

ANDOR TECHNOLOGY LIMITED- STANDARD TERMS AND CONDITIONS OF SOFTWARE MAINTENANCE SERVICES

PLEASE READ THESE SOFTWARE MAINTENANCE SERVICE TERMS CAREFULLY. THIS SOFTWARE MAINTENANCE SERVICES AGREEMENT IS A LEGAL AGREEMENT BETWEEN YOU AND ANDOR TECHNOLOGY LIMITED.

BY CLICKING THE "AGREE" BUTTON, OR BY CONTINUING TO ACCESS ANDOR'S SOFTWARE MAINTENANCE SERVICES, YOU ARE AGREEING TO THE TERMS OF THIS SOFTWARE MAINTENANCE SERVICES AGREEMENT.

1. DEFINITIONS AND INTERPRETATION

- 1.1. In these terms and conditions:
- "**Andor**" means Andor Technology Limited, its employees, subcontractors and sub suppliers and its affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out herein;
 - "**Commencement Date**" means the date on which the SMA becomes effective as set out in the Quotation;
 - "**Customer**" means the purchaser of Software Maintenance Services as set out in the Quotation;
 - "**Distributor**" means a distributor named on the Quotation who is duly authorised by Andor to distribute Software Maintenance Services;
 - "**Initial Period**" means an initial period of twelve (12) months from the Commencement Date;
 - "**Licence**" means the end user software licence agreement entered into between Andor and Customer a copy of which is available via this link:
<https://imaris.oxinst.com/terms/andor-technology-ltd-eula.pdf>
 - "**Order Acknowledgment**" means the acknowledgement of order issued by Andor or the Distributor to Customer;
 - "**Quotation**" means a quotation for the provision of the Software Maintenance Services issued by Andor or the Distributor to Customer;
 - "**Renewal Period**" has the meaning given to it in clause 9.2;
 - "**Service Fee**" means the fee payable by Customer to Andor or the Distributor for the Software Maintenance Services, as set out in the Quotation;
 - "**Software**" means the Andor software and any Update to be supported by Andor as part of the SMA.
 - "**Software Maintenance Agreement**" or "**SMA**" means these terms, the Quotation, and the Order Acknowledgement;
 - "**Software Maintenance Services**" means the support and training services set out in the Quotation to be provided via a Technical Support Expert (either in person, via telecommunication, or via a screen-sharing session as Andor may determine to be appropriate) and/or the responding to technical and application Customer queries relating to the Software and any applicable Update during the Term;
 - "**Standard Support Hours**" means 8:00 am to 6:00 pm Monday to Friday Zurich time except on days which are bank holidays in Switzerland, or as may be specified otherwise in the Quotation.
 - "**Technical Support Expert**" means an individual engaged or employed by Andor to perform the Software Maintenance Services;
 - "**Term**" means the Initial Period and any Renewal Period;
 - "**Update**" means a maintenance release, correction, amendment, or update of the Software provided to Customer as part of the Software Maintenance Services;
 - "**Warranty Period**" means the period of ninety (90) days from the date of performance of any given Software Maintenance Services.
- 1.2. Clause headings shall not affect the interpretation of the SMA.
- 1.3. A payment shall be deemed made when credited to the payee's bank account and is cleared funds.
- 1.4. Unless the context otherwise requires, in these terms words in the singular include the plural and, in the plural include the singular, and each gender includes each other gender.
- 1.5. Any words in the terms 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.
- 1.6. English is the authentic text of the SMA and all notices or other communications under or relating to it shall be in writing and in English. Any translation will be for guidance only.

- 1.7. Save as otherwise expressly agreed in writing by Andor, in the event of any inconsistency in the documents comprising the SMA, the following order of prevalence shall apply: (1) the Quotation; (2) the Order Acknowledgement; and (3) these terms, in that order.
- 1.8. 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.

