



## ILLUMIA PARTNER PROGRAM TERMS AND CONDITIONS

**THESE ILLUMIA PARTNER PROGRAM TERMS AND CONDITIONS DESCRIBE THE GENERAL TERMS BY WHICH PROGRAM MEMBER MAY DEVELOP AND BUILD ONE OR MORE CERTIFIED INTEGRATIONS AS IDENTIFIED HEREIN. IF PROGRAM MEMBER PURCHASES PROMOTIONAL SERVICES, IN ADDITION TO THE AGREEMENT, THE PROMOTIONAL SERVICES SUPPLEMENTAL TERMS AND CONDITIONS SET FORTH IN EXHIBIT A WILL APPLY TO SUCH PURCHASE.**

**NOW, THEREFORE**, in consideration of the following mutual covenants and agreements and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Program Member and Illumia (each a “Party” or collectively “Parties”) hereby agree as follows:

### **1. Definitions**

Capitalized terms used but not defined in the Program Terms and Conditions shall have the meanings assigned to such terms in the Order Form.

1.1 “Certification” means Program Member has completed all the certification requirements of the Program to the satisfaction of Illumia.

1.2 “Certification Documentation” means documentation made available to Program Member that outlines the requirements to successfully complete Certification.

1.3 “Change Event” means a change in systems upgrades or changes in a software solution that would impact the existing Integration functionality, where additional testing and recertification will be required by Illumia.

1.4 “Confidential Information” means any non-public information about a Party, including, without limitation, the Party’s business, vendors, customers, subsidiaries, affiliates, products, services, employees, finances, costs, expenses, financial or competitive condition, policies, practices, computer software programs and programming tools and their respective design, architecture, modules, interfaces, databases and database structures, nonliteral elements, capabilities and functionality, source code and object code, research and development efforts, marketing and distribution efforts, licensing, cross-licensing, marketing and distribution practices; computer software programs and other information licensed or otherwise disclosed to a Party in confidence by a third party, and any other non-public information that does or may have economic value by reason of not being generally known. However, the term “Confidential Information” shall not include any information that: (a) at the time of disclosure, is in the public domain; (b) becomes, after disclosure, part of the public domain through no fault and or breach of the Receiving Party; (c) is known to the Receiving Party prior to disclosure by the Disclosing Party, without any obligation of confidentiality; (d) is received without any obligation of confidentiality from a third party who had a lawful right to disclose such information; or (e) is independently developed by the Receiving Party without use of the Confidential Information of the Disclosing Party.

1.5 “Customer(s)” means those persons, organizations, or entities (other than Program Member) that have licensed from Illumia one or more components of the Software or have purchased services from Illumia.

1.6 “Derivative Work(s)” means a work which is based upon, refers to or makes use of one or more preexisting works, in part or in whole, such as a revision, modification, translation, abridgement, condensation, expansion, or any other form in which the preexisting work may be recast, transformed, or adapted, and which, if prepared without authorization of the owner of the preexisting work, would constitute a copyright infringement.

1.7 “End User” means a consumer or user of a product or service provided by Customer.

1.8 “Fees” means the one-time fees and annual fees set forth in an Order Form.

1.9 “Integration” means the software application program developed pursuant to the Order Form that (i) is designed to operate in combination with and integrate, seamlessly and easily, with the Software through a Supported Interface, (ii) contains functionality authored or created by Program Member or on Program Member’s behalf and not contained in the Software, and (iii) does not incorporate any part of the Software or any other Illumia intellectual property or otherwise constitute a Derivative Work of the Software or other Illumia intellectual property.

1.10 “Marks” means the trademark, service marks, trade name or logos of a Party for use in connection with this Agreement.

1.11 “Program Member Products” means the products and services of Program Member that are listed in the Order Form and with respect to which the Promotional Services may be provided.

1.12 “Promotional Services” means the promotional services and benefits which may be included in the Order Form and as described in the relevant and then current supplemental documentation provided to Program Member with respect to the Program Member Products as referenced therein.

1.13 “Representatives” means the directors, officers, employees, subcontractors, and professional advisors (including lawyers, accountants, contractors, and financial advisors) of a Party hereto or its affiliates. Notwithstanding the previous sentence, a “Representative” does not include a competitor of either Party regardless of the affiliation with such Party.

1.14 “Software” means the current, supported versions of the Illumia software, which includes software made available under a software-as-a-service delivery model, and Supported Interfaces (and any documentation and help files included within such software), as well as any additional materials that Illumia may provide, such as corrections, Updates and Upgrades. Illumia shall have no obligation to provide such additional materials, and any such additional materials that it does provide shall be deemed “Software” under this Agreement.

1.15 “Specifications” means the technical specifications for the Software as set forth in the applicable Supported Interfaces.

1.16 “Supported Interfaces” means Illumia application programming interfaces (“API”), network protocols, data formats, database schemas, and file formats used in the Software, as may be described in documentation provided by Illumia.

1.17 “Taxes” shall mean any federal, state, municipal or other governmental taxes, fees, tariffs or duties, including income, franchise, excise, sales, use, gross receipts, value added, goods and property or similar tax, now or hereafter imposed on you or required to be collected by you in connection with the sales of your products and which you are obligated to collect or remit to any such taxing authority (but excluding taxes payable by you on its own net income).

1.18 “Illumia Enabled” means a designation granted (as set forth in Section 2.1(b)) to a third party product or service that has an Integration which allows it to integrate into a Customer’s Software installation, and which has passed compatibility testing conducted by Illumia or a third party designated by Illumia.

1.19 “Updates” means the object code versions of the Software that have been developed by Illumia to correct any software error and/or provide additional functional and technical updates, patches, and that have been commercially released with a version number that differs from that of the prior version in the number to the right of the decimal point (e.g., 2.0 vs. 2.1) and that are not marketed as a separate product or module.

1.20 “Upgrades” mean the object code versions of the Software that have been customized, enhanced, or otherwise modified by or on behalf of Illumia, acting in its sole discretion, to include additional functionality and that has been released with a version number that differs from that of the prior version in the number to the left of the decimal point (e.g., 3.0 vs. 2.0).

## **2. Obligations**

### **2.1 Illumia Obligations.**

(a) Illumia shall provide Program Member with access to the Supported Interfaces. Upon the availability of any Upgrade or Update to the Software and / or the Supported Interfaces, Program Member shall update its Integration within 30 calendar days of release of such Upgrade or Update to work with any such Upgrade or Update to the Software or the Supported Interfaces.

