DeepPack Terms of Service

These Terms, together with the Order Form, constitutes the entire agreement between us and supersedes any other discussion or agreement between us ("**Agreement**"). We have written these Terms in plain English so it is clear what is required from both Parties. Please pay particular notice to clauses 11 and 12 as these are really important provisions. This is where We set out Your indemnity to us and Our liability to You. We have put the Definitions at the end of this Agreement.

We, Instadeep Ltd, are a limited company registered in England and Wales under company number 09816291 with Our registered office at 5 Merchant Square, London W2 1AY ("**We**", "**Us**", "**Our**"); and **You** are the **Customer** as detailed on the Order Form (the words "**You**", "**Customer**" and "**Your**" will be construed accordingly). Any reference to one of us could refer to a '**Party**' and to both of us will refer to 'the **Parties**'.

You are contracting with Us to access DeepPack, Our load planning optimisation platform. Whenever We refer to 'DeepPack', We also mean the DeepPack Dashboard and Our AI proprietary technology and modelling services that We will provide to You ("**DeepPack**").

1. **DeepPack**
   1.1. In consideration for You paying the Subscription Fees, for the duration of the Subscription Term, We shall:
   1.1.1. grant to You a non-exclusive, non-transferable, non-sublicensable, revocable licence to access and use (and to permit Authorised Users to access and use) DeepPack for Your internal business purposes in accordance with the Documentation and the terms of this Agreement;
   1.1.2. use commercially reasonable efforts to maintain the availability of the Hosted Services 24 hours a day, seven days a week, but We do not guarantee the availability of the Hosted Services; and
   1.1.3. not be responsible for any downtime caused by anything outside of Our control including but not limited to Force Majeure Events or breach by You of this Agreement.
   1.2. In providing DeepPack we need to 'use' your Data. We promise:
   1.2.1. not to use your Data other than as provided for in this Agreement;
   1.2.2. only for the purposes of DeepPack;
   1.2.3. to allow you to delete your Data from the DeepPack platform at any point and on termination of this Agreement; and
   1.2.4. will treat your Data as Confidential Information.

2. **Your obligations**
   2.1. You will:
   2.1.1. inform Us of any bespoke requirements, issues or strategies that could affect how You use DeepPack and the suitability of recommendations DeepPack suggests such as packing strategies (including where weight and delicacy of products are considerations);
   2.1.2. only access and use DeepPack for the purpose of conducting simulations for optimised packing in order to accommodate Your bespoke preferred packing strategy, product and Container type;
   2.1.3. provide Us with all necessary cooperation and access to any information and Data as We may need only to be able to provide You with the DeepPack service;
   2.1.4. comply with all applicable laws, guidance and regulations with respect to Your activities under this Agreement;
   2.1.5. ensure that Your Authorised Users use DeepPack in accordance with this Agreement and User Terms and access DeepPack only through a Supported Web Browser;

2.1.6. ensure that You have all consents and approvals for any of Your Personal Data that You might upload into DeepPack;

2.1.7. have sole responsibility for the legality, reliability, integrity, accuracy and quality of Your Data ensuring that to the best of Your knowledge it is as accurate, reliable, clean, relevant and appropriate as possible;

2.1.8. only use APIs provided to You by Us with or in relation to an application or applications approved by Us in writing and controlled directly by You;

2.1.9. implement and maintain reasonable security measures relating to Access Credentials and ensure that Your Authorised Users keep Access Credentials secure and confidential preventing any third party access;

2.1.10. maintain a written record of current Authorised Users and provide Us with that list on request; and

2.1.11. permit and assist Us with any audit of DeepPack We may carry out including audits of Your Authorised Users log in credentials and Your data processing facilities.

2.2. You will not:

2.2.1. unless agreed with Us in writing, use DeepPack to provide any services to third parties;

2.2.2. access any DeepPack software code (including but not limited to object code, intermediate code and source code) and You will not attempt to:

2.2.2.1. copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit or distribute all or any portion of the Hosted Services in any form or media or by any means;

2.2.2.2. de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Hosted Services; and

2.2.2.3. access all or any part of the Hosted Services in order to build a product or service which competes with the Hosted Services;

2.2.3. Do anything that will affect Our ownership of the Intellectual Property Rights;

2.2.4. Unless agreed with Us in writing, licence, sell, rent, lease, transfer, assign, distribute, display, disclose or otherwise commercially exploit or otherwise make the Hosted Services available to any third party except the Authorised Users;

2.2.5. conduct, or request that any Authorised User or any third party conducts, any load testing or penetration testing on or in relation to DeepPack;

2.2.6. use DeepPack in any way that infringes the Intellectual Property Rights of any third party; or

2.2.7. use DeepPack in any way that is unlawful, illegal, fraudulent or harmful. We reserve the right at any time during the Subscription Term, without liability or prejudice to Our other rights to You, to disable Your access to DeepPack should you breach the provisions of this clause 2.2.

