

LICENSE AGREEMENT

Carnegie Mellon University – <Legal Company Name>

This Agreement (hereinafter "this Agreement") entered into as of _____, __, 20__ ("Effective Date") by and between Carnegie Mellon University, a Pennsylvania not-for-profit corporation, having a principal place of business at 5000 Forbes Avenue, Pittsburgh, PA 15213 ("Carnegie Mellon") and <LEGAL COMPANY NAME>, a <STATE/COUNTRY OF INCORPORATION> <TYPE OF CORPORATION>, having a principal place of business at <ADDRESS> ("Licensee").

Witnesseth

Whereas, Carnegie Mellon owns certain rights in certain technology relating to realtime location of anatomical landmarks and known at Carnegie Mellon as OpenPose;

Whereas, Licensee desires to acquire rights in and to OpenPose upon the terms and conditions herein set forth;

Now Therefore, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the parties agree as follows:

1. Certain Definitions ("Defined Terms")

1.1. "**Code**" shall mean Source Code and Object Code collectively.

1.2. "**Object Code**" shall mean code, substantially or entirely in binary form, which is intended to be directly executable by a computer after suitable processing but without the intervening steps of compilation or assembly.

1.3. "**Source Code**" shall mean code, other than Object Code, and related source code level system documentation, comments and procedural code, such as job control language, which may be printed out or displayed in human readable form.

1.4. "**Copyrights**" shall mean Carnegie Mellon's copyrights in the Licensed Technology.

1.5. "**Licensed Technology**" or "**Technology**" shall mean the OpenPose software including related Code and Copyrights, owned by Carnegie Mellon on an "as is" basis on the Effective Date and provided to Licensee as specified in Section 2.2 herein.

1.6. "**Derivative**" shall mean computer software or other intellectual property developed by Licensee, which includes, or is based in whole or in part on, the Licensed Technology, including, but not limited to, translations of the Licensed Technology to other foreign or computer languages, adaptation of the Licensed Technology to other hardware platforms, abridgments, condensations, revisions, and software incorporating all or any part of the Licensed Technology which may also include Licensee-created modifications, enhancements or other software.

1.7. "**Licensed Product**" or "**Product**" shall mean any product and/or service which constitutes, is based on, incorporates or utilizes, wholly or in part, Licensed Technology and/or any and all Derivatives.

1.8. "**Dispose**" or "**Disposition**" shall mean the use, sale, lease or other transfer.

1.9. "**Dollar**", "**U.S. Dollar**" and "**\$ U.S.**" shall mean lawful money of the United States of America.

1.10. "**Field of Use**" shall mean software installations for location of anatomical landmarks, specifically excluding the field of sports.

2. License Grant and Delivery

2.1. Subject to and conditioned upon receipt of the Annual Minimum Royalty described in Section 4.1, Carnegie Mellon hereby grants to Licensee, and Licensee hereby accepts, an non-exclusive, world-wide right to use the Licensed Technology to create Derivatives for the sole purpose of making and/or Disposing of Licensed Products for the Field of Use. Licensee agrees not to assert against Carnegie Mellon any of Licensee's intellectual property rights in any Derivatives.

2.2 Within five (5) days following Carnegie Mellon's receipt of the first Annual Minimum Royalty described in Section 4.1 from Licensee, Carnegie Mellon shall provide to Licensee the Licensed Technology on an "AS IS, AS PROVIDED" basis, via secure download from the url <add flintbox site>.

2.3. No right to sublicense the Technology is hereby granted to Licensee except that Licensee may sublicense to its customers Licensed Technology in the ordinary course of business to the extent necessary for use and practice of the Licensed Product Disposed of by Licensee to said customers and consistent with the use and practice permitted by Section 2.1.

2.4. Nothing in this Agreement shall restrict academic research or other not-for-profit scholarly activities, which are undertaken at a nonprofit or governmental institution in the Field of Use and/or in the area of Licensed Technology and/or any other areas.

2.5. All Licensed Products shall be Disposed of and performed by Licensee in compliance with all applicable governmental laws, rules, and regulations. Licensee shall keep Carnegie Mellon fully informed of, and shall move expeditiously to resolve, any complaint by a governmental body relevant to the Licensed Products.

