

ANDOR TECHNOLOGY INC - TERMS AND CONDITIONS OF QUOTATION AND SALE FOR GOODS AND SERVICES

1. INTERPRETATION

1.1 In these terms ("Terms"):

"Applicable Warranty Period" means in relation to any Goods the warranty period applicable to those Goods, subject to Sections 7.3 and 7.4 being either

(i) the Standard Warranty Period except as follows:

- (a) iStar and Apogee range: Alta, Ascent, Aspen models – twenty four (24) months from date of shipment;
- (b) Microscopy Systems – twelve (12) months from date of installation for Goods installed by the Company and twelve (12) months from the sooner of installation or thirty (30) days after delivery for Goods that are installed by the Purchaser or a third party;
- (c) Vacuum integrity on all cameras with an UltraVac™ permanent hermetic vacuum head – five (5) years from the date of shipment except (i) iXon3 and iXon Ultra camera models which is seven (7) years from the date of shipment; and (ii) ex-demonstrator units which is one (1) year, or the remainder of the standard vacuum period effective from the date of first manufacture, whichever is greater. For the avoidance of doubt, components protected by the vacuum but damaged or defective due to other causes covered by Section 7 are subject to the Standard Warranty Period;
- (d) Sealed sensor enclosure integrity for backfilled cameras – twelve (12) months from date of shipment, except (i) Alta, Ascent, Aspen and Zyla models which is three (3) years from date of shipment and (ii) ex-demonstrator units which is the remainder of the standard sealed enclosure integrity period from date of first manufacture; or

(ii) as otherwise notified in the Company's relevant quotation or SOA (as later defined in this Section 1.1);

"Commencement Date" means the date on which the Service Schedule is signed;

"the Company" means Andor Technology Inc;

"Contract" means the agreement between the Purchaser and the Company for the supply of the Supplies and consisting of the documents referred to in Section 1.4 below;

"Engineer" or "Consultant" means an individual engaged or employed by the Company to perform the Services;

"Goods" means the goods listed in the SOA or which the Company otherwise agrees to supply to the Purchaser under the Contract (including any instalments or parts of the goods but excluding any Serviced Goods or parts or components provided to the Purchaser in respect of Serviced Goods);

"liability in relation to" means liabilities, losses, damages, costs (including without limitation legal costs on a full indemnity basis and tax), expenses, actions, claims, proceedings and demands whatsoever arising directly or indirectly out of or in connection with;

"Non-Standard Specification" means any specification relating to the Goods or the formatting or layout of the Goods at the Purchaser's premises requested by the Purchaser which deviates from the Standard Specification;

"Purchaser" means the purchaser of the Goods and/or Services as stated in any applicable SOA;

"Price" means, subject to these Terms, the price for the Goods as quoted and confirmed in any SOA;

"Services" means the services specified in the Service Schedule, SOA or which the Company otherwise agrees to provide to the Purchaser under the Contract;

"Serviced Goods" means the goods and/or systems (as appropriate) and any configuration thereof listed in the Service Schedule;

"Service Schedule" means the statement of work, schedule or SOA issued by the Company to the Purchaser detailing the Serviced Goods or the Services, excluding those Serviced Goods covered by an annual maintenance contract;

"SOA" means the order acknowledgement form (if any) issued by the Company to the Purchaser;

"Software" means any software used in the operation of the Goods;

"Standard Specification" means the standard design of the Goods and/or layout of the Goods (prior to any Non-Standard Specification requested by the Purchaser) which is current at the time of the issue of an SOA;

"Standard Warranty Period" means twelve (12) months commencing on the date of shipment;

"Supplies" means the Goods and/or the Services;

1.2 Any Contract provision invalid or unenforceable for any purpose shall be severed for that purpose but otherwise remain valid and enforceable and shall not affect the validity of the remainder of the Contract.

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

1.4 Except as may be otherwise agreed in writing by the Company, the Contract shall comprise solely these Terms, any SOA and any relevant quotation and any relevant Service Schedule issued by the Company to the Purchaser. In the event of any inconsistency the following shall prevail in this order (1) the express terms of the SOA, (2) the Service Schedule, (3) quotation, (4) these Terms. Variations of the Contract shall be effective only if agreed in writing and will then prevail over these Terms.

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

2. QUOTATIONS, SPECIFICATION, VARIATION AND CANCELLATION

2.1 A quotation is not an offer and may be withdrawn or modified. Except as otherwise agreed in writing by the Company, no contract or commitment shall exist until the Company sends its SOA and/or Service Schedule to the Purchaser or until the Company commences work on or appropriates Supplies to the Contract.

2.2 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other documentation or information issued by the Company shall be subject to correction without any liability on the part of the Company.

2.3 The Company may alter the specification of any Goods if such alteration does not materially affect their performance or utility.

