

**IMPORTANT: PLEASE READ THE FOLLOWING TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY BEFORE CONTINUING**

This Algorithm as a Service Agreement (“**Agreement**”) is a legal agreement between the individual or entity entering this Agreement (“**Customer**” or “**you**”) and **Lumina SAAS Operations, LLC**, a Florida limited liability company with its principal place of business at 101 East Kennedy Boulevard, 4110, Tampa, Florida 33602 (“**Lumina**”), for provision of the Services (hereafter defined). By clicking “I ACCEPT LUMINA’S TERMS OF SERVICE & SUBSCRIPTION AGREEMENT” when registering for an account, ordering, and/or receiving the Services, you agree to be bound by the terms of this Agreement and the terms of the Subscription Agreement. This Agreement supersedes any prior proposal, representation, understanding, or agreement between you and Lumina with respect to the Services. **IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT SIGN-UP FOR AN ACCOUNT.** Lumina and Customer may be referred to in this Agreement individually as a “**Party**” and together as the “**Parties.**”

WHEREAS, Lumina has developed and owns certain proprietary algorithms (the “Algorithms”); and

WHEREAS, the Algorithms can be applied to data sets to interpret such data and create trained models that are capable of being applied to similar data sets to reach desired outcomes (“Trained Models”), including, but not limited to, Trained Models that can perform searches, predict outcomes, and translate language based on Customer’s original data input and instructions; and

WHEREAS, Customer desires to engage Lumina to apply the Algorithms to data to be supplied by Customer to Lumina (“Customer Data”) to create one or more Trained Models for Customer (the “Services”); and

WHEREAS, Lumina and Customer mutually desire to set forth in this Agreement certain terms applicable to such engagement;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. Services.

- (a) Lumina will provide Customer with one or more unique identifications, shared log-ins, and passwords so that the Customer can access Lumina’s system via a web browser or API interface provided by Lumina to submit Customer Data to Lumina and choose its desired type of Trained Model from pre-selected options provided by Lumina. Customer will be responsible for maintaining the confidentiality of its assigned identifications, shared log-ins, and passwords and for all activities and charges resulting from their use, including, but not limited to, unauthorized use. There is no distribution of software or code under this Agreement.
- (b) Upon receipt of Customer Data, Lumina will apply its appropriate Algorithm(s) to such Customer Data and otherwise use its commercially reasonable efforts to create

the requested Trained Model for use by Customer and otherwise perform the Services.

2. Term and Termination. The term of this Agreement shall commence on the Effective Date and terminate upon completion of the Services, provided, however, Customer shall have the right to terminate this Agreement prior to the completion of the Services upon written notice to Lumina if Lumina fails or refuses to perform the Services. Lumina shall have the right to terminate this Agreement at any time, for any or no reason, upon written notice to Customer. Upon termination of this Agreement, Lumina shall promptly delete all Customer Data.
3. Ownership of and Access to Trained Model. Customer acknowledges and agrees that the Algorithms and Trained Model(s) belong to Lumina, and that Lumina shall at all times own and retain possession of the Algorithms and Trained Model(s). Upon completion of the Services and each Trained Model, Lumina shall provide access to and use of the Trained Model to Customer pursuant to Lumina's standard Subscription Agreement, the form of which is attached hereto as **Exhibit A**. If Customer terminates this Agreement prior to completion of the Services and a Trained Model, Customer shall retain no rights of any nature with respect to the Services or Trained Model, including the right to access and use the Trained Model.
4. Protection of Customer Data.
  - (a) Lumina shall not disclose or use any Customer Data for any purpose outside the scope of this Agreement without Customer's prior written permission.
  - (b) Lumina shall protect the confidentiality of Customer Data in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall Lumina exercise less than a reasonable degree of care in protecting Customer Data.
  - (c) If Lumina is compelled by law to disclose Customer Data, it shall provide the Customer with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Customer's cost, if Customer wishes to contest the disclosure.
  - (d) This Section shall not apply to Customer Data which:
    - (i) is or becomes publicly known under circumstances involving no breach by Lumina of the terms of this Section; or
    - (ii) is generally disclosed to third parties by Customer without restriction on such third parties; or
    - (iii) is approved for release by Customer.

- (e) Lumina acknowledges and agrees that Customer Data belongs to Customer, and that Customer shall at all times own Customer Data. Upon completion of the Services and Trained Model, the Customer Data will be subject to the Subscription Agreement between Lumina and Customer. If Lumina or Customer terminates this Agreement prior to completion of the Services and a Trained Model, Lumina shall delete Customer Data and shall retain no rights of any nature with respect to Customer Data or to use Customer Data.

