

Terms of Sale

These Terms of Sale (“**Terms of Sale**”) are entered into by and between Lepton Global Solutions, LLC dba Kymeta Government & Defense, a Delaware corporation, having its principal place of business at 2000 Corporate Ridge Suite 525, McLean, Virginia 22182 (“**KGD**”) and the customer identified on the applicable Quote for the Products and/or Services (“**Customer**”).

1.0 DEFINITIONS

1.1 “**Customer**” means the entity (including Resellers and End Users as the case may be) purchasing Products and/or Services from KGD as set forth on the applicable Quote for resale (in the case of Reseller’s) or for its own internal business purposes (in the case of End Users).

1.2 “**Customer Data**” means information, data, and other content, in any form or medium that is collected, downloaded, or otherwise received, from Customer or an authorized user. For the avoidance of doubt, Customer Data does not include information, data, or other content that is derived from (a) analyzing or processing Customer Data or (b) Customer’s use of the Services.

1.3 “**Authorized Users**” means End User’s employees or contractors who have been issued Access Credentials by End User.

1.4 “**Data Services**” means the managed broadband data connectivity service (using standard internet protocols), utilizing both a satellite-enabled connectivity solution and broadband network or cellular network, and/or the hosted Software application or applications and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that KGD manages, operates, and maintains for remote electronic access and use by End Users under this Agreement.

1.5 “**Data Service Plans**” means the particular rates, terms, and conditions more fully described in Exhibit A, under which KGD makes the Data Services available.

1.6 “**Data Service Plan Guidelines**” means those guidelines attached as Exhibit A.

1.7 “**Data Services Term**” means the Data Plan Initial Term taken together with any Data Plan Renewal Terms, as those terms are defined in the Data Service Plan Guidelines.

1.8 “**Documentation**” any manuals, instructions, training materials, technical manuals, supporting materials, Marketing Materials, or other documents or materials that KGD provides or makes available to, Customers, or End Users in any form or medium and that describe the functionality, components, features, or requirements of, or otherwise relate to, the Products and/or Services, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof. Documentation includes Third Party Materials where applicable.

1.9 “**Early termination fees**” or “**ETF**” shall be equivalent to the subscription fees for the remaining unpaid then-current Data Services Term.

1.10 “**End User**” means a person or entity that purchases Products or Services from any Customer (including any SubReseller), or KGD directly, for its own internal use and not for sale to a third party.

1.11 “**End User Data**” means information, data and other content, in any form or medium that is collected, downloaded or otherwise received, directly or indirectly from an End User by or through the Services. For the avoidance of doubt, End User Data does not include information, data, or other content that is derived from (a) analyzing or processing End User Data or (b) Customer’s use of the Services.

1.12 “**KGD Marketing Materials**” means Marketing Materials provided to Customer by KGD.

1.13 “**KGD Materials**” means Specifications, Documentation, KGD’s Marks, and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, or training materials that are provided or used by KGD or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or KGD Systems. KGD Materials include any modifications to, or derivative works of, the foregoing materials. KGD Materials do not

include any Third-Party Materials. For the avoidance of doubt, KGD Materials include any information, data or other content derived from KGD's monitoring of Customer's access to or use of the Services, but do not include End User Data.

1.14 **"KGD Systems"** means the information technology infrastructure used by or on behalf of KGD in providing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by KGD or through the use of third-party services.

1.15 **"Intellectual Property"** means all intellectual property rights throughout the world, whether existing under statute or common law or equity, in force or recognized now or in the future, including: (a) copyrights, trade secrets, Marks, domain names, Patents, inventions, designs, logos and trade dress, moral rights, mask works, rights in computer information, rights of personality, publicity, and privacy, and any other intellectual property and proprietary rights; (b) any application or right to apply for any of the rights referred to in clause (a); and (c) all renewals, extensions, future equivalents, and restorations of any of the rights referred to in clauses (a) or (b), in force or effect now or in the future.

1.16 **"Law"** means all applicable laws, rules, statutes, decrees, decisions, orders, regulations, judgments, codes, and requirements of any government authority (federal, state, local, or international) having jurisdiction.

1.17 **"Maintenance"** means the Maintenance Contract (if any) opted for in the Quote.

1.18 **"Marketing Materials"** means, collectively, any promotional, marketing, advertising materials, collateral materials, display items, kiosk, or other materials, related to or used in connection with the promotion and sale of a party's products or services.

1.19 **"Marks"** means the trademarks, service marks, trade dress, trade names, corporate names, proprietary logos or indicia, and other source or business identifiers of each party.

1.20 **"Patent"** means: (a) any and all patents, utility models, patent registrations, and equivalent rights (including originals, divisionals, provisionals, re-exams, continuations, continuations-in-part, extensions or reissues); (b) applications for any of the rights, registrations, or documents listed in clause (a) in all countries of the world; and (c) any other procedure or formality with respect to any of the rights, registrations, or documents listed in clauses (a) or (b) that can result in an enforceable patent right anywhere in the world.

1.21 **"Personal Information"** means any information that, individually or in combination, does or can identify a specific individual or by or from which a specific individual may be identified, contacted, or located.

1.22 **"Products"** as used in these Terms of Sale, means the Third Party Products KGD provides to Customer pursuant to a Purchase Order.

1.23 **"Purchase Order"** means an order issued by Customer to KGD for the Products and/or Services purchased under these Terms of Sale pursuant to a Quote issued by KGD and accepted and acknowledged by Customer or any other document issued by Customer and accepted by KGD for the Products and/or Services purchased pursuant to these Terms of Sale or some other mutually agreed upon terms.

1.24 **"Quote"** means any proposal or order signed by authorized representatives of each of KGD and Customer for the purchase of Products and/or Services.

1.25 **"Reseller Customer"** means a person or entity that purchases Products or Services from Reseller. Reseller Customer's include End Users and Sub-Resellers.

1.26 **"Reseller Direct Sale"** means a sale of Products or Services directly from Reseller to Sub-Resellers or End Users.

1.27 **"Services"** means the Data Services and any other Services (including support) that KGD provides under these Terms of Sale.

1.28 **"Service Level Commitment" or "SLC"** means the minimum guaranteed level of Data Service availability and provided under these Terms of Sale as further described in the Data Service Plan Guidelines.

1.29 **"Software"** means the computer software programs (solely in object code form) that KGD provides, licenses, or otherwise makes available to Customer, whether on a standalone basis or incorporated into Products, as the case may be, including any Updates that KGD makes commercially available, and may also include KGD's hosted software application or applications and any

third-party or other software, and all new versions, updates, revisions, improvements, and modifications of the foregoing, that KGD manages, operates, and maintains for remote electronic access and use by Customer and its authorized users.

1.30 **“Specifications”** means the specifications for the Products or Services set forth in the applicable Quote and the Documentation.

