

## Kentik On Premise Services Agreement

<p>This Kentik On Premise Services Agreement is made as of _____, 20____, or if no date is inserted, the date of the last signature below ("Effective Date") between Kentik Technologies, Inc., a Delaware corporation, with offices at 548 Market St PMB 78595, San Francisco, CA 94104 ("Kentik") and _____ a _____ entity, with offices at _____ ("Customer").</p> <p>The purpose of the Agreement is to create a single mechanism under which Customer may use the Services. The Services ordered by Customer, corresponding fees, and additional terms are identified in an Order Form. If Customer orders additional Services after the Effective Date, Kentik may require an additional Order Form to be executed by Customer. In the event of any conflict between the Order Form and the Agreement, the Order Form shall control.</p>	
<b>CUSTOMER:</b> _____	<b>KENTIK TECHNOLOGIES, INC.</b>
<b>Individual Signing:</b> _____ [print name]	<b>Individual Signing:</b> [print name]
<b>Signature:</b>	<b>Signature:</b>
<b>Title:</b> _____	<b>Title:</b>
<b>Signing Date:</b> _____	<b>Signing Date:</b>
<b>CUSTOMER ADDRESS FOR NOTIFICATIONS:</b> _____	<b>KENTIK TECHNOLOGIES, INC. ADDRESS FOR NOTIFICATIONS:</b>  548 Market St PMB 78595 San Francisco, CA 94104-5401 Attn: CEO

### 1. DEFINITIONS.

**"Customer Data"** means information which Customer inputs into the Services and data output from the Services that is made available to Customer or can otherwise be retrieved or accessed by Customer through the Services.

**"Customer Equipment"** means Customer's computer hardware, software, and network infrastructure used to access the Services.

**"Device"** means a single router, switch, chassis, server, and the like, and that functions as a flow-exporter. Single router, switch, chassis or server. Clusters are considered multiple devices and are excluded from the definition of a single Device.

**"Extension Term"** means each additional period beyond the Initial Term that for which the term for the applicable Services is extended, and if no period is stated, each Extension Term is one (1) year.

**"Hosting Environment"** means the facilities and environment with respect to the provision of the Services pursuant to this Agreement, including software, and the servers, hardware, networks, equipment, and telecommunications facilities and technology installed or used within such environment.

**"Initial Term"** means the first term for the Services defined in an Order Form.

**"Order Form"** means a Kentik ordering document that is executed by the parties, references this Agreement, and lists the applicable term, fees,

Services and any Professional Services ordered by Customer, and any additional terms applicable to the Services.

**"Professional Services"** means the professional/consulting services listed in Section 4, the Professional Services Description, and as may be further identified in an Order Form.

**"Professional Services Description"** means the description of the Professional Services purchased by Customer contained in the applicable description document.

**"Services"** means the applicable Services and/or Professional Services.

**"Services Description"** means the description of the applicable Services purchased by Customer contained in the applicable description document, available on Kentik's website at <https://kb.kentik.com/>.

**"Support"** has the meaning set forth in Section 7.

**"Taxes"** means any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, sales, use or withholding taxes.

**"Term"** means the Initial Term and any Extension Term applicable to each Service.

**"Updates"** means all Services updates and enhancements that Kentik generally makes available at no additional charge to its customers of the Services listed in an Order Form who are current in payment of applicable fees.

**"Users"** means Customer's employees, contractors, and agents who are authorized by Customer to use the Services on its behalf.

**2. TERMS OF THE SERVICES.** Subject to the terms of the Agreement and each Order Form, Kentik grants Customer a non-exclusive, non-transferable right to install (where applicable), access and use the Services listed under an Order Form during the Term. Customer's right to use the Services is also limited to any other restrictions contained in an Order Form.

**3. CUSTOMER RESPONSIBILITIES RELATING TO USE OF THE SERVICES AND KENTIK'S RIGHTS.**

**3.1** As between the parties, Customer is responsible for (i) all activities conducted under its User logins, (ii) obtaining and maintaining any Customer Equipment and any ancillary services needed to connect to, access or otherwise use the Services, and (iii) ensuring that the Customer Equipment and any ancillary services are compatible with the Services and comply with all configuration requirements set forth in the Services Description. Customer is also responsible for meeting the Hardware Requirements set forth in Exhibit B.