(b) If applicable under Program requirements, Illumia shall provide compatibility testing for the Integration, either directly or on a subcontracted basis as determined by Illumia. The schedule for such testing by Illumia is subject to availability. Upon satisfaction of the compatibility testing criteria required for Certification of the Integration, Illumia shall notify Program Member in writing of the same (e-mail notification is acceptable) and grant Program Member permission to use the “Illumia Enabled” mark (or such other moniker as Illumia may determine from time to time) in accordance with the Illumia usage guidelines in effect from time to time (the “Compatibility Notice”). Unless otherwise notified by Illumia, such permission shall remain in effect for the remaining Term of this Agreement, so long as no modifications are made to the Integration, the Software or any third party product or service that may impact the functionality of the Integration. In the event that any such product is modified, Illumia’s permission to use the “Illumia Enabled” mark shall immediately and automatically terminate until such time as the Integration is re-tested and an additional Compatibility Notice is provided by Illumia in accordance with procedures set forth above. If, at any time, the Integration materially fails to satisfy the compatibility testing criteria, Illumia shall provide you with a report detailing the areas in which the Integration failed, and you may not use the “Illumia Enabled” Mark for any purpose. You may correct the errors that resulted in the failure and resubmit the Integration for compatibility testing in accordance with the procedures set forth above. Notwithstanding anything contained herein to the contrary, Illumia shall have no liability whatsoever with respect to, or arising from, the testing or accessing the Integration pursuant to this Section 2.1(b).

(c) Subject to (i) payment by the Customer of Illumia’s then current applicable usage fee(s) as provided for in Section 10.5 below and (ii) the terms and conditions of this Agreement and Customer’s license for the Software, Illumia shall permit activation and use of the Integration with Customer’s Software installation locally or in the cloud. Notwithstanding the foregoing, Illumia may decline to permit activation and use of the Integration with Customer’s Software installation, if (i) such usage is or is likely to become, in Illumia’s sole determination, outside the scope of

use contemplated by such Customer's license for the Software or by this Agreement, including but not limited to the provisions set forth in Sections 2.2 (i) and (j) below, (ii) such Integration would, in Illumia's sole discretion, impact Illumia's systems or software in any way, or (iii) Program Member is in breach of its obligations or restrictions under this Agreement including any Certification, recertification, and/or Program requirements.

## 2.2 Program Member Obligations.

- (a) You shall use the Supported Interfaces to develop, maintain and support the Integration(s), which can be distributed as a separate item and installed by you on your Software installation upon request of a Customer.
- (b) You shall provide support to all End Users and Customers using the Integration, including any modifications to the Integration needed to allow the Integration to operate with Updates and Upgrades of the Software.
- (c) If applicable under Program requirements, within thirty (30) calendar days of the end of each quarter during the Term and for so long as the Integration is in use by any Customer, you agree to provide a report to Illumia detailing all Integrations in use by Customers including all Customer names, usage bands or end user count, and functionality provided through each Integration by Customer.
- (d) You shall provide to Illumia (i) access to your development staff for questions and support of the Integration(s), and (ii) the specifications, Customers, and End User information for the Integration(s).
- (e) If requested, you agree to provide Illumia a demonstration license of your software and applicable hardware required to perform end-to-end testing, including but not limited to controllers and readers as mutually agreed and determined by the parties in order for Illumia to test and provide Certification.
- (f) Prior to permitting a third party to resell, distribute or bundle the Integration, you and Illumia agree to discuss the desired third party use and access and shall only proceed based upon mutually agreeable terms and conditions that will be in accordance with this Agreement and memorialized in writing.
- (g) If provided to you by Illumia, you shall complete its Program Member document to be used to educate Illumia internal staff and stakeholders about you and your product integration and relationship with Illumia.
- (h) You agree to abide by all applicable laws and regulations in connection with its obligations and performance under this Agreement.
- (i) You may not offer, nor aid any third party in offering, products which operate with the Integration to provide any functionality which is not expressly authorized by this Agreement or consented to by Illumia in writing. You shall not create or develop any Integration as it relates to this agreement on behalf of any third party without the prior written consent of Illumia.
- (j) You may not deploy, nor permit any third party to deploy, the Integration in conjunction with a product that is deemed by Illumia to be competitive with a product then-offered by Illumia. If you intend at any time to institute such a program, you agree to promptly inform Illumia, will not use in that program (whether for advice, review or otherwise) any personnel who have had access to any Supported Interfaces, and will not use any part of the Supported Interfaces or any related intellectual property in connection with that program otherwise you shall be in material breach of this Agreement.
- (k) You must demonstrate compliance with the Certification Documentation to receive Certification prior to activating or communicating availability of Integration. Illumia may require recertification at its discretion no more than once per year or within sixty (60) days following the anniversary date of the first Certification date. The Integration must also be recertified upon a Change Event as defined in this Agreement. You shall abide by all Certification requirements during the term of the Agreement, otherwise shall be in material breach of the Agreement. Illumia reserves the right to update the Certification Documentation from time to time, and you may be required to fulfill additional requirements to retain Certification or receive re-Certification at the direction of Illumia. You shall provide reasonable advance notice to Illumia when you become aware of a Change Event.
- (l) You shall provide prior written notice within ten (10) business days to Illumia in the event that you are acquired by another legal entity, person or other entity with a change in control that results in a controlling ownership change or management change, or acquisition through bankruptcy. In the event of such change in control, Illumia will require new Certification Documentation or may terminate the Agreement in its sole discretion. You are expressly prohibited from extending the scope of the Integration outside of what has been approved by Illumia.

## 3. **Licenses**

3.1 Supported Interfaces Grant. Solely in connection with this Agreement, Illumia hereby grants to you, and you hereby accept from Illumia, a limited, non-exclusive, non-transferable, non-sub-licensed right and license to download, review and use the Supported Interfaces during the Term of this Agreement. You may use the Supported Interfaces solely in connection with your own internal development purposes in connection with this Agreement and any Program. You may copy the Supported Interfaces, or any portion thereof, in whole or in part only for the purposes of this Agreement. Uses not described in the Supported Interfaces without the prior written consent of Illumia is not covered by this Agreement and shall be a material breach of this Agreement. You shall not (and shall not authorize or encourage any third party to), directly or indirectly: (i) rent, lease, loan, sell, sublicense, assign, or otherwise transfer

any rights in or to the Supported Interfaces; (ii) clone or use Supported Interfaces to build an application programming interface, application, or product that is competitive with any Illumia product or service); (iii) remove any proprietary notices from the Supported Interfaces (or any portion thereof); (iv) decompile, reverse engineer, disassemble, or derive the source code, underlying ideas, concepts, or algorithms from the Supported Interfaces (except as and only to the extent the foregoing restrictions are expressly prohibited by applicable statutory law); or (v) modify or create Derivative Works of the Supported Interfaces.

3.2 Program Member License Grant. Solely in connection with the Program, you hereby grant to Illumia, and Illumia hereby accepts from you a non-exclusive, worldwide, fully paid-up irrevocable and perpetual right and license to use the Integration provided to Illumia by you. No right is granted to distribute all or any portion of Integration. Illumia may only make copies of the Integration for its own internal purposes and/or to fulfill its obligations under this Agreement or to Customers, but otherwise may not copy, duplicate or reproduce the Integration in any manner unless otherwise permitted by You.

