Smart CT

Master Services Agreement

Citation ISO Certification ISO 9001 REGISTERED Quality management

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CYBER ESSENTIALS CERTIFIED

Smart CT

Master Services Agreement

This Master Services Agreement **(MSA)** is made on the latest date stated with Parties' signature below between:

SMART CT LIMITED	of Unit 5, Chancery Gate Business Centre, Ruscombe Park, Ruscombe, Reading, RG10 9LT (Company no. 04569616) (**Smart CT**); and
[Customer]	Customer's address and company registration number (**Customer**).

Smart CT and Customer may hereinafter individually be referred to as **Party** and collectively as the **Parties**.

NOW IT IS HEREBY AGREED as follows:

1. This MSA shall commence on the Effective Date and shall remain in force until the expiry, or termination as the case may be, of all the Customer associated Contracts.
2. Smart CT will provide to the Customer the Services as described in a Contract.
3. Customer shall pay to Smart CT the Charges set out in the applicable Contract.

1.0 INTERPRETATION AND APPLICATION OF TERMS

1.1 This MSA and the terms set out in the Contract are the terms and conditions on which the Services will be provided to Customer.

1.2 Clause headings are included for convenience only, have no legal effect and shall be ignored when constructing these Terms.

1.3 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.

1.4 In the event of any conflict among this MSA and the terms and conditions of a Contract, the following order of precedence shall be observed:

1.4.1 the applicable Quotation or Statement of Work;

1.4.2 this MSA

1.5 Smart CT and Customer may hereinafter individually be referred to as **Party** and collectively as the **Parties**.

1.6 For the avoidance of doubt the Parties agree that any document that purports to amend the terms of this MSA, the terms of a Quotation or a Statement of Work and which is not in compliance with this MSA or the Contract (including without limitation to any Purchase Order or Purchase Order confirmation or similar document that carries terms not expressly included in this MSA or the Contract) shall be of no effect.

2.0 Definitions:

Account	means the account created for Customer with Smart CT for invoicing purposes;
Applicable Law(s)	means all laws, regulations, rules, duties and other obligations having the force of law which apply to the provision of the Services;

Business Day	means a day that is not a Saturday, a Sunday a public holiday or bank holiday in the country where the Services are to be performed;
Change in Law	means any change in Applicable Law which impacts on the performance of this MSA and /or Contract which comes into force after the Effective Date or Contract Start Date;
Charges	means the fees for the Services;
Confidential Information	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;
Contract	means an individual contract for the provision of Services incorporating the terms of this MSA and the relevant Statement of Work and/or Quotation;
Contract Start Date/Contract End Date	means the dates specified in a Contract from which Customer's entitlement to receive the Services for a given piece of Equipment shall commence and cease;
Effective Date	the latest date stated with Parties' signature below;
End User	means an unaffiliated third-party customer of the Customer that receives the Services provided by Smart CT;
Equipment	means those units, components or sub-assemblies referred to in the Equipment List(s) for which the Services will be provided;
Equipment List	means the list of supported Equipment defined in a Contract;
Estate	means all active Support Service Contracts and/or all Server and Storage Maintenance Contracts (as applicable) between Customer and Smart CT;
Faulty Part	means the part of the Equipment identified as faulty;
Field Service Engineer	means the Smart CT assigned engineer who will execute the on Site Services;
GMT	means Greenwich Mean Time;
Hours of Cover	means the hours of cover under which Services will be provided as set out in the applicable Contract;
IT Services	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.
Legitimate Part	means a Part or Faulty Part which is recognised as being official and legitimate by the Manufacturer and capable of being registered for support services with the Manufacturer if necessary;
Manufacturer	means the company responsible for making or producing the Equipment and/or Parts;

