

## SCHEDULE 4.3 – MAINTENANCE SUPPORT SERVICES

### 1. APPLICATION

- 1.1 This Schedule contains a description of the Maintenance Support Services and forms part of the Agreement between the Parties for the provision of Services together with the **General Conditions**.
- 1.2 Definitions and interpretations that are specific to this schedule are set out in Annex 1 and apply in addition to the definitions and interpretations set out in **Schedule 1 (Definitions)** of the **General Conditions**.

### 2. SERVICE DESCRIPTION

- 2.1 The Supplier shall use its reasonable endeavours to perform the Maintenance Support Services in accordance with the terms of this Schedule and the Supplier shall:
  - 2.1.1 allocate sufficient resources and ensure that all Supplier Personnel engaged in the provision of the Maintenance Support Services are appropriately qualified and experienced to undertake tasks allocated to them;
  - 2.1.2 where relevant, inform the Customer about new developments and modifications to the Maintenance Support Services; and
  - 2.1.3 promptly provide, to the Customer, a quotation for providing any Non-Standard Project Services.
- 2.2 In consideration of the provision of the Maintenance Support Services, the Customer shall pay Supplier the Charges in accordance with the provisions of paragraph 8 and **Annex 2**.
- 2.3 The Customer acknowledges and agrees that Maintenance Support Services may be provided by the Supplier and/or an Affiliate and/or their sub-contractors.
- 2.4 Where any time is stipulated for the provision of Maintenance Support Services, such time shall be an estimate only and shall not be (nor be capable of being deemed) of the essence of this Agreement.
- 2.5 The Supplier shall not be obliged to provide Maintenance Support Services if the relevant premises are:
  - 2.5.1 outside the United Kingdom; or
  - 2.5.2 within the United Kingdom and in:
    - (a) the Highlands (area North and West of a line between Inverness and Fort William and West of a line between Dunoon and Fort William) and Islands of Scotland;
    - (b) West Cornwall, (area west of Newquay and Truro); or
    - (c) the Isle of Wight, Isle of Man, Orkneys, Shetlands, Outer and Inner Hebrides, Northern Ireland, Channel Islands, Isles of Scilly.
- 2.6 The Supplier shall co-operate and use reasonable endeavours to procure that each of its sub-contractors co-operates, with the Customer so as to integrate (where reasonably requested by the Customer) other services, materials or equipment supplied by any third party with the Maintenance Support Services.
- 2.7 The co-operation from the Supplier shall only apply where the need to integrate the Maintenance Support Services and/or Equipment is set out clearly in the Agreement and the costs of such co-operation shall be charged by the Supplier in accordance with this Agreement.

### 3. CUSTOMER OBLIGATIONS

- 3.1 On and from the Commencement Date, the Customer shall:

- 3.1.1 co-operate with the Supplier in all matters relating to the Maintenance Support Services;
  - 3.1.2 provide, for the Supplier, its agents, sub-contractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by the Supplier;
  - 3.1.3 provide, in a timely manner, such Customer Material and other information as the Supplier may reasonably require, and ensure that it is accurate in all material respects of satisfactory quality, and fit for purpose;
  - 3.1.4 inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;
  - 3.1.5 take all reasonable steps to protect the health and safety of Supplier Personnel whilst Supplier Personnel are at the Customer's premises;
  - 3.1.6 ensure that all the Customer Material is in good working order and suitable for the purposes for which it is used in relation to the Maintenance Support Services and conforms to all relevant United Kingdom standards or requirements;
  - 3.1.7 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the use of Customer Material (such licences and consents shall in all cases commence on or before the date on which the Maintenance Support Services are to start); and
  - 3.1.8 make available to the Supplier and Supplier Personnel such access to staff of the Customer who are familiar with the Customer Network and Customer Equipment and software as the Supplier may reasonably require in connection with the supply of the Maintenance Support Services.
- 3.2 The Customer is responsible for data cleaning, and for the integrity of any data, including Customer Material, provided to the Supplier and for all direct and indirect consequences of any errors in such data or Customer Material.
  - 3.3 Except to the extent the Supplier has specifically agreed in the Agreement to provide a back-up service, or to transfer, duplicate or reinstall data or information as a part of the Maintenance Support Services, the Customer is solely responsible for safeguarding its data by taking backup copies, maintaining a disaster recovery process and through any other means the Customer believes appropriate including maintaining up to date anti-virus software. Save as set out in paragraph 3.4 below, the Supplier shall not be responsible for any loss or corruption of data arising as a result of the provision of the Services.
  - 3.4 If the Supplier has agreed to provide a back-up service, or to transfer, duplicate or reinstall data or information as a part of the Maintenance Support Services, the Customer's sole and exclusive remedy for any loss or corruption of data shall be for the Supplier to use reasonable endeavours to restore such data or information to the most recent, uncorrupted copy of such information or data which the Supplier holds.