2.4 The Company may vary the design, materials or method of construction of the Goods as it reasonably considers appropriate in order to improve performance, design or construction; to respond to availability of various materials or components; or to comply with any safety or regulatory requirements. No such variation shall materially alter the size or proportions or materially worsen the performance of the Goods. The Company shall promptly notify the Purchaser of any such variations and if reasonably practicable shall consult with it upon any variations which are not immaterial.

2.5 If any variation in the Supplies or the Contract is agreed or is required for compliance with any applicable law, regulation or safety recommendation the Purchaser shall pay such additional amount as is fair and reasonable and the Company shall have reasonable additional time to perform the Contract.

2.6 The Purchaser may request Non-Standard Specifications in relation to the Goods. The Company shall consider such Non-Standard Specifications and if it considers them feasible and reasonably compatible with the scope of the Contract, then Section 2.7 shall apply. Any Non-Standard Specification and any consequential change in the Price must be agreed in writing within four (4) weeks from the date of issue of the applicable SOA (or longer period agreed by the Company) failing which the Standard Specification shall apply.

2.7 If the Purchaser requests a Non-Standard Specification which the Company considers so feasible and compatible the Company shall respond to the Purchaser upon such request including with the implications upon the Price, delivery date and other implications; the parties shall then seek in good faith to agree the Non-Standard Specification and the terms upon which it will be applied. If such terms are agreed, the Contract shall be modified accordingly but if such terms are not agreed within the four (4) week (or longer) period referred to in Section 2.6 the request shall be of no effect and the Standard Specification shall apply.

3. PRICES AND PAYMENT

3.1 Subject to any SOA, the Price shall exclude sales tax and any other applicable taxes and duties, packaging, carriage, insurance, documentation and installation charges. Unless costed for in any SOA or Service Schedule, the Company may make reasonable additional charges for complying with any special requirements of the Purchaser. Payment, subject to any SOA or Service Schedule, shall be made in US Dollars at the Company's office in Massachusetts, clear of any banking transaction charges and without deduction, set off or counterclaim.

3.1.1 Subject to any terms set out on the SOA, the Company shall be entitled to invoice the Purchaser for the Price of the Goods on or at any time after delivery of the Goods. Should the Purchaser wrongfully fail to take delivery of the Goods, the Company shall be entitled to invoice the Purchaser for the Price at any time after the Company has tendered delivery of the Goods (or as the case may be) after the Company has notified the Purchaser that the Goods are ready for delivery.

3.1.2 Subject to any terms set out on the SOA, the Purchaser shall pay the Price of the Goods (less any discount to which the Purchaser is entitled, but without any other deduction) within thirty (30) days of the date of the Company's invoice. Receipts for payment will be issued only upon request.

3.2 Time of payment is of the essence. Without limiting the Company's remedies if payment is overdue, the Purchaser shall indemnify the

Company against any legal fees and other costs of collection and (as well after as before judgment) shall pay to interest of one and a half percent (1.5%) per month or such lesser amount as is the maximum rate permissible by law and the Company may cancel the Contract and any other contracts and suspend performance of the Services and suspend deliveries to the Purchaser.

3.3 Any payment which would fall due later than it would have done but for delay caused by the Purchaser shall be deemed to fall due when, but for the Purchaser's delay, it might reasonably be expected to have fallen due. The Company may delay or withhold performance under the Contract until the Purchaser 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 its time for performance shall be extended accordingly.

4. RISK AND PROPERTY

4.1 Until payment has been made of the whole of the Price and other monies payable by the Purchaser under the Contract and of all other monies owing by the Purchaser to the Company at the time the payment for the Goods falls due:

- (a) title in any Goods shall remain the Company's; the Purchaser shall hold such Goods as the Company's fiduciary agent and bailee, stored separately from those belonging to any other person and labelled so as to show clearly that they are the property of the Company and properly protected, treated and insured;
- (b) the Company may recover and/or resell the Goods, require their return to the Company and enter upon the Purchaser's or any carrier's premises by its servants or agents for that purpose and the Purchaser grants the Company an irrevocable right to this effect which shall survive termination of the Contract;
- (c) upon disposal by the Purchaser of the Goods it shall account to the Company for the proceeds and shall keep such proceeds separate from any other monies or property and (if tangible) properly stored and insured;
- (d) the Company shall have a right of lien over any goods or materials belonging to the Purchaser which are in the Company's possession or control; and
- (e) the Purchaser shall not pledge or charge by way of security for any indebtedness any of the Goods which remain the Company's property but if it does all monies owing by the Purchaser to the Company shall forthwith become immediately due and payable.

4.2 Risk of damage to or loss of the Goods shall pass to the Purchaser at the earlier of the time when the Company notifies the Purchaser that the Goods are available for collection or upon the Company first dispatching the Goods from its premises unless any SOA specifies otherwise.