**3.2** Customer shall use the Services solely for its internal business purposes, in compliance with applicable law, and shall not (and except as otherwise permitted in an Order Form): (a) resell, sublicense, lease, time-share or otherwise make the Services available to any third party; (b) send or store infringing or unlawful material using the Services; (c) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Services or the data contained therein; (d) modify, copy or create derivative works based on the Services; (e) reverse engineer the Services; (f) access the Services for the purpose of building a competitive product or service or copying its features or user interface; (g) use the Services, or permit the Services to be used, for purposes of product evaluation, benchmarking or other comparative analysis intended for publication without Kentik's prior written consent; or (h) permit access to the Services by a direct competitor of Kentik.

**3.3** Customer acknowledges and agrees that, if a User attempts to use the Software beyond the rights granted herein, the license key provided by Kentik for the Software may generate a notice to Customer and to Kentik, and/or may limit Customer's usage of the Software, unless and until Customer purchases additional license rights from Kentik.

**3.4** Customer is responsible for procuring the components of the Hosting Environment. Customer will immediately notify Kentik of any unauthorized disclosure or unauthorized use of the Services.

**3.5** Any failure of Customer to comply with the obligations set forth in this Section 3 may be deemed a material breach of this Agreement. If Customer fails to comply with the obligations set forth in this Section 3 within three (3) days of receipt of notice from Kentik to do so, Kentik reserves the right to suspend the use of the Services until such failure is remedied.

**4. PROFESSIONAL SERVICES.**

**4.1** Kentik shall provide Professional Services as set forth in an Order Form and the applicable Professional Services Description or as otherwise set forth in a Statement of Work ("SOW") executed by the parties.

**4.2** Kentik shall not be liable for failure to perform any of its obligations, including satisfaction of the time deadlines set forth in any SOW, where Kentik is unable to perform, or its performance is delayed, due to the actions or inactions of Customer including, but not limited to, Customer's failure to meet its project deadlines, fulfill the Customer obligations set forth in any SOW or provide necessary information or adequate working conditions, including, without limitation, equipment, space, personnel, or technical support.

**4.3** Any material changes to a SOW shall be set forth in a new SOW or Order Form signed by both parties.

**5. OWNERSHIP AND USE.**

**5.1** Customer shall retain all ownership rights in the Customer Data (as defined in Section 1) and Customer Confidential Information. Except as otherwise expressly identified in a mutually executed SOW, Kentik shall have and retain all ownership rights in the Services, report format and structure and general statistical information, and all work developed or created by Kentik during the course of providing Support or Professional Services to Customer (if any). Kentik hereby grants Customer a royalty-free, nonexclusive, right to use the foregoing on the same terms and conditions as the Services subject to any and all agreed upon fees.

**5.2** Kentik shall own any suggestions, enhancement requests, recommendations, or other feedback provided by Customer or its Users relating to the Kentik Products.

**6. FEES.**

**6.1** The Fees for the Services are as stated in an Order Form and are effective during the Initial Term specified therein. Notwithstanding the foregoing, if Customer places an order from a different geographical location than as set forth in the initial Order Form, different fees may apply. Unless otherwise stated in an Order Form, Fees for the Initial Term are due upon the Effective Date of the applicable Order Form. Fees for any Extension Terms are due in accordance with the above, except that they are due on the effective date of the renewal.

**6.2** Upon execution of this Agreement, payment obligations are non-cancelable and, except as expressly provided in this Agreement, upon payment, all payments made by Customer are non-refundable. All undisputed fees due hereunder shall be due and payable within thirty (30) days of receipt of invoice unless otherwise stated in an order form. Any payment not received from Customer by the due date may accrue (except for amounts then under reasonable and good faith dispute) late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid. Failure to make payments in accordance

with this Section may result in suspension of Customer's ability to access the Services until payment is made. In the event Customer issues purchase orders in its normal course of business, Customer shall provide Kentik with a purchase order upon execution of this Agreement, or if Customer does not provide Kentik with such purchase order, Customer authorizes Kentik to accept this Agreement in lieu of a purchase order.

