



## HARDWARE SUPPORT SUPPLEMENTAL TERMS AND CONDITIONS

### 1. Scope

- 1.1 These Hardware Support Supplemental Terms and Conditions supplement and (unless expressly stated otherwise) incorporate the terms and conditions set out in the General Terms and Conditions and the relevant Proposal in respect of the Hardware Support Services to be provided by ITPS to the Customer under a Contract. These Hardware Support Supplemental Terms and Conditions apply only to the supply by ITPS of the Hardware Support Services and the Customer's use of those Services. Any other Products supplied by ITPS to the Customer remain subject to the Contract Terms applicable to those Products.
- 1.2 The additional definitions set out in clause 5 shall apply in these Hardware Support Supplemental Terms and Conditions. Any defined terms in the General Terms and Conditions or the Proposal will have the same meaning in these Hardware Support Supplemental Terms and Conditions unless stated otherwise.

### 2. Hardware Support Services

- 2.1 If and to the extent that the relevant Services are expressly identified in the Proposal or otherwise agreed between the parties in writing, ITPS shall provide the Customer with the Hardware Support Services and the Additional Services (if any) at the Location during the Term in accordance with the Contract Terms.
- 2.2 On the Customer informing ITPS or ITPS otherwise becoming aware during the Designated Hours that the Maintained Equipment is malfunctioning or has failed or is otherwise not in Good Working Order, ITPS shall perform the **Standard Support Service** by using its reasonable endeavours to:
  - 2.2.1 attend the Location as soon as is reasonably practicable during the Designated Hours; and
  - 2.2.2 perform Corrective Maintenance of the relevant Maintained Equipment as soon as soon as is reasonably practicable.
- 2.3 If agreed between the parties in writing in advance and subject to agreement in writing for the payment by the Customer of the relevant Additional Charges, ITPS shall provide to the Customer the **Emergency Support Service** in the following circumstances:
  - 2.3.1 on the Customer informing ITPS outside of the Designated Hours that the Maintained Equipment is malfunctioning or has failed or is otherwise not in Good Working Order, ITPS shall use its reasonable endeavours to:
    - (a) attend the Location as soon as is reasonably practicable; and
    - (b) subject to clause 2.8 and 2.102.10, perform the Corrective Maintenance of the relevant Maintained Equipment as soon as soon as is reasonably practicable; or
  - 2.3.2 on the parties agreeing in writing that ITPS shall perform the relevant Hardware Support Services outside of the Designated Hours.
- 2.4 ITPS shall provide the Hardware Support Services:
  - 2.4.1 with reasonable skill and care; and
  - 2.4.2 in accordance with any relevant Service Level Agreement.
- 2.5 Additional Services shall be charged at the Additional Services Rates for each of ITPS's Personnel reasonably required to perform the relevant Additional Services. Additional Charges shall be calculated by reference to the relevant information set out in the Proposal or as otherwise notified to the Customer by ITPS in writing from time to time.
- 2.6 In performing the Hardware Support Services and/or the Additional Services (as the case may be), ITPS shall use its reasonable endeavours to restore any malfunctioning or failed Maintained Equipment to Good Working Order while in attendance at the Location. Where this is not reasonably practicable, or not reasonably practicable within the Designated Hours (in the case of Corrective Maintenance), ITPS shall either arrange for a further visit to the Location within the Designated Hours to complete the repair, or remove the Maintained Equipment or part of the Maintained Equipment for repair off-site (in which

circumstances ITPS may (at its sole discretion) provide substitute equipment (“**Substitute Equipment**”) to the Customer.

- 2.7 ITPS shall procure that its Personnel shall, while on site at the Location, comply with the Customer's reasonable health and safety and security policies provided that these policies have been brought to the attention of its Personnel.
- 2.8 ITPS is not obliged to perform any Excluded Services. Where ITPS performs the Excluded Services, ITPS may charge, and the Customer shall pay, the Additional Services Fees in respect of that work.
- 2.9 Where ITPS determines at its sole discretion (acting reasonably) that it will be more cost effective to replace an item of the Maintained Equipment rather than performing Corrective Maintenance thereof, ITPS shall provide the Customer with a replacement item which ITPS acting reasonably considers to be of equivalent standard to the relevant Maintained Equipment and the Customer shall pay for the cost of the replacement item.
- 2.10 ITPS shall not be responsible for providing, or liable in respect of, any Out-of-Scope Activities such activities being the sole responsibility of the Customer.

