

## TERMS AND CONDITIONS FOR ICT SERVICES

This Agreement (as defined below) is made between (1) **China Telecom (Europe) Limited**, a company incorporated under the laws of England with its registered address at 11th Floor, Exchange Tower, 1 Harbour Exchange Square, London, E14 9GE, United Kingdom (hereinafter “CTE”) and (2) the customer named in the Order Form (**Customer**).

### It is agreed as follows:

#### 1 Structure of the agreement

1.1 This agreement (**Agreement**) comprises

- 1.1.1 these General Terms and Conditions;
- 1.1.2 the Operation and Maintenance Terms and Conditions in Schedule 1;
- 1.1.3 the Hire Terms in Schedule 2; and
- 1.1.4 the Order Form.

1.2 If an Order Form specifies any Tangible Deliverable as being leased or hired to the Customer, then the hire of that Tangible Deliverable to the Customer will be the subject of a separate contract between CTE and the Customer on the terms set out in the Hire Agreement and (to the extent that it applies to the relevant Tangible Deliverable) the Order Form (each, a "**Hire Agreement**"). Each Hire Agreement shall last for the period set out in the Hire Terms and/or Order Form and shall be terminable separately from this Agreement.

1.3 If any of these documents is inconsistent with the others, then: (a) if and to the extent that the Tangible Deliverable is being leased or hired by the Customer, subject to clause 1.2 the Hire Terms shall take precedence over all other terms and otherwise the documents will prevail in the descending order set out in clause 1.1 to the extent of the inconsistency (and so that these General Terms and Conditions shall apply to the Hire Agreement only to the extent set out in the Hire Agreement); or (b) otherwise, then unless expressly stated otherwise in the relevant documents, the documents will prevail in the descending order set out in clause 1.1 to the extent of the inconsistency.

1.4 For the avoidance of doubt, the terms and conditions of this Agreement prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

#### 2 Deliverable

2.1 Where the Order Form indicates that the Customer is purchasing the Tangible Deliverable then, in consideration of payment of the Tangible Deliverable Charges, the Customer shall purchase, and CTE shall supply, the Tangible Deliverable on the terms and conditions set out in this Agreement. Where the Order Form indicates that the Customer is leasing the Tangible Deliverable then the Customer shall hire,

and CTE shall supply, the Hired Hardware and Asset on the terms and conditions set out in the Hire Agreement.

#### 2.2 Quantity and description

2.2.1 The quantity and description of the Deliverable shall be as set out in the Order Form.

2.2.2 All samples, drawings, descriptive matter, specifications and advertising issued by CTE, and any descriptions or illustrations contained in CTE's marketing materials or brochures are issued or published for illustrative purposes only and they do not form part of this Agreement.

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

2.2.4 CTE reserves the right (but does not assume the obligation) to make any changes in the specification of the Deliverable which are required to conform with any applicable legislation or, where the Deliverable is to be supplied to the Customer's specification, which do not materially affect their quality or performance.

#### 2.3 Delivery

2.3.1 CTE shall deliver the Tangible Deliverable to the Premises.

2.3.2 CTE shall use its reasonable endeavours to deliver the Tangible Deliverable on the date(s) specified in the Order Form, but any such date is approximate only. If no dates are so specified, delivery shall be within a reasonable time of the Commencement Date. Time is not of the essence as to the delivery of the Tangible Deliverable and CTE is not in any circumstances liable for any delay in delivery, however caused.

2.3.3 The Tangible Deliverable may be delivered by CTE in advance of the quoted delivery date on giving reasonable notice to the Customer.

2.3.4 Delivery shall be made during Normal Business Hours. CTE may levy additional charges for any deliveries made outside

Normal Business at the Customer's request.

2.3.5 CTE shall be responsible for any damage, shortage or loss in transit, provided that:

(A) the Customer notifies it to CTE (or its carrier, if applicable) within three (3) Business Days of delivery of the Tangible Deliverable; and

(B) the Tangible Deliverable has been handled in accordance with CTE's stipulations.

Any remedy under this clause 2.3.5 shall be limited, at the option of CTE, to the replacement or repair of any Tangible Deliverable which is proven to CTE's satisfaction to have been lost or damaged in transit.

2.3.6 CTE may deliver the Tangible Deliverable by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of this Agreement. Cancellation or termination by either party of any instalment shall not entitle the Customer to repudiate or cancel any other instalment.

## 2.4 Title and risk

2.4.1 The Tangible Deliverable shall be at CTE's risk until delivery to the Customer at the Premises.

2.4.2 Ownership of the Tangible Deliverable shall pass to the Customer on the later of completion of delivery (including off-loading) or when CTE has received in full in cleared funds all sums due to it in respect of the Tangible Deliverable.

2.4.3 Until ownership of Tangible Deliverable purchased by the Customer has passed to the Customer under clause 2.4.2, the Customer shall:

(A) hold the Tangible Deliverable on a fiduciary basis as CTE's bailee;

(B) store the Tangible Deliverable (at no cost to CTE) in satisfactory conditions and separately from all other hardware or asset of the Customer or a third party, so that it remains readily identifiable as CTE's property;

(C) not destroy, deface or obscure any identifying mark or packaging on or relating to the Tangible Deliverable;

(D) indemnify CTE and keep CTE indemnified in relation to any loss or damage caused to the Tangible Deliverable; and

(E) keep the Tangible Deliverable insured on CTE's behalf for its full price against all risks with a reputable insurer to CTE's reasonable satisfaction, and hold the proceeds of such insurance on trust for

CTE and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

2.4.4 The Customer's right to possession of Tangible Deliverable purchased by it before ownership has passed to it shall terminate immediately if:

(A) any of the circumstances set out in clauses 11.2.1 or 11.2.2 occur to the Customer;

(B) the Customer encumbers or in any way charges the Tangible Deliverable; or

(C) the Customer fails to make any payment of the Tangible Deliverable Charges to CTE on the due date.

2.4.5 The Customer grants CTE and CTE's Personnel an irrevocable licence at any time to enter the Premises or any other premises where the Tangible Deliverable is or may be stored in order to inspect it or, where the Customer's right to possession has terminated, to remove it. All costs incurred by CTE in repossessing the Tangible Deliverable shall be borne by the Customer.

## 2.5 Export restrictions

2.5.1 The Customer shall be responsible for complying with any legislation governing:

(A) the importation of the Tangible Deliverable into the country of destination; and

(B) the export and re-export of the Tangible Deliverable,

and shall be responsible for the payment of any duties on it.

2.5.2 CTE shall be responsible for arranging for the testing and inspection of the Tangible Deliverable at CTE's premises before shipment.

2.5.3 Each Party represents, warrants and undertakes that it shall not engage in any agreement, arrangement, practices or conduct which would be reasonably likely to result in a violation of any Sanctions which are applicable to the Parties or an activity under this MSA or a relevant Agreement. Each Party further acknowledges and agrees that any failure by a Party to comply with the provision of this Clause shall constitute a material and incurable breach of this Agreement for the purpose of Clause 11.

2.5.4 Notwithstanding any other provision, neither Party shall be required to undertake any action under this Agreement which would constitute a violation of, or would be reasonably likely to expose either Party to the risk of being designated as a target of, any Sanctions.

2.5.5 The Customer will not, directly or indirectly, use the CTE's products or services, or export,

re-export, transfer, or otherwise make available such products or services to any subsidiary, joint venture partner, or any other person:

- (A) in any country, region or territory that is, at that time, subject to comprehensive Sanctions defined in Clause 17.1 (including but not limited to Cuba, Iran, North Korea, Syria, the Crimea, Donetsk People's Republic and Luhansk People's Republic regions);
- (B) to facilitate, directly or indirectly, any activities or business of, with, or related to, any person who is a designated target of any Sanctions to the extent doing so would constitute a breach of such Sanctions or for any prohibited end-use; or
- (C) in any other manner that will result in a violation of any Sanctions by any person.

