

**GENERAL TERMS AND CONDITIONS OF BUSINESS**

*This document sets out the terms and conditions that apply to each order by a customer for the services of Connectivity, Computing and Co-Location from Urban Wimax Ltd trading as Luminet (registered company no: 5467333).*

**1 DEFINITIONS AND INTERPRETATION**

1.1 In these terms and conditions (the "**Conditions**") the following words shall have the following meanings (unless the context otherwise requires):

"**Acceptable Use Policy**" means Luminet's relevant "**Acceptable Use Policies**" in respect of the Services which may be amended from time to time as published on Luminet's website.

"**Business Day**" means any day excluding Saturday, Sunday, bank and public holidays in the UK.

"**Charges**" means the Service Charge, the Usage Charges, One off Charges and any other charges as set out in the Contract.

"**Contract**" means, together, the Order Form, these Conditions, the Acceptable Use Policy, the applicable SLA and the relevant charges in the Price List.

"**Confidential Information**" means all information in tangible or intangible form that is marked or designated as confidential or that, under the circumstances of its disclosure, should be considered confidential. Confidential Information will also include, but not be limited to, Luminet Technology, Customer Technology, and the terms and conditions of this Agreement.

"**Customer**" means the person to whom Luminet provides the Services as stated in the Order Form.

"**Customer Area**" means that portion(s) of the Data Centre(s) made available to Customer for the placement of Customer Equipment and/or Luminet Supplied Equipment and use of the Service(s).

"**Customer's Equipment**" means the Customer's computer hardware, not including stored data, and other tangible equipment placed by Customer in the Customer Area.

"**Customer Nominated Contact**" means the Customer's nominee as stated in the Order Form who will be Luminet's point of contact for all matters relating to the Services.

"**Customer Services**" means the Luminet team responsible for receiving calls from the Customer to log faults and respond to queries about the Services.

"**Customer's Technology**" means Customer's proprietary technology, including Internet operations design, content, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), know how, trade secrets and any related intellectual property rights throughout the world (whether owned by Customer or licensed to Customer from a third party) and also including any derivatives, improvements, enhancements or extensions of Customer Technology conceived, reduced to practice, or developed during the term of this Agreement by Customer.

**"Data Centre(s)"** means any of the facilities used by Luminet to enable placement of Customer Equipment and/or Luminet Supplied Equipment and use of the Service(s) therein.

**"Equipment"** means the equipment installed or provided by Luminet and/or a third party supplier at the Site, which forms part of the Services (including but not limited to antenna, cabling, power supply, router or physical telecommunications connections, Co-Location cabinet and power supplies). It does not include "Purchased Equipment".

**"Force Majeure"** means any cause beyond the reasonable control of either Party including without limitation, any of the following:- construction of third party buildings, any third party construction (whether temporary or permanent), maintenance works, failure of the Internet (not resulting from the actions or inactions of Luminet), inability to obtain essential power, act of God, war, insurrection, riot, civil disturbance, acts of terrorism, fire, explosion, flood, storm, pandemic theft, malicious damage, strike, lock-out or other industrial dispute (whether involving the workforce of Luminet or any other party), third party injunction, national defence requirements, acts or regulations of national or local governments.

**"Installation"** means the physical work required to deliver the Service including (without limitation) installing the Equipment at the Site.

**"Installation and Planning Guidance"** means the installation and planning guidance issued by Luminet to the Customer in respect of installing the Equipment.

**"Installation Date"** means the date on which Luminet or a third party supplier performs the Installation.

**"Luminet"** means "Urban Wimax Limited trading as Luminet" (registration no. 5467333) and or Luminet Data Ltd (registration no. 9105335) whose registered offices are both at Thames House, Portsmouth Road, Esher, Surrey, KT10 9AD, and whose trading addresses are both at 22 Southampton Place, London WC1A 2BP.

**"Luminet Network"** means Luminet's telecommunications network.

**"Luminet Technology"** means Luminet proprietary technology, including Services, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, know-how, trade secrets and any related intellectual property rights throughout the world (whether owned by Luminet or licensed to Luminet from a third party) and also including any derivatives, improvements, enhancements or extensions of Luminet Technology conceived, reduced to practice, or developed during the term of this Agreement by either party that are not uniquely applicable to Customer or that have general applicability in the art.

**"Luminet Website"** means the website located at URL <http://www.Luminet.co.uk> or such other website or URL as Luminet may notify the Customer from time to time.

**"Minimum Term"** means the Minimum Term specified in the Order Form starting from the Ready for Service date or, if more than one service is being provisioned (for example a wireless and fibre service or other service), starting from the most recent Ready for Service date, or if no such period is specified, the first 12 months starting from the Ready for Service Date, or if there is no Installation, the Minimum Term specified in the Order Form from the date of Luminet's signature to the Order Form.

**"One Off Charges"** means any charges in respect of site visits, Installation, Site installation, the upkeep, depreciation and/or amortisation of the Equipment supplied to the Customer, support, configuration and de-installation.

**"Order"** means the Order Form to be completed by the Customer for services and is the Original Order or the Revised Order, as applicable.

**"Original Order Form"** means the completed Order Form signed by the Customer and Luminet in respect of the Services.

**"Price List"** means the list of Luminet's charges that apply to the Services as amended and updated from time to time. Charges are all exclusive of Value added taxes.

**"Professional Services"** means any professional or consulting service provided by Luminet to Customer as more fully described in a Statement of Works

**"Purchased Equipment"** means equipment purchased by the Customer pursuant to a separate agreement with Luminet and/or a third party supplier.