**6.3** Unless otherwise provided, Kentik's fees do not include any Taxes. Customer is responsible for paying all Taxes, including, but not limited to sales, use, GST, and VAT taxes associated with its purchases hereunder, excluding Taxes based on Kentik's net income. If Kentik includes on the invoice such Taxes for which Customer is responsible, the tax amount invoiced shall be paid by Customer, unless Customer provides a valid tax exemption certificate authorized by the appropriate taxing authority upon execution of this Agreement. Taxes not included on a Kentik invoice shall be the responsibility of the Customer to remit to the appropriate tax authorities as necessary.

**6.4** Customer shall reimburse Kentik for all reasonable, pre-approved and appropriately documented travel and related expenses incurred by Kentik in performing Professional Services at Customer's location. Customer shall be responsible for its own travel and out of pocket expenses associated with attending any training services at a Kentik facility.

**6.5** Customer shall comply with the use restrictions and limitations contained in this Agreement and the applicable Order Form. Upon reasonable request by Kentik, Customer shall review its records related to the foregoing and pay any underpaid Fees related to an over usage or notify Kentik that no additional Fees are due. Kentik or its authorized representative shall also have the right to audit the books and records of Customer, at Kentik's expense, to determine whether Customer is in compliance with this Section ("Audit"). Any Audit shall be performed only during Customer's normal business hours upon reasonable prior written notice, no more frequently than once per calendar year, and shall be performed in such a manner as to avoid unreasonable interference with Customer's business operations.

**7. SLA and SUPPORT.** Kentik shall provide the SLA and Support as set forth in Exhibit A as long as Customer is current on payment of all Fees listed in an Order Form.

## **8. WARRANTIES.**

**8.1** Each party represents and warrants that (i) it has the legal power to enter into and perform under this Agreement; and (ii) it shall comply with all applicable laws in its performance hereunder.

**8.2** Kentik warrants (i) it will provide the Professional Services in a professional and workmanlike manner consistent with good industry standards and practices; and (ii) that for a period of thirty (30) days after completion, the Professional Services will conform to the representations in Section 4. As

Customer's sole and exclusive remedy and Kentik's entire liability for any breach of the foregoing warranty, Kentik will repair and/or re-perform the Professional Services.

**8.3** Kentik warrants that the Services will substantially conform in all material respects in accordance with the Services Description for a period of three (3) months from delivery. Customer will provide prompt written notice of any non-conformity. As Customer's sole and exclusive remedy and Kentik's entire liability for any breach of the foregoing warranty, Kentik will confirm and then fix, provide a work around, or otherwise repair or replace the nonconforming portion of the Services, or, if Kentik is unable to do so, terminate the right to use the Services and return the Services Fees paid to Kentik for the period beginning with Customer's notice of nonconformity through the remainder of the Initial Term or then-current Extension Term, as applicable. The foregoing warranty does not apply if (i) the Software is not used in accordance with the Documentation; (ii) the Software has been modified without the prior express written consent of Kentik; or (iii) a defect in the Software has been caused by Customer or anyone other than Kentik.

**8.4 EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. KENTIK DOES NOT WARRANT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.**

## **9. PATENT AND COPYRIGHT INDEMNITY.**

**9.1** Kentik shall defend, indemnify and hold Customer and its officers, directors, employees, subsidiaries and shareholders harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("Claims") (i) made or brought against Customer by a third party alleging that the use of the Services as contemplated hereunder infringes the U.S. intellectual property rights of such third party or (ii) based on a violation of any statute, law, ordinance or regulation by Kentik, provided that Customer (a) promptly gives written notice of the Claim to Kentik; (b) gives Kentik sole control of the defense and settlement of the Claim (provided that Kentik may not settle any Claim unless it unconditionally releases Customer of all liability); and (c) provides to Kentik, at Kentik's cost, all reasonable assistance.

**9.2** As it relates to 9.1(i), Kentik may, at its sole option and expense: (i) procure for Customer the right to continue using the Services under the terms of this Agreement; (ii) replace or modify the Services to be non-infringing without material decrease in functionality; or (iii) if the foregoing options are not reasonably practicable, terminate the right to use the infringing Services and refund Customer the prepaid fees for the remainder of the Initial Term or then-current Extension Term as measured from the date of termination.