2. SCOPE OF THE SERVICES

- 2.1. On payment of the Service Fee, Andor shall use its reasonable endeavours to provide the Software Maintenance Services in the Standard Support Hours during the Term.
- 2.2. During the Term, Andor shall from time to time make Updates available to Customer. If Customer fails to install an Update within one month of Andor notifying Customer that such Update is available for installation (or such other longer period as Andor may specify), Andor shall be under no obligation to continue to make such Update available and Customer shall no longer be entitled to such Update.
- 2.3. In the event that no Updates are made available during the Initial Period, Andor shall provide the next available Update to Customer free of charge following the end of the Initial Period.
- 2.4. Andor shall issue Updates as and when Andor deems necessary and in whatever form Andor may choose (including, by way of a local fix or patch of the Software or a temporary by-pass solution) in the absolute discretion of Andor.
- 2.5. Andor shall supply Customer with any documentation it considers necessary relating to any Updates acquired by Customer.
- 2.6. Andor may, on prior notice to Customer, make changes to the Software Maintenance Services, provided such changes do not have a material adverse effect on Customer's business operations.
- 2.7. If any variation in the Software Maintenance Services or the Software Maintenance 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 SMA.
- 2.8. It is the responsibility of Customer to download and install any Updates via Customer's online portal when notified by Andor of the availability of an Update. If Customer chooses to disable the version update notification, Customer shall check for the latest available version on Andor Portal, and Andor shall have no liability to Customer if Customer fails to do so.

3. PAYMENT

The following provisions of this clause 3 do not apply to Software Maintenance Services purchases made by Customer from a Distributor. The terms of payment for Software Maintenance Services purchases made by Customer from a Distributor shall be provided in the Distributor's Quotation or as otherwise provided by the Distributor.

- 3.1. Subject to any applicable Quotation, the Service Fee shall exclude any sales tax and any other applicable taxes and duties. Unless expressly included in an applicable Quotation, 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.
- 3.2. Andor shall provide Customer with an invoice detailing the Service Fee and Customer shall pay the invoice sum within thirty (30) days of the date of such invoice unless stated otherwise in the Quotation or on the invoice.
- 3.3. Payment shall be made in either (i) United States Dollars (USD); (ii) Canadian Dollars (CAD); (iii) Euros (EUR); (iv) Great British Pounds (GBP); (v) Japanese Yen (JPY); or (vi) Swiss Francs (CHF) as set out in any applicable Quotation, clear of any banking transaction charges and without deduction, set off or counterclaim.
- 3.4. Without limiting Andor's remedies, if payment is overdue Andor at its discretion may cancel or suspend performance of the SMA.

4. CUSTOMER'S RESPONSIBILITIES

- 4.1. Customer shall ensure that the operating system on the computer on which the Software is installed is compatible for use with the Software and kept up-to-date. Customer acknowledges and agrees that failure to comply with this clause 4.1 may result in the Software being incompatible with Customer's operating system and Andor shall be under no obligation to ensure that the Software continues to work on any out-of-date operating systems.
- 4.2. Customer shall not request or permit anyone other than Andor to provide any software maintenance services in respect of the Software.
- 4.3. To the extent strictly necessary for the performance of the Software Maintenance Services, Customer shall grant Andor access (including remote access) and use of its systems, equipment, premises, facilities, the Software and any necessary information to enable Andor to perform the Software Maintenance Services during Standard Support Hours (and upon reasonable notice from Andor at any other time).
- 4.4. Where the Software Maintenance Services are to be performed at Customer's premises, Customer shall ensure that any such premises to which Andor's employees or agents have access for provision of Software Maintenance 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.
- 4.5. 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 Software Maintenance Services or to enable Andor to limit any damage to either party, including complying with safety procedures.
- 4.6. Customer warrants that any site where performance of the Software Maintenance Services is to take place is in all respects suitable for the safe and lawful performance of the Software Maintenance Services.
- 4.7. Customer shall provide all reasonable utilities (including heat, light, electricity, and ventilation) and telecommunications required for the performance of the Software Maintenance Services.
- 4.8. 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 Software Maintenance 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 Customer to take the above-mentioned precautions to protect and perform regular back-ups of its data.
- 4.9. Customer warrants that it does, and undertakes that it will, comply with any applicable data protection legislation from time to time in force.
- 4.10. In addition to the Service Fee, 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 Customer's request during the provision of the Software Maintenance Services.
- 4.11. Customer shall be responsible for any losses, damages, costs (including legal fees) and expenses incurred by or awarded against Andor as a result of:
 - 4.11.1. Customer's failure to comply with any of its obligations under this clause 4; or
 - 4.11.2. the negligence or wilful misconduct of Customer.

