

Channel Services Terms and Conditions



GENERAL TERMS AND CONDITIONS OF SUPPORT

1.0 INTERPRETATION AND APPLICATION OF TERMS

The definitions and rules of interpretation in this Clause 1.0 apply in these Terms.

- 1.1 These General Terms and Conditions of Support are the terms and conditions on which the Services will be provided to Partner. The terms and conditions specific to the Services offering are set-out in the Specific Terms and Conditions of Support (Schedule 1) of these Terms.
- 1.2 Unless expressly stated to the contrary, all defined terms in these Terms shall have the meaning set out in Clause 1.10 (Definitions and Interpretations) of these Terms.
- 1.3 Clause headings are included for convenience only, have no legal effect and shall be ignored when constructing these Terms.
- 1.4 References to Clauses are to the clauses of the General Terms and Conditions of Support of these Terms, references to Paragraphs are to the paragraphs of the Specific Terms and Conditions of Support as set-out in Schedule 1 of these Terms.
- 1.5 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the Contract under that statute or statutory provision.
- 1.6 In the event of any conflict among the terms and conditions of a Contract, the following order of precedence shall be observed:
- 1.6.1 the applicable Support Service Quotation, Statement of Work, Unsupported Equipment Offer or T&M Offer;
 - 1.6.2 the Specific Terms and Conditions of Support (as set-out in Schedule 1) of these Terms;
 - 1.6.3 the General Terms and Conditions of Support of these Terms;
- 1.7 SCT and Partner may hereinafter individually be referred to as “Party” and collectively as the “Parties”.
- 1.8 For the avoidance of doubt the Parties agree that any document that purports to amend the terms of these Terms, a Support Service Quotation, a Statement of Work, a Support Service Order, a T&M Offer or a T&M Order and which is not in compliance with these Terms or the Contract (including without limitation any Purchase Order or Purchase Order confirmation or similar document that carries terms not expressly included in these Terms or the Contract) shall be of no effect.
- 1.9 SCT may revise these Terms from time to time by changing it on SCT’s website. By continuing to purchase Services Partner accepts the terms and conditions of these Terms. It is Partner’s responsibility to check the Terms each time Partner places a Purchase Order for Services. These Terms were last updated on 1 June 2020.
- 1.10 Definitions:
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| Account | means the account created for Partner with SCT for invoicing purposes; |
| Advance Hardware Replacement | means a spares management service providing replacement Parts to Partner for supported Equipment before the Faulty Part is returned. |
| Business Day | means Monday to Friday, excluding UK bank and other UK public holidays, unless otherwise agreed in writing; |
| Case | is the term used to identify any request logged on SCT’s incident management system for Partner; |
| Charges | means the fees (recurring and/or non-recurring) for the Services; |
| Confidential Information | means all information (in whatever format) designated as such by either Party together with such information which relates to the business, affairs, networks, products, developments, trade secrets, know-how, security information and personnel of either Party and which may reasonably be regarded as the confidential information of the disclosing Party; |
| Contract | means a Support Service Order or T&M Order; |
| Contract Start Date/Contract End Date | means the dates specified in the Equipment List from which Partner’s entitlement to receive the Support Services for a given piece of Equipment shall commence and cease; |
| Deliverable | means a tangible or intangible good or service produced by SCT for Partner. |
| End User | means an unaffiliated third party customer of Partner that receives IT Services for such third party’s internal business purposes; |

Equipment	means those units, components or sub-assemblies referred to in the Equipment List(s) for which the Support Services will be provided;
Equipment List	means the list of Equipment defined in a Support Service Order;
Estate	means all active Support Service Orders between Partner and SCT;
Faulty Part	means the part of the Equipment identified as faulty and replaced by a Part supplied by SCT;
Field Service Engineer	means the SCT assigned engineer who will execute the Services;
Good Industry Practice	means the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier or operator engaged in a similar undertaking to SCT under the same or similar circumstances;
Hours of Cover	means the hours of cover under which Support Services will be provided as defined in the SLA set out in the Equipment List of the applicable Support Service Order;
Incident	means the event causing Partner to log a Case with SCT under the terms of the Support Services;
IT Services	means the IT services provided by Partner to End Users using the Services and Partner's intellectual capital and/or additional services provided by Partner.
Legitimate Part	means a Part or Faulty Part which is recognised as being official and legitimate by the Manufacturer and capable of being registered for support services with the Manufacturer if necessary;
Manufacturer	means the company responsible for making or producing the Equipment and/or Parts;
Nominated Contacts	means the name, email address and phone number of the individuals provided to SCT by Partner to contact in relation to providing the Support Services;
Non-Legitimate Part	means a Part or Faulty Part which is not recognised by the Manufacturer or is counterfeit and is not capable of being registered for support services with the Manufacturer;
Normal Business Hours	means the hours of 8.00am to 6.00pm (WET or WEST as appropriate), Monday to Friday, excluding UK bank and other UK public holidays;
Partner	means the customer entity identified on the Contract;
Parts	means spare parts and/or whole units and/or sub-modules of Equipment supplied by SCT to provide the Support Services;
Purchase Order	means an official document issued by Partner committing to pay SCT for the sale of specific goods or services to be delivered in the future;
Request For Service	means a formal request by Partner for the provision of Time and Materials Work;
SCT	means Smart Capital Technology Limited, a company registered in England and Wales (Registration No. 4569616) and having its registered office at Unit 7, The Pavilions, Ruscombe Business Park, Ruscombe, Reading, Berkshire, RG10 9NN;
Service Credit	means credit applied to the Account to be used as credit against future invoices for Support Services.
Service Level or SLA	means the service levels set out in each Support Service Order that apply to the performance of the relevant Support Services or relevant parts thereof;
Services	means Support Services and/or T&MW as applicable;
Site	means the Equipment location as defined in the applicable Support Service Order or the location where the T&MW is to be performed as specified in the applicable T&M Order;

Specific Deliverable	means a specific Deliverable agreed in writing and identified as such in a Contract and unless a Specific Deliverable is agreed the Contract does not contain any Deliverable;
Statement of Work	means a document issued by SCT to Partner setting out the details of more complex Support Services than can be defined in a Support Service Quotation or T&MW and which SCT is willing to provide to Partner. A generic pro-forma for a Statement of Work is set out in Appendix A of these Terms;
Support Engineering	means the provision of a suitably qualified Field Service Engineer on-site to facilitate the replacement of Faulty Parts for supported Equipment;
Support Period	means the period between the Contract Start Date and Contract End Date during which the Support Services shall be provided and the Charges shall be calculated for each piece of Equipment on the Equipment List;
Support Service Order	means an individual contract for the provision of Support Services incorporating these Terms and the relevant Support Service Quotation or Statement of Work;
Support Service Quotation	means a written document provided by SCT detailing the Equipment, Sites, Charges, Contract Start/End Dates and Service Levels for Support Services requested by Partner from time to time;
Support Services	means the contracted services for Support Engineering and/or Advance Hardware Replacement to be used by Partner to provide IT Services;
Terms	means these General Terms and Conditions of Support together with any schedules or addendums to the aforementioned and documents referred to herein;
T&M Offer	means a written document, which may take the format of a Statement of Work, provided by SCT detailing the T&MW to be undertaken and the applicable Charges;
T&M Order	means an individual contract for the provision of T&MW incorporating these Terms and the relevant T&M Offer;
Time and Materials Work or T&MW	means any work conducted for Partner by SCT in accordance with Clause 9.0 (Time and Materials Charges) of the General Terms and Conditions of Support which falls outside of the scope of the Support Services, as provided by these Terms, either through its nature or time of execution and as further detailed in Schedule 1(C) of these Terms;
TUPE	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as may be amended, added to, replaced or superseded from time to time;
Unsupported Equipment Service Request	means a request for Support Services for equipment not on the Equipment List or for Support Services for Equipment outside of the contracted Service Level;
VAT	means Value Added Tax;
WEST	means Western European Summer Time; and
WET	means Western European Time.

2.0 SUPPORT SERVICES

- 2.1 From time to time, as requested by Partner, SCT shall issue a Support Service Quotation or Statement of Work to Partner. By issuing a Purchase Order referencing the Support Service Quotation or Statement of Work (as applicable) the Purchase Order shall constitute an offer by Partner to purchase the Support Services subject to the terms of the referenced Support Service Quotation or Statement of Work and these Terms. Upon SCT's acceptance of the Purchase Order the applicable Support Service Quotation or Statement of Work shall be considered a Support Service Order incorporating these Terms.
- 2.2 The Support Services shall only be used by Partner to provide IT Services.
- 2.3 Support Service Quotations and Statements of Work for Support Services referencing pounds sterling shall remain valid for thirty (30) days unless stated otherwise. Support Service Quotations and Statements of Work for Support Services referencing currencies other than pounds sterling shall remain valid for ten (10) Business Days, unless stated otherwise.

