

Equipment Maintenance Agreement Terms and Conditions

Kaizen IT Solutions Ltd (hereinafter referred to as KITS) will in consideration of the Maintenance prices specified in the Schedule annexed hereto provide Service to the party named in the Schedule (the Customer) at the address shown in the Schedule (Equipment site) to repair and maintain Software described (Part 1 - System software) and Hardware described (Part 2 - Hardware) from the date specified therein as the Commencement Date providing that all Hardware and Software is in full working order immediately prior to commencement of the Agreement and in accordance with the following Terms and Conditions:

1. The Service provided. The Service will be that of repair and maintenance of the Software and Hardware via telephone support, remote support or on a call out basis at the Equipment site between the hours of 9.00 AM and 5.00 PM Monday to Friday excluding Public Holidays. Calls will normally be responded to within the agreed working hour response time set out within the Schedule of a call being logged with KITS advising that a fault condition exists with either the System Software or Hardware.

2. System Software support

2.1 The 'System Software' is defined as comprising the following categories of software:-

i. Operating system software

ii. Supported third party software

2.2 Operating system software is defined as the system software that manages computer hardware and software resources and provides common services for computer programs.

2.3 Supported third party software is defined as software owned or licensed to the Customer by one or more third parties that is used by the Customer in the course of the business of the Customer from time to time.

2.4 KITS shall best endeavour respond to the Customer within the agreed response time set out within the System Software response time shown in the Schedule.

2.5 KITS shall investigate and remedy malfunctions of the Operating system software and or Supported third party software if these are included within Part 1 – System software specified within the Schedule.

2.6 KITS shall not be responsible for faults which are intrinsic to the system software. Where a fault is identified as such KITS shall report details of the fault to the Customer along with the details of identified 'workarounds' where available.

2.7 The normal fix times shall not apply where the problem can only be resolved by on-site actions by a support engineer, in which case the response time to site shall be extended to the Hardware response time.

3. Hardware Support

3.1 KITS will best endeavour respond to the Customer within the agreed response time set out within the Hardware response time shown in the Schedule.

3.2 KITS will, during the continuance of this Agreement, maintain the Hardware in an efficient operating condition, such maintenance to include workshop repairs and the fitting of replacement parts when deemed necessary by KITS. Replacement parts do not include ribbons, batteries, print wheels, print heads, rubber platens, toner cartridges, or any other consumable parts. Where replacement or exchange parts are fitted, the items removed become the property of KITS. Where parts are no longer available or the parts/ repair cost exceeds the current market value of any unit covered under this Agreement then the unit shall be determined as irreparable/ beyond economic repair, in this event the Equipment will be returned to the customer and no longer included within Service.

3.3 Loan equipment replacement scheme. In the event of repair of a defective piece of Hardware not being possible within 16 hours of the original notification of the fault, KITS shall provide where possible, a loan unit replacement of an equivalent specification free of charge until such time as the defective item is re-installed in working order. KITS shall only provide this service if it has been included within the Loan Equipment Scheme within the Schedule.

3.4 Remedial Maintenance. An on-site engineer shall be provided to carry out a series of predetermined preventative maintenance duties as well as user support in accordance with Remedial Maintenance within the Schedule. KITS will endeavour to schedule these visits with the Customer to suit both parties. Unused Remedial Maintenance visits do not roll over to subsequent periods and cannot be banked. The quota is reset at the anniversary of the Commencement date. KITS shall only provide this service if it has been included within Remedial Maintenance within the Schedule.

3.5 Pre bought engineering days. An on-site engineer shall be provided to carry out installation services for the Customer as required from time to time in accordance with Pre bought engineering days within the Schedule. Such days will be booked in with KITS no less than 5 working days in advance. Unused Pre bought engineering days do not roll over to subsequent periods and cannot be banked. The quota is reset at the anniversary of the Commencement date. KITS shall only provide this service if it has been included within Pre bought engineering days within the Schedule.

4. 24/7 Out of hours Cover

4.1 The Customer will have access to a separate 24/7 helpdesk telephone number to log faults with KITS outside of normal working hours.