### 4. MAINTENANCE SUPPORT SERVICES

- 4.1 Each Party undertakes to the other that it shall (and shall use reasonable endeavours to procure that persons acting on its behalf shall) comply with any requirements or obligations set out in this Schedule 4.3.

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### Service Fault Request

- 4.2 Where a Service Fault occurs, the process set out in this paragraph 4.2 shall apply:
- 4.2.1 the Customer shall at any time after becoming aware of a Service Fault be entitled to make a Service Fault Request that the Supplier provide Maintenance Support Services to Fix the Service Fault by logging a ticket with the Supplier by telephone or by email;
- 4.2.2 each Service Fault Request shall include all relevant information required for the Supplier to assess the Service Fault including but not limited to a description of the Service Fault and the Equipment which is relates to;
- 4.2.3 the Supplier shall use reasonable endeavours to carry out Maintenance Support Services in response to the Service Fault Requests for items of Equipment identified on the Supported Equipment List.
- 4.2.4 for all Service Fault Requests in relation to Equipment not listed on the Supported Equipment List, the Supplier shall use reasonable endeavours to respond to such Service Fault Requests and the Customer shall be liable to pay the Supplier in accordance with the Supplier's applicable standard hourly rates. Such Service Fault shall not benefit from any Service Level and the Supplier's performance in relation to responding and/or fixing such a Service Fault shall not be counted in relation to its achievement or otherwise of the Service Levels.

### Maintenance Support Services

- 4.3 As soon as reasonably possible following the receipt of the Service Fault Request, the Supplier shall undertake Triage work to attempt to Fix the Service Fault.
- 4.4 If the Supplier acting reasonably concludes that the Service Fault cannot be fixed remotely, the Supplier shall arrange for an Engineer to attend at the relevant Site. The Supplier shall notify the Customer of the estimated time of arrival for the Engineer at the relevant Site.
- 4.5 Providing such items have been made available, the Supplier shall ensure that any Engineer responding to a Service Fault Request shall have the relevant security clearance, card access and gate keys necessary to gain access to the Sites for the purposes of providing the Maintenance Support Services. If the Engineer cannot gain entry to the Sites, paragraph 4.10 below shall apply.
- 4.6 The Customer can cancel any Service Fault Request at any time by giving notice to the Supplier. Such a Service Fault shall be deemed to be Fixed and Closed for the purposes of determining the Supplier's achievement or otherwise of the Service Levels. Any cancelled Service Fault Request shall be charged to the Customer in accordance with the Supplier's standard hourly rates.
- 4.7 The Supplier shall ensure that on arrival at the Site, the Engineer will notify the Supplier that they have arrived. The time of arrival recorded by the Supplier shall be recorded as the response time for the purposes of calculating whether the Service Level has been achieved.
- 4.8 The Supplier shall update the Customer as soon as reasonably possible following any material change to the estimated time of arrival of an Engineer at any Site.
- 4.9 The Supplier shall ensure that the Engineer uses their reasonable endeavours to Fix any Service Fault (which shall include the Engineer using their own skill and judgement to Fix an Service Fault) where the Service Fault does not match information provided by the Customer, providing always such Service Fault requires Maintenance Support Services within the Agreed

Parameters and that the Service Fault is not within any of the Exclusions listed in paragraph 9.

- 4.10 Where an Engineer arrives at the Sites and is refused access to the Sites by the Customer or is otherwise unable to access the Sites, the Engineer shall notify the Supplier of the situation together with sufficient details to allow the parties to determine the cause and action required. The Engineer shall remain at the Sites for a further period of fifteen (15) minutes or such time as is agreed with the Customer (whichever is the shorter). The Supplier shall be entitled to charge for this period of waiting time in accordance with Chess' applicable standard hourly rates. In such circumstances where the Supplier does not gain access to the Sites and/or Equipment at all, the Supplier shall be entitled to charge for the time and travel in accordance with the Supplier's standard hourly rates together with the charges for any spares, logistics and subsistence and the Service Fault shall be deemed to be Closed and Fixed within any relevant Service Level.
- 4.11 If the Engineer requires assistance from the Customer, the Supplier shall contact the Customer and the Customer shall provide such assistance which the Engineer may reasonably require.

