

POCKETALK SALES AGREEMENT

This POCKETALK SALES AGREEMENT (the “**Agreement**”) is made by and between KDDI America Inc. (“KDDIA”), and “Customer” and/or “End User”.

WHEREAS KDDIA is in the business of selling the Products (as defined herein); and

WHEREAS Customer is the End User(s) (as defined hereinafter); and

NOW THEREFORE, in consideration of mutual promises and agreements set out herein and other consideration (the receipt and sufficiency of which are acknowledged by each of KDDIA and Customer), the parties agree as follows:

1. **Definitions and Contract Interpretation**

(a) **Definitions**

“**Applicable Law**” means any domestic or foreign statute, law, ordinance, rule, regulation, treaty, regulatory policy or guideline, code, by-law or order that applies in whole or part to the applicable situation or event.

“**Application for Service**” means a KDDIA ordering document (alternatively referred to hereinafter as the “Product Order”), for specific Product(s) provided hereunder, which sets forth Customer’s specific order for such Product(s) and which is executed by Customer and accepted in writing by KDDIA.

“**Confidential Information**” means this Agreement and all proprietary or confidential data, trade secrets, business information and other information of any kind whatsoever that a party discloses, in writing, orally, visually or in any other medium, to the other party or to which one party obtains access and that relates to the other party. Confidential Information includes any information that reasonably appears to be proprietary or confidential in nature because of legends or other markings, the circumstances of disclosure, or the nature of the information itself; however, information does not need to be identified as being confidential by the party disclosing such information in order to be Confidential Information for the purposes of this Agreement.

“**Customer**” means the person, firm or corporation, or other entity which orders, cancels, amends, or uses KDDIA Services and is responsible for the payment of charges and/or compliance with the general terms and conditions of the Agreement.

“**Designs**” means all the internal and external schematics, and designs, including the specifications, industrial designs, or mechanical designs, layouts and the like, contained in or related to the Products.

“**End User**” means the Customer who submits an Application for Service/Purchase Order and who is the ultimate purchaser of the Products for use and not resale.

“**Intellectual Property Rights**” means any and all (by whatever name or term known or designated) tangible and intangible and now known or hereafter existing: (i) rights associated with works of authorship, including, without limitation, all exclusive exploitation rights, copyrights, neighbouring rights, moral rights, mask-works and design rights; (ii) KDDIA Marks; (iii) trade secret rights, (iv) inventions, patents, Designs, patent applications, algorithms, patent

licenses, know how, and other industrial property rights; (v) domain names; (vi) all other intellectual and industrial property and proprietary rights (of every kind and nature and however designated in the Territory), whether arising by operation of law, contract, license, or otherwise; and (vi) all registrations, applications, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force.

“Non-Conforming Goods” means any Product(s) received by Customer from KDDIA under a Purchase Order that: (a) is not a Product; or (b) does not conform to the specifications listed in the applicable Purchase Order.

“Policy Guide(s)” means policy guides and instructions issued by KDDIA from time to time, as modified by KDDIA from time to time.

“Product(s)” means the products, supplies and accessories sold by KDDIA that are set out on Schedule 1. **“Supplier”** means Sourcexnext Inc., who is also the manufacturer of the Product(s).

- (b) **Order of Precedence.** In the event of any conflict or inconsistency between the terms and conditions in the body of this Agreement and those in any schedule or Purchase Order, acknowledgment form, or other instrument delivered in accordance with this Agreement, the terms and conditions in the body of this Agreement shall govern to the extent of the conflict or inconsistency and the parties shall take such steps as may be required or desirable to conform the conflicting or inconsistent provisions thereof to this Agreement.
- (c) **Schedules.** The following Schedules are attached to and incorporated in this Agreement by reference and are deemed to be a part of this Agreement:

Schedule 1 Products

2. **Restrictions**

- (a) **Resales.** Customer shall not purchase the Products for the purpose of reselling the Products to any other person and/or company.
- (b) **Changes to the Products.** The list of Products may be revised or amended from time to time at the discretion of KDDIA, without the consent of Customer, by providing written notice of such revision or amendment. Any such revision or amendment will be effective on the later of the date of the notice or the date specified in the notice for the revision or amendment. The Territory may be revised or amended from time to time at the discretion of KDDIA without the consent of Customer on thirty (30) calendar days prior written notice to Customer.
- (c) **Independent Contractors; No Franchise.** The parties to this Agreement are independent contractors and nothing in this Agreement shall be deemed or constructed as creating a joint venture, partnership, agency relationship, franchise or business opportunity between KDDIA and Customer. Neither party, by virtue of this Agreement, will have any right, power or authority to act or create an obligation, express or implied, on behalf of the other party. Each party assumes responsibility for the actions of their personnel under this Agreement and will be solely responsible for their supervision, daily direction and control, wages, withholding taxes, benefits, and the manner and means through which the work under this Agreement will be accomplished.

