

Module 2 - Hardware Maintenance and Support Services

Version 3.0

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1. Agreed Terms and Interpretation

AGREED TERMS

The terms and conditions included in this **Module 2** form part of the Customer Contract when the Parties state that the Hardware Maintenance and Support Services Module forms part of the Customer Contract in Item 8 of the General Order Form.

In this Module, unless the contrary intention appears:

- 1.1 Exception** means the reasons that excuse the Contactor from being in breach of the Customer Contract in respect of the Services provided under this Module, as stated in clause 6.
- 1.2 Firmware** means fixed software code and/or data structures that internally control elements or provides functionality within the Hardware.
- 1.3 Hardware Maintenance and Support Services** means the Services specified in the Module Order Form in respect of the Hardware and related Machine Code and consists of Preventative Maintenance, Remedial Maintenance, Help Desk Services and/or ancillary services in respect of the Hardware, all as set out on the Module Order Form.
- 1.4 Help Desk Services** means any Services specified in clause 3.8.
- 1.5 Machine Code** includes any microcode, basic input/output system code (called BIOS), utility programs, device drivers, diagnostics, Firmware, and any other code (all subject to any exclusions in the licence provided with it) delivered with the Hardware for the purpose of enabling the Hardware function as specified in its Contract Specifications. The term **Machine Code** excludes the operating system and any Licensed Software applications.
- 1.6 Preventative Maintenance** means the scheduled maintenance Services that are specified by the supplier or manufacturer that are to be performed on the Hardware and related Machine Code on a scheduled basis.
- 1.7 Remedial Maintenance** means the unscheduled maintenance Services required to be performed, whether on-site or off-site, to remedy a Defect.
- 1.8 Reseller as Facilitator** means a Reseller who uses the business model describe in clause 4.1(a) to facilitate the supply of the Hardware Maintenance and Support Services to the Customer.
- 1.9 Reseller with Pass Through Warranties** means a Reseller who uses the business model describe in clause 4.1(b) to supply Hardware Maintenance and Support Services to the Customer.

INTERPRETATION

- 1.10** Other capitalised words and expressions used in this Module are defined in Part 3 of the Procure IT Framework.

2. Maintenance Period

- 2.1** Unless otherwise agreed in the General Order Form or the relevant Module Order Form, the Hardware Maintenance and Support Services must be provided for a Contract Period of 12 months commencing upon the AAD of the Hardware, unless the Customer Contract is terminated earlier in accordance with its terms. The Contract Period for the Hardware

Maintenance and Support Services may be extended for such term and at such Price as may be agreed between the Parties prior to the end of the current Contract Period.

- 2.2** The Customer may at any time suspend the Hardware Maintenance and Support Services, upon 30 days Notice in Writing to the Contractor. On receipt of any such notice, the Contractor must immediately return to the Customer a pro rata amount of the Contract Price for Hardware Maintenance and Support Services prepaid (if any) by the Customer. This suspension right is additional to any rights that the Customer has to terminate the Customer Contract.
- 2.3** Unless otherwise specified in the Order Documents, at any time during the Contract Period the Customer may require the Contractor to recommence any Hardware Maintenance and Support Services that have been suspended under clause 2.2. The Customer will provide the Contractor with written notice where it requires such recommencement. The Contractor may, acting reasonably, require the equipment to undergo an inspection to verify the condition of the equipment, and:
- (a) where the inspection verifies that the equipment is in good order (fair wear and tear excepted) or the Contractor does not require an inspection, the Hardware Maintenance and Support Services shall recommence and the Customer must pay to the Contractor an amount equal to 50% of the Price (or such other amount specified in the Order Documents) that would have been payable in respect of the Hardware Maintenance and Support Services had the Customer not suspended them in accordance with clause 2.2. Such amount is due on the date that the Hardware Maintenance and Support Services recommence; or
 - (b) where the inspection determines the equipment is not in good order (fair wear and tear excepted), the Parties must agree what actions need to be taken to restore the equipment to good order and the Price for any future the Hardware Maintenance and Support Services, and
 - (c) in either event the Customer must pay the Contractor for the cost of the inspection, unless the suspension of the Hardware Maintenance and Support Services was caused by a major failure of the Contractor to provide the Hardware Maintenance and Support Services in accordance with the requirements of the Customer Contract.
- 2.4** The Price for the Hardware Maintenance and Support Services may be varied annually upon 30 days written notice by the Contractor. If the Customer does not accept the proposed variation the Customer may terminate the Hardware Maintenance and Support Services by giving the Contractor 14 days Notice in Writing.

