



# Terms of Service

## **Product Overview**

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Kemp Technologies, Inc. reserves all ownership rights for the LoadMaster and Kemp 360 product line including software and documentation.

Used, under license, U.S. Patent Nos. 6,473,802, 6,374,300, 8,392,563, 8,103,770, 7,831,712, 7,606,912, 7,346,695, 7,287,084 and 6,970,933

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# 1 Terms of Service

This document, Terms of Service (“Terms”), is agreed by and between Kemp Technologies, Inc., (“Kemp”) and any entity (“Customer”) that has an active Support Subscription or Support Contract (“Support”) for one or more products or services (“Product”) provided by Kemp.

# 2 Terms

Kemp agrees to support, maintain, repair or replace the purchased Kemp products and provide agreed services. The Customer agrees to pay for such Support services subject to the terms herein.

# 3 Scope of Service

The Terms provide various levels of Support and Services for Customers worldwide detailed in **Appendix A: Support Subscription Offerings**.

The Support Subscription offered by Kemp includes:

- Diagnosing, troubleshooting, and correcting issues with the Kemp LoadMaster and Kemp 360 Products
- Answering general information questions (How To's)
- Resolving licensing issues
- Facilitating firmware upgrades as per the Product Lifecycle provided the Customer has a valid Support agreement.
- Self-help user support includes the Kemp Help Centre where detailed resolution information may be found, <https://support.kemptechnologies.com>
- All local services are provided by a Kemp-authorized service provider
- English is the primary language used to provide support to Customers. Kemp may provide support in other languages but is not obliged to do so.

The Support service offered by Kemp does NOT include:

- Configuring, or diagnosing problems that are not related to Kemp LoadMaster and Kemp 360 Products and services
- Supporting devices and software that are not covered under an active support plan.
- Supporting software other than software provided by Kemp for its Products
- Supporting hardware other than hardware provided by Kemp for its Products
- Troubleshooting issues with Internet connectivity or network interoperability (outside of Kemp Products and Software)
- Supporting any Application Firewall Pack (AFP) rules other than the commercial ruleset which has been licensed from Kemp by the Customer.
- Data or information backup
- Providing training other than answering general information questions (How To's)
- Providing support in a language other than defined by the Scope above.

**Kemp reserves the right to modify these Terms at its discretion and without notification.**

# 4 Contacting Kemp

Kemp operates multiple Technical Support Centers (TSCs). The Service purchased defines when Support Services may be obtained. Kemp recommends that Customers contact their regional TSC during business hours to obtain Support. Kemp's business hours vary by country and region. Kemp reserves the right to change their business hours at any time. Kemp TSC business hours are defined in the **Standard Business Hours** section.

## 4.1 TSC Contact Information

Contact information for Kemp's TSC's are available at the following location.

<https://support.kemptechnologies.com/hc/en-us/articles/201870787>

## 4.2 Standard Business Hours

The following table outlines Kemp's standard business hours:

Region	Hours of Operation
America's	8AM - 9PM EST, Monday to Friday
EMEA	7:30AM – 5:30PM GMT, Monday to Friday
APAC	8AM - 6PM SST, Monday to Friday

## 4.3 Recording Calls

In carrying out its obligations, Kemp may, at its discretion, record part or all of the calls between the Customer and Kemp. Primarily call recording is for the purposes of monitoring Kemp's service quality, however in some circumstances Kemp may use call recording to determine if a customer has been offensive towards Kemp representatives which could lead to grounds for termination of Support. By utilizing these Services, you consent to have your calls with Kemp monitored and/or recorded.



# 5 Kemp's Obligations

The following Kemp obligations require the Customer to have active and paid Support:

- Kemp will provide Support for any Product(s) covered by these Terms. Such support will consist of responding to incidents as reasonably required to make the Product(s) perform as described in the current Product(s) specifications. Customer will receive Support services as purchased, subject to the service offerings shown in **Appendix A: Support Subscription Offerings**.
- During the term of Support the Customer is entitled, at no additional charge, to updated versions of covered software such as bug fixes, and incremental enhancements as designated by minor software update increases. Customer may receive special pricing on upgraded versions of covered Products such as major feature enhancements.
- Support for Free LoadMaster is limited to Community Support via <https://support.kemptechnologies.com>, unless a Support Subscription has been purchased for the Products.
- Customer must return the failed Products or components to Kemp under the Return Material Authorization (RMA) number issued by Kemp. Kemp may invoice the Customer for any failed Products or components that are further damaged by the Customer. The title to any returned Products or components will transfer to Kemp upon receipt. For Premium, Premium Plus, Enterprise, Enterprise Plus and Mission Critical Support Subscription Plans, Kemp will be responsible for all freight charges for returned Products or components provided the Customer uses a Kemp-designated carrier. For the Basic and Standard Support Subscription Plans, the Customer will be responsible for the freight charges associated with returning the defective unit to Kemp and Kemp will be responsible for the freight charges to provide the Customer with a replacement for the defective unit.