5. EXCLUSIONS FROM SERVICES

- 5.1. Andor shall have no obligation to provide the Software Maintenance Services where faults arise from:
 - 5.1.1. misuse of or damage to the Software from whatever cause (other than any act or omission by Andor), including failure or fluctuation of electrical power;
 - 5.1.2. failure to maintain the necessary environmental conditions for use of the Software;
 - 5.1.3. use of the Software in combination with any equipment or software not provided by Andor or not designated by Andor for use with any Update which

forms part of the Software to which the Software Maintenance Services apply, or any fault in any such equipment or software;

- 5.1.4. relocation or installation of the Software by any person other than Andor or a person acting under Andor's instructions (any migration of the Software by Andor shall be subject to the terms of Andor's license migration agreement);
 - 5.1.5. any breach of Customer's obligations under this SMA howsoever arising or having the Software maintained by a third party;
 - 5.1.6. use by Customer of any update to the Software not authorised by Andor ; or
 - 5.1.7. operator error.
- 5.2. Unless otherwise agreed in writing by Andor, the following shall be excluded from the Software Maintenance Services and/or an additional fee will be payable to Andor for:
 - 5.2.1. the servicing of any Software not described in any applicable Quotation; and/or
 - 5.2.2. any services not described in the Quotation.
 - 5.3. Customer shall reimburse Andor for any costs incurred by Andor arising from any claims made against Andor which have been caused by operator error or incorrect application or other default of Customer.
 - 5.4. In the provision of Software Maintenance Services, Andor cannot guarantee the attendance of any particular individual as a Technical Support Expert and reserves the right to replace any Technical Support Expert with an appropriate alternative individual at any time.
 - 5.5. Unless otherwise agreed in writing, the Technical Support Expert shall not be required to perform any services other than the Software Maintenance Services.
 - 5.6. If any appointment with a Technical Support Expert is cancelled by Customer with less than twenty-four (24) hours' notice, notwithstanding the payment of the Service Fee, Andor may also charge its standard rates for its time and expenses in respect of such appointment.

6. WARRANTY

- 6.1. Andor warrants that the Software Maintenance Services will be performed with reasonable skill and care.
- 6.2. If within the Warranty Period Andor has received notice from Customer that any Software Maintenance Services were not performed in accordance with the SMA, Andor shall at its option either re-perform any non-compliant Software Maintenance Services free of charge or refund to Customer a proportion of the price paid (as Andor in its absolute discretion deems reasonable) for such Software Maintenance Services provided that:
 - 6.2.1. Customer promptly gives written notice of the relevant non-performance (with salient information) to Andor within the Warranty Period;
 - 6.2.2. none of the exclusions set out in clause 5 apply; and
 - 6.2.3. payment in full of all sums due in respect of the Software Maintenance Services have been made.
- 6.3. The Warranty Period for any Software Maintenance Services re-performed pursuant to clause 6.1 shall be the remaining period, if any, of the initial Warranty Period which applied from the date on which the relevant Software Maintenance Services were first performed.

7. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- 7.1. 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 Software Maintenance 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 the Quotation so requires, Andor shall grant or procure the grant of a licence to use materials created specifically for Customer in the course of the Software Maintenance Services.
- 7.2. 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 Software Maintenance 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.

contractor, such associate or sub-contractor shall be entitled to the benefit of this clause 8 and to enforce it on its own behalf.

