

Apex ATM Processing Agreement



This Apex Automated Teller Machine Processing Agreement ("Agreement") is entered into and becomes effective as of _____, 20____ ("Effective Date") is entered, by and between _____ ("Merchant") and Apex ATM ("APEX"), an affiliate of ATM Deployer Services, LLC (ADS).

RECITALS

WHEREAS, Merchant agrees to have APEX be the exclusive and sole provide of Automated Teller Machine ("ATM") electronic funds transfer services to Merchant for the locations ("Premises") listed in Exhibit A of this Agreement.

THEREFORE, Merchant and APEX agree to perform the terms and conditions of this Agreement in good faith. Merchant and APEX hereby agrees as follows.

TERMS AND CONDITIONS

- Term:** The initial term of this agreement shall begin as of the date of this agreement and shall continue for a period of five (5) years following the live date. The agreement shall automatically renew for a three (3) years term at the end of the initial term and also at the end of each successive term unless terminated by merchant upon giving written notice to APEX ninety (90) days prior to end of current term. In the event merchant breaches this agreement causing an early termination, or terminates this agreement prior to the expiration of its term, merchant agrees to pay an early termination fee equal to \$.50 times your average monthly volume of surchargeable transaction in the preceding (6) months times the number of months remaining on contract. This agreement shall ensure to the benefit of and be binding upon the parties and their successors, assigns, representatives and heirs.
- Driving Services:** APEX will provide electronic authorization services to enable your ATM to operate its cash dispensing functions. This means we will, in accordance with all network regulations provide data processing services through our processing agreements. APEX will arrange for the communication link necessary between your ATM and the applicable network(s) for (a) transmission and receipt of authorization /denial messages (b) transmit batch totals to the network (c) receive settlements from the Networks for transactions at your machine. The system will be available for use by merchant 24 hours a day, 7 days a week.
- Training:** APEX agrees to train and inform personnel at location of all regulations and uses of system. Merchant agrees to stay within network regulations at location including necessary network logos, surcharge notices, and all other applicable items.
- Maintenance:** Merchant agrees to maintain the ATM in proper working order. As the owner of the ATM you are responsible for maintenance contracts and the day to day upkeep of ATM. In the event of any ATM failure the merchant agrees to correct problem within 24 hours or notify APEX of said problem. APEX shall at any reasonable time have the right to inspect the ATM to verify proper working order.
- Supplies:** Merchant shall inventory an adequate supply of paper, ribbons, etc. for the ATM at merchant's expense. Supplies will be available through APEX or other authorized service provider.
- Cash Supply:** Merchant will supply money for cash replenishment of the ATM. Merchant shall do everything in its power to keep the unit loaded with a sufficient cash supply. This should be done in a timely fashion in order to eliminate potential down time.
- Phone and Electrical:** Merchant shall at his own expense, contract for and provide a dedicated telephone line and dedicated electrical outlet within 2 feet of ATM location. Merchant understands that any telephone or electrical problems are the responsibility of merchant.
- Reporting:** APEX agrees to provide reporting to the merchant either directly or through one of its representatives by the last day of the following month for the preceding month. Example: June reports by July 31, July reports by August 31.
- Fees:** APEX or one of its representatives shall pay Merchant revenue as provided under this agreement and in accordance with the attached fee schedule in "Exhibit B".
- Clearing account:** In order to facilitate the settlement of daily monetary transactions, Merchant agrees to establish and maintain its own clearing account. Merchant agrees to sign an "ACH Authorization Release" and supply a pre-printed voided check or deposit slip from that account in "Exhibit C".
- Adjustments:** Merchant agrees to store and maintain all audit tapes, disc, etc. for future verification if needed. In the event any transaction is disputed by the cardholder's (customer's) financial institution and, as a result, charged back by that financial institution, Merchant approves charging the amount of any such dispute directly to the Merchant's clearing account as identified by ACH authorization.
- Representation and Indemnification:** Merchant hereby represents and warrants to APEX that Merchant does not have a written or oral contract currently in effect with any third party which provides for electronic funds transfer services similar to those provided in this Agreement. Merchant hereby agrees to indemnify and hold APEX harmless from all claims, damages and losses, including attorneys' fees, incurred by APEX as a result of the breach by Merchant of these representations and warranties.
- Responsibilities of Merchant and Limitation of Liability of APEX:** It shall be the responsibility of Merchant (i) to reconcile all withdrawals from your ATM on at least a bi-weekly basis; and (ii) immediately notify APEX in writing of any discrepancies between amounts withdrawn from your ATM and amounts credited to your account. **APEX shall not be liable for any such discrepancies unless**

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- 14. **Merchant has notified APEX in writing no later than close of business on the forty-fifth (45th) day following the withdrawal as to which there is no corresponding credit.**
- 15. **Governing Law:** This Agreement shall be, in all respects, governed by and construed and enforced in accordance with the laws of the State of California, including all matters of constrictions, validity and performance. If any provisions of this Agreement or its applications shall be held invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity, legality, and enforceability of all other provisions and applications hereof shall not in any way be affected or impaired.
- 16. **Disputes:** If a dispute arises out of or relates to this contract, or the breach thereof, and is said dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by meditation administered by the American Arbitration Association under its Commercial Mediation Rules, before resorting to arbitration. Thereafter, any unresolved controversy or claim arising out of or relating to this contract, or breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment upon the Award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Any such mediation or arbitration will be conducted in Sacramento, California.

