

ILLUMEX TECHNOLOGIES INC TERMS AND CONDITIONS 2023

These terms and conditions (the "**Terms and Condition**") set out the terms under which Illumex Technologies, Inc. together with its Affiliates (collectively, "**illumex**") will provide the Customer access to one or more hosted software services (the "**Services**") as specified on the attached Order Form (the "**Order Form**"). If there is any conflict or inconsistency between the Order Form and the these Terms and Conditions, the Order Form will take precedence.

1. DEFINITIONS & INTERPRETATION

1.1 The following terms have the following meanings:

"Affiliate" of a party means any corporation or other entity that such party directly or indirectly controls, is controlled by, or is under common control with. In this context, a party "controls" a corporation or other entity if it or any combination of it and/or its Affiliates owns more than fifty percent (50%) of the voting rights for (i) the board of directors, or (ii) other mechanisms of control for such corporation or other entity.

"Agreement" means the Order Form and these Terms and Conditions (as updated from time to time) together with any schedules attached to these Terms and Conditions or referenced on the Order Form.

"Confidential Information" means any information (in any format or medium) disclosed by one party to the other that is marked "confidential" or "proprietary" or similarly designated or that the recipient knows or reasonably ought to know is regarded by the disclosing party as confidential or proprietary.

"Customer" means the party designated as such on the Order Form and its Users.

"Customer Data" means all content and data that Customer or its Users submits or inputs to, or stores, transmits or otherwise makes available on or through, the Platform or Services.

"Documentation" means all illumex's instructions and technical documentation made available from time to time by illumex in connection with the Platform or Services, including but not limited to the training materials, user guides, and release notes, either in hard copy or as electronic media.

"Effective Date" means effective date as stated on the Order Form.

"Fees" means the fees listed on the Order Form, exclusive of applicable taxes.

"Insights" means information, data, and other analytics regarding, derived from, or compiled by the Platform and any interaction performed by Users on the Platform.

"Performance Data" means aggregated and non-identifiable usage and performance metrics, information, data and other analytics generated or derived from

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illumex's provision and operation of the Platform and Services and Users access to and use of the Platform and Services.

"Platform" means the reporting, analytics, visualization and diagnosis platform (including related software, algorithms, applications, databases, technology, and materials) used or provided by illumex as part of the Services (including any copies, corrections, bug fixes, enhancements, modifications or new versions thereof).

"Subscription Start Date" means the date in the Order Form.

"Subscription Term" means a 12-month period starting on the Subscription Start Date or an anniversary of the Subscription Start Date, or such other period specified in the Order Form.

"System Requirements" means the minimum requirements for ancillary software, computers, internet, and telephone connections, and other hardware and equipment needed to access and use the Platform, as set out in the Documentation provided by illumex from time to time.

"User(s)" means a named individual that is a Customer employee, representative, consultant, contractor, or agent and is designated by Customer to access and use the Services, subject to the restrictions in section 2.2.

2. SETUP & LICENSE TERMS

2.1 License Grant. During the Subscription Term and subject to Customer's compliance with the terms and conditions of this Agreement, illumex grants Customer a limited, non-exclusive, personal, non-sub-licensable, non-assignable, royalty-free, limited, revocable right to access and use the Services through the Platform for Customer's internal business only, all in accordance with the Documentation and the terms set out in the Order Form.

2.2 Users.

- 2.2.1 Customer's obligations under this Agreement apply to each Users, and Customer is responsible for ensuring that its Users comply with all those obligations.
- 2.2.2 Each subscription is personal for each User and may not be shared or used by more than one individual. Customer must ensure that such subscription is used solely by that designated User.
- 2.2.3 Notwithstanding any other wording in this Agreement, allow any User that is, or that is employed or retained by, a competitor of illumex to access, use, observe or assess the Services or Platform.