Kemp will, at its option, repair or replace any product or component that fails with Kemp certified reconditioned Product(s) during the term of Support at no additional cost to the Customer, provided that the Customer contacts Kemp Customer Support during the term of Support to report the failure and complies with Kemp's repair policies. Hardware Products returned to Kemp must be pre-authorized by Kemp with a RMA number marked on the outside of the package, and sent prepaid and insured (by Kemp) 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. Products that fail within the first 30 days are considered as Dead on Arrival (DOA). Kemp will replace these Products with new Products.

# 6 Customer Responsibilities

In order to receive Kemp Technical Support, the Customer agrees to:

- Ensure there is an active Support Subscription agreement with Kemp prior to requesting any type of service or support. Expired support will be referred to Kemp Sales.
- Ensure that all LoadMasters configured in a High Availability (HA) pair or Clustered environment have the same level of service plan.
- Make available a qualified representative who has access to the Kemp products or components used to deliver services when resolving a service-related incident.
- Cooperate with and follow instructions provided by Kemp Support.
- Provide accurate and detailed information regarding the incident being reported, with a clear definition of the symptoms.
- Respond in a timely manner to requests for information regarding the incident
- Backup all existing data and removal of confidential or proprietary data.

Kemp WILL HAVE NO LIABILITY FOR:

- Any confidential or proprietary information
  - Loss of corrupted data
  - Loss of use of a system or network
  - And/or for any acts of omissions, including negligence, by a third-party service provider
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- Ensure that Kemp's performance of services will not affect any other manufacturer's warranties or if it does, that the effect will be acceptable to Customer. Kemp does not take responsibility for third party warranties, or for any effect that the Services performed by Kemp may have on those warranties.

# 7 Restrictions

Services provided by Kemp under these Terms 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. Product specifications and datasheets may be found on the Kemp website ([www.kemptechnologies.com](http://www.kemptechnologies.com)). Kemp will not be obligated to provide any service or to correct any malfunction, damage or any other problem if the Product;

- Has been altered, except by Kemp
- Has not been installed, operated, repaired, or maintained in accordance with Kemp instructions
- Has been subjected to abnormal physical or electrical stress, misuse, negligence or accident
- Has been operated outside of the environmental specifications for the Product
- Is deployed in a Customer network configuration outside the technical scope and intended use of the Product

Kemp reserves the right to limit support, including error correction services, of any Product version prior to the most recently-released Generally Available (GA) software versions or for our Long Term Support (LTS) version of that same Product.

The LTS version is defined as a stable software version the will not include new features or feature enhancements, however Kemp will back port relevant security fixes and major bugs.

# 8 Prices and Payment

- Fees for the initial or any subsequent term of this Support will be due and payable net 30 days from date of invoice and all payments will be made in Euro in EMEA and US dollars for all other regions. 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 the Customer.
- If a Customer wishes to purchase Support for a Product where the Support has lapsed on the Product, the Customer will be charged the then-current standard Support fee for the forthcoming year and may be required to pay a pro-rated fee for the time period during which no Support agreement was in effect.

# 9 Taxes and Other Charges

All charges are exclusive of all taxes or fee's levied by outside parties, such but not limited to, foreign, federal, state, municipal, or other government excise, duty, sales, use or occupational taxes or charges now in force or enacted in the future. In such an event, Kemp may be required to collect for such payments upon the services performed or materials provided hereunder whether during the service coverage period or otherwise.

# 10 Limitation of Liability

Kemp's sole obligation and liability hereunder is for the service and repair of the Products covered under these Terms. 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 THESE TERMS.

# 11 General Provisions

- **Non-Assignment:** No assignment by the Customer of these Terms will be binding on Kemp without Kemp's prior written consent.
- **Governing Law:** These Terms will be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflicts of law rules.
- **Entire Agreement:** These Terms 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.
- **Severability:** If any provision of these Terms is found to be unenforceable, the remainder of the Agreement will be fully enforced, 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.

# 12 Force Majeure

Kemp will exercise every reasonable effort to meet its obligations hereunder, but will not be liable or in default under these Terms due to the delays in delivering materials or furnishing services resulting that could not be foreseen or circumvented that may include, but not be limited to, acts of God, civil riots, terrorism, etc. Kemp will make best efforts to ensure the obligations are met as soon as is reasonable after the event has cleared.



