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TERMS AND CONDITIONS OF SERVICE

Terms and Conditions of Service

Last Updated: October 5, 2021

THESE TERMS AND CONDITIONS OF SERVICE (the “**Agreement**”) CONSTITUTE A BINDING CONTRACT BETWEEN THE LUMIGO ENTITY SET OUT IN SECTION 17 (“**Lumigo**”)AND THE CUSTOMER ENTITY (“**Customer**”) THAT ENTERS INTO THE SALES ORDER (DEFINED BELOW).

A “**Sales Order**” means as the case may be: (a) the Lumigo online sales order form, which is submitted by Customer via the Lumigo website (the “**Online Form**”); or (b) the offline sales order form executed by both parties.

References herein to the “**Agreement**” shall be deemed to include the Sales Order.

BY ENTERING INTO THE SALES ORDER, OR BY OTHERWISE ACCESSING OR USING THE SERVICES (DEFINED BELOW), CUSTOMER ACKNOWLEDGES THAT IT HAS READ, UNDERSTOOD, AND AGREES TO BE BOUND BY THE FOLLOWING (THE DATE OF SUCH OCCURRENCE BEING THE “**Effective Date**”):



- THIS AGREEMENT, AND



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For the avoidance of doubt:

- the individual who submits an Online Form hereby represents that he/she has the authority to act on behalf of the Customer, and to bind the Customer to this Agreement; and
- Lumigo reserves the right to make changes to these terms and conditions at any time by posting the changed version at <https://lumigo.io>. Lumigo may – but is not obligated to – also provide notice through a pop-up or banner within the Service, by sending an email to any address Customer may have used to register for the Service, or through other similar mechanisms. Such changes will be effective ten (10) days after such posting, and Customer’s continued use of the Service thereafter shall constitute Customer’s acceptance of such changes. In such cases, we will also update the “*Last Updated*” date and “*Version*” number set forth above. Please check the above webpage regularly for any changes to this these terms and conditions.

1. DEFINITIONS

“**Affiliate**” means, with respect to either party, any person, organization or entity controlling, controlled by, or under common control with, such party, where “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, organization or entity, whether through the ownership of voting securities or by contract or otherwise.

“**Authorized User**” means an employee of Customer (or any other entity, as may be specified in the Sales Order) that the Customer authorized to access and use the Service.



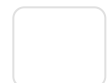
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“**Customer Content**” means any Content inputted or uploaded to the Service, or transmitted through the Service, by or on behalf of Customer (such as SMS messages sent by Customer to its clients).

“**Feature**” means any module, tool, functionality, or feature of the Service.

“**Intellectual Property**” means any and all inventions, invention disclosures, discoveries, improvements, works of authorship, technical information, data, databases, know-how, show-how, designs, ideas, drawings, logos, utility models, topography and semiconductor mask works, specifications, formulas, methods, techniques, processes, software (including object code, source code, APIs, and non-literal aspects), algorithms, architecture, records, documentation, and other similar intellectual property or technology, in any format and media, anywhere in the world.

“**Intellectual Property Rights**” means any and all rights, titles, and interests (under any jurisdiction or treaty, whether protectable or not, and whether registered or unregistered) in and to Intellectual Property, including without limitation patents, copyrights and similar authorship rights, moral (and similar personal) rights, mask work rights, data and database rights, trade secret rights and similar rights in confidential information and other non-public information, design rights, industrial property rights, trademark, service mark, trade name, trade dress and similar branding rights, as well as: (i) all applications, registrations, renewals, reexaminations, extensions, continuations, continuations-in-part, provisionals, substitutions, divisions or reissues of or for the foregoing; and (ii) all goodwill associated with the foregoing.



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“**Lumigo Content**” means any Content (excluding Customer Content) appearing or made available on or in the Service.

“**New Versions**” means new releases and new versions of the Service, as typically represented by the number to the left of the decimal point (*e.g.* Version X.0)

“**Site**” means <https://lumigo.com>

“**Service**” means Lumigo’s proprietary field service management (FSM) software-as-a-service, as operated by Lumigo’s proprietary platform and other Intellectual Property.

“**Service Connector Code**” means the connecting codes that connect the Customer’s application to the Service.