Nominated Contacts	means the name, email address and phone number of the individuals provided to Smart CT by Customer to contact in relation to providing the Services;
Non-Legitimate Part	means a Part or Faulty Part which is not recognised by the Manufacturer or is counterfeit and is not capable of being registered for support services with the Manufacturer;
Normal Business Hours	means the hours of 08:00 to 18:00 on a Business Day;
Parts	means spare parts and/or whole units and/or sub-modules of Equipment supplied by Smart CT to provide the Services;
Purchase Order	means an official document issued by Customer committing to pay Smart CT for the sale of specific goods or services;
Quotation	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;
Smart CT	means Smart CT 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;
Smart CT Germany	means Smart CT 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;
Server and Storage Maintenance	means the contracted services for server and storage maintenance to be used by Customer to provide IT Services;
Services	means the services to be performed by Smart CT as set out in a Contract;
Site	means the Equipment location, or the location where the Services are to be performed, as defined in the applicable Contract;
Smarthands	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;
Standard Industry Practice	means the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier or operator engaged in a similar undertaking to Smart CT under the same or similar circumstances;
Statement of Work, SOW	means a document issued by Smart CT to Customer setting out the details of the Services which Smart CT will provide to the Customer.
Support Period	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 payable;

Time and Materials Work or T&MW	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;
Third Party Support Costs	Amounts paid to third party suppliers for support services of the End Users Equipment.
TUPE	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as may be amended, added to, replaced or superseded from time to time;
UK GDPR	has the meaning given to it in the Data Protection Act 2018;
UK Normal Business Hours	means the hours of 8.00 to 18:00 on a Business Day;
VAT	means Value Added Tax.

3.0 SERVICES

3.1 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 this MSA the Quotation or Statement of Work.

3.2 Quotations and Statements of Work referencing pounds sterling shall remain valid for thirty (30) days unless stated otherwise.

3.3 Quotations and Statements of Work referencing currencies other than pounds sterling shall remain valid for ten (10) Business Days, unless stated otherwise.

3.4 Smart CT reserves the right to withdraw the Quotation or Statement of Work at any time prior to a Contract coming into effect.

4.0 SMART CT RESPONSIBILITIES

4.1 Smart CT shall provide the Services set out in the Contract.

4.2 Smart CT warrants that it will use every degree of care and skill to be reasonably expected of an experienced services support provider in the provision of the Services.

4.3 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.

5.0 CUSTOMER RESPONSIBILITIES

5.1 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.

5.2 Customer shall pay for all Charges in accordance with Charges and Payment clause.

5.3 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.

5.4 Customer shall follow the instructions provided by Smart CT in the Welcome Pack.

5.5 Customer shall allocate a minimum of one person to sign up to Smart CT's customer service portal. The person shall have portal permissions to add and remove portal users in the

customers organisation plus the End User they are associated with. Customer acknowledges and accepts that:

5.5.1 the responsibility for maintaining the users that have access to the Smart CT customer service portal.

5.5.2 Customer is responsible for removing and updating the details of any users who have left the Customer or End User to prevent any unauthorised interference, for example for data protection requirements, or to prevent any malicious activity

5.5.3 Smart CT does not warrant that the Smart CT customer portal will meet the requirements of the Customer

5.5.4 Smart CT shall not be responsible for any claims, losses, or damages resulting from Customers use of Smart CT customer portal including any violations of the Smart CT customer service portal provider.

6.0 CHARGES AND PAYMENT

6.1 The Services, Support Period and the related Charges will be set out in the applicable Contract. All Charges shown include all delivery and packaging costs unless otherwise agreed.

6.2 All Charges exclude VAT, unless otherwise agreed.

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

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

6.5 Unless otherwise agreed, the payment terms in respect of invoices submitted shall be net thirty (30) days from the invoice date. If VAT is payable, it shall be separately identified on the invoice and shall be payable by the Customer.

6.6 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) Business days written notice to Customer and then until payment in full 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.

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

6.8 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.

6.9 Smart CT reserves the right not to accept new Contracts whilst the Account is in arrears.

6.10 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

6.11 All SLAs that include an onsite Engineer, charges assume that each Case will require a maximum 2 hours on 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.

6.12 Smart CT reserves the right to amend the Charges: a) for any Renewal Term of a 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.

7.0 TERM AND TERMINATION

7.1 This MSA shall be effective from the Effective Date and shall continue thereafter unless otherwise terminated in writing by either Party in accordance with the provisions of this clause.