3. Scope of Hardware Maintenance and Support

SCOPE

- 3.1** The Parties will set out on the Module Order Form the details of the Hardware Maintenance and Support Services, including:
- (a) the Contract Period;
 - (b) the Hardware and related Machine Code that is to be the subject of the Hardware Maintenance and Support Services;
 - (c) the details relating to any of the following Services that the Contractor is to provide:
 - (i) Remedial Maintenance;
 - (ii) Preventative Maintenance;

- (iii) Help Desk Services, including the hours of operation;
 - (iv) any ancillary services;
 - (d) any applicable Service Levels;
 - (e) the particulars of any access to the Site or the Deliverables, on-site storage of parts and equipment or other resources that may be needed in connection with the Services;
 - (f) the Price and any expenses or other charges that apply for each Service;
 - (g) if the Services are to be provided by the Contractor as a Reseller, then the Module Order Form must set out details of the manufacturer's support and maintenance services that the Contractor will co-ordinate and manage under clause 4 as well as any value added services that the Reseller will provide.
- 3.2** If no Service Level Agreement is set out or referred to in the Order Documents, then if requested by the Customer, the Parties will use best efforts to promptly negotiate service levels applicable to Hardware Maintenance and Support Services, which must include, at a minimum, committed response and resolution times and availability measures, and service credits that may be imposed where the Contractor fails to meet the service levels.
- 3.3** The Customer must provide access to the Site or the Deliverables, on-site storage of parts and equipment or other resources that may be needed in connection with the Services. The Contractor agrees that it uses such facilities at its own risk.
- 3.4** Where the performance of Hardware Maintenance and Support Services commences on the AAD for the relevant Hardware and related Machine Code or during the Warranty Period for the Hardware:
 - (a) the Contractor acknowledges that there is a potential overlap between the Contractor's obligation to remedy Defects for no additional cost during the Warranty Period and the Contractor's obligations to remedy Defects as part of Hardware Maintenance and Support Services; and
 - (b) taking paragraph (a) into account, for so long as Hardware Maintenance and Support Services are being performed during the Warranty Period, the Customer will pay the Contractor for those Hardware Maintenance and Support Services an amount equal to 65% of the Contract Price applicable to such Hardware Maintenance and Support Services (or such other amount as is specified in the Order Documents).

BACK UPS

- 3.5** Unless the Contractor has an obligation under another Module to take back ups of data that is loaded into a Deliverable, the Customer must take and maintain adequate back ups of any data that is loaded into any Deliverable so that there is no loss of data in the event that any failure of any Deliverable causes damage to, or loss of, any data.

PREVENTATIVE MAINTENANCE

- 3.6** If Preventive Maintenance Services are specified in the Order Documents, the Contractor must, during the Contract Period, ensure that the Preventative Maintenance:
 - (a) is carried out in accordance with a Preventative Maintenance schedule agreed between the Parties;
 - (b) is consistent with the Customer's operating requirements and the Contract Specifications; and

- (c) includes the preservation of the Hardware in good operating condition, problem detection, systems checks, replacement of unserviceable parts (excluding consumable items), cleaning and where required lubrication, and adjustment of mechanical and electro-mechanical devices all in accordance with the supplier's or manufacturer's instructions.

REMEDIAL MAINTENANCE

3.7 If Remedial Maintenance Services are specified in the Order Documents, the Contractor must, during the Contract Period, after being notified of a Defect or possible Defect in the Hardware or related Machine Code, promptly restore the Hardware and Machine Code to good working order and must, as necessary:

- (a) replace or repair parts;
- (b) to the extent that it is practical, implement measures to minimise disruption to the Customer's operations during maintenance work and perform the Services at times likely to cause the least possible disruption to the Customer's business and in all cases only by prior arrangement with the Customer; and
- (c) comply with any requirements specified in the Contract Specifications and any other requirements of the Customer Contract, including any Service Level Agreement.
- (d) prior to completion of Remedial Maintenance, the Contractor must, if the Customer makes such request prior to the completion of the relevant Remedial Maintenance:
 - (i) test the Hardware by running a diagnostic program and performing any other relevant tests necessary to demonstrate the Remedial Maintenance has been successful; or
 - (ii) otherwise explain and demonstrate to the Customer the effect of the Remedial Maintenance;
 - (iii) and provide the Customer with written confirmation of such test results or such explanation.