3. Term of this Agreement

The term of this Agreement and the rights and licenses granted hereunder shall commence on the Effective Date and shall continue for an initial period of one (1) year thereafter (the "Initial Term"), and may be automatically renewed each successive year thereafter (each successive year, a "Renewal Term" and together with the Initial Term, the "Term"), upon Licensee's timely payment of the Annual Minimum Royalty on or before the commencement of each and every Renewal

Term, but only if (i) Licensee is not otherwise then in breach or default of this Agreement at such time and (ii) this Agreement is not terminated earlier and provided herein.

4. Royalties and Payment Terms

4.1. Licensee shall pay Carnegie Mellon a non-refundable annual minimum royalty ("Annual Minimum Royalty"), of twenty-five-thousand U.S. Dollars (\$U.S. \$25,000) which shall be due and payable simultaneously in connection with the execution of this Agreement and on or before the commencement of each and every Renewal Term thereafter.

4.2. All amounts payable to Carnegie Mellon shall be paid by Licensee to Carnegie Mellon in U.S. Dollars and shall be made by wire transfer to Carnegie Mellon's account No.197-9003, account title "Carnegie Mellon University", ABA043000261, SWIFT Code: IRVTUS3N, Carnegie Mellon Ref. No 2017-098, at Bank of New York Mellon Client Service Center, 500 Ross Street, Pittsburgh, PA 15262-0001 USA, contact Jan Schade, jan.schade@bnymellon.com, telephone +1 (412) 234-3359, or by Licensee's credit card payment through the secure url <add flintbox site>.

4.3. All amounts payable hereunder which are overdue shall bear interest until paid at a rate equal to the Prime Rate in effect at the date such amounts were due plus four percent (4%) per annum, but in no event to exceed the maximum rate of interest permitted by applicable law. This provision for interest shall not be construed as a waiver of any rights Carnegie Mellon has as a result of Licensee's failure to make timely payment of any amounts.

4.4. Without limiting the generality of the foregoing, in the event that the first Annual Minimum Royalty of twenty-five-thousand U.S. Dollars (\$U.S. \$25,000) required by Section 4.1 is not received by Carnegie Mellon within 10 days (10) days following the Effective Date, this Agreement shall be void ab initio, as if it had never been executed and neither party shall have any obligation hereunder.

5. Markings, Trademarks and Trade Names

5.1 Licensee acknowledges that the title to the Technology (including Copyright) shall remain with Carnegie Mellon.

5.2 Licensee acknowledges that it does not have any rights or any title whatsoever in or to Carnegie Mellon's technology, trade name or in or to any of Carnegie Mellon's trademarks, except as provided under this Agreement. Licensee shall neither register nor use any Carnegie Mellon trademarks or trade names. Any reference by Licensee to Carnegie Mellon may only be done with express written permission of Carnegie Mellon's Associate Vice Provost for Technology Transfer and Enterprise Creation.

6. Termination/Non-Renewal

6.1. In the event that Licensee defaults in the payment in full of any amount required to be paid under this Agreement on the date such payment is due, in addition to utilizing any other legal

and/or equitable remedies, Carnegie Mellon shall have the right by written notice to Licensee to terminate this Agreement (and the Term). In the event that the Annual Minimum Royalty of twenty-five-thousand U.S. Dollars (\$U.S. \$25,000) required by Section 4.1 is not received by Carnegie Mellon within 10 days (10) days following the Effective Date, this Agreement shall be void ab initio, as if it had never been executed and neither party shall have any obligation hereunder. In addition to the foregoing, in the event that (a) Licensee shall make or offer to make any arrangement or composition with or for the benefit of its creditors, or (b) Licensee ceases or threatens to cease to carry on its business, or (c) Licensee is or becomes unable to pay its debts as they become due, or (d) Licensee commits any act of insolvency or bankruptcy, or (e) a petition or resolution for the making of an administration order or for the bankruptcy, winding-up or dissolution of Licensee is presented or passed, or (f) Licensee files a voluntary petition in bankruptcy or insolvency, or (g) a receiver or administrator takes possession of or is appointed over the whole or any part of the assets of Licensee, or (h) any analogous procedure is commenced against or by Licensee in any jurisdiction, Carnegie Mellon shall have the right by written notice to Licensee to terminate this Agreement (and the Term).

6.2. In the event that either party to this Agreement defaults in the performance of any of its obligations hereunder (other than any of the defaults or events referred to in Section 6.1. hereof) and fails to cure such default within thirty (30) days after written notice of such default from such other party, the other party shall have the right by written notice to the defaulting party to terminate this Agreement (and the Term).

