

## KDDI Mobile End-User's Terms & Conditions

By accessing any areas of this Internet site and/or by ordering any product and/or service through this Internet site, the user agrees to be bound by KDDI America, Inc.'s ("KDDI-A") terms and conditions, as set forth below. The terms and conditions of this agreement includes terms on use of this Internet site, terms on the purchase of products and/or services, and terms and conditions regarding copyright and trademark related matters.

"KDDI-A" means (1) entities controlled by, under common control with or controlling KDDI America, Inc., and (2) any entity which is or becomes a member of the KDDI-A group, as defined from time to time by KDDI-A.

### General Terms and Conditions

Effective December 5, 2007

**General.** Your agreement with KDDI-A, includes any terms noted on your service plan and these General Terms & Conditions, as further detailed hereinafter (collectively referred to hereinafter as the "Terms"). These Terms cover the terms on which we agree to provide and you agree to accept any service or product we make available to you, including your wireless services, wireless devices, etc. (collectively the "Services"). You accept these Terms when you do any of the following: (a) provide your written or electronic signature; (b) accept through an oral or electronic statement; (c) attempt to or in any way use any of the Services; (d) pay for any Services; or (e) open any materials or package that says you are accepting when you open it. These Terms include the terms in this document together with the terms associated with the Services you select (as described in our marketing materials, e.g., service plan brochures, or on our website). You represent that you are at least 18 years old. In this document, we use the words "we," "us," "our" or "KDDI-A" to refer to KDDI America, Inc. and its affiliates doing business as KDDI-A. Carefully read all the herein noted terms, which includes, amongst other things, a **MANDATORY ARBITRATION** provision. Moreover, KDDI-A may, from time to time, amend, modify and/or supersede the Terms. The revised Terms shall apply, as the terms and conditions pursuant to which the Services shall be provided to you, as of the date the revised Terms are posted on KDDI-A's KDDI Mobile website. The Terms will be posted on KDDI-A's KDDI Mobile website where you can see and read same, including your My Account page within the KDDI Mobile website, in which you may log in as a KDDI Mobile user to view your account information.

**Term.** Unless we specifically tell you otherwise, our service plans require that you maintain service for a minimum term ("Service Plan Term"). After satisfying this minimum term, your service plan will continue on a month-to-month basis unless you have agreed to extend the term for additional period(s). Certain service, promotional or product offers may require that you agree to or extend a Service Plan Term. As discussed below, we may charge you an Early Termination Fee if you deactivate a Service Plan Term before the end of the term. If your service plan requires you to maintain an active phone line service, for a minimum Term, the Term begins on the phone line activation date, even if you have not received your wireless device, and the phone line activation date shall also be billing start date. For customers changing service plans, the Term begins when the new service plan is selected. You may terminate any line of service before its Term ends by calling 1-877-533-4117, however you will be responsible for an EARLY TERMINATION FEE of up to \$225 (the "Early Termination Fee") for each line of service terminated early. Business customers are only liable for the Early Termination Fee on lines of service that are the responsibility of the business. Business customers are not liable for the Early Termination Fee on lines of service that are the responsibility of any employees. You do not have to pay the Early Termination Fee if you terminate under our return policy or where the Terms allow you to do so without being accessed an Early Termination Fee. Payment of the Early Termination Fee does not satisfy other outstanding obligations owed to us, including maintaining Term Commitments on other lines of service, and/or service and/or equipment related charges.

**Verification of your identity and credentials.** Plans are subject to credit approval. KDDI-A will require you to provide certain necessary personal information, in order to verify your identity, credit worthiness and other credentials, including but not limited to your name, address and credit card information, which you hereby agree KDDI-A may maintain in its database, as determined by KDDI-A in its sole discretion. You must have and maintain satisfactory credit to receive and continue to receive Services. In addition, depending on your credit worthiness, we may charge a nonrefundable activation fee, deposit, prepayment or other fee to establish and/or maintain Services. Also, if KDDI-A believes, in its sole discretion, that some or all of the information you provided is fraudulent, then KDDI-A may not accept your service order and/or may suspend/terminate your already existing service without further notice. If you have any past due balance, KDDI-A may apply your deposit to the outstanding balance. In that case, you will be required to replenish your deposit amount again. Your service shall remain suspended until you replenish the deposit.

