

KDDI America, Inc.

Master Agreement for International ATM & Frame Relay Services

**MASTER AGREEMENT FOR
INTERNATIONAL ATM AND FRAME RELAY SERVICES
FURNISHED BY
KDDI AMERICA, INC.**

KDDI America, Inc.
825 Third Avenue, 3rd Floor
New York, New York 10022

This Master Agreement for International ATM and Frame Relay Services (“Agreement”) is made by and between KDDI America, Inc. (“KDDI-A” or “Company”) and Customer.

SECTION 1 - DEFINITIONS

Affiliate – With respect to party to this Agreement, any entity whose equity or voting stock is twenty (20) percent or more owned or controlled, directly or indirectly, by that party.

Authorized User – A person, firm or corporation, or any other entity authorized by Customer to communicate utilizing the Company’s services.

Company or KDDI-A – KDDI America, Inc.

Customer – A person, firm or corporation that contracts for service under this Agreement and is responsible for the payment of charges and compliance with the terms and conditions of this Agreement.

Effective Date – The date on which the signature page of a Service Order Form for any service provided hereunder is signed by the Company, or the date upon which Customer begins using any service provided hereunder, whichever is earlier.

FCC - Federal Communications Commissions.

Foreign Affiliate - A foreign carrier that controls or directly or indirectly owns more than 25 percent of the Company or is controlled or is directly or indirectly owned more than 25 percent by the Company or an entity that controls the Company.

Foreign Correspondent – A foreign administration or other company operating terminals outside the United States.

Interruption – Inability to complete either incoming or outgoing calls or both due to equipment malfunction or human errors. Service difficulties such as slow dial tone, circuits busy or other network and/or switching capacity shortages are not Interruptions. Interruptions caused by (i) the negligence of or noncompliance of the provisions of this Agreement by the Customer, (ii) facilities, power, or equipment provided by Customer, including customer-purchased equipment and automatic dialing equipment, or (iii) failure of channels, equipment or communications systems not provided by the Company, are not deemed an Interruption of service.

Local Exchange Carriers: Providers of local exchange services within the United States.

PVC (or Permanent Virtual Circuit) - A virtual link between Customer sites for data transmission.

Rate Schedule – The schedule of current rates, restrictions, and discounts applicable to the services provided hereunder.

Service Order Form – 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.

United States: The contiguous 48 states, the District of Columbia, Alaska and Hawaii.

SECTION 2 - APPLICATION OF AGREEMENT

- 2.1** This Agreement contains the terms, conditions and rates applicable to the provision of International ATM and Frame Relay Services, as described in Section 4 below, by KDDI America, Inc., between the United States and foreign points listed in the Rate Schedule. The specific rates set forth in the Rate Schedule shall apply to the services provided hereunder. Service is furnished subject to transmission, atmospheric and like conditions.
- 2.2** Each Customer that orders any service described in this Agreement agrees, upon placing an order for such service with the Company, to be bound by the terms, conditions and rates applicable to that service as set out in this Agreement. This Agreement is available for review by any Customer or prospective customer of the Company. Customers or prospective customers may obtain additional copies of this Agreement through the Company's website at www.kddia.com, or by making a telephone request to 1-888-533-4649.
- 2.3** The telecommunications services of the Company are not part of a joint undertaking with any other entity providing telecommunications channels, facilities or services.
- 2.4** The rates, terms and conditions contained in this Agreement do not apply, unless otherwise specified, to the lines, facilities, or services provided by a local exchange telephone company or other common carrier for use in accessing the services of the Company.
- 2.5** The Term of this Agreement shall begin on the Effective Date and shall continue in effect for as long as the Term of any service provided hereunder remains in effect, unless earlier terminated in accordance with the provisions of the Agreement. The minimum initial Term of each service provided hereunder shall begin on the commencement of such service and shall end one (1) year thereafter, unless a longer term is specified in the Service Order Form for that service. Upon the expiration of the initial or then-current Term of any service 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 Service Order Form for that service), 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 service.

