



**Original**

**The Complete  
Guide to IBM  
Third Party  
Support &  
Maintenance**

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# 1 **Executive Summary**

Software vendors – including IBM – are increasingly reliant on support and maintenance contracts to protect their margins. Loyal customers are rewarded with the opportunity to pay ~20% of the original software purchase price in return for the right to upgrade said applications.

For IBM customers, software maintenance can consume as much as 80% of their total annual software spend. One Infoworld reader suggested, “Maintenance revenue provides an inappropriate incentive to release buggy software.”<sup>1</sup>

As strategic IT spend increases, CIOs are looking to make savings elsewhere. Attention quickly shifts to support and maintenance contracts – particularly for stable platforms that require little to no vendor assistance.

For the vendor, a maintenance contract provides additional leverage to encourage customers to upgrade to a newer version of their software. As well as squeezing new capital spend from the customer, the upgrade helps lock them into a new maintenance contract cycle, helping to guarantee revenue for a few more years. But where the customer has built a stable operating platform, upgrading is costly, unwelcome and incredibly complicated.

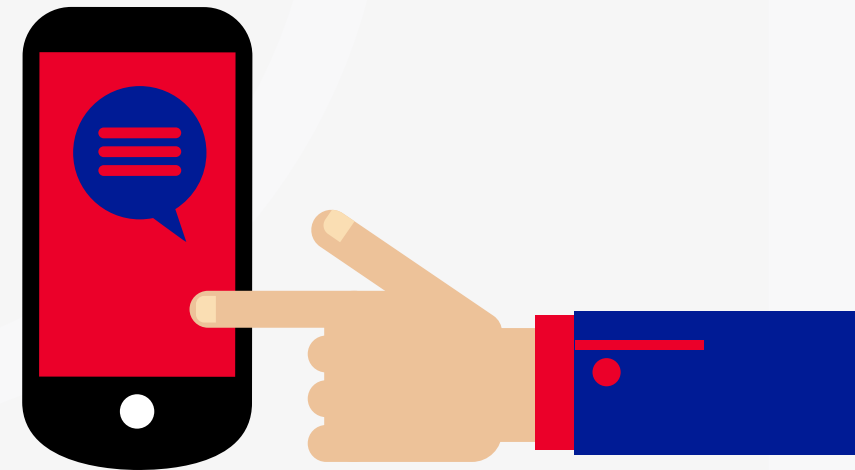
[1 Maintenance madness – Infoworld](#)

Upgrading one IBM system typically triggers an update of many other related applications, increasing the cost and complexity of every upgrade exponentially. And because IBM can force updates as part of their maintenance contracts, this expense is unavoidable. Worse still, without proper advice surrounding End of Support updates, your technical team seldom has the time to properly plan, let alone execute, a completely error-free upgrade.

In many cases, software maintenance contracts seem to exist for the vendor's benefit – not yours. Which is why third party support and maintenance contracts have begun to gain greater acceptance among enterprise-class organisations keen to contain operating costs.

**“What am I getting? I’m not getting to dictate product strategy, and I don’t get premier support. I’m getting the right to code fix it and to upgrade.”<sup>2</sup>**

— Manjit Singh, CIO of Chiquita Brands and user of third party software maintenance services



[2 Software Maintenance Fees: Time For This Model To Change?](#)