“**Support Services**” means the Service support and maintenance services provided under this Agreement.

“**Updates**” means modifications, revisions, or enhancements (such as a bug fix or patch) to the Service (excluding New Versions), as typically represented by the number to the right of the decimal point (*e.g.* Version 1.X).

2. ACCOUNT

In order to access the Service, Customer is required to register for an account by submitting the information requested in the applicable web form or interface (“**Account**”). Under such Account, Customer may be required to set

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accurate. As between Lumigo and Customer, Customer alone shall be responsible and liable for maintaining the confidentiality and security of its Account credentials, as well as for all activities that occur under or in such Account(s). Customer shall immediately notify Lumigo in writing of any unauthorized access to, or use of, an account, or any other breach of security. Furthermore, Customer must make each user aware of the provisions of this Agreement and the Privacy Policy (found at lumigo.io/privacy prior to authorizing such user to access the Service. In any event, Customer shall be primarily responsible and liable for the acts and omissions of each user.

3. SUBSCRIPTION RIGHTS AND RESTRICTIONS.

3.1. **Subscription.** Subject to the terms and conditions of this Agreement, Lumigo grants Customer a limited, non-exclusive, non-assignable, non-sublicensable license and right, during the Subscription Term or Beta Service Term as applicable (both such terms, as defined below), to do the following (collectively, the “**Subscription**“):

- (a) Receive Service Connector Codes as authorized by the Sales Order;
- (b) as applicable, connect or otherwise access and receive the Service or Beta Service, as applicable; and
- (c) permit its Authorized Users to use and access the Service or Beta Service, as applicable, as applicable solely for Customer’s internal, end-use



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Feature, or similar limitations or conditions specified in the Sales Order (collectively the “**Subscription Metrics**”). Use of the Service must be in accordance with the Documentation. Customer shall remain primarily responsible and liable for the Authorized Users’ acts and omissions under this Agreement.

3.2. **Restrictions.** As a condition to the Subscription, Customer shall not do (or permit or encourage to be done) any of the following (in whole or in part): (a) copy, “frame” or “mirror” the Service; (b) sell, assign, transfer, lease, rent, sublicense, or otherwise distribute or make available the Service to any third party (such as offering it as part of a time-sharing, outsourcing or service bureau environment); (c) publicly perform, display or communicate the Service; (d) modify, alter, adapt, arrange, or translate the Service; (e) decompile, disassemble, decrypt, reverse engineer, extract, or otherwise attempt to discover the source code or non-literal aspects (such as the underlying structure, sequence, organization, file formats, non-public APIs, ideas, or algorithms) of, the Service; (f) remove, alter, or conceal any copyright, trademark, or other proprietary rights notices displayed on or in the Service; (g) circumvent, disable or otherwise interfere with security-related or technical features or protocols of the Service; (h) make a derivative work of the Service, or use it to develop any service or product that is the same as (or substantially similar to) it; (i) store or transmit any robot, malware, Trojan horse, spyware, or similar malicious item intended (or that has the potential) to damage or disrupt the Service; (j) employ any hardware, software, device, or technique to pool connections or reduce the number of devices or users that directly access or use the Service (sometimes referred to as ‘virtualization’, ‘multiplexing’ or ‘pooling’) in order to circumvent any limitations or conditions on the scope of the Subscription, including the



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imposes or may impose (as determined in Lumigo’s reasonable discretion) an unreasonable or disproportionately large load on the servers, network, bandwidth, or other cloud infrastructure which operate or support the Service, or otherwise systematically abuse or disrupt the integrity of such servers, network, bandwidth, or infrastructure.

3.3. **Reservation of Rights.** For the avoidance of doubt, the Service (including any copies thereof) is only licensed hereunder, and no title in or to the Service (or such copies) passes to Customer. Any rights not expressly granted herein are hereby reserved by Lumigo and its licensors, and, except for the Subscription, Customer is granted no other right or license to the Service, whether by implied license, estoppel, exhaustion, operation of law, or otherwise.

3.4. **Hosting and Availability.** The Service will be hosted by a third party hosting services provider selected by Lumigo (“**Hosting Provider**”), and accordingly the availability of the Service shall be in accordance with the Hosting Provider’s then-current uptime commitments. The Sales Order may specify any restrictions as to which third parties may be a Hosting Provider. Lumigo shall notify Customer in writing if, and when, Lumigo engages a new Hosting Provider under this Agreement.