HELP DESK

3.8 If Help Desk Services are specified in the Order Documents, the Contractor must, during the Contract Period, provide Help Desk Services during the times of operation and in accordance with the Contract Specifications and any other requirements of the Customer Contract, including any Service Level, all as set out in the Order Documents.

MANDATORY ENGINEERING CHANGES

3.9 Where the Customer has acquired Preventative Maintenance or Remedial Maintenance, the Contractor must implement any engineering changes that are classified by the supplier or the manufacturer as being mandatory changes that are necessary to ensure product safety.

3.10 If the Contractor determines that any Hardware requires an engineering change that is classified by the supplier or manufacturer as being mandatory in order to ensure product safety then:

- (a) the Contractor will, at its own cost, provide a 'user installable part' which the Customer must promptly Install; or
- (b) the Customer must allow the Contractor to Install the engineering change, at the Contractor's own cost.

DISCRETIONARY ENGINEERING CHANGES

- 3.11** Where the Customer has acquired Preventative Maintenance or Remedial Maintenance and the Contractor generally makes available to its supported customers any engineering change that is designed to improve the performance or reliability of the Hardware, then the Contractor must offer that engineering change to the Customer. If the Customer wishes to implement that engineering change, the Parties must implement the change using a Change Request and the Variation Procedures in Schedule 4 – Variations Procedures.
- 3.12** The Contractor is not liable for any costs incurred by the Customer which result directly from the Customer not implementing an engineering change offered to the Customer by the Contractor under clause 3.11.
- 3.13** Where the Contractor implements an engineering change the Contractor must perform any tests required by the supplier or the manufacturer that are necessary to demonstrate the engineering change has been successfully implemented and, if requested by the Customer prior to completing the implementation, the Contractor must:
- (a) explain and demonstrate to the Customer the effect of the engineering change;
 - (b) provide the Customer with written confirmation of any test results or such explanation.

ASSISTANCE

- 3.14** The Customer must provide reasonable assistance in remedying any Defect, including installing any 'user installable parts' (as defined by the Contractor) supplied by the Contractor and running any diagnostic tests or software. Where the Contractor requires remote access to the Deliverable to provide Hardware Maintenance and Support Services the Customer must provide that access, subject to the Contractor complying with the Customer security and privacy policies set out in Item 9 of the Head Agreement and/or Item 30 of the General Order Form. If the Customer does not permit such access then Customer must pay any additional costs incurred by the Contractor in attending the Customer's Site to provide the Hardware Maintenance and Support Services.

SUPPORT FOR LICENSED SOFTWARE

- 3.15** Services for the support of any operating system or Licensed Software that is an application will be provided under Module 5. Support for any Machine Code is included under the Hardware Maintenance and Support Services.

MOVEMENT, ADDITIONS, CHANGES AND SUBSTITUTION OF HARDWARE

- 3.16** The Customer must give the Contractor at least 30 days Notice in Writing of its intention to relocate from the Site any Hardware that is being maintained under the Customer Contract, such notice to include the dates of decommissioning and re-commissioning and the new location of the Hardware.
- 3.17** The Contractor shall cease to provide any Hardware Maintenance and Support Services and the Customer ceases to be liable for the Price for the Hardware Maintenance and Support Services, from the date that the Hardware is decommissioned for relocation until the date that the Customer commences the re-commissioning of the Hardware at the new location.
- 3.18** Where the Hardware is portable and may be moved without any impact on the cost or difficulty to the Contractor of providing the Hardware Maintenance and Support Services, the Customer may move the Hardware without prior approval from the Contractor without any reduction of the Contractor's obligations under the Contract. The Contractor is not responsible for any loss or damage that occurs due to such movement.