**Account Spending Limit & Deposits.** Depending on your credit worthiness, payment history and/or any deposit amounts you provide, KDDI-A may impose an account spending limit ("ASL") on any account, with or without notice. An ASL should not be relied on to manage usage on your account. We may suspend an account without prior notice when the account balance reaches the ASL, even if the account is not past due. Services can be restored upon payment of an amount that brings the account balance below the ASL and any past due amounts. If we require a deposit for you to establish or maintain an account, we will hold the deposit as partial guarantee of payment for Services. We may change the deposit amount at any time with notice for good reason. Except as we allow, a deposit may not be used to pay any invoice or delay payment. The deposit amount, the length of time we hold the deposit and changes to the deposit amount are determined based on your credit and payment history. No interest shall be paid on any deposits provided. We may mix deposits with our other funds. If your account is terminated for any reason, we may without notice apply your deposit to any outstanding charges. We may send any remaining deposit amounts to your last known address within 90 days after account termination. If the funds are returned to us, you may claim these funds for one year from the date of return. Any money held during this one-year period will not accrue interest for your benefit and are subject to a servicing fee charged against the balance. You forfeit any portion of the money left after the one-year period.

**Wireless Devices, Numbers & E-mail Addresses.** We did not manufacture your wireless device and we are not responsible for any defects or for the acts or omissions of the manufacturer. The only warranties on your device are any limited warranties extended by the manufacturer directly to you or passed on to you through us. Service requires a phone compatible with our network. Your device may not accept Services directly from any other carrier. KDDI-A will only ship your wireless device to an address within US address, but under no circumstances shall KDDI-A ship a wireless device to a P.O. BOX. You do not have any rights to any number, e-mail address or other identifier we may assign to your device or account; you may not modify, change or transfer any of these except as we allow or as allowed for by law. Your phone number will be assigned based on your address. In certain instances, you may transfer your number from another carrier to us, or from us to another carrier. We do not guarantee that transfers to or from us will be successful. If you transfer your number away from us, these Terms (e.g., Early Termination Fee, etc.) shall still apply. Should you decide to terminate the service, because your requested phone number transfer to KDDI-A was unsuccessful, you will be held responsible for any discounts provided to you with the purchase of your device.

**Coverage.** Coverage is not available everywhere. See our mapping brochure or visit our website at [www.kddimobile.com](http://www.kddimobile.com) for approximate outdoor coverage information. This may include coverage on our digital network (the "KDDI Mobile Digital Network") as well as coverage we make available to you through agreements with other carriers ("off network" or "roaming" coverage). *All coverage maps are high level representations of outdoor coverage and there are gaps in coverage within areas shown as covered on the maps. Coverage is not available everywhere, nor can we guarantee you will receive coverage at all times, or without interruptions or delays (e.g., dropped calls, blocked calls, etc.) in the coverage areas we identify. Actual coverage and quality of Services may be affected by conditions within or beyond our control, including network problems, software, signal strength, your equipment, structures (including buildings in which you may be located), atmospheric, geographic, or topographic conditions.*

**Roaming Coverage.** You are roaming anytime your phone indicates that you are roaming. Roaming coverage is available through KDDI-A and any roaming calls placed will result in additional charges. Roaming calls placed "manually" (through an operator or with a credit card) will always incur separate and additional charges. Depending on your phone settings, you may automatically roam if there is a gap or interruption in coverage within the KDDI Mobile Digital Network coverage area and roaming coverage areas. See your phone guide for how to adjust phone settings. Certain features and services may not be available in roaming coverage areas (including Data Services, voicemail, call waiting, call forwarding, etc.).

**Messaging.** You may incur charges in accessing, sending or receiving messages on your device. We may impose limits on the number of voicemail, text, email or other messages that can be retained through your account. Indicators of messages on your device, including mailbox icons, may not always provide an up to date indication of new messages and you may at times need to manually reset or clear your mailbox indicator. Legitimate messages may be interrupted by software aimed at prevention of SPAM or similar messages.

**TTY Access.** A TTY (also known as TDD or Text Telephone) is a telecommunications device that allows people who are deaf or hard of hearing, or who have speech or language disabilities, to communicate by telephone. TTY doesn't work with all devices. If you have a TTY-capable device, it may not function effectively, or at all, when attempting 911 calls and should not be relied on for such calls.