2.3 License Restrictions. Customer shall use the Platform and Services solely as contemplated in this Agreement. Customer shall not:

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- (a) license, sublicense, sell, resell, lease, transfer, assign, distribute, time share or otherwise make the Services or Platform available to any third party other than authorized Users;
- (b) modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Platform or Services except to the extent expressly approved in writing by illumex or to the extent that enforcement is prohibited by applicable law notwithstanding a contractual provision to the contrary;
- (c) circumvent any user limits or other use restrictions that are built into the Platform or Services;
- (d) access the Platform or Services in order to (i) build a competitive product or service; (ii) copy any ideas, features, functions or graphics of the Platform or Services;
- (e) use, or permit the use of, the Platform or Services for an illegal purpose, criminal offense, intellectual property infringement, harassment (including annoying or offensive transmissions);
- (f) attempt to bypass illumex's network, or re-arrange, disconnect, remove, repair or otherwise interfere with any service or facilities;
- (g) remove, modify, alter or deface any proprietary notices, labels, or marks from the Platform or Services;
- (h) use any type of spider, virus, worm, Trojan-horse, time bomb or any other codes or instructions that are designed to distort, delete, damage or disassemble the technology underlying the Platform or Services (including our proprietary software which may be available for download on the Website); or
- (i) endanger any part of any system or internet connection of illumex or any third party.

2.4 Third-Party Software. Platform may incorporate and embed software and other technology owned and controlled by third parties. Any such third-party software or technology falls under the scope of this Agreement and is licensed, not sold, and will be provided to Customer on the license terms of this Agreement unless additional or separate license terms apply as indicated at the time of account access.

2.5 System Requirements. Customer will, at its sole expense, be solely responsible for supplying, configuring and maintaining the hardware, software and licenses, telecommunication and internet equipment, connections and services necessary for accessing and using the Platform in accordance with the System Requirements. illumex will not be responsible for, nor obligated to provide support or warranty services for, interruptions, problems, deficiencies or other problems with the Platform arising from, Customer's failure to comply with the System Requirements. illumex has no responsibility for the working of Customer's computer and telecommunications equipment and networks, any other computer equipment or software Customer uses, or Customer's internet access. Customer acknowledges and agrees that the operation and availability of equipment and systems used for accessing and interacting with the Platform, including public telecommunication networks, computer networks and the internet (whether supplied by illumex, Customer or a third party) can be unpredictable and may from time to time interfere with or prevent Customer's access to or use of the Platform. illumex is not in any way responsible for any such interference with or prevention of Customer's access to or use of the Platform.

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3. PROPRIETARY RIGHTS AND DATA TERMS.

3.1 Platform. Except for the rights and licenses expressly granted in this Agreement, Customer acknowledges and agrees that any intellectual property rights to or arising from the Platform are and will remain the exclusive property of illumex and its licensors. Nothing in this Agreement is intended to transfer any such intellectual property rights to, or to vest any such intellectual property rights in, Customer. Customer is only entitled to the limited use of the intellectual property rights granted to Customer in this Agreement. Customer will not take any action to jeopardize, limit or interfere with illumex's intellectual property rights.

3.2 Insights. Through the use of the Services, Customer will receive access to Insights. As between Customer and illumex, Customer owns such Insights.

3.3 Customer Data. Customer hereby grants to illumex a non-exclusive, royalty-free, perpetual, worldwide license to use, reproduce, and prepare derivative works of all Customer Data, to permit illumex to perform the Services to Customer as set forth in this Agreement.

Customer understands that illumex, in performing the required technical steps to provide the Services, may (a) transmit or distribute Customer Data over various public or private networks and in various media; and (b) make such changes to Customer Data as are necessary to conform and adapt that Customer Data to the technical requirements of connecting networks, devices, Services or media. Customer represents and warrants to illumex that Customer has all the rights, power and authority necessary to grant the licence set out above and that use of the Customer Data in this manner will not breach the rights of any third party or violate applicable laws.