SECTION 3 - GENERAL TERMS AND CONDITIONS

3.1 Provision of Service

The Company, in conjunction with United States interconnecting carriers, will provide facilities for the transmission of voice, data, facsimile and video communications, subject to the terms and conditions set forth in this Agreement.

International ATM and Frame Relay Services provided by the Company shall, except as otherwise provided for by laws and ordinances, be provided in accordance with the terms and conditions of this Agreement.

International ATM and Frame Relay Services furnished by the Company may be connected with services or facilities of another carrier. Such interconnection may be made as authorized by the Company, acting as Customer's authorized agent. Such interconnection will be subject to the rates, terms, and conditions of the relevant local access or other carrier.

3.2 Limitations on Service

3.2.1 Service is offered subject to the availability of the necessary facilities and equipment, and only to Customers in compliance with the terms and conditions of this Agreement.

3.2.2 The Company reserves the right to discontinue or limit service when necessitated by conditions beyond its control, as set forth in Section 3.12.7 below, or when the Customer is using service in violation of provisions of this Agreement or the law.

3.2.3 The Company does not undertake to transmit messages, but offers the use of its facilities when available for purposes of providing the telecommunications services requested by Customer, and will not be liable for errors in transmission or for failure to establish connections.

3.2.4 The Company reserves the right to discontinue service, limit service, or to impose requirements on Customers as required to meet changing regulatory or statutory rules and standards, or when such rules and standards have an adverse material affect on the business or economic feasibility of providing service, as determined by KDDI-A in its reasonable judgment.

3.2.5 In furnishing service, the Company's responsibility is limited to furnishing a channel capable of transmitting communications between a terminal arranged by the Company in the United States, and a designated location outside the United States.

3.2.6 Customers may not connect non-interconnected private lines provided over the Company's facilities to the public switched network at either the United States or

foreign end or both, for the provision of switched basic services, unless authorized to do so by the FCC.

3.2.7 Service will be provided to such Customers that have been accredited and approved as to financial responsibility and creditworthiness by the Company, or to Customers that have a prepayment deposit established with the Company as provided in Sections 3.5 and 3.6 below, and whose accounts with the Company are current.

3.3 Service Restrictions in Overseas Countries

The provision of International ATM and Frame Relay Services may be subject to restrictions under the provisions of foreign laws and ordinances, or other restrictions. Communications to, from, or via facilities operated by or under the authority of foreign administrations or subject to the jurisdiction of a foreign country are subject to such restrictions as may be imposed by the authority of such country or countries.

3.4 Service Order Form

Customers wishing to obtain service from the Company shall submit to the Company a Service Order Form stating the following:

- i) name or trade name, and address or principal place of business of the Customer;
- ii) type of service;
- iii) desired date of commencement of service; and
- iv) any other information required for provision of International Services.

3.5 Establishment and Re-establishment of Credit

3.5.1 The Company will conduct a credit investigation of each new Customer. A Customer whose service has been discontinued for nonpayment of bills will be required to re-establish credit before service is restored.

3.5.2 The Company may require a Customer to make an advance payment before services and facilities are furnished. The advance payment will not exceed an amount equal to any applicable non-recurring charges(s) and one month's charges for the contracted service or facility. In addition, where special construction is involved, the advance payment may also include an amount equal to the estimated non-recurring charges (if any) for a period to be set between the Company and the Customer. The advance payment will be credited to the Customer's initial bill. An advance payment may be required in addition to a deposit.

3.6 Deposits

3.6.1 Before a service or facility is furnished to a Customer whose credit has not been duly established to the sole and exclusive satisfaction of the Company, the Company may require a Customer to make a deposit to be held as a guarantee of payment of charges. A deposit does not relieve the Customer of the responsibility for the prompt payment of bills on presentation. The deposit will not exceed an amount equal to three months' charges for a service or facility which has a minimum payment period of one month.

3.6.2 When a service or facility is discontinued, the amount of the deposit, if any will be applied to the Customer's account and any credit balance remaining will be refunded. A deposit will be refunded with interest after a period of twelve months, provided the Customer has made all requisite payments during the preceding twelve-month period.