**Charges.** Carefully review the Terms of your Services. A non-refundable phone activation fee applies to new activations, certain service plan changes and/or upgrades of equipment, as further detailed on your service application form. You will be assessed charges based on the Terms of your Services including, without limitation, monthly recurring charges and charges based on actual usage (e.g., charges for international long distance, roaming, call forwarding, etc.). Some of Monthly service charges are not refundable if service is terminated

before your billing cycle ends. All phone usage, including incoming and outgoing calls and messages, incur charges. Unused plan minutes do not carry forward. Except with certain plans, included plan minutes are not good for local or long-distance off network roaming calls. International roaming rates will vary. On a call that crosses time periods, minutes are deducted or charged based on the call start time. Calls are rounded up to the next whole minute. Airtime and other time based usage charges are calculated from when your device first initiates contact with a network until the network connection is broken, whether or not you were actually successful in connecting to the intended destination. However, you will not be charged for voice calls that ring and do not pick up, or if you get a busy signal. For voice calls received by your device, you are charged from the time shortly before the phone starts ringing until the call is terminated. You are charged for an entire voice call based on the time period in which the call is initiated. Prepaid services shall have an expiration date and a daily service charge may be applicable, based on the service plan you select. KDDI-A will terminate your prepaid service account thirty (30) days after your prepaid service balance is depleted, unless you replenish the prepaid services account, within said thirty (30) day period. Once your service account is terminated and/or closed you may not be able to obtain your previous phone number upon reactivation. In addition, KDDI-A shall require that you pay your monthly invoices and/or top-up amount, for prepaid service plans, via the means specified by KDDI-A from time to time, such as but not limited to personal checks, credit cards, via website and VRS (Voice Response System).

**Mobile WEB Service.** "Mobile WEB Service" refers to Internet data services provided by KDDI-A. Mobile WEB Service may require a specific type of KDDI Mobile Phone or device. Mobile WEB Service may not be available while roaming off the KDDI Mobile Digital Network. You may not receive calls or use other services while using Mobile WEB Service.

**Mobile WEB Service Limitation of Usage.** Mobile WEB Service is not available for use with server devices or host computer applications, including but not limited to other systems that drive continuous heavy traffic or data sessions, or as substitutes for private lines or frame relay connections, VPN and/or other similar services. Mobile WEB Service is not available: (1) with any other device used in connection with a computer or PDA - including phones, smart phones or other devices used with connection kits or similar phone-to-computer/PDA accessories; and (2) with Bluetooth capable KDDI Mobile Phones used as a modem in connection with other devices. KDDI-A reserves the right to deny and/or terminate the Services, without notice, for any misuse, breach, default and/or illegal activity.

**Mobile WEB Service Data Usage Charges.** Data usage of Mobile WEB Service is calculated on a per kilobyte basis and rounded up to the next whole kilobyte. Kilobyte usage charge per each session will be rounded up to the next full cent. Rounding occurs at the end of each session or each clock hour and, at that time, we will deduct accumulated data usage from your plan, or assess overage or casual usage charges. You are responsible for all data activity from and to your phone/device, regardless of who initiates the activity. Estimates of data usage will vary from actual use. In certain instances, you may not know that your session has not ended. As long as your device is connected to our network, you will incur data usage charges. You will be charged for all data directed to the internet address (or "IP address") assigned to your device, regardless of who initiates the activity or whether your device actually receives the data. This includes, but is not limited to, the amount of data associated with the particular information/item (e.g. game, ringer, email, etc.), additional data used in accessing, transporting and routing this information/item on our network, data from partial or interrupted downloads, re-sent data, and data associated with unsuccessful attempts to reach websites or use applications. Based on these and a number of other factors (e.g., the specific application, network performance, etc.) data used and charged to you will vary widely, even for the same activity. Estimates of data usage - for example, the size of downloadable files - will not be accurate or a reliable predictor of actual usage. Your invoice will not separately identify the number of kilobytes attributable to your use of specific sites, sessions or services. The use of *Mobile WEB plus* requires an additional fee. For the charges related to *Mobile WEB plus*, see the Sections titled: "*Mobile WEB plus*" and "Content Charges."

**General Use of the Internet through Mobile WEB Service.** You assume all responsibility and risk for the use of the Internet and the Internet generally. The use of the information, products, and/or services provided on or available through the services are provided on an "As is" and "AS available" basis, without warranties of any kind, either express or implied, including, but not limited to warranties of title, non-infringement or implied warranties of merchantability or fitness for particular purpose. No advice or information given by us, our partners, affiliates or their respective employees or representatives shall create any warranty. Neither KDDI-A nor its partners, affiliates, employees or representatives warrant that the information, products, processes, and/or services on the internet generally, will be un-interruptible, accurate, complete, useful, functional or error free, or that any information, software or other material accessible through the services is free of viruses or other harmful components.

