

## Terms of Use

Taking into account that:

- Luminext is a supplier of dynamic lighting systems and software;
- Luminext has developed management and control software under the name Luminizer that enables users to manage and control (dynamic) lighting systems;
- In addition to software, Luminext may or may not supply data connections to manage and control lighting installations;
- Customer wishes to use the Luminizer software;

Customer and Luminext (hereinafter referred to as the "Parties") have agreed as follows:

### 1. DEFINITIONS

1.1. For the purposes of this Agreement, the following capitalized terms shall have the following meanings:

"Account":	The unique username and password combination that gives access to the Service. Accounts are personal and non-transferable.
"Service":	The services provided by Luminext as described in Appendix B, Service Description, possibly supplemented with Connections.
"End Users":	Individuals who use the Service.
"Customer":	Legal entity with whom Luminext enters into an Agreement and/or the user of the Service.
"Agreement":	This Terms of Use.
"Process data":	The data entered by the Customer and/or the data entered or generated by third parties or field equipment.
"Service Level Agreement":	The Service Level Agreement applicable to this Agreement as described in Appendix A under the variant 'Standard', unless expressly agreed otherwise.

"Connections": The secure wireless connection between the lighting installation and Luminizer supplied by Luminext, which Luminext in turn obtains from a nationally active telecom provider.

### 2. GENERAL

- 2.1. This agreement applies to the implementation and use of Luminizer and any related Connections and services that Luminext makes available to the Customer, unless expressly agreed otherwise in writing between the Parties.
- 2.2. During the term of this Agreement, Luminext will provide Customer with access to the Service in accordance with the provisions of this Agreement.
- 2.3. Customer shall owe a periodic fee to Luminext in connection with the use of the Service during the Term.

### 3. TERM AND TERMINATION

- 3.1. The Agreement is entered into for a period of 12 months. The parties may not terminate the Agreement prematurely. At the end of the term, the Agreement shall be tacitly extended for a period of 12 months, unless terminated by one of the Parties in accordance with paragraph 2.
- 3.2. Either of the Parties may terminate the Agreement in writing at the end of a term, subject to at least one (1) month's notice.
- 3.3. Without prejudice to the provisions of paragraph 2, Luminext may terminate the Agreement immediately, without further notice of default as a result of which outstanding claims are immediately due and payable, by means of a written notification in the event:
  - (i) the Customer has applied for or has been granted a moratorium;
  - (ii) a substantial part of the Customer's business is seized;
  - (iii) there is insolvency or bankruptcy of the Customer, or if the Customer's bankruptcy has been filed;
  - (iv) the Customer has been guilty of, or is guilty of, fraud;
  - (v) the Customer ceases its business; and

(vi) the Customer transfers all or part of its business to a third party or third parties, or otherwise transfers all or part of the ownership or control of that business to another party.

3.4. In the event that the Agreement ends, the provisions that by their nature must continue to apply after the end of the Agreement, including in any case confidentiality obligations, provisions with regard to liability and Intellectual Property.

#### 4. ACCOUNTS

4.1. Luminext will make Accounts available. Customer hereby obtains access to the Service from the Effective Date. Luminext can only facilitate access to the service if Customer uses a recent Internet browser. The Customer guarantees that it uses an Internet browser for access to the Service that was never released more than 3 years ago (at the time of using the Service).

4.2. Customer will handle the Accounts with care, and Customer warrants that (i) its employees will handle the Accounts with care, (ii) the Accounts will only be used for the Service, and (iii) only employees of Customer will have access to the Accounts for whom access is necessary for the use of the Service.

4.3. Customer shall immediately notify Luminext electronically of any changes in name, e-mail addresses and other data that are important for the performance of the Service by Luminext, but in any event 14 days before Luminext is required to make any changes to the usernames and/or passwords in the context of the Service.

4.4. Customer shall not allow more End Users to access the Service than the number of Accounts that Customer has obtained from Luminext, and to which Customer is entitled under the Agreement. Customer shall immediately notify Luminext of any (suspicion of) improper use and/or unauthorized access to the usernames and passwords.