3.7 Return Check Charge

A return check charge of \$20.00 or 1.5% of the balance due (whichever is greater) will be assessed for checks returned for insufficient funds. Any applicable return check charges will be assessed according to the terms and conditions of the billing entity (i.e. local exchange company and/or commercial credit card company).

3.8 Use

Services provided under this Agreement may be used for any lawful purpose for which the service is technically suited.

3.9 Restrictions on Use in Emergency Situations

If a natural disaster, accidental event, or other emergency situation occurs or threatens to occur, or the Company becomes unable to provide full International ATM and Frame Relay Services because of malfunction of telecommunications facilities installed by the Company or because of any other unavoidable reason, the Company may take steps to suspend part of the International ATM and Frame Relay Services in order to handle, on a priority basis, communications relating to matters that are essential for disaster prevention or relief, for securing means of transportation, communications, or electric power supplies, or for the maintenance of order, or urgent communications concerning matters relating to the public good.

3.10 Interruptions of Service

3.10.1 Credit for Interruptions to Service

- a. Interruptions of service, for which substitute service is not provided, are credited to the Customer at the monthly service charge, divided by 720 and multiplied by the number of hours during which the service was not available. As used in this Section, service means the channels provided by

- (i) the Company and (ii) Foreign Affiliates and Foreign Correspondents connecting with the Customer's premise overseas and (iii) Local Exchange Carriers connecting with the Customer's premises in the United States, when the services described in (ii) and (iii) are obtained by the Company, as Customer's agent, from the underlying carrier.
- b. Credits will be given for Interruptions when the telecommunications facilities have been unavailable for a continuous period of at least one hour. Fractional hours shall be adjusted to the nearest whole hour.
- c. An Interruption period begins when the Customer reports a service, facility or circuit to be interrupted and releases it for testing and repair. An Interruption period ends when the Company and Customer mutually confirm that the service, facility, or circuit is operative. If the Customer reports a service, facility or circuit to be inoperative but declines to release it for testing and repair, it is considered to be impaired, but not interrupted.
- d. The Company shall not accept any request for the refund of charges under the provisions of Section 3.10.1(a) above after six months have elapsed from the date on which the grounds for the refund arose.

3.10.2 Substitute Service

In the event of channel Interruption caused by storms, or the action of elements, or other acts of God, or by strikes, or by civil or military authority or by wars, insurrections, riots, rebellions, or the unlawful acts of individuals, or by other conditions beyond the control of the Company, the Company reserves the right to provide International ATM and Frame Relay Service by any available substitute means (if acceptable to the Customer) pending restoration of normal service. No credit will be given for periods of channel Interruption when substitute service has been provided to the Customer.

3.11 Termination

3.11.1 Termination or Suspension by Company. The Company may terminate or suspend any service provided under this Agreement or terminate this Agreement (or the applicable portion thereof) without liability, effective immediately upon written notice to Customer for any of the following reasons:

- a. Customer fails to pay any amount due and owing to the Company within thirty (30) days after the date of an invoice for service, which failure is not remedied within fifteen (15) days of Customer's receipt of written notice thereof.
- b. Customer fails to perform a material obligation (other than payment of amounts due or other failures to perform specified in this Section 3.11.1)

under this Agreement, which failure is not remedied within thirty (30) days of Customer's receipt of written notice thereof.

- c. Customer fails to comply with or violates any local, state, FCC, national, or international regulation, law, or tariff applicable to use of the service.
- d. Customer's use of equipment is in such a manner as to adversely affect the Company's equipment or the Company's service to others.
- e. Customer becomes insolvent, files for bankruptcy or reorganization, fails to discharge an involuntary bankruptcy petition against Customer within the time permitted by law, or becomes involved in an assignment for the benefit of its creditors.
- f. Company determines in its sole discretion that continued provision of such facility, equipment, or service would contravene any local, state, national, or international regulation, law, or tariff.
- g. Company determines in its sole discretion that discontinuance or suspension of service is necessary to prevent or protect against fraud or otherwise protect its personnel, agents, facilities, or services.
- h. Any third-party subcontractor or vendor to Company for any reason fails to provide a facility, component of equipment, or service in connection with any service provided hereunder.
- i. Acts of the Customer are such as to indicate intentions to defraud the Company. This includes fraudulently placing and receiving calls and/or providing false credit information.
- j. Upon condemnation of all or any material portion of the facilities used by the Company to provide service to a Customer or in the event a casualty renders all or any material portion of such facilities inoperable and beyond feasible repair.

