

## 1. DEFINITIONS AND INTERPRETATION

### 1.1. In these Standard Terms and Conditions of Service:

**"ANDOR"** means Andor Technology Limited or Andor Incorporated as stated and confirmed on a Quotation and/or an AO.

**"AO"** means the acknowledgement of order form (if any) issued by ANDOR to Customer.

**"Commencement Date"** means the date on which the Service Agreement becomes effective as set out in any applicable AO or Service Schedule.

**"Customer"** means the purchaser of the Services as stated in any applicable AO or Service Schedule.

**"Engineer"** means an individual engaged or employed by ANDOR to perform the Services.

**"Equipment"** means the ANDOR product(s) to be serviced by ANDOR for Customer as part of the Services as listed in any applicable AO or Service Schedule.

**"Extended Period"** has the meaning given to it in clause 12.2.

**"Initial Period"** means the initial period for which ANDOR shall provide the Services as set out in any applicable AO or the Service Schedule.

**"Quotation"** means the quotation for Services issued by Andor to Customer in accordance with the Service Schedule.

**"Services"** means the services to be provided by ANDOR to Customer in accordance with the terms of the Service Agreement and as set out in the Service Plan.

**"Service Agreement"** means these Standard Terms and Conditions of Service and any applicable AO, Quotation and/or Service Schedule.

**"Service Fee"** means the fee payable by Customer to ANDOR for the Services as set out in any applicable Quotation, AO or Service Schedule.

**"Service Plan"** means the document(s) forming part of the Service Schedule which describes the services to be performed by ANDOR for Customer.

**"Service Repair Centre"** means an ANDOR dedicated service facility situated in various locations globally.

**"Service Schedule"** means the document(s), including the Service Plan, accompanying these Standard Terms and Conditions of Service detailing the services to be provided by ANDOR to Customer for the Equipment and the Service Fee.

**"Standard Terms and Conditions of Service"** means these standard terms and conditions of service.

**"Term"** means the Initial Period and any Extended Period.

**"Warranty Period"** means the period of ninety (90) days from the date of performance of the Services.

1.2. These Standard Terms and Conditions of Service are an integral part of the Service Agreement between ANDOR and Customer.

1.3. Clause headings shall not affect the interpretation of the Service Agreement.

1.4. A payment shall be deemed made when credited to the payee's bank account and is cleared funds.

1.5. Unless the context otherwise requires, in the Service Agreement words in the singular include the plural and the plural include the singular and each gender includes each other gender.

1.6. Any words in the Service Agreement following the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.7. English is the authentic text of the Service Agreement and all notices or other communications under or relating to it shall be in writing in English. Any translation will be for guidance only.

1.8. A Quotation is not an offer and may be withdrawn or modified; save as otherwise agreed in writing by ANDOR no contract or commitment shall exist until ANDOR sends its AO and/or Service Schedule to Customer or until ANDOR commences work on the Services.

1.9. Save as otherwise expressly agreed in writing by ANDOR, in the event of any inconsistency in the documents comprising the Service Agreement, the following order of prevalence shall apply: (1) any applicable AO (excluding any standard terms and conditions of sale and/or service attached to the AO); (2) any applicable Service Schedule; (3) any applicable Quotation; (4) these Standard Terms and Conditions of Service.

1.10. Reference to a "person" includes any individual, partnership, company, corporation, joint venture, trust, association, organisation or other entity, in each case whether or not having separate legal personality.

1.11. References to attachments, clauses, recitals, annexes and schedules are of or to the same in the Service Agreement unless otherwise stated.

## 2. SCOPE OF THE SERVICES

2.1. ANDOR shall use its reasonable endeavours to provide the Services detailed in any applicable AO or Service Schedule.

2.2. In the event of failure of any Equipment, Customer shall notify ANDOR as soon as possible and assist ANDOR in determining the cause of such failure.

2.3. ANDOR may send a replacement part for Customer to replace a defective part of the Equipment or, if such replacement requires technical skills which Customer does not possess, ANDOR shall either send an Engineer to repair the Equipment in situ or have the Equipment returned to a Service Repair Centre at ANDOR's election, in accordance with clause 6.7.

