



**F A X**

To:  
Fax number:

From:  
Fax number:

Date: 7/29/2009

Regarding:  
ACH Agreement

Phone number for follow-up:

**Comments:**

# PREPAID SERVICES RETAILER AGREEMENT

**Distributor  
Address  
Address  
Phone:**

**Fax:**

New Retailer  
 Change of Acct

Distributor Agent:	Distributor Sales Rep:
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**Retailer Information:**

Legal Name:		Federal Tax ID:	
Mailing Address:		City:	State:
Phone: (    )	Fax: (    )	Contact Person:	
Retailer Name (DBA):		Phone: (    )	Fax: (    )
Location Address:		City:	State:
E-Mail Address: (Required for Web Reporting)		Password: (Required for Web Reporting, 5 to 10 characters)	

### SCHEDULE OF FEES

Account setup and account maintenance fees may be charged and are at the discretion of the Solution Manager. When those fees are applicable, a separate agreement will be provided.

### AUTHORIZATION FOR AUTOMATIC WITHDRAWAL OF FUNDS

Retailer's Account will be debited on (please circle your preference): Mon    Tues    Wed    Thurs    Fri

Retailer's Account may also be debited the day a threshold amount of \$500 or more is owed to Distributor. If multiple locations share the same Retailer Account, this threshold amount will be \$500 for each location sharing the Retailer Account up to maximum threshold of \$5,000.

Retailer hereby authorizes \_\_\_\_\_ ("Distributor"), or its service bureau, Krush Communications (DBA Homies No Mas), to initiate and/or transmit automatic credit and/or debit entries to the Account and Depository identified in the attached voided check (hereinafter "Retailer's Account"). Said authority includes, but is not limited to, the initiation and transmission of such entries, requests or orders as may be necessary to charge Retailer's account for any fees or other amounts payable by Retailer to under the terms of this Prepaid Services Retailer Agreement, including, but not limited to, initiate and transmit such entries, requests or orders as may be necessary to reverse or adjust any entries made in error or by mistake, and to initiate, transmit or suspend such entries, requests or orders as may be necessary to grant, effect or revoke conditional credit with respect to any entry or group of entries. \_\_\_\_\_'s service bureau, Krush Communications, abides by the NACHA Rules governing these transactions. The below signatory, as the primary owner of the Retailer, obligates the Retailer's formal entity (if any) and shall also serve as an absolute personal and continuing guaranty of the signing individual for all liability of Retailer hereunder. This guaranty binds the individual and his/her successors, assigns, estate, representatives and heirs. Distributor may pursue this guaranty before or concurrent with, pursuit of a claim for recovery against Retailer.

### MUST ATTACH PRE-PRINTED VOIDED BUSINESS CHECK

Your signature acknowledges that you are authorized to execute this Agreement and have read and understand all information contained herein, the terms and conditions on the reverse side of this Agreement, and any addenda, amendments and/or attachments, all of which are part of this Agreement.

<b>Signature</b>	<b>Date</b>	<b>Print Name</b>	<b>Title</b>
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## PREPAID SERVICES RETAILER AGREEMENT TERMS AND CONDITIONS

The following Prepaid Services Retailer Agreement ("Agreement") by and between \_\_\_\_\_ ("Distributor") and "Retailer" governs the selling of Distributor's prepaid services by Retailer. **INVESTIGATIVE CONSUMER REPORT:** An investigative or Consumer Report may be made in connection with this application. Retailer authorizes Distributor or any credit bureau or any credit reporting agency employed by Distributor or any agents of Distributor to investigate any references given or any other statements or data obtained from Retailer or of the undersigned principal, for the purpose of this application and this Agreement.

**For good consideration, the parties agree as follows:**

**1. Distributor will:** (a) provide Retailer with prepaid products and services; (b) furnish network, debit systems and provisioning necessary to provide the service to consumers; (c) "deactivate" prepaid products, when required, in certain circumstances including, but not limited to, cases of possible fraud, lost shipments, non-return of sold product or technical problems.

**2. Retailer will:** (a) Verify, note and immediately report any discrepancy between the product sold by Retailer and those actually shipped to Retailer, or, any discrepancy reported by consumers; (b) sell the prepaid services supplied by Distributor to consumers; be responsible for the collection of funds for services used, activated or dispensed, and collection, reporting and payment of all applicable sales taxes; (c) represent the product in a factual and accurate manner; and (d) prominently display marketing material and all appropriate product according to current Distributor's "Marketing Guidelines" using displays provided or in a manner which will be functionally equivalent or better approved in writing in advance by Distributor.

**This Agreement is also subject to the following terms and conditions:**

The provisioning of prepaid services is subject to the technical and economic limitations of Distributor and/or its affiliates. Distributor shall retain the right to alter, modify or withdraw its prepaid services and retailer program at any time, without prior notice to Retailer. Distributor reserves the right to limit the total number of transactions and total retail value of those transactions that may be activated within a 24-hour period. Distributor also reserves the right to request financial statements and other financial information on a reasonable basis from Retailer at its sole discretion.