5. Representations and Warranties.

- (a) Lumina represents and warrants that upon completion of the Services, the Trained Model shall perform in all material respects consistent with the parameters for the Trained Model provided by Lumina. Other than as set forth in the previous sentence, Lumina provides, and Customer accepts, the Services and Trained Model in “AS-IS” CONDITION AND “WITH ALL FAULTS”, AND TO THE FULLEST EXTENT PERMITTED BY LAW, LUMINA, ITS MEMBERS, MANAGERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND REPRESENTATIVES DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SERVICES, THE TRAINED MODEL, AND CUSTOMER’S USE THEREOF, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OR SUITABILITY FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.
- (b) IN NO EVENT SHALL LUMINA OR ITS MEMBERS, MANAGERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR REPRESENTATIVES BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, LOST REVENUES, LOSS OF DATA, LOSS OF USE, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR OTHER DAMAGES ARISING FROM CUSTOMER’S USE OF THE TRAINED MODEL, HOWEVER CAUSED AND WHETHER IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY, EVEN IF LUMINA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, LUMINA’S AGGREGATE LIABILITY TO CUSTOMER FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY CUSTOMER TO LUMINA FOR THE SERVICES.

6. Miscellaneous.

- (a) Relationship of the Parties. The Parties shall at all times act as independent contractors. Nothing contained in this Agreement shall be deemed to constitute a partnership or joint venture between the Parties, nor shall any Party be deemed the

employee, agent, or representative of the other. Neither Party shall have any authority whatsoever, whether express or implied, to assume, create, or incur any obligation or liability whatsoever on behalf or in the name of the other, or to bind the other in any manner whatsoever. Neither Party shall hold itself out contrary to the provisions of this Section.

- (b) No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement. The Trained Model, results of the use of the Trained Model, and any information furnished to or procured by Customer by or through the Trained Model is solely for the benefit of Customer, and no third party is entitled to rely on the same.
- (c) Notices. Any notice or other communication which is required or permitted under this Agreement shall be in writing and shall be deemed to have been given, delivered, or made, as the case may be (notwithstanding lack of actual receipt by the addressee), (i) on the date sent if delivered personally or by email (which is confirmed), or (ii) three (3) business days after having been deposited in the United States mail, certified or registered, return receipt requested, sufficient postage affixed and prepaid, or (iii) one (1) business day after having been deposited with a nationally recognized overnight courier service (such as by way of example, but not limitation, U.S. Express Mail, Federal Express, UPS, or DHL), to the Parties at the addresses first above stated (or at such other address for a Party as shall be specified by like notice).
- (d) Waiver. No failure or delay on the part of either Party in exercising any right or remedy with respect to a breach of this Agreement by the other Party shall operate as a waiver thereof or of any prior or subsequent breach of this Agreement by the breaching Party, nor shall the exercise of any such right or remedy preclude any other or future exercise thereof or exercise of any other right or remedy in connection with this Agreement. Any waiver must be in writing and signed by the waiving Party.
- (e) Severability. If any section, subsection, or provision, or the application of such section, subsection, or provision, of this Agreement is held invalid, illegal, or unenforceable, the remainder of this Agreement, and the obligation of such section, subsection, or provision to persons or circumstances other than those to which it is held invalid, illegal, or unenforceable, shall not be affected by such invalidity, illegality, or unenforceability.
- (f) Assignment. Customer may not assign any of its rights or delegate any of its duties under this Agreement, directly or indirectly by operation of law or otherwise, without the prior written consent of Lumina, which shall not be unreasonably withheld, delayed, or conditioned. Any attempted assignment in violation of this Section shall be void. This Agreement shall inure to the benefit of and be binding upon the Parties to this Agreement, and their respective legal representatives, trustees, successors, and permitted assigns

- (g) Applicable Law; Attorneys' Fees to Prevailing Party. This Agreement shall be governed in its construction, interpretation, and performance by the laws of the State of Florida and the United States, as applicable, without reference to law pertaining to choice of laws or conflict of laws. In the event of any litigation arising out of or relating to this Agreement or the breach, termination, validity, or enforcement of this Agreement, venue shall be in the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, or the Tampa Division of the United States District Court for the Middle District of Florida, as applicable, and the prevailing Party shall be entitled to recover all costs and reasonable attorneys' fees incurred, including, without limitation, costs and attorneys' fees incurred in any investigations, trials, bankruptcies, and appeals.
- (h) Dispute Resolution.
- (i) In the event of any dispute, controversy, or claim arising out of or related to this Agreement or to a breach hereof, whether based in contract, tort, or statute, including its interpretation, scope, formation, performance, or termination ("Dispute"), the Parties shall attempt to settle such Dispute by amicable discussions between two senior executives of Lumina and Customer having the specific authority to settle the Dispute within fifteen (15) days after one Party giving notice to the other of existence of the Dispute.
- (ii) If no settlement is reached by this meeting of the Parties, the Parties shall attempt in good faith to resolve the dispute through mediation in Tampa, Florida, or such other place as the Parties may otherwise agree, with the assistance of a mutually agreeable mediator. Such mediation will take place with ninety (90) days after notice of the Dispute.
- (iii) If no settlement is reached at mediation, then either Party shall be free to commence litigation pursuant to the terms of this Agreement. The provisions of this Section shall not apply to breaches of Sections 2 or 3, for which the non-breaching Party may proceed immediately to seek temporary and/or preliminary injunctive relief.
- (iv) IN THE EVENT ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT, ALL ISSUES OF LAW AND FACT SHALL BE DETERMINED BY THE COURT AND ANY AND ALL RIGHT TO A JURY TRIAL IS HEREBY EXPRESSLY WAIVED BY THE PARTIES.
- (i) Construction. This Agreement shall not be construed more strictly against any Party regardless of who is responsible for its drafting. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular and the singular include the plural. Wherever the context so requires, the masculine shall refer to the feminine, the feminine shall refer to the masculine, the masculine

or the feminine shall refer to the neuter, and the neuter shall refer to the masculine or the feminine. The captions of this Agreement are for convenience and ease of reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any of its provisions.