SCT reserves the right to withdraw the Support Service Quotation or Statement of Work at any time prior to a Support Service Order coming into effect in accordance with Clause 2.1.

- 2.4 The items of Equipment to which the Support Services apply are set out in the Equipment List in the applicable Support Service Order.
- 2.5 Equipment may be deleted from the Equipment List during the term of a Support Service Order upon 30 days written notice from Partner to SCT. SCT will issue a pro rata credit only where SCT does not have committed third party support costs in relation to the deleted Equipment and Partner repays any discount or other benefit Partner may have received which was based on the initial Support Period.

3.0 SCT RESPONSIBILITIES

- 3.1 SCT shall provide the Support Services for the Support Period indicated in the Equipment List of the applicable Support Service Order.
- 3.2 SCT warrants that notwithstanding any statutory rights accruing to Partner it will use every degree of care and skill to be reasonably expected of an experienced channel services support provider in the provision of the Services.
- 3.3 SCT's support desk ("**Support Desk**") will coordinate the Services and will be the point of contact for Partner for all issues relating to the Services.

4.0 PARTNER RESPONSIBILITIES

- 4.1 Partner shall use all reasonable endeavours to ensure that their End User(s) provide and maintain a secure and suitable environment for the Equipment as specified by the Manufacturer of the Equipment.
- 4.2 Partner shall provide to SCT in a timely manner all documents, information, items and materials in any form (whether owned by Partner or third party) required under a Contract or otherwise reasonably required by SCT in connection with the Services and ensure that they are accurate and complete.
- 4.3 Before requesting any assistance from SCT under the Support Services, Partner shall use all reasonable endeavours to implement the following:
 - 4.3.1 any applicable operator tasks and procedures on problem determination, analysis and recovery (of which Partner is aware or made aware of by SCT) have been carried out;
 - 4.3.2 all safeguards that might reasonably be considered to be appropriate for all programs, software data or configuration information contained in, on or in relation to the Equipment have been implemented.
- 4.4 Partner shall notify SCT of the identity and contact details of the Nominated Contacts within fourteen (14) days of the Contract Start Date. Any subsequent changes to the Nominated Contacts shall be made at least seven (7) days prior to the new Nominated Contact being permitted to log calls with SCT.
- 4.5 Partner shall ensure that the Nominated Contacts are suitably skilled and knowledgeable in the operation of the Equipment, through the provision of training where appropriate.
- 4.6 Partner shall take sole responsibility for the maintenance of procedures to enable the reconstruction of any lost or altered files, data, programs or configuration. Partner has sole responsibility for performing, or ensuring the End User performs, all back-up procedures so that data integrity can be maintained.
- 4.7 Partner shall pay for all Charges in accordance with Clause 6.0 (Charges and Payment) of the General Terms and Conditions of Support of these Terms.
- 4.8 Partner shall make no representations or warranty, written or oral, on SCT's behalf, other than representations and warranties expressly authorised by SCT in writing. SCT shall have no liability to Partner or any End User for any warranty made by Partner on SCT's behalf which it shall not be herein expressly authorised to make.

5.0 SUPPORT SERVICES EXCLUSIONS

- 5.1 SCT shall not be responsible for:
 - 5.1.1 faults in the Equipment arising for reasons other than fair wear and tear. Without limitation as to the generality of this Clause 5.1.1 SCT shall not be responsible for any faults arising from the following causes:
 - 5.1.1.1 accident, neglect or misuse;
 - 5.1.1.2 failure, fluctuation or fault of electricity supply, air-conditioning, humidity control or other environmental conditions;
 - 5.1.1.3 fire or water damage;
 - 5.1.1.4 the fitting of parts, software or accessories that are not compatible with the Equipment;

5.1.1.5 modifications and / or alterations to the Equipment by Partner or other third party which have not been agreed by SCT through a mutually acceptable change control process, where such agreement shall not unreasonably be withheld or delayed; and

5.1.1.6 any use, modification or alteration of the Equipment other than that for which it was designed or which is contrary to the instructions of the Manufacturer.

5.1.2 the provision of operating supplies, materials or accessories including but not limited to disks, tapes, printer ribbons, tape heads, print heads, anything identified by the Manufacturer as consumable and any other item which might reasonably be considered to be consumable;

5.1.3 performing electrical works external to the Equipment or providing the Support Services in relation to accessories, alterations to, attachments to the Equipment or other devices not specified in the Contract;

5.1.4 performing the Support Services outside of the Hours of Cover. If Partner wishes for the Support Services to be provided outside of the Hours of Cover, or wishes for Support Services for equipment not on the Equipment List, Partner may make an Unsupported Equipment Service Request in accordance with Clause 10.0 (Unsupported Equipment) of the General Terms and Conditions of Support of these Terms;

5.1.5 software updates, upgrades or technical advice.

5.2 For any services Partner would like provided outside of the scope of the Support Services Partner may make a Request For Service to SCT in accordance with Clause 9.0 (Time and Materials Charges) of the General Terms and Conditions of Support of these Terms.

6.0 CHARGES AND PAYMENT

6.1 The Support Period for the Support Services and the related Charges for each piece of Equipment are set out in the Equipment List of the applicable Support Services Order. All Charges shown include all delivery and packaging costs unless otherwise agreed.

6.2 All Charges exclude VAT, unless otherwise agreed.

6.3 In the event currency conversion is required for currency other than pounds sterling, the conversion shall be calculated at the SCT internally published weekly rate in force at the time of conversion.

6.4 Unless otherwise agreed all Charges shall be invoiced annually in advance.

6.5 Unless otherwise agreed, the payment terms in respect of invoices submitted in accordance with this Clause 6.0 shall be net thirty (30) days from the date of the relevant invoice and the amounts payable shall be exclusive of VAT but inclusive of all other taxes, imposts and fees. If VAT is payable it shall be separately identified on the invoice and shall be payable by Partner subject to receipt of a valid VAT invoice from SCT.

6.6 Time for payment of the Charges shall be of the essence of the Contract.

6.7 In the event of late payment of any undisputed invoice, SCT reserves the right, without prejudice to any other available remedy, to suspend provision of the Services in whole or in part giving seven (7) calendar days written notice to Partner and then until payment has been made. Partner acknowledges that SCT will not be responsible for any consequences, financial or otherwise, which may flow from the suspension of the Services.

6.8 Partner shall notify SCT in writing of any invoice disputes within five (5) Business Days of the date of the invoice, specifying in reasonable detail the basis of the dispute. SCT agrees to investigate such matter and where the dispute is valid, correct the invoiced amount.

6.9 Payments which are not received when the amount invoiced is properly due and payable will be considered overdue and will remain payable by Partner. SCT reserves the right, without prejudice to any other right or remedy available to SCT, to exercise SCT's statutory right to claim interest and compensation for debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998.

6.10 SCT reserves the right not to accept new Contracts whilst the Account is in arrears.

6.11 All vendor backed Support Services are subject to change at any time due to being underwritten by the vendor. For multi-year Support Periods SCT reserves the right to change the Charges on any anniversary of the Contract Start Date as a result of changes in the vendor pricing to SCT used to provide the Support Services (and solely to the extent necessary to address such changes in pricing without any increase in SCT's margin).

7.0 TERMINATION

7.1 Without limiting any other remedy available to it, either Party may terminate a Contract with immediate effect by giving written notice to the other Party at any time if:

- 7.1.1 the other Party commits a material breach of any provision of the Contract and (if such breach is remediable) fails to remedy that breach within thirty (30) days of a request to do so; or
 - 7.1.2 the other Party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or
 - 7.1.3 an order is made or a resolution is passed for the winding up of the other Party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other Party; or
 - 7.1.4 an order is made for the appointment of an administrator to manage the affairs, business and property of the other Party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other Party, or notice of intention to appoint an administrator is given by the other Party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
 - 7.1.5 a receiver is appointed of any of the other Party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other Party, or if any other person takes possession of or sells the other Party's assets; or
 - 7.1.6 the other Party makes any arrangement or composition with its creditors; or
 - 7.1.7 the other Party ceases, or threatens to cease, to trade; or
 - 7.1.8 the other Party takes or suffers any similar or analogous action in any jurisdiction in consequence of the debt.
- 7.2 Without affecting any other right or remedy available to it, SCT may terminate a Contract on giving not less than ninety (90) days' notice to Partner.