1.31 **“SubReseller”** means a third party that purchases Products or Services from Customer for further resale only and does not use the Products or Services for its own internal business purposes. SubReseller’s efforts are limited by these Terms of Sale.

1.32 **“Support”** means the minimum guaranteed level of support services as further described in Section 2.3 (Support Services).

1.33 **“Third Party Products”** means hardware, equipment, devices, peripherals, software, or other items KGD provides to Reseller that are not proprietary to KGD.

1.34 **“Third Party Materials”** means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment or components of Third Party Products relating to the Third Party Products that are not proprietary of KGD.

2.0 SCOPE

2.1 General Scope. These Terms of Sale set forth the terms and conditions for Customer’s purchase of Products and/or Services for resale to Customer’s SubResellers or End Users, or for Customer’s (in the case of Customer being an End User) internal business use. Except as otherwise described in these Terms of Sale, Customer has no authority to make any commitments on behalf of KGD.

2.2 SubResellers. If Customer uses SubResellers: (a) before any such appointment, Customer shall provide written notice of the SubResellers for KGD’s advance written consent, which consent shall not be unreasonably withheld; (b) Customer shall control and monitor each SubReseller’s performance; (c) Customer shall be liable under these Terms of Sale for each SubReseller’s acts and omissions relating to these Terms of Sale as if they were Customer’s own; and (d) Customer must maintain a written agreement with each SubReseller sufficient for Customer to comply with these Terms of Sale, and that, at a minimum, is similar in form and substance to those terms and conditions set forth in these Terms of Sale with respect to confidentiality, training, marketing, license grants and protection of KGD’s Marks, and indemnification, and insurance. Customer’s delegation of any of its rights or obligations under these Terms of Sale shall not relieve it from liability for the performance of those obligations. Customer guarantees, and shall ensure and remain fully responsible for, the performance of all of its obligations and compliance with all terms and conditions of these Terms of Sale.

2.3 Government Sales. Except as approved in writing by KGD, Customer will not resell or distribute Products or Services to any United States federal, state, local, or municipal government or any agency, branch, subdivision, or entity thereof, or any regulatory body of any kind.

3.0 PRICES

3.1 Prices for Products and/or Services shall be those specified in the Quote and unless otherwise expressly agreed to in writing are not subject to any special pricing or volume discounts.

3.2 All prices are exclusive of any freight, handling and shipping insurance charges, taxes, fees and duties or other similar amounts, however designated, including without limitation value added, sales and withholding taxes which are levied or based upon the prices, charges or upon these Terms of Sale. Customer shall pay any taxes related to Products and/or Services provided pursuant to these Terms of Sale (except for taxes based on KGD’s revenue or income). Applicable taxes shall, to the extent practical, be billed as a separate item on the invoice.

4.0 ORDERS

4.1 KGD shall provide the applicable Products and Services as agreed upon by the parties in the applicable signed Quote. These Terms of Sale shall apply, regardless of any additional or conflicting terms on any purchase order, Quote, or other correspondence submitted by Customer to KGD. Any such additional or conflicting terms are hereby deemed rejected by KGD.

4.2 Customer may not defer Product shipment or cancel any orders placed pursuant to the Quote.

5.0 SHIPPING AND DELIVERY

5.1 Scheduled shipping dates will be assigned by KGD based on KGD's then-current lead times for the Products. Customer shall pay the shipping and handling charges in addition to the purchase price for the Products and/or Services, which will be included in the invoices issued by KGD. Shipment for Products will be DAP destination, Incoterms 2020 from KGD's designated shipping location or its manufacturer's facility, as applicable ("**Origination Point**"). Customer shall be responsible for all shipping costs and expenses from the Origination Point to the Destination Point and KGD will invoice for the shipping cost and expense (including applicable insurance) on the initial invoice. Title and risk of loss of Products transfer to Customer at the Origination Point.

5.2 Customer shall assume responsibility for compliance with applicable export laws and regulations, including the preparation and filing of shipping documentation necessary for export clearance.

5.3 Any time quoted by KGD for delivery is an estimate only, and KGD is not liable for any loss or damage arising from any delay in delivery. No delay in the shipment or delivery of any Products relieves Reseller of its obligations under this Agreement, including accepting delivery of any remaining installment or other orders of Products.

5.4 **All Sales are Final.** KGD does not accept returns unless (i) KGD shipped Products other than as specified in the Quote, (ii) such Products are unopened, and (iii) the Products are returned in accordance with KGD's then current return policy and procedures as provided to Customer from time to time.

6.0 PAYMENT

6.1 Payment Terms. Upon and subject to credit approval by KGD, payment terms shall be thirty (30) days from date of the invoice, unless otherwise agreed to in writing by KGD. All payments shall be made in United States Dollars by check or wire transfer in accordance with the instructions provided by KGD. If at any time Customer is delinquent in the payment of any invoice, or is otherwise in breach of these Terms of Sale, KGD may, in its discretion, and without prejudice to its other rights, withhold shipment (including partial shipments) of any order, require Customer to prepay for further shipments, and/or withhold the provision of Services, until complete payment has been received. Any sum not paid by Customer when due shall bear interest from the due date until paid at a rate of (i) 1.5 per cent (1.5%) per month or (ii) the maximum rate permitted by law, whichever is less, applied from the first day the amount is past due. Customer grants KGD a security interest in the Products purchased under these Terms of Sale to secure payment for such Products. If requested by KGD, Customer agrees to execute financing statements to perfect this security interest.

6.2 Disputed Invoices. Customer must notify KGD in writing of any disputed invoice within 15 days of the date of receipt of such invoice. The parties will work together in good faith to resolve such dispute. Customer shall pay any undisputed portion of an applicable invoice in accordance with Section 6.1 above and Customer shall make prompt payment of any outstanding amount after the dispute is resolved. Customer will be deemed to have accepted all invoices for which KGD does not receive timely notification of disputes.

7.0 PROPRIETARY RIGHTS AND SOFTWARE LICENSING

7.1 Ownership. As between KGD and Reseller, KGD is the sole owner of all intellectual Property in and to the Products and Services. Subject solely to the licenses expressly granted in these Terms of Sale, nothing contained herein will have any effect on either party's ownership of its Intellectual Property. All rights not expressly granted in these Terms of Sale are reserved. Without limiting the above, and except to the extent otherwise expressly provided in these Terms of Sale, nothing herein may be construed as a license to either party's Intellectual Property, expressly or by implication, estoppel, exhaustion, or otherwise. If Customer acquires any Intellectual Property in or relating to any Product or Service purchased under these Terms of Sale (including any rights in any KGD Marks, KGD Marketing Materials, derivative works, or patent improvements relating thereto), by operation of law, or otherwise, these rights are deemed and are hereby irrevocably assigned to KGD or its licensors, as the case may be, without further action by either party.