4.5. Customer may only offer the Service to third parties when:

(a) The Customer has the role of (sub)contractor or supplier vis-à-vis the third party and the Service is part of a project to be delivered by the Customer to the third party, whereby the third party takes over the Customer's rights and obligations and further conditions under this Agreement in full upon delivery of the project, whereby the Customer is obliged to realise this transfer in a legally valid manner and the applicability of the further terms and conditions of this Agreement on the use of the Service by the third party, or

(b) There is a third-party use whereby the Customer assigns one or more Account(s) assigned to it to an End User who does not belong to the Customer's organisation but who works for a third party, to which third party Customer provides services for which use of the Service by (employee(s) of) the third party is necessary or desirable;

In both cases, transfer or use by third parties is only permitted after Luminext has been informed of this in writing, or this reasonably follows from the Agreement and has been made known to Luminext.

#### 5. RIGHTS OF (INTELLECTUAL) PROPERTY

5.1. All Intellectual Property Rights in connection with the Service, including – but not limited to – any documentation, manual, design/design and/or functionality of the user interface of the online portal in connection with the Service are vested exclusively in Luminext. These Intellectual Property Rights may only be used to the extent agreed under the Agreement. The Customer shall not reproduce these Intellectual Property Rights, make them available to third parties or otherwise use them or have them used.

5.2. During the term of the Agreement, the Customer will only acquire a right of use with regard to the Service that is not exclusive and non-transferable, except in the cases referred to under 4.5 under the rights and obligations as set out in the Agreement.

## 6. SERVICE LEVEL AGREEMENT

- 6.1. Luminext guarantees that the Service will be available in the manner set out in the Service Level Agreement, which forms part of the Agreement.
- 6.2. Luminext has the right to temporarily suspend the Service for the purpose of maintenance, adjustment, improvement or Security of the Service, without further liability towards the Customer. Luminext will endeavour to ensure that such decommissioning takes place outside office hours as much as possible and to notify Customer in advance of any planned decommissioning.
- 6.3. Customer accepts that the Service only contains the functionality and other features as Customer finds them in the Service at the time of use ("as is" basis). Luminext is not obligated to maintain, update, modify or add certain features or functionalities of the Service specifically for Customer, and has the right (to modify the software and components of the Service: (i) to improve the functionality and/or to correct errors; (ii) no longer provide updates; and (iii) no longer available in the application of the Service, without further liability to Customer.
- 6.4. If an adjustment of (the software of) the Service leads to a substantial change of (the software of) the Service, Luminext will notify Customer thereof by means of Release Notes, which will be published on the Luminizer website and will be visible to Customer on its personal website after logging in. If adjustments to (the software of) the Service make the Service unsuitable for the continued use of the Service by the Customer, the Customer has the right to terminate the agreement without notice.

## 7. DATA

- 7.1. As the data owner, Customer is responsible for the Process Data and any other information and/or data stored, generated and/or exchanged using the Service. The Customer guarantees that this data and/or information is lawful and does not infringe the rights of third parties.
- 7.2. The Process Data stored for the Customer remains the property of the Customer. Luminext will store and keep available the Process Data for a maximum of 12 months after the termination of this agreement, unless Customer expressly requests in writing to destroy this data. There are costs associated with making the data available on request after the termination of the agreement.

- 7.3. Customer indemnifies Luminext against claims by third parties that are based on the assumption that the information and/or data stored, generated and/or exchanged by Customer using the Service is unlawful or infringes the rights of the third party in question.
- 7.4. If Luminext becomes aware that information and/or data that Customer has stored and/or exchanged using the Service is unlawful, Luminext has the right to immediately delete this information and/or data and/or to block Customer's access to the Service.
- 7.5. Luminext has the right to use the information and/or data stored, generated and/or exchanged with the help of the Service for the purpose of delivering, (further) developing and improving its services and products.
- 7.6. In relation to data that may be classified as personal data in the relevant data protection legislation, Customer acts as and has the role of the owner and/or controller of such data and Luminext acts as and has the role of the processor and must only process those personal data for which Customer has given written instructions, in accordance with the provisions of this Agreement.
- 7.7. The Customer is responsible for complying with all statutory administrative and retention obligations incumbent on him.

