

# Terms of business for Luminus Insight CIC

## 1. Interpretation

The following definitions and rules of interpretation apply in these conditions.

### 1.1 Definitions:

<b>“Business Day”</b>	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
<b>“Charges”</b>	the charges payable by the Customer for the supply of the Services in accordance with clause 5 (Charges and payment).
<b>“Conditions”</b>	these terms and conditions as amended from time to time in accordance with clause 0.
<b>“Contract”</b>	the contract between Luminus Insight CIC and the Customer for the supply of Services in accordance with these Conditions and the Specifications.
<b>“Customer”</b>	the person or firm who purchases Services from Luminus Insight CIC.
<b>“Customer Default”</b>	has the meaning set out in clause 0.
<b>“Data Controller”</b>	has the meaning set out in section 1(1) of the Data Protection Act 2018.
<b>“Data Subject”</b>	an individual who is the subject of Personal Data.
<b>“Deliverables”</b>	the deliverables set out in the Specifications.
<b>“Luminus”</b>	Luminus Insight CIC (Company number 08737632)
<b>“Luminus Materials”</b>	has the meaning set out in clause 4.1.6.
<b>“Personal Data”</b>	has the meaning set out in section 1(1) of the Data Protection Act 2018 and relates only to personal data, or any part of such personal

data, in respect of which the Customer is the Data Controller and in relation to which Luminus is providing Services under the Contract.

**“Processing and process”** have the meaning set out section 1(1) of the Data Protection Act 2018.

**“Services”** the services, including the Deliverables, supplied by Luminus to the Customer as set out in the Specification.

**“Specification”** the description or specification of the Services to be provided by Luminus to the Customer as set out in writing by Luminus to the Customer.

## 1.2 Interpretation:

- 1.2.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.2.2 A reference to **writing** or **written** includes faxes and emails.

## 2. Basis of contract

- 2.1 The Contract constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

## 3. Supply of Services

- 3.1 Luminus shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 Luminus shall use reasonable endeavours to meet any performance dates specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

- 3.3** Luminus reserves the right to amend the specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Luminus shall notify the Customer in any such event.
- 3.4** Luminus warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.5** Luminus aspires to embed in our culture the attributes that we feel distinguish our brand and contribute to the difference that you experience when you engage Luminus. We may invite you to provide feedback on our performance so that we can measure to what extent we meet our goals. If you wish to discuss the Services or complain about them, you are invited to contact Kate Scribbins, our Chief Executive, by e-mail to [kate.scribbins@Luminus-cic.uk](mailto:kate.scribbins@Luminus-cic.uk) or by writing to her at Luminus Insight CIC, Freepost RSYX-ETRE-CXBY, Astolat, Coniers Way, Burpham, Surrey GU4 7HL.

## 4. Customer's obligations

- 4.1** The Customer shall:
  - 4.1.1 ensure that the terms of the Specification and any information it provides in the Specification are complete and accurate;
  - 4.1.2 co-operate with Luminus in all matters relating to the Services;
  - 4.1.3 provide Luminus, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Luminus;
  - 4.1.4 provide Luminus with such information and materials as Luminus may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects, and provided in a timely manner;
  - 4.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
  - 4.1.6 comply with all applicable laws, including health and safety laws; and
  - 4.1.7 keep all materials, equipment, documents and other property of Luminus (Supplier Materials) at the Customer's premises in safe custody at its own risk, maintain Luminus Materials in good condition until returned to Luminus, and not dispose of

or use Luminus Materials other than in accordance with Luminus's written instructions or authorisation.

- 4.2** If Luminus's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
- 4.2.1 without limiting or affecting any other right or remedy available to it, Luminus shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Luminus's performance of any of its obligations;
  - 4.2.2 Luminus shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Luminus's failure or delay to perform any of its obligations as set out in this clause 0; and
  - 4.2.3 the Customer shall reimburse Luminus on written demand for any costs or losses sustained or incurred by Luminus arising directly or indirectly from the Customer Default.

## 5. Charges and payment

- 5.1** The Charges for the Services shall be as set out in the Specification.
- 5.2** Luminus shall invoice the Customer on completion of the Services or otherwise as set out in the Specification. The Customer shall pay each invoice submitted by Luminus:
- 5.2.1 within 15 days of the date of the invoice; and
  - 5.2.2 in full and in cleared funds to a bank account nominated in writing by Luminus, and time for payment shall be of the essence of the Contract.
- 5.3** All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Luminus to the Customer, the Customer shall, on receipt of a valid VAT invoice from Luminus, pay to Luminus such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

- 5.4** If the Customer fails to make a payment due to Luminus under the Contract by the due date, then, without limiting Luminus's remedies under Clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 5.3 will accrue each day at 2% a year above the Bank of England's base rate from time to time, but at 2% a year for any period when that base rate is below 0%.
- 5.5** We will exercise our statutory right to claim interest (at 8% over the Bank of England base rate) and compensation for debt recovery costs under the Late Payment legislation if we are not paid according to our agreed credit terms. (<https://www.gov.uk/late-commercial-payments-interest-debt-recovery/charging-interest-commercial-debt>)
- 5.6** All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 6. Intellectual property rights

- 6.1** All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Luminus.
- 6.2** Luminus grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 6.3** The Customer shall not sub-license, assign or otherwise transfer the rights granted in Clause 6.2.
- 6.4** The Customer grants Luminus a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to Luminus for the term of the Contract for the purpose of providing the Services to the Customer.