3. **Obligations of Customer.** In addition to other obligations of Customer included in this Agreement, Customer covenants and agrees that, throughout the Term, it shall comply with the following, at its expense:
 - (a) **Product Issues and Complaints.** Customer shall promptly notify KDDIA of any complaints with respect to the Products. Customer shall notify KDDIA immediately after Customer learns of any adverse claims or litigious proceedings regarding the Products.
 - (b) **Returns.** Customer shall report to KDDIA any returns of Products to Customer that may be indicative of problems with a Product. Products may only be returned to KDDIA in compliance with the policy set forth in the Limited Warranty (as defined in Section 11 below). However, Customer may return the Product(s) to KDDIA, but only a maximum of fifty (50) units in the aggregate for any or no reason, provided that such units are unused and in their original, unopened packaging. Customer shall be responsible for all costs of shipping, handling, etc. in returning Products to KDDIA and shall bear the risk of loss of such Products until delivery to KDDIA.
4. **Obligations of KDDIA.** In addition to any other obligations of KDDIA included in this Agreement, KDDIA covenants and agrees that, throughout the Term, it shall comply with the following:
 - (a) **Products.** KDDIA shall advise Customer of improvements and changes to the Products that KDDIA considers to be material.
5. **Order Process**
 - (a) **Purchase Orders.** Customer shall order Products in accordance with the terms and conditions of this Agreement. Orders for Products (each a “**Purchase Order**” and/or “**Application for Service**”) must be submitted via an Application for Service form (as provided by KDDIA) and approved by KDDIA in writing. Without limiting the generality of the foregoing, each Purchase Order must specify: (i) the quantity of Products being ordered; (ii) the price of each Product being ordered; (iii) payment terms granted by KDDIA under the terms of this Agreement; (iv) a requested delivery date; and (v) Customer Location to which the Products will be shipped. Purchase Orders submitted by Customer shall be subject to acceptance by KDDIA in writing and shall not be binding until the earlier of such acceptance or shipment, and any acceptance by shipment shall be binding only as to the portion of such Purchase Order actually shipped. A Purchase Order that has been submitted by Customer and accepted by KDDIA may only be amended with the consent of KDDIA in writing.
 - (b) **Delivery Date.** Requested delivery dates must be during the Term, except that KDDIA may, in its sole discretion, accept a Purchase Order during the Term which has a requested delivery date after the expiration or termination of this Agreement, in which case the terms and conditions of this Agreement shall apply to such shipment, but under no circumstances shall such shipment be deemed to be, or be construed as being, a renewal or extension of this Agreement. KDDIA is not required to accept a requested delivery date that is less than ten (10) business days from the date of the relevant Purchase Order.
 - (c) **Product Discontinuance.** KDDIA reserves the right to discontinue the production or distribution of any of its Products at any time. KDDIA reserves the right to modify or change any of the Products at any time. In the event that KDDIA elects to discontinue the production or distribution of any of the Products or modifies or changes any of the Products in a manner that KDDIA considers material, KDDIA will use commercially reasonable efforts to provide Customer with thirty (30) calendar days prior notice of such discontinuance of production or distribution or modification or change.

- (d) **Procedures.** In addition to the order process set out herein, Customer shall also generally comply with Policy Guides with respect to ordering procedures in effect from time to time.
- (e) **Minimum Order Quantity.** Unless otherwise agreed by KDDIA in writing, a Purchase Order submitted by Customer shall have a minimum ordered quantity of ten (10) units of Products and a maximum ordered quantity of one hundred (100) units of Products.

