



## SOFTWARE MAINTENANCE SERVICES TERMS

These Software Maintenance Services Terms apply to any quote, order, order acknowledgment, and invoice, and any sale or provision of standard software maintenance services by LUMENTUM, in addition to LUMENTUM's General Terms and Software License Terms, which are incorporated by reference herein and are either attached hereto, or available at [www.lumentum.com/terms](http://www.lumentum.com/terms) or on request.

### 1. SCOPE AND DEFINITIONS.

**1.1 Scope.** These Software Maintenance Services Terms apply to maintenance services for standard Software. If JDSU performs any services outside the scope of the applicable Software Maintenance Services — including, but not limited to, services requested by Customer in accordance with Section 2.4 (Other Errors) or services required due to actions or events listed in Section 2.5 (Limitations and Exclusions) — such services will be rendered at Customer's expense; provided, however, that LUMENTUM shall not be obligated to perform any services outside the scope of the applicable Software Maintenance Services. LUMENTUM's obligation under these Software Maintenance Terms shall solely be to undertake the agreed services activities and not to achieve certain technical, economical, or other results.

**1.2 Definitions.** The definitions in LUMENTUM's General Terms shall apply in addition to the following definitions:

**"Problem"** means the failure of Software to materially conform to the applicable Documentation.

**"Software Maintenance Period"** means a period of twelve (12) consecutive calendar months commencing on the Software Delivery Date.

**"Update"** means a new version of Software that LUMENTUM makes, at its sole discretion, generally available to subscribers of Software Maintenance Services for such Software.

**"Upgrade"** means any new version of Software other than an Update.

**2. SCOPE OF SOFTWARE MAINTENANCE SERVICES.** During the Software Maintenance Period, LUMENTUM will provide the services described in this Section 2 that LUMENTUM, at its sole discretion, makes generally available to all of LUMENTUM's Software customers (collectively, **"Software Maintenance Services"**).

**2.1 Software Updates.** With respect to Software, LUMENTUM may make available Updates in such form and format and on such media as LUMENTUM, in its discretion, deems appropriate. While LUMENTUM reserves the right not to create any Updates (i.e. nothing herein entitles Customer to receive a minimum number of Updates during the Software Maintenance Period), and to market new versions of the Software as Upgrades or new products for additional consideration, nothing herein shall obligate LUMENTUM to make available, or entitle Customer to receive, any Upgrades and/or new products. Customer may use Updates only to update or replace previous versions; if Customer installs an Update, Customer may not continue to use the previous version separately. Updates are covered by these Software Maintenance Services Terms, but, without limiting Section 4.3 (Disclaimer), are not covered by the warranties applicable to the updated Software. Notwithstanding the foregoing, Customer's use of any Updates shall be subject to the infringement indemnity provisions of LUMENTUM's General Terms and Customer's use of the Updates shall additionally be subject to all license limitations and restrictions contained in the Software License Terms and General Terms applicable to the updated Software. LUMENTUM owns, retains and reserves ownership, title, and all rights and interest, including, but not limited to, all Proprietary Rights in and to the Updates, subject only to the limited rights that LUMENTUM expressly grants herein. Without limiting the foregoing, Customer acknowledges that nothing herein shall constitute a sale of any Updates (or any Intellectual Property in and to Updates) including any copies and portions thereof.

**2.2 Support.** During LUMENTUM's normal support hours, LUMENTUM shall, via telephone, e-mail, or LUMENTUM's technical support website, if any, provide the following services (**"Support"**): (i) respond to Customer's questions regarding Problems; and (ii) if the Authorized Support Contacts report Problems to LUMENTUM with a detailed description of the Problem, use commercially reasonable efforts to correct any reproducible Problem that materially affects the operation of Software by delivering patches, identifying a work-around or detour solution, or specifying a plan for correcting the Problem.

**2.3 Problem Reporting, Response, Resolution, and Escalation.** Customer shall inform LUMENTUM of a Problem by providing the information required to correct the Problem or as otherwise reasonably requested by LUMENTUM, based

on which LUMENTUM will assign to the Problem a severity level. LUMENTUM reserves the right to downgrade at any time the assigned severity level (i) if the Problem is determined to be less severe than originally reported; (ii) as LUMENTUM provides solutions to lessen the impact of the Problem; or (iii) if LUMENTUM is unable to effectively provide Support due to Customer's failure to provide cooperation reasonably requested by LUMENTUM. If LUMENTUM specifies any response and resolution times, such response and resolution times shall constitute targets only.

**2.4 Other Errors.** If LUMENTUM believes that an error reported by Customer may not be due to a Problem or is otherwise outside the scope of the Software Maintenance Services, LUMENTUM will so notify the Customer, who may then either (i) instruct LUMENTUM to proceed with services regarding said error at Customer's possible expense; or (ii) advise LUMENTUM that Customer does not wish the error pursued, in which case LUMENTUM may elect, at its sole discretion, not to pursue the error without liability therefor.