3.5. **Beta Service.** Lumigo may from time to time make available, in “beta”, “pre-release”, “free-trial”, “free proof of concept”, “free tier” (or similar designation) mode, new versions of the Service that are still undergoing internal development and testing and/or evaluation (each, as applicable, a “**Beta Service**”). A Beta Service may be time-limited, feature-limited, and/or functionality-limited. Lumigo may also decide to only make a

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Lumigo with respect to the Beta Service, which may include a requirement to provide feedback data, questions, reports comments, suggestions or the like and participate in surveys about the Beta Service; and (ii) Customer must not publicize the fact that there is a Beta Service, or show, display, or otherwise make available the Beta Service to any other person (which includes, without limitation, making such disclosures to traditional or social media). For the avoidance of doubt, the provisions of this Agreement that apply to the Service (such as the Restrictions on Use in Section 3.2, and the Disclaimers in Section 13) shall also apply to Beta Services.

4. DATA BACKUP

The Service is not intended to, and will not, operate as a data storage or archiving product or service, and Customer agrees not to rely on the Service for the storage of any Customer Content whatsoever. Customer is solely responsible and liable for the maintenance and backup of all Customer Content.

5. CUSTOMER CONTENT

As between Customer and Lumigo, Customer is solely responsible and liable for (and agrees to hold harmless and release Lumigo and all Lumigo Affiliates from) all Customer Content, and for its use of the foregoing, as well as for the consequences of inputting, uploading, or transmitting Customer Content (including without limitation, for obtaining any licenses, permissions,

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misappropriate, or violate any third party's Intellectual Property Rights, privacy rights, or any Law; (b) its Customer Content is not, and will not be, disparaging, libelous, threatening, offensive, harassing, deceptive, abusive, promoting of violence, illegal drugs, illegal arms trafficking, or illegal gambling, and does not, and will not, contain obscenity or pornography, create any risk to a person's safety or health, impersonate another person, compromise national security, or interfere with an investigation by law enforcement; (c) its Customer Content does not, and will not, contain any robot, virus, malware, Trojan horse, spyware, or similar malicious item intended (or that has the potential) to damage or disrupt the Service; (d) it has obtained, and will maintain during and after any termination of this Agreement, any and all licenses, permissions, consents, approvals, and authorizations required in connection with Customer Content; and (e) the content, type and quantity of Customer Content has not been authorized by Lumigo and is uploaded to the Service at Customer's sole risk and discretion. Unless specifically requested by the Service, or strictly required for use of the Service, Customer represents and warrants that Customer Content will not include any Sensitive Data.

6. THIRD PARTY CONTENT AND APPS

The Service may present, or otherwise allow Customer to view, access, link to, and/or interact with, Content from third parties and other sources that are not owned or controlled by Lumigo (such Content, "Third Party Content") as

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not be construed to) in any way imply, suggest, or constitute any sponsorship, endorsement, or approval by Lumigo of such Third Party Content, Third Party Apps, or third party, nor any affiliation between Lumigo and such third party. Lumigo does not assume any responsibility or liability for Third Party Content or Third Party Apps, or any third party's terms of use, privacy policies, actions, omissions, or practices. Customer should read the terms of use and privacy policy of any third party that Customer interacts with before it engage in any such activity.

7. FEATURES

Lumigo reserves the right to remove, modify, and/or add Features at any time, without any notice or obligation to Customer, and for any reason whatsoever. Some Features may in any event be limited, suspended or restricted by geography, volume, duration or any other criteria decided by Lumigo in its sole discretion or required by the applicable third party provider. Moreover, if Lumigo determines that Customer is in breach of any provision of this Agreement, Lumigo reserves the right to block or suspend Customer from certain Features. Lumigo may in its sole discretion charge for Features as part of the Fees (defined below) and/or require additional personal information. Customer acknowledges and agrees that just because Lumigo makes a Feature available, it does not mean Lumigo endorses, or can otherwise control, every manner in which such Feature is used. Each Feature may be accompanied by separate or additional terms and conditions, as well as additional fees (in each case, "**Feature Specific Terms**"). Unless stated

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8. SUPPORT AND PROFESSIONAL SERVICES

8.1. Support Services. Lumigo (and/or its Affiliate or subcontractor) will use commercially reasonable efforts to provide Service-related technical support, via any helpdesk or online portal offered via the Service or Site.