6. Invoices and Payment

- (a) **Invoices.** KDDIA will deliver invoices by mail, email, or fax concurrently with each delivery of Products. However, any delay in delivery or failure to deliver an invoice shall not relieve Customer of Customer's payment obligations in Section 6(b) hereof.
- (b) **Payment Terms.** Invoices are due and payable within thirty (30) days from the date of the invoice unless agreed otherwise in the applicable Purchase Order. Payments due to KDDIA hereunder must be made by wire transfer or other method agreed upon by KDDIA in writing. KDDIA may charge a late fee of one and one-half percent (1.5%) per month, not to exceed the maximum rate of interest allowed to be charged by law, on all payments not received by their due date.
- (c) **No Set-Off.** Customer has no right of set-off, withholding or ability to assess any compliance charges (or similar fees) under the terms of this Agreement.
- (d) **Withholding Shipments.** If any amount due to KDDIA by Customer, for any reason, becomes past due, KDDIA may in its sole discretion withhold further shipments or deliveries of Products until all invoices are paid in full. In the event that KDDIA withholds Products as a result of the application of this Section, Customer releases KDDIA from any liability or loss arising from or relating to KDDIA withholding such Products whether anticipated or unanticipated. If any indebtedness is more than thirty (30) days past due, KDDIA may terminate this Agreement upon five (5) business days written notice, and/or declare that all sums owned by Customer are immediately due and payable regardless of the payment terms set forth elsewhere herein. KDDIA's remedies in this Section are in addition to any other remedies provided for in this Agreement or by Applicable Law.
- (e) **Security Interests.** KDDIA reserves a purchase money security interest in all Products sold pursuant to this Agreement and proceeds thereof until payment in full is made for all such Products in connection with any such sale. Customer agrees to execute any financing statement requested by KDDIA to protect its security interest in the Products. Except where prohibited by Applicable Law, title to Products sold to a third party shall be subject to a lien in favour of KDDIA until payment in full is received from Customer.

7. Pricing to Customer

- (a) **Pricing.** Unless specifically stated to the contrary, any price presented by KDDIA shall not include the cost of freight, insurance, or any required taxes.
- (b) **Duties and Taxes.** Customer shall be solely responsible for any national, provincial or local sales, use, value added or other applicable taxes, tariff, duty or assessment levied or imposed by United States federal, state, or local authorities or any foreign governmental authority arising out of or related to any of the transactions contemplated under this Agreement, other than any tax based on KDDIA's net income (collectively, "Taxes"). Customer must pay directly, or reimburse KDDIA for, the amount of such Tax that KDDIA is at any time obligated to pay or collect.

8. **Records and Claims.** Customer shall, at KDDIA's request, provide full and complete records which fully support any discrepancies that Customer may claim exist between amounts KDDIA claims are due from Customer and amounts Customer claims are due from KDDIA. Customer shall not claim against KDDIA and expressly waives and releases KDDIA from any claim that is not made by Customer within twelve (12) months of the date of invoice on which such claim is based, notwithstanding that such claim is not now known or anticipated and irrespective of whether such claim is known or anticipated at the time of such waiver and release.
9. **Shipping Terms**
- (a) **Shipping Terms.** All Products shipped pursuant to this Agreement will be suitably packed for shipment in KDDIA's standard containers, marked for shipment to Customer at the address specified in the Purchase Order, and delivered to Customer within the Territory. Shipment of Products will be F.O.B. such address or as otherwise agreed between KDDIA and Customer. It is understood and agreed that, upon the parties' written agreement in a Purchase Order or otherwise, KDDIA may ship Products directly to the End User. Customer waives and releases KDDIA from any claim with respect to Products damaged during shipment or claim for shortages in Product shipped that is not made by Customer within seven (7) days of the date upon which the shipment was made to Customer.
- (b) **Title and Risk of Loss.** The title and risk of loss or damage to the physical Products shall pass to Customer upon delivery of the Products to Customer.
- (c) **Delivery Dates.** Notwithstanding any delivery date specified in a Purchase Order, shipment of any Products may be delayed to enable KDDIA to acquire the Products for Customer in its normal course of business. Such delay shall not constitute a breach or termination of this Agreement by KDDIA. Customer waives and releases KDDIA from any liability or loss arising from any delay in delivery of the Products. KDDIA's remedies in this Section are in addition to any other remedies provided for in this Agreement or by Applicable Law.
- (d) **Cancellation.** KDDIA may cancel any Purchase Orders placed by Customer and accepted by KDDIA or refuse, cancel or delay shipment to Customer as contemplated in this Agreement if: (i) Customer is delinquent in payments; (ii) payment for a shipment has not been arranged to KDDIA's reasonable satisfaction; or (iii) Customer has failed to perform any of its obligations under this Agreement. Such refusal, cancellation or delay shall not constitute a breach or termination of this Agreement by KDDIA. Customer waives and releases KDDIA from any liability or loss arising from any such refusal, cancellation or delay. KDDIA's remedies in this Section are in addition to any other remedies provided for in this Agreement or by Applicable Law.
- (e) **Allocation.** In the event that Purchase Orders for Products exceed KDDIA's available inventory, KDDIA shall allocate its available inventory on a basis KDDIA deems equitable, in its sole discretion. Customer waives and releases KDDIA from any liability or loss on account of the method of allocation chosen or its implementation. KDDIA's remedies in this Section are in addition to any other remedies provided for in this Agreement or by Applicable Law.
- (f) **Inspection.** Customer shall inspect Products received under this Agreement within three (3) business days of receipt (the "**Inspection Period**") of the Products and either accept or, if any Products are Non-Conforming Goods, reject these Products. Customer will be deemed to have accepted the Products unless it notifies KDDIA in writing of any Non-Conforming Goods during the Inspection Period and furnishes written evidence or other documentation as required by KDDIA. If Customer timely notifies KDDIA of any Non-Conforming Goods, KDDIA shall determine, in its sole discretion, whether the Products are Non-Conforming Goods. If KDDIA determines that the Products are Non-Conforming Goods, it shall either, in its sole discretion (i) replace the Non-