### 3. **Spare parts, consumables and Substitute Equipment**

- 3.1 In performing the Hardware Support Services and/or the Additional Services (as the case may be) and subject to clause 3.3, ITPS shall use its reasonable endeavours to supply spare parts (on what ITPS considers (acting reasonably) to be a materially like-for-like basis) required to restore the Maintained Equipment to Good Working Order including but not limited to circumstances where necessary as a result of fair wear and tear.
- 3.2 All spare parts and/or replacements provided by ITPS to the Customer shall become part of the Maintained Equipment. On payment by the Customer (in cleared funds) of every part of the relevant Charges (but not before), ITPS shall assign to the Customer, with full title guarantee and free from all third-party rights, all spare parts and/or replacements provided by ITPS. All parts and components removed from the Maintained Equipment by ITPS in the course of performing the Hardware Support Services shall no longer constitute part of the Maintained Equipment and will be the property of ITPS. The Customer will assign to ITPS, with full title guarantee and free from all third-party rights, all parts and components removed from the Maintained Equipment by ITPS in accordance with this clause 3.2.
- 3.3 ITPS shall have no obligation to supply items which ITPS considers (acting reasonably) to constitute consumables which shall include but not be limited to: back-up tapes, laptop power adaptors, batteries for UPS, batteries for laptops and mice (“**Consumables**”).
- 3.4 Where ITPS provides Substitute Equipment pursuant to clause 2.6 or otherwise, the Customer acknowledges and agrees that:
  - 3.4.1 the Substitute Equipment shall at all times remain the property of ITPS and the Customer shall have no right, title or interest in or to the Substitute Equipment (save the right to use the Substitute Equipment in the ordinary course of trading subject to the terms and conditions of the Contract);
  - 3.4.2 the risk of loss, theft, damage or destruction of the Substitute Equipment shall pass to the Customer on delivery and the Substitute Equipment shall remain at the sole risk of the Customer during the period which the Substitute Equipment is in the possession, custody or control of the Customer (“**Risk Period**”) until such time as the Substitute Equipment is redelivered to ITPS;
  - 3.4.3 during the Risk Period, the Customer shall at its own expense, obtain and maintain the following insurances:
    - (a) insurance of the Substitute Equipment to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as ITPS may from time to time designate in writing;
    - (b) insurance for such amounts as a prudent owner or operator of such Substitute Equipment would insure for, or such amount as ITPS may reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Substitute Equipment; and

- (c) insurance against such other or further risks relating to the Substitute Equipment as may be required by law, together with such other insurance as ITPS may from time to time consider reasonably necessary and advise to the Customer;
- 3.4.4 the Customer shall give immediate written notice to ITPS in the event of any loss, accident or damage to the Substitute Equipment arising out of or in connection with the Customer's possession or use of the Substitute Equipment;
- 3.4.5 if the Customer fails to effect or maintain any of the insurances required under the Contract, ITPS shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due and payable immediately from the Customer; and
- 3.4.6 the Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to ITPS and proof of premium payment to ITPS to confirm the insurance arrangements.
- 3.5 In respect of the Substitute Equipment, the Customer shall:
  - 3.5.1 be responsible for making good any damage to the Substitute Equipment (fair wear and tear only excepted);
  - 3.5.2 make no alteration to the Substitute Equipment and shall not remove any existing components from it;
  - 3.5.3 not, without the prior written consent of ITPS, part with control of, sell or offer for sale, underlet or lend the Substitute Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
  - 3.5.4 not without the prior written consent of ITPS, attach the Substitute Equipment to any land or building so as to cause the Substitute Equipment to become a permanent or immovable fixture on such land or building. If the Substitute Equipment does become affixed to any land or building then the Substitute Equipment must be capable of being removed without material injury to such land or building and the Customer shall repair and make good any damage caused by the affixation or removal of the Substitute Equipment from any land or building and indemnify ITPS against all losses, costs or expenses incurred as a result of such affixation or removal;
  - 3.5.5 not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of ITPS in the Substitute Equipment and, where the Substitute Equipment has become affixed to any land or building, the Customer must take all necessary steps to ensure that ITPS may enter such land or building and recover the Substitute Equipment both during the term of this agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of ITPS of any rights such person may have or acquire in the Substitute Equipment and a right for ITPS to enter onto such land or building to remove the Substitute Equipment;
  - 3.5.6 not suffer or permit the Substitute Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Substitute Equipment is so confiscated, seized or taken, the Customer shall immediately notify ITPS and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Substitute Equipment and shall indemnify ITPS on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
  - 3.5.7 not use the Substitute Equipment for any unlawful purpose;
  - 3.5.8 ensure that at all times the Substitute Equipment remains identifiable as being ITPS's property and wherever possible shall ensure that a visible sign to that effect is attached to the Substitute Equipment;
  - 3.5.9 deliver up the Substitute Equipment at such time and such address as ITPS requires, or if necessary allow ITPS or its Personnel access to the Location or any premises where the Substitute Equipment is located for the purpose of removing the Substitute Equipment.
- 3.6 The Customer acknowledges that ITPS shall not be responsible for any loss of or damage to the Substitute Equipment arising out of or in connection with any negligence, misuse, mishandling of the Substitute Equipment or otherwise caused by the Customer or its Personnel, and the Customer undertakes to indemnify ITPS on demand against the same, and against all losses, liabilities, claims, damages, costs or