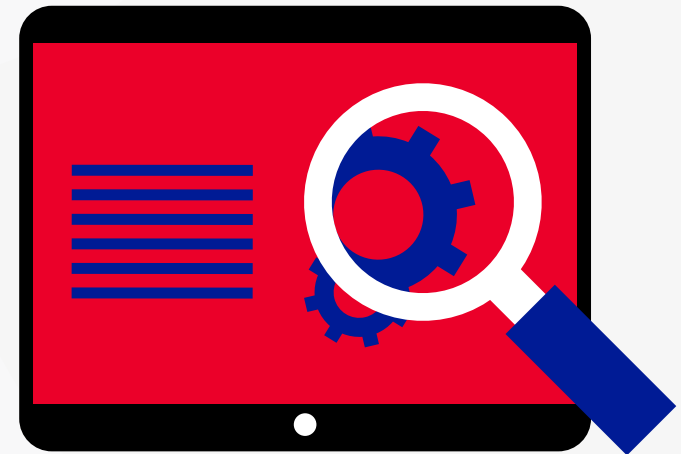
Gartner research discovered that 4 in 5 IT professionals would invest in a third-party maintenance solution if it was more affordable and offered more comprehensive support than their current contract.<sup>3</sup> The appetite for third party maintenance definitely exists – but what are the factors that need to be considered?

**“The software vendors are very bullish. I find their [IBM’s] arrogance unacceptable; their pricing model is complex, and understanding their licensing model is complex too.”<sup>4</sup>**

— Paul Denman, Head of Infrastructure for Direct Line Group, and user of third party maintenance services

[3 CIOs and ERP Application Leaders Can Exploit the Impact of Differences in Third-Party Application Maintenance and Support Providers](#)

[4 IBM & Oracle: “I find their arrogance unacceptable” – The ITAM Review](#)



## **2**

# **The Risks of Third Party IBM Support & Maintenance**

To say there are no risks associated with third party support and maintenance would be a lie. There are potential problems that your business needs to be aware of, although they tend to be related to the provider themselves, rather than the concept of third party maintenance.

Your account manager at IBM will be more than happy to outline the pitfalls of third party support – real or imagined. But there are organisations who have been using third party services for some years now, indicating that there are rewards available to those who successfully identify (and avoid) these hazards.



## A breakdown in your relationship with IBM

Choosing to outsource support to a third party can place strain on your existing relationship with IBM. This is of particular concern when your business uses other products that are still under maintenance with IBM direct.

Historically vendors have used a lapse in maintenance agreements to increase the renewal cost. One high profile software company (later identified as Sage <sup>5</sup>) demanded that returning customers who allowed their maintenance contracts to lapse pay for the intervening period plus a further 25% “penalty”.<sup>6</sup> Veritas apply a similar Reinstatement Fee for renewing lapsed contracts.<sup>7</sup>

Renewing a lapsed contract with IBM is also quite costly. A “reinstatement fee” is levied on returning customers, worth three times the normal annual support fee. The long-term punitive costs (160% of the annual support contract cost in year one) could quickly cancel out any savings made through reduced third party support unless the business case is solid.

### Minimising the risk

If your business plans to replace an application with a non-IBM alternative in future, the question of ongoing relationships is of far minimal importance. But if you plan to run a mix of applications supported by IBM and third parties, you may need to tread carefully.

As with any relationship, communication is key to keeping your IBM account manager on board. If your relationship with IBM is important to you, take time to explain your software strategy, budgetary constraints and the reasons your business is adopting third party maintenance services. Make sure you understand if this will affect discounts you receive on other products or services from IBM (if applicable) as this will be important for building your business case.

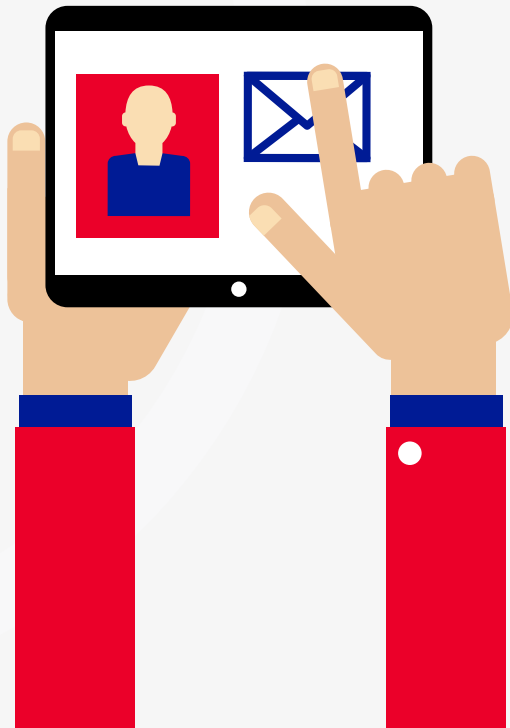
This helps to prevent misunderstandings, and helps to maintain focus on products that IBM do still support. Your account manager will also find it much easier to recommend products and services that can play a productive part in your strategic vision.