8.0 CONSEQUENCES OF TERMINATION

- 8.1 Any termination of a Contract howsoever occasioned shall not prejudice or affect any right of action or remedy which shall have accrued up to the date of termination.
- 8.2 In respect of the termination of a Contract, SCT shall cease providing the Services from the date of termination of that Contract.
- 8.3 Termination of a Contract is without prejudice to the continuance of any other Contract existing.
- 8.4 On termination of any Contract SCT shall be entitled to recover from Partner any devices or equipment owned by SCT that have been loaned to Partner or stored in the Sites for the purpose of providing the Services.
- 8.5 On termination of any Contract any outstanding invoices shall immediately become due and payable.
- 8.6 In the event of Partner terminating any Support Service Order in accordance with Clause 7.1.1 any amounts paid by Partner to SCT relating to periods after termination will be refunded forthwith provided that Partner indemnifies SCT in full against any third party support costs that cannot be cancelled but have been incurred by SCT and Partner repays any discount or other benefit Partner may have received which was based on the initial Support Period.
- 8.7 In the event of Partner terminating any T&M Order in accordance with Clause 7.1.1 any amounts paid by Partner to SCT relating to T&MW not completed prior to termination will be refunded forthwith.
- 8.8 In the event of SCT terminating any Support Service Order in accordance with Clause 7.3 any amounts paid by Partner to SCT relating to periods after termination will be refunded forthwith.
- 8.9 In the event of SCT terminating any T&M Order in accordance with Clause 7.3 any amounts paid by Partner to SCT relating to T&MW not completed prior to termination will be refunded forthwith.

9.0 TIME AND MATERIALS WORK

- 9.1 Where Partner would like SCT to provide services outside of the scope of the Support Services, Partner shall submit a Request for Service in accordance with Schedule 1(C) – Specific Terms & Conditions of Support.
- 9.2 Where SCT are willing and able to provide the requested Time and Materials Work the specific terms of provision are set-out in of Schedule 1(C) – Specific Terms & Conditions of Support of these Terms.

10.0 UNSUPPORTED EQUIPMENT

- 10.1 If commercially and technically feasible to do so SCT will accept an Unsupported Equipment Service Request from Partner.
- 10.2 When Partner places an Unsupported Equipment Service Request and where SCT are able to provide the Support Services requested, SCT will provide an offer to Partner, subject to the terms and conditions of these Terms, detailing the applicable Charges ("**Unsupported Equipment Offer**"). The Charges are calculated to include the return of the Faulty

Part(s) (where a replacement Part is being provided), further charges will apply in the event the Faulty Part is not returned.

- 10.3 An Unsupported Equipment Offer shall remain valid for five (5) Business Days unless stated otherwise.
- 10.4 Upon Partner’s emailed acceptance of an Unsupported Equipment Offer the Unsupported Equipment Offer shall be considered a Support Service Order, and SCT will despatch the required Part and/or Field Service Engineer to the stated destination on a reasonable endeavours basis.
- 10.5 Within two (2) Business Days of Partner’s acceptance of the Unsupported Equipment Offer, Partner will raise a Purchase Order to cover the Charges detailed in the Unsupported Equipment Offer.
- 10.6 The return of the Faulty Part(s) (where applicable) must be in accordance with Clause 4.0 (Returns) of Schedule 1(A) - Specific Terms & Conditions of Support.

11.0 SERVICE LEVELS

- 11.1 Throughout the Support Period SCT shall provide the Support Services in accordance with any Service Levels set out in the applicable Support Service Order and the definitions in the table below.

SLA Type	SLA Definition	Support Services Type***
2HrP24x7	2Hr24x7 Part to Site	Advance Hardware Replacement
4HrEP24x7	4Hr24x7 Engineer & Part to Site	Advance Hardware Replacement & Support Engineering
4HrE24x7	4Hr24x7 Engineer to Site	Support Engineering
4HrEPNBH	4Hr Normal Business Hours Engineer & Part to Site	Advance Hardware Replacement & Support Engineering
4HrENBH	4HrNormal Business Hours Engineer to Site	Support Engineering
4HrP24x7	4Hr24x7 Part to Site	Advance Hardware Replacement
4HrPNBH	4Hr Normal Business Hours Part to Site	Advance Hardware Replacement
5BDEP	5 Business Days Engineer & Part to Site	Advance Hardware Replacement & Support Engineering
5BDP	5 Business Days Part to Site	Advance Hardware Replacement
8HrEP24x7	8Hr24x7 Engineer & Part to Site	Advance Hardware Replacement & Support Engineering
8HrE24x7	8Hr24x7 Engineer to Site	Support Engineering
8HrP24x7	8Hr24x7 Part to Site	Advance Hardware Replacement
NBDEP	Next Business Day Engineer & Part to Site*	Advance Hardware Replacement & Support Engineering
NBDE	Next Business Day Engineer to Site*	Support Engineering
NBDP	Next Business Day Part to Site*	Advance Hardware Replacement
NDP	Next Day Part to Site**	Advance Hardware Replacement
NDEP	Next Day Engineer & Part to Site**	Advance Hardware Replacement & Support Engineering
NDE	Next Day Engineer to Site**	Support Engineering
2BDP	2 Business Days Part to Site*	Advance Hardware Replacement
2BDEP	2 Business Days Engineer & Part to Site*	Advance Hardware Replacement & Support Engineering

* Requests must be received before 14:00 WET/WEST to meet the required Service Level. The Service Level for requests received after 14:00 WET/WEST will commence from the next Business Day. SCT cannot be held responsible for any delays caused by customs.

** Requests must be received before 14:00 WET/WEST to meet the required Service Level. The Service Level for requests received after 14:00 WET/WEST will commence from the next day. SCT cannot be held responsible for any delays caused by customs.

*** For Advance Hardware Replacement please refer to Schedule 1(A) – Specific Terms & Conditions of Support. For Support Engineering please refer to Schedule 1(B) – Specific Terms & Conditions of Support.

- 11.2 The following shall not be included in any calculation of SCT’s performance against any Service Level for any Support Services and shall not be eligible for Service Credit:
 - 11.2.1 Any Case, or delay in effecting resolution of any Case, that is solely and directly caused by Partner’s failure to comply with their obligations as set out in the Contract provided that SCT shall inform Partner of the reason for the Case or delay as soon as reasonably practicable;
 - 11.2.2 Any delay in SCT providing Support Services due to any failure by any third party (excluding all third parties which SCT has contracted with to deliver the Support Services) to act on or to act in a timely fashion in respect of any Case and provided SCT has correctly followed the procedures set out in the third party contract in respect of such failure;
 - 11.2.3 Any delay in SCT providing Support Services due to any Force Majeure Event (as defined in Clause 22.0) provided that SCT has acted in accordance with these Terms;
 - 11.2.4 Any Support Services provided for an Unsupported Equipment Service Request;

- 11.2.5 Any Case that is caused by an excluded fault as set out in Clause 5.1.1; and
- 11.2.6 Any exclusions identified in the applicable Specific Terms and Conditions of Support schedule.
- 11.3 SCT will collect and analyse service delivery performance information related to all aspects of the Support Services on a regular basis to facilitate continual improvement of Service Levels and in accordance with:
 - 11.3.1 Service Level measurement will be from the time Partner registers a Case with SCT to the time of delivery of the Part to the Site, or the arrival of the Field Service Engineer at the Site;
 - 11.3.2 The time stamps used for Partner registering a Case with SCT and the notified delivery/arrival time will be SCT's incident management system;
 - 11.3.3 SCT will investigate the cause of any missed Service Levels on a monthly basis and take mitigating action to prevent re-occurrence.
 - 11.3.4 SCT may have service review meetings as agreed with Partner during which the delivery performance of the Support Services shall be discussed;
 - 11.3.5 On request SCT can provide Partner with a service delivery report which will include Service Level achievement statistics ("**Service Delivery Report**").
- 11.4 The Support Desk can be reached by telephone on 0808 164 3618.
 - 11.4.1 Partner may telephone the Support Desk to request the Support Services in relation to an Incident, or to place a Request for Service or Unsupported Equipment Service Request.
 - 11.4.2 In the event that the Service Levels are not met, or there is reasonable indication that they may not be met, Partner shall contact the Support Desk to escalate.
 - 11.4.3 Any commercial escalations or requests should be directed to Partner's nominated service delivery or channel services manager during Normal Business Hours.
- 11.5 Subject to Clause 11.2, in the event that SCT fails to provide any part of the Support Services in accordance with the relevant Service Levels, then:
 - 11.5.1 Partner may request escalation in accordance with Clause 11.4.2;
 - 11.5.2 in the event that a Part supplied is faulty on delivery, SCT shall arrange a replacement Part (together with a Field Service Engineer if applicable) as soon as is reasonably practicable;
 - 11.5.3 Partner may request a Service Credit in accordance with Clause 12.0 (Service Credits).
- 11.6 SCT agrees that Service Levels may only be changed to improve and increase their benefit to Partner and may not be lowered without Partner's prior written consent.