## 8. LIABILITY

- 8.1. Luminext's liability for direct damage suffered by Customer as a result of an attributable failure by Luminext to comply with its obligations under the Agreement, expressly including any failure to comply with a warranty obligation agreed with Customer, or as a result of an unlawful act of Luminext, its employees or third parties engaged by Luminext, is limited per event or a series of related events to an amount (excluding VAT) equal to the fees that Customer owes per year under the Agreement for the Service(s) in question.
- 8.2. Luminext's liability for indirect damages, including but not limited to consequential damages, loss of profits, costs for determining damages and liability, legal advice and attorney's fees, loss of opportunities and lost savings, contractual penalties, loss of goodwill, loss of business and delay damage, costs related to modifications to the Customer's own software and damage as a result of the unavailability of the Service, Missed savings, mutilation or loss of (company) data and data, damage due to business interruption, incorrect conversion of scanned or entered documents, is excluded

9. SECRECY

9.1. The Parties shall not disclose the confidential information relating to the other Party, the Agreement and/or the Service to any third party, unless an obligation to do so arises from the law, a court ruling or a designation of a supervisory body or public authority, or is necessary in connection with the exercise of rights under the Agreement, in which cases the Parties will agree in advance on the manner of disclosure.

The foregoing does not apply to confidential information and/or documentation:

- (i) which the disclosing Party demonstrates in writing that it was already publicly known at the time of receipt thereof or thereafter, other than by breach of the confidentiality obligation set forth in this Article;
- (ii) which is required to be disclosed by law; and (iii) which has been obtained from such authorised third parties without confidentiality.

9.2. Confidential information and documentation, including all copies thereof, will be destroyed at the first request of Luminext as far as technically possible, or returned. The Customer shall not reproduce confidential information or make copies thereof.

The Customer guarantees that its employees and any third party involved in (the performance of) the Agreement and/or work in connection with the Service will comply with the obligations pursuant to this article.

10. FORCE MAJEURE

10.1. If, for a period of more than 30 days, one of the parties fails to fulfil obligations arising from the agreement of which these terms and conditions form part as a result of force majeure, the other party has the right to terminate the effect of these terms and conditions by means of a registered letter with immediate effect without judicial intervention, without any right to compensation arising as a result.

**ANNEX A**  
**SERVICE LEVEL AGREEMENT**

**DEFINITIONS**

<b>Backup</b>	Securing Process Data by loading this Process Data onto a Backup medium.
<b>Availability</b>	The time that the System Environment is connected to the Internet and can be accessed by the user by following the login procedure. Availability is measured over a certain calendar month, excluding planned Outages and announced Outages. Availability = 100% x [1 - (the number of minutes Outage per month / total number of minutes per month)]. For Connections, availability is only determined within the periods that the installation in question is under power.
<b>Security</b>	Ensuring that the confidentiality (protection against unauthorized access or use), integrity (correctness, completeness and correctness of the information) and availability (within the agreed period) of the data within the system is and remains guaranteed.
<b>Holiday</b>	Public holidays generally recognized in the Netherlands.
<b>Office Hours</b>	The period between 08:00 and 17:00 on Workdays.
<b>Luminizer</b>	Luminext's web application, accessible via the URL <a href="http://www.luminizer.nl">www.luminizer.nl</a> / <a href="http://www.luminizer.eu">www.luminizer.eu</a> to which Customer is given access, if part of the Service, by means of Accounts.
<b>Notification</b>	The notification of a Malfunction or RFC that is submitted and registered with Luminext.
<b>Maintenance</b>	Activities that are carried out with the aim of preventing malfunctions, remedying detected defects and guaranteeing or improving the quality of the System Environment.
<b>Solving Action</b>	The action taken to resolve a Notification, answer a Question, fulfill a Request, or resolve a Malfunction.
<b>Function Recovery Time (FRT)</b>	The time lapse (including Response Time) within which a detected or reported Malfunction (whether or not temporarily by means of a workaround) is resolved or repaired.
<b>Process data</b>	The data entered by the Customer and/or the data entered or generated by third parties or field equipment.
<b>Response Time</b>	The period of time between a correct Notification by the Customer of a Malfunction and the commencement of the work related to the resolution thereof.
<b>Request For Change (RFC)</b>	A request to make a change.
<b>Service Window</b>	The period of time during which a particular service is offered.
<b>Malfunction</b>	The unforeseen non-functioning or incorrect functioning of a company is a critical part of the System Environment.
<b>Support Desk</b>	The Support Desk of Luminext BV, which functions as the primary point of contact for the functional administrator/webmaster of the Customer with regard to the Service.
<b>System Environment</b>	The sum total of hosting services, servers and Connections and through which Customer is enabled to use the Service.
<b>Outage</b>	An Outage occurs when the Service is unusable for all End Users as a result of an unplanned event. If the Service is unusable for only a few users, or does not function correctly, there is a Malfunction in which the service itself is considered Available. Unavailability due to Maintenance is explicitly not an Outage.
<b>Weekend</b>	Saturday and Sunday.
<b>Workday</b>	Monday to Friday, excluding public holidays.

