



**Helpdesk Service Master Agreement  
Furnished By  
KDDI America, Inc.**



This KDDI America, Inc. Helpdesk Service Master Agreement (hereinafter referred to as the “Agreement”) is entered into by and between the party (s) defined below (the “Customer and/or CUSTOMER”) and KDDI America, Inc. (the “Company and/or KDDI”), subject to the terms and conditions set forth herein, including all attachments referenced herein.

This Agreement contains the terms and conditions applicable to the provision of helpdesk services, which includes end user support related services (collectively the “Services”) by KDDI America, Inc. to Customer. The CUSTOMER and Company hereby agree, that upon Customer placing an order for Services with the Company, to be bound by the terms and conditions applicable to the Services as set out in this Agreement and any applicable Application for Service.

## **DEFINITIONS**

**Effective Date of Contract** - The date on which the signature page of an Application for Service, for any Services provided hereunder, is signed by the CUSTOMER.

**Service Commencement Date** - The date defined in an Application for Service.

**Service Specification(s)** – means the services, prices, and the terms and conditions listed in subsection 3.1.2, as it may be updated by the Company from time to time.

**“Application for Service” and/or “AFS”** - means a Company ordering document for specific services provided hereunder, which sets forth Customer’s specific requirements for such Services and which is executed by Customer and accepted in writing by Company.

**Customer** - means the person, firm or corporation, or other entity which orders, cancels, amends, or uses the Company’s Services and is responsible for the payment of charges and/or compliance with the general terms and conditions of this Agreement, including those noted in any applicable Application for Service.

**Customer Related Party** – means, but not limited to (a) Customer affiliates; (b) the employees, sub-contractors, agents and representatives of the Customer; and (c) the employees, sub-contractors, agents and representatives of the Customer’s own third party customers; and (d) any third party telecommunications carrier or maintenance representative.

**Service Level Objectives** – means the objectives that shall be achieved — for each service activity, function and process by Company, in accordance with subsection 3.1.2.

## **TERMS AND CONDITIONS**

### **1. TERM AND TERMINATION**

1.1 The Term of this Agreement shall begin on the Service Commencement Date and shall continue in effect for as long as the Term of any Services provided hereunder remains in effect, unless earlier terminated in accordance with the provisions of the Agreement. The minimum initial Term of each Services provided hereunder shall begin on the commencement of such Services and shall end Twelve (12) month thereafter, unless a different term is specified in the Application for Service. Notwithstanding anything contained herein to the contrary, during the first three (3) months of the initial term, the CUSTOMER can terminate/cancel the Services at any time, for its convenience, upon prior written notice to KDDI. Nevertheless, if the



CUSTOMER does not terminate and/or otherwise cancel the Services during the initial three (3) months of the initial term, then the CUSTOMER shall be obligated to abide by its original term (12 months minimum) as noted above. All licenses purchased under the same domain name after the Service Commencement Date will end on the anniversary of the Initial Term of the initial Application for Services.

Upon the expiration of the initial or then current Term of any Services provided hereunder, such Term shall be renewed automatically for consecutive renewal terms of twelve (12) months, unless specified in the Application for Service and/or terminated for any reason by either party upon at least 30 days' written notice prior to the expiration of the initial or the then current Term of such Services.

Notwithstanding anything contained herein and/or in any AFS to the contrary, during any term of any AFS, but no more than once in a twelve (12) month period, KDDI shall reserve the absolute right to increase the herein referenced Services fees and/or charges upon giving CUSTOMER at least thirty (30) days' prior written notice, in the event of any change in any applicable law, regulation, rule, order and/or any other change that in anyway increases KDDI's operating costs, overhead costs and/or any costs associated with the delivery of the Services referenced herein, including but not limited to increases in third-party vendor rates, electrical rates, utilities, taxes and surcharges that are in anyway associated with the Services delivered hereunder to CUSTOMER. Such a pass-through increase(s) shall be reflected in a revised AFS, which shall be automatically incorporated by reference into this Agreement.