[5 Come on down! – Infoworld](#)

[6 Maintenance games – Infoworld](#)

[7 Maintenance madness – Infoworld](#)

Remember, if you do need to go back to IBM for whatever reason, there is always the option of either buying the software again from scratch or reinstating the maintenance contract. Despite the additional cost of doing so, the business case for third party services remains strong if the new agreement remains in place long enough. Carefully examine the business case for third party services – particularly into the long-term.



## Illegal support provisions

In order to provide a “like for like” support service, some providers have broken the licensing terms attached to the applications being maintained. Any support provider who accesses or modifies proprietary source code, or makes use of restricted APIs as part of their provisions is breaking the law.

Oracle won a famous victory over third party maintenance provider Terix in a case that still causes many businesses to avoid anything but OEM support. Oracle was awarded \$71 million in damages after a court ruled Terix had illegally accessed Solaris operating system patches to which it, and its customers, were not entitled.<sup>8</sup>

This of course leaves the customer – you – in a difficult position. Your third party support contract be terminated with immediate effect, leaving your application platforms unprotected. Your business could also be prosecuted if there is any suspicion of complicity in circumventing the vendor’s intellectual property.

<sup>8</sup> [Oracle wins damages vs. third-party maintenance firm Terix – ZDNet](#)



### Minimising the risk

In general, it is accepted that an independent third party can legally provide software maintenance services. Indeed, even in the Oracle v Rimini Street litigation, this was accepted. Oracle's complaint was about the fact that Rimini Street had downloaded copies of licensed software belonging to customers onto its own environmental workspace.

The law relating to IPR protection of computer software, in Europe, is governed by the Computer Software Directive (2009/24/EC).<sup>9</sup>



Under this directive:

1. The protection of computer programs is via the law of copyright;
2. Copyright protection in computer programs arises automatically;
3. The exclusive rights of the copyright owner in a computer program include the permanent or temporary reproduction of a computer program or part of it even if such acts occur by loading, displaying, running, transmission or storage of the computer program (Art.4.1(a));
4. There are certain exceptions to such rights e.g. the making of a backup copy; the observation, study or testing of the functionality of a computer program to determine the ideas and principles which underlie the computer programme;
5. The decompilation of a computer program to obtain information necessary for a third party computer program to interface with it.

<sup>9</sup> [Directive 2009/24/EC of the European Parliament and the Council](#)

It is clear from these clauses that almost any act of software maintenance will involve loading or running a computer program. Without a licence to do so, this would constitute an infringing act.

However, precisely because any act of loading or running a computer program requires a licence, licensees of IBM software programs are entitled to do so. To this end, IBM has an International Program License Agreement which sets out the terms of the licence. Licensees are granted a non-exclusive licence to use the software (according to the terms of its licence).

In most cases, the licences for IBM “legacy” software are perpetual, allowing ongoing use even if the licensee chooses not to maintain a Support and Maintenance Agreement with IBM. More recently, software companies have sought to license software on a “rental” basis – under which terms ongoing use would almost certainly be forbidden.