5. DELIVERY AND RESCHEDULE

5.1 Except as otherwise agreed in writing by the Company, delivery of the Goods shall be made by the Company or its nominated carrier dispatching the Goods from its premises to the place stated in any SOA or, where not stated, delivery shall be Ex Works (Company's premises, Northern Ireland) Incoterms 2010. If the Purchaser fails to take delivery or to give adequate delivery instructions, the Company may (without prejudice to its other rights) store or dispose of the Goods, in which case the Purchaser shall pay to the Company upon request the amount of any reasonable storage or disposal charges. While the Company will seek to meet the stated delivery time, it is approximate and the Company shall not incur liability in relation to late delivery. If no time for delivery is agreed the Purchaser shall accept the Goods when ready for delivery.

5.2 The Company may deliver Goods in instalments constituting separate contracts and delay in delivery of any instalment will not entitle the Purchaser to terminate the Contract, nor permit the set off of any payments in respect of one delivery against any claim in respect of any other delivery. Where Goods are delivered by instalments the Company may issue separate invoices.

5.4 Any delivery times quoted by the Company for the Supplies are approximate and shall not be binding upon the Company.

5.5 Should the Purchaser wish to vary a delivery schedule, it shall make a request in writing to the Company. Rescheduling restrictions apply and the Company is not obligated to accept a request for a re-schedule delivery of Supplies. If the Company agrees in writing to amend a delivery schedule, charges may apply. Such charges shall be applied at the time the re-schedule is agreed.

6. INSPECTION AND ACCEPTANCE

Unless the Company will issue or has issued an acceptance certificate or an installation confirmation form is to be or has been issued pursuant to Section 13, the Purchaser shall inspect and test the Goods and within seven (7) days of their delivery, and in respect of Services, within seven (7) days of the Company tendering their completion, shall give written notice to the Company of any damage or claim. In the absence of such notice, the Goods shall be deemed to comply with the Contract and the Purchaser shall accept them. The Goods are sold as a batch and

without prejudice to the Purchaser's right to reject all the Goods the Purchaser may not reject only some of the Goods.

7. LIMITED WARRANTY

7.1 If within the Applicable Warranty Period any Goods (excluding software) prove defective by reason of faulty design, workmanship or materials the Company will adjust, repair or replace them as it sees fit free of charge provided that:

- (a) the Purchaser gives written notice of the defect (with reasonable relevant information) to the Company as soon as reasonably practicable and within the Applicable Warranty Period;
- (b) the Goods have been used solely for their proper purpose and in accordance with the operating instructions;
- (c) the defect has not been caused by fire, accident, misuse, neglect, incorrect installation by the Purchaser or its customers, agents or servants, unauthorized alteration, repair or maintenance or the use of sub-standard consumables and has not arisen from fair wear and tear;
- (d) the defect has not arisen from any design, specification, component or material supplied by or on behalf of the Purchaser;
- (e) no part of the Goods has been replaced with a part not supplied or approved by the Company;
- (f) payment in full of all amounts due in respect of the Goods has been made;
- (g) the Purchaser shall be liable for any costs incurred by the Company in responding to claims caused by operator error or incorrect application or other default of the Purchaser or other third party;
- (h) the Purchaser shall accord the Company sufficient access to the Goods to enable its staff to inspect and adjust, repair, remove or replace the Goods;
 - (i) the costs of all consumables shall be paid by the Purchaser;
 - (j) the Purchaser shall be liable for all costs incurred by the Company relating to (a) ICCD damage caused by laser burn, bleaching of the photocathode (brought about by excessive numbers of photoelectrons in the Multichannel plate); (b) the sensor and other exposed parts of the High Energy Detection including X-ray cameras where (i) the sensor is openly exposed (typically SO/SX models) and/or (ii) the sensor is used for the direct detection of X-ray photons; or (iii) the sensor is indirectly contactable via a protruding fiber optic plate (typically HF models);
- (k) for Borealis upgrades performed by the Company on scanheads not supplied by the Company or not supplied as part of a new revolution XD system, the warranty relates to the upgraded component only;
- (l) the Purchaser immediately stops use of the camera in the event that a vacuum failure is suspected (typically shown by degradation in quantum efficiency or cooling performance) or that backfill integrity failure is suspected (typically shown by formation of condensation on the sensor).

7.2 The Company may repair the Goods in situ or have them returned to its premises; if the latter, the risk in the Goods shall at all times remain the Purchaser's and they shall be packaged as the Company instructs and dispatched at the Purchaser's expense. Costs of carriage on the Goods' return to the Purchaser shall be borne by the Company where the defect is covered by the warranty in this Section 7.

7.3 If the Goods incorporate goods or services provided by a third party, the obligations of the Company in respect of such goods or services shall not exceed the warranty obligations of such third party to the Company nor exceed any time limit upon those obligations.

7.4 The Applicable Warranty Period for any Goods replaced or repaired or any corrective services pursuant to the initial warranty shall be the remaining period, if any, of such initial warranty period.