# 13 Commercially Reasonable Limits to Scope of Service

- Service extends only to uses for which the supported Kemp Product was designed. Kemp Technicians may refrain from providing any services on the basis that the minimum system requirements are not met or the technical needs or other requirements are unusual or extensive as reasonably determined by Kemp.
- In some cases, Kemp technicians may not be able to diagnose or resolve a problem because of complications relating to the Customer's network infrastructure or its configuration. In this situation, Kemp will provide the customer with detailed information as to why it is not possible for Kemp to resolve the issue.
- All Kemp Technical Support services are offered as "best efforts" services and without warranty except as specifically set forth in this Agreement.

# 14 Geographic Limitations and Relocation

Service will be delivered to the site(s) indicated by the Customer at time of purchase. Service is not available at all locations. Service options, including service levels, technical support hours, and on-site response times will vary by geographic location and certain options may not be available for purchase in the Customer's location, please contact your Kemp sales representative for further details.

If relocation of the Kemp Product(s) is required, please ensure that Kemp is informed no less than one month prior to the relocation. Kemp's obligation to supply the Services to relocated Supported Products is subject to various factors, including without limitations, local Service availability, and possible additional fees.

# 15 Recertification

Kemp is under no obligation to accept any request for Support Subscription renewal or requests for Support on Hardware 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 Kemp, or an authorized 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 at the current rate. Shipping charges and insurance will be the responsibility of the party requesting Recertification of the product. The Recertification fee is payable in advance of recertification and is in addition to the then current rates for support.



# 16 Appendix A: Support Subscription Offerings

Kemp offers the following support subscription plans. The service plan purchased will govern access to Kemp’s Technical Support Team, warranty of the Product(s) and terms related to hardware replacement policy. Basic, Premium and Premium Plus have been replaced by Standard, Enterprise and Enterprise Plus.

The following table details Kemp’s Service Plans:

Service Plan	Hardware (RMA)	Email Support Phone Support
Standard	Replacement within two (2) weeks of receipt of failed unit	Standard Business Hours
Enterprise	<p>In advance replacement</p> <p>From time of confirmed diagnosis, replacement unit ships next business day.</p> <p>Add-on purchase of Kemp’s 4-Hour in advance replacement along with an engineer onsite is available with an Enterprise Support Subscription at an additional charge</p> <p>See the <b>Geographic Limitations and Relocation</b> section</p>	24 x 7
Enterprise Plus	<p>In advance replacement</p> <p>From time of confirmed diagnosis,</p>	24 x 7



	<p>replacement unit ships next business day.</p> <p>Add-on purchase of Kemp’s 4-Hour in advance replacement along with an engineer onsite is available with an Enterprise Support Subscription at an additional charge</p> <p>See the <b>Geographic Limitations and Relocation</b> section</p>	
Mission Critical	<p>4 hour in advance parts replacement accompanied by Engineer on site</p> <p>Emergency dispatch, in parallel with troubleshooting, for incidents identified as critical severity level 1 situations</p> <p>Customer ability to self-identify severity levels 1, 2 and 3</p> <p>Escalation management for Severity 1 critical situation with scheduled updates every step of the way.</p> <p>See the Section <b>Geographic Limitations and Relocation</b></p>	
Basic	<p>Replacement within two (2) weeks of receipt of failed unit</p>	<p>Standard Business Hours</p>
Premium	<p>In advance replacement</p> <p>From time of confirmed diagnosis, replacement unit ships next business day</p>	<p>24 x 7</p>
Premium Plus	<p>4 hour in advance replacement accompanied by Engineer on site from time of confirmed diagnosis</p>	<p>24 x 7</p>



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See Section on **Geographic Limitations and Relocation**

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**Exclusions:** The only exclusions to the above information relates to components and consumables such as pluggable transceivers purchased through Kemp. All of these components have a 12 month warranty associated from time of purchase.

# 17 Appendix B: Incident Severity

All Incidents will be assigned a severity rating using industry standard definitions. The severity is assessed by Kemp based on Customer-provided information.

Over the course of the investigation, severity may need to be changed. For example, if it is determined that the issue affects more users than initially estimated, the severity may be increased and more resources applied to finding a solution. Conversely, if it is determined that a work around is available, the severity may be lowered. The Kemp support engineers working on the problem will be responsible for changing the severity level as appropriate.

The following table outlines how each severity rating is defined:

Severity	Characteristics
1 (Critical)	The LoadMaster or Kemp 360 Product(s) is hard down and completely unable to service the Users and no workaround is available
2 (Major)	A large group of users are impacted and no workaround is available
3 (Escalated)	The impact is on a small group of users or the impact on a large group of users but a workaround is available
4 (Normal)	Setup, and non-production troubleshooting, Firmware Requests and General Questions. No immediate operational impact on Users.

# 18 Appendix C: Incident Handling

Any interruption to the normal functioning of a service or system is considered an incident.

