



PBD West Retailer Profile Sheet

PBD Information

Salesrep Name _____ Phone Number _____

Store Information

Account Name _____
 PBD Account # _____
 Contact Name _____
 Phone Number _____
 Fax Number _____
 Billing Address _____
 City, State, Zip _____
 Shipping Address _____
 City, State, Zip _____
 Email Address _____
 Invoicing Method Email _____ Fax _____

Product & Merchandising Selection

*****Please select from Large Store Kit or Small Store Kit*****

_____ **Large Store Kit** (*This kit is for stores with ample space for a spinner rack*)

Contents:

- Two Sided Spinner Rack with 18" base
- Wireless & Phone Card P.O.P Kit
- Prepaid Phone Cards (*Pennywise, Dial 4 Less, La Calidad, Discount World & Carib Call*)
- Prepaid Wireless Pins (*Alltel, Boost, Cingular, T-Mobile, Tracfone & Verizon*)
- Prepaid Ringtones & Games
- Prepaid Napster
- Prepaid Handsets (*2-Tracfone Handsets \$49.99 retail cost*)
- *If retailer prefers AT&T or Cingular handset, please check their choice:*
- AT&T _____ Cingular _____

_____ **Small Store Kit** (*This kit is for stores without space for a spinner rack*)

Contents:

- 2 Lucite Counter displays
- Wireless & Phone Card P.O.P. Kit
- Prepaid Phone Cards (*Pennywise, Dial 4 Less, La Calidad, Discount World & Carib Call*)
- Prepaid Wireless Pins (*Alltel, Boost, Cingular, T-Mobile, Tracfone & Verizon*)
- Prepaid Napster

INCOMM PREPAID PROGRAM PBD WEST DEALERS INSTRUCTIONS

- STEP 1: Locate the PAYMENT AGREEMENT. Please complete each section with the required information. NOTE: Only an authorized agent (Owner, Partner or Corporate Officer) may sign this form.
- STEP 2: Locate the AUTHORIZATION FOR DIRECT PAYMENTS (ACH DEBITS). Please complete each section with the required information. NOTE: Only an authorized agent (Owner, Partner or Corporate Officer) may sign this form.
- STEP 3: Locate the UNIFORM SALES & USE TAX CERTIFICATE. Please complete each section with the required information. NOTE: Only an authorized agent (Owner, Partner or Corporate Officer) may sign this form.
- STEP 4: Return this document with all **REQUIRED** signatures to:

InComm
Attn: PBD West Program Manager
250 Williams Street
Suite M-100
Atlanta, GA 30303

**INCOMM PREPAID PROGRAM
PAYMENT AGREEMENT**

Required Customer Information

Full Corporate Legal Name ("Customer"): _____

Store Names/Addresses (identify all stores owned/operated by Customer): _____

State of Incorporation: ____

Corporate Headquarters Address: _____

City: _____ State: ____ Zip: _____

Phone #: _____ Fax #: _____

Primary E-Mail Address: _____

Those products identified in Attachment 1, attached hereto and made a part hereof by this reference, will be made available to Customer for purchase by Customer from InComm and for resale to end-users based upon the terms and conditions set forth herein and in Attachment 1 and in the Standard Terms and Conditions, attached hereto and made a part hereof by this reference. Customer acknowledges having received and read said Attachment 1 and the Standard Terms and Conditions and agrees to the terms contained therein.