1.2 Subject to Section 1.6(d), either party, in its sole discretion, may terminate this Agreement or any Services in whole or in part by providing at least thirty (30) days' prior written notice to the other party.

1.3 Either party may terminate this Agreement or any Application for Services, effective upon written notice to the other party (the "Defaulting Party"), if the Defaulting Party: (a) materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within 10 days after receipt of written notice of such breach; (b) (i) becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within 14 business days or is not dismissed or vacated within 14 days after filing; (iii) is dissolved or liquidated or takes any corporate action for such purpose; (iv) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

1.4. Upon expiration or termination of this Agreement and/or the Services, for any reason whatsoever: (a) KDDI shall promptly deliver to Customer all deliverables (whether complete or incomplete) for which Customer has paid, and all Customer materials in its possession; (b) Customer may request, in writing, KDDI to provide reasonable cooperation and assistance to Customer for purposes of transitioning the Services to a different service provider, provided that Customer pays an additional fee to KDDI for said cooperation and assistance, as agreed to by the parties; (c) Customer shall immediately (i) deactivate, remove and/or change any and all of KDDI's access to Customer's PCs, systems, and administrative accounts, including but not limited to user-ids and passwords, which KDDI used to access Customer's PCs, administrative accounts,



and/or systems, and (ii) deactivate, remove, and/or delete KDDI's access to any and all software licenses, which were utilized by KDDI to access any and all of Customer's accounts, including but not limited to Customer's PCs, systems, and/or administrative accounts, and as such, upon termination of the Services, for any reason whatsoever, Customer shall indemnify and hold harmless KDDI against any and all damages and/or losses sustained by Customer which are related to an unauthorized access to Customer's PCs, administrative accounts, systems, and any other similar Customer assets; and (d) Each party shall (i) return to the other party all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the other party's Confidential Information, and (ii) certify in writing to the other party that it has complied with the requirements of this clause. .

**1.5. CO-TERMINATION** In the event that Customer shall elect to add seats and/or services to an existing Application for Service (hereinafter referred to as the "Change(s) to AFS"), then once the term of the initial/original AFS expires/terminates said expiration/termination of the initial/original AFS shall be deemed to constitute a termination of all of the then existing Changes to AFS, in their entirety, subject to the provisions that expressly survive the termination thereof. For example: Customer sign an initial AFS on 1/1/2023, for a 12 month term, for ten (10) seats, then on 3/1/2023, the customer adds two (2) more seats (for a total of 12 seats). The term of the two (2) seats (which were added) will ended on 12/31/2023, the exact same date that the original AFS for ten (10) seats expires, and thereafter the initial AFS and the Change to AFS will be combined and renewed for a total of twelve (12) seats within one (1) Application for Service. For clarification purposes, the only time that Customer is allowed to "reduce" the number of seats is during the "renewal" of an AFS, which would be reflected in the newly renewed AFS, so the Customer cannot "reduce" the number of seats ordered at any other time during the term.

#### **1.6. TERMINATION LIABILITY**

**(a) Termination Or Suspension By Company.** The Company may terminate or suspend any Services provided pursuant to this Agreement and/or any Application for Service or terminate this Agreement (or the applicable portion thereof) without liability, effective immediately upon written notice to Customer for any of the following reasons:

- (i) Customer fails to pay any amount due and owing to the Company within fifteen (15) days after the date of an invoice for Service, which failure is not remedied within fifteen (15) days of Customer's receipt of written notice thereof;
- (ii) Customer fails to perform a material obligation (other than payment of amounts due or other failures to perform as specified in this Section) under this Agreement, which failure is not remedied within thirty (30) days of Customer's receipt of written notice thereof; and
- (iii) If the Service has been terminated and/or discontinued by Company and Customer requests that Service be restored, Company shall have the sole and absolute discretion to restore such Service. Nonrecurring charges may apply to restoration of Service.