3.4 Usage Statistics. Notwithstanding the provisions above of this section 3, Customer agrees that illumex may calculate aggregate, anonymized statistics about its Customers' use of the Service that are non-personally identifiable with respect to Customer and/or any individual and use those statistics (but not the underlying data) (the "Anonymized Data") for purposes of illumex's own sales, marketing, business development, product enhancement, or customer service initiatives, provided that: (i) the Anonymized Data is irreversibly anonymized, to a degree in which the Anonymized Data is no longer considered to be Personal Data and cannot be associated with Customer; and (ii) the Anonymized Data will be used solely by illumex and will not be provided to any third party. illumex shall ensure that the statistics will not constitute Personal Data and will not include any Personal Data. illumex

3.5 Performance Data. illumex may generate Performance Data based on Customer's and its Users' use and operation of the Platform and Services, and between illumex and Customer, all right and title to Performance Data belongs to illumex. illumex may use, modify and create derivatives of the Performance Data to provide, operate, maintain, optimize, improve and support the Services and Platform and illumex's business (including to develop new products, services, functionality and features).

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3.6 Privacy.

- (a) illumex shall, in providing the Services, comply with the privacy policy which can be found on its website at www.illumex.ai or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by illumex in its sole discretion provided that such amendments shall not degrade the level of protection offered, or be detrimental to Customer's use of the Services in comparison to the unamended privacy policy in force at the date of this Agreement; and (ii) comply with the Data Protection Legislation.
- (b) If illumex processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the parties record their intention that the Customer shall be the data controller and illumex shall be a data processor and the parties agree to comply with the Data Processing Addendum contained in the website in URL: <https://illumex.ai/DPA/> ("DPA") which in such case is hereby incorporated into this Agreement.

4. TERM AND TERMINATION

4.1 Term and Renewals. This Agreement commences on the Effective Date and will continue for an initial term that ends on the last day of the Subscription Term. This Agreement will automatically renew for successive Subscription Terms unless either party notifies the other party in writing at least 90 days before of the end of the then-current Subscription Term that the first party does not wish to renew the Agreement

4.2 Termination by Customer. Either party may terminate this agreement upon written notice to illumex if illumex materially breaches any of its material obligations under this Agreement, such termination to be effective immediately if the breach is not curable or, if the breach is capable of being cured, then 30 days after the notice date if the breach remains uncured at the end of the thirty-day period.

4.3 Service Suspension or Termination by illumex. Without limiting any other available remedies, illumex may:

- (a) immediately suspend any User's account if illumex determines in its sole discretion that the User is in breach of this Agreement;
- (b) limit, suspend, or terminate this Agreement and Customer's use of the Services, prohibit access to the Platform and delete Customer User accounts and/or User IDs, with immediate effect, if any outstanding invoices are more than 10 days past due or if Customer otherwise materially breaches this Agreement. illumex will effect such termination by providing notice to Customer to the email address Customer has provided (if any), and/or by preventing Customer access to Customer's account.

illumex reserves the right to cancel User accounts that have been inactive for more than one (1) year.

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4.4 Effect of Termination. If this Agreement terminates or expires for any reason then:

- (a) the license granted this Agreement will immediately terminate;
- (b) illumex will immediately stop providing the Service;
- (c) Customer will immediately cease accessing and using the Platform and Services and otherwise exercising any rights granted under this Agreement, and will cause its Users to do the same;
- (d) Customer will immediately pay any outstanding amounts owed to illumex under this Agreement;
- (e) illumex will not be liable in respect of any damage caused by the termination;
- (f) sections 2.3, 3, 4.4, 6, 9.2, 9.3, 9.4, 10, 11 and 12 will survive termination; and
- (g) It is Customer's responsibility to back-up Customer Data, illumex shall not be responsible for any loss, alteration, or corruption of any Customer Data.