- 2.4. Component parts of the Equipment will be replaced at ANDOR's absolute discretion. If Equipment cannot be repaired without replacement parts ANDOR shall, at its discretion, provide either new parts or similar parts of equivalent performance to new parts. ANDOR reserves the right to use reconditioned parts, if necessary. Replacement parts shall be the property of Customer and replaced parts shall become the property of ANDOR once the replaced parts have been removed from or replaced in the Equipment. ANDOR may invoice Customer for their replacement value if such parts are not returned to it within ten (10) days of their replacement.
- 2.5. Charges for labour or materials for any service other than the Services shall be invoiced at ANDOR's then current rates less any discounts to be applied at ANDOR's sole discretion.
- 2.6. Reinstallation and training in the use of the Equipment, such as for an affiliate of Customer or at a new Customer location, can be provided by ANDOR at an additional cost. Customer may request a quotation from ANDOR for such reinstallation and training.
- 2.7. If any variation in the Services or the Service Agreement is agreed or is required for compliance with any applicable law, regulation or safety recommendation, Customer shall pay such additional amount as is fair and reasonable and ANDOR shall have reasonable additional time to perform any of its obligations set out in the Service Agreement.

### 3. ELIGIBLE EQUIPMENT

- 3.1. ANDOR shall determine, in its sole discretion, whether equipment of Customer is eligible as Equipment to be serviced by ANDOR pursuant to the Service Agreement.
- 3.2. ANDOR may prior to accepting any order from Customer to provide the Services, carry out at the expense of Customer an inspection of the Equipment as ANDOR reasonably requires. Such inspection shall be charged at ANDOR's then current list price for such inspection.
- 3.3. If ANDOR reasonably determines that the Equipment is not in good operating condition prior to the start of performance of the Services, ANDOR may require Customer to effect such adjustments as it determines necessary and, if ANDOR agrees to provide such adjustments Customer will pay for such work on a time and materials basis. ANDOR reserves the right not to commence performance of the Services until the Equipment is, as determined by ANDOR, in good operating condition.
- 3.4. Customer shall comply with the obligations set out in clauses 5.1 to 5.4 in respect of the performance of any pre-inspection or adjustments performed by ANDOR pursuant to clauses 3.2 and 3.3.
- 3.5. Without limiting any other provision of these Standard Terms and Conditions of Service, the

Equipment must be fully installed and accepted by Customer for performance and adherence to specification using ANDOR's warranty activation acceptance feedback (WAAF) form at the time of installation.

- 3.6. In the event that additional Equipment is agreed to be added to the Service Agreement, a new Service Schedule shall be executed between the parties to identify the new Equipment, the new Service Fee and payment terms (if any).

### 4. SERVICE FEE AND PAYMENT

- 4.1. Subject to any applicable AO, the Service Fee shall exclude value added tax and any other applicable taxes and duties. Unless costed for in any applicable AO or Service Schedule, ANDOR may make reasonable additional charges for complying with any special requirements of Customer. Unless Customer provides ANDOR with appropriate tax exemption certificates, such additional charges shall be billed to Customer as a separate line item on each invoice.
- 4.2. ANDOR shall provide Customer with an invoice detailing the Service Fee and Customer shall pay the Service Fee less any applicable discounts and surcharges within thirty (30) days of the date of such invoice.
- 4.3. Unless specified on the Service Schedule or the AO, ANDOR shall invoice Customer for the Service Fee annually in advance. Monthly, quarterly or semi annual invoices may be requested by Customer at an additional cost of seventy five US Dollars (\$75.00), fifty six Euros (€56) or fifty Great British Pounds (£50) per invoice.
- 4.4. Payment shall be made in either (i) United States Dollars (USD); (ii) Euros (EUR); (iii) Great British Pounds (GBP); or (iv) Renminbi (RMB) as set out in any applicable AO or Service Schedule, clear of any banking transaction charges and without deduction, set off or counterclaim.
- 4.5. ANDOR shall notify Customer ninety (90) days prior to the expiry of the Initial Period or any Extended Period of any increases in the Service Fee greater than five percent (5%) for the next Extended Period.
- 4.6. Time of payment is of the essence of every Service Agreement. Without limiting ANDOR's remedies, if payment is overdue, Customer shall indemnify ANDOR against any legal fees and other costs of collection and (as well after as before judgment) shall pay to it a sum equal to any loss suffered by ANDOR arising from exchange rate fluctuations and interest on such sum and on the amount overdue at four per cent (4%) above the base rate from time to time of Barclays Bank PLC calculated from the date payment fell due until the date of actual payment (or such lesser amount as is the maximum rate permissible by law) and ANDOR may cancel the Service Agreement and any other