- 3.19** If the Hardware is relocated by any person other than the Contractor, then the Customer must inform the Contractor of the new location of the Hardware and confirm that upon the Customer's Installation of the Hardware in the new location the Hardware conforms to the Contract Specifications.
- 3.20** If the Contractor dispatches any of the Hardware away from the Site for Preventative Maintenance or Remedial Maintenance then, unless otherwise agreed between the Parties or an Exclusion applies, the Contractor must bear all the costs, including those of packing, carriage and insurance that are incurred in the dispatch, overhaul, repair, return and reinstallation of the Hardware.
- 3.21** The Customer may, in its discretion, acquire additional equipment for attachment to or use in connection with the Hardware maintained by the Contractor, and where the Customer exercises this discretion, the Contractor must provide all reasonable assistance and co-operation to the Customer and any alternative supplier in effecting the system interfaces involved.
- 3.22** If the Customer notifies the Contractor of the attachment, or intended attachment of equipment to the Hardware, the Contractor must provide the Customer with any information which the Contractor is aware of indicating that the attachment is likely to or may be detrimental in any way to the operation of the Hardware.
- 3.23** The Customer may for any reason during the Contract Period after giving to the Contractor at least 30 days Notice in Writing:
- (a) substitute an item of Hardware of the same or similar type (provided that the Contractor provides the Hardware Maintenance and Support Services on the same basis for that substituted item of Hardware) to those covered by the Hardware Maintenance and Support Services; or
 - (b) withdraw an item of Hardware from the Hardware Maintenance and Support Services, in which case this will be agreed (including any impact on Price or Service) using a Change Request and the procedures in Schedule 4 – Variations Procedures will apply.
- 3.24** Where the Contractor replaces parts of the Hardware:
- (a) the replacement parts must be new or warranted as new, unless agreed otherwise by the Customer;
 - (b) the replacement parts become the property of the Customer on Installation; and
 - (c) the components that have been replaced remain the property of the Customer.
- 3.25** If the Customer requires the Contractor to deal with any replaced parts in any particular way, e.g. remove Confidential Information from the replaced part and/or dispose of the replaced part, the Parties may agree the scope and Price for such services, and such services must be documented using a Change Request.
- 3.26** The Contractor must not interchange parts between the Hardware and any other equipment without the prior consent of the Customer.
- 3.27** The Contractor's warranty obligations in respect of the Hardware are not reduced or extended as a result of the Contractor replacing or repairing any Hardware component during the performance of the Hardware Maintenance and Support Services.

MAINTENANCE RECORDS AND CHARGES

- 3.28** The Contractor shall maintain records of all:
- (a) issues reported by the Customer;
 - (b) remedial action taken by the Contractor; and
 - (c) parts replaced by the Contractor,
 - (d) during the performance of the Hardware Maintenance and Support Services.
- 3.29** The Contractor shall make copies of such records available to the Customer at no additional cost promptly following request.

ANCILLARY SERVICES

- 3.30** The Parties may agree that other services are to be provided by the Contractor during the Contract Period. The details of those Services, including the scope of the Services and the Prices that are payable for them, must be set out in the Module Order Form or if the Services are requested after the Commencement Date, on a Change Request and the Variation Procedures in Schedule 4 – Variations Procedures will apply. Such additional Services may include:
- (a) the installation of patches, fixes and updates to the Hardware or the Machine Code;
 - (b) the installation of additional software on the Hardware;
 - (c) additional ad hoc Hardware Maintenance and Support Services in respect of existing Hardware;
 - (d) Hardware Maintenance and Support Services for additional hardware obtained after the Commencement Date;
 - (e) the implementation and update of the Customer's anti-Virus software;
 - (f) providing disaster recovery from backup;
 - (g) maintaining a current file library of software licences, records, source code and maintain a history log or other record for the Customer concerning installations, upgrades, patches or other services performed;
 - (h) providing fully supported, minimally supported and network Hardware support;
 - (i) training.
- 3.31** The Contractor may store Contractor's Documentation, tools and test equipment at the Site as required for the purposes of the Customer Contract. The Customer agrees not to use any such material without the Contractor's consent.
- 3.32** The Contractor must maintain up-to-date lists of significant spares, User Documentation, tools, test equipment, plant and engineering diagnostic routines required for the Hardware Maintenance and Support Services and have sufficient replacement parts available to effect the Hardware Maintenance and Support Services in accordance with the Customer Contract or Service Level Agreement for the Contract Period.
- 3.33** Diagnostic programs designed to check the correct functioning of specified units of Hardware must be run according to the relevant manufacturer's specifications.