8.2. Professional Services. Subject to any payment applicable therefor, Lumigo (and/or its Affiliates) shall provide Customer with any professional services specified in the Sales Order.

9. PAYMENT.

9.1. Fees. Customer agrees to pay all fees stated in the Sales Order (“Fees”), and in accordance with such Sales Order’s payment terms. Customer authorizes Lumigo (either directly or through third parties) to request and collect payment (or otherwise charge, refund or take any other billing actions) from Lumigo’s payment provider or Customer’s designated bank account, and to make any inquiries Lumigo deems necessary to validate Customer’s designated payment account or financial information, in order to ensure prompt payment (including for the purpose of receiving updated payment details from Customer’s payment, credit card or banking account provider – such as, updated expiry date or card number as may be provided to Lumigo by Customer’s credit card company).

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shall in each case be subject to Lumigo's acceptance in a signed writing. Unless the new or modified Sales Order states otherwise, such increase or upgrade shall be charged at Lumigo's then-current rates, pro-rated for the remainder of the then-current Term. Similarly, any such increase or upgrade without notifying Lumigo and obtaining Lumigo's acceptance as aforesaid, shall be charged at Lumigo's then-current rates, pro-rated for the remainder of the then-current Term. In the event that Customer sends Customer Content in excess of the Subscription Metrics set forth in the Sales Order, Lumigo reserves the right to charge additional fees with respect thereto, either as set forth in the applicable Sales Order or, to the extent not provided, an additional 24 cents (\$.24) per 1,000 Traced Invocations per month. Any such additional fees will be added to the invoice payable in the following month.

9.3. **General.** Unless expressly stated otherwise in a Sales Order: (a) all Fees are stated, and are to be paid, in USD; (b) all Fees are payable in advance; (c) all payments under this Agreement are non-refundable, and are without any right of set-off or cancellation; and (d) any amount not paid when due will accrue interest on a daily basis until paid in full, at the lesser of the rate of one and a half percent (1.5%) per month and the highest amount permitted by applicable Law. Amounts payable under this Agreement are exclusive of all applicable sales, use, consumption, VAT, GST, and other taxes, duties or governmental charges, except for taxes based upon Lumigo's net income. In the event that Customer is required by any Law applicable to it to withhold or deduct taxes for any payment under this Agreement, then the amounts due to Lumigo shall be increased by the amount necessary so that Lumigo receives and retains, free from liability for any deduction or

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9.4. **Customer PO.** If a purchase order number is required in order for an invoice to be paid, then Customer must provide such purchase order number to Lumigo by emailing the number to info@lumigo.io. Any terms or conditions (whether printed, hyperlinked, or otherwise) in a purchase order or related correspondence, which purport to modify or supplement this Agreement (or the corresponding Sales Order), shall be void and of no effect.

10. OWNERSHIP.

10.1. **Service.** As between the parties, Lumigo is, and shall be, the sole and exclusive owner of all Intellectual Property Rights in and to: (a) the Service; and (b) any and all improvements, derivative works, modifications, and/or customizations of/to the Service, regardless of inventorship or authorship. Customer shall make, and hereby irrevocably makes, all assignments necessary or reasonably requested by Lumigo to ensure and/or provide Lumigo the ownership rights set forth in the preceding sentence.

10.2. **Customer Data; No Liability for Sensitive Data.** As between the parties, Customer is, and shall be, the sole and exclusive owner of all data and information inputted or uploaded to the Service by or on behalf of Customer (“Customer Data”). Customer shall not provide Lumigo, or input or upload to the Service or use the Service to collect, any Sensitive Data (defined below), and notwithstanding any other provision to the contrary, Lumigo shall have no obligations or liabilities under this Agreement for Sensitive Data.