- contracts and suspend performance of the Services and suspend deliveries to Customer.
- 4.7. Any payment which would fall due later than it would have done but for delay caused by Customer shall be deemed to fall due when, but for Customer's delay, it might reasonably be expected to have fallen due. ANDOR may delay or withhold performance under the Service Agreement until Customer has made any payment or opened any letter of credit or established any other payment arrangements which are due to be made, opened or established and the time for performance shall be extended accordingly.
- 5. CUSTOMER'S RESPONSIBILITIES**
- 5.1. Customer shall grant full access to and use of its premises, equipment and any necessary information to enable ANDOR to perform the Services during all normal working hours and upon reasonable notice from ANDOR at any other time.
- 5.2. Customer shall ensure that any premises to which ANDOR's employees or agents have access for provision of Services fully comply with health and safety regulations and best practices and Customer will not expose such persons to unnecessary risk or danger to personal safety. Customer shall ensure that ANDOR's personnel are made aware of all relevant safety procedures and regulations.
- 5.3. Customer shall ensure that its employees and agents comply with all reasonable instructions made by ANDOR's employees and agents in the course of provision of the Services or to enable ANDOR to limit any damage to either party, including complying with safety procedures.
- 5.4. Customer warrants that the site where performance of the Services is to take place is in all respects suitable for the safe and lawful performance of the Services.
- 5.5. Customer shall provide all reasonable utilities (including heat, light, electricity and ventilation) and telecommunications required for the performance of the Services.
- 5.6. Customer shall take all precautions to protect its data and shall ensure that a regular back-up arrangement for such data is implemented before and during the provision of the Services. Customer shall be responsible for restoring any lost or corrupted data unless such loss is caused by the negligence or wilful default of ANDOR; where such loss is caused by the negligence or wilful default of ANDOR, ANDOR's liability shall be limited to the reinstatement cost, where reinstatement is possible, of all data proven to have been lost or irremediably corrupted unless such loss or corruption has resulted from the failure of the Customer to take the abovementioned precautions to protect and perform regular back-ups of its data.
- 5.7. Save with ANDOR's prior written consent, Customer undertakes that it will not, during or for a period of twelve (12) months after the provision of the Services has ceased, directly or indirectly solicit any employee of ANDOR or seek to cause him to leave the employment of ANDOR.
- 5.8. Without prejudice to clause 5.7, Customer shall pay to ANDOR a commission fee of twenty seven per cent (27%) of that employee's then current salary including accrued benefits in respect of any employee of ANDOR who is employed or engaged by Customer or any associate of Customer during or within twelve (12) months after the provision of the Services ceased.
- 5.9. Customer warrants that it does and undertakes that it will comply with any applicable data protection legislation from time to time in force.
- 5.10. Customer shall at Ol's request provide adequate security and space at its premises for secure and proper storage of any equipment belonging to or used by ANDOR or its employees or agents.
- 5.11. If the Service Agreement or the commencement of the provision of any Services by ANDOR to Customer (whether pursuant to or prior to and in anticipation of the Service Agreement being entered into) constitutes a service change provision for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 or other legislation which has the effect that the employment or rights of any person employed by Customer or by any previous service provider of Customer are transferred to ANDOR or ANDOR becomes liable for the same ("TUPE") then:
- 5.11.1. Customer warrants to ANDOR that it has provided to ANDOR all relevant information concerning such transfer and that all requirements of TUPE have been fully complied with in respect of the transfer; and
- 5.11.2. Customer shall indemnify ANDOR against any liability in relation to or as a result of any such transfer or the application of TUPE, including any penalty for non-compliance with TUPE (save to the extent that ANDOR, having received notice and all relevant information as required by this clause 5.11, fails to consult as required by TUPE), costs of employment of any person whose employment transfers to ANDOR, liability for employee claims transferred to ANDOR, liability for terminating any employment transferred to ANDOR by TUPE or otherwise.
- 5.12. Customer shall reimburse the reasonable expenses of any employees or representatives of ANDOR who are required to travel from ANDOR's premises to Customer's premises at its request during the provision of the Services.
- 5.13. Customer shall indemnify ANDOR against any liability in relation to:

