

KDDI America SD-WAN Service Agreement

for

VMware SD-WAN by VeloCloud

This KDDI America SD-WAN Service Agreement for VMware SD-WAN by VeloCloud (the "Agreement") is entered into by and between the Customer (as defined hereinafter) and KDDI America, Inc., a corporation organized under the laws of the state of New York, with offices located at 7 Teleport Dr, Staten Island, NY 10311 ("KDDI"), who will provide the software-defined cloud networking service ("Service(s)") to the Customer. This Agreement sets forth the terms and conditions under which the Service will be provided to Customer. "Customer" as used herein, means the person, firm or corporate entity which executes an Application for Service, for purposes of ordering and/or using the Services, including but not limited to paying the charges for the Services and/or complying with the general terms and conditions of this Agreement.

WHEREAS, KDDI has the rights to sell (including any sale, lease, rental or other transfer of equipment) or grant a license to Customer in the United States, Canada and Japan including Asia Pacific to use the Service utilizing (1) a network of gateways running proprietary gateway software and controller software deployed at network and cloud data centers, (2) proprietary edge devices installed at Customer branch, HQ and/or datacenter locations, and/or (3) a proprietary network-connected orchestrator for centralized configuration, monitoring and provisioning of virtual services, and orchestration of the data flow through the cloud network.

WHEREAS, Customer desire to purchase the Service from KDDI, and KDDI is willing to sell to Customer the Services, as per the terms and conditions set forth in this Agreement.

NOW THEREFORE, KDDI and Customer, in consideration of the mutual covenants and agreements hereinafter set forth, agree as follows:

1. Entire Agreement.

This Agreement, together with all ordering documents, including but not limited to an Application for Service, referencing this Agreement and entered into and validly executed between KDDI and Customer (each, an "Application"), and any other documents incorporated by reference herein, constitute the entire agreement between KDDI and Customer relating to Customer's purchase of subscription(s) to use the Service and to use edge devices and any other hardware products or appliances provided to Customer for use in connection with the Service (the "Equipment"). Additionally, Customer hereby acknowledges and agrees that the terms and conditions of the Master Agreement Applicable to System Integration Services, as available at http://us.kddi.com/master_agreements/ (the "Master Agreement"), as may be revised by KDDI from time to time, shall apply to the Services and is by this reference made a part of this Agreement. If there is any conflict, inconsistency or incompatibility between the terms and conditions of this Agreement, the Master Agreement and/or the Application, then the order of precedence, (1) being the highest precedence and (3) being the lowest precedence, is as follows:

- (1) The "Application," including any of its written amendments; then
- (2) This "Agreement," including any of its written amendments; then
- (3) The "Master Agreement," including any of its written amendments.

Customer may not modify this Agreement by making any typed, handwritten, or any other changes to it for any purpose whatsoever. This Agreement may only be amended or modified by a writing signed by both parties.

2. Delivery; Subscription Start Date.

All deliveries of Equipment are FCA KDDI's facility. Delivery dates are estimates only and are not of the essence. The start date of Customer's subscription to the Service shall

be the earlier of (i) the date of Customer's activation of the Service or (ii) the date that is 10 days after the date of shipment by KDDI of the Equipment associated with the subscription.

3. Invoicing, Payments and Taxes.

Customer agrees to pay the prices for the Service as set forth in the Application, together with shipping charges (if applicable) and any taxes, duties, excises and other charges, including VAT, due in connection with the sale, installation, provisioning or use of the Service. Payment is due thirty (30) days from the date of the invoice. All payments are to be made in U.S. dollars. In the event of late payment, KDDI may charge Customer interest on the unpaid amount at the rate of 1.5% per month or the maximum amount permitted under applicable law, whichever is less; and Customer agree to pay KDDI's collection costs and expenses, including reasonable attorney fees. KDDI reserves the right to change the price for the Service at any time with effect thirty (30) days after publication or notice to Customer for Service purchased after such date (for clarity, rates for term-based Service that have already been purchased will not increase during the purchased term thereof).

4. Cancellation Policy.

ALL EXECUTED APPLICATIONS ARE NON-CANCELLABLE AND ALL AMOUNTS PAID ARE NONREFUNDABLE.

5. Use of Service and Equipment.

Customer agrees to abide by any terms of use for the Services, as published by KDDI from time to time. Customer may install and use the Equipment solely for the purposes of accessing and using the Service during the subscription period purchased by Customer. Customer agree not to disable or defeat any capacity-limiting feature of the Equipment, or otherwise use the Equipment at a greater capacity rate than the rate for which Customer have subscribed. Customer agree not to use the Equipment with any

unsupported hardware or software (as described in the applicable documentation provided by KDDI); or use the Service other than as described in the documentation provided therewith; or use the Service for any unlawful purpose.

6. No Life Support.

The Service is not designed, intended, authorized, or warranted for use or inclusion in life support, nor in life endangering applications where failure or inaccuracy might cause death or personal injury; any such use or inclusion by Customer is fully at Customer's own risk, and Customer shall indemnify and hold KDDI from all resulting or related costs, loss, liability, and expense (including without limitation court and reasonable attorneys' fees).

