



LUXONCLOUD SOLUTION – TERMS OF SUBSCRIPTION

These LuxonCloud Terms of Subscription are an integral part of the Order Form entered into by **Nedap Inc.**, business unit Light Control, with a corporate office located at 25 Corporate Drive, Burlington, Massachusetts 01803 USA, hereinafter referred to as **“Nedap”**, and the entity designated as customer in the applicable Order Form (**“Order Form”**), hereinafter referred to as **“Customer.”** Nedap and Customer are hereinafter collectively also referred to as the **“Parties”** and individually as a **“Party.”**

Nedap is a technology company that provides a software solution for lighting solutions and related services including the LuxonCloud solutions, which is a cloud-based solution. Customer wishes to make use of technology to, under its control and for its own account and risk, monitor and amend its usage of lighting to adjust or amend energy consumption, in order to achieve CO2 reduction or reduce the carbon footprint and costs. Customer has requested Nedap to make elements of its LuxonCloud solution available as a “software as a service” as set out in Nedap’s Order Form. Nedap is willing to make the (requested elements of its) LuxonCloud solution and related support services and products available to Customer at Locations indicated in the Order Form by means of a subscription under the terms and conditions set out in these LuxonCloud Solution – Terms of Subscription, the appendices thereto (the **“Appendices”**) and the Order Form (jointly the **“Agreement”**).

1 DEFINITIONS

- 1.1 **“Affiliate”** means (a) with respect to either Party, any legal entity that directly or indirectly controls, is controlled by or is under common control with such Party, where “control” means (i) ownership of more than 50% of the equity of such Party or entity or (ii) the power to direct or cause the direction of the management and policies of such Party or entity, for so long as such entity meets the foregoing definition, or (b) with respect to Customer, any entity that operates a store, facility, or as a franchisee of Customer or otherwise on behalf of Customer under a legally enforceable agreement with Customer.
- 1.2 **“Cause”** means: (i) if the other Party breaches any provision of this Agreement and fails to cure such breach within thirty (30) days after receipt by the breaching Party of written notice from the non-breaching Party describing such breach; (ii) upon the institution by or against the other Party of insolvency, receivership, or bankruptcy proceedings or any other proceedings for the settlement of the other Party’s debts, which proceedings are not stayed or dismissed within sixty (60) days after institution; (iii) upon the other Party’s making an assignment for the benefit of creditors; or (iv) upon the other Party’s dissolution or ceasing to conduct business.
- 1.3 **“Change of Control”** means: (i) the sale, transfer or other disposition (whether by merger, consolidation or otherwise) by a Party of all or substantially all of its assets, properties or business; provided, any event in which the new controlling party or group, or transferee, as the case may be, is an Affiliate of a Party or any of the persons holding the voting securities of such Party as of the Effective Date of this Agreement, shall not constitute a “Change of Control.”

- 1.4 A **“Force Majeure Event”** shall mean any event or cause beyond the control of the impacted Party, including but not limited to acts of God, acts or omissions of any government or agency thereof, tariffs/taxes, rebellion, insurrection, riot, sabotage, invasion, quarantine, epidemic or health crisis, restrictions, transportation embargoes, non-Nedap software or hardware, failure or delay of the Internet, non-performance or late performance of suppliers of Nedap, etc....
- 1.5 **“Harmful Code”** means a virus, drop dead device, Trojan horse, time bomb, back door device, bot, or any other software routine that is harmful, destructive, disabling or that is meant or designed to assist in or enable theft or alternation of data or to allow access to, or use of, a computer system by an unauthorized person, or that otherwise disrupts or impairs the normal operation of a computer system.

2 APPLICABILITY

- 2.1 These LuxonCloud Solution – Terms of Subscription, including the Appendices thereto, shall apply to any requests, offers and/or Order Forms relating to the provision of (elements of) the LuxonCloud Solution and related support services and products by Nedap to Customer.
- 2.2 Customer’s terms and conditions of whatever kind, whether set forth on Customer’s general terms and conditions, purchase order, acknowledgment or confirmation, are expressly superseded by this Agreement.
- 2.3 In the event of any conflict or inconsistency between an Order Form and the terms of these Luxon Cloud Solution – Terms of Subscription, including its Appendices, the Order Form shall prevail.

3 THE SERVICES

- 3.1 As from the date set out in the Order Form (the **“Effective Date”**) and for the Term of the Agreement including the Service Level Agreement, subject to Customer timely paying the fees and charges set out in clause 12.1 and meeting its other obligations under the Agreement, Nedap shall:
 - a) make the elements of the LuxonCloud solution described in the Order Form (the **“LuxonCloud”** or the **“LuxonCloud Solution”**) available to Customer by means of “software as a service.” This means that the LuxonCloud Solution is hosted in one or more Nedap data centers and is made accessible to Customer via the Internet;
 - b) grant Customer a limited, non-exclusive and non-transferable right for the term of the Agreement to access and use the LuxonCloud Solution in accordance with the terms of the Agreement;
 - c) supply Customer with up-to-date documentation of the LuxonCloud Solution via the Customer Portal. The **“Customer Portal”** is the LuxonCloud Solution website where Customer can find documentation and information with respect to the LuxonCloud Solution and other Nedap products and services;
 - d) change the Luxon Light Control setting after receipt of the Change Request Form as mentioned in the Service Level Agreement;
 - e) subject to clauses 4 and 7 of these LuxonCloud Solution – Terms of Subscription, provide reasonable assistance in the implementation and roll-out of the LuxonCloud



Solution and provide any other professional services set out in the Order Form; and