The links found in the "Mobile WEB Directory" (links on the Mobile WEB portal site for KDDI Mobile Phones or devices provided by KDDI-A), unless otherwise explicitly noted as a KDDI Mobile web link, are third party websites. KDDI-A has no control over or responsibility for any contents and/or any other materials on, obtained

from and/or viewed through these third party websites, including third party website links available via KDDI Mobile's website (hereinafter collectively referred to as "Third Party Contents") and/or transactions that occur therein. KDDI-A provides links to other sites merely as a convenience to you, and KDDI-A cannot be held liable for any damages or injury arising from Third Party Contents, transactions occurring therein, or any interruptions which might affect such transactions, including, but not limited to, transactions entered into through security-related websites. The terms and conditions, privacy policies and security levels governing the services provided by the third party websites may differ significantly from the policies of third party websites. There are risks in using any information, products or software found on the Internet or in otherwise entering transactions through the Internet. Accordingly, KDDI-A cautions you to make certain you understand these risks and any applicable policies of Third Party Contents before retrieving, using, relying upon, or purchasing anything, or before otherwise transacting, via the internet.

Any dealings that you have with any third party websites, owners and/or advertisers found on the Internet, including the third party website links on the Mobile WEB Directory, are between you and the third party websites, owners and/or advertisers and you acknowledge and agree that KDDI-A, its employees, officers, agents and/or affiliates will not be liable for any loss you may have sustained and/or claim you may have against any such third party websites, owners and/or advertisers. Furthermore, KDDI Mobile's Customer Support Center cannot assist you, regarding any issues related to third party websites, including but not limited to the third party website links found on the Mobile WEB Directory. Use of certain content is generally restricted by law to those 18 years of age or older ("adult content"). Adult content are intended by KDDI-A for use only by those 18 years of age or older. By using adult content, you represent and warrant that you are at least 18 years of age. You further hereby represent and warrant you will not, under any circumstance, permit anyone under the age of 18 to access the adult content on any KDDI-A service, or to consume content provided in connection with adult content.

**Mobile WEB plus.** "Mobile WEB plus" refers to a service within Mobile WEB Service, whereby you can make purchases of contents from KDDI-A by entering your Mobile Password. A Mobile Password is a four (4)-digit PIN number given to you for the purchases of *Mobile WEB plus* services and log-ins for VRS. You must be subscribed to KDDI Mobile WEB Service, in order to use *Mobile WEB plus*. *Mobile WEB plus* may require a specific type of KDDI Mobile Phone or device.

"*Mobile WEB plus* Service(s)" refer to each content or service you can purchase via *Mobile WEB plus*. Contents purchased via the *Mobile WEB plus* are a variety of services and contents that can be used over a KDDI Mobile Phone or device, including but not limited to screensavers, ringtones, and subscription-based paid information (collectively hereinafter referred to as "Mobile Contents"), and services and products whose use is not limited to usage over KDDI Mobile Phone or devices, such as airlines e-tickets (collectively hereinafter referred to as "Non-Mobile Contents"), and they are provided by either KDDI-A and/or third party content providers. Use and/or purchase of each *Mobile WEB plus* Service requires an additional fee (the "Content Charge").

KDDI-A may temporarily disallow you from attempting the use of *Mobile WEB plus*, if you enter the wrong Mobile Password more than three (3) times in a row at the point of purchase, in order to avoid fraudulent use of *Mobile WEB plus*. KDDI-A has the right to prohibit or cancel the use of *Mobile WEB plus*, if we suspect that your KDDI Mobile Phone/device or Mobile Password was or may have been fraudulently used. Subject to the terms of the *Mobile WEB plus* Services purchased, KDDI-A may delete downloaded items downloaded to any storage areas KDDI-A may provide, including any pictures, games and other content. KDDI-A may limit the amount of *Mobile WEB plus* Services you may purchase in a specific time frame (month, week, day, or other time period).

