

**KDDI AMERICA, INC.**  
**KDDI AMERICA CLOUD SERVICE MASTER AGREEMENT**  
**TERMS AND CONDITIONS**

This KDDI AMERICA Cloud Service ("KACS") Master Agreement (hereinafter referred to as the "Agreement") is entered into by and between the Party(s) identified below (the "Customer") and KDDI America, Inc. (the "Company"). KACS is a cloud platform related services, provided by KDDI America, Inc., subject to the terms and conditions set forth herein, including all attachments referenced herein.

**1. DEFINITIONS**

"Service Specification, Menu and Price provided with Service" means the terms and conditions list in Exhibits, as it may be updated by the Company from time to time.

"Application for Service" 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, or any other form under which services have been ordered by Customer and accepted in writing by Company.

"Agreement" means this Master Agreement and its associated exhibits, appendixes, and amendments.

"Company" means KDDI America, Inc. unless otherwise indicated by the context.

"Content" means software (including machine images), data, text, audio, video, images or other content.

"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.

"Customer Content" means Content Customer, Customer's customers, or any third parties on behalf of Customer (a) run on the Services, (b) cause to interface with the Services, or (c) upload to the Services under your account or otherwise transfer, process, use or store in connection with your account.

"Customer Related Party" means (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.

"Customer Zone" means virtual computing resources available for Customer's use and operation.

"Self Portal" means an HTTPS site, which Customer may utilize to perform management of the Customer Zone and Customer Content.

"Service Level Agreement" means the levels of performance at which the Services are to be provided by Company, in accordance with the provisions set out in Section 3 below and Exhibits.

**2. SERVICES**

The Company shall provide, subject to the terms and conditions stated herein, and the Customer shall accept and pay for all the services subscribed to by the Customer in any and all "Applications for Service" (hereinafter referred to as the "Service(s)"), hereinafter submitted by the Customer. The Services shall be provided pursuant to this Agreement, the rates, terms, and conditions described in each respective Application for Service, and KDDI America, Inc.'s Master Agreement Applicable to KDDI AMERICA Cloud Service, as modified, amended and revised from time to time (hereinafter collectively referred to as the "Agreements"). This Agreement incorporates by reference the terms of such other Agreements. 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) **KDDI AMERICA Cloud Service:** KDDI AMERICA Cloud Service is a cloud based service providing virtualized computing resources to Customer, to operate Customer Content. Company will take reasonable efforts to maintain all equipment and technologies associated to providing the Service, which include physical hardware and virtualization technologies. Customer hereby agrees that Company may temporarily stop the Service (i) to perform periodic and planned Service maintenance, (ii) unplanned emergency Service

maintenance and (iii) whenever there are difficulties that prevent the Company from providing the Service due to reasons not attributable to the Company and/or beyond its reasonable control. Customer is responsible for complying with all laws, rules and regulations, as well as Company's Acceptable Use Policy listed in Exhibits, regarding the management and administration of Customer Content.

- (b) **Customer Zone:** Customer Zone is an area of Service where Customer has control over provisioning of its contracted computing resources. Customer is allowed and is responsible for provisioning its computing resources within Customer.

Notwithstanding anything contained herein to the contrary, Customer acknowledges and agrees, that regardless of any situation, the Company may temporarily withhold and/or suspend any Services and/or may choose not to enter into this Agreement due to: (i) the lack of computing resources, as requested by Customer; (ii) Customer defaults on payment for any of the Services; and (iii) under any circumstances which Company is experiencing technical difficulties while attempting to provide the Customer requested functionalities and/or if said request for Services in anyway affects Company's Service operations.

### **3. SERVICE LEVEL AGREEMENT**

The Company will take commercially reasonable action to maintain Customer's accessibility to the Service and guarantees a monthly service availability rate of 99.99% (the "Monthly Service Availability"). In the event Customer is not able to access portions of the Service, it shall be considered as "Downtime." The Monthly Service Availability is calculated by (total usage hours in a month - Downtime)/total usage hours in a month, multiplied by 100. In case the Monthly Service Availability falls below 99.99% in any given month, the Company will refund 10% of applicable portion of Service Charge to Customer. Exclusions from "Downtime", which will not result in a 10% refund are; (i) periodic and planned Service maintenance; (ii) unplanned emergency Service maintenance; (iii) the time required for virtual machines to be (failed over); (iv) the Downtime is caused by an application and/or software installed in the Service; (v) virtual machines shut down by the Customer; (vi) inaccessibility to Self Portal; and/or (vii) performance degradation due to CPU, memory, and network resource performance.