- f) provide support and maintenance services in relation to the LuxonCloud Solution to Customer, as set out in more detail in clause 5 and Appendix 1.
- 3.2 Nedap will create an administration account for Customer in LuxonCloud so that Customer can access the LuxonCloud Solution and if applicable the Support Portal. Customer is responsible for all activities that occur under this administration account regardless of whether the activities are undertaken by Customer or an employee, contractor, consultant or other auxiliary person of Customer. Except to the extent caused by Nedap's attributable breach of this Agreement, Nedap is not responsible for unauthorized access to Customer's administration account, or any related information. Customer will notify Nedap immediately if it believes an unauthorized third party may be using its account or if Customer's account information is lost or stolen.
- 3.3 Nedap may change, extend, enhance, or deprecate (elements of) the LuxonCloud Solution, or change or remove or add features or functionality of or to the LuxonCloud Solution from time to time. Nedap will notify Customer in advance of any material changes to or discontinuation of elements of the LuxonCloud Solution. When extensions, enhancements or added functionality of the LuxonCloud Solution are made available to Customer, the terms and conditions of the Agreement will govern Customer's use and access to such extensions, enhancements or added functionality.
- 3.4 Customer agrees that Nedap may collect performance data related to the LuxonCloud Solution for Customer's use and use the same on an aggregated level for its own business purposes, such as statistical analysis and service enhancement and improvement.
- 3.5 If and when Nedap, in providing the LuxonCloud Solution, makes available to Customer software from a third party, Customer shall be bound by the (license) terms imposed by such third parties in relation to such software, provided that Nedap has supplied Customer with a copy of such (license) terms, via the Support Portal or otherwise.

4 IMPLEMENTATION AND ROLL-OUT

- 4.1 Customer shall be responsible for:
- a) installing the hardware and any software and follow up on the recommendations of the business partner of Nedap that provided the Nedap hardware to the Customer; and
 - b) building and maintaining the interfaces to be put in place between the LuxonCloud Solution and Customer's software system or any other systems, and for making sure that the interfaces are adapted if necessary when adjustments are made to the LuxonCloud Solution by Nedap; and
 - c) commissioning the LuxonCloud Solution and signing the commissioning documents prior to the going live date of the LuxonCloud Solution.
- 4.2 If so agreed between Customer and Nedap, Nedap shall reasonably assist Customer in the activities set out in clause 4.1 of these LuxonCloud Solution – Terms of Subscription, e.g. by responding to questions, by assisting in integration activities, by training the Customer's employee's ("train the trainers"), by adjusting software code (e.g. of APIs or other tools) for the purpose of interfacing with Customer or third

party systems, etc. Nedap and Customer will detail the assistance to be provided by Nedap in the Order Form, and Nedap will invoice Customer for such assistance on a time and material basis.

- 4.3 Upon activation of a Customer in the LuxonCloud Solution, the commissioning for that Customer shall be deemed to have ended and Customer's obligation to pay the yearly subscription fee for that Customer shall commence.

5 MAINTENANCE AND SUPPORT SERVICES

- 5.1 Nedap shall provide Customer with reasonable remote support services and corrective maintenance services in relation to the LuxonCloud Solution, which shall consist of the following services (jointly "**Maintenance and Support Services**"):
 - a) Service desk support to Customer;
 - b) Corrective maintenance, including problem management; and
 - c) New versions of the LuxonCloud Solution, all as further specified in Appendix 1.
- 5.2 Nedap shall use commercially reasonable efforts to ensure that the Maintenance and Support Services are available to Customer from 8.30am until 5.00pm ET from Monday up to and until Friday, excluding public holidays in the United States ("**Working Days**").
- 5.3 Within the context of the Maintenance and Support Services:
 - a) "**support**" is the support provided by Nedap to Customer regarding questions and/or Incidents arising from the use of the LuxonCloud Solution or other Nedap products and/or services in accordance with the Agreement as further described in Appendix 1;
 - b) an "**Incident**" is an event that deviates from the (expected) standard operation of the LuxonCloud Solution. The event can relate to the LuxonCloud Solution service or the LuxonCloud Solution software program. Even though the effect may be small or even transparent to the Customer it is still classified as an Incident. Incidents typically trigger the generation of an error report by the LuxonCloud Solution software program or the LuxonCloud Solution service; and
 - c) a "**Problem**" is a fault in the LuxonCloud Solution, identified based on repeating Incidents with similar symptoms.
- 5.4 Nedap shall only provide Maintenance and Support Services in relation to the most recent version of the LuxonCloud Solution.
- 5.5 Any maintenance and support activities not covered by clauses 5.1 and 5.4 of these LuxonCloud Solution – Terms of Subscription shall be provided only on the basis of a separate accepted Order Form (or other agreement between Nedap and Customer) and, unless agreed otherwise, charged on a time and material basis (e.g. additional support, corrective maintenance when any exceptions apply, etc....)
- 5.6 In order for Nedap to meet its obligations under this clause 5 and Appendix 1, Customer is required to uphold its part in the procedures described in the Agreement, among which:
 - a) Customer shall have the hardware and any software properly installed and will have a stable Internet connection in place at all times between the hardware installed and the Luxon server, as described in the installation manual;