**Content Charges.** Unless otherwise stated in the Terms of Use of the *Mobile WEB plus* Service of which you are purchasing, you will be billed for *Mobile WEB plus* Service purchases on your KDDI Mobile invoice based on the charges as specified at the time of purchase. Content Charge may be billed per use, download, subscription, or based on some other form, and it will be identified at each point of purchase. If the *Mobile WEB plus* Service is billed on a subscription-basis, you may terminate it at anytime after the first month of subscription. KDDI will regard the account holder to whom the Mobile Password was issued as the purchaser of the *Mobile WEB plus* Services, even if the "Remember Password Function" was used to obtain the *Mobile WEB plus* Service and regardless of who actually entered the Mobile Password or who actually purchased the *Mobile WEB plus* Services, and shall bill the charges accordingly. ("Remember Password Function" shall mean a function you can use to bypass the step for entering the Mobile Password by agreeing and registering to the method set by KDDI-A in advance.) You acknowledge that you have agreed to the Terms of Use and the responsibility to pay the Content Charge, when you enter the Mobile Password to use the *Mobile WEB plus* Service. KDDI-A may not allow you to purchase new *Mobile WEB plus* Services, cancel or discontinue your subscription-based *Mobile WEB plus* Services if you have a balance overdue to KDDI-A for a period of time, longer than what is set as allowable by KDDI. Once the outstanding balance is cleared, you may use the *Mobile WEB plus* to purchase *Mobile WEB plus* Services again. If a subscription-based *Mobile WEB plus* Service was canceled as a result of your outstanding payment, you may need to re-subscribe to the *Mobile WEB plus* Service, once the balances are cleared.

**Customer Support & Warranties for *Mobile WEB plus*.** The available customer support and/or warranties for each *Mobile WEB plus* Service shall be set forth in the Terms of Use pertaining to each *Mobile WEB plus* Service. You must review the applicable Terms of Use for each *Mobile WEB plus* Service in order to identify the person/company to contact regarding your inquiries pertaining to both customer support and warranties related issues associated with the *Mobile WEB plus* Service. **NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, KDDI-A DISCLAIMS AND MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (TO THE MAXIMUM EXTENT ALLOWED BY LAW) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE CONCERNING THE MOBILE WEB PLUS SERVICES AND ALL SUCH CLAIMS PERTAINING TO SAME SHALL BE ADDRESSED TO THE APPROPRIATE PARTY AS NOTED IN THE ABOVE REFERENCED TERMS OF USE.**

**Your Responsibilities for Financial Transactions dealing with non-Mobile WEB plus Services.** FOR ANY ISSUES REGARDING USE, COMPENSATION FOR DAMAGES AND/OR DISPUTES YOU HAVE WITH ANY THIRD-PARTY CONTENTS TO WHICH THE TERMS OF THE MOBILE WEB PLUS DO NOT APPLY (THE "NON-MOBILE WEB Plus"), YOU AND THE THIRD PARTY MUST RESOLVE THE DISPUTE BASED ON THE TERMS OF USE YOU AGREED WITH THE THIRD PARTY, AND KDDI-A WILL NEITHER ASSUME ANY RESPONSIBILITY FOR SAME NOR TAKE PART IN REPRESENTING YOU REGARDING SAID NON-MOBILE WEB Plus. **NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, KDDI-A MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED REGARDING ANY NON-MOBILE WEB PLUS AND/OR OTHER RELATED MATTERS.**

**KDDI Mobile Roadside Assistance Service.** Roadside Assistance is linked to your KDDI Mobile Services. You will need to give your wireless phone number and have your phone with you when obtaining assistance through the service. Your Roadside Assistance Service may be terminated when your KDDI Mobile Service terminated. Roadside Assistance is not a reimbursement program. You must call the designated access number for number for service. Service is available for legally registered light passenger vehicles (i.e. sedans, coupes, convertibles, SUVs, minivans, light-duty pickups, etc.). RVs, motorcycles, boats, trailers and/or vehicles with more than 2 axles and/or more than 4 wheels are not covered. Any vehicles designed or modified for commercial or heavy-duty use are not covered (i.e. limousines, emergency vehicles, public transportation vehicles, heavy-duty trucks, etc.) Roadside Assistance Service is not valid when operating off road. If roadside service exceeds the maximum benefit of \$50.00 per service call, you are responsible for the difference in cost at the time of service. Your coverage will become effective 72 hours after enrollment. While prompt attention to your call is assured, this service is not responsible for delays. Nor is this service responsible for extra expenses associated with such delays. This includes, but is not limited to, inconvenience, storage, payment for lost time, vehicle rental expense, lodging, meals, other travel costs and/or other miscellaneous expenses. Fuel replenishment is available if you've completely run out of gasoline or diesel. Vehicle must be attended when service arrives. We make any warranties as to actual response times on individual calls and are not responsible for service delays.

