



Service Level Agreement

Continental U.S.A. & Canada

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Service Level Agreement (SLA)

This Service Level Agreement (“Agreement”) is made by and between KEMP Technologies, Inc., (“KEMP”) and any entity (“Customer”) that has an active Gold or Platinum support contract for the LoadMaster product suite (“Product”).

1. Agreement

KEMP agrees to support, maintain, repair or replace the purchased KEMP products and Customer agrees to pay for such services subject to the terms of this Agreement.

2. Scope of Service

This agreement provides telephone support as defined in Appendix A for Customers in the Continental U.S.A. and Canada. Separate agreements are available for other regions of the world.

The support service offered by KEMP is limited to correcting issues with KEMP LoadMaster hardware and software Products and does not provide for KEMP support staff acting as a consulting resource to configure, or diagnose problems in, any other part of the Customer’s network.

Self-Help User support includes the KEMP forums where detailed resolution information may be found, <http://forums.kemptechnologies.com/index.php>.

KEMP reserves the right to modify this SLA at its discretion.

3. Hour of Operation

KEMP provide two levels of telephone support shown in Appendix A:

Gold support provides 5x10 telephone cover between the hours of 08:00 and 18:00 local time.

Platinum support provides 24x7 telephone cover for Priority 1 (Critical) situations, and 5x10 telephone cover for all other priorities, as defined for Gold support.

Contact information:

- E-mail: nasupport@kemptechnologies.com
- Platinum Level: +1 631-775.0027
- Gold Level: +1 631-345-5292

4. KEMP’s Obligations.

- (a) KEMP will provide telephone support for any Product covered by this Agreement. Such support will consist of responding to trouble calls as reasonably required to make the Product perform as described in the current Product specifications. Customer will receive Gold or Platinum service as agreed and subject to the service levels shown in Appendix A.
- (b) Customer is entitled, at no charge, to updated versions of covered software such as bug fixes, and incremental enhancements as designated by minor software update increases (*e.g.* LOADMASTER V1.4.4 to LOADMASTER V1.4.5). Customer may receive special pricing on upgraded versions of covered products such as new clients, new modules, and major enhancements.
- (c) KEMP will, at its option, repair or replace any Product or component that fails during the term of this Agreement at no cost to Customer, provided that Customer contacts KEMP Customer Support to report the failure and complies with KEMP’s return policies. Products returned to KEMP must be pre-authorized by KEMP with a Return Material Authorization (RMA) number marked on the outside of the package, and sent prepaid, insured and packaged appropriately for

safe shipment. Only packages with RMA numbers written on the outside of the shipping carton and/or the packing slips and shipping paperwork will be accepted by KEMP's receiving department. All other packages will be rejected. A replacement Product or component will be shipped to the Customer on the first business day following confirmation of the failure. Customer will return the failed Product or component to KEMP under the RMA number issued by KEMP upon receipt of the replacement. KEMP may invoice Customer for any failed Products or components that are either further damaged by the Customer or not returned within 30 days of receipt of the replacement. Title to any returned Products or components will transfer to KEMP upon receipt. KEMP will be responsible for all freight charges for returned Products or components provided Customer uses KEMP designated carrier. KEMP will replace defective media or documentation or, at its option, undertake reasonable efforts to modify the software to correct any substantial non-conformance with the specifications.

5. Customer Responsibilities

The Customer agrees to:

- (a) Ensure there is an active service agreement with KEMP.
- (b) Make available a representative(s) when resolving a service related incident.
- (c) Respond in a timely manner to requests for further information regarding the incident.
- (d) Provide accurate and detailed information regarding the issue being reported, with a clear definition of the symptoms.

6. Restrictions.

Services provided by KEMP under this Agreement are limited to the Product and are contingent upon the Customer's proper use of the Product in the application for which it was designed. KEMP will not be obligated to provide any service or to correct any malfunction, damage or other problem if the Product: (a) has been altered, except by KEMP, (b) has not been installed, operated, repaired, or maintained in accordance with KEMP instructions, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence or accident, (d) has been operated outside of the environmental specifications for the Product or (e) is related to configuration of Customer's network beyond that necessary to the use or installation of KEMP Products. KEMP reserves the right to limit support (including error correction services) of any Product version prior to the two most recently-released major versions of that same Product (KEMP's products are currently designated: major version, minor version). For example, if Customer has LOADMASTER V4.x installed on-site upon signing both license and Support agreements with KEMP and then KEMP releases LOADMASTER V5.0 and 6.0 subsequently, any time after the release of V 6.0, KEMP has the option to limit support of LOADMASTER V4.x.

7. Prices and Payment

Fees for the initial or any subsequent term of this Agreement will be due and payable net 30 days from date of invoice, and all payments will be made in US dollars. KEMP may accept payment in any amount without prejudice to its right to recover the balance of the amount due or to pursue any other right or remedy. No endorsement or statement on any check or payment or in any letter accompanying a check or payment or elsewhere will be construed as an accord or satisfaction. Overdue payments may be charged interest at the lesser of 1.5% per month or the maximum interest allowed by law. If KEMP is required to retain a collection agency or attorney to collect overdue payment, all reasonable collection costs, including attorney fees, will be payable by Customer.

