



## KDDI AMERICA, INC.

### MONITORING SERVICE AGREEMENT

#### TERMS AND CONDITIONS

This KDDI AMERICA Monitoring Service (“KAMS”) Agreement (hereinafter referred to as the “Agreement”) is entered into by and between the party(s) submitting an Application for Service, as defined below (“Customer”) and KDDI America, Inc. (“KDDI/Company”). KAMS is a monitoring and operation services, provided by KDDI America, Inc., subject to the terms and conditions set forth herein, including all attachments referenced herein.

#### 1. DEFINITIONS

1.1 “Affiliate” of a party means any entity that controls, is controlled by or is under common control with such party, and, in the case of KDDI, it also means any entity which KDDI has authorized to offer any Service or part of any Service.

1.2 "Content" means information made available, displayed or transmitted in connection with a Service (including, without limitation, information made available by means of an HTML "hot link", a third party posting or similar means) including all trademarks, service marks and domain names contained therein as well as the contents of any bulletin boards or chat forums, and, all updates, upgrades, modifications and other versions of any of the foregoing.

1.3 "User" means anyone whom Customer allows, by action or omission, to use or access any Service including, without limitation, Customer's Affiliates.

1.4 “Application for Service” A KDDI 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 KDDI.

#### 2. DESCRIPTION OF SERVICE

2.1 The KDDI America Monitoring Service (KAMS) is a set of services that include the following: providing Customer support desk, monitoring the physical devices in the Customer site and/or virtual machines in the public and/or private Azure cloud, Customer notification, collecting the monitoring data, providing trouble-shoot by logging into the devices, virtual machines and Azure Customer portal, incident management, providing KAMS portal access, providing the operation for the devices, virtual machines and Azure Customer portal, instead of the Customer, exclusively for the conditions, applications, and/or equipment noted on any Applications for Service submitted by Customer, from time to time, and subject to the herein noted terms and conditions.

2.2 The types of monitoring services provided are as follows (collectively referred to herein as the “service(s)” and/or “Service(s)”):

##### a) Physical network device monitoring

KDDI provides the monitoring services on a 24 hours X 365 days basis, for physical network devices such as routers, switches, firewalls, load balancers, Wifi controllers, Wifi access points, WAN links. KDDI monitors the ICMP/TCP reachability, CPU usage, Memory usage, Disk usage, interface status and traffic, power status, fan status, and temperature status from KDDI’s monitoring servers and/or KDDI’s monitoring proxies. The monitoring services are done via ICMP and/or SNMP, as such The Customer has to allow its devices to connect with KDDI’s monitoring system. The monitored devices and monitored items shall be designated by the Customer. In case that the Customer requires a maintenance operation of Level 2 and Level3 service, KDDI can provide remote troubleshooting, ticket open with vendor/ISP, RMA support, and status updates.

The service levels are defined in Table-1 below, and should be selected by the Customer



Table-1 service level definition for physical network device monitoring service:

Services	Monitoring		Maintenance	
	Level 0	Level 1	Level 2	Level 3
24x7 proactive monitoring	•	•	•	•
24x7 proactive notification	•	•	•	•
Customer portal access	•	•	•	•
Notify and escalate to users based upon standard procedure (Phone and email )		•	•	•
Incident management (Logging/Categorization)		•	•	•
Initial trouble shooting based on the standard operation procedure			•	•
Remote troubleshooting (Non-standard operation procedure)				•
Vendor management and coordination				•
Status updates				•
Hardware replacement support				•

b) Physical server monitoring service:

KDDI provides server monitoring service on a 24hours X 365days basis, for all physical server devices. KDDI monitors ICMP/TCP reachability, CPU usage, Memory usage, disk usage, disk status, interface status and traffic, power status, fan status, and temperature status, from KDDI’s monitoring servers and/or KDDI’s monitoring proxies. These monitoring is done via ICMP and/or SNMP and/or the monitoring software agent, the Customer devices must be allowed to connect with KDDI’s monitoring systems and/or the Customer must allow KDDI to install its monitoring software agent in the Customer’s servers. The monitored devices and monitoring items shall be designated by the Customer. In case that the Customer requires a maintenance operation of Level 2 and Level3 service, KDDI can provide remote troubleshooting, ticket open with vendor/ISP, RMA support, and status updates.