“Sensitive Data” means any (i) categories of data enumerated in Article 9(1) of the European Union’s General Data Protection Regulation (Regulation 2016/679, aka the GDPR) or any successor Law; (ii) patient, medical or other

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Associate or subcontractor (as such terms are defined under HIPAA); (iii) credit, debit or other payment card data subject to the *Payment Card Industry Data Security Standards* (“**PCI DSS**”); (iv) other information subject to regulation or protection under specific Laws, such as the United States’ Gramm-Leach-Bliley Act (or related Laws); (v) social security numbers, national insurance numbers, driver’s license numbers or other government ID numbers; or (vi) any data similar to the foregoing that is protected under foreign or domestic Laws.

10.3. **Feedback and Statistical Data.** In the event that Customer (or any person on Customer’s behalf) provides any suggestions or similar feedback regarding the Service or any part thereof (“**Feedback**”), and/or to the extent Lumigo receives de-identified statistical (or similar) information or data regarding Customer’s use of the Service (“**Statistical Data**”), Lumigo shall be entitled, in perpetuity, to use and commercially exploit such Feedback and Statistical Data without any obligation or restriction whatsoever.

11. CONFIDENTIALITY.

Each party and/or its Affiliates (the “**Recipient**”) may have access to certain non-public or proprietary information and materials of the other party and/or its Affiliates (the “**Discloser**”), whether in tangible or intangible form (“**Confidential Information**”). Confidential Information shall not include information and material which: (a) at the time of disclosure by Discloser to Recipient hereunder, was in the public domain; (b) after disclosure by Discloser to Recipient hereunder, becomes part of the public domain through

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Recipient by a third party having the lawful right to do so; or (e) independently developed by the Recipient without use of, or reliance upon, Confidential Information received from the Discloser. The Recipient shall not disclose the Discloser's Confidential Information to any third party, except to its employees, advisers, agents and investors, subject to substantially similar written confidentiality undertakings. Recipient shall take commercially reasonable measures, at a level at least as protective as those taken to protect its own Confidential Information of like nature, to protect the Discloser's Confidential Information within its possession or control, from disclosure to a third party. The Recipient shall use the Discloser's Confidential Information solely for the purposes of performing under this Agreement. In the event that Recipient is required to disclose Confidential Information of the Discloser pursuant to any Law, regulation, or governmental or judicial order, the Recipient will (a) promptly notify Discloser in writing of such Law, regulation or order, (b) reasonably cooperate with Discloser in opposing such disclosure, (c) only disclose to the extent required by such Law, regulation or order (as the case may be). Upon termination of this Agreement, or otherwise upon reasonable written request by the Discloser, the Recipient shall promptly return to Discloser its Confidential Information (or if embodied electronically, permanently erase it, and if requested, certify such erasure in a signed writing).

Notwithstanding anything in this Agreement to the contrary, Customer shall not disclose any of the Sales Order's pricing or payment terms to any third party, without Lumigo's prior express written consent.



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Customer shall maintain in the ordinary course of business appropriate records in connection with this Agreement throughout the Term of this Agreement and for at least two (2) years thereafter. Customer agrees that Lumigo may audit (both on-premise and remotely) such records to determine Customer's compliance with this Agreement and its payment obligations. Any such audit shall be at Lumigo's expense, require reasonable written notice, and be performed during Customer's normal business hours. If an audit reveals underpayments of fees due pursuant to this Agreement, then Customer shall immediately pay Lumigo such underpayments, as well as reimburse Lumigo for the expense incurred by Lumigo in performing the audit.

13. DISCLAIMERS

13.1. (A) THE SERVICE, ANY LUMIGO CONTENT, AND ANY THIRD PARTY CONTENT AND ALL OTHER SERVICES, CONTENT AND ITEMS PROVIDED AND MADE AVAILABLE BY LUMIGO ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS, AND WITHOUT ANY REPRESENTATION, WARRANTY, GUARANTEE OR CONDITION OF ANY KIND WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET POSSESSION, NON-INFRINGEMENT, QUALITY OF SERVICE, TITLE, OR THAT OTHERWISE ARISE FROM A COURSE OF PERFORMANCE OR DEALING, OR USAGE OF TRADE, ALL OF WHICH ARE HEREBY DISCLAIMED BY LUMIGO AND ITS LICENSORS AND SUPPLIERS; AND (B)