**(b) Notification Of Suspension By Company.** In the event the Company elects to suspend rather than terminate Services for any of the reasons specified in this Section above, the Company shall notify Customer in writing, in advance, of the reason(s) for such suspension, the remedies required to restore service, and the maximum time allowed to remedy the default which is



the cause of the suspension.

**(c) Termination By Customer.** Customer may terminate this Agreement (or the applicable portion thereof) without liability effectively immediately upon written notice to Company, if Company fails to perform a material obligation under this Agreement, which failure is not remedied within thirty (30) days of Company's receipt of written notice thereof.

**(d) Termination Liability Of Customer.** If this Agreement and/or any Services provided under any Application for Service (or any applicable portion thereof) is terminated for any reason, then all accrued but unpaid charges incurred by Customer shall become due and owing as of the effective date of such termination. In addition to the foregoing, if (i) Customer terminates this Agreement and/or any Services provided under any Application for Service (or any applicable portion thereof) prior to the expiration of the Initial Term of the respective Application for Service, or any subsequent term, for reasons other than those specified in Section 1.6(c) above, or (ii) the Company terminates this Agreement and/or any Services, provided under any Application for Service (or any applicable portion thereof), under this Section and/or any other applicable section, then Customer will pay to Company the following sums which shall become due and owing as of the effective date of such termination:

- (i) all charges reasonably expended by Company to establish Service to Customer;
- (ii) all disconnection, early cancellation and termination charges reasonably incurred and paid to third parties by Company on behalf of Customer; and
- (iii) a total of one hundred (100) percent of all recurring service charges for the remainder of the Initial Term(s) and/or any subsequent terms (if any) in each respective and applicable Application for Service.
- (iv) all applicable taxes, including but not limited to value added tax, sales taxes, and duties or levies imposed by any authority, government or government agency (except income tax or other corporate taxes attributable to either Party)

A Customer's order and/or delivery of the Services may be discontinued: If Customer fails to pay a past due balance for Service (i) within three (3) business days after written notice from Company respecting Service invoiced in arrears, or (ii) within seven (7) business days after written notice from Company respecting Service invoiced in advance.

## **2. CHARGES**

- 1) The charges for the Services, shall be specified in each respective Application for Service, attached and incorporated to this Agreement hereto and/or hereinafter executed by CUSTOMER.
- 2) The CUSTOMER shall pay the aggregate monthly amount to KDDI within fifteen (15) days the invoice is received by the Customer.
- 3) The late payment charges are in effect, as per applicable Agreements. If any check is returned to the Company unpaid, the Customer shall be considered immediately in default and subject to a returned check charge of \$25.00. Accounts which remain unpaid for thirty (30) days, after date of invoice, may have their Services interrupted. Such interruption does not relieve the Customer from the obligation to pay the monthly recurring charges and/or any other charges then due and owing. In addition, accounts in default are subject to a late payment charge of \$50 for each month that the payment is late.
- 4) Any amounts due hereunder that are not paid when due shall accrue interest at the rate of one and one-half percent



(1.5%) per month or the maximum allowable by law, compounded daily, beginning with the day following the date on which the payment was due, and continuing until paid in full.

- 5) All rates and other charges due hereunder are exclusive of all applicable taxes, including but not limited to value added tax, sales taxes, and duties or levies imposed by any authority, government or government agency (except income tax or other corporate taxes attributable to either Party), all of which shall be paid by CUSTOMER promptly when due.

### 3. SERVICES

#### 3.1.1 HELPDESK SERVICES

KDDI shall provide, subject to the terms and conditions stated herein, and the CUSTOMER shall accept and pay for all services, subscribed to by CUSTOMER in any and all “Applications for Service,” hereafter submitted by the CUSTOMER (the “Services”). The Services shall be provided pursuant to this Agreement and the rates, terms, and conditions described in the respective Application for Service. This Agreement incorporates by reference the terms of such Applications for Service. Please note that, if applicable, portions of the Services provided outside of the U.S. may be subject to additional regulations and/or taxes imposed by the foreign countries in which the Services are provided.