### **4. CHANGES TO SERVICE**

- (a) If the Customer requires any change to its applied information pertaining to the KACS, the Customer may submit to Company a written notice detailing the change requested together with all relevant information (the "Change Request"). A Change Request may include any configuration or setting related to the Service, which the Customer is unable to perform itself through the SelfPortal.
- (b) 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.

### **5. OBLIGATIONS OF CUSTOMER & INDEMINIFICATION**

During the term of this Agreement, Customer shall have the following obligations, in addition to those set forth elsewhere in this Agreement:

- (a) Customer is and will remain solely responsible for complying with all laws, rules and regulations regarding the management and administration of Customer Content. Customer acknowledges and agrees that Company responsibilities and liability do not extend to the internal management or administration of Customer's Content.
- (b) Customer agrees to comply with Company's Acceptable Use Policy, as listed in Exhibits.
- (i) In case there are violations of the Acceptable Use Policy, Company may by written notice (specifying the matter to be rectified) require the Customer to remedy the same within seven (7) days of the date of such notice.
- (ii) In the event that Company considers any condition of the Customer Zone to be unsafe for Company's other customers or their agents or sub-contractors, it may suspend provision of the Customer Services until its instructions have been fully complied with by the Customer.
- (iii) In the event that the Customer has not complied with any notice given by the Company, Company may itself, without prejudice to its other rights and remedies, take the requisite actions to rectify the conditions of the Customer Zone, including, but not limited to, removal or disposal of any unsafe matters at the Customer's expense
- (c) Customer is solely responsible for the development, content, operation, maintenance, and use of its

Content. For example, but not limited to, Company is solely responsible for:

- (i) the technical operation of all Customer Content;
- (ii) compliance of Customer Content with the Acceptable Use Policy, the other Policies, and the law;
- (iii) any claims relating to Customer Content; and
- (iv) properly handling and processing notices sent to Customer (or any of Customer Related Party) by any person claiming that Customer Content violate such person's rights.

In the event that of any breach of the aforementioned obligations by Customer, then Customer agree to forever indemnify and hold Company harmless from and against any and all claims, demands, suits, actions, losses, damages, assessments or payments which may be asserted by any third-party against Company as it arises out of or relates to the Services and/or the aforementioned obligations.

Each party shall indemnify, defend and hold harmless the other, its directors, officers and employees from any claims, liability, judgments, damages or costs, including reasonable attorneys' fees, asserted or awarded against or incurred by the indemnified party its directors, officers or employees as a result of any negligent act or omission of the indemnifying party or its personnel. Further, Digital Edge also agrees to indemnify, defend and hold Client harmless from any claims, actions, losses, or damages arising from Digital Edge's use of the Client and/or Client trademarks.

## **6. TERMS**

- (a) The initial term of this Agreement shall be twelve (12) months (the "Initial Term") beginning on the date the Services are provisioned to Customer, as noted on the Application for Service. All licenses purchased under the same domain name after the Service Commencement Date will end on the anniversary of the Initial Term. At the end of the Initial Term, this Agreement and the Application for Service shall be renewed automatically for consecutive renewal terms of one (1) months, unless terminated by either party (effective as of the end of the then current term) by providing the other party written notice at least forty (40) days prior to the end of the applicable term.