8. Recertification.

KEMP is under no obligation to accept any request for support renewal or requests for support on Products purchased from sources other than an authorized KEMP Reseller or directly from KEMP (e.g. for Products purchased at an online auction). In this case the Product will first be subject to an evaluation by a representative of KEMP who will inspect the Product and determine if it is in a condition eligible for support. This service carries a Recertification fee of US \$2,600 per unit (US \$5,200 for redundant systems) payable to KEMP Technologies Inc., excluding shipping charges. Shipping charge will be the responsibility of the party requesting Recertification of the product. The Recertification fee is in addition to the then current rates for support.

9. Lapsed Service Fee

If Customer purchases an annual Support Agreement for a Product where the support Agreement has lapsed on the Product by up to 180 days, Customer will be charged a “Lapsed Service” fee at the rate of \$2,000 USD in addition to the then-current standard Support fee pro-rated for the time period during which no Support was in effect.

10. Taxes and Other Charges

All charges are exclusive of all foreign, federal, state, municipal, or other government excise, duty, sales, use or occupational taxes or charges now in force or enacted in the future, and therefore are subject to an increase equal in amount to any taxes or charges KEMP may be required to collect or pay upon the services performed or materials provided hereunder whether during the service coverage period or otherwise.

11. Limitation of Liability

KEMP's sole obligation and liability hereunder is for the service and repair of the Products covered under this Agreement. KEMP will have no further obligation or liability beyond such service and repair. IN NO EVENT WILL KEMP BE LIABLE FOR ANY DAMAGE RESULTING FROM LOSS OF USE, DATA, PROFIT, OR BUSINESS, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER ARISING FROM AN ACTION OF CONTRACT, TORT OR OTHER LEGAL THEORY. KEMP LIABILITY FOR DAMAGES FOR ANY CAUSE, WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION (IN CONTRACT OR TORT) WILL BE LIMITED TO THE SERVICE FEE ACTUALLY PAID UNDER THIS AGREEMENT.

12. General Provisions.

- (a) Non-Assignment: No assignment by the Customer of this Agreement will be binding on KEMP without KEMP's prior written consent.
- (b) Force Majeure. KEMP will exercise every reasonable effort to meet its obligations hereunder, but will not be liable or in default under this Agreement due to the delays in delivering materials or furnishing services resulting from any cause beyond its reasonable control including, but not limited, to acts of God, weather, strikes, labor disputes, transportation difficulties, and/or any other cause whatsoever.
- (c) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of New York, without regard to its conflicts of law rules.
- (d) Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior communications and writings on this subject matter. No modifications of any nature will be binding on the parties unless evidenced by a written amendment signed by authorized representatives of both parties.
- (e) Severability. If any provision of this Agreement is found to be unenforceable, the remainder of the Agreement will be enforced as fully as possible and the unenforceable provisions will be

deemed modified to the limited extent required to permit its enforcement in the manner most closely representing the intention of the parties as expressed herein.

- (f) **Survival.** The provisions of the clause titled, Taxes and Other Charges, and the obligation to pay any amounts owed prior to the effective date of termination will survive termination of this Agreement.

Appendix A

The table shows the priorities and corresponding service levels of support calls made to KEMP.

Priority	Characteristics	Gold Support	Platinum Support
1 Critical	LoadMaster hardware is down and completely unable to service the Users and no workaround is available.	Customer will be contacted within one (1) hour of initial contact, if reported during appropriate support hours.	Customer will be contacted within one (1) hour of initial contact.
2 Major	Large number of Users are impacted and no work around is available.	Customer will be contacted within one (1) hour of initial contact, if reported during appropriate support hours. If reported outside of appropriate support hours, the incident will be actioned the following business day.	Customer will be contacted within one (1) hour of initial contact.
3 Normal	Impact on a small number of Users, or, impact on a large number of Users but where a workaround is available.	Customer will be contacted within two (2) hour of initial contact, if reported during appropriate support hours. If reported outside of appropriate support hours, the incident will be actioned the following business day.	Customer will be contacted within one (1) hour of initial contact.
4 Low	No immediate operational impact on Users.	Customer will be contacted within two (2) business days of initial contact.	Customer will be contacted within two (2) business days of initial contact.
5	Scheduled support during off-hours. Contact KEMP for a quote.		

Notes:

1. The times shown are target times and will be adhered to with the best effort of KEMP support personnel. However, certain conditions could arise that may necessarily increase the target response times.
2. Incoming support calls will be handled on a priority basis, i.e. priority 1 will be addressed before lower priority calls, however a support call of priority 1, 2 or 3 that is currently being actioned will continue to be worked on and the next problem to be actioned will be the next queued priority 1 incident on a First-Come- First-Served basis.
3. Over the course of problem investigation, the priority may need to be changed. For example, if it is determined the issue affects more Users than initially estimated, the priority may be increased and more resources applied to finding a solution. Conversely, if it is determined that a work around is available, the priority may be lowered. The KEMP support personnel working on the problem will be responsible for changing the priority level as appropriate.
4. Resolution will be determined by the KEMP support staff working on the problem and the resolution information will be updated in the trouble ticketing system.

5. Any interruption to the normal functioning of a service or system is considered a trouble, and when reported via email a Trouble Ticket will be created automatically, and if reported by telephone, the trouble ticket will be created manually by KEMP support staff.

Document History

Date	Change	Responsible
April 2011	Refined definition of service priorities.	CJM