- b) Customer will ensure that any mobile devices and web browser(s) used by Customer to operate the LuxonCloud Solution are fit for such purpose. Nedap will not be responsible for any issues arising with the LuxonCloud app that arise as a result of difficulties with a web browser, device, or third-party apps running on Customer devices.
 - c) Customer will provide the Nedap service desk with all available and reasonably requested information (including, but not limited to, documentation and data) necessary to diagnose, investigate and resolve incidents, problems or other issues related to support requests as can reasonably be expected;
 - d) if an Incident or other issue cannot be reproduced, Nedap cannot be held responsible to solve the report or service call which has been submitted to the Support Portal;
 - e) Customer will provide, operate and maintain, at its expense, all of Customer's software, hardware, infrastructure, communication devices and services necessary for Customer to access and use the LuxonCloud Solution; and
 - f) Customer will notify Nedap of any errors, omissions or deficiencies in the LuxonCloud of which Customer becomes aware.
- 5.7 Any support, corrective maintenance and other services performed in relation to the LuxonCloud Solution that was caused, wholly or partly, by any of the following circumstances, shall not be in scope of the standard Maintenance and Support Services:
- a) Incidents, Problems or other issues that result from Customer's use of the LuxonCloud Solution in breach of the Agreement or any applicable laws or regulations;
 - b) modifications made to the LuxonCloud Solution by any party other than Nedap (unless approved in advance and in writing by Nedap);
 - c) willful misconduct or gross negligence by Customer, or any of its users;
 - d) requests for Customer-specific modifications that are implemented in the LuxonCloud Solution (e.g. configurations, Customer-specific interfaces, etc.), as these activities are not covered by the subscription fee set out in the Order Form; or
 - e) any issues arising with the LuxonCloud Solution that arise as a result of difficulties with Customer's and Customer Store's web browsers and mobile devices to operate the LuxonCloud Solution or third-party apps running on the device.
- Any such out-of-scope services will be charged by Nedap on a time and material basis.
- 6 SERVICE LEVELS**
- 6.1 Nedap shall use commercially reasonable efforts to meet the service levels or services as set out in Appendix 1.
- 7 PROFESSIONAL SERVICES**
- 7.1 If professional services will be provided by Nedap, such professional services will be detailed in the Order Form, and they will be provided subject to the terms of this clause 7 and the specific additional arrangements in the Order Form.
- 7.2 Nedap shall only provide professional services on Working Days, unless explicitly otherwise agreed in the Order Form.
- 7.3 Nedap will provide the professional services with due care and in accordance with the arrangements and procedures agreed with Customer in writing. Professional services are always performed on a commercially reasonable effort basis and will not constitute result-oriented obligations for Nedap. If the provision of professional services is to be performed by a specific individual, Nedap shall at all times be entitled to replace this individual with one or more other individuals with the same or substantially similar qualifications.
- 7.4 Nedap shall periodically update Customer on the progress of the professional services via the contact person designated by Customer.
- 7.5 Customer shall notify Nedap in advance of any circumstances that affect or may affect the provision of professional services by Nedap, such as the method of reporting, the issues that Customer wishes to focus on, Customer's priorities, the availability of Customer's resources and personnel, special facts and circumstances of which Nedap may not be aware.
- 7.6 Customer shall be responsible for the further distribution and examination of the information provided by Nedap within Customer's organization and shall assess this information and notify Nedap accordingly.
- 7.7 Customer is obligated to provide access to all necessary documents and files that are required to configure the solution as well as remote accessibility to necessary software components. Customer shall at all times guarantee that all materials, information, software, procedures and instructions that it makes available to Nedap for the purpose of providing the professional services are accurate and complete.
- 7.8 In connection with the continuity of the professional services, Customer shall designate a contact or contacts who will act in this capacity during the period wherein the professional services are performed. Customer's contacts shall have the necessary experience, specific relevant knowledge and an insight into Customer's desired objectives.
- 7.9 Any changes with respect to the scope of the professional services and/or any agreed deliverables shall be agreed in writing by the authorized representatives of both Parties. Nedap shall not be obligated to undertake the activities in connection with such change(s) until the Parties have reached full written agreement on the consequences to the scope, price and/or (time) schedule of the planned change(s).
- 8 HARDWARE**
- 8.1 The hardware required for the LuxonCloud solution ("Hardware") shall be ordered by the Customer, provided for and installed by a business partner of Nedap.
- 8.2 Nedap will not enter into any contractual obligations regarding the Hardware with the Customer except as set forth in this Agreement.
- 9 SECURITY AND BUSINESS CONTINUITY**
- 9.1 Nedap is aware that the security of the data and information submitted by or for Customer into the LuxonCloud Solution or collected and processed by or for Customer using the LuxonCloud Solution (the "Customer Data") is important. Nedap has therefore implemented the following measures designed to protect the security of the Customer Data stored in the LuxonCloud Solution:
- a) The data centers, in which the LuxonCloud Solution is hosted, have the following certifications: ISO 27001, PCI-



DSS, ISO 9001, ISO 50001, ISO 14001, and ISAE 3402 type II;

- b) The data that is exchanged between Customer on the one hand and the LuxonCloud Solution on the other hand is encrypted during transit;
- c) Nedap has set security requirements that the Customer must apply at all times such as the use of passwords when accessing the LuxonCloud Solution. The passwords must be kept safe by Customer so no unauthorized use or entrance can occur.

10 **Warranty and Disclaimer**

- 10.1 Nedap warrants to Customer that: (a) the LuxonCloud Solution will perform substantially in accordance with the applicable Documentation during the Term, subject to this Agreement; and (b) Nedap will not materially decrease the functionality of the LuxonCloud Solution during the Term.
- 10.2 Nedap warrants to Customer that any services provided hereunder will be performed in a professional manner, in accordance with industry standards and by qualified individuals. This warranty shall be valid for thirty (30) days from completion of service. Customer's sole and exclusive remedy and Nedap's sole and exclusive liability for any failure of such services to conform to this warranty shall be for Nedap to re-perform the non-conforming services.
- 10.3 Nedap provides the following Hardware warranty:
 - a) Nedap retains full title of all Hardware delivered to Customer in accordance with the Order Form until such time as all amounts owed by Customer to Nedap pursuant to the Agreement have been paid in full.
 - b) The warranty period for Hardware is 12 (twelve) months from the date of first delivery of the Hardware to Customer or a Customer location, unless Nedap has indicated a different warranty period to Customer in the Order Form.
 - c) Nedap's repair and return policy and procedures, which are available via the Support Portal, including the warranty policy that is a part thereof, shall apply to any defective Hardware that has been delivered under this Agreement.
 - d) To meet its warranty obligations, Nedap shall, at its sole discretion, either replace the defective Hardware with new Hardware free of charge, or repair the defective Hardware free of charge. The remedies in this clause 10 shall constitute Customer's and the Customer Stores' sole remedy.
 - e) The warranty does not apply if:
 - the warranty period has expired;
 - products are not properly packaged when shipped for repair;
 - products are damaged mechanically, by water or by overvoltage;
 - products show defects or failures other than the failures described on the corresponding RMA request form;
 - products have been used incorrectly;
 - products have been repaired by someone other than Nedap without Nedap's prior written consent;
 - products have been (technically) modified by someone other than Nedap without Nedap's prior written consent;

- the defect in the product results from Customer's or a Customer Store's or a Customer user's conduct, including from the connection of the product with a third-party product;
- products show no defect at all.