- 5.13.1. Customer's failure to comply with any of its obligations under this clause 5;
- 5.13.2. any action of ANDOR required to be taken or not to be taken at the request or direction of Customer or any information or materials provided to ANDOR by Customer or any of its employees, associates or representatives other than for their intended use as communicated to Customer by ANDOR; or
- 5.13.3. the negligence or wilful misconduct of Customer.

## 6. LOCATION

- 6.1. Subject to clause 6.2, Customer may, at its own risk, remove and reinstall Equipment from its original location to a new location provided that it informs ANDOR in writing at least thirty (30) days prior to such removal and reinstallation, specifying the new location for such Equipment.
- 6.2. Unless otherwise agreed in writing, ANDOR shall have no obligation to provide Services in respect of Equipment moved to a different location to that specified in any applicable AO or Service Schedule: where ANDOR agrees to provide Services in such circumstance it may charge additional rates for such Services.
- 6.3. Following a request by Customer, ANDOR may remove and reinstall Static Equipment for Customer from its original location to a new location: such removal and reinstallation if agreed shall, unless otherwise agreed in writing, be on ANDOR's then current standard terms for such services and shall be charged to Customer at ANDOR's then current standard rates for the same.
- 6.4. If ANDOR undertakes the removal and reinstallation of Equipment for Customer from its original location to a new location, ANDOR may, in its sole discretion, waive the requirement for a pre-service inspection and adjustments as described in clauses 3.2 and 3.3.
- 6.5. If Equipment is moved pursuant to clause 6.1 and ANDOR has agreed to provide Services in respect of such Equipment and the removal and reinstallation of Equipment from its original location to a new location is undertaken by Customer or a third party, ANDOR may, in its sole discretion, require the performance of a further pre-service inspection and adjustment pursuant to clauses 3.2 and 3.3.
- 6.6. If ANDOR reasonably determines that any Equipment cannot be put into good operating condition following its removal and reinstallation from its original location to a new location, ANDOR shall have the right to immediately terminate the Service Agreement in whole or in part on written notice to Customer.
- 6.7. ANDOR may, in its sole discretion, elect to carry out any of the Services at a Service Repair Centre. If ANDOR elects that any of the Equipment) should be serviced at a Service Repair Centre, the risk in the Equipment shall at all times remain with Customer and Customer shall package such Equipment as ANDOR instructs and dispatch such Equipment at its own expense. Costs of carriage on the Equipment return to Customer from the Service Repair Centre shall be borne by ANDOR unless otherwise specified in any applicable AO or Service Schedule. Customer acknowledges that failure by Customer to ship any Equipment to the nearest Service Repair Centre at ANDOR's election may result in a delay or alteration to the performance of the Services and, to the extent permitted by law, ANDOR shall not be liable for any losses, damages, claims, costs or expenses incurred by Customer or any third party arising out of or in connection with such delay or alteration to the performance of the Services.
- 6.8. ANDOR shall not be liable for any defect, wastage or other loss whatsoever in, or arising from any equipment, hardware, software or other items supplied or made available to ANDOR by Customer ("Customer Equipment") which shall be held, worked on and used at Customer's risk. Quantities of Customer Equipment supplied by Customer shall allow for normal spoilage and fair wear and tear. Prior to Customer Equipment's delivery to ANDOR or to ANDOR being granted access to it, Customer shall notify ANDOR of the nature of any such Customer Equipment, shall provide adequate warnings and instructions where such Customer Equipment is or may be hazardous to safety and shall ensure that it complies with any requirements or descriptions of or in the Service Agreement.