### Fixing and Closing Service Faults

- 4.12 Where an Engineer considers that the Service Fault is Fixed it shall notify the Supplier, who in turn will notify the Customer as soon as reasonably possible. The notice to the Customer shall include the date on, and time at, which the Service Fault was Fixed.
- 4.13 Where any follow up action is required (if the Supplier determines such work should not be the subject of a separate Request) the Supplier shall complete the follow up action. On completion of the follow up action the Supplier shall give notice to the Customer.

## 5. PER EVENT SERVICES

### Requests

- 5.1 Where a Per Event Service is required the process set out in this paragraph 5.1 shall apply.
- 5.2 The Customer shall make a written Request to the Supplier which shall include the following:
- 5.2.1 details of any Spares or Consumables required;
- 5.2.2 details of any items of equipment to be returned to the Supplier;
- 5.2.3 details of the relevant user;
- 5.2.4 details of the Site which is to be visited or to which the spares or parts are to be delivered to (and any return address) (as applicable);
- 5.2.5 a proposed date(s) for the delivery of the Spares;
- 5.2.6 any other information which is relevant to the request.
- 5.3 The Supplier shall accept or reject each Request in accordance with paragraph 5.4 below.

### Per Event Services

- 5.4 The Supplier shall use reasonable endeavours to carry out Per Event Services for items of Equipment identified on the Supported Equipment List. As soon as reasonably possible following acceptance of an Order Form by the Customer, the Supplier shall notify the Customer of:
- 5.4.1 the estimated time of arrival of the Engineer at the Sites; and
- 5.4.2 (if applicable) the estimated time of arrival for the Spare at the relevant Site.

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5.5 Subject to the following provisions of this paragraph 5.5, the Customer can cancel any Order Form at any time by giving notice in writing to the Supplier, and such request for Per Event Services shall be deemed to be Completed and Closed:

5.5.1 if (in respect of Logistics Services), the Customer cancels the request for Per Event Services before the Supplier receives the consignment number or similar from the relevant logistics supplier, the Customer shall be charged for such Logistics Services in accordance with the Supplier's standard hourly rates together with charges for any Spares or Consumables;

5.5.2 if (in respect of Routine Maintenance Services and/or MACD Services), the Customer cancels its request for Routine Maintenance Services and MACD Services less than forty eight (48) Working Hours before the Routine Maintenance Services or the MACD Services is due to commence, the Customer shall be charged for such services in accordance with the Supplier's standard hourly rates.

### Completed and Closed Per Event Services

5.6 Where the Supplier considers that the relevant Per Event Service is Completed it shall confirm to the Customer that the relevant Per Event Service is Completed.

5.7 Where any follow up work is required, the Supplier shall complete the follow up action at a date and time agreed with the Customer. Upon completion of the follow up action, the Supplier shall give notice to the Customer.

5.8 The Per Event Services shall be charged to the Customer in accordance with **Annex 2**.

## 6. PROJECT SERVICES

### Standard Project Services

6.1 Where any Project Services are required, this paragraph 6 shall apply.

6.2 Following acceptance by the Supplier of an Order in accordance with paragraph 6.4 below, the Supplier shall use its reasonable endeavours to commence work on the start date agreed between the parties, and to perform the Standard Project Services in accordance with the terms of this Agreement.

6.3 The Standard Project Services shall be charged to the Customer in accordance with Annex 2.

### Non-Standard Project Services

6.4 On receipt of an Estimate Request, the Supplier shall provide the Customer with an Estimate Response or reject an Estimate Request within a reasonable period of time.

6.5 An Estimate Response submitted by the Supplier shall be valid and capable of acceptance by the Customer for the period stated in the Estimate Response.

6.6 An Estimate Response submitted in accordance with paragraph 6.5 above shall include the information agreed between the parties from time to time but shall include (as a minimum) a breakdown of the number of days required to complete the Non-Standard Project Services, and the associated Charges (including requirements for any interim payments) and a summary of the work required.

6.7 If the Customer has any queries with regard to the Estimate Response, both parties will seek to resolve such queries promptly.

6.8 Once the parties have agreed the Estimate Response, the Supplier shall submit an Order Form to the Customer referencing the Estimate Response. When the Order Form is signed by an

authorised representative of the Customer, the terms of the Order Form shall bind both parties.

