



# General Terms and Conditions of Service

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## Service desk

+44 (0) 808 164 3618  
support@smartct.com

## Sales

+44 (0) 118 960 2520  
sales@smartct.com

[www.smartct.com](http://www.smartct.com)

Unit 5, Chancery Gate Business Centre  
Ruscombe Park, Twyford, Reading, RG10 9LT



# General Terms and Conditions of Service

## 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 Service are the terms and conditions on which the Services will be provided to Customer. The terms and conditions specific to the Services offering are set-out in the Specific Terms and Conditions of Service (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 1.11 (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 Service of these Terms, references to Paragraphs are to the paragraphs of the Specific Terms and Conditions of Service 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 Quotation or Statement of Work;
  - 1.6.2 the Specific Terms and Conditions of Service (as set-out in Schedule 1) of these Terms;
  - 1.6.3 the General Terms and Conditions of Service of these Terms;
- 1.7 Smart CT and Customer 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 Quotation or a Statement of Work and which is not in compliance with these Terms or the Contract (including without limitation to 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 Smart CT may revise these Terms from time to time by changing them on Smart CT’s website and by providing Customer with a three months’ written notice. However, unless agreed otherwise by the Parties, changes will not be retroactive. By continuing to purchase Services or place new Contracts after the notified change effective date, Customer acknowledges its acceptance of such amended Terms.
- 1.10 Manufacturers may require Smart CT to pass-through terms (“Manufacturer Pass-Through Terms) for the Manufacturer products to Customer and their customers, as a Schedule. By purchasing Smart CT Services, Customer agrees to the applicable Manufacturer Pass-Through Terms, which shall form part of the Contract between Customer and Smart CT. To the extent required under the applicable Manufacturer Pass-Through Terms, Customer will flow down such terms to its customer in its agreements with such customer. Manufacturers may amend the respective Manufacturer Pass-Through Terms from time to time. In such case, Smart CT will publish the updated terms on its website or amend the relevant Contract schedule. Customer agrees to be bound by such updated pass-through terms. In case of conflicts between any applicable Manufacturer Pass-Through Terms and the General and/or Specific Terms and Conditions, the Manufacturer Pass-Through terms shall prevail.
- 1.11 Definitions:

<b>Agreement</b>	means these General and Special Terms and Conditions;
<b>Account</b>	means the account created for Customer with Smart CT for invoicing purposes;
<b>Advance Hardware Replacement</b>	means a spares management service providing replacement Parts to Customer for supported network Equipment before the Faulty Part is returned.
<b>Affiliate</b>	means, in relation to a Party, any company which is a Subsidiary or a Holding Company of that Party, or is a Subsidiary of the Holding Company of that Party (where “Subsidiary” and “Holding Company” have the meanings given in section 1159 and Schedule 6 of the Companies Act 2006);

<b>Applicable Law(s)</b>	means all laws, regulations, rules, duties and other obligations having the force of law which apply to the provision of the Services;
<b>BST</b>	means British Summer Time;
<b>Business Day</b>	means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Services are to be performed;
<b>Case</b>	means the term used to identify any request logged on Smart CT's incident management system for Customer;
<b>Change in Law</b>	means any change in Applicable Law which impacts on the performance of the Agreement and /or Contract which comes into force after the Effective Date or Contract Start Date;
<b>Charges</b>	means the fees (recurring and/or non-recurring) for the Services;
<b>Confidential Information</b>	means all information (in whatever format) designated in writing 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;
<b>Contract</b>	means an individual contract for the provision of Services incorporating these Terms and the relevant Statement of Work and/or Quotation;
<b>Contract Start Date/Contract End Date</b>	means the dates specified in Contract from which Customer's entitlement to receive the Services for a given piece of Equipment shall commence and cease;
<b>Customer</b>	means the party purchasing Smart CT Services as identified in this Agreement or Contract.
<b>Effective Date</b>	means the date Contract terms become legally binding as agreed by both parties;
<b>Execution Date</b>	means in relation to this Agreement, the date the last Party signs this Agreement;
<b>End User</b>	means an unaffiliated third-party customer of Customer that receives IT Services for such third party's internal business purposes;
<b>Equipment</b>	means those units, components or sub-assemblies referred to in the Equipment List(s) for which the Services will be provided;
<b>Equipment List</b>	means the list of supported Equipment defined in a Contract;
<b>Estate</b>	means all active Support Service Contracts and/or all Server and Storage Maintenance Contracts (as applicable) between Customer and Smart CT;
<b>Faulty Part</b>	means the part of the Equipment identified as faulty;
<b>Field Service Engineer</b>	means the Smart CT assigned engineer who will execute the on Site Services;
<b>GMT</b>	means Greenwich Mean Time;
<b>Hours of Cover</b>	means the hours of cover under which Services will be provided as set out in the applicable Contract;
<b>Incident</b>	means the event causing Customer to log a Case with Smart CT under the terms of the Contract;
<b>IT Services</b>	means the IT services provided by Customer to End Users using the Services and Customer's intellectual capital and/or additional services provided by Customer.

<b>Legitimate Part</b>	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;
<b>Manufacturer</b>	means the company responsible for making or producing the Equipment and/or Parts;
<b>Support Services or NSS</b>	means the contracted services for Smarthands and/or Advance Hardware Replacement to be used by Customer to provide IT Services;
<b>Nominated Contacts</b>	means the name, email address and phone number of the individuals provided to Smart CT by Customer to contact in relation to providing the Services;
<b>Non-Legitimate Part</b>	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;
<b>Normal Business Hours</b>	means the hours of 08:00 to 18:00 on a Business Day;
<b>Parts</b>	means spare parts and/or whole units and/or sub-modules of Equipment supplied by Smart CT to provide the Services;
<b>Partner</b>	means Customer in this Agreement;
<b>Purchase Order</b>	means an official document issued by Customer committing to pay Smart CT for the sale of specific goods or services;
<b>Quotation</b>	means a written document provided by Smart CT in response to a request by Customer from time to time, detailing the proposed Services to be provided by Smart CT to Customer and the applicable Charges;
<b>RMA (Return Material Authorisation)</b>	means the process by which Faulty Parts can be returned to the Manufacturer for refund, replacement or repair;
<b>Smart CT</b>	means Smart Capital Technology Limited, a company registered in England and Wales (Registration No. 4569616) and having its registered office at Unit 5, Chancery Gate Business Centre, Ruscombe Park, Ruscombe, Reading, Berkshire, RG10 9LT;
<b>Smart CT Germany</b>	means Smart Capital Technology GmbH c/o RA Ralph Krone Solmstrasse 41 D-60486 Frankfurt a.M. Germany, and Smart CT Affiliate which may perform Services for the Customer, as the parties may agree from time to time via a Contract;
<b>Server and Storage Maintenance</b>	means the contracted services for server and storage maintenance to be used by Customer to provide IT Services;
<b>Services</b>	means the services to be performed by Smart CT as set out in a Contract;
<b>Site</b>	means the Equipment location, or the location where the Services are to be performed, as defined in the applicable Contract;
<b>Smarthands</b>	means the provision of a suitably qualified Field Service Engineer on-site to provide engineering resources and facilitate the replacement of Faulty Parts for supported network Equipment;
<b>Standard Industry Practice</b>	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 Smart CT under the same or similar circumstances;

<b>Statement of Work</b>	means a document issued by Smart CT to Customer setting out the details of more complex Services than can be defined in a Quotation and which Smart CT is willing to provide to Customer. A generic pro-forma for a Statement of Work is set out in Appendix A of these Terms;
<b>Support Period</b>	means the period between the Contract Start Date and Contract End Date during which the Services shall be provided and the period during which Charges shall be calculated;
<b>Terms</b>	means these General Terms and Conditions of Service and the Specific Terms and Conditions of Service together with any schedules or addendums to the aforementioned and documents referred to herein;
<b>Time and Materials Work or T&amp;MW</b>	means any work conducted for Customer by Smart CT in accordance with Clause 8.0 (Time and Materials Charges) of the General Terms and Conditions of Service which falls outside of the scope of the NSS or Server and Storage Maintenance (as applicable), as provided by these Terms, either through its nature or time of execution and as further detailed in Schedule 1(B) of these Terms;
<b>TUPE</b>	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;
<b>UK Business Day</b>	means Monday to Friday, excluding UK bank and other UK public holidays, unless otherwise agreed in writing;
<b>UK GDPR</b>	has the meaning given to it in the Data Protection Act 2018;
<b>UK Normal Business Hours</b>	means the hours of 8.00 to 18:00 (GMT or BST as appropriate), on a UK Business Day;
<b>Unsupported Equipment Service Request</b>	means a request for NSS or Server and Storage Maintenance for equipment not on the Equipment List or for NSS or Server and Storage Maintenance for Equipment outside of the contracted Service Level; and
<b>VAT</b>	means Value Added Tax.

## 2.0 SERVICES

- 2.1 From time to time, as requested by Customer, Smart CT shall issue a Quotation or Statement of Work to Customer. By issuing a Purchase Order referencing the Quotation or Statement of Work (as applicable) the Purchase Order shall constitute an offer by Customer to purchase the Services subject to the terms of the Quotation or Statement of Work and these Terms. Upon Smart CT's acceptance of the Purchase Order the applicable Quotation or Statement of Work shall be considered a Contract.
- 2.2 The Services shall only be used by Customer to provide IT Services.
- 2.3 Quotations and Statements of Work referencing pounds sterling shall remain valid for thirty (30) days unless stated otherwise.
- 2.4 Quotations and Statements of Work referencing currencies other than pounds sterling shall remain valid for ten (10) UK Business Days, unless stated otherwise.
- 2.5 Smart CT reserves the right to withdraw the Quotation or Statement of Work at any time prior to a Contract coming into effect in accordance with Clause 2.1.
- 2.6 Equipment may be deleted from the Equipment List during the term of a Contract upon 60 days written notice from Customer to Smart CT. Smart CT will issue a pro rata credit only where Smart CT have not committed third party support costs in relation to the deleted Equipment or has not invested in spare Equipment to support the Contract and Customer repays any discount or other benefit Customer may have received which was based on the initial Support Period. (For Server and Storage service specific Equipment amendments, please refer to Schedule 1(C), clause 9.2)

- 2.7 Within 90 days of the initial period commencement, no estate deductions will be reimbursed for. The maximum reduction to the volume of asset in the initial period is capped at 15%. For any subsequent period, estate reductions are capped at 25%.