**"Ready for Service Date"** means the date on which Customer Services hand over the Services to the Customer for use by the customer. Billing commences from this date, and this date would normally be the date on which the Customer signs the Installation Sign-off Document or the date Luminet advises you in writing that the Service is ready for use.

**"Representatives"** means the individuals identified in writing on the Customer Registration Form and authorized by Customer to enter the Data Centre(s) and the Customer Area.

**"Revised Order Form"** means an update of the Original Order Form signed by the Customer and Luminet for additional costs in respect of the Services following inspection of the Site.

**"Services"** means the services supplied by Luminet to the Customer as set out in the Order Form, including but not limited to installation and de-installation.

**"Service Charge"** means the standing charge (normally monthly in advance) in respect of the Services.

**"Site"** means a Customer location at which Luminet agrees to provide the Services as stated in the Order Form. Where Co-Location services are supplied the Customer location is the location of those services.

**"SLA"** means the relevant **"Service Level Agreement"**, specifying standards to which the Services will be delivered, which may be amended from time to time as published on Luminet's website.

**"Term"** means the term of the Contract between the parties as set out in the Order Form.

**"Usage Charges"** means any charges in respect of the Customer's use of the Services where those services are measured for the quantum of their use in a period such as voice calls and volumes of data backed up, and Burst internet bandwidth usage in excess of the committed data rate measured using the 95 percentile method

## 2 SERVICES

- 2.1 In consideration of the payment by the Customer to Luminet of the Charges, Luminet shall provide the following Services to the Customer in accordance with and subject to the terms and conditions of the Contract and in accordance with the SLA:
- (a) the provision and installation of the Equipment and Services in accordance with clause 3;
  - (b) the provision of the Services from the Ready for Service Date.
- 2.2 Luminet warrants that the Services will be provided with reasonable care and skill and in accordance with good industry practice and the SLA.
- 2.3 Luminet expressly excludes any warranty or undertaking (express or implied) subject to the terms and conditions of the Contract and in accordance with the SLA, that:
- (a) the Services or Equipment (or any software provided to Customer as part of the Services) will interoperate successfully with any third party software or device employed by the Customer;
  - (b) the Customer will be able to access or use the Services at times or locations of its choosing, or that there will be sufficient capacity for the Services as a whole, for any specific product or service or in any specific geographical area. Due to the nature of the Services, Luminet depends upon third parties over which it may have no control for the delivery of the Services (for example, delivery of emails to internet addresses); and
  - (c) any software or content available through the Services and that originates from the Internet will be free from any virus, malware, spyware, worm, Trojan horse or other program or device that is apparently intended to access and modify, delete or damage data file(s) or computer program(s).
- 2.4 Without prejudice to the specific disclaimers set out in clause 2.3 above and save as expressly set out in this Contract and the SLA, Luminet makes no warranty or representation in relation to the Services or the Equipment (or any software provided as part thereof) and hereby excludes all warranties, representations and guarantees relating thereto which may be implied by statute, common law, course of dealing or otherwise to the fullest extent permitted by law.
- 2.5 IP Addresses and Domain names: In the event that Luminet licenses to the Customer an IP address as part of the provision of Services, such IP address shall (upon the request of Luminet and to the extent permitted by law) revert to Luminet after termination of a Contract for any reason whatsoever, and the Customer shall cease thereafter to use such address in any way whatsoever. At any time after such termination, Luminet may re-assign such address to another user.

## 3 CONDITIONS PRECEDENT TO THE PROVISION OF THE SERVICES

- 3.1 Luminet shall, prior to the Installation Date, confirm in writing as far as is reasonably possible:
- (a) the Services to be provided;

- (b) that the Services are available and may be provided at the Site and how and whether provided through a third party supplier;
- (c) whether access to any third party property will be required to install the Equipment at the Site;
- (d) that, following an inspection of the Site, the Equipment can physically be deployed to the required standard and presented in a manner approved by the Customer (such approval not to be unreasonably withheld or delayed).

3.2 In the event Consents are required by the Customer, then prior to the Installation Date, Luminet will provide documentation including copies of photographs, diagrams, technical descriptions and official documents in order to facilitate the Customer acquiring planning consents and wayleaves, including any licences and/or consents required from Customer's landlord or any other third party to install the Equipment at the Site (each a "**Consent**"). Luminet makes no warranties that the documentation provided will be sufficient to obtain the Consents and notwithstanding any assistance that Luminet may provide to the Customer, the Customer shall remain solely responsible for obtaining the Consents.

3.3 In respect to Wayleaves that may be required by the Customer's Landlord, Luminet requests, as a cost and time saving measure, that the Customer encourage their Landlord to use the "Standardised Wayleave" created by the City of London for Landlords.

3.4 Prior to the Installation Date, the Customer shall confirm in writing:

- (a) that the Customer has obtained the necessary Consents where required from third parties if Luminet and / or a 3rd party supplier of fibre has to cross their land or place Equipment on their premises;
- (b) that the Customer has obtained all necessary planning Consents where it is considered by the Customer that planning consent is necessary;
- (c) In respect to Wireless and Fibre Services, that the Customer consents to Luminet and / or third party fibre supplier installing the Equipment including, without limitation, mounting any Equipment necessary to receive the Service on the exterior of the Site (and Luminet shall, where this does not interfere with provision of the Service, mount such Equipment in such a manner to minimise visual impact and physical restoration and in accordance with any instructions from the Consents); and
- (d) that the Customer accepts responsibility for all subsequent issues related to property arising from the installation and continued operation of the Equipment but excluding any damage that is proven to be due to the negligence of Luminet, its employees or subcontractors.