3.11.2 Notification of Suspension by Company. In the event the Company elects to suspend rather than terminate service for any of the reasons specified in Section 3.11.1 above, the Company shall notify Customer in writing, in advance, of the reason(s) for such suspension, the remedies required to restore service, and the maximum time allowed to remedy the default which is the cause of the suspension.

3.11.3 Termination by Customer. Customer may terminate this Agreement (or the applicable portion thereof) without liability effectively immediately upon written notice to Company for any of the following reasons:

- a. Company fails to perform a material obligation under this Agreement, which failure is not remedied within thirty (30) days of Company's receipt of written notice thereof.
- b. Company becomes insolvent, files for bankruptcy or reorganization, fails to discharge an involuntary bankruptcy petition against Company within the time permitted by law, or becomes involved in an assignment for the benefit of its creditors.

3.11.4 Termination Liability of Customer. If this Agreement (or the applicable portion thereof) is terminated for any reason, then all accrued but unpaid charges incurred by Customer shall become due and owing as of the effective date of termination. In addition to the foregoing, if (i) Customer terminates this Agreement (or the applicable portion thereof) prior to the expiration of the Term of this Agreement for reasons other than those specified in Section 3.11.3 above, or (ii) the Company terminates this Agreement (or the applicable portion thereof) under Sections 3.11.1(a), (b), (c), (d), (e), or (i), then Customer will pay to Company the following sums which shall become due and owing as of the effective date of such termination:

- a. all charges reasonably expended by Company to establish service to Customer;
- b. all disconnection, early cancellation and termination charges reasonably incurred and paid to third parties by Company on behalf of Customer; and
- c. a total of one hundred (100) percent of all recurring service charges for the remainder of the Term (if any) of this Agreement.

3.12 Liability of the Company

3.12.1 Limitation of Liability. WITHOUT LIMITING SECTION 3.12.2 BELOW, THE ENTIRE LIABILITY OF THE COMPANY AND ITS FOREIGN AFFILIATES FOR ALL CLAIMS OF WHATEVER NATURE ARISING UNDER THIS AGREEMENT SHALL NOT EXCEED THE LESSER OF: (1) DIRECT DAMAGES PROVEN BY CUSTOMER; OR (2) AN AMOUNT EQUIVALENT TO THE PROPORTIONATE CHARGE TO THE CUSTOMER FOR THE PERIOD DURING WHICH ANY MISTAKE, INTERRUPTION, OMISSION, DELAY, ERROR, OR DEFECT IN THE COMPANY'S FURNISHING OF ITS SERVICES (OR ANY OTHER EVENT OR ACTION GIVING RISE TO A CLAIM) OCCURS.

3.12.2 Exclusion of Liability. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT WILL COMPANY BE RESPONSIBLE FOR ANY OF THE FOLLOWING, EVEN IF COMPANY HAS BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THEIR POSSIBILITY,

UNDER ANY THEORY OF LIABILITY, INCLUDING WITHOUT LIMITATION TORT, CONTRACT, WARRANTY, STRICT LIABILITY, OR NEGLIGENCE: (1) ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF USE OF OR LOST PROFITS, BUSINESS, REVENUE, OR GOODWILL, ARISING IN CONNECTION WITH THIS AGREEMENT, THE SERVICES, RELATED PRODUCTS, DOCUMENTATION, OR THE INTENDED USE THEREOF; AND (2) ANY CLAIMS BY THIRD PARTIES AGAINST CUSTOMER.

THE COMPANY IS NOT LIABLE FOR ANY ACT OR OMISSION OF ANY OTHER COMPANY OR COMPANIES FURNISHING A PORTION OF THE SERVICE. NO AGENTS OR EMPLOYEES OF OTHER CARRIERS SHALL BE DEEMED TO BE AGENTS OR EMPLOYEES OF THE COMPANY.