## 7. SERVICE AMENDMENTS

7.1 If the Customer is moving or transferring its operations to a new Site, the Supplier must be informed as soon as is reasonably practicable so that suitable arrangements can be made to transfer the relevant Services and/or Equipment to the new Site.

7.2 If a new installation or moving Site involves the visit of an engineer to facilitate it, the Customer shall be responsible for the costs incurred by the Supplier for the appointment of the engineer together with an administration fee in respect of any additional works required to be undertaken by the Supplier to complete the transfer of the Services and/or Equipment. Such an activity shall be chargeable as a MACD Service.

7.3 If the Customer moves to a new Site and leaves the Equipment for the new owner/tenant, the Customer is required to inform the new owner or tenant that the relevant Service will be discontinued if the Supplier is not contacted by the new owner/tenant within seventy two (72) hours for the purpose of entering into a new contract with the Supplier for such services and subject in any event to the agreement of such a contract. The Customer shall submit a written request to the Supplier to request the provision of Services to the Customer at the new Site.

7.4 If, at the new Site, the Customer receives services which are similar to the Services from an alternative supplier, as between the Supplier and the Customer, the Customer shall remain liable for meeting the Customer's obligations under any contractual agreement the Customer has with such alternative supplier and for any liabilities the Customer may incur for terminating such agreement. For the avoidance of doubt, the Customer shall remain liable to pay the Charges in respect of the old Site until such time as the new contract is entered into pursuant to paragraph 7.3 above.

## 8. CHARGES AND PAYMENT

8.1 The Charges payable by the Customer to the Supplier in respect of the Services shall be as set out in the Order and **Annex 2**, (and if none are set out in **Annex 2** or the Order then charges payable shall be the Supplier's then current hourly rates as per its **Tariff**).

8.2 All Charges are expressed exclusive of Value Added Tax or other applicable or equivalent taxes. The Customer will be responsible for paying Value Added Tax and other applicable or equivalent taxes. Such taxes will be included at the applicable rate at time of invoice in all invoices submitted by the Supplier.

8.3 Chess shall be entitled to invoice the Customer in accordance with **Annex 2**.

8.4 The Customer shall pay, by direct debit, each undisputed invoice (or such undisputed part thereof) within seven (7) days of the date of the invoice (without any set-off or deduction).

8.5 The Supplier shall have the option, but not the obligation, to send a single consolidated invoice to the Customer for all Services provided.

8.6 All Charges shall be expressed, invoiced and payable in pounds sterling. Invoices shall be in the Supplier's standard form and shall constitute valid VAT invoices.

8.7 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:

8.7.1 charge interest on such sum from the due date for payment at the annual rate of 4% above LIBOR, accruing on a daily basis and being compounded quarterly until