4. Reseller Provision of Maintenance Services

4.1 Where it is specified on the Module Order Form that the Hardware Maintenance and Support Services is to be supplied via a Contractor that is a Reseller, the provisions of this clause 4 apply, and the Customer and the Contractor must agree on the Module Order Form which of the business models, Reseller as Facilitator or Reseller with Pass Through Warranties, applies to the supply of the Hardware Maintenance and Support Services:

- (a) **Reseller as Facilitator.** In this business model the Contractor provides reseller services which facilitate the supply of the Hardware Maintenance and Support Services by the original equipment provider or its authorised distributor to the Customer, in which case:
- (i) the Contractor will procure that the original equipment provider or its authorised distributor enters into a contract directly with the Customer for the supply of the Hardware Maintenance and Support Services for the Contract Period, and the provisions of the Customer Contract that relate to the supply of the Hardware Maintenance and Support Services, including provisions in this Customer Contract relating to intellectual property rights and the features, capabilities, performance or other characteristics of the Hardware Maintenance and Support Services and the other provisions of this Module (other than clauses 3.1, 3.3, 3.5, 3.9, 3.10, 3.16 to 3.23 and 3.30 to 3.31) do not apply. The terms of the contract between the original equipment provider or its authorised distributor and the Customer for the supply of the Hardware Maintenance and Support Services will be attached to the Customer Contract and will be deemed accepted by the Customer when the Customer enters into the Customer Contract;
 - (ii) co-ordinate and manage any the provision of any manufacturer's support and maintenance services that are to be provided in respect of any Defect or alleged Defect that is reported by the Customer to the Contractor;
 - (iii) co-ordinate and manage the provision of any services that are to be provided in respect of any movement, addition, change substitution of the Hardware;
 - (iv) the Customer will pay the Contract Price for the Hardware Maintenance and Support Services to the Contractor, and the Contractor shall pay the amount agreed between the Contractor and the original equipment provider or its authorised distributor for the Hardware Maintenance and Support Services; or
- (b) **Reseller with Pass Through Warranties.** In this business model, the Contractor will supply the Hardware Maintenance and Support Services to the Customer on the terms and conditions of the Customer Contract, except that:
- (i) clause 19.1(c) of Part 2 does not apply;
 - (ii) clauses 2.3, 5 and 6 of this Module shall not apply;
 - (iii) the warranties or guarantees that are provided under this Module are limited to any warranties and guarantees that cannot be excluded by law and any warranties that the original equipment provider or its authorised distributor permits the Contractor to assign to the Contractor's customers; and
 - (iv) the Contractor must use best efforts to ensure that:
 - (A) all benefits of the warranty to the Customer for that Hardware are utilised to the benefit of the Customer;

- (B) all benefits of any original equipment provider or its authorised distributor warranty services for that Hardware are utilised to the benefit of the Customer, and this may include returning faulty equipment to the original equipment manufacturer or authorised distributor for repair under warranty rather than repairing the maintained Hardware;

- 4.2** The Customer warrants to the Contractor that the Customer and all of the Customer's end users of the Hardware and/or the Machine Code will comply with the terms of any contract between the Customer and the original equipment provider or its authorised distributor.
- 4.3** The Contractor must provide any value added services that are set out in the Order Documents.

