

MASTER AGREEMENT
APPLICABLE TO DOMESTIC INTERSTATE
PRIVATE LINE SERVICES
FURNISHED BY
KDDI AMERICA, INC.

This Private Line Services Agreement (“Agreement”) is made by and between KDDI America, Inc. (“KDDI-A,” “Company,” or “Carrier”) and (“Customer”).

SECTION 1 - DEFINITIONS

Access Line - An arrangement which connects the Customer's or Subscriber's location to the Carrier's designated point of presence or network switching center using either switched or dedicated transmission facilities.

Access Provider - The person, firm, or corporation providing an Access Line.

Affiliate – With respect to party to this Agreement, any entity whose equity or voting stock is twenty (20) percent or more owned or controlled, directly or indirectly, by that party.

Authorized User - A person, firm or corporation, or any other entity authorized by the Customer or Subscriber to communicate utilizing the Company's services.

Carrier or Company - KDDI America, Inc. unless otherwise indicated by the context.

Customer - The person, firm or corporation, or other entity which orders, cancels, amends, or uses service and is responsible for the payment of charges and/or compliance with general terms and conditions of the Agreement.

Dedicated Access - Originating or terminating access between the Customer and the Company that is provided on non-switched, dedicated circuits. The Access Provider provides these dedicated circuits from the Customer's premise to the Company's point of presence. The rates and charges for dedicated circuits are determined by the Access Provider and the Customer is responsible for payment of these charges to the Access Provider.

Effective Date – The date on which the signature page of a Service Order Form for any service provided hereunder is signed by the Company, or the date upon which Customer begins using any service provided hereunder, whichever is earlier.

KDDI-A - Refers to KDDI America, Inc.

Interruption - Inability to complete either incoming or outgoing calls or both due to equipment malfunction or human errors. Service difficulties such as slow dial tone, circuits busy or other network and/or switching capacity shortages are not Interruptions. Interruptions caused by negligence of the Customer, Customer-provided equipment including customer-purchased equipment and automatic dialing equipment, or by failure of channels, equipment or communications systems not provided by the Company, are not deemed an Interruption of service.

Private Line Service - The provision of channel facilities for direct transmission and reception of voice, data, facsimile and video communications between terminals at Customer’s premises.

Service Order Form – 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.

Subscriber - The person, firm, corporation, or other legal entity which arranges for services of the Company on behalf of itself or Authorized Users. The Subscriber is responsible for compliance with the terms and conditions of this Agreement. A Subscriber may also be a Customer when the Subscriber uses services of the Company.

SECTION 2 - APPLICATION OF AGREEMENT

- 2.1** This Agreement contains the terms, conditions and rates applicable to the provision of domestic interstate telecommunications services by KDDI America, Inc., from its originating location(s) in the contiguous 48 states of the United States to other states within the contiguous United States. Service is furnished subject to transmission, atmospheric and like conditions.
- 2.2** Each Customer that orders any service described in this Agreement agrees, upon placing an order for such service with the Company, to be bound by the terms, conditions and rates applicable to that service as set out in this Agreement. This Agreement is available for review by any Customer or prospective customer of the Company. Customers or prospective customers may obtain additional copies of this Agreement through the Company's website at www.kddia.com, or by making a telephone request to 1-888-533-4649.
- 2.3** The telecommunications services of the Company are not part of a joint undertaking with any other entity providing telecommunications channels, facilities or services.
- 2.4** The rates, terms and conditions contained in this Agreement do not apply, unless otherwise specified, to the lines, facilities, or services provided by a local exchange telephone company or other common carrier for use in accessing the services of the Company.
- 2.5** The Term of this Agreement shall begin on the Effective Date and shall continue in effect for as long as the Term of any service provided hereunder remains in effect, unless earlier terminated in accordance with the provisions of the Agreement. The minimum initial Term of each service provided hereunder shall begin on the commencement of such service and shall end one (1) year thereafter, unless a longer term is specified in the Service Order Form for that service. Upon the expiration of the initial or then-current Term of any service 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 Service Order Form for that service), 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 service.

SECTION 3 - GENERAL TERMS AND CONDITIONS

3.1 Undertaking of KDDI America, Inc.

The Company will furnish services and facilities to Customers for communications within the United States pursuant to the terms and conditions of this Agreement. The Company's service is available twenty-four hours per day, seven days per week. Interstate service is offered via Switched Access or Dedicated Access circuits.

KDDI-A arranges for installation, operation, and maintenance of the communications service provided in this Agreement for the Customer in accordance with the terms and conditions set forth under this Agreement.

3.2 Limitations

3.2.1 Service is offered subject to the availability of the necessary facilities and equipment, and is subject to the provisions of this Agreement.

3.2.2 The Company reserves the right to discontinue or limit service when necessitated by conditions beyond its control, or when the Customer is using service in violation of provisions of this Agreement or the law.