### **3.0 SMART CT RESPONSIBILITIES**

- 3.1 Smart CT shall provide the Services set out in the Contract.
- 3.2 Smart CT warrants that 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 Smart CT's support desk ("**Support Desk**") will coordinate the Services and will be the point of contact for Customer for all issues relating to the Services.

### **4.0 CUSTOMER RESPONSIBILITIES**

- 4.1 Customer 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 Customer shall provide to Smart CT in a timely manner all documents, information, items and materials in any form (whether owned by Customer or third party) required under a Contract or otherwise reasonably required by Smart CT in connection with the Services and ensure that they are accurate and complete.
- 4.3 Before requesting any assistance from Smart CT under the Support Services, Customer 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 Customer is aware or made aware of by Smart CT) 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.
  - 4.3.3 Customer shall notify Smart CT 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 Smart CT.
- 4.4 Customer shall ensure that the Nominated Contacts are suitably skilled and knowledgeable in the operation of the Equipment, through the provision of training where appropriate. Customer shall take sole responsibility for the maintenance of procedures to enable the reconstruction of any lost or altered files, data, programs or configuration. Customer has sole responsibility for performing, or ensuring the End User performs, all back-up procedures so that data integrity can be maintained.
- 4.5 Customer shall pay for all Charges in accordance with Clause 5.0 (Charges and Payment) of the General Terms and Conditions of Service of these Terms.
- 4.6 Customer shall make no representations or warranty, written or oral, on Smart CT's behalf, other than representations and warranties expressly authorised by Smart CT in writing. Smart CT shall have no liability to Customer or any End User for any warranty made by Customer on Smart CT's behalf which it shall not be herein expressly authorised to make.
- 4.7 Customer shall follow the instructions provided by Smart CT in the Welcome Pack.
- 4.8 Customer shall allocate one Partner contact to sign-up to Smart CT's customer service. Partner's contact shall have portal permissions to add and remove portal users in their organisation plus the End Customer they are associated with. Customer acknowledges and accepts that: a) the responsibility for maintaining the users that have access to the Smart CT customer service portal. Partner is responsible for removing, updating the details of any users who may have left the Partner or End Customer to prevent any unauthorised interference, for example for data protection requirements, or to prevent any malicious activity; b) Smart CT does not warrant that the Smart CT customer portal will meet the requirements of Partner or will be accurate or operate without interruption or error or is free of error; c) Smart CT shall not be responsible for any claims, losses, or damages resulting from Partner use of Smart CT customer service system, including any violations of the Smart CT customer service portal provider.

## **5.0 CHARGES AND PAYMENT**

- 5.1 The Services, Support Period and the related Charges are set out in the applicable Contract. All Charges shown include all delivery and packaging costs unless otherwise agreed.
- 5.2 All Charges exclude VAT, unless otherwise agreed.
- 5.3 In the event currency conversion is required for currency other than pounds sterling, the conversion shall be calculated at the Smart CT internally published weekly rate in force at the time of conversion.
- 5.4 Unless otherwise agreed all Charges shall be invoiced annually in advance.
- 5.5 Unless otherwise agreed, the payment terms in respect of invoices submitted in accordance with this Clause 5.0 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 Customer subject to receipt of a valid VAT invoice from Smart CT.
- 5.6 Time for payment of the Charges shall be of the essence of the Contract.
- 5.7 In the event of late payment of any undisputed invoice, Smart CT reserves the right, without prejudice to any other available remedy, to suspend provision of the Services in whole or in part by giving seven (7) calendar days written notice to Customer and then until payment has been made. Customer acknowledges that Smart CT will not be responsible for any consequences, financial or otherwise, which may flow from the suspension of the Services.
- 5.8 Customer shall notify Smart CT in writing of any invoice disputes within five (5) UK Business Days of the date of the invoice, specifying in reasonable detail the basis of the dispute. Smart CT agrees to investigate such matter and where the dispute is valid, correct the invoiced amount.
- 5.9 Payments which are not received when the amount invoiced is properly due and payable will be considered overdue and will remain payable by Customer. Smart CT reserves the right, without prejudice to any other right or remedy available to Smart CT, to exercise Smart CT's statutory right to claim interest on such overdue sum from the due date for payment at the annual rate of two (2) percent above the base rate from time to time of the Bank of England.
- 5.10 Smart CT reserves the right not to accept new Contracts whilst the Account is in arrears.
- 5.11 All Manufacturer backed Services are subject to change at any time due to being underwritten by the Manufacturer. For multi-year Support Periods Smart CT reserves the right to change the Charges on any anniversary of the Contract Start Date as a result of changes in the Manufacturer pricing to Smart CT used to provide the Services (and solely to the extent necessary to address such changes in pricing without any increase in Smart CT's margin)
- 5.12 All SLAs that include an onsite Engineer, charges assume that each Case will require maximum 2 hours / site Smarthands presence. Smart CT reserves the right to charge additional costs for anytime exceeding the two (2) hours. For example, circumstances outside of Smart CT's control or Case complexity may trigger additional time on Site and Charges.
- 5.13 Smart CT reserves the right to amend the Charges: a) for any Renewal Term of an Order or Contract subject to providing at least sixty (60) days written notice to Customer of the amended Charges prior to the renewal date; b) for each anniversary of the Effective Date ("Charges Review Date") the Charges shall be subject to the official United Kingdom Retail Price Index ("RPI" or Consumer Price Index, should RPI be withdrawn) review and shall be increased to reflect the percentage change in the RPI (annual, percentage change over 12 months, applicable to all Charges), unless otherwise agreed.

## **6.0 TERM AND TERMINATION**

- 6.1 This Agreement shall be effective throughout the Initial Period and shall continue annually thereafter unless otherwise terminated in writing by either Party in accordance with the provisions of this Clause 6.
  - 6.1.1 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
  - 6.1.2 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
  - 6.1.3 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

- 6.1.4 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
  - 6.1.5 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
  - 6.1.6 the other Party makes any arrangement or composition with its creditors; or
  - 6.1.7 the other Party ceases, or threatens to cease, to trade; or
  - 6.1.8 the other Party takes or suffers any similar or analogous action in any jurisdiction in consequence of the debt.
- 6.2 Either Party may terminate this Agreement and/or any associated Contract by providing three months prior written notice to the other Party, however such termination is to take effect only at the expiry of the initial Agreement and/or Contract Period or at any Year thereafter, unless mutually agreed otherwise in writing.
- 6.3 Each Contract constitutes a separate agreement on the terms of this Agreement and the terms of Contract and applicable schedules. The effective date and the term of each Contract shall be as set out in the respective Contract. Termination of any Contract shall not affect termination of any other Contract (although this shall not prevent more than one Contract being subject to termination if termination circumstances apply to them). The limitations of liability in Clause 14 cover this Agreement including all Contracts and their applicable schedules in aggregate.

## **7.0 CONSEQUENCES OF TERMINATION**

- 7.1 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.
- 7.2 In respect of the termination of a Contract, Smart CT shall cease providing the Services from the date of termination of that Contract.
- 7.3 Termination of a Contract is without prejudice to the continuance of any other Contract existing.
- 7.4 On termination of any Contract:
- 7.4.1 Smart CT shall be entitled to recover from Customer any devices or equipment owned by Smart CT that have been loaned to Customer or stored in the Sites for the purpose of providing the Services.
  - 7.4.2 Customer shall collect Customer owned kit stored by Smart CT on its behalf for the purpose of providing the Services, as agreed under the Contract;
  - 7.4.3 any outstanding invoices shall immediately become due and payable;
  - 7.4.4 Customer pays Smart CT in full against any third party support costs that cannot be cancelled but have been incurred by Smart CT, although not invoiced yet by the relevant third-party;
  - 7.4.5 Customer repays any discount or other benefit Customer may have received which was based on the initially contracted Support Period.
- 7.5 In the event of Customer terminating any Contract in accordance with Clause 6.1.1 any amounts paid by Customer to Smart CT relating to periods after termination or amounts paid relating to Services not completed prior to termination (as applicable) will be refunded forthwith provided that Customer indemnifies Smart CT in full against any third party support costs that cannot be cancelled but have been incurred by Smart CT and Customer repays any discount or other benefit Customer may have received which was based on the initial Support Period.
- 7.6 In the event of Smart CT terminating any Contract in accordance with Clause 6.2 any amounts paid by Customer to Smart CT relating to periods after termination or amounts paid relating to Services not completed prior to termination (as applicable) will be refunded forthwith. Provided that Customer indemnifies Smart CT in full against any third-party support costs that cannot be cancelled but have been incurred by Smart CT and Customer repays any discount or other benefit Customer may have received which was based on the initial Support Period.
- 7.7 In the event Customer does not arrange a collection in accordance with Clause 7.4.2, Customer agrees that Smart CT shall have the right to treat any Customer owned kit as waste and dispose of it in accordance with the applicable laws. All costs associated with such disposal shall be returned by Customer within 30 days of invoice date.



## **8.0 TIME AND MATERIALS WORK**

- 8.1 Where Customer requires Smart CT to provide Time and Materials Work, Customer shall submit a Request for Service in accordance with Schedule 1(B) of these Terms.
- 8.2 Where Smart CT are willing and able to provide the requested Time and Materials Work the specific terms of provision are set-out in Schedule 1(B) of these Terms.

## **9.0 STEP IN RIGHTS**

- 9.1 Smart CT acknowledges and agrees that if Smart CT is in material default of its obligations under a Contract or there is a serious risk that Smart CT will meet any of the grounds specified in Clause 6.0 (Termination) Customer may, at its sole discretion and subject only to notifying Smart CT in writing of its intention to do so, arrange itself or for a third party, at Customer's expense, to provide all or any of the Services.
- 9.2 Customer 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 Customer itself or a third party is providing such elements of the Services.
- 9.3 Customer's rights under this Clause 9.0 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. Customer shall notify Smart CT in writing of the date it plans to end exercising its step in right. Smart CT shall, on receipt of the notice, develop a plan to be approved by Customer, to enable the Services to be provided in accordance with the Contract. Smart CT shall co-operate in all reasonable respects with Customer and any third-party supplier engaged by Customer under this Clause 9.0.
- 9.4 The provisions of this Clause 9.0 are without prejudice to any other right or remedy of Customer.