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- payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand; and/or
- 8.7.2 (if payment remains unpaid four (4) days after the due date) immediately suspend all Services until payment has been made in full (and for the avoidance of doubt, such suspension shall be at no cost or penalty to the Supplier).
- 8.8 If the Customer's account remains unpaid (in any part) the Supplier may require a security deposit of three times the average monthly invoice or payment in full for the next twelve months before the Supplier will reinstate the Services.
- 8.9 All sums payable to the Supplier for the provision of Services shall become due immediately on its termination, despite any other provision. This paragraph 8.9 is without prejudice to any right to claim for interest under the law, or any such right under this Agreement.
- 8.10 If the Customer receives an invoice which it reasonably believes includes a sum which is not valid and properly due:
- 8.10.1 the Customer shall notify the Supplier in writing within seven (7) days of the date of the invoice;
- 8.10.2 the Customer's failure to pay the disputed Charges pending an investigation by the Supplier shall not be deemed to be a breach of this Agreement;
- 8.10.3 the Customer shall pay the balance of the invoice which is not in dispute by the due date for payment of the invoice;
- 8.10.4 to the extent that the Customer is obliged, following investigation by the Supplier of the dispute, to pay an amount, then the Supplier may charge interest in accordance with paragraph 8.9 from the original due date until the date of payment;
- 8.10.5 once the dispute has been investigated, where either party is required to make a balancing payment (or the Supplier is required to issue a credit note), it shall do so within 3 days.
- 8.11 The Supplier reserves the right to carry out a credit check against the Customer during the Term of this Agreement, and subsequent to the carrying out of such credit check, may set a credit limit and/or request from the Customer (and if requested the Customer shall provide and/or procure) a cash deposit or bank guarantee in a form and amount to be approved by the Supplier and issued by a bank acceptable to it, the amount not exceeding the Charges which the Supplier might reasonably expect the Customer to incur during the Term of this Agreement. The Supplier shall be entitled to retain any such deposit or bank guarantee during the Term of this Agreement.
- 9. EXCLUSIONS**
- 9.1 Notwithstanding any other provision of this Agreement, the Supplier shall not be obliged to perform or provide any of the services set out below. If the Supplier does agree to provide such services, the Supplier's charges for supplying or providing such services shall be calculated in accordance with the Supplier's applicable standard hourly rates as per its Tariffs and charges in respect of Spares and Consumables, and shall not be counted or considered in relation to any performance of any Service Level or other term or condition of this Agreement:
- 9.1.1 the maintenance or repair of any power supply (including without limitation, any battery back-up and/or uninterruptible power supply) to the Equipment;
- 9.1.2 the repair or maintenance of any network connected to the Equipment; and/or
- 9.1.3 repair or maintenance of ancillary items including, but not limited to cabinets and/or any infrastructure cabling.
- 9.2 The following matters shall not be included or covered in the Charges or the scope of Maintenance Support Services or Standard Project Services:
- 9.2.1 the transportation or relocation of the Equipment;
- 9.2.2 the repair of damage to the Equipment resulting from accident, neglect or causes other than ordinary use (including, but not limited to, failure to observe any instructions supplied by the manufacturer regarding the operation of the Equipment);
- 9.2.3 any development, modification or correction of any software used upon or in association with the Equipment; and/or
- 9.2.4 the reprogramming of the Equipment to provide improved or modified service or facilities;
- 9.2.5 any repair, labour or materials required as a result of accidental damage, theft, vandalism, fire, lightning, water damage, fluctuations in electrical power supply, unsatisfactory environmental conditions, telephone line or other network (public or private) conditions or faults, the connection of unapproved accessories, attachments or other devices;
- 9.2.6 the alteration, modification, repair or maintenance of the Equipment by any person other than Chess;
- 9.2.7 the negligence of the Customer or its users or the improper use by the Customer or the user of the Equipment;
- 9.2.8 a failure to maintain a suitable environment for the Equipment at the Sites;
- 9.2.9 a disaster affecting the Equipment (including without limitation fire, flood, water, wind, lightning);
- 9.2.10 network faults caused by equipment other than the Equipment in respect of which the Services are provided and which cannot be fixed without that unsupported equipment being repaired or which could be fixed but would fail again unless the unsupported equipment is repaired;
- 9.2.11 any Equipment which cannot be fixed due to the failure of any other software or the system (not being Equipment) without such unsupported software or system being repaired, or which could be fixed, but would fail again unless the unsupported software or system is repaired by the relevant third party;
- 9.2.12 the repair or maintenance of any Equipment which is at the end of its normal, useful working life, for which parts are no longer reasonably, commercially available or which is beyond economical repair; and/or
- 9.2.13 any call-outs, repair, maintenance or advice in respect of an item of Equipment during the first week after the later of the date upon which:
- (a) Chess agrees to provide Services in respect of such item; or
- (b) the item of Equipment is added to the Supported Equipment List.
- If such services are performed, supplied or provided (and the Supplier shall be under no obligation in this regard), they shall be subject to charges in accordance with the Supplier's applicable standard hourly rates and charges in respect of Spares and Consumables and shall not be counted or considered in relation to any performance of any Service Level or other term or condition of this Agreement.

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9.3 The Supplier shall not be obliged to fix or correct, or be liable for, any of the following matters. Such matters shall not be counted or considered in relation to any performance of any Service Level or other term or condition of this Agreement and any services, equipment or spares utilised in connection with such matters shall be charged to the Customer in accordance with the Supplier's applicable standard hourly rates and charges for Spares and Consumables:

- 9.3.1 (save as expressly provided in Clause 4.6 of the General Conditions) any defect in design, manufacture or installation or performance of equipment (including Equipment), software and/or services to be used under or in connection with this Agreement or an Order (except in relation to defects in installation, where the Supplier defectively carried out such installation);
- 9.3.2 late or non-delivery of parts or equipment or software by a third party not under the instruction of the Supplier;
- 9.3.3 any change in the Customer's requirements other than agreed by way of a Change;
- 9.3.4 a Customer restricting or preventing access to Sites and/or any Equipment;
- 9.3.5 the Customer's breach of this Agreement;
- 9.3.6 requirements arising after the termination of this Agreement;
- 9.3.7 any necessary landlord or local authority consent or permission not being in place;
- 9.3.8 an act or omission by the Customer, a user or other third party (not being a sub-contractor of the Supplier) which prevents the achievement of a Service Level or other obligation by the Supplier (or any of the Supplier's sub-contractors);
- 9.3.9 the Customer or any third party incorrectly diagnosing the cause of any Service Fault or instructing the Supplier to provide the incorrect Spare or replacement equipment;
- 9.3.10 the Supplier not being provided with the necessary configuration of the Equipment by the Customer;
- 9.3.11 making the Sites good (for example, plastering and/or redecorating) following the performance of any Services; and/or
- 9.3.12 power or cooling failure at any of the Sites.

9.4 If and to the extent that a failure or delay by the Supplier (or any of its sub-contractors) in performing any of its obligations under this Agreement is attributable to any of the matters in paragraph 9.3 above:

- 9.4.1 the time for performance of the Supplier's obligations shall be extended by a reasonable period;
- 9.4.2 the Customer shall reimburse the Supplier for all costs, expenses and losses incurred as a result of such matter; and

if there is any other material impact on the Services (including the timing of delivery or level of performance of any of the Equipment or Services) as a result of such matter, then the parties shall deal with such impact in accordance with the Change Control Procedure in Clause 10.

### 10. CHANGE CONTROL

10.1 Where the Customer or the Supplier identifies a need to make a Change to this Agreement or an Order Form, the Customer may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the provisions of Clause 16 of the General Conditions.

### 11. LIMITATION OF LIABILITY

- 11.1 Subject to clause 9 of the **General Conditions** (but except clause 9.5 which is superseded by this clause), each Party's total aggregate liability to the other in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in any calendar year in connection with the performance or contemplated performance of its obligations under this Schedule 4.3 shall be limited to a sum equal to 100% of the Charges payable under this Schedule 4.3 during the calendar year which the relevant claim arises.
- 11.2 Any Service Credits payable shall be limited with respect to all failures to meet the Service Level occurring in any month to 1% of the Charge payable for the Services. For the avoidance of doubt, the monthly charge for Services shall be one twelfth of the annual amount invoiced. Service Credits shall be the sole and exclusive remedy of the Customer for any failure by the Supplier to achieve the associated Service Level.
- 11.3 The Parties agree that if any limitation or provision contained or expressly referred to in this paragraph 11 and as detailed in the applicable sub-clauses in clause 9 of the General Conditions are held to be invalid under any applicable statute or rule of law, it shall, to that extent, be deemed omitted. If either party becomes liable for loss or damage which would otherwise have been excluded, that liability shall be subject to the other limitations and provisions set out in this paragraph 11.
- 11.4 Nothing in this Schedule 4.3 shall be taken as in any way reducing or affecting a general duty to mitigate loss suffered by a party.

### 12. TERMINATION

- 12.1 This paragraph 12 is supplemental to clauses 2 and 8 of the **General Conditions**. If this paragraph 12 conflicts with clause 8 of the **General Conditions**, this paragraph shall take precedence.
- 12.2 The Customer may terminate the Maintenance Support Services by giving the Supplier not less than ninety (90) days and no more than one hundred and twenty (120) days written notice for convenience before the end of the Minimum Term or Successive Term.
- 12.3 In the event of termination of this Schedule 4.3 for any reason:
  - 12.3.1 the Customer shall immediately pay to the Supplier all of the Supplier's unpaid invoices, and in respect of Services supplied but for which no invoice has been submitted the Supplier may submit an invoice which shall be payable immediately upon receipt;
  - 12.3.2 the Supplier shall, if requested by the Customer, provide assistance to the Customer to the extent reasonably necessary for an orderly handover of the Services, the terms of such assistance (which will include the extent to which the Supplier shall be paid for such assistance) shall be agreed between the parties; and
  - 12.3.3 the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

## ANNEX 1 - DEFINITIONS

**Agreed Parameters** means the parameters outside of which the Supplier is not obliged to provide Services or Equipment, as set out in paragraph 2.5;

**Change** means any change to this Agreement including to any of the Services and/or Equipment under the Change Control Procedure;