## 7. EXCLUSIONS FROM SERVICES

- 7.1. Unless otherwise agreed in writing by ANDOR, there shall be excluded from the Services and/or an additional fee will be payable to ANDOR for:
  - 7.1.1. the servicing of any equipment not described in any applicable AO or Service Schedule and components supplied by third parties which were not originally part of the Equipment shipped by ANDOR;
  - 7.1.2. any services not described in the AO or the Service Schedule;
  - 7.1.3. the provision of consumables and accessories (such as storage devices, modems, additional screens, keyboards);
  - 7.1.4. the supply and installation of patches, fixes, BIOS upgrades or other software related upgrades or modifications, add ons or other upgrades to the Equipment;
  - 7.1.5. repairs necessitated as a result of any cause other than fair wear and tear resulting from proper use of the Equipment or other equipment in



- accordance with ANDOR's or the manufacturer's instructions (including fire, accident, misuse, neglect, incorrect installation by Customer or its customers, agents or servants, unauthorised alteration, repair or maintenance or the use of sub standard consumables, failure or fluctuation of electrical power, failure of air conditioning or humidity control, or abnormal physical or electrical stress) or repairs necessitated by equipment not supplied by ANDOR or by the Equipment not being in good working order when the Services are commenced;
- 7.1.6. any modification or alteration to the Equipment except as required to rectify a fault diagnosed by ANDOR or the manufacturer;
- 7.1.7. repair necessitated by any design, specification, component or material supplied by or on behalf of Customer or by the replacement of any part of the Equipment with a part not supplied or approved by ANDOR;
- 7.1.8. repair or replacement of any Equipment that is obsolete or beyond economic repair, meaning that the cost of repair is in the opinion of ANDOR not less than sixty per cent (60%) of the then current market value of such equipment;
- 7.1.9. electrical work external to the Equipment;
- 7.1.10. restoring Equipment to good working condition as a result of contamination by radiological, chemical, biological or any other means. Contaminated parts shall be the property of the Customer and replacements will be invoiced to the Customer at the then current list prices; and
- 7.1.11. loaners, add-ons or upgrades.
- 7.2. Customer shall reimburse ANDOR against any costs incurred by ANDOR responding to claims caused by operator error or incorrect application or other default of Customer or other third party.
- 7.3. In the provision of Services, ANDOR cannot guarantee the attendance of any particular individual as an Engineer and reserves the right to replace any Engineer with an appropriate alternative individual at any time.
- 7.4. Unless otherwise agreed in writing, the Engineer shall not be required to perform any services other than the Services; in particular the Engineer does not carry stock unless specifically ordered in advance.
- 7.5. If any appointment with an Engineer is cancelled with less than twenty four (24) hours' notice,

ANDOR may charge its standard rates for its times and expenses in respect of such appointment.

## 8. WARRANTY

- 8.1. ANDOR warrants that the Services will be performed with reasonable skill and care and ANDOR shall use reasonable endeavours to attain any service levels or project specifications contained in any applicable AO or Service Schedule; such service levels or specifications shall not form part of the Service Agreement and failure to attain any service level or specifications shall not of itself constitute a breach of contract by ANDOR save as expressly specified in such Service Schedule.
- 8.2. If within the Warranty Period ANDOR has received notice from Customer that any Services were not performed in accordance with the Service Agreement ANDOR shall at its option either re-perform any non-compliant Services free of charge or refund to Customer the price paid for such Services provided that:
- 8.2.1. Customer gives written notice of the non-performance in question (with reasonable relevant information) to ANDOR as soon as reasonably practicable and within the Warranty Period;
- 8.2.2. the Equipment has been used solely for its proper purpose and in accordance with the operating instructions;
- 8.2.3. the failure so to perform the Services has not been caused by fire, accident, misuse, neglect, mishandling, incorrect installation of Equipment by Customer or its customers, agents or servants, unauthorised alteration, repair or maintenance or the use of sub-standard consumables and has not arisen from fair wear and tear;
- 8.2.4. the failure so to perform the Services has not arisen from any design, specification, component or material supplied by or on behalf of Customer;
- 8.2.5. no part of the Equipment has been replaced with a part not supplied or approved by ANDOR;
- 8.2.6. payment in full of all sums due in respect of the Services has been made;
- 8.2.7. Customer shall be liable for any costs incurred by ANDOR in responding to claims caused by operator error or incorrect application or other default of Customer or other third party;
- 8.2.8. Customer shall accord ANDOR sufficient access to the Equipment to enable its staff to inspect it and re-perform the Services; and