## 2.6 Warranty

- 2.6.1 CTE is not the manufacturer of the Tangible Deliverable and accordingly CTE shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer to CTE.
- 2.6.2 CTE's Personnel are not authorised to make any representations or contractually binding statements concerning the Tangible Deliverable.

## 2.7 Licence of Software

- 2.7.1 If CTE refers to a software licence in the Order Form, the Tangible Deliverable Charges includes the licence fee for the Customer's right to use the Software.
- 2.7.2 If the Customer is provided with any operating system software licence in respect of the Software, the Customer shall sign and return it to CTE within five (5) Business Days of installation of the Software, unless the licence has been supplied on a "shrink-wrap" or "click-wrap" basis.
- 2.7.3 If no software licence has been provided to the Customer, the Customer hereby accepts a non-exclusive, non-transferable licence, terminable, [for the term of this Agreement] to use the Software for its own internal business purposes on the following conditions:
  - (A) the Customer shall not copy (except to the extent permissible under applicable law or for normal operation of the Tangible Deliverable), reproduce, translate, adapt, vary or modify the Software, nor communicate it to any third party, without CTE's prior written consent;
  - (B) the Customer shall not use the Software on any hardware or asset other than the Tangible Deliverable, and shall not remove, adapt or otherwise tamper with

any copyright notice, legend or logo which appears in or on the Software on the medium on which it resides;

- (C) such licence shall be terminable by either party on twenty (20) Business Days' written notice, provided that CTE may only terminate if the continued use or possession of the Software by the Customer infringes the developer's or a third party's rights, or CTE is compelled to do so by the developer or by law, or if the Customer has failed to comply with any term of this Agreement; and
- (D) on or before the expiry of this licence, the Customer shall return to CTE all copies of the Software in its possession.

## 3 Installation and Commissioning Services

- 3.1 In consideration of payment of the Installation and Commissioning Fees, CTE shall perform the Installation and Commissioning Services on the terms and conditions set out in this Agreement.
- 3.2 CTE shall use reasonable endeavours to manage and complete the Installation and Commissioning Services in accordance in all material respects with the Statement of Work.
- 3.3 CTE shall use reasonable endeavours to meet the commencement date and/or performance dates (if any) specified in the Statement of Work, but any such dates shall be estimates only and time for performance of the Installation and Commissioning Services shall not be of the essence.
- 3.4 CTE shall perform the Installation and Commissioning Services at the Premises. CTE shall procure that its Personnel shall, while on site at the Premises, comply with the Customer's reasonable health and safety and security policies provided that these policies have been brought to the attention of its Personnel.
- 3.5 CTE warrants to the Customer that:
  - 3.5.1 the Installation and Commissioning Services shall be performed:
    - (A) by an appropriate number of suitably qualified and experienced Personnel;
    - (B) using all reasonable skill and care; and
    - (C) in accordance with all applicable laws and regulations in force from time to time; and
  - 3.5.2 all components and hardware or asset supplied or used in the course of the provision of the Installation and Commissioning Services shall operate in accordance with their technical specifications.

## 4 Acceptance testing

- 4.1 The Customer will have three (3) calendar days following the Ready for Service Date to conduct tests to determine whether the Deliverable complies with the Acceptance Criteria (**Acceptance Testing**)

**Period**) and to notify CTE that the Deliverable is accepted.

- 4.2 If no written notice is received from the Customer on expiry of the Acceptance Testing Period, the Customer will be deemed to have accepted the Deliverable.
- 4.3 If the Customer notifies CTE during the Acceptance Testing Period that the Deliverable does not comply with the Acceptance Criteria, CTE will promptly take such reasonable action as is necessary to correct any such non-compliance in the Deliverable and clauses 4.1 and 4.2 will apply.

## 5 Deliverable Operation and Maintenance Services

5.1 Subject to clause 5.4, in consideration of payment of the Deliverable Operation and Maintenance Fees, CTE shall perform the Deliverable Operation and Maintenance Services on the terms and conditions:

5.1.1 set out in the Operation and Maintenance Terms and Conditions; and

5.1.2 otherwise set out in this Agreement.

5.2 CTE shall perform the Deliverable Operation and Maintenance Services during the Operation and Maintenance Term at the Premises.

5.3 CTE warrants to the Customer that:

5.3.1 the Deliverable Operation and Maintenance Services shall be performed:

(A) by an appropriate number of suitably qualified and experienced Personnel;

(B) using all reasonable skill and care; and

(C) in accordance with all applicable laws and regulations in force from time to time; and

5.3.2 all components and hardware or asset supplied or used in the course of the provision of the Deliverable Operation and Maintenance Services shall operate in accordance with their technical specifications.

5.4 If the Order Form provides that maintenance of the Deliverable shall be the responsibility of the manufacturer of the Deliverable, the provisions of this clause 5 shall not apply and CTE shall have no responsibility or liability for any maintenance of the Deliverable.

## 6 Extra Services

6.1 In consideration of payment of the Extra Fees, CTE shall perform the Extra Services on the terms and conditions set out in this Agreement.

6.2 CTE shall use reasonable endeavours to manage and complete the Extra Services in accordance in all material respects with the specification for the Extra Services set out in the Order Form.

6.3 CTE shall use reasonable endeavours to meet the commencement date and/or performance dates (if any) for the Extra Services specified in the Order Form, but any such dates shall be estimates only and time for performance of the Extra Services shall not

be of the essence.

6.4 CTE shall perform the Extra Services at the Premises. CTE shall procure that its Personnel shall, while on site at the Premises, comply with the Customer's reasonable health and safety and security policies provided that these policies have been brought to the attention of its Personnel.

6.5 CTE warrants to the Customer that:

6.5.1 the Extra Services shall be performed:

(A) by an appropriate number of suitably qualified and experienced Personnel;

(B) using all reasonable skill and care; and

(C) in accordance with all applicable laws and regulations in force from time to time; and

6.5.2 all components and hardware or asset supplied or used in the course of the provision of the Extra Services shall operate in accordance with their technical specifications.

## 7 Customer obligations

7.1 The Customer shall:

7.1.1 be responsible (at the Customer's cost) for preparing the delivery location for the delivery of the Deliverable and the performance of the Services;

7.1.2 at all reasonable times permit full and free access to the Premises and to the Deliverable to CTE and its Personnel and provide them with adequate and safe working space, and any other facilities as are reasonably required, to enable CTE to perform the Services while at the Premises, including obtaining all necessary permits, authorisations, licences and consents for CTE and its Personnel to deliver the Deliverable and perform the Services at the Premises;

7.1.3 co-operate with CTE and provide CTE with any information that is reasonably requested in the delivery of the Deliverable and/or performance of the Services, and ensure that such information is accurate in all material respects;

7.1.4 keep an operational logbook as instructed by CTE; and

7.1.5 take any steps reasonably necessary to ensure the safety of CTE's personnel when attending the Premises.

7.2 The Customer agrees to act in a timely manner and to provide properly competent and qualified Personnel with respect to its obligations under this Agreement and to any tasks to be undertaken by it, whether expressly set out in this Agreement or otherwise reasonably requested of it by CTE. Delivery of the Deliverable and performance of the Services are provided on the assumption that the Customer and its Personnel will fulfil their obligations and tasks on time and as stated.

7.3 If, as a result of any act or omission by the Customer or its Personnel (howsoever caused) which is not directly and wholly caused by CTE (including the provision of any incorrect or inadequate information or data by the Customer), CTE is prevented or delayed from performing any of its obligations under this Agreement or the cost of such performance increases, then:

7.3.1 the time for performance of CTE's obligations will be extended for a reasonable period;

7.3.2 the Customer will be responsible at its own cost for storing the Deliverable until the Premises are ready for delivery or performance of the Services and/or nominating alternative premises; and

7.3.3 the Customer shall pay CTE on demand:

(A) at CTE's standard time and materials rates for any additional time spent and materials used by it with respect to any delays or extra work caused by such act or omission; and

(B) all other reasonable costs, loss or damage which it sustains as a direct result of such act or omission.