## 7. Data protection and data processing

- 7.1** The Customer and Luminus acknowledge that for the purposes of the Data Protection Act 2018, the Customer is the Data Controller and Luminus is the data processor in respect of any Personal Data.

- 7.2** Luminus shall process the Personal Data only in accordance with the Customer's written instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by the Customer provided that Luminus may use such Personal Data in connection with the performance of its statutory duties as a "local Healthwatch" under the Health and Social Care Act 2012 or in the event that it needs to report a safeguarding concern.
- 7.3** Luminus contracts require employees to treat all personal data they come into contact with as confidential and that appropriate data protection training is given to all employees
- 7.4** Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.
- 7.5** Luminus warrants that, having regard to the state of technological development and the costs of implementing any measures, it will:
- 7.5.1 take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:
  - 7.5.2 the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
  - 7.5.3 the nature of the data to be protected; and
  - 7.5.4 take reasonable steps to ensure compliance with those measures.
- 7.6** Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause 7.
- 7.7** The Customer acknowledges that Luminus is reliant on the Customer for direction as to the extent to which Luminus is entitled to use and process the Personal Data. Consequently, Luminus will not be liable for any claim brought by a Data Subject arising from any action or omission by Luminus, to the extent that such action or omission resulted directly from the Customer's instructions.

**7.8** Luminus may authorise a third party (subcontractor) to process the Personal Data provided that the subcontractor's contract:

7.8.1 is on terms which are substantially the same as those set out in the Contract; and

7.8.2 terminates automatically on termination of the Contract for any reason.

**7.9** Luminus will assist in meeting data protection requirements in particular in relation to managing personal data breaches and facilitating subject access requests.

**7.10** Luminus will return or delete all data at the end of the contract as required by the customer.

**7.11** Luminus has designated Rebecca Griffin, Operations Manager at Surrey Independent Living Council as a Data Protection Officer under Article 37 of the GDPR.

## **8. Limitation of liability: the customer's attention is particularly drawn to this clause**

**8.1** Nothing in the Contract shall limit or exclude Luminus's liability for:

8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

8.1.2 fraud or fraudulent misrepresentation; or

8.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

**8.2** Subject to clause 8.1, Luminus shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

8.2.1 loss of profits;

8.2.2 loss of sales or business;

8.2.3 loss of agreements or contracts;

8.2.4 loss of anticipated savings;

8.2.5 loss of use or corruption of software, data or information;

8.2.6 loss of damage to goodwill; and

8.2.7 any indirect or consequential loss.

**8.3** Subject to clause 8.1, Luminus's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to 100% of the total Charges paid under the Contract.

**8.4** The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

**8.5** This clause 8 shall survive termination of the Contract.

## 9. Termination

**9.1** Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party three months' written notice (or such other period as set out in the Specifications).

**9.2** If the client cancels the contract after the contract has been signed but before fieldwork starts, a cancellation fee of 25% of the overall contract value will apply.

**9.3** Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

9.3.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so (or such other period as set out in the Specifications);

9.3.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

9.3.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

9.3.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

**9.4** Without affecting any other right or remedy available to it, Luminus may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

**9.5** Without affecting any other right or remedy available to it, Luminus may suspend the supply of Services under the Contract or any other contract between the Customer and Luminus if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 9.3.1 to clause 9.3.3 or Luminus reasonably believes that the Customer is about to become subject to any of them.

## **10. Consequences of termination**

**10.1** On termination of the Contract:

10.1.1 the Customer shall immediately pay to Luminus all of Luminus's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Luminus shall submit an invoice, which shall be payable by the Customer immediately on receipt; and

10.1.2 the Customer shall return all of Luminus Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then Luminus may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

**10.2** Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

**10.3** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## 11. General

- 11.1 Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 11.2 Assignment and other dealings.** Neither the Customer nor Luminus shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the other.
- 11.3** As Luminus is an independent organisation, we will retain editorial control of subject matter and reporting. If the client quotes from work carried out by us under this contract then Luminus must be mentioned and the work must not be quoted out of context.

### 11.4 Confidentiality.

11.4.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.4.1.

11.4.2 Each party may disclose the other party's confidential information:

11.4.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.2; and

11.4.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.4.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

### 11.5 Entire agreement.

11.5.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

11.5.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

11.5.3 Nothing in this clause shall limit or exclude any liability for fraud.

**11.6 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**11.7 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**11.8 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

## **11.9 Notices.**

11.9.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address specified in in the Specification

11.9.2 Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 11.00 am on the second Business Day after posting or at the

time recorded by the delivery service; or, if sent by fax or email, at the following business day on the next Business Day after transmission.

11.9.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

### **11.10 Third party rights.**

11.10.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

11.10.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**11.11 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

**11.12 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.