5. PAYMENT TERMS

5.1 Subscriptions. Unless otherwise specified on the Order Form, the Services are purchased for an annual subscription based on the data the customer will require the service to process. Customer may request changes to their subscription plan by sending formal notice to illumex and by paying the applicable fee. Any charges for set-up or support are as specified on the Order Form. If this Agreement renews one or more times under section 4.1 then the subscription plan that is in place at the end of a Subscription Term will be the subscription plan for next Subscription Term.

5.2 Fees, Payment and Charges. Except as expressly stated otherwise in the Order Form, Customer access to and use of the Services is subject to Customer's payment of the Fees. All invoiced amounts are due upon receipt. Receipts for purchased Services will be invoiced and delivered to Customer electronically. Customer is solely responsible for updating its billing and payment information.

5.3 Taxes. Customer is responsible for paying all governmental sales, use, value-added, commodity, harmonized and other taxes imposed on Customer's purchase or use of the Services. To the extent that illumex is required to collect such taxes, the applicable tax will be added to Customer's billing account.

5.4 Recurring Fees. Unless otherwise specified on the Order Form, illumex will process and charge the relevant Fees to Customer in full at the start of each Subscription Term.

6. CONFIDENTIALITY

6.1 Obligations. A party ("receiving party") that receives or accesses Confidential Information from the other party ("disclosing party") will (i) maintain the disclosing party's Confidential Information in confidence, (ii) use the disclosing party's Confidential Information

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only for the purpose of exercising its rights and fulfilling its obligations under this Agreement, and (iii) not disclose any of the disclosing party's Confidential Information to any third party except as expressly permitted by this Agreement. The receiving party will treat the disclosing party's Confidential Information with the same degree of care against disclosure and unauthorized use as the receiving party affords its own Confidential Information but in no event less than a reasonable degree of care. The receiving party further agrees not to remove or destroy any proprietary or confidential legends or markings placed by the disclosing party upon any documents or other materials containing the disclosing party's Confidential Information. The receiving party may provide the disclosing party's Confidential Information to the receiving party's employees, directors, officers, contractors or professional advisors that have agreed in writing to confidentiality obligations at least as protective as those contained in this Agreement, or who have professional duties of confidentiality. Any disclosure or use of the disclosing party's Confidential Information by any of the receiving party's employees, directors, officers, contractors or professional advisors other than as authorized by this Agreement will be deemed to have been by the receiving party, and the receiving party will be responsible and liable for any such unauthorized disclosure or use as though the receiving party had committed the unauthorized disclosure or use. For greater clarity, nothing in this section 4.1 limits or restricts any rights set out in sections 3.3 (Insights), 3.4 (Customer Data), 3.5 (Usage Statistics) or 3.6 (Performance Data).

6.2 Exemptions. The obligations in section 6.1 will not apply to Confidential Information that (i) was already lawfully known or received by the receiving party without any obligation of confidentiality before disclosure or access in the context of this Agreement; (ii) was generally publicly available before its disclosure or access in the context of this Agreement, or which becomes generally publicly available other than through the receiving party's breach of this Agreement; (iii) was disclosed to the receiving party by a third party, provided that the third party, or any other party from whom the third party received such information, is not in breach of any confidentiality obligation in respect of the information; or (iv) is independently designed and developed by the receiving party without the use of any of the disclosing party's Confidential Information or any infringement or misappropriation of any of the disclosing party's intellectual property or other rights.

6.3 Compelled Disclosure. If the receiving party becomes or may become legally compelled to disclose any of the disclosing party's Confidential Information, the receiving party may disclose that Confidential Information to the extent required by law provided that: (a) the receiving party promptly notifies the disclosing party of the efforts to compel disclosure (unless prohibited by law from doing so); (b) the receiving party cooperates with and assists with the disclosing party's lawful attempts to prevent or limit disclosure or to obtain a protective order; and (c) to the extent disclosure is still required by law, the receiving party takes reasonable steps to make the disclosure on a confidential basis.