A typical licence used by IBM is their “IBM International Program License Agreement”. Clause 3 which provides the actual “License Grant” says:

1. The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not sold.
2. IBM grants Licensee a nonexclusive license to
  - 1) use the Program up to the Authorized Use specified in the PoE,
  - 2) **make and install copies to support such Authorized Use,** and
  - 3) make a backup copy, all provided that
3.
  - a. Licensee has lawfully obtained the Program and complies with the terms of this Agreement;
  - b. the backup copy does not execute unless the backed-up Program cannot execute;
  - c. Licensee reproduces all copyright notices and other legends of ownership on each copy, or partial copy, of the Program;
  - d. Licensee ensures that anyone who uses the Program (accessed either locally or remotely) 1) does so only on Licensee’s behalf and 2) complies with the terms of this Agreement;**
  - e. Licensee does not 1) use, copy, modify, or distribute the Program except as expressly permitted in this Agreement; 2)

reverse assemble, reverse compile, otherwise translate, or reverse engineer the Program, except as expressly permitted by law without the possibility of contractual waiver; 3) use any of the Program’s components, files, modules, audio-visual content, or related licensed materials separately from that Program; or 4) sublicense, rent, or lease the Program; and f. if Licensee obtains this Program as a Supporting Program, Licensee uses this Program only to support the Principal Program and subject to any limitations in the license to the Principal Program, or, if Licensee obtains this Program as a Principal Program, Licensee uses all Supporting Programs only to support this Program, and subject to any limitations in this Agreement. For purposes of this Item ‘f’, a ‘Supporting Program’ is a Program that is part of another IBM Program (‘Principal Program’) and identified as a Supporting Program in the Principal Program’s LI. (To obtain a separate license to a Supporting Program without these restrictions, Licensee should contact the party from whom Licensee obtained the Supporting Program.)<sup>10</sup>

[10 International Program License Agreement - IBM](#)

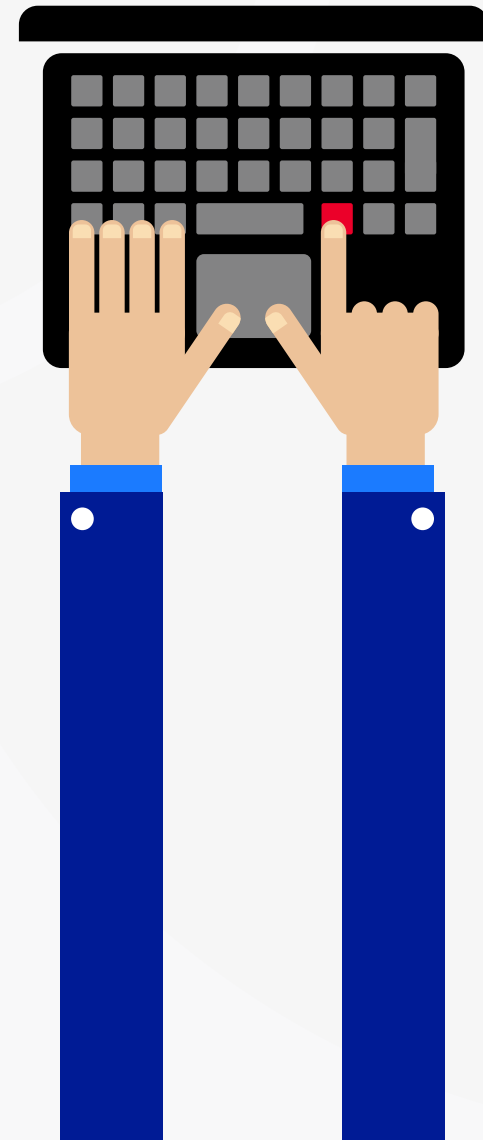
There are a number of points to note:

1. There is no contractual bar on the licensee getting the licensed program maintained by an independent third party company not connected with IBM;
2. Clause 3(b) specifically envisages that third parties may access the licensed program locally or remotely provided that it is done on behalf of the Licensee.
3. The IPLA envisages that a licensee can make and install copies of their software to support authorised use.

Working from IBM's own license agreement, provided that the third party provider is maintaining a licensed program on behalf of the licensee, any acts of running or loading the software (being restricted acts) to maintain the program is permissible under the licence.