- 8.2.9. the costs of all consumables shall be paid by Customer.
- 8.3. The Warranty Period for any Services re-performed pursuant to clause 8.1 shall be the remaining period, if any, of such initial Warranty Period.

## 9. NOT USED

## 10. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- 10.1. All inventions, designs, copyrights and processes and all and any other intellectual or industrial property rights whether or not registered or registerable and all goodwill associated thereto relevant to the Services and all specifications, designs, programs or other material issued by or on behalf of ANDOR shall, as between ANDOR and Customer, remain the absolute property of ANDOR. Customer shall not acquire any right or interest in the same except, if any applicable AO or Service Schedule so requires, ANDOR shall grant or procure the grant of a licence to use materials created specifically for Customer in the course of the Services.
- 10.2. Customer acknowledges that all specifications, design, programs or other material including know-how, plans, drawings and price lists issued by or on behalf of ANDOR and any other information received by it during or as a result of the Services are confidential and agrees not to use them or any other confidential information of ANDOR for any purpose (other than the purpose for which the information was disclosed) nor reproduce them in any form nor disclose them to third parties.

## 11. EXCLUSION AND LIMITATION OF LIABILITY

- 11.1. In order to keep the Service Fee as low as possible and as Customer is better able than ANDOR to quantify loss which it may suffer from a breach of the Service Agreement and to insure accordingly, Customer agrees to ANDOR limiting its liability as set out in this clause 11, subject always to clause 11.8.
- 11.2. Subject to clause 11.8, if ANDOR has properly re-performed the Services in accordance with clause 8.2, it shall have no further liability in respect of such default in the Services unless proper performance is not possible in which case ANDOR's liability shall be limited to refunding any monies paid in respect of such defective Services.
- 11.3. Customer acknowledges that ANDOR's obligations and liabilities in respect of the Services are exhaustively defined in these Standard Terms and Conditions of Service and that, subject to clause 11.8, such express obligations are in lieu of and to the exclusion of any other warranty, condition, term, undertaking or representation of any kind, express or implied, statutory or otherwise relating to the Services including, as to the

condition, quality, performance or fitness for any purpose of the Services or any part of them.

- 11.4. Subject to clause 11.8, ANDOR shall under no circumstances be liable to Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, revenue, benefit, anticipated savings or goodwill, loss of use of any asset, loss of data, business interruption, management costs or third party liability, any loss which procedures and precautions implemented by the other party (or which would generally be implemented by a person exercising a degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a reasonably and appropriately skilled and experienced person in the same or similar circumstances) could have prevented or reduced, or for any indirect or consequential loss arising out of or in connection with the Service Agreement, or for any claim against a Customer by any other party, even if ANDOR has been advised of the possibility of such loss or damages.
- 11.5. Subject to clause 11.8, the aggregate liability of ANDOR (whether in contract, tort, breach of statutory duty or otherwise) for all breaches under or non-performance of its obligations or contemplated by the Service Agreement shall not exceed a sum equal to one and a half times the Service Fee save that this clause 11 shall not limit or exclude any liability of ANDOR which cannot be effectively excluded in law.
- 11.6. Without prejudice to the foregoing, the provision of the Services is not a guarantee that any Equipment will operate uninterrupted or without error, nor is it a guarantee against obsolescence.
- 11.7. Any liability of ANDOR under any warranty, indemnity or other obligation stated or confirmed in the AO is subject to all exclusions and limitations in these Standard Terms and Conditions of Service.
- 11.8. Nothing in the Service Agreement or these Terms shall limit or exclude the liability of ANDOR for (i) death or personal injury caused by its negligence; (ii) breach of the term implied by section 2 of the Supply of Goods and Services Act 1982; (iii) fraud or fraudulent misrepresentation; or (iv) any other liability which may not be excluded or limited by law.
- 11.9. Customer acknowledges that where ANDOR supplies any marketing, promotional or other information or material relating to any goods supplied by any third party or to any services performed by any third party ("Third Party Materials"), ANDOR does not in any way endorse, verify or warrant that the information contained therein is accurate or correct, and ANDOR shall have no liability in respect of any such Third Party Materials.
- 11.10. ANDOR shall not be responsible or liable for:
- 11.10.1. any loss, damage, cost or expense arising from any mistake, defect,