12.0 SERVICE CREDITS

- 12.1 Subject to Clause 11.2 and Clause 12.1.1.1:
 - 12.1.1 if SCT's Service Level achievement, verified by a Service Delivery Report (as defined in Clause 11.3.5), falls below 95% across the Estate in a calendar month (a "**Service Failure**") SCT shall investigate the cause internally and monitor the applicable Support Service Order;
 - 12.1.1.1 If the number of Cases being measured in a calendar month falls below twenty (20) (the "**Minimum Sample**") the Parties agree that the Service Level achievement shall be recalculated across the prior three (3) or six (6) calendar month period (as applicable to achieve the Minimum Sample) and averaged.
 - 12.1.2 if there is a Service Failure in two consecutive calendar months Partner may request that SCT identify mitigating action taken to prevent future Service Failures;
 - 12.1.3 if there is a Service Failure in three consecutive calendar months (a "**Service Credit Event**") Partner shall be entitled to claim a Service Credit in accordance with Clause 12.2 unless agreed otherwise in writing between the Parties.
- 12.2 Partner shall submit a written claim for the Service Credit within twenty (20) Business Days after the end of the three (3) month period during which the Service Credit Event occurred. No Service Credit shall be due if Partner fails to submit a written claim in accordance with this Clause 12.2.
- 12.3 The claim for the Service Credit must include the following information:
 - 12.3.1 Partner name and contact information;
 - 12.3.2 The Service Delivery Reports (as defined in Clause 11.3.5) substantiating the claim.
- 12.4 The Parties acknowledge that each Service Credit is proportionate when considering Partner's legitimate interest to avoid any delay or deficiency in the provision of the Support Services.

- 12.5 The provisions in Clause 12.1 shall be the exclusive remedy for Service Failures.
- 12.6 Service Credits shall be issued as a credit note and offset against the next Support Services invoice issued on the Account. SCT shall not in any circumstances be obliged to pay any money or make any refund to Partner.
- 12.7 The Service Credit calculation shall be 3% of the Charges paid for the three (3) months of the Service Credit Event for the Support Service Order(s) impacted by the Service Failures.

13.0 INTEGRITY OF PARTS

- 13.1 Subject to Clause 13.4 SCT will only utilise Legitimate Parts for the delivery of the Support Services.
- 13.2 SCT will check the integrity of all Parts on any Manufacturer’s online facility to confirm only Legitimate Parts are used prior to operational use in the delivery of the Support Services.
- 13.3 Subject to Clause 13.4, in the unlikely event that the integrity of a Part is brought into question, SCT will, at its own cost, replace the Part.
- 13.4 In the event Support Services are requested on old or rarely available End-of-Service-Life (“EoSL”) equipment and where such Support Services can only be delivered through the use of Non-Legitimate Parts, SCT will advise Partner accordingly prior to contracting to provide Support Services for the EoSL equipment.
- 13.5 Partner reserves the right to accept or decline Support Services in the event of Clause 13.4.

14.0 STEP IN RIGHTS

- 14.1 SCT acknowledges and agrees that if SCT is in material default of its obligations under a Contract or there is a serious risk that SCT will meet any of the grounds specified in Clause 7.0 (Termination) Partner may, at its sole discretion and subject only to notifying SCT in writing of its intention to do so, arrange itself or for a third party to provide all or any of the Services.
- 14.2 Partner shall not be obliged to make any payment for that element of the Services in relation to which it has exercised any right of step in during the period that Partner itself or a third party is providing such elements of the Services.
- 14.3 Partner’s rights under this Clause 14.0 will cease on the earlier of the cessation or resolution of the matter giving rise to the right of step in, or thirty (30) days from when the step in right was exercised. Partner shall notify SCT in writing of the date it plans to end exercising its step in right. SCT shall, on receipt of the notice, develop a plan to be approved by Partner, to enable the Services to be provided in accordance with the Contract. SCT shall co-operate in all reasonable respects with Partner and any third party supplier engaged by Partner under this Clause 14.0.
- 14.4 The provisions of this Clause 14.0 are without prejudice to any other right or remedy of Partner.

15.0 SUBCONTRACTING

- 15.1 SCT may sub-contract all or any of its obligations under a Contract to any third party including any SCT group companies without the prior written consent of Partner.
- 15.2 SCT shall be and at all times remain liable for the acts and omissions of any sub-contractors in relation to a Contract.
- 15.3 In the event SCT sub-contracts any of its rights or obligations pursuant to this Clause 15.0, SCT shall procure that its approved sub-contractors:
 - 15.3.1 enter into a confidentiality agreement in substantially the terms of the confidentiality provisions of these Terms.
 - 15.3.2 are authorised, licensed, qualified, approved and permitted to provide the sub-contracted Services as required by any regulatory body or other relevant person.

16.0 REGULATORY COMPLIANCE

- 16.1 SCT shall provide the Services in accordance with all applicable legislation as from time to time subsists and, in the case of industry specific legislation applicable to Partner, as is notified to SCT by Partner prior to the commencement of the Services.
- 16.2 SCT shall provide the Services in accordance with all applicable regulatory bodies’ requirements and guidelines as from time to time subsist and as are notified to SCT by Partner prior to the commencement of the Services and from time to time to reflect regulatory changes.
- 16.3 To the extent that any of the legislation or requirements referred to in this Clause 16.0 is advisory rather than mandatory, the standard of compliance to be achieved by SCT shall be in accordance with Good Industry Practice.

17.0 CONFIDENTIALITY

- 17.1 The term Confidential Information does not include any information that:

- 17.1.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving Party in breach of this Clause 17.0);
 - 17.1.2 was available to the receiving Party on a non-confidential basis before disclosure by the disclosing Party;
 - 17.1.3 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;
 - 17.1.4 was known to the receiving Party before the information was disclosed to it by the disclosing Party;
 - 17.1.5 the Parties agree in writing is not confidential or may be disclosed; or
 - 17.1.6 is developed by or for the receiving Party independently of the information disclosed by the disclosing Party.
- 17.2 Each Party shall keep the other Party's Confidential Information confidential and shall not:
- 17.2.1 use any Confidential Information except for the purpose of exercising or performing its rights and obligations under a Contract ("**Permitted Purpose**"); or
 - 17.2.2 disclose any Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 17.0.
- 17.3 A Party may disclose the other Party's Confidential Information to those of its employees or sub-contractors who need to know that Confidential Information for the Permitted Purpose, provided that:
- 17.3.1 it informs those employees or sub-contractors of the confidential nature of the Confidential Information before disclosure; and
 - 17.3.2 at all times, it is responsible for the employees' or sub-contractors' compliance with the confidentiality obligations set out in this Clause 17.0.
- 17.4 A Party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority, or by a 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 the disclosure as possible.
- 17.5 Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information, other than those expressly stated in the Contract, are granted to the other Party, or are to be implied from the Contract.

18.0 LIMITATION OF LIABILITY

- 18.1 The following provisions set out the entire financial liability of SCT (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to Partner in respect of:
- 18.1.1 any breach of the Contract howsoever arising; and
 - 18.1.2 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising out of or in connection with the Contract.
- 18.2 Unless expressly set out in the Contract, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 18.3 Nothing in these conditions excludes or limits the liability of SCT for:
- 18.3.1 death or personal injury caused by SCT's negligence; or
 - 18.3.2 fraud or fraudulent misrepresentation.
- 18.4 Subject to Clause 18.2 and Clause 18.3:
- 18.4.1 SCT shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
 - 18.4.1.1 loss of profits; or
 - 18.4.1.2 loss of business; or
 - 18.4.1.3 depletion of goodwill or similar losses; or
 - 18.4.1.4 loss of anticipated savings; or
 - 18.4.1.5 loss of goods; or
 - 18.4.1.6 loss of contract; or
 - 18.4.1.7 loss of use; or

18.4.1.8 loss or corruption of data or information; or

18.4.1.9 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

18.4.2 and subject to Paragraph 3.3 of Schedule 1(B) and Paragraph 5.1 of Schedule 1(C) (where applicable), SCT's total liability in contract, tort (including without limitation negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising under or in connection with the Contract and/or any other Contract between the Parties in relation to direct physical damage to tangible property of Partner and/or End User caused by a default by SCT shall not exceed a combined aggregate of £500,000.

18.4.3 and subject to Clause 18.4.2, SCT's total liability in contract, tort (including without limitation negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to 125% of the Charges paid and payable to SCT for each successive twelve (12) month period of the Contract (commencing from the Contract Start Date, or commencement of the T&MW, or any anniversary of it) under which the liability arose.