7.4 The Customer shall not either on its own account or in partnership or association with any person, firm, company or organisation, or otherwise and whether directly during, or for a period of six (6) months from, expiry or termination of this Agreement, solicit or entice away or attempt to entice away or authorise the taking of such action by any other person, any of CTE's Personnel who has worked on delivery of the Deliverable and/or performance of the Services provided under this Agreement at any time during the term of this Agreement.

## 8 Charges

8.1 The Charges shall be as stated in the Order Form as the same may be varied in accordance with the terms of this Agreement or, if relevant, the Hire Agreement.

8.2 The Charges are exclusive of all delivery, warehousing, packaging, packing, shipping, carriage, insurance, Taxes and other charges and duties, which shall be paid by the Customer in addition to the Charges (and in the case of Taxes at the rate and in the manner for the time being prescribed by law).

8.3 CTE reserves the right:

8.3.1 by giving notice to the Customer at any time before delivery of the Tangible Deliverable, to increase the Tangible Deliverable Charges of such of the Tangible Deliverable purchased by the Customer and as has not been delivered to reflect any increase in the cost to CTE which is due to any factor beyond the control of CTE (including any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for

the relevant Tangible Deliverable which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give CTE adequate information or instructions;

8.3.2 to vary the Standard Operation and Maintenance Fees in accordance with the Operation and Maintenance Terms and Conditions; and/or

8.3.3 to vary the Charges for Hired Hardware and Asset in accordance with the relevant Hire Agreement.

## 9 Invoices and payment

9.1 CTE will issue an invoice in accordance with the timetable for invoicing set out in the Order Form or, in relation to any Hired Hardware and Asset, in accordance with the Hire Agreement.

9.2 Subject to clause 10, the Customer must pay all invoices in full:

9.2.1 within the time for payment specified in the Order Form or Hire Agreement or, if no such payment terms are so specified, within thirty (30) days of the date of the invoice;

9.2.2 in the currency specified in the Order Form or Hire Agreement; and

9.2.3 without any withholding, deduction, set off or counterclaim.

9.3 Time for payment of the price shall be of the essence of this Agreement and of any Hire Agreement.

9.4 CTE reserves the right at its sole discretion to appoint from time to time an Affiliate and/or a third party as its agent:

9.4.1 to issue invoices to the Customer on behalf of CTE; and/or

9.4.2 to collect and receive payments due under this Agreement or any Hire Agreement from the Customer on behalf of CTE,

and the Customer acknowledges and agrees to such arrangements.

9.5 In addition and without prejudice to any other remedies CTE may have, if the Customer fails to pay any amount when due, CTE shall without notice to the Customer be entitled to:

9.5.1 charge interest on the overdue amount from the date due until the date paid at the rate of 1.5% per month. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest immediately on demand by CTE;

9.5.2 terminate this Agreement or suspend any further deliveries of Deliverable to the Customer and/or performance of the Services;

9.5.3 net or set off amounts payable by CTE to the

Customer under this Agreement;

- 9.5.4 make a storage charge for any undelivered Deliverable at its current rates from time to time;
- 9.5.5 stop any Deliverable in transit; and/or
- 9.5.6 a general lien on all Tangible Deliverable and property belonging to the Customer, exercisable in respect of all sums lawfully due from the Customer to CTE. CTE shall be entitled, on the expiry of ten (10) Business Days' notice in writing, to dispose of such Deliverable or property in such manner and at such price as it thinks fit and to apply the proceeds towards the amount outstanding.

## 10 Billing disputes

- 10.1 If the Customer reasonably disputes any matter contained in any invoice, the Customer shall:
  - 10.1.1 pay the undisputed portion of the invoiced charges by the due date for the relevant invoice; and
  - 10.1.2 notify CTE in writing of the disputed amount providing the invoice number and reasonable details as to why the amount is disputed within twenty (20) Business Days of the date of the relevant invoice;

provided that this clause 10.1 shall not apply to any Charges payable under any Hire Agreement, which must be paid on time and without any deduction or set-off as set out in the Hire Agreement.
- 10.2 A dispute shall not be cause for delay of payment of the balance due, nor may it be grounds for the Customer to withhold payment of any undisputed amount.
- 10.3 In the event of a dispute, the parties will investigate the matter and use reasonable endeavours to resolve the disputed charges within twenty (20) Business Days of the notice of the dispute. If the parties are unable to resolve the dispute informally in good faith within those twenty (20) Business Days, CTE reserves the right to terminate this Agreement or suspend any further deliveries of Deliverable to the Customer and/or performance of the Services.
- 10.4 Following resolution of the dispute, the adjustment (if any) will be applied to the payment of the Customer's next invoice. If it is ultimately determined that the adjustment amount is payable by the Customer, CTE may (without prejudice to any other remedies CTE may have) charge interest on the adjustment amount from the original due date for payment of the disputed amount at the rate of 1.5% per month. Such interest shall accrue on a daily basis from for each day thereafter until actual payment is made, whether before or after judgment. The Customer shall pay the interest immediately on demand by CTE.

## 11 Termination

- 11.1 Termination of a Hire Agreement shall be in accordance with the terms of the Hire Agreement. Unless otherwise stated in the Hire Agreement,

termination of this Agreement will not terminate any Hire Agreement previously entered into between the parties under this Agreement, and each relevant Hire Agreement shall remain in effect until terminated in accordance with its terms.

- 11.2 Subject to clause 11.1, either party may terminate this Agreement:
  - 11.2.1 where the other party is in material breach of this Agreement and that breach is not remedied twenty (20) Business Days after the breaching party has received notice to do so;
  - 11.2.2 on notice to the other party where the other party suffers an Insolvency Event; or
  - 11.2.3 where a Force Majeure Event continues for more than twenty (20) Business Days.
- 11.3 If during the term of this Agreement, any government agency enacts any law or regulation, imposes any requirements or restrictions, or takes any other actions, which, in CTE's sole discretion, causes CTE to be unable to perform its obligations under this Agreement, the Parties shall, at the request of the CTE, enter into good faith negotiations with the objective of amending the terms of this Agreement to the extent permissible under the relevant law or regulation, requirement or restriction, or government action. If the Parties cannot reach a reasonably acceptable modification within one (1) month of the CTE's request, either Party shall have the right to unilaterally terminate this Agreement without liabilities by giving one (1) month written notice to the other Party.
- 11.4 On termination of this Agreement by either party for any reason:
  - 11.4.1 all Confidential Information of a party must on the request of a party be destroyed or returned to that party by the other party;
  - 11.4.2 the Customer must return all of CTE's hardware, asset and materials, failing which, CTE may enter the Premises or other relevant premises and take possession of them. Until these are returned or repossessed, the Customer shall be solely responsible for their safe-keeping;
  - 11.4.3 all outstanding charges and invoices which have yet to be paid must be paid by the Customer;
  - 11.4.4 accrued rights and obligations of a party are not affected; and
  - 11.4.5 clauses 1, 2.4, 11.4 11.5, 12, 13, 14.1, 14.2, 15 (excluding clause 15.1) and 16 will survive termination.
- 11.5 On termination of this Agreement:
  - 11.5.1 by CTE in accordance with clause 11.2.1 or 11.2.2; or
  - 11.5.2 by the Customer for convenience where permitted by this Agreement,

the Customer must pay CTE the Termination Fee in addition to any outstanding charges payable pursuant to clause 11.4.3. The parties agree that the Termination Fee has been calculated as, and is, a genuine pre-estimate of the loss likely to be suffered by CTE.