It is also worth noting that in many cases, a licensee uses a mixture of employees and consultants (i.e. freelancers) to use and maintain its software. So already there is no clear line that defines who can (and cannot) run or load licensed applications.

There is no substantive difference between a freelance self-employed IT consultant who helps maintain the licensed software and a third party company such as Origina. Accordingly, if a licensee is entitled to maintain its own licensed software



(which it is), then there is no substantive difference between such being done by employees, freelance individuals or a third party like Origina. Provided that these activities are done on behalf of the licensee, such acts are permitted.

It should also be said that whilst the licence is to “use” the program, the term “use” is not defined in the agreement. It therefore encompass any type of use that would be in the reasonable contemplation of the parties. This includes actually using the program, and any ancillary use of the program to support authorised use (see “make and install copies to support such Authorised Use”). Clearly, maintenance activities that allow a licensee to “use” the licensed software would be considered “supporting” such authorised use.

IBM has never sought to suggest that third party maintenance of its licensed software is per se illegal. This is no doubt because it is aware that doing so would be seen as an anti-competitive practice.

Deciding whether the support provisions on offer are fully legal should not be too difficult. As a rule of thumb, a third party support provider should not be able to offer IBM feature upgrades or patches that are released after the end date of your IBM maintenance agreement. While these must always be sourced directly from IBM under your licence entitlements, a third party support provider should have a clear process to assist you in getting these. If a lack of vendor maintenance agreement prevents access or these upgrades/patches were released after your maintenance agreement ended, you must not obtain updates from anywhere else.

Always make sure that you understand your licence entitlements, and that your third party support provider understands your entitlements under the software license, your due diligence process should also ask about the provenance of patches, upgrades and enhancements to avoid doubt. A reputable maintenance partner will never offer software upgrades you are not entitled to – and they will make you aware of this fact up front.

## Sub-standard support and maintenance

In the event of a serious system problem, you need access to suitably skilled product experts who can provide instant support. IBM, like every other software vendor, promises this as standard in every support and maintenance agreement. So even if IBM does fail to meet expectations, the IT team knows what to expect from their requests for software support.

Third party support is an unknown quantity however. How can a smaller business compete against the global reach and in-depth product knowledge of IBM? Do they have the manpower and expertise required to provide the depth of support you need to solve a problem? Logically, the vendor is best placed to provide the highest levels of support.

Anecdotally, this is not necessarily the case. IT industry websites are full of examples where vendors consistently fail to deliver the level of support customers expect in return for their ~20% annual maintenance fees. Research conducted by Constellation Research found that more than 60% of businesses had experienced poor levels of service. They also discovered that 30% were providing their own software support, further reducing the value of their maintenance contracts. <sup>11</sup>

## Minimising the risk

You are most likely to initially consider third party support for software that is not mission-critical, or which is being maintained for legacy operations. 24x7x365 support with a 30 minute response time is probably unnecessary.

But there is nothing to suggest that reputable third party providers are unable to offer this level of support if required. Ask to see evidence of the provider's average response times, and time-to-fix statistics to get an understanding of how well they perform. Where possible, you should also ask to speak with existing service users to get a feeling for what it is like working with a particular provider.

You will find that the third party providers actually outperform IBM on most fronts.

[11 Why Users Must Preserve Their Third Party Maintenance Rights – R Ray Wang / Constellation Research](#)

## Compliance and data protection issues

Your software maintenance partner will often be party to sensitive information, your business needs to be sure that they can comply with relevant legislation. The Data Protection Act 1998,<sup>12</sup> the Sarbanes Oxley Act and PCI DSS may all have some bearing on your operations, and you need to be sure that they are upheld at all times.

Your previous dealings with IBM offer some reassurance that they are not only aware of your compliance burden, but that they are also capable of upholding them. When moving to a new third party provider, you do not have the same kind of assurance built on experience.