7. Protection of Equipment; Return Upon Expiration.

Full ownership of the Equipment shall at all times remain in KDDI or its supplier of Equipment ("Supplier"). Customer may not sell, lease, abandon, or give away the Equipment; allow anyone other than KDDI or its agents to service the Equipment; or permit any other person to use the Equipment, other than on Customer's behalf in connection with Customer's use of the Service. Customer will be directly responsible for loss of the Equipment. Upon expiration or termination of this Agreement, Customer must return the Equipment to KDDI in the same condition as when delivered to Customer, reasonable wear and tear excepted; and if KDDI has not received the Equipment in such condition within 10 days thereafter, Customer will be deemed to have purchased the Equipment at KDDI's list price, and will pay KDDI upon invoice as provided in Section 3 above.

8. Right to Audit; Use of Data.

Customer grant KDDI the right to audit Customer's use of the Service, in order to confirm compliance with this Agreement and other agreements Customer have with KDDI. Customer acknowledge and agree that KDDI may use, on an aggregated,

non-individually-identifiable basis, all information regarding networking characteristics, usage, performance and related data involved in the use of the Service.

9. Changes.

Customer acknowledges that KDDI may change the Service, and may change the Equipment, either by physical replacement or by remote changes to its software or firmware, at its sole discretion at any time it chooses. Such change may interrupt Customer's use of the Service.

The Customer hereby acknowledges that upgrades may be necessary, from time to time, and that some upgrades will only be performed only if the Customer agrees to pay for all related costs. Notwithstanding anything contained herein to the contrary, if the upgrade and/or its implementation requires a service fee and/or any additional costs, then KDDI will provide prior notice to Customer, and the upgrade shall not be performed unless and until the Customer approves it and agrees to pay for all such related costs.

Notwithstanding anything contained in this Agreement to the contrary, any and all matters relating to any of the following, are the sole responsibility of the Customer: 1) software updates; 2) software bugs; 3) responses to any kind of Security Advisory; 4) any kind of virus related issues; 5) and/or any other related matters. Therefore any matters related to the above noted matters, including but not limited to administration of technical information, software information, Router hardware, bug information and/or security information, are all excluded from the Services and are not within the scope of this Agreement.

10. Proprietary Rights.

Except as explicitly set forth in this Agreement, Customer do not acquire any rights in or license to any component of the Service, or any KDDI or Supplier intellectual property rights. Customer shall not, and shall not encourage any third party to: (a) modify, adapt, alter, disassemble, reverse-engineer, decompile, disassemble, or attempt to derive the source code for the Service (including the Equipment), except to the extent that such activities are required to be permitted under applicable law; or (b) remove, alter, or obscure in any way the proprietary rights notices (including copyright, patent, and trademark notices and symbols) of KDDI or Supplier affixed or contained on or within any Equipment. Without limiting the foregoing, any software provided to

Customer or made available for Customer's use, including but not limited to any software embedded in the Equipment or used in any Service ("Software") is licensed only, is subject to any license agreement provided therewith, and KDDI or Supplier retain title in all copies of the Software, and Customer do not obtain title to, or ownership of, any intellectual property rights in the Software or any copies thereof. KDDI or Supplier reserve all rights not expressly granted by this Agreement.

11. Confidential Information.

Customer agrees to treat any confidential information regarding the Services and any other information provided to Customer by KDDI that would reasonably be understood to be confidential (collectively the "Confidential Information") as strictly confidential, exercising a degree of care not less than reasonable care, and use such Confidential Information only for the purposes of using the Services as permitted hereunder.

Customer shall restrict disclosure of Confidential Information solely to its directors, officers, employees, agents, and consultants and only if they have a need to know and have executed a confidentiality agreement, stating that they will not disclose it to any other person.

12. Limited Warranty.

KDDI warrants to Customer that the Equipment shall be free from defects in material and workmanship (the "Exclusive Warranty") during Customer's subscription of the Service. With respect to the Equipment, the Exclusive Warranty shall apply only to the extent it has been installed, used and maintained in the conditions specified by KDDI or, in absence thereof, at least in conditions consistent with generally accepted practices for this type of product; and not been subject to any unauthorized modification or repair or attempts thereto; and not been connected to or used in combination with other incompatible equipment or systems.

If any Equipment fails to meet the Exclusive Warranty, then upon Customer's written request and pursuant to any warranty procedure published by KDDI, KDDI shall, at

their sole options and expenses, promptly either repair or replace the Equipment in question. The remedies specified in this Section shall constitute CUSTOMER'S sole and exclusive remedy and KDDI's sole and exclusive liability for EQUIPMENT and KDDI's breach of the Exclusive Warranty hereunder.

