

## 1. DEFINITIONS

1.1. The definitions in this clause apply in this Agreement.

**Advanced Exchange Services** means the services set out in clause 5 of the Maintenance Terms and Conditions.

**Agreement** means the Maintenance Terms and Conditions together with the Statement of Work.

**Avnet** means the Avnet entity set out in the Statement of Work performing the Maintenance Services.

**Commencement Date** means the date of execution as set out in the Statement of Work

**FRU(s)** means field replaceable unit(s)

**Customer** means shall mean he legal entity specified in the Statement of Work.

**Good Working Order** means that the Equipment operates in accordance with the Operating Manuals.

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

**Equipment** means the equipment specified in the Statement of Work on which the Maintenance Services will be performed.

**Maintenance Services** means the Advanced Exchange Services and/or On-site Maintenance and Support as set out in the Maintenance Terms and Conditions and/or Statement of Work.

**Maintenance Terms and Conditions** means this document, entitled 'Maintenance Terms and Conditions'

**On-site Maintenance and Support** means the services set out in clause 4 of the Maintenance Terms and Conditions

**Statement of Work** means the specific terms and conditions supplementing the terms and conditions in relation to the provision of the Maintenance Services

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

**Replacement Part(s)** means (a) part(s) with an equal functionality as the defective part in the Equipment.

**Replacement Product(s)** means (a) product(s) with an equal functionality as the defective Equipment.

**Service Level(s)** means the service level(s) stated in the Statement of Work

## 2. MAINTENANCE SERVICES

2.1. During the Term, Avnet shall provide Maintenance Services in relation to the Equipment at the Location set out in the Statement of Work.

2.2. The Customer accepts and acknowledges that Avnet may use third parties to perform the Maintenance Services.

2.3. The Maintenance Services shall be performed in accordance with the Service Levels set out in this Agreement. These Maintenance Services will commence from the moment that Avnet is informed of the defect.

2.4. Avnet shall make reasonable commercial efforts to perform the Maintenance Services in accordance with the Service Levels set out in the Statement of Work. The Customer accepts and acknowledges that the proposed timing(s) set out in the Statement of Work are only an indication and do not bind Avnet

## 3. CUSTOMER OBLIGATIONS

3.1. The Customer shall:

(a) ensure that the Equipment is installed and kept in suitable premises and under suitable conditions, as specified in the terms and conditions of the manufacturer of the Equipment, permit only trained and competent personnel to use it and follow any operation instructions of the manufacturer of the Equipment.

(b) notify Avnet promptly if the Equipment is discovered to be defect or is operating incorrectly.

(c) at all reasonable times permit full and free access to the Location and to the Equipment to Avnet, its employees, contractors and agents and provide them with adequate and safe working space, and any telecommunication facilities as are reasonably required to enable Avnet to perform the Maintenance while at the Location.

(d) provide Avnet with any information that is reasonably requested in the performance of the Maintenance Services;

(e) take any steps reasonably necessary to ensure the safety of Avnet's personnel when attending the Location;

(f) not allow any person other than Avnet to maintain, alter, modify or adjust the Equipment;

(g) provide reasonable support to Avnet and ensure that a qualified employee is available for support at the Location.

#### **4. ON-SITE MAINTENANCE AND SUPPORT**

4.1. To the extent that the Parties have agreed to a Service Level which includes On-site Maintenance and Support, the following shall apply:

(a) Prior to any onsite assistance, Avnet may initiate and perform remote diagnostics using electronic remote support solutions to access the Equipment, or Avnet may use other means available to facilitate remote incident resolution.

(b) For incidents that cannot, at Avnet's discretion, be resolved remotely, an Avnet authorized representative will provide onsite technical support on the Equipment to return them to operating condition.

(c) Avnet may, at its sole discretion, elect to replace the Equipment in lieu of repairing them. Replacement Products are new or functionally equivalent to new in performance. Replaced products become the property of Avnet.

