



**Master Agreement  
Applicable to  
System Integration Services  
Furnished By  
KDDI America, Inc.**

**THIS MASTER AGREEMENT FOR SYSTEM INTEGRATION SERVICE** (the “Agreement”) is made by and between KDDI America, Inc. (“KDDI-A,” “KDDI America” or “Company”) and “CUSTOMER,” as such term is hereinafter defined.

#### **DEFINITIONS**

**CUSTOMER** – The person, firm or corporation, or other entity which orders, cancels, amends, or uses KDDI-A Services and is responsible for the payment of charges and/or compliance with the general terms and conditions of this Agreement.

**Effective Date** – The date on which the signature page of an Application for Service, for any Services provided hereunder, is signed by the Company or the date upon which CUSTOMER begins using any Services provided hereunder, whichever is earlier.

**Application for Service** - A KDDI-A 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-A, or any other form under which Services have been ordered by CUSTOMER and accepted in writing by KDDI-A.

**Services** – Services related to system integration, as subscribed to by CUSTOMER via an Application for Service.

#### **APPLICATION OF AGREEMENT**

This Agreement contains the terms and conditions applicable to the provision of system integration and maintenance services (the “Services”) by KDDI America, Inc. to Customer. Each CUSTOMER that orders any Services agrees, upon placing an order for such Services with the Company, to be bound by the terms and conditions applicable to the Services as set out in this Agreement.

The Term of this Agreement shall begin on the Effective Date and shall continue in effect for as long as the Term of any Services provided hereunder remains in effect, unless earlier terminated in accordance with the provisions of the Agreement. The minimum initial Term of each Services provided hereunder shall begin on the commencement of such Services and shall end one (1) year thereafter, unless a different term is specified in the Application for Service for the Services. Upon the expiration of the initial or then-current Term of any Services provided hereunder, such Term shall continue automatically upon the same rates, terms, conditions for successive periods of one (1) month (or such other periods as may be specified in the Application for Services for the Services), unless terminated for any reason by either party upon at least 30 days’ written notice prior to the expiration of the initial or then-current Term of such Services.

## TERMS AND CONDITIONS

### 1. CHARGES

- 1) The charges for the Services, shall be specified in each respective Application for Service, attached hereto and/or hereinafter executed by CUSTOMER.
- 2) The CUSTOMER shall pay the aggregate amount to KDDI within fifteen (15) days of the date posted on each invoice.
- 3) Any amounts due hereunder that are not paid when due shall accrue interest at the rate of one and one-half percent (1.5%) per month or the maximum allowable by law, compounded daily, beginning with the day following the date on which the payment was due, and continuing until paid in full.
- 4) All rates and other charges due hereunder are exclusive of all applicable taxes, including but not limited to value added tax, sales taxes, and duties or levies imposed by any authority, government or government agency (except income tax or other corporate taxes attributable to either Party), all of which shall be paid promptly when due, and each Party agrees to indemnify and hold the other harmless from any liability therefore.

### 2. RIGHT TO SUBCONTRACT

KDDI reserves the right to subcontract any of the herein referenced Services to any qualified agent. Notwithstanding, KDDI shall remain responsible, as per the terms and conditions of this Agreement, notwithstanding the subcontracting.

### 3. SERVICES

#### A. SYSTEM INTEGRATION SERVICES

KDDI shall provide, subject to the terms and conditions stated herein, and the CUSTOMER shall accept and pay for all services, subscribed to by the CUSTOMER in any and all "Applications for Service," hereafter submitted by the CUSTOMER (the "Services"). The Services shall be provided pursuant to this Agreement and the rates, terms, and conditions described in the respective Application for Service. This Agreement incorporates by reference the terms of such Applications for Service.

SYSTEM INTEGRATION SERVICES SHALL NOT INCLUDE ANY OF THE FOLLOWING:

- (A) Any services and/or any type of solution not listed in an Application for Service;
- (B) Any shipping fees for repair of defective hardware and/or software package;
- (C) Any and all costs associated with traveling to and from CUSTOMER'S Equipment location and/or work site(s), including the time necessary to travel to and from same; and
- (D) Any training services.
- (E) Any services associated with the relocation, changing, installation, de-installation, demolition, inspection and addition of hardware and/or software onto the herein referenced equipment.
- (F) Any problems and/or damages caused by CUSTOMER's fault and/or misuse of the equipment.
- (G) Any problems and/or damages caused by hardware and/or software installed by other than KDDI America.
- (H) Any problems and/or damages caused by viruses.