10.4 EXCEPT AS EXPRESSLY PROVIDED IN SECTION 10.1, 10.2, and 10.3, ALL SERVICES ARE PROVIDED "AS IS" AND NEDAP AND ITS AFFILIATES MAKE NO WARRANTIES OF ANY KIND, WHETHER WRITTEN OR ORAL, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, NON-INFRINGEMENT, OWNERSHIP, QUIET ENJOYMENT, SECURITY OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE, ALL OF WHICH ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEDAP AND ITS AFFILIATES SPECIFICALLY DISCLAIM ANY REPRESENTATION OR WARRANTY (A) THAT THE LUXONCLOUD SOLUTION WILL PERFORM CONTINUOUSLY OR WITHOUT INTERRUPTION OR BE BUG OR ERROR-FREE, (B) THAT THE LUXONCLOUD SOLUTION WILL MEET CUSTOMER'S, ANY OF ITS AFFILIATES' OR ANY USER'S REQUIREMENTS, OR (C) THAT ANY OR ALL DATA PROVIDED THROUGH THE LUXONCLOUD SOLUTION WILL BE ACCURATE, UP-TO-DATE, COMPLETE OR FREE OF HARMFUL COMPONENTS OR THAT ANY DATA WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED.

11 **CUSTOMER OBLIGATIONS**

- 11.1 Customer shall:
 - a) be responsible for the quality, completeness, accuracy, and lawfulness of the Customer Data and the means by which Customer acquired such Customer Data;
 - b) be responsible for all non-Nedap hardware or software used by it in combination with the LuxonCloud Solution;
 - c) use reasonable efforts to prevent unauthorized access to or use of the LuxonCloud Solution by any person or entity, and notify Nedap promptly of any such unauthorized access or use;
 - d) use the LuxonCloud Solution only in accordance with Nedap's online user guides for the LuxonCloud Solution, which are accessible via the Support Portal, and in accordance with applicable laws and government regulations; and
 - e) cooperate with Nedap in order to enable Nedap to meet its obligations under the Agreement, e.g. by timely providing input, data and information reasonably requested by Nedap and ensuring that the same is accurate, correct and complete.
- 11.2 Customer shall not:
 - a) make the LuxonCloud Solution available to, or use the LuxonCloud Solution for the benefit of, anyone other than Customer and only use the LuxonCloud Solution for the Customer's internal business purposes;
 - b) create derivative works, decompile, decrypt, disassemble, modify, or reverse engineer the LuxonCloud Solution in any way;
 - c) (re)sell, (sub)license, distribute, rent or lease the subscription license of the LuxonCloud Solution or any part thereof;



- d) frame or mirror any part of the LuxonCloud Solution, or include the LuxonCloud Solution in a service bureau or outsourcing offering;
 - e) copy any features, functions or graphics of the LuxonCloud Solution for any purpose other than what is expressly permitted in this Agreement;
 - f) upload, send, store, or authorize a third party to upload, send or store, spam, unlawful, infringing, obscene or libelous material, or any Harmful Code (as defined in clause 1.4), in, through or with LuxonCloud;
 - g) attempt to gain unauthorized access to, or disrupt the integrity or performance of the LuxonCloud Solution;
 - h) use any intellectual property rights and or proprietary materials contained in or accessible through LuxonCloud for the purpose of building a competitive or similar product or service, or copying its features or user interfaces;
 - i) use the LuxonCloud Solution for any unlawful or illegal activity;
 - j) delete, alter, or obscure any disclaimers, warnings, trademark, copyright or other proprietary notices accompanying the LuxonCloud Solution;
 - k) access the LuxonCloud Solution with an intention to probe, scan or test the vulnerability of any systems or networks, or to breach or circumvent any security or authentication measures; or
 - l) disclose the login information, such as passwords, to Customer's LuxonCloud Solution account, or otherwise grant any rights to the LuxonCloud Solution, to any third party.
- 11.3 Customer shall be responsible for the compliance by its users of the LuxonCloud Solution with the obligations under this Agreement. Any acts or omissions by its user will be deemed to be Customer's acts or omissions, and Customer will be deemed to have permitted or facilitated any such acts or omissions.
- 11.4 Should Customer not (timely) fulfill any of its obligations or responsibilities under the Agreement, this may affect any time periods for completion indicated by Nedap, which may then be extended accordingly. Nedap is also entitled to invoice Customer for additional costs that are incurred by Nedap as a result of Customer not meeting its obligations or responsibilities, on a time and materials basis.
- 12 PRICES AND PAYMENT**
- 12.1 In addition to the time and material charges for any professional services provided by Nedap (e.g. assistance in implementation/roll-out, roadmap acceleration developments, termination assistance, or if out-of-scope maintenance or support is provided by Nedap), Customer shall pay a fixed yearly subscription fee to Nedap. The subscription fee is payable promptly following activation of a Customer account in the LuxonCloud Solution. The amount of the subscription fee is set out in the Order Form and covers the use of the LuxonCloud Solution and the Maintenance and Support Services (all subject to the limitations and exceptions in this Agreement, including in Appendix 1).
- 12.2 Customer is responsible for paying any taxes, levies and duties, as well as of any expenses to be incurred by Nedap within the context of performing its obligations under the Agreement.
- 12.3 The subscription fee or any other amounts specified in the Order Form may be adjusted annually to reflect price inflation in accordance with the CPI Index "CBS Consumer Index for Households."
- 12.4 Invoices for the subscription fees will be submitted by Nedap on a yearly basis and will be based on the number of nodes that are live ('activated') within the LuxonCloud Solution at the annual anniversary date of this Agreement.
- 12.5 Customer shall provide complete and accurate billing and contact information to Nedap and shall notify Nedap of any changes to such information.
- 12.6 Customer shall pay Nedap's invoices within thirty (30) calendar days of the invoice date via a credit card payment or a bank transfer into the account number specified by Nedap in the invoice. In the event of late payment of an invoice, the amount payable by Customer may be increased with a rate equal to the higher of 1.5% per month or the maximum rate allowed by applicable law, which shall be calculated starting from the date that is 30 days of the invoice date and ending on the date on which effective payment has taken place.
- 12.7 Disputed invoices shall be reported to the nominated Nedap Customer account manager within five (5) Working Days of receipt of the invoice by Customer.
- 12.8 If any amounts due to Nedap are thirty (30) days or more overdue, then Nedap may, without limiting its other rights and remedies, suspend access to the LuxonCloud Solution until such amounts have been paid in full, provided that Nedap has given Customer at least ten (10) days' prior notice that the amounts are overdue in accordance with clause 23. Nedap shall not exercise its rights under this clause if Customer is timely disputing amounts that have been invoiced reasonably and in good faith and is cooperating diligently to resolve the dispute.
- 13 CUSTOMER DATA**
- 13.1 Customer represents, warrants, and covenants that Customer is (and shall remain) the owner of all right (including intellectual property rights), title and interest in and to the Customer Data. Customer grants Nedap a limited, royalty-free, non-transferable, non-exclusive license to use the Customer Data for the purpose of meeting its obligations under the Agreement, for the purpose of monitoring compliance with the Agreement and for statistical purposes, and to permit sub-contractors to do the same, in each case, during the Term of the Agreement. To the extent applicable, Customer grants Nedap the right to create aggregated data sets using Customer Data, and grants Nedap a perpetual, royalty-free and irrevocable license to use aggregated Customer Data in the context of Nedap's business and for the improvement of Nedap's products and services.
- 13.2 Nedap shall logically segregate all Customer Data and Customer's Confidential Information (as defined in clause 15) from that of Nedap's other customers, and shall only edit the Customer Data in the databases of the LuxonCloud Solution (e.g. restoring a backup) after having received written authorization to do so from Customer.
- 14 INTELLECTUAL PROPERTY RIGHTS**
- 14.1 Nedap and/or its Affiliates and/or its licensor(s) are and shall remain the owner(s) of all right (including intellectual property rights), title and interest in and to the LuxonCloud Solution, all documentation related to the LuxonCloud Solution and all other Nedap products.



