



**Master Agreement  
Applicable to  
System Integration Services  
Furnished By  
KDDI America, Inc.**



**THIS MASTER AGREEMENT FOR SYSTEM INTEGRATION SERVICE** (the “Agreement”) is made by and between KDDI America, Inc. (“KDDI-A,” “KDDI America” or “Company”) and “CUSTOMER,” as such term is hereinafter defined.

#### **DEFINITIONS**

**CUSTOMER** – The person, firm or corporation, or other entity which orders, cancels, amends, or uses KDDI-A Services and is responsible for the payment of charges and/or compliance with the general terms and conditions of this Agreement.

**Effective Date** – The date on which the signature page of an Application for Service, for any Services provided hereunder, is signed by the Company or the date upon which CUSTOMER begins using any Services provided hereunder, whichever is earlier.

**Application for Service** - A KDDI-A ordering document for specific Services provided hereunder, which sets forth CUSTOMER’s specific requirements for such Services and which is executed by CUSTOMER and accepted in writing by KDDI-A, or any other form under which Services have been ordered by CUSTOMER and accepted in writing by KDDI-A.

**Services** - Services related to system integration and/or maintenance for network related hardware, as subscribed to by CUSTOMER via an Application for Service.

#### **APPLICATION OF AGREEMENT**

This Agreement contains the terms and conditions applicable to the provision of system integration and maintenance services (the “Services”) by KDDI America, Inc. to Customer. Each CUSTOMER that orders any Services agrees, upon placing an order for such Services with the Company, to be bound by the terms and conditions applicable to the Services as set out in this Agreement.

The Term of this Agreement shall begin on the Effective Date and shall continue in effect for as long as the Term of any Services provided hereunder remains in effect, unless earlier terminated in accordance with the provisions of the Agreement. The minimum initial Term of each Services provided hereunder shall begin on the commencement of such Services and shall end one (1) year thereafter, unless a different term is specified in the Application for Service for the Services. Upon the expiration of the initial or then-current Term of any Services provided hereunder, such Term shall continue automatically upon the same rates, terms, conditions for successive periods of one (1) month (or such other periods as may be specified in the Application for Services for the Services), unless terminated for any reason by either party upon at least 30 days’ written notice prior to the expiration of the initial or then-current Term of such Services.

## TERMS AND CONDITIONS

### 1. CHARGES

- 1) The charges for the Services, shall be specified in each respective Application for Service, attached hereto and/or hereinafter executed by CUSTOMER.
- 2) The CUSTOMER shall pay the aggregate amount to KDDI within fifteen (15) days of the date posted on each invoice.
- 3) Any amounts due hereunder that are not paid when due shall accrue interest at the rate of one and one-half percent (1.5%) per month or the maximum allowable by law, compounded daily, beginning with the day following the date on which the payment was due, and continuing until paid in full.
- 4) All rates and other charges due hereunder are exclusive of all applicable taxes, including but not limited to value added tax, sales taxes, and duties or levies imposed by any authority, government or government agency (except income tax or other corporate taxes attributable to either Party), all of which shall be paid promptly when due, and each Party agrees to indemnify and hold the other harmless from any liability therefore.

### 2. RIGHT TO SUBCONTRACT

KDDI reserves the right to subcontract any of the herein referenced Services to any qualified agent. Notwithstanding, KDDI shall remain responsible, as per the terms and conditions of this Agreement, notwithstanding the subcontracting.

### 3. SERVICES

#### A. SYSTEM INTEGRATION SERVICES

KDDI shall provide, subject to the terms and conditions stated herein, and the CUSTOMER shall accept and pay for all services, subscribed to by the CUSTOMER in any and all "Applications for Service," hereafter submitted by the CUSTOMER (the "Services"). The Services shall be provided pursuant to this Agreement and the rates, terms, and conditions described in the respective Application for Service. This Agreement incorporates by reference the terms of such Applications for Service.

SYSTEM INTEGRATION SERVICES SHALL NOT INCLUDE THE FOLLOWING:

- (A) Any services and/or any type of solution not listed in an Application for Service;
- (B) Any shipping fees for repair of defective hardware and/or software package;
- (C) Any and all costs associated with traveling to and from CUSTOMER'S Equipment location and/or work site(s), including the time necessary to travel to and from same; and

- (D) Any training services.
- (E) Any services associated with the relocation, changing, installation, de-installation, demolition, inspection and addition of hardware and/or software onto the herein referenced equipment.
- (F) Any problems and/or damages caused by CUSTOMER's fault and/or misuse of the equipment.
- (G) Any problems and/or damages caused by hardware and/or software installed by other than KDDI America.
- (H) Any problems and/or damages caused by viruses.
- (I) Any restoration services of hardware, software and/or data installed and/or managed by other than KDDI America.
- (J) Solution for any trouble caused beyond KDDI America control, such as power outage, flood.
- (K) Answering questions related to the operation of application softwares or terminals, and
- (L) Labor and/or maintenance services provided due to troubles caused by:
  - Improperly adjusted controls which are available to the CUSTOMER, for subjective settings
  - Any unauthorized alteration and/or modification of the EQUIPMENT
  - Failure or fluctuation of electrical power or air conditioning for the herein referenced equipment
  - Vandalism or theft, fire, earthquake or other Acts of God, and
  - Other events not necessarily associated with the maintenance of EQUIPMENT over which KDDI has no control.