Conforming Goods with conforming Products, or (ii) refund the Price for the Non-Conforming Goods

Customer shall ship, at its expense, all Non-Conforming Goods to KDDIA at an address specified by KDDIA in writing. If KDDIA exercises its option to replace Non-Conforming Goods, KDDIA shall, after receiving Customer's shipment of Non-Conforming Goods, ship to Customer, at Customer's expense, the replaced Products to a location designated by Customer.

Customer acknowledges and agrees that the remedies set out in this Section 9(f) are Customer's exclusive remedy for the delivery of Non-Conforming Goods, subject to Customer's rights under Section 11.

10. **Intellectual Property Rights**

- (a) **Ownership.** Customer acknowledges and agrees that all Intellectual Property Rights involved or arising from the development and manufacture of the Products are owned exclusively by or are licensed by KDDIA. Customer acknowledges and agrees that KDDIA shall retain sole and exclusive ownership of all Intellectual Property Rights. Customer agrees that it shall not, at any time during or after the Term: (i) do anything that may adversely affect the ownership, ability to receive registration, validity or enforceability of any Intellectual Property Right belonging to KDDIA or licensed to KDDIA (including any act, or assistance to any act, that may infringe or lead to the infringement of any Intellectual Property Right in any product or service of KDDIA); or (ii) exercise, or attempt to exercise, any Intellectual Property Right in any product or service of KDDIA, other than as expressly set forth herein and in any other written agreement that may be entered into between the parties.
- (b) **Terms of Use.** Customer acknowledges and agrees that any and all use of the Products shall be governed by the Pocketalk Terms of Use that are electronically included with the Products (the "**Terms of Use**"). KDDIA may modify the Terms of Use in its sole discretion.

11. **Representations and Warranties**

- (a) **Warranty.** KDDIA makes no warranties, representations or conditions as to the performance of the Products or as to service to any other person, except to End Users as expressly set forth in Supplier's standard Warranty & Guarantee, currently set forth at <https://www.pocketalk.net/warranty-guarantee/> accompanying the Products ("**Limited Warranty**"). Subject to Applicable Law relating to consumer sales, KDDIA reserves the right to change the terms of the Limited Warranty at any time, without further notice and without liability to Customer or any other person.
- (b) **No Agency.** No Customer or any employee or agent of a Customer is authorized by KDDIA to modify, extend or add to the Limited Warranty. CUSTOMER SHALL TAKE ALL MEASURES NECESSARY TO ENSURE THAT NEITHER IT NOR ANY OF ITS EMPLOYEES OR AGENTS MAKES OR ATTEMPTS TO MAKE ANY SUCH REPRESENTATION, WARRANTY OR CONDITION ON BEHALF OF KDDIA TO ANY THIRD PARTY IN CONTRAVENTION OF THIS AGREEMENT.
- (c) **Disclaimer.** EXCEPT AS PROVIDED FOR IN THIS SECTION 11, ALL PRODUCTS ARE PROVIDED AS IS AND KDDIA DOES NOT MAKE, AND KDDIA HEREBY EXPRESSLY DISCLAIMS ANY REPRESENTATION, WARRANTY OR CONDITION TO CUSTOMER, ANY END USER OR OTHER THIRD PARTY, WITH RESPECT TO ANY PRODUCTS PURCHASED OR ACQUIRED BY CUSTOMER PURSUANT TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR DURABILITY.