4.2 KITS shall provide Service as set out in the Schedule of the Equipment Maintenance Agreement during these hours.

4.3 Whilst KITS shall provide best endeavour response times for calls logged with the 24/7 helpdesk, calls logged are not subject to the response times set within the system software response time and hardware response time within the Equipment Maintenance Agreement.

4.4 KITS shall charge the Customer at the prevailing rates set out within 24/7 Out of hours cover within the Schedule.

4.5 KITS shall only provide this service if it has been included within 24/7 Out of hours cover within the Schedule.

5. Conditions and Exclusions

5.1 The Customer will allow KITS full access to any of the Hardware and Software during normal working hours in order to effect repairs or to provide any Service which is necessary in the performance of KITS's obligations under this Agreement, including any preventative maintenance work deemed necessary by KITS.

5.2 The Customer must allow sufficient time and facilities for KITS to test the Hardware or Software in order to ascertain the cause of failure and to effect repairs. If access is prevented to such an extent that KITS are unable to fulfil their obligations under this Agreement, or that the call out was not warranted for any reason, then KITS reserve the right to levy charges to the Customer at their prevailing rates as if the call were not covered by this Agreement.

5.3 This Agreement does not cover any faults caused directly or indirectly by accidental or wilful damage, relocation, neglect, alteration to the Hardware or Software, environmental conditions, electrical failure or fluctuation or works carried out by non KITS staff.

5.4 With reference to portable/ notebook/ laptop computer products or any computer product or monitor containing an in-built LCD, active matrix or other integral flat video screen, these parts will not be covered by KITS'S liability in this Agreement.

5.5 This Agreement excludes calls for the purpose of fitting consumables or relocation of the Equipment.

5.6 It is the Customers sole responsibility for maintaining backups of all data stored within the Equipment and to ensure that adequate precautions are taken to preserve Data and Programs loaded to the Equipment.

5.7 It is the Customers sole responsibility for ensuring that systems including business continuity and failover, and the recovery time objectives / recovery point objectives are robust and sufficient for continuation of business.

6. Payment Terms

Upon Acceptance by the Customer, a VAT invoice will be submitted to cover the Service charge from the Commencement Date, until the anniversary thereof. Thereafter, a VAT invoice will be submitted annually not more than 60 days prior to the anniversary of the Commencement date in respect of charges for the following year at the Service rates prevailing at the time of invoicing. Any invoice so submitted becomes due on the anniversary of the Commencement Date and without prejudice to any other rights to KITS under this Agreement, Service will not be provided until payment is received in full. In the event that any additional charges are levied to the Customer in accordance with this Agreement or for the supply of any other products or services and remain outstanding for more than 30 days, KITS reserve the right to suspend Service until the charges are paid in full.

7. Termination of Agreement

This Agreement will remain in full force and effect until terminated by either the Customer or KITS by giving no less than 60 days notice in writing sent by recorded delivery such notice to expire on any anniversary of the Commencement Date.

8. Liabilities

KITS will not be liable for any delay or failure to perform under this Agreement or for any consequence thereof if such delay or failure is due to any industrial dispute or to any cause which is beyond the reasonable control of KITS. In any other case, KITS's total liabilities under any material breach of their service obligations shall be limited to the annual service price levied to the Customer for the individual piece of Hardware or Software concerned. KITS will not be liable for any loss or contingent loss suffered by the Customer as a result of their actions except in the case of personal injury which is a direct consequence of negligence of KITS or their agents or assignees, then KITS's liability will be limited to £2,000,000 in respect of any claim or series of claims arising out of any one incident. KITS reserve the right to sub-contract or assign the whole or any part of their obligations under this Agreement.

9. Non-solicitation of employees

9.1 The Customer acknowledges that KITS have a substantial investment in its employees that provide service to the Customer under the Equipment Maintenance Agreement and that such employees are subject to KITS control and supervision.

9.2 The Customer agrees not to solicit, hire, employ, retain, or contract with any employee of KITS without KITS prior written consent during the term of the Equipment Maintenance Agreement and for 12 months following termination.

10. General

- a) Any references to KITS will include their associates, subsidiaries, sub-contractors or assignees.
- b) This Agreement is not transferable by the Customer without the written consent of KITS.
- c) The headings to these Terms and Conditions are for convenience only and shall not affect the constitution thereof.
- d) This Agreement is subject to the Laws of England.