The service levels are defined in Table-2 below, and should be selected by Customer

Table-2 service level definition for physical server monitoring service:

Services	Monitoring		Maintenance	
	Level 0	Level 1	Level 2	Level 3
24x7 proactive monitoring	•	•	•	•
24x7 proactive notification	•	•	•	•
Customer portal access	•	•	•	•
Notify and escalate to users based upon standard procedure (Phone and email )		•	•	•
Incident management (Logging/Categorization)		•	•	•
Initial trouble shooting based on the standard operation procedure			•	•
Status updates				•
Hardware replacement support				•

c) Azure cloud virtual machine monitoring service:

KDDI provides the Azure cloud virtual machine monitoring service on a 24hours X 365days basis, for virtual machines in the Azure public/private cloud. KDDI monitors ICMP/TCP reachability, CPU usage, Memory usage, disk usage, disk status, interface status and traffic, port status, process status, URL accessibility, logs, and database status, from KDDI’s monitoring servers and/or KDDI’s monitoring proxies. The monitoring is done via ICMP and/or SNMP and/or a monitoring software agent, and the Customer’s virtual machines must be allowed to connect with the KDDI monitoring system and/or Customer must allow the installation of KDDI’s monitoring software agent in the Customer’s virtual machines. The monitored devices and monitoring items should be selected by Customer

The service levels are defined in Table-3 below, and it should be selected by Customer



Table-3 service level definitions for virtual machines monitoring for Azure cloud:

Services	Monitoring			
	Level 0 Bronze	Level 1 Silver	Level 2 Gold	Level 3 Platinum
24x7 proactive monitoring	●	●	●	●
24x7 proactive notification (*)	●	●	●	●
Customer portal access	●	●	●	●
Notify and escalate to users based upon standard procedure (Phone and email )		●	●	●
Incident management (Logging/Categorization)		●	●	●
Initial trouble shooting based on the standard operation procedure (Azure portal operation + Restarting VM)			●	●
Status updates				●
Initial trouble shooting based on the standard operation procedure (Mainly guest OS operation of customer VM)				●

\* Notification is made by monitoring system or operator

To avoid system congestion, within the Azure cloud monitoring service, the following limitations shall apply:

- Maximum number of processes to be monitored is 20 per virtual machine
- Maximum number of ports to be monitored is 20 per virtual machine
- Maximum number of URL to be monitored is 10 per virtual machine
- Maximum number of databases to be monitored is 1 per virtual machine

d) Operation service in Azure cloud:

KDDI can provides Azure cloud operation service, on behalf of the Customer, during business hours (9:00-17:00CT, Monday-Friday). KDDI can make changes and/or resolutions by following the Customer’s established procedures, which are provided in advance, onto the Azure Customer portal and/or the Customer virtual machines, which are designated by Customer in advance. Customers must provide KDDI with their login credentials, for the Azure cloud portal and/or Customer’s virtual machines.

The applicable service levels are defined in Table-4 below, and are based on the operation selected by Customer

Table-4 service level definitions for operation service for virtual machines in Azure cloud:

Service	Operation	
	Level 2 Gold	Level 3 Platinum
Restart VM (Azure portal operation and guest OS operation)	●	●
Check the setting of Azure portal / VM	●	●
Application vendor ticket open and follow up *1		●
Apply the OS patch *2 *3		●

\*1 Customer must have an established support contract with the vendor separately, and must provide the vendor’s contact info and any applicable conditions for opening trouble tickets.

\*2 The services will be provided once per month, including taking snapshot before patching and delete the snapshot after patching. Restoring VM only from the VM snapshot per customer request is included.

\*3 KDDI will restore the VM from the snapshot which KDDI takes, but KDDI does not warrant and/or otherwise assure the functionality of the OS, application, and/or VM itself by restoring the VM, and as such hereby disclaims any and all liability for any failure of the functionality of the OS, applications, and/or VM.

2.3 The Services are only applicable to the physical devices which the Customer owns and/or virtual machines in the Microsoft Azure cloud which KDDI sells to the Customer. Any and all support fees and/or usage fees related to the virtual machines for the referenced devices and/or any virtual machines shall be paid for by the Customer in its sole expense; furthermore, any and all other services provided, other than as specified above in subsection 2.1, 2.2 and 2.3, shall also be paid for by Customer as an additional charge. Additionally, the Services shall not extend beyond the ones which are described in this agreement. In addition, Customer acknowledges and agrees to allow KDDI to utilize, at no cost, any and all of Customer’s telecommunication circuits, as necessary to monitor the physical devices and/or virtual machines.