- (a) **Helpdesk Service:** Helpdesk Service is a set of services that include the following: Basic Helpdesk, Administration and Operation, and Auditing and Reporting. The Service is to remotely assist Customer users on (i) questions on the usability of the Customer’s company provided devices; (ii) administration tasks of user related systems; (iii) periodic report generation and log collection.
- (b) **Helpdesk:** Helpdesk is a category of Service which provides end user support including (i) acceptance of the request; (ii) provide guided assistance to Customer request; (iii) troubleshoot and resolve issues the end users are facing. Helpdesk is provided in two (2) levels. Level 1 being general assistance and guidance to the users via e-mail or voice call. Customer users are to perform the procedures necessary to resolve the issue on the devices. Level 2 being technician assisted troubleshooting and resolution including technicians remotely logging into the devices on behalf of the users to resolve the issues.
- (c) **Administration and Operation:** Administration and Operation is a category of Service which provides performing change requests on behalf of the Customer’s IT administrators. The service includes change requests such as add/change/removal of accounts and permissions on various systems, and routine operation health checks such as security patch distribution and backup status checks.
- (d) **Auditing and Reporting:** Auditing and Reporting is a category of Service which provides periodic reporting of the Service, as well as routine log collection and/or report generation.

#### 3.1.2 GENERAL SERVICE TERMS AND CONDITIONS

| Category                     | Description          | Note                             |
|------------------------------|----------------------|----------------------------------|
| Service Type                 | Remote Assistance    |                                  |
| Servicing Location           | United States        |                                  |
| Primary Contact Method       | Email                |                                  |
| Optional Contact Method      | Phone<br>Chat        |                                  |
| Ticket Tracking              | Zendesk              |                                  |
| Standard Remote Support Tool | SplashTop SOS        |                                  |
| Support Language             | English and Japanese | Japanese support requirement may |



|                           |                                 |                                                                                       |
|---------------------------|---------------------------------|---------------------------------------------------------------------------------------|
|                           |                                 | delay the response time and resolution time                                           |
| Minimum Term              | 12 Month                        |                                                                                       |
| Billing Term              | Monthly, Prorated               |                                                                                       |
| Termination Notice Window | 30 Days                         |                                                                                       |
| Service In                | Date Agreed Between the Parties | Information required to provide the Service shall be prepared before Service In date. |
| Application Method        | Application Form                |                                                                                       |
| Billing Method            | Monthly Invoice                 |                                                                                       |
| Payment Method            | Check/Wire Transfer             |                                                                                       |

**Service Window:** Monday through Friday, 9:00 to 21:00 US Eastern Standard Time, excluding KDDI America, Inc. Holidays. (Holiday calendar available upon request)

### Service List and Information Requirements

Please refer to the attachment of Application Form for list of the services available and the information required to provide the Service.3.1.2.

#### IT HELPDESK SERVICES “SHALL NOT” INCLUDE THE FOLLOWING:

- (A) Any consulting work, including but not limited to the creation of any operations manual(s), procedures, and/or documents.
- (B) Any services and/or any type of solution not listed in an Application for Service;
- (C) Any repair of and/or replacement parts, including any hardware and/or software package and/or any shipping related fees for same;
- (D) Any training services.
- (E) Onsite Support
- (F) Any restoration services of hardware, software and/or data installed.
- (G) Service for any trouble caused beyond KDDI control, such as power outage, flood.
- (H) Providing any services related to the operation of any Customer specific application software and/or terminals, if not specified in the Application for Service.
- (I) Any countermeasures against any and all kinds of cyber security threats.

### 3.2 CUSTOMER’S RESPONSIBILITIES & OBLIGATIONS

1. Customer shall designate at least one primary contact to receive any and all escalations and other communications related to the Services.
2. Customer shall provide KDDI the operation procedures, and the Customer shall maintain/update said procedures.
3. Customer shall prepare and provide to KDDI the system credentials if Customer requests KDDI to perform any administration and operation services. The Customer shall maintain the credentials up to date as well.
4. Customer shall prepare and provide any and all necessary information in order for KDDI to provide the Services listed



in the Application for Service,.