**9.3** As it relates to 9.1(i), Kentik shall have no liability for any Claim to the extent the Claim is based upon (i) the use of the Services in combination with any other product, service or device not furnished, recommended or approved by Kentik, if such Claim would have been avoided by the use of the Services, without such product, service or device; (ii) the use of prior versions of the Software where the current version would make the Software no longer infringing; or (iii) Customer's use of the Services other than in accordance with this Agreement.

**9.4** The provisions of this Section 9 set forth Kentik's sole and exclusive obligations, and Customer's sole and exclusive remedies, with respect to infringement or misappropriation of third party intellectual property rights of any kind.

**9.5** Customer shall defend, indemnify and hold Kentik, its officers, directors, employees, subsidiaries and shareholders harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with all Claims arising out of (i) a violation of any statute, law, ordinance, or regulation by Customer; and/or (ii) Customer Data used in conjunction with the Services. Kentik shall have the right to participate in such defense with counsel of its own choosing at its expense.

## **10. CONFIDENTIALITY AND DATA SECURITY.**

**10.1** As used herein, "Confidential Information" means all confidential and proprietary information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of this Agreement (including pricing and other terms reflected in an Order Form), the Services, documentation, business and marketing plans, technology and technical information, product designs, and certification and business processes. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to Disclosing Party; (ii) was known to Receiving Party prior to its disclosure by Disclosing Party without breach of any obligation owed to Disclosing Party; (iii) was independently developed by Receiving Party without breach of any obligation owed to Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to Disclosing Party.

**10.2** Receiving Party shall not disclose any Confidential Information of Disclosing Party for any purpose outside the scope of this Agreement, except with Disclosing Party's prior written consent. Receiving Party shall protect the confidentiality of Disclosing Party's Confidential Information in the same manner that it protects the confidentiality of its own confidential information of like kind (but in no event using less than reasonable care). Receiving Party shall promptly notify Disclosing Party if it becomes aware of any actual or reasonably suspected breach of confidentiality of Disclosing Party's Confidential Information.

**10.3** If Receiving Party is compelled by law to disclose Confidential Information of Disclosing Party, it shall provide Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if Disclosing Party wishes to contest the disclosure.

**10.4** Upon any termination of this Agreement, the Receiving Party shall continue to maintain the confidentiality of the Disclosing Party's Confidential Information as long as it remains confidential and, upon request, return to the Disclosing Party or destroy all materials containing such Confidential Information.

**10.5** Kentik shall take appropriate management, operational and technical measures sufficient to secure the Customer data entered into the Services ("Customer Data") against any unauthorized disclosure, and as required by any applicable law or regulation. Without limiting the foregoing, Kentik will implement security measures that are consistent with industry standards.

**10.6** Kentik will (a) process Customer Data only to the extent, and in such manner, as is necessary to provide the Services to Customer and its Users under this Agreement and in accordance with Customer's instructions from time to time; (b) not otherwise process or use the Customer Data; and (c) keep Customer Data logically separate from other data and information that is held by Kentik. For purposes of clarity, the provisions above apply to all Customer Data, including but not limited to personal information. Kentik shall promptly comply with any request from Customer requiring Kentik to delete Customer Data. Kentik will provide Customer with the means to access, amend, delete or transfer Customer Data. If Kentik receives any third-party communication relating directly or indirectly to the processing of the personal information, Kentik must promptly notify Customer and must fully cooperate and assist Customer in addressing the communication. Kentik will, at its expense, provide Customer with reasonable assistance to comply with any obligations under the applicable data protection laws relating to personal information.