3.2.3 The Company does not undertake to transmit messages, but offers the use of its resold facilities when available for purposes of providing the telecommunications services requested by Subscriber, and will not be liable for errors in transmission or for failure to establish connections.

3.2.4 The Company reserves the right to discontinue service, limit service, or to impose requirements on Customers or Subscribers as required to meet changing regulatory or statutory rules and standards, or when such rules and standards have an adverse material affect on the business or economic feasibility of providing service, as determined by KDDI-A in its reasonable judgment.

3.3 Assignment or Transfer

All services provided under this Agreement are directly or indirectly controlled by KDDI-A and the Customer may not transfer or assign the use of service or facilities without the prior express written consent of the Company. Such transfer or assignment shall be permitted only where there is no interruption of the use or of change in location of the service or facilities. All terms and conditions contained in this Agreement shall apply to all such permitted assignees or transferees, as well as all conditions of service.

3.4 Use

Services provided under this Agreement may be used for any lawful purpose for which the service is technically suited.

3.5 Liabilities of the Company

3.5.1 **Limitation of Liability.** WITHOUT LIMITING SECTION 3.5.2 BELOW, THE COMPANY'S ENTIRE LIABILITY FOR ALL CLAIMS

OF WHATEVER NATURE ARISING UNDER THIS AGREEMENT SHALL NOT EXCEED THE LESSER OF: (1) DIRECT DAMAGES PROVEN BY CUSTOMER; OR (2) AN AMOUNT EQUIVALENT TO THE PROPORTIONATE CHARGE TO THE CUSTOMER FOR THE PERIOD DURING WHICH ANY MISTAKE, INTERRUPTION, OMISSION, DELAY, ERROR, OR DEFECT IN THE COMPANY'S FURNISHING OF ITS SERVICES (OR ANY OTHER EVENT OR ACTION GIVING RISE TO A CLAIM) OCCURS.

3.5.2 Exclusion of Liability. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT WILL COMPANY BE RESPONSIBLE FOR ANY OF THE FOLLOWING, EVEN IF COMPANY HAS BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THEIR POSSIBILITY, UNDER ANY THEORY OF LIABILITY, INCLUDING WITHOUT LIMITATION TORT, CONTRACT, WARRANTY, STRICT LIABILITY, OR NEGLIGENCE: (1) ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF USE OF OR LOST PROFITS, BUSINESS, REVENUE, OR GOODWILL, ARISING IN CONNECTION WITH THIS AGREEMENT, THE SERVICES, RELATED PRODUCTS, DOCUMENTATION, OR THE INTENDED USE THEREOF; AND (2) ANY CLAIMS BY THIRD PARTIES AGAINST CUSTOMER.

3.5.3 THE COMPANY IS NOT LIABLE FOR ANY ACT OR OMISSION OF ANY OTHER COMPANY OR COMPANIES FURNISHING A PORTION OF THE SERVICE. NO AGENTS OR EMPLOYEES OF OTHER CARRIERS SHALL BE DEEMED TO BE AGENTS OR EMPLOYEES OF THE COMPANY.

3.5.4 Indemnification. Customer shall indemnify, defend, and hold harmless the Company, its Affiliates, employees, directors, officers, and agents from and against all claims, demands, actions, causes of action, damages, liabilities, losses, and expenses (including reasonable attorney's fees and costs) incurred as a result of:

- a.** Claims for libel, slander, infringement of copyright or unauthorized use of any trade mark, trade name or service mark arising out of the material, data, information, or other content transmitted by the Customer over the Company's facilities; and
- b.** Claims for patent infringement arising from combining or connecting the Company's facilities with apparatus and systems of the Customer; and

- c. All other claims arising out of any act or omission of the Customer or any third party in connection with any service provided by the Company.

3.5.5 The Company will make no refund of overpayments by a Customer unless the claim for such overpayment together with proper evidence be submitted within six (6) months from the date of alleged overpayment.

3.5.6 **Disclaimer of Warranties.** EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE COMPANY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE, RELATED PRODUCT, OR DOCUMENTATION. THE COMPANY SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE OR NONINFRINGEMENT OF THIRD PARTY RIGHTS.

3.5.7 **Personal Injury; Property Damage.** EACH PARTY SHALL BE RESPONSIBLE FOR ANY ACTUAL PHYSICAL DAMAGES IT DIRECTLY CAUSES TO THE OTHER IN THE COURSE OF ITS PERFORMANCE UNDER THIS AGREEMENT, LIMITED TO PROVEN DIRECT DAMAGES RESULTING FROM PERSONAL INJURIES, DEATH, OR PROPERTY DAMAGE ARISING FROM SUCH PARTY'S NEGLIGENCE OR WILLFUL MISCONDUCT.