- (d) **Third-Party Products.** Customer acknowledges and agrees that Products purchased by Customer under this Agreement may contain, be contained in, incorporated into, attached to or packaged together with the products manufactured by a third party (the "**Third-Party Products**"). Third-Party Products are not covered by the Limited Warranty. For the avoidance of doubt, KDDIA makes no representations, conditions or warranties regarding any Third-Party Products.

12. **Term and Termination**

- (a) **Term.** This Agreement shall be effective on the Effective Date and Effective Date is the date on which the signature page of an Application for Service, for the Service provided, is signed by Customer or the date upon which Customer begins using the Service provided, whichever is earlier. The Term of this agreement shall continue in effect for as long as the Term of any Services provided remains in effect, unless terminated in accordance with the provisions of the Agreement.
- (b) **Termination for Breach.** If either party breaches its obligations under this Agreement, the non-defaulting party may terminate this Agreement as provided in this Section 12(b). In the event of a failure to pay monies when due pursuant to the terms of this Agreement, this Agreement shall automatically terminate without further notice or action by either party ten (10) calendar days following written notice of default to the defaulting party provided such breach is not cured by the defaulting party within such period. In the event of a breach that is not related to the payment of monies, this Agreement shall automatically terminate without further notice or action by either party thirty (30) calendar days following written notice of default to the defaulting party provided such breach is not cured by the defaulting party within such period.
- (c) **Termination for Insolvency.** A party may terminate this Agreement immediately by providing written notice to the other party if the other party: (i) ceases to conduct business in the normal course; (ii) becomes or is declared insolvent or bankrupt; (iii) is the subject of any proceeding related to its liquidation or insolvency (whether voluntary or involuntary) which is not dismissed within ninety (90) calendar days; or (iv) makes an assignment for the benefit of creditors.
- (d) **Termination for Convenience.** A party who is not in default under any provision of this Agreement may terminate this Agreement without cause for convenience by providing sixty (60) calendar days prior written notice to the other party.
- (e) **Effect of Termination.** Upon termination of this Agreement: (i) unless otherwise provided herein, all rights granted by KDDIA to Customer under this Agreement shall immediately terminate, including Customer's appointment as an authorized seller of Products; (ii) all amounts of indebtedness owing by Customer to KDDIA shall, notwithstanding any prior terms of sale, become immediately due and payable; (iii) all unshipped orders may be cancelled by KDDIA without liability of either party to the other; and (iv) at KDDIA's election, Customer shall resell and deliver to KDDIA, free and clear of all liens and encumbrances, at a price equal to Customer's cost therefor, any or all of Customer's inventory of Products in the original factory cartons, unopened and undamaged. Customer must accept KDDIA's offer and promptly deliver, at Customer's expense, the ordered Products to KDDIA's designated carrier for delivery to KDDIA.

13. **Confidentiality**

- (a) **Confidentiality.** Each party agrees that it will: (i) hold the Confidential Information disclosed by the other party in confidence; (ii) not disclose such Confidential Information to any person or persons; and (iii) not use such Confidential Information for any purpose except to exercise its rights or perform its obligations under this Agreement. Each party shall protect and prevent the unauthorized use, dissemination, or publication of the Confidential Information disclosed by the

other party by using the same degree of care it would use in protecting its own confidential information. Notwithstanding anything to the contrary in the preceding two sentences, each party may disclose Confidential Information disclosed by the other party to its affiliates, employees, directors, officers, attorneys, accountants, financial advisors, agents and contractors who have bona fide need to know and are subject to an obligation of confidentiality no less stringent than set forth in this Agreement (collectively, “**Representatives**”), but only to the extent necessary to carry out the provisions of this Agreement. Upon termination or expiration of this Agreement, each party shall immediately cease all use of the other party’s Confidential Information.