(d) Once an Avnet authorized representative arrives at the Customer's site, the representative will continue to deliver the service in accordance with the service levels agreed between the parties, either onsite or remotely, at the discretion of Avnet, until the products are repaired. Work may be temporarily suspended if parts or additional resources are required, but work will resume when they become available.

(e) Repair is considered complete upon Avnet's verification that the Equipment malfunction has been corrected or that the Equipment has been replaced.

#### **5. ADVANCED EXCHANGE SERVICES**

5.1. To the extent that the Parties have agreed to a Service Level which includes Advanced Exchange Services, the following shall apply:

(a) Avnet will at its discretion either (i) replace the Equipment with a Replacement Product or (ii) replace the defective parts of the Equipment with Replacement Parts.

(b) Unless otherwise agreed between the parties, Avnet shall deliver these (i) Replacement Products or (ii) Replacement Parts within a reasonable period of time. Any installation of the Replacement Products or Replacement Parts will be charged separately by Avnet.

(c) Avnet shall make reasonable commercial efforts to replace the defective Equipment or defective parts or components by the same product, parts or components. If such is not possible, Avnet shall provide a Replacement Product or Replacement Parts with at least the same functionalities as the defective Equipment.

(d) The Customer accepts and acknowledges that the Replacement Product or the Replacement Parts may not be new but will be in good working order.

5.2. Unless otherwise agreed between the parties, Avnet shall make reasonable commercial efforts to deliver the Replacement Products or repaired Equipment containing the Replacement Parts during normal business hours (09.00 – 17.00h, Monday to Friday, excluding public holidays) of the local Avnet entity.

(e) All Replaced products or replaced parts or components will become the property of Avnet.

5.3. Some of the Replacement Parts are designated as FRUs, enabling the Customer to replace these parts. The Customer will be offered to install a FRU itself or it may request Avnet to install it at cost of the Customer. To the extent applicable, the Customer undertakes to return all defective FRUs to Avnet in accordance with the return instructions issued with the replacement FRU.

5.4. Certain replacement parts or components require a machine code or a licensed internal code (LIC), such as microcode or system code to correctly function. For such parts or components you are responsible for downloading the machine code or LIC updates from the manufacturers

website or from other electronic media and follow the instructions that the manufacturer provides.

5.5. The Customer shall use the Replacement Products in accordance with the specifications and operation manual of the manufacturer.

### **6. PAYMENT**

6.1. Unless otherwise agreed between the Parties, the price for the Maintenance Services is set out in the Statement of Work and is due as specified in the Statement of Work and indicated on the invoice

6.2. All prices quoted are exclusive of all taxes, shipping charges, freight, duties, and other charges or fees, such as fees for special packaging and labelling of the Products, permits, certificates, customs declarations and registration (collectively, "Additional Fees"). Customer is responsible for any Additional Fees. Each Party is responsible for its own taxes relating to transactions under this Agreement and shall report and pay any relevant taxes to the respective tax authorities.

6.3. Customer shall withhold and pay to the relevant tax authorities on Avnet's behalf any withholding taxes applicable to the purchase of Products under this Agreement and shall deduct such withholding taxes from the amount due Avnet. Customer shall accept Avnet's good faith representation of any applicable exemption or reduction to withholding taxes. In addition, Customer will gross up the amounts to be paid to Avnet so that the net amounts received by Avnet are the amounts specified on the invoice. To the extent that any withholding tax is payable, Avnet and Customer shall mutually collaborate and provide any and all assistance reasonably requested to obtain the benefits of any applicable tax treaty between the country where the Avnet entity provided the Services, Products, or Deliverables is located and the applicable jurisdiction where the withholding tax is applied.

6.4. Customer shall make payment to Avnet net thirty (30) days from the date of invoice or as indicated in the applicable Statement of Work. Customer shall pay the entire net amount of each invoice from Avnet pursuant to the terms of each such invoice without offset or deduction.