2.3. If We carry out an audit under 2.1.11 above and We become aware:

2.3.1. of unauthorised access then without prejudice to Our other rights, You shall promptly disable such Access Credentials and We shall not issue any new Access Credentials to any such individual; and/or

2.3.2. that You have underpaid Subscription Fees to Us then without prejudice to Our other rights, You shall pay to Us an amount equal to such underpayment as calculated in accordance with the prices set out in any applicable Order Form within ten (10) Business Days of the date of the relevant audit.

3. **Maintenance**

From time to time We may need to suspend DeepPack in order to carry out maintenance. For non-urgent maintenance, We will try to give You as much notice in advance that this will happen and will try to carry out Our maintenance outside of usual business hours.

4. Support Services

We will provide You with Support Services during Business Hours. However, We may suspend these Support Services if any of the Fees are outstanding.

5. Your Data

5.1. We need to use Your data to be able to provide You with the full services in DeepPack, including our AI, algorithms and machine learning. So, to the extent required for Your use of DeepPack, You grant to Us a non-exclusive license to copy, reproduce, store, use, export, adapt, edit and translate Your Data.

5.2. You warrant to Us that Your Data will not infringe the Intellectual Property Rights or privacy rights of any third party and that any of Your Personal Data that is used and/or uploaded to DeepPack will not infringe the Data Protection Legislation.

6. Intellectual Property Rights

6.1. Nothing in this Agreement will assign or transfer any Intellectual Property Rights from Us to You nor from You to Us.

6.2. You acknowledge and agree that We and/or Our licensors own all Intellectual Property Rights including but not limited to any algorithms, AI and machine learning, in and to DeepPack and the Documentation and unless We say otherwise in this Agreement You are not granted any rights to, under, or in any Intellectual Property Rights in respect of DeepPack or the Documentation.

6.3. You grant to Us a worldwide, non-exclusive, royalty-free, transferable license to use Your name, logo, trademark and other related get-up ("**Get Up**") so as to promote DeepPack. If You do not wish for Us to use Your Get Up then please give notice to Us in writing to the email address set out in 15.1.1.

7. Subscription Fees

7.1. Subscription Fees are stated exclusive of any applicable value added taxes or similar taxes and unless otherwise stated on the Order Form all Subscription Fees are shown in GBP.

7.2. We will keep Our Pricing Plans under review but no changes will be effective to Your Fees until the commencement of the next Renewal Term.

8. Confidentiality

We both promise to keep each other's Confidential Information secret for as long as it has commercial value to the Party disclosing it. But, You agree that We may share Your Confidential Information with Our employees or anyone else who needs to know it in order for Us to provide You with and to improve DeepPack. We promise to act reasonably when sharing your confidential information and will ensure that anyone who We share Your Confidential Information with is bound by confidentiality obligations similar to these. Information that is already known by either of us; is lawfully told to either of us by anyone else without restriction; is independently developed by either of us (with evidence to show its independence); or is agreed by both of us in writing to not be confidential will not be covered by this clause. Both of us may disclose each other's Confidential Information to the minimum extent required by law and shall let each other know if required to do so to the extent that we are legally allowed.

9. Data Protection

We shall both comply with our obligations under the Data Protection Legislation and You acknowledge that We will process any of Your Personal Data in accordance with Our Privacy Policy.

10. Warranties

10.1. You warrant that:

10.1.1. You have the legal right and authority to enter into this Agreement;

10.1.2. You will comply with all applicable legal and regulatory requirements applicable to Your use of DeepPack and complying with this Agreement; and

10.1.3. You will obtain and maintain any licences, consents, permits, and regulatory approvals applicable to Your Data and to Your use of DeepPack.