## **11. LIMITATION OF LIABILITY.**

**11.1** EXCEPT (i) FOR THE PARTIES' INDEMNIFICATION OBLIGATIONS; (ii) FOR CUSTOMER'S FAILURE TO PAY ANY FEES DUE UNDER THIS AGREEMENT; (iii) IN THE EVENT OF EITHER PARTY'S UNAUTHORIZED USE, DISTRIBUTION OR DISCLOSURE OF THE OTHER PARTY'S INTELLECTUAL PROPERTY; OR (iv) EITHER PARTY'S MATERIAL BREACH OF SECTION 10 (COLLECTIVELY, "EXCLUSIONS"), IN NO OTHER EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE ANNUALIZED FEES OWED OR PAID TO KENTIK FOR THE SERVICES GIVING RISE TO THE CLAIM DURING THE TWELVE MONTHS PRIOR TO WHEN THE CLAIM ACCRUED.

**11.2** EXCEPT FOR THE EXCLUSIONS, IN NO OTHER EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR DAMAGE TO GOODWILL HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**11.3** THE PARTIES' LIABILITY FOR THE EXCLUSIONS WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WILL BE LIMITED TO (5) TIMES THE ANNUALIZED FEES OWED OR PAID TO KENTIK FOR THE SERVICES GIVING RISE TO THE CLAIM DURING TWELVE MONTHS PRIOR TO WHEN THE CLAIM ACCRUED.

## **12. TERM AND TERMINATION.**

**12.1** This Agreement commences on the Effective Date and continues until all rights granted in accordance with this Agreement and the applicable Order Form(s) have expired or have been terminated. The Initial Term applicable to each Order Form commences upon Customer's execution of such Order Form and shall expire at the end of the Initial Term or then-current Extension Term. Each Order Form shall be automatically extended for Extension Term(s) equal to the greater of the previous Term or twelve (12) months (at the current price of the Services) unless either party provides written notice of non-renewal to the other at least thirty (30) days before such expiration.

**12.2** A party may terminate this Agreement or an Order Form for cause: (i) upon 30 days' written notice to the other party of a material breach of this Agreement if such breach remains uncured at the expiration of such period; (ii) immediately upon written notice if the other party becomes the subject of a bankruptcy, insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding; and (iii) as otherwise provided herein.

**12.3** Either party may terminate the Agreement immediately by written notice if no Order Form is in effect.

**12.4** Upon termination of this Agreement or an Order Form, Customer shall: (i) cease all use of the Services and (ii) uninstall the Software so that Customer no longer has any copies of any portion of the Software. The parties' rights and obligations under Sections 5, 6, 8.5, 9-11, 12.5, and 13 shall survive termination of this Agreement.

## **13. General**

**13.1** The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby.

**13.2** Notices shall be in writing, sent using a recognized private mail carrier or the United States Postal Service and effective on proof of delivery.

**13.3** No amendment or waiver of any provision of this Agreement shall be effective unless in writing and

signed by Customer and Kentik. Notwithstanding any language to the contrary therein, no terms stated in a purchase order or in any other order document (other than a SOW, or other mutually executed order document expressly incorporated herein) shall be incorporated into this Agreement, and all such terms shall be void. This Agreement, which includes all documents referenced herein, SOWs and attachments hereto, represents the entire agreement of the parties, and supersedes all prior or contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. This Agreement is not for the benefit of any third party.

**13.4** No failure or delay in exercising any right hereunder shall constitute a waiver of such right. Except as otherwise provided, remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions shall remain in effect.

**13.5** Neither party shall be liable to the other for any delay or failure to perform hereunder (excluding payment obligations) due to a natural disaster, actions or decrees of governmental bodies or communications line failure which (i) hinders, delays or prevents a party in performing any of its obligations, (ii) is beyond the control of, and without the fault or negligence of, such party, and (iii) by the exercise of reasonable diligence such party is unable to prevent or provide against.

**13.6** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other (not to be unreasonably withheld). Notwithstanding the foregoing, Kentik may assign this Agreement in its entirety, without consent of the Customer, to its successor in interest in connection with a merger, reorganization, or sale of all or substantially all assets or equity. Any attempted assignment in breach of this Section shall be void. This Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. For clarity, Kentik may use subcontractors in the ordinary course of its business.