## 12 Liability

- 12.1 Each party accepts liability to the other party in connection with this Agreement as set out in this clause 12.
- 12.2 Subject to clauses 2.3.2, 2.3.5, 12.3, 12.6, 12.7, 12.8 and 12.9, a party's maximum liability to the other party for Loss suffered or incurred in connection with this Agreement is limited in aggregate to 100% of the Charges paid under this Agreement.
- 12.3 A party's liability to the other party for Losses under clauses 12.4 and 12.5 is not limited by clause 12.2.
- 12.4 The exclusions and limitations on a party's liability in this clause 12 do not apply in the case of (i) fraud or fraudulent misrepresentation by it or its employees; (ii) death or personal injury caused by its or its employees' negligence; or (iii) a breach by that Party of obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or (iv) under any indemnities in this Agreement; or (v) for non-payment by that party of any fees, charges and/or amounts owing to the other party; or (vi) any other liability that cannot be excluded or limited under the relevant applicable law.
- 12.5 The Customer indemnifies CTE for all Loss suffered or incurred by CTE arising from:
- 12.5.1 any claim from its Personnel;
- 12.5.2 any claim from any End User or its Personnel; and
- 12.5.3 any breach of any law or regulations by the Customer or its Personnel.
- 12.6 To the extent possible, CTE excludes any and all liability to End Users except to the extent that the Customer is the End User.
- 12.7 Other than for liability under clauses 12.4 and 12.5 or for any liability which may not be limited by applicable law, each party excludes any liability for any Consequential Loss suffered or incurred in connection with this Agreement.
- 12.8 To the extent possible, CTE excludes all conditions and warranties implied into this Agreement and limits its liability for any non-excludable conditions and warranties, where permitted by law to do so, to (at CTE's option) repairing or replacing the relevant goods, or resupplying the relevant or equivalent services.
- 12.9 CTE excludes all liability to the Customer for its failure to perform the Operation and Maintenance Services in accordance with the Service Levels. The Customer's sole remedy for any failure of the Operation and Maintenance Services to meet the Service Levels is the provision of the Service Credits.

## 13 Confidentiality and Data Privacy

### 13.1 Each party must:

- 13.1.1 keep the other party's Confidential Information confidential;
- 13.1.2 not use or exploit the other party's Confidential Information in any way except in connection with its rights and obligations under this Agreement; and
- 13.1.3 not disclose the other party's Confidential Information except:
- (A) to its Personnel and Affiliates who have a need to know for the purposes of this Agreement; or
- (B) as required by law or a governmental or other regulatory authority (including any relevant securities exchanges), court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of this disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 13.1.3(B), it takes into account the reasonable requests of the other party in relation to the content of this disclosure.

### 13.2 Confidential Information does not include any information that:

- 13.2.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Personnel in breach of this clause);
- 13.2.2 was available to the receiving party on a non-confidential basis prior to disclosure by the disclosing party;
- 13.2.3 was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
- 13.2.4 was known to the receiving party before the information was disclosed to it by the disclosing party;
- 13.2.5 the parties agree in writing is not confidential or may be disclosed; or
- 13.2.6 is developed by or for the receiving party independently of the information disclosed by the disclosing party.

### 13.3 Each party shall comply with its respective obligations under all applicable laws and regulations relating to use of personal data and privacy in relation to all personal data that is used by it in the course of performing its obligations under this Agreement.

## 14 Intellectual Property

14.1 The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Deliverable and in any and all materials, hardware, asset and tools, drawings, specifications and data created or supplied by or on behalf of CTE while providing the Services are and shall remain the sole property of CTE or (as the case may be) its licensor(s) or other third party rights' owner(s), and the Customer shall not at any time make any unauthorised use of such Intellectual Property Rights, nor authorise or permit any of its Personnel or any other person to do so. The Customer shall keep the same in safe custody at its own risk and maintained and in good condition until returned to CTE, and shall not dispose of or use the same other than in accordance with CTE's written instructions or authorisation.

14.2 In relation to the Software:

14.2.1 the Customer acknowledges that it is buying only the media on which the Software is recorded and the accompanying user manuals;

14.2.2 nothing contained in these conditions shall be construed as an assignment of any Intellectual Property Rights in the Software or user manuals;

14.2.3 the Customer shall be subject to the rights and restrictions imposed by the owner of the Intellectual Property Rights in the Software and user manuals, and shall comply with all licence agreements, terms of use and registration requirements relating to them; and

14.2.4 the Customer agrees that except as expressly permitted by applicable law it will not decompile, disassemble or otherwise reverse engineer any Software. Requests for interface information relating to the Software shall be addressed in writing to CTE marked for the attention of the Legal Officer.

14.3 Neither party shall have the right to use the other party's or its Affiliates' trademarks, service marks or trade names or to otherwise refer to the other party in any marketing, promotional or advertising materials or activities without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except that CTE may list the Customer as a customer of CTE's products and services in sales, promotional and advertising materials.

## 15 General

### 15.1 Warranty

Each party warrants to the other party that it:

15.1.1 is duly incorporated and subsisting under, and the operation of its business is in compliance with, the law of the relevant jurisdiction; and

15.1.2 has the complete right and authority to enter into this Agreement without approval or consent of any third party.

### 15.2 Force majeure

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). In such circumstances the time for performance of the affected obligations will be extended by the time of the delay caused by the Force Majeure Event.

### 15.3 Notices

15.3.1 A notice given to a party under or in connection with this Agreement shall be in writing and sent to the party at the address set forth at the top of this Agreement or as otherwise notified in writing to the other party in accordance with this clause 15.3. Any notice shall be duly served:

(A) on delivery if delivered by hand;

(B) forty-eight (48) hours after sending if sent by pre-paid post or recorded delivery;

(C) on the date and at the time that the courier's delivery receipt is signed, if delivered by commercial courier; or

(D) at the time of transmission, if sent by fax or email, unless sent after 17.00 in the place of receipt in which case it shall be deemed to have been received on the next Business Day in the place of receipt, and, subject to clause 15.3.2, provided that a copy has also been sent by post as set out in clause 15.3.1(B).

15.3.2 The Customer acknowledges and agrees that notices issued by CTE in connection with acceptance testing, Service Levels and Service Credits will be sent by email only and that for any such notices CTE shall not be required to send a copy of the notice by post under clause 15.3.1(D) to be duly served.

### 15.4 Variation

Save as expressly provided in this Agreement, no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

### 15.5 Assignment

15.5.1 Subject to clauses 9.4 and 15.5.2, this Agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

15.5.2 CTE has the right to:

(A) assign to any of its Affiliates part or all of its rights and obligations under this Agreement without the Customer's consent; and



(B) sub-contract the provision of all or part of delivery of the Deliverable and/or of performance of the Services to any Affiliate of CTE or a Third Party Provider, but CTE will remain primarily liable for the performance of its obligations under this Agreement.

#### 15.6 Entire agreement

15.6.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

15.6.2 Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement.

15.6.3 No party shall have any claim for innocent or negligent misrepresentation based upon any statement in this Agreement.

15.6.4 Nothing in this clause 15.6 shall limit or exclude any liability for fraud.

#### 15.7 Severability

15.7.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

15.7.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

#### 15.8 Waiver and remedies cumulative

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. A waiver of any right or remedy under this Agreement is only effective if given in writing. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

#### 15.9 No third party rights

Except to the extent expressly provided otherwise by this Agreement, a person who is not a party to this Agreement shall not have any rights under or in

connection with this Agreement, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise Non-exclusive arrangements.

Nothing in this Agreement diminishes, restricts or prejudices the rights of either party to enter into similar agreements with a third party.

#### 15.10 No partnership or agency

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute a party the agent of the other party, nor authorise a party to make or enter into any commitments for or on behalf of the other party.

#### 15.11 Further assurances

Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

#### 15.12 Language

15.12.1 This Agreement is drafted in the English language. If this Agreement is translated into any other language, the English language text shall prevail.

15.12.2 Any notice given under or in connection with this Agreement shall be in the English language. All other documents provided under or in connection with this Agreement shall be in the English language, or accompanied by a certified English translation. If such document is translated into any other language, the English language text shall prevail.

#### 15.13 Governing law

This Agreement and all documents made under this Agreement shall be governed by and construed and enforced in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of the English courts.

#### 15.14 Dispute resolution

15.14.1 Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof ("Dispute"), must follow the dispute resolution process set out in this clause 15 before commencing proceedings. To avoid doubt, billing and payment disputes shall be dealt with under clause 10.