2.4 KDDI does not provide any Service Level Agreement (SLA). However, KDDI provides the Services utilizing good service levels and improves upon it when it is needed.

2.5 Notwithstanding anything contained in this agreement to the contrary, KDDI may disable the Services in any case that involves any critical issues on KDDI’s monitoring system, and/or heavy degradation of the monitoring network quality, and/or due to any natural disaster, and/or power related issues which may be due to, but not limited to, political and/or climate reason.



### 3. TERM

3.1 Unless otherwise stated in an Application for Service, the term of this Agreement and each Application for Service shall be for the term set forth in each respective Application for Service, as submitted by Customer from time to time, commencing on the Service Commencement Date noted in each respective Application for Service, and after the term noted in the Application for Service ends it shall thereafter automatically continue on a month to month basis, pursuant to the herein referenced and noted rates and terms, until such time as either KDDI or the Customer provides to the other at least thirty (30) days prior written notice of intent to terminate the Services and/or a new Agreement/Application for Service is executed, by and between the Parties to this Agreement. This Agreement is an attachment to the Application for Service and is an integral part of each Application for Service. Customer's signature below constitutes Customer's written consent to the terms and conditions of the Agreement and each Application for Service. Notwithstanding anything contained in this Agreement to the contrary, in the event of any conflict as to the terms and conditions, between any Application for Service and this Agreement, then the Application for Service shall govern.

### 4. CHARGES AND BILLING

4.1 Customer shall pay KDDI for its and Users' use of the Services at the rates and charges specified in the Application for Service, without deduction, setoff or delay for any reason. Payment for the Services shall be absolute and unconditional, and shall not be subject to any abatement, reduction, defense, counterclaim, interruption, deferment or recoupment for any reason whatsoever., including circumstances arising under any other Application for Service. Charges set forth in the Application for Service are exclusive of any applicable taxes, unless specified otherwise therein.

4.2 Customer agrees to pay or otherwise reimburse KDDI for (or pay directly if requested by KDDI) all sales, use, transfer, gross receipts, federal excise and similar taxes, duties, levies, and other similar charges and any related interest and penalties (collectively, "Taxes"), however designated, levied or imposed by any governmental authority by reason of the performance, sale, license or use of any of the Services (collectively "Taxes"); provided, however, that Customer shall not be liable for any such Taxes imposed on or measured by KDDI's net income. Customer's obligation includes the obligation to pay all license and registration fees and all sales, use, personal property, value added and other taxes and governmental charges, whether they are imposed upon KDDI, Customer, or other goods covered by this Agreement or as a result or arising out of the existence or operation of this Agreement.

4.3 In addition, the Application for Service reflects standard charges for additional services, which may be provided, to Customer by KDDI, and not covered by this Agreement. Customer agrees to pay all these additional standard charges, to the extent applicable. Upon receipt of the invoice, the Customer shall pay the amount billed, by the date specified on the invoice (the "Due Date"). Customer shall reimburse KDDI for all costs (including reasonable attorney fees) associated with collecting delinquent or dishonored payments. At KDDI's option, interest charges may be added to any past due amounts at the lower of 1.5% per month or the maximum rate allowed by law.

4.4 The billing for Services rendered in connection with each Customer site will begin when Customer is notified by KDDI that the Service is available for that site ("Service Commencement Date"). By its execution of the Application for Service, Customer authorizes KDDI to begin implementing the Service. However, in the event that a Service Commencement Date for any site is earlier than the Effective Date of this Agreement and/or any applicable Application for Service, the Effective Date of the Application for Service and the Agreement shall be retroactive to the actual Service Commencement Date and the Service Period shall be extended from the Service Commencement Date to the Effective Date. Customer authorizes KDDI to bill for Services rendered in any such site, from the Service Commencement Date for that site.

### 5. CUSTOMER'S RESPONSIBILITIES

5.1 Customer shall designate one primary contact to receive any and all reports, regarding the monitoring activities and other communications related to the Services.

5.2 Customer shall designate a maximum of two (2) persons who are authorized to request the maintenance and/or operations, regarding troubleshooting service and operation service to confirm the request is legitimated. If any other persons request the trouble shooting and/or operation service, then KDDI may refuse the request(s).