7.5 THIS LIMITED WARRANTY IS IN LIEU OF ANY OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL (INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON INFRINGEMENT) WITH RESPECT TO THE GOODS OR SERVICES, THE MANUFACTURE, SALE, SUPPLYING OR FAILURE OR DELAY IN SUPPLYING OF THE GOODS, SERVICES RELATED THERETO OR THE USE, RESULTS OR DISPOSITION OF THE GOODS. THE COMPANY EXPRESSLY DISCLAIMS ALL WARRANTIES (WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL) WITH RESPECT TO THE RESULTS OBTAINED FROM THE GOODS, THE COMPANY DOES NOT WARRANT THAT THE USE OF THE GOODS SHALL BE UNINTERRUPTED OR ERROR-FREE.

8. PROVISION OF SERVICES

8.1 Where the Services comprise the servicing and/or maintenance by the Company of Serviced Goods the following applies:

- (a) The Company may prior to accepting any order from the Purchaser to provide the Services, carry out at the expense of the Purchaser an inspection of the Serviced Goods as the Company reasonably requires. Such inspection shall be charged at the Company's then current list price for such inspection;
- (b) If the Company reasonably determines that the Serviced Goods are not in good operating condition prior to start of performance of the

Services, the Company may require the Purchaser to effect such adjustments as it determines necessary and, if the Company agrees to provide such adjustments the Purchaser will pay for such work on a time and materials basis. The Company reserves the right not to commence performance of the Services until the Serviced Goods are in good operating condition;

(c) The Company may send a replacement part for the Purchaser to replace a defective part with or, if such replacement requires technical skills which the Purchaser does not possess, the Company shall send an Engineer to repair the Serviced Goods in situ or may have them returned to its premises; if the latter, the risk in the Serviced Goods shall at all time remain the Purchaser's and they shall be packaged as the Company instructs and dispatched at the Company's expense. Costs of carriage on the Serviced Goods' return to the Purchaser shall be borne by the Company unless otherwise specified in the Service Schedule;

(d) Parts of components of Serviced Goods will be replaced at the Company's discretion, if no appropriate alternative fix is available any replacement parts used by the Company shall be new or of equivalent performance to new parts, at the Company's discretion; replacement parts shall be the property of the Purchaser and replaced parts shall become the property of the Company which may invoice the Purchaser for their replacement value if such parts are not returned to it within ten (10) days of their replacement;

(e) Unless otherwise agreed in writing, the Company shall have no obligation to provide Services in respect of Serviced Goods which are moved to a new location from that specified in the Service Schedule and may charge additional rates for such Services;

(f) If any appointment with an Engineer is cancelled the Company may charge its standard rates for its time and expenses in respect of such appointment.

8.2 The Company shall provide the Services detailed in the Service Schedule or the SOA at the location and rates contained therein. If there is any conflict between the terms of the SOA and any attached Service Schedule the terms of the written SOA shall prevail.

8.3 The Purchaser shall grant full access to its premises and equipment to enable the Company to perform the Services during all normal working hours and upon reasonable notice from the Company at any other time.

8.4 The Purchaser shall ensure that any premises to which the Company's employees or agents have access for provision of Supplies fully comply with health and safety regulations and best practices and the Purchaser will not expose such persons to unnecessary risk or danger to personal safety. The Purchaser shall ensure that the Company's personnel are made aware of all relevant safety procedures and regulations.

8.5 Without limitation of Section 10, the Purchaser shall ensure that its employees and agents comply with all reasonable instructions made by the Company's employees and agents in the course of provision of Supplies or to enable the Company to limit any damage to either party, including without limitation complying with safety procedures.

8.6 The Purchaser shall take all precautions to protect its data and shall ensure that a regular back-up arrangement is implemented before and during the provision of the Supplies. The Purchaser shall be responsible for restoring any lost or corrupted data unless such loss is caused by the negligence or willful misconduct of the Company in which case its liability shall be limited to the reinstatement where possible of all data proven to have been lost or irretrievably corrupted and which would not have been included in such back-up arrangements required to be maintained by the Purchaser.

8.7 Except with the Company's prior written consent, the Purchaser undertakes that it will not, during or for a period of twelve (12) months after the provision of the Supplies has ceased, directly or indirectly solicit any employee of the Company or seek to cause him to leave the employment of the Company.

8.8 Without limiting Section 8.7, the Purchaser shall pay to the Company 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 the Company who is employed or engaged by the Purchaser or any associate of the Purchaser during or within twelve (12) months after the provision of the Supplies ceased.

8.9 The Purchaser warrants that it does and undertakes that it will comply with any applicable privacy legislation from time to time in force.

8.10 The Purchaser shall at the Company's request provide adequate security and space at its premises for secure and proper storage of any equipment belonging to or used by the Company or its employees or agents.

8.11 The Purchaser shall reimburse the reasonable expenses of any employees or representatives of the Company who are required to travel from the Purchaser's premises at Purchaser's request during the provision of the Supplies.