6.5. Customer shall pay to Avnet, as a late fee on any amounts more than thirty (30) days past

due, the lesser of one and one-half percent (1.5%) per month or the maximum interest rate allowed by applicable law. Customer shall pay all costs and expenses, including a reasonable attorneys' fee and collection costs, incurred by Avnet in an effort to collect past due amounts from Customer, whether or not resulting in litigation.

6.6. If Customer has any dispute with respect to any invoice, Customer must raise such issue within seven (7) days from the receipt of the invoice or such dispute is waived and the amounts stated on the invoice shall be presumed payable. Disputes related to any items contained on an invoice shall not affect the payment of undisputed charges.

### **7. WARRANTIES**

7.1. Avnet warrants to the Customer that it has full capacity and authority and all necessary permissions, licenses and consents necessary to enter into, and perform its obligations under this Agreement.

7.2. Avnet warrants that the Maintenance Services shall be performed:

(a) by an appropriate number of suitably qualified and experienced personnel; and

7.3. using all reasonable skill and care Avnet does not warrant uninterrupted or error-free operation of the Equipment or the Maintenance Services or that Avnet will correct all defects.

7.4. To the extent permitted by law, Avnet makes no other warranties, express or implied, such as warranty of merchantability, fitness for purpose or non-infringement, and disclaims any and all other express or implied warranties, statutory or otherwise.

7.5. Customer's sole remedies for breach of this Avnet Maintenance Services warranty are, at Avnet's sole discretion, limited to: (i) re-perform the Avnet Maintenance Services, or (ii) refund the portion of the fees paid by Customer that related to the non-conforming Avnet Maintenance Services. Avnet will have no obligation with respect to any warranty claim if the claim is the result of (i) an excluding event set out in clause 8 of the Maintenance Terms and Conditions or (ii) damage caused by disaster such as fire, flood, wind or lightning

### **8. . EXCLUDED MAINTENANCE**

8.1. Unless otherwise agreed in writing, Avnet has no liability for, and is not required to provide Maintenance Services under this Agreement if it relates to:

- (a) Preventive maintenance of the Equipment;
- (b) Customer induced damage(s);
- (c) a defect in the manufacturer's design of the Equipment;
- (d) faulty materials or workmanship in the manufacture of the Equipment;
- (e) any maintenance, alteration, modification or adjustment performed by persons other than Avnet or its authorised personnel;
- (f) the Customer not following the manufacturer's written instructions for the Equipment or using incompatible materials in it;
- (g) a failure, interruption or surge in the electrical power, internet connection or its related infrastructure connected to the Equipment;
- (h) damage caused by external causes outside Avnet's control including accident, disaster, electrical fault, power surges, lightning, internet connection fault, vandalism or burglary; or
- (i) the Customer or third party's abnormal use, storage or handling of the Equipment (including failure to provide appropriate environmental conditions) and/or any repair or damage caused by such use, storage or handling;
- (j) repair necessitated by a virus or denial-of-service attack (or similar) in the Customer environment;
- (k) Warranty support for other than the listed Equipment;
- (l) Configuring or re-configuring, mapping or re-mapping of any of the Equipment, its replacement parts/components/products, the Customer's network or other hardware and/or software;

(m) Recovery, transfer or back-up of data and/or applications, as well as disaster recovery (such as application software, reloading data;

(n) Customizations or configuration of any hardware and/or software of the Customer and/or its users;

(o) Installation, de-installation or re-installation, decommissioning, re-commissioning, transfer or relocations of any of the Maintained Equipment or any software or applications contained therein;

8.2. Where Avnet is providing Maintenance Services in circumstances where it is established that the Equipment was not in Good Working Order due to any of the causes set out in clause 8.1 of this Agreement, Avnet may charge additional service fees.