- (b) **Publicity.** Without limiting the generality of Section 13(a), neither party shall make any press releases or public statements regarding or mentioning the other party or this Agreement without prior written approval from the other party.
- (c) **Limitations.** Each party’s obligations with regard to Confidential Information will not apply to the extent the receiving party can document that information disclosed by the other party: (i) is now, or hereafter becomes, through no act or failure to act on the part of the receiving party, generally known or available to the public other than by breach of this Agreement by the receiving party or its Representatives; (ii) was acquired by the receiving party without restriction as to use or disclosure before receiving such information from the disclosing party; (iii) is hereafter rightfully furnished to the receiving party without restriction as to use or disclosure by a third party authorized to make such disclosure; or (iv) is information that was independently developed by the receiving party without reference to the Confidential Information disclosed by the other party. In addition, each party shall be entitled to disclose Confidential Information in a proceeding brought to enforce its rights and obligations under this Agreement.
- (d) **Request for Confidential Information.** In the event the receiving party is required by law, regulation or a valid and effective order issued by a court of competent jurisdiction or by a governmental body having proper jurisdiction, to disclose any of the Confidential Information disclosed by the other party, the receiving party will promptly notify the other party in writing of the existence, terms and circumstances surrounding such required disclosure, unless prevented from doing so by law, regulation or a valid and effective order issued by a court of competent jurisdiction or by a governmental body having proper jurisdiction, so that the disclosing party may seek a protective order or other appropriate remedy from the proper authority. The receiving party agrees to cooperate with the disclosing party in seeking such order or other remedy. The receiving party further agrees that if it is required to disclose Confidential Information of the other party, it will furnish only that portion of the Confidential Information that is legally required to be furnished and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded such Confidential Information.

- 14. **Insurance.** Customer represents and warrants that it has and will maintain the following coverages: (a) commercial general liability with personal injury liability blanket coverage, contractual liability and completed operations liability insurance endorsements, with minimum limits of two million dollars (\$2,000,000) per occurrence for bodily injury, death, or property damage; and (b) reasonable and customary property insurance covering electronic computer equipment, covering each party’s respective equipment in the amount of its full replacement cost at the time of the loss. Customer shall maintain such other coverages as KDDIA may reasonably request from time to time. Customer must maintain all such insurance in full force and effect at all times during the term of this Agreement with reputable and nationally recognized insurers. Upon execution of this Agreement, Customer shall provide to KDDIA one or more certificates evidencing such coverage with KDDIA listed as an “Additional Insured.” Such certificates shall also contain evidence that the policy shall not be cancelled or altered without at least thirty (30) days prior written notice to KDDIA. Maintenance of the insurance noted in this Section and the

performance by Customer of its obligations under this Section shall not relieve Customer of any liability under the indemnity provisions set out in Section 15.

15. **Indemnification**

- (a) **Indemnification by KDDIA.** KDDIA agrees to indemnify, defend and hold Customer, its affiliates, and its and their respective directors, officers, shareholders, employees, consultants, advisors, and licensees (collectively, the "Customer Indemnitees") harmless from and against any loss, claim, judgment, liability, damage, action or cause of action (including reasonable attorneys' fees and court costs) (collectively, "Losses") finally awarded in connection with (a) a third party claim that use of the Products by an End User in accordance with the applicable licensing terms infringes or misappropriates a valid U.S. patent, copyright, or trademark, and (b) willful misconduct or intentionally unlawful acts of KDDIA in performing its obligations hereunder. Customer shall promptly notify KDDIA in writing of the claim, allow KDDIA to control the defense of such claim, and reasonably cooperate with KDDIA in the defense of the claim or in any related settlement negotiations. KDDIA shall not settle or otherwise agree to the disposal of any such claim in any manner that imposes fault or liability on Customer without Customer's consent.
- (b) **Indemnification by Customer.** Customer agrees to indemnify, defend and hold KDDIA, its affiliates, and its and their respective directors, officers, shareholders, employees, consultants, advisors, and licensees (collectively, the "KDDIA Indemnitees") harmless from and against any Losses finally awarded in connection with (i) any claims, suits, demands, causes of action or other proceedings brought by an End User or other third party arising in any way from the marketing or any other promotion of the Products by Customer, but excluding any liability for using any marketing or promotional materials provided by KDDIA; (ii) a third party claim that the use of any trademark, content, or other materials provided by and/or created by Customer infringes or misappropriates a third party copyright or trademark or any other intellectual property or other right; and (iii) any claim, loss, cost, fine, or expense, including reasonable attorney's fees, arising out of Customer's breach of any material provision set forth in this Agreement. KDDIA shall promptly notify Customer in writing of the claim, allow Customer to control the defense of such claim, and reasonably cooperate with Customer in the defense of the claim or in any related settlement negotiations. Customer shall not settle or otherwise agree to the disposal of any such claim in any manner that imposes fault or liability on any KDDIA Indemnitee without KDDIA's and such KDDIA Indemnitee's written consent.
- (c) **Cap on Liability.** Notwithstanding anything to the contrary, each party's maximum aggregate liability under this Section 15 shall be the greater of (a) the amount paid by such party's insurer for such liability or (b) \$1,000,000.