**13.7** A party will be excused from a delay in performing, or a failure to perform, its obligations under the Agreement (other than payment obligations) to the extent such delay or failure is caused by the occurrence of any contingency beyond the reasonable control, and without any fault, of such Party. In such event, the performance times will be extended for a period of time equivalent to the time lost because of the excusable delay; provided, however, if the delay or failure continues for more than twenty (20) days, the Party not relying on the excusable delay may terminate the Agreement upon notice to the other party. In order to avail itself of the relief provided in this Agreement, a party must act

with due diligence to remedy the cause of, or to mitigate or overcome, such delay or failure.

**13.8** Kentik may access and use Customer Data to the extent necessary to provide, support and improve the Service under this Agreement and for its own business purposes on an anonymized and aggregated basis in a manner that does not disclose Customer as the source and the contents of the underlying Customer Data. Such uses may include, but are not limited to, enabling the sharing of network alerts and vulnerabilities and other network issues Kentik discovers through its provision of the Services.

**13.9** In any action to interpret or enforce this Agreement, the prevailing party shall be awarded all court costs and reasonable attorneys' fees it incurs.

**13.10** There are no third-party beneficiaries to this Agreement.

**13.11** Kentik may list Customer's name in Kentik's customer lists on Kentik's website and in its marketing materials.

**13.12** Each party agrees to comply fully with all applicable regulations of the United States Department of Commerce and with the United States Export Administration Act, as amended from time to time, and with all applicable laws and regulations of other jurisdictions with respect to the importation and use of the Services.

**13.13** This Agreement shall be governed exclusively by the internal laws of the state of California, without regard to its conflicts of laws rules. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. The parties hereby consent to the exclusive jurisdiction of the state and federal courts located in San Francisco, California, for resolution of any disputes arising out of this Agreement.

**EXHIBIT A  
SLA AND SUPPORT**

The SLA and Support terms provided below are provided by Kentik to Customer during the term of the Agreement.

1. **Definitions.** The following definitions apply to this SLA.

1.1 **“Actual Unavailability”** means the percentage of Maximum Availability during the calendar month in which the Services was Unavailable (i.e., cumulative minutes Services are Unavailable during such month divided by Maximum Availability).

1.2 **“Emergency Maintenance”** means any maintenance required as a result of conditions beyond Kentik’s reasonable control. Emergency Maintenance may occur at any time, as Kentik deems necessary.

1.3 **“Exclusion”** means any period in which the Services are Unavailable, inoperable, suspended, terminated or otherwise disrupted as a result of any of the following:

(a) outages or degradation of performance to any public internet backbones, networks or servers;

(b) any failures of, or problems caused by, Customer's equipment, software, technology, systems or local access Services.

(c) periods of Scheduled Maintenance or Emergency Maintenance activities;

(d) lack of availability or untimely response time from Customer to respond to incidents that require its participation for source identification and/or resolution;

(e) any failures of, or problems caused by, any third party and/or third party equipment, software hardware or other technology (other than third party equipment within Kentik’s direct control) or third party actions or inactions;

(f) any voluntary actions or inactions from Customer or any third party, including any work performed at Customer request (for example additional technical assistance) or other activities that Customer directs;

(g) events beyond Kentik's control, such as changes resulting from government, political, or other regulatory actions or court orders, strikes, riots, labor disputes, insurrection, fires, floods, explosions, war, governmental action, labor conditions, earthquakes, natural disasters, acts of or against third parties (including third party carriers or other vendors), or any other force majeure events;

(h) suspension or termination of the Services by Kentik as authorized pursuant to the Agreement;

(i) problems due to Customer’s failure to implement changes in equipment or software reasonably recommended by Kentik in writing to Customer as essential to maintaining Services levels following a Customer directed change in the operating environment.

1.4 **“Infrastructure Updates”** means the responsibility and timing for upkeep and maintenance of hardware used for hosting Kentik solutions as specified in Kentik Infrastructure Requirements, attached hereto as Exhibit B. Kentik will provide Customer with at least ninety (90) days prior written notice of any modifications to the Kentik Infrastructure Requirements and shall use reasonable efforts to coordinate with Customer regarding the phasing in of any such new requirements based on new functionality or customer load.

Type	Description
Customer On-Premise	Customer is responsible for keeping current with Kentik Infrastructure Requirements in a timely manner. Failure to do so will void this SLA.