14.2 Customer shall notify Nedap promptly after becoming aware of any claim that the LuxonCloud Solution or any elements thereof infringe the intellectual property rights of a third party. It shall permit Nedap to conduct any negotiations and litigation to settle such claim, it shall not make any admission in respect of such claim without Nedap's prior written consent, and it shall upon Nedap's written request immediately cease all use of the LuxonCloud Solution.

14.3 If the LuxonCloud Solution or any elements thereof are alleged to, or are held to, constitute an infringement of the intellectual property rights of a third party, then Nedap may do any or all of the following, at its own option and sole discretion:

- a) make all reasonable attempts to procure for Customer the right to continue selling and servicing the alleged infringing elements;
- b) modify or replace the infringing elements so as to avoid the infringement; or
- c) terminate Customer access to the infringing elements of the LuxonCloud Solution (or the complete LuxonCloud Solution if required in Nedap's reasonable opinion) and refund any prepaid subscription fees covering the remainder of the Term relating to such infringing elements to Customer.

The obligations in this clause 14.3 shall constitute Customer's sole remedy in relation to any infringement claims made in relation to the LuxonCloud Solution or any elements thereof.

14.4 Nedap shall have no obligations under clause 14.3 if Customer has not met its obligations under clause 14.2 in full or if the (alleged) infringement is caused by (i) any use of the LuxonCloud Solution by Customer in breach of the conditions of this Agreement, or (ii) any use of the LuxonCloud Solution in combination with equipment, software or other devices not supplied by Nedap.

15 CONFIDENTIALITY

15.1 Each Party shall keep the Confidential Information of the other Party confidential and not disclose the Confidential Information to any third party without the other Party's prior written consent.

15.2 "Confidential Information" means the contents of this Agreement, any information (in any form) relating to the LuxonCloud Solution, any other Nedap products or the services provided under this Agreement, Nedap's or the Customer's business, and any other information (in any form) that has been disclosed by or on behalf of a Party in confidence, or which by its nature or the circumstances of disclosure, ought to be regarded as confidential.

15.3 Clause 15.1 of these LuxonCloud Solution – Terms of Subscription does not prevent a Party from disclosing information, which:

- a) was already in its possession without an obligation of confidentiality at the time of disclosure;
- b) was already in the public domain at the time of disclosure, except as a result of a breach of this Agreement; or
- c) is required to be disclosed by applicable law or the rules of a relevant stock exchange, provided that the disclosing Party promptly notifies the other Party of its requirement to disclose and cooperates with the other Party in avoiding or limiting the disclosure.

15.4 Each Party shall:

- a) use the Confidential Information solely for the purpose of performing its obligations or exercising its rights under this Agreement;
- b) only make Confidential Information available to staff and/or subcontractors on a need-to-know basis, and only after having made sure that such staff and/or subcontractors are bound by confidentiality obligations that are at least as strict as those in this Agreement; and
- c) upon the other Party's first written request, promptly return to the other Party, or destroy, all Confidential Information of the other Party in its or any of its subcontractors' possession.

16 DATA PROTECTION

16.1 Terms used in this clause 16 shall have the same meaning given to them under Article 4 of Regulation (EU) 2016/679 ("GDPR").

16.2 If Nedap processes personal data that is used in the course of Customer's use of the LuxonCloud Solution, then Nedap shall do so solely on behalf of Customer and in accordance with the written instructions of Customer as a data processor. Nedap shall not use or otherwise process the personal data for any purpose other than the exercise of its rights and the performance of its obligations under this Agreement. Customer warrants in respect of any personal data it may provide to Nedap that it is authorized to do so and indemnifies Nedap from and against any and all claims relating to a breach of this warranty.