16. **Limitation of Liability**

- (a) **Limitation of Damages.** Except with respect to the Excluded Liabilities (as defined below), the cumulative liability of the KDDIA Indemnitees AND THE CUSTOMER INDEMNITEES to the other party hereto for any damages arising out of, based on, or relating to this Agreement whether arising out of, based on, or relating to breach of contract, tort (including negligence), warranty or any other legal theory, shall be limited to the other party's direct damages not to exceed the amount of the collective Customer Discount received by Customer under this Agreement within the twelve (12) month period immediately preceding the accrual of such claim.
- (b) **Exclusion of Indirect Damages.** EXCEPT WITH RESPECT TO THE EXCLUDED LIABILITIES, IN NO EVENT SHALL EITHER PARTY, OR ITS DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES,

CONSULTANTS, ADVISORS, OR AFFILIATES (OR ANY KDDIA INDEMNITEE), BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES HOWSOEVER ARISING AND WHETHER UNDER CONTRACT, TORT, EQUITY OR OTHERWISE (INCLUDING, WITHOUT LIMITATION, THIRD PARTY CLAIMS, DAMAGES RELATED TO DELAYS, LOSS OF DATA, INTERRUPTION OF SERVICE, OR LOSS OF BUSINESS OR PROFITS OR DAMAGE TO REPUTATION OR GOODWILL, HOWEVER CHARACTERIZED), EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A LIMITED REMEDY IS DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

- (c) **“Excluded Liabilities”** means (a) either party’s liability under Section 15 (Indemnification); (b) Customer’s liability for violation of KDDIA’s intellectual property rights including any breach by Customer of Section 10 (Intellectual Property); and (c) either party’s liability for breach of Section 13 (Confidentiality).

17. General Provisions

- (a) **Governing Law, Jurisdiction, and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, USA without reference to its conflict of laws provisions. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The Parties expressly agree that any controversy, claim or dispute arising under or relating to this Agreement, including any Purchase Order(s)/Application for Service, shall be submitted to the exclusive jurisdiction of the American Arbitration Association (“AAA”) for binding arbitration, under the Commercial Rules of Arbitration of the AAA, by one (1) arbitrator appointed in accordance with said rules. Any required arbitration hearing shall be held in Santa Clara County, within the State of California.
- (b) **Independent Contractors.** Both parties are acting as independent contractors with respect to the activities hereunder. Nothing in this Agreement shall be deemed to create any type of agency, joint venture, partnership or franchising relationship between the parties. Neither party shall have any right or authority to bind or obligate the other in any manner to any third party.
- (c) **Injunctive Relief.** The parties stipulate and admit that a breach by either of any of their covenants, obligations, or undertakings hereunder relating to each party’s Intellectual Property Rights or Confidential Information will cause said party irreparable damage that may not be adequately remedied in monetary damages in an action at law. Therefore, notwithstanding Section 17(a), the parties agree that they shall be entitled to seek, without notice and on an expedited basis from any court of competent jurisdiction, immediate injunctive relief to enjoin any breach or prospective breach of any such provision of this Agreement. The foregoing shall be in addition to such other remedies provided for in this Agreement or by Applicable Law.
- (d) **Further Action.** The parties shall execute and deliver all documents, provide all information, and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.
- (e) **Binding Effect.** Except as expressly set forth in this Agreement to the contrary, this Agreement shall be binding upon and ensure to the benefit of the parties and their respective successors, legal representatives, and assigns.
- (f) **Integration; Amendment.** This Agreement, including the Schedules and Exhibits attached hereto and all Purchase Orders, constitutes the entire agreement between the parties pertaining to the

subject matter hereof and supersedes all prior agreements and understandings pertaining thereto, including, without limitation, any prior proposed terms. Any amendment or modification of any provision of this Agreement must be in writing, dated, and signed by both parties.

