

## ***Rest of World Standard Equipment Service Terms and Conditions***

### **Agreement**

These Standard Terms and Conditions for equipment services (“Services”) apply to the services described on the Service Plan Proposal provided by Luminex Corporation or its affiliate (the “Company”) to the customer identified in the Service Plan Proposal (the “Customer”). By accepting the Service Plan Proposal, Customer agrees to these terms and conditions (which, along with the Service Plan Proposal and any attachments incorporated by reference, is the “Agreement”). Any terms or conditions on a purchase order, order acknowledgement or any other documents relating to the Services will be null and void. Upon receipt of Customer’s purchase order or payment from Customer, Company agrees to provide the Services during the term of this Agreement as set forth herein for each Covered Product, at the address specified in the Service Plan Proposal. Company reserves the right to determine the designation and allocation of Company personnel, or third parties authorized by Company, to provide Services under this Agreement.

### **Defined Terms**

“**Covered Product(s)**” means the Company products listed in the Covered Products table specified in the Company Service Plan Proposal.

“**Covered Software**” means all (i) unmodified, generally available and commercially released software manufactured by Company and distributed by or on behalf of Company for use with the Covered Products purchased by Customer, and (ii) Updates (as defined herein) thereto.

“**Customer**” means the purchaser of Services.

“**Customer Site**” means the Customer facility or facilities located at the address set forth in the Company Service Plan Proposal and where the Covered Products are located.

“**Error**” means any material failure of a Covered Product to substantially conform to its Specifications. However, any nonconformity resulting from Customer’s misuse, improper use, alteration or damage of the Covered Products, or Customer’s combining or merging the Covered Products with any hardware or software not certified by Company shall not be considered an Error.

“**Repair Services**” means Services performed at the Customer Site under this Agreement to identify performance problems, troubleshooting and repair of the Covered Products to comply with the Specifications.

“**Modification**” means required technical service bulletins that modify the hardware of the Covered Products.

“**Parts**” means replacement components incorporated into a Covered Product in connection with Services provided under this Agreement.

“**Preventative Maintenance Services**” means examining and performing preventative maintenance for Covered Products.

“**Services**” means Repair Services and Preventative Maintenance Services that Company performs under the terms of this Agreement.

“**Service Call**” means an on-site scheduled visit to the Customer Site for the purpose of performing Repair Services and/or Preventative Maintenance Services.

“**Service End Date**” means the applicable date indicated in the Company Service Plan Proposal under the heading “Service End Date.”

“**Specifications**” means the written product specifications expressly set forth in the end user manual accompanying the applicable Covered Product.

“**Updates**” means any Error corrections, bug fixes, minor Modifications, and/or minor improvements to the Covered Software that (i) do not alter the functionality of or add new functions to the Covered Software, (ii) are not new versions of the Covered Software, (iii) are generally made available to customers by Company, and (iv) are provided by Company to Customer under this Agreement.

### **Service Hours & Access Points**

All Service Hours are provided Monday – Friday, excluding Company-designated holidays.

#### Phone Support

<b>Region</b>	<b>Primary Phone Number</b>	<b>Secondary Phone Number</b>
EU – 25 (CET)	+800 29 39 49 59	+1-512-381-4397
N. America (CST)	1-877-785-2323	+1-512-381-4397
APAC (GMT+8)	+800 29 39 49 59	+1-512-381-4397

Service Calls are performed local time by region where Services are performed.

## **Parts**

At Company's discretion, Parts supplied may be new or refurbished to original Specifications. Exchanged Parts become the property of Company.

## **Unscheduled and Extended Maintenance Services**

Customer may request additional maintenance services under this Agreement beyond the Services described herein. In the event Company agrees to provide such additional services, Customer agrees to pay Company the then-current costs for any Parts supplied by Company and the then-current applicable hourly labor rates and travel expenses for any such additional services, as solely determined by Company.

## **Term, Pricing and Payment Terms**

The term of this Agreement shall commence on the Effective Date and expire on the Service End Date, both as set forth in the Company Service Plan Proposal, subject to earlier termination as provided herein. Company reserves the right to adjust the Services at any time. Payments made under this Agreement shall be due net thirty (30) days from the date of the Company invoice. Company may delay or postpone performance of Services if payment is not received before Services are scheduled. All payments are final and are not subject to refund.

If termination of this Agreement occurs for any reason (except default by Company) for one or more Covered Products, prior to the applicable Service End Date, Customer will be responsible to Company for the price difference, as of the Effective Date, between the Service list price and the price that was extended by Company to Customer as part of any multi-instrument and/or multi-year discount. Customer shall pay such price difference to Company no later than the effective date of any such termination.

## **Exclusions**

Excluded from this Agreement are any services performed due to damage or failure of Covered Products related to (1) accident, misuse, neglect, fire, war, power outages or electrical problems that are external to the Covered Products or failure to use the Covered Products in compliance with end user manual, (2) acts of God, (3) relocation or transportation of the Covered Products, (4) unauthorized alterations of the Covered Products, (5) use of chemicals that are not used for normal operation of the Covered Products, or (6) use of third party hardware or software. Any questions regarding any third party warranty should be directed to such third party and not Company. Software installation not performed by Company is not covered and consultation regarding use of software not provided by Company is not covered. In the event that any Services are provided due to one or more of the above reasons, Customer will be charged at Company's then-current standard rates.

## **Default**

A "Default" under this Agreement by a party shall be deemed to have occurred when such party has breached a material provision of the Agreement and has failed to cure said breach within thirty (30) days after receipt of written notification thereof by the other party. A "material breach" of this Agreement includes, but is not limited to, the failure of Customer to make timely payment, the filing of a petition of bankruptcy, assignment for the benefit of creditors, or insolvency by either party. In the event of Default by a party, the other party may, in addition to any and all other remedies available to it in law and equity, terminate this Agreement. No delay or failure by the non-breaching party to exercise any right or remedy operates as a waiver thereof.

