



# Apex Automated Teller Machine 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").

## 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

1. **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.
2. **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.
3. **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.
4. **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.
5. **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.
6. **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.
7. **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.
8. **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.
9. **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".
10. **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".
11. **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.
12. **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



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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.

- 13. **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 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.**
- 14. **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.
- 15. **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 mediation 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 \_\_\_\_\_



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## 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 \_\_\_\_\_



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## 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 \_\_\_\_\_



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## 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 terminal(s) associated with the settlement account indicated below and shall promptly, but in no event more than 30 days after the date of any disputed or missing item, notify CDS of any disputed or missing item or items. If CDS determines that the disputed or missing item was credited or debited or not made in error by CDS, CDS shall correct the error; however, CDS shall not be liable for any recovery of any amounts over 30 days prior to the date CDS was notified of the disputed or missing item although CDS will use its best efforts to recover any amounts over 30 days from the disputed date.

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

Authorized by: \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name and Title: \_\_\_\_\_

### Daily Cash Settlement Account Information\*\*\*

**\*\*\* This form Must be accompanied by a 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.**

Financial Institution: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Contact Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_

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

### Business Name as it Appears on the Account

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CDS use only

Date received: \_\_\_\_\_  
Date entered: \_\_\_\_\_ Entered by: \_\_\_\_\_

Apex ATM \* 6905 Waterview Way \* Sacramento, CA 95831  
Tel (916) 394-APEX \* Fax (916) 673-6122