- (I) Any restoration services of hardware, software and/or data installed and/or managed by other than KDDI America.
- (J) Solution for any trouble caused beyond KDDI America control, such as power outage, flood.
- (K) Answering questions related to the operation of application software or terminals.
- (L) Labor and/or maintenance services provided due to troubles caused by:
  - Improperly adjusted controls which are available to the CUSTOMER, for subjective settings
  - Any unauthorized alteration and/or modification of the EQUIPMENT
  - Failure or fluctuation of electrical power or air conditioning for the herein referenced equipment
  - Vandalism or theft, fire, earthquake, cyberwarfare, cyberterrorism, and other cyberattacks, or any other Acts of God, and
  - Other events not necessarily associated with the maintenance of EQUIPMENT over which KDDI has no control; and
- (M) Any and all changes and/or upgrades to the Services, which require additional charges, from KDDI America to

CUSTOMER

**B. CUSTOMER'S RESPONSIBILITIES**

- 1) The CUSTOMER shall provide free of charge and with full and free access, parking space, adequate storage space, all necessary parts, new and/or replacement, tools, test and maintenance equipment and working space, heat, light, ventilation, electrical current and outlets for use by KDDI's Customer service personnel.
- 2) CUSTOMER shall provide new hardware equipment information and operating manuals (brand, specification, and serial number etc.) to KDDI, upon request.
- 3) The CUSTOMER shall provide a suitable clean location, for the installation and operation of the equipment, including adequate electrical supply.
- 4) The CUSTOMER shall notify KDDI, as soon as possible, of any alterations, relocations, changes and/or additions to the hardware and/or software.
- 5) The CUSTOMER shall furnish and update Network Configuration Diagram, and other documents essential to KDDI America in fulfilling its responsibilities in a timely manner.
- 6) If the CUSTOMER requests KDDI to perform any of the Services listed above, in Subsection 3(A) through 3(L) and/or any service outside the scope of the herein referenced Applications for Service, Customer shall be liable for any and all expenses incurred, including labor, new, spare and/or replacement parts, and all other applicable full service charges will be billed by KDDI, in accordance with the rates specified in the applicable Application for Service.
- 7) Any maintenance service required as a result of other than normal wear and tear of the equipment, such as abuse or misuse of the Equipment, or CUSTOMER's failure to provide the necessary facilities or specified operating environment, as stated by KDDI America, will be invoiced to the CUSTOMER as an additional charge based on KDDI's prevailing per call rates or any other rates noted and/or referenced herein, as applicable, and then in effect.
- 8) Any matters relating to any of the following, are the sole responsibility of the Customer: 1) software updates; 2) software

bugs; 3) responses to any kind of Security Advisory; 4) any kind of virus related issues; 5) and/or any other related matters. Therefore any matters related to the above noted matters, including but not limited to administration of technical information, software information, Router hardware, bug information and/or security information, are all excluded from the Services and are out of scope of this Agreement.

**C. SERVICE HOURS**

The “Service Hours” are defined and agreed upon by the parties within the Application for Service. If any additional services are provided, above and beyond what is agreed to in the Application for Service, said services shall be provided at an additional charge, based on the Standard Additional Charges rates shown on the Application For Service and its referenced attachments.

**4. RISK OF LOSS**

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

**5. WARRANTY**

- 1) KDDI warrants that KDDI shall perform the Services covered under this Agreement in a good and workmanlike manner. The warranties in this Section 5 shall not apply to any Services where the non-conformance is due to (i) any alteration, misuse, improper maintenance, repair or failure to keep operating environment by CUSTOMER or anyone other than KDDI; (ii) acts of God, accident, fire, flood, lightning, earthquake, explosion, riots, cyberwarfare, cyberterrorism, any other cyberattacks, wars, strikes, unusual severe weather conditions, lack of adequate transportation, power failure, quarantine restrictions, freight embargoes, orders or requests of governmental or judicial authority or any other cause beyond reasonable control of KDDI; or (iii) any breach of this Agreement by CUSTOMER.
- 2) The warranties and conditions set forth in this Section 5 constitute the only warranties, obligations and conditions with respect to the Services. They are in lieu of all other warranties or conditions, written or oral, statutory, expressed or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

**6. LIMITATION OF LIABILITY**

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, KDDI'S DIRECT DAMAGES ARISING OUT OF THE FURNISHING AND/OR USE OF THE SERVICES (AS APPLICABLE) BY CUSTOMER, OR ANY OTHER MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT INCLUDING ANY APPLICABLE APPLICATION FOR SERVICE, AND THE CUSTOMER'S EXCLUSIVE REMEDY FOR ANY LOSSES SUFFERED OR INCURRED BY THE CUSTOMER, SHALL BE LIMITED TO THE LESSER OF (X) THE PROVABLE AMOUNT OF ACTUAL LOSSES DIRECTLY SUFFERED OR INCURRED BY THE CUSTOMER, OR (Y) THE AMOUNT OF FEES ACTUALLY PAID BY CUSTOMER TO KDDI IN CONNECTION WITH THE APPLICABLE APPLICATION FOR SERVICE. FURTHERMORE, AND NOTWITHSTANDING ANYTHING CONTAINED HEREIN

TO THE CONTRARY, IN NO EVENT SHALL KDDI BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, NOR ANY LOST OF REVENUES OR PROFITS, FOR OR ARISING FROM ANY BREACH OF THIS AGREEMENT AND/OR ANY APPLICABLE APPLICATION FOR SERVICE, WHETHER THE CLAIMS FOR SUCH DAMAGES ARISE IN TORT, CONTRACT OR OTHERWISE.