**Change Control Procedure** means the procedure set out in paragraph 10 and Clause 16 of the General Conditions;

**Closed** means where an Service Fault, or Per Event Service has been Fixed or Completed (as appropriate) and all follow up work on the Sites (if such work is not itself the subject of a separate request to perform Services) has been completed, including the removal of all parts that have been replaced and Close shall be interpreted accordingly;

**Consumables** means peripheral hardware type items that may be required to complete any Services including cable ties, cable ties with labels, cables, labelling tape, ADSL filters, ADSL iPlates, 3A fuses, 13A fuses, kettle leads, console cable, modem leads and USB memory sticks, connectors, adapters and any other item determined by Chess (acting reasonably) from time to time;

**Completed** means:

- (a) (in respect of Logistics Services) the Spares have been delivered, and the old Spares removed;
- (b) (in respect of Routine Maintenance Services) the service, inspection or maintenance of the Customer Equipment or systems has been carried out by the Supplier;
- (c) (in respect of MACD Services) means the move, addition, change or deletion of the Customer Equipment or systems has been carried out by the Supplier.

**Customer Material** means any equipment, systems, cabling or facilities provided by the Customer, including Input Material and used directly or indirectly in the supply of the Services and/or Equipment;

**Document** means any document including any drawing, map, plan, diagram, design, picture or other image, whether in writing, on tape, disk or other device or record embodying information in any form;

**Engineer** means the Supplier representative responsible for carrying out engineering duties on the Sites;

**Equipment** means an item of equipment in respect of which the Supplier is to perform Services in accordance with the terms of this Schedule 4.3;

**Estimate Request** means a description of the Project and the requirement of the Customer for Non-Standard Project Services from the Supplier (such request to be in the format provided to the Supplier by the Customer);

**Estimate Response** means a response to the Estimate Request in the agreed format including the price associated with the relevant Non-Standard Project Services;

**Excluded Event** means any of the events set out in paragraph 9;

**Fixed** means that the Equipment is installed and operational and Fix shall be interpreted accordingly;

**General Conditions** means the Supplier's standard terms and conditions for the provision of the Services as set forth on the Supplier's website at [www.chessict.co.uk](http://www.chessict.co.uk) and which forms part of this Agreement;

**Input Material** means all Documents, information and materials provided by the Customer relating to the Services or Equipment, including computer programs, data, reports and specifications;

**Logistics Services** means the procurement of Spares together with a courier service for those Spares to any Customer Site;

**MACD Services** means the provision of "moves, additions, changes and deletions", being engineering services within the scope of this Agreement which Chess is requested to carry out by the Customer;

**Maintenance Support Services** means the Services to be provided by Chess which are necessary to attend to and/or resolve Service Faults affecting Equipment on the Supported Equipment List;

**Non-Standard Project Services** means Project Services other than Standard Project Services;

**Per Event Services** means any of the following services:

- Logistics Services;
- Routine Maintenance Services; and
- MACD Services

**Personnel** means all employees, agents, consultants, sub-contractors and other representatives of the Supplier (or any Affiliate or any of their respective sub-contractors) who are involved, or proposed to be involved, in the provision of the Services and/or Equipment;

**Project** means the engineering project to be carried out by the Customer;

**Project Services** means Standard Project Services and/or Non-Standard Project Services;

**Request** means a specific request by the Customer to Chess to provide individual Services;

**Routine Maintenance** means scheduled service, inspections and maintenance of any Equipment;

**Routine Maintenance Services** means the provision of engineering services as requested by the Customer to carry out the Routine Maintenance;

**Service Fault** means any fault, issue, matter or notice relating to any Customer Equipment;

**Service Fault Request** means a request by the Customer within the Agreed Parameters for the Supplier to Fix a Service Fault;

**Services** means (as the context requires) the Maintenance Support Services, Per Event Services and/or Project Services to be provided by Chess under this Schedule 4.3;

**Service Level** means the time within **Schedule 4.1 (Fault Management Connectivity)** in which the Supplier must arrange for an engineer and/or part to be on Site as notified by the Customer in the Service Fault Request;

**Spare** means an individual, supplementary or replacement part provided by the Supplier as part of the Services;

**Standard Project Services** means engineering services which are charged on a per activity basis in accordance with the Supplier's standard hourly rates;

**Supported Equipment List** means the list of Equipment in respect of which the Supplier may provide Services in accordance with the terms of this Schedule 4.3;

**Triage** means a suitably qualified engineer will attempt to resolve an Service Fault or identify the root cause of an Service Fault including but not limited to the use of remote access tools and dialogue with the Customer;