In Witness Whereof, the undersigned duly authorized representatives of the parties have executed this agreement as of the date stated below.

Apex ATM

Address:

Name_____

Apex ATM
6905 Waterview Way
Sacramento, CA 95831
916-394-APEX Telephone
916-673-6122 Fax

Signature_____

Date_____

Title_____

Merchant

Address:

Name_____

Signature_____

Date_____

Title_____

E-mail_____

Federal Tax ID/ SSN_____

EXHIBIT A ATM Location

Location

Business Name _____

Address _____

City, St, Zip _____

Phone _____

Contact _____

ATM Type _____ Surcharge _____

Location

Business Name _____

Address _____

City, ST, Zip _____

Phone _____

Contact _____

ATM Type _____ Surcharge _____

EXHIBIT B Fee Schedule

Location:

It is agreed and understood that Apex ATM

_____ will pay the merchant directly on a daily basis.

_____ will pay the merchant directly on a monthly basis

_____ per transaction per machine will be paid to the Merchant for every transaction that collects a surcharge of _____.

I have read and agree to the terms of the fee schedule.

Merchant Signature _____ Date _____

Name _____ Title _____

APEX Signature _____ Date _____

APEX Name _____ Title _____

EXHIBIT C ACH AUTHORIZATION RELEASE

_____ (“Customer”) authorizes Columbus Data Services, (“CDS”) to initiate ACH transfer entries and to debit and/or credit the account identified herein for all Processing Services. CDS shall have the right to credit or debit account, on behalf of the Customer, for settlement of transactions, settlement error corrections, transaction adjustments and any amounts or fees due CDS by Customer. Customer agrees to keep account funded to the extent needed to reasonably support transaction adjustments. All shortages and adjustments are the full responsibility of the Customer. Customer agrees to comply with all electronic fund transfer regulations, requirements and rules. This Authorization shall remain in effect unless cancelled by Customer by providing written notice of cancellation to CDS and after such time as all settlements and adjustments have been processed/cleared through the account. Any debits and credits pursuant to this Authorization will be effected through the Federal Reserve System automated clearing house (ACH) system.

Settlement Disputes

Customer shall audit and balance the data contained in the periodic statements and reports provided by CDS and shall promptly, but in no event more than 30 days after the date of the disputed item, notify CDS in writing (the “Notice Date”) of any disputed item or items on such periodic statements and reports. If CDS determines that the disputed item was credited or debited in error by CDS, CDS shall correct the error. Notwithstanding, CDS shall not be liable for any recovery, reimbursement or otherwise of any amounts over 30 days from the Notice Date. CDS will, however, use its commercially reasonable efforts to recover any amounts over such 30-day period. CDS shall not be liable for any damages, interest or costs associated with the error other than correcting the error.

The undersigned represents and warrants to CDS that the person executing the Authorization is an authorized signatory on the Account referenced below and all information regarding the Account and the Account Holder is true and correct.

Signature: _____ Date: _____

Print Name and Title: _____

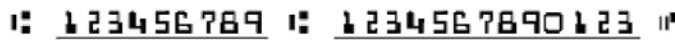
Account Information

This form MUST be accompanied by a pre-printed voided check or a letter from the bank to which the funds are settling referencing the Customer’s name, routing number and account number. The information on the check or bank form must match the information provided below. Forms submitted without all fields on this document completed will not be processed.

Routing/Transit Number (9 digits): _ _ _ _ _

Account Number: _____

These numbers are printed on the bottom of your check. See example below:



 Routing Number Account Number

CDS Office Use Only			
Date Received		Entered By	
Date Entered		Date Scanned	



Apex ATM Processing Agreement Merchant Application and ATM Operator Agreement

**_____ (“ISO”)
MetaBank (“Bank”)**

SECTION A – Application: Merchant/ATM Operator Completes Lines 1-10 ** PLEASE PRINT CLEARLY**

1. Name of Location (Doing Business As)		2. Physical Street Address of Location	
3. City, State Zip		4. Location Phone Number	5. Location Fax Number
6. Business Tax ID Number	7. Financial Institution Number (FI #, FDIC, NCUA, ASI)	8. Email Address of Business Principal	
9. Type of Business (Sole Proprietor, Partnership, LLC, Corporation, Financial Institution)		10. Merchandise/Services Sold	

SECTION B – Application: ATM Operator Completes Lines 11 - 26 ** PLEASE PRINT CLEARLY**