7.2 License. Customer's and its authorized End Users' use of the Software is subject to the license grant and any applicable End User License Agreement ("**EULA**"), including the Kymeta EULA available at <https://www.kymetacorp.com/legal/eula/>.

7.3 Restrictions. Except as may be expressly and unambiguously stated otherwise in these Terms of Sale, Customer will not, and will not permit any other person to:

- (a) copy, modify, or create derivative works or improvements of the Products, Services, Documentation, or KGD Materials;
- (b) in the case of End Users, rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Products, Services, Documentation, or KGD Materials;

(c) disable, disassemble, decompile, attempt to derive source code or algorithms of, or otherwise reverse engineer the Products, Services, Documentation, or KGD Materials except and only to the extent expressly permitted by law notwithstanding this limitation;

(d) remove, delete, alter, or obscure any warranties, disclaimers, or warning labels, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Products, Services, Documentation, or KGD Materials; or

(e) access or use the Products, Services, Documentation, or KGD Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any other KGD customer), or that violates any applicable law.

7.4 Trademarks.

(a) License of Marks. During the Term and subject to the terms and conditions herein, each party hereby grants to the other a non-exclusive, non-transferable, non-sublicensable, royalty-free, worldwide personal license to use, publish and display the other party's Marks solely for purposes of fulfilling its obligations under these Terms of Sale, to advertise and to promote the Products, Services, and Customer's products and services. In carrying out its obligations under these Terms of Sale, each party will use the other party's Marks solely in the manner approved by the other party. Neither party will use the other party's Marks in any manner that is disparaging or that otherwise portrays the other party in a negative light. Neither party may alter, modify, or change the other party's Marks.

(b) Ownership of Licensed Marks. Each party acknowledges the other party's sole ownership of the other party's Marks worldwide and all associated goodwill. Nothing in these Terms of Sale or in the performance thereof, or that might otherwise be implied by Law, will operate to grant a party any right, title, or interest in or to the other party's Marks other than as specified in the limited license grant herein. All goodwill arising from each party's use of the other party's Marks will inure solely to the benefit of the other party. Each party hereby assigns and will assign in the future to the other party all rights it may acquire by operation of law or otherwise in the other party's Marks, including all applications or registrations therefore, along with the goodwill associated therewith.

(c) Protection of Licensed Marks. Each party will assist the other party in protecting and maintaining the other party's rights in its Marks worldwide, including preparation and execution of documents necessary to register the Marks or record these Terms of Sale. Each party will have the sole right to and in its sole discretion may commence, prosecute or defend, and control any action concerning its Mark. Neither party will contest the validity of, by act or omission jeopardize, or take any action inconsistent with, the other party's rights or goodwill in the other party's Mark in any country, including attempted registration of any of the other party's Mark, or use or attempted registration of any mark confusingly similar thereto.

(d) Quality Control of Licensed Marks. Each party will supply the other party with suitable specimens of its Marks for use as contemplated. Each party will fully correct and remedy any deficiencies in its use of the other party's Marks, upon reasonable notice from the other party.

7.5 Feedback. As between KGD and Customer, Customer agrees that any Feedback or ideas it provides to KGD or any suggested improvements to the Products or Services will be the exclusive property of KGD. To the extent that Customer retains any rights in the Feedback or suggested improvements, Customer hereby assigns to KGD all right, title and interest in and to the Feedback or suggested improvements. Customer will, at KGD's cost, perform all acts reasonably requested by KGD for KGD to perfect and enforce such rights. "**Feedback**" means ideas, suggestions, comments, input, or know-how, in any form, that Customer provides to KGD in relation to KGD's products or services. Feedback does not include sales forecasts or financial results.

8.0 **CUSTOMER DATA**

8.1 Customer Data. As between Customer and KGD, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, subject to the rights and permissions granted in this Section.

8.2 Consent to Use Customer Data. Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data: (a) to KGD, its subcontractors and affiliates, and KGD personnel as are necessary or useful to perform the Services; (b) to KGD and its affiliates as are necessary or useful to enforce these Terms of Sale and exercise its rights and perform its obligations hereunder; (c) to KGD, its subcontractors and affiliates, and KGD personnel for use, solely in anonymized form, to improve, maintain and support KGD's products, services and internal business operations; and (d) to KGD, its subcontractors and affiliates, and KGD personnel as are necessary to comply with any applicable laws.

8.3 Personal Information. If Customer Data includes Personal Information, KGD or its affiliates will use, store, and transmit such Personal Information in accordance with law applicable to KGD's collection, use, or disclosure of such Personal Information. Notwithstanding anything to the contrary each party will comply with all applicable country specific data protection Laws, including but not limited to the Directive 95/46/EC of the European Parliament and Regulation 2016/679 of the European Parliament and of the Council, and any implementation thereof in national law, and Customer will ensure compliance with such laws by its SubResellers and End Users. Customer represents that it, its affiliates, and any of its vendors, subcontractors, or agents have the legal rights and necessary consents required to collect, use, or disclose to KGD, or to provide KGD with access to, Personal Information. Customer, its Affiliates, and any of its vendors, subcontractors, or agents will ensure that each authorized user or other user of the Products and/or Services agrees to both Customer's and KGD's respective privacy policies before such users use the Products and/or Services.

9.0 WARRANTY

9.1 Mutual. Each Party continuously represents and warrants that: (a) it has the right to enter into this Agreement; (b) it has the rights to perform its obligations and grant any licenses granted to the other Party under this agreement (if any); and (c) its performance shall not violate any agreement or obligation between it and any third party.

9.2 Product Warranties. Customer acknowledges and agrees that Products purchased by Customer are manufactured by a third party and not by KGD. KGD will pass through any warranties provided by such third party manufactures and suppliers (including those contained in Third Party Materials) on Products to Customers (as applicable). For the avoidance of doubt, KGD makes no representations or warranties regarding any Products.

9.3 **No other warranties. EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS AGREEMENT ALL OTHER WARRANTIES RELATED TO THIS AGREEMENT (EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE), INCLUDING ANY WARRANTIES OR CONDITIONS OF PRODUCT LIABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, MERCHANTABILITY, AND WORKMANLIKE EFFORT ARE EXCLUDED.**

10.0 CONFIDENTIAL INFORMATION

10.1 **"Confidential Information"** means nonpublic information disclosed by one party (**"Disclosing Party"**) to the other (**"Receiving Party"**) in connection with any Quote or these Terms of Sale, in any form, that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential by a reasonable person under the circumstances.