## ANNEX 2 – PRICE AND PAYMENT

### 1. MAINTENANCE SUPPORT SERVICES

- 1.1 If the Supplier provides Maintenance Support Services, the Supplier shall be entitled to invoice annually in advance in relation to the cover to be provided for each item of Equipment on the Supported Equipment List by submitting an invoice to the Customer on or after the Commencement Date and on each anniversary of such date thereafter.
- 1.2 The charges for the Maintenance Support Services are based on a maximum number of three (3) call-outs per item of Equipment contained on the Supported Equipment List in any, and further assumes that all call-outs will be made entirely during Normal Working Hours. If the Supplier is requested to attend more call-outs than this in any period and/or call-outs which are wholly or partially outside of Normal Working Hours, the Supplier shall charge the Customer for (and the Customer shall pay for) such additional call-outs in accordance with the Supplier's standard hourly rates.
- 1.3 Maintenance Support Services shall only be provided in respect of Equipment on the Supported Equipment List. If the Customer requires Maintenance Support Services to be provided in respect of equipment other than that on the Supported Equipment List, the Customer may request that additional equipment be included on the Supported Equipment List by following the process set out in Annex 3, but such new equipment shall be subject to the conditions and exclusions set out in paragraph 9.

### 2. PER EVENT SERVICES

- 2.1 If the Supplier provides Per Event Services, the Supplier shall be entitled to charge monthly in arrears for the amounts in respect of Spares provided (in respect of Logistics Services) and the charges in accordance with the Supplier's applicable standard hourly rates (in respect of Routine Maintenance Services and MACD Services), by submitting an invoice following the end of the month in which Per Event Services were Completed.

### 3. PROJECT SERVICES

- 3.1 If the Supplier provides Standard Project Services, the Supplier shall be entitled to charge monthly in arrears for the amounts as per the Supplier's applicable standard hourly rates as such amounts correlate to the Standard Project Services which have been provided.
- 3.2 The Supplier shall deliver with each invoice a statement setting out the number of visits relating to Completed Per Event Services in the month to which the invoice relates.
- 3.3 If the Supplier provides Non-Standard Project Services, the Supplier shall be entitled to charge monthly in arrears such amounts as are set out in the relevant Estimate Response.

### 4. GENERAL PROVISIONS

- 4.1 Notwithstanding the foregoing provisions of this Annex 2, the Supplier reserves the right to require payment from the Customer in advance for any Spares which are to be supplied as part of any of the Services.
- 4.2 All Charges, prices and amounts contained in:
  - 4.2.1 any Maintenance Support Services Charges;
  - 4.2.2 Supplier's applicable standard hourly rates; and
  - 4.2.3 each Estimate Response (as applicable)exclude VAT.
- 4.3 The Supplier's standard hourly rates vary dependent upon the nature of the work to be undertaken, the seniority of engineer required and the geographical area in which the services will be provided. The Supplier's standard hourly rates are available upon request.

- 4.4 The Customer shall pay the Supplier the Charges as set forth in the applicable Order or Statement of Work, any Charges which become payable under this Schedule 4.3, together with:

- 4.4.1 all reasonable and properly incurred expenses, including but not limited to travel and other out of pocket expenses; and

- 4.4.2 reasonable time spent by the Engineer in travelling, where the distance travelled is further than 35 miles from the Chess Office closest to the geographical location of the Customer Site.

## ANNEX 3 – SUPPORTED EQUIPMENT LIST

### 1. SUPPORT EQUIPMENT

- 1.1 Without prejudice to the Term or the Minimum Term, in respect of each item of Equipment listed in the Supported Equipment List, the Customer shall be obliged to procure a minimum of 12 months of Maintenance Support Services from the Supplier.
- 1.2 Such twelve (12) month minimum term will commence from the date on which the Customer signs the relevant Order or Change Control Note provided by the Supplier and upon confirmation by the Supplier that the item of Equipment had been accepted onto the Supported Equipment List.
- 1.3 If the Customer wishes to remove such an item of Equipment from the Supported Equipment List (for any reason) during such twelve (12) month minimum term such that the Customer will no longer be entitled to receive Maintenance Support Services in respect of that item, the Customer shall continue to be liable to pay the Charges for that item of Equipment for the remaining period of the Minimum Term.

### 2. AMENDMENTS

- 2.1 If the Customer wishes to amend the Supported Equipment List, it shall submit a request to the Supplier, indicating the changes to the Supported Equipment List it wishes to make.