- (j) Entire Agreement. This Agreement, constitutes the entire agreement between the Parties relating to the subject matter hereof. All prior understandings and agreements between the Parties relating to the subject matter hereof are merged in this Agreement, which alone and completely expresses their understanding. This Agreement may not be altered, amended, or changed except by written instrument signed by and on behalf of each of the Parties. In the event of any conflict between the provisions in this Agreement, the terms of such exhibit shall prevail to the extent of any inconsistency.
  
- (k) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original instrument, but all of which counterparts together shall constitute one and the same instrument. Facsimile signatures shall be binding and hold the same evidentiary weight as originals.

# Exhibit A

## Subscription Agreement

This Subscription Agreement (“**Agreement**”) is made and entered into effective as of the date that User creates an account, the “**Effective Date**”, by and between **Lumina SAAS Operations, LLC**, a Florida limited liability company with its principal place of business at 101 East Kennedy Boulevard, Suite 4110, Tampa, Florida 33602 (“**Lumina**”) and “**Customer**.” Lumina and Customer may be referred to in this Agreement individually as a “**Party**” and together as the “**Parties**.”

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. Definitions.** As used herein, the following terms shall have the respective meanings set forth below:

“**Administrator**” means the individual(s) appointed by Customer to oversee identifications, shared log-ins, passwords, and access and use of the Service.

“**Customer Data**” means all electronic data or information submitted by Customer to the Service.

“**IP Rights**” means all intellectual property rights, including, but not limited to, copyrights, patent rights, trade secret rights, trademark rights, and other similar property rights.

“**Service**” means the services provided by Lumina via a trained model created by Lumina pursuant to the Algorithm as a Service Agreement between the Parties used by Customer via access to Lumina’s SaaS platform, website, and/or other designated products or services.

“**User**” means Customer and Customer’s employees, contractors, agents, and representatives who are authorized to use the Service and have been supplied user identifications, shared log-ins, and passwords by Customer (or by Lumina at Customer’s request).

## 2. Service.

**2.1 Provision of Service.** Subject to the terms, conditions, and restrictions set forth in this Agreement (including, but not limited to, the restrictions in Sections 2.2 and 2.3), including without limitation Customer’s payment of the fees charged by Lumina, Lumina hereby grants to Customer and its authorized Users, subject to all IP Rights owned or otherwise assertable by Lumina, a non-exclusive, non-transferable, limited, and restricted right to remotely access and use the Service for Customer’s internal business purposes only. Lumina may provide Customer with one or more unique identifications, shared log-ins, and passwords

so that the Customer and its authorized Users will be able to access and use the Service as provided in this Agreement.

Customer will be responsible for maintaining the confidentiality of its assigned identifications, shared log-ins, and passwords and for all activities and charges resulting from their use, including, but not limited to, unauthorized use. There is no distribution of software or code under this Agreement.

**2.2 No Implied License.** Customer acknowledges and agrees that this Agreement shall in no way be construed to provide to Customer or its authorized Users any express or implied license:

- (i) to copy, reproduce, modify, change, alter, translate, improve, prepare derivative works based on, decompile, disassemble, reverse engineer, sell, rent, lease, distribute, sublicense, publish, or otherwise transfer its right to access and use the Service; or
- (ii) to use the Service in any outsourcing, time sharing, service bureau, or other similar enterprise; or
- (iii) to use the Service other than as expressly set forth in Section 2.1;

and Customer expressly agrees not to take any of the foregoing actions. All rights not expressly granted under this Agreement are reserved to Lumina.

**2.3 Restrictions on Use of Service.** Customer agrees to use the Service only for lawful purposes. Customer will not engage in any conduct involving the Service that would constitute a criminal offense or give rise to civil liability under any United States or foreign federal, state, local, or other law, rule, regulation, treaty, or convention, or that would in any way compromise the national security of the United States or any other nation. Customer will be responsible for any wrongful or unlawful acts or omissions of its Users with respect to the Service and shall have sole responsibility for notifying its Users of the terms, conditions, and restrictions contained in this Agreement and for securing their agreement to be bound by the same. Use of the Service

is also subject to Lumina's privacy policy, available through its website at <https://lumina247.com/privacy-policy/>.

### 3. Provision and Use of the Service.

**3.1 Lumina Responsibilities.** Lumina shall: (i) maintain reasonable administrative, physical, and technical safeguards for the Service in accordance with Lumina security policies; and (ii) provide telephone and/or online support to Customer and its Users during normal business hours.