6.3. Carnegie Mellon may terminate this Agreement (and the Term) prior to the commencement of any Renewal Term by providing Licensee written notice of termination at least nine (9) months prior to the commencement of such Renewal Term.

6.4. In connection with the termination of this Agreement (and the Term) pursuant to this section 6 or the termination or expiration of the Term for non-renewal, Licensee shall cease using the Licensed Technology and all Derivatives for any and all purposes.

6.5. The termination of this Agreement (and the Term) pursuant to this Section 6 hereof shall not terminate the obligations of Licensee to pay any Annual Minimum Royalty or other amount owed to Carnegie Mellon under this License through the effective date of termination and/or the obligations of Licensee under Sections 2.1 (non-assertion), 6 (Termination), 7 (Taxes), 10 (Indemnification), and 14 (Dispute Resolution).

7. Taxes

Licensee shall pay all taxes which may be assessed or levied on, or on account of, the Licensed Products made or Disposed of. In addition, all amount(s) (including any license fees payable hereunder) quoted in this Agreement do not include charges for applicable Taxes (hereinafter defined). There shall be added to the amounts set forth and payable to Carnegie Mellon pursuant to this Agreement any and all such Taxes relating to the amounts payable by Licensee hereunder (other than U.S. Federal, state or local income taxes which may be assessed on the income of Carnegie Mellon in the U.S. or Carnegie Mellon's franchise taxes in the U.S.), including any Taxes payable as a result of the payment of such Taxes by Licensee, and all such Taxes shall also be

payable by Licensee. Without limiting the generality of the foregoing, Licensee shall make all payments due to Carnegie Mellon under this Agreement without deduction for Taxes, unless such deduction is required by law. If Licensee is required under applicable law to withhold Taxes from any payment due to Carnegie Mellon under this Agreement, Licensee shall (i) pay to Carnegie Mellon such additional amounts as are necessary so that Carnegie Mellon receives the full amount that it would have received absent such withholding, and (ii) furnish and Carnegie Mellon shall use reasonable efforts to complete all necessary documentation, if any, to permit the parties to claim application of applicable tax treaty benefits. "Taxes" mean any taxes, governmental charges, duties, or similar additions or deductions of any kind, including, without limitation, all federal, state, local, or governmental use, income, goods and services, excise, and withholding taxes, plus applicable interest, penalties, or additions.

8. NO WARRANTY; LIMITATION AS TO TYPES OF DAMAGES

ANY AND ALL INFORMATION, MATERIALS, SERVICES, INTELLECTUAL PROPERTY AND OTHER PROPERTY AND RIGHTS GRANTED AND/OR PROVIDED BY CARNEGIE MELLON PURSUANT TO THIS AGREEMENT, INCLUDING THE LICENSED TECHNOLOGY ARE GRANTED AND/OR PROVIDED ON AN "AS IS" BASIS. CARNEGIE MELLON MAKES NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER, AND ALL SUCH WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CARNEGIE MELLON DOES NOT MAKE ANY WARRANTY OF ANY KIND RELATING TO EXCLUSIVITY, INFORMATIONAL CONTENT, ERROR-FREE OPERATION, RESULTS TO BE OBTAINED FROM USE, FREEDOM FROM PATENT, TRADEMARK AND COPYRIGHT INFRINGEMENT AND/OR FREEDOM FROM THEFT OF TRADE SECRETS. LICENSEE IS PROHIBITED FROM MAKING ANY EXPRESS OR IMPLIED WARRANTY TO ANY THIRD PARTY ON BEHALF OF CARNEGIE MELLON RELATING TO ANY MATTER, INCLUDING THE APPLICATION OF OR THE RESULTS TO BE OBTAINED FROM THE INFORMATION, MATERIALS, SERVICES, INTELLECTUAL PROPERTY OR OTHER PROPERTY OR RIGHTS, INCLUDING THE LICENSED TECHNOLOGY GRANTED AND/OR PROVIDED BY CARNEGIE MELLON PURSUANT TO THIS AGREEMENT.

CARNEGIE MELLON SHALL NOT BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY REASON WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING ANY BREACH OF THIS AGREEMENT) FOR LOSS OF PROFITS OR FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF CARNEGIE MELLON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR HAS OR GAINS KNOWLEDGE OF THE EXISTENCE OF SUCH DAMAGES.