3.6 Taxes, Surcharges and Utility Fees

All federal, state and local taxes and fees, including but not limited to gross receipts taxes, sales taxes, and municipal utilities taxes, associated surcharges, or universal service fees, for services billed are listed as separate line items and are not included in the rates listed in this Agreement.

3.7 Payment for Service

3.7.1 The Customer is responsible for payment of all charges for services and equipment furnished to the Customer or to an Authorized User of the Customer by KDDI-A. This includes payment for communications or services originated at the Customer's number(s) or equipment(s) incurred at the specific request of the Customer. All charges due by the Customer are payable to the Company or to the Company's authorized billing agent by the date shown on the invoice (the "Due Date"). Charges not received or credited by the Due Date will incur a late payment fee of one and one half (1.5) percent on the outstanding balance. Any objections to billed charges must be reported to the Company or its billing agent within six (6) months after receipt of bill. Adjustments to the Customer's bill shall be

made to the extent that circumstances exist which reasonably indicate that such changes are appropriate.

3.7.2 In the event that the Company incurs fees or expenses, including attorney's fees, collecting, or attempting to collect, any charges owned to the Company, the Company may charge the Customer all such fees and expenses reasonably incurred. Collection fees on unpaid charges shall begin to accrue when the account is assigned to an outside collection agency. Such collection fees are separate and distinct from attorney's fees and other costs incurred in collecting charges owed to the Company.

3.7.3 The Customer shall be responsible for all communications transmitted by or through Customer's equipment by any person. In particular and without limitation to the foregoing, the Customer is responsible for any communications transmitted by or through the Customer's equipment via any remote access features.

3.7.4 Dispute Resolution Procedures

In the case of a dispute between a Customer and the Company as to the correct amount of a bill rendered by the Company for service furnished to the Customer, which cannot be adjusted with mutual satisfaction, the Customer can make the following arrangements:

1. The Customer may make a written request, and the Company shall comply with the request, for an investigation and review of the disputed amount.
2. The undisputed portion of the bill and subsequent bills, other than the disputed amount, must be paid by the Due Date shown on the bill. If the undisputed portion of the bill and subsequent bills become delinquent as described in Section 3.7.1, the service may be subject to disconnection if the Company has notified the Customer by written notice of such delinquency and impending termination.

3.8 Deposits

The Company may require deposits of Customers.

3.9 Advance Payments

The Company may require advance payments of Customers.

3.10 Return Check Charge

A return check charge of \$20.00 or 1.5% of the balance due (whichever is greater) will be assessed for checks returned for insufficient funds. Any applicable return check charges will be assessed according to the terms and conditions of the billing entity (i.e. local exchange company and/or commercial credit card company).

3.11 Interconnection with Other Carriers

Service furnished by KDDI-A may be connected with the services or facilities of other carriers. Such services or facilities, if used, are provided under the terms, rates and conditions of the other carrier. The Customer is responsible for all charges billed by other carriers for use in connection with KDDI-A's service. Any special interface equipment or facilities necessary to achieve compatibility between carriers is the responsibility of the Customer.

3.12 Termination

3.12.1 Termination or Suspension by Company. The Company may terminate or suspend any service provided under this Agreement 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 specified in this Section 3.12.1) under this Agreement, which failure is not remedied within thirty (30) days of Customer's receipt of written notice thereof.
- c.** Customer fails to comply with or violates any local, state, FCC, national, or international regulation, law, or tariff applicable to use of the service.
- d.** Customer's use of equipment is in such a manner as to adversely affect the Company's equipment or the Company's service to others.
- e.** Customer becomes insolvent, files for bankruptcy or reorganization, fails to discharge an involuntary bankruptcy petition against Customer within the time permitted by law, or becomes involved in an assignment for the benefit of its creditors.
- f.** Company determines in its sole discretion that continued provision of such facility, equipment, or service would contravene any local, state, national, or international regulation, law, or tariff.
- g.** Company determines in its sole discretion that discontinuance or suspension of service is necessary to prevent or protect against unauthorized use, fraud or otherwise protect its personnel, agents, facilities, or services.

- h.** Any third-party subcontractor or vendor to Company for any reason fails to provide a facility, component of equipment, or service in connection with any service provided hereunder.

3.12.2 Notification of Suspension by Company. In the event the Company elects to suspend rather than terminate service for any of the reasons specified in Section 3.12.1 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.

3.12.3 Termination by Customer. Customer may terminate this Agreement (or the applicable portion thereof) without liability effectively immediately upon written notice to Company for any of the following reasons:

- a.** 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.
- b.** Company becomes insolvent, files for bankruptcy or reorganization, fails to discharge an involuntary bankruptcy petition against Company within the time permitted by law, or becomes involved in an assignment for the benefit of its creditors.

