



SkyMind License Agreement

This SkyMind License Agreement ("**Agreement**"), by and between SkyMind, Inc., a Delaware corporation ("**SkyMind**") and the licensee agreeing to the terms below ("**Licensee**"). The parties agree:

1. License.

- (a) The "**Software**" means object code versions of the following SkyMind software products, excluding any Open Source Components, but including any Upgrade provided under this Agreement: SkyMind Intelligence Layer (SKIL), including Deeplearning4j, ND4J, Libnd4j, DataVec, Arbiter, JavaCPP and SKIL Monitoring.
- (b) License Grant. Subject to the terms of this Agreement, SkyMind grants to Licensee a non-exclusive, non-transferable, limited, royalty-bearing license during the term of this Agreement to:
 - (i) install and use the Software in object code form, solely for Licensee's internal testing, development and business purposes;
 - (ii) copy and incorporate the Software into an Integrating Application; and
 - (iii) use and copy the Documentation.
- (c) Open Source. Copies of the Software may contain and use software components licensed under Open Source Licenses ("**Open Source Components**"). Open Source Components have their own copyright and its applicable license conditions. Open Source Components are licensed under the terms of the applicable Open Source Licenses and copyright notices found or referenced in the corresponding license files, Documentation or other accompanying materials.

2. License Restrictions. Except as expressly permitted in this Agreement, Licensee agrees not to and shall not allow any third party to:

- (a) sell, lease, license, distribute, sublicense or otherwise transfer in whole or in part, any Software or Documentation to a third party;
- (b) decompile, disassemble, translate, reverse engineer or otherwise attempt to derive source code from the Software, in whole or in part, nor shall Licensee use any mechanical, electronic or other method to trace, decompile, disassemble, or identify the source code of the Software or encourage others to do so, except to the limited extent, if any, that applicable law permits such acts notwithstanding any contractual prohibitions, provided, however, before Licensee exercises any rights that Licensee believes to be entitled to based on mandatory law, Licensee shall provide SkyMind with 30 days prior written notice and provide all reasonably requested information to allow SkyMind to assess Licensee's claim and, at SkyMind's sole discretion, to provide alternatives that reduce any adverse impact on SkyMind's intellectual property or other rights;
- (c) allow access or permit use of the Software by any users other than Licensee's employees or authorized third-party contractors who are providing services to



Licensee and agree in writing to abide by the terms of this Agreement, provided further that Licensee shall be liable for any failure by such employees and third-party contractors to comply with the terms of this Agreement;

- (d) create, develop, license, install, use, or deploy any third party software or services to circumvent or provide access, permissions or rights which violate the license keys embedded within the Software;
 - (e) modify or create derivative works based upon the Software or Documentation;
 - (f) disclose the results of any benchmark test of the Software to any third party without SkyMind's prior written approval;
 - (g) change any proprietary rights notices which appear in the Software or Documentation;
 - (h) use the Software as part of a software as a service where Licensee receives payment for such software as a service or in any other resale capacity; or
 - (i) incorporate, modify, combine or distribute the Software with any other computer code in a manner that would subject the Software to Copyleft License Terms.
3. Delivery. SkyMind will make electronic copies of
- (a) the Software, packaged as Debian software package and RPM package manager packages; and
 - (b) corresponding Documentation

available to Licensee via Internet servers.

4. Royalty Fees. SkyMind shall invoice Licensee, and Licensee shall pay, royalty fees as set forth on the attached pricing sheet, on a per-Node basis. All invoices are due upon receipt and payable within 30 days in U.S. dollars. Licensee will pay directly any taxes arising out of this Agreement or SkyMind's performance under this Agreement, including applicable local, state, federal and international sales taxes, value added taxes, withholding taxes, and any other taxes or duties of any kind, but excluding taxes on SkyMind's net income and all employer reporting and payment obligations with respect to SkyMind's personnel. If any applicable law requires Licensee to withhold amounts from any payments to SkyMind under this Agreement;
- (a) Licensee will effect such withholding, remit such amounts to the appropriate taxing authorities and promptly furnish SkyMind with tax receipts evidencing the payments of such amounts; and
 - (b) the sum payable by Licensee upon which the deduction or withholding is based will be increased to the extent necessary to ensure that, after such deduction or withholding, SkyMind receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount SkyMind would have received and retained absent the required deduction or withholding.