3.12.3 Indemnification. Customer shall indemnify, defend, and hold harmless the Company, its Affiliates, employees, directors, officers, and agents from and against all claims, demands, actions, causes of action, damages, liabilities, losses, and expenses (including reasonable attorney's fees and costs) incurred as a result of:

- a. claims for libel, slander, infringement of copyright or unauthorized use of any trade mark, trade name or service mark arising out of the material, data, information, or other content transmitted by the Customer over the Company's facilities; and
- b. claims for patent infringement arising from combining or connecting the Company's facilities with apparatus and systems of the Customer; and
- c. all other claims arising out of any act or omission of the Customer or any third party in connection with any service provided by the Company.

3.12.4 Refund of Overpayments. The Company will make no refund of overpayments by a Customer unless the claim for such overpayment together with proper evidence is submitted within six (6) months from the date of alleged overpayment.

3.12.5 Disclaimer of Warranties. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE COMPANY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICE, RELATED PRODUCT, OR DOCUMENTATION. THE COMPANY SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

3.12.6 Personal Injury; Property Damage. EACH PARTY SHALL BE RESPONSIBLE FOR ANY ACTUAL PHYSICAL DAMAGES IT DIRECTLY CAUSES TO THE OTHER IN THE COURSE OF ITS PERFORMANCE UNDER THIS AGREEMENT, LIMITED TO PROVEN DIRECT DAMAGES RESULTING FROM PERSONAL INJURIES, DEATH, OR PROPERTY DAMAGE ARISING FROM SUCH PARTY'S NEGLIGENCE OR WILLFUL MISCONDUCT.

3.12.7 Force Majeure. The Company shall not be liable for any failure or performance or equipment due to causes beyond its control, including, but not limited to: acts of God, fire, flood or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of the federal, state, or local governments, or of any civil or military authority; national emergencies; insurrections; riots, wars; unavailability of rights-of-way or materials; or strikes, lock-outs, work stoppages, or other labor difficulties.

3.13 Obligations of Customer

3.13.1 With regard to the telecommunications facilities or equipment installed by the Company:

- a. Customer shall maintain the telecommunications facilities or equipment located on the Customer's premises with the care of a qualified manager.
- b. Customer shall not move, disconnect, alter or disassemble the Company's telecommunications facilities or equipment.
- c. Customer shall not connect other lines or attach other machines, to the Company's telecommunications facilities or equipment except where the Company gives approval, or where it is necessary to do so in order to protect the telecommunications facilities or equipment in times of natural or other disasters.

3.13.2 Customer shall be responsible for the damage to or loss of the Company's facilities or equipment caused by the acts or omissions of, or the noncompliance by Customer or Authorized Users with these regulations, including damage or loss by fire, theft or other casualty occurring on the Customer's premises, unless caused by the negligence or willful misconduct of the employees or agents of the Company.

3.13.3 When non-compliance with the provisions of Sections 3.13.1 or 3.13.2 above has led to loss of, or damage to the telecommunications facilities or equipment,

Customer shall bear any required costs associated with replacement, repair, or other installation works.

3.13.4 Customer shall pay charges for the use of telecommunications facilities or equipment, when the Company has installed and made the facilities or equipment available for use.

3.13.5 Even when the use of telecommunications facilities or equipment has been suspended under the provisions of Section 3.11.1, Customer shall pay the charges during the period of suspension.

3.13.6 Customer shall be responsible to the Company for all charges incurred by its Authorized Users.

3.14 Connection of Terminal Equipment

3.14.1 When Customer intends to connect terminal equipment to the Company's facilities, Customer shall maintain the terminal facilities in such a way that their connection continues to conform to the Company's technical standards and other technical requirements.

3.14.2 When Customer intends to change or cancel a connection to terminal equipment, Customer shall notify the Company to that effect.

3.15 Repair or Restoration of Facilities and Equipment

3.15.1 Customer shall report any Interruption in service or malfunction which Customer reasonably believes is the result of some failure in the Company's facilities or equipment, and Customer shall request the Company to remedy the malfunction.