10.2 The Receiving Party may use the Confidential Information solely for the purpose of performing its obligations under these Terms of Sale and shall not disclose the Confidential Information to any third party, other than to employees of the Receiving Party who have a need to have access to and knowledge of the Confidential Information, solely for the purpose of fulfilling its obligations under these Terms of Sale. The Receiving Party will take all reasonable measures to avoid disclosure, dissemination, or unauthorized use of Confidential Information, including, at a minimum, those measures it takes to protect its own confidential information of a similar nature and the Receiving Party shall take appropriate measures by instruction and agreement prior to disclosure to such employees to assure against unauthorized use or disclosure.

10.3 The Receiving Party shall have no obligation with respect to information that (a) was rightfully in possession of the Receiving Party without any obligation of confidentiality prior to receiving it from the Disclosing Party; (b) is, or subsequently becomes, legally and publicly available without breach of these Terms of Sale; (c) is rightfully obtained by the Receiving Party from a source other than the Disclosing Party without any obligation of confidentiality; (d) is developed by or for the Receiving Party without use of the Confidential Information and such independent development can be shown by documentary evidence; or (e) is disclosed by the Receiving Party pursuant to and in accordance with a valid order issued by a court or government agency, provided that the Receiving Party provides (i) prior written notice to the Disclosing Party of such order, (ii) the Disclosing Party prior opportunity to oppose or restrict such disclosure, (iii) discloses only such information as is required by the government agency, and (iv) uses commercially reasonable efforts to obtain confidential treatment for any Confidential Information so disclosed. Upon written demand by the Disclosing Party or upon termination of the Services, the Receiving Party shall: (A) cease using the Confidential Information, (B) return or destroy the Confidential Information and all copies, notes or extracts thereof within seven (7) days of receipt of demand or termination of Services, and (C) upon request of the Disclosing Party, certify in writing that the Receiving Party has complied with the obligations set forth in this paragraph.

10.4 Each party shall retain all right, title and interest to such party's Confidential Information. No license to any Intellectual Property (or application for Intellectual Property protection) is either granted or implied by the conveying of Confidential Information. The Receiving Party shall not remove, overprint or deface any notice of copyright or confidentiality, trademark, logo, legend, or other

notices of ownership from any originals or copies of Confidential Information it obtains from the Disclosing Party or from any copies the Disclosing Party is authorized to make.

10.5 Receiving Party will notify Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of these Terms of Sale. Receiving Party will cooperate with Disclosing Party in every reasonable way to help Disclosing Party regain possession of such Confidential Information and prevent its further unauthorized use and disclosure.

10.6 Receiving Party acknowledges that a breach of its obligations under this Section 10 could cause irreparable harm to Disclosing Party as to which monetary damages may be difficult to ascertain or an inadequate remedy. Receiving Party agrees that Disclosing Party will have the right, in addition to its other rights and remedies, to seek injunctive relief for any violation of these Terms of Sale.

10.7 Customer shall not disclose, advertise, or publish either the existence, the subject matter, any discussions relating to any Quote or these Terms of Sale to any third party without the prior written consent of KGD. Any press release, publication, advertisement or public disclosure regarding these Terms of Sale or Customer's purchase of the Products and/or the Services is subject to both the prior review and the written approval of KGD.

11.0 REGULATORY

11.1 Except as otherwise expressly agreed in writing, if at any time during the Term any notification, registration, or approval is required for giving legal effect in any applicable jurisdiction to these Terms of Sale or the transactions contemplated hereunder, Customer shall: (a) immediately take whatever steps may be necessary to properly notify, register or obtain approval; (b) be responsible for any charges incurred in connection with notifying, registering, or obtaining this approval; and (c) keep KGD currently informed of its efforts regarding this Section 11. KGD shall not be obligated to ship any Products or other materials to Customer or provide access to Services under these Terms of Sale until Customer has provided KGD with satisfactory evidence that this approval, notification, or registration is not required or that it has been obtained. Customer is responsible for ensuring that any satellite connection made and maintained using the Products and/or the Services is done so in accordance with these Terms of Sale, applicable permits, approvals and Laws.

11.2 KGD is not responsible for obtaining certification or homologation of any kind from any government or regulatory authority ("Hardware Approvals") and will flow through any such approvals provided from third party manufacturers on the Products. Should Customer intend to use Products in, or sell into a country, where a Product is not yet approved, such certification responsibility lies solely with Customer. Customer acknowledges that any Product purchased from KGD is in the configuration specified by the Documentation and as authorized by applicable regulatory bodies and any modifications made thereto may create an unauthorized product. Should Customer intend to make, or actually make, configuration (hardware or software) changes to the Products, including combining the Products with any other products provided by KGD or other third party suppliers or modifying the Products in a manner not specifically directed by KGD, Customer agrees it is and shall be solely responsible for such changes and any additional testing or certification that may be required. Notwithstanding any other provision in these Terms of Sale, Customer shall be wholly liable for and indemnify, defend and hold KGD, and its affiliates, harmless from any and all claims, penalties and/or charges it may face arising from Customer's unauthorized sale or use of the Products in violation of any applicable regulations or Laws in any country or failure to obtain or maintain any applicable Hardware Approvals. KGD shall not be held liable in any circumstance for Reseller's inability to sell into any desired country.

12.0 TERM AND TERMINATION

These Terms of Sale shall terminate:

(a) automatically upon expiration or termination of the term as set forth in a Purchase Order issued by Customer and accepted by KGD; or

(b) at such other time as the Parties mutually agree in writing, whichever is earlier.

13.0 EXPORT, RE-EXPORT, TRANSFER & USE CONTROLS

The Products, Services and related technology may contain technical data (collectively, "Regulated Items") and may be subject to U.S. and local export control Laws and regulations, including the Export Administration Regulations and the International Traffic in Arms Regulations. Customer will not, and will not permit any customers, End Users, or third parties to, directly or indirectly, export, reexport, or release any Regulated Items to any jurisdiction or country to which, or any party to whom, the export, reexport, or release of any Regulated Items is prohibited by applicable Law, regulation, or rule. Customer shall comply with such Laws and regulations governing use, export, re-export, and transfer of Regulated Items and will obtain all required U.S. and local authorizations, permits or licenses

prior to exporting, reexporting, or releasing any Regulated Items. Customer certifies that they are not on the U.S. Department of Commerce's Denied Persons List or affiliated lists, on the U.S. Department of Treasury's Specially Designated Nationals List or on any U.S. Government export exclusion lists. Customer will be responsible for any breach of this Section 13 by its, and its successors' and permitted assigns', affiliates, employees, officers, directors, partners, customers, agents, Resellers, resellers, vendors, or End Users. The export obligations under this clause shall survive the expiration or termination of these Terms of Sale agreed to by the Parties.