6.4 Remedies. If the receiving party discloses or uses (or threatens to disclose or use) any of the disclosing party's Confidential Information in breach of this Agreement, the disclosing party will have the right, in addition to any other rights and remedies available to it, to seek injunctive relief from a court of competent jurisdiction, it being specifically acknowledged by the parties that any other available remedies may be inadequate and that any unauthorized

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use or disclosure of Confidential Information will likely cause injury to the disclosing party that will not be readily measurable in monetary damages.

7. CHANGES TO PLATFORM AND SERVICES

7.1 Changes to Platform. illumex may alter, update or upgrade the Platform or any hardware, software, databases or other technology comprising or supporting the Platform from time to time provided that such changes do not materially degrade, remove, or limit the features, functionality, capability, or performance of the Services.

7.2 Changes to Services and/or Fees. illumex may change the Services at any time and from time to time, provided that illumex will provide Customer with at least 60 days prior notice of any material changes to the Services. Such changes will take effect from the next billing cycle onwards. If Customer does not accept the change, Customer's sole recourse is to terminate the Services as of the end of the current Subscription Term by providing notice of non-renewal as set out in section 4.1, in which case this Agreement will terminate at the end of the current Subscription Term and illumex will refund to Customer any prepaid but unused Fees. Customer's continued access to and use of the Services after the change has come into effect constitutes Customer's acceptance of the change and Customer acknowledges and agrees that (i) Customer will be deemed to have accepted the change, with no additional written agreement or express acknowledgment required; and (ii) Customer will continue to be responsible to pay for the Services unless Customer terminates in accordance with this Agreement.

8. SUPPORT AND MAINTENANCE

8.1 Technical Support. Depending on the type of Services ordered, illumex will use commercially reasonable efforts to: (i) provide support as specified in the Order Form except during: (a) planned downtime, or (b) periods of any unavailability caused by circumstances beyond illumex's reasonable control, including without limitation, force majeure events or Internet service provider failures or delays, and (iii) provide the Services only in accordance with applicable laws and government regulations.

8.2 Maintenance Services. illumex may provide upgrades to the Platform (including software) from time to time to provide new features and improvements, bug fixes and error corrections.

9. LIMITED WARRANTY

9.1 Subject to section 9.4, illumex warrants that the Platform and Services will perform substantially without material problems, provided that (i) Customer promptly notifies illumex of the Problem after Customer discovers it, and (ii) Customer has paid all Fees then due to illumex, and (iii) Customer is not otherwise in breach of this Agreement.

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9.2 If illumex breaches the warranty set out in section 9.1 then upon prompt written notification by Customer illumex will either:

- (a) cause the Platform and Services to perform substantially in accordance with illumex's then-current Documentation; or
- (b) terminate this Agreement with 30 days prior written notice and refund any prepaid but unused Fees.

9.3 Customer acknowledges and agrees that section 9.2 sets out Customer's sole and exclusive remedies, and illumex's only obligations, under the warranty set out in section 9.1.

9.4 The warranty set out in section 9.1 does not apply to, and illumex will not otherwise be responsible for any problems or deficiencies in the Platform that arise due to:

- (a) Customer's failure to use equipment, software and connections that comply with the System Requirements to access and use the Platform or Services;
- (b) any failure to use the Platform or Services in accordance with the Documentation or from any misuse of the Platform or Services;
- (c) any modification or extension to the Platform or Services made by anyone other than illumex or as illumex authorizes in writing;
- (d) any Customer Data;
- (e) the combination of the Platform or Services with any other software or hardware not provided by illumex; or
- (f) any act or default of Customer or its Users, employees, contractors or agents.