5. Customer must provide any software licenses, accounts, and administrator privileges and roles necessary to provide the Services.
6. It is solely the responsibility of Customer to plan, design, deploy, install and setup, delete, dispose, terminate the Customer's devices. KDDI does not cover and is not responsible for any such activities as part of the Services, this Agreement and/or any Application for Service.
7. If any system failures or problems are caused by the operations requested by the Customer, then KDDI does not warrant and/or assume any responsibility for same. The restoration from the failures or problems shall be done by the Customer at its sole expense.
8. If Customer intends to make any changes that may affect KDDI's ability to provide the Services, such as changes to its computing platform, protocols or its operating system software, Customer must provide prior written notice of same, whenever possible, to KDDI, and should any problems arise due to same, Customer shall be responsible for any charges assessed to resolve the problems.
9. All protections against cyber security attacks and/or other related risks shall be provided by the Customer. KDDI does not provide any measures or protections, from cyber security attacks and/or other related risks, for the Customer's devices/resources if not specified in Application for Service. It is Customer's responsibility to implement reasonable cyber security measures.

Any Customer's responsibilities stated in this Section 3.2, subsections (1)-(9) above, shall be provided by CUSTOMER free of charge to KDDI. If the CUSTOMER requests KDDI to perform any of the Services listed in Subsection 3.1.1 (a) through 3.1,1(d) and/or any service outside the scope of the herein referenced Applications for Service.

### **3.3 SERVICE HOURS**

The Helpdesk services (the "Services"), will be performed from 9:00am to 9:00pm EST, Monday through Friday, excluding KDDI America, Inc. Holidays. (Holiday calendar available upon request)

(the "Service Hours"). If any additional services are requested by Customer to be provided by Company, above and beyond what is agreed to in any applicable Application for Service, and/or if any services are provided beyond the Service Hours, then CUSTOMER must execute and provide a new AFS, and Company may provide said services, at an additional fee based on the Services and extended service hour rates noted in the applicable Application for Service.

### **3.4 SERVICE LEVEL AGREEMENT**

The Company does not provide any Service Level Agreement (SLA).

### **3.5 INDEMNIFICATION**

**3.5.1** Each party hereto shall indemnify, defend and hold harmless the other party hereto and its officers, directors, employees, agents, successors, and permitted assigns ("collectively "Indemnitees") from and against any and all losses, costs, liabilities, damages and expenses, claims, allegations, judgments, penalties and fees, including reasonable attorneys' fees



(collectively “Losses”), resulting from and/or arising out of a party’s grossly negligent and/or willful breach of any representation, warranty, or obligation set forth in this Agreement.

**3.5.2.** Each party hereto shall defend, indemnify, and hold harmless the other party’s Indemnitees from and against all Losses based on a claim that anything provided by a party hereunder infringes any Intellectual Property Right of a third party; provided, however, that KDDI shall have no obligations under this Section 3.5.2 with respect to claims to the extent arising out of (a) any Customer materials or instructions, information, design, specifications, or other materials provided by Customer in writing to KDDI or its agents/personnel; (b) any modifications or changes made to the deliverables by or on behalf of any person other than KDDI or KDDI agent/personnel.

### **3.6 TRAINING**

Upon acceptance, the CUSTOMER shall provide the KDDI helpdesk agents with appropriate training, if any is required, CUSTOMER policies, operating system manuals and such standard operating procedures. KDDI agrees that the KDDI helpdesk agents are responsible to follow all such reasonable training requirements, policies, manuals and procedures set by CUSTOMER.

## **4. CHANGE TO SERVICE**

**4.1** If the Customer requires any changes to its Services, the Customer may submit to Company a written notice detailing the change requested together with all other relevant information (the “Change Request”). A Change Request may include addition of service options and categories.