8.12 The Purchaser shall have no right in or lien over any equipment provided to it by the Company on loan and shall return any such equipment to the Company immediately upon request. The Company

reserves the right to enter the premises of the Purchaser to identify and remove any such equipment.

8.13 The Purchaser shall indemnify the Company against any liability in relation to:

(a) the Purchaser's failure to comply with any of its obligations under this Section 8;

(b) any action of the Company required to be taken or not to be taken at the request or direction of the Purchaser;

(c) any information or materials provided to the Company by the Purchaser or any of its employees, associates or representatives other than for their intended use as communicated to the Purchaser by the Company;

(d) the negligence or willful misconduct of the Purchaser.

8.14 The Company warrants that the Services will be performed with reasonable skill and diligence and the Company shall use reasonable efforts to attain any service levels or project specifications contained in the Service Schedule or referred to in any SOA; such service levels or specifications shall not form part of the Contract and failure to attain any service level or specifications shall not constitute a breach of contract by the Company save as specified in such Service Schedule.

9. EXCLUSIONS FROM SERVICES

9.1 Where the Services include service or maintenance of the Purchaser's equipment there shall be excluded from such Services or an additional fee will be payable to the Company for any items specifically set out in the SOA or in an agreed schedule, and unless otherwise expressly stated therein there shall be excluded from such Services or an additional fee shall be payable for:

(a) the provision of consumables and accessories (such as storage devices, modems, additional screens, keyboards);

(b) the supply and installation of patches, fixes, BIOS upgrades or other software related upgrades or modifications, or of loaners, add ons or other upgrades to Serviced Goods;

(c) repairs necessitated as a result of any cause other than fair wear and tear resulting from proper use of the Serviced Goods or other equipment in accordance with the Company's or the manufacturer's instructions (including, without limitation, fire, accident, misuse, neglect, incorrect installation by the Purchaser or its customers, agents or servants, unauthorized 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 the Company or by the Serviced Goods not being in good working order when the Services are commenced;

(d) any modification or alteration to the Serviced Goods except as required to rectify a fault diagnosed by the Company or the manufacturer;

(e) repair necessitated by any design, specification, component or material supplied by or on behalf of the Purchaser or by the replacement of any part of the Serviced Goods with a part not supplied or approved by the Company;

(f) repair or replacement of any equipment the subject of such services if such equipment is obsolete or beyond economic repair ("BER"), meaning that the cost of repair is not less than sixty (60%) of the then current market value of such equipment; and

(g) Electrical work external to the Serviced Goods.

9.2 The Purchaser shall reimburse the Company for any costs incurred by the Company responding to claims caused by operator error or incorrect application or other default of the Purchaser or other third party.

9.3 In the provision of Services, the Company cannot guarantee the attendance of any particular individual as an Engineer or Consultant and reserves the right to replace any Engineer or Consultant with an appropriate alternative individual at any time.

9.4 Unless otherwise agreed in writing, the Engineer or the Consultant 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.

10. EXCLUSION AND LIMITATION OF LIABILITY

10.1 IN AN EFFORT TO KEEP THE CONTRACT PRICE AS LOW AS POSSIBLE OR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES AND AS THE PURCHASER IS BETTER ABLE THAN THE COMPANY TO QUANTIFY LOSS WHICH IT MAY SUFFER FROM A BREACH OF CONTRACT AND TO INSURE ACCORDINGLY, THE PURCHASER AGREES TO THE COMPANY LIMITING ITS LIABILITY AND THEREFORE AGREES THAT EXCEPT AS EXPRESSLY AGREED IN WRITING OR AS MANDATORILY IMPLIED BY LAW:

(a) THE COMPANY SHALL HAVE NO OBLIGATION IN RESPECT OF THE GOODS EXCEPT FOR ITS UNDERTAKING IN SECTION 7 ABOVE ("THE WARRANTY") AND AS EXPRESSLY STATED IN THE CONTRACT;

- (B) IF THE COMPANY HAS REPAIRED OR REPLACED THE GOODS PURSUANT TO THE WARRANTY, OR PROPERLY REPERFORMED THE SERVICES IT SHALL HAVE NO FURTHER LIABILITY IN RESPECT OF SUCH DEFECT OR FAULT IN THE GOODS OR DEFAULT IN THE SERVICES UNLESS A REPAIR OR REPLACEMENT OR PROPER PERFORMANCE IS NOT POSSIBLE IN WHICH CASE THE COMPANY'S LIABILITY SHALL BE LIMITED TO REFUNDING ANY MONIES PAID IN RESPECT OF SUCH DEFECTIVE GOODS OR SERVICES;
- (C) THE PURCHASER ACKNOWLEDGES THAT THE COMPANY'S OBLIGATIONS AND LIABILITIES IN RESPECT OF THE SUPPLIES ARE EXHAUSTIVELY DEFINED IN THESE TERMS AND THAT 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 SUPPLIES INCLUDING, WITHOUT LIMITATION, AS TO THE CONDITION, QUALITY, PERFORMANCE OR FITNESS FOR THE PURPOSE OF THE SUPPLIES OR ANY PART OF THEM;
- (D) THE COMPANY SHALL NOT BE LIABLE FOR ANY LOSS WHICH REPRESENTS OR WHICH IS 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 OR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES.

