



12212 Technology Blvd  
Austin, TX 78727-6115  
(512) 219-8020

Name and address of User ("Customer")

## Luminex Maintenance and Support Agreement

For Luminex Use Only

Agreement No. _____
Effective Date _____
Ending On _____

Luminex agrees to provide maintenance and support services on behalf of the purchaser of Services set forth below ("Customer") in accordance with and subject to the terms and conditions specified on the reverse side of this document ("Agreement"). Taxes are not included in the pricing for Services and are based on applicable rates in effect on date of issuance. Your signature below indicates your acceptance of this Agreement. This is not an invoice.

Luminex Systems Covered ("Covered Products")

\_\_\_\_\_  
Luminex 100 Serial Number:

\_\_\_\_\_  
Luminex XY Platform Serial Number (if any):

\_\_\_\_\_  
Luminex SD Serial Number (if any):

For Multiple Instrument Coverage enter number of units \_\_\_\_\_

Attach Addendum A for multiple units specifying all serial numbers.

Rev. 6-04

<b>Service Program.....\$</b>
<b>Certification..... \$900.00 per instrument</b> (Includes 3 hours Labor. Excludes Travel Expenses and Parts. ) Applies only to Covered Products not under warranty.
<b>Total.....\$</b>
_____ <b>Customer Name</b>
_____ <b>Authorized Signature</b>
_____ <b>Printed Name &amp; Title</b>
_____ <b>Purchase Order or Credit Card No.</b>
_____ <b>Name of Cardholder/Expiration Date</b>

# **Luminex Maintenance and Support Agreement**

## **Agreement**

Upon execution of this Agreement by an authorized representative of Customer, during the term of this Agreement, Luminex agrees to provide the Services set forth in the attached Addendum for each Luminex System listed on the reverse side of this Agreement, at the address specified on the reverse side of this Agreement. Luminex reserves the sole right to determine the designation and allocation of Luminex personnel, or third parties authorized by Luminex, to provide Services under this Agreement.

## **Defined Terms**

“**Addendum**” means an addendum to this Agreement that specifies the Service Programs purchased from Luminex under this Agreement.

“**Covered Products**” means the Luminex 100 System purchased by Customer that includes a laser-based fluorescent analytical test system consisting of Luminex’s instrumentation marketed under the name Luminex 100 and the Covered Software.

“**Covered Software**” means all unmodified, generally available and commercially released Software distributed by Luminex with the Luminex 100 System purchased by Customer.

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

“**Error**” means any material failure of the commercially unmodified Luminex Covered Products to substantially conform to its functional specifications as published in the End User Manual accompanying Covered Products at the location designed by Customer under this agreement. However, any nonconformity resulting from Customer’s misuse, improper use, alteration or damage of the Luminex Covered Products, or Customer’s combining or merging the Luminex Covered Products with any hardware or software not certified by Luminex shall not be considered an Error.

“**Response Time**” means the time interval between the dispatch for Repair Services by Luminex, as determined by Luminex, and Luminex’s arrival at Customer Site for Repair Services.

“**Repair Services**” means Services performed at Customer’s location under an applicable Service Program to identify performance problems, troubleshooting and repair of the Covered Products to comply with published Specifications shipped with End User Manual accompanying Covered Products at the location designated by Customer under this Agreement.

“**Modification**” means required technical service bulletins that modify the hardware of the Luminex 100 system.

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

“**Preventative Maintenance (PM) Calls**” means an on-site scheduled visit to the location identified in this Agreement for the purpose of examining and performing preventative maintenance for Covered Products. PM Calls may be performed in conjunction with service calls.

“**Services**” means services Luminex is obligated to perform under the terms of this Agreement and the relevant Service Program Addendum, as well as maintenance and support services provided by Luminex outside of a Service Program and on a time and materials basis.

“**Service Call**” means an on-site visit for the purpose of performing Repair Services.

“**Service Program**” means a standardized combination of Services and/or Parts offered by Luminex as set forth in the attached Addendum.

“**Updates**” means any software service pack generally released by Luminex to Customer for Covered Software.

## **Service Hours & Access Points**

All Service Hours are provided Monday – Friday excluding Luminex designated holidays.

### Phone Support

<b>Region</b>	<b>Service Hours</b>	<b>Primary Phone Number</b>	<b>Secondary Phone Number</b>
EU – 25 (CET)	08:30 – 17:30	+31-162-408-333	+1-512-381-4397
N. America (CST)	7:00am – 7:00pm	1-877-785-2323	N/A
APAC (GMT+8)	08:00 – 17:00	+31-162-408-333	+1-512-381-4397

On-Site Services are provided local time by region where Services are performed.

## **Parts**

At Luminex’s discretion, Parts supplied may be new or remanufactured to original specifications. Exchanged Parts shall become the property of Luminex.

## **Unscheduled and Extended Maintenance Services**

Customer may request additional maintenance services beyond a Service Program. In the event Luminex agrees to provide such Services, Customer agrees to pay Luminex’s then current applicable hourly labor rates and travel expenses for any such Services.

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

The term of this Agreement shall be for a period of 1 year from the Effective Date, subject to earlier termination as provided herein. This Agreement will automatically renew for

additional periods of one (1) year, unless Customer provides at least sixty (60) days' written notice prior to the end of the then-current term of its intent not to renew. Luminex reserves the right to adjust the Services and pricing for Service Programs at any time. Payments made under this Agreement shall be due net thirty (30) days of the date of the Luminex invoice. Late payments shall be subject to interest at a rate of 1.5% per month. All payments are final and are not subject to refund.