10. LIABILITY PROVISIONS

10.1 NO WARRANTIES. EXCEPT FOR ANY EXPRESS WARRANTIES IN THIS AGREEMENT, THE SERVICES AND PLATFORM ARE PROVIDED "AS IS"; ILLUMEX DOES NOT MAKE ANY EXPRESSED, IMPLIED OR STATUTORY WARRANTIES, CLAIMS OR REPRESENTATIONS WITH RESPECT TO THE SERVICES AND PLATFORM, INCLUDING, WITHOUT LIMITATION, WARRANTIES OR CONDITIONS OF QUALITY, PERFORMANCE, INTEGRITY OF DATA, MERCHANTABILITY, OR FITNESS FOR USE FOR A PARTICULAR PURPOSE. ILLUMEX FURTHER DOES NOT REPRESENT OR WARRANT THAT THE SERVICES OR PLATFORM WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE AND ERROR-FREE OR WILL OPERATE WITHOUT PACKET LOSS, NOR DOES ILLUMEX WARRANT ANY CONNECTION TO OR TRANSMISSION FROM THE INTERNET.

10.2 LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER ILLUMEX NOR ANY OF ITS AFFILIATES, LICENSORS, SUPPLIERS OR SUBCONTRACTORS WILL HAVE ANY LIABILITY TO CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR ANY OF THE FOLLOWING DAMAGES (WHETHER ARISING FROM THIS AGREEMENT, RELATED TO THE SERVICES OR PLATFORM PROVIDED TO CUSTOMER:

- (a) ANY INDIRECT, RELIANCE, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER ARISING FROM CONTRACT, EQUITY, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR ANY OTHER

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THEORY OF LIABILITY, EVEN IF ILLUMEX (INCLUDING ITS AFFILIATES, LICENSORS, SUPPLIERS, SUBCONTRACTORS AND/OR DISTRIBUTORS) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR THEY ARE FORESEEABLE; OR

- (b) LOSS OF REVENUE OR PROFIT, LOSS OF OR DAMAGE TO DATA, BUSINESS INTERRUPTION, LOSS OF DATA, REPLACEMENT OR RECOVERY COSTS, OR OTHER COMMERCIAL OR ECONOMIC LOSS.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL ILLUMEX'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER UNDER THIS AGREEMENT IN THE 12 MONTHS PRECEDING THE INCIDENT FIRST GIVING RISE TO LIABILITY.

10.3 THE LIMITATIONS IN THIS SECTION WILL APPLY WHETHER OR NOT THE ALLEGED BREACH OR DEFAULT IS A BREACH OF A FUNDAMENTAL CONDITION OR TERM OR FUNDAMENTAL BREACH.

10.4 THE DISCLAIMER OF REPRESENTATIONS, WARRANTIES AND CONDITIONS AND LIMITATION OF LIABILITY CONSTITUTE AN ESSENTIAL PART OF THIS AGREEMENT.

11. INDEMNIFICATION.

11.1 Indemnity by Customer. Customer agrees on-demand to indemnify, defend and hold illumex, its Affiliates and subcontractors and their respective officers, directors, employees and agents harmless from and against any liability, damages, expenses and costs (including reasonable attorneys' fees) arising out of or related to any claim that Customer's or its User's (a) violation or breach of any term of this Agreement or any applicable law or regulation, whether or not referenced in this Agreement, or (b) violation of any rights of any third party, or (c) use or misuse of the Platform or Services.

11.2 Indemnity by illumex. illumex will defend Customer against any claim, demand, suit, or proceeding made or brought against Customer by a third party alleging that the use of the Platform and Services as permitted by this Agreement infringes or misappropriates the intellectual property rights of a third party, and will indemnify Customer for any damages finally awarded against, and for reasonable attorney's fees incurred by, Customer in connection with any such claim; provided, that Customer (a) promptly gives illumex written notice of the claim; (b) gives illumex sole control of the defense and settlement of the claim; and (c) provides to illumex all reasonable assistance, at illumex's expense.

12. GENERAL TERMS

12.1 Logos. illumex may refer to Customer in illumex's customer list and may use Customer's corporate name, logo, trademark or trade name for this purpose. For the avoidance of doubt, illumex will not use Customer's name, logo, any other trademark or

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trade-name of Customer for any other purposes without Customer's prior consent.