expenses of whatever nature otherwise arising out of or in connection with any failure by the Customer to comply with the terms of this clause 3.

#### 4. Customer's obligations

##### 4.1 The Customer shall:

- 4.1.1 ensure that the Maintained Equipment is in Good Working Order at the Commencement Date or otherwise instruct ITPS to undertake such services as ITPS considers to be reasonably necessary in order to bring the Maintained Equipment up to Good Working Order in which case the Customer shall pay ITPS such fees as ITPS advises the Customer are payable in this regard;
- 4.1.2 ensure that the Maintained Equipment and/or the Substitute Equipment (if any) is installed and kept in suitable premises and under suitable conditions, as specified in the Operating Manuals or as otherwise directed by the relevant Equipment Supplier and follow any instructions as ITPS or the Equipment Supplier (as the case may be) may give from time to time (including in relation to preventative maintenance measures);
- 4.1.3 take all reasonable measures to adequately protect the Maintained Equipment and/or the Substitute Equipment (if any) against Malicious Software including by using the latest versions of anti-virus software available from an industry-accepted anti-virus software vendor to check for and delete Malicious Software;
- 4.1.4 take all reasonable steps to ensure that the Maintained Equipment and/or the Substitute Equipment (if any) is operated in a normal and proper manner and used only by competent and trained personnel;
- 4.1.5 notify ITPS promptly in writing and in accordance with any relevant Service Level Agreement if the Maintained Equipment and/or the Substitute Equipment (if any) is discovered to be operating incorrectly and immediately cease to use the relevant Maintained Equipment and/or the Substitute Equipment (if any) unless and until ITPS confirms otherwise in writing;
- 4.1.6 at all reasonable times permit full and free access to the Location and to the Maintained Equipment and/or the Substitute Equipment (if any) to ITPS, its Personnel, and provide them with adequate facilities and safe working space, and any cabling, power, telecommunications facilities and Consumables as are reasonably required to enable ITPS to fulfil its obligations under the Contract;
- 4.1.7 keep ITPS fully informed of all material matters relating to the Maintained Equipment and/or the Substitute Equipment (if any) and provide ITPS with any information that is reasonably requested in the performance of the Hardware Support Services and/or the Additional Services (as the case may be);
- 4.1.8 take reasonable care to ensure the health and safety of ITPS' Personnel when attending the Location;
- 4.1.9 not maintain, alter, modify, dismantle, repair, adjust or in any way interfere with (or allow any person other than ITPS or the relevant Equipment Supplier (as the case may be) to maintain, alter, modify, dismantle, repair, adjust or in any way interfere with) the Maintained Equipment and/or the Substitute Equipment without the prior written approval of ITPS;
- 4.1.10 ensure that appropriate environmental conditions (including in relation to temperature and humidity) are maintained for the Maintained Equipment and/or the Substitute Equipment (if any) including by complying with any requirements or recommendations of the Equipment Supplier in this regard;
- 4.1.11 keep full backup copies of all of its data, applications and operating systems and (notwithstanding the foregoing) conform with Good Industry Practice in this regard;
- 4.1.12 ensure that there is an adequate power supply supplying the Maintained Equipment which provides adequate protection against lightning strikes, power surges and other reasonably foreseeable external factors;
- 4.1.13 not move the Maintained Equipment and/or the Substitute Equipment (if any) from the Location without the prior written approval of ITPS; and

4.1.14 only use supplies or materials supplied or approved by ITPS or the relevant Equipment Supplier (as the case may be).

## 5. Definitions and interpretation

5.1 In these Hardware Support Supplemental Terms and Conditions, the following additional definitions apply:

**Additional Services:** means any Emergency Support Services and/or any Excluded Services performed by ITPS pursuant to these Hardware Support Supplemental Terms and Conditions.

**Additional Services Fees:** means the fees payable in consideration of the provision of any Additional Services, which shall be calculated at the Additional Services Rates.

**Additional Services Rates:** means the rates set out in the Proposal or otherwise notified by ITPS to the Customer in writing, as those rates are amended from time to time in accordance with the Contract Terms.