16.3 In connection with the processing of personal data as a data processor, Nedap shall:

- a) take appropriate technical and organizational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure, use or access and against all other unlawful forms of processing, including controls over entry, access, intervention, disclosure, input and preservation of and to the personal data, pseudonymization and encryption, measures that ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services, measures to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident, and a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing. The measures shall ensure an adequate level of protection appropriate to the risks involved in the processing;
- b) monitor and verify compliance with the measures set out under 16.3(a). For this purpose, Nedap has a process in place for regularly testing, assessing and evaluating the effectiveness of those measures
- c) not transfer the personal data out of the European Union, except with due observance of the applicable law to such international transfers of data;
- d) ensure that the personal data is only accessible to staff who need to have access to the data in order to carry out their roles in the performance of Nedap's obligations under the Agreement;
- e) give Customer cooperation, assistance and information as it may reasonably request to enable it to comply with its obligations under any data protection laws, such as to comply with access, correction, data portability and



removal requests of data subjects, and cooperate and comply with the inspections, directions or decisions of any competent data protection authority in relation to personal data, in a timely manner;

- f) notify the Customer if Nedap is of the opinion that an instruction given by them would cause Nedap to act contrary to applicable data protection laws;
- g) notify Customer without undue delay by email of any data breach that resulted or may have resulted in the disclosure of personal data through to the LuxonCloud Solution as soon as reasonably possible after its establishment of a data breach, and take measures in order to remedy the data breach as soon as reasonably possible;
- h) remove the personal data upon termination of this Agreement in accordance with clause 22 of these LuxonCloud Solution – Terms of Subscription;
- i) agree in writing on the obligations of this clause 16 with any sub-processors it engages for the performance of its obligations under this Agreement;
- j) maintain a record of all categories of processing activities carried out on behalf of Customer containing: (a) the name and contact details of Nedap and of Customer, and, where applicable, of the their representative(s); (b) the categories of processing carried out on behalf of each of Customer; (c) where applicable, transfers of personal data to a third country, including the identification of that third country and, if applicable, the documentation of suitable safeguards; (d) where possible, a general description of the technical and organizational security measures referred to in clause 16.3(a) of these LuxonCloud Solution – Terms of Subscription; and
- k) provide Customer without undue delay with written notice of any personal data breach that involves the unauthorized access, use or disclosure of personal data comprised in Customer Data.

17 AUDIT

- 17.1 Customer may request Nedap to conduct an audit of Nedap's performance of this Agreement, during normal business hours of Nedap at Customer's expense upon at least fifteen (15) days prior written notice to Nedap and no more than once per contract year. Any audits shall be conducted in a manner that shall result in minimum inconvenience and disruption to Nedap's business operations and shall only concern the last twelve (12) months of business prior to the beginning of such audit.
- 17.2 Upon a request as in Clause 17.1, Nedap will request a fee estimate from a third-party auditor and present such estimate to Customer for its approval. Upon such approval, Nedap will instruct the third-party auditor and in that context undertakes that each auditor (i) shall sign a confidentiality agreement that is at least as strict as the confidentiality obligations in the Agreement, and (ii) shall comply with any security or other requirements imposed by Nedap.
- 17.3 Nedap shall provide a full copy of the audit report to the Customer. The Parties shall meet to review each audit report as soon as reasonably practical after the issuance thereof, and shall discuss the appropriate manner, if required, in which to respond to the findings of the audit report.

18 LIABILITY

- 18.1 SUBJECT TO CLAUSE 18.3 OF THESE LUXONCLOUD SOLUTION – TERMS OF SUBSCRIPTION AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY NOR ITS AFFILIATES, LICENSORS OR OTHER PROVIDERS SHALL BE LIABLE, REGARDLESS OF THE THEORY OF LIABILITY, WHETHER IN NEGLIGENCE, BREACH OF CONTRACT, TORT, MISREPRESENTATION OR OTHERWISE, FOR ANY INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE, FOR ANY EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, FOR ANY LOSS OF PROFIT, DATA, GOODWILL, PRODUCTION, REVENUE OR BUSINESS OPPORTUNITY, FOR ANY MISSED OR ANTICIPATED SAVINGS, FOR ANY INCREASE OF (INSURANCE) PREMIUMS, OR FOR ANY LOSS OR DAMAGE RESULTING FROM INTERRUPTIONS IN THE FUNCTIONING OR AVAILABILITY OF LUXONCLOUD SOLUTION, HOWEVER CAUSED, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.
- 18.2 SUBJECT TO CLAUSE 18.3 OF THESE LUXONCLOUD SOLUTION – TERMS OF SUBSCRIPTION, THE TOTAL CUMULATIVE LIABILITY OF NEDAP AND/OR ANY OF ITS AFFILIATES, FOR ANY LOSS OR DAMAGE INCURRED BY CUSTOMER UNDER OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THEORY OF LIABILITY, WHETHER FOR NEGLIGENCE, BREACH OF CONTRACT, TORT, MISREPRESENTATION OR OTHERWISE, SHALL, IN RELATION TO ALL EVENTS OCCURRING IN A GIVEN CALENDAR YEAR, SHALL NOT EXCEED AN AMOUNT EQUAL TO ONE (1) TIME THE AGGREGATE FEES AND CHARGES PAID BY CUSTOMER UNDER THIS AGREEMENT IN THAT CALENDAR YEAR.
- 18.3 The exclusions and limitations of liability set out in this clause 18 shall not apply if the liability has arisen out of the willful misconduct, fraud or gross negligence of a Party, or by that Party's directors or officers with leadership oversight over the performance of this Agreement.

19 INDEMNITY

- 19.1 Customer shall indemnify, defend, and hold harmless Nedap and its Affiliates and their respective directors, officers, employees and agents from and against any and all losses, damages, liabilities, claims, demands, suits, expenses and any other out-of-pocket costs (including attorney's fees and expenses) which Nedap may incur or be liable for arising out of or in connection with:
 - a) a claim that the Customer Data, or Customer's use of the LuxonCloud Solution in breach of this Agreement, infringes or misappropriates any third party's intellectual property rights or other rights or violates applicable laws or regulations; or
 - b) the Customer sending or storing, or authorizing a third party to send or store, spam, unlawful, infringing, obscene or libelous material, or any Harmful Code, in, through or with the LuxonCloud Solution.