18.5 In the course of providing the Services, SCT may rely on software and hardware produced or supplied by third parties. Partner acknowledges that in such circumstances SCT relies on the description given by the relevant Manufacturer of the performance and functionality of its product, provided that SCT shall take reasonable steps to satisfy itself that the relevant item performs in accordance with the Manufacturer's description and it is suited to the purpose for which SCT intends it to be used. SCT's sole responsibility shall be use of reasonable skill and care in supplying such products and to use reasonable efforts to resolve any problem caused by the non-compliance with any Manufacturer's description by liaising with the relevant Manufacturer. Other than the foregoing, SCT does not give any warranties, terms, conditions or representations (whether express or implied) in respect of any software or hardware provided by SCT as part of the Services and the implied terms of satisfactory quality and fitness for purpose are hereby excluded.

19.0 ASSIGNMENT

19.1 Neither Party may assign these Terms nor a Contract without the others prior written consent, such consent shall not be unreasonably withheld.

20.0 NON-COMPETITION AND NON-SOLICITATION

20.1 During the Support Period, and for one year thereafter, SCT shall not offer to provide, nor provide, directly to an End User support equivalent to the Support Services nor services that are of a competitive nature to Partner's services without prior written consent of Partner.

20.2 During the term of the Contract and for a period of twelve months following its termination for any reason, neither Party will employ or offer employment to any person employed by the other Party, other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the other Party.

21.0 TUPE

21.1 The Parties do not envisage that any employees will transfer between SCT and Partner or vice versa. If circumstances change and it becomes likely that a transfer of employee(s) may arise, then the Parties will meet and use reasonable endeavours to agree appropriate and commercially reasonable terms to govern such transfer in accordance with the TUPE.

22.0 FORCE MAJEURE

22.1 Neither Party is liable for any breach of a Contract (other than the obligation to make payments due under it) to the extent that the breach was caused by a matter beyond its reasonable control including (without limit) any (a) acts of God, fire, flood, drought, earthquake, storm or other natural disaster; (b) epidemic or pandemic; (c) interruption or failure of utility service or transport or telecommunications network; (d) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (e) nuclear, chemical or biological contamination or sonic boom; (f) difficulties, delays or failure in manufacture, production or supply by third parties of any goods to SCT under the Contract; (g) acts or omissions of government, or other competent authority, including without limitation imposing an export or import restriction, quota or prohibition; (h) collapse of buildings, fire, explosion or accident; (i) industrial disputes of any kind; and (j) acts or omissions of persons for whom it is not responsible (including, in particular, other service providers) (**a "Force Majeure Event"**).

22.2 If a Party is prevented, hindered or delayed in or from performing any of its obligations under a Contract by a Force Majeure Event ("**Affected Party**"), the time for performance of such obligations shall be extended accordingly.

22.3 The Affected Party shall:

22.3.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than five (5) Business Days' from its start, notify the other Party in writing of the Force Majeure Event, the date on which it started, it's likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and

22.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

23.0 ENTIRE AGREEMENT AND VARIATIONS

23.1 The Contract constitutes the entire agreement between the Parties on the subject matter contained herein and supersedes all representations and prior agreements (written and oral). Each Party confirms that it has not relied upon any representation, statement or warranty not recorded in the Contract. The only remedy available in respect of any misrepresentation shall be a claim for damages for breach of contract under the Contract. This Clause 23.0 shall not apply to any statement, representation or warranty made fraudulently in respect of which the remedies available shall be those available under the governing law. No variation of the Contract will be valid unless confirmed in writing by the authorised signatories of both Parties.

23.2 Nothing in the Contract and no action taken by the Parties pursuant to the Contract shall constitute or be deemed to constitute between the Parties a partnership, associate, joint venture or other co-operative entity.

24.0 WAIVER

24.1 No forbearance or delay by either Party in enforcing its respective rights will prejudice or restrict the rights of that Party, and no waiver of any such rights or any breach of any contractual terms will be deemed to be a waiver of any other right or any later breach.

25.0 SEVERANCE

25.1 If any term or condition of the Contract is deemed invalid, void, or for any reason unenforceable, that term or condition will be deemed severable and will not affect the validity and enforceability of any remaining term or condition.

26.0 SURVIVAL

26.1 On termination or expiry a Contract, the following Clauses shall continue in force: Clause 7.0 (Termination), Clause 8.0 (Consequences of Termination), Clause 17.0 (Confidentiality), Clause 18.0 (Limitation of Liability), Clause 22.0 (Force Majeure), Clause 24.0 (Waiver), Clause 25.0 (Severance), Clause 26.0 (Survival), Clause 28.0 (Notices), Clause 29.0 (Dispute Resolution) and Clause 30.0 (Governing Law).

26.2 Termination or expiry of a Contract shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

27.0 THIRD PARTIES

27.1 Unless expressly provided in the Contract, no terms of the Contract are enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

28.0 NOTICES

28.1 Any notice given to a Party under or in connection with the Contract shall be in writing and shall be:

28.1.1 delivered by hand or by pre-paid first-class post or other next Business Day delivery service to SCT at Finance Director's Office, Unit 5, Chancery Gate Business Centre, Ruscombe Park, Twyford, Berkshire, RG10 9LT; or

28.1.2 delivered by hand or by pre-paid first-class post or other next Business Day delivery service to Partner at its registered office (if a company) or its principal place of business (in any other case).

28.2 Any notice shall be deemed to have been received:

28.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

28.2.2 if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

28.3 This Clause 28.0 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

29.0 DISPUTE RESOLUTION

29.1 This Clause 29.0 shall not apply to any undisputed unpaid Charges which, for the avoidance of any doubt, shall be deemed to be a material breach and shall be dealt with under Clause 6.7 or Clause 7.1.1 at SCT's discretion.

- 29.2 If a dispute arises between SCT and Partner in relation to any other matter the representatives for each Party shall, in the first instance, attempt to agree a resolution for such dispute. If after thirty (30) consecutive days (or such other time as the Parties may agree in writing) such representatives, each acting reasonably, are unable to resolve the dispute, SCT and Partner shall arrange for a senior representative to attend one or more meeting solely in order to resolve the matter in dispute. Such meetings shall be conducted in such manner at such venue (including a meeting conducted over the telephone) as to promote a consensual resolution of the dispute in question and each Party shall act in good faith.
- 29.3 If the senior representatives are unable to resolve the matter in question within 30 consecutive days (or such other time as the Parties may agree in writing) then the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("**CEDR**") Model Mediation Procedure or any other model mediation procedure as agreed between the Parties. To initiate a mediation either Party may give notice in writing (a "Mediation Notice") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or agreed equivalent mediation organisation asking them to nominate a mediator. The mediation shall commence within 28 consecutive days of the Mediation Notice being served. Neither of the Parties will terminate such mediation until each has made its opening presentation and the mediator has met each of them separately for at least one hour. Thereafter paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of the other agreed model mediation procedure). Neither Party will commence legal proceedings against the other until 30 consecutive days after such mediation of the dispute in question has failed to resolve the dispute. Each Party will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and will pay his costs, as he shall determine or, in the absence of such determination, such costs will be shared equally.
- 29.4 In the event that the dispute is not resolved in accordance with Clause 29.2 or Clause 29.3, the dispute may be referred by either Party to the English courts and the Parties submit to the non-exclusive jurisdiction for that purpose.

30.0 GOVERNING LAW

- 30.1 The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England.
- 30.2 The Parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

Appendix A – Form of Statement of Work

RECITALS

This Statement of Work (“**SOW**”) is provided by Smart Capital Technology Limited (“**SCT**”) to xxx (“**Partner**”) and is subject to the terms of the Channel Services Terms and Conditions (“**Terms**”) available at www.smartct.com.

The Services to be provided to Partner are detailed in this SOW. In the event Partner request the provision of further Services then either a further SOW or a variation of this SOW will be agreed in writing between the Parties. All SOWs are automatically made subject to the Terms and any changes from the form of the Terms and / or this SOW must be mutually agreed in writing by authorised representatives of the Parties in accordance with the provisions of the said Terms. For the avoidance of any doubt the Parties agree that any document that purports to amend the Terms and / or this SOW(s) and which is not in compliance with this paragraph (including without limitation any Purchase Order or Purchase Order confirmation or similar document that carries terms not expressly included in the Terms or this SOW shall be of no effect.

1. DEFINITIONS

- 1.1. Unless otherwise stated in this SOW words and expressions defined in the Terms shall have the same meaning where used in this SOW.

2. THE SERVICES

SCT will provide the following Services to Partner.