Customer specifically agrees to provide KGD with the complete name and address of each End User either (a) in the Purchase Order issued, or (b) in writing within five (5) days of receiving a request by KGD, and any other information required under these Terms of Sale or requested by KGD, including but not limited to completing any End-Use/End-User Certificate form¹ as may be required by KGD from time to time.

14. Customer Acting as A Reseller.

Any Customer acting as a Reseller purchasing Products and Services under these Terms of Sale for the purpose of reselling such Products and Services to their SubResellers and End Users ("Reseller") shall comply with the terms of this Section 14.

14.1 Marketing, Promotion of Products and Services, & Identification of End Users.

(a) **Customer Marketing Responsibilities.** Any Customer (acting as a Reseller) ("Reseller") shall, at its own expense: (a) use its best commercial efforts to advertise, market, and promote the Products and Services consistent with good business ethics and in a manner that reflects favorably upon KGD, in each case using best efforts to maximize the sales volume of the Products and Services; (b) establish and maintain a competent and adequately trained and skilled sales and marketing organization, independent sales representatives, and a distribution organization and facilities sufficient for the sale of Services and the sale and shipment of Products to SubResellers and End Users; and (c) observe all of KGD's reasonable directions.

(b) **Marketing Support.** During the Term, KGD shall provide information and support that may be reasonably requested by Reseller regarding the marketing, advertising, promotion, and sale of the Products and Services that Reseller is authorized to sell under these Terms of Sale.

(c) **Marketing Materials.** Each Party may reproduce, display, use, and distribute, solely in connection with the performance of its obligations under these Terms of Sale, any Marketing Materials made available to it by the other Party. Each Party agrees that it shall not, without the prior written consent of the other Party in each instance, use the other Party's Marks in advertising, publicity or otherwise. Each Party must submit any Marketing Materials it produces that includes or references the other Party's Marks, products, or services to the other Party for the other party's review and written approval prior to each use. The approving Party shall use commercially reasonable efforts to notify the submitting party in writing (for clarity, email notification is acceptable to fulfill this notification obligation set forth in Section 17.15) of acceptance or rejection within ten (10) days for each submission. Failure to accept or reject a submission within ten (10) days following receipt shall be deemed a rejection of that submission. Once a Party has approved specific Marketing Materials for any particular use or event, the same or substantially similar Marketing Materials (with no material variation) shall be deemed approved for any substantially similar use or event.

14.2 Resale of Products and Services. Resale. Reseller is responsible for all credit risks regarding, and collecting payment for, all Products and Services sold as part of a Reseller direct sale, whether or not Reseller has made full payment to KGD for the Products and Services. The inability of Reseller to collect the purchase price for any Product or Service does not affect Reseller's obligation to pay KGD for any Product or Service. Reseller may sell Products incorporated into its own products and services, either alone or as a bundle. Reseller shall consult with KGD on all Product and Services bundles.

14.3 Other Reseller Responsibilities.

(a) **Authority to Perform.** Reseller shall not disparage the Products, KGD, or any of KGD's Marks or KGD's Marketing Materials in any way, or engage in any illegal or unethical business practices in promoting, marketing, distributing, or supporting the Products and Services. Reseller shall, at its own expense, obtain and maintain all required certifications, credentials, licenses, and permits necessary to conduct business in accordance with these Terms of Sale.

(b) **End User Privacy.** For clarity, with respect to End Users to which it provides access to Products or Services, Reseller shall comply with all applicable country-specific data protection Laws, including but not limited to: (1) the Directive 95/46/EC of the European Parliament and Regulation 2016/679 of the European Parliament and of the Council, and any implementation thereof in

¹ KGD will require an End-Use/End-User Certificate for any transaction where the Products and Services are to be shipped to, or billed to, countries on the U.S. Department of Commerce Country Group D list as those countries are identified by the BIS, which list may be modified from time to time (available at <https://www.bis.doc.gov/index.php/documents/regulations-docs/2255-supplement-no-1-to-part-740-country-groups-1>). KGD will not book an Order until a complete and signed End-Use/End-User Certificate is provided to KGD.

national Law; (2) the provisions of the California Consumer Protection Act, California Civil Code §§ 1798.100, et seq.; (3) any applicable security breach notification laws; (4) any other applicable laws requiring the protection of Personal Information; and (5) in compliance with the Payment Card Industry Association Security Standards, to the extent Reseller has access to any End User payment card information. Reseller shall provide End Users a privacy policy which describe how it collects, stores, and uses Personal Information of End Users, consistent with Law. Reseller represents and warrants that it has obtained all necessary consents from End Users (including, where applicable, by requiring SubResellers to obtain all necessary consents) to collect, use and process Personal Information. Reseller shall provide Personal Information to KGD only if and to the extent (a) requested by KGD in writing or (b) necessary for KGD to provide to Reseller Products or Services. Reseller, SubResellers, and their affiliates, vendors, subcontractors, or agents shall use Personal Information solely to provide the Products or Services to End Users, and for no other purpose. If Reseller has End Users in the European Economic area, the Parties agree to be bound by the respective legal obligations with respect to the Personal Information of individuals in the European Economic Area.

(c) **Training.** KGD may require Reseller and its personnel to participate in and complete training on the Products and Services at Resellers expense.

(d) **Installation Services.** Reseller shall provide Installation Services for all Products and Services sold through Reseller Direct Sales, unless the End User affirmatively elects to utilize a third-party installer acceptable to KGD. Where Reseller is performing Installation Services, Reseller agrees to indemnify, defend, and hold harmless KGD and its affiliates against any and all third-party claims involving, related to, or flowing from the failure by Reseller to install the equipment in accordance with applicable standards, Specifications, and Documentation.

(e) **Reseller Conduct.** Reseller shall limit its claims and representations concerning the Products and Services to those made by KGD in its published literature for the Products and shall be responsible for any claims or representations concerning the Products or Services in excess of or inconsistent with such claims of KGD. Reseller shall at all times conduct its activities in a professional and competent manner. Without limitation, Reseller shall: (a) promote the Products and Data Services in a manner that maintains the good name and reputation of KGD its suppliers and its and their Products and Data Services; and (b) not engage in any unfair, competitive, misleading, or deceptive practices with respect to KGD, KGD's Marks, KGD's Marketing Materials, or the Products or Services with respect to its business activities and practices.

15.0 LIMITATION AND EXCLUSION OF LIABILITY.

15.1 Nothing in these Terms of Sale limits or excludes the liability of:

(a) either party to the other for fraud or fraudulent misrepresentation; a breach of confidentiality obligations; either party's infringement, misappropriation, or violation of the other party's Intellectual Property; or any liability that cannot be limited or excluded under applicable law.

(b) Customer to KGD arising out of: Customer's breach of Sections 2.0 (Scope), 7.0 (Proprietary Rights and Software Licensing), 11.0 (Regulatory) or 13.0 (Export, Re-export, Transfer & Use Controls); Customer's breach of any EULA; or any amounts due to KGD under these Terms of Sale or a Quote.