15.14.2 All Disputes shall be referred to a senior executive who has authority to resolve the Dispute. The senior executives shall consider the Dispute and shall negotiate in good faith to resolve it. If the Dispute is not resolved by the senior executives within twenty (20) Business Days

after their appointment, then the parties are free to commence external proceedings.

15.14.3 Nothing in this clause 15 prevents either Party from seeking urgent injunctive or interlocutory relief from a court of competent jurisdiction.

## 16 Anti-bribery

Each party shall:

16.1 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including the Bribery Act 2010;

16.2 have and shall maintain in place throughout the term of the Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the requirements set out in clause 16.1, and will enforce them where appropriate; and

16.3 promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of the Agreement.

A breach of this clause 16 shall be a material breach of this Agreement.

## 17 Definitions and Interpretation

17.1 In this Agreement, unless the context otherwise indicates:

**Acceptance Criteria** means the acceptance criteria set out in or appended to the Order Form;

**Acceptance Date** means the date on which the Deliverable is accepted or deemed accepted pursuant to clauses 4.1 and 4.2;

**Acceptance Testing Period** has the meaning given in clause 4.1;

**Additional Services Fees** has the meaning given in the Operation and Maintenance Terms and Conditions;

**Additional Services** has the meaning given in the Operation and Maintenance Terms and Conditions;

**Affiliate** means in respect of a company, a company which is its subsidiary or holding company or a company which is a subsidiary of that holding company;

**Agreement** has the meaning given in clause 1.1;

**Business Day** means a day other than a Saturday, Sunday or a public or general holiday in the location where the obligation is to be performed or England (whichever is appropriate);

**Charges** mean the Tangible Deliverable Charges,

Deliverable Operation and Maintenance Fees, the Installation and Commissioning Fees and the Extra Charges;

**Commencement Date** means the date on which the last party to this Agreement has executed the Order Form;

**Confidential Information** means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, goods/services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party and all personal and private data and includes the terms of and information in this Agreement;

**Consequential Loss** means any:

(a) loss of profits, use, anticipated savings, revenue, business opportunity, goodwill, reputation, economic loss or data; and/or

(b) Indirect loss or damages, special, punitive or consequential loss;

**Deliverable** means any Tangible Deliverable and/or Intangible Deliverable that is agreed to be provided to the Customer under the Agreement;

**Deliverable Operation and Maintenance Fees** means the Standard Operation and Maintenance Fees, Additional Services Fees and any additional charges for spare parts as provided in the Operation and Maintenance Terms and Conditions;

**Deliverable Operation and Maintenance Services** means the Operation and Maintenance Services and Additional Services to be provided by or on behalf of CTE;

**Dispute** has the meaning given in clause 15.14.1;

**End User** means any person who uses the Deliverables and/or to whom the Deliverables are resold and includes the Customer;

**Extra Charges** means the charges for any Extra Services as specified in the Order Form;

**Extra Services** means any additional training, technical support and/or other extra services agreed between CTE and the Customer as specified in the Order Form;

**Force Majeure Event** has the meaning given in clause 15.2;

**General Terms and Conditions** means these general terms and conditions;

**Hire Agreement** is defined in clause 1.2 of the General Terms and Conditions;

**Hire Terms** means the terms set out in Schedule 2;

**Hired Hardware and Asset** means the Tangible Deliverables, to be supplied by CTE to the Customer for hire as set out in the relevant Order Form (for the

purpose of clauses of these General Terms and Conditions incorporated into the relevant Hire Agreement references to Tangible Deliverables shall be read to refer to Hired Hardware and Asset);

**Hire Services** means the services provided by CTE to Customer relating to Hired Hardware and Asset as further described in the relevant Order Form;

**Insolvency Event** means, in relation to a party to this Agreement:

- (i) any evidence of the potential or imminent insolvency of the relevant party or that Party's insolvency, dissolution or cessation of business operations;
- (ii) the relevant party filing a petition in bankruptcy or if a petition in bankruptcy is filed against it;
- (iii) the relevant party making an assignment for the benefit of any of its creditors or similar arrangement pursuant to any bankruptcy law or similar law of an applicable jurisdiction;
- (iv) the relevant party ceasing to carry on its business; and/or
- (v) if the relevant party is resident in a jurisdiction other than England and Wales and an event similar or equivalent to any of those specified in sub-clauses (i), (ii), (iii) or (iv) occurs in relation to such party;

**Installation and Commissioning Fees** means the fees payable by the Customer to CTE for the performance of the Installation and Commissioning Services, as set out in the Order Form;

**Installation and Commissioning Services** means the installation and commissioning services to be provided by or on behalf of CTE as set out in the Statement of Work;

**Intangible Deliverable** means Services. Software, and/or output from any Service that is agreed to be provided to the Customer under the Agreement;

**Intellectual Property Rights** means any and all existing and future rights associated with registered and unregistered copyrights, trademarks, trade dress, trade names, corporate names, logos, inventions, patents, patent applications, software, know-how, and all other intellectual and industrial property and proprietary rights of every kind and nature and however designated, wheresoever arising or subsisting;

**Loss** means all loss, liability, damage, cost and expense (including Taxes and reasonable legal fees);

**Normal Business Hours** means CTE's official business hours (as may be notified by CTE from time to time) on a Business Day in the location where the obligation is to be performed or 9.00 am to 5.30 pm on a Business Day in England (as appropriate);

**Operation and Maintenance Services** has the meaning given in the Operation and Maintenance Terms and Conditions;

**Operation and Maintenance Term** has the meaning given in the Operation and Maintenance Terms and Conditions;

**Operation and Maintenance Terms and Conditions** mean the service-specific terms applicable to the Operation and Maintenance Services set out in Schedule 1 to these General Terms and Conditions;

**Order Form** means the summary of the Deliverables (as the case may be) to be provided by CTE to the Customer pursuant to this Agreement (in a form approved by CTE) made by the Customer requesting supply of the Service and attached to these General Terms and Conditions;

**Personnel** means employees, officers, agents, consultants, contractors, sub-contractors and their employees, officers, agents, consultants, contractors and sub-contractors;

**Premises** means (as the case may be):

- (a) the place of delivery of the Deliverable; and/or
- (b) the place of performance of the Services,

as specified in the Order Form or any other location as may be agreed by the parties in writing from time to time subject to the Customer having given CTE at least five (5) Business Days' notice prior to the scheduled delivery or performance date (as the case may be) of any request to change the place of delivery or performance;

**Ready for Service Date** means the date when:

- (a) if Installation and Commissioning Services are to be provided, CTE notifies the Customer that the Installation and Commissioning Services have been completed; or
- (b) if no Installation and Commissioning Services are to be provided, the Tangible Deliverable is delivered;

**Sanctions** means:

- (a) United Nations sanctions imposed pursuant to any United Nations Security Council Resolution;
- (b) U.S. sanctions and export controls administered by the Office of Foreign Assets Control ("OFAC"), the U.S. Department of the Treasury or the Bureau of Industry and Security ("BIS") or any other U.S. Government authority or department;
- (c) EU restrictive measures adopted pursuant to any EU Council or Commission Regulation or Decision adopted pursuant to a Common Position in furtherance of the EU's Common Foreign and Security Policy;
- (d) UK sanctions administered by HM Treasury, the Export Control Organisation, or any other UK Government authority or department;
- (e) Chinese sanctions and export control administered by the Ministry of Commerce, the Ministry of Foreign Affairs, and any other

Chinese Government authority or department;  
and

- (f) any other economic sanctions or export control laws and regulations applicable to either party.