KDDI MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AND KDDI EXPRESSLY EXCLUDES AND DISCLAIMS ANY AND ALL WARRANTIES WHICH MAY BE IMPLIED OR OTHERWISE CREATED BY OPERATION OF LAW INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF UNINTERRUPTED OR ERROR-FREE USE OR OPERATION, AND MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

13. Claim.

Customer shall give prompt, written notice to KDDI of any claim, suit or proceeding brought against Customer by any third party for infringement or misappropriation of a valid U.S. patent, copyright or trade secret by the Equipment ("Claim"). In the event of such Claim, the parties shall immediately mutually consult on the course of action to be taken. After its consultation, KDDI will, to the extent it considers necessary, take all appropriate actions, provided that Customer render all reasonable assistance in connection with such actions, including but not limited to allowing KDDI or Supplier the sole and discretionary right to defend against or settle such Claims. If KDDI becomes aware of a Claim, KDDI may, in its sole discretion, obtain the right for Customer to continue to use the Equipment, modify the Equipment so that it is no longer infringing or misappropriating, or accept return of Equipment from Customer and refund to Customer a pro rata amount paid for the Service. KDDI shall have no liability for any Claim resulting from: (i) use or combination of the Equipment with any other incompatible goods or services; or (ii) any modification or alteration of Equipment, where such Claim would not have arisen except for such use, combination, modification or alteration. The foregoing expresses Customer's sole remedy, and KDDI's sole liability,

for any Claim.

14. LIMITATION OF LIABILITY.

(A) IN NO EVENT SHALL KDDI BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOST PROFITS, LOSS OF DATA, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER CAUSED, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY AND WHETHER OR NOT KDDI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

(B) IN NO EVENT SHALL KDDI'S AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH ANY APPLICATION OR SERVICE OR THIS AGREEMENT EXCEED, AND CUSTOMER RELEASES ALL CLAIMS AGAINST KDDI (AND ANY OF KDDI'S LIABILITY) IN EXCESS OF, THE AMOUNTS PAID BY CUSTOMER TO KDDI IN RELATION TO THE SERVICE IN CONNECTION WITH WHICH THE LIABILITY ARISES. THE EXISTENCE OF ONE OR MORE SUCH CLAIMS SHALL NOT RAISE OR EXTEND THIS LIMIT. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED OR EXCLUSIVE REMEDY.

15. Supplier as Beneficiary

THE TERMS OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE LIMITED WARRANTY AND LIMITATIONS OF LIABILITY SET FORTH HEREIN, ARE EXPRESSLY INTENDED TO INNURE TO THE BENEFIT OF KDDI'S SUPPLIER, AND SUCH SUPPLIER SHALL BE A THIRD PARTY BENEFICIARY TO SUCH TERMS.

16. Export.

Customer shall comply with all applicable export laws and all applicable restrictions

and regulations of any agency or authority, and shall not export, nor permit the export or re-export of any confidential or proprietary information or the Equipment in violation of any such laws, restrictions and regulations, or without all required licenses and authorizations, to any country to which such export laws, restrictions and regulations prohibit exportation.

17. Governing Law; Arbitration.

The parties agree that this Agreement shall be construed and regulated under and by the laws of the State of New York, without giving effect to provisions related to choice of laws or conflict of laws. Any and all disputes between the parties arising out of or related to this Agreement and/or any Application 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, New York, and any of such disputes, other than claims arising out of non-payment by Customer, shall be brought within one (1) year after the accrual of the dispute.

18. Term and Termination.

The term of this Agreement shall be the period for which the Customer has purchased a subscription to the Service, beginning on the subscription start date, determined as set forth above. KDDI may terminate this Agreement with immediate effect upon notice to Customer if any of the following occurs: (i) a petition in bankruptcy is filed by or against Customer, Customer are declared bankrupt, or proceedings are initiated by or against Customer seeking appointment of a receiver, reorganization, liquidation, dissolution, or other similar relief, or (ii) Customer materially breach this Agreement and fail to cure such breach within thirty (30) days after written notice thereof, provided, however, that no cure period shall apply to Customer's failure to make timely payments hereunder. In the event of any of the foregoing, KDDI shall be entitled, without prejudice to any other remedies, to terminate Customer's use of the Service without being in breach of this

Agreement. Upon expiration or termination, all terms, conditions and provisions herein which by their nature should survive expiration or termination of this Agreement shall so survive, including without limitation the foregoing Sections 8 (Right to Audit; Use of Data), 10 (Proprietary Rights), 11 (Confidential Information), 12 (Limited Warranty), 13 (Claim), 14 (LIMITATION OF LIABILITY), 15 (Supplier as Beneficiary), 16 (Export), and 17 (Governing Law; Arbitration).

19. Force Majeure.

Other than for any payment obligations hereunder, neither party shall be liable to the other for default or delay in the performance of any of its obligations hereunder due to events beyond the reasonable control of such party, including without limitation acts of God or of public enemy (collectively, "Force Majeure"). In the case of a Force Majeure event, the affected party's performance is excused for a period equal to the time lost by reason of Force Majeure.

20. Assignment.

Customer may not, without prior written consent of KDDI, assign or otherwise transfer to a third party this Agreement, except to an entity that acquires all or substantially all of Customer's business or assets, and then only upon obtaining KDDI's written consent. This Agreement shall be binding and shall inure to the benefit of the permitted legal successors of either party hereto.

21. Miscellaneous.

Failure by either party to enforce any provisions of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision. If any part of this Agreement is found to be unenforceable, the remaining portions of this Agreement will remain in full force and effect.