## **B. CUSTOMER'S RESPONSIBILITIES**

- 1) The CUSTOMER shall provide free of charge and with full and free access, parking space, adequate storage space, all necessary parts, new and/or replacement, tools, test and maintenance equipment and working space, heat, light, ventilation, electrical current and outlets for use by KDDI's Customer service personnel.
- 2) CUSTOMER shall provide new hardware equipments information and operating manuals (brand, specification, and serial number etc.) to KDDI, upon request.
- 3) The CUSTOMER shall provide a suitable clean location, for the installation and operation of the equipment, including adequate electrical supply.
- 4) The CUSTOMER shall notify KDDI, as soon as possible, of any alterations, relocations, changes and/or additions to the hardware and/or software.
- 5) The CUSTOMER shall furnish and update Network Configuration Diagram, and other documents essential to KDDI America in fulfilling its responsibilities in a timely manner.
- 6) If the CUSTOMER requests KDDI to perform any of the Services listed above, in Subsection 4 (A)(1) and/or 4(B)(1) and/or any service outside the scope of the herein referenced Applications for Service, CUSTOMER

shall be liable for any and all expenses incurred, including labor, new, spare and/or replacement parts, and all other applicable full service charges will be billed by KDDI, in accordance with the rates specified in the applicable Application for Service.

- 7) Any maintenance service required as a result of other than normal wear and tear of the equipment, such as abuse or misuse of the Equipment, or CUSTOMER's failure to provide the necessary facilities or specified operating environment, as stated by KDDI America, will be invoiced to the CUSTOMER as an additional charge based on KDDI's prevailing per call rates or any other rates noted and/or referenced herein, as applicable, and then in effect.

### **C. SERVICE HOURS**

Maintenance service will be performed between the hours of 9:00 AM and 5:00 PM, Local Time, Monday through Friday, excluding KDDI America, Inc.'s holidays such as : New Year's Day, Martin Luther Kin, Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Day after Thanksgiving Day, Christmas Day (the "Service Hours"). If any additional services are provided, above and beyond what agreed to in the Application for Service, and/or if any services are provided outside of the above noted Service Hours, said services shall be provided at an additional charge, based on the Standard Additional Charges rates shown on the Application For Service and its referenced attachments.

### **4. RISK OF LOSS**

This agreement does not cover Services, maintenance or repair necessitated by loss or damage resulting from any cause beyond the control of KDDI, including but not limited to loss or damage due to fire, water, lightning, earthquake, riots, theft, unauthorized service or modifications, or any other cause originating outside of the EQUIPMENT.

### **5. WARRANTY**

- 1) KDDI warrants that KDDI shall perform the maintenance services covered under this Agreement in a good and workmanlike manner and to the standards not less than ones generally accepted in the industry. The warranties in this Section 6 shall not apply to any Services where the non-conformance is due to (i) any alteration, misuse, improper maintenance, repair or failure to keep operating environment by CUSTOMER or anyone other than KDDI; (ii) acts of God, accident, fire, flood, lightning, earthquake, explosion, riots, wars, strikes, unusual severe weather conditions, lack of adequate transportation, power failure, quarantine restrictions, freight embargoes, orders or requests of governmental or judicial authority or any other cause beyond reasonable control of KDDI; or (iii) any breach of this Agreement by CUSTOMER.
- 2) The warranties and conditions set forth in this Section 6 constitute the only warranties, obligations and

conditions with respect to the Services. They are in lieu of all other warranties or conditions, written or oral, statutory, expressed or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

#### **6. LIMITATION OF LIABILITY**

In no event KDDI shall be liable for any indirect, incidental, special, punitive, or consequential damages of any nature whatsoever, nor any lost of revenues or profits, for or arising from any breach of this Agreement whether the claims for such damages arise in tort, contract or otherwise.

#### **7. FORCE MAJEURE**

If the performance by a party of any of its obligations under this Agreement shall be interfered with by reason of any circumstances beyond the reasonable control of that party, then that party shall be excused from such performance for a period equal to the delay resulting from the applicable circumstances and such additional period as may be reasonably necessary to allow that party to resume its performance.

