Kymeta End User License Agreement

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To the extent required by law, and at Customer’s written request, Kymeta shall provide Customer with the interface information needed to achieve interoperability between the Software and another independently created program, on payment of Kymeta’s applicable fee, if any. Customer shall observe strict obligations of confidentiality with respect to such information and shall use such information in compliance with any applicable terms and conditions upon which Kymeta makes such information available.

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Restrictions. This warranty does not apply if the Software, product or any other equipment upon which the Software is authorized to be used (a) has been altered, except by Kymeta or its authorized representative, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Kymeta, (c) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; or (d) is licensed for beta, evaluation, testing or demonstration purposes. The Software warranty also does not apply to (e) any temporary Software modules; (f) any Software that Kymeta expressly provides on an “as is” basis; (h) any Software for which an approved source does not receive a license fee; and (i) Software supplied by any third party which is not an approved source.

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Customer acknowledges and agrees that Kymeta has set its prices and entered into the Agreement in reliance upon the disclaimers of warranty and the limitations of liability set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its
essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

Controlling Law, Jurisdiction. the Agreement and warranties (“Warranties”) shall be construed under the laws of the state of Washington, United States of America, notwithstanding any conflicts of law provisions; and the state and federal courts of King County, Washington shall have exclusive jurisdiction over any claim arising under the Agreement or Warranties. 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. If any portion hereof is found to be void or unenforceable, the remaining provisions of the Agreement and Warranties shall remain in full force and effect. Except as expressly provided herein, the Agreement constitutes the entire agreement between the parties with respect to the license of the Software and Documentation and supersedes any conflicting or additional terms contained in any purchase order or elsewhere, all of which terms are excluded. The Agreement has been written in the English language, and the parties agree that the English version will govern.