**4.2** Company shall consider any Change Request received from the Customer and may request any additional information reasonably required by Company to evaluate such Change Request. Where Company can accommodate the Change Request to the Services, Company will provide the Customer with a written response (“Change Response”), which may include any increase of, and/or additional charges associated with the implementation and subsequent performance of the requested change. Subject to any mutually agreed changes, the Change Response may be executed by duly authorized representatives of both parties and shall be amended to this Agreement and /or Application for Service.

## **5. RISK OF LOSS**

This agreement does not cover Services, maintenance or repair necessitated by loss or damage resulting from any cause beyond the control of KDDI, including but not limited to loss or damage due to fire, water, lightning, earthquake, riots, theft, unauthorized service or modifications, or any other cause originating outside of the Services.

## **6. LIMITATION OF LIABILITY**

(a) IN NO EVENT SHALL KDDI BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OF ANY KIND OR INCREASED COST OF OPERATIONS, WHETHER OR NOT KDDI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.



- (b) KDDI ALSO SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: INTEROPERABILITY, INTERACTION OR INTERCONNECTION PROBLEMS WITH APPLICATIONS, EQUIPMENT, SERVICES OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; SERVICE INTERRUPTIONS OR LOST OR ALTERED MESSAGES OR TRANSMISSIONS, OR, UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF CUSTOMER'S, USERS' OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORK OR SYSTEMS.
- (c) EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, KDDI MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT OR ANY WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. KDDI DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE SERVICES WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES. KDDI DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY OF ANY KIND ON ITS BEHALF AND CUSTOMER SHOULD NOT RELY ON ANYONE MAKING SUCH STATEMENTS.
- (d) THE LIMITATIONS OF LIABILITY SET FORTH IN THIS ARTICLE 10 AND IN ANY APPLICATION FOR SERVICE SHALL APPLY: (i) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE; AND (R) WHETHER OR NOT DAMAGES WERE FORESEEABLE. THESE LIMITATIONS OF LIABILITY SHALL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDIES PROVIDED IN THIS AGREEMENT.
- (e) This Agreement does not expressly or implicitly provide any third party (including Users) with any remedy, claim, liability, reimbursement, cause of action or other right or privilege.

## **7. FORCE MAJEURE**

Neither party to this Agreement shall be liable for delays caused by an event of natural disaster, casualty, acts of God, riots, governmental acts or such other event of similar nature that is beyond the delaying party's control. If the performance by a party of any of its obligations under this Agreement shall be interfered with by reason of any circumstances beyond the reasonable control of that party, then that party shall be excused from such performance to the extent, and for a period equal to, the delay resulting from the applicable circumstances and such additional period as may be reasonably necessary to allow that party to resume its performance.

## **8. DELIVERY AND INSTALLATION DATES**

The initial due date(s) and the target delivery date for the installation of the Services, as may be set forth in the Application for Service, shall be mutually agreed upon by the Parties, and are subject to the availability of the necessary infrastructure, resources, and equipment. The Company shall timely notify the Customer of any event(s) that may cause a delay in the target delivery date.

## **9. INFRINGEMENTS, WARRANTIES & REGULATORY**

To the fullest extent permitted by law, Company, its licensors and suppliers make no warranty, express or implied, including without limitation with respect to the Services, and expressly disclaims the warranties or conditions of non-infringement, satisfactory quality, merchantability and fitness for any particular purpose. Customer hereby waives any rights that it might otherwise have in connection with this section. Company will not be obligated under this agreement to take any action or fail to take any action that it believes, in good faith, would cause it to be in violation of any laws of the territory or any other applicable jurisdiction, including, without limitation, the United States of America. Additionally, the Company will not be responsible for any damage the Customer suffers, including but not limited to loss of data resulting from service interruptions



caused by its own negligence or the customer's errors or omissions.

#### **10. NOTIFICATION**

Any notice required herein shall be in writing and shall be deemed received only when mailed via the United States Post Office, via certified mail-return receipt requested, submitted via facsimile, and/or sent via Overnight Courier addressed to the other party at its last known mailing address.