## **9. CONFIDENTIALITY**

9.1. Avnet and the Customer undertake to keep confidential and not to divulge to any third party for the duration of this Agreement as well as for a period of three (3) years after the termination of this Agreement (for any reason whatsoever) any confidential information, reports, records or other restricted documents concerning the other Party or its activity which they have received or obtained in the framework of this Agreement. Each party shall ensure that its directors, employees, agents and other intermediaries are bound by a similar duty of confidentiality.

9.2. The term Confidential Information does not include any information that:

(a) 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);

(b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;

(c) was, is or becomes, available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;

(d) was known to the receiving party before the information was disclosed to it by the disclosing party;

(e) the parties agree in writing is not confidential or may be disclosed; or

(f) is developed by or for the receiving party independently of the information disclosed by the disclosing party.

9.3. A party may disclose the 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, it gives the other party as much notice of the disclosure as possible.

9.4. Upon termination or expiration of this Agreement for any reason whatsoever, the receiving party shall immediately return to the disclosing party any confidential information provided by the disclosing party within the framework of this Agreement

## **10. TERM**

10.1. The term of the Agreement is set out in the relevant Statement of Work.

## **11. TERMINATION**

11.1. Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, Avnet may terminate this Agreement for conveniences by giving a three (3) month prior written notice.

11.2. Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, each party may terminate this Agreement immediately by giving notice to the other party if the other party:

(g) becomes insolvent or unable to meet its obligations as they become due or files or has filed against it a petition under the bankruptcy laws;

(h) ceases to function as a going concern or to conduct its operations in the normal course of business;

(i) materially breaches this Agreement and (i) the other party cannot remedy the breach, or (ii) if the breach can be remedied, the other party fails to do so within thirty (30) days after receiving a

notice specifying the breach and demanding it be remedied. Prolongation of the remedial period will however not be refused unreasonable if the defaulting party has commenced to remedy and continues to do so in all reasonableness and fairness.

11.3. On termination or expiration of this Agreement:

(a) Avnet will stop providing Maintenance Services: and

(b) All sums unpaid by the Customer will become immediately due and payable.

11.4. Avnet reserves the right to charge the Customer for Hardware Services received by the Customer but not yet paid for.

11.5. Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination, including the right to claim for damages in respect of any breach of the Agreement which existed at or before the date of termination.

## **12. LIABILITY**

12.1. To the extent permitted by law, Avnet shall not be liable for and Customer is not entitled to any indirect, special, incidental, consequential, punitive or exemplary damages of any nature including without limitation removal, reinstallation costs, re-procurement costs, costs of cover, loss of use, loss of profit or revenue, business interruption, loss of data, promotional or manufacturing expenses, overhead, injury to reputation or loss of customers even if Avnet has been advised of the possibility of such damages. To the extent permitted by applicable law, customer's total recovery from Avnet for any direct damages will not exceed the total amount paid by customer for Avnet Maintenance Services or third party services performed under the relevant Statement of Work during the twelve month period immediately preceding the event giving rise to the claim

## **13. DATA PROTECTION**

13.1. The Customer warrants that it has obtained or shall obtain all necessary approvals for Avnet to process personal data by virtue of the applicable law. In addition the Customer warrants that the content, use or processing of the data is

not illegal and does not infringe any rights of third parties or any statutory or regulatory provisions. The Customer shall protect Avnet and hold Avnet harmless against any legal claim which may result from a breach of the above warranties.

**14. NON SOLICITATION**

14.1. During the term of the Agreement and for one year from termination or expiration of this Agreement, the Customer shall not, without the prior written consent of Avnet, directly or indirectly solicit, offer employment or hire any current or former employee, subcontractor or consultant of Avnet who was directly involved in the performance of this Agreement. The Customer's failure to comply with this provision shall result in a penalty equal to an amount to 12 (twelve) months of salary or payment of that employee, subcontractor or consultant.