**3.2 Customer Responsibilities.** Customer will be responsible for procuring and maintaining, at its own expense, all hardware, software, communication equipment, access service, access lines, and Internet connectivity necessary for Customer and Customer's Users to access and use the Service, as well as browser software that supports protocols used by Lumina to deliver the Service. Customer is responsible for all activities that occur under its User accounts. Customer shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, protection, security, and appropriateness of all Customer Data; (ii) use commercially reasonable efforts to prevent unauthorized access to or use of the Service and Customer Data; (iii) procure in advance all necessary consents and authorizations from all individuals whose names and/or other personally identifiable data (PII) are to be utilized by Customer in connection with its use of the Service; and (iv) comply with all applicable United States or foreign federal, state, local, or other laws, rules, regulations, treaties, and conventions in connection with its use of the Service, including, but not limited to, the Federal Trade Commission Act (15 U.S.C. § 41 *et seq.*), Financial Services Modernization Act (15 U.S.C. § 6801 *et seq.*), Health Insurance Portability and Accountability Act (42 U.S.C. § 1301 *et seq.*), Fair Credit Reporting Act (15 U.S.C. § 1681), Right to Financial Privacy Act, and General Data Protection Regulation (Regulation EU 2016/679).

Customer shall at all times be solely responsible for maintaining and securing its systems, including Customer's information technology infrastructure, computers, software, databases, and networks, whether operated directly by Customer or through the use of third-party services. Without limiting the foregoing, Customer shall remain solely responsible for legal compliance of any integrated use of the Service to Customer's systems, including the security of Customer's data transmission portals for any reports issued from the Service, as well as all access credentials associated with third-party use of Customer's systems. Customer shall solely control the content and use of Customer's systems. Customer shall be responsible for entering into binding end-user agreements that comply in all respects with, and are at least as restrictive as, this Agreement. Customer assumes sole liability as to its systems' interactions with all Users.

Customer knowingly and voluntarily agrees to defend, indemnify, and hold harmless Lumina, its members, managers, directors, officers, employees, agents, representatives, successors, and assigns from and against all

claims, losses, damages, judgments, and costs (including reasonable attorneys' fees) arising out of Customer's or its Users' failure to comply with this Section 3.2 or any applicable United States or foreign federal, state, local, or other laws, rules, regulations, treaties, and conventions.

**3.3 Use Guidelines.** Customer and its Users shall use the Service solely for Customer's internal business purposes as contemplated by this Agreement and shall not: (i) send, upload, or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or in violation of third-party privacy or IP rights; (ii) send, upload, or store material containing software viruses, worms, Trojan horses, or other harmful computer code, files, scripts, agents, or programs; (iii) interfere with or disrupt, damage, or impair the integrity or performance of the Service or the data contained therein; (iv) remove, delete, obscure, or alter any trademarks, disclaimers, or proprietary notices from any materials included with the Service; (v) access or use the Service to conduct any competitive analysis of the Service or develop a competing product or service or otherwise to Lumina's commercial disadvantage; (vi) use the Service to send unsolicited bulk mail, junk mail, spam, or other forms of duplicative or unsolicited messages or other fraudulent activity; (vii) use the Service to store or upload any sensitive personally identifiable information or personal health information, as that term is defined by the Health Insurance Portability and Accountability Act; or (viii) bypass or breach any security device or protection used by the Service or attempt to gain unauthorized access to the Service or its related systems or networks.

Customer will not use the Service to make any phone call or send any email or text message that does not comply with CAN-SPAM, the Telephone Consumer Protection Act, or any other applicable federal or state law. Customer is solely responsible for ensuring that telephone calls made or email or text messages sent using information obtained from the Service are in compliance with CAN-SPAM, the Telephone Consumer Protection Act, or all other applicable federal or state laws.

Customer and its Users shall not send or upload to the Service any information that is protected from disclosure by applicable law and for which Customer does not have the legal right to associate with the Service. Customer and its Users shall use Lumina's designated data transfer protocols only and will not send Customer Data via e-mail or other unauthorized transmissions, except as approved in writing by Lumina. Customer knowingly and voluntarily agrees to defend, indemnify, and hold harmless Lumina, its members, managers, directors, officers, employees, agents, representatives, successors, and assigns from and against all claims, losses, damages, violations, judgments, penalties, and costs (including reasonable attorneys' fees) arising out of Customer's or its Users' violation of this Section 3.3.

**3.4 GDPR Compliance.** Customer and its Users shall not provide any "Personal Data" regarding individuals located in the European Union or a jurisdiction that is subject



to Regulation EU 2016/679 (“**GDPR**”) to Lumina or through the Service. “**Personal Data**” under the GDPR means any information relating to an identified or identifiable natural person (“data subject”). An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that person. In the event Customer or its Users provide Lumina with Personal Data relating to a data subject that is located in the European Union or a jurisdiction that is subject to the GDPR (“**GDPR data**”), Customer will immediately notify Lumina in writing by contacting [Privacy@LuminaAnalytics.com](mailto:Privacy@LuminaAnalytics.com). Customer shall be deemed to be the data controller for all such Personal Data at all times. Customer knowingly and voluntarily agrees to defend, indemnify, and hold harmless Lumina, its members, managers, directors, officers, employees, agents, representatives, successors, and assigns from and against all claims, losses, damages, violations, judgments, penalties, and costs (including reasonable attorneys’ fees) arising out of or in relation to the GDPR data that Customer or its Users provide to Lumina and any violation of the GDPR.