**INVOICES RENDERED:** All invoices for services used, activated or dispensed, will be paid by direct ACH debit to Retailer's business checking account identified on the attached pre-printed business check according to the terms specified in the Prepaid Services Retailer Agreement. The debit will occur on the indicated billing day(s) after the close of the previous billing business day for the wholesale cost of sales plus any fees and expenses. A billing period shall be defined as the time period ending on the day previous to the billing day(s) indicated on the front of this Agreement. In the event the ACH is returned for lack of sufficient funds, the Retailer will be assessed a \$30.00 NSF fee. Wholesale cost of sales equals one hundred percent (100%) of retail value of prepaid services during each billing period minus the applicable Retailer Profit Margin. Fees and expenses include all fees identified on this and other agreements between Distributor and Retailer and shipping costs for prepaid products and marketing material. If there are not sufficient available funds in the account to cover this debit, Retailer agrees to pay Distributor the amount of the deficiency on demand in immediately available funds. Billing amounts not timely received by Distributor shall accrue interest at the lesser rate of (i) Eighteen percent (18%) per annum; and (ii) the highest rate allowed by applicable law. If the rate referenced above exceeds the maximum rate allowed by applicable law, the interest rate made herein shall be the maximum rate allowed by applicable law. Interest shall accrue if Distributor does not receive payment within seven (7) days of the invoice date. Activation of any additional services may be suspended until all amounts owed are made available to Distributor. Retailer agrees to notify Distributor in writing of any change to the business checking account used for ACH debits at least five (5) business days prior to the next scheduled ACH debit. All notices hereunder shall be effective upon personal delivery, by confirmed fax delivery, or two (2) business days after deposit in the United States Postal Service postage prepaid by certified mail, return receipt requested to the notice address of the party's states herein.

**LENGTH OF AGREEMENT:** This Agreement shall be effective on the date accepted by Distributor.

**A. If Term Commitment Not Accepted:** This Agreement may be terminated at any time by either party with a thirty (30) day written notice to the other party.

**B. If Term Commitment Accepted:** This agreement shall have a term of twenty-four (24) months and shall renew automatically for twelve (12) month terms thereafter unless written notice of termination is given to Distributor by

Retailer at least thirty (30) days prior to the end of a term. This agreement shall be considered terminated by the Retailer if a terminal is essentially idle for a period exceeding thirty (30) days. Should Retailer terminate this Agreement before the end of a term, Retailer shall pay to Distributor liquidated damages equal to the total number of weeks in that term multiplied by the waived Weekly Account Maintenance Fee for each location of Retailer.

**TERMINATION OF AGREEMENT BY DISTRIBUTOR:** This Agreement may be terminated at any time by Distributor with a thirty (30) day written notice to Retailer. Distributor shall also have the absolute right to immediately terminate this Agreement and require Retailer to return unsold product and marketing material in the event: (a) of any misrepresentation by Retailer concerning Distributor, any Consumer or prospective Consumer; (b) Retailer violates any of the terms or conditions of this Agreement, or; (c) Distributor in good faith becomes insecure in continuing to do business with Retailer. In the event of non-payment by Retailer of any fees or expenses required herein, Distributor shall be entitled to the recovery of all attorneys' fees and costs related to pursuit of such payment. Distributor further reserves the right to deactivate any product previously activated by Retailer for which Retailer has not made payment to Distributor. Retailer is responsible for any product deficiency occurring after delivery to Retailer.

**RETAILER OBLIGATIONS AT TERMINATION:** In the event of termination of this Agreement, Retailer will be required to immediately return to Distributor any unsold product and marketing material, including, but not limited to, equipment, displays, signs, and chits provided by Distributor and Distributor will process any credits owed to Retailer, as appropriate, for the returned, unsold product. If shipment is not received within fifteen (15) days of notification, Distributor will deactivate all unused products and invoice Retailer for the equipment, marketing material and administrative costs associated with deactivation.

**INDEMNITY AND HOLD HARMLESS AGREEMENT:** Retailer agrees to indemnify, defend and hold harmless Distributor and its agents, employees, officers, directors, members, successors, and assigns from any and all suits, actions, or claims of any type, character or description (including necessarily related costs and expenses and reasonable attorneys' fees) brought or made for or on account of any injuries or damages received or sustained by any person or persons or property, arising out of or occasioned by Retailer's negligence or malfeasance.

**VENUE:** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of \_\_\_\_\_. It is agreed that any disagreement between the parties of this contract that requires resolution through judicial proceedings must be litigated in \_\_\_\_\_ County, \_\_\_\_\_. It is the obligation of each party to give timely, written notice to the other party of any change of address.

**CONFIDENTIALITY:** Retailer agrees not to disclose and not to use the Confidential Information. The "Confidential Information" includes the terms and conditions of this Agreement and any financial, marketing, technology, business, personnel or other similar information of Distributor, which is not in the public domain.

**ENTIRE AGREEMENT:** This Agreement constitutes the full and complete agreement between the parties with respect to the subject matter hereof and there are no representations or conditions not stated herein. This Agreement may not be amended or modified except in writing signed by authorized representatives of Distributor and Retailer.

**SEVERABLE PROVISIONS:** The provisions of this Agreement are severable, and if any one or more provisions is determined to be illegal, indefinite, invalid or otherwise unenforceable, in whole or in part, the remaining provisions of this Agreement, and any partially unenforceable provisions to the extent enforceable in the pertinent jurisdiction, shall continue in full force and effect and shall be binding and enforceable on the parties.

**LIMITATION OF LIABILITY:** Under no circumstances shall Distributor be liable for special, incidental, consequential or punitive damages, whether or not Distributor receives notice of any such damages and whether or not such damages could have been foreseen.

This Agreement becomes effective on the date accepted by Distributor.