3.12.4 Termination Liability of Customer. If this Agreement (or the 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 termination. In addition to the foregoing, if (i) Customer terminates this Agreement (or the applicable portion thereof) prior to the expiration of the Term of this Agreement for reasons other than those specified in Section 3.12.3 above, or (ii) the Company terminates this Agreement (or the applicable portion thereof) under Sections 3.12.1(a), (b), (c), (d), or (e), 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 (if any) of this Agreement.

3.13 Inspection, Testing and Adjustment

Upon reasonable notice, the services provided by the Company shall be made available to the Company for tests and adjustments as may be deemed necessary by the Company for maintenance. No credit allowance for Interruption of service will be granted for the time during which such tests and adjustments are made when the Interruption is less than twenty-four consecutive hours.

3.14 Credit Allowance for Interruption of Service

Credit allowances for Interruptions of service which are not due to the Carrier's testing or adjusting are subject to the general liability provisions set forth in Section 3.5 herein and shall be equal to the proportionate charge to the Customer for the period during which any such Interruption occurred.

It shall be the obligation of the Customer to notify Carrier immediately of any Interruption in service for which a credit allowance is desired by Customer. Before giving such notice, Customer shall ascertain that the trouble is not within his or her control, or is not in wiring or equipment, if any, furnished by Customer in connection with Carrier's service.

SECTION 4 - SERVICE DESCRIPTION

4.1 Service

KDDI-A's interstate Private Line Service consists of furnishing for the private use of Customers and Authorized Users channel facilities for direct transmission and reception of voice, data, facsimile, and video communications between Customer terminals in the contiguous 48 states of the United States and Customer terminals in other states within the contiguous United States.

Dedicated Access, if utilized, is provided to the Customer by the local exchange carrier. Charges for Dedicated Access service are determined by the local exchange carrier, and KDDI-A will pass through such charges to the Customer. Customer may elect to be billed directly by the local exchange carrier for such service, and Customer shall be responsible for payment of these charges to the local exchange carrier.

SECTION 5 - RATES

5.1 DS-0 Service

Non-recurring charge	\$ 2,000
Monthly recurring charge	\$ 0.64 per mile or \$ 560, whichever is greater

5.2 Fractional DS-1 Service (i.e., 2 through 24 DS-0 Channels)

Non-recurring charge	\$ 3,000
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Monthly recurring charge	\$ 0.64 per DS-0 Channel or \$ 560, whichever is greater
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5.3 DS-1 Service

Non-recurring charge	\$ 3,000
Monthly recurring charge	\$ 5.04 per mile or \$ 1,000, whichever is greater

5.4 DS-3 Service

Non-recurring charge	\$ 5,000
Monthly recurring charge	\$ 51.84 per mile or \$ 8,000, whichever is greater

5.5 OC-3 Service

Non-recurring charge	\$ 10,000
Monthly recurring charge	\$ 146.02 per mile or \$ 20,000, whichever is greater

SECTION 6 - MISCELLANEOUS

6.1 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of New York without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of New York to the rights and duties of the parties.

6.2 Severability. If any term, covenant, or condition contained herein shall, to any extent, be invalid or unenforceable in any respect under the laws governing this Agreement, the remainder of this Agreement shall not be affected thereby, and each term, covenant, or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

6.3 No Waiver. The failure of either party hereto to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a waiver or relinquishment of such party's right to enforce each and every provision of this Agreement in the future.

6.4 Notice. Any notice required to be given under this Agreement shall be in writing, in English, and transmitted via facsimile, overnight courier, hand delivery, or certified or registered mail, postage prepaid and return receipt requested, to the parties at the addresses specified in the Service Order Form or such other addresses as may be specified by written notice. Notice sent in accordance with this Section shall be deemed effective upon receipt when hand delivered, upon confirmation of sending when sent by

fax, on the day after being sent when sent by overnight delivery service, or three (3) days after deposit in the mail when sent by U.S. mail.

- 6.5 Survival.** The provisions of this Agreement which by their nature are intended to survive this Agreement shall survive the termination or expiration of this Agreement.
- 6.6 Confidentiality.** During the term of this Agreement and continuing for a period of three (3) years following termination of this Agreement, each party shall protect as confidential, shall not disclose to any third party, and shall use only for the purpose of this Agreement any documentation, technical information, software, business information, or other information disclosed by the other party that is in written or other tangible form and marked as “confidential” or “proprietary.” The foregoing restrictions shall not apply to any information that: (a) is independently developed by the receiving party; (b) is lawfully received by the receiving party free of any obligation to keep it confidential; (c) becomes generally available to the public other than by breach of this Agreement; or (d) is required to be disclosed by law, regulation, or court or governmental order.
- 6.7 Entire Agreement.** This Agreement, including Service Order Forms and all other appendices and attachments referred to herein, 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.