7.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either Party may terminate the MSA without liability to the other Party if:

7.3

7.3.1 the other Party commits a material breach of any provision of a Contract and (if such breach is remediable) fails to remedy that breach within thirty (30) days of a request to do so; or

7.3.2 the other Party repeatedly breaches any of the terms of a Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or

7.3.3 an order is made or a resolution is passed for the winding up of the other Party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other Party; or

7.3.4 an order is made for the appointment of an administrator to manage the affairs, business and property of the other Party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other Party, or notice of intention to appoint an administrator is given by the other Party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

7.3.5 a receiver is appointed of any of the other Party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other Party, or if any other person takes possession of or sells the other Party's assets; or

7.3.6 the other Party makes any arrangement or composition with its creditors; or

7.3.7 the other Party ceases, or threatens to cease, to trade; or

7.3.8 the other Party takes or suffers any similar or analogous action in any jurisdiction in consequence of the debt.

7.4 Either Party may terminate this MSA by providing three months prior written notice to the other Party, however such termination is to take effect only at the expiry of the Contract End Date of all Contracts entered into between the Parties.

7.5 Each Contract constitutes a separate Contract on the terms of this MSA 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 a Contract is without prejudice to the continuance of any other Contract existing.

7.6 The limitations of liability in Clause 14 cover this MSA including all Contracts and their applicable schedules in aggregate.

8.0 CONSEQUENCES OF TERMINATION

8.1 Any termination of a Contract howsoever occasioned shall not prejudice or affect any right of action or remedy which shall have accrued up to the date of termination.

8.2 In respect of the termination of a Contract, Smart CT shall cease providing the Services from the date of termination of that Contract.

8.3 On termination of any Contract:

8.3.1 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.

8.3.2 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; Any Customer owned equipment not collected from Smart CT within 20 Business days will be subject to a storage charge and if not collected within 120 days the Customer authorises Smart CT to dispose of the kit. Smart CT will use any proceeds to settle any outstanding amounts and remit the balance if any of the proceeds to the Customer.

8.3.3 any outstanding invoices shall immediately become due and payable;

8.3.4 Customer pays Smart CT in full against any Third Party Support Costs that cannot be cancelled and have been incurred by Smart CT, whether invoiced or not by the relevant third party;

8.3.5 Customer repays to Smart CT any discount or other benefit Customer may have received which was based on the initially contracted Support Period.

8.4 In the event of Customer terminating any Contract in accordance with this clause 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.

9.0 SUBCONTRACTING

9.1 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 consent of Customer.

9.2 Smart CT shall be and at all times remain liable for the acts and omissions of any sub-contractors in relation to a Contract.

9.3 In the event Smart CT sub-contracts any of its rights or obligations pursuant to this Clause Smart CT shall procure that its approved sub-contractors:

9.3.1 enter into a confidentiality agreement and MSA in substantially the terms of the this MSA and any Contract.

9.3.2 are authorised, licensed, qualified, approved and permitted to provide the sub-contracted Services as required by any regulatory body or other relevant person.

10.0 REGULATORY COMPLIANCE

10.1 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 Contract.

10.2 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.

10.3 To the extent that any of the legislation or requirements referred to in this Clause is advisory rather than mandatory, the standard of compliance to be achieved by Smart CT shall be in accordance with Standard Industry Practice.

11.0 CONFIDENTIALITY

11.1 The term Confidential Information does not include any information that:

11.1.1 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);

11.1.2 was available or known to the receiving Party on a non-confidential basis before disclosure by the disclosing Party;

11.1.3 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 MSA with the disclosing Party or otherwise prohibited from disclosing the information to the receiving Party;

11.1.4 the Parties agree in writing is not confidential or may be disclosed; or

11.1.5 is developed by or for the receiving Party independently of the information disclosed by the disclosing Party.

11.2 Each Party shall keep the other Party's Confidential Information confidential and shall not:

11.2.1 use any Confidential Information except for the purpose of exercising or performing its rights and obligations under a Contract **("Permitted Purpose")**; or

11.2.2 disclose any Confidential Information in whole or in part to any third party, except as expressly permitted by this Clause 12.0.

11.3 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:

11.3.1 it informs those employees or sub-contractors of the confidential nature of the Confidential Information before disclosure; and

11.3.2 at all times, it is responsible for the employees' or sub-contractors' compliance with the confidentiality obligations set out in this Clause 12.0.

11.4 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.

11.5 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.

12.0 DATA PROTECTION

12.1 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.

