

KDDI AMERICA, INC.
MASTER AGREEMENT FOR PRODUCT SALES

This Master Agreement for Product Sales (the "Agreement") is made by and between KDDI America, Inc. ("KDDI") and Buyer(s).

1. Definitions:

- 1.1 **Buyer(s):** The person, firm or corporation, or other entity which orders, cancels, amends, and/or purchases Products, pursuant to an executed Purchase Order Form, and is responsible for the payment of the charges and/or compliance with the general terms and conditions of this Agreement.
- 1.2. **Effective Date:** The date that Buyer signs the Purchase Order Form.
- 1.3. **Product(s):** Includes KDDI supported goods, hardware and third party products, including but not limited to Cisco Systems, as same are noted on the Purchase Order Form executed by Buyer.
- 1.4. **KDDI Software & Peripheral Product(s):** Third-party name-brand peripherals and software, including but not limited to software, hardware and networking equipment.
- 1.5. **Confidential Information:** The Confidential Information disclosed under this Agreement ("Confidential Information") is described generally as current and future product information, financial and other business information including, but not limited to all confidential and proprietary information so designated in writing or verbally by the words "Confidential", "Proprietary" or similar terms.
- 1.6 **Purchase Order Form** - A KDDI ordering document, which sets forth Buyer's specific requirements for Product(s) and which is executed by Buyer and accepted in writing by KDDI, or any other form under which Products have been ordered by Buyer and accepted in writing by KDDI.

2. **Termination:** In the event of Buyer's material breach of or failure to timely pay any sum due under this Agreement, KDDI may terminate this Agreement if the breach or non-payment is not cured within ten (10) days after written notice from KDDI.

3. **Buyers:** KDDI may extend this Agreement for use by other Buyer Subsidiaries, Parent Companies or partners. Buyer shall not have any liability or responsibility for performance by any other purchaser electing to use this Agreement. Nevertheless, all Buyers hereunder hereby acknowledge and agree to accept and comply with any and all applicable end user agreements, end user license agreements, terms of use, and/or acceptable user policy, which are required and/or mandated by the manufactures, their distributors, and/or service providers.

4. **Orders:** Buyers must place orders in writing; written orders confirmations may be sent by facsimile. An order (including any order placed under a quotation issued by KDDI) is subject to acceptance by KDDI. A Buyer may not change or cancel an order or any part of it at any time after KDDI accepts such order.

5. Prices:

5.1. Prices:

5.1.1. The Products and other items or services covered by this Agreement shall be sold and invoiced at KDDI's prices and charges as reflected on the KDDI Purchase Order Form, executed by and between KDDI and Buyer, and shall include any applicable discount noted therein. Prices do not include sales, excise, use or other taxes (other than taxes based on income) now in effect or hereafter levied by reason of this transaction. Buyer will pay all such taxes.

5.1.2. For large quantity purchases of a single or limited number of configurations, KDDI may offer special pricing to Buyer. KDDI need not extend the same offer to other Buyers unless they commit to purchase a similar quantity.

5.2. **Quotations:** Quotations issued by KDDI are valid for a period of thirty (30) calendar days from the date the quotation is issued, unless noted otherwise therein.

5.3. **Shipping and Handling Charges:** Buyer will pay charges for shipping and handling for Products that are shipped by KDDI's designated carrier.

5.4. **Packing:** All Products shall be suitably packed for the respective type of shipment method selected by Buyer.

5.5. **Taxes:** KDDI shall be responsible for its franchise taxes and taxes on KDDI's net income. Buyer shall be responsible for all sales, excise, use and/or other related taxes. If Buyer provides KDDI with a valid tax exemption certificate, KDDI will not invoice Buyer for the affected taxes.

6. **Discounts:** Buyer's discount percentages that are applicable to Products purchased by Buyers are listed in KDDI's Purchase Order Form

7. **Product Classifications:** Classification of Products is subject to change by KDDI at any time if KDDI changes classifications for its Buyers generally.