- virus, poor quality of or inaccuracy in any program, electronic communication or other materials specified or supplied by or on behalf of Customer, all of which shall be for the sole account of Customer which shall indemnify ANDOR against any liability in relation to the same; or
- 11.10.2. any failure to perform, or delay in performing, any Services which is caused or contributed to by a breach by Customer of its obligations under the Service Agreement and ANDOR shall be entitled to rely on all information and materials provided by Customer without verifying the same.
- 11.11. Subject to clause 11.8, if in the course of performance of any Services, any equipment or materials of Customer are lost or destroyed by reason of a breach of the Service Agreement by ANDOR, ANDOR's sole liability shall be to replace or pay the manufacturing replacement value of the physical goods or materials that have been lost or destroyed.
- 11.12. If ANDOR obtains performance of any of the Services by any of its associates or any sub-contractor, such associate or sub-contractor shall be entitled to the benefit of this clause 11 and to enforce it on its own behalf.
- 12. TERM AND TERMINATION**
- 12.1. The Service Agreement shall begin on the Commencement Date and, unless terminated earlier in accordance with this clause 12, shall continue for the Initial Period.
- 12.2. ANDOR and Customer may agree to extend the Initial Period for any number of one year periods thereafter (each being an "Extended Period") for an additional fee.
- 12.3. During any Extended Period, either party may terminate the Service Agreement in whole or in part on sixty (60) days' notice in writing to the other party, such notice expiring on the expiry of such Extended Period.
- 12.4. During the Term, ANDOR may terminate the Service Agreement in whole or in part and every other contract with Customer if:
- 12.4.1. Customer fails to make payments to ANDOR under any contract as they fall due or Customer otherwise breaches any such contract and the breach or non-payment is not remedied within seven (7) days of notice from ANDOR; or
- 12.4.2. Customer is, or is deemed to be, insolvent or suspends payment or performance of its obligations or threatens to do so, or ANDOR has reasonable grounds for believing it will fail to discharge its obligations under any contract or steps are taken to propose any composition, scheme or arrangement involving Customer and its creditors or obtain an administration order or appoint any administrative or other receiver or manager in relation to, or put in force any legal process against, Customer or any of its property or enforce any security over Customer's property, or repossess any goods in its possession or wind up or dissolve Customer, or sequester its estate or dissolve it or file a petition in bankruptcy or other relief from creditors; or
- 12.4.3. control of Customer passes from the present shareholders, owners or controllers to other persons whom ANDOR in its absolute discretion regards as prejudicial to its reasonable interests; or
- 12.4.4. in the reasonable opinion of ANDOR, Customer has ceased or threatened to cease to trade; or
- 12.4.5. where Customer is an individual or partnership, he or any partner dies or any steps are taken with a view to making a bankruptcy order against him or any partner; or
- 12.4.6. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 12.4.2 to 12.4.5 above.
- 12.5. In the event that ANDOR terminates the Service Agreement in part by discontinuing maintenance on any item of Equipment covered by it, Customer shall be entitled to terminate the remainder of the Service Agreement in its entirety by notice in writing to ANDOR within thirty (30) days of receipt of ANDOR's notice to terminate and the effective date of the termination for the remainder of the Service Agreement shall be the same date as the effective date of termination for the item of Equipment discontinued by ANDOR.
- 12.6. If the Service Agreement is terminated, ANDOR (without prejudice to its other rights but subject to any relevant mandatory laws) may do any of the following:
- 12.6.1. declare immediately payable (and so interest-bearing under clause 4.6) any sums owed by Customer, proceed against Customer for the same and/or damages, and appropriate any payment by Customer as ANDOR thinks fit (notwithstanding any purported appropriation by Customer);
- 12.6.2. suspend further performance of the Service Agreement and/or any credit

