

Maintenance Agreement SLA

Standard Scope of Work and Exclusions

For all of the following, the determination of the appropriate frequency of such actions is at the sole discretion of Kew Computers Ltd. Furthermore, in all events the final decision regarding the inclusion into or exclusion of services from the Maintenance Agreement and the definition of such services remains at the sole discretion of Kew Computers Ltd.

1) Definition of Services Covered by Maintenance Agreement

1.1 Regular maintenance of Personal Computers (PCs) and Server(s) where applicable.

- Scandisk
- Defrag
- Hardware Check
- Free Space Check
- System Log Check (if available)
- System Performance Optimisation including system configuration.
- Anti-virus Updating (if applicable)
- Firewall updating (if applicable)
- Backup of Data (if applicable)
- Applying Security Patches
- Installation of Maintenance Scripts belonging to Kew Computers Ltd.

1.2 Regular maintenance of Network nodes

- Checking Hardware
- Checking Load
- Checking Paths
- Applying Security Patches

1.3 Any other items hereunder listed

2) Explicitly Not Covered Within the Scope of Maintenance Agreement

2.1 Explicitly Excluded

- Repairing damage caused by malicious use of a PC/Server

- Repairing damage caused by accident of any sort to PC/Servers
- Installing additional software to PC's or Servers
- Installing additional hardware to PC's or Servers
- Reinstalling current software to PC's or Servers
- Moving or Relocating Equipment
- Installing new PC's or Servers
- Installing new network elements (hubs, switches, cabling etc)
- Installing new printers or other external devices
- Costs of purchasing hardware. (To be met solely by the customer).
- Updating of other software (except when agreed with Kew Computers and Client)
- Maintenance of software (except when agreed with Kew Computers and Client)
- Any licences for software that may be required.
- Configuration of software (such as e mail clients, DSL or dial up connections, etc).

2.2 Any other items hereunder listed

Terms & Conditions for Computer Maintenance Service Agreement

General and Acknowledgement

- 1.1 These Conditions shall apply to all contracts for the sale of goods and services by the Company to the Customer to the exclusion of all other terms and conditions including any terms or conditions which the Customer may purport to apply under any purchase order, confirmation of order or similar document.
- 1.2 Unless the context otherwise requires, references to the singular include the plural and references to the masculine include the feminine and neuter genders and vice versa.
- 1.3 The headings in these Conditions are inserted for convenience only and shall not affect their construction.
- 1.4 Any variation to these Conditions and the Agreement (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Company.
- 1.5 Anything in this Contract that is required to be 'agreed in writing' shall be agreed in writing signed by a director of the Company.

Scope of the Service

The Company shall provide remedial maintenance during the Service Hours when notified that the equipment is inoperative. The Company will use its best efforts to respond to the call for remedial service within the Response Time. The Company also provides preventative maintenance either by arrangement

with the Customer or which may be performed concurrently with remedial maintenance. In all cases the Scope of Work is defined under the “Standard Scope of Work and Exclusions”.

Services performed outside Service Hours

The Company shall provide remedial maintenance outside the Service Hours only if requested by the Customer, for which the Customer shall pay the Premium Rate Hourly Charge in addition to the Annual Charge. For any job started before the end of the Service Hours each day, the work carried out in the first hour which continues after the end of the Service Hours shall be regarded as work being provided at the Service Hours but the subsequent hours shall be charged at the Premium Rate Hourly Charge as provided herein.

Replacement Parts

The Company will provide at prevailing list price + VAT all parts and equipment which the Company deems necessary for maintaining the Equipment in good operating condition, subject to the Customer’s approval. The Customer will pay for any such parts and equipment + VAT at the prevailing rate, and payment shall be made prior to installation. Should the Customer be unwilling to pay for the parts and equipment required, the Company shall be released from its obligation under this Agreement to maintain the relevant part of the Equipment. All parts removed for replacement shall become the property of the Company.

Additional Equipment

Additional equipment may be included in this Agreement only if the parties agree in writing, together with a reasonable additional or increased charge.

Exclusion of old Equipment

There shall be excluded from this Agreement all equipment more than 4 years old from the date of its purchase by its first owner, unless the Company has agreed in writing to the Customer that it will not be excluded. Similarly, the Company is entitled at its absolute discretion to remove / exclude from the Agreement any individual equipment items that are deemed by the Company to be disproportionately troublesome and in such event there shall be a reasonable reduced charge in respect of it. Such reduced charge normally is calculated on a pro-rata basis.

Back Up & Copy Programs

Additional labour incurred in attempting to recover files (whether successful or not), should the Customer fails to maintain proper file backups, shall be charged at the Premium Rate Hourly Charge. The Customer shall obtain, keep and make available to the Company machine-readable copies of all programs, data files, and operating systems relating to the Equipment. The Company shall have no liability for the Customer’s inability to use its machine-readable data.

Exclusion from maintenance

In addition to any exclusions from the Maintenance Agreement as defined by the “Standard Scope of Work and Exclusions”, the Company’s obligation to provide maintenance services is also contingent upon the Customer’s proper use of all the Equipment. The Company shall not be obligated to furnish maintenance services if:

- 7.1 the Equipment has been subjected to unusual physical or electrical stress;
- 7.2 adjustment, repair, or parts replacement is required because of accident, neglect, misuse, improper programming, or failure of electrical power, air conditioning, humidity control, transportation or causes other than normal use;

- 7.3 the Equipment has been maintained or repaired, or if an attempt to repair or service the Equipment has been made by someone other than the Company's personnel without prior written approval of the Company (such approval not to be unreasonably withheld);
- 7.4 the Equipment is either removed from its initial installation location or is reinstalled without the written approval of the Company;
- 7.5 the Equipment is over 4 years old, unless the Company has agreed in writing to the Customer that it will not be excluded under Clause 5 above;
- 7.6 the Equipment or any part of it, in the Company's reasonable opinion, has reached the end of its useful life; or
- 7.7 the Customer allows any person to access or tamper with the Company's software on any Equipment.