SkyMind is not responsible for any expenses incurred by Licensee in connection with this Agreement. All fees are nonrefundable and made without right of set-off or chargeback.



All amounts not paid when due are subject to a late fee of the lesser of one percent (1%) per month or the maximum amount allowable by law.

5. Upgrades. From time to time, SkyMind may provide an Upgrade of its Software. An Upgrade may incorporate third party upgrades as well as accumulated bug fixes. A list of supported third party software and associated upgrades are listed in the Documentation. There shall be no additional charge for any Upgrade provided Licensee is current in the fees described in Section 4 (Royalty Fees). Licensee shall implement each provided Upgrade as soon as reasonably practical. No Upgrade includes new Software. New Software provides significant new features and functions not available in the current Software line, ports existing Software to new hardware or software platforms or provides significant new functionality on new hardware or software platforms. Hot fixes are provided to address critical failure and may not receive the full quality assurance and regression testing performed on regular maintenance releases due to the urgent nature of the situation.
6. Ownership. SkyMind reserves all intellectual property rights not expressly granted by it to Licensee under this Agreement. Other than the limited licenses granted in this Agreement, SkyMind retains all right, title and interest in the Software and Documentation, and all derivative works thereof. Except as otherwise set forth in this Agreement, Licensee agrees that the rights granted to Licensee under this Agreement do not extend to its affiliates or to any other third party. At any time during the use of the software by Licensee, Licensee's personnel or Licensee's End User, SkyMind may collect data and metadata resulting from such use, and shall, and hereby does, own any such data and metadata collected and processed by SkyMind resulting from such use, and may use such data and metadata on a de-identified, aggregated basis, for any purposes SkyMind deems fit. If such data and metadata is not capable of being owned pursuant to applicable law, then Licensee hereby grants to SkyMind a worldwide, perpetual, irrevocable, royalty-free, fully sublicensable and non-exclusive right and license to use, access, store, copy, download, print, sell, perform, display, execute, reproduce and modify (including to create improvements and derivative works of), distribute, and otherwise use and exploit such data and metadata on a de-identified, aggregated basis for any purpose SkyMind deems fit.
7. Term and Termination.
 - (a) Term. This Agreement will become effective as of the date of this Agreement and will continue for a period of 24 months. Thereafter, this Agreement will automatically renew for additional one-year periods unless either party provides written notice to the other party at least 90 days prior to the end of the then-current term.
 - (b) Termination. This Agreement may be terminated with the prior written consent of both parties. In addition, either party may terminate this Agreement immediately upon giving notice in writing to the other party if the non-terminating party commits a material breach of this Agreement and has failed to cure such breach within 30 days following a request in writing from the notifying party to do so.
 - (c) Effect of Termination.
 - (i) Upon the expiration or termination of this Agreement:



- (A) all outstanding amounts owed by Licensee under this Agreement will become immediately due and payable;
 - (B) subject to the remainder of Section 7(b) (Termination), all licenses under this Agreement will terminate; and
 - (C) Licensee will immediately cease using the Software and Documentation.
- (d) Survival. Section 2 (License Restrictions), Section 6 (Ownership), Section 7 (Term and Termination), Section 8 (Warranties, Disclaimer and Indemnification), Section 9 (Limitation of Liability), Section 10 (General) and Section 11 (Definitions) will survive the expiration or termination of this Agreement.
8. Warranties, Disclaimer and Indemnification.
- (a) Software Warranty. SkyMind warrants to Licensee only that, for a period of 30 days following the date the Software is initially licensed under this Agreement ("**Warranty Period**"), the Software shall substantially conform to the description contained in the applicable Documentation. This warranties will apply only if:
- (i) the Software has been properly installed and used at all times and in accordance with the instructions in the applicable Documentation;
 - (ii) no modification, alteration or addition has been made to the Software; and
 - (iii) SkyMind receives written notification of the breach during the Warranty Period.
- (b) Disclaimer. *Except for the warranty in Section 8(a) (Software Warranty), the Software and Documentation are provided "as-is" and SkyMind and its suppliers make no warranties of any kind, express or implied, including, but not limited to, any implied warranties of merchantability, fitness for a particular purpose, integration, non-infringement, title, performance, and accuracy and any implied warranties arising from statute, course of dealing, course of performance, or usage of trade. Without limiting the generality of the foregoing disclaimer, the Software and Documentation are not designed, manufactured or intended for use in the planning, construction, maintenance, control, or direct operation of nuclear facilities, aircraft navigation, control or communication systems, weapons systems, or direct life support systems.*
- (c) Indemnification.
- (i) Indemnity. Subject to the remainder of Section 8(c) (Indemnification), SkyMind shall defend Licensee against any unaffiliated third party claim brought against Licensee that use of the Software as permitted under this Agreement infringes such third party's U.S. copyright or trade secret right ("**Infringement Claim**"), and indemnify Licensee from the resulting costs and damages awarded against Licensee to the third party making such Infringement Claim, by a court of competent jurisdiction or agreed to in settlement; provided that Licensee:
 - (A) notifies SkyMind promptly in writing of such Infringement Claim;
 - (B) grants SkyMind sole control over the defense and settlement thereof; and
 - (C) reasonably cooperates in response to a SkyMind request for assistance.