12.2 Third Party Relationships. illumex or its business partners may present service offerings, advertisements, promotional materials or links to third party sites or services via the Platform or Services. Customer dealings with, or participation in promotions of any third-party business partners via the Platform or Services are solely between Customer and that third party and Customer participation is subject to the terms and conditions associated with that offering, advertisement or promotion. Customer agrees that illumex is not responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such third parties via the Platform or Services.

12.3 Assignment. Neither party will assign this Agreement, whether voluntarily or involuntarily or by operation of law, in whole or in part, to any other entity without the other party's prior written consent, which consent will not unreasonably be withheld, conditioned or delayed. Notwithstanding the previous sentence, illumex may freely assign this Agreement to a successor in interest upon a merger, acquisition, reorganization, change of control, or sale of all or substantially all of its assets, and any such assignment will not require Customer's consent. Any assignment in violation of this section 12.3 will be null and void from the beginning, and will be deemed a material breach of this Agreement.

12.4 Waiver. No failure or delay by either party in exercising any right, power, or remedy under this Agreement, except as specifically provided herein, will operate as a waiver of any such right, power or remedy.

12.5 Choice of Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of New York, which will in all respects govern this Agreement as though this Agreement was entered into, and was to be entirely performed, within the State of New York. Each party hereby irrevocably consents to the exclusive jurisdiction of, and venue in, any state or federal court of competent jurisdiction located in the Borough of Manhattan, New York City.

12.6 Notices. All notices, demands or consents required or permitted under this Agreement will be in writing and delivered to the addresses set forth on the Order Form or at such other address as either party may specify to the other in writing in accordance with this section 12.6. Notice will be considered delivered and effective on the earlier of actual receipt or when: (a) personally delivered; (b) the day following transmission if sent by electronic mail or facsimile when followed by written confirmation by registered overnight carrier or certified mail; or (c) 1 day after posting when sent by registered private overnight carrier (e.g., DHL, Federal Express, etc.); or (d) 5 days after posting when sent by certified mail.

12.7 Independent Contractors. The parties are independent contractors. Neither party will be deemed to be an employee, agent, partner, joint venturer or legal representative of the other for any purpose and neither will have any right, power or authority to create any obligation or responsibility on behalf of the other.

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12.8 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, that provision will be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law (or, if any such change or interpretation is not allowed by applicable law, deleted) and this Agreement's remaining provisions will remain in full force and effect.

12.9 Force Majeure. Except for obligations to pay any fees under this Agreement, neither party will be deemed to be in breach of this Agreement for any failure or delay in performance caused by reasons beyond its reasonable control, including but not limited to acts of God, earthquakes, wars, terrorism, communication failures, strikes (other than strikes at the affected party's facility or involving that party). If either party's performance is prevented by a force majeure event for more than 30 calendar days, the other party may terminate this Agreement without further obligation or liability, subject to any payment amounts due and payable immediately before the start of the force majeure event.

12.10 Subcontractors. illumex may provide the Services directly or through one or more Affiliates, subcontractors or third-party providers or suppliers, provided that illumex will remain responsible for fulfilling its obligations under this Agreement and for the performance of the Services.

12.11 No Third Party Beneficiaries; Inurement. There are no third party beneficiaries to this Agreement. This Agreement will ensure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

12.12 Further Assurances. Each party will from time to time and at all times do such further acts and execute and deliver such further documents as may be reasonably required in order to evidence, carry out and give full effect to the terms, conditions, intent, meaning, and effectiveness of this Agreement.

12.13 Complete Understanding. These Terms and Conditions, the Order Form and any external documents referenced therein (including delivery timetables and deliverable requirements), constitute the final, complete and exclusive agreement between the parties with respect to the its subject matter, and supersede any prior or contemporaneous agreement, proposal or representation (whether written or oral) concerning its subject matter. Under no circumstances will the terms, conditions or provisions of any purchase order, invoice or other administrative document issued by Customer in connection to this Agreement be deemed to modify, alter or expand the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of illumex's failure to object to those terms, provisions, or conditions.