15.2 Subject to Section 15.1 above, each party's total aggregate liability is limited to direct damages incurred not to exceed the actual amounts of money paid to KGD for the Products and/or Services under an applicable Quote or Purchase Order.

15.3 Subject to Section 15.1 above, and notwithstanding anything else in these Terms of Sale to the contrary, neither party will be liable for any special, incidental, indirect, exemplary, punitive, or consequential damages; loss of any of the following: profits, revenue, business, anticipated savings, use of any product or service, opportunity, goodwill or reputation; or lost or damaged data whether or not such damage or loss was known or reasonably foreseeable by the other party and regardless of whether liability is based on breach of contract or warranty, tort, strict liability, or otherwise.

15.4 References in this section to (a) a "party" includes a party's affiliates, officers, directors, employees, agents and suppliers and (b) "liability" includes liability arising from contract, tort (including negligence), under any indemnity, strict liability or otherwise, in each case even if a party has been informed of the possibility of that liability. In Section 15.3, references to "loss" refers to any and all kinds of loss or damage including, without limitation, any damages, fines, costs, charges, fees or other liability.

16.0 INDEMNIFICATION

16.1 **Obligation.** If a Claim is brought against a party, or its subsidiaries, affiliates, agents, licensees, or successors, or any agents, directors, officers, or employees of any of them (all, collectively, "**Defendant**"), the other party ("**Respondent**") will defend the Claim (including by paying litigation costs and reasonable attorneys' fees) and pay any settlement Respondent reasonably consents to or

any adverse final judgment subject to the following limitations. **“Claim”** means an unaffiliated third party’s demand, suit, or other action to the extent: (a) it alleges bodily injury, death or damage to real or tangible, personal property caused by Respondent’s gross negligence or willful misconduct; (b) solely for Customer as Respondent, it alleges the Marketing Materials created by or on behalf of Customer, the Customer Marks, or Customer’s products, services or any other material provided by Customer under these Terms of Sale, unmodified from the form provided by Customer and uncombined with anything else, infringes claimant’s Intellectual Property; (c) solely for Customer as Respondent, it alleges or relates to any grossly negligent or willful act or omission of Customer or its personnel in connection with the performance of its obligations under these Terms of Sale; or (d) solely for Customer as Respondent, it alleges that Customer breached its agreement with a third party as a result of or in connection with entering into, performing under or terminating these Terms of Sale.

16.2 **Procedure.** Defendant: (a) will promptly notify Respondent of any Claim and permit Respondent, using counsel of its choice, to answer and defend; (b) at Respondent’s reasonable request and expense, will assist in the defense; and (c) at its expense, may participate in the defense with separate counsel of its choosing. Respondent is not responsible for settlements it does not consent to and will not settle Claims under this Section 16 without Defendant’s consent (with both parties’ consent not unreasonably withheld). Neither party will stipulate, acknowledge, or admit fault or liability on the other’s part without the other’s prior, written consent. Respondent will not publicize any settlement without Defendant’s prior, written consent.

16.3 **Remedies.** If any Product, Service, Deliverable or any KGD Materials provided to Customer is alleged to infringe and KGD may become liable, KGD may, at its sole option and expense and without obligation: (a) obtain the right for Customers or End Users to continue using such Product, Service, Deliverable or any KGD Materials; (b) replace or modify such Product, Service, Deliverable or KGD Materials to make it non-infringing, so long as the replacement or modification is functionally equivalent or (c) if (a) and (b) are not commercially reasonable, require Customer return the infringing Product or materials and refund the amounts paid for such Product or materials, based on the date the claim arose, and prorated over a 3-year period beginning on the date of delivery of the Product or materials. THIS SECTION 16 SETS FORTH CUSTOMER’S SOLE REMEDIES AND KGD’S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THE PRODUCT, SERVICES AND KGD MATERIALS INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD PARTY INTELLECTUAL PROPERTY.

16.4 **Exclusions.** KGD has no obligation under this Section 16 for: (a) claims or awards arising out of or based on the value of: (i) anything not provided by KGD; (ii) Third Party Products or Materials; (iii) use or distribution of any Product or Service other than as expressly permitted by these Terms of Sale; (iv) modification of any Product or Service by anyone other than KGD or combination with any other product or service; (v) use of a Product or Service after KGD notified Customer to cease use due to a third-party claim; (vi) failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Customer or End User by or on behalf of KGD; or (vii) Customer’s marketing, advertising, promotion, or sale of a Product in any manner not otherwise authorized under these Terms of Sale; or (b) any claim (e.g., a counterclaim) made in response to a suit or proceeding first filed by Customer.

17.0 GENERAL

17.2 **Audit.** Customers acting as Resellers shall maintain complete and accurate records related to its performance under these Terms of Sale. During the Term and for three (3) years after expiration or termination of these Terms of Sale, KGD has the right, upon reasonable prior notice and during normal business hours, to periodically examine Reseller’s books and records to verify compliance with these Terms of Sale.

17.3 **Compliance with Law.** The parties agree to comply with and provide necessary training to its employees regarding all applicable Laws, including but not limited to the Export and Regulatory Control Laws expressed in these Terms of Sale and all Laws against bribery, corruption, inaccurate books and records, inadequate internal controls and money-laundering, and the U.S. Foreign Corrupt Practices Act.

17.4 **Choice of Law.** The validity, interpretation, and performance of these Terms of Sale shall be controlled by and construed under the laws of the State of Washington, United States of America, as if performed wholly within the state and without giving effect to the principles of conflicts of law, and the state and federal courts of King County, Washington shall have exclusive jurisdiction over any claim arising thereunder. The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods. Notwithstanding the foregoing, either party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party’s intellectual property or proprietary rights.

17.5 **Dispute Resolution.** The Parties shall first attempt in good faith to resolve any dispute, controversy or claim arising out of these Terms of Sale (**“Dispute”**) by negotiation and consultation between themselves. In the event that such Dispute is not resolved on an informal basis within thirty (30) days after one Party provides written notice to the other Party of such Dispute (**“Dispute Notice”**), either Party may, by written notice to the other Party (**“Escalation Notice”**), refer such Dispute to the executives of each Party. If the

executives cannot resolve any Dispute during the time period ending thirty (30) days after the date of the Escalation Notice, either Party may pursue all applicable rights and remedies at law or in equity, subject to the terms of these Terms of Sale.

17.6 Force Majeure. Except for the obligation to pay monies due and owing, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including, without limitation, acts of nature, earthquakes, labor disputes, industry-wide shortages of supplies, actions of governmental entities, riots, war, terrorism, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the defaulting party shall be extended for a period equal to the period during which such event prevented such party's performance.