**Commencement Date:** the date set out in the Proposal or as otherwise agreed in writing between the parties being the date on which the commencement of the Hardware Support Services and/or the Additional Services is planned to occur.

**Consumables:** shall have the meaning given in clause 3.3.

**Corrective Maintenance:** means:

- a) making any adjustments to the Maintained Equipment; and/or
- b) replacing any parts or components of the Maintained Equipment,

in each case as required to restore the Maintained Equipment to Good Working Order and in accordance with clause 2.2.

**Customer Operating System:** means the customer's operating system as set out in the Proposal or as agreed in writing from time to time.

**Designated Hours:** 8.30 am to 6.00 pm GMT on Business Days.

**Emergency Support Services:** means the services to be provided by ITPS pursuant to clause 2.3.

**Equipment Supplier:** means the supplier of the Maintained Equipment or (as the context requires) the Substitute Equipment (or any part of either of them).

**Excluded Causes:** means any of the following:

- (a) any breach by the Customer of its obligations under the Contract Terms (including any breach of clause 4 of these Hardware Support Supplemental Terms and Conditions);
- (b) any failure of computer hardware where that hardware is not Maintained Equipment;
- (c) any defect in the manufacturer's design of the Maintained Equipment;
- (d) any work to or replacement of accessories, attachments or devices not configured by ITPS;
- (e) the removal of devices or attachments to the Maintained Equipment;
- (f) the use of faulty materials or workmanship in the manufacture of the Maintained Equipment;
- (g) the use of the Maintained Equipment with computer equipment or materials not supplied or approved in writing by ITPS;
- (h) any maintenance, alteration, modification or adjustment performed by persons other than ITPS or its Personnel unless approved in writing by ITPS;
- (i) the moving of the Maintained Equipment by the Customer or any third party;
- (j) a defect arising directly or indirectly other than as a result of fair wear and tear including in circumstances of wilful damage, negligence, abnormal storing or working conditions or as a result of or in connection with the deployment of Malicious Software;

- (k) the use of the Maintained Equipment in breach of any of the provisions of the agreement under which the Maintained Equipment was supplied by the relevant Equipment Supplier;
- (l) a failure, interruption, fluctuation or surge in the electrical power or its related infrastructure connected to the Maintained Equipment;
- (m) any defect or failure caused by ITPS re-loading the Customer Operating System on to the relevant Maintained Equipment;
- (n) a failure or malfunction in the air conditioning or other environmental controls required for the normal operation of the Maintained Equipment, or an error or omission in the correct use of that air conditioning or other environmental controls by the Customer;
- (o) any accident (including but not limited to incidents involving water, fire and lightning), theft, neglect or misuse affecting the Maintained Equipment (or any part of it); or
- (p) any issue affecting the Maintained Equipment which constitutes an **Excluded Cause** in any of the other Contract Terms (including pursuant to the Software Support Supplemental Terms).

**Excluded Services:** means any Hardware Support Services which ITPS (acting reasonably) determines (either before or after the provision of the relevant services) that became necessary directly or indirectly as a result of any of the Excluded Causes.

**General Terms and Conditions** means the General Terms and Conditions of ITPS from time to time, as available at <https://www.itps.co.uk/terms-conditions/>.

**Good Industry Practice:** means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.

**Good Working Order:** means the Maintained Equipment operates materially in accordance with the Operating Manuals.

**Hardware Support Services:** means the Standard Support Services and/or the Emergency Support Services (as the case may be) provided always that the Out-of-Scope Activities shall in no circumstances comprise the Hardware Support Services.

**Location:** means the location of the Maintained Equipment at the Customer's premises as specified in the Proposal, or any other location as may be agreed by the parties in writing from time to time.

**Maintained Equipment:** means the equipment specified in the Proposal and/or any other equipment as may be agreed by the parties in writing from time to time.

**Malicious Software:** means any software program or code intended to destroy, interfere with, corrupt or have a disruptive effect on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether such software program or code is introduced wilfully, negligently or without knowledge of its existence.

**Operating Manual:** means all manufacturer operating manuals, specifications and other manufacturer documentation relating to the Maintained Equipment.

**Out-of-Scope Activities:** means any of the following:

- (a) electrical work external to the Maintained Equipment;
- (b) cosmetic work (including painting or refinishing) to the Maintained Equipment.

**Risk Period:** in relation to the Substitute Equipment, shall have the meaning given in clause 3.4.2.

**Standard Support Services:** means the support services to be provided by ITPS pursuant to clause 2.2.

**Substitute Equipment:** shall have the meaning given in clause 2.6.