**Using Services.** You agree to not use our Services in an unlawful, fraudulent or abusive manner. You may not resell or lease Services to anyone. KDDI-A is not responsible for any opinions, advice, statements, services applications or other information provided by third parties and accessible through our various Services, including the internet. Neither KDDI-A, its vendors or licensors guarantees the accuracy, completeness or usefulness of information that is obtained through these Services. You are responsible for evaluating such content. ***You are also responsible for any use of our Services through any wireless device on your account including, but not limited to, use by children or minors. We strongly recommend that you closely monitor any such usage.***

**Changing Services.** Changes to Services will generally be effective by the end of next business day, in which case your invoice will reflect pro-rated charges. Certain changes may be conditioned upon payment of an Early Termination Fee or certain other charges.

**Add-a-Phone.** Requires a minimum Term agreement for each phone/line of service added ("Secondary Line"). The first phone activated on the service plan ("Primary Line") and Secondary Lines may have different Term commitment end dates. If the Primary Line on the account is terminated prior to the expiration of the Term of any Secondary Line, a Secondary Line must move to the Primary Line position.

**Invoicing & Payment.** Invoicing cycles and dates may change from time to time. Monthly recurring and related charges for Services are generally invoiced one invoicing cycle in advance. Other charges are invoiced soon after they are incurred. Most usage is generally applied to the invoicing cycle in which they are incurred, but in some instances may be applied to subsequent invoicing cycles. You are responsible for all charges associated with any device activated on your account, regardless of who used the device. You must pay all charges by the due date on the invoice. ***Past due amounts accrue late charges until paid at the rate of 1.5% per month or at the highest rate allowed by law and may result in immediate suspension of your account.*** Please note that even while your service is suspended, as provided for hereunder, you are responsible for the monthly usage and recurring charges and same must be paid by you. If you provide KDDI-A with your credit card information

and/or if you agree to any auto-payment option through banking or credit card, we may initiate payment from the credit card and/or banking information for all amounts we invoice you without additional authorization and/or notice. Please note that KDDI-A does not accept certain types of credit cards, as determined by KDDI-A from time to time, in its sole discretion. Based on your credit or payment history, we may require certain forms of guaranteed payment as a condition of maintaining Services. If we invoice you for amounts on behalf of a third-party, payments received are first applied to amounts due to us. You may be charged additional fees for certain methods of payment and for payments denied by a financial institution. Acceptance of payments (even if marked "paid in full") does not waive our right to collect all amounts that you owe us. Additionally, if there are any past due amounts, KDDI-A may not allow you to perform and/or exercise certain account activities, including but not limited to change of the rate plan, replacement of handset, etc...

**Disputed Charges.** Disputes concerning any charges invoiced must be raised within 30 days of the date of the invoice. You accept all charges not disputed in this time period. Disputes can only be made by calling or writing us as directed on your invoice.

**Taxes and Surcharges.** Prices do not include taxes, national KDDI-A surcharges, such as a USF charge and local KDDI-A surcharges. Surcharges are not taxes or government required charges. We invoice you for taxes, fees and other charges levied by or remitted directly to federal, state, local or foreign governments including, without limitation, sales, gross receipts, Universal Service, use, and excise taxes. If you claim any tax exemption, you must provide us with a valid tax-exempt document. Tax exemptions are not applied retroactively. We also invoice you for surcharges that we collect and keep to pay for the costs of complying with government programs such as number pooling and portability, and Enhanced 911 service; these charges are not the taxes nor government imposed assessments.

**Termination of Services.** Consistent with these Terms, we may terminate the Services at any time with notice to you, and in certain circumstances without notice, for any reason, including but not limited to misuse, default, breach and/or any illegal activity. You may terminate the Services at any time with prior notice to us, subject to any herein noted Early Termination Fee. Except as otherwise provided, in these Terms, **IF YOU TERMINATE YOUR SERVICE PLAN TERM EARLY, OR WE DO SO FOR GOOD CAUSE, INCLUDING BUT NOT LIMITED TO MISUSE, DEFAULT, BREACH AND/OR ANY ILLEGAL ACTIVITY, YOU WILL BE REQUIRED TO PAY THE APPLICABLE EARLY TERMINATION FEE ASSOCIATED WITH YOUR SERVICES.** We will not charge an Early Termination Fee for deactivations consistent with our Return Policy section noted herein or for service plans being provided on a month-to-month basis. If any Services are terminated before the end of your current invoicing cycle, we will prorate charges to the date of termination, but you will not receive a credit or refund for any unused Services.