**3.5 Third-Party Providers.** Certain third-party providers, some of which may be listed on pages within Lumina’s website, offer products and services related to the Service, that work in conjunction with the Service, such as by exchanging data with the Service or by offering additional functionality within the user interface of the Service through use of the Service’s application programming interface. Lumina does not warrant any such third-party providers or any of their products or services, whether or not such products or services are designated by Lumina as “certified,” “validated,” or otherwise. Any exchange of data or other interaction between Customer or its Users and a third-party provider, and any purchase by Customer of any product or service offered by such third- party provider, is solely between Customer and such third- party provider. In addition, from time to time, certain additional functionality (not defined as part of the Service) may be offered by Lumina to Customer, for an additional fee, on a pass-through or OEM basis pursuant to terms specified by the licensor and agreed to by Customer in connection with a separate purchase by Customer of such additional functionality. Customer or its Users’ use of any such additional functionality shall be governed by such terms, which shall prevail in the event of any inconsistency with the terms of this Agreement.

**3.6 Export Control.** Customer shall not, unless it has obtained all necessary legal permissions, export or otherwise disclose any technology or software accessed as part of the Service to any destination or to any foreign national that is prohibited by the United States government. Further, Customer and its Users shall not access or use the Service if Customer or its User is located in any jurisdiction or territory in which the provision of the Service is prohibited under United States or other applicable law, rule, regulation, treaty, or convention. Customer warrants that Customer and its Users are not named on any United States government list of

persons prohibited from receiving United States exports or transacting with a United States person, and that Customer and its Users are not a national of, or a company registered in, any jurisdiction prohibited by United States export laws.

**3.7 Term and Termination.** The term of this Agreement shall commence upon your acceptance of this Agreement and terminate upon completion of the project for which Customer is accessing and using the Service. Customer shall have the right to terminate this Agreement prior to the completion of the project for which it is accessing and using the Service upon written notice to Lumina if Lumina fails or refuses to provide the Service. Lumina shall have the right to terminate this Agreement at any time, for any or no reason, upon written notice and with no liability to Customer other than to return unearned fees received for Customer’s use of the Service. Upon termination of this Agreement, Lumina shall delete all Customer data.

#### **4. Fees and Payment.**

**4.1 User Fees.** Customer shall pay all fees agreed to be paid for its use of the Service.

**4.2 Professional Services.** In addition to fees under Section 4.1, Customer may, from time to time, request professional services from Lumina. These services will be billed by Lumina to Customer at Lumina’s then prevailing rates and terms.

**4.3 Invoicing and Payment.** Fees for the Service and other professional services will be payable in advance. All payments made under this Agreement shall be in United States Dollars.

**4.4 Taxes.** Unless otherwise stated, Lumina’s fees do not include any local, state, federal, or foreign taxes, levies, or duties of any nature (“**Taxes**”). Customer is responsible for paying all Taxes, excluding only taxes based on Lumina’s income. If Lumina has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Lumina with a valid tax exemption certificate authorized by the appropriate taxing authority.

#### **5. Proprietary Rights.**

**5.1 Reservation of Rights.** Customer acknowledges that in providing the Service, Lumina utilizes (i) the Lumina name, the Lumina logo, the domain name, the product and service names associated with the Service; (ii) certain audio and visual information, documents, software, and other works of authorship; and (iii) other technology, software, hardware, products, processes, algorithms, user interfaces, databases, know-how and other trade secrets, techniques, designs, invention, and other tangible or intangible technical material or information (collectively, “**Lumina Technology**”) and that the Lumina Technology is covered

by IP Rights owned or licensed by Lumina IP, LLC (collectively, “**Lumina IP Rights**”). Customer acknowledges and agrees that the Lumina IP Rights belong to Lumina IP, LLC and that other than as expressly set forth in this Agreement, no license or other rights in or to the Lumina Technology or Lumina IP Rights are granted to Customer, and all such licenses and rights are hereby expressly reserved. Customer shall retain no rights of any nature with respect to the Service, the Lumina Technology, or the Lumina IP Rights. All rights, title, and interest in and to the Lumina IP Rights will remain with Lumina IP, LLC exclusively at all times.

**5.2 Improvements and Resultant Data.** Lumina shall also own all improvements to and derivatives of the Lumina Technology and Lumina IP Rights, whether or not arising out of data that Customer or its Users provide to Lumina when using the Service. Lumina shall at all times be the sole and exclusive owner of any and all IP Rights created by Lumina for purposes of this engagement, including, but not limited to, creation of all behavioral affinity and other models, search results, databases, integration components, ecosystems and databases, and other technology, services, and work product created through activities of Lumina. Customer grants to Lumina a limited, worldwide license to use, host, store, reproduce, modify, and create derivative works from any Customer Data uploaded to the Service by Customer and Users.