CARNEGIE MELLON'S MAXIMUM LIABILITY IN THE AGGREGATE FOR ANY REASON ARISING OUT OF OR RELATING TO THIS AGREEMENT IS LIMITED TO THE LICENSE FEE PAID BY LICENSEE TO CARNEGIE MELLON DURING THE ONE YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE RELATED CLAIM.

9. Costs

All costs and expenses incurred by Licensee in carrying out Licensee's obligations under this Agreement shall be paid by Licensee, and Licensee shall not be entitled to reimbursement from license fees hereunder or otherwise therefor from Carnegie Mellon. Licensee shall possess or obtain at its own expense all necessary licenses and permits and shall comply with all laws, ordinances, rules or regulations affecting the exportation or Disposition of Licensed Products, Licensed Technology and/or Derivatives.

10. Indemnification

Licensee shall defend, indemnify, and hold harmless Carnegie Mellon and Carnegie Mellon's trustees, officers, employees, attorneys and agents from and against any liability, damage, loss or expense (including attorneys' fees and expenses) incurred by or imposed upon Carnegie Mellon and/or Carnegie Mellon's trustees, officers, employees, attorneys and agents in connection with any claim, suit, action or demand arising out of or relating to any exercise of any right or license granted or provided to Licensee or any failure to perform any obligation of Licensee under this Agreement, including any Disposition of Licensed Product(s), under any theory of liability (including without limitation, actions in the form of tort, warranty, or strict liability, or violation of any law, and regardless of whether such action has any factual basis).

11. No Acquiescence

No acquiescence in any breach of this Agreement by either party shall operate to excuse any subsequent or prior breach.

12. Entire Agreement

This Agreement supersedes all previous agreements relating to the subject matter hereof, whether oral or in a writing, and constitutes the entire agreement of the parties hereto relating to the subject matter hereof and may not be amended or altered in any respect except in a writing executed by the parties.

13. Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Pennsylvania, without regard to conflict of law principles in that or any other jurisdiction.

14. Dispute Resolution

All claims and/or controversies of every kind and nature arising out of or relating to this Agreement, including any questions concerning its existence, negotiation, validity, meaning, performance, non-performance, breach, continuance or termination shall be settled exclusively in the U.S. District Court for the Western District of Pennsylvania or, if such Court does not have

jurisdiction, in any court of general jurisdiction in Allegheny County, Pennsylvania and each party consents to the exclusive jurisdiction of any such courts and waives any objection which such party may have to the laying of venue in any such courts.

15. Notices

Any notice under any of the provisions of this Agreement shall be deemed given when (a) personally delivered, or (b) sent prepaid by nationally recognized overnight carrier, or (c) deposited in the mail, postage prepaid, registered or certified first class mail, and in the case of (b) or (c), when addressed to the applicable party at the address stated on the signature page hereof, or such other address as such party shall specify for itself by like notice to other party. Each party shall in the case of (b) or (c), transmit to the other an electronic mail copy of each such notice promptly after sending same by nationally recognized overnight carrier or depositing same in the mail, as applicable.

16. Assignment

Licensee shall not assign or transfer this Agreement or any interest herein without the prior written consent of Carnegie Mellon.

17. Headings

The section headings contained in this Agreement are set forth for the convenience of the parties only, do not form a part of this Agreement and are not to be considered a part hereof for the purpose of construction or interpretation hereof, or otherwise.

18. Severability

If any provision of this Agreement or portion thereof is determined by a court of competent jurisdiction, or declared under any law, rule or regulation of any government having jurisdiction over the parties hereto, to be invalid, illegal or otherwise unenforceable, then such provision will, to the extent permitted by the court or government not be voided but will instead be construed to give effect to its intent to the maximum extent permissible under applicable law and the remainder of this Agreement will remain in full force and effect according to its terms.

(The balance of this page is intentionally left blank).

The parties hereto have caused this Agreement to be executed by their duly authorized representatives in duplicate counterparts, each of which shall be deemed to constitute an original, effective as of the Effective Date.

Carnegie Mellon University

By: _____
Robert A. Wooldridge
Associate Vice Provost

Date: _____

Address for Notices:

Carnegie Mellon University
4615 Forbes Avenue, Suite 302
Pittsburgh, PA 15213
Attention: Associate Vice Provost for Technology Transfer and Enterprise Creation
Email: innovation@cmu.edu

By _____

Date: _____

Address for Notices:

Attention:
Email: