



**Managed Service Master
Agreement Furnished By
KDDI America, Inc.**



Service Agreement

This KDDI America, Inc. Managed Service Agreement (the "Agreement") is entered into by and between the party (s) defined below (the "Customer and/or CUSTOMER") and KDDI America, Inc. (the "Company and/or KDDI"), subject to the terms and conditions set forth herein, including all attachments referenced herein.

Service Provider: Contact details

Service Provider:	KDDI America, Inc.
Address:	7 Teleport Dr, Staten Island NY 10311
Telephone:	212-295-1200

Definitions

- 1 **"Customer"** means person or organization that purchased the Managed Services under this Agreement
- 2 **"Service Provider"** means the entity providing the Managed Services under this Agreement
- 3 **"Party"** means either the Customer or the Service Provider individually, and **"Parties"** means the Customer and the Service Provider collectively
- 4 **"After Hours"** means outside of the Service Provider's Business Hours
- 5 **"Service Specification(s)"** means the services, prices, and the terms and conditions listed in section 3, as it may be updated by the Company from time to time
- 6 **"Support Hours"** means 9.00am-8.00pm (U.S. Eastern Time) on the Service Provider's Business Days
- 7 **"Exception Factors"** means the factors described in section 6 of Description of Services
- 8 **"Incident"** means an issue in respect of the Managed IT Infrastructure or an issue that the Customer is experiencing in accessing or using the Managed IT Infrastructure
- 9 **"Managed IT Infrastructure"** means the Customer's IT Infrastructure or specified part of it that is managed by the Service Provider under the Managed Service, as specified in section 3.2 of Description of Services and as varied under Change Control (refer to section 2 of Description of Services)
- 10 **"Managed Services"** means the managed services to be provided to the Customer, as described in section 3 of Description of Services
- 11 **"Service Levels"** means the service levels described in section 7 of Description of Services;
- 12 **"Services"** means the Managed Services provided under this Agreement, including monitoring, break fix, as further described in the Scope of Services;
- 13 **"Product"** means goods or services manufactured or provided by the companies other than KDDI America, Inc.;
- 14 **"Project"** means a temporary, customer-needs-based initiative to create, modify, or implement an information technology solution, with a defined scope, timeline, budget, and deliverables, and which concludes upon achieving its objectives.
- 15 **"Endpoint"** means specific customer-owned or -operated device, including desktop, laptops, servers, network devices and supported virtual instances, which Managed Services support;
- 16 **"Working Day"** means a day other than a Saturday, Sunday or KDDI America, Inc. Holidays; (Holiday calendar available upon request)



- 17 **“Effective Date”** means the calendar date on which the Application for Service is signed by the Customer. This date marks the official commencement of the agreement and serves as the starting point for any obligations, rights, or services outlined in the Application for Service;

Description of Services

1 **Managed IT Infrastructure**

1.1 Supported products

The Products themselves are not included for this service. These products need to be purchased through KDDI America, or to be prepared by the Customer. The specific products and platforms covered under this Agreement are defined described in the Supported Products List or Pricing Plan maintained as a separate attachment to this Agreement. Customers should refer to each respective section for specific product names and coverage details.

1.2 In Scope (The Managed IT Infrastructure that is in Scope for the Managed Service):

The Managed Service relates to the third-party products and applications described in equipment lists provided by Customer.

The Managed Service does not include a remedy for defective or faulty equipment or components, or failure of third-party services. Where applicable, the Service Provider can assist with escalating warranty and defective product/application issues to the relevant third-party supplier.

The Managed IT Infrastructure is the items listed in equipment lists provided by Customer, as approved and confirmed by the Service Provider on or prior to Commencement Date. Changes to the Managed IT Infrastructure are made via change control under section 2 below or as agreed in writing between the parties.

1.3 Out of scope:

- (a) Equipment that is not covered by warranty;
- (b) All or any part of any home networks;
- (c) Any application on a user's work device not approved by the Service Provider;
- (d) Equipment which is primarily for personal use (not for business purposes);
- (e) Any machine where the operating system or application is not under support or extended support from the vendor for the Customer.

2 **Change Control**

- 2.1 Changes to the Managed IT Infrastructure will be controlled by customer service portal, email or other written communication between the Parties. Where a change to the Managed IT Infrastructure requires a change to the pricing for the Managed Service, that pricing change will be notified by the Service Provider to the Customer in writing and will be implemented and charged to the Customer accordingly unless the Customer notifies the Service Provider within 5 Working Days following the notification being issued to the Customer.

3 **Service Specification(s)**

- 3.1 The Managed Service is as follows and is provided in relation to the Managed IT Infrastructure except to the extent of Out of Scope factors in relation to the Managed IT Infrastructure or the Managed Service, and subject to the Customer meeting its obligations under this Statement of Work and subject also to the Exception Factors.



Conditions and third-party software and/or hardware required to provide the Managed Service are listed, not limited to below.

(a) Remote Support

Service Provider will provide maintenance and support for the existing hardware and software listed in equipment lists provided by Customer. Service Provider will make a best effort to resolve as many issues as possible remotely.

Projects outside the scope of the above to maintain the existing network are billed separately including but not limited to setting up 2nd or additional offices or system changes expanding beyond what is currently in use in the network are beyond the scope of this Agreement.

(b) Automated Support

Through the use of the Service Provider's Remote, Monitoring and Management (RMM) software, the Service Provider remotely monitor all devices' operating with supported Operating Systems that are powered on 24/7 for critical errors. The Party may create automated remediation playbooks upon agreement to automatically resolve the known critical issues.

(c) Monitoring Probe

Mandatory for applicable services, at least 1 probe device per site. The detail is defined in the Supported Products List or Pricing Plan maintained as a separate attachment to this Agreement.

(d) Power Management

Mandatory for applicable services, at least 1 power management device per site. The detail is defined in the Supported Products List or Pricing Plan maintained as a separate attachment to this Agreement.

3.2 Managed IT Infrastructure

The Service Provider may provide monitoring and troubleshooting for Customer-owned assets and network circuits under this Agreement, provided that all Managed Services Requirements are met. Service coverage for Customer assets is subject to Service Provider's technical evaluation and approval prior to onboarding.

(a) Supported products shall be defined in the Supported Products List or Pricing Plan maintained as a separate attachment to this Agreement.

(b) This service is optional and not included by default under the base Managed Service Agreement.

(c) Scope of Service:

Monitoring, job failure notifications, and restoration support;
The Customer can choose either of 2 plans:

- i. Essential plan
Includes status monitoring and break fix;
- ii. Advanced plan
As well as Essential plan, Including Operation & Maintenance and Change Management;



The plan contracted for each item of Managed IT Infrastructure is defined in the Supported Products List or Pricing Plan.

- (d) Support Hours:
 - i. Network circuits:
Monitoring and troubleshooting available 24/7/365
 - ii. Others:
Monitoring: 24/7/365
Troubleshooting and Change Requests: Working days 9:00–20:00 (ET)
- (e) Exclusions:
 - i. Any installation of network circuits, hardware, and software required for onboarding is not included in the Service.
 - ii. Cisco, Fortinet and Aruba Networks are only supported as network OS; other OS platforms are excluded.
 - iii. Windows Server instances are only supported as server OS; Linux and other OS platforms are excluded.
 - iv. Any issues, defects, or vulnerabilities identified during the initial technical evaluation or onboarding process that require remediation to bring the network into compliance with Managed Services Requirements shall be treated as a separate "Project" and billed at KDDI's standard hourly rates.

3.3 Managed SASE

Service Provider may provide monitoring, configuring, and troubleshooting support for Secure Access Service Edge (SASE) platforms **as an optional managed service**.

- (a) Supported products shall be defined in the Supported Products List or Pricing Plan maintained as a separate attachment to this Agreement.
- (b) This service is optional and not included by default under the base Managed Service Agreement.
- (c) Scope of Service:
 - i. Continuous monitoring of SASE connectivity and tunnel availability
 - ii. Configuration change requests (policy updates, user or site additions)
 - iii. Troubleshooting and coordination with the vendor's technical support as required
 - iv. Alerting and remediation for critical incidents affecting network access
 - v. Monthly status reporting (if Help Desk service is subscribed)For specific monitoring items and the Statement of Work (SOW), please refer to the pricing plan referenced herein.
- (d) Support Hours:
 - i. Monitoring: 24/7/365
 - ii. Troubleshooting and Change Requests: Working days 9:00–20:00 (ET)
- (e) Exclusions:
 - i. Initial SASE platform setup and onboarding
 - ii. Hardware or appliance procurement
 - iii. Advanced design or architecture changes Service Provider's professional services



3.4 Managed Email

Service Provider may provide administration and support for email service as an optional managed service.

- (a) Supported products shall be defined in the Supported Products List or Pricing Plan maintained as a separate attachment to this Agreement.
- (b) This service is optional and not included by default under the base Managed Service Agreement.
- (c) Scope of Service:
 - i. Administer user account creation and termination, group management, and MFA setup of Customer email service.
 - ii. Create/delete email user account
 - iii. Password reset for users
 - iv. Change Management
 - *shared and resource mailboxes/ group addresses/ address books/ blocklisting
 - v. Email quarantine restoration

For the Statement of Work (SOW), please refer to the pricing plan referenced herein.

- (d) Support Hours:
 - i. Support are available Working days 9:00–20:00 (ET).
- (e) Exclusions:
 - i. Tenant onboarding (initial setup of email tenants) is excluded.

3.5 Managed Backup

Service Provider may provide data backup and restore management as an optional managed service. The specific backup methods and target storage solutions (such as local or cloud Infrastructure) shall be defined in the Pricing Plan referenced herein.

Customer must maintain an Internet connection of at least 15 Mbps upload and download speed for successful remote backup operations. Additionally, backup seeding may be needed depending on the total size of full backup which needs to be taken initially.

Automatically backs up all current data stored on the Servers to a secure local or online storage location, depending on the Customer's selected configuration

The cost of any online (cloud-based) storage used for backup shall be quoted separately and is not included in the base Managed Service fee, unless the Customer provides and manages its own cloud infrastructure.

- (a) Supported products shall be defined in the Supported Products List or Pricing Plan maintained as a separate attachment to this Agreement.
- (b) This service is optional and not included by default under the base Managed Service Agreement.
- (c) Scope of Service:
 - i. Monitor and notify job status
 - ii. Ensure backup jobs completes successfully



- iii. Initiate restore jobs in case any data restoration is needed
- (d) Support Hours:
 - i. Monitoring and notifying: 24/7/365
 - ii. Request for Support Service: Working days 9:00–20:00 (ET)
- (e) Exclusions:
 - i. Hardware and software setup for the backup infrastructure, other than online storage provided by the Service Provider, are excluded. and require to be added to Managed IT Infrastructure.
 - ii. Hardware and software maintenance for the backup infrastructure, other than online storage provided by the Service Provider, are excluded and require to be added to Managed IT Infrastructure.
 - iii. Customer is required to provide their own backup management server.

4 Out of scope

The following are out of scope for this Managed Service. Where services in relation to the following are provided by the Service Provider, the services will be charged at the Service Provider's standard hourly rates.

Out of scope:

- (a) data restoration;
- (b) recovery work following any cyber attack;
- (c) services required to investigate, diagnose and/or provide a remedy in relation to Exception Factors (refer section 6 below);
- (d) procurement and set up of new equipment;
- (e) projects, such as but not limited to server upgrades and new office setup or office move;

Any of the above items shall be treated as separate projects outside the scope of this Agreement and shall be quoted and billed separately under a new Statement of Work or Project Agreement.

5 Customer responsibilities

The Customer must:

- (a) maintain support contracts with all relevant third party suppliers;
- (b) ensure there is no deliberate damage to any aspect of the Managed IT Infrastructure;
- (c) notify the Service Provider immediately when it becomes aware of any Incident, to prevent further issues.

6 Exception Factors

The Service Provider has no obligation to address or remedy an Incident where the Incident has arisen due to any of the following Exception Factors:



- (a) issues resulting from the Customer's use of infrastructure (including IaaS/PaaS), networks, devices, internet connections, software or services where the relevant infrastructure, network, device, software or service is not included in the Managed IT Infrastructure;
- (b) the failure or poor performance of the Customer's power source and/or power supply;
- (c) any additions, changes or modifications made to the Customer's operating system, infrastructure or equipment except where made or approved by the Service Provider;
- (d) the Customer not acting on a recommendation from the Service Provider (given in writing) that additions, changes or updates to the Managed IT Infrastructure are required;
- (e) changes made by a third-party supplier of software, services or equipment;
- (f) any third party act, omission or circumstance including without limitation any cyberattack (and including any cyberattack on the systems or services used by the Service Provider to provide the Managed Service) which results in unavailability of all or any part of the Managed IT Infrastructure, whether malicious or not (other than where the third party is a subcontractor engaged by the Service Provider) or any unauthorized access to the Managed IT Infrastructure;
- (g) willful damage by any person including without limitation any current or former member of the Customer's staff (employees and/or contractors);
- (h) any situation, event, outage, defect or other factor (except where the Service Provider has directly caused that situation, event, outage, defect, or other factor), which impacts the availability or proper functioning of any component of the Managed IT Infrastructure or the Customer's access to Data, where the impact of that situation, event, outage, defect or other factor is experienced not only by the Customer but also by other businesses and users, including without limitation a Windows update issue, antivirus update issues or system outage by upstream providers;
- (i) Force Majeure Event; or
- (j) KDDI's exclusion of recovery work following a cyberattack and its status as an Exception Factor are absolute; any assistance provided by KDDI in such events is at KDDI's sole discretion and billed as a separate engagement.

The Service Provider may, at its sole discretion, agree to provide assistance with resolving Incidents that have arisen due to an Exception Factor and if and when it does so:

- the work will not be undertaken under this Agreement but under as a separate engagement and additional charges will apply; and
- the Service Provider accepts no responsibility for resolving the issue.

7 Service Levels

7.1 Service Level Agreement (SLA):

- (a) Not defined

7.2 Service Level Objective (SLO):

- (a) First response within 4 hours after an incident occurs or an inquiry is received (during support hours only)



- (b) Change request requires at least 3 business days' notice before implementing any configuration change.

Managed Services Requirements

- 1 PC's, Servers and network equipment including routers, switches, backup devices and media must be less than 5 years old or turning 5 years old in the first 11 months of the agreement. Servers must be replaced by the Customer upon reaching the age of 5 years. Replacement installation costs are billed outside the monthly service amount at Service Provider's hourly rate. Servers must be covered by an active hardware warranty. Service Provider will coordinate warranty diagnostics, repairs and return to service. Any hardware (PCs, Servers, or network equipment) reaching five (5) years of age from the date of manufacture shall automatically be deemed "Out of Scope" without further notice from KDDI.
- 2 PC's (laptops/desktops/Macs) in excess of 5 years in age that fail will need to be replaced by the Customer with a new machine or one that is less than 5 years in age. Work to restore or replace equipment older than 5 years will be billed as an additional charge.
- 3 All Servers, Desktop PC's and Notebooks/Laptops with Microsoft Windows or Apple operating systems must be running an operating system supported by Microsoft or Apple with support expected to continue 12 months or more with the latest service packs and critical updates installed. As Microsoft or Apple stops supporting an operating system Customer must update their operating system or remove it from any access to the network.
- 4 Customer will maintain service/support contracts for hardware such as routers, firewalls and switches and specialty software applications.
- 5 If a Customer has software particular to its business which is installed on its network, the Customer is responsible to obtain installation, training and continuing technical support from the software provider. Service Provider technicians are able to assist with network support but they are not experts in all software applications and rely on the software manufacturer to provide software support at Customer's expense.
- 6 This Agreement covers users and their associated computers and other devices as detailed in the appendix. Customer shall provide a desktop and laptop which are less than 5 years old in good functioning condition to serve as a hot spare. A hot spare will not be counted as an operating computer for purposes of this Agreement.
- 7 For each new user added during the term of this agreement beyond computer/users the monthly Managed Service will increase fees upon renewal or in response to:
 - Changes in endpoint volume
 - Addition of new services
- 8 All server and desktop software must be genuine, licensed and vendor-supported.
- 9 The network must have a currently licensed, vendor-supported server-based backup solution that can be monitored and send notifications on job failures and successes.
- 10 The network must have a currently licensed, vendor-supported hardware firewall between the internal network and the Internet.
- 11 All wireless data traffic in the infrastructure must be securely encrypted.
- 12 Customer is required to provide a method of remote access to the Service Provider in form of:



- Remotely accessible console server;
 - A step server with RMM;
- 13 For Monitoring Probe, one LAN IP address from the Customer is required. In addition, the hostname and IP address of the monitored equipment must be provided in advance. NAT and ACL may be needed to provide the service.

At the time of initiating service for the Customer, Service Provider will evaluate Customer's network and determine whether all Managed Services Requirements are in place and if not in place will install the required services. Charges for bringing the network into compliance with the requirements will be billed as incurred as additional services.

Third-Party Software and Hardware Usage

The Service Provider uses third-party products and services to provide the Managed Service. Some of these third-party services—such as Remote Monitoring and Management (“RMM”) tools—require the installation of an agent on the Customer's devices and other equipment, as applicable. The Customer hereby acknowledges, agrees, and consents to the installation and use of such RMM applications and related third-party software by the Service Provider in connection with the Managed Services.

- (a) By executing this Agreement, the Customer expressly authorizes the Service Provider to procure and install such third-party software and to accept, on the Customer's behalf, the relevant third-party supplier's end-user license agreements (“EULA”) and terms of use that are necessary to provide the Managed Services. Without limitation, this includes acknowledgment and acceptance of KDDI America Monitoring Service Agreement (available at <https://us.kddi.com/content/dam/kddi/americas/us/ja/masteragreement/Monitoring-Service-Agreement.pdf>), the NinjaOne End User License Agreement (available at <https://www.ninjaone.com/license-agreement/>) and the NinjaOne Terms of Use (available at <https://www.ninjaone.com/terms-of-use/>), as amended from time to time.
- (b) As part of the services provided under this Agreement, Service Provider may integrate or rely upon third-party software, hardware, or services, including but not limited to Edgeboot, a power management and out-of-band monitoring solution provided by Granite Telecommunications. The Customer acknowledges and agrees that Edgeboot Services include:
- Remote rebooting functionality using the Edgeboot device's power cycle control capability (“Power Cycling”)
 - Out-of-band monitoring via cellular connection, enabling limited remediation even when other network connections are unavailable
 - Access to a management portal and analytics

Installation of Granite-owned, Granite-provided Edgeboot devices may be subject to additional charges. Granite's Network Operations Center (NOC) will provide support for Edgeboot Services following the Effective Date. Granite may automatically remediate service-affecting issues via Power Cycling. If such remediation is unsuccessful, Granite will coordinate with the Customer for onsite troubleshooting. If the root cause is determined to be within Granite's service scope, a support case will be opened until resolution. Edgeboot Services are provided on a best-efforts basis and are not subject to any service levels. Any connectivity or monitoring functionality enabled through Edgeboot shall be governed by the applicable terms of Granite's underlying services. The Customer is solely responsible for selecting and managing the equipment connected to the Edgeboot device. Service Provider and Granite make no representations or warranties regarding:



- Compatibility between the Edgeboot device and any other device
- Appropriateness of connecting any particular device to the Edgeboot device
- Whether Granite's NOC will be able to remediate any particular issue involving connected equipment

Edgeboot Services may utilize Granite's machine-to-machine (M2M) mobility data services for out-of-band monitoring and, in certain cases, data connectivity. These components are governed by Granite's Mobility Services Additional Terms of Service.

Edgeboot Services are provided "as is." The sole and exclusive remedies available to the Customer are either:

- As set forth in any applicable SLA, or
- Repair or replacement of a defective Granite-provided Edgeboot device

The Customer acknowledges that:

- Edgeboot is only one component of a broader CPE management strategy and is not a comprehensive maintenance or monitoring solution
- There is no guarantee of uninterrupted or error-free service
- Cellular connectivity is provided on a best-efforts basis
- Use of Edgeboot Services is at the Customer's sole risk, and the Customer is responsible for any resulting damage, loss, or expense
- Edgeboot Services are not designed or intended for use in high-risk applications requiring fail-safe performance (e.g., nuclear facilities, aircraft systems, life-support equipment, weapons systems)

In no event shall Service Provider or Granite's liability in connection with Edgeboot Services exceed \$100, regardless of the nature of the claim or whether advised of the possibility of greater damages.

Data Ownership

All telemetry, alerts, and logs from Customer endpoints remain Customer property. Provider may use anonymized data for internal diagnostics and service improvement

Compliance

Service Provider shall comply with applicable laws and standards (e.g., GDPR, HIPAA, PCI-DSS) as applicable. Customer must disclose industry-specific requirements prior to onboarding.

Governing Law

This Agreement shall be governed by the laws of the State of New York, without reference to its provisions on conflicts of law.



Dispute Resolution

Any dispute arising out of or relating to this Agreement which cannot be resolved within a reasonable time directly by Service Provider and Customer shall be settled by binding 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. 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. 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 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

Notices

Notices shall be delivered via certified mail, email, or courier to the addresses listed above. Notices are deemed received upon actual receipt.

Waiver

Failure to enforce any provision shall not constitute a waiver of future rights.

Agreement

Customers and Service Provider agree to the following:

Service Provider will provide the Managed Services listed on the Managed Services Offerings. The term of this Agreement is 12 months beginning the Effective Date. This Agreement will automatically renew for successive 12-month terms unless at least 60 days prior to the expiration of each such term, either party notifies the other party in writing of non-renewal.

- Customer agrees to all requirements in the preceding pages of this document.
- Customer will pay Service Provider monthly within thirty (30) days of invoice date the amount of invoice
- Customers will execute the ACH form attached to this Agreement and authorize the monthly drafting of their account for the monthly managed service. If the Customer is in a jurisdiction which charges sales tax on services the stated price does not include tax.



Execution of the ACH form is a mandatory condition of service, and ACH shall be the exclusive method for monthly Managed Service fee payments.

- This Agreement covers only the Customer's locations as referenced in the attachment and its IT assets, services, service hours, and covered days defined within this Agreement.
- The addition of locations, IT assets, the number of users, services, service hours, and covered days not set out in this Agreement will require billing as additional services or a project or result in an adjustment to the Customer's monthly charges. For example, Customers moving to a new location or adding additional users requiring additional routers and networks are Projects. All services requested by Customers which are not included in the coverages set out in this Agreement are billed as another "Project" and will be quoted and billed as Separate Charges.
- The cost of any equipment necessary to perform the additional services or project will be paid by the Customer before installation. The estimated charges for projects and additional services will be paid in full prior to the commencement of the Project. Customer agrees to make payment in full within 30 days of billing for additional services not anticipated in the initial estimated charges plus expenses.
- Customers will comply with the Policies and Responsibilities and also the Managed Services Requirements.

This Agreement includes the Managed Services Offerings, Managed Services Requirements and also the Terms and Conditions; these documents are incorporated herein by reference.

This Agreement, including all appendices (if applicable), constitutes the entire understanding between the parties and supersedes all prior agreements. Any amendments to this Agreement must be in writing and signed by both parties.

ANY HEREINAFTER ATTACHED APPLICATION FOR SERVICE AND/OR ALL APPENDICES ARE HEREBY INCORPORATED HEREIN VIA THIS REFERENCE, AND AS REVISED FROM TIME TO TIME BY THE COMPANY (HEREINAFTER THE AFOREMENTIONED DOCUMENTS ARE COLLECTIVELY REFERRED TO AS THE "AGREEMENT").

Terms and Conditions

- 1 Confidentiality During the term of this Agreement, and thereafter in perpetuity, neither party shall without the prior written consent of the other, disclose to anyone any Confidential Information of the other. "Confidential Information" for the purposes of this Agreement shall include each party's proprietary and confidential information such as, but not limited to, Customer lists, business plans, marketing plans, financial information, designs, drawing, specifications, models, software, source codes, and object codes. Confidential Information shall not include any information that Customer makes publicly available or information which becomes publicly available through no act of Service Provider or Customer or is rightfully received by either party from a third party.



- 2 Customer and Service Provider both agree that they will not solicit for hire and it will not hire or otherwise engage any of each other's employees or contractors, either directly or indirectly during any period services are provided under this agreement or in the 24-month period immediately following termination of this agreement. If the Customer hires or otherwise engages any KDDI employee or contractor during the term or within 24 months following termination, the Customer agrees to pay KDDI, as liquidated damages and not as a penalty, an amount equal to 100% of the annual base salary of said employee or contractor.
- 3 Force Majeure: Neither party shall be liable for any failure of or delay in performance of its obligations under this Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of God, acts of a public enemy, pandemics, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, terrorism, blockades, embargoes, storms, explosions, labor disputes (whether or not the employees' demands are reasonable and within the party's power to satisfy), acts of any governmental body, failure or delay of third parties or governmental bodies from whom approvals, authorizations, licenses, franchises or permits must be obtained, or inability to obtain labor, materials, equipment, or transportation or illness of Service Provider's technical staff (collectively referred to herein as "Force Majeure"). Each party shall use reasonable efforts to minimize the duration and consequences of any failure of or delay in performance resulting from a Force Majeure event.
- 4 Service Provider shall not be liable to Customer or any of its affiliates for any damages, whether incidental, direct, indirect, special, consequential or punitive damages arising out of service or equipment provided hereunder, including but not limited to loss of profits or revenue, loss of use of equipment, lost data, or loss to person or property, costs of substitute equipment or other costs even if Service Provider has been advised of the possibility of such damages. Regardless of the form of action, Service Provider's cumulative liability shall be only for loss or damage directly attributable to negligence of a Service Provider employee or contractor, for the cost of restoring the network to its condition prior to the negligence, but not to exceed thirty thousand Dollars. If a collection action is initiated by either party or if Service Provider has to defend any action by Customer, Service Provider is entitled to its reasonable attorney fees and expenses to be paid by Customer.
- 5 Implied Warranties are expressly disclaimed by Service Provider. An Service Provider contractor is a technician or contractor who operates on behalf of Service Provider, is paid by Service Provider and has access to Service Provider's service ticket management system for making time entries and charges for their work. Service Provider is not responsible for the acts of other technicians, contractors or consultants providing service to Customer not under its control and direction. If Customer purchases equipment from Service Provider it understands and agrees that it will look to the manufacturer for all remedies and warranties and agrees that Service Provider is not responsible for functioning of the equipment and has not made any express or implied warranties. Service Provider shall not be liable for any claim or demand against the Customer by any third party on account of errors or omissions performed hereunder.
- 6 Remote access to personal computers and/or networks. If or when Customer transitions to home or alternative networks, Service Provider will make best effort to make connections and serviceability. However, home or alternative networks may not have adequate internet connectivity and equipment to effectively work. Service Provider is not responsible for inadequacies in those home or alternative networks or to secure those connections. Home equipment will not be as secure and may not have Service Provider's software and security features. Service Provider is not responsible for the security of the home or alternative networks. Work on a home or alternative network unless otherwise included is outside the scope of this Agreement and Service Provider may charge it's then hourly rate for work on home or alternative networks. Service Provider will charge for additional software installed at home or alternative networks as needed.



- 7 In the event of a Force Majeure Service Provider is not required to have technicians work during periods or at places where their safety or health could be in jeopardy and in any event will not require technicians to go on site.
- 8 Customer agrees to carry liability insurance and property insurance covering any damage to its network as well as to any Customers of the Customer adversely affected by Customer's network functioning or transmissions from its network.
- 9 Service Provider may apply changes or additional terms, conditions and provisions to this Agreement upon 30 days advance written notice to Customer containing the proposed addition or change. If the additions or changes are not objected to then they shall take effect at the end of the 30 days. Within the 30 days Customer may submit changes or objections to the proposed changes or additional terms. If the parties do not agree on the change or addition then it shall not become part of the Agreement. All the terms, conditions and provisions of this Agreement will continue to apply during any renewal term. Both parties agree to negotiate in good faith rates to be mutually agreed under any renewed contractual service term to be effective at the end of the initial term.
- 10 Failure to pay: If payment is not received by the first of the month for that month of service the Service Provider reserves the right to put a hold on rendering on-site and remote services until monthly fee has been paid, provided Service Provider gives a five (5) business day notice of late payment. If Customer's failure to pay continues for fifteen (15) days, KDDI reserves the right to immediately suspend or deactivate all third-party software, agents, and RMM tools installed on Customer devices, in addition to placing a hold on remote and on-site services.
- 11 It is understood that any Federal, State or Local Taxes applicable shall be added to each invoice for services or materials provided by Service Provider. Customer shall pay any such taxes unless a valid exemption certificate is furnished to Service Provider for the jurisdiction of use, except in cases when Service Provider procures or sources the incorrect equipment and / or software and / or support services any incorrect items or software shall be returned to Service Provider.
- 12 If Customer fails to make payment for any services or items purchased, and such failure continues for fifteen days, interest shall accrue on any amount due at the rate of 1.5% per month or the maximum allowed by law until paid. In the event collection processes are instituted to collect any amounts due from Customer, Customer shall pay the costs of collection plus reasonable attorney fees.
- 13 This Agreement is fully assignable by Service Provider. Immediately upon assignment the assignee's name, address and contact information shall be provided to the other party. This Agreement shall be fully binding and enforceable as against all permitted assignees and successors in interest.
- 14 Termination: Customer may terminate this Agreement, with or without cause, at the end of any renewal term by providing at least sixty (60) days' prior written notice to Service Provider and by (i) paying a termination fee equal to one month of the Managed Services fee agreed to in this Agreement, and (ii) paying all past and currently due amounts together with any applicable late fees and costs, unless the Customer has a valid reason to withhold payment for incomplete tasks, outstanding work orders, or faulty equipment, provided that Service Provider was notified through a service ticket within ten (10) days of the original occurrence of such incomplete tasks, work orders, or faulty equipment, and that the issue was described in sufficient detail to identify the problem. That amount may be withheld until the incomplete tasks, work orders or equipment issues are resolved. Service Provider shall be given a reasonable opportunity to correct any problems. Any such election shall be made in writing by Notice of Termination and is to be accompanied by the Termination Fee and all other amounts due.



Either party may terminate this Agreement for cause if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days of receiving written notice. Upon termination or expiration, Customer shall pay all outstanding fees incurred up to the effective date of termination, and each party shall, upon request, return or destroy the other's Confidential Information.

Termination by Service Provider:

- (a) KDDI may terminate this Agreement for cause if the Customer fails to cure a payment default within ten (10) business days of written notice. Repeated late payments (more than twice in a 12-month period) shall be deemed a material breach not subject to a cure period. Upon giving notice to Customer of default and the default is not cured within ten (10) business days of receipt of written notice from Service Provider or for failure of Customer to pay for service or products at the time of ordering or within 30 days of billing. Failure of Service Provider to require payment at the time provided shall not be construed as a waiver of the right to do so.
- (b) Any of the following which remains un-dismissed for a period of sixty (60) days: If Customer files protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver is commenced by a third party against Customer.
- (c) Failure of Customer to comply with its obligations in this Agreement after written notice by Service Provider of the non-compliance and failure to correct the problem or acknowledge the problem and commitment to take corrective action in the future.
- (d) Backups in the event of default or early termination or in the event the parties do not renew at the end of the term of this Agreement: Customer shall be responsible for transferring backups to a system administered by Customer or others on its behalf and for paying any costs of transferring and/or setting up backups off of the system maintained by Service Provider. If Customer does not provide for any transfer of backups, they shall be terminated within 30 days of the Notice of Termination or Notice of Default. Customer assumes all responsibility for its backups and Service Provider has no responsibility to retain backups. In the event prior to the end of the 30 days, Customer places its own backups on site or obtains its own cloud backups then it shall notify Service Provider so its backups can be terminated.
- (e) In the event of default or termination under any circumstances Customer agrees it will provide access to Service Provider technicians to remove monitoring tools. The consequence of and failure to provide this access shall be that Customer shall continue to be responsible for 50% of the amount of the monthly Managed Services payment until access is allowed and the licenses and tools removed.

Furthermore, the Customer shall return any physical devices provided by the Service Provider for service delivery — including but not limited to Monitoring Probe and Power Management devices — to the Service Provider at the Customer's own cost and responsibility, including shipping charges. Such devices shall be returned within thirty (30) days of termination or written request by the Service Provider. Failure to return these devices within the specified period may result in additional charges equivalent to the replacement cost of the devices and continuation of up to 50% of the monthly Managed Services payment until the return is completed.

- (f) In the event of termination by either party, Customer is responsible for the full amount of all payments for services provided and products ordered.
- (g) If either party terminates the relationship of managed Service Provider and Customer or if Customer defaults then the parties agree to work cooperatively to transfer the Customer's



data and network information as directed by the Customer to another Service Provider or to the Customer. The Customer will pay the cost of transfer which will include hourly charges of technicians to accomplish the transfer and any services maintained by Service Provider containing Customer data. Customer must designate a vendor to handle its email, backups and any other services provided by Service Provider. Customer must establish an account for transfer of the backups and any other services within 30 days of notice of termination or default, or within 30 days of termination of this SLA. Service Provider has no responsibility for backups, email or other services beyond 30 days following termination or default under this Agreement.

- (h) In the event of termination of services for any reason by either party, upon written request by Customer Service Provider will provide up to 60 days support to allow Customer to make a transition provided Customer pays all amounts then due and pays the fee for the additional 60 days in advance.
- 15 This Agreement and any amendments and its validity, construction and performance shall be governed by the laws of the State of New York. Exclusive jurisdiction and venue for all matters relating to this Agreement shall be in the county and state of the Service Provider, and the parties agree and consent to such jurisdiction and venue.
- 16 This Agreement does not create any rights in any third parties.
- 17 Customer shall not modify, create any derivative work of, or incorporate any other software into the computer software programs or any portion thereof with the exception of allowing automatic updates to commence or confirming the installation of an automatically scheduled update or fully supported software for which Customer has purchased technical support and has scheduled such installation with Service Provider. Programs must be installed by an Service Provider technician or software technical support with an Service Provider technician assisting. Service Provider shall not be responsible for maintenance of or for repair of errors or malfunctions occasioned by any installation, modification or enhancement to the Programs made by Customer or by anyone other than Service Provider unless Service Provider has agreed. Corrections of unauthorized modifications shall be at the Service Provider's standard hourly rates and may be grounds for immediate termination by Service Provider of this Managed Services Agreement. Customer agrees to prohibit others, including its principals, officers and employees from installing hardware, working on the technical aspects of the operating systems on the Servers and PC's or to give anyone Domain Administrator access. Only Service Provider will make administrative or technical changes to the servers.