1.5 **“Incident Response Time”** means the time taken for Kentik support personnel to acknowledge a reported issue, following submission via email to [support@kentik.com](mailto:support@kentik.com) (for incidents) or [product@kentik.com](mailto:product@kentik.com) (for enhancement requests). Response time may vary by incident severity:

Type	Description	Response Time
Critical	System is down/unavailable, either for data ingest or for query access	4 hours
Major	System is up and partially functional; no data lost; some portal or query functionality unavailable; no workaround exists	4 hours
Minor	System is up and partially functional; no data lost; some portal or query functionality unavailable; workaround exists	8 hours
Cosmetic	System is up and fully functional; issue that does not affect functionality	24 hours
Enhancement	Request for new or extended functionality	48 hours

1.6 **“Maximum Availability”** means the total number of minutes in the calendar month, e.g. 43,200 minutes in the month of September.

1.7 **“Monthly Fees”** means the applicable fee payable to Kentik for the Services under the Agreement allocated to the month in which the Services Commitment is not met, as described on the applicable Schedule.

1.8 **“Monthly Uptime Percentage”** is calculated by subtracting Actual Unavailability from 100%, not including any Unavailability resulting directly or indirectly from an Exclusion. If Customer’s subscription to the Services are only over a partial month, it is assumed that the Services were Available during the portion of the month in which Customer was not subscribed to the Services.

1.9 **“Scheduled Maintenance”** means the period of time where Kentik performs scheduled maintenance making commercially reasonable efforts to schedule outages for essential maintenance and updating to occur on weekends and/or non-business hours. Kentik reserves the right to extend or change the times of the Scheduled Maintenance.

1.10 **“Services Commitment”** is defined in Section 3 below.

1.11 **“Unavailable”** means the Services are not available and/or providing the following capabilities to the Customer, not including Exclusions:

- (1) Access to portal
- (2) Collection of Customer Data
- (3) Ability to query Customer Data
- (4) Anomaly detection system
- (5) Availability of API

2. **Maintenance Notifications.** All maintenance notifications will be sent to all of Customer’s email addresses with User Accounts on the Kentik system. It is Customer’s sole responsibility to ensure the provided email address is current and fully functional. Kentik will use commercially reasonable efforts to notify Customer at least three (3) business days before any Scheduled Maintenance and thirty minutes before any Emergency Maintenance is performed on its systems, if the maintenance is reasonably expected to cause any Services degradation or Services availability problem for Customer.

3. **Services Commitment.** Subject to the terms and conditions of this SLA and the Agreement, Kentik will use commercially reasonable efforts to provide the Services at a Monthly Uptime Percentage of 99.5% each calendar month during the term of the Agreement (**“Services Commitment”**).

4. **Services Credits.** If Kentik fails to meet the Services Commitment in any month during the term of the Agreement, then Customer may be eligible to receive a Services credit of one day of Monthly Fees for each hour of downtime up to half of the Monthly Fees in a given month.

5. **Services Credit Process.**

5.1 If, during a calendar month during the term of the Agreement, the Services does not meet the Services Commitment, Customer may be eligible to receive a Services Credit, provided that Customer (a) sends a notice to [billing@Kentik.com](mailto:billing@Kentik.com) within 20 business days from the end of the month in which the Services Commitment is not met, and (b) provides such details regarding the failure to meet the Services Commitment as reasonably requested by Kentik.

Customer’s failure to notify Kentik within this time period, or to provide such information, will result in loss of Customer’s eligibility for any Services Credit associated with the failure to meet the Services Commitment.

5.2 If, upon Customer’s notice pursuant to Section 5.1 above, Kentik confirms that the Monthly Uptime Percentage is less than the Services Commitment, Kentik will apply the applicable Services Credit against the next invoice issued to Customer by Kentik.

6. **Customer Problems.** Customers experiencing technical issues or with technical questions will first verify that problems experienced are caused by the Services, to Kentik’s reasonable satisfaction and confirmation. All reported issues, incidents, and technical questions shall be sent via email to [support@kentik.com](mailto:support@kentik.com). Product enhancements requests should be sent to [product@kentik.com](mailto:product@kentik.com).