### Minimising the risk

As with any new partnership, due diligence assessment before entering into a contract will be essential. Make sure the provider knows and understands the constraints under which you operate, and ask them to provide suitable safeguards to prevent breaches.

It is also worth bearing in mind that most of the engineers employed by a third party maintenance provider have worked at IBM previously. They have a similar level of understanding and training to IBM's existing support team. And because they specialise in post-warranty software versions, they may be even better placed to assist businesses running legacy applications.

Never be afraid to get specific when specifying support requirements. Ensure that any potential provider has the relevant skills to support the exact product version you use to prevent problems in future.

<sup>12</sup> <https://www.dataprotection.ie/docs/Data-Protection-Acts-1988-and-2003:-Informal-Consolidation/796.htm>

### **3**

## **The Rewards of Third Party IBM Support & Maintenance**

**To justify the move away from an IBM maintenance contract, the benefits of breaking away from the vendor must be significant. With the right third party provider and contract in place, the benefits extend beyond simple cost savings.**

### Lower costs

For many businesses, initial investigations into third party support provisions are motivated by a desire to reduce their maintenance costs. According to Accenture, maintenance and support contracts account for 50-60% of all annual software spend.<sup>13</sup>

When you consider that software is the first or second priority for IT spending,<sup>14</sup> your business could be spending 25% or more of the total IT budget on simply standing still. Support and maintenance help your business stand still rather than helping you move forward.

Depending on the specific application and your third party support provider, maintenance contract costs can be as much as 50% lower than the IBM equivalent. Accenture suggest potential savings of between \$600,000 and \$2.3 million for the largest organisations.<sup>15</sup>

[13 How software maintenance fees are siphoning away your IT budget— and How to Stop It – Accenture](#)

[14 Ibid](#)

[15 Ibid.](#)



The cumulative costs of third party support are far lower than those of IBM's contracts; by year five, cumulative maintenance costs will exceed the total purchase price of the software for the first time. A third party contract can help to reduce cumulative spend – and the total cost of ownership moving forward.

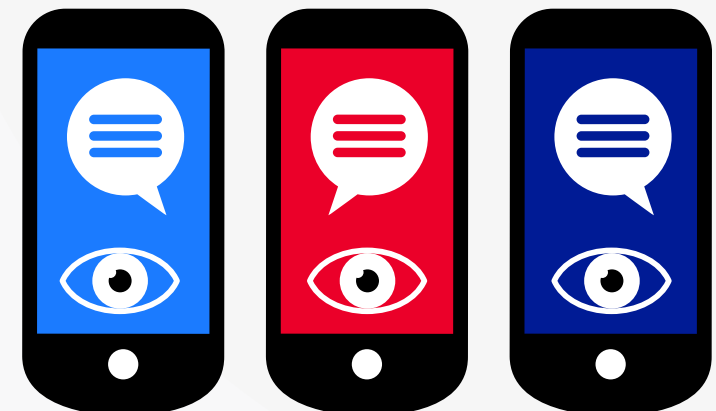
Escalating maintenance costs are even harder to justify when you consider the amount of support calls you make for a stable, well-established platform. A £100,000 maintenance contract that is only used ten times per year equates to £10,000 per support call.

Third party support helps to cut the up-front cost of your maintenance provisions and to keep cumulative spend down for as long as you own the specified applications.

## Support for customisations

Few vendors, including IBM, support customisations to their platforms – the maintenance agreement typically only covers the base application. This despite the fact that the customisations are a vital part of your business processes.

Some third party vendors do offer support for customisations however, offering additional value from a non-IBM maintenance contract. Instead of leaving these platform additions completely unprotected, your business can access service and support in the event of a problem – without tying up your own staff and resources in the process.



## Total control of your operating environment

On the face of it, a vendor's maintenance contract is supposed to guarantee support for your applications. But at the same time it also gives the vendor a high degree of control over your IT infrastructure. By withdrawing support for your applications, they can effectively force you to perform upgrades.