**5.3 Suggestions.** If Customer communicates to Lumina any suggested modifications, changes, or improvements to the Service, Customer agrees that any and all information, inventions, discoveries, or other matters communicated to Lumina under this Section 5.3 shall be deemed to be the property of Lumina, and Customer agrees to execute and deliver to Lumina, at Lumina’s request, any further documentation necessary to effectuate ownership of such information, inventions, discoveries, and other matters by Lumina.

**5.4 Notice to United States Government End Users.** If the United States federal government is the ultimate user or recipient of the benefits of the Service, the following provision applies: Government technical data and software rights related to the Service include only those limited and restricted rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227- 7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Lumina to determine whether there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

**5.5 Customer Data.** As between Lumina and Customer, all Customer Data is owned exclusively by

Customer. Customer Data shall be considered Confidential Information subject to the terms of this Agreement. Lumina may access Customer’s User accounts, including Customer Data, solely to respond to service or technical problems, at Customer’s request, or for training purposes. Lumina shall have no obligation to maintain or provide any Customer Data and may after Customer completes its use of the Service, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control.

## **6. Confidentiality.**

**6.1 Definition of Confidential Information.** As used herein, “**Confidential Information**” means all confidential and proprietary information of a Party (“**Disclosing Party**”) disclosed to the other Party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of this Agreement, the Customer Data, the Service, the Lumina Technology, software source code and specifications, business and marketing plans, technology, and technical information, product designs, and business processes. Confidential Information (except for Customer Data) shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) is known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) is independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

**6.2 Confidentiality.** The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement without the Disclosing Party’s prior written permission.

**6.3 Protection.** Each Party agrees to protect the confidentiality of the Confidential Information of the other Party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either Party exercise less than reasonable care in protecting such Confidential Information.

**6.4 Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure.

**6.5 Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in violation of this Section 6, the Disclosing Party shall have the right, in

addition to any other remedies available to it, to seek preliminary and permanent injunctive relief, without bond, to enjoin such acts, it being specifically acknowledged by the Parties that any other available remedies at law are inadequate.

**6.6 Publicity.** Neither Party may issue press releases relating to this Agreement without the other Party's prior written consent. Notwithstanding the foregoing, Customer grants to Lumina a limited, royalty free, non-exclusive, revocable, non-sublicensable, and non-transferable license to use such Customer names, logos, trademarks, and/or service marks (the "Customer Trademark(s)") to identify Customer as a Customer of Lumina in Lumina's marketing and sales materials. Customer represents and warrants that it has the authority to grant the license above and that Lumina's use of Customer Trademark(s) in compliance with this Agreement will not infringe upon any third-party rights.

## **7. Warranties and Disclaimers.**

**7.1 Warranties.** Each Party represents and warrants that it has the legal power to enter into this Agreement. Lumina represents and warrants that (i) it owns or otherwise has sufficient rights to permit Customer and its Users to access and use the Service; and (ii) the Service and Lumina Technology do not infringe the IP Rights of any third party. Customer represents and warrants that it holds the necessary legal rights to use the Service and to send or upload Customer Data to the Service, without misappropriation or violation of the privacy or other rights of third parties.

**7.2 Disclaimer.** The representations and warranties made by Lumina in this Agreement are made solely to Customer. Except as otherwise provided in this Agreement, Lumina provides, and Customer accepts, the Service in "AS-IS" CONDITION AND "WITH ALL FAULTS"; and

TO THE FULLEST EXTENT PERMITTED BY LAW, LUMINA, ITS MEMBERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND REPRESENTATIVES DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE LUMINA WEBSITE, THE SERVICE, AND CUSTOMER'S AND ITS USERS' USE THEREOF, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS OR SUITABILITY FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

LUMINA MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THE SERVICE, THE LUMINA WEBSITE OR SERVICE CONTENT, THE LUMINA WEBSITE OR SERVICE ACCESSIBILITY, OR THE CONTENT OF ANY WEBSITES LINKED TO THE SERVICE AND ITS ACCESSIBILITY, AND ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (A) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT AND MATERIALS, (B) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE

WHATSOEVER, RESULTING FROM CUSTOMER'S AND ITS USERS' ACCESS TO AND USE OF THE SERVICE, (C) ANY UNAUTHORIZED ACCESS OR USE OF THE SERVICE OR LUMINA'S SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN, (D) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE WEBSITE OR SERVICE, (E) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED TO OR THROUGH THE WEBSITE BY ANY THIRD PARTY, AND/OR (F) ANY ERRORS OR OMISSIONS IN ANY CONTENT AND MATERIALS OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE WEBSITE OR SERVICE.

AS WITH THE PURCHASE OF A PRODUCT OR SERVICE THROUGH ANY MEDIUM OR IN ANY ENVIRONMENT, CUSTOMER SHOULD USE ITS BEST JUDGMENT AND EXERCISE CAUTION WHERE APPROPRIATE.

SOME STATES OR COUNTRIES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO CERTAIN OF THE ABOVE EXCLUSIONS MAY NOT APPLY.