17.7 No Waiver. The waiver by either party of any right provided under these Terms of Sale shall not constitute a subsequent or continuing waiver of such right or of any other right under these Terms of Sale.

17.8 Assignment. Neither these Terms of Sale nor any rights or obligations under these Terms of Sale shall be assigned by Customer without KGD's prior written consent, which will not be unreasonably withheld or delayed. Any unpermitted attempted assignment shall be void and of no effect. Notwithstanding any assignment by Customer, Customer shall remain liable for the payment of all amounts due under these Terms of Sale.

17.9 Severability. In the event that part of or one or more terms of these Terms of Sale become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, each such part or term shall be null and void and shall be deemed deleted from these Terms of Sale. All remaining terms of these Terms of Sale shall remain in full force and effect. Notwithstanding the foregoing, if this paragraph is invoked and, as a result, the value of these Terms of Sale is materially impaired for either party, as determined by such party in its sole discretion, then the affected party may terminate these Terms of Sale by written notice with immediate effect to the other.

17.10 Attorneys' Fees. In any suit or proceeding relating to these Terms of Sale the prevailing party will have the right to recover from the other its costs and reasonable fees and expenses of attorneys, accountants, and other professionals incurred in connection with the suit or proceeding, including costs, fees and expenses upon appeal, separately from and in addition to any other amount included in such judgment. This provision is intended to be severable from the other provisions of these Terms of Sale, and shall survive expiration or termination.

17.11 No Agency. These Terms of Sale do not create any agency, partnership, joint venture, or franchise relationship. No employee of either party shall be or become, or shall be deemed to be or become, an employee of the other party by virtue of the existence or implementation of these Terms of Sale. Each party hereto is an independent contractor. Neither party shall assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.

17.12 Entire Agreement. These Terms of Sale constitute the entire agreement between the parties concerning the subject matter of these Terms of Sale and replace any prior oral or written communications between the parties, all of which are excluded. There are no conditions, understandings, agreements, representations or warranties, expressed or implied, that are not specified herein. These Terms of Sale may be modified only by a written document executed by the parties hereto.

17.13 Notices. All notices required or permitted under these Terms of Sale will be in writing and will be deemed given one (1) day after deposit with a commercial express courier specifying next day delivery (or two (2) days for international courier packages specifying two (2)-day delivery), with written verification of receipt. All communications will be sent to the addresses set forth on the first page of these Terms of Sale, (and notices to KGD shall be further addressed to the Office of the General Counsel) or such other address as may be designated by a party by giving written notice to the other party pursuant to this paragraph, or, in the absence of such an address from Customer, to the address to which the last invoice under these Terms of Sale was sent before notice is served. Notwithstanding the foregoing, notices regarding changes in pricing, license terms, policies or programs may be by posting on KGDcorp.com or by e-mail.

17.14 Survival. The following sections shall survive the expiration or earlier termination of these Terms of Sale: Sections 2.0 (Scope), 6.0 (Payment), 7.0, (Proprietary Rights and Software Licensing), 8.0 (Customer Data), 9.0 (Limited Warranty), 10.0 (Confidential Information), 13.0 (Export, Re-Export, Transfer and Use Controls), 15.0 (Limitation and Exclusion of Liability), 16.0 (Indemnification), 17.0 (General) and the license to use the Products and/or Services set out in the EULA.

EXHIBIT A
Data Service Plan Guidelines

These Data Service Plan Guidelines shall control with respect to the individual Data Service Plans purchased pursuant to the applicable Quote. KGD reserves the right, in its sole discretion, to make modifications to this Exhibit A at any time, provided that if such modification is not acceptable to Customer, KGD will permit Customer to terminate Service within thirty (30) days of the date such notice is provided.

1. Data Services Term

- a. All Data Service Plans begin on the activation date, and except for certain promotional/demo plans or as otherwise may be agreed to in writing are for a twelve (12) month period (“Data Plan Initial Term”). At the expiration of the Data Plan Initial Term, the Data Services Plan (except in the case of PAYG) will automatically renew for an additional twelve (12) month term unless Customer provides written notice to KGD at support@kymetacorp.com of its intent not to renew at least thirty (30) days prior to the end of the then-current term (each renewal a “Data Plan Renewal Term”).
- b. Additional PAYG plans may be added at any time.
- c. In the event that Customer decides to terminate the Data Services Plan before the end of the Data Services Term, Customer must provide a Service deactivation request to KGD Support at support@kymetacorp.com no less than thirty (30) days in advance and pay the applicable ETF(s).

2. Data Services Plans

- a. **Hybrid.** A single twelve (12) month Broadband satellite plan and a single 12-month Broadband cellular plan can be purchased per terminal.
- b. **Changes.** Customer may, at any time during the Data Services Term, modify its then-current Data Service Plan(s); subject to the following:
 - (i) Any twelve (12) month plan may be upgraded to another plan of the same service type at any time without any fee.
 - (ii) Any twelve (12) month plan may be downgraded for a fee and agreement that the Data Services Term will start over as of the first day of such new plan.
 - (iii) PAYG and Demo plans may not be modified.
- c. **Network Updates.** KGD reserves the right to upgrade, reconfigure or make any changes to the network from time to time, such changes will not degrade network performance, this may include software updates, options files, etc. Except in the case of emergency, KGD will provide ninety (90) days for Customer to validate and implement any such changes on their equipment as necessary.

3. Use of Services

- a. **Prohibited Use of the Data Services.** Customer will, and will ensure End Users, only access and use the Data Services as expressly permitted by the Agreement and the EULA. Customer will not enable any person to, and will not itself, do any of the following, except as expressly permitted by KGD: (a) make the Data Services available on or in connection with any time-sharing, service bureau, software-as-a-service, cloud, or other technology or service; (b) bypass or breach any security device or protection used by the Data Services or access or use the Data Services other than by an authorized user through the use of such authorized user’s own then-valid Access Credentials; (c) input, upload, transmit, or otherwise provide to or through the Data Services, any information or materials that are unlawful or injurious, or contain, transmit, or activate any harmful code; (d) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Data Services or KGD’s provision of services to any third party, in whole or in part; (e) do any “mirroring” or “framing” of any part of the Data Services, or create internet links to the Data Services that include log-in information, user names, passwords, and/or secure cookies; or (f) otherwise access or use the Data Services or KGD Materials or Third Party Materials beyond the authorized scope. If Customer becomes aware of any actual or threatened activity prohibited by this Section, Customer will promptly notify KGD of any such actual or threatened activity.
- b. **Suspension or Termination of Data Services.** Customer acknowledges that KGD may, directly or indirectly, suspend, terminate, or otherwise deny any Customer or End User access to or use of all or any part of the Data Services, without incurring any resulting obligation or liability, if: (a) KGD receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires KGD to do so; (b) KGD believes, in its sole discretion, that: (i) any Customer or End User has failed to comply with any material term of the Agreement or EULA, or accessed or used the Data Services beyond the scope of the rights granted or for a purpose not authorized under the Agreement or EULA, or in any manner that does not comply with any instruction or requirement of the Specifications; (ii) Customer or End User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities relating to or in connection with any of the Data Services; or (iii) this Exhibit A expires or is terminated; or (c) Customer has caused a

material breach of the Agreement and has not cured such breach as provided therein, including defaulting on any payment obligations. This Section does not limit any of KGD's other rights or remedies, whether at law, in equity, or under this Agreement.

c. Throttling. Customer acknowledges that KGD may throttle down any usage of data if Customer or End Users exceed the data provided under the subscribed Data Service Plan.

d. Unused Data. Any unused data at the end of a month will not be carried over to the next month nor accumulate from month-to-month.