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COMPLETENESS, OR QUALITY OF THE SERVICE, CONTENT OR ITEMS, THAT USE THEREOF WILL BE UNINTERRUPTED, SECURE ERROR-FREE, OR VIRUS-FREE, OR THAT DEFECTS IN THE SERVICE WILL BE CORRECTED, THAT CUSTOMER'S USE OF, OR RELIANCE UPON, THE SERVICE, LUMIGO CONTENT, THIRD PARTY APPS, OR THIRD PARTY CONTENT WILL MEET ANY REQUIRMENTS OR EXPECTATIONS, OR REGARDING THE SATISFACTION OF, OR COMPLIANCE WITH, ANY GOVERNMENT REGULATIONS OR STANDARDS.

13.2. CUSTOMER AGREES THAT LUMIGO WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY CONSEQUENCES THAT MAY RESULT FROM TECHNICAL PROBLEMS INCLUDING WITHOUT LIMITATION IN CONNECTION WITH THE INTERNET (SUCH AS SLOW CONNECTIONS, TRAFFIC CONGESTION OR OVERLOAD OF LUMIGO'S OR SERVICE-RELATED SERVERS) OR ANY TELECOMMUNICATIONS OR INTERNET PROVIDERS.

14. LIMITATION OF LIABILITY

14.1. EXCEPT FOR BREACHES OF CONFIDENTIALITY UNDER SECTION 11 (*CONFIDENTIALITY*), A BREACH OF THE SUBSCRIPTION, AND/OR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT, FOR:

(A) ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES;





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(C) ANY LOSS OF, OR DAMAGE OR INTERRUPTION TO, DATA, NETWORKS, HARDWARE, REPUTATION, OR GOODWILL; AND/OR

(D) THE COST OF PROCURING ANY SUBSTITUTE GOODS OR SERVICES.

14.2. THE COMBINED AGGREGATE LIABILITY OF LUMIGO AND ALL LUMIGO AFFILIATES UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER UNDER THIS AGREEMENT IN THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE DATE GIVING RISE TO LIABILITY.

14.3. THE FOREGOING EXCLUSIONS AND LIMITATIONS SHALL APPLY: (A) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW; (B) EVEN IF A PARTY HAS BEEN ADVISED, OR SHOULD HAVE BEEN AWARE, OF THE POSSIBILITY OF LOSSES, DAMAGES, OR COSTS; (C) EVEN IF ANY REMEDY IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE; AND (D) REGARDLESS OF THE THEORY OR BASIS OF LIABILITY, INCLUDING WITHOUT LIMITATION BREACH OF WARRANTY, NEGLIGENCE, MISREPRESENTATION, STRICT LIABILITY, OR OTHER CONTRACT, TORT OR STATUTORY LIABILITY.

15. TERM AND TERMINATION

15.1. **Term.** This Agreement commences on the Effective Date and, unless terminated in accordance herewith, shall continue in full force and effect for the Subscription term stated in the applicable Sales Order (the “Initial Subscription Term”), following which this Agreement shall automatically

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the Agreement not less than ninety (90) days prior to the expiration of the then-current term.

15.2. **Beta Service**. If Customer has registered for a Beta Service, this Agreement, unless earlier terminated in accordance herewith, shall commence and continue in full force and effect throughout the Beta Service Term, as determined by Lumigo and notified to Customer (“**Beta Service Term**”).

15.3. **Termination for Breach**. Each party may terminate this Agreement immediately upon written notice to the other party if the other party commits a material breach under this Agreement and, if curable, fails to cure that breach within sixty (60) days after receipt of written notice specifying the material breach (except that for payment defaults, such cure period will be seven (7) days).

15.4. **Termination for Bankruptcy**. Each party may terminate this Agreement upon written notice to the other party upon the occurrence of any of the following events in respect of such other Party: (a) a receiver is appointed for the other party or its property, which appointment is not dismissed within sixty (60) days; (b) the other party makes a general assignment for the benefit of its creditors; (c) the other party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor’s relief Law, which proceedings are not dismissed within sixty (60) days; or (d) the other party is liquidating, dissolving or ceasing normal business operations.