7. **Kentik Support Commitment.** Subject to the terms and conditions of this SLA document and the Agreement, Kentik agrees to respond to reported problems within target Incident Response Times, and to deliver new or corrected versions of the Customer On-Premise Services as needed

7.1 **Customer Infrastructure Support Commitment:** Customer agrees to acquire, deploy, and maintain hardware, network, connectivity and physical infrastructure as described in the Kentik Infrastructure Requirements on Exhibit B for the purposes of running Kentik and takes responsibility for infrastructure updates to that environment as required to support the environment.

7.2 **Remote Access for Support:** Customer agrees to instantiate and ensure ongoing operational integrity of remote network access to all devices in the Kentik cluster for Kentik’s use in operational monitoring, tuning and support of Kentik and its related Services infrastructure and software.

8. **Exclusive Remedies.** The remedies set forth in this SLA set forth Customer’s sole and exclusive remedies, and Kentik’s sole and exclusive liabilities, in the event of any failure to meet the Services Commitment or any other outage, disruption or other degradation of, or problems with the Services. Services Credits will not entitle Customer to any refund or other payment from Kentik. For the avoidance of doubt, the Services Credit made available to Customer hereunder for any failure to meet the Services Commitment constitutes the sole financial obligations of Kentik with respect to such failure. Customer is not entitled to any other credits, refunds or other remuneration of any kind from Kentik with respect to any failure to meet the Services Commitment or any other outage, disruption or other degradation of the Services, even if otherwise provided for in the Agreement, including but not limited to with respect to support and maintenance.

9. **Modifications.** Kentik reserves the right to modify the terms of this SLA and the listed SLAs with 30 days’ notice, as applicable generally to its customers of the Services.



**[SAMPLE – NOT FOR SIGNATURE- TO BE COMPLETED BY KENTIK  
EXHIBIT B  
HARDWARE REQUIREMENTS**

1. Hardware Sourcing Choices:
  1. Customer will acquire the Kentik recommended hardware as further described below directly from IXsystems. Since the Kentik solution requires specialized hardware, configuration, burn-in and set up, it is required that the hardware be purchased from IXsystems in order to maintain the SLA specified on Exhibit A.
  2. While it is recommended that Customer procure all hardware through IXsystems, Customer may purchase all of the hardware as further described below directly from IXsystems but provide the network components and optics on its own. The Customer can request specific hardware, configuration, and set up from Kentik. This configuration will also enable Customer to have the SLA specified on Exhibit A apply.
2. The hardware to run Kentik will be hosted in a single Customer datacenter with hardware installation, power, cooling, physical maintenance, security and remote “smart hands” assistance provided by Customer personnel.
3. The Kentik solution has specific network connectivity requirements, which the Customer is responsible for providing, including:
  1. Single or Dual 10Gbps unfiltered Internet connectivity to the hardware running the Kentik solution for remote management (inbound and outbound), Customer NetFlow, and Customer portal access.
  2. 64 IPV4 and 64 IPv6 public addresses.
4. Kentik provides a managed Services of the Kentik solution via the hardware described in this Exhibit B, including:
  1. Installation and maintenance of operating system and Kentik software.
  2. Monitoring, management, and support of all server and network hardware.
5. IXsystems provides equipment and is responsible for maintenance of equipment required to run the Kentik solution. If the Customer elects to use their own vendor, the Customer’s selected vendor is responsible for both providing the warranty and maintenance of the equipment.

IX SKU: Kentik - CUSTOMER - 480K-60-365

**DESIGN SPECIFICATION**

- 480K Peak FPS, 400K Sustained FPS Storage
- 960K Peak Ingest FPS
- 700 Maximum Devices
- 4K FPS Stored Maximum Per Device
- 60 Days Full Data Retention
- 365 Day Annual Trending Data
- 60 Anomaly Detection Policies
- 100K IP Tags
- 10 Custom Dimensions
- Designed for 2 Cabinets (54 Rack Units), 12.5KW

**HARDWARE SPECIFICATION**

- 2 ingest servers
- 1 BGP server
- 2 Storage servers
- 2 Database servers
- 1 Juniper QFX switch
- 1 Juniper EX switch
- 1 Console server
- Optics and cables
- Spares Kit