10.2 THE AGGREGATE LIABILITY OF THE COMPANY (WHETHER IN CONTRACT, TORT, BREACH OF STATUTORY DUTY OR OTHERWISE) FOR ALL BREACHES UNDER OR NON-PERFORMANCE OF ITS OBLIGATIONS OR CONTEMPLATED BY ANY CONTRACT SHALL NOT EXCEED A SUM EQUAL TO ONE AND A HALF TIMES THE AMOUNT PAID FOR ANY SUPPLIES THE SUBJECT OF SUCH CONTRACT EXCEPT THAT THIS SHALL NOT LIMIT OR EXCLUDE ANY LIABILITY OF THE COMPANY WHICH CANNOT BE EFFECTIVELY EXCLUDED IN LAW.

10.3 The Purchaser shall not rely upon any representation concerning the Supplies unless made by the Company in writing in the Contract except that nothing in the Contract or these Terms shall exclude liability for fraudulent misrepresentation.

10.4 Without prejudice to the foregoing, the provision of the Services is not a warranty that any Serviced Goods will operate uninterrupted or without error, nor is it a warranty against obsolescence.

10.5 Any liability of the Company under any warranty, indemnity or other obligation stated or confirmed in the SOA is subject to all exclusions and limitations in these Conditions.

11. REGULATORY COMPLIANCE, LICENSES AND PRE-DELIVERY TESTS

11.1 The Purchaser represents that it is not a Restricted Party, which shall be deemed to include any person or entity: (1) located in or a national of Cuba, Iran, Libya, North Korea, Sudan, Syria, or any other countries that may, from time to time, become subject to U.S. export controls for anti-terrorism reasons or with which U.S. persons are generally prohibited from engaging in financial transactions; (2) on the U.S. Department of Commerce Denied Person's List, Entity List, or Unverified List; U.S. Department of the Treasury list of Specifically Designated Nationals and Blocked Persons; or U.S. Department of State List of Debarred Parties; (3) engaged in activities involving nuclear materials or weapons, missile or rocket technologies, or proliferation of chemical or biological weapons; or (4) affiliated with or a part of any military organization with the exception of the U.S. military.

11.2 The Purchaser shall strictly comply with all applicable export laws, controls and regulations. The Purchaser shall not export, re-export, divert, transfer or disclose, directly or indirectly, any Goods or related technical data, materials or documents or any product thereof to an Restricted Party or to any country (or any national or resident thereof) which the U.S. Government determines from time to time is a country (or end-user) to which such export, re-export, diversion, transfer or disclosure is restricted, without obtaining the prior written authorization of the Company and the applicable U.S. Government agency.

11.5 The Company may label the Goods as required by the Waste Electronic and Electrical Equipment Regulations 2006 ("WEEE"). Goods bearing a WEEE label should not be disposed of in a landfill or with municipal waste. The Company will assist the Purchaser, at the Purchaser's request and expense, to dispose of electrical or electronic Goods. For the avoidance of doubt, the cost to the Purchaser for the collection, treatment, recycling, recovery and sound environmental disposal of Goods at the end of their useful life has not been included in the Price. Further information is available on the Company's website and within its WEEE Policy document available at www.andor.com, or via a member of the Company's sales team.

12. TERMINATION OF CONTRACT

12.1 For Services, the Contract shall begin on the Commencement Date and thereafter, unless terminated earlier in accordance with this Section, shall continue for the term specified in the Service Schedule. Either party may terminate any annual based Contract for Serviced Goods by giving sixty (60) days' notice in writing to the other party, such notice expiring on any anniversary of the Commencement Date.

12.2 The Company may terminate separately all or any of the Contract and every other contract with the Purchaser if:

- the Purchaser fails to make payments to the Company under any contract as they fall due or the Purchaser otherwise breaches any such contract and the breach or non-payment is not remedied within seven (7) days of notice from the Company; or
- the Purchaser undergoes dissolution, termination of existence, liquidation, insolvency or business failure, or a custodian or receiver is appointed for the Purchaser or any part of the property of the Purchaser if such appointment is not terminated or dismissed within thirty (30) days; or
- the Purchaser institutes any proceeding under the United States Bankruptcy Code or any other federal or state bankruptcy, reorganization, receivership, insolvency or other similar law affecting the rights of creditors generally or the making by either party of a composition or any assignment or trust mortgage for the benefit of creditors; or
- a proceeding is instituted against the Purchaser under the United States Bankruptcy Code or any other federal or state bankruptcy, reorganization, receivership, insolvency or other similar law affecting the rights of creditors generally, which proceeding is not dismissed within thirty (30) days of filing; or
- control of the Purchaser passes from the present shareholders, owners or controllers to other persons whom the Company in its absolute discretion regards as prejudicial to its reasonable interests;
- in the reasonable opinion of the Company the Purchaser has ceased or threatened to cease to operate in the normal course of its business;
- where the Purchaser 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.