14.2. Clause 14.1 does not restrict the right of Customer to solicit or recruit generally in the media and does not prohibit Customer from hiring an employee of Avnet who answers any advertisement or who otherwise voluntarily applies for hire without having been initially personally solicited or recruited by Customer.

**15. WAIVER**

15.1. No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**16. NOTICE**

16.1. Any notices given under this Agreement will be sent by certified or registered mail, return receipt requested, or by recognized delivery service providing traceability, to the party to be notified at its address set forth above.

**17. FORCE MAJEURE**

17.1. Except for Customer's payment obligations, neither party shall be liable for failure to fulfil its obligations under this Agreement or for delays in delivery due to causes beyond its reasonable control (for example, acts of nature, acts or omission of the other Party, operational

disruptions, man-made or natural disasters, epidemic medical crises, materials shortages, strikes, criminal acts, delays in delivery or transportation, or inability to obtain labour or materials through its regular sources).

17.2. In the event of force majeure occurs, the parties shall immediately consult with one another with a view of finding an equitable solution and shall use all commercial reasonable efforts to minimize the consequences of the occurrence. If the conditions of force majeure prevail for more than one (1) month and the parties have not been able to find an equitable solution, each party may terminate the Agreement by operation of law and without the parties owing each other any compensation other than those who were already due.

**18. ASSIGNMENT**

18.1. Neither party may assign this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Avnet's affiliated entities may perform its obligations hereunder. This Agreement is binding on successors and assigns.

**19. ENTIRE AGREEMENT**

19.1. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, related to its subject matter.

**20. COMPLIANCE WITH LAWS**

20.1. The parties shall observe and comply with all applicable laws, rules and regulations applicable to the performance of their respective obligations under this Agreement including, but not limited to, anti-corruption laws (such as the U.S. Foreign Corrupt Practices Act) and regulations in respect of import or export of equipment.

**21. VARIATION**

21.1. No variation of this Agreement shall be effective unless it is in writing and signed by the parties or their authorised representatives.

**22. SEVERANCE**

22.1. If any provisions or part-provisions of this Agreement is or becomes invalid, illegal or

unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

22.2. If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provisions.

**23. NO PARTNERSHIP OR AGENCY**

23.1. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorize any party to make or enter into any commitments for or on behalf of any other party.

**24. SURVIVAL OF OBLIGATION**

24.1. All obligations under this Agreement which by their nature extend beyond termination will survive termination and remain in effect, including without limitation all monetary obligations of either party to the other under this Agreement.

**25. EXPORT/IMPORT**

25.1. Certain Maintenance Services, Equipment and related technology and documentation sold by Avnet are subject to export control laws, regulations and orders of the United States, the European Union, or other countries ("Export Laws"). Customer shall comply with such Export Laws and obtain any license, permit or authorization required to transfer, sell, export, re-export or import the services, products and related technology and documentation.

25.2. Customer will not export or re-export the Maintenance Services, Equipment and related technology and documentation to any country or entity to which such export or re-export is prohibited, including any country or entity under sanction or embargoes administered by the United Nations, U.S. Department of Treasury, U.S. Department of Commerce or U.S. Department of State. Customer will not use the Maintenance

Services, Equipment and products and related technology and documentation in relation to nuclear, biological or chemical weapons or missile systems capable of delivering same, or in the development of any weapons of mass destruction.

**26. APPLICABLE LAW AND JURISDICTION**

26.1. All issues, questions and disputes concerning the validity, interpretation, enforcement and termination of this Agreement shall be governed by and construed in accordance with laws of the country where the Avnet entity entering into this Agreement has its registered office. No effect shall be given to any other choice-of-law or conflict-of-laws rules or provisions that would cause the laws of any other jurisdiction to be applicable.

26.2. All disputes concerning the validity, interpretation, enforcement, performance and termination of this Agreement shall be submitted to the exclusive jurisdiction of the courts of the country where the Avnet entity entering into this Agreement has its registered office.