Under a third party maintenance agreement, your business remains in total control of its infrastructure. If your system is stable and continues to deliver the performance your business needs, you can opt out of the IBM-defined upgrade cycle. This is particularly helpful for legacy systems, or those which are used infrequently and do not need the latest features – or the exorbitant maintenance contract fees that these unwanted features attract.

Every upgrade is also a risk in itself – whether you want the new features or not. After years of operation, your platform is stable and delivering results. Upgrades and patches threaten that stability – particularly on customised systems – which is why enterprise CTOs typically avoid upgrading unless there is a clear business case for doing so.

Remember that understanding your licence entitlements is a very important part of this assessment. Where older software versions are being used, and support has been with the vendor, these entitlements do not expire once those contracts end. You may lose automatic future entitlements, but the assets you paid for are yours in perpetuity.

A recent Forbes article regarding Oracle and Third Party Support touched on this, saying “If they all of a sudden attempted to limit the scope of what Oracle support customers get for that payment, those customers would reasonably want to be compensated for the loss in value.”<sup>15</sup>

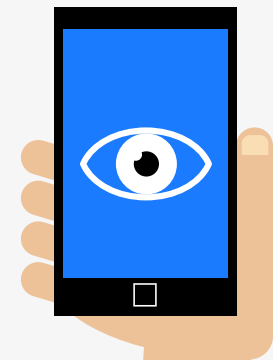
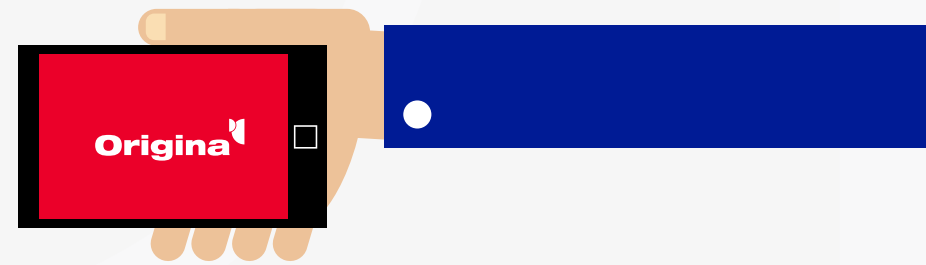
The potential savings offered by third party software maintenance and compounded by this avoidance of upgrade costs. Some firms have achieved a 90% reduction against the equivalent service from IBM for their software. Third party maintenance services could actually help the CTO achieve one of his most important strategic goals – to deliver a truly stable operating environment for the business.

[15 Can Third Party Support Really Hurt Oracle? - Forbes](#)

## You can always go back

It is also worth bearing in mind that the decision to adopt third party support is not a one-way choice. Your business can move back to OEM support if the third party equivalent fails to meet expectations.

In fact, some businesses claim to have received preferential pricing on their next purchase as OEMs fight to reclaim a “lost” customer. This could be particularly useful for any business currently running previous versions of an IBM application, but who plan to upgrade at some point in the future.



## **4**

# **Balancing Risk and Reward - what works for your business?**

In terms of cost-savings alone, the benefits of third party maintenance are unarguable. Even a 10% reduction on the IBM maintenance renewal fee could be a considerable IT budget saving – imagine what you could achieve with a 50%+ saving. Over the course of the application's lifetime, third party support services can considerably reduce the total cost of ownership.

Third party support services also help your business reclaim control of the data centre. By breaking out of the IBM-defined upgrade cycle, you can further contain costs and reduce the risks presented by untested software updates.

It is worth remembering that third party maintenance is not suitable in every situation however. When first purchasing a new application, there's a very good chance that support and maintenance was bundled into the deal for instance. It does not make financial sense to try and break the contract early – instead you will probably want to let it run its course.

For mission-critical applications you should also give careful thought to the need for patches and updates. Although IBM will make critical security patches available free of charge, anything else is restricted to maintenance contract holders. You must carefully consider whether this is likely to be a problem at any point in the future.