5.3.1 Customer shall pay the setup fee for the proxy server, which is installed in Customer's LAN in cases were the monitored devices do not have the direct connectivity with KDDI's monitoring system. KDDI shall charge said fees via invoices and/or other means.

5.3.2 Customer shall cover all resource fees and setup fees for the proxy server to be installed within the Azure cloud environment, in case the virtual machines do not have the requisite Internet connection. And the Customer shall also have the responsibility of maintain the operating system in the proxy server. KDDI shall charge any applicable fees via invoices and/or other means.



5.4 Customer must request the initial troubleshooting operation, in advance, in case KDDI detects alerts in the monitoring service and/or the Customer requires said services. Hence, the Customer must provide KDDI the operation procedures, and the Customer must maintain/update said procedures.

5.5 Customer shall prepare and provide to KDDI the system credentials if Customer requests KDDI to perform any operations including logging into the Azure Customer portal or virtual machines. The Customer shall maintain the credentials up to date as well.

5.6 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.

5.7 It is solely the responsibility of Customer to plan, design, deploy, install and setup, delete, dispose, terminate the Customer's devices and/or cloud resources. 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.

5.8 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.

5.9 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. Notwithstanding anything contained herein to the contrary, even though the proxy server is used as a part of the attack, KDDI shall have no responsibility for any damages cause by the attack. KDDI strongly recommends to the Customer to consider and implement reasonable cyber security measures. KDDI will also consider the configuration in the proxy server if the Customer requests it.

5.10 If the Customer plans to make changes to its network and/or system design, and/or to perform maintenances on its power and/or other facilities which are related to the monitored devices, and it expects that such changes will result in detection and alerts related to the Service, then Customer shall inform KDDI via prior written notice of the plan and the Customer's request to disable the monitoring temporarily

## 6. USE OF INFORMATION

6.1 All documentation, technical information, Software, business information, proposals for new Services or other materials that are disclosed by either party to the other in the course of performing this Agreement shall be considered proprietary information ("INFORMATION") of the disclosing party, provided such information is in written or other tangible form that is clearly marked as "proprietary" or "confidential", or is disclosed orally and is both identified as proprietary or confidential at the time of disclosure and summarized in a writing so marked within 15 business days following the oral disclosure. This Agreement shall be deemed to be KDDI INFORMATION.

6.2 Each party's INFORMATION shall, for a period of 3 years following its disclosure (except in the case of Software, for an indefinite period): (i) be held in confidence; (ii) be used only for purposes of performing this Agreement and using the Services; and, (iii) not be disclosed except to the receiving party's affiliates, employees, agents and contractors having a need-to-know (provided that such agents and contractors are not direct KDDI competitors and agree in writing to use and disclosure restrictions as restrictive as this Article 6, or to the extent required by law.

6.3 The restrictions in Section 7.2 shall not apply to any information that: (i) is independently developed by the receiving party, or (ii) is lawfully received by the receiving party free of any obligation to keep it confidential; or (iii) becomes generally available to the public other than by breach of this Agreement.

6.4 Customer authorizes KDDI and its Affiliates to use Customer's Proprietary Network Information ("CPNI" as defined in the Communications Act of 1934, as amended, to evaluate Customer's requirements and provide Customer with information concerning Routers and services offered by KDDI and other companies.

## 7. PUBLICITY AND MARKS

7.1 No public statements or announcements relating to this Agreement shall be issued by either party without the prior written consent of the other party.

7.2 Each party agrees not to display or use, in advertising or otherwise, any of the other party's trade names, logos, trademarks, service marks or other indicia of origin (collectively "Marks") without the other party's prior written consent, provided that such consent may be revoked at any time.

