

KDDI AMERICA, INC.

GLOBAL INTERNET MASTER SERVICES AGREEMENT

TERMS AND CONDITIONS

This Global Internet Master Services Agreement (hereinafter referred to as the "Agreement") is entered into by and between the Party(s) identified below (the "Customer") and KDDI AMERICA, INC. (the "Company"). Global Internet is Internet Access related services, provided by KDDI America, Inc. (the "Company"), subject to the terms and conditions set forth herein, including all attachments referenced herein.

1. SERVICES: The Company shall provide, subject to the terms and conditions stated herein, and the Customer shall accept and pay for all the services subscribed to by the Customer in any and all "Applications for Service" (hereinafter referred to as the "Services"), hereinafter submitted by the Customer. The Services shall be provided pursuant to this Agreement, the rates, terms, and conditions described in each respective Application for Service, and the Master Agreement for International Services, furnished by Company as modified, amended and revised by the parties and attached hereto (hereinafter collectively referred to as the "Agreements"). This Agreement incorporates by reference the terms of such other Agreements. Please note that, if applicable, portions of the Services provided outside of the U.S. may be subject to additional regulations and/or taxes imposed by the foreign countries in which the Services are provided.

2. TERM: The term of this Agreement shall be for the term set forth in each respective Application for Service, commencing on the date of installation of the Services, and shall thereafter continue on a month to month basis, pursuant to the terms, conditions and rates contained in the herein referenced Agreements and Applications for Service, until such time as either the Company or the Customer provides to the other written notice of its intent to terminate, said notice must be given at least forty five (45) days prior to the end of the then current term, and/or until a new Agreement is executed, by and between the Parties to this Agreement (hereinafter referred to collectively as the "Parties").

3. CHARGES: The total charges payable by Customer, and frequency of those payments, to the Company for the Services shall be set forth in each respective Application for Service. The rates set forth in the Application for Service do not include the following: charges for services other than those set forth in the Application for Service; taxes, tax related or tax-like surcharges. Customer agrees to pay all these additional charges, to the extent applicable, in addition to the charges set forth in the applicable Application for Service. The additional charges, if any, for any necessary terminal equipment at each termination point of the Services will be set forth in the Applications for Service. Upon receipt of the monthly invoice, the Customer shall pay the amount billed, by the date specified on the invoice (the "Due Date"). Please note that late payment charges are in effect, as per applicable Agreements. If any payment is returned to the Company unpaid, the Customer shall be considered immediately in default and subject to a returned check charge of \$25.00. Accounts which remain unpaid for Thirty (30) days, after date of invoice, may have their Global Internet Services interrupted. Such interruption does not relieve the Customer from the obligation to pay the monthly charge and/or any other charges then due and owing. In addition, accounts in default are subject to a late payment charge of \$50 and an interest rate of 1.5% per month on the outstanding balance. If the Customer's state law does not allow an interest rate of 1.5% of month, the maximum allowable rate for the Customer's state will be charged.

4. TERMINATION LIABILITY:

A) **TERMINATION OR SUSPENSION BY COMPANY.** The Company may terminate or suspend any Services provided pursuant to this Agreement and/or any Application for Service or terminate this Agreement (or the applicable portion thereof) without liability, effective immediately upon written notice to Customer for any of the following reasons:

1) 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;

2) 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.

If Service has been terminated and/or discontinued by Company pursuant to the terms of this section 4(A) and Customer requests that Service be restored, Company shall have the sole and absolute discretion to restore such Service. Nonrecurring charges may apply to restoration of Service.

B) **NOTIFICATION OF SUSPENSION BY COMPANY.** In the event the Company elects to suspend rather than terminate Services for any of the reasons specified in this Section above, the Company shall notify Customer in writing, in advance, of the reason(s) for such suspension, the remedies required to restore service, and the maximum time allowed to remedy the default which is the cause of the suspension.

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

D) **TERMINATION LIABILITY OF CUSTOMER.** If this Agreement and/or any Services provided under any Application for Service (or any applicable portion thereof) is terminated for any reason, then all accrued but unpaid charges incurred by Customer shall become due and owing as of the effective date of such termination. In addition to the foregoing, if (i) Customer terminates this Agreement and/or any Services provided under any Application for Service (or any applicable portion thereof) prior to the expiration of the Term of the respective Application for Service for reasons other than those specified in Section 4(C) above, or (ii) the Company terminates this Agreement and/or any Services, provided under any Application for Service (or any applicable portion thereof) under Section 4(A), then Customer will pay to Company the following sums which shall become due and owing as of the effective date of such termination: 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. A Customer order and delivery of the Services may be discontinued: If Customer fails to pay a past due balance for Service (i) within three (3) business days after written notice from Company respecting Service invoiced in arrears, or (ii) within seven (7) business days after written notice from Company respecting Service invoiced in advance.