10.2. We do not warrant that:

10.2.1. Your use of DeepPack will always be uninterrupted or error free;

10.2.2. Your use of DeepPack will meet Your desired results; or

10.2.3. DeepPack will be compatible with any other software or systems other than that software and those systems specified as compatible in the Specification.

10.3. You acknowledge and agree that artificial intelligence and machine learning is dependent on the quality of the data sets the artificial intelligence/machine learning is applied to, and that such data sets have a material impact on any results produced. As You will be inputting Your data to DeepPack, You therefore accept that We have no liability whatsoever to You for any results obtained when You use DeepPack.

11. Indemnity

You shall indemnify Us and hold Us harmless against any claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs, reasonable legal fees and any defence costs and expenses) arising out of or in connection with Your use of DeepPack.

12. Liability

12.1. Except as expressly and specifically provided in this Agreement:

12.1.1. You will assume sole responsibility for any results obtained from Your use of DeepPack and for any conclusions drawn from such use. Therefore We shall have no liability for any damage, loss or impact caused by Your use of DeepPack or caused by any errors or omissions in any information, instructions or Your Data uploaded to DeepPack;

12.1.2. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and

12.1.3. DeepPack is provided to You on an 'as is' basis.

12.2. Nothing in this Agreement will limit or exclude any liability:

12.2.1. of either Party for death or personal injury resulting from a Party's negligence;

12.2.2. of either Party for fraud or fraudulent misrepresentation; or

12.2.3. that cannot be lawfully limited or excluded under applicable law.

12.3. Subject to clauses 12.1 and 12.2:

12.3.1. We shall not be liable whether in tort (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, including Your Data, or pure economic loss, or for any special, indirect or consequential loss, penalties, costs, damages, charges or expenses however arising under this Agreement; and

12.3.2. Our total aggregate liability in contract, tort (including negligence and breach of statutory duty), misrepresentation, restitution or otherwise, arising out of or in connection with the performance or contemplated performance of this Agreement shall be limited to the greater of USD 10,000 (ten thousand United States dollars) or the total Subscription Fees payable by You in the twelve (12) months preceding the date on which the claim arose.

13. Term and termination

13.1. Unless You terminate as per clause 13.2 below, Your renewal ("**Renewal Term**") shall occur as follows:

13.1.1. For Annual Subscriptions, the Subscription Term shall renew automatically for succeeding terms of one (1) year each; or

13.1.2. For Monthly Subscription the Subscription Term shall renew automatically for succeeding terms of one (1) month each.

13.2. Either Party can terminate if they give written notice to the other at least thirty (30) days prior to the expiration of the then current Subscription Term or Renewal Term.

13.3. Without affecting any other right or remedy available to Us or You, either Party may terminate this agreement immediately by giving written notice to the other Party if:

13.3.1. the other Party commits a material breach of this Agreement and (if such breach is remediable) fails to remedy the breach within five (5) Business Days of being notified in writing to do so; or

13.3.2. the other Party goes into liquidation (whether compulsory or voluntary) otherwise than for the purposes of a bona fide amalgamation or reconstruction, or an administrator or receiver or similar officer is appointed over the whole or any part of the other's assets, or the other Party enters into any arrangement for the benefit of or compounds with its creditors generally, or threatens to do any of these things, or any judgement is made against the other Party, or any similar occurrence under any jurisdiction affects the other Party; or the other Party ceases or threatens to cease to carry on business.

13.4. On Termination You will delete all the Data You have uploaded onto DeepPack.

14. Effects of termination

On termination of these Terms for any reason clauses 18 (Definitions), 6 (Intellectual Property), 8 (Confidentiality), 9 (Data Protection), 11 (Indemnity), 12 (Liability) and 17 (General) shall continue in force and effect notwithstanding the termination or expiry of this Agreement.

15. Notices

15.1. A notice given under or in connection with this agreement shall only be valid if served as follows:

15.1.1. Any notice from You to Us shall be made by email to legal@instadeep.com; and

15.1.2. Any notice from Us to You shall be made either by email to any of the Authorised users or by notice on the DeepPack Dashboard or Website by way of banner or alert or other notifiable method.

16. No partnership or agency

Nothing in this Agreement is intended to or shall operate to create a partnership, agency or authority to act between the Parties.

17. General

17.1. No full or partial failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver.

17.2. If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the Parties, in which case the entirety of the relevant provision will be deemed to be deleted).