### **Exclusions**

Excluded from this Agreement are maintenance and service due to damage or instrument failure 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 published user instructions, (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. Software installation is not covered and consultation regarding use of software not provided by Luminex is not covered. In the event services are provided due to one or more of the above reasons, Customer will be charged at Luminex's then 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 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 or the filing of a petition of bankruptcy or 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**

Texas law without regard to principles of conflicts of laws will govern this Agreement. Luminex and Customer irrevocably consent to the personal jurisdiction of the state and federal courts seated in Travis County, Texas and hereby waive (1) any objection to any action pertaining to this Agreement being brought in federal or state courts in Travis County, Texas, and (2) any claim that such action was brought in an inconvenient forum.

### **Access and Customer /Responsibilities**

In order to perform Services hereunder, Customer shall provide Luminex with full on-site access when requested to the Covered Products, and provide at no charge for Luminex's use, all facilities such as working space, electricity and telephone services and shall provide any other facilities and support reasonably necessary to enable Luminex to perform the Services. Customer shall also make available to Luminex for consultation employees of Customer having familiarity with the Covered Products. Luminex shall not be liable for any failure or delay in performance due to any cause beyond its control. Customer agrees to indemnify

and hold Luminex harmless from any claim of injury to person or property arising under this Agreement or from unauthorized use of the Covered Products.

### **Warranty and Limitations**

Luminex warrants that for ninety (90) days from delivery to you any Parts provided hereunder will substantially conform to Luminex's written specification as set forth in the "End User Manual" shipped with the Product into which the Parts have been installed ("Specifications") and that Services provided to you will be provided in a workmanlike manner. Your sole and exclusive remedy with respect to Parts and/or Services proved to Luminex's satisfaction to be defective or nonconforming to this warranty shall be replacement of such Parts and/or reperformance of Services without charge. **LUMINEX MAKES NO OTHER WARRANTY OF ANY KIND UNDER THIS AGREEMENT, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE RESPECTING THIS AGREEMENT OR THE SERVICES, MATERIALS AND DOCUMENTATION PROVIDED HEREUNDER.**

**NEITHER PARTY SHALL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES OF ANY KIND, RESULTING ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, INCLUDING, WITHOUT LIMITATION, ANY CLAIM THAT USE OF COVERED DEVICES CAUSED AN INACCURATE TEST RESULT OR MISDIAGNOSIS. IN NO EVENT SHALL LUMINEX'S MAXIMUM LIABILITY EXCEED THE TOTAL AMOUNTS PAID BY CUSTOMER HEREUNDER.**

### **Miscellaneous**

The terms and conditions of this Agreement, and any document referred to on the face hereof, constitute the entire agreement between Customer and Luminex 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 Luminex is precluded from performing its obligations under this Agreement due to circumstances beyond its control ("Force Majeure"), including without limitation war, acts of terrorism, flood, earthquake, government actions and labor unrest, Luminex's failure to perform shall not constitute a breach of this Agreement for so long as such conditions persist. This Agreement and its terms are confidential. Customer shall not make any public statements regarding Luminex or the Services provided under this Agreement without the prior consent of Luminex. 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. Luminex may assign this Agreement to a third party who acquires a controlling equity interest in Luminex or who acquires all or substantially all of its assets. 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.

## Service Program Addendum No. 1

**This Addendum sets forth the Luminex Service Programs available as of the Effective Date. Service Programs are subject to the terms and conditions of the Luminex Maintenance and Support Agreement to which this Addendum is appended. Defined Terms in the Agreement shall have the same meaning defined in the Agreement when used in this Addendum.**

### **Service Program No. 1: Standard (Gold) Maintenance and Service Agreement**

#### **Covered Services:**

- 1. Unlimited visits for Repair Services*
- 2. All costs of Parts and Services (including travel expenses)*
- 3. One PM visit per year.*
- 4. Priority scheduling for requests for service*
- 5. Product Updates and Modifications.*
- 6. Telephonic and online support during normal Service Hours.*

**Response Time: On-Site 48 hours response time for Repair Services, if required (restricted to certain geographic areas within the United States and the European Union at this time.**

### **Service Program No. 2: Comprehensive (Platinum) Maintenance and Service Agreement**

#### **Covered Services:**

- 1. Unlimited visits for Repair Services*
- 2. All costs of Parts and Services (including travel expenses)*
- 3. Two PM visits per year*
- 4. One Luminex 100 1.7 or IS training session (CN-0069-01 or CN-0070-01), which must be redeemed during the year of coverage (travel expenses not included).*

**Response Time: On-site 24 hours response time for Repair Services, if required (restricted to certain geographic areas within the United States and the European Union at this time.**

**Service Program Addendum No. 2  
(Academic and Government Customers)**

**This Addendum No. 2 sets forth the Luminex Service Programs available only to Government agencies and Academic institutions as of the Effective Date. Service Programs are subject to the terms and conditions of the Luminex Maintenance and Service Agreement (“Agreement”) to which this Addendum is appended. Defined Terms in the Agreement shall have the same meaning defined in the Agreement when used in this Addendum.**

**Service Program No. GA1: Basic (Silver) Maintenance and Service Agreement**

**Services:**

- 1. One PM visit per year.*
- 2. 30% discount on replacement Parts needed for Repair Services*
- 3. Customer covers costs of Parts and Services up to a maximum annual cost of \$7,000.00 for US and Canada, \$8,500.00 for EU and \$9,500.00 for ROW. Any costs of Services or Parts above this cap are covered by Luminex.*
- 4. Access to standard telephonic and online support during Normal Service Hours.*

**Service Program GA2: Prevention Plus (Bronze) Maintenance and Service Agreement**

**Services:**

- 1. One PM visit per year.*
- 2. 20% Discount on replacement Parts needed for Repair Services*
- 3. Access to Standard telephonic and online support during Normal Service Hours.*