If maintenance services are required as a result of the causes stated above, such repairs will be made at the Company's then prevailing non-contract rates.

Work not included

The maintenance service under this Agreement does not include:

installation or maintenance of software;

operating supplies or accessories including media such as tapes and disc packs, paint or refinishing the equipment, or furnishing materials for this purpose;

electrical work external to the Equipment and other devices not specifically noted as part of this Agreement;

verification that the Customer's software licenses are valid and current. Licensing of the Customer's software remains the responsibility of the Customer;

prevention of any virus or similar problem entering or leaving the Equipment; and

Price and Payment

The Price payable by the Customer shall be exclusive of VAT. Payment of the Price and VAT at the rate ruling on the date of the Company's invoice shall be due and paid as set out in the Agreement. The Customer shall also pay all other charges in accordance with these conditions (e.g. parts and equipment if not paid for before their installation) within 3 days from the date of the Company's invoice. The risk of the supplies shall pass to the Customer upon delivery. The property in the supplies shall not pass to the Customer until the payment plus VAT for them has been made in full. Time for payment shall be of the essence. Interest on overdue payments shall accrue from the date when the payment becomes due until the date of payment at a rate of 1.5% per calendar month or part of a calendar month and shall accrue at such a rate after as well as before any judgement. The Customer shall indemnify the Company in full all its reasonable administrative and legal costs of recovering overdue payments. If the Customer has failed to make any payment in accordance with the Agreement, the Company shall be entitled to enter into the Customer's premises to remove the installed parts and equipment and the provisions under Clause 13 below shall apply. Notwithstanding any actions have or have not been taken, the Company shall be entitled to recover the price plus VAT and other damages under the Agreement.

Increasing charges

The Company may increase the Annual Charge, Normal & Premium Rate Hourly Charges as set out in this Agreement by giving 14 days' prior written notice to take effect at the end of the notice period. In such an

event, the Customer may terminate this Agreement before the end of the said notice period by a written notice to the Company.

Access to equipment

The Customer shall provide, at no charge to the Company:

full and free access to the Equipment;

working space and adequate facilities including electrical outlets within a reasonable distance from the Equipment;

all 8 hour response times are subject to remote access to the equipment via Kew Computers chosen remote access software;

the opportunity to install the Company's own software to facilitate this Agreement. Such software remains at all times the property of the Company and will be removed from the Equipment at the termination of this Agreement

the opportunity at the convenience of the Company to remove software belonging to the Company.

Confidentiality

All information acquired by the Company relating to the business of the Customer and its customers shall be treated by the Company as confidential (after as well as during this Agreement) and the Company shall not make any use or disclosure of it. The Company shall take all reasonable steps to protect the confidentiality of such information and require its employees who require access to it for the performance of their duties to enter into written undertakings as to confidentiality, which are consistent with the Company's obligations under this Agreement and are directly enforceable by the Customer.

Suspension and termination

If the Customer fails to make payment in accordance with the Agreement or commits any other material breach or if any distress or execution shall be levied upon any of the Customer's goods or if the Customer offers to make any arrangement with its creditors or if any petition in bankruptcy is presented against the Customer or the Customer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Customer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver administrative receiver or manager shall be appointed over the whole or any part of the Customer's business or assets, the Company may in its absolute discretion and without prejudice to any other rights which it may have suspend and/or terminate the Agreement without liability upon its part.

Force Majeure

The Company shall not be liable to the Customer for any loss or damage which may be suffered by the Customer as a direct or indirect result of the duties and/or obligations of the Company in the Agreement being prevented, hindered, delayed or rendered uneconomic by reason of any Force Majeure Circumstances. In these Conditions "Force Majeure Circumstances" shall mean any act of God, war, riot, strike, lock-out, industrial action, accident, breakdown of plant or machinery, fire, flood, drought, storm, difficulty or increased expense in obtaining materials or transport or other circumstances beyond the reasonable control of the Company.

Liability

The Company shall be under no liability what so ever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of the Agreement. Under no circumstances shall the liability of the Company exceed the price payable under this Agreement.

Indemnity

The Customer shall indemnify the Company in full including legal costs in respect of any claims by third parties which are occasioned by, or arising from the Company's performance pursuant to the instructions of the Customer.

Third parties

No person other than the Company and the Customer shall acquire any enforceable rights against the Company nor the Customer under or in connection with this Agreement.

Notices

Any notice required or allowed under this Agreement shall be deemed properly given if mailed postage paid, to the address as stated in the Agreement unless an alternative address of service is agreed in writing by the parties.

Non-solicitation of staff

The Customer shall not, during the term of this Agreement and for two years thereafter, directly or indirectly canvas with a view to offering or providing employment to, offer to contract with, or entice to leave any employee of or contractor to the Company engaged in the performance of any part of this Agreement without the prior written consent of the Company. In giving such a consent, a fee may be payable by the Customer.

Invalidity of part of contract

If any part of this Agreement is held to be a violation of any applicable law, statute or regulation, it shall be deemed to be deleted from this Agreement and shall be of no force and effect and this Agreement shall remain in full force and effect as if that part had not originally been contained in the Agreement.

Assignability

The parties shall not assign any part of this Contract without the prior written consent of the other party.

Waiver

The failure by either party to exercise or enforce any rights conferred by the Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

Law

The Agreement shall in all respects be governed by and construed and interpreted in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of the English Courts.

I have understood the service level agreement herein and agree to Kew Computers terms and conditions of business:

Signed on behalf of customer

Date