SkyMind will have the exclusive right to defend any such Infringement Claim and make settlements thereof at its own discretion, and Licensee may not settle or compromise such Infringement Claim, except with prior written consent of SkyMind.

- (ii) **Options.** Should any Software licensed under this Agreement become, or in SkyMind's opinion be likely to become, the subject of such an Infringement Claim, SkyMind shall, at its option and expense;
 - (A) procure for Licensee the right to make continued use thereof;
 - (B) replace or modify such so that it becomes non-infringing; or
 - (C) request return of the Software and, upon receipt thereof, the corresponding licenses are terminated and SkyMind shall refund the prepaid but unused fees paid for the infringing Software.
- (iii) **Exclusions.** SkyMind shall have no liability if the alleged infringement is based on:
 - (A) combination with non-SkyMind products, data or business processes;
 - (B) use for a purpose or in a manner for which the Software was not designed;
 - (C) use of any older release of the Software when use of a newer SkyMind revision would have avoided the infringement;
 - (D) any modification or alteration of the Software;
 - (E) any intellectual property right owned or licensed by Licensee and End User, excluding the Software;
 - (F) SkyMind's compliance with any materials, designs, specifications or instructions provided by Licensee;
 - (G) Licensee or End User using the Software after SkyMind notifies Licensee to discontinue using due to such a claim; or
 - (H) Open Source Components or other software under Open Source Licenses.
- (iv) **Limitation. Section 8(c) (Indemnification) states Licensee's sole and exclusive remedy and SkyMind's entire liability for infringement claims.**

9. ***Limitation of Liability. In no event shall SkyMind be liable for any loss of use, lost data, failure of security mechanisms, interruption of business, or any indirect, special, incidental, exemplary, punitive or consequential damages of any kind (including lost profits), regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise, even if informed of the possibility of such damages in advance. SkyMind's total liability for any type of claim whatsoever arising hereunder, shall be limited to proven direct damages in an amount not to exceed the amount paid by Licensee to SkyMind under this Agreement during the 12-month period immediately preceding the date of the claim. In no event will SkyMind's suppliers have any liability under this Agreement. The foregoing limitations, exclusions and disclaimers are an allocation of the risk between the parties and will apply to the maximum extent permitted by applicable law, even if any remedy fails in its essential purpose.***