**Warranties & Disclaimers.** Handset replacements may not be for the same model, based on availability. Returned handsets must be accompanied by Return Authorization Number ("RA#") and all its accessories, the original box, and the original receipt. You must return the product to the KDDI-A specified address, within fourteen (14) days after obtaining the RA#, at KDDI'S expense. You shall be charged in full the replacement value of the handset, if KDDI-A identifies any type of physical or water damage and/or if the returned handset's damages are not covered by the manufacturer's warranty. The only warranties on your device are any limited warranties extended by the manufacturer directly to you or passed on to you through us. Please note that the warranty period will vary based on type of handset purchased. **NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, WE MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING (TO THE EXTENT ALLOWED BY LAW) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE CONCERNING THE SERVICES AND/OR WIRELESS DEVICES, INCLUDING BUT NOT LIMITED TO SERVICE ACTIVATION DATES AND/OR ANY POTENTIAL HARM DERIVED FROM THE HANDSETS. IN ADDITION, WE DO NOT PROMISE UNINTERRUPTED AND/OR ERROR-FREE SERVICES AND YOU AGREE TO HOLD US HARMLESS FOR ALL SUCH PROBLEMS AND/OR FAILURES.**

**KDDI Mobile Return Policy.** To cancel your contract, you are required to return of your complete, undamaged KDDI Mobile wireless device with the original retailer's proof of purchase within fourteen (14) days of purchase. You must still pay all charges based on actual usage (partial monthly service charges, taxes and KDDI-A surcharges). You will first need to contact KDDI Mobile's customer support center, and acquire a return authorization number ("RA#"). Should you cancel your service contract within fourteen (14) calendar days of your service activation, you will not be assessed an early termination penalty, provided that you return the KDDI Mobile wireless device to the specified location, within fourteen (14) calendar days after obtaining the RA#. **Please note:** If you purchase any KDDI-A wireless device and/or accessory at a non-KDDI-A store (e.g. retail store), all returns must and shall be handled by the retail store, and not KDDI-A. Therefore, the retail store's return policy shall apply, and may vary from store to store.

**Lost or Stolen Equipment.** If your device is lost or stolen, please notify us immediately by calling 1-877-533-4117. ***You are responsible for all charges incurred before you notify us of the loss or theft.*** You agree to cooperate reasonably with us in investigating suspected unlawful or fraudulent use.

**Limitation of Liability.** Neither we nor our vendors, suppliers or licensors are liable for any damages arising out of or in connection with any: (a) act or omission by you, or another person or company; (b) providing or failing to provide Services, including deficiencies or problems with your wireless device, our network coverage or Services (e.g., dropped, blocked, interrupted calls/messages, etc.); (c) traffic or other accidents, or any health-related claims allegedly arising from the use of Services, any wireless devices or related accessories; (d) content or information accessed while using our Services, such as through the internet; (e) interruption or failure in accessing or attempting to access emergency services from your phone, including through 911, E911 or otherwise; or (f) events due to factors beyond our control, including acts of God (including, without limitation, weather-related phenomena, fire or earthquake), war, riot, strike, or orders of governmental authority. *In the event we are found to be responsible to you for monetary damages relating to the Services (including wireless devices), you agree that any such damages will not exceed the pro-rated monthly recurring charge for your Services during the affected period.*

**NO CONSEQUENTIAL OR OTHER DAMAGES.** UNDER NO CIRCUMSTANCES SHALL WE BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES OF ANY NATURE WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH PROVIDING OR FAILING TO PROVIDE SERVICES, PHONES OR OTHER EQUIPMENT USED IN CONNECTION WITH THE SERVICES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF BUSINESS, OR COST OF REPLACEMENT PRODUCTS AND SERVICES. THIS SECTION SURVIVES TERMINATION OF THE SERVICES.

**MANDATORY ARBITRATION OF DISPUTES.** INSTEAD OF SUING IN COURT, YOU AND KDDI-A AGREE TO ARBITRATE ANY AND ALL CLAIMS, CONTROVERSIES OR DISPUTES AGAINST EACH OTHER ARISING OUT OF OR RELATING TO THESE TERMS, INCLUDING, WITHOUT LIMITATION, THE SERVICES, ANY PHONES/EQUIPMENT, OR ADVERTISING, EVEN IF IT ARISES AFTER YOUR SERVICES HAVE TERMINATED, AND INCLUDING CLAIMS YOU MAY BRING AGAINST KDDI-A'S EMPLOYEES, AGENTS, AFFILIATES OR OTHER REPRESENTATIVES, OR THAT KDDI-A MAY BRING AGAINST YOU (THE "CLAIMS"). THE FEDERAL ARBITRATION ACT APPLIES TO THESE TERMS AND ITS PROVISIONS, NOT STATE LAW, GOVERN ALL QUESTIONS OF WHETHER A CLAIM IS SUBJECT TO ARBITRATION. THIS PROVISION DOES NOT PREVENT EITHER YOU OR KDDI-A FROM BRINGING APPROPRIATE CLAIMS IN SMALL CLAIMS COURT, BEFORE THE FEDERAL COMMUNICATIONS COMMISSION OR A STATE PUBLIC UTILITIES COMMISSION.