## **7. CHARGES**

The total charges payable by Customer and frequency of those payments, to the Company for the Services shall be set forth in each respective Application for Service. The rates set forth in the Application for Service do not include the following: charges for Company services other than those set forth in the Application for Service; taxes, tax related or tax-like surcharges; and other related charges. Customer agrees to pay all these additional charges, to the extent applicable, in addition to the charges set forth in the applicable Application for Service. The additional charges, if any, for any necessary terminal equipment at each termination point of the Services will be set forth in the Applications for Service. Upon receipt of the monthly invoice, the Customer shall pay the amount billed, by the date specified on the invoice (the "Due Date"). Please note that 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 and an interest rate of 1.5% per month on the outstanding balance. If the applicable law does not allow an interest rate of 1.5% of month, the maximum lawfully allowable rate will be charged. Furthermore, if the Customer defaults, the Customer hereby agrees to pay for all of Company's reasonable expenses, incurred by the Company in enforcing its rights under this Agreement, including reasonable attorney's fees. The Customer may be required by the Company to provide its credit card number upon submitting its Application for Service, and the Customer hereby unconditionally authorizes the Company to charge said credit card whenever the Customer is in default and/or delinquent hereunder, regardless of the payment method selected by the Customer. Company may suspend Customer's access to the Services, if Customer's account has been delinquent for thirty (30) days, unless an active dispute related to Customer's delinquency is pending. If this suspension continues for longer than seven (7) days, notwithstanding anything contained herein to the contrary, then Company may terminate this Agreement and/or the Services for breach. Each party will be responsible for taxes based on its own capital, net income, employment taxes of its own employees, and for taxes on any property it owns. In the event that taxes must be withheld from payments to Company, Customer will increase the payment to Company so that the amount received by Company is the same as it would have been if no taxes were withheld. Customer is responsible for the payment of all other taxes imposed by any governmental authority in connection with the sale of the Services under this Agreement.

## **8. 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 thirty (30) 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 8(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.

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.

- (e) **Customer Account Access.** Upon termination of the Agreement, the Company shall cease the provision of the Service to the Customer and shall disconnect the Customer's access to Customer Content.
- (f) **Customer Content Removal.** Upon termination of the Agreement, the Customer shall at its own cost remove Customer Content from the Customer Zone. Removal of Customer Content shall take place within a timeframe to be agreed with the Company (subject to any lien which the Company may have over the Customer Content). Should the Customer fail to remove the Customer Content from Customer Zone within a period of three (3) days from the date of termination or agreed time of removal, Company shall be entitled to disconnect, remove and place applicable charges to the Customer to retrieve the Customer Content.

## 9. 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.

## 10. LIMITATION OF LIABILITY

In no event will either party be liable to the other for any special, incidental, punitive or consequential damages (including, without limitation, lost profits, loss of use, loss of data or loss of goodwill), arising out of or in connection with this Agreement or the performance or operation of the Services, whether such liability arises from any claim based upon breach of contract, breach of warranty, tort (including negligence), product liability or otherwise, and whether or not such party has been advised of the possibility of such damages. In no event shall either party's liability for any damages hereunder exceed the amounts paid by Customer to the Company during the twelve (12) month period preceding the causation of the damages.

Neither party shall be responsible for any failure to perform hereunder or for lost data which is caused by Acts of God or any other circumstances beyond its control, including but not limited to communication failure, labor strikes, internet grid failure, power failures, failure of any other third party component upon which the proper functioning of the system is dependent, acts of terrorism, computer viruses or acts of computer hackers.

Neither party shall be responsible for any failure to perform hereunder or for lost data which is caused by Acts of God or any other circumstances beyond its control, including but not limited to communication failure, labor strikes, internet grid failure, power failures, failure of any other third party component upon which the proper functioning of the system is dependent, acts of terrorism, computer viruses or acts of computer hackers.

#### **11. 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.

#### **12. 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.

#### **13. 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.

#### **14. GOVERNING LAW**

This Agreement shall at all times be governed by the laws of the State of New York, and any Public Service Commission regulation, if applicable, and such changes or modifications as they may, from time to time, direct in the exercise of their jurisdictions.

#### **15. 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; provided however that such party shall not have contributed in any way to such event.

#### **16. ORDER OF PRECEDENCE**

In the event of a conflict as to the terms and conditions, between this Agreement and/or any Application for Services; then the Application for Service, and then this Agreement shall govern, in that respective order.

#### **17. ENFORCEABILITY**

If any provision of this Agreement is held to be unenforceable, the parties shall substitute for the affected provision a provision which approximates the intent and economic effect of the affected provision.

#### **18. HEADINGS**

The headings in this Agreement are for purposes of reference only and shall not in any way limit or affect the meaning or interpretation of any of the terms hereof.

#### **19. ACCORD & SATISFACTION**

Whenever a debt hereunder shall be un-liquidated and/or under a legitimate good faith dispute or disagreement as to its amount, the Parties agree that they may not discharge the debt by tendering a check marked "payment in full" or any other similar marking, even though the check is negotiated by either party.