## 8. INTELLECTUAL PROPERTY RIGHTS

Customer acknowledges and agrees that it shall have no right, title, claim, interest, security interest or lien in any innovations, made, conceived or devised by KDDI prior to or in the course of providing Services or in specifications, designs, plans, drawings, software, computer systems, prototypes or other technical or business information ("Proprietary Information") disclosed to Customer



by or on behalf of KDDI in connection with this Agreement and that all such Proprietary Information, including all rights to patents, copyrights, trademarks and trade secrets inherent therein and appurtenant thereto ("Proprietary Rights") are and shall be the exclusive property of KDDI and its suppliers. Where necessary for the proper performance of its Services under this Agreement, KDDI will grant to Customer a personal, nonexclusive, nontransferable, royalty-free license (without the right to sublicense) during the term of this Agreement to use (in object code form as it relates to software) any such KDDI Proprietary Information solely in connection with Customer's receipt of the Services. Customer shall not copy or download the KDDI Proprietary Information except to the extent expressly provided otherwise in the applicable documentation for the Service or in a writing signed by KDDI. Any copy must contain the same copyright notices and proprietary markings as the original KDDI Proprietary Information. Except as otherwise specified herein, no other right or license to or under any of KDDI's Proprietary Information and Proprietary Rights is either granted or implied under this Agreement.

## 9. DISPUTE RESOLUTION

9.1 All disputes, controversies or claims, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, arising out of or relating to this Agreement and the Services provided under this Agreement (collectively, "Disputes"), not resolved amicably between the parties shall be settled by final and binding arbitration conducted in New York or other mutually agreed location by one neutral arbitrator, in accordance with this Agreement and the then current Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The arbitrability of Disputes shall also be determined by the arbitrator. Each party shall bear its own expenses and the parties shall equally share the filing and other administrative fees of the AAA and the expenses of the arbitrator, except that the arbitrator shall be entitled to award a different allocation of costs and fees where the arbitrator determines that a filed claim is frivolous. Any award of the arbitrator shall be in writing and shall state the reasons for the award. Judgment upon an award may be entered in any Court having competent jurisdiction. The arbitrator shall not have the power to award any damages in excess of the liability limitations set forth in this Agreement, including any Application for Service. The arbitrator shall not have the power to order pre-hearing discovery of documents or the taking of depositions, but may compel attendance of witnesses and the production of documents at the hearing. The Federal Arbitration Act, 9 U.S.C. Sections 1 to 14, shall govern the interpretation and enforcement of this Section 9.1.

9.2 The parties, their representatives and participants and the arbitrator shall hold the existence, content and result of the arbitration in confidence, except to the limited extent necessary to enforce a final settlement agreement or to obtain, or enforce a judgment on an arbitration decision and award.

## 10. FORCE MAJEURE

Neither KDDI nor Customer shall be liable for any delay, failure in performance, loss or damage due to: fire, explosion, power blackout, earthquake, flood, the elements, strike, embargo, labor disputes, acts of civil or military authority, war, acts of God, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, or other causes beyond such party's reasonable control, whether or not similar to the foregoing, except that Customer's obligation to pay for charges incurred shall not be excused.

## 11. LIMITATIONS OF LIABILITY

11.1 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.

11.2 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.

11.3 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.

11.4 THE LIMITATIONS OF LIABILITY SET FORTH IN THIS ARTICLE 11 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.



11.5 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.

## 12. INDEMNITY

Customer shall indemnify and hold harmless KDDI and KDDI's Assignee from and against any and all claims, actions, suits, proceedings, liabilities, damages, penalties, costs and expenses (including reasonable attorneys' fees), arising out of the use, operation, possession, ownership (for strict liability in tort only), selection, leasing, maintenance, delivery or return of the Services and/or any Routers.

## 13. TERMINATION

**13.1 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:

- a) 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.
- b) 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.

**13.2 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.

**13.3 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.

**13.4 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 Term of the respective Application for Service for reasons other than those specified in Section 14.3 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:

- a) all charges reasonably expended by Company to establish service to Customer;
- b) all disconnection, early cancellation and termination charges reasonably incurred and paid to third parties by Company on behalf of Customer; and
- c) a total of one hundred (100) percent of all recurring service charges for the remainder of the Term(s) (if any) in each respective and applicable Application for Service.

13.5 Termination by either party of any Application for Service does not waive any other rights or remedies it may have under this Agreement.

13.6 Except as provided in this Section, termination or suspension of any /Application for Service shall not affect the Services provided or the rights and obligations of the parties under any other Application for Service.

## 14. GENERAL PROVISIONS

14.1 Any supplement, modification or waiver of any provision of this Agreement or any Application for Service must be in writing and signed by authorized representatives of both parties.

14.2 This Agreement may not be assigned by either party without the prior written consent of the other (which shall not be unreasonably withheld, except that KDDI may, without Customer consent, assign any right or delegate any duty under this Agreement or any Application for Service to a present or future Affiliate or successor and may assign its right to receive payments. KDDI may subcontract work to be performed under this Agreement, but shall retain responsibility for all such work.