#### **8. DEFAULT**

Upon default by the CUSTOMER of payment, or performance of its obligations under this Agreement, and if such failure should continue for a period of ten (10) days after written notice thereof, KDDI may, at its option, refuse or defer service, or terminate its obligations at the end of the ten (10) day notice period. During the ten (10) day notice period, KDDI shall not be obligated to provide any Services hereunder.

#### **9. CANCELLATION**

Should CUSTOMER default, terminate and/or otherwise cancel this Agreement and/or any Application for Service, after it's Commencement Date (as such term is defined in each respective Application for Service), for any reason whatsoever, any and all pre-paid charges shall not be: 1) reimbursed; 2) assignable; 3) transferable; and/or 4) refunded; therefore CUSTOMER shall forfeit all pre-paid charges. In addition, CUSTOMER hereby acknowledges and agrees that should CUSTOMER default, terminate and/or otherwise cancel this Agreement and/or any Application for Service, after it's Commencement Date, any all other charges due for the remainder of the Term and/or Project, as applicable, under the terminated and/or cancelled Application for Service shall become due and payable immediately, and that said charges may include but are not limited to non-recurring charges, recurring charges, charges for hardware, software and labor.

#### **10. CERTIFICATION OF DELIVERY & COMPLETION**

CUSTOMER hereby warrants, acknowledges and agrees that within fourteen (14) days of completion of any project

by KDDI, as subscribed to by CUSTOMER pursuant to any Application for Service submitted by same, CUSTOMER shall provide KDDI with a Certification of Delivery & Completion, in a format similar to or same as the one provided by KDDI to CUSTOMER.

#### **11. NOTIFICATION**

Any notice required herein shall be in writing and shall be deemed received only when mailed via the United States Post Office, via certified mail-return receipt requested, submitted via facsimile, and/or sent via Overnight Courier addressed to the other party at its last known mailing address.

#### **12. WAIVER**

Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

#### **13. ARBITRATION**

Any dispute arising out of or relating to this Agreement which can not be resolved within a reasonable time directly by KDDI and CUSTOMER shall be settled by 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. 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.

#### **14. CONFIDENTIALITY**

KDDI AMERICA shall hold in the strictest confidence all information that CUSTOMER or its affiliates may furnish to KDDI AMERICA and/or KDDI AMERICA may observe while on CUSTOMER's premises rendering Services to CUSTOMER, which information may include, but is not limited to, technical, business and Customer information, plans, products, processes, AND equipment ("Confidential Information"), taking all reasonable measures to ensure confidentiality. KDDI AMERICA shall limit disclosure of Confidential Information to only those individuals as the parties consider necessary and only after such individuals have undertaken to comply with the confidentiality obligations provided for in this Agreement.

KDDI AMERICA shall not make reproductions, copies or disclosures to others of any portion of Confidential Information, except with the previously obtained written permission of CUSTOMER. Upon CUSTOMER's written request or termination of this Agreement, KDDI AMERICA shall return to CUSTOMER all documents or other tangible materials provided in connection with this Agreement, and any documents or other tangible materials in KDDI AMERICA's possession or control reflecting Confidential Information of CUSTOMER.

KDDI AMERICA's obligation to maintain confidentiality shall not apply to any Confidential Information which: (i) at the time of disclosure is in the public domain; (ii) after disclosure, becomes part of the public domain, by publication or otherwise, through no fault of KDDI AMERICA; (iii) at the time of disclosure is already in KDDI AMERICA's possession, and such prior possession can be demonstrated in writing by KDDI AMERICA; (iv) is subsequently made available to KDDI AMERICA by an independent third party; *provided, however*, the third party has a lawful right to make such disclosure and that such Confidential Information was not obtained by said third party, directly or indirectly, from CUSTOMER; or (v) is required by law or judicial decree to be disclosed, though if so obligated, KDDI AMERICA shall immediately inform CUSTOMER of such requirement and shall make known to said government body or court the proprietary nature of the Confidential Information and make any applicable claim of confidentiality with respect thereto. In the event KDDI AMERICA disputes the confidential status of certain information provided by CUSTOMER, the burden of proving that such information *should* not be considered confidential *shall* be on KDDI AMERICA. No right or license whatsoever in Confidential information is granted by CUSTOMER to KDDI AMERICA hereunder or by the disclosure of Confidential Information.

## **15. GOVERNING LAW**

The construction and performance hereof shall be governed by the laws of the State of New York, without reference to its principles of conflict of laws.

**16. CONFLICTS:** In the event of a conflict between the terms and conditions, in this Agreement & the Application(s) for Service, then the Application(s) for Service shall govern.

## **17. ENTIRE AGREEMENT**

This Agreement, including the herein referenced Applications for Service constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. This Agreement may only be modified or supplemented by an instrument in writing executed by a duly authorized representative of each party.