2.1. Services Description

<insert>

2.2. Specific Deliverables

<insert>

2.3. Site(s)

<insert>

2.4. Equipment

<insert>

2.5. Support Period

<insert>

2.6. Hours of Cover

<insert>

3. ADDITIONAL TERMS

<insert as applicable>

CHARGES

<insert as applicable>

SCHEDULE 1 (A) – SPECIFIC TERMS & CONDITIONS OF SUPPORT

ADVANCE HARDWARE REPLACEMENT

1.0 GENERAL

- 1.1 These are the Specific Terms and Conditions of Support on which SCT will provide to Partner the Advance Hardware Replacement. All words and phrases used in these Specific Terms and Conditions of Support have the same meanings as those in the General Terms and Conditions of Support.
- 1.2 Advance Hardware Replacement provides Parts when a hardware fault is identified with the Equipment by Partner and the Faulty Part requires replacement. Advance Hardware Replacement does not provide Parts for upgrades, preventative or periodic maintenance purposes. If Partner requires SCT to supply parts for upgrades, preventative or periodic maintenance purposes a Request For Service should be made in accordance with Clause 9.0 (Time and Materials Work) of the General Terms and Conditions of Support.
- 1.3 SCT requires a minimum of thirty (30) days' notice prior to the Contract Start Date. In the event that thirty (30) days' notice cannot be provided SCT shall provide Advance Hardware Replacement on a reasonable endeavours basis only for the first thirty (30) days and Partner shall not be eligible for Service Credits during this period.
- 1.4 **"Replacement Value"** means the non-return value (based on a Legitimate Part and not to exceed the Manufacturer's list price at the original point of sale) identified in the weekly outstanding RMA report issued to the customer.

2.0 SCT'S RESPONSIBILITIES

- 2.1 SCT shall, on diagnosis of a hardware failure by Partner in relation to Equipment specified by serial number or other unique identifying mark on the Equipment List, deliver to Site a replacement Part of equivalent or higher specification within the contracted Service Level.
- 2.2 SCT shall advise Partner by e-mail of an expected time for delivery of the Part.
- 2.3 SCT shall advise Partner by e-mail when the Part has been delivered and will provide proof of delivery.
- 2.4 SCT shall be responsible for any damage, shortage, delivery of incorrect Part or loss in transit, provided that Partner notifies it to SCT (or its carrier, if applicable) within twenty-four (24) hours of receiving proof of delivery and that the Part has been handled in accordance with SCT's stipulations and retained in the original packaging. Any remedy under this Paragraph 2.4 shall be limited, at the option of SCT, to the replacement or repair of any Part which is proven to SCT's satisfaction to have been lost or damaged in transit, or delivered incorrectly.
- 2.5 SCT shall test all returned Faulty Parts to determine the nature of the fault. In the event that no fault is found (**"NFF"**) SCT will record the findings in the SCT incident management system. SCT reserves the right to review the Charges should the level of NFFs become (in SCT's reasonable opinion) excessive.

3.0 PARTNER'S RESPONSIBILITIES

- 3.1 Partner is responsible:
 - 3.1.1 for ensuring that diagnosis has taken place before contacting SCT under the scope of the Support Service Order, to determine that the fault in question is hardware based and not due to firmware, software or other application or system as may be running on or connected to the Equipment;
 - 3.1.2 for the installation and configuration of the Part supplied, unless Support Engineering has been contracted, and Partner acknowledges that under Advance Hardware Replacement SCT does not assume responsibility for the installation or reinstallation of any Parts or Equipment, or for any consequences that may result from such installation or reinstallation; and
 - 3.1.3 for the return of the Faulty Part in accordance with Paragraph 4.0 (Parts, Faulty Parts and Returns) below.
- 3.2 From time to time Partner may have cause to cancel the requested delivery of a Part (a **"Cancelled Delivery"**). SCT will record the number of Cancelled Deliveries in the SCT incident management system. SCT reserves the right to apply additional Charges should the level of Cancelled Deliveries become (in SCT's reasonable opinion) excessive.
- 3.3 Partner shall be deemed to have accepted the Part when Partner has had twenty-four (24) hours from receipt of proof of delivery to inspect the Part and has not exercised in writing its right of rejection in accordance with Paragraph 2.4.

4.0 PARTS, FAULTY PARTS AND RETURNS

- 4.1 Partner shall return the Faulty Part, or in the event the Part is not used Partner shall return the Part, to SCT within ten (10) Business Days of receiving the Part, except in the event that SCT requests the return of a critical Faulty Part/Part, in which instance Partner shall use all reasonable endeavours to return the Faulty Part/Part to SCT within three (3) Business Days. Partner acknowledges that failure to comply with this may result in Service Level failures for which SCT will not be held accountable.
 - 4.2 The Faulty Part (or Part if applicable) shall be returned where reasonably practicable in the original packing of the Part. Where re-use of the original packing would not provide adequate protection, or the original packing is not available, suitable alternative packing shall be used.
 - 4.3 The address for the return of all Faulty Parts and/or Parts to SCT under the scope of the Contract is: SCT, Unit 5, Chancery Gate Business Centre, Ruscombe Park, Twyford, Berkshire RG10 9LT.
 - 4.4 If the Faulty Part/Part (as applicable) is not delivered to SCT within ten (10) Business Days of the delivery of the Part, SCT shall be entitled to invoice Partner for the Replacement Value of the Part.
 - 4.5 Risk in the Part shall pass to Partner on delivery of the Part to Site.
 - 4.6 Where vendor support services are registered to a Faulty Part, Partner shall ensure that the vendor support services are transferred from the Faulty Part within thirty (30) days of receipt of the applicable Part ("**Clean Status**").
 - 4.7 If the Faulty Part does not achieve a Clean Status in accordance with Paragraph 4.6, SCT shall be entitled to invoice Partner for the Replacement Value of the Part and return the Faulty Part to Partner.
 - 4.8 Where the Part is supplied for Equipment identified in the Equipment List, title to the Part shall not pass to Partner until the applicable Faulty Part is received by SCT and is in a Clean Status. In the event that the Faulty Part is not returned to SCT in accordance with Paragraph 4.1 or the Faulty Part does not achieve a Clean Status, and SCT invoices Partner in accordance with Paragraph 4.4 or Paragraph 4.7 (as applicable), then title to the Part shall pass to Partner on payment in full.
 - 4.9 Where the Part is supplied under an Unsupported Equipment Service Request, title to the Part shall not pass to Partner until:
 - 4.9.1 Partner has paid all Charges in relation to the Unsupported Equipment Service Request; and
 - 4.9.2 the applicable Faulty Part is received by SCT and is in a Clean Status. In the event that the Faulty Part is not returned to SCT in accordance with Paragraph 4.1 or the Faulty Part does not achieve a Clean Status, and SCT invoices Partner in accordance with Paragraph 4.4 or Paragraph 4.7 (as applicable), then payment for the Part must be received in full.
 - 4.10 Risk in the Faulty Part shall pass to SCT upon SCT's receipt of the Faulty Part. Title to the Faulty Part shall pass to SCT on the later of:
 - 4.10.1 SCT's receipt of the Faulty Part; or
 - 4.10.2 the Faulty Part achieving a Clean Status.
 - 4.11 SCT will check the integrity of all returned Faulty Parts on any Manufacturer's online facility to confirm that they are Legitimate Parts. Except where SCT is supplying Non-Legitimate Parts in accordance with Clause 13.4 of the General Terms and Conditions of Support of these Terms, then in the event that a Faulty Part is identified as being a Non-Legitimate Part SCT shall be entitled to invoice Partner for the Replacement Value of the Part supplied.
- ## 5.0 CISCO® EQUIPMENT
- 5.1 In the event any of the Equipment has existing contracts in place for Cisco Smart Net Total Care® or Partner Support Service ("**PSS**") at the Contract Start Date, Partner shall be liable for any additional charges relating to takeover costs incurred by SCT. In the event that the existing contracts cannot be transferred to SCT, Partner acknowledges that Advance Hardware Replacement Services will not be available from SCT until those contracts have expired.
 - 5.2 Unless specifically stated otherwise in the Support Service Order, all Charges relating to Cisco Smart Net Total Care® and PSS excludes IPS Signature and engine updates (where applicable).
 - 5.3 Where PSS is listed in the applicable Support Service Order End User is entitled to software downloads for the applicable Equipment, within the purchased feature-set, via www.cisco.com.

- 5.4 All serial numbers for Cisco® Equipment must be provided before Equipment is placed on a Cisco Smart Net Total Care® or PSS contract.
- 5.5 Cisco® and Cisco Smart Net Total Care® are registered trademarks, or trademarks, of Cisco Systems, Inc. and/or its affiliates in the United States and certain other countries.

6.0 PARTNER OWNED STOCK

- 6.1 From time to time SCT may agree to hold at SCT's premises and/or forward stocking locations spare parts owned by Partner, or End User, to be utilised by SCT in the provision of the Advance Hardware Replacement ("**Partner Owned Stock**"). In this event Partner agrees and accepts that the Partner Owned Stock remains the property of Partner, or End User as applicable, at all times and is held by SCT at Partner's risk. Under no circumstances shall SCT be liable in the event of theft or loss of, or damage to, the Partner Owned Stock and Partner shall ensure that Partner has appropriate and sufficient insurance in place as Partner deems necessary.