10. **General.**



- (a) Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the use of the Software and Documentation. Purchase orders shall be for the sole purpose of defining quantities, prices and describing the Software and Documentation to be provided under this Agreement and to this extent only are incorporated as a part of this Agreement and all other terms in purchase orders are rejected. This Agreement supersedes all prior or contemporaneous discussions, proposals and agreements between the parties relating to the subject matter hereof. No amendment, modification or waiver of any provision of this Agreement shall be effective unless in writing and signed by both parties.
- (b) Severability. If any provision of this Agreement is held to be invalid or unenforceable, the remaining portions shall remain in full force and effect and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provision valid and enforceable.
- (c) Waiver. No waiver of rights by either party may be implied from any actions or failures to enforce rights under this Agreement.
- (d) Force Majeure. Neither party shall be liable to the other for any delay or failure to perform due to causes beyond its reasonable control (excluding payment of monies due).
- (e) No Third Party Beneficiaries. Unless otherwise specifically stated, the terms of this Agreement are intended to be and are solely for the benefit of Skymind and Licensee and do not create any right in favor of any third party.
- (f) Governing Law and Jurisdiction. This Agreement shall be governed by the laws of the State of California, without reference to the principles of conflicts of law. The provisions of the Uniform Computerized Information Transaction Act and United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any litigation related to this Agreement shall be brought in the state or federal courts located in San Francisco County, California, and only in those courts and each party irrevocably waives any objections to such venue.
- (g) Notice. The parties shall provide notices and other communications under this Agreement in writing to the address provided with each party's signature or another address the party designates by notice. Notice may be given only in the following ways:
 - (i) notice delivered personally is given on the date of delivery;
 - (ii) notice sent by electronic mail is given on receipt and acceptance by the recipient's electronic mail server;
 - (iii) notice sent by overnight courier service with delivery receipt requested and charges paid by the dispatching party is given on the date the courier schedules the parcel for delivery; and
 - (iv) notice sent by registered or certified mail with return receipt requested and postage prepaid is given on five business days following the date of mailing.
- (h) Government Regulation.



- (i) Licensee acknowledges that the Software is subject to export restrictions by the U.S. government and import restrictions by certain foreign governments. Licensee may not export or reexport the Software except in compliance with the U.S. Export Administration Act and the related rules and regulations and similar non-U.S. government restrictions, if applicable. Licensee shall not and shall not allow any third-party to remove or export from the United States or allow the export or reexport of any Software or any direct product thereof:
 - (A) into (or to a national or resident of) any embargoed or terrorist-supporting country;
 - (B) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals;
 - (C) to any country to which such export or reexport is restricted or prohibited, or as to which the U.S. government or any agency thereof requires an export license or other governmental approval at the time of export or reexport without first obtaining such license or approval; or
 - (D) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority.
- (ii) Licensee agrees to the foregoing and warrants that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The Software is further restricted from being used for:
 - (A) terrorist activity; or
 - (B) the design or development of nuclear, chemical, or biological weapons or missile technology without the prior permission of the U.S. government.
- (iii) Licensee shall at all times comply with all applicable laws and regulations in its performance under this Agreement, including without limitation any applicable anti-corruption laws.
- (iv) The Software and accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and its accompanying Documentation by the U.S. Government shall be governed solely by the terms of the agreement between Licensee and Licensee.

11. Definitions. Capitalized terms in this Agreement have the following meanings:

- (a) "**Copyleft License Terms**" means the terms of a license of an item of software that requires or that conditions any rights granted in such license upon:
 - (i) the disclosure, distribution or licensing of any other software;
 - (ii) a requirement that any disclosure, distribution or licensing of any other software be at no charge;



- (iii) a requirement that any other licensee of the software be permitted to modify, make derivative works of, or reverse-engineer any such other software;
 - (iv) a requirement that such other software be redistributable by other licensees; or
 - (v) the grant of any patent rights of such other software, including non-assertion or patent license obligations with respect to such other software.
- (b) "**Documentation**" means the documentation made available electronically as part of the Software, which may be modified from time to time by SkyMind.
- (c) "**End User**" means an end user customer that purchases the Software for its own internal use and not for resale, sublicensing or providing any services for any third party.
- (d) "**Integrating Application**" means a software solution that incorporates the Software with other software applications.
- (e) "**Node**" means any physical or virtual server or container that runs a Java Virtual Machine as part of an Integrating Application.
- (f) "**Open Source Licenses**" means terms of public licenses approved by the Open Source Initiative as "open source licenses". The Apache License, Version 2.0, and The MIT License are Open Source Licenses.
- (g) "**Upgrade**" means a Major Release, Minor Release, or Patch Release of the Software. "**Major Release**" means a generally available release of the Software designated by SkyMind by means of a change in the digit to the left of the first decimal point (e.g. 2.y.z, 3.y.z, 4.y.z). "**Minor Release**" means a generally available release of the Software designated by SkyMind by means of a change in the digit to the right of the first decimal point (e.g. x.4.z, x.5.z, x.6.z). "**Patch Release**" means generally available code corrections and patches for the Software designated by SkyMind by means of a change in the digit to the right of the Minor Release number (e.g. x.y.1, x.y.2).

Intending to be legally bound, the SkyMind Inc. and the Licensee agrees to these terms.