**1. FORCE MAJEURE**

If the performance by a party of any of its obligations under this Agreement shall be interfered with by reason of any circumstances beyond the reasonable control of that party, including but not limited to cyberwarfare, cyberterrorism, and other cyberattacks, then that party shall be excused from such performance for a period equal to the delay resulting from the applicable circumstances and such additional period as may be reasonably necessary to allow that party to resume its performance.

**2. DEFAULT**

Upon default by the CUSTOMER of payment, or performance of its obligations under this Agreement, and if such failure should continue for a period of ten (10) days after written notice thereof, KDDI may, at its option, refuse or defer service, or terminate its obligations at the end of the ten (10) day notice period. During the ten (10) day notice period, KDDI shall not be obligated to provide any Services hereunder.

**3. CANCELLATION**

Should CUSTOMER default, terminate and/or otherwise cancel this Agreement and/or any Application for Service, after its Commencement Date (as such term is defined in each respective Application for Service), for any reason whatsoever, any and all pre-paid charges shall not be: 1) reimbursed; 2) assignable; 3) transferable; and/or 4) refunded; therefore CUSTOMER shall forfeit all pre-paid charges. In addition, CUSTOMER hereby acknowledges and agrees that should CUSTOMER default, terminate and/or otherwise cancel this Agreement and/or any Application for Service, after its Commencement Date, any all other charges due for the remainder of the Term and/or Project, as applicable, under the terminated and/or cancelled Application for Service shall become due and payable immediately, and that said charges may include but are not limited to non-recurring charges, recurring charges, charges for hardware, software and labor.

**4. CERTIFICATION OF DELIVERY & COMPLETION**

CUSTOMER hereby warrants, acknowledges and agrees that within fourteen (14) days of completion of any project by KDDI, as subscribed to by CUSTOMER pursuant to any Application for Service submitted by same, CUSTOMER shall provide KDDI with a Certification of Delivery & Completion, in a format similar to or same as the one provided by KDDI to CUSTOMER. Furthermore, and notwithstanding anything contained in the Agreement to the contrary, Customer hereby acknowledges and agrees that upon KDDI receiving the Certificate of Delivery & Completion, KDDI shall have no further obligations and/or liability to Customer, including but not limited to any herein noted and/or referenced warranty.

**5. NOTIFICATION**

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

## 6. **WAIVER**

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

## 7. **NO SOLICITATION/INTENTIONAL INTERFERENCE WITH CONTRACTUAL RELATIONS**

CUSTOMER, its affiliates/subsidiaries, and any third party beneficiaries shall not directly or indirectly contract with or hire any of KDDI's employees and/or contractors/consultants, whom were part of providing the herein noted Services to CUSTOMER, without KDDI's prior written consent, during the term of this Agreement and thereafter for a period of one (1) year.

## 8. **ARBITRATION**

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

## 9. **CONFIDENTIALITY**

The parties hereto shall hold in the strictest confidence all information that the disclosing party or its affiliates may furnish to the receiving party and/or the receiving party may observe while on the disclosing party's premises, which information may include, but is not limited to, technical, business and Customer information, plans, products, processes, AND equipment (collectively the "Confidential Information"), taking all reasonable measures to ensure confidentiality. The receiving party 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 receiving party hereby agrees to destroy all materials containing any Confidential Information disclosed by the disclosing party to the receiving party, in connection with the Services provided hereunder, and which are within receiving party's possession and/or control, upon request from the disclosing party; determination that provision of the Services has been completed, or upon expiration or termination of the Services term; provided, however, that the aforementioned destruction of Confidential Information shall not apply to any Confidential Information which (i) should be kept in the receiving party's possession pursuant to any applicable laws and/or regulations, (ii) are necessary for the receiving party'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 receiving party, during a certain period as mutually determined by the parties hereto.

The receiving party'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 receiving party; (iii) at the time of disclosure is already in the receiving party's possession, and such prior possession can be demonstrated in writing by the receiving party; or (iv) is subsequently made available to the receiving party by an independent third party; provided, however, that the third party has a lawful right to make such disclosure; or (v) is required by law or judicial decree to be disclosed, though if so obligated, receiving party shall immediately inform disclosing party of such requirement, unless prevented from doing so by said law, regulation, government agency, or other judicial decree, 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 that receiving party disputes the confidential status of certain information provided by the disclosing party, the burden of proving that such information should not be considered confidential shall be on the receiving party. No right or license whatsoever in Confidential information is granted by the disclosing party to the receiving party hereunder or by the disclosure of Confidential Information.

#### **10. GOVERNING LAW**

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

#### **11. CONFLICTS**

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

#### **12. ENTIRE AGREEMENT**

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