SCHEDULE 1 (B) – SPECIFIC TERMS & CONDITIONS OF SUPPORT

SUPPORT ENGINEERING

1.0 GENERAL

- 1.1 These are the Specific Terms and Conditions of Support on which SCT will provide to Partner the Support Engineering. All words and phrases used in these Specific Terms and Conditions of Support have the same meanings as those in the General Terms and Conditions of Support.
- 1.2 SCT requires a minimum of thirty (30) days' notice prior to the Contract Start Date. In the event that thirty (30) days' notice cannot be provided SCT shall provide Support Engineering on a reasonable endeavours basis only for the first thirty (30) days and Partner shall not be eligible for Service Credits during this period.

2.0 SCT'S RESPONSIBILITIES

- 2.1 SCT shall, on diagnosis of a hardware failure by Partner in relation to Equipment specified by serial number or other unique identifying mark on the Equipment List, send to Site a Field Service Engineer within the contracted Service Level.
- 2.2 SCT shall advise Partner by e-mail of an expected time of arrival at Site of the Field Service Engineer.
- 2.3 Where the Equipment is covered by Advanced Hardware Replacement and SCT has provided the Part(s), the Field Service Engineer shall install the Part(s) and where possible remove the Faulty Part(s) from Site.

3.0 PARTNER'S RESPONSIBILITIES

- 3.1 Partner is responsible for ensuring that diagnosis has taken place before contacting SCT under the scope of the Support Service Order, to determine that the fault in question is hardware based and not due to firmware, software or other application or system as may be running on or connected to the Equipment
- 3.2 Partner shall give or arrange for SCT's Field Service Engineers unfettered and safe access to the Equipment as is reasonably required to provide the Support Engineering, including, but not limited to, ensuring that electrical and power supplies meet the appropriate electrical standards, and confirming any health, safety, security access and/or any protection requirements at the Site.
- 3.3 Partner shall ensure that any fixtures and fittings at the Site which could reasonably be anticipated to be damaged in the provision of the Support Engineering are either moved or are adequately protected. Where necessary a Risk Assessment Method Statement ("**RAMS**") shall be carried out prior to the Support Engineering being undertaken. SCT shall not be liable for any damage caused where the Partner required actions identified by the RAMS have not been completed and/or where adequate protection has not been put in place.
- 3.4 Where emergency or monitoring systems and alarms (including but not limited to smoke or fire alarms, theft prevention systems and fire suppressant systems) ("**Emergency Controls**") may be impacted or triggered in the provision of the Support Engineering Partner shall isolate the applicable Emergency Controls. SCT shall not be liable for any activation of Emergency Controls where Partner has not put suitable isolation processes in place.
- 3.5 From time to time Partner may have cause to cancel the requested arrival of a Field Service Engineer (a "**Cancelled Request**"). SCT will record the number of Cancelled Requests in the SCT incident management system. SCT reserves the right to review the Charges should the level of Cancelled Requests become (in SCT's reasonable opinion) excessive.

4.0 WORKING AT HEIGHT

- 4.1 If the Equipment is located in an external or raised location necessitating the Field Service Engineer to work at height, then the appropriate infrastructure or resources shall be provided by Partner to facilitate the provision of Support Engineering in accordance with applicable health and safety directives and regulations (the "**Appropriate Provisions**"), unless agreed otherwise in writing by the Parties.
- 4.2 If the Appropriate Provisions are not provided the Field Service Engineer will not be permitted to provide the Support Engineering for the applicable Equipment. Where Advance Hardware Replacement is contracted for the same Equipment the Support Services will be limited to the Advance Hardware Replacement only and SCT shall not be liable for any costs, charges or losses sustained or incurred by Partner that arise directly or indirectly as a result.
- 4.3 In the event that SCT is unable to provide Support Engineering as a result of Partner failing to have the Appropriate Provisions in place this shall be excluded from any calculation of SCT's performance against Service Levels for any Support Engineering elements of the Support Services.

- 4.4 In the event that SCT is unable to provide Support Engineering as a result of Partner failing to have the Appropriate Provisions in place the Charges shall still apply.

SCHEDULE 1(C) – SPECIFIC TERMS & CONDITIONS OF SUPPORT

TIME AND MATERIALS WORK

1.0 GENERAL

- 1.1 These are the Specific Terms and Conditions of Support on which SCT will provide to Partner the Time and Materials Work. All words and phrases used in these Specific Terms and Conditions of Support have the same meanings as those in the General Terms and Conditions of Support.
- 1.2 **“Authorised Requestor”** means Partner’s representative who is responsible and accountable for requesting T&MW from the Support Desk;
- 1.3 **“End User’s System”** means variously, the End User’s computer and telephony equipment, operating system, computer network infrastructure hardware and/or associated telecom links and networks;
- 1.4 **“Project Based Engineering”** means the provision of a suitably qualified Field Service Engineer on-site to provide defined T&MW which could include, but not limited to, implementation or configuration of networking equipment;
- 1.5 **“Professional Services”** means the provision of services to provide defined T&MW which could include, but not limited to, network audits, health checks, staging services, project management services, decommissioning, recycling and disposal.
- 1.6 **“Professional Services Consultant”** means the appropriately qualified individual SCT provides to perform the Professional Services.
- 1.7 **“Site Contact”** means the authoritative onsite representative at the Site nominated by Partner to liaise with the Field Service Engineer and/or Professional Services Consultant providing the T&MW and responsible for confirmation of completion as the case may be;
- 1.8 **“Site Report”** means the form issued by the Field Service Engineer and/or Professional Services Consultant to the Site Contact for signature at Site confirming the status of the T&MW at the end of the particular visit. Subject to actual events prevailing the status may be recorded as: i) completed (all tasks completed successfully); (ii) partially completed (listing both completed and outstanding tasks); and (iii) visit failed stating the material reason(s) for such status.

2.0 TIME AND MATERIALS WORK

- 2.1 Each specific Request For Service shall:
 - 2.1.1 be communicated via email to the Support Desk by the Authorised Requestor as further detailed in Paragraph 2.4 below;
 - 2.1.2 be assessed by the Support Desk who will confirm to the Authorised Requestor if the T&MW requested is feasible to be carried out by SCT or not. SCT reserves the right to reject a Request For Service should the requested T&MW fall outside the scope of this Schedule 1(C) and/or the capabilities of SCT or if SCT does not have sufficient resources available;
 - 2.1.3 if deemed feasible and agreed to be undertaken by SCT in accordance with Paragraph 3.0 of this Schedule 1(C), will be performed in response to Partner’s written requirement and carried out over a recorded duration. The Charges for such T&MW shall be determined by the scope of work, the duration and the skill level of the Field Service Engineer or Professional Services Consultant utilised.
- 2.2 For skill-matching, scheduling and charging purposes, all approved T&MW will :
 - 2.2.1 be categorised as Project Based Engineering or Professional Services;
 - 2.2.2 be aligned to the appropriate Field Service Engineer or Professional Services Consultant skill level;
 - 2.2.3 have the type of response confirmed being either Project Based Engineering or Professional Services;
 - 2.2.4 have the Charges confirmed in accordance with Paragraph 3.1.
- 2.3 The scope of the T&MW covers:
 - 2.3.1 providing remote Field Service Engineer expertise in response to Partner’s technical request for IT administration and ‘how do I’ queries regarding the End User’s System;