- Incident severity handling:
  - Inbound incidents will be handled based on the assigned severity rating. Incidents with the highest severity will be addressed first.
  - In-process incidents, regardless of assigned Severity, will continue to be worked on and the next problem to be actioned will be the next queued Severity 1 incident on a first-come first-served basis.
  - Any incident categorized as a Severity 1 or Severity 2 should be reported to Kemp via phone



# 19 Appendix D: Incident Response Times

Kemp provides web, email and phone access according to the Service Level purchased. Incident response times outlined below are targets to which Kemp will make a best effort to adhere, however certain conditions could arise that may necessarily change the target update times.

Initial response is defined as severity assignment and acknowledgement of new incident.

Update is defined as the relay of information related to the status of an incident and may consist of requests for additional information or troubleshooting, application of a workaround, or other action/information related to the incident.

The following table details the response times for incidents during standard business hours:

Incident Severity	Initial Response Time	Update Time
1	Within one (1) business hour	Update within one (1) business hour of an inbound customer request
2		Update within two (2) business hours of an inbound customer request
3		Update within four (4) business hours of an inbound customer request
4		Update within one (1) business day of an inbound customer request

Customers who have purchased Premium, Premium Plus, Enterprise, Enterprise Plus or Mission Critical Support Subscriptions will receive the Responses and Updates for incidents opened via phone outside of business hours.

The following table details the response times for incidents opened via phone outside of standard business hours.



Incident Severity	Initial Response Time	Update Time
1	Within one (1) hour	Update within one (1) hour of an inbound customer request
2		Update within two (2) hours of an inbound customer request
3		Update within four (4) business hours of an inbound customer request
4		Update within one (1) business day of an inbound customer request

Customers who have purchased Kemp 360 Vision™ will receive the following Responses and Updates for incidents opened via our proactive alerting feature.

The following table details the response times for incidents opened via Kemp 360 Vision™ alerts.

Incident Severity	Initial Response Time	Update Time
1	Within 30 minutes	Update within 30 minutes of inbound customer request
2		Update within one (1) hours of an inbound customer request
3		Update within four (2) hours of an inbound customer request
4		Update within one (4) hours of an inbound customer request





# 20 Appendix E: Defect Work - Around and Correction

Kemp will provide Work-Around and Correction Timeframes as outlined in the table below in accordance with the following definitions.

**Correction:** Means any bug fix, patch, workaround or Maintenance Release to the Software, Firmware or Documentation that fixes a Defect.

**Correction Time:** Means the time between when Kemp accepts a trouble ticket from a customer as a Defect in accordance with this Agreement and when Kemp delivers a Correction to the Customer.

**Defect:** Means a failure or function impairment in the Product that is reproducible, that causes the Product, when used in accordance with the Product specifications and Kemp’s instructions, to not function in conformance with the Documentation, and that is reported to Kemp as set forth in this Agreement.

**Documentation:** Means the Product Documentation and Datasheets, in either written or electronic form, made available by Kemp to Customer.

**Work-Around:** Means any operational process, additional Software or Hardware or Documentation that limits or circumvents the impact of a Defect, commonly referred to as a temporary fix for Defect.

**Work-Around Time:** Means the time between when Kemp accepts a trouble ticket from a customer as a Defect in accordance with this Agreement and when Kemp delivers a Work-Around to the Customer.

The table below shows the service levels of Workarounds and Corrections for Defects reported to Kemp.

Defect Priority	Definition	Work-Around Time	Correction Time
Priority 1	A Defect that causes the Product to fail to function and/or crash the system and render the operation of the Product impossible or impracticable.	2 days	15 business days





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Priority 2	A Defect that causes the Product to fail to operate in a material manner but does not render the system inoperable.	6 business days	30 business days
Priority 3	A Defect that produces an inconvenient situation in which the Product operates substantially in accordance with the Documentation and Specifications but nevertheless causes or results in substandard or erratic performance. Such Defect is often minor or cosmetic in nature and does not necessarily result in reduced Performance.	20 business days	180 business days

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# 21 Appendix F: Incident Resolution

Kemp Support will use all reasonable efforts to provide resolution as quickly as possible; however, as Customer topologies and configurations may be unique, Kemp may not guarantee time to resolution.

Resolution will be determined by the Kemp support staff working on the problem in conjunction with the Customer and the resolution information will be updated in the Incident Management System.

# 22 Appendix G: 4 Hour RMA Service

Kemp's 4-Hour RMA service provides customers with 4-Hour in advance hardware replacement of their Kemp products along with an engineer onsite for installation and support when a failure is encountered. 4 Hours are calculated from the time of confirmed diagnosis with Kemp Support.

This service is included in with Premium Plus and available as an add-on service available at an additional cost for customers with Enterprise and Enterprise Plus Support Subscription plans. Availability of this service varies by country.

# Last Updated Date

This document was last updated on 25 April 2019.