3.3 Third Party Software/Content. You acknowledge that the Supported Interfaces and/or the Software may utilize software and/or content made available to Illumia by certain third parties (the “Third Party Software”). Pursuant to its agreements with such third parties, Illumia hereby grants to you a non-exclusive, nontransferable, and non-sub-licensable right and license to load and/or operate and use the Third-Party Software solely to the extent of the license in Section 3.1.

3.4 Termination of Access to Third Party Software. Illumia’s licensors and suppliers reserve the right, at their discretion, to restrict, suspend or terminate your access to all or any part of the Third-Party Software at any time for any reason without liability to Illumia or such licensor. Illumia’s licensors and suppliers may change, suspend or discontinue all or any aspect of the Third-Party Software, including the availability, at any time for any reason without liability to Illumia or themselves.

3.5 No Other Rights Granted. Apart from the licenses expressly granted in Sections 3.1, 3.2, and 3.3, no license or other right are granted by either Party to the other under this Agreement. As a Program Member, you shall have no right to or right to access the source code of the Software or any Third-Party Software. You shall not appoint any resellers, other partners, or sub-distributors or ASPs of the Software, and shall not permit any unauthorized third party to access the Software or the Supported Interfaces.

3.6 Restrictions. Except as may be expressly permitted during the Term of this Agreement, you shall not (a) modify, decompile, disassemble, decrypt, extract, or otherwise reverse engineer the Software, the Supported Interfaces, or any part thereof, or grant any other person or entity the right to do so or take any action that would assist any other person or entity in doing so (and you will promptly notify Illumia of any information that any other person or entity is or is attempting to copy, reverse engineer, disassemble, decompile, translate or modify the Software or the Supported Interfaces); (b) modify, insert, delete, replace, change, prepare Derivative Works of or otherwise alter any files in the Software or the Supported Interfaces; (c) loan, rent, lease, give, sublicense, distribute, transfer, publish, disclose, display, or otherwise make available the Software or the Supported Interfaces, in whole or in part, to any other person or entity except as expressly permitted herein; (d) use the Software or the Supported Interfaces in connection with the development of any products other than the Integration(s); (e) use the Software or the Supported Interfaces in connection with the development of any products that are designed specifically for use on a mobile platform or mobile devices; (f) transmit the Software or the Supported Interfaces over a network or from one computer to another (other than on a limited basis within your local area network), or upload the Software or the Supported Interfaces to electronic bulletin boards, web sites, or otherwise distribute them (or any portion), whether electronically, or on tangible media; (g) use the Software or the Supported Interfaces to develop, introduce, send, and/or store viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; or (h) attempt to monitor or gain unauthorized access to any Illumia system or software. Illumia reserves the right to modify its software to block unauthorized access to it.

#### **4. Marketing**

4.1 License for Marks. Contingent upon the requirements set forth in this Section 4, Illumia grants to you, for the term of this Agreement, a limited, nonexclusive, royalty-free license to use the trademarks and trade names as specified in marketing materials provided by Illumia, each only in order to show that the Integration is compatible with the Software (the “Illumia Licensed Marks”). You acknowledge and agree that Illumia may from time to time make changes to its marketing materials without advance notice. You are responsible for checking with Illumia’s marketing department from time to time to ensure that your rights to and use of any Illumia Licensed Marks is in accordance with the most current Illumia requirements. You grant to Illumia a limited, nonexclusive, royalty-free license to use the following Marks: (1) your corporate name and/or trade name; (2) your corporate logo; and (3) the product name of the Integration developed under this Agreement; each only in order to identify Integration that is compatible with the Software (the “Program Member Licensed Marks”). Collectively, the Illumia Licensed Marks and the Program Member Licensed Marks shall be referred to as the “Licensed Marks”. Each of these two licenses is

contingent on the requirements that each Party: (a) does not create a unitary composite mark involving a Mark of the other Party without the prior written approval of such other Party; (b) displays symbols and notices clearly and sufficiently, indicating the trademark status and ownership of the other Party's Marks in accordance with applicable trademark law and practice; and (c) uses the other Party's Marks in a manner that is consistent with the Purpose of this Agreement. In no event shall you use the word "Illumia" in the name of any of your products or services, including, without limitation, the use of "[product] for Illumia". Each Party acknowledges that its utilization of the Licensed Marks under this Agreement will not create in it, nor will it represent that it has any right, title or interest in or to such Licensed Marks other than the licenses expressly granted herein. Illumia may, but is not obligated to, list the Program Member Licensed Marks on web sites and product marketing materials associated with the Partner Program, Partners Network and/or Illumia Partnerships. Neither Party will do anything to contest or impair the trademark rights of the other Party and will comply with such Party's standard trademark usage guidelines as such Party may provide from time to time.

4.2 Quality Standards. Each Party agrees that the nature and quality of its products and services supplied in connection with the other Party's Marks shall conform to quality standards communicated in writing by the other Party for use of its Marks. Each Party agrees to supply the other Party, upon request, with a reasonable number of samples of any marketing or other materials publicly disseminated by such Party which utilize the other Party's Marks. Each Party shall comply with all applicable laws, regulations and customs and obtain any required government approvals pertaining to use of the other Party's Marks.

4.3 Infringement Proceedings. Each Party agrees to promptly notify the other Party of any unauthorized use of the other Party's Marks of which it has actual knowledge. Each Party shall have the sole right and discretion to bring proceedings alleging infringement of its Marks or unfair competition related thereto; provided, however, that each Party agrees to provide the other Party, at such other Party's expense, with its reasonable cooperation and assistance with respect to any such infringement proceedings.

4.4 Press Releases. Any news release, public announcement, marketing materials, advertisement or publicity proposed to be released by either Party concerning the activities of either Party in connection with this Agreement, including the Integration, will be subject to the written approval of the other Party prior to release. Any such publicity shall be consistent with the terms and conditions of this Agreement and will give due credit to the contribution of each Party. You should refer to Illumia's marketing department for guidance on preparing permitted materials.

4.5 Marketing Costs. Any costs of promotion and marketing shall be borne solely by the respective Party, and nothing in this Agreement shall be interpreted to require promotion of products or services through marketing media forms which either Party normally charges a fee to provide.

4.6 Marketing Materials. Each Party will submit to the other Party for its prior written approval, which shall not be unreasonably withheld, any materials to be used in connection with performing its obligations or rights under, or related to, this Agreement, including but not limited to business card, website or jewel case design, that incorporates any of the other Party's Marks. Any use of the phrase "Illumia Enabled" shall be subject to the terms of Section 2.1(b) above. Each Party will make commercially reasonable efforts to respond to any such request for approval within five (5) business days. Each Party reserves the right to disapprove such marketing materials if it reasonably determines that its Marks are improperly used or if the marketing materials do not accurately represent the business relationship between the Parties or the services or products of the other Party or otherwise does not comply with any applicable law.