#### **11. WAIVER**

Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

#### **12. ARBITRATION**

Any dispute arising out of or relating to this Agreement which cannot be resolved within a reasonable time directly by KDDI and CUSTOMER shall be settled by binding arbitration, in accordance with the Rules & Regulations of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The location of any such arbitration shall be New York. All discussions and correspondence among the representatives, during said arbitration shall be treated as confidential information, exempt from discovery, and shall not be admissible in any lawsuit without the agreement of the parties. The cost of the arbitration, including the fees and expenses of the arbitrator(s), shall be shared equally by the parties unless the arbitration award provides otherwise. Each party shall bear the cost of preparing and presenting its case. The arbitrator(s) are not empowered to award damages in excess of compensatory damages and each Party irrevocably waives any damages in excess of compensatory damages. The parties agree to undertake all reasonable steps to expedite the arbitration process. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction.

#### **13. CONFIDENTIALITY**

KDDI shall hold in the strictest confidence all information that CUSTOMER or its affiliates may furnish to KDDI and/or KDDI may observe while on CUSTOMER's premises rendering Services to CUSTOMER, which information may include, but is not limited to, technical, business and CUSTOMER information, plans, products, processes, and equipment ("Confidential Information"), taking all reasonable measures to ensure confidentiality. KDDI shall limit disclosure of Confidential Information to only those individuals as the parties consider necessary and only after such individuals have undertaken to comply with the confidentiality obligations provided for in this Agreement.

KDDI shall not make reproductions, copies or disclosures to others of any portion of Confidential Information, except with the previously obtained written permission of CUSTOMER. Upon CUSTOMER's written request or termination of this Agreement, KDDI shall return to CUSTOMER all documents or other tangible materials provided in connection with this Agreement, and



any documents or other tangible materials in KDDI's possession or control reflecting Confidential Information of CUSTOMER.

KDDI's obligation to maintain confidentiality shall not apply to any Confidential Information which: (i) at the time of disclosure is in the public domain; (ii) after disclosure, becomes part of the public domain, by publication or otherwise, through no fault of KDDI; (iii) at the time of disclosure is already in KDDI's possession, and such prior possession can be demonstrated in writing by KDDI; (iv) is subsequently made available to KDDI by an independent third party; *provided, however*, the third party has a lawful right to make such disclosure and that such Confidential Information was not obtained by said third party, directly or indirectly, from CUSTOMER; or (v) is required by law or judicial decree to be disclosed, though if so obligated, KDDI shall immediately inform CUSTOMER of such requirement and shall make known to said government body or court the proprietary nature of the Confidential Information and make any applicable claim of confidentiality with respect thereto. No right or license whatsoever in Confidential information is granted by CUSTOMER to KDDI hereunder or by the disclosure of Confidential Information.

#### **14. INTELLECTUAL PROPERTY RIGHTS;**

Except as expressly stated otherwise in this Agreement, neither party will acquire any rights, title or interest, in any of the intellectual property rights belonging to the other party, or the other party's licensors. All ownership rights, title, and intellectual property rights in and to the content accessed through any Services are the property of the applicable content owner and may be protected by copyright or other applicable laws.

#### **15. REQUIRED DISCLOSURES**

Each party may disclose the other party's confidential information when required by law but only after it, if legally permissible: (a) uses commercially reasonable efforts to notify the other party; and (b) gives the other party the chance to challenge the disclosure.

#### **16. GOVERNING LAW**

The construction and performance hereof shall be governed by the laws of the State of New York, without reference to its principles of conflict of laws.

**17. CONFLICTS:** In the event of a conflict between the terms and conditions in this Agreement and the Application(s) for Service, then the Application(s) for Service shall govern.

#### **18. ENTIRE AGREEMENT**

This Agreement, including the herein referenced Applications for Service constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. This Agreement may only be modified or supplemented by an instrument in writing executed by a duly authorized representative(s) of each party.