

In the third part of our series, **Ray Murphy** explains how you can get the best out of support agreements

Fixing the maintenance deal



Got your number: help desk back-up would come under the technical support services part of a contract

Like most other assets in an organisation, software needs to be maintained and kept up to date if it is to be useful to the business. Unlike tangible assets, which need repairing or even replacing over time, software is unusual in that it does not physically deteriorate. However, it will need updating in line with changing business needs, to implement government or regulator-enforced changes, or to interface with new systems.

Because of the complexity of software and the interfaces with other software products and applications, it is almost inevitable that bugs will appear over time. When this happens, the customer needs the software supplier to identify and fix the problem as soon as possible.

The resolution of software bugs is a key component of any support and maintenance agreement. And, because the software will also require updating with new functions, features or general enhancement, it is desirable to have the supplier provide these software upgrades under a regular regime.

The main activities covered under a support and maintenance service are technical support – which includes bug fixes, technical queries and software “patches” – and software updates.

Right to refuse

Sometimes, the support and maintenance services are defined as part of a software licence or software development agreement (as an addendum to the main agreement) or there may be a separate, stand-alone support and maintenance agreement. Generally, the customer has the right to take or decline the support and maintenance services.

When software is rented or licensed on a subscription basis (as opposed to being licensed on a perpetual basis, for example) or when the software is provided under a

hosting agreement (where, for example, the software is hosted on the supplier's system and accessed by the customer via the Internet) the support and maintenance is provided as an integral part of the software rental, subscription or hosting service.

If the customer chooses to cancel or forgo the service where the support and maintenance agreement is optional, the supplier will have no further obligation in respect of supporting or maintaining the software.

The only, and quite limited, support available to the customer in such a case will be for the fixing of bugs during the initial software warranty period.

If the customer subsequently wishes to take up or reinstate the support service, it will generally be subject to the payment of the back fees that would have been payable if the agreement had been kept from the initial support start date.

This is quite different, however, to the regime that would apply if a cable TV service were cancelled and reinstated a few years later. In this instance, apart from a small reconnection fee, the customer would simply pay for the service from the time it is switched on again.

Technical support services generally cover support for bug fixes, support for the customer's internal help desk, online access to software patches and involvement in the supplier technical user groups.

When a software problem occurs, it is important that it is fixed as soon as possible. Therefore, it is common for a service-level agreement (SLA), which would define the supplier's key performance obligations, to be incorporated into the technical support service. These would include a definition of the support timetable – for example, a 9am-5pm, Monday-to-Friday service; or a 24-hours-a-day, seven-days-a-week affair – and response and resolution targets by problem category or priority.

A “priority one” problem, causing severe business disruption, could have a response target of, say, one hour from notification and a fixing target of, say, two hours. Generally, the supplier performance under the SLA would be reviewed every month or quarter. Depending on the nature of the software and the supplier's business practices, some suppliers provide refunds or credits when the service fails to meet agreed criteria.

Software maintenance services include upgrades to the software and documentation, with most suppliers releasing a major upgrade every year. Interim maintenance updates, which include important bug fixes that cannot wait for the next major upgrade, would be



Totally wired: sometimes the support service may be defined as part of the software licence

provided on, say, a quarterly basis. A definition of major and minor upgrades should be included in any agreement.

Some suppliers define a major software upgrade by the version number (such as version 4) with minor updates or releases a subset of this (4.1 or 4.2).

The agreement must be clear on what is included – if you require major upgrades, then say so. You do not want to discover a major new upgrade outside your agreement that must be licensed as a new product. So you should be careful, as many agreements will attempt to limit support and maintenance to the latest version.

Many organisations do not install new versions of software until they have been released for some time and at least one maintenance release has been issued. This

ensures the software has been well tried and tested. The agreement should provide for support of previous versions during this period.

Support and maintenance services are generally charged as a percentage of the original list or purchase price of the software and can range from about 15-25 per cent. The agreement is also likely to be index-linked for year-on-year increases, while maintenance fees are generally levied quarterly or annually in advance.

Some suppliers decouple the support and maintenance elements. For example, software firm Oracle lets customers select a basic support service that includes software updates, patches, maintenance releases and selected functionality releases. If the customer needs technical support, this may be added to the basic service, for an additional fee.

Where the software is tried and tested and not subject to change or future upgrade, it is possible to agree “care and maintenance” support charges, which should be cheaper than commercial ones.

Where software has been developed or modified for the customer, it is sometimes possible to agree support charges based on the purchase of support staff at an agreed daily rate. The activities undertaken under this type of support SLA might also include small functionality changes to the software over time.

● **NEXT ISSUE:** requests for information and proposals in software projects

■ **Ray Murphy** is a specialist consultant in software sourcing and procurement (www.strategiccomputing.ie)

Six elements of support agreements

1. **Ensure** the definition of the support timetable is clear. If support is required outside core support hours (and this is extra), ensure that it is charged at reasonable rates, not top-end consultancy rates.
2. **Be clear** on the definitions of upgrades, updates, major versions and minor releases so that no surprises occur when a new version of the software is released.
3. **Define** the key performance measures under a service-level agreement, monitor and review performance over time and tie performance to service credits or similar.
4. **Comply** with your obligations in the deal.
5. **Be aware** (and wary) of clauses that limit support to the latest version of the software; ensure that you are covered on the previous software versions until you are ready to install the latest one.
6. **Review** the commercial regimes rigorously. While some suppliers try to base support charges on the software list price, it is common practice for this to be based on the discounted software purchase price. Consider alternatives to the standard commercial offerings, such as resource-based support.

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