## **10.0 SUBCONTRACTING**

- 10.1 Smart CT may sub-contract all or any of its obligations under a Contract to any third party including any Smart CT group companies without the prior written consent of Customer. Nevertheless, if any third-party subcontractor is nominated in this Agreement or a Contract, then Customer's approval to use such nominated third party as subcontractor shall be deemed received.
- 10.2 Smart CT shall be and at all times remain liable for the acts and omissions of any sub-contractors in relation to a Contract.
- 10.3 In the event Smart CT sub-contracts any of its rights or obligations pursuant to this Clause 10.0, Smart CT shall procure that its approved sub-contractors:
  - 10.3.1 enter into a confidentiality agreement in substantially the terms of the confidentiality provisions of these Terms.
  - 10.3.2 are authorised, licensed, qualified, approved and permitted to provide the sub-contracted Services as required by any regulatory body or other relevant person.

## **11.0 REGULATORY COMPLIANCE**

- 11.1 Smart CT 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 Customer, as is notified to Smart CT by Customer prior to the commencement of the Services.
- 11.2 Smart CT 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 Smart CT by Customer prior to the commencement of the Services and from time to time to reflect regulatory changes.
- 11.3 To the extent that any of the legislation or requirements referred to in this Clause 11.0 is advisory rather than mandatory, the standard of compliance to be achieved by Smart CT shall be in accordance with Standard Industry Practice.

## **12.0 CONFIDENTIALITY**

- 12.1 The term Confidential Information does not include any information that:
  - 12.1.1 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 12.0);
  - 12.1.2 was available or known to the receiving Party on a non-confidential basis before disclosure by the disclosing Party;

- 12.1.3 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;
  - 12.1.4 the Parties agree in writing is not confidential or may be disclosed; or
  - 12.1.5 is developed by or for the receiving Party independently of the information disclosed by the disclosing Party.
- 12.2 Each Party shall keep the other Party's Confidential Information confidential and shall not:
- 12.2.1 use any Confidential Information except for the purpose of exercising or performing its rights and obligations under a Contract (**"Permitted Purpose"**); or
  - 12.2.2 disclose any Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 12.0.
- 12.3 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:
- 12.3.1 it informs those employees or sub-contractors of the confidential nature of the Confidential Information before disclosure; and
  - 12.3.2 at all times, it is responsible for the employees' or sub-contractors' compliance with the confidentiality obligations set out in this Clause 12.0.
- 12.4 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.
- 12.5 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.

## 13.0 DATA PROTECTION

- 13.1 For the purposes of this Clause 13.0, the terms Controller, Processor, Data Subject, Personal Data, Personal Data Breach and processing shall have the meaning given to them in the Data Protection Act 2018 and its subsequent amendments.
- 13.2 Both Parties will comply with all applicable requirements of the Data Protection Act 2018 and any other data protection Applicable Law and this Clause 13.0 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under such laws.
- 13.3 For the purposes of data protection requirements, the parties shall work together in good faith to make any determinations and changes which are necessary for each individual Contract.
- 13.3.1 when Smart CT shall act as controller in respect of the personal data and processing activities the provisions of clause 13.4 shall apply;
  - 13.3.2 when Smart CT shall act as processor, Smart CT shall act in accordance with the instructions provided in writing by Customer;
- 13.4 Smart CT is the data controller of Customer's personal data processed for the purpose of entering and managing the contractual relationship between the Smart CT and Customer.
- 13.4.1 Smart CT as data controller, informs you that, for the purposes listed above, it collects the following personal data:
    - 13.4.1.1 identification data;
    - 13.4.1.2 contact information;
    - 13.4.1.3 business data information.
  - 13.4.2 This personal data processing activity is legally grounded on the legitimate interest of Smart CT to enter into Agreement and to provide the Services.
  - 13.4.3 Customer's personal data will not be disclosed to third parties except, as necessary for the performance of the Services, to the subcontractors or any party required by law.
  - 13.4.4 Once the contractual relationship between the Parties terminates, said personal data shall be stored during the statutory limitation periods that are applicable. Once the limitation periods come to term, the personal data will be deleted or, alternatively, anonymized.
  - 13.4.5 In accordance with the applicable regulation, Customer is entitled to access to, rectify but also erase your data (unless your personal data is necessary to comply with a legal obligation). Customer can exercise its rights by using the form provided on Smart CT's Privacy Policy (Smart CT's privacy statement available at [www.smartct.com](http://www.smartct.com)). Customer is also reminded that it can lodge a complaint about the processing of its personal data with the Information Commissioner's Office (ICO).

- 13.4.6 Customer consents to and shall procure all required consents, from its personnel, representatives and agents, and End User(s) in respect of all actions taken by Smart CT in connection with the processing of Smart CT personal data, provided these are in compliance with Smart CT's Privacy Policy.
- 13.5 Without prejudice to the generality of Clause 13.2, Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Smart CT Personal Data and Customer Personal Data to Smart CT or lawful collection of the same by Smart CT for the duration and purposes of the Contract.
- 13.6 Without prejudice to the generality of Clause 13.2 and Clause 13.3.2, when acting as a processor, Smart CT will:
- 13.6.1 process that Customer Personal Data only on the documented instructions the Customer, unless Smart CT is required by Applicable Laws to otherwise process that Customer Personal Data. Where Smart CT is relying on Applicable Laws as the basis for processing Customer Processor Data, Smart CT shall notify Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Smart CT from so notifying Customer on important grounds of public interest. Smart CT shall inform Customer if, in the opinion of Smart CT, the instructions of Customer infringe relevant Applicable Law;
  - 13.6.2 implement adequate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which Customer has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
  - 13.6.3 ensure that any personnel engaged and authorised by Smart CT to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
  - 13.6.4 assist Customer insofar as this is possible (taking into account the nature of the processing and the information available to Smart CT), and at Customer's cost and written request, in responding to any request from a data subject and in ensuring Customer's compliance with its obligations under relevant Applicable Law with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - 13.6.5 notify Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
  - 13.6.6 at the written direction of Customer, delete or return Customer Personal Data and copies thereof to Customer on termination of the Contract unless Smart CT is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this Clause 13.6.6 Customer Personal Data shall be considered deleted where it is put beyond further use by Smart CT; and
  - 13.6.7 maintain records to demonstrate its compliance with this Clause 13.0.
- 13.7 Customer hereby provides its prior, general authorisation for Smart CT to:
- 13.7.1 Appoint processors to process the Customer Personal Data, provided that Smart CT:
    - 13.7.1.1 shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on Smart CT in this Clause 13.0;
    - 13.7.1.2 shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of Smart CT; and
    - 13.7.1.3 shall inform Customer of any intended changes concerning the addition or replacement of the processors, thereby giving Customer the opportunity to object to such changes provided that if Customer objects to the changes and cannot demonstrate, to Smart CT's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, Customer shall indemnify Smart CT for any losses, damages, costs (including legal fees) and expenses suffered by Smart CT in accommodating the objection.
  - 13.7.2 transfer Customer Personal Data outside of the UK as required for the Purpose, provided that Smart CT shall ensure that all such transfers are performed in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU General Data Protection Regulation applies to the transfer) or adopted by the UK Information Commissioner from time to time (where the UK General Data Protection Regulation applies to the transfer).

## **14.0 LIMITATION OF LIABILITY**

- 14.1 The following provisions set out the entire financial liability of Smart CT (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to Customer in respect of:
- 14.1.1 any breach of the Contract howsoever arising; and
  - 14.1.2 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.
- 14.2 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.
- 14.3 Nothing in these conditions excludes or limits the liability of Smart CT for:
- 14.3.1 death or personal injury caused by Smart CT's negligence;
  - 14.3.2 fraud or fraudulent misrepresentation.
- 14.4 Subject to Clause 14.2 and Clause 14.3:
- 14.4.1 Smart CT 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:
    - 14.4.1.1 loss of profits; or
    - 14.4.1.2 loss of business; or
    - 14.4.1.3 depletion of goodwill or similar losses; or
    - 14.4.1.4 loss of anticipated savings; or
    - 14.4.1.5 loss of goods; or
    - 14.4.1.6 loss of contract; or
    - 14.4.1.7 loss of use; or
    - 14.4.1.8 loss or corruption of data or information; or
    - 14.4.1.9 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
  - 14.4.2 Smart CT'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 Customer and/or End User caused by a default by Smart CT shall not exceed a combined aggregate of £500,000.
  - 14.4.3 and subject to Clause 14.4.2, Smart CT'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 Smart CT 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.
- 14.5 In the course of providing the Services, Smart CT may rely on software and hardware produced or supplied by third parties. Customer acknowledges that in such circumstances Smart CT relies on the description given by the relevant Manufacturer of the performance and functionality of its product, provided that Smart CT 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 Smart CT intends it to be used. Smart CT'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, Smart CT does not give any warranties, terms, conditions or representations (whether express or implied) in respect of any software or hardware provided by Smart CT as part of the Services and the implied terms of satisfactory quality and fitness for purpose are hereby excluded.

## **15.0 ASSIGNMENT**

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

## 16.0 NON-SOLICITATION

- 16.1 During the term of the Contract and for a period of six (6) months following its termination for any reason, neither Party will employ or offer employment to any person employed or engaged by the other Party in the provision of the Services or (in the case of the Customer) in the receipt of the Services, other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the other Party.

## 17.0 TUPE

- 17.1 The Parties do not envisage that any employees will transfer between Smart CT and Customer 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.

## 18.0 FORCE MAJEURE

- 18.1 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 Smart CT 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")**.
- 18.2 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.
- 18.3 The Affected Party shall:
- 18.3.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than five (5) UK 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
- 18.3.2 use reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

## 19.0 ENTIRE AGREEMENT AND VARIATIONS

- 19.1 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 19.0 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.
- 19.2 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.

## 20.0 WAIVER

- 20.1 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.

## **21.0 SEVERANCE**

- 21.1 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.