**2.5 Limitations and Exclusions.** LUMENTUM shall not be obligated to provide Software Maintenance Services if Problems are caused by or related to (i) Customer's mishandling, abuse, misuse, or use of the Software other than in accordance with LUMENTUM's operation instructions; (ii) use of the Software with hardware or software that was not expressly specified in writing by LUMENTUM as suited for use with the Software; (iii) changes to the Customer environment, in which the Software was provided; (iv) actions or omissions of persons other than LUMENTUM; (v) installation, maintenance, or repair of Software by someone other than LUMENTUM, except maintenance performed by Customer if and to the extent authorized by LUMENTUM in a duly signed writing; (vi) failure to implement all updates, upgrades, and other new releases of Software made available to Customer (provided, for the avoidance of doubt, that LUMENTUM is not obligated to make available any minimum number of such new releases); or (vii) Force Majeure conditions as defined in LUMENTUM's General Terms. LUMENTUM shall not be obligated to provide Software Maintenance Services for (a) Software that has been modified by someone other than LUMENTUM, unless such modifications were directed or approved by LUMENTUM in writing and made in strict conformance with all specifications and instructions provided by LUMENTUM in such writing; (b) Software that LUMENTUM modified in accordance with Customer's request, specifications, or instructions; or (c) third party products. LUMENTUM shall not be obligated to provide Software Maintenance Services, except for (y) the most recent version of Software and (z) prior versions of Software for a period of twelve (12) months following the issuance of the next version of the Software; LUMENTUM shall have no obligation to provide Software Maintenance Services for any other version of Software or for any version of Software that has been discontinued more than twelve (12) months prior to the then-current date.

**3. PAYMENT.** LUMENTUM may invoice Customer in advance for the performance of Software Maintenance Services, at LUMENTUM's current standard rates, which are available on request. Customer shall make payment within thirty (30) days of the invoice date and in accordance with the General Terms.

### 4. LIMITED WARRANTY AND DISCLAIMER.

**4.1 Limited Warranty.** LUMENTUM will perform Software Maintenance Services substantially in accordance with the applicable documentation made available to Customer regarding the Software Maintenance Services.

**4.2 Exclusive Remedy.** If the Software Maintenance Services materially fail to conform to the limited warranty set forth in Section 4.1 (Limited Warranty), Customer may terminate Software Maintenance Services in accordance with Section 5.2 (Termination for Cause) if LUMENTUM fails to cure a non-conformance within thirty (30) days after receiving Customer's detailed request to cure the non-conformance. Termination shall not affect (i) Customer's obligations to pay for Software Maintenance Services already performed before LUMENTUM receives Customer's request to cure; or (ii) any other obligations of Customer under these Software Maintenance Services Terms. THE REMEDIES EXPRESSLY PROVIDED IN THIS SECTION 4.2 (EXCLUSIVE REMEDY) WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND SHALL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CUSTOMER MAY HAVE AGAINST LUMENTUM WITH

RESPECT TO A NON-CONFORMANCE OF SOFTWARE MAINTENANCE SERVICES OR UPDATES.

**4.3 Disclaimer.** EXCEPT AS SPECIFIED IN SECTION 4.1 (LIMITED WARRANTY), LUMENTUM MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES WITH REGARD TO ANY SOFTWARE MAINTENANCE SERVICES OR UPDATES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LUMENTUM DISCLAIMS ALL IMPLIED WARRANTIES, CONDITIONS, AND REPRESENTATIONS INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, REGARDLESS OF THE LEGAL THEORY ON WHICH SUCH IMPLIED WARRANTY, CONDITION OR REPRESENTATION MAY BE BASED, INCLUDING, WITHOUT LIMITATION, CONTRACT, COURSE OF DEALING, USAGE, OR TRADE PRACTICE. CUSTOMER SHALL HAVE NO WARRANTY CLAIM UNDER SECTION 4.1 (LIMITED WARRANTY), UNLESS LUMENTUM RECEIVES CUSTOMER'S WRITTEN REQUEST TO CURE A NON-CONFORMANCE WITHIN THIRTY (30) DAYS AFTER ITS OCCURRENCE.

## 5. TERM AND TERMINATION.

**5.1 Term and Renewals.** LUMENTUM will provide Software Maintenance Services during the Software Maintenance Period, which shall not be automatically renewed. If Customer wishes to obtain Software Maintenance Services beyond the initial Software Maintenance Period or for additional Software, Customer has to submit a new order. Nothing herein obligates LUMENTUM to accept such order for a subsequent renewal period. Rates for subsequent Software Maintenance Periods may vary. Additional fees may apply if Customer allows the Software Maintenance Services to lapse, and wishes to restart such Software Maintenance Services at some future date.

**5.2 Termination for Cause.** Either party may terminate Software Maintenance Services by written notice, effective immediately, if the other party fails to cure any

material breach of these Software Maintenance Services Terms within thirty (30) days after receiving a written notice from the non-breaching party detailing the alleged material breach.

**5.3 Automatic Termination.** Software Maintenance Services shall be automatically terminated with respect to Software for which the license has expired or was terminated for any reason.

**5.4 Consequences.** Unless LUMENTUM validly terminates Software Maintenance Services for cause due to Customer's material breach of these Software Maintenance Services Terms, or such Software Maintenance Services automatically terminate in accordance with Section 5.3, Customer shall be entitled to receive a proportionate credit equal to any prepaid fees applicable to the terminated portion of the Software Maintenance Period. If Customer validly terminates Software Maintenance Services for cause because of LUMENTUM's material breach of these Software Maintenance Services Terms, Customer shall also be entitled to receive a proportionate credit equal to any fees applicable to the thirty (30) days immediately preceding the termination. Customer shall not be entitled to receive any refunds. If LUMENTUM terminates Software Maintenance Services due to Customer's material breach, Customer shall return to LUMENTUM all Updates, LUMENTUM's Confidential Information and other tangibles and intangibles received in connection with Software Maintenance Services, without retaining any copies thereof and all licenses granted to Customer under these Software Maintenance Services Terms for Updates shall be automatically revoked.

**5.5 Survival.** LUMENTUM's General Terms and Sections 3 (Payment), 4 (Limited Warranty and Disclaimer), and Section 5 (Term and Termination) of these Software Maintenance Terms shall survive any termination of Software Maintenance Services. Customer's licenses to Updates shall survive only so long as Customer continues to fully comply with all provisions of these Software Maintenance Services Terms and LUMENTUM's General Terms.