YOU AND KDDI-A FURTHER AGREE THAT NEITHER KDDI-A NOR YOU WILL JOIN ANY CLAIM WITH THE CLAIM OF ANY OTHER PERSON OR ENTITY IN A LAWSUIT, ARBITRATION OR OTHER PROCEEDING; THAT NO CLAIM EITHER KDDI-A OR YOU HAS AGAINST THE OTHER SHALL BE RESOLVED ON A CLASS-WIDE BASIS; AND THAT NEITHER KDDI-A NOR YOU WILL ASSERT A CLAIM IN A REPRESENTATIVE CAPACITY ON BEHALF OF ANYONE ELSE. IF FOR ANY REASON THIS ARBITRATION PROVISION DOES NOT APPLY TO A CLAIM, WE AGREE TO WAIVE TRIAL BY JURY.

A single arbitrator engaged in the practice of law will conduct the arbitration. The arbitration will be filed with and the arbitrator will be selected according to the rules of the American Arbitration Association ("AAA"), or, alternatively, as we may mutually agree. We agree to act in good faith in selecting an arbitrator. The arbitration will be conducted by and under the then-applicable rules of AAA, wherever the arbitration is filed or, if the arbitrator is chosen by mutual agreement of the parties, the then-applicable rules of AAA will apply unless the parties agree otherwise. All expedited procedures prescribed by the applicable rules will apply. We agree to pay our respective arbitration costs, except as otherwise required by rules of AAA, as applicable, but the arbitrator can apportion these costs as appropriate. The arbitrator's decision and award is final and binding, and judgment on the award may be entered in any court with jurisdiction.

If any party files a judicial or administrative action asserting a claim that is subject to arbitration and another party successfully stays such action or compels arbitration, the party filing that action must pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including attorneys' fees.

If any portion of this Mandatory Arbitration of Disputes section is determined to be invalid or unenforceable, the remainder of the Section shall remain in full force and effect.

**The Terms.** We may change the Terms at any time with notice. Any changes to the Terms are effective when we publish them. If you use our Services or make any payment to us on or after the effective date of the changes, you accept the changes. If we change a material term of the Terms and that change has a material adverse effect on you, you may terminate the Services without an Early Termination Fee by calling 1-877-533-4117 within 30 days after the changes go into effect. You understand and agree that taxes, Universal Service fees and other charges imposed by the government or based on government calculations may increase or decrease on a monthly basis, and that this paragraph does not apply to any increases in such taxes, Universal Service fees or other charges.

**Miscellaneous.** You may notify us by calling us at 1-877-533-4117, or use that number to get our current address for written notice. We may send you notice to your last known address, via overnight courier and/or first class or certified U.S. mail postage prepaid, as reflected in our invoicing records, or by email and if rejected by your server for any reason (e.g. spam email), said email shall be deemed delivered nonetheless, or by calling and leaving you a voice message on your wireless device or home phone. Notices will be deemed given as of the earlier of (i) the date of actual receipt, (ii) the next business day when notice is sent via express mail or personal delivery, (iii) three (3) business days after mailing in the case of first class or certified U.S. mail or (iv) on the date set forth on the email confirmation. Furthermore, upon request of either party, the other party shall provide an email confirmation receipt, as proof of delivery, for all emailed notices. The Services and these Terms shall be governed by and must be construed under federal law and the laws of the State of New York, without regard to its choice of law principles. If either of us waives or fails to enforce any requirement under these Terms in any one instance, that does not waive our right to later enforce that requirement. If any part of these Terms is held invalid or unenforceable, the rest of these Terms shall remain in full force and effect. Section headings are for descriptive, non-interpretive purposes only. You may not assign the Services and/or these Terms to any other person or entity without our prior written approval. These Terms (including any referenced documents and attachments) makes up the entire agreement between us and replaces all prior written or spoken agreements.

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