## **22.0 SURVIVAL**

- 22.1 On termination or expiry a Contract, the following Clauses shall continue in force: Clause 7.0 (Consequences of Termination), Clause 12.0 (Confidentiality), Clause 13.0 (Data Protection), Clause 14.0 (Limitation of Liability), Clause 20.0 (Waiver), Clause 21.0 (Severance), Clause 22.0 (Survival), Clause 24.0 (Notices), Clause 25.0 (Dispute Resolution) and Clause 26.0 (Governing Law).
- 22.2 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.

## **23.0 THIRD PARTIES**

- 23.1 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.

## **24.0 NOTICES**

- 24.1 Any notice given to a Party under or in connection with the Contract shall be in writing and shall be:
- 24.1.1 delivered by hand or by pre-paid first-class post or other next UK Business Day delivery service to Smart CT at Finance Director's Office, Unit 5, Chancery Gate Business Centre, Ruscombe Park, Twyford, Berkshire, RG10 9LT; or
  - 24.1.2 delivered by hand or by pre-paid first-class post or other next Business Day delivery service to Customer at its registered office (if a company) or its principal place of business (in any other case).
- 24.2 Any notice shall be deemed to have been received:
- 24.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - 24.2.2 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.
- 24.3 This Clause 24.0 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.

## **25.0 DISPUTE RESOLUTION**

- 25.1 This Clause 25.0 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 5.7 or Clause 6.1.1 at Smart CT's discretion.
- 25.2 If a dispute arises between Smart CT and Customer 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, Smart CT and Customer 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.

- 25.3 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.
- 25.4 In the event that the dispute is not resolved in accordance with Clause 25.2 or Clause 25.3, the dispute may be referred by either Party to the English courts and the Parties submit to the non-exclusive jurisdiction for that purpose.

## **26.0 GOVERNING LAW**

- 26.1 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 and Wales.
- 26.2 The Parties irrevocably agree that the courts of England and Wales 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 made on [DATE] and is provided by Smart Capital Technology Limited of Unit 5 Chancery Gate Business Centre, Ruscombe Park, Ruscombe, Reading, RG10 9LT ("**Smart CT**") to

[Customer Name] of [registered address] ("**Customer**")

subject to the terms of the Channel Services Terms and Conditions, available at [www.smartct.com](http://www.smartct.com) ("**Terms**").

The Services to be provided to Customer are detailed in this SOW. In the event Customer 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

Smart CT will provide the following Services to Customer.

### 2.1. Services Description

<insert>

### 2.2. Site(s)

<insert>

### 2.3. Equipment

<insert>

### 2.4. Support Period

<insert>

### 2.5. Hours of Cover

<insert>

## 3. ADDITIONAL TERMS

<insert as applicable>

## 4. CHARGES

<insert as applicable>

## 5. AUTHORITY TO PROCEED

This SOW has been entered into by the Parties or their duly authorised representatives on the date set out at the beginning of this SOW.



**Signed** for and on behalf of  
**Customer**

---

Duly authorised

Name:

Date:

Title:

---

**Signed** for and on behalf of  
**Smart Capital Technology Limited**

---

Duly authorised

Name:

Date:

Title:

---

# Schedule 1(A) – Specific Terms & Conditions of Service - Support Services

## 1.0 GENERAL

- 1.1 These are the Specific Terms and Conditions of Service on which Smart CT will provide to Customer Support Services. All words and phrases used in these Specific Terms and Conditions of Service have the same meanings as those in the General Terms and Conditions of Service. These are the Specific Terms and Conditions of Service on which Smart CT will provide to Customer the Server and Storage Maintenance. All words and phrases used in these Specific Terms and Conditions of Service have the same meanings as those in the General Terms and Conditions of Service.
- 1.2 For the purposes of the Support Services Specific Terms & Conditions of Service, the following definitions shall also apply:
- 1.3 **Service Credit** means credit which may be applied to the Account to be used as credit against future invoices for Support Services, as defined in the Terms or Contract;
- 1.4 **Service Level** or **SLA** means the service levels set out in each Contract that apply to the performance of the relevant Services or relevant parts thereof;
- 1.5 Smart CT 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 Smart CT shall provide Support Services on a reasonable endeavours basis only for the first thirty (30) days and Customer shall not be eligible for Service Credits during this period.
- 1.6 The items of Equipment to which the Support Services apply are set out in the Equipment List in the applicable Contract.
- 1.7 Equipment may be deleted from the Equipment List during the term of the contract in accordance with clause 2.6 and 2.7 general terms and conditions. Smart CT will issue a pro rata credit only where Smart CT have not committed third party support costs in relation to the deleted Equipment and Customer repays any discount or other benefit Customer may have received which was based on the initial Support Period. Within 90 days of the initial period commencement, no estate deductions will be reimbursed for. The maximum reduction to the volume of assets in the initial period is capped at 15%. For any subsequent period, estate reductions are capped at 25%.

## 2.0 CUSTOMER RESPONSIBILITIES

- 2.1 Before requesting any assistance from Smart CT under the Support Services, Customer shall use all reasonable endeavours to implement the following:
- 2.1.1 any applicable operator tasks and procedures on problem determination, analysis and recovery (of which Customer is aware or made aware of by Smart CT) have been carried out;
- 2.1.2 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.
- 2.2 Customer shall notify Smart CT 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 Smart CT.
- 2.3 Customer shall ensure that the Nominated Contacts are suitably skilled and knowledgeable in the operation of the Equipment, through the provision of training where appropriate.

### 3.0 SUPPORT SERVICES EXCLUSIONS

- 3.1 Smart CT shall not be responsible for:
- 3.1.1 faults in the Equipment arising for reasons other than fair wear and tear. Without limitation as to the generality of this Clause 3.1.1 Smart CT shall not be responsible for any faults arising from the following causes:
    - 3.1.1.1 accident, neglect or misuse;
    - 3.1.1.2 failure, fluctuation or fault of electricity supply, air-conditioning, humidity control or other environmental conditions;
    - 3.1.1.3 fire or water damage;
    - 3.1.1.4 the fitting of parts, software or accessories that are not compatible with the Equipment;
    - 3.1.1.5 modifications and / or alterations to the Equipment by Customer or other third party which have not been agreed by Smart CT through a mutually acceptable change control process, where such agreement shall not unreasonably be withheld or delayed; and
    - 3.1.1.6 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.
  - 3.1.2 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 (excluding all batteries) and any other item which might reasonably be considered to be consumable;
  - 3.1.3 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;
  - 3.1.4 performing the Support Services outside of the Hours of Cover. If Customer 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, Customer may make an Unsupported Equipment Service Request in accordance with Clause 1.0 (Unsupported Equipment) of the General Terms and Conditions of Service of these Terms;
  - 3.1.5 software updates, upgrades or technical advice.
- 3.2 For any T&MW Customer would like provided outside of the scope of the Support Services Customer may make a Request for Service in accordance with Schedule 1(B) of these Terms.

### 4.0 UNSUPPORTED EQUIPMENT

- 4.1 If commercially and technically feasible to do so Smart CT will accept an Unsupported Equipment Service Request from Customer.
- 4.2 When Customer places an Unsupported Equipment Service Request and where Smart CT is able to provide the Support Services requested, Smart CT will provide a Quotation to Customer, subject to the terms and conditions of these Terms, detailing the applicable Charges (**“Unsupported Equipment Quotation”**). 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.
- 4.3 An Unsupported Equipment Quotation shall remain valid for five (5) UK Business Days unless stated otherwise.
- 4.4 Upon receipt and acceptance of Customer’s emailed acceptance of an Unsupported Equipment Quotation the Unsupported Equipment Quotation shall be considered a Contract, and Smart CT will despatch the required Part and/or Field Service Engineer to the stated destination on a reasonable endeavours basis.
- 4.5 Within two (2) UK Business Days of Customer’s acceptance of the Unsupported Equipment Quotation, Customer will raise a Purchase Order to cover the Charges detailed in the Contract.
- 4.6 The return of the Faulty Part(s) (where applicable) must be in accordance with Paragraph 12.0 below.

## 5.0 SERVICE LEVELS

5.1 Throughout the Support Period Smart CT shall provide the Support Services in accordance with any Service Levels set out in the applicable Contract and the definitions in the table below.

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

\* Requests must be received before 14:00 local time (to the Site) to meet the required Service Level. The Service Level for requests received after 14:00 local time will commence from the next Business Day. Smart CT cannot be held responsible for any delays caused by customs.

\*\* Requests must be received before 14:00 local time (to the Site) to meet the required Service Level. The Service Level for requests received after 14:00 local time will commence from the next day. Smart CT cannot be held responsible for any delays caused by customs.

5.2 The following shall not be included in any calculation of Smart CT's performance against any Service Level for any Support Services and shall not be eligible for Service Credit:

- 5.2.1 Any Case, or delay in effecting resolution of any Case, that is solely and directly caused by Customer's failure to comply with their obligations as set out in the Contract provided that Smart CT shall inform Customer of the reason for the Case or delay as soon as reasonably practicable;
- 5.2.2 Any delay in Smart CT providing Support Services due to any failure by any third party (excluding all third parties which Smart CT 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 Smart CT has correctly followed the procedures set out in the third party contract in respect of such failure;
- 5.2.3 Any delay in Smart CT providing Support Services due to any Force Majeure Event (as defined in Clause 18.0) provided that Smart CT has acted in accordance with these Terms;
- 5.2.4 Any Support Services provided for an Unsupported Equipment Service Request;
- 5.2.5 Any Case that is caused by an excluded fault as set out in Paragraph 3.0 above; and
- 5.2.6 Any exclusions identified in the Terms.