12.3 If the Contract is terminated, the Company (without prejudice to its other rights but subject to any relevant mandatory laws) may do any of the following:

- declare immediately payable (and so interest-bearing under Section 3.2) any sums owed by the Purchaser, proceed against the Purchaser for the same and/or damages, and appropriate any payment by the Purchaser as the Company thinks fit (notwithstanding any purported appropriation by the Purchaser);
- suspend further performance of any Contract and/or any credit granted to the Purchaser on any account (and the time for delivery by the Company shall be extended by the period of such suspension);
- take possession of and deal with (including the sale of) any materials and other assets of the Purchaser held by or on behalf of the Company and apply any proceeds of sale in payment of any sums owing under or damages arising in connection with any Contract including any interest and costs arising thereon.

13. INSTALLATION/PERFORMANCE

13.1 Where the Company has agreed to install the Goods or perform Services, the Purchaser warrants that the site where the Goods are to be used or where performance of the Service is to take place is in all respects suitable for the safe and lawful installation and operation of the Goods or performance of the Services. If the Company is to effect or supervise the installation the Purchaser shall prepare the site in good time and provide all services (including without limitation labor, power, compressed air, water, drainage, liquid cryogenics, vacuum pumps, extraction, process gas, bottled gasses and environment as appropriate) for efficient installation, failing which the Company may charge for lost time of its personnel.

13.2 The Purchaser shall obtain any certificates or other approvals required in good time before installation and shall inform the Company of all relevant safety, building and electrical codes and other requirements relevant to installation and shall indemnify the Company against any liability or expense resulting from failure to do so.

13.3 If for any reason (except the Company's default) commencement of installation of the Goods is delayed beyond the date scheduled in the Contract or initially agreed by the Company (or if none is so scheduled or agreed, then beyond the date which is thirty (30) days after the Goods were ready for shipment by the Company), the Purchaser shall pay to the Company at its request the costs which it incurs by reason of the delay plus charges at the Company's standard service charge rate for the time which it spends on the additional work required by reason of the delay. If the delay extends by more than thirty (30) days from the scheduled date of installation (or if none so scheduled by more than sixty (60) days after the Goods were ready for shipment) the Purchaser shall be deemed to automatically accept the Goods.

13.4 Subject to automatic acceptance in Section 6 or Section 13.3, where the Company is to install the Goods, upon completion of installation the Company shall issue and the Purchaser shall accept an installation confirmation form which shall be conclusive evidence of the Goods' conformity with the Contract and of their acceptance by the Purchaser. Such acceptance shall not be negated by any comments or amendments made by the Purchaser on or to the installation confirmation form, or any lack of signature by the Purchaser on such form.

13.5 All software is licensed and not sold by the Company. The Company hereby grants to the Purchaser a non-exclusive, non-transferable license to use the Software solely for the purposes of operating the Goods for their proper designed purpose, but the Purchaser shall have no right to access or use the source code of the Software and shall not copy all or part of the Software unless otherwise expressly agreed in writing by the Company.

13.6 All intellectual property and other rights of whatever nature in the Software and the documentation for it are and shall remain the property of the Company or the software vendor.

14. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

14.1 All inventions, designs, copyrights and processes and all and any other intellectual / industrial property rights whether or not registered or registerable and all goodwill associated thereto relevant to the Supplies and all specifications, designs, programs or other material issued by or on behalf of the Company shall, as between the Company and the Purchaser remain the absolute property of the Company. The Purchaser shall not acquire any right or interest in the same except, if the SOA or the Service Schedule so requires, the Company shall grant or procure the grant of a license to (i) use relevant software with the Goods or the Serviced Goods to or at the direction of the Purchaser or (ii) use materials created specifically for the Purchaser as part of the Services.

14.2 The Purchaser acknowledges that all specifications, design, programs or other material including know-how, plans, drawings and price lists issued by or on behalf of the Company are confidential and agrees not to use them or any other confidential information of the Company 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. The Purchaser shall not seek to abstract from the Goods any confidential information regarding their design, construction or otherwise (and without limiting the foregoing shall not decompile any software comprised in the Goods or Serviced Goods) and all rights subsisting in such material are reserved.

14.3 The Purchaser shall obtain similar undertakings as those set out in sub-Sections 14.1 and 14.2 from its customers and indemnify the Company against any liability in relation to any failure to do so. The Purchaser shall upon request sign and/or require its customers to sign the software vendors form of non-exclusive license to use programs necessary to operate the Goods; all obligations of the Company under any contract are conditional upon execution of such agreement and compliance with its terms.