**8. INDEMNIFICATION. CUSTOMER AGREES TO DEFEND, INDEMNIFY, AND HOLD LUMINA, ITS SUBSIDIARIES AND AFFILIATES, AND ITS AND THEIR RESPECTIVE MEMBERS, MANAGERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND REPRESENTATIVES, HARMLESS FROM AND AGAINST, ANY LOSS, DAMAGE, LIABILITY, CLAIM, OR DEMAND, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, MADE BY ANY THIRD PARTY DUE TO OR ARISING OUT OF CUSTOMER'S USE OF THE SERVICE, AND/OR ARISING FROM A BREACH OF THIS AGREEMENT, AND/OR ANY BREACH OF CUSTOMER'S REPRESENTATIONS AND WARRANTIES. NOTWITHSTANDING THE FOREGOING, LUMINA RESERVES THE RIGHT, AT CUSTOMER'S EXPENSE, TO ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF ANY MATTER FOR WHICH CUSTOMER IS REQUIRED TO INDEMNIFY LUMINA, AND CUSTOMER AGREES TO COOPERATE, AT CUSTOMER'S EXPENSE, WITH LUMINA'S DEFENSE OF SUCH CLAIMS. LUMINA WILL USE REASONABLE EFFORTS TO NOTIFY CUSTOMER OF ANY SUCH CLAIM, ACTION, OR PROCEEDING WHICH IS SUBJECT TO THIS INDEMNIFICATION UPON BECOMING AWARE OF IT.**

**LUMINA AGREES TO DEFEND, INDEMNIFY AND HOLD CUSTOMER AND ITS MEMBERS, MANAGERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND REPRESENTATIVES,**

HARMLESS FROM AND AGAINST, ANY LOSS, DAMAGE, LIABILITY, CLAIM, OR DEMAND, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, MADE BY ANY THIRD PARTY DUE TO OR ARISING OUT OF LUMINA'S FRAUD OR INTENTIONAL MISCONDUCT. NOTWITHSTANDING THE FOREGOING, CUSTOMER RESERVES THE RIGHT, AT CUSTOMER'S EXPENSE, TO ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF ANY MATTER FOR WHICH LUMINA IS REQUIRED TO INDEMNIFY CUSTOMER, AND LUMINA AGREES TO COOPERATE, AT LUMINA'S EXPENSE, WITH CUSTOMER'S DEFENSE OF SUCH CLAIMS. CUSTOMER WILL USE REASONABLE EFFORTS TO NOTIFY LUMINA OF ANY SUCH CLAIM, ACTION, OR PROCEEDING WHICH IS SUBJECT TO THIS INDEMNIFICATION UPON BECOMING AWARE OF IT.

## 9. Limitation of Liability.

**9.1 Limitation of Liability.** IN NO EVENT SHALL LUMINA OR ITS MEMBERS, MANAGERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, LICENSORS, AND REPRESENTATIVES BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, LOST REVENUES, LOSS OF DATA, LOSS OF USE, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR OTHER DAMAGES ARISING FROM CUSTOMER'S USE OF THE LUMINA WEBSITE OR SERVICE, HOWEVER CAUSED AND WHETHER IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY, EVEN IF CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, LUMINA'S AGGREGATE LIABILITY TO CUSTOMER FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY CUSTOMER TO LUMINA FOR CUSTOMER'S USE OF THE SERVICE THAT GIVES RISE TO SUCH LIABILITY.

CUSTOMER ACKNOWLEDGES AND AGREES THAT THE ESSENTIAL PURPOSE OF THIS SECTION IS TO ALLOCATE RISK UNDER THIS AGREEMENT BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE FEE CHARGED, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF LUMINA WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. LUMINA HAS RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO PROVIDE CUSTOMER WITH THE RIGHT TO ACCESS AND USE THE SERVICE.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO CUSTOMER, SOME OR ALL OF THE ABOVE DISCLAIMERS OR LIMITATIONS MAY NOT APPLY TO CUSTOMER, AND CUSTOMER MAY HAVE ADDITIONAL RIGHTS. HOWEVER, IN SUCH JURISDICTIONS, LUMINA'S LIABILITY SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

IF CUSTOMER IS A CALIFORNIA RESIDENT, CUSTOMER WAIVES CALIFORNIA CIVIL CODE SECTION 1542, WHICH SAYS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

**9.2 Limitation of Action.** Except for actions for non-payment or breach of either Party's IP rights, no action (regardless of form) arising out of this Agreement may be commenced by either Party more than two (2) years after the cause of action has accrued.

## 10. General Provisions.

**10.1 Relationship of the Parties.** The Parties shall at all times act as independent contractors and service provider/subscriber. Nothing contained in this Agreement shall be deemed to constitute a partnership or joint venture between the Parties, nor shall any Party be deemed the employee, agent, or representative of the other. Neither Party shall have any authority whatsoever, whether express or implied, to assume, create, or incur any obligation or liability whatsoever on behalf or in the name of the other, or to bind the other in any manner whatsoever. Neither Party shall hold itself out contrary to the provisions of this Section.

**10.2 No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement. The Service, results of the Service or use of the Service, and any information furnished to or procured by Customer by or through the Service is solely for the benefit of Customer, and no third party is entitled to rely on the same.