11A. ATM Operator Principal First Name	11B. ATM Operator Principal Last Name	12. ATM Operator Principal "FULL" Legal Name (if same as 10-11, write "Same")	
13. ATM Operator Principal Home Street Address		14. ATM Operator Principal City, State, Zip	
15. ATM Operator Principal Social Security Number		16. ATM Operator Principal Driver License Number, Issuing State and Expiration Date	
17. ATM Operator Principal Date of Birth		18. Any other names by which you are now or have been known:	
19. Are you on parole or probation? Yes or No?	20. Have you ever been convicted of a felony? Yes or No?	21. Percentage of Ownership held by above named ATM Operator Principal	
22. Are there any other persons/entities that own or control [10%] or more of ATM Operator? Yes or No?		23. If the answer to #21 is Yes, such person/entities are deemed Other Principals. Please include details referenced in 10-21 regarding every Other Principal, on a separate ATM Operator Agreement.	
24. APPLICATION DECLARATION: The undersigned Applicant represents that all information contained in this Application for Sponsorship, and any other documentation supplied thereto, is true and correct. The Applicant hereby applies for an account relationship with Bank, as an ATM Operator sponsored by Bank. The undersigned acknowledges that in order to fight the funding of terrorism and money laundering activities, Bank is required to verify the identity of each person who opens an account with Bank. Therefore, the undersigned agrees that Bank is authorized to obtain Consumer and (if applicable) Business Credit Reports and to undertake a Criminal Background Investigation in connection with this Application. Applicant authorizes Bank or any of its agents to investigate information or data obtained from this Application. If there is more than one Principal indicated above, Applicant hereby provides the signed authorization for such Other Principals as well. Applicant agrees to provide any further information, including financial data, as may be reasonably requested by Bank. Applicant may, upon written request, obtain a complete and accurate disclosure of the nature and scope of the investigation requested hereunder. Applicant acknowledges that Bank may accept or deny this Application in its reasonable discretion.			
25. SIGNATURE OF ATM OPERATOR PRINCIPAL / DATE			

Meta Payment Systems, a division of MetaBank, ("Bank") sponsors the ATM Terminal and financial transactions on the ATM Terminal that you financially participate in.

SECTION C – AGREEMENT BETWEEN Merchant/ATM OPERATOR, ISO AND BANK Line 26

26. In the event this Application is accepted by Bank, the above named ATM Operator, ISO and the Bank (collectively, the "parties") hereby agree as follows: (1) Bank will sponsor the ATM Terminal and financial transactions on the ATM Terminal that ATM Operator financially participates in. ATM Operator and ISO acknowledge that they have signed a separate agreement governing the placement and operation of the ATM Terminal(s) and to abide by the terms of such separate agreement; (2) The parties agree at all times to comply with applicable laws and regulations. (3) ATM Operator and ISO agree to comply at all times with all system and network rules, including but not limited to the Plus System, Inc., MasterCard/Cirrus, etc. Bylaws and Operating Regulations, which Bylaws and Operating Regulations may be amended from time to time; (4) The Bank may terminate this Agreement in Bank's sole discretion or in the event that either ATM Operator or ISO fail to comply with this Agreement and/or with the Bylaws and Operating Regulations; (5) ATM Operator and ISO will indemnify and hold harmless the Bank, the processor, the Networks you participate in (including but not limited to Plus System, Inc., MasterCard/Cirrus, etc.) and Network Members, from and against any and all claims, losses or damages arising out of ATM Operator's or ISO's failure to comply with this Agreement, with applicable laws and regulations, and with the Bylaws and Operating Regulations. (6) the surcharge amount shall not exceed the fee defined in Section F.

SECTION D – ATM Operator Completes Lines 27-31 ** PLEASE PRINT CLEARLY**

27. Check Recipient Name (Name of person (or entity) to whom the monthly commission check should be made out)		28. Mailing/Billing Address (What address should your monthly commission check be mailed to)	
29. Corporate/Alternate Phone Number	30. Corporate/Alternate Fax Number	31. City, State, Zip	

SECTION E – ATM Operator Identification (ISO Representative Completes Lines 32-35) ** PLEASE PRINT CLEARLY**

32. By signing below, I certify that the document used to identify this ATM Operator was provided to me and the above identification information is true and accurate and reflects the identity of this ATM Operator.		
33. Signature of Sales Representative for ISO	Typed /Printed Name	Date
34. Name of Registered ISO / Sales Representative for ISO		35. Processor

SECTION F – ATM Operator Completes Lines 37- 38 (ISO Completes Lines 36- 49) ** PLEASE PRINT CLEARLY**

36. Surcharge Amount	37. Terminal Phone Number	38. Terminal Manufacturer	39. Terminal Model
40. Terminal Serial Number (# inside the ATM)	41. Terminal ID Number	42. Does this terminal have a Certified Self Encrypting PIN PAD? Yes or No?	43. Encrypting PIN PAD (EPP) Serial Number
44. Is this terminal Triple DES compliant? Yes or No?	45. Is this a Scrip Terminal? Yes or No?	46. Software Version	47. Firmware Version
48. Activating Custodian (1)		49. Activating Custodian (2)	

SIGNATURE OF ATM OPERATOR

SIGNATURE OF ISO

SIGNATURE OF BANK

NAME:
TITLE:
DATE:

NAME
TITLE
DATE

NAME
TITLE
DATE