20 FORCE MAJEURE EVENT

- 20.1 If a Party is prevented from or delayed in performing any of its obligations under the Agreement by a Force Majeure Event (with the exception of Customer's payment obligations under this Agreement) then:
 - a) its obligations under the Agreement shall be suspended for as long as the Force Majeure Event continues, but only to



the extent that the Party is prevented or delayed from performing them;

- b) as soon as reasonably possible after the start of the Force Majeure Event, the impacted Party shall notify the other Party of the nature of the Force Majeure Event, the time at which the Force Majeure Event started and the likely effects of the Force Majeure Event on its ability to perform its obligations under the Agreement; and
- c) as soon as possible after the end of the Force Majeure Event, the impacted Party shall notify the other Party that the Force Majeure Event has ended and shall resume performance of its obligations under the Agreement.

21 TERM AND TERMINATION

- 21.1 The Agreement shall enter into force for a period of on (1) years as from the Effective Date and will renew automatically unless a Party has issued a termination notice 1 month prior to each End Date of this Agreement.
- 21.2 After the first year of the Agreement, either Party may prematurely terminate (*opzeggen*) the Agreement for convenience by giving one month's notice.
- 21.3 In case Nedap terminates the Agreement for convenience as described in article 21.2 and Customer has prepaid a subscription fee, Nedap will refund the pro rata amount of the prepaid subscription fee for the period that the Agreement is prematurely ending.
- 21.4 Throughout the whole duration of the Agreement and with the exclusion of article 21.3:
- 21.5 Each Party is able to terminate this Agreement for cause, if the other Party has breached this Agreement and after having received a written notice thereof, is not able to cure the breach within 30 business days.
- 21.6 In addition, Nedap shall be entitled to terminate the Agreement, with immediate effect or with effect from a later date at Nedap's discretion, if a change of control occurs in relation to the ownership of Customer.
- 21.7 Nedap shall also be entitled to terminate the Agreement by giving Customer written notice, taking into account a notice period of at least 10 days, if any amount due to Nedap by Customer are 30 days or more overdue.

22 EFFECT OF TERMINATION

- 22.1 Subject to clause 22.2 of these LuxonCloud Solution – Terms of Subscription and subject to any rights or obligations which have accrued under the Agreement prior to the effective date of termination, upon the effective date of termination of the Agreement, irrespective of the ground of termination, neither Party shall have any further obligation to the other Party under the Agreement, and:
 - a) all rights granted by Nedap to Customer under the Agreement will cease to exist, and Customer's access to and right to use the LuxonCloud Solution will terminate;
 - b) Customer shall (i) cease use of the LuxonCloud Solution and Nedap's Confidential Information, and (ii) remove Nedap's Confidential Information from its computer hardware and storage media and return the same to Nedap; and
 - c) unless required for the performance of its activities pursuant to clause 22.3 below, Nedap shall (i) cease use of all Customer Data and Customer's Confidential Information, (ii) remove such Customer Data and

Customer's Confidential Information from its computer hardware and storage media, and (iii) at Customer's expense, transfer to Customer such Customer Data and Customer's Confidential Information in a commercially reasonable format and on media reasonably requested by Customer.

- 22.2 Notwithstanding the termination of the Agreement, all rights and obligations of the Parties, which by their nature survive the termination of the Agreement shall survive such termination.
- 22.3 Upon Customer's request, Nedap shall provide commercially reasonable termination assistance services to Customer, e.g. by responding to questions, by assisting in integration and/or data conversion activities, etc.... Nedap will invoice Customer for such assistance on a time and material basis.
- 22.4 Customer acknowledges and agrees that Nedap will remove all Customer Data from the LuxonCloud Solution and destroy the same on the effective date of termination of the Agreement, unless Nedap and Customer have made deviating arrangements in writing (e.g. as part of the termination assistance services). Nedap will in any event never keep any Customer Data in its possession for longer than the date that is 6 (six) months after the effective date of termination, and Nedap will destroy any Customer Data still in its possession on that date. Notwithstanding anything to the contrary in this Section 22, the Parties agree that Nedap may maintain any aggregated Customer Data.

23 NOTICES

- 23.1 Any notice, request, demand, consent or other communication required or permitted under the Agreement shall be in writing and shall be given by personal delivery (including courier), prepaid registered or certified mail, or e-mail, addressed to the Party for which it is intended at the address set out in the Order Form.
- 23.2 A notice shall be deemed to have been given on the day of delivery or transmission if during normal business hours, or, if after normal business hours, on the next following business day, or, if mailed by registered or certified mail, on the day which is 5 (five) Working Days thereafter. Either Party may change its address details for notices upon notice to the other Party in accordance with this clause 23.

- 24 **EXPORT COMPLIANCE.** The Service and any hardware may be subject to export laws and regulations of the United States and other jurisdictions. Without limitation, Customer shall not, and shall not permit its Affiliates or users to, access, use, export or re-export the Service, or any hardware provided by Nedap, or use the Service to access, use, export or re-export Customer Data, in or to a U.S.-embargoed country or in violation of any applicable export law, regulation, order or sanction. Customer represents that neither it nor any of its Affiliates nor any User is named on any U.S. government denied-party list.

25 MISCELLANEOUS

- 25.1 The Parties to this Agreement are independent contractors and nothing in this Agreement or a Local Agreement or Order shall be deemed to have created a joint venture, partnership, agency or employment relationship, or franchise between the Parties.