3.15.2 When the Company determines that a malfunction has occurred in its facilities or equipment, the Company shall repair or restore the facilities or equipment without delay.

3.15.3 When the Company dispatches an engineer at the request of Customer, who reports a service Interruption or malfunction pursuant to Section 3.15.1 above, and it is proved that the malfunction has arisen from Customer-provided terminal equipment and facilities, the Customer shall pay for the cost of the dispatch.

3.16 Alterations to Terminal Equipment Resulting from Alterations to Company's Facilities

In the case where alterations have been made to the Company's telecommunications facilities (including technical standards, requirements, and specifications), and it becomes necessary to modify or alter Customer-provided terminal equipment (excluding terminal equipment installed by the Company), Customer shall be responsible for completing such modifications or alterations. The Company shall notify Customer of the required

alterations, and the necessary modifications must be completed by Customer within 15 days of such notice.

3.17 Entering Customer's Premises

Customer shall allow anyone accredited by the Company access to Customer's premises for the purpose of investigations of malfunction or other reasonable purposes.

3.18 Responsibility of Damage to Land or Buildings

Customer shall be responsible for the reasonable damage or loss caused to land, buildings or other structures belonging to Customer during installation, removal or relocation of, or repair work to telecommunications facilities and equipment by the Company, except where such damages or losses are caused by negligence of the Company or its agents.

3.19 Payment for Service

3.19.1 All charges from the Company to Customer shall be calculated in United States dollars. Payments from Customer to the Company shall be in United States dollars; however, Customer may elect to have the invoice also show the amount due in a currency other than United States dollars, calculated at the exchange rate in effect on the date of the Company's invoice, and Customer may elect to pay the invoice in the non-United States currency in the amount set forth in the invoice.

3.19.2 Customer is responsible for payment of all charges for services and equipment furnished to the Customer or to an Authorized User of the Customer by KDDI-A. This includes payment for calls or services originated at the Customer's number(s) incurred at the specific request of the Customer. All charges due by the Customer are payable to the Company or to the Company's authorized billing agent by the date shown on the invoice (the "Due Date"). Charges not received or credited by the Due Date will incur a late payment fee of one and one half percent (1.5%) on the outstanding balance. Any objections to billed charges must be reported to the Company or its billing agent within six (6) months after receipt of bill. Adjustments to the Customer's bill shall be made to the extent that circumstances exist which reasonably indicate that such changes are appropriate.

3.19.3 Unless otherwise specified herein, International ATM and Frame Relay Service charges do not include the following: (i) federal, state and local taxes and fees, including but not limited to gross receipts taxes, sales taxes, and municipal utilities taxes, associated surcharges, or universal service fees; (ii) charges for equipment and collocation; (iii) charges incurred where Company acts as agent for Customer in the acquisition of goods or services; and (iv) access or egress (or related) charges or all other charges imposed by third parties.

3.19.4 In the event that the Company incurs fees or expenses, including attorney's fees, collecting, or attempting to collect, any charges owed to the Company, the

Company may charge Customer all such fees and expenses reasonably incurred. Collection fees on unpaid charges shall begin to accrue when the account is assigned to an outside collection agency. Such collection fees are separate and distinct from attorney's fees and other costs incurred in collecting charges owed to the Company.

3.19.5 Customer shall be responsible for all calls placed by or through Customer's equipment by any person. In particular and without limitation to the foregoing, Customer is responsible for any calls placed by or through Customer's equipment via any remote access features.

3.20 Calculation of Charges

Charges (restricted to those items that are determined on a monthly basis) shall be calculated each month in accordance with the applicable monthly recurring charges. For any calendar month during which service is provided for less than the full calendar month, the applicable monthly recurring charges shall be calculated on a pro-rated basis.

3.21 Refund of Payments Relating to Installation Work

At the request of Customer, the Company shall refund payments made by Customer to Company for the installation of the International Service or terminal equipment, if any of the following cases apply:

Classification	Amount to be Refunded
Where the Agreement is terminated or the application for installation work is withdrawn prior to the commencement of installation work by Company.	All costs relating to the installation work.
Where the Agreement is terminated or the application for installation work is withdrawn after the commencement of installation work by the Company, but before the completion.	An amount of costs equivalent to the unfinished portion of the installation work.