## **5. Protection of Personal Information**

5.1 Personal Information. Personal Information is information collected from Illumia or its systems under the Agreement that can be used to identify a specific individual. Personal Information may include student data that is directly related to an identifiable student that is maintained by a school, school district, or related entity or organization, or by you, Program Member. In the United States, student data may include "educational records" as defined by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(g).

5.2 Confidentiality. You agree to treat Personal Information as confidential and not to share it with third parties other than as described in the terms of this Agreement.

5.3 Personal Information Access. To the extent necessary to provide the products and services, Illumia authorizes you to collect, access, use, transmit and/or otherwise process (together, "Process") Personal Information. Unless otherwise expressly indicated, if Illumia is subject to regulations in the United States, you shall Process Personal Information as an outsourced institutional function pursuant to FERPA 34 CFR Part 99.31(a)(1). You agree and understand that all Personal Information is owned by Customer or another third party, and that you do not own any Personal Information.

5.4 Personal Information Consents and Authority. Both parties agree to uphold their responsibilities under data protection laws ("Data Protection Laws") governing Personal Information, including in the U.S., FERPA, the Protection of Pupil Rights Amendment (PPRA), and COPPA, as applicable. To the extent applicable and upon

Illumia's request, you agree to fulfill any legally satisfactory request and consent by a Customer or End User to download, export, save, maintain or transfer their own Personal Information.

5.5 Use of Personal Information. You may Process the Personal Information solely for the purposes of (i) providing products and services to Customers, (ii) maintaining, supporting, evaluating, improving and/or developing the products and services solely on Illumia's or Illumia's Customers behalf, and (iii) enforcing Your rights under the Agreement. You shall not use Personal Information for targeted advertising or for any purpose that constitutes a "sale" of personal information as defined by the California Consumer Privacy Act or any other similar Data Protection Law.

5.6 Use of De-Identified Data. You may Process, during the Term (defined below), data derived from Personal Information that has been de-identified and aggregated to reasonably avoid identification of a specific End User, or as otherwise required by applicable law, for research, development, analytics, and similar purposes with the prior approval of Illumia. You represent and warrant that you will not re-identify, or permit any third party to re-identify, any de-identified and/or aggregated information.

5.7 Personal Information Deletion, Access, Correction, and Retrieval Requests. Illumia may request that you delete, access, correct, or retrieve certain Personal Information in your possession at any time by providing such a request in writing, and you shall comply with such request in a commercially reasonable time unless a shorter time is required by law, and then in such shorter time. To the extent applicable, any request received by you directly from an end user to delete, access, correct, or retrieve their Personal Information shall be redirected to Illumia, and such request shall only be accommodated at Illumia's direction. You will otherwise delete Personal Information within a commercially reasonable time following the end of the Term (defined below).

5.8 Program Member's Third-Party Service Providers. Illumia agrees that you may provide access to Personal Information to certain third party service providers, which have a legitimate need to access such information in order to provide their services to you, Illumia and Illumia's Customers as part of its provision of Integration. You acknowledge and agree that you may only share Personal Information with third parties (i) in support of your use of Personal Information as described in Section 5.6 above, (ii) to ensure legal and regulatory compliance, and (iii) to respond or participate in judicial process. All third party service providers involved in the Processing of Personal Information shall be subject to contractual terms related to data use, disclosure, retention and data security, that are no less stringent than the terms of this Agreement.

5.9 Data Localization. You shall only transfer Personal Information outside the country in which it is located by means of legally recognized data transfer mechanisms or safeguards.

5.10 EU Data Protection. In the event that you have access to Personal Information subject to any Data Protection Laws, the Agreement expressly incorporates by reference the Program Member Data Processing Addendum ("DPA") which is available at <https://illumiatech.com/legal/>, as it may be revised from time to time in accordance with applicable law, regulation, or product or service requirements. The Parties agree that Illumia is a processor or service provider of such Personal Information and that you are a sub processor of such information. If any term in the Agreement expressly conflicts with any term in the DPA, the conflicting term in the DPA shall control.

## 6. Data Security

6.1 Data Security. You agree to implement commercially reasonable administrative, physical and technical safeguards in line with industry standards that are designed to secure Personal Information from unauthorized access, disclosure, or use, and which shall include all related measures enumerated in the DPA attached hereto, including data encryption, firewalls, physical access controls to buildings and files, and any other data privacy or security measures required under applicable law.

6.2 Notification. If you have a reasonable, good faith belief that an unauthorized party has acquired, accessed, or been disclosed Personal Information that you have collected, in a manner which compromises the security or privacy of such Personal Information ("Security Incident"), you will immediately notify Illumia within twenty-four (24) hours of discovery. You will use reasonable efforts to cooperate with Illumia and Customer in order to investigate such Security Incident. Unless otherwise required by law, you shall not provide notification of the Security Incident to any third party (except for your legal counsel and vendors retained to investigate such Security Incident) without Illumia's prior written approval.

6.3 Security Incident Indemnification. If a third party brings a claim for damages, suit, or proceeding against Illumia, its affiliates, or their respective employees, contractors, agents, licensors, or assigns or Illumia otherwise incurs any costs, losses, claims expenses or similar resulting from a Security Incident (including, costs associated with forensic investigation, legal counsel, notification, credit monitoring, regulatory inquiries and enforcement actions, law suits or settlements) (collectively, "Losses") which is caused by you or your agents' acts or omissions, you shall, at your own expense, indemnify, defend, and hold Illumia and its applicable its affiliates, employees, contractors, agents, licensors, or assigns harmless in connection with such Losses.

## **7. Ownership and Intellectual Property Rights**

7.1 Ownership of Illumia Intellectual Property. No title to or ownership of any portion of the Supported Interfaces or Software as well as any other products or services manufactured, sold and/or distributed or otherwise made available by Illumia, or to any proprietary rights related to those products/services, including, without limitation, Illumia's trademark or trade dress rights, is transferred pursuant to or by virtue of this Agreement and all rights and interest to the foregoing shall remain the sole and exclusive property and proprietary information of Illumia.

7.2 Derivative Works Ownership and Other Restrictions. Illumia shall own all rights, title, and interest (and all related moral rights and intellectual property rights) in and to the Supported Interfaces and Software, including any copies and Derivative Works thereof, and Program Member shall reasonably cooperate in facilitating Illumia's rights in Derivative Works that do not pass to Illumia by operation of law. No rights or licenses are granted except as expressly and unambiguously set forth herein. No right is granted to distribute all or any portion of the Supported Interfaces or Software.

7.3 Ownership Rights in Non-Derivative Works. To the extent that the Integration does not (a) constitute Derivative Works of the Software; or (b) contain any Illumia intellectual property, the Integration shall be owned exclusively by you.