**Services** means the Deliverable Operation and Maintenance Services, the Installation and Commissioning Services and the Extra Services;

**Software** means any operating system installed on the Tangible Deliverable;

**Standard Operation and Maintenance Fees** has the meaning given in the Operation and Maintenance Terms and Conditions;

**Statement of Work** means the statement of work for the Installation and Commissioning Services set out in or attached to the Order Form;

**Tangible Deliverable** means any tangible items (including but not limited to hardware, equipment, goods, material, item, tangible asset, unit, object) that is agreed to be provided to the Customer under the Agreement;

**Tangible Deliverable Charges** means the charges payable by the Customer to CTE for the supply of the Tangible Deliverable as set out in the Order Form;

**Taxes** means all forms of taxation, duties, levies, imposts and other similar impositions of any jurisdiction whether central, regional or local (but excluding income tax attributable to CTE);

**Termination Fee** means the termination fee set out in the Order Form or, if no such termination fee is stated in the Order Form, then an amount equal to: (a) all outstanding Tangible Deliverable Charges, Installation and Commissioning Fees, Extra Charges

and Additional Services Fees (if any); (b) one hundred percent (100%) of the Standard Operation and Maintenance Fees payable for the unexpired remainder of the then current Operation and Maintenance Term; and (c) the aggregate charges, payable to any Affiliates or other Third Party Providers, if any, for which CTE is or becomes contractually liable in connection with any such termination; and

**Third Party Provider** means any third party who provides services to CTE to enable CTE to deliver all or part of the Deliverable and/or to provide all or part of the Services.

17.2 In this Agreement, unless the contrary intention appears:

17.2.1 headings are for convenience only and do not impart any meaning;

17.2.2 the singular includes the plural and vice versa;

17.2.3 references to any legislation includes all amendments, modifications, consolidation or re-enactment of that legislation;

17.2.4 a reference to a party is a reference to a party to this Agreement;

17.2.5 mentioning anything after "include", "includes" or "including" does not limit the reference to anything else which might be included;

17.2.6 other grammatical forms of defined words and expressions have corresponding meanings; and

17.2.7 references to clauses herein are to clauses of these General Terms and Conditions.

## SCHEDULE 1 TO GENERAL TERMS AND CONDITIONS: OPERATION AND MAINTENANCE TERMS AND CONDITIONS

### 1 Operation and Maintenance Term

- 1.1 CTE shall provide the Deliverable Operation and Maintenance Services during the Initial Operation and Maintenance Period.
- 1.2 Subject to earlier termination in accordance with this Agreement, the term of the Deliverable Operation and Maintenance Services shall automatically be extended for a Operation and Maintenance Renewal Period at the end of the Initial Operation and Maintenance Period and at the end of each Operation and Maintenance Renewal Period, unless a party gives written notice to the other party, not later than sixty (60) days before the end of the Initial Operation and Maintenance Period or the relevant Operation and Maintenance Renewal Period, to terminate the Deliverable Operation and Maintenance Services.

### 2 Performance of Operation and Maintenance Services

- 2.1 CTE shall attend the Premises during Normal Business Hours at a frequency as is reasonably determined by CTE to perform Preventative Maintenance of the Tangible Deliverable.
- 2.2 As soon as becoming aware that the Tangible Deliverable is malfunctioning or has failed or is otherwise not in Good Working Order (**Fault**), the Customer must notify CTE by contacting such telephone number and/or email address as CTE may from time to time notify the Customer for this purpose.
- 2.3 Subject to paragraph 3, on the Customer informing CTE of a Fault, CTE shall:
- 2.3.1 use all reasonable endeavours to attend the Premises during Normal Business Hours; and
- 2.3.2 use all reasonable endeavours to perform Corrective Maintenance of the Tangible Deliverable.
- 2.4 In performing the Operation and Maintenance Services, CTE shall use all reasonable endeavours to restore any malfunctioning or failed Tangible Deliverable to Good Working Order while in attendance at the Premises. Where this is not reasonably practicable, or not reasonably practicable within Normal Business Hours, CTE shall either arrange for a further visit to the Premises within Normal Business Hours to complete the repair, or remove the Tangible Deliverable or part of the Tangible Deliverable for repair off-site.
- 2.5 CTE shall procure that its Personnel shall, while on site at the Premises, comply with the Customer's reasonable health and safety and security policies provided that these policies

have been brought to the attention of its Personnel.

### 3 Additional Services

- 3.1 On the Customer informing CTE outside Normal Business Hours that the Tangible Deliverable is malfunctioning, has failed or is not in Good Working Order, CTE shall use all reasonable endeavours to attend the Premises and to perform Emergency Maintenance of the Tangible Deliverable. Emergency Maintenance is an Additional Service and shall be charged at the Additional Services Rates for each of CTE's Personnel reasonably required to attend the Premises. Any additional charges shall be calculated from when the Personnel arrive at the Premises until they leave the Premises.
- 3.2 CTE is not obliged to perform any Excluded Maintenance.
- 3.3 Where CTE is performing or has performed the Operation and Maintenance Services in circumstances where it is established that the Tangible Deliverable was not in Good Working Order due to any of the Excluded Causes, CTE may charge, and the Customer shall pay, the Additional Services Fees in respect of that work.

### 4 Replacements and spare parts

- 4.1 In performing the Deliverable Operation and Maintenance Services, CTE shall use all reasonable endeavours to source spare parts required to restore the Tangible Deliverable to Good Working Order. Where CTE is unable to source individual spare parts for less than this amount, CTE shall have the right to charge the Customer for the spare parts.
- 4.2 All spare parts and/or replacements provided by CTE to the Customer shall become part of the Tangible Deliverable. All parts and components removed from the Tangible Deliverable by CTE in the course of performing the Deliverable Operation and Maintenance Services shall no longer constitute part of the Tangible Deliverable and will be the property of CTE.

### 5 Customer's obligations

- 5.1 Notwithstanding the provisions of clause 7.1 of the Agreement, the Customer shall:
- 5.1.1 ensure that the Tangible Deliverable is installed and kept in suitable premises and under suitable conditions, as specified in the Operating Manuals, permit only trained and competent Personnel to use it and follow any operating instructions as CTE may give from time to time;
- 5.1.2 notify CTE promptly if the Tangible

Deliverable is discovered to be operating incorrectly and keep accurate records of Faults;

- 5.1.3 not allow any person other than CTE to maintain, alter, modify or adjust the Tangible Deliverable without the prior written approval of CTE;
- 5.1.4 not move the Tangible Deliverable from the Premises without the prior written approval of CTE (such approval not to be unreasonably withheld or delayed);
- 5.1.5 store any reserve Tangible Deliverable only in conditions approved by CTE, and make such hardware or asset available for periodic maintenance, as with all other Tangible Deliverable; and
- 5.1.6 only use supplies or materials supplied or approved by CTE (such approval not to be unreasonably withheld or delayed).

## 6 Maintenance Fees

- 6.1 For the performance of Operation and Maintenance Services, CTE shall invoice, and the Customer shall pay to CTE, the Standard Operation and Maintenance Fees in accordance with the invoicing and payment terms set out in the Order Form. The Standard Operation and Maintenance Fees are non-refundable.
- 6.2 For the performance of any Additional Services, CTE shall invoice following performance of the Additional Services, and the Customer shall pay to CTE, the Additional Services Fees within thirty (30) days of the date of the invoice.
- 6.3 The Standard Operation and Maintenance Fees shall be inclusive of all expenses, other than those recoverable in accordance with paragraph 4.1, and CTE shall be responsible for all costs and expenses incurred in providing the Operation and Maintenance Services (other than those recoverable in accordance with paragraph 4.1).
- 6.4 Any charges for spare parts recoverable in accordance with paragraph 4.1 shall be invoiced by CTE as and when incurred.