3.5 If the Charges and/or the Services (or any part of them) require amendment following inspection of the Site (whether performed by Luminet or a third party supplier), Luminet shall issue to the Customer a Revised Order Form detailing the additional charges and/or amended Service specifications. If the Customer does not sign and return the Revised Order Form to Luminet within a period of five (5) working days of issue of the Revised Order Form, Luminet shall be under no obligation to provide the Services detailed in either the Original Order Form or the Revised Order Form. The Customer shall promptly pay for all reasonable Site inspection costs

incurred and/or committed to by Luminet but shall be under no further obligation to pay any other charges and the Original Order Form shall be deemed cancelled.

- 3.6 If the Customer is unable to secure any or all of the confirmations above and the Customer provides a copy of any written refusal to Luminet, then the Customer shall promptly inform Luminet and Luminet shall be under no obligation to provide the Services. The Customer shall promptly pay for all reasonable Site inspection costs incurred and/or committed to by Luminet but shall be under no further obligation to pay any other charges and the Order Form shall be deemed cancelled.
- 3.7 In respect to provision of Wireless services, where the Customer provides written evidence from the landlord and/or third parties that the Customer will incur a cost greater than an amount of £2,000 plus the amount of any offer to the Customer as shown on the Order Form, both exclusive of VAT, to obtain the Customer's Landlord's Consent in respect of the Wireless services at a single Site, then unless Luminet has confirmed in writing within seven days of receiving such written evidence from Customer that Luminet is prepared to meet the risk of incurring the charges from the Landlord less the amount of any offer to the Customer as shown on the Order Form, in respect of such Site, either party shall thereafter be entitled to terminate the Order Form without penalty, save as to re-imbursing Luminet for any reasonable survey and administrative costs incurred by Luminet, subject to prior written notice to the other party.
- 3.8 The Customer shall reimburse Luminet for all reasonable charges incurred and/or committed to by Luminet as a result of Luminet or its nominated third party not being permitted access to the Site or any third party premises on the dates and times agreed with the Customer. Luminet shall provide reasonable documentary evidence of such charges being incurred and/or committed to.

Luminet shall comply with such reasonable safety and security requirements in relation to the Site as notified to Luminet by the Customer in writing at least three days prior to Luminet's attendance at the Site.

#### **4 INSTALLATION**

- 4.1 Following the satisfaction of the conditions precedent set out in clauses 3.1, 3.2 and 3.3, Luminet shall or shall procure that a third party shall:
- (a) install the Equipment at the Site; and
  - (b) carry out an activation and quality check of the Services at the Site;
- at such time as shall be mutually agreed between the Customer and Luminet.
- 4.2 The Customer shall be responsible for clearing and preparing the Site in readiness for the installation of the Equipment, including providing connections to stable electrical power and the Customer shall, at its own expense, comply with Luminet's reasonable instructions regarding preparation of the Site for delivery and installation of the Equipment.
- 4.3 Installation shall be deemed completed when Luminet notifies the Customer that Installation has been successfully completed and that the connection is ready for use.

4.4 Luminet undertakes to take all reasonable care to minimise the impact of the Installation. However, following Installation of the Equipment, the Customer will be responsible for putting back any items moved and any redecoration which may be required, save that where any redecoration is required that is attributable to a failure by Luminet to take all reasonable care in carrying out the Installation of Equipment, the reasonable costs of such redecoration shall be for Luminet's account subject always to the limitations contained in clause 9.2."

4.5 In the event that Luminet cannot provide the Services requested because:

- (a) the location of the Site will not support the required SLA; and/or
- (b) the installation and/or checks cannot be successfully completed

Luminet will notify the Customer as soon as possible, which will normally be prior to completion of the inspection of the Site as referred to in clause 3.1(d).

4.6 If a different level of Services can be provided, the parties shall discuss whether to adjust the SLA requirement for some or all of the Sites.

4.7 The Service will be provided and charged for from the Ready for Service Date. The Ready For Service Date will be the date on which all of the following activities have been completed:

- (a) the Equipment has been installed and tested;
- (b) the Equipment has been configured and functional testing has been completed;
- (c) the Installation Sign-Off Document has been signed and dated by the Customer; and/or
- (d) in the case of a third party installation at the Customer Site, the Customer is advised that the Service is ready for use. In this case, the Customer has the right to reject the Service as being ready for use by notice in writing or by email within 5 working days of the Ready for Service Date. If the Customer (a) does not reject the Service as being ready for use within that time; or (b) uses the Service other than for testing purposes, the Service will be deemed accepted.
- (e) In the case of Co-located Cabinets and associated power, the Customer is advised that the Cabinets are ready for occupation and the ordered services ready for use

## **5 CUSTOMER OBLIGATIONS**

5.1 During the Term, the Customer shall, in addition to the obligations set out elsewhere in the Contract, make reasonable and timely endeavours to:

- (a) Continue working in good faith to obtain the Consents subject to the provisions of the Clause "3 Conditions precedent to the provision of the services".
- (b) Comply with the Customer's obligations under the Contract, including (without limitation) in respect of use of the Equipment (clause 6);
- (c) Only use the Services and the Equipment in accordance with the Acceptable Use Policy and Luminet's instructions and those of its officers, employees, agents or representatives;