## **8. Term**

8.1 Term. The Term of this Agreement shall be as set forth in the Order Form.

8.2 Termination. Either Party may, at its option, terminate this Agreement if a material breach by the other Party is not cured or waived within thirty (30) days after receipt of a written notice of the default. Either Party may terminate this Agreement immediately following written notice to the other Party if the other Party (a) ceases to do business in the normal course, (b) becomes or is declared insolvent or bankrupt, (c) is the subject of any proceeding related to its liquidation or insolvency (whether voluntary or involuntary), other than a reorganization under Chapter 11 of the Bankruptcy Code, which is not dismissed within ninety (90) calendar days, or (d) makes an assignment for the benefit of creditors. Notwithstanding the foregoing, Illumia may terminate this Agreement without cause upon thirty (30) days written notice and shall provide a pro-rated refund of any prepaid annual fees.

8.3 Rights and Obligations upon Termination. Termination of this Agreement shall not relieve either Party of any obligation or liability accrued hereunder prior to or in connection with such termination, except as expressly provided herein. Upon termination of this Agreement, all licenses granted hereunder shall immediately terminate and both Parties shall: (1) cease using any Software and/or Supported Interfaces that were made available pursuant to this Agreement; (2) discontinue any use of the name, logo, trademarks, trade names, service marks, service names or slogans and other marks of the other and the applicable products and services; (3) discontinue all representations or statements from which it might be inferred that any relationship exists between you and Illumia with respect to the applicable products and services; (4) Illumia shall cease promoting or soliciting or procuring orders for the applicable products or services and Parties shall pay all fees due for the applicable products or services previously purchased in accordance with (and subject to) the payment provisions hereof; (5) deliver to Illumia or delete or destroy all copies of Software or Supported Interfaces for which licenses do not remain in force; (6) provide certification to Illumia of such delivery, deletion or destruction; and (7) if applicable, Illumia shall cease performing the Promotional Services. Each Party shall also return any Confidential Information as well as any copies of marketing materials of the other Party it has in its possession. Further, in the event of termination of this Agreement, absent Illumia's express written consent, you shall cease all offers of, and terminate all sublicenses of, the Integration. The Parties shall use commercially reasonable efforts to conclude existing projects in a manner that serves the best interests of Illumia's Customers, at Illumia's reasonable determination.

## **9. Confidentiality**

9.1 Nondisclosure and Nonuse. For the Term of this Agreement, and for a period of three (3) years after termination or expiration of this Agreement, each Party receiving Confidential Information (the "Receiving Party") from the disclosing Party (the "Disclosing Party"), including but not limited to, materials containing Confidential Information shall (a) disclose such Confidential Information to only those directors, officers, employees and agents of such Party (i) whose duties justify their need to know such information and (ii) who have been clearly informed of their obligation to maintain the confidential, proprietary and/or trade secret status of such Confidential Information; and (b) use such Confidential Information only for the Purpose set forth in this Agreement; and (c) each Party agrees not to disclose (or allow access to) the Supported Interfaces (or any information derived therefrom) to any third party and will limit access to the Supported Interfaces (and any derived information) to your employees who are developing the Integration. Each Receiving Party shall treat Confidential Information as strictly confidential and shall use the same care to prevent disclosure of such information as such Party uses with respect to its own confidential and proprietary information, which shall not be less than the care a reasonable person would use under similar circumstances. Notwithstanding the foregoing, a Receiving Party may disclose Confidential Information to the extent

necessary pursuant to applicable federal, state or local law, regulation, court order, or other legal process, provided that the Receiving Party has, to the extent not prohibited from doing so by law or governmental action, given the Disclosing Party prior written notice of such required disclosure and, to the extent reasonably possible, has given the Disclosing Party an opportunity to contest such required disclosure at the Disclosing Party's expense.

9.2 **Notice.** The Receiving Party will notify the disclosing Party promptly in the event the Receiving Party learns of any unauthorized possession, use or knowledge of the Confidential Information and/or materials containing Confidential Information and will cooperate with the Disclosing Party (at the Disclosing Party's cost and expense) in any litigation against any third persons necessary to protect the Disclosing Party's rights with respect to the Confidential Information and materials.

9.3 **Confidential Treatment of Agreement.** Except for press releases subject to Section 4.4, neither Party shall disclose the terms of this Agreement to any third party; provided, however, that either Party may disclose the terms of this Agreement to its affiliates, their professional advisors, board of directors or advisory board members or to any potential investor or acquirer of a substantial part of such Party's business (whether by merger, sale of assets, sale of stock or otherwise) that is bound by a written agreement to keep such terms confidential, or as may be required by law.

9.4 **Confidential Treatment of Disputes.** You shall keep confidential the existence of any dispute, controversy or claim arising out of or relating to this Agreement, or the breach thereof, or any arbitration thereof under Section 15.4, and the details of any such dispute, controversy, claim or arbitration.

9.5 **Treatment of Confidential Information Upon Termination.** Promptly upon request, each Party shall turn over all Confidential Information of the other Party and all documents or media containing any such Confidential Information and any and all copies or extracts thereof to the other Party, or, if appropriate, upon request attest to the destruction of such Confidential Information.

9.6 **Independent Creation of Technology.** Nothing in this Agreement shall preclude Illumia from developing or acquiring the same or similar technology as yours, provided that Illumia does not use your Confidential Information in violation of this Agreement.

## **10. Fees and Payments**

10.1 **Partner Program Fees.** You agree to pay Illumia the total Fees set forth on the Order Form and Illumia may invoice for a pro-rated portion of said Fees for the applicable period. In the case of transaction-based or usage-based fees, Illumia may calculate incremental fees on a quarterly basis and agrees to invoice accordingly, unless otherwise agreed in writing. You agree not to pass through your Fees as an Illumia line item charge to Customers or End Users. All Fees are nonrefundable and due within thirty (30) days following the date of an invoice from Illumia. Additional fees may be required for merchant-facing transactional systems.

10.2 **Payment Process.** You shall pay all applicable Fees in U.S. dollars and by an electronic payment method, unless otherwise specified.

10.3 **Late Fees.** Illumia may charge interest on any overdue amounts at the lower of: (a) the highest permissible rate, or (b) 18% per annum, charged at 1.5% per month from the date on which such amount fell due until the date of payment, whether before or after judgement. You acknowledge that any delay in payment may result in termination or interruption of the provision of Integration at Illumia's sole discretion.