## 1. AVAILABILITY

Luminext BV will make maximum efforts to ensure that the Service is available at all times without any problems. In the event that a Malfunction reduces Availability, Luminext undertakes to resolve the Malfunction within the Function Recovery Times agreed in this SLA.

Availability
99.9%

## 2. CORRECTIVE MAINTENANCE

The purpose of corrective maintenance is to resolve (imminent) malfunctions as quickly as possible. Luminext makes every effort to ensure optimal availability of the Service for Customer. This is done by receiving, reviewing, resolving, and unsubscribing from Customer Reports.

Upon receipt of a Notification, Luminext BV will determine whether there is a Malfunction or a Request For Change (RFC). In the event of a Malfunction, a priority will be assigned according to the table below. If a temporary solution is available, the priority may deviate pending a structural solution. In the event of an RFC, the Report will be handled according to the Innovative and Preventive Maintenance process.

1 business day

SLA Standard			
Priority	Omschrijving	Response Time	FRT
High	A Malfunction that prevents the lighting from working in an entire installation or a Malfunction that prevents Luminizer from being used in its entirety.	1 Working hour	4 Working hours
Normal	A Malfunction that causes Luminizer to have reduced performance and/or be partially unusable.	4 Working hours	2 Working days

Service Level Agreement Plus			
Prioriteit	Omschrijving	Response Time	FRT
High	A Malfunction that prevents the lighting from burning in an entire installation or a Malfunction that prevents Luminizer from being used in its entirety.	1/2 Working Hour	2 Working hours
Normal	A Malfunction that causes Luminizer to have reduced performance and/or be partially unusable.	4 Working hours	1 workday

Corrective maintenance is carried out according to the following process:

Process	Definition	Result	Responsible
Notice	Customer sends Notification to Support Desk	Sent Notification	Customer
Register & Classify	Customer is heard, his Notification is interpreted.	Interpreted Notification	Luminext
Research & Initiation	The Customer will be informed of the intended Solving Action.	Solving action determined and planned	Luminext
Solving and Implementation	The Solving action will be carried out in accordance with the usual working method at Luminext.	Resolved Malfunction	Luminext
Close	If the Malfunction has been resolved, Customer will be notified and the Notification will be closed.	Closed notification	Luminext

Luminext's responsibility with respect to Function Recovery Times as stated above shall not apply to Malfunctions if:

- Planned Maintenance is being performed;
- The Malfunction occurs as a result of a failure in the telecommunications structure of third parties;
- The Malfunction occurs as a result of a failure in the power infrastructure of third parties;
- The Malfunction is caused by improper configuration or use of the Service by Customer;
- The Malfunction is caused by circumstances at the Customer's location (such as: power supply, climate, housing, shutdown);
- The Malfunction is the result of force majeure that is not attributable to Luminext.

### 3. REQUESTS FOR CHANGE

Customer may submit a request to Luminext to make adjustments to the System Environment. Luminext will assess and classify Customer's RFCs in the interest of the quality of the services provided. Luminext is not obliged to implement RFCs. Carrying out an RFC may incur additional costs which will be quoted in advance.

In the event of the acceptance of a Request For Change, a priority will be assigned by Luminext BV in accordance with the table below. For RFCs submitted for the resolution of a reported Malfunction, the priority set for the Malfunction will in principle determine the priority of the Change. If a Workaround is available, the priority may deviate pending a structural solution.

Requests for Change are executed according to the following process:

Process	Definition	Result	Responsible
RFC Notice	Customer sends Notification to Support Desk. The Report may originally concern a Malfunction, but may have been designated as an RFC in the Incident Management process.	RFC Notification Sent.	Customer
Register	The RFC is registered in the system.	Registered Notification	Luminext
Assess, Classify & Plan	RFCs are reviewed by Luminext, whether they fit into the product, and planned if necessary.	Implementation plan for the Change.	Luminext
Solving and Implementation	Changes are executed and tested.	Implemented Change.	Luminext
Close	The Change is evaluated and closed.	Closed notification	Luminext , Customer.