12.2 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.

12.3 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.

12.3.1 when Smart CT shall act as controller in respect of the personal data and processing activities the provisions of clause 13.4 shall apply;

12.3.2 when Smart CT shall act as processor, Smart CT shall act in accordance with the instructions provided in writing by Customer;

12.4 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.

12.4.1 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.

12.4.2 This personal data processing activity is legally grounded on the legitimate interest of Smart CT to enter into MSA and to provide the Services.

12.4.3 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.

12.4.4 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.

12.4.5 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). Customer is also reminded that it can lodge a complaint about the processing of its personal data with the Information Commissioner's Office (ICO).

12.4.6 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.

12.5 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.

12.6 Without prejudice to the generality of Clause 13.2 and Clause 13.3.2, when acting as a processor, Smart CT will:

12.6.1 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;

12.6.2 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;

12.6.3 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;

12.6.4 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;

12.6.5 notify Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;

12.6.6 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

12.6.7 maintain records to demonstrate its compliance with this Clause 13.0.

12.7 Customer hereby provides its prior, general authorisation for Smart CT to:

12.7.1 Appoint processors to process the Customer Personal Data, provided that Smart CT:

12.7.1.1 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;

12.7.1.2 shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of Smart CT; and

12.7.1.3 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.

12.7.2 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).

13.0 LIMITATION OF LIABILITY

13.1 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:

13.1.1 any breach of the Contract howsoever arising; and

13.1.2 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.

13.2 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.

13.3 Nothing in these conditions excludes or limits the liability of Smart CT for:

13.3.1 death or personal injury caused by Smart CT’s negligence;

13.3.2 fraud or fraudulent misrepresentation.

13.4 Subject to Clause 14.2 and Clause 14.3:

13.4.1 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:

13.4.1.1 loss of profits; or

13.4.1.2 loss of business; or

13.4.1.3 depletion of goodwill or similar losses; or

13.4.1.4 loss of anticipated savings; or

13.4.1.5 loss of goods; or

13.4.1.6 loss of contract; or

13.4.1.7 loss of use; or

13.4.1.8 loss or corruption of data or information; or

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

13.4.2 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.

13.4.3 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.

13.5 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.

14.0 ASSIGNMENT

14.1 Neither Party may assign this MSA nor a Contract without the others prior written consent, such consent shall not be unreasonably withheld.

15.0 NON-SOLICITATION

15.1 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.

16.0 TUPE

16.1 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.

17.0 FORCE MAJEURE

17.1 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")**.

17.2 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.

17.3 The Affected Party shall:

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

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

18.0 ENTIRE MSA AND VARIATIONS

18.1 The MSA and Contracts constitutes the entire agreement between the Parties on the subject matter contained herein and supersedes all representations or prior MSAs (written and oral). Each Party confirms that it has not relied upon any representation, statement or warranty not recorded in the MSA or Contracts. The only remedy available in respect of any misrepresentation shall be a claim for damages for breach of contract under the Contract. This Clause 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 MSA or Contract will be valid unless confirmed in writing by the authorised signatories of both Parties.

18.2 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.

19.0 WAIVER

19.1 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.

20.0 SEVERANCE

20.1 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.

21.0 SURVIVAL

21.1 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).

21.2 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.

22.0 THIRD PARTIES

22.1 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.

23.0 NOTICES

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

23.1.1 delivered by hand or by pre-paid first-class post or other next 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

23.1.2 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).

23.2 Any notice shall be deemed to have been received:

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

23.2.2 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.

23.3 This Clause 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.

24.0 DISPUTE RESOLUTION

24.1 This clause 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.

24.2 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 twenty (20) business 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.

24.3 If the senior representatives are unable to resolve the matter in question within twenty (20) business 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 twenty (20) Business 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 twenty (20) Business 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.

24.4 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.

25.0 GOVERNING LAW

25.1 The MSA and Contracts 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.

25.2 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).

IN WITNESS WHEREOF the duly authorised representatives of the Parties hereto have executed this MSA as is made on the latest date stated with the parties' signatures.

Signed for and on behalf of	**Signed** for and on behalf of
Smart CT Limited	**[Customer]**
Sign:	Sign:
Name:	Name:
Date:	Date:
Title:	Title: