

KYMETA™ u7 MAINTENANCE AND SUPPORT AGREEMENT

This Maintenance & Support Agreement (the “**M&S Agreement**”) is effective as of the date Maintenance Services commence pursuant to an accepted Purchase Order, (the “**Effective Date**”) and is between **Customer** and **Kymeta Corporation** (“**Kymeta**”). Customer and Kymeta may be referred to individually as a Party or together as the Parties. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Agreement.

RECITALS

WHEREAS Customer and Kymeta are Parties to an Agreement governing the terms of sale the Products and Services to be covered hereunder.

WHEREAS Customer has provided Kymeta with a Purchase Order for, and Kymeta has accepted the Purchase Order and will provide the Maintenance Services pursuant to such Purchase Order.

WHEREAS Customer and Kymeta agree that the terms of this M&S Agreement are supplemental to, subject to, and hereby incorporated into, the Master Agreement and will apply to the Maintenance Services for the Term stated in the applicable Purchase Order. Unless otherwise stated in this M&S Agreement, the Master Agreement will control with regard to any inconsistency or conflicting terms between the Master Agreement and this M&S Agreement.

AGREEMENT

Section 1. Definitions

Where not defined elsewhere in this M&S Agreement, the following capitalized terms have the following meanings:

“**Agreement**” means the applicable Quote, Purchase Order or Master Agreement that this M&S Agreement is appended thereto.

“**Applicable Laws**” means any law, statute, rule, regulation, ordinance, order, code, interpretation, judgment, decree, directive, or decision in effect from time to time of any national, state or local government, any political subdivision thereof or any other governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, commission or other governmental entity, which is applicable to or affects this M&S Agreement.

“**Covered Products**” means the Antenna, Terminal, or other similar terminal configuration that Kymeta provides Maintenance for under this M&S Agreement.

“**Customer**” means any Distributor or End User purchasing Services under this M&S Agreement.

“**End User**” means a person or entity that purchases Covered Products or Services for its own internal business purposes either directly from Kymeta or through a Kymeta distributor.

“Excluded Equipment” means any hardware, equipment, components, or accessories (including all Third Party Materials) that are not Covered Products.

“Extended Warranty Period” means the period of time Covered Products are covered under warranty beyond the Standard Warranty Period. The Extended Warranty Period shall not in any circumstance exceed the period of time stated in [Section 2.1](#) after the Standard Warranty Period expires.

“Hot Fix” means any revision to Software that Kymeta, in its discretion, may make as an interim resolution to any reported issue.

“Maintenance Release” means any revision to Software that Kymeta may make that maintains or enhances Software operability and functionality, including available fixes for reported or identified Software problems.

“Maintenance Plan” means the maintenance services as described in [Section 2](#).

“Master Agreement” means the agreement between Customer and Kymeta governing the sale of the Covered Products. Master Agreement includes a negotiated Kymeta Master Agreement, the Kymeta Terms of Sale or other negotiated agreement.

“Person” means any individual, company, corporation, partnership or other legal entity.

“Purchase Order” or “PO” means the applicable order issued by Customer to Kymeta for the Maintenance Services.

“Quote” means any proposal signed by an authorized representative of each Party for the purchase of Maintenance Services.

“Software” means all licensed and unlicensed software, computer programming object code, source code, and other software for or incorporated into the Covered Products now or hereafter owned by Kymeta or licensed from third parties and necessary for effective operation of the Covered Products.

“Software License” means the license granted to Customer under the applicable Master Agreement or End User License Agreement.

“Software Updates” means any updated version of the Software that may be released by Kymeta from time to time.

“Services” means the Maintenance Services provided under this M&S Agreement.

“Term” is defined in [Section 3.1](#).

“Terms of Sale” means the terms of sale available at <https://www.kymetacorp.com/legal/terms%20of%20sale/> as may be amended from time to time by Kymeta.

“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 or relating to the Covered Products or Software that are not proprietary to Kymeta.

Section 2 u7 Maintenance Plan

Unless otherwise terminated pursuant to [Section 3.2](#), Kymeta agrees to provide the following u7 Maintenance Plan for u7 Products Hardware purchases:

- Two full years of warranty support (24 months) from the earlier of commissioning or six (6) months from the date of shipment
- Hot Fixes and Software Updates available via over-the-air (OTA) or secure file transfer

2.1 Extended Warranty.

Distributor or End User may purchase extended warranty support for u7 Covered Products for one additional year. The Extended Warranty under this Section must be purchased within six (6) months of original product sale.

Section 3. Term and Termination.

3.1 Term.

The Term of this M&S Agreement shall be for the number of years of Maintenance Customer purchases pursuant to the applicable Purchase Order. If Customer would like to purchase additional Services after expiration of the Term, Customer may do so at Kymeta's then prevailing rates on an annual basis; provided, however that at no time will the applicable Extended Warranty Period be extended for longer than specified in [Section 2.1](#) (above).

3.2 Termination.

(a) Termination for Default. Either Party may terminate this M&S Agreement immediately for Default provided that the non-defaulting Party gives written notice of the Default and the defaulting Party fails to cure such Default within thirty (30) days of the date notice was provided. "Default" as used in this section means (i) failure of either Party to materially perform under the terms of this M&S Agreement or (ii) termination of the Master Agreement or Kymeta Data Services Plan Addendum.

(b) Termination for Convenience. Either Party may terminate this M&S Agreement without penalty or liability upon sixty (60) days' prior written notice.

(c) Effect of Termination. Unless this M&S Agreement is terminated by Customer for Kymeta's Default pursuant to [Section 3.2\(a\)](#) or Kymeta pursuant to 3.2(b), in which case any refund will be on a prorate basis, Kymeta shall not be required to refund any portion of prepaid but unused Fees. Upon termination or expiration of this M&S Agreement all Warranties provided under this M&S Agreement shall terminate and Kymeta shall no longer be obligated to provide the Services herein.

Section 4. Pricing and Payment Terms.

4.1 Pricing.

Kymeta shall provide the Maintenance Plan for the prices set forth in Price Book ("Fees").

4.2 Payment Terms.

Maintenance Fees are paid in advance for the applicable year. Kymeta will provide invoices for the Maintenance Plan and Customer shall pay all invoices in accordance with the terms set forth in the applicable Agreement.

Section 5. Intellectual Property; Indemnification.**5.1 Intellectual Property Ownership**

Subject solely to the licenses expressly granted in any Master Agreement, nothing in this M&S Agreement shall have any effect on either Party's interest in, rights to, title or ownership of its Intellectual Property. All rights not expressly granted in this M&S Agreement or an applicable Master Agreement are reserved. Any methodologies or processes (including Documentation of the same) by which Kymeta performs any of the Services herein are the exclusive property of Kymeta.

5.2 Indemnification

Kymeta will defend Customer from and against all unaffiliated third party claims that the methodologies or processes used in performing the Services provided pursuant to this M&S Agreement infringe such third party's intellectual property rights and will indemnify Customer and pay any resulting judgement or settlement; provided, however, Customer (i) provides Kymeta with prompt written notice of the claim, (ii) gives control of the defense or settlement to Kymeta, (iii) provides Kymeta with reasonable assistance regarding the defense or settlement.

Section 6. Limitation on Liability

THE TOTAL CUMULATIVE LIABILITY OF KYMETA WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, ARISING OUT OF OR RELATED TO THIS M&S AGREEMENT OR THE PERFORMANCE OF THE SERVICES SHALL IN NO CASE EXCEED THE AMOUNTS PAID BY CUSTOMER FOR THE SERVICES IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM, AND CUSTOMER HEREBY RELEASES KYMETA FROM ANY LIABILITY IN EXCESS OF SUCH AMOUNT. THIS MONETARY LIMITATION SHALL SURVIVE THE FAILURE OF ANY EXCLUSIVE REMEDY.

KYMETA SHALL NOT BE LIABLE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE OR INCIDENTAL LOSS OR DAMAGE, LOSS BY REASON OF SERVICE INTERRUPTION, COSTS OF CAPITAL OR EXPENSES THEREOF, LOSS OF PROFITS OR REVENUES OR THE LOSS OF USE THEREOF, CLAIM OF ANY THIRD PARTY FOR LOSS CAUSED BY DELAYS IN MANUFACTURE OR OPERATION, AND CUSTOMER HEREBY RELEASES KYMETA FROM ANY LIABILITY FOR ALL SUCH LOSSES AND DAMAGES.

Section 7. Miscellaneous**7.1 Compliance with Laws.**

The Parties agree to comply with all Applicable Laws in relation to performance of their respective obligations under this M&S Agreement.

7.2 Assignment

Neither Party will assign all or any part of this M&S Agreement or any of its rights under this M&S Agreement without the prior written consent of the other Party, which will not be unreasonably withheld. However, Kymeta may upon written notice to Customer, assign this M&S Agreement in whole to an affiliate or any successor as part of a merger or acquisition.

7.3 Force Majeure

Except for the obligation to pay monies due and owing under this M&S Agreement, neither party shall be liable for any delay or failure in performance of their obligations under this M&S Agreement due to events outside the defaulting Party's reasonable control, including, without limitation, acts of nature, natural disaster, 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.

7.4 Headings

The headings of sections, paragraphs, and subsections of this M&S Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of this M&S Agreement.

7.5 Severability

In the event that part of or one or more terms of this M&S Agreement 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 this M&S Agreement. All remaining terms of this M&S Agreement shall remain in full force and effect. Notwithstanding the foregoing, if this paragraph is invoked and, as a result, the value of this M&S Agreement is materially impaired for either Party, as determined by such Party in its sole discretion, then the affected Party may terminate this M&S Agreement by written notice with immediate effect to the other.

7.6 Survival

Any section that by its express terms or should otherwise reasonably survive the expiration or termination of this M&S Agreement shall survive such expiration or termination.

7.7 Entire Agreement

This M&S Agreement constitutes the entire agreement and supersedes any and all prior agreements between the Parties with regard to the subject matter hereof. No amendment, modification or waiver of any of the provisions of this M&S Agreement will be valid unless set forth in a written instrument signed by the Party to be bound thereby. Notwithstanding the foregoing, the Agreement and End User License Agreement shall continue in full force and effect and, unless expressly stated herein, control with regard to any inconsistency or conflicting terms.