14.3 If any portion of this Agreement is found to be invalid or unenforceable, the remaining provisions shall remain in effect and the parties shall promptly begin negotiations to replace invalid or unenforceable portions that are essential parts of this Agreement.

14.4 Any initial demand for arbitration pursuant to Section 10 and any legal action arising in connection with this Agreement must begin within two years after the cause of action arises.



14.5 All notices under this Agreement shall be in writing and either mailed by certified or registered mail, postage prepaid return receipt requested, sent by express courier or hand delivered and addressed to each party at the address set forth on the front of this Agreement or, if the notice relates to a specific Application for Service, the address set forth in such Application for Service, or, in any other case, such other address a party designates in writing.

14.6 The construction, interpretation and performance of this Agreement shall be governed by the substantive laws of the State of New York, excluding its choice of law rules and the United Nations Convention on Contracts for International Sale of Goods. No rights or remedies referred to in Article 2A of the Uniform Commercial Code will be conferred on Customer unless expressly granted in this Agreement.

14.7 The respective obligations of Customer and KDDI which by their nature would continue beyond the termination or expiration of this Agreement or any Application for Service shall survive termination or expiration of this Agreement or any Application for Service.

14.8 The parties acknowledge that any devices, software and technical information (including, but not limited to, services and training) provided under this Agreement are subject to U.S. export laws and regulations and any use or transfer of such Routers, software and technical information must be authorized under those regulations. The parties agree that they will not use, distribute, transfer or transmit the Routers, software, or technical information (even if incorporated into other Routers) except in compliance with U.S. export regulations.

14.9 Customer represents and warrants for this Agreement and each Schedule, if any, that the execution, delivery and performance by Customer have been duly authorized by all necessary corporate action; the individual executing was duly authorized to do so; the Agreement and each Schedule constitute valid, binding agreements of the Customer enforceable in accordance with their terms; that all information supplied by Customer, including but not limited to the credit application and other financial information concerning Customer, is accurate in all material respects as of the date provided; and if there is any material change in such information prior to manufacturer's or, if appropriate, supplier's shipment of Routers under the Schedule, Customer will advise KDDI of such change in writing.

14.10 Customer agrees to execute and deliver to KDDI such further documents, including, but not limited to, financing statements, assignments, and financial reports and take such further action as KDDI may reasonably request to protect KDDI's interest in the Routers.

14.11 This Agreement and any Application for Service is non-cancelable, other than as herein permitted, for the full term specified and this Agreement and any Application for Service shall be binding upon, and shall inure to the benefit of KDDI, Customer, and their respective successors, legal representatives and permitted assigns.

14.12 THIS AGREEMENT AND ANY APPLICABLE APPLICATION FOR SERVICE CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SERVICES TO BE PROVIDED HEREUNDER, THIS AGREEMENT SUPERSEDES ALL PRIOR AGREEMENTS, PROPOSALS, REPRESENTATIONS, STATEMENTS OR UNDERSTANDINGS, WRITTEN OR ORAL, CONCERNING SUCH SERVICES OR THE RIGHTS AND OBLIGATIONS RELATING TO THOSE SERVICES. EXCEPT FOR ANY APPLICABLE KDDI APPLICATION FOR SERVICE, THIS AGREEMENT SHALL NOT BE CONTRADICTED, EXPLAINED OR SUPPLEMENTED BY ANY WRITTEN OR ORAL STATEMENTS, PROPOSALS, REPRESENTATIONS, ADVERTISEMENTS, SERVICE DESCRIPTIONS, OR ANY CUSTOMER'S PURCHASE ORDER FORMS.

CUSTOMER'S SIGNATURE ON AN APPLICATION FOR SERVICE, WHICH REFERENCES THIS AGREEMENT, ACKNOWLEDGES THAT CUSTOMER HAS READ AND UNDERSTANDS EACH OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND APPLICATION FOR SERVICE HERETO, AND AGREES TO BE BOUND BY THEM. CUSTOMER'S SIGNATURE ON ANY APPLICATION FOR SERVICE AUTHORIZES KDDI TO BEGIN IMPLEMENTATION OF THE SERVICES IN THE QUANTITIES, SUPPORT LEVELS AND PRICES SET FORTH IN THE APPLICATION FOR SERVICE.