#### 4. INNOVATIVE AND PREVENTIVE MAINTENANCE

Luminext aims to limit the noticeable impact on the service to the user to the utmost minimum in innovative and preventive maintenance work on the System Environment. However, it is possible that the Service may be temporarily unavailable to End Users in whole or in part. To prevent this as much as possible, the following measures are used:

- Innovative and preventive maintenance is carried out in Service Window 2 as far as possible;
- Noticeable maintenance work is kept to an absolute minimum;
- Maintenance work will be combined as much as possible.
- Planned maintenance outside of Service Window 2 will be announced by Luminext at least 5 days in advance via a notification to the End Users in Luminizer and by means of an e-mail message to the contact person designated by the Customer.

Rollout of major releases of Luminizer will be announced in advance by Luminext and communicated to Customer. Planning and costs for any training, education or changed user instructions will be agreed upon in consultation before the installation.

#### 5. SERVICE WINDOW

The following Service Windows apply:

Service Window	Period
1	Werkdays: 08.00 tot 17.00
2	Werkdays: 17.00 tot 08.00
3	Weekends Holidays: 00.00 tot 24.00 uur

#### 6. ACCESSIBILITY

The Luminext Support Desk can be reached via the following channels during the relevant service windows:

SLA Standard		
Service Window	Urgency	Contact via
1	High, Normal	E-Mail ( <a href="mailto:support@luminext.eu">support@luminext.eu</a> )
2	-	-
3	-	-

SLA Plus		
Service Window	Urgency	Contact via
1	High, Normal	E-Mail ( <a href="mailto:support@luminext.eu">support@luminext.eu</a> ) Telefonisch (+31b 30 207 2018)
2	High	Tba
3	High	Tba



## 7. BACKUP

Luminext guarantees that a full backup of the Process Data will be made once a week. An incremental backup is made 3 times a day. Backups are made on the hard drives of a physically different server, in the secure data center. The Backup is only intended to be able to restore service in the event of Malfunctions.

## 8. CHANGES AT CUSTOMER

Changes in IT Infrastructure at Customer that will affect the services provided by Luminext must be reported to the Support Desk of Luminext BV by means of an RFC within 20 working days before the change takes place. Costs may be charged for the necessary adjustments for the continuation of the Service by Luminext.

## 9. OTHER SUPPORT

Luminext is available to perform various additional tasks for the Customer regarding the Process Data and System Environment at the request of the Customer, for which additional charges may arise.

## 10. PENALTY CLAUSE

Availability below minimum

Penalty	SLA Standard	SLA PLUS
Failure to achieve Availability for two consecutive months	N.v.t.	Up to 15% of the total annual price for the Service, per month.*

\*In the event that the offered Availability is not achieved for two consecutive months due to one or more Malfunctions, the Client is entitled to invoice an immediately payable penalty of 15% of the total annual price involved in the Agreement for the Service within three months. Regardless of the number of malfunctions, the total of fines will never exceed the maximum of 100% of the annual price:

## **Appendix B**

### **Service description Luminizer**

Luminizer Software as a Service offers the following functionalities and services:

#### **General**

- Web-based application available on common browsers (Chrome, Edge, Firefox)

#### **Area management**

- Display of asset data on a map from Google Maps (2D or Streetview where available) and Open Street Maps
- Display of own geo information as underlying maps (if offered as WMS)
- Recording of asset movements and events for up-to-date insight into technical data and acreage status
- Export and analysis module
- Area management dashboard

#### **Reporting portal**

- Website where residents can report malfunctions (Optional, not applicable unless explicitly stated)

#### **Work order management**

- Functionality for planning and monitoring orders for repair and maintenance work by contractor
- Up-to-date insight into the workload and status of work carried out

#### **Management reports**

- Reporting module for analysis for maintenance and replacement.
- Energy report for calculated consumption per light point or per group.
- Daily email reports.
- Access to reports in the Reporting Module

#### **Automatic fault messages**

- Notification of malfunctions of installations with Outdoor Light Controllers.
- Fault dashboard with insight into existing and new faults.

#### **Dimming**

- Remote control of smart lighting installations

#### **Data and management**

- Data storage in data centers in the Netherlands on redundant servers with daily backup.