- 5.3 Smart CT 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:
- 5.3.1 Service Level measurement will be from the time Customer registers a Case with Smart CT to the time of delivery of the Part to the Site, or the arrival of the Field Service Engineer at the Site (as applicable);
  - 5.3.2 The time stamps used for Customer registering a Case with Smart CT and the notified delivery/arrival time will be Smart CT's incident management system;
  - 5.3.3 Smart CT will investigate the cause of any missed Service Levels on a monthly basis and take mitigating action to prevent re-occurrence.
  - 5.3.4 Smart CT may have service review meetings as agreed with Customer during which the delivery performance of the Support Services shall be discussed;
  - 5.3.5 On request Smart CT can provide Customer with a service delivery report which will include Service Level achievement statistics (**"Service Delivery Report"**).
- 5.4 The Smart CT Support Desk can be reached by telephone on 0808 164 3618 within the UK, or from overseas by telephone on +44(0)118 207 9395.
- 5.4.1 Customer 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.
  - 5.4.2 In the event that the Service Levels are not met, or there is reasonable indication that they may not be met, Customer shall contact the Support Desk to escalate.
  - 5.4.3 Any commercial escalations or requests should be directed to Customer's nominated service delivery or channel services manager between 09:00 and 17:30 GMT/BST excluding UK bank and other UK public holidays.
- 5.5 Subject to Paragraph 5.2, in the event that Smart CT fails to provide any part of the Support Services in accordance with the relevant Service Levels, then:
- 5.5.1 Customer may request escalation in accordance with Paragraph 5.4.2;
  - 5.5.2 in the event that a Part supplied is faulty on delivery, Smart CT shall arrange a replacement Part (together with a Field Service Engineer if applicable) as soon as is reasonably practicable;
  - 5.5.3 Customer may request a Service Credit in accordance with Paragraph 6.0 (Service Credits) below.
- 5.6 Any Manufacturer Support Services (as defined in Paragraph 9.3 below) provided are provided by the Manufacturer subject to the Manufacturer's terms and conditions and service levels. Supplier shall not be liable for service levels not achieved by Manufacturer.

## **6.0 SERVICE CREDITS**

- 6.1 Subject to Paragraph 5.2 and Paragraph 6.1.1.1:
- 6.1.1 if Smart CT's Service Level achievement, verified by a Service Delivery Report (as defined in Paragraph 5.3.5), falls below 95% across the Estate in a calendar month (**a "Service Failure"**) Smart CT shall investigate the cause internally and monitor the applicable Contract;
    - 6.1.1.1 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.
  - 6.1.2 if there is a Service Failure in two consecutive calendar months Customer may request that Smart CT identify mitigating action taken to prevent future Service Failures;
  - 6.1.3 if there is a Service Failure in three consecutive calendar months (**a "Service Credit Event"**) Customer shall be entitled to claim a Service Credit in accordance with Paragraph 6.2 unless agreed otherwise in writing between the Parties.
- 6.2 Customer shall submit a written claim for the Service Credit within twenty (20) UK 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 Customer fails to submit a written claim in accordance with this Paragraph 6.2.

- 6.3 The claim for the Service Credit must include the following information:
- 6.3.1 Customer name and contact information;
  - 6.3.2 The Service Delivery Reports (as defined in Paragraph 5.3.5) substantiating the claim.
- 6.4 The Parties acknowledge that each Service Credit is proportionate when considering Customer's legitimate interest to avoid any delay or deficiency in the provision of the Support Services.
- 6.5 The provisions in Paragraph 6.1 shall be the exclusive remedy for Service Failures.
- 6.6 Service Credits shall be issued as a credit note and offset against the next Support Services invoice issued on the Account. Smart CT shall not in any circumstances be obliged to pay any money or make any refund to Customer.
- 6.7 The Service Credit calculation shall be 3% of the Charges paid for the three (3) months of the Service Credit Event for the Contract(s) impacted by the Service Failures.

## **7.0 INTEGRITY OF PARTS**

- 7.1 Subject to Paragraph 7.4 Smart CT will only utilise Legitimate Parts for the delivery of the Support Services.
- 7.2 Smart CT 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.
- 7.3 Where parts are deemed in life by the manufacturer and Smart CT is providing an uplifted SLA advanced hardware support service, Customer agrees to invoke manufacturer base level support to include RMA of faulty part.
- 7.4 Subject to Paragraph 7.4, in the unlikely event that the integrity of a Part is brought into question, Smart CT will, at its own cost, replace the Part.
- 7.5 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, Smart CT will advise Customer accordingly prior to contracting to provide Support Services for the EoSL equipment.
- 7.6 Customer reserves the right to accept or decline Support Services in the event of Paragraph 5.

## **8.0 CISCO® EQUIPMENT**

- 8.1 In the event any of the Equipment has existing contracts in place for Cisco Smart Net Total Care® or Cisco® Customer Support Service ("**PSS**") at the Contract Start Date, Customer shall be liable for any additional charges relating to takeover costs incurred by Smart CT. In the event that the existing contracts cannot be transferred to Smart CT, Customer acknowledges that Advance Hardware Replacement Services will not be available from Smart CT until those contracts have expired.
- 8.2 Unless specifically stated otherwise in the Contract, all Charges relating to Cisco Smart Net Total Care® and PSS excludes IPS Signature and engine updates (where applicable).
- 8.3 Where PSS or Cisco Smart Net Total Care® is listed in the applicable Contract, End User is entitled to software downloads for the applicable Equipment, within the purchased feature-set.
- 8.4 All serial numbers for Cisco® Equipment must be provided before Equipment is placed on a Cisco Smart Net Total Care® or PSS contract.
- 8.5 Where Equipment is supported by Cisco Smart Net Total Care® contract, and subject to Customer providing Smart CT with access to the Cisco Smart Net Total Care® contract in accordance with the Manufacturer's terms and conditions, Smart CT shall log Incidents direct with Manufacturer otherwise Customer shall log Incidents direct with the Manufacturer.
- 8.6 Where Equipment is supported by PSS purchased through Smart CT, Incidents covered by the PSS contract shall be raised with the Smart CT Support Desk.
- 8.7 Where Equipment is supported by PSS but not purchased through Smart CT, Incidents covered by the PSS contract shall be raised by Customer with the supplier of the PSS contract.
- 8.8 Customer agrees to purchase a base level Cisco support service which includes RMA.
- 8.9 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.

## **ADVANCE HARDWARE REPLACEMENT**

### **9.0 GENERAL**

- 9.1 Advance Hardware Replacement provides Parts when a hardware fault is identified with the Equipment by Customer and the Faulty Part requires replacement. Advance Hardware Replacement does not provide Parts for upgrades, preventative or periodic maintenance purposes. If Customer requires Smart CT to supply parts for upgrades, preventative or periodic maintenance purposes a Request For Service should be made in accordance with Request for Service in accordance with Schedule 1(B).
- 9.2 **“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: a) the weekly outstanding RMA report issued to Customer in the event that a Faulty Part (or Part where appropriate) is not returned in accordance with Paragraph 12.0 below; or b) an email from Smart CT to Customer in the event that a returned Faulty Part does not have the pre-requisite Manufacturer’s support agreement as detailed in Paragraph 11.1.4 below.
- 9.3 **“Manufacturer Support Services”** means Cisco® Customer Shared Support (PSS) and Cisco’s Smartnet Total Care® or any support services provided by a Manufacturer.

### **10.0 SMART CT’S RESPONSIBILITIES**

- 10.1 Smart CT shall, on diagnosis of a hardware failure by Customer 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.
- 10.2 Smart CT shall advise Customer by e-mail of an expected time for delivery of the Part.
- 10.3 Smart CT shall advise Customer by e-mail when the Part has been delivered and will provide proof of delivery.
- 10.4 Smart CT shall be responsible for any damage, shortage, delivery of incorrect Part or loss in transit, provided that Customer notifies it to Smart CT (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 Smart CT’s stipulations and retained in the original packaging. Any remedy under this Paragraph 10.4 shall be limited, at the option of Smart CT, to the replacement or repair of any Part which is proven to Smart CT’s satisfaction to have been lost or damaged in transit, or delivered incorrectly.
- 10.5 Smart CT shall test all returned Faulty Parts to determine the nature of the fault. In the event that no fault is found (“NFF”) Smart CT will record the findings in the Smart CT incident management system. Smart CT reserves the right to review the Charges should the level of NFFs become (in Smart CT’s reasonable opinion) excessive.
- 10.6 For in-life Equipment where Smart CT has provided a Part, Smart CT shall manage the RMA process to return the Faulty Part to the Manufacturer. Any repaired Faulty Part or replacement provided by the Manufacturer shall replenish Smart CT stock.

### **11.0 CUSTOMER’S RESPONSIBILITIES**

- 11.1 Customer is responsible:
- 11.1.1 for ensuring that diagnosis has taken place before contacting Smart CT under the scope of the Contract, 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;
  - 11.1.2 for the installation and configuration of the Part supplied, unless Smarhands has been contracted, and Customer acknowledges that under Advance Hardware Replacement Smart CT 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;
  - 11.1.3 for the return of the Faulty Part in accordance with Paragraph 12.0 (Parts, Faulty Parts and Returns) below; and
  - 11.1.4 for ensuring that any in-life Equipment is covered by Manufacturer Support Services to facilitate the return of Faulty Parts to Manufacturer by Smart CT under the RMA process to replenish Smart CT stock.
- 11.2 From time to time Customer may have cause to cancel the requested delivery of a Part (**a “Cancelled Delivery”**). Smart CT will record the number of Cancelled Deliveries in the Smart CT incident management system. Smart CT reserves the right to apply additional Charges should the level of Cancelled Deliveries become (in Smart CT’s reasonable opinion) excessive.

- 11.3 Customer shall be deemed to have accepted the Part when Customer 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 10.4.