4. Commitments

a. Service Availability. KGD will guarantee a ninety-eight percent (98%) ("Availability Guarantee") for all Services under the Agreement during any calendar month that the Services are provided. The Services will be considered "Available" at all times that there is an active connection between the terminal and the network capable of bi-directional data transmission, except that the following occurrences will not be considered when determining if the Services are unavailable or calculating the time Services were unavailable: (i) any act, failure to act, or omission on the part of the Customer or End User, any third-party contractor or vendor, or any failure of the Customer's or End User's applications, equipment, other services or providers, or facilities; (ii) any scheduled maintenance (provided KGD provides no less than twenty-four (24) hours' notice for scheduled maintenance); (iii) any event or outage lasting less than three hundred (300) seconds in duration, except in the event of significant and repetitive instances of such outages (i.e. four (4) or more related event or outages within a rolling sixty (60) day period ("Chronic Service Condition")); (iv) any Force Majeure event; (v) issues associated with new installations (within 5 days of install or interoperability testing); (vi) any period when Customer or End Users deny KGD or its agents access to the premises (including IT systems as may be necessary) where affected terminals are located; (vii) interruptions associated with failures of equipment, software, or Customer's or End User's underlying network connection not provided by KGD, including any local access provider; (viii) outages of non-network service offerings; (ix) any delay or downtime attributed to Customer or End User not responding to KGD's request for assistance in investigation; or (x) after investigation, any occurrence that is found to be caused by any party other than KGD.

b. Unavailable Time Calculation. The time Services are unavailable will be the actual length of time between the first report of the unavailable nature of the Services and the time KGD notifies Customer or End User that the issue is resolved and Service is restored.

5. Support

a. Trouble Tickets. If there is an experienced Service Outage or other Service Degradation, including but not limited to, total throughput speeds or latency Customer should open a KGD "Trouble Ticket" (unique trouble tracking number assigned to a reported issue) with the Network Operations Center ("NOC") by calling +1.855.525.6638 or emailing support@kymetacorp.com. The NOC is available 24x7.

b. Mean Time to Respond/Repair. KGD commits to an average time for initial response and resolution based on the following table of priorities. The times in the table below are calculated as an average of all response and repair times for Trouble Tickets in the preceding calendar month.

Priority	Initial Response	Resolution
Priority 1: Service Outage – meaning any unscheduled period where Services are interrupted and not usable	2 hours	8 hours
Priority 2: Service Degradation – meaning any unscheduled period where Services are available but do not perform as described herein or in an applicable service order (i.e. not meeting the CIR specified with any Data Service Plan) <ul style="list-style-type: none"> Priority 2 issues are only applicable for Committed Information Rate ("CIR") Data Service Plans with guaranteed bandwidth and performance measures. 	4 hours	12 hours

Priority 3: an inquiry requesting standard troubleshooting support or questions regarding the Service	24 hours	36 hours
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- c. Chronic Service Conditions.** When either Party identifies what they believe is a Chronic Service Condition (as defined above), they shall provide notice to the other Party. Upon notification, KGD will:
- (i) Immediately perform a detailed investigation of the reported issues;
 - (ii) After the core issue is identified during investigation, develop and provide a plan for mitigating such issues going forward; and
 - (iii) If the issue returns within sixty (60) days of KGD providing the mitigation plan, Customer shall have the option to terminate any affected Data Service Plans without incurring an ETF.
- d. No Fault Found.** If KGD responds to a Trouble Ticket and reasonably determines that the cause of the issue is (i) not due to the Data Services or (ii) is due to the Customer’s or End User’s equipment or other responsibilities (including that of Customer’s or End User’s third-party suppliers), KGD shall be entitled to invoice for the support service provided at KGD’s then prevailing rates.

6. Service Credits

a. Service Credit Structure. Credits under this Section are based on monthly billing intervals for monthly recurring charges (“MRC(s)”) and apply to the Data Service Plans for which the Service Credit is issued. “Service Credit” means any amount credited against the following months invoice, issued by KGD in response to a Credit Request (As defined below) resulting from a Service Outage or Service Degradation. Service Credits accumulate only for the period of time that exceeds the Availability Guarantee under this Agreement. Service Credits are measured by a one to one (1:1) ratio of downtime (or degradation time) exceeding the Availability Guarantee to the applicable MRC (for example, if there is a Service Outage that exceeds the Availability Guarantee by 1 hour, KGD will provide a Service Credit equal to the amount of 1 hour worth of Service).

b. Eligibility. In order to be eligible for a Service Credit, Customer must first open a Trouble Ticket with the NOC reporting the Service Outage or Service Degradation. After the Trouble Ticket is resolved, Customer must e-mail KGD support at support@kymetacorp.com within thirty (30) days requesting the applicable Service Credit (“Credit Request”). The Credit Request should include “Request to Billing” in the subject line, the corresponding Trouble Ticket number, and a short explanation of the Service Credit requested. KGD will evaluate the reported issue, the Service Credit request, and notify Customer of KGD’s determination of any applicable Service Credit. Service Credit requests made on past-due accounts will not be processed until the past-due amount is fully paid or resolved. Maximum Information Rate (“MIR”) (i.e. Non-CIR) Data Service Plans offered by KGD are not eligible to receive Service Credits on Priority 2 or Priority 3 issues.

7. Sole and Exclusive Remedy. Notwithstanding anything to the contrary in the Agreement, Section 6 (Service Credits) is the sole and exclusive remedy for Service Outages or Service Degradations described in this Exhibit. In no event will the cumulative total Service Credit for any Service Outages, Service Degradations, or any other Trouble Tickets opened during any calendar month exceed fifty percent (50%) of the impacted months MRC(s). Additionally, all Service Credits during a Data Services Term shall not exceed thirty percent (30%) of the total MRC(s) for all Data Services provided during such Data Services Term.