8. EXCLUSION AND LIMITATION OF LIABILITY

- 8.1. 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 SMA and to insure accordingly, Customer agrees to Andor limiting its liability as set out in this clause 8, subject always to clause 8.10.
- 8.2. Subject to clause 8.8, if Andor has properly re-performed the Software Maintenance Services in accordance with clause 6.2, it shall have no further liability in respect of such default in the Software Maintenance Services unless proper performance is not possible in which case Andor's liability shall be limited to refunding a proportion of any monies paid in respect of such defective Software Maintenance Services.
- 8.3. Customer acknowledges that Andor's obligations and liabilities in respect of the Software Maintenance Services are exhaustively defined in the SMA and that, subject to clause 8.8, 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 Software Maintenance Services including, as to the condition, quality, performance or fitness for any purpose of the Software Maintenance Services or any part of them.
- 8.4. All dates supplied by Andor for the delivery of the Updates, or the provision of Software Maintenance Services shall be treated as approximate only. Andor shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.
- 8.5. Subject to clause 8.9, 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 SMA, or for any claim against Customer by any other party, even if Andor has been advised of the possibility of such loss or damages.
- 8.6. Subject to clause 8.9, 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 SMA shall not exceed a sum equal to one and a half times the Service Fee save that this clause 8.6 shall not limit or exclude any liability of Andor which cannot be effectively excluded in law.
- 8.7. Without prejudice to the foregoing, the provision of the Software Maintenance Services is not a guarantee that any Software will operate uninterrupted or without error.
- 8.8. Any liability of Andor under any warranty or other obligation stated or confirmed in the Quotation is subject to all exclusions and limitations in the SMA.
- 8.9. Nothing in the SMA shall limit or exclude the liability of Andor for (i) death or personal injury caused by its negligence; (ii) fraud or fraudulent misrepresentation; or (iii) any other liability which may not be excluded or limited by law.
- 8.10. Andor shall not be responsible or liable for:
 - 8.10.1. 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 be responsible for any liability in relation to the same; or
 - 8.10.2. any failure to perform, or delay in performing, any Software Maintenance Services which is caused or contributed to by a breach by Customer of its obligations under the SMA and Andor shall be entitled to rely on all information and materials provided by Customer without verifying the same.
- 8.11. If Andor obtains performance of any of the Software Maintenance Services by any of its associates or any sub-

9. TERM AND TERMINATION

- 9.1. The SMA shall commence on the Commencement Date and, unless terminated earlier in accordance with this clause 9, shall continue for the Initial Period.
- 9.2. Andor and Customer may agree to extend the Initial Period for the Software Maintenance Services for any number of one-year periods thereafter (each being a "Renewal Period") for an additional Service Fee.
- 9.3. During the Term, Andor may terminate the SMA in whole or in part and every other contract with Customer if:
 - 9.3.1. Customer commits a material breach of any term of the SMA, or repeatedly breaches any term of the SMA; or
 - 9.3.2. 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
 - 9.3.3. 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
 - 9.3.4. 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
 - 9.3.5. in the reasonable opinion of Andor, Customer has ceased or threatened to cease to trade; or
 - 9.3.6. 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
 - 9.3.7. 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 9.3.3 to 9.3.6 above.

10. FORCE MAJEURE

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 or pandemic; 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 SMA whereupon Customer shall pay a sum equal to the costs to Andor of performing the SMA and Andor's liability shall be limited to repayment of any sums paid in respect of unperformed Software Maintenance Services less such costs.

11. GENERAL

- 11.1. Any notice given to a party under or in connection with the SMA 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 email to the address set out for the party in the Quotation.

- 11.2. 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 email, at 9.00 am on the next business day after transmission.
- 11.3. Any provision invalid or unenforceable for any purpose in the SMA shall be severed for that purpose but otherwise remain valid and enforceable and shall not affect the validity of the remainder of the SMA.
- 11.4. Variations of the SMA shall be effective only if agreed in writing by authorised representatives of both parties.
- 11.5. 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.
- 11.6. 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.
- 11.7. Customer shall not assign, mortgage, charge, sub-let or otherwise dispose of the SMA or any rights thereunder in whole or in part.
- 11.8. Customer acknowledges that Andor may use sub-contractors to perform the Software Maintenance Services. Andor shall at all times remain responsible for the acts and omissions of its sub-contractors.
- 11.9. The SMA shall be binding upon and inure to the benefit of the successors and assigns of Customer.
- 11.10. A person who is not a party to the SMA has no right to enforce any term of the SMA.
- 11.11. The SMA shall be governed by and construed and interpreted in accordance with laws of England and all disputes arising out of or in connection with the Agreement shall be subject to the exclusive jurisdiction of the courts of England.
- 11.12. Save for the Licence, the SMA 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.