## 12.0 PARTS, FAULTY PARTS AND RETURNS

- 12.1 Customer shall return the Faulty Part, or in the event the Part is not used Customer shall return the Part, to Smart CT within ten (10) UK Business Days of receiving the Part, except in the event that Smart CT requests the return of a critical Faulty Part/Part, in which instance Customer shall use all reasonable endeavours to return the Faulty Part/Part to Smart CT within three (3) UK Business Days. Customer acknowledges that failure to comply with this may result in Service Level failures for which Smart CT will not be held accountable.
- 12.2 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.
- 12.3 The address for the return of all Faulty Parts and/or Parts to Smart CT under the scope of the Contract is: Smart CT, Unit 5, Chancery Gate Business Centre, Ruscombe Park, Twyford, Berkshire RG40 9LT.
- 12.4 If the Faulty Part/Part (as applicable) is not delivered to Smart CT within fifteen (15) UK Business Days of the delivery of the Part, Smart CT shall be entitled to invoice Customer for the Market Replacement Value of the Part. Smart CT reserves the right to charge for unreturned parts at the end of the following month.
- 12.5 Risk in the Part shall pass to Customer on delivery of the Part to Site.
- 12.6 Where Manufacturer Support Services are registered to a Faulty Part, and where it is not within Smart CT's control to do so, Customer shall ensure that the Manufacturer Support Services are transferred from the Faulty Part within thirty (30) days of receipt of the applicable Part (**"Clean Status"**).
- 12.7 If the Faulty Part does not achieve a Clean Status in accordance with Paragraph 12.6, Smart CT shall be entitled to invoice Customer for the Replacement Value of the Part and return the Faulty Part to Customer.
- 12.8 Where the Part is supplied for Equipment identified in the Equipment List, title to the Part shall not pass to Customer until the applicable Faulty Part is received by Smart CT and is in a Clean Status. In the event that the Faulty Part is not returned to Smart CT in accordance with Paragraph 12.1 or the Faulty Part does not achieve a Clean Status, and Smart CT invoices Customer in accordance with Paragraph 12.4 or Paragraph 12.7 (as applicable), then title to the Part shall pass to Customer on payment in full.
- 12.9 Where the Part is supplied under an Unsupported Equipment Service Request, title to the Part shall not pass to Customer until:
- 12.9.1 Customer has paid all Charges in relation to the Unsupported Equipment Service Request; and
- 12.9.2 the applicable Faulty Part is received by Smart CT and is in a Clean Status. In the event that the Faulty Part is not returned to Smart CT in accordance with Paragraph 12.1 or the Faulty Part does not achieve a Clean Status, and Smart CT invoices Customer in accordance with Paragraph 12.4 or Paragraph 12.7 (as applicable), then payment for the Part must be received in full.
- 12.10 Risk in the Faulty Part shall pass to Smart CT upon Smart CT's receipt of the Faulty Part. Title to the Faulty Part shall pass to Smart CT on the later of:
- 12.10.1 Smart CT's receipt of the Faulty Part; or
- 12.10.2 the Faulty Part achieving a Clean Status.
- 12.11 Smart CT will check the integrity of all returned Faulty Parts on any Manufacturer's online facility to confirm that they are Legitimate Parts. Except where Smart CT is supplying Non-Legitimate Parts in accordance with Paragraph 7.4 of the General Terms and Conditions of Service of these Terms, then in the event that a Faulty Part is identified as being a Non-Legitimate Part Smart CT shall be entitled to invoice Customer for the Replacement Value of the Part supplied.
- 12.12 In the event that a minimum Manufacturer Support Services contract has not been maintained by Customer in accordance with Paragraph 11.1.4 above Smart CT shall be entitled to invoice Customer for the Replacement Value of the Part provided.



### **13.0 CUSTOMER OWNED STOCK**

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

## **SMARTHANDS**

### **14.0 SMART CT'S RESPONSIBILITIES**

- 14.1 Smart CT shall, on diagnosis of a hardware failure by Customer 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.
- 14.2 Smart CT shall advise Customer by e-mail of an expected time of arrival at Site of the Field Service Engineer.
- 14.3 Smarthands provides for the first two (2) hours of Field Service Engineer's time on Site. Any time in excess of the included two (2) hours shall be Charged at the current rate.
- 14.4 Where the Equipment is not covered by Advance Hardware Replacement the Field Service Engineer shall replace the Faulty Part with the part provided by Customer or End User.
- 14.5 Where the Equipment is covered by Advanced Hardware Replacement and Smart CT has provided the Part(s), the Field Service Engineer shall install the Part(s) and where possible remove the Faulty Part(s) from Site.
- 14.6 Upon installation of the Part or part, the Field Service Engineer, shall, where required, take the Equipment up to IP address level and provide remote access to the Customer to configure the Equipment. In the event that Customer wishes the Field Service Engineer to load the configuration, Customer shall provide the configuration to Smart CT and Smart CT shall not be liable for the configuration nor any form of loss or damage caused by such configuration.

### **15.0 CUSTOMER'S RESPONSIBILITIES**

- 15.1 Customer is responsible for ensuring that diagnosis has taken place before contacting Smart CT under the scope of the Contract, 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
- 15.2 Customer shall give or arrange for Smart CT's Field Service Engineers unfettered and safe access to the Equipment as is reasonably required to provide the Smarthands, 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.
- 15.3 Customer shall ensure that any fixtures and fittings at the Site which could reasonably be anticipated to be damaged in the provision of the Smarthands are either moved or are adequately protected. Where necessary a Risk Assessment Method Statement ("RAMS") shall be carried out prior to the Smarthands being undertaken. Smart CT shall not be liable for any damage caused where the Customer required actions identified by the RAMS have not been completed and/or where adequate protection has not been put in place.
- 15.4 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 Customer shall isolate the applicable Emergency Controls. Smart CT shall not be liable for any activation of Emergency Controls where Customer has not put suitable isolation processes in place.
- 15.5 From time to time Customer may have cause to cancel the requested arrival of a Field Service Engineer (a "Cancelled Request"). Smart CT will record the number of Cancelled Requests in the Smart CT incident management system. Smart CT reserves the right to review the Charges should the level of Cancelled Requests become (in Smart CT's reasonable opinion) excessive.

## **16.0 WORKING AT HEIGHT**

- 16.1 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 Customer to facilitate the provision of Smarthands in accordance with applicable health and safety directives and regulations (the “Appropriate Provisions”), unless agreed otherwise in writing by the Parties.
- 16.2 If the Appropriate Provisions are not provided the Field Service Engineer will not be permitted to provide the Smarthands 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 Smart CT shall not be liable for any costs, charges or losses sustained or incurred by Customer that arise directly or indirectly as a result.
- 16.3 In the event that Smart CT is unable to provide Smarthands as a result of Customer failing to have the Appropriate Provisions in place this shall be excluded from any calculation of Smart CT’s performance against Service Levels for any Smarthands elements of the Support Services.
- 16.4 In the event that Smart CT is unable to provide Smarthands as a result of Customer failing to have the Appropriate Provisions in place the Charges shall still apply.

# Schedule 1(B) – Specific Terms & Conditions of Service – Time and Materials Work

## 1.0 GENERAL

- 1.1 These are the Specific Terms and Conditions of Support on which Smart CT will provide to Customer 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 Service.
- 1.2 For the purposes of the Time and Materials Work, the following definitions shall also apply:
- 1.3 **“Authorised Requestor”** means Customer’s representative who is responsible and accountable for requesting T&MW from the Support Desk;
- 1.4 **“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;
- 1.5 **“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;
- 1.6 **“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.
- 1.7 **“Professional Services Consultant”** means the appropriately qualified individual Smart CT provides to perform the Professional Services.
- 1.8 **“Site Contact”** means the authoritative onsite representative at the Site nominated by Customer 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;
- 1.9 **“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 Smart CT or not. Smart CT reserves the right to reject a Request For Service should the requested T&MW fall outside the scope of this Schedule 1C and/or the capabilities of Smart CT or if Smart CT does not have sufficient resources available;
  - 2.1.3 if deemed feasible and agreed to be undertaken by Smart CT in accordance with Paragraph 3.0 of this Schedule, will be performed in response to Customer’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 Customer'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 Smart CT:
- 2.4.1 the full requirements of the work that Customer wishes Smart CT to undertake at the specified Site(s);
  - 2.4.2 the availability and location of Customer'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 Smart CT 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 Smart CT considers suitably qualified to undertake the work and who shall at all times remain under the direction and control of Smart CT. Field Service Engineers and/or Professional Services Consultants will be matched and allocated to the T&MW requested by Customer 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 Customer will pay to Smart CT the Charges as set out in Paragraph 7.0 of this Schedule (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 UK 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 Smart CT shall use its reasonable endeavours to achieve any estimates made by Smart CT regarding any timescales or any results projected in connection with the T&MW, it is agreed that any such estimates are not entirely within Smart CT's control and are dependent upon the accuracy and completeness of the information supplied to Smart CT as well as the degree of assistance given by Customer and the way in which any results of the T&MW are used. Accordingly, Smart CT 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 10.0 above, when Customer places a Request For Service, and where Smart CT is willing to provide the requested T&MW, Smart CT will provide a Quotation to Customer in accordance with Clause 2.0 of the General Terms and Conditions of Service.
- 3.2 If Customer wishes to proceed with the provision of the T&MW Customer shall issue a Purchase Order in accordance with Clause 2.0 of the General Terms and Conditions of Service.
- 3.3 Smart CT reserves the right to withdraw the Quotation at any time prior to a Contract coming into effect in accordance with Clause 2.0 of the General Terms and Conditions of Service..
- 3.4 Smart CT will not commence any T&MW nor provide any Field Service Engineers or Professional Services Consultants until Smart CT have received Customer's emailed acceptance of the Quotation and Customer's Purchase Order placed in accordance with the Quotation.

### 4.0 SMART CT RESPONSIBILITIES

- 4.1 Smart CT 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 Customer with status reports on a mutually agreed frequency;
  - 4.1.3 promptly notify Customer in writing of any substantive out of scope work required to complete the T&MW and where appropriate Smart CT shall provide a Quotation in accordance with Paragraph 3.0 for the additional work required.
  - 4.1.4 provide a warranty of ten (10) UK Business Days from the date of completion of the T&MW. Smart CT's sole liability (and Customer's sole remedy against Smart CT) in respect of any materially defective T&MW for which Smart CT is responsible under the warranty shall be the re-performance of the T&MW at Smart CT's cost.

### 5.0 CUSTOMER RESPONSIBILITIES

- 5.1 Customer 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. Smart CT shall not be liable for any damage caused where the Customer 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 Customer shall isolate the applicable Emergency Controls. Smart CT shall not be liable for any activation of Emergency Controls where Customer 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 Customer 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 Smart CT shall not be liable for any costs, charges or losses sustained or incurred by Customer 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 Smart CT default (**“Partial – Smart CT Default”**) revisit at Smart CT cost (endeavour to revisit within five (5) Business Days);
    - 6.1.2.2 Customer/End User default (**“Partial – Customer Default”**) notification to Customer (visit Charges applies) and Customer to notify Smart CT when problem resolved. Customer to notify/request revisit;
  - 6.1.3 **Failed** – Site visited but no T&MW tasks undertaken/completed. If due to:
    - 6.1.3.1 Smart CT default (**“Failed – Smart CT Default”**) revisit at Smart CT cost (endeavour to revisit within five (5) Business Days);
    - 6.1.3.2 Customer/End User default (**“Failed – Customer Default”**) notification to Customer (visit Charges applies) and Customer to notify Smart CT when problem resolved. Customer 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 – Customer Default or Failed – Customer Default) shall be invoiced by Smart CT to Customer as detailed in the applicable Contract.