- (d) Provide Luminet with such assistance, information and facilities as Luminet may reasonably request to enable it to perform its obligations under this Contract, including but not limited to providing access to the Site and procuring any necessary access to any third party premises where required;
- (e) In respect to Wireless and Fibre services, supply on an ongoing basis, all space, power supply access points, cables, trunking, electricity and air-conditioning as are required to receive the Services at the Site;
- (f) In respect to Co-located Cabinets and associated power; to provide such access to the Site as Luminet or its third party provider shall require to discharge its obligations, and be responsible for the health and safety of the personnel of Luminet or its third party provider at the Site and will ensure that written notice of all health and safety policies and procedures pertaining to the applicable Site is provided to all personnel attending the Site; and to procure and provide all precautions to protect the health & safety of the personnel while at the Site;
- (g) Respond to all requests for approval and within any deadline reasonably stipulated by Luminet. Luminet shall be entitled to rely upon any act, decision or approval of the Customer Nominated Contact and the Customer shall be bound by any such act, decision or approval of the Customer Nominated Contact;
- (h) Keep to appointments to install, which are confirmed by Luminet with the Customer 48 hours before the Installation Date. In the event that the Customer subsequently cancels or does not keep the appointment, Luminet reserves the right to make a charge in accordance with the Price List.
- (i) Respond to all requests by Customer Services in respect of resolving any reported fault. In the event that the Customer Nominated Contact is not available, Luminet shall rely on the Customer delegating an appropriate alternate contact to work with Customer Services in resolving the fault;
- (j) Inform Luminet if any Customer information set out in the Order Form changes;
- (k) Extend the timelines applicable to the performance of the Services as stated in the SLA by an equivalent period where the Customer fails to comply with clauses in 5.1 above and this impacts upon the Services and Luminet's ability to meet the Installation Date or any other timelines agreed between the parties,;
- (l) Comply with all other reasonable requests of Luminet and ensure that its own employees, agents and sub-contractors comply with the obligations of the Customer as set out in this Contract.
- (m) Except with the advanced written consent of Luminet, Customer's access to the Data Centre will be limited solely to the nominated Representatives. Representatives may only access the Customer Area and are prohibited from accessing other areas of the Data Centre(s) unless accompanied by an authorised Luminet representative.
- (n) Customer shall not, without the prior written consent of Luminet (which may be withheld in its sole discretion), resell the Services to any third parties or connect Customer Equipment directly to anything other than the Luminet network, equipment and facilities.



(o) In the event that it becomes necessary to relocate the Customer Equipment to another Customer Area or Data Centre operated by Luminet, Customer will cooperate in good faith with Luminet to facilitate such relocation, provided that such relocation is based on reasonable business needs of Luminet. Luminet shall be solely responsible for any costs and expenses incurred by Luminet in connection with any such relocation and will use commercially reasonable efforts, in cooperation with Customer, to minimize and avoid any interruption to the Services.

5.2 The Customer shall indemnify and hold harmless Luminet from and against any and all liability, costs (including legal costs), claims, expenses, actions, proceedings or damages incurred or suffered by Luminet or any of its employees, agents or contractors as a result of any breach or alleged breach of the Customer's warranties, obligations and undertakings. The liability of the Customer under this clause shall be limited to the amount that would have been payable, by the Customer to Luminet, under the Minimum Term.

5.3 If content or software is provided as part of the Service, the Customer agrees to comply with the terms of use for the content or software.

## **6 EQUIPMENT**

6.1 The Equipment is and shall remain at all times the property of Luminet or its relevant third party supplier notwithstanding that the Equipment has become incorporated in or affixed to the Site or otherwise and the Customer shall have no right, title or interest in the Equipment, and shall possess the Equipment as Bailee only unless otherwise expressly agreed in writing such that the ownership in the Equipment is transferred to the Customer.

6.2 Luminet has the right to recover any and all Equipment at any time including, without limitation, in the event that the Services are suspended or a Contract is terminated.

6.3 The Customer shall ensure that any Landlord to the Customer waives any rights they may otherwise enjoy over the Equipment.

6.4 In the event that:

(a) the Equipment fails, unless due to the default or negligence of Customer or its agents, Luminet will correct the problem at its own cost;

(b) the Equipment fails due to the default or negligence of Customer or its agents, Luminet will correct any such failure and charge the Customer for the work done in accordance with the Price List;

(c) the cabling between Equipment fails, Luminet will correct any such failure and charge the Customer for the work done in accordance with the Price List, unless the failure is due to insufficient specification of the cable, in which case Luminet will correct the problem at its own cost;

6.5 The Customer shall promptly notify Luminet in the event that any part of the Equipment fails, is stolen or damaged. The Customer shall be responsible for, and shall indemnify Luminet for all costs in connection with, any loss of or damage to the Equipment howsoever caused, save for any such loss or damage caused by the negligence of Luminet, or directly by an Act of God.

- 6.6 Any costs incurred by Luminet in investigating alleged faults or failures of the Equipment notified by the Customer which are later found not to exist shall be charged to the Customer in accordance with the current standard Price List.
- 6.7 The Customer shall:
- (a) Take reasonable care of the Equipment. If the Customer fails to prevent damage to the Equipment, the Customer shall be held solely responsible for the costs of repair or replacement save for any such loss or damage caused by the negligence of Luminet;
  - (b) Not tamper, interfere with, alter, damage, obscure (so as to prevent normal operation or access) or attempt to repair the Equipment or request that a third party do so without Luminet's prior written consent, nor remove the Equipment from the Site.
- 6.8 If the Customer connects alternative or additional equipment to the Luminet Network other than by the specified connection, then:
- (a) Luminet shall not be responsible for and shall have no liability to the Customer for any detriment to the Services that may occur as a result of connecting such equipment.
  - (b) Such alternative equipment must be technically compatible with the Services and not cause harm to the Luminet Network or any other customer's equipment;
  - (c) Such alternative equipment must at all times follow Luminet recommendations and not breach any standards or laws in force; and

The Customer must immediately and permanently disconnect the alternative or additional equipment if instructed to do so by Luminet.