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TERMINATION; SURVIVAL

Upon termination of this Agreement: (a) the Subscription will automatically terminate and be deemed revoked, and Customer must immediately cease all access to and use of the Service, and permanently uninstall all copies of the Service; and (b) Customer shall promptly pay any unpaid amounts that are outstanding as of termination. Sections 10 (*Ownership*) through 18 (*Miscellaneous*) shall survive termination of this Agreement, as shall any right, obligation or provision that is expressly stated to so survive or that ought by its nature to survive. Termination shall not affect any rights and obligations accrued as of the effective date of termination.

17. GOVERNING LAW, DISPUTE RESOLUTION AND LUMIGO ENTITY

17.1. For Customers located in the United States: If Customer's location as listed in the Sales Order is in the United States, then "Lumigo" means Lumigo Inc., a Delaware corporation, with offices at 2 Shaw Alley, 4th Floor, San Francisco, California, 94105, and this Agreement, the subject matter thereof, and any disputes between the parties relating thereto, shall be governed by, and construed in accordance with, the laws of the State of California, without regard to any conflicts of laws rules or principles. Any claim, dispute or controversy under, or otherwise in connection with, this

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waive any jurisdictional, improper venue, inconvenient forum, or other objections to such jurisdiction and venue.

17.2. For Customers located outside of the United States: If Customer's location as listed in the Sales Order is outside of the United States, then "Lumigo" means Lumigo Ltd., an Israeli company, with offices at Shpinoza 41, Tel Aviv-Yafo, Israel, and this Agreement, the subject matter thereof, and any disputes between the parties relating thereto, shall be governed by, and construed in accordance with, the laws of the State of Israel, without regard to any conflicts of laws rules or principles. Any claim, dispute or controversy under, or otherwise in connection with, this Agreement shall be subject to the exclusive jurisdiction and venue of the courts located in Tel Aviv-Jaffa, Israel, and the Parties hereby irrevocably and unconditionally submit to the personal jurisdiction of such courts and waive any jurisdictional, improper venue, inconvenient forum, or other objections to such jurisdiction and venue.

The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement and is hereby disclaimed.

18. MISCELLANEOUS

18.1. **Entire Agreement.** This Agreement represents the entire agreement between Lumigo and Customer with respect to the subject matter hereof and supersedes and replaces any and all prior and contemporaneous oral and/or written agreements, understandings and statements between Customer and Lumigo with respect to such subject matter. Customer acknowledges and

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any FAQs, summaries or explanatory guides regarding this Agreement, or other marketing material on the Lumigo website. To the extent of any conflict or inconsistency between these terms and conditions on the one hand, and the Sales Order on the other hand, the former shall prevail (unless the Sales Order expressly overrides a provision herein). The language of this Agreement is expressly agreed to be the English language. By entering into the Agreement Customer hereby irrevocably waives, to the maximum extent legally permitted, any Law applicable to Customer requiring that the Agreement be localized to meet Customer's language (as well as any other localization requirements), or requiring an original (non-electronic) signature or delivery or retention of non-electronic records. The Section headings in this Agreement are for convenience of reading only, and shall not to be used or relied upon for interpretive purposes.

18.2. Modifications to Agreement. Lumigo may, from time to time and in its sole discretion, modify the terms and conditions of this Agreement, with notice to Customer in accordance with Section 18.11 (*Notices*). Except as otherwise indicated below, modifications to this Agreement will take effect at the next renewal of your Subscription Term and will automatically apply as of the next Renewal Subscription Term (if any). Notwithstanding the foregoing, in some cases (for example, to address compliance with Laws, or as necessary for new Features) Lumigo may specify that such modifications become effective during Customer's then-current Term. If the effective date of such modifications is during Customer's then-current Term, and Customer objects to the modifications, then, as Customer's sole remedy, and Lumigo's sole liability, Customer may terminate the affected Sales Order upon written notice to Lumigo and receive a pro-rated refund of any pre-paid Subscription

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days of Lumigo's notice of the modification.

18.3. **Lumigo Affiliates.** At Lumigo's sole discretion, any Lumigo obligation hereunder may be performed (in whole or in part), and any Lumigo right or remedy may be exercised (in whole or in part), by a Lumigo Affiliate. Without limiting the generality of the foregoing, Lumigo may assign its right to invoice and receive payments under this Agreement to an Lumigo Affiliate.