## 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 Contract.
- 7.3 The Charges in the Contract apply only to work carried out during UK Normal Business Hours, or for T&MW performed outside of the UK the hours shall be as mutually agreed within the Contract. Work performed outside of UK 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 Customer in accordance with Paragraph 7.3, Paragraph 7.6 and Paragraph 7.7 as appropriate.
- 7.5 Smart CT will use reasonable endeavours to provide Customer with outside of UK Normal Business Hours (or such other hours as set out in the Contract) resource when so requested, but makes no guarantee as to the availability of such resource.
- 7.6 For T&MW performed outside UK Normal Business Hours and which is between Sunday 23:59 GMT/BST and Saturday 23:59 GMT/BST, excluding UK bank and other UK statutory holidays (or such other hours as set out in the Contract for Services performed outside the UK), the Charges will be uplifted by 50%.
- 7.7 For T&MW performed outside UK Normal Business Hours and which is between Saturday 23:59 GMT/BST and Sunday 23:59 GMT/BST or on UK bank and other UK statutory holidays (or such other hours as set out in the Contract for Services performed outside the UK) the Charges will be uplifted by 100%.
- 7.8 Charges will be invoiced in accordance with Clause 5.0 (Charges and Payment) of the General Terms and Conditions of Service.

## **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 two (2) 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 four (4) 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 four (4) clear Business Days' notice prior to planned commencement of T&MW requires no payment of Charges.
- 8.2 In the event Customer 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 Smart CT, Customer shall pay the Charges relating to those goods or materials in full in addition to the cancellation fees detailed in Paragraph 8.1.

# Schedule 1(C) – Specific Terms & Conditions of Service – Server and Storage Maintenance

## 1.0 GENERAL

1.1 These are the Specific Terms and Conditions of Service on which Smart CT will provide to Customer for the Server and Storage Maintenance. All words and phrases used in these Specific Terms and Conditions of Service have the same meanings as those in the General Terms and Conditions of Service.

For the purposes of the Server and Storage Maintenance Specific Terms & Conditions of Service, the following definitions shall apply:

**“Beyond Economic Repair”** means any Equipment which Smart CT has advised Customer that in Smart CT’s reasonable opinion has come to the end of its life or is beyond economic repair due to: i) the cost of Parts to restore the Equipment to an operational status is greater than the current price to replace the Equipment, or ii) the Equipment suffers persistent or re-occurring faults, or iii) Parts are no longer available. Smart CT shall provide to Customer written notification (including the reasons why) that a supported item of Equipment has been deemed Beyond Economic Repair. Customer and/or End User may replace the Beyond Economic Repair Equipment at their cost to continue receiving the Services.

**“Fix”** means restoration of the Equipment to its pre-fault status in the event of a hardware fault.

**“Response”** means the point at which contact is made with Customer and/or End User by the Field Service Engineer or Smart CT technical support personnel in response to a Case.

**“Response to Call”** means that Smart CT is providing engineering and technical response remote or on-site, at Smart CT’s sole choice;

**“Server and Storage Maintenance”** means a service to provide Parts and engineering resources when a hardware fault is identified with the Equipment in accordance with the terms and conditions of the agreed Contract. Server and Storage Maintenance does not include provision for firmware or software support and cannot be used in conjunction with hardware or firmware upgrades.

**“Support Desk”** shall mean Smart CT’s support desk. Smart CT operates a 24x7 Service Desk.

## 2.0 THE SERVICE

### Service Description

2.1 Smart CT will perform the Server and Storage Maintenance Services in relation to Equipment and Sites, subject to the terms and conditions of the Section 3 Service Exclusions below.

2.2 The Equipment to which the Server and Storage Maintenance Service will apply is listed in the Contract describing the agreed Equipment List and the agreed Sites. Changes to the Equipment List and/or Locations will be managed in accordance with the terms and conditions of the Paragraph 8 Changes to the Equipment List and Sites below.

### Service Start Date

2.3 Smart CT require a minimum 30 days ramp up period to allow for spares provisioning. Smart CT shall provide Server and Storage Maintenance on a reasonable endeavour’s basis only for the first thirty (30) days of the agreed contract start date. Customer agrees that it shall not make any claims associated with Smart CT’s standard of performance during such first thirty (30) days.



## Customer Logging a Call with Smart CT

The Welcome Pack describes in depth the process the Parties will use to log or escalate cases.

2.4 Customer will report a hardware failure by logging a Case with the Support Desk.

2.5 Customer can log or escalate all cases using the number below:

24x7 Service Desk UK Number	0808 164 3618	24/7
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2.6 Customer may telephone the Support Desk to request the Server and Storage Maintenance Service in relation to an Incident, by raising a case.

2.7 Customer can access additional support at:

Service Desk Email: support@smartct.com	24/7
Smart CT Support Portal: <a href="https://portal.smartct.com/sct">https://portal.smartct.com/sct</a>	24/7

## Smart CT response to a CALL

2.8 At its own choice, Smart CT may provide Response to Call remote or on-site engineering and technical support, together with required Parts, to resolve the hardware fault and restore the Equipment to an operational level. If Customer requests an on-site response where in Smart CT reasonable opinion a remote response is sufficient, Smart CT reserves the right to invoice Customer the cost of incurred travel and expenses.

2.9 Upon request Customer's may be required to provide errorlog/analysis information to aid Smart CT in a fault resolution within SLA.

## Smart CT Service Levels

- 2.10 Throughout the Support Period Smart CT shall provide the Server and Storage Maintenance in accordance with any Service Levels set out in the applicable Contract and the definitions in the table below:

SLA	SLA Definition		
	Response timeframe	Hours	Public Holidays Impact
24x7x4 Resp	4Hr Response	24x7	Excluding Public Holidays
24x7x4 Resp	4Hr Response	24x7	Including Public Holidays
24x7x8 Resp	8Hr Response	24x7	Excluding Public Holidays
24x7x8 Resp	8Hr Response	24x7	Including Public Holidays
9x5x4 Resp	4Hr Response	9:00 to 17:00 Monday to Friday	Excluding Public Holidays
9x5x4 Resp	4Hr Response	9:00 to 17:00 Monday to Friday	Including Public Holidays
9x5xNBD Resp	Next Business Day Response	9:00 to 17:00 Monday to Friday	Excluding Public Holidays
9x5xNBD Resp	Next Business Day Response	9:00 to 17:00 Monday to Friday	Including Public Holidays
24x7x4 Fix	4Hr Fix	24x7	Excluding Public Holidays
24x7x4 Fix	4Hr Fix	24x7	Including Public Holidays
24x7x8 Fix	8Hr Fix	24x7	Excluding Public Holidays
24x7x8 Fix	8Hr Fix	24x7	Including Public Holidays
9x5x4 Fix	4Hr Fix	9:00 to 17:00 Monday to Friday	Excluding Public Holidays
9x5x4 Fix	4Hr Fix	9:00 to 17:00 Monday to Friday	Including Public Holidays
9x5xNBD Fix	Next Business Day Fix	9:00 to 17:00 Monday to Friday	Excluding Public Holidays
9x5xNBD Fix	Next Business Day Fix	9:00 to 17:00 Monday to Friday	Including Public Holidays

- 2.11 For Equipment supported under a Response SLA, Smart CT's Field Service Engineer or technical support personnel shall contact Customer or attend Site within the applicable SLA but shall be under no contractual obligation to execute a Fix within any specified timeframe or single visit.
- 2.12 For Equipment supported under a Fix SLA, Smart CT shall Fix the Equipment within the applicable SLA. However, where a hardware fault is reported on Equipment, but the cause is not clearly attributable to a single piece of Equipment Smart CT shall, without any liability to Customer, be entitled to defer the Case whilst further diagnosis and analysis is undertaken.
- 2.13 For Equipment not covered by a 24x7 Service Level Cases raised outside of the Hours of Cover will be logged but Service Level shall commence and apply only during Hours of Cover. Smart CT may choose, at no additional Charge, to finish any on Site work started within the Hours of Cover where completion requires that work extends beyond the end of the Hours of Cover, if appropriate to do so.
- 2.14 Smart CT will collect and analyse service delivery performance information related to all aspects of the Server and Storage Maintenance on a regular basis to facilitate continual improvement of Service Levels and in accordance with:
- (i) Service Level measurement will be from the time Customer registers a Case with Smart CT to the time of Response by Smart CT or the time the Equipment is Fixed (as applicable);
  - (ii) The time stamps used for Customer registering a Case with Smart CT and the Response or Fix time will be Smart CT's incident management system.
  - (iii) Smart CT will investigate the cause of any missed Service Levels on a monthly basis and take mitigating action to prevent re-occurrence.
  - (iv) Smart CT may have service review meetings as agreed with Customer during which the delivery performance of the Server and Storage Maintenance shall be discussed.

- 2.15 On request Smart CT can provide Customer with a service delivery report which will include Service Level achievement statistics (“Service Delivery Report”).
- 2.16 Smart CT is not responsible for any consequential data loss resulting from any work carried out by Smart CT and/or its third party suppliers.

### **Customer Service Level Complaints**

- 2.17 In the event that the Service Levels are not met, or there is reasonable indication that they may not be met, Customer shall contact the Support Desk to escalate.
- 2.18 Commercial escalations or requests should be directed to Customer’s nominated service delivery or channel services manager between 09:00 and 17:30 GMT/BST Monday to Friday excluding UK bank or public holidays.
- 2.19 If the complaint will not find a resolution within a reasonable timeframe, the General Terms, Dispute Resolution shall apply.