- (g) **No Third Party Beneficiaries.** Notwithstanding anything to the contrary contained in this Agreement, there are no third party beneficiaries to this Agreement.
- (h) **Execution and Delivery.** This Agreement and any other related documents may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument binding on the parties hereto. All such agreements shall be considered signed and delivered when the signature of a party is delivered by facsimile or other electronic transmission, such as email exchanges of signed pdf format documents. Such signature shall be treated in all respects as having the same effect as an original signature.
- (i) **Waiver.** No failure by either party to insist upon the strict performance of any covenant, duty, agreement, term, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such covenant, duty, agreement, term or condition, or any such breach. Except as otherwise expressly provided in this Agreement, the waiver or the failure by either party to claim a breach of any provision of this Agreement, shall not be construed as a waiver of any other provision or the waiver of the same provision at a subsequent time beyond the original breach.
- (j) **No Other Agreements.** This Agreement terminates and supersedes all prior Agreements, if any, between the parties hereto relating to the Products, and this Agreement contains the full agreement between the parties. Customer and KDDIA declare that there are no other terms and conditions, representations or understanding regarding the subject matter hereof, except those set forth in or referenced and incorporated by this Agreement.
- (k) **Invalidity of Provisions.** If any provision of this Agreement shall be or become invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not be affected thereby.
- (l) **Force Majeure.** Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, earthquakes, acts of God, war, governmental action, KDDIA problems, or any other force majeure event that is beyond the reasonable control of such party; provided, however, that if such failure or delay in performance continues for more than thirty (30) calendar days, the other party shall have the right to terminate this Agreement immediately upon written notice. Each party shall use its reasonable best efforts to notify the other party of the occurrence of such an event within three (3) business days of its occurrence.
- (m) **Assignment.** The rights and obligations of either party under this Agreement cannot be transferred, assigned, or sublicensed to a third party by operation of law or otherwise, without the prior written consent of the other party in its sole and absolute discretion. Notwithstanding the foregoing: (i) KDDIA may assign, with written notice to Customer, its rights and/or obligations under this Agreement to any third party acquiring KDDIA by merger or acquisition of all or substantially all of KDDIA's assets, or acquiring all or substantially all of a division of KDDIA; and (ii) KDDIA may assign, without notice to Customer, any or all of its rights and/or obligations under this Agreement to any subsidiary or affiliate.

- (n) **Survival.** Any provision of this Agreement that is by its sense and context designed to survive expiration of the Term or any termination of this Agreement shall survive such expiration or termination. Without limiting the foregoing, Sections 6, 10, 12, 13, 15, 16 and all other Sections that by their nature should survive shall survive the termination of this Agreement.
- (o) **Export.** The Products are subject to U.S export laws and regulations, and Customer shall not export, re-export, or transfer the Products except in full compliance with the laws and regulations of the United States, including the Export Administration Regulations established by the U.S. Department of Commerce and regulations of the U.S. Treasury Department's Office of Foreign Assets Control.
- (p) **Interpretation.**
- (i) In this Agreement, unless the context requires otherwise, words in one gender include all genders and words in the singular include the plural and vice versa.
 - (ii) The division of this Agreement into Articles, Sections, Schedules and other subdivisions and the inclusion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
 - (iii) Unless otherwise specified, all currency amounts in this Agreement, including the symbol "\$", refer to legal currency of the United States.
 - (iv) Unless the context otherwise requires, references in this Agreement to a "person" are to be broadly interpreted and shall include an individual, body corporate, unlimited liability company, partnership, limited liability partnership, limited partnership, joint venture, trustee, trust, unincorporated association, unincorporated syndicate, any governmental authority and any other legal or business entity.
 - (v) The word "including" means "including, but not limited to".
- (q) **General Matters.** This Agreement shall not be effective unless and until it is duly executed and delivered, if at all, by KDDIA and Customer. The language of this Agreement shall be construed as a whole, according to its fair meaning and intent, and not strictly for or against either party, regardless of who drafted or was principally responsible for drafting this Agreement or any specific term or conditions hereof. This Agreement shall be deemed to have been drafted by each party. Time shall be of the essence of this Agreement. Furthermore, this Agreement may not be revised and/or otherwise changed, unless done so in writing and signed by the parties hereto.

SCHEDULE 1

PRODUCTS

The current version of the Pocketalk (W) Voice Translator product and related accessories.