5. Specific Warranties

- 5.1** The Contractor warrants that, subject to any Exception:
 - (a) when providing the Hardware Maintenance and Support Services, it shall at all times:
 - (i) use appropriate materials of high quality;
 - (ii) employ appropriate techniques and standards;
 - (iii) exercise due care, skill and attention;
 - (b) perform the Hardware Maintenance and Support Services in accordance with any services levels agreed in a Service Level Agreement, or if no service levels are agreed, it will perform Hardware Maintenance and Support Services in a reasonable time taking into account the impact of the Defect on the Customer's operations;
 - (c) the specific Personnel that perform the Hardware Maintenance and Support Services are appropriately qualified and experienced Personnel, and have reasonable knowledge of the Customer's hardware and software environment;
 - (d) where the Contractor replaces parts of the Hardware under this Customer Contract, the Contractor warrants that the replacement parts will be free from defects or omissions in materials, workmanship, design or performance;
 - (e) components and materials shall not when used in accordance with the User Documentation emit fumes, liquids, electro-magnetic radiation or noise which could be detrimental to Personnel, the environment or the operation of other equipment.
- 5.2** The Contractor shall provide the Remedial Maintenance so as to ensure the Hardware and Machine Code conforms at all times to the Contract Specifications and other requirements of this Customer Contractor, including any Service Level Agreement, subject to any Exceptions.
- 5.3** In the event that the Contractor fails to perform Hardware Maintenance and Support Services in accordance with this Customer Contract:
 - (a) the Contractor must provide to the Customer such additional hardware or perform such services as may be necessary to mitigate and remedy the failure to perform the relevant Hardware Maintenance and Support Services;
 - (b) if the Contractor has not remedied the failure within a reasonable time taking into account the impact of the Defect on the Customer's operations, the Customer may, using a third party who has been authorised by the supplier or the manufacturer to be an authorised repairer of the Hardware, rectify the Defect. In this case:

- (i) the Contractor must provide the authorised third party whatever assistance that may reasonably require to rectify the Defect; and
- (ii) the Contractor is liable to pay all costs reasonably incurred by the Customer under this sub-clause, subject to the limitations on liability in this Customer Contract.

5.4 If the Contractor fails to meet the Service Levels as a result of its default the Price for the Hardware Maintenance and Support Services must be adjusted in accordance with any services credits in the manner agreed in the Service Level Agreement.

5.5 The Contractor must meet all its costs that incidental to the discharge of its obligations under clause 5.1, including the provision of any packing, freighting, disassembly, reassembly costs and Installation costs (other than any Installation costs for 'user installable parts (as determined by the Contractor).

6. Exceptions

6.1 The Contractor is not liable for any breach of the Customer Contract which arises as a result of:

- (a) fair wear and tear;
- (b) not implementing any mandatory engineering changes as specified by the Contractor;
- (c) damage arises from the re-installation, moving, relocation or decommissioning or re-commissioning of the Hardware by a person other than the Contractor;
- (d) damage arising from changes, alterations, additions or modifications effected or attempted by a person other than the Contractor or an authorised third party repairer appointed under clause 5.3(b). To the extent that the Contractor permits a repair to be conducted by the Customer or any part is a 'user installable part' (as defined by the Contractor), then where that repair is conducted (or part is installed) in accordance with the Contractor's instructions this shall not affect any warranty;
- (e) damage arising from the act, error, fault, neglect, misuse or omission of the Customer;
- (f) damage caused by the failure of electrical power (other than power from the internal battery of the Hardware), air conditioning, humidity control or any environmental factor;
- (g) damage caused by the operation of the Hardware or Machine Code other than in accordance with recommended operating procedures, User Documentation or otherwise than in accordance with the directions or recommendations of the manufacturer or the Contractor;
- (h) any Virus, denial of service attack or other malicious act that adversely affects the Hardware, Machine Code or any software installed on it or connected to it, except to the extent that:
 - (i) the attack or malicious act is an attack or malicious act of the Contractor; or
 - (ii) the Contract Specifications include a requirement to protect against Viruses, denial of service attacks or other malicious acts, and the Customer's damages are caused solely by a failure to meet that obligation in the Contract Specification;

- (i) use of consumables or parts that are of a type that, or which are provided by any person who, is not approved by the Contractor;
- (j) improper use or mismanagement by the Customer;
- (k) an Event.

6.2 Where the Contractor has been requested to provide any Hardware Maintenance and Support Service and the item that was requested to be remedied is determined not to be a Defect then the Contractor is entitled to charge the Customer for the costs and expenses (calculated using the rates set out in the Customer Contract, or if none are stated, at the Contractor's then current commercial rates) that arise out, of or in connection with identifying and attempting to remedy that item.

6.3 The Contractor expressly excludes any warranty that the Hardware or Machine Code will operate with any consumables or parts that are of a type that, or which are provided by any person who, is not approved by the Contractor.