- 6.9 **Purchased Equipment:** Where the Customer has purchased equipment through Luminet, the Customer shall acquire title to the Purchased Equipment upon full payment of the purchase price. Notwithstanding the foregoing, Luminet and any licensor of rights to Luminet shall retain title to and rights in the intellectual property (whether or not subject to patent or copyright) and content contained in the materials supplied under the terms of this Agreement.

Customer acknowledges that it has selected the Purchased Equipment and disclaims any statements made by Luminet.

Customer acknowledges and agrees that use and possession of the Purchased Equipment by Customer shall be subject to and controlled by the terms of any manufacturer's or, if appropriate, the relevant supplier's warranty, and Customer agrees to look solely to the manufacturer or the relevant supplier with respect to all mechanical, service and other claims; and the right to enforce all warranties made by said manufacturer are hereby, to the extent Luminet has the right, assigned by Luminet to the Customer.

## **7 CHARGES**

- 7.1 The Customer shall pay to Luminet the Usage Charges, Services Charges, and other One-off Charges as may apply from time to time including (without limitation) in connection with the Installation of the Equipment and provision of the Services.

- 7.2 The Charges will be calculated in accordance with the Order Form and any applicable offers available or made available to the Customer or the Price list. Where 3<sup>rd</sup> party services are being supplied, Luminet will normally invoice the Customer for all installation charges at the beginning of the month following notification to the Customer of acceptance of the order and of any additional costs by the 3<sup>rd</sup> party supplier where the Customer has not objected to the additional costs within 5 days. In the event that the service does not reach the Ready for Service date for a technical or physical reason or lack of permissions by the Landlord, then Luminet will issue a credit note against any earlier invoice for installation charges. Luminet will begin charging the Service Charge from the Ready for Service Date.
- 7.3 Subject to clause 7.4, Luminet shall invoice normally monthly for:
- (a) On the first month, pro rata for the initial period prior to the beginning of that month; and in advance for 1 – 3 (one to three) months as specified on the Order Form.
  - (b) On the 2<sup>nd</sup> and subsequent months the Service Charge in advance for a further month;
  - (c) Usage Charges measured for the last month in arrears;
  - (d) One off Charges.
- 7.4 In the event that:-
- (a) The Services to be provided are of duration of 3 months or less, then the Customer is required to pay in advance, before the provision of the Services, the total forecast Charges to be invoiced for the Services including the vat thereon. Luminet may retain the advance payment to the extent that payment has not otherwise been received for the Services,
  - (b) Luminet shall or is likely to incur significant cost in providing the Services or if Luminet otherwise requires, it may request that the Customer pay a deposit as guarantee of payment in relation to future Charges. Luminet may retain the deposit, to the extent that payment has not otherwise been received for the Services, or if the Equipment has been lost or damaged. Notwithstanding the foregoing, Luminet acknowledges and agrees that the Customer shall not be required to pay a deposit unless it has agreed to the same in the applicable Order Form.”
  - (c) Luminet incur additional cost because of any delay or failure by the Customer to perform the Customer’s obligations or responsibilities under the Order Form, Luminet is entitled to be compensated by the Customer for such additional costs.
  - (d) Logged faults are ultimately diagnosed as being the responsibility of the Customer, or caused by the Customer breaching any of their obligations or failing to perform their responsibilities; Luminet is entitled to charge the Customer for the additional costs including any repair costs.
  - (e) Where Site visits in respect of installations and fault repairs are aborted by the Customer, Luminet is entitled to charge the Customer for additional costs.
- 7.5 The Customer shall pay the invoice together with any VAT due thereon, within 14 days of the date of the relevant invoice. The Customer shall authorise a Direct Debit mandate to pay to Luminet the amount(s) invoiced in accordance with this Contract. In the event that a Direct Debit

mandate is not authorised, then for the period there is no authorised mandate, Luminet reserves the right to charge an additional fee no greater than 10% of the contracted monthly charges. In the event that the Direct Debit is subsequently returned unpaid, Luminet reserves the right to charge the Customer a sum of up to £40 plus Vat for each occurrence as a contribution towards the additional administration costs associated with collecting the Charges.

7.6 Where any sums are outstanding, Luminet shall be entitled to:

- (a) suspend provision of the Services if payment is not made within 7 days of notice requiring the Customer to pay; and/or
- (b) charge interest on all overdue payments at the rate of 4% per annum above the London Interbank base rate from time to time from the due date for payment until actual payment, whether before or after judgment, calculated on a daily basis, and without prejudice to any of its other rights contained in this Contract or to any existing claim.
- (c) In the event that Customer fails to pay Luminet all undisputed amounts owed to Luminet under this Agreement when due, Customer agrees that, upon delivery of written notice to Customer, Luminet may where relevant (i) restrict Customer's physical access to the Customer Area and Equipment; and/or (ii) take possession of any Customer Equipment and store it, at Customer's expense, until taken in full or partial satisfaction of any lien or judgment, all without being liable to prosecution or for damages.
- (d) Recover any legal costs incurred to recover overdue payments under this contract.

7.7 Luminet reserves the right to revise the Charges (or part thereof) upwards or downwards in response to market conditions, legal or regulatory changes, third party supplier increases and/or service related changes subject to written notification to the Customer, including by way of a notice in Customer's invoice.