3.22 Dispute Resolution

Unless prohibited by applicable law, either the Company or the Customer may demand arbitration of any claim or dispute arising out of or relating to the provision of International Service.

3.23 Interconnection with Other Carriers

Service furnished by KDDI-A may be connected with the services or facilities of other carriers. Such services or facilities, if used, are provided under the terms, rates and conditions of the other carrier. The Customer is responsible for all charges billed by other carriers for use in connection with KDDI-A's service. Any special interface equipment or facilities necessary to achieve compatibility between carriers is the responsibility of the Customer.

3.24 Inspection, Testing and Adjustment

Upon reasonable notice, the services provided by the Company shall be made available to the Company for tests and adjustments as may be deemed necessary by the Company for maintenance. No credit allowance for Interruption of service will be granted for the time during which such tests and adjustments are made when the Interruption is less than twenty-four consecutive hours.

3.25 Assignment or Transfer

All services provided under this Agreement are directly or indirectly controlled by KDDI-A, and the Customer may not transfer or assign the use of service or facilities without the prior express written consent of the Company. Such transfer or assignment shall be permitted only where there is no interruption of the use or change in location of the service or facilities. All terms and conditions contained in this Agreement shall apply to all such permitted assignees or transferees, as well as all conditions of service.

SECTION 4 - SERVICE DESCRIPTION

4.1 International ATM Service

International ATM (or Asynchronous Transfer Mode) service is a cell-switched data carriage network service which provides customers with a capability to connect locations via PVCs for data transmission.

4.2 International Frame Relay Service

Frame Relay Service is a packet data carriage network service which provides Customers with a capability to connect locations via PVCs for data transmission.

SECTION 5 - MISCELLANEOUS

5.1 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of New York without giving effect to any choice of law rule that

would cause the application of the laws of any jurisdiction other than the internal laws of New York to the rights and duties of the parties.

- 5.2 Severability.** If any term, covenant, or condition contained herein shall, to any extent, be invalid or unenforceable in any respect under the laws governing this Agreement, the remainder of this Agreement shall not be affected thereby, and each term, covenant, or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 5.3 No Waiver.** The failure of either party hereto to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a waiver or relinquishment of such party's right to enforce each and every provision of this Agreement in the future.
- 5.4 Notice.** Any notice required to be given under this Agreement shall be in writing, in English, and transmitted via facsimile, overnight courier, hand delivery, or certified or registered mail, postage prepaid and return receipt requested, to the parties at the addresses specified in the Service Order Form (if any) or such other addresses as may be specified by written notice. If there is no Service Order Form for any service provided hereunder, notice shall be sent as follows: (a) to Customer at the address provided by Customer prior to commencement of such service; and (b) to the Company at KDDI America, Inc., 825 Third Avenue, 73rd Fl., New York, NY 10022. Notice sent in accordance with this Section shall be deemed effective upon receipt when hand delivered, upon confirmation of sending when sent by fax, on the day after being sent when sent by overnight delivery service, or three (3) days after deposit in the mail when sent by U.S. mail.
- 5.5 Confidentiality.** During the term of this Agreement and continuing for a period of three (3) years following termination of this Agreement, each party shall protect as confidential, shall not disclose to any third party, and shall use only for the purpose of this Agreement any documentation, technical information, software, business information, or other information disclosed by the other party that is in written or other tangible form and marked as "confidential" or "proprietary." The foregoing restrictions shall not apply to any information that: (a) is independently developed by the receiving party; (b) is lawfully received by the receiving party free of any obligation to keep it confidential; (c) becomes generally available to the public other than by breach of this Agreement; or (d) is required to be disclosed by law, regulation, or court or governmental order.
- 5.6 Survival.** The provisions of this Agreement which by their nature are intended to survive this Agreement shall survive the termination or expiration of this Agreement.
- 5.7 Entire Agreement.** This Agreement, including the Rate Schedule, Service Order Forms, and all other appendices and attachments referred to herein, 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.