## **Governing Law**

Delaware law without regard to principles of conflicts of laws will govern this Agreement.

## **Access and Customer Responsibilities**

In order for Company to perform Services hereunder, Customer shall provide Company, when requested, with reasonable access to the Covered Products at the Customer Site, and provide at no charge for Company's use, required facilities such as working space, electricity and telephone services and shall provide any other facilities and support reasonably necessary to enable Company to perform the Services. Customer shall also make available to Company for consultation employees of Customer having familiarity with the Covered Products.

## **Intellectual Property**

Customer acknowledges and agrees that (i) all intellectual property rights relating to or residing in Services are solely and exclusively owned by Company and (ii) Customer receives no rights or licenses to Company intellectual property rights by virtue of Customer's purchase of the Services.

## **Warranty and Limitations**

Company warrants that the Services will be performed in a workmanlike manner and that the Parts supplied hereunder shall conform to Company's specifications and shall be free from defects in material and workmanship for a period of 90 days from the date of installation. Customer's sole and exclusive remedy with respect to Parts and/or Services that are proved, to Company's reasonable satisfaction, to be defective or nonconforming will be replacement or repair of such Parts and/or performance of Services without charge. Company shall use commercially reasonable efforts to extend to Customer the benefit of any third party warranties related to hardware or software, which are provided with the Covered Products. **COMPANY MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND UNDER THIS AGREEMENT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OR MIS-APPROPRIATION OR**

**REGARDING RESULTS OBTAINED THROUGH THE USE OF ANY COVERED PRODUCT, PART, OR SERVICE.**

**NEITHER PARTY SHALL BE LIABLE IN ANY EVENT FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, MULTIPLE, EXEMPLARY, OR ENHANCED DAMAGES, OR LOST PROFITS OR REVENUES ARISING OUT OF, RELATING TO OR IN CONNECTION WITH THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, INCLUDING, WITHOUT LIMITATION, ANY CLAIM THAT USE OF COVERED PRODUCTS OR COVERED SOFTWARE CAUSED AN INACCURATE TEST RESULT OR MISDIAGNOSIS REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.**

**EXCEPT AS OTHERWISE PROVIDED HEREUNDER IN NO EVENT SHALL EITHER PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OR RELATED TO THIS AGREEMENT, EXCEED THE AMOUNT PAID BY CUSTOMER HEREUNDER FOR THE SERVICE GIVING RISE TO THE CLAIM.**

**THIS SECTION WILL SURVIVE THE CANCELLATION, COMPLETION, OR OTHER TERMINATION OF THIS AGREEMENT FOR ANY REASON.**

**Insurance.**

In connection with the provision of Services under this Agreement, Company at its own cost and expense, will obtain and maintain in force during the term of this Agreement, the minimum insurance coverage(s) listed below, as applicable. A certificate of insurance evidencing such coverage will be provided to Customer upon written request.

- i. Commercial General Liability with limits of not less than one million US dollars (\$1,000,000.00) per occurrence and two million US dollars (\$2,000,000.00) in the aggregate, including bodily injury and property damage and products and completed operations and advertising liability, which policy will include contractual liability coverage insuring the activities of Company under this Agreement.
- ii. Workers' Compensation with limits not less than the minimum amount required by applicable law and including Employer's Liability coverage in an amount not less than \$500,000.
- iii. Errors and omissions and cyber liability coverage, with limits not less than one million US dollars (\$1,000,000.00) per occurrence and two million US dollars (\$2,000,000.00) in the aggregate.

- iv. Commercial Automobile Liability, including non-owned automobile liability, with limits not less than one million US dollars (\$1,000,000.00), combined single limit.

The foregoing insurance coverages may be met through any combination of general and excess/umbrella liability policies.

**Non-exclusion**

Company represents to Customer that Company and its directors, officers, and key employees as of the Effective Date: (i) are not currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. § 1320a-7b(f) or any state healthcare program (collectively, the "Healthcare Programs"); (ii) have not been convicted of a criminal offense related to the provision of healthcare items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Healthcare Programs; and (iii) are not under investigation or otherwise aware of any circumstances which may result in Company being excluded from participation in the Healthcare Programs.

**Miscellaneous**

The terms and conditions of this Agreement, and any document referred to on the face hereof, constitute the entire agreement between Customer and Company regarding the subject matter hereof. Either party's failure to strictly enforce any term or condition of this Agreement or to exercise any right, power or privilege arising hereunder shall not constitute a waiver of that party's right to strictly enforce such terms or conditions or exercise such right, power or privilege thereafter. In the event either party is precluded from performing its obligations under this Agreement due to circumstances beyond its control ("Force Majeure"), including without limitation war, acts of terrorism, pandemic, flood, earthquake, government actions and labor unrest, that party's failure to perform shall not constitute a breach of this Agreement for so long as such conditions persist. Notwithstanding the foregoing, a Force Majeure event shall not relieve Customer of its payment obligations herein. This Agreement and its terms are confidential. Neither party shall make any public statements regarding the other or the Services provided under this Agreement without the prior written consent of the other party. Company shall comply with applicable requirements of Customer's vendor credentialing service. All rights and remedies under this Agreement are cumulative and are in addition to any other rights and remedies each party may have at law or in equity. If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, rights, powers and privileges shall not be affected or impaired thereby. Company may assign this Agreement to an affiliate or a third party who acquires a controlling equity interest in Company or who acquires all or substantially all of its assets or the business to

which this Agreement relates. The paragraph headings herein are for convenience only and form no part of this Agreement and shall not affect its interpretation. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their representatives, agents and permitted successors and assigns.