- a. A notice of decrease in Charges will take immediate effect.
- b. Subject to the remainder of this clause, a notice of increase in Charges will take effect no sooner than 15 days after the date of the notification except that where the Customer does not agree with the increase, the Customer shall have 10 days from the date of the notice of increase within which:-
  - i. to seek an explanation of the increase and,
  - ii. if not satisfied with the explanation to give notice to Luminet in writing of termination of the affected Services.
- c. Upon expiry of the 10 day period, if the Customer has not served notice of termination of the affected Services, the Customer shall be deemed to have accepted the relevant increase in Charges.
- d. Where Customer has given a valid notice of termination in accordance with the terms of the preceding sentence, the relevant increase in Charges shall only take effect in relation to such a Customer 30 days after the date of issue by the Customer of Customer's notice of termination.

## 8 TERM AND TERMINATION

8.1 This Contract shall commence on the date that the Order Form is signed by Luminet and, subject to earlier termination, shall continue for the Minimum Term and thereafter unless either party gives to the other at least 3 calendar months' written notice to terminate, such notice not to expire before the end of the Minimum Term. In the event that the Service agreed is for a short duration with a Minimum Term of less than 12 months, then the 3 calendar months is replaced by one calendar month.

8.2 Luminet may, at its discretion, suspend the Services and/or terminate the Contract without liability for such termination:

(a) immediately in the event that:

- (i) the Customer is in material or persistent breach of any of its obligations under this Contract and fails to remedy such breach (if capable of remedy) within two (2) days after notice in writing to the Customer from Luminet; or
- (ii) Luminet has sufficient reason to believe that the Customer is using the Services in breach of clause 5.1b and the Customer fails to remedy such breach within two (2) days after notice in writing to the Customer from Luminet;
- (iii) The Customer's Landlord requires the removal of Equipment under the terms of a wayleave agreement between the Customer's Landlord and the Customer.
- (iv) Any landlord or licensor of Luminet requiring the removal of any equipment at any location which is necessary for the provision of the Services.
- (v)

(b) immediately by notice to the Customer if:

- (i) the Customer enters into any composition or arrangement with its creditors generally or is unable to pay its debts within the meaning of Section 123(1) of the Insolvency Act 1986; or
- (ii) an encumbrancer lawfully takes possession or an administrative receiver is validly appointed over the whole or any part of the undertaking, property or assets of the Customer; or
- (iii) an order is made or a resolution is passed or a notice is issued concerning a meeting for the purpose of passing a resolution or any analogous proceedings are taken for the appointment of an administrator of or the winding up of the Customer; or
- (iv) Luminet is required by law or any relevant authority to cease providing the relevant Services.

8.3 The Customer may terminate the Contract on written notice to Luminet in the event that Luminet is in material or persistent breach of any of its obligations under this Contract and fails

to remedy such breach (if capable of remedy) within 28 days after notice in writing from Customer.

- 8.4 Termination of this Contract for any reason whatsoever shall be without prejudice to any rights and remedies of the parties accrued prior to such termination.
- 8.5 In the event of termination for whatever reason, Luminet may enter the Site to remove the Equipment at a mutually agreed time not to be unreasonably refused or delayed. Luminet shall comply with the Customer's reasonable instructions, rules and policies relating to attendance at its office, including as relate to health and safety, building and staff security, the security, integrity and appropriate use of any information technology systems and protection of assets.
- 8.6 In the event that Luminet terminates the Contract pursuant to clause 8.2, or the Customer terminates a Service without giving notice in compliance with the terms of clause 8.1, then, without prejudice to any other right or remedy to which it is entitled by law, Luminet shall be entitled to charge Customer (a) the balance of any unpaid Charges up to the date of effective termination; together with (b) the full balance of the unpaid Service Charges for the terminated Service due up until the end of the Minimum Term. The Customer shall make the Equipment available for collection by Luminet at any time during standard UK office hours. To the extent that the Equipment is unavailable for collection by Luminet when it arrives at the Site, then Luminet shall additionally be entitled to charge the Customer for its subsequent out of pocket costs of recovering such Equipment.
- 8.7 In the event that the Customer terminates the Contract without giving notice in compliance with the terms of clause 8.1 and there has been no Installation, then Luminet shall be entitled to charge the Customer the full balance of the unpaid Service Charges for the terminated Service due up until the end of the Minimum Term where the Minimum Term starts from the date of signing of the Order Form.
- 8.8 Where the Service or a part of the Service is ordered from and provided by a 3<sup>rd</sup> party supplier, in the event that the Customer terminates the Contract without giving notice in compliance with the terms of clause 8.1 and there has been no Installation, or there has been a significant modification (for example a change of the Site) Luminet shall be entitled, without prejudice to any other right or remedy to which it is entitled by law, to charge the Customer the charges for Installation that Luminet has incurred and/or committed to with a 15% uplift to cover related administration costs of Luminet.
- 8.9 On termination, Customer shall remove from the Data Centres all Customer Equipment and Customer owned property within ten (10) days of termination, and deliver Luminet owned Equipment to Luminet, and return the Customer Area to Luminet in the same condition as it was on the Service Commencement Date for the Customer Area, normal wear and tear excepted. If Customer does not remove the Customer Equipment and its property within such 10 day period, Luminet will have the option to move any and all such property to secure storage and charge Customer for the cost of such removal and storage, and/or liquidate the property in any reasonable manner.

## **9 LIABILITY**

- 9.1 Nothing in this Contract shall limit either party's liability for death or personal injury caused by its negligence, or for fraudulent misrepresentation.