**10.3 Notices.** Any notice or other communication which is required or permitted under this Agreement shall be in writing and shall be deemed to have been given, delivered, or made, as the case may be (notwithstanding lack of actual receipt by the addressee), (i) on the date sent if delivered personally or by e-mail, cable, telecopy, telegram, telex, or facsimile (which is confirmed), or (ii) three (3) business days after having been deposited in the United States mail, certified or registered, return receipt requested, sufficient postage affixed and prepaid, or (iii) one (1) business day after having been deposited with a nationally recognized overnight courier service (such as by way of example, but not limitation, U.S. Express Mail, Federal Express, or

Airborne), to the Parties at the addresses or email addresses first above stated or submitted by Customer when ordering the Service (or at such other address for a Party as shall be specified by like notice).

**10.4 Waiver.** No failure or delay on the part of either Party in exercising any right or remedy with respect to a breach of this Agreement by the other Party shall operate as a waiver thereof or of any prior or subsequent breach of this Agreement by the breaching Party, nor shall the exercise of any such right or remedy preclude any other or future exercise thereof or exercise of any other right or remedy in connection with this Agreement. Any waiver must be in writing and signed by the waiving Party.

**10.5 Severability.** If any section, subsection, or provision, or the application of such section, subsection, or provision, of this Agreement is held invalid, illegal, or unenforceable, the remainder of this Agreement, and the obligation of such section, subsection, or provision to persons or circumstances other than those to which it is held invalid, illegal, or unenforceable, shall not be affected by such invalidity, illegality, or unenforceability.

**10.6 Assignment and Delegation.** Neither party shall assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that either party may assign its rights or delegate its obligations, in whole or in part, without such consent and upon 10 days prior written notice to the other party, to (a) one or more of its wholly owned Subsidiaries or Affiliates, or (b) an entity that acquires all or substantially all of the business or assets of such party to which this Agreement pertains, whether by merger, reorganization, acquisition, sale, or otherwise. Any purported assignment or delegation in violation of this Section shall be null and void. This Agreement shall inure to the benefit of and be binding upon the Parties to this Agreement, and their respective legal representatives, trustees, successors, and permitted assigns.

**10.7 Applicable Law; Attorneys' Fees to Prevailing Party.** This Agreement shall be governed in its construction, interpretation, and performance by the laws of the State of Florida and the United States, as applicable, without reference to law pertaining to choice of laws or conflict of laws. In the event of any litigation arising out of or relating to this Agreement or the breach, termination, validity, or enforcement of this Agreement, venue shall be in the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, or the Tampa Division of the United States District Court for the Middle District of Florida, as applicable. In the event of any litigation arising out of or relating to this Agreement or the breach, termination, validity, or enforcement of this Agreement, the prevailing Party shall be entitled to recover all costs and reasonable attorneys' fees incurred, including, without limitation, costs and attorneys' fees incurred in any investigations, trials, bankruptcies, and appeals.

**10.8 Dispute Resolution.** In the event of any dispute, controversy, or claim arising out of or related to this Agreement or to a breach hereof, whether based in contract, tort, or statute, including its interpretation, scope, formation, performance, or termination ("Dispute"), the Parties shall attempt to settle such Dispute by amicable discussions between two senior executives of Lumina and Customer having the specific authority to settle the Dispute within fifteen (15) days after one Party giving notice to the other of existence of the Dispute.

If no settlement is reached by this meeting of the Parties, the Parties shall attempt in good faith to resolve the dispute through mediation in Tampa, Florida, or such other place as the Parties may otherwise agree, with the assistance of a mutually agreeable mediator. Such mediation will take place within ninety (90) days after notice of the Dispute.

If no settlement is reached at mediation, then either Party shall be free to commence litigation pursuant to the terms of this Agreement. The provisions of this Section shall not apply to breaches of Sections 2.2, 2.3, 5.1, and 6, for which the non-breaching Party may proceed immediately to seek temporary and/or preliminary injunctive relief.

**IN THE EVENT ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT, ALL ISSUES OF LAW AND FACT SHALL BE DETERMINED BY THE COURT AND ANY AND ALL RIGHT TO A JURY TRIAL IS HEREBY EXPRESSLY WAIVED BY THE PARTIES.**

**10.9 Construction.** This Agreement shall not be construed more strictly against any Party regardless of who is responsible for its drafting. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular and the singular include the plural. Wherever the context so requires, the masculine shall refer to the feminine, the feminine shall refer to the masculine, the masculine or the feminine shall refer to the neuter, and the neuter shall refer to the masculine or the feminine. The captions of this Agreement are for convenience and ease of reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any of its provisions.

**10.10 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof. All prior understandings and agreements between the Parties relating to the subject matter hereof are merged in this Agreement, which alone and completely expresses their understanding. This Agreement may not be altered, amended, or changed except by written instrument signed by and on behalf of each of the Parties. In the event of any conflict between the provisions in this Agreement and any addendum hereto, the terms of such addendum shall prevail to the extent of any inconsistency. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or

in any other Customer order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

10.11 **Anti-Corruption.** Neither Party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other Party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restrictions