- 2.3.2 undertaking on-site installations, repairs, refits and recoveries in relation to the End User's System;
 - 2.3.3 providing larger managed programmes of work at Sites covering: site surveys and auditing, multi-site implementations and operational handover, equipment staging and configuration, decommissioning and disposal, project management services.
- 2.4 The Authorised Requestor shall be responsible for confirming to SCT:
- 2.4.1 the full requirements of the work that Partner wishes SCT to undertake at the specified Site(s);
 - 2.4.2 the availability and location of Partner's or End User's equipment spares if essential and appropriate to the request;
 - 2.4.3 the address details of the Site(s);
 - 2.4.4 the name and contact details of the Site Contact;
 - 2.4.5 that Site access and permission to work arrangements have been put in place with the nominated Site Contact;
 - 2.4.6 that all necessary consents, including consents for any necessary alterations and provisions to buildings and power, are in place and, if appropriate any formal arrangements for minor works that may need to be completed at any Site in order to facilitate the T&MW;
 - 2.4.7 any health, safety, security access and/or any protection requirements at the Site;
 - 2.4.8 that the Site Contact has been comprehensively briefed on the purpose of the T&MW and is able to facilitate required physical access and any prerequisites as may be required, including the acknowledgement and acceptance that PC's, servers and communication links may require to be out of service for a period of time.
- 2.5 SCT shall provide Field Service Engineering or Professional Services Consultants resource to perform the T&MW at Sites and shall carry out the T&MW in a professional manner using such personnel as SCT considers suitably qualified to undertake the work and who shall at all times remain under the direction and control of SCT. Field Service Engineers and/or Professional Services Consultants will be matched and allocated to the T&MW requested by Partner based on the skill level definitions set out below:
- 2.5.1 **Level 1:** Minimum 2+ years' experience, voice/data networking products and technologies;
 - 2.5.2 **Level 2:** Minimum 3+ years' experience, fault finding, configurations and installations;
 - 2.5.3 **Level 3:** Minimum 5+ years' experience, complex fault finding, design and configuration, project management, leadership skills;
 - 2.5.4 **Consultant:** 6+ years' field, pre-sales, design and configuration, complex project and leadership experience.
- 2.6 Partner will pay to SCT the Charges as set out in Paragraph 7.0 of this Schedule 1(C).
- 2.7 The T&MW will be provided at agreed Sites and, unless mutually agreed otherwise in writing, there shall be unfettered access available during Normal Business Hours or at any other time as mutually agreed at each Site when the allocated Field Service Engineer and/or Professional Services Consultant is scheduled to attend.
- 2.8 While SCT shall use its reasonable endeavours to achieve any estimates made by SCT regarding any timescales or any results projected in connection with the T&MW, it is agreed that any such estimates are not entirely within SCT's control and are dependent upon the accuracy and completeness of the information supplied to SCT as well as the degree of assistance given by Partner and the way in which any results of the T&MW are used. Accordingly, SCT does not guarantee that the T&MW will be completed within the timescales or achieve the projected results and time is not of the essence.

3.0 REQUESTING TIME AND MATERIALS WORK

- 3.1 In accordance with Paragraph 2.0, when Partner places a Request For Service, and where SCT is willing to provide the requested T&MW, SCT will provide a T&M Offer to Partner subject to these Terms. The T&M Offer shall be valid for thirty (30) days unless stated otherwise.
- 3.2 Upon Partner's issuance of a Purchase Order accepting the T&M Offer the T&M Offer shall be considered a T&M Order.
- 3.3 SCT reserves the right to withdraw the T&M Offer at any time prior to a T&M Order coming into effect in accordance with Paragraph 3.2.

- 3.4 SCT will not commence any T&MW nor provide any Field Service Engineers or Professional Services Consultants until SCT have received Partner's emailed acceptance of the T&M Offer and Partner's Purchase Order placed in accordance with the T&M Offer.

4.0 SCT RESPONSIBILITIES

- 4.1 SCT shall:
- 4.1.1 arrange for all Field Service Engineers and Professional Services Consultants to carry appropriate identification documents, conduct themselves in a professional manner and that their appearance is appropriate and business like for the tasks to be performed at Sites.
 - 4.1.2 provide Partner with status reports on a mutually agreed frequency;
 - 4.1.3 promptly notify Partner in writing of any substantive out of scope work required to complete the T&MW and where appropriate SCT shall provide a T&M Offer in accordance with Paragraph 3.0 for the additional work required.
 - 4.1.4 provide a warranty of ten (10) Business Days from the date of completion of the T&MW. SCT's sole liability (and Partner's sole remedy against SCT) in respect of any materially defective T&MW for which SCT is responsible under the warranty shall be the re-performance of the T&MW at SCT's cost.

5.0 PARTNER RESPONSIBILITIES

- 5.1 Partner shall ensure that any fixtures and fittings at the Site which could reasonably be anticipated to be damaged in the provision of the T&MW are either moved or are adequately protected. Where necessary a Risk Assessment Method Statement ("**RAMS**") shall be carried out prior to the T&MW being undertaken. SCT shall not be liable for any damage caused where the Partner required actions identified by the RAMS have not been completed and/or where adequate protection has not been put in place.
- 5.2 Where emergency or monitoring systems and alarms (including but not limited to smoke or fire alarms, theft prevention systems and sprinkler systems) ("**Emergency Controls**") may be impacted or triggered in the provision of the T&MW Partner shall isolate the applicable Emergency Controls. SCT shall not be liable for any activation of Emergency Controls where Partner has not put suitable isolation processes in place.
- 5.3 If the T&MW necessitates the Field Service Engineer or Professional Services Consultant to work at height, then the appropriate infrastructure or resources shall be provided by Partner to facilitate the provision of the T&MW in accordance with applicable health and safety directives and regulations (**the "Appropriate Provisions"**), unless agreed otherwise in writing by the Parties.
- 5.4 If the Appropriate Provisions are not provided the Field Service Engineer or Professional Services Consultant will not be permitted to provide the T&MW and SCT shall not be liable for any costs, charges or losses sustained or incurred by Partner that arise directly or indirectly as a result.

6.0 EXECUTION

- 6.1 The T&MW carried out at each Site shall be signed off by the Site Contact using a Site Report provided by the Field Service Engineer or Professional Services Consultant. The Site Report will be categorised as follows:
- 6.1.1 **Complete** – all requested T&MW tasks completed successfully;
 - 6.1.2 **Partial** – some of the requested T&MW tasks completed successfully. If due to:
 - 6.1.2.1 SCT default ("**Partial – SCT Default**") revisit at SCT cost (endeavour to revisit within five (5) Business Days);
 - 6.1.2.2 Partner/End User default ("**Partial – Partner Default**") notification to Partner (visit Charges applies) and Partner to notify SCT when problem resolved. Partner to notify/request revisit;
 - 6.1.3 **Failed** – Site visited but no T&MW tasks undertaken/completed. If due to:
 - 6.1.3.1 SCT default ("**Failed – SCT Default**") revisit at SCT cost (endeavour to revisit within five (5) Business Days);
 - 6.1.3.2 Partner/End User default ("**Failed – Partner Default**") notification to Partner (visit Charges applies) and Partner to notify SCT when problem resolved. Partner to notify/request revisit.
- 6.2 Abortive visit criteria (examples):

- 6.2.1 Access (whether full or partial) is rejected for whatever reason by the Site Contact.
- 6.2.2 The Site is closed for whatever reason at the time/date scheduled.
- 6.3 All visits to Sites that qualify for a Charge (i.e. Complete or Partial – Partner Default or Failed – Partner Default) shall be invoiced by SCT to Partner as detailed in the applicable T&M Order.

7.0 CHARGES FOR TIME AND MATERIALS WORK

- 7.1 All stated Charges are exclusive of VAT.
- 7.2 The Charges for the specified T&MW are set out in the applicable T&M Order.
- 7.3 The Charges in the T&M Order apply only to work carried out during Normal Business Hours. Work performed outside of Normal Business Hours shall be uplifted in accordance with Paragraph 7.6 and Paragraph 7.7 as appropriate.
- 7.4 Travel time to and from Site will be charged to Partner in accordance with Paragraph 7.3, Paragraph 7.6 and Paragraph 7.7 as appropriate.
- 7.5 SCT will use reasonable endeavours to provide Partner with outside of Normal Business Hours resource when so requested, but makes no guarantee as to the availability of such resource.
- 7.6 For T&MW performed outside Normal Business Hours and which is between Sunday 23:59 WET/WEST and Saturday 23:59 WET/WEST, excluding UK bank and other UK statutory holidays, the Charges will be uplifted by 50%.
- 7.7 For T&MW performed outside Normal Business Hours and which is between Saturday 23:59 WET/WEST and Sunday 23:59 WET/WEST or on UK bank and other UK statutory holidays the Charges will be uplifted by 100%.
- 7.8 Charges will be invoiced in accordance with Clause 6.0 (Charges and Payment) of the General Terms and Conditions of Support.

8.0 CANCELLATION

- 8.1 Subject to Paragraph 8.2, any request to cancel Professional Services and/or Project Based Engineering prior to the T&MW commencing shall be subject to the following cancellation fees:
 - 8.1.1 Cancellation with one (1) or less clear Business Day's notice prior to planned commencement of T&MW requires payment of the Charges in full.
 - 8.1.2 Cancellation with two (2) or less clear Business Days' notice prior to planned commencement of T&MW requires payment of 50% of the Charges.
 - 8.1.3 Cancellation with more than two (2) clear Business Days' notice prior to planned commencement of T&MW requires no payment of Charges.
- 8.2 In the event Partner requests to cancel the T&MW less than ten (10) Business Days' prior to the T&MW commencing, and where the T&MW included provision of goods or materials by SCT, Partner shall pay the Charges relating to those goods or materials in full in addition to the cancellation fees detailed in Paragraph 8.1.