18.4. **GDPR Data Processing Addendum.** Customer hereby warrants and represents that it will (i) provide all appropriate notices, (ii) obtain all required informed consents and/or have any and all ongoing legal bases, and (iii) comply at all times with any and all applicable privacy and data protection laws and regulations (including, without limitation, the EU General Data Protection Regulation ("GDPR")), for allowing Lumigo to use and process the data in accordance with this Agreement (including, without limitation, the provision of such data to Lumigo (or access thereto) and the transfer of such data by Lumigo to its affiliates, subsidiaries and subcontractors, including transfers outside of the European Economic Area), for the provision of the Services and the performance of this Agreement. To the extent that Customer needs a *data processing agreement*, Customer shall submit an email request to privacy@lumigo.io for a copy of Lumigo's Data Processing Agreement ("DPA") and return it signed to Lumigo as described therein.

18.5. **Assignment.** Lumigo may assign this Agreement (or any of its rights and/or obligations hereunder) without Customer's consent, and without notice or obligation to Customer. This Agreement is personal to Customer, and Customer shall not assign (or in any other way transfer) this Agreement

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18.6. **Third Party Software**. The Service may include third party software components that are subject to open source and/or pass-through commercial licenses and/or notices (“**Third Party Software**” and “**Third Party Software Terms and Notices**“, respectively). Lumigo will comply with any valid written request submitted by Customer to Lumigo for exercising any rights Customer may have under such Third-Party Software Terms and Notices. Any undertakings, representations, warranties, guarantees, conditions, indemnities or other commitments made by Lumigo in this Agreement concerning the Service (if any), are made by Lumigo and not by any authors, licensors, or suppliers of, or contributors to, such Third Party Software.

18.7. **Severability**. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, then: (a) the remaining provisions of this Agreement shall remain in full force and effect; and (b) the Parties hereto agree that the court making such determination shall have the power to limit the provision, to delete specific words or phrases, or to replace the provision with a provision that is legal, valid and enforceable and that most closely approximates the original legal intent and economic impact of such provision, and this Agreement shall be enforceable as so modified in respect of such jurisdiction. In the event such court does not exercise the power granted to it as aforesaid, then such provision will be ineffective solely as to such jurisdiction (and only to the extent and for the duration of such illegality, invalidity or unenforceability), and will be substituted (in respect of such jurisdiction) with a valid, legal and enforceable provision that most closely approximates the original legal intent and economic impact of such provision.



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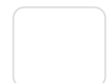
right or remedy under this Agreement, at law or in equity, but shall be cumulative of such other rights and remedies.

18.9. **Waiver.** No failure or delay on the part of any party in exercising any right or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. Any waiver granted hereunder must be in writing (for waivers by Customer, emails will be acceptable; for waivers by Lumigo, the writing must be duly signed by an authorized representative of Lumigo), and shall be valid only in the specific instance in which given.

18.10. **Relationship.** The relationship of the parties is solely that of independent contractors. Nothing in this Agreement shall be deemed to create any employment, fiduciary, joint venture, agency or other relationship between the parties.

18.11. **Publicity.** Lumigo may use Customer's name and logo on the Lumigo website and in its promotional materials to state that Customer is a customer of Lumigo and the Service, and upon request, Customer shall cooperate with Lumigo in this regard.

18.12. **Notices.** Customer agree that Lumigo may send Customer notices by email, via Customer's Account, by regular mail, and/or via postings on or through the functionality of the Service. Except as stated otherwise in this Agreement or required by Law applicable to Customer, Customer agrees to send all notices to Lumigo, to [info@lumigo.io].





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18.14. Force Majeure. Lumigo shall not be responsible for any failure to perform any obligation or provide any service hereunder because of any (a) act of God, (b) war, riot or civil commotion, (c) governmental acts or directives, strikes, work stoppage, or equipment or facilities shortages, and/or (d) other similar cause beyond Lumigo’s reasonable control. For the avoidance of doubt, any problems relating to the hosting of the Service shall not be deemed within Lumigo’s reasonable control.

18.15. Third Party Charges. Customer’s use of the Service may require and utilize an internet connection or data access. To the extent that third party service provider or carrier charges for internet or data usage are applicable, Customer shall be solely responsible and liable for those charges.



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