## 7 Additional definitions

In addition to the terms defined in the General Terms and Conditions, in these Operation and Maintenance Terms and Conditions unless the context otherwise indicates:

**Additional Services** means any Emergency Maintenance and/or any Excluded Maintenance performed by CTE under this Agreement;

**Additional Services Fees** means the fees payable in consideration of the provision of any Additional Services, which shall be calculated at the Additional Services Rates, together with all costs and expenses incurred in providing the

Additional Services (including those recoverable in accordance with paragraph 5.1);

**Additional Services Rates** means CTE's standard time and materials rates from time to time in force;

**Corrective Maintenance** means:

- (a) making any adjustments to the Tangible Deliverable; and
- (b) replacing any parts or components of the Tangible Deliverable, required to restore the Tangible Deliverable to Good Working Order,

in accordance with paragraphs 2.2 and 2.3;

**Excluded Causes** means:

- (a) a defect in the manufacturer's design of the Tangible Deliverable;
- (a) faulty materials or workmanship in the manufacture of the Tangible Deliverable;
- (b) use of the Tangible Deliverable with computer hardware or materials not supplied or approved in writing by CTE;
- (c) any maintenance, alteration, modification or adjustment performed by persons other than CTE or its Personnel;
- (d) the Customer or a third party moving the Tangible Deliverable;
- (e) the use of the Tangible Deliverable in breach of any of the provisions of this Agreement;
- (f) a failure, interruption or surge in the electrical power or its related infrastructure connected to the Tangible Deliverable;
- (g) a failure or malfunction in the air conditioning or other environmental controls required for the normal operation of the Tangible Deliverable, or an error or omission in the correct use of that air conditioning or other environmental controls by the Customer; or
- (h) the neglect or misuse of the Tangible Deliverable;

**Excluded Maintenance** means any Operation and Maintenance Services required to restore any malfunctioning or failed Tangible Deliverable to Good Working Order where the malfunction or failure results from or is caused by any of the Excluded Causes;

**Emergency Maintenance** means:

- (a) making any adjustments to the Tangible Deliverable; and
- (b) replacing any parts or components of the Tangible Deliverable, required to restore the Tangible Deliverable to Good Working

Order,  
in accordance with paragraph 3.1;

**Fault** has the meaning set out in paragraph 2.2;

**Initial Operation and Maintenance Period** means the initial maintenance period set out in the Order Form commencing on the day after the Acceptance Date;

**Good Working Order** means the Tangible Deliverable operates in accordance with the Operating Manuals;

**Operating Manuals** means the standard manufacturer operating manuals and specifications relating to the Tangible Deliverable;

**Operation and Maintenance Renewal Period** means each successive twelve (12) month period after the Initial Operation and Maintenance Period for which the Operation and Maintenance Services are renewed in accordance with paragraph 1.2;

**Operation and Maintenance Services** means Preventative Maintenance and Corrective Maintenance of the Tangible Deliverable;

**Operation and Maintenance Term** means the Initial Operation and Maintenance Period together with any and all Operation and Maintenance Renewal Periods;

**Preventative Maintenance** means:

- (a) testing that the Tangible Deliverable is functional; and
- (b) making any adjustments as may be required to ensure the Tangible Deliverable remains in Good Working Order,

in accordance with paragraph 2.1;

**Standard Operation and Maintenance Fees** means the fees payable by the Customer for the provision of Corrective Maintenance and Preventative Maintenance, as set out in the Order Form, as these fees are varied from time to time in accordance with the terms of this Agreement.

In these Operation and Maintenance Terms and Conditions, reference to paragraphs means to paragraphs of these Operation and Maintenance Terms and Conditions.

## SCHEDULE 2 TO GENERAL TERMS AND CONDITIONS: HIRE AGREEMENT

### 1 Introduction

1.1 In addition to the sale of Tangible Deliverable, CTE also provides Hired Hardware and Asset and Hire Services to its customers.

1.2 These Hire Terms sets out the terms on which the Customer shall hire Hired Hardware and Asset and obtains Hire Services from CTE. There will be a separate Hire Agreement between the Customer and CTE in relation to each Order Form specifying Tangible Deliverable to be leased or hired to the Customer, as set out in clause 1.2 of the General Terms and Conditions.

1.3 Each Hire Agreement shall incorporate the following clauses in the General Terms and Conditions: 2.3 (Delivery), 2.5 (Export Restrictions), 2.6 (Warranty), 2.7 (Licence of Software), 3 (Installation and Commissioning Services), 4 (Acceptance Testing), 5 (Deliverable Operation and Maintenance Services), 7 (Customer Obligations), 8 (Charges), 9 (Invoices and payment), 10 (Billing disputes), 11 (Termination) 12 (Liability), 13 (Confidentiality and Data Privacy), 14 (Intellectual Property) and 15 (General). All defined terms used in this Hire Agreement shall have the meanings in the General Terms and Conditions unless expressly defined herein.

### 2 Commencement and minimum term

2.1 Each Hire Agreement will be treated as having come into effect on the date set out in the relevant Order Form ("**Effective Date**").

2.2 The Minimum Term of each Hire Agreement will start on the first day of the first complete month immediately following

2.2.1 the Effective Date; or

2.2.2 the date of delivery of the Hired Hardware and Asset;

whichever is the later.

2.3 Each Hire Agreement will continue until:

2.3.1 it is terminated by either party giving not less than 3 months' written notice to the other party, provided that such a notice may not be given so as to expire before the end of the relevant Minimum Term;

2.3.2 it is otherwise terminated in accordance with its terms to that effect.

### 3 Supply of Hired Hardware and Asset and Hire Services

3.1 CTE agrees to let and the Customer agrees to take on hire each piece of Hired Hardware and Asset specified in the Order Form on the terms

set out in the Hire Agreement.

3.2 CTE shall deliver and install the Hired Hardware and Asset in accordance with clauses 2.3 (Delivery), 3 (Installation and Commissioning Services) and 4 (Acceptance Testing) of the General Terms and Conditions.

3.3 CTE shall:

3.3.1 hire the Hired Hardware and Asset to the Customer for the term of the Hire Agreement; and

3.3.2 supply the Hire Services to the Customer; on the terms set out in the Hire Agreement.

### 4 Premises

4.1 The Customer shall at its own cost be responsible for:

4.1.1 preparing the Premises for the delivery and installation of the Hired Hardware and Asset; and

4.1.2 providing sufficient facilities at the Premises:

(A) to enable the Hired Hardware and Asset to be installed and to function; and

(B) for CTE to deliver and install the Hired Hardware and Asset and provide the Hire Services.

4.2 If requested to do so by the Customer, CTE will inspect and prepare the Premises instead of the Customer, provided that this will be subject to agreement in the Order Form and will be subject to additional Charges.

4.3 The Customer is responsible for ensuring that its information technology system is compatible with the Hired Hardware and Asset and the Hire Services.

4.4 The Customer shall at all times give CTE reasonable access to the Premises and to the Hired Hardware and Asset.

### 5 Invoicing and Payment

5.1 CTE will issues invoices in accordance with the Order Form and clauses 9 (Invoices and payment) and 10 (Billing disputes) of the General Terms and Conditions.

5.2 The Customer acknowledges and agrees that all payment obligations in relation to Charges relating to the Hired Hardware and Asset are:

5.2.1 unconditional;

5.2.2 non-terminable;

5.2.3 non-cancellable; and

5.2.4 not subject to any right of set-off or offset;



so that the Customer may not under any circumstances (including on the occurrence of an Insolvency Event):

5.2.5 be entitled not to, or refuse to, make any relevant payments of Charges or otherwise fail to fulfil its payment obligations in full in relation to any Charges relating to Hired Hardware and Asset; or

5.2.6 terminate the Hire Agreement other than in accordance with the express terms of the Hire Agreement and after all the payment obligations of the Customer under it have been fulfilled.

5.3 CTE may increase the Charges for Hired Hardware and Asset annually. Any such increase in excess of the increase in the RPI over the period since the previous increase or (if none) the Effective Date, (whichever is the greater), will only be made by agreement with the Customer.

## **6 Deliverable Operation and Maintenance Services**

6.1 Where the Order Form indicates that it will be provided by CTE, CTE shall in relation to the Hired Hardware and Asset provide Deliverable Operation and Maintenance Services to the Customer in accordance with clause 5 (Deliverable Operation and Maintenance Services) of the General Terms and Conditions and any terms contained in the Order Form.

## **7 Title, risk and insurance**

7.1 Title to the Hired Hardware and Asset (and all rights in relation to any Software) shall be retained by CTE (or its licensors).