## **3.0 SERVICE EXCLUSIONS**

- 3.1 Smart CT shall not be responsible for:
  - 3.1.1 any faults arising from the following causes:
    - 3.1.1.1 accident, neglect or misuse.
    - 3.1.1.2 failure, fluctuation or fault of electricity supply, air-conditioning, humidity control or other environmental conditions.
    - 3.1.1.3 fire or water damage.
    - 3.1.1.4 the fitting of parts, software or accessories that are not compatible with the Equipment.
    - 3.1.1.5 modifications and / or alterations to the Equipment by Customer or other third party which have not been agreed by Smart CT through a mutually acceptable change control process, where such agreement shall not unreasonably be withheld or delayed; and
    - 3.1.1.6 any use, modification or alteration of the Equipment other than for which it was designed, or which is contrary to the instructions of the Manufacturer.
    - 3.1.1.7 the provision of operating supplies, materials or accessories including but not limited to disks, tapes, printer ribbons, tape heads, print heads, batteries, anything identified by the Manufacturer as consumable and any other item which might reasonable be considered to be consumable.
  - 3.1.2 performing electrical works external to the Equipment or providing the Server and Storage Maintenance in relation to accessories, alterations to, attachments to the Equipment or other devices not specified in the Contract.
  - 3.1.3 performing the Server and Maintenance outside of the Hours of Cover. If Customer wishes for the Server and Storage Maintenance to be provided outside of the Hours of Cover or wishes for Server and Storage Maintenance for equipment not on the Equipment List, Customer may make an Unsupported Equipment Service Request in accordance with Paragraph 8.0 below.
  - 3.1.4 software, licenses or firmware updates, upgrades or technical advice or support on.
  - 3.1.5 hardware upgrades.
  - 3.1.6 providing Services for Equipment notified to Customer as being Beyond Economic Repair.
- 3.2 For any supported Equipment requiring battery replacement (including, but not limited to, controller batteries or standby power supply batteries) Smart CT shall Charge Customer the replacement value of the battery. Battery replacement shall be provided on a reasonable endeavours basis only and shall not be subject to any Service Levels.
- 3.3 For any services Customer would like provided outside of the scope of the Server and Storage Maintenance Customer may make a Request for Service to Smart CT in accordance with Time and Materials Charges, Schedule 1(B) of the General Terms.
- 3.4 Any Case, or delay in effecting resolution of any Case, that is solely and directly caused by Customer’s failure to comply with their obligations as set out in the Contract provided that Smart CT shall inform Customer of the reason for the Case or delay as soon as reasonably practicable.

- 3.5 Any delay in Smart CT providing Server and Storage Maintenance due to any failure by any third party (excluding all third parties which Smart CT has contracted with to deliver the Services) to act on or to act in a timely fashion in respect of any Case and provided Smart CT has correctly followed the procedures set out in the third-party contract in respect of such failure; and
- 3.6 Any delay in Smart CT providing Server and Storage Maintenance due to any Force Majeure Event (as defined in Clause 22.0 of the General Terms and Conditions of Support) provided that Smart CT has acted in accordance with these Terms.

#### **4.0 SMART CT RESPONSIBILITIES AND REMEDIES**

- 4.1 Subject to Paragraph 3, Smart CT shall deliver the Server and Storage Maintenance within the Standard Industry Practice.
- 4.2 Smart CT shall be responsible for any damage, shortage, delivery of incorrect Part or loss in transit, provided that Customer notifies it to Smart CT (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 Smart CT's stipulations and retained in the original packaging. Any remedy under this Paragraph 4.2 shall be limited, at the option of Smart CT, to the replacement or repair of any Part which is proven to Smart CT's satisfaction to have been lost or damaged in transit or delivered incorrectly.
- 4.3 The Field Service Engineer shall install the Part(s) and shall, subject to Paragraph 7.5, at Smart CT's discretion remove the Faulty Part(s) from Site.
- 4.4 Smart CT shall replace Faulty Part(s) with Part(s) containing the same or functional equivalent, or later, firmware revisions as the Faulty Part. Smart CT shall not provide any new or additional software, firmware, or licenses.
- 4.5 For Equipment where Smart CT has provided a Part and such Equipment is under Manufacturer's warranty, Smart CT shall manage the RMA process to return the Faulty Part to the Manufacturer. Any repaired Faulty Part or replacement provided by the Manufacturer shall replenish Smart CT stock.

#### **5.0 CUSTOMER'S RESPONSIBILITIES**

- 5.1 Customer is responsible for determining 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, nor due to the excluded causes identified in Paragraph 3.0 above.
- 5.2 Customer shall give or arrange for Smart CT's Field Service Engineers unfettered and safe access to the Equipment as is reasonably required to provide the Server and Storage Maintenance, 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.
- 5.3 Customer shall ensure that any fixtures and fittings at the Site which could reasonably be anticipated to be damaged in the provision of the Server and Storage Maintenance are either moved or are adequately protected. Where necessary a Risk Assessment Method Statement ("RAMS") shall be carried out prior to the Server and Storage Maintenance being undertaken. Smart CT shall not be liable for any damage caused where the Customer required actions identified by the RAMS have not been completed and/or where adequate protection has not been put in place.
- 5.4 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 Server and Storage Maintenance Customer shall isolate the applicable Emergency Controls. Smart CT shall not be liable for any activation of Emergency Controls where Customer has not put suitable isolation processes in place.
- 5.5 From time-to-time Customer may have cause to cancel the requested delivery of a Part (**a "Cancelled Delivery"**) and/or the requested arrival of a Field Service Engineer (**a "Cancelled Request"**). Smart CT will record the number of Cancelled Deliveries and Cancelled Requests in the Smart CT incident management system. Smart CT reserves the right to apply additional Charges should the level of Cancelled Deliveries and/or Cancelled Requests become (in Smart CT's reasonable opinion) excessive.
- 5.6 Customer shall be deemed to have accepted the Part when Customer 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 5.2.

## **6.0 HEALTH AND SAFETY - WORKING AT HEIGHT**

- 6.1 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 Customer to facilitate the provision of Server and Storage Maintenance in accordance with applicable health and safety directives and regulations (the "Appropriate Provisions"), unless agreed otherwise in writing by the Parties.
- 6.2 If the Appropriate Provisions are not provided the Field Service Engineer will not be permitted to provide the Server and Storage Maintenance on Site for the applicable Equipment and the Server and Storage Maintenance shall be limited to provision of the replacement Part only until such time as the Appropriate Provisions are provided. Smart CT shall not be liable for any costs, charges or losses sustained or incurred by Customer that arise directly or indirectly as a result.
- 6.3 In the event that Smart CT is unable to provide Server and Storage Maintenance as a result of Customer failing to have the Appropriate Provisions in place this shall be excluded from any assessment of Smart CT's performance against Service Levels for the Server and Storage Maintenance.
- 6.4 In the event that Smart CT is unable to provide Server and Storage Maintenance as a result of Customer failing to have the Appropriate Provisions in place the Charges for the aborted visit shall still apply.

## **7.0 PARTS, FAULTY PARTS AND RETURNS**

- 7.1 Risk in the Part shall pass to Customer on delivery of the Part to Site.
- 7.2 Where the Part is supplied for Equipment identified in the Equipment List, title to the Part shall pass to Customer on installation in the Equipment.
- 7.3 Where the Part is supplied under an Unsupported Equipment Service Request, title to the Part shall not pass to Customer until Customer has paid all Charges in relation to the Unsupported Equipment Service Request.
- 7.4 Smart CT is entitled to take possession of the Faulty Part upon installation of the replacement Part (except where the Media Retention Option applies) with risk in and title to the Faulty Part passing to Smart CT upon Smart CT's removal of the Faulty Part from the Site. However, Smart CT reserves the right to leave the Faulty Part at the Site with risk, title and responsibility for disposal remaining with the Customer or End User.
- 7.5 At the time of placing Equipment under Contract Customer shall identify whether Customer requires defective disk drives be retained on Site for destruction by Customer or End User ("**Media Retention Option**"). If Customer subsequently requests to retain a defective disk drive not previously identified as being retained in the event of failure Smart CT shall Charge Customer the replacement value of the Part.

## **8.0 UNSUPPORTED EQUIPMENT**

- 8.1 If commercially and technically feasible to do so Smart CT will accept an Unsupported Equipment Service Request from Customer.
- 8.2 When Customer places an Unsupported Equipment Service Request and where Smart CT are able to provide the Server and Storage Maintenance requested, Smart CT will provide a Quotation to Customer, subject to the terms and conditions of these Terms, detailing the applicable Charges ("Unsupported Equipment Quotation").
- 8.3 An Unsupported Equipment Quotation shall remain valid for five (5) Business Days unless stated otherwise.
- 8.4 Upon receipt and acceptance of Customer's emailed acceptance of an Unsupported Equipment Quotation the Unsupported Equipment Quotation shall be considered a Contract, and Smart CT will despatch the required Part and/or Field Service Engineer to the stated destination on a reasonable endeavour's basis.
- 8.5 Within two (2) Business Days of Customer's acceptance of the Unsupported Equipment Quotation, Customer will raise a Purchase Order to cover the Charges detailed in the Contract.

## **9.0 CHANGES TO THE CONTRACT, INCLUDING EQUIPMENT LIST OR SITES**

- 9.1 Changes to the Contract shall be subject to the Parties written agreement, in accordance with the terms and conditions of Clause 19 of the General Terms.
- 9.2 Deletion of items is not permitted within the initial twelve (12) months. Only after the initial twelve (12) months, Equipment may be deleted from the Contract upon ninety (90) days' written notice from Customer to Smart CT. Smart CT will issue a pro rata credit only where:
- (i) all Smart CT committed third party support costs in relation to the deleted Equipment are accounted for.
  - (ii) any discount or other benefit Customer may have received which was based on the contracted Support Period is accounted for; and
  - (iii) after applying 9.2.(i) and 9.2.(ii) steps, a credit is still due to Customer.
- If applying the steps 9.2(i) and 9.2(ii) will reveal a negative balance, Smart CT will invoice, and Customer shall pay the difference.
- 9.3 Changes during the Support Period, to the contracted Equipment List, Locations or other terms, shall be subject to the Parties' written agreement, in accordance with clause 19 of the General Terms.