15. FORCE MAJEURE

The Company shall not be liable for any failure to perform its obligations hereunder by reason of any cause whatsoever beyond its reasonable control (including without limitation trade dispute; fire, flood or act of god; armed conflict; equipment or supply difficulties; any rule or action of any public authority; transportation delays; refusal or delay in granting any necessary license or permit; or any repudiatory event by the Purchaser). In such circumstances it may terminate the Contract whereupon the Purchaser shall pay a sum equal to the costs to the Company of performing the Contract and the Company's liability shall be limited to repayment of any sums paid in respect of undelivered Goods or unperformed Services less such costs.

16. USE OF GOODS AND SAFETY

The Purchaser shall:

- (a) procure that the Goods (including any goods the subject of services) are used only for the purposes and in the manner for which they were designed and supplied; that all persons likely to use or come into contact with the Goods receive appropriate training and copies of applicable literature supplied by the Company; that all third parties who use or may be affected by or rely upon the Goods are given full and clear warning of any hazards (both patent and latent) associated with them or limitations of their effectiveness and that safe working practices are adopted and complied with. Any warning notices displayed on the Goods must not be removed or obscured; the Purchaser shall procure that any third party to whom the Goods are supplied agrees not to remove or obscure such warning notices and shall take such steps as are reasonable to enforce such agreement;
- (b) promptly comply with any safety recommendation made to it in respect of the Goods (including recall of them) and shall procure compliance by all relevant persons and shall pay the Company's

reasonable charges for additional or replacement parts (including installation costs) supplied by the Company for this purpose;

- (c) maintain and make available to the Company all records necessary to enable Goods to be traced to their ultimate buyer or user;
- (d) indemnify the Company against any liability in relation to any breach of the Purchaser's obligations under this Section 16.

17. PURCHASER'S EQUIPMENT AND OTHER ITEMS

17.1 The Company shall not be liable for any defect, wastage or other loss whatsoever in, of or arising from equipment, hardware or software or other items (in this Section, "equipment") supplied or made available to the Company by the Purchaser, which equipment shall be held, worked on and used at the Purchaser's risk. Quantities of equipment supplied by the Purchaser shall allow for normal spoilage and fair wear and tear.

17.2 The Company shall not be responsible for any loss, damage, cost or expense arising from, or from any defect, mistake or inaccuracy in any equipment specified or supplied by the Purchaser. Any loss, damage, cost or expense arising therefrom shall be for the sole account of the Purchaser who shall indemnify the Company accordingly.

17.3 The Company's liability for equipment specified or provided to the Company by the Purchaser or otherwise held or worked on by the Company on behalf of the Purchaser shall be limited to the lesser of the basic raw material cost of the equipment or an independent external valuation of such equipment.

17.4 Prior to its delivery to the Company or to the Company being granted access to it the Purchaser shall notify the Company of the nature of any equipment to be held or worked on by the Company under the Contract, shall provide adequate warnings and instructions where such equipment is or may be hazardous to safety and shall ensure that it complies with any requirements or descriptions of or in the Contract.

17.5 The Purchaser shall indemnify the Company for any liability in relation to such equipment which could not have been prevented by the Company acting in accordance with the Purchaser's reasonable written instructions and was not caused by the negligence or willful default of the Company or its employees.

17.6 The Purchaser shall indemnify the Company against any liability in relation to the contamination, damage or loss (due to contact with any radioactive, chemical or other hazardous materials or by the negligence of the Purchaser or its representatives) of any instruments, components, parts or materials brought by the Company to the Purchaser's premises for the purposes of performance of the Contract.

18. GENERAL

18.1 The Purchaser shall indemnify the Company against all liability in relation to any specification, design, information or component which the Purchaser has supplied or arranged for the supply to the Company and warrants that the use of such specifications, designs, information or components will not infringe the rights of any third party.

18.2 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.

18.3 The Purchaser shall not assign, mortgage, charge, sub-let or otherwise dispose of the Contract or any rights thereunder in whole or in part.

18.4 After termination (howsoever caused) or cancellation, Sections 3.2, 4, 10, 14, 16 and 18 shall continue in full effect.

18.5 This Contract and any disputes between the Purchaser and the Company relating to the subject matter of this Contract shall be governed and construed in accordance with the laws of the State of Massachusetts, excluding: (i) its conflicts of laws principles that would apply the laws of any other jurisdiction; (ii) the United Nations Convention on Contracts for the International Sale of Goods; (iii) the 1974 Convention on the Limitation Period in the International Sale of Goods; and (iv) the Protocol amending the 1974 Convention, done at Vienna April 11, 1980.

18.6 The Company and the Purchaser each hereby irrevocably submits to the exclusive jurisdiction of the federal and state courts located in the State of Massachusetts. The Purchaser hereby irrevocably waives any objection which it may now or hereinafter have to the laying of venue of any suit, action or proceeding relating to this Agreement in Massachusetts and further irrevocably waives any claim that Massachusetts is not a convenient forum for any such suit, action or proceeding.