7.2 Liability for loss or damage to the Hired Hardware and Asset shall pass to the Customer upon delivery.

7.3 The Customer is liable for, and must insure the Hired Hardware and Asset against:

7.3.1 risk of physical loss of, or damage to, the Hired Hardware and Asset, for an amount equal to the full replacement value of the Hired Hardware and Asset; and

7.3.2 loss or damage caused by the Hired Hardware and Asset.

The Customer must notify CTE immediately of any loss of, or damage to, the Products.

7.4 If any Hired Hardware and Asset is declared a total loss the hire of the Hired Hardware and Asset and this Hire Agreement will continue as to payment of Charges under this Hire Agreement until the proceeds of insurance are received by CTE, at which point the Hire Agreement will terminate insofar as it applies to

the Hired Hardware and Asset concerned (but will remain in effect in relation to any products) and CTE, in addition to any other entitlement under the Hire Agreement, will apply any proceeds of insurance received by it in or towards payment to CTE of the sum necessary to compensate it for any loss incurred as a result of the loss of the relevant Hired Hardware and Asset. CTE is hereby authorised by the Customer to give a good receipt to any relevant insurer in respect of insurance monies received by it under the Hire Agreement.

7.5 CTE (acting fairly and reasonably) will have the right itself at the cost of the Customer to repair or have repaired any Hired Hardware and Asset which are damaged by accident, theft, vandalism or negligence (other than where this arises from any wrongful act or omission of CTE, its employees or agents) but, if CTE does not choose to do so, the Customer will be liable to reinstate or repair at its own expense (but subject to reimbursement from any insurance proceeds and except where the damage arises from any wrongful act or omission of CTE, its employees or agents) any Hired Hardware and Asset which have not become a total loss and will continue to pay Charges.

7.6 The Customer shall use any Software in accordance with any licences required by the relevant licensors. In the event of any conflict between the terms of the applicable licensor's licence and the Hire Agreement, the licensor's terms shall prevail only in relation to the Software.

## **8 Warranties**

8.1 The warranties in clause 2.6 of the General Terms and Conditions shall apply to the Hired Hardware and Asset.

## **9 Customer Obligations**

9.1 In addition to the Customer's obligations set out in clause 7 (Customer Obligations) of the General Terms and Conditions which shall also apply to the Hired Hardware and Asset, the Customer agrees to comply with its obligations under this clause.

9.2 The Customer may use the Hired Hardware and Asset for the purposes of its business. The Hired Hardware and Asset is not to be used and the Customer will not permit it to be used for any purpose for which they are not designed.

9.3 The Customer will not use or permit the Hired Hardware and Asset to be used:

9.3.1 for hire;

9.3.2 for any illegal purpose; or

9.3.3 for any purpose not authorised in any policy of insurance applicable to the Hired Hardware and Asset.

9.4 The Customer will:

9.4.1 ensure that the Hired Hardware and Asset is operated:

- (A) properly and safely;
- (B) in accordance with all applicable laws and regulations; and
- (C) in accordance with the manufacturer's operating instructions;

9.4.2 maintain the Hired Hardware and Asset in accordance with the manufacturer's recommendations and, where the Hired Hardware and Asset is hired without Deliverable Operation and Maintenance Services, pay for the maintenance of the Hired Hardware and Asset (provided that where the Hired Hardware and Asset is hired with Deliverable Operation and Maintenance Services CTE will either supply for arrange and pay for the supply of Deliverable Operation and Maintenance Services);

9.4.3 ensure that any maintenance not carried out by CTE or its agents is carried out by an authorised dealer of the Hired Hardware and Asset with the prior consent of CTE;

9.4.4 bear the cost of the repair of any Hired Hardware and Asset resulting from improper use of the Hired Hardware and Asset by the Customer or by any other person (save for any employee or agent of CTE);

9.4.5 take all necessary steps at its own expense to retain and recover possession and control of the Hired Hardware and Asset if the Customer loses possession or control of them and pay any sum required to remove or redeem any lien on the Hired Hardware and Asset;

9.4.6 permit CTE or its authorised representatives at all reasonable times to enter upon the premises on which the Hired Hardware and Asset may from time to time be kept to inspect and test the condition of the Hired Hardware and Asset;

9.4.7 notify CTE of any change in the address of any of the Premises detailed in the Order Form and upon request by CTE promptly inform CTE of the whereabouts of the Hired Hardware and Asset;

9.4.8 in respect of the condition and maintenance of the Hired Hardware and Asset, be solely responsible at its own cost for:

- (A) regularly cleaning the Hired Hardware and Asset;
- (B) promptly repairing damage;
- (C) keeping accurate records of servicing; and
- (D) arranging the regular servicing of the Hired Hardware and Asset;

9.4.9 keep the Hired Hardware and Asset in good repair and condition (fair wear and tear excepted);

9.4.10 comply with CTE's reasonable requirements from time to time with regard to the Hired Hardware and Asset;

9.4.11 pay for the costs of all repairs to the Hired Hardware and Asset which are not the responsibility of CTE under this Hire Agreement; and

9.4.12 as against CTE, and whether covered by the Customer's insurance or not, be responsible and pay for all repairs to the Hired Hardware and Asset necessary because of any accident, damage, theft, vandalism, negligence or misuse (except to the extent that these result from any negligent or other wrongful act or omission of CTE, its employees or agents).

9.5 The Customer agrees that it will not:

9.5.1 without the prior written consent of CTE effect any modification to the Hired Hardware and Asset;

9.5.2 remove or interfere with any identification marks affixed to the Hired Hardware and Asset;

9.5.3 alter or apply to the Hired Hardware and Asset any modification or accessory save in accordance with the manufacturer's recommendations and, if such modification or accessories are removed, all damage caused by such removal will be made good at the cost of the Customer to the reasonable satisfaction of CTE;

9.5.4 sell, hire or grant any security or charge over or otherwise assign or dispose of the Hired Hardware and Asset or any interest in them or attempt or purport to do so;

9.5.5 use or permit the Hired Hardware and Asset to be used or operated in a manner contrary to any statutory provision or regulation or in any way contrary to law.

9.6 The Customer shall:

9.6.1 keep the Hired Hardware and Asset at

the Site(s);

9.6.2 supply all assistance, documentation and other information reasonably requested by CTE to enable or assist it:

(A) to diagnose or remedy a Fault or other issue relating to the Hired Hardware and Asset or Hire Services; or

(B) to supply the Hired Hardware and Asset and Hire Services; and

9.6.3 make at appropriately frequent intervals, and maintain, backups of any data stored on the Hired Hardware and Asset;

9.6.4 implement and maintain reasonable industry-standard virus protection systems for its business.

9.7 The Customer shall be solely responsible for, and will indemnify CTE against, any loss or damage resulting from any accident or other occurrence involving the Hired Hardware and Asset, provided the Customer will not be responsible for, and this indemnity will not apply to:

9.7.1 any accident or other occurrence, or any other loss, damage, cost or expense, arising from any negligent act or omission of CTE, its employees or agents; or

9.7.2 any loss, damage, cost or expense for which CTE has agreed to be responsible under the Hire Agreement.

## 10 Termination

10.1 CTE may terminate the Hire Agreement with immediate effect on written notice to the Customer in any of the following events:

10.1.1 the Customer fails to pay any Charges due under the Hire Agreement;

10.1.2 the Hired Hardware and Asset is lost, stolen or damaged

10.1.3 any person (including the landlord of any Premises in which the Hired Hardware and Asset is installed) with any claim against the Customer takes or threatens to take any steps of enforcement of its rights in relation to such claim against or in relation to any of the Hired Hardware and Asset; or

10.1.4 the happening of the events set out in clause 11.2 (Termination) of the General Terms and Conditions.

10.2 On termination of this Hire Agreement the clauses 11.2, 11.3 and 11.4 of the General Terms and Conditions shall apply.

## 11 Additional definitions

In addition to the terms defined in the General Terms and Conditions, in each Hire Agreement unless the context otherwise indicates:

**Effective Date** means the date on which this Hire Agreement is treated as having come into effect as set out in the Order Form;

**Minimum Term** means the initial minimum period of the relevant Hire Agreement as set out in the Order Form.