10.4 **Taxes.** The Fees hereunder do not include any sales, use, excise, import or export, value-added or similar tax or interest, or any costs associated with the collection or withholding thereof, or any government permit fees, license fees or customs or similar fees levied on the delivery of the Software or Supported Interfaces hereunder or in connection with your sales to Customers. You will be responsible for payment of such applicable sales, use, excise, import or export, value-added or similar tax or interest at point of sale. If you are exempt from any such taxes or fees, then such taxes or fees shall not be charged upon Illumia's receipt of a copy of your sales tax exemption certificate or VAT registration number. All payments due under this Agreement shall be made without any deduction or withholding, unless such deduction or withholding is required by any applicable law or regulation then in effect. If you are required to deduct or withhold, you will promptly notify Illumia of the requirement, timely pay the required deduction or withholding amount to the relevant tax authority, provide Illumia with an official receipt, certified copy or other documentation acceptable to Illumia evidencing payment, and pay to Illumia the amount to which Illumia is otherwise entitled under this Agreement, less the amount required to be deducted or withheld. In the event and to the extent that Illumia is unable to claim an income tax credit equal to the amount deducted or withheld, you shall pay Illumia, within thirty (30) days following receipt of an invoice from Illumia, the difference between the amount Illumia would have received and retained in the absence of such required deduction or withholding and the amount previous paid by you to Illumia under this Agreement.

10.5 **Customer Fees.** Illumia shall be entitled to charge and collect fees (as determined by Illumia in its sole discretion) from Customers for the use of the Integration with the Software. You may not offer, or aid any third party in offering, products requiring the Integration to Customers who have not paid the applicable fees to Illumia.

## **11. Warranty**

11.1 Illumia Warranties. Illumia represents and warrants that (a) it has authorized the person who has signed this Agreement for Illumia to execute and deliver this Agreement to you, (b) it and/or its suppliers and licensors possess all rights necessary to grant the rights herein, and (c) it will comply with all applicable local, national and international laws, regulations or other provisions in all material respects in performing its obligations under this Agreement.

11.2 Program Member Warranties. You represent and warrant that (a) you have authorized the person who has signed or accepted this Agreement for you to execute and deliver this Agreement to Illumia, (b) the Integration shall be developed in a good and workmanlike manner and in compliance with the requirements of this Agreement, (c) it and/or its suppliers and licensors possess all rights necessary to grant the rights herein, (d) it will not display or convey any unsuitable or inappropriate content to Customers or End Users; and (e) that it will comply with all applicable local, national and international laws, regulations or other provisions in all material respects in performing its obligations under this Agreement.

## **12. Disclaimer of Warranty**

THE SOFTWARE AND THE SUPPORTED INTERFACES, AND ALL PORTIONS THEREOF, AND ANY ASSOCIATED PROFESSIONAL SERVICES, ARE PROVIDED "AS IS". EXCEPT AS EXPRESSLY AND SPECIFICALLY PROVIDED IN SECTION 11 ABOVE: (A) TO THE MAXIMUM EXTENT PERMITTED BY LAW, ILLUMIA AND ITS LICENSORS AND SUPPLIERS DISCLAIM ALL OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION AND/OR DATA ACCURACY, NON-INFRINGEMENT, MERCHANTABILITY OR QUIET ENJOYMENT; (B) NEITHER ILLUMIA NOR ITS LICENSORS WARRANT THAT THE FUNCTIONS OR INFORMATION CONTAINED IN THE SOFTWARE OR THE SUPPORTED INTERFACES WILL MEET ANY REQUIREMENTS OR NEEDS YOU OR YOUR CUSTOMERS MAY HAVE, OR THAT THE SOFTWARE OR THE SUPPORTED INTERFACES WILL OPERATE ERROR FREE OR WITHOUT INTERRUPTION, OR THAT ANY DEFECTS OR ERRORS IN THE SOFTWARE OR THE SUPPORTED INTERFACES WILL BE CORRECTED, OR THAT THE SOFTWARE OR THE SUPPORTED INTERFACES IS COMPATIBLE WITH ANY PARTICULAR COMPUTER SYSTEM OR SOFTWARE; AND (C) ILLUMIA AND ITS LICENSORS MAKE NO GUARANTEE OF ACCESS OR OF ACCURACY OF THE CONTENT CONTAINED IN OR ACCESSED THROUGH THE SOFTWARE OR THE SUPPORTED INTERFACES.

## **13. Limitation of Liability**

13.1 UNLESS OTHERWISE STATED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL DAMAGES OF THE OTHER, INCLUDING, BUT NOT LIMITED TO, LOST BUSINESS PROFITS, LOSS OF USE OR GOODWILL, OR LIABILITY OR INJURY TO THIRD PERSONS, WHETHER FORESEEABLE OR NOT, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. AS A MATERIAL CONSIDERATION FOR ILLUMIA ENTERING INTO THIS AGREEMENT, PROGRAM MEMBER AGREES THAT IF ILLUMIA HAS ANY LIABILITY WHATSOEVER, THE AGGREGATE LIABILITY HEREUNDER FOR ANY AND ALL CLAIMS SHALL NOT EXCEED THE TOTAL FEES OWED BY PROGRAM MEMBER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT WHICH GAVE RISE TO SUCH CLAIM OR \$25,000, WHICHEVER IS GREATER. SUCH MAXIMUM LIABILITY SHALL APPLY IN ALL INSTANCES, AND SHALL APPLY IF LOSS OR DAMAGE, IRRESPECTIVE OF CAUSE OR ORIGIN, RESULTS DIRECTLY OR INDIRECTLY TO PERSONS OR PROPERTY FROM PERFORMANCE OR NONPERFORMANCE BY ILLUMIA OR ITS AFFILIATES, SUPPLIERS OR CONTRACTORS, WHETHER ARISING UNDER CONTRACT OR TORT, STATUTE, STRICT LIABILITY, OR OTHER FORM OF ACTION.

13.2 Essential Basis. The Parties acknowledge and agree that the disclaimers, exclusions and limitations of liability set forth in this Section 13 form an essential basis of this Agreement, and that, absent any such disclaimers, exclusions or limitations of liability, the terms of this Agreement, including, without limitation, the economic terms, would be substantially different.

## **14. Infringement**

14.1 Illumia. Illumia shall, at its own expense, defend or, at its option, settle any claim, suit or proceeding brought against you by a third party for infringement or misappropriation of any U.S. patent, copyright, trade secret or other

proprietary right of any third party arising from the Software or the Promotional Services (a “Program Member Claim”) and shall pay any damages finally awarded or settlement amounts agreed upon to the extent based upon a Program Member Claim, provided that you provide Illumia with (a) prompt written notice of such Program Member Claim; (b) control over the defense and settlement of such Program Member Claim; and (c) proper and full information and assistance to settle or defend any such Program Member Claim.