8. **Credit:** KDDI limit or cancel the credit of Buyer as to time and amount, and as a consequence, demand payment in cash before delivery of any unfilled portion of this Agreement, and demand assurance of Buyer's due performance. Upon making such demand KDDI may suspend production, shipment and/or deliveries. If, within the period stated in such demand, but in no event longer than 30 days, Buyer fails to agree and comply with such different terms of payment, and/or fails to give adequate assurance of due performance, KDDI may (1) by notice of Buyer, treat such failure or refusal as a repudiation by Buyer of the portion of the Agreement not then fully performed, whereupon KDDI may cancel all further deliveries and any amounts unpaid hereunder shall immediately become due and payable or, (2) make shipments under reservation of a security interest and demand payment against tender of documents of title. If KDDI retains a collection agency and/or attorney to collect overdue amounts, all collection costs, including attorney's fees, shall be payable by Buyer. Buyer hereby represents to KDDI that Buyer is now solvent and agrees that each acceptance of delivery of the Products sold hereunder shall constitute reaffirmation of this representation at such time.

9. **Payment Terms:** A. Payment terms are net 15 days from date of invoice. KDDI reserves the right to require alternative payment terms, including, without limitation, Sign Draft, Letter of Credit, or Payment in Advance. If shipments are delayed by Buyer, payment shall be made based on the contract price and the percent of completion. Buyer shall be liable for the price of all Products conforming to the Agreement. B. If payment is not received by the due date, a service charge will be added at the rate of 1.5% per month (18% per year) or the maximum legal rate, whichever is less, to unpaid invoices from the due date thereof. C. Remittances will be received by a bank simply as clearing agency. The receiving bank has no authority to determine whether or not the amount remitted constitutes payment in full. Remittances marked to indicate payment in full will be deposited by the bank notwithstanding such markings as such deposit shall not indicate our acceptance of the remittance as payment in full unless the remittance actually constitutes payment of all sums owed. Notwithstanding anything contained herein to the contrary, all payments and/or amounts due hereunder shall be absolute and unconditional, and shall not be subject to any abatement, reduction, setoff, defense, counterclaim, interruption, deferment or recoupment for any reason whatsoever.

10. **Product Update and Revision:** KDDI's policy is one of on-going product update and revision. Manufacturer's may revise and discontinue Products at any time, without notice. The Products shipped to a Buyer will meet or exceed the material specifications of Products ordered; however, minor differences between Products as shipped and Products as described in a specification sheet or catalog are possible. The parts and assemblies used in building the Products sold under this Agreement are selected from new and equivalent to new parts and assemblies in accordance with industry practices.

11. **Shipping:** All ship dates are KDDI estimates only. Many factors, including availability of parts and assemblies, affect KDDI's delivery scheduling and ship dates. In the absence of specific shipping instructions, KDDI will ship by the method it deems most advantageous. Transportation charges will be collected, or if prepaid, will be substantially invoiced to Buyer. When special or export packaging is required, the cost of the same, if not set forth on the invoice, will be separately invoiced.

11.1. **Delivery:** KDDI will use every reasonable effort to effect shipment on or before the date indicated. KDDI shall not be liable, directly or indirectly, for any delay or failure in performance or delivery or inability to perform or deliver where such delay, failure or inability arises or results from any cause beyond the KDDI's control, or beyond the control of KDDI's suppliers or contractors, including, but not limited to strike, boycott or other labor disputes, embargo, cyberwarfare, cyberterrorism, any other cyberattacks, governmental regulation, inability or delay in obtaining materials. In no event shall KDDI, in the event of delays or otherwise, be liable to Buyer or any third parties for any consequential, special, or contingent damages. In the event of any such delay or failure of performance, KDDI shall have such additional time within which to perform its obligations hereunder as may reasonably be necessary under the circumstances, and KDDI shall also have the right, to the extent necessary in KDDI's reasonable judgment, to apportion fairly among its various Buyers in such manner as KDDI may consider equitable, the Products then available for delivery. If, as a result of any such contingency, KDDI is unable to perform this Agreement in whole or in part, then to the extent that it is unable to perform, this Agreement shall be deemed terminated without liability to either party, but shall remain in effect as to the unaffected portion of the Agreement, if any.

11.2. **Several Shipments:** KDDI may make delivery in installments, with Buyer's prior written consent, and may render a separate invoice for each installment, which invoice shall be paid when due, without regard to subsequent deliveries. Each installment shall be deemed a separate sale. If the delay in delivery of any installment materially affects Buyer, Buyer shall be relieved of any obligation to accept delivery of any remaining installments. Any delivery not in dispute shall be paid for

on the due date, as provided in this Agreement, regardless of controversies relating to other deliveries.

11.3. **Title, Risk or Loss, Insurance:** Title to each shipment of the Products sold hereunder and risk of loss thereon shall pass to Buyer when KDDI or its agent delivers such shipment to a common carrier or licensed trucker consigned to Buyer, or his agent, but such shipment shall remain subject to KDDI's rights of stoppage in transit and of reclamation. If a strike, embargo, governmental action, or any other cause beyond KDDI's control prevents shipment or delivery to Buyer or his agent, or if payment is to be made on or before delivery, regardless of the aforementioned circumstances title and risk of loss shall not pass to Buyer until the shipment has been actually given to the designated carrier by KDDI and invoiced to Buyer (subject to KDDI's rights as an unpaid KDDI) and KDDI shall be under no duty to carry insurance thereafter.

11.4. **Acceptance:** (1) Buyer or Buyer's agent may inspect the Products at the place of manufacture and/or upon delivery. Buyer shall accept any tender of the Products by KDDI which conforms to the description of the Products set forth herein and/or ordered hereafter. (2) Buyer shall be deemed to have accepted any Product and Buyer's right to cancel, reject or claim any damages for breach of warranty or breach of KDDI's obligation under this Agreement shall cease, unless Buyer gives to KDDI notice in writing of KDDI's breach: (a) in the case of defects discoverable through inspection, 2 days after arrival of the shipment or (b) in the case of defects not discoverable through inspection, 30 days after invoice date. (3) In the case of non-conforming Products, Buyer shall, as early as reasonably possible, notify KDDI whether or not Buyer will continue to accept similarly non-conforming Products and acceptance of any non-conforming Products shall constitute a one-time waiver by Buyer of specification requirements for said Products. (4) In any event, when the Product has been altered from its original state by Buyer, Buyer shall be deemed to have accepted the Product. Buyer's acceptance of Products tendered in conformance to this Agreement shall be final and irrevocable, subject to the herein mentioned terms and conditions.

11.5. **KDDI's Liability:** If Buyer timely notifies KDDI under the terms hereof (which notice shall be given in accordance with section 18.7) of a claimed defect, it shall be assumed that Buyer in each such case concurrently in writing offers KDDI the opportunity to investigate the claim and to inspect allegedly defective Products. If KDDI determines that Buyer's claims are valid, KDDI shall within a reasonable time repair the defective Products or replace the defective Products with conforming Products at the F.O.B. point specified in this Agreement. KDDI's liability for damages on account of a claimed defect in any Product delivered by KDDI shall in no event exceed the purchase price of the Product on which the claim is based and associated costs for shipping such defective Product. Replacement of defective Products or repayment of purchase price of any such Product and other costs will be made only upon return of the defective Product. Specifically, and without limiting the generality of the foregoing, KDDI shall not be responsible or liable to Buyer or any third party for any lost profits, or incidental, consequential, indirect, special, contingent damages, and/or any other indirect damages related to cyberwarfare, cyberterrorism, and/or any other cyberattacks, based on any breach of warranty and/or any other breach of KDDI's obligations under this Agreement.

11.6. **KDDI's Remedies:** If Buyer fails, without cause, as provided for herein, to furnish KDDI with specifications and/or instructions for, or refuses to accept the deliveries without cause, of any of the Products sold under this Agreement, or is otherwise in default under or repudiates this Agreement or any other agreement with KDDI or fails to pay when due any invoice under this Agreement, then in addition to any and all remedies allowed by law, KDDI without notice (1) may bill and declare due and payable all undelivered products under this or any other agreement between KDDI and Buyer and/or

(2) may defer shipment under this or any other agreement between Buyer and KDDI until such default, breach or repudiation is removed and/or (3) may cancel any undelivered portion of this and/or any other agreement in whole or in part (Buyer remaining liable for damages.)

12. **Return Material Authorization (RMA):** KDDI shall refuse returned items without prior approval from the KDDI's Return Material Authorization department. KDDI shall accept returned items arriving in its original packaging. KDDI shall charge the Buyer for any missing items upon inspection of the returned items including, but not limited to, products, documentation, special packaging, cables and other accessories, as defined by the Products sold under this Agreement. Furthermore, except for defective items which are returned by Buyer, the Buyer shall receive a restocking service charge at the rate of 15% of the purchase price and will be invoiced and due immediately upon receipt by Buyer.

13. **Limited Warranties:**

13.1. **Hardware Products:**

13.1.1. **Invoice:** The warranty period for Hardware Products will be referenced on Buyer's invoice and/or provided upon Buyer's request. The limited warranty statements for Hardware Products are included in the documentation provided with such Hardware Products. **All warranties for those Products are provided by the original manufacturers.**

13.1.2. **Specifications:** Hardware Products will conform to the specifications current when the Products are shipped. KDDI will pass good title to Buyers.

Configurations with Third Party Products: KDDI does not warrant that Products will function in any specific configuration, that includes hardware or software not provided by KDDI, or that it will function to produce a particular result, even if the specific configuration or the result has been discussed with KDDI personnel.

13.1.3. **Warranty Repairs:** Unless stated otherwise, Warranty repairs of all defective Products sold to the buyer by KDDI are the sole responsibility of the original Product manufacturer and buyer.

13.2. Software & Peripheral Product(s):

13.2.1. **Warranty:** KDDI specifically excludes all express and implied warranties including without limitation any implied warranty that the Products sold under this agreement are merchantable or are fit for any particular purpose, except such warranties expressly identified as warranties and set forth in KDDI's current operating manual, catalog or written guarantee covering such Product and/or stated herein.

KDDI also makes no warranty that the Products sold under this Agreement are delivered free of the rightful claim of any third party by way of patent infringement or the like, nonetheless KDDI hereby indemnifies Buyer against any and all such claims. If Buyer furnishes specification to KDDI, Buyer agrees to hold KDDI harmless against any claim which arises out of compliance with the specifications. No affirmation of fact or promise made by KDDI, shall constitute a warranty that the Products will conform to the affirmation or the promise, unless stated in writing.

KDDI does not warrant third-party software products. Any warranty provided on software or KDDI-supplied product is provided by the publisher or original manufacturer and may vary from product to product.

13.2.2. **License Agreement:** All software, including Microsoft and/or Cisco software, is provided subject to the license agreement that is part of the package. KDDI has the right to provide such software to Buyer. Each Buyer purchasing under this Agreement agrees that it will be bound by the license agreement once the package is opened or the seal is broken. Notwithstanding anything contained in this Agreement to the contrary, Buyer hereby acknowledges and agrees to accept and comply with any and all applicable end user agreements, end user license agreements, terms of use, and/or acceptable user policy, which are required and/or mandated by the software and/or product manufactures, their distributors, and/or service providers.

13.3. **WARRANTY DISCLAIMERS:** KDDI MAKES NO EXPRESS WARRANTIES FOR HARDWARE EXCEPT THOSE INCLUDED IN THE DOCUMENTATION PROVIDED WITH THE PRODUCT AND/OR STATED HEREIN. ANY WARRANTIES, SERVICE, OR TECHNICAL SUPPORT WILL BE EFFECTIVE ONLY UPON KDDI'S RECEIPT OF PAYMENT IN FULL OF THE APPLICABLE INVOICE, UNLESS A PERIODIC PAYMENT PLAN IS AGREED TO BY THE PARTIES HERETO. KDDI DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ANY WARRANTY PROVIDED ON HARDWARE AND/OR SOFTWARE IS PROVIDED BY THE PUBLISHER OR ORIGINAL MANUFACTURER AND MAY VARY FROM PRODUCT TO PRODUCT.

13.4. **LIMITATION OF LIABILITY:** NEITHER PARTY WILL HAVE ANY LIABILITY BEYOND THE REMEDIES SET FORTH IN THIS AGREEMENT, INCLUDING ANY LIABILITY FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES. KDDI WILL NOT HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGES ARISING FROM A CYBERWARFARE, CYBERTERRORISM, AND/OR ANY OTHER CYBERATTACKS, AND/OR THE USE OF THE PRODUCTS IN ANY HIGH RISK ACTIVITY, INCLUDING THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATIONS SYSTEMS, AIR TRAFFIC CONTROL, MEDICAL SYSTEMS, LIFE SUPPORT OR WEAPONS SYSTEMS.

14. **Service and Support:** KDDI will make available to Buyers in the United States the same service and support offerings that are made generally available to Buyers that are similarly situated to Buyer. The service and support will be provided in accordance with the then-current terms and conditions set by KDDI and/or the third party service provider(s).

15. **Export Restrictions:** Buyer acknowledges that the Products are subject to United States export control laws and agrees to comply with all applicable laws, regulations, rules and orders.

16. **Statutory Requirements:** This Agreement is subject to the following statutory requirements:

16.1. The invoices submitted by KDDI to Buyer shall be in sufficient detail for a proper post audit thereof.

16.2. Renewal of this Agreement annually is contingent upon satisfactory performance evaluations of KDDI by Buyer and Buyer's compliance with its obligations under this Agreement.

17. **Confidential Information:** In order to protect certain confidential information, KDDI and Buyer (individually referred to as a "Party" and collectively referred to as the "Parties"), agree that:

17.1. **Discloser:** The Parties disclosing Confidential Information (each, a "Discloser") may be KDDI or Buyer.

17.2. **Term:** This Section is applicable only to Confidential Information that is disclosed between the Effective Date and the End Date.

17.3. **Expiration of Duty of Care:** A Recipient's duty to protect Confidential Information expires three (3) years from the End Date. A Recipient, upon Discloser's written request, will promptly return all Confidential Information received from the Discloser, together with all copies, or certify in writing that all such Confidential Information and copies thereof have been destroyed.

17.4. **Duty of Care:** A Recipient will use the same degree of care, but no less than a reasonable degree of care, as the Recipient uses with respect to its own similar information to protect the Confidential Information and to prevent (a) any use of Confidential Information not authorized in this Agreement, (b) dissemination of Confidential Information to any employee of Recipient without a need to know, (c) communication of Confidential Information to any third party or (d) publication of Confidential Information. Buyer's obligations hereunder are subject to California public record law.

17.5. **Identification:** A Recipient will have a duty to protect Confidential Information (a) if it is marked or accompanied by documents clearly and conspicuously designating them as "confidential" or the equivalent;(b) or if it is identified by the Discloser as confidential before, during or promptly after the presentation or communication.

17.6. **Obligation:** This Agreement imposes no obligation upon a Recipient with respect to Confidential Information which (a) was known to the Recipient before receipt from the Discloser; (b) is or becomes publicly available through no fault of the Recipient; (c) is rightfully received by the Recipient from a third party without a duty of confidentiality; (d) is disclosed by the Discloser to a third party without a duty of confidentiality on the third party; (e) is independently developed by the Recipient without a breach of this Agreement; or (f) is disclosed by the Recipient with the Discloser's prior written approval. If a Recipient is required by a government body or court of law to disclose Confidential Information, the Recipient agrees to give the Discloser reasonable advance notice so that Discloser may contest the disclosure or seek a protective order.

17.7. **Right to Disclose:** Each Discloser warrants that it has the right to disclose its Confidential Information.

17.8. **Exchange:** This Agreement imposes no obligation on a Party to exchange Confidential Information or to purchase, sell, license, transfer or otherwise make use of any technology, services or products.

17.9. **Applicable Laws; Exports:** A Recipient will adhere to all applicable laws and regulations of the U.S. Export Administration and will not export or re-export any technical data or products received from a Discloser, or the direct product of such technical data, to any proscribed country listed in the U.S. Export Administration regulations unless properly authorized by the U.S. government.

17.10. **Intellectual Property Rights:** No Party acquires any intellectual property rights under this Agreement except the limited rights necessary to carry out the purposes as set forth in this Agreement. Subject to the obligations of this Agreement, no Party will be precluded from independently developing technology or pursuing business opportunities similar to those covered by this Agreement. Each Party retains sole discretion to assign or reassign the job responsibilities of its employees.

17.11. **Damages:** Each Party acknowledges that damages for improper disclosure of Confidential Information may be irreparable; therefore, the injured Party is entitled to seek equitable relief, including injunction and preliminary injunction, in addition to all other remedies.

17.12. **Enforceability:** The obligations and duties imposed by this Agreement with respect to any Confidential Information may be enforced by the Discloser of such Confidential Information against any and all Recipients of such Confidential Information.

18. Miscellaneous:

18.1. **Amendments:** Except as otherwise stated in this Agreement, this Agreement may not be amended except by a subsequently dated written instrument signed on behalf of both parties by a duly authorized representative. Specifically, this Agreement may not be amended by addition of terms or conditions to purchase order, delivery orders, or other instruments absent signature by authorized representatives of KDDI and Buyers.

18.2. **Assignment:** Either party may assign this Agreement, with its Schedules and any addenda hereof, with notice to the other party to any entity owned or controlled by the party's parent corporation. Otherwise, neither party may assign this Agreement without the other party's prior written consent, which will not be unreasonably withheld or delayed.

18.3. **Compliance:** Buyer agrees to comply with all applicable laws, rules and regulations.

18.4. **Currency; Collection:** All payments due to either party for any reason will be made in U.S. currency. In the event that either Party is required to pursue the collection of past due amounts from the other Party, the Party shall be entitled to recover all costs associated with collection, including attorneys' fees and court costs, as well as interest accrued at the highest rate allowed by law from the date the notice of non-payment is given by either Party.

18.5. **GOVERNING LAW:** THIS AGREEMENT IS GOVERNED BY, AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, EXCLUSIVE OF ANY PROVISIONS OF THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS, AND WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

18.6. **Independent Contractors:** KDDI and Buyer are independent contractors. Neither party will state, imply nor knowingly permit anyone, including Buyers, to infer that any other relationship exists between the parties without the other party's prior written consent.

18.7. **Notices:** All notices under this Agreement, will be in writing and served by machine-confirmed facsimile, overnight delivery, personal service or by certified or registered mail, return receipt requested, and will be deemed to have been given or received on the earlier of actual receipt or, if mailed, on the fifth (5th) day after it is properly addressed to the party to be notified, certified or registered with return receipt requested, and properly stamped, sealed and deposited in the U.S. mail. Notices from one party to the other will be sent to the respective address listed under the parties' signatures below. Either party may change its address for notices by giving notice of the new address to the other party. Notices to KDDI will be sent to the attention of KDDI's Account Manager. Notices to Buyer will be sent to the attention of Buyer's then-current liaison.

18.8. **ARBITRATION**

Any dispute arising out of or relating to this Agreement which cannot be resolved within a reasonable time directly by KDDI and Buyer 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 such arbitration shall be New York, New York.

18.9. **Security Interest:** Buyer agrees that KDDI retains a purchase money security interest in, and Buyer grants KDDI a lien on, Buyer's right, title, and interest in all Products wherever located (and all replacements or proceeds) until the applicable invoice is paid in full. Buyer further agrees that KDDI may use this Agreement, as well as any applicable invoices, as a financing statement for perfecting this interest.

18.10. **Severability:** If any provision of this Agreement is void or unenforceable, the parties agree to delete it and agree that the remainder of this Agreement will continue to be in effect.

18.11. **Force Majeure:** Neither party shall be liable or deemed in default for any delay or failure in performance under this Agreement or interruption of service resulting directly or indirectly from acts of God, civil or military authority, acts of the public enemy, war, riots, civil disturbances, cyberwarfare, cyberterrorism, and/or any other cyberattacks, insurrections, accidents, fires, explosions, earthquakes, floods, the elements or any other cause beyond the reasonable control of such party. KDDI and Buyers agree to address or minimize the impact of such acts by taking reasonable measures to ensure to the extent possible performance hereunder.

18.12. **Waiving of Rights:** No waiver of any term or condition is valid unless it is in writing and signed by a duly authorized representative of the waiving party. The failure or delay of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement or to exercise any right, power or privilege under this Agreement, shall not operate or be construed as a relinquishing of performance under this Agreement or as a waiver of any of the same or similar rights, power or privileges in the future, and the obligation of the other party with respect to such rights or performance shall continue in full force and effect as if such failure or delay never occurred. A valid waiver is limited to the specific situation for which it was given.

18.13. **Paragraph Headings:** Paragraph headings used in this Agreement are for reference purposes only and shall not be interpreted to limit or affect in any way the meaning of the language contained in such paragraphs.

18.14. **Items Incorporated by Reference/Order of Precedence:** The following documents are incorporated herein and in the event of conflicting provisions, such documents shall be construed according to the following priority: KDDI's Purchase Order Form(s), any addenda and/or amendments (most recent with first priority) to this Agreement, and this Agreement.

18.15. **Attorney Fees:** In any action brought between the parties, pursuant to section 18.8, to enforce or construe the terms of this Agreement, the prevailing party shall be entitled, in addition to any rights and remedies it may have, to recover all court costs incurred.

18.16. **Entire Agreement:** This Agreement is the exclusive statement of the agreement in effect between KDDI and Buyer regarding this subject matter and supersedes any prior agreements, if any, made between the parties relative to such subject matter. No oral understandings, statements, practice, or other inducements contrary to the terms of this Agreement exist.