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

6. OBLIGATIONS OF CUSTOMER: The Customer shall, whenever applicable: a) use reasonable care to protect the Company's equipment from damage; b) move, disconnect, alter, or disassemble the equipment only with the express written permission of the Company; c) subject to applicable regulatory requirements, not attach any customer premises equipment or any other equipment or facilities to the Company equipment except where the Company gives express written consent to the interconnection or attachment; e) ensure that its use of customer premise equipment and interconnection of any such equipment to the Company's terminal equipment complies with all applicable rules, regulations, and statutes of the country where the interconnection occurs; f) comply with all provisions of Company's Agreements, if applicable, and the laws and regulations of each country where the Services are provided; g) require any third party who Customer permits to jointly use the Services provided herein to execute an Authorized User Agreement provided by the Company establishing that the third party shall be bound by this Agreement, the Agreements and the Company's rules, regulations, statutes, or laws governing the Services, and Customer shall remain responsible to Company for all charges incurred by the Authorized User.

7. LIMITATION OF LIABILITY: Notwithstanding anything contained herein to the contrary, neither party will be liable for any indirect, incidental, special, exemplary, punitive, or consequential damages, including, but not limited to, lost profits, however arising, even if it has been advised of the possibility of such damages. Each party's aggregate liability for damages under this Agreement (whether in contract or tort) shall in no event exceed all fees paid by Customer under this Agreement. Furthermore, and not withstanding anything contained herein to the contrary, Company shall not provide any credit to Customer for any Services outage(s) of a duration less than one hour, regardless of the cause or origin of such outage.

8. Infringements, Warranties & Regulatory: The Customer recognizes that Company exercises no control whatsoever over the content of the information passing through the GLOBAL INTERNET Services and/or network. The Company also disclaims any warranty of merchantability or fitness for a particular purpose and/or any other warranty, whether statutory and/or contractual in nature. Additionally, the Company will not be responsible for any damage the Customer suffers, including but not limited to loss of data resulting from delays, non-deliveries, mis-deliveries, or service interruptions caused by the Customer's own negligence or the Customer's errors or omissions. Use of any information obtained via GLOBAL INTERNET SERVICE is at the Customer's own risk. The Company specifically denies any responsibility for the accuracy or quality of any information obtained through its Services. GLOBAL INTERNET may only be used for lawful purposes. Use of GLOBAL INTERNET for lawful commercial purposes is both permitted and encouraged. Transmission of any material in violation of any federal, state or any local rules and regulations is prohibited. This includes, but is not limited to, copyrighted material, material legally judged to be threatening or obscene, or material protected as trade secret. The Customer agrees to indemnify and hold harmless the Company from any claims resulting from the Customer's and/or its customers use of the GLOBAL INTERNET Services, which damages the Customer, its customers and/or any other party. If Customer accesses any other networks connected to the GLOBAL INTERNET Services, then Customer must comply with the rules appropriate for those other networks.

9. Reselling: Provided that Customer is legally licensed to resell the Services, Customer may resell the Services it procures under this Agreement to end-users only. As such connectivity is provided for the Customer and its customer's organizations only, and the Customer's end-users may not and shall not resell the Services. Resale to and/or use of the Services by another organization is Customer's responsibility, and Customer hereby agrees to indemnify Company as to any and all claims related to same.

10. FORCE MAJEURE: Neither party to this Agreement shall be liable for delays caused by an event of natural disaster, casualty, acts of God, riots, governmental acts or such other event of similar nature that is beyond the delaying party's control; provided however that such party shall not have contributed in any way to such event.

11. TECHNICAL SPECIFICATIONS: The Company shall disclose technical specifications relating to the connection of terminals and any other equipment to the Customer if and when requested.

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

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

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

15. Accord & Satisfaction: Whenever a debt hereunder shall be unliquidated and/or under a legitimate good faith dispute or disagreement as to its amount, the Parties agree that they may not discharge the debt by tendering a check marked "payment in full", even though the check is negotiated by either party.

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

17. REGULATORY JURISDICTION & DISPUTE RESOLUTION: This Agreement shall at all times be governed by the laws of the State of New York, and any Public Service Commission regulation, if applicable, and such changes or modifications as they may, from time to time, direct in the exercise of their jurisdictions. If any such modification renders the Agreement unenforceable or creates any ambiguity or requirement for further amendment of the Agreement, the Parties will negotiate in good faith to agree upon any necessary amendments to the Agreement. Any dispute relating to and/or originating from the Agreements shall be submitted to binding arbitration by a single arbitrator at the office of the American Arbitration Association ("AAA"), located in Los Angeles, CA. The arbitration shall be held in accordance with the AAA's Commercial Arbitration Rules, as may be applicable to the dispute. The cost

of the arbitration, including the fees and expenses of the arbitrator(s), shall be shared equally by the parties unless the arbitration award provides otherwise.

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

19. ENTIRE AGREEMENT: This Agreement, the Application for Service, and the Agreements, shall constitute the entire and exclusive statement of the rights, obligations, and understandings of the Parties with respect to Services and any other subject matter herein discussed. With the exception of revisions to the Agreements made in accordance with applicable law, the terms of this Agreement may only be amended in writing signed by an authorized representative of the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year last written below.

KDDI AMERICA, INC.:

Authorized Rep.: _____

Signature & Date: _____

Customer: _____

Authorized Representative: _____

Signature & Date: _____