- 9.2 Subject to clause 9.1, Luminet limits its liability under this Contract, whether such liability arises in contract, tort (including without limitation negligence), under any indemnity or otherwise, as follows:
- (a) the maximum liability of Luminet for damage to or loss of physical property of the Customer shall be limited to £100,000 for each claim or series of related claims and shall not in aggregate exceed £1 million;
  - (b) except for liabilities under sub-clause (a) above, the maximum liability of Luminet for all claims under this Contract shall be limited to the lower of (a) the aggregate of the Charges paid in each 12 month-period (calculated from the Commencement Date); or (b) £100,000; and
  - (c) Luminet assumes no liability for any damage to, or loss of, any Customer equipment in the Data Centres resulting from any cause other than the negligence or wilful misconduct of Luminet. To the extent Luminet is liable for any damage to, or loss of, customer equipment for any reason, such liability will be limited solely to the then current replacement value of the customer equipment, excluding lost data software and firmware
  - (d) Luminet shall not be liable for loss of business, use, profit, anticipated profit, contracts, revenues, goodwill or anticipated savings, loss of data or loss of use of data, or consequential, special or indirect loss or damage, howsoever caused and whether or not Luminet was warned of the possibility.
- 9.3 Luminet does not endorse/warrant any goods or services offered through the Services by a third party and does not monitor any transaction between the Customer and such a third party.
- 9.4 The Services allow access to the Internet. The Internet is separate from the Services and use of the Internet is at the Customer's own risk. Luminet has no responsibility for any goods, services, information, software, or other materials the Customer obtains when using the Internet (including email). The Customer is responsible for ensuring any computer is adequately protected against viruses.
- 9.5 Luminet does not and cannot control the flow of data to or from Luminet's network and other portions of the internet. Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt customer's connections to the internet. Although Luminet will use commercially reasonable efforts to take actions it deems appropriate to remedy and avoid such events, Luminet cannot guarantee that such events will not occur. Accordingly, Luminet disclaims any and all liability resulting from or related to such events.

## **10 FORCE MAJEURE**

- 10.1 If either Party is prevented or delayed in the performance of any of its obligations under this Contract by Force Majeure, that party shall have no liability in respect of the performance of such of its obligations as are prevented by the Force Majeure events during the continuation of such events.
- 10.2 In the event of:

- (a) Luminet being prevented from supplying the Service by a refusal or delay by a third party to supply services, equipment or rights, and where there is no alternative service available at reasonable cost; or
- (b) Luminet being prevented by restrictions of a legal or regulatory nature from supplying the Service.

Luminet will have no liability to the Customer for failure to supply the Service. Luminet will make reasonable endeavours to provide prompt written notice to the Customer should any of the aforementioned events occur.

- 10.3 If any of the events detailed in clauses 10.1 and 10.2 continue for more than thirty (30) days, either Party may serve notice on the other terminating the affected part of the Service, without liability to the other Party

## **11 CONFIDENTIAL INFORMATION; INTELLECTUAL PROPERTY OWNERSHIP; LICENSE GRANTS**

### 11.1 Confidential Information.

- (a) Each party acknowledges that it will have access to certain Confidential Information of the other party concerning the other party's business, plans, customers, technology, and products, and other information held in confidence by the other party. Each party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by, or required to achieve the purposes of, this Agreement, nor disclose to any third party (except as required by law or to that party's attorneys, accountants and other advisors as reasonably necessary), any of the other party's Confidential Information and will make reasonable efforts to protect the confidentiality of such information.
- (b) Information will not be deemed Confidential Information if such information:
  - (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party;
  - (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party;
  - (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or is independently developed by the receiving party. The receiving party may disclose Confidential Information pursuant to the requirements of a governmental agency or by operation of law, provided that it gives the disclosing party reasonable prior written notice sufficient to permit the disclosing party to contest such disclosure.
- (c) Each party shall return all Confidential Information of the other party in its possession within thirty (30) days of Termination, and will not make or retain any copies of such Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement.



### 11.2 Intellectual Property.

- (a) These terms do not transfer from Luminet to Customer any Luminet Technology, and all right, title and interest in and to Luminet Technology will remain solely with Luminet. These terms do not transfer from Customer to Luminet any Customer Technology, and all right, title and interest in and to Customer Technology will remain solely with Customer. Luminet and Customer each agrees that it will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from the other party.
- (b) Notwithstanding anything to the contrary in this Agreement, Luminet will not be prohibited or enjoined at any time by Customer from utilizing any skills or knowledge of a general nature acquired during the course of providing the Services, including, without limitation, information publicly known or available or that could reasonably be acquired in similar work performed for another customer of Luminet.

### 11.3 License Grants.

- (a) Luminet grants to Customer a nonexclusive, royalty free license, during the term of the Services, to use the Luminet Technology solely for purposes of using the Service(s). Customer shall have no right to use the Luminet Technology for any purpose other than using the Service(s).
- (b) Customer agrees that if, in the course of performing the Service(s), it is necessary for Luminet to access Customer Equipment and use Customer Technology, Luminet is hereby granted and shall have a nonexclusive, royalty free license, during the term of the Services, to use the Customer Technology solely for the purposes of delivering the Service(s) to Customer. Luminet shall have no right to use the Customer Technology for any purpose other than providing the Service(s).