14.2 Exceptions. Illumia shall have no liability to you, the Program Member, under Section 13 or otherwise for any claim or action based upon (a) any use of the Software or the Supported Interfaces by you or your Representatives in a manner other than as specified by Illumia or any use of the Software of the Supported Interfaces by a person not authorized by Illumia; (b) any use of the Integration; (c) any combination of the Software or the Supported Interfaces by you or your Representatives with other products, equipment, devices, software, systems or data not supplied by Illumia (including, without limitation, any software produced by you for use with the Software) to the extent such claim is directed against such combination; (d) any modifications or customization of the Software or the Supported Interfaces by you or your Representatives; (e) any use of a Illumia server by you for beta or other testing of the Integration; (f) any Program Member Materials (as defined in Exhibit A) or any related Program Member Intellectual Property Rights (as defined in Exhibit A) along with Program Member’s website addresses, websites, and URLs that are incorporated in, used, or referenced in connection with providing the Promotional Services; or (g) Illumia having followed any instruction of Program Member in connection with the performance of the Promotional Services (collectively, a “Program Member Matter”).

14.3 Program Member. You shall, at your own expense, defend or, at your option, settle any claim, suit or proceeding brought against Illumia arising out of or based upon a Program Member Matter (an “Illumia Claim”) and shall pay any damages finally awarded or settlement amounts agreed upon to the extent based upon an Illumia Claim, provided that Illumia provides you with (a) prompt written notice of such Illumia Claim; (b) control over the defense and settlement of such Illumia Claim; and (c) proper and full information and assistance to settle or defend any such Illumia Claim.

14.4 Exclusive Remedy. THE FOREGOING PROVISIONS OF THIS SECTION 14 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF EACH PARTY, AND THE EXCLUSIVE REMEDY OF EACH PARTY WITH RESPECT TO ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT.

## **15. Miscellaneous**

15.1 Relationship of the Parties. Each of the Parties hereto shall conduct the work to be performed hereunder as an independent contractor and not as an agent or employee of the other Party. This Agreement does not create a partnership, joint venture, or fiduciary relationship and the Parties to this Agreement do not have the right or authority to make any promise, guarantee, warranty, or representation, or to assume, create, or incur any liability or other obligation of any kind, express or implied, against or in the name of, or on behalf of, the other Party, without the other Party’s prior written consent or approval.

15.2 Severability. Should any term or provision of this Agreement be finally determined by a court of competent jurisdiction to be void, invalid, unenforceable or contrary to law or equity, the offending term or provision shall be modified and limited (or if strictly necessary, deleted) only to the extent required to conform to the requirements of law and the remainder of this Agreement (or, as the case may be, the application of such provisions to other circumstances) shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law, and the parties shall use their best efforts to substitute for the offending provision new terms having similar economic effect.

15.3 Governing Law. This Agreement shall for all purposes be governed by and interpreted in accordance with the laws of the State of Arizona without reference to its conflicts of law provisions, and each Party irrevocably submits to the non-exclusive jurisdiction of the courts in or for Maricopa County, Arizona. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

15.4 Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in Phoenix Arizona administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. All communications or negotiations related to or associated with such controversy, claim or arbitration will be considered Confidential Information under Section 9 of this Agreement.

15.5 Modification. Any modification, amendment, supplement, or other change to this Agreement or any addendum or exhibit hereto must be: (a) in writing and signed by a duly authorized representative of each Party; or (b) in an electronic form of contract presented by Illumia and accepted by you.

15.6 Waiver. All waivers must be in writing. The failure of either Party to insist upon strict performance of any provision of this Agreement, or to exercise any right provided for herein, shall not be deemed to be a waiver of the future of such provision or right, and no waiver of any provision or right shall affect the right of the waiving Party to

enforce any other provision or right herein.

15.7 Assignment. No right or obligation of Program Member under this Agreement may be assigned, delegated or otherwise transferred, whether by agreement, operation of law or otherwise, without the express prior written consent of Illumia, not to be unreasonably withheld, and any attempt to assign, delegate or otherwise transfer any of Program Member rights or obligations hereunder, without such consent, shall be void. Illumia may assign its rights and obligations hereunder without the consent of Program Member. Subject to the provisions of this Section 15.7, this Agreement shall bind each Party and its permitted successors and assigns.

15.8 Non-Solicitation. You agree that during the Term, you will not, except with prior written approval of Illumia's Chief Legal Officer or CEO, directly or indirectly hire (including hiring as an independent contractor) or attempt to solicit for hire, or encourage to end their relationship with Illumia, any persons who are employed by Illumia or have been employed by Illumia at any time within one (1) year preceding such attempts to hire or solicit for hire and with whom you came in contact or otherwise became aware of in connection with the performance of this Agreement. For purposes of this Section 15.8, "Illumia" includes Illumia LLC and its subsidiaries.

15.9 Remedies. The Parties agree that any material breach of this Agreement may cause irreparable injury for which no adequate remedy at law exists; therefore, the parties agree that the non-breaching party may seek equitable remedies, including without limitation, injunctive relief and specific performance, are appropriate remedies to redress any material breach or threatened material breach of this Agreement, in addition to other remedies available to the parties. All rights and remedies hereunder shall be cumulative, may be exercised singularly or concurrently and shall not be deemed exclusive. If any legal action is brought to enforce any obligations hereunder, the prevailing Party shall be entitled to receive its reasonable legal fees, court costs and other collection expenses, in addition to any other relief it may receive.

15.10 Non-Disparagement. Each Party agrees to refrain from making any false, derogatory or defamatory remarks, comments or statements that may disparage the other Party, its products and services, or any officer, director, employee, attorney, representative or agent of the other Party.

15.11 Notices. Any notice or communication permitted or required hereunder shall be in writing and shall be delivered in person or by courier, sent by facsimile, or mailed by certified or registered mail, postage prepaid, return receipt requested, and addressed as set forth above or to such other address as shall be given in accordance with this Section 15.11, and shall be effective upon receipt. All notices to Illumia shall be addressed to the attention of 'General Counsel'.

15.12 Force Majeure. Neither Party will be responsible for any failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, or inability to obtain any export or import license or other approval of authorization of any government authority.

15.13 Construction; Counterparts. The headings herein will not be considered a part of this Agreement. This Agreement may be executed in several counterparts, all of which will constitute a single agreement.