#### **20. ASSIGNMENT AND SUCCESSION**

This Agreement shall be binding upon and inure to the benefit of the heirs, successors, and/or assigns of the Parties. Customer may not assign its rights or obligations hereunder without the prior written consent of the Company.

## **21. DISPUTE RESOLUTION**

Any dispute relating to and/or originating from this Agreements and/or any applicable Application for Service shall be submitted to binding arbitration by a single arbitrator at the office of the American Arbitration Association ("AAA"), located in New York City, New York. The arbitration shall be held in accordance with the AAA's Commercial Arbitration Rules, as may be applicable to the dispute. 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.

## **22. WAIVER**

No forbearance by either party to enforce any provision under the Agreements or any right existing under the Agreements shall constitute a waiver of such provisions or rights or be deemed to amend or modify the Agreements.

## **23. PROPRIETARY INFORMATION / CONFIDENTIALITY**

The Company agrees that any information obtained in connection with work performed hereunder, including but not limited to Client intellectual property, systems, procedures, business practices, programs, events, or materials, is proprietary information and Digital Edge shall take all reasonable precautions to assure that said information shall remain confidential and shall not be disclosed to any third parties. The parties hereto agree that the terms and conditions of this Agreement shall remain confidential between the parties hereto. Disclosure of the terms of this Agreement will be limited to those persons requiring information contained herein to make certain its terms and conditions are met. Further, Digital Edge agrees that any proprietary information shall not be commercially exploited by or on behalf of Digital Edge, its employees or agents.

## **24. CONFIDENTIALITY**

The Company shall hold in the strictest confidence all information that Customer or its affiliates may furnish to the Company and/or the Company 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. The Company 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. The Company hereby agrees to destroy all materials containing any Confidential Information disclosed by Customer to The Company, in connection with the Services provided hereunder, and which are within the Company's possession and/or control, upon the Company's determination that provision of the Services has been completed, or upon expiration or termination of the Service term; provided, however, that the aforementioned destruction of Confidential Information shall not apply to any Confidential Information which (i) should be kept in the Company's possession pursuant to any applicable laws and/or regulations, (ii) are necessary for the Company's performance or implementation of certain delineated duties in compliance with applicable laws and/or regulations, or (iii) the parties have agreed that it should remain in the possession of the Company, during a certain period as mutually determined by the parties hereto.

The Company'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 the Company; (iii) at the time of disclosure is already in the Company's possession, and such prior possession can be demonstrated in writing by the Company; (iv) is subsequently made available to the Company 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, the Company 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. In the event the Company disputes the confidential status of certain information provided by Customer, the burden of proving that such information should not be considered confidential shall be on the Company. No right or license whatsoever in Confidential information is granted by Customer to the Company hereunder or by the disclosure of Confidential Information.

## **25. SEVERABILITY**

If any portion of this Agreement is held to be void or unenforceable, such part shall be treated as severable, and the remainder of the Agreement shall be given full force and effect.

## **26. ENTIRE AGREEMENT**

This Agreement and the Application for Service shall constitute the entire and exclusive statement of the rights, obligations, and understandings of the parties hereto with respect to Services and any other subject matter herein discussed. The terms of this Agreement and the Application for Service may only be amended in a writing signed by an authorized representative of the parties hereto.

**Exhibit A**

**US KACS Service Specification, Menu and Price provided with Service**

This exhibit ("Exhibit A") for US KDDI America Cloud Service describes additional terms and conditions for the Service.

**1. General Terms and Conditions**

Category	Description	Note
Minimum Term	1 Year	
Billing Term	Monthly, Prorated	
Termination Notice Window	40 Days	
Delivery Window (My Account)	TBA	
Delivery/Termination Notification Method	Service Delivery Notice/ Service Termination Notice	
Compensatory Damage	None, other than failure to fulfill SLA	
Application Method	Application Form	
Billing Method	Monthly Invoice	
Payment Method	Check/Wire Transfer	

**2. Service Window:** 24 Hours, 365 Days.

**3. Pricing**

Item	Price per month
1 vCPU	Provided by Sales Account
1 GB RAM	
1 GB Production Disk Storage	
1 GB Backup Disk Storage (Always online, no extra charges for retrieval)	
1 GB Backup Disk Storage long term (Offline, no retrieval fees)	
Firewalls, IDS, VPN	Included
One backup for all VMs	Included
Additional customer hardware	Priced per power specs