### 11.4 Professional Services Assignment and License.

- (a) Effective at the time Luminet receives full and final payment for the Professional Service, Luminet assigns to Customer all right, title and interest, including all intellectual property rights, in the services provided, however, that such assignment does not include the Luminet Technology.
- (b) Commencing at the time Luminet receives full and final payment for the Services, Luminet grants to Customer a nonexclusive, non-transferable, royalty free, perpetual license to use the Luminet Technology incorporated into the Services solely in connection with the use of the Services as a whole. To the extent that Customer or its employees or contractors participate in the creation or development of Luminet Technology, Customer, on behalf of itself and its employees and contractors, hereby assigns to Luminet all right, title and interest, including all intellectual property rights in, the Luminet Technology.

## 12 INSURANCE

- 12.1 In order to provide Customers with physical access to the Data Centre facilities and to operate their equipment the Customer must keep in full force and effect during the term of the Services, Public and Employers Liability and Property damage insurance cover of not less than £10 million.

Customer agrees that it will ensure and be solely responsible for ensuring that its agents (including contractors and subcontractors) maintain insurance coverage at levels no less.

- 12.2 Prior to installation of any Customer Equipment in the Customer Area, Customer will deliver to Luminet, certificates of insurance which evidence the levels of insurance.

### **13 COMPLAINTS PROCEDURE**

- 13.1 If any dispute arises out of the Contract, the parties shall attempt to settle it by negotiation for a period of at least 14 days. To this end they shall use their respective reasonable endeavours to consult or negotiate with each other in good faith, and recognising their mutual interests, attempt to reach a just and equitable settlement satisfactory to both parties. Negotiations shall be conducted between the respective senior executives of the parties who have authority to settle disputes.

### **14 APPLICATION OF TERMS**

- 14.1 This Contract shall govern the provision of the Services by Luminet to the Customer. By submitting an Order Form signed by the Customer, the Customer is deemed to have made an offer for the Services and Luminet is not bound by the Order Form until the Order Form is accepted by the signature of Luminet on the Order Form. By submitting an Order Form, the Customer is deemed to have accepted the terms of this Contract in their entirety. No other terms and conditions shall apply relating to the supply of the Services to the Customer including, without limitation, the Customer's terms and conditions (if any, howsoever provided, and whether supplied previously or at any time in the future), unless agreed in writing or by email between both parties.
- 14.2 The terms of this Contract are complete and exhaustive and shall be in substitution for any oral arrangements made between Luminet and the Customer. Should there be any inconsistency between the terms of the documents forming the Contract; the documents shall rank in the following order to establish which terms prevail: the Order Form; these Conditions; the Acceptable Use Policy; the Price List; and the SLA.
- 14.3 No addition or amendment to or exclusion or substitution of the terms of this Contract by the Customer will be accepted by Luminet unless signed by an authorised signatory of Luminet or notified to Customer in accordance with the provisions of clause 12.4 below.
- 14.4 Luminet reserves the right to change these Conditions from time to time, and the Customer's continued use of the Service/s without raising any objection within 10 days of notification to such change shall be deemed to be the Customer's acceptance of the change. Luminet will publish any changes to it's the Conditions on the Luminet Website.

### **15 THE CUSTOMER AREA AND USE OF THE DATA CENTRES**

- 15.1 This contract is a services Agreement and is not intended to and will not constitute a Lease of any Real Property. Customer acknowledges and agrees that:-
- (a) It has been granted only a License to occupy the Customer Area and use the Data Centres and any equipment provided by Luminet in accordance with this Agreement;

- (b) Customer has no rights as a Tenant or otherwise under any real property or landlord/tenant laws, regulations, or ordinances;
- (c) this agreement, to the extent it involves the use of space leased by Luminet, shall be subordinate to any Lease between Luminet and its landlord(s);
- (d) the expiration or termination of any such Lease shall terminate this Agreement as to such property subject to Customer retaining any rights or claims it may have against Luminet arising from the expiration or termination of such lease. Customer hereby waives and releases any claims or rights to make a claim that it may have against the landlord(s) under any lease by Luminet with respect to any equipment or property of Customers' located in the premises demised to Luminet by such landlord(s).

## **16 GENERAL**

- 16.1 Rights and obligations under the Contract may not be assigned by either party without the written consent of the other provided that Luminet shall be entitled to assign the benefit of the Contract in its discretion and without consent to a purchaser of substantially all of its assets or to any of its subsidiary or associated companies.
- 16.2 No waiver by Luminet of any breach of any term of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 16.3 If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected thereby.
- 16.4 A person who is not a party to the Contract may not have the right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of the Contract.
- 16.5 During the Term of this Agreement and continuing through the first anniversary of the termination of this Agreement, Customer agrees that it will not, and will ensure that its affiliates do not, directly or indirectly, solicit or attempt to solicit for employment any persons employed by Luminet or contracted by Luminet to provide Services to Customer.

## **17 NOTICES**

- 17.1 Any notices to be served by either party on the other shall be:
  - (a) in the case of Luminet sending notice, by post or email to the address for the Customer set out in Section 1 of the Order Form and marked for the attention of the Customer Nominated Contact.
  - (b) in the case of the Customer sending notice, by post to the address shown on Luminet's invoice or any alternative address provided by Luminet; or by email to [Customer.services@Luminet.co.uk](mailto:Customer.services@Luminet.co.uk)
- 17.2 Such notice shall be deemed to have been received by the addressee within 72 (seventy two) hours of posting or 24 (twenty four) hours (excluding non-business days) if sent by email where

sent to the correct address or email address of the addressee and where applicable evidence of posting and/or transmission is retained.

**18 GOVERNING LAW AND JURISDICTION**

- 18.1 The Contract shall be interpreted in all respects in accordance with English law and the parties submit to the non-exclusive jurisdiction of the English courts in all matters pertaining thereto.