- 25.2 The Appendices form an integral part of these LuxonCloud Solution – Terms of Subscription. If provisions in an Appendix contradict or are inconsistent with the provisions in the body of the LuxonCloud Solution – Terms of Subscription, the provisions in the LuxonCloud Solution – Terms of Subscription shall take precedence.
- 25.3 No modification or amendment of the Agreement shall be effective unless in writing signed by authorized representatives of both Parties.
- 25.4 Nedap may, upon written notice to Customer, transfer and assign any or all of its rights and obligations arising out of the Agreement to any third party, provided that the assignee shall agree in writing to be bound by the Agreement. Upon such an assignment, Nedap shall have no further obligations under this Agreement with respect to any of the rights and obligations so assigned.
- 25.5 Customer is not permitted to assign or transfer any of its rights or obligations under this Agreement to any third party without the prior written consent of Nedap. This Agreement shall be binding upon the Parties and their respective successors and permitted assignees. Any attempted assignment in violation of this clause 25.4 shall be void and have no legal effect.
- 25.6 Except as expressly provided in this Agreement, only a Party or a Party's successors or permitted assignees may enforce the terms of this Agreement. Nothing in this Agreement shall be construed as giving or creating any right, remedy or claim hereunder to any third parties, including but not limited to any end users, suppliers, or vendors of a party, or to create any obligations of a party to any such third parties, or to give any right to either party to enforce this Agreement on behalf of a third party. Any person or entity which is not a party to this Agreement shall have no right to enforce any part of it.
- 25.7 Customer waives any right to set off any amounts due by it under this Agreement, or to suspend its performance under this Agreement in the event of a non-performance by Nedap.
- 25.8 If any provision of this Agreement is held to be invalid or unenforceable, then such provision shall (so far as it is invalid or unenforceable) be given no effect and shall be deemed not to be included without invalidating any of the remaining provisions of this Agreement. The Parties shall then replace the invalid or unenforceable provision by a valid and enforceable substitute provision, with an effect that is as close as possible to the effect intended with the invalid or unenforceable provision.
- 25.9 This Agreement sets forth the complete and entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, proposals and representations, written or oral, concerning such subject matter. Any terms appearing on any of Customer's general terms and conditions, purchase order, acknowledgment or confirmation that are different from or in addition to the terms of this Agreement or the applicable Order Form shall not be binding on the parties, even if signed and returned.
- 25.10 Nedap is allowed to amend the terms and conditions of this Agreement and/or its Appendix at any time and will inform Customer accordingly.
- 25.11 If Nedap makes available a different language version than the English version of these LuxonCloud Solution – Terms of Subscription, and there should be any difference in the meaning or interpretation of such different language versions, the English version shall be leading and take precedence over other language versions, if any, regardless of whether such other language version was signed.
- 26 APPLICABLE LAW AND DISPUTE RESOLUTION**
- 26.1 This Agreement shall be exclusively governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without having regard to the conflict of law rules. The provisions of the United Convention on Contracts for the International Sale of Goods are excluded.
- 26.2 In the event a dispute arises under this Agreement, either Party may refer such dispute in writing for final settlement to a joint meeting of the representatives of both Parties that are responsible for the management and performance of this Agreement. For Nedap, this representative is the Customer account manager or its appointed representative. If those representatives fail to reach agreement within 10 (ten) Working Days of the referral, each Party may refer the dispute in writing for final settlement to the respective retail managers of the Parties. Those representatives shall consider the dispute as soon as practicable and in any event within a period of 10 Working Days (or such other period agreed in writing) following the referral.
- 26.3 Any and all disputes between the Parties arising from or in connection with this Agreement and any agreement, arrangement or undertaking arising therefrom shall, after exhaustion of the escalation procedure in clause 26.2, be exclusively submitted for binding arbitration. The arbitral tribunal shall consist of three (3) arbitrators and shall be decided in accordance with the rule of law and the then-current Commercial Arbitration Rules of the American Arbitration Association (the "AAA"). Each Party shall bear its own expenses associated with the arbitration; the Parties shall equally share the filing and other administrative fees of the AAA and the expenses of the arbitrator. The arbitrator shall not have the power to award damages in excess of actual damages, such as punitive damages. Consolidation of arbitral proceedings is excluded. The arbitration shall be conducted in the English language and the place of arbitration shall be Boston, Massachusetts.



APPENDIX 1 - SERVICE LEVEL AGREEMENT

A. GENERAL

This Service Level Agreement (SLA) describes the service level goals of the LuxonCloud Solution and remote Maintenance and Support Services in relation to the LuxonCloud Solution. The purpose of this SLA is to make arrangements about the quality of the service provision and the associated reporting. In this SLA, all expressions used shall have the meaning assigned to them in the body of the LuxonCloud Solution – Terms of Subscription, unless a deviating definition is provided in this SLA, in which case the definition provided in this SLA applies.

B. SERVICE LEVEL

Nedap shall use commercially reasonable efforts to ensure that the LuxonCloud Solution is available to Customer for ninety-nine percent (99%) of the time, calculated over a period of one year quarter, with the exception of: (i) planned downtime e.g. for scheduled maintenance or emergency maintenance (for which Nedap shall give Customer written notice in advance by e-mail), and (ii) unavailability caused by a Force Majeure Event (as defined in clause 1.4) and (iii) the effect of any action taken by Customer, the effect of any third party software, hardware, application, content or service, and any suspensions permitted under this Agreement. Customer acknowledges that the uninterrupted availability of LuxonCloud cannot be guaranteed by Nedap, due to amongst others the nature of the Internet and the dependency on third-party software and equipment out of the control of Nedap.

C. REMOTE MAINTENANCE AND SUPPORT

1. Access to the Support Portal

Nedap shall grant Customer access to the Support Portal during the Term of the Agreement through the administration account referred to in clause 3.2 of the LuxonCloud Solution – Terms Of Subscription

2. Luxon Light Control (LLC gateway) setting changes

Luxon Light Control setting changes can be requested by filling out the online 'Change Request form', which can be found in the Customer Portal of the LuxonCloud Solution under widget "help".

The following terms and conditions apply:

- Annually a maximum of twelve (12) remote light control settings Change Requests during the Term of the Agreement are to be performed, free of charge. For any other or additional requests during the year, Nedap will charge extra costs;
- Light setting changes will be implemented on Working Days, and such implementation will commence within twenty-four (24) hours after the Change Request has been received and accepted by Nedap. Customer is responsible for providing correct parameters in online 'Change Request form';
- Luxon Light Control setting changes can affect expected energy savings;
- Nedap will confirm a Luxon Light Control setting change to Customer after implementation;
- Desired Luxon Light Control Setting changes which cannot be done through remote access are not executed and Nedap will inform the Customer accordingly in order for the Customer to check the hardware, if that is the cause of the problem.

3. The LuxonCloud Customer service desk

Nedap has set up a central service desk to provide remote support to Customer.

Tickets:

- a. The Nedap Light Controls service desk can be contacted by Customer using the following methods:

Service desk email support@nedap.com or adam.john@nedap.com

In the first instance, Customer shall report all change requests via the Support Portal or Service desk email.