Just like every business partnership, third party support provisions do present potential risks. The reality is that none are insurmountable – despite what your IBM account manager says. And when so much of IBM's revenue is tied to the recurring maintenance contract income, you can see why they will try and prevent your defection to a lower-priced equivalent service elsewhere.

## About Origina

Recognising a significant market opportunity Origina has created a mould-breaking business that delivers a vastly improved customer-centric support service, using many of the same independent technical resources that IBM currently does, but at a significantly reduced cost.

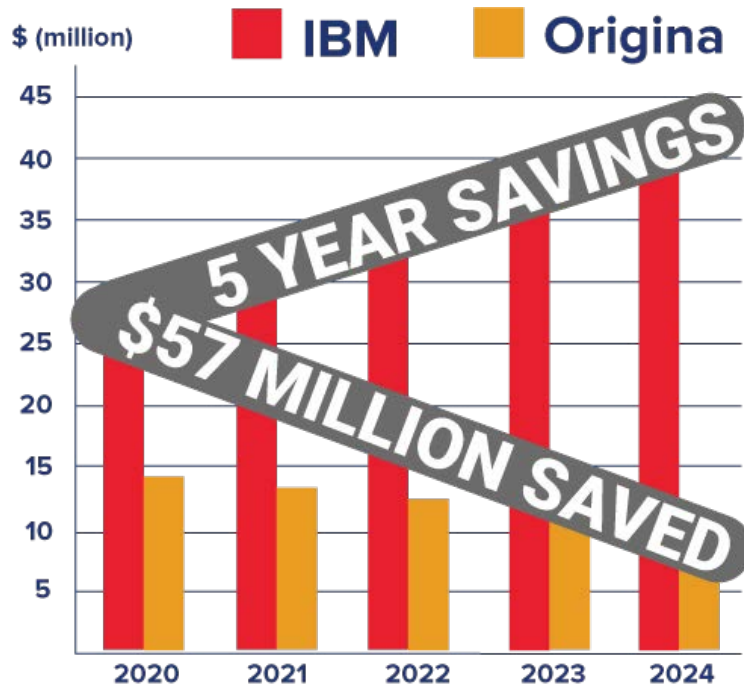
Origina has extensive internal technical expertise, and by harnessing the power of the collective support ecosystem it has evolved from its origins as an IBM Business Partner to become the only credible alternative independent provider of software maintenance for IBM software products.

Headquartered in Dublin with locations throughout the world, Origina delivers value-based and cost effective services to a wide spectrum of international customers.



## About Tomás – CEO/Founder

Tomás is a thought leading and vocal member of the secondary ICT market. Having spent over 15 years either working in IBM or in leading one of its more successful European business partners, Tomás understands the issues and dynamics at play in the rapidly changing IBM SW landscape. Having spent the last number of years building a business that is fast becoming a recognised global leader in the independent support of IBM software, Tomás understands the importance of representation and co-operation to achieve common goals. He has been a consistent advocate for the promotion of choice for large ICT users and a campaigner against the lock-in practices that can dominate the ICT industry. Having cut his teeth with the SIA's Advocacy Group (that ultimately became Repair.org) he then went on to help found Free ICT Europe Foundation in 2014.



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### LONDON OFFICE

Tower 42,  
25 Old Broad St., London  
EC2N 1HN  
United Kingdom

Phone: +44 (0) 2033 183790  
Email: [info@origina.co.uk](mailto:info@origina.co.uk)

### DALLAS OFFICE

5151 Headquarters Drive,  
Suite 275, Plano,  
TX 75024

Phone: +353 1 294 2300

### DUBLIN OFFICE

Burton Court,  
Burton Hall Road, Sandyford  
Industrial Park, Ireland  
D18 Y2T8

Phone: +353 1 294 2300  
Email: [info@origina.ie](mailto:info@origina.ie)

Web: [www.origina.com](http://www.origina.com)