granted to Customer on any account; and/or

- 12.6.3. take possession of and deal with (including the sale of) any materials and other assets of Customer held by or on behalf of ANDOR and apply any proceeds of sale in payment of any sums owing under or damages arising in connection with the Service Agreement including any interest and costs arising thereon.

### 13. FORCE MAJEURE

- 13.1. ANDOR shall not be liable for any failure to perform its obligations hereunder by reason of any cause whatsoever beyond its reasonable control (including trade dispute; fire, flood or act of god; armed conflict, riot or civil commotion; terrorist act, equipment or supply difficulties; any rule or action of any public authority; transportation delays; refusal or delay in granting any necessary licence or permit; epidemic illness; failure by suppliers; compliance with any law or government order, rule, regulation or direction; failure or interruption of internet communications or telecommunications, criminal or malicious damage to networks, systems or premises; or any repudiatory event by Customer). In such circumstances, ANDOR may terminate the Service Agreement whereupon Customer shall pay a sum equal to the costs to ANDOR of performing the Service Agreement and ANDOR's liability shall be limited to repayment of any sums paid in respect of unperformed Services less such costs.

### 14. GENERAL

- 14.1. Any notice given to a party under or in connection with the Service Agreement shall be in writing and shall be: (i) 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 (ii) sent by fax to its main fax number.
- 14.2. Any notice shall be deemed to have been received: (i) if delivered by hand, on signature of a delivery receipt; (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second business day after posting or at the time recorded by the delivery service; or (iii) if sent by fax, at 9.00 am on the next business day after transmission.
- 14.3. Any provision invalid or unenforceable for any purpose in the Service Agreement shall be severed for that purpose but otherwise remain valid and enforceable and shall not affect the validity of the remainder of the Service Agreement.
- 14.4. Variations of the Service Agreement shall be effective only if agreed in writing by authorised representatives of both parties and will then

prevail over these Standard Terms and Conditions of Service.

- 14.5. No indulgence, forbearance, partial exercise of any right or remedy or previous waiver shall prejudice any rights or remedies. Remedies shall be cumulative and no choice of remedy shall preclude any other remedy.
- 14.6. Customer warrants that the use of any information, components, specifications or designs which it has supplied or arranged to be supplied to ANDOR will not infringe the intellectual property rights of any third party and Customer shall indemnify ANDOR against all liability in relation to the same.
- 14.7. Customer shall not assign, transfer, mortgage, charge, sub-let or otherwise dispose of the Service Agreement or any rights thereunder in whole or in part. ANDOR may at any time assign, transfer, mortgage, charge, sub-let or deal in any other manner with any or all of its rights and obligations under this Agreement.
- 14.8. Customer acknowledges that ANDOR may use sub-contractors to perform the Services. ANDOR shall at all times remain responsible for the acts and omissions of its sub-contractors.
- 14.9. The Service Agreement shall be binding upon and inure to the benefit of the successors and assigns of Customer.
- 14.10. A person who is not a party to the Service Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Service Agreement but this does not affect any right or remedy of a third party which is available apart from that Act.
- 14.11. If this Service Agreement is with Andor Technology Limited, it shall be governed and construed in accordance with English law and Customer irrevocably submits to the exclusive jurisdiction of the Courts of England, and if this Service Agreement is with Andor Incorporated, it shall be governed and construed in accordance with the internal laws of the State of New York and the Customer irrevocably submits to the exclusive jurisdiction of the Courts of New York, without prejudice to which ANDOR may apply for any provisional or conservatory measures or interim relief in any court having jurisdiction in Customer's country or the country where the Services are performed or the Equipment is located.
- 14.12. The Service Agreement sets out the entire agreement and understanding of the parties relating to the subject matter thereof and supersedes all prior agreements, understandings or arrangements relating thereto.