15.14 Insurance. You agree, at your sole cost and expense, to insure your activities in connection with the obligations under this Agreement and obtain, keep in force, and maintain the following insurance coverages during the Term and for a period of at least three (3) years thereafter: (a) Commercial General Liability insurance, including but not limited to products/completed operations, broad form property damage, contractors protective liability, broad form blanket contractual, advertising and personal injury liability; with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate; (b) Business Automobile Liability insurance (including coverage for all owned, non-owned and hired autos, and no-fault coverage where applicable) with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage combined; (c) Workers' Compensation insurance, including but not limited to coverage for all costs, benefits, and liabilities under workers' compensation and similar laws that may accrue in favor of any person employed by you or contracting with you, in all states where you perform services, and Employer's Liability insurance with limits of liability of not less than \$1,000,000 combined, with a waiver of subrogation in favor of Illumia (where permitted by law); and (d) Technology/Professional Liability, Media Liability and Network Security/Privacy (cyber) Liability insurance covering acts, errors, omissions, breach of contract, and violation of any consumer protection laws arising out of your operations or services with a limit of \$10,000,000.00 per claim and in the aggregate. Such coverage shall include but not be limited to, third party and first party coverage for loss or disclosure of any data, including personally identifiable information and payment card information, network security failure, violation of any consumer protection laws, unauthorized access and/or use or other intrusions, infringement of any intellectual property rights (except patent), unintentional breach of contract, negligence or breach of duty to use reasonable care, breach of any duty of confidentiality, invasion of privacy, or violations of any other legal protections for personal information, defamation, libel, slander, commercial disparagement, negligent transmission of computer virus, or use of computer networks in connection with denial of service attacks. Such coverage shall include contractual privacy coverage for data breach response and crisis management costs that would be incurred by Program Member on behalf of Illumia in the event of a data breach including legal and forensic

expenses, notification costs, credit monitoring costs, and costs to operate a call center. Program Member's insurance shall be primary and non-contributory to any insurance maintained by Illumia. Program Member shall maintain coverage in force during the term of this Agreement and for an extended reporting period of not less than three years after. Upon Illumia's request, you shall provide certificates of insurance for the coverage required by this Section 15.14. In the event you fail to carry such insurance, such insurance is insufficient to cover Illumia's Losses, or such insurance coverage lapses while this Agreement is in effect, you shall still be responsible to indemnify and hold harmless Illumia and its agents and employees, from and against any such Losses arising out of or resulting from this Agreement.

15.15 Export Compliance. Program Member agrees not to export, re-export, or otherwise transmit, directly or indirectly, any product, service, sample, information, technical data, or other materials received from Illumia hereunder, unless in full compliance with all applicable laws and regulations, including obtaining any required approvals or export licenses.

15.16 Survival. The provisions set forth in Sections 1, 3.5, 3.6, 4.3, 5, 6, 7, 8.3, 10, 11, 12, 13, 14, and 15 and any other provision by its nature intended to survive termination shall survive any termination of this Agreement.

15.17 Entire Agreement. This Agreement, including any addendum(s) and exhibits hereto constitute the entire, full and complete Agreement between the parties concerning the subject matter hereof, and they collectively supersede all prior agreements concerning the subject matter hereof.

## EXHIBIT A: PROMOTIONAL SERVICES SUPPLEMENTAL TERMS AND CONDITIONS

The following Promotional Services Supplemental Terms and Conditions will supplement and become a part of the Agreement and will apply to the provision and use of the Promotional Services as set forth in the Order Form.

### 1. Obligations

#### 1.1 Illumia Obligations.

(a) Subject to the Agreement and Program Member's payment of the Fees set forth in the Order Form, Illumia shall provide Program Member with the Promotional Services as agreed in the Order Form.

(b) Illumia's obligations to provide the Promotional Services are expressly subject to any restrictions imposed by or approval, consent, or cooperation required of any Customer as to how any such Promotional Services are provided specifically in connection with such Customer (for example, as to any promotion of Program Member Products to such Customer or such Customer's End Users). In no event will Illumia be liable or deemed to have breached its obligations where any Promotional Services are limited by operation of any such Customer restrictions or refusal to provide any such required approval, consent or cooperation.

(c) Illumia's obligations to provide the Promotional Services are expressly subject to the timely performance in full of all of Program Member's obligations herein, including without limitation those set forth in Section 1.2 below. In no event will Illumia be responsible for any delayed or incomplete Promotional Services to the extent resulting from any failure of Program Member to timely satisfy its obligations under Section 1.2.

#### 1.2 Program Member Obligations. Program Member shall:

(a) Appoint and, in its reasonable discretion, replace a Program Member employee to serve as the primary contact with respect to the Agreement and who will have the authority to act on behalf of Program Member with respect to matters pertaining to the Agreement.

(b) Provide copies of or access to Program Member's information, documents, samples, or other materials (collectively, "Program Member Materials") as Illumia may reasonably request in order to carry out the Promotional Services in a timely manner, and ensure that they are complete and accurate in all material respects. Program Member and its licensors are, and shall remain, the sole and exclusive owner of all right, title, and interest in and to all Program Member Materials, including all copyrights, Program Member Marks, trade secrets, patents, and other intellectual and industrial property rights (collectively "Intellectual Property Rights") therein. Illumia shall have no right or license to use any Program Member Materials other than during the Term and then to the extent necessary to provide the Promotional Services to Program Member, and all other rights in and to the Program Member Materials are expressly reserved by Program Member.

(c) Respond promptly to any Illumia request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Illumia to perform the Promotional Services in accordance with the requirements of the Agreement. Program Member expressly acknowledges that many of the specific Promotional Services depend on timely and active cooperation from Program Member and the quality of the Program Member Materials to be successful.

### 2. Ownership of Materials and Licenses

2.1 Program Member Materials. Subject to and in accordance with the terms and conditions of the Agreement, Program Member grants Illumia a limited, non-transferable, non-sublicensable (except to Illumia subcontractors), non-exclusive license during the Term to use, solely in connection with its performance of the Promotional Services, the Program Member's Materials and any related Program Member Intellectual Property Rights along with Program Member's website addresses, websites, and URLs in each case as required to provide the Promotional Services.

2.2 Illumia Materials. Any Illumia materials (and any related Illumia Intellectual Property Rights) (collectively, "Illumia Materials") incorporated in any work product generated by the Parties as part of the Promotional Services will remain the exclusive property of Illumia, subject to the following. Illumia hereby grants Program Member a limited, non-transferable, non-sublicensable (except to Program Member subcontractors), non-exclusive license during the Term to use such Illumia Materials solely as incorporated in any such work product and solely as necessary or reasonable to realize the expected benefits of the Promotional Services.

2.3 No Other Rights Granted. Apart from the licenses expressly granted in Sections 2.1 and 2.2, no license or other right is granted by either Party to the other under the Agreement.

### **3. Disclaimer of Warranty**

THE PROMOTIONAL SERVICES ARE PROVIDED "AS IS". EXCEPT AS EXPRESSLY AND SPECIFICALLY PROVIDED IN SECTION 11 OF THE AGREEMENT: (A) TO THE MAXIMUM EXTENT PERMITTED BY LAW, ILLUMIA AND ITS LICENSORS AND SUPPLIERS DISCLAIM ALL REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, MERCHANTABILITY OR QUIET ENJOYMENT; AND (B) NEITHER ILLUMIA NOR ITS LICENSORS WARRANT THAT THE PROMOTIONAL SERVICES WILL MEET ANY REQUIREMENTS OR NEEDS THAT PROGRAM MEMBER MAY HAVE, OR THAT THE PROMOTIONAL SERVICES WILL BE PROVIDED WITHOUT ERROR OR INTERRUPTION, OR THAT ANY DEFECTS OR ERRORS THEREIN WILL BE CORRECTED.