17.3. You agree that We may assign Our rights and obligations under this Agreement to any successor to all or a substantial part of Our business from time to time. However, You must not assign, transfer or otherwise deal with any of Your contractual rights or obligations under this Agreement without Our prior written consent.

17.4. This Agreement does not confer any rights on any person or party (other than the Parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

17.5. This Agreement and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and Wales.

17.6. Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to adjudicate and settle any dispute or claim arising under or in connection with this Agreement.

18. **Definitions** In this Agreement the following terms apply:

18.1. "**Access Credentials**" means the usernames, passwords and any other credentials necessary to enable Authorised Users' access to DeepPack;

18.2. "**Annual Subscription**" means a twelve (12) month Subscription Term commencing on the Effective Date which shall automatically renew as a Renewal Term unless terminated in accordance with clause 13.2;

18.3. "**API**" means any application programming interface made available by Us from time to time in relation to Your use of DeepPack;

18.4. "**Authorised User**" means an employee or consultant engaged by You who is authorised to have access to DeepPack and who will be granted one of the following access roles: Owner, Manager, Guest Collaborator or Guest;

18.5. "**Confidential Information**" means information that is proprietary, confidential or a trade secret and is either identified as Confidential Information by either Party or clearly confidential or proprietary due to the nature of the information or is stated as being Confidential Information in clause 8;

18.6. "**Your Data**" means all data inputted by You or Your Authorised Users into DeepPack;

18.7. "**Your Personal Data**" means any Personal Data that is processed by Us on Your behalf in relation to Your use of DeepPack;

18.8. "**Data Protection Legislation**" means all applicable data protection, privacy and electronic marketing legislation, including any national legislation implementing Directive 2002/58/EC (the Privacy and Electronic Communications Directive), the General Data Protection Regulation (Regulation (EU) 2016/679), the Data Protection Act 2018 (and any related national legislation) and any replacement or repealing legislation;

18.9. "**Documentation**" means the documentation made available to You by Us online via the Website or as notified to You from time to time setting out a description and instructions for use of DeepPack;

18.10. "**Effective Date**" means the date on the Order Form upon which We grant You access to DeepPack;

18.11. "**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of the Party affected (including, without limitation, failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, Virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

18.12. "**Intellectual Property Rights**" means all patents, unpatented inventions, registered and unregistered designs and design rights, copyrights (including rights in computer software), database rights, topography rights, domain names, trade marks, rights in trade dress and get-up, rights in goodwill or to sue for passing off, service marks, trade names, logos, rights in trade secrets, know-how (including applications or the right to apply for registration of all of the foregoing) and all other intellectual property rights of any nature whatsoever and all rights of a similar nature or having similar effect

throughout the world whether registered or unregistered and whether now existing or in the future created including all applications and rights to apply for, and be granted renewals or extensions of, and rights to claim priority from, such rights;

18.13. "**Monthly Subscription**" means a one (1) month Subscription Term commencing on the Effective Date and which shall automatically renew as a Renewal Term unless terminated in accordance with clause 13.2;

18.14. "**Order Form**" means a digital or hard copy order form signed by You which incorporates these Terms;

18.15. "**Personal Data**" has the meaning given to it in the Data Protection Legislation;

18.16. "**Pricing Plan**" means the particular subscription plan that You sign up to, as specified in the Order Form and described either as 'Free Trial', 'Lite', 'Pro', 'Enterprise', or 'Elite';

18.17. "**Renewal Term**" has the meaning given to it in clause 13.1;

18.18. "**Specification**" means the specification for the Hosted Services set out in the Documentation;

18.19. "**Subscription Fee**" means the fees payable by You for using DeepPack based on the Pricing Plan;

18.20. "**Subscription Term**" means the initial term specified in the Order Form commencing on the Effective Date and shall include any subsequent Renewal Term(s);

18.21. "**Support Services**" means the services offered by Us that allow You to report any issues, performance or availability of DeepPack as specified in the Order Form;

18.22. "**Supported Web Browser**" means the current release from time to time of Microsoft Edge, Mozilla Firefox, Google Chrome or Apple Safari, or any other web browser that We notifiy You of in writing from time to time;

18.23. "**User Terms**" means the terms and conditions applicable to the access and use of DeepPack by Authorised Users at https://deeppack.ai/terms-conditions/; and

18.24. "**Virus**" means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by rearranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.