Payment. Customer hereby authorizes InComm to sweep its designated account by ACH debit (the "ACH Debit") on a weekly basis for all amounts owed for any and all point-of-sale activated products and services activated by Customer's stores, prepaid credit card product Activation and Reload Fees, and Terminal fees (if any) as set forth herein. All invoices for hardware items or non-point-of-sale activated products and services shall be due and payable by Customer within such period of time as determined by InComm's credit department. Promptly after execution of this Agreement (but in any event before implementation of this Agreement), Customer shall complete, execute and deliver to InComm all forms necessary for InComm to perform the ACH Debit. InComm will provide to Customer a reconciliation describing the products and services for which the ACH Debit was performed. Any failure by InComm to perform an ACH Debit as authorized hereunder shall not be construed in any manner as a waiver of the Customer's obligation to pay any amounts due hereunder. All amounts due by Customer to InComm shall be paid without any deduction, revision or set-off whatsoever. In the event that adequate funds are not available at the time of any ACH Debit performed by InComm, in addition to any other rights available in this Agreement or at law or in equity, (i) all unpaid amounts shall be subject to a late fee equal to the greater of one and one-half percent (1.5%) per month of the total unpaid balance or five percent (5%) of such unpaid balance; and (ii) InComm may immediately suspend the ability for Customer's stores to activate any products and services until InComm has received payment in full of all outstanding amounts, including any late fees. Additionally, Customer shall be liable to InComm for all banking charges or fees incurred by InComm as a result of any failed or rejected ACH Debit attempts in connection with Customer's designated account. Payment terms in connection with the retail face value of prepaid Visa Card products shall be in accordance with those payment terms set forth in the applicable Attachment.

IN WITNESS WHEREOF, Customer hereto agrees that it has read and agrees to the terms contained herein and in Attachment 1 and the Standard Terms and Conditions, and caused this InComm Prepaid Program Payment Agreement (the "Agreement") to be duly executed as of the Effective Date. The parties agree that this Agreement, including any Attachments, the Authorization for Direct Payments, and the Uniform Sales & Use Tax Certificate, may be executed as facsimile originals and each copy thereof bearing the facsimile transmitted signature of the executing party's authorized representative shall be deemed to be an original and be binding upon the executing party to the same extent as the original executed pages.

ACCEPTED AND AGREED TO BY:

CUSTOMER'S FULL CORPORATE LEGAL NAME: _____

By {authorized signature}: _____

Printed Name: _____

Title: _____

Date: _____



AUTHORIZATION FOR DIRECT PAYMENTS (ACH DEBITS)

¹Full Corporate Legal Name: _____ (“Customer”)

²Customer’s Federal Tax ID #: _____

The Customer hereby authorizes Interactive Communications International, Inc. ("InComm") to debit/credit its checking account with the financial institution named below. The debits will differ week-to-week (or as otherwise set forth in the applicable agreement between InComm and Customer) and are based on sales and related charges.

If an entry is erroneously initiated by InComm to the Customer's account, the Customer has the right to have the amount of the entry credited to the Customer's account. However, the Customer must give the financial institution and InComm written notice within thirty (30) days after the debit is taken explaining fully why the entry was in error. If InComm does not receive such written notice within the thirty (30) day period, Customer waives its rights to credit.

Financial Institution Information:

³Name: _____

⁴Branch: _____

⁵Address: _____

⁶City: _____ ⁷State: ____ ⁸Zip: _____

⁹Routing Number (ABA#): _____

¹⁰Account Number: _____

This authorization is to remain in full force and effect until InComm receives written notification from the Customer of its termination in such time and in such manner as to afford InComm and the financial institution a reasonable opportunity to act on it, but in any event no fewer than thirty (30) days.

ACCEPTED AND AGREED TO BY:

CUSTOMER’S FULL CORPORATE LEGAL NAME: _____

By {authorized signature}: _____

Printed Name: _____

Title: _____

Date: _____

UNIFORM SALES & USE TAX CERTIFICATE—MULTIJURISDICTION

The below-listed states have indicated that this form of certificate is acceptable, subject to the notes on pages 2 - 4. The issuer and the recipient have the responsibility of determining the proper use of this certificate under applicable laws in each state, as these may change from time to time.

Issued to Seller: Interactive Communicational International, Inc.

Address: 250 Williams Street, suite M100 Atlanta, Georgia 30303

I certify that _____ is engaged as a registered

Name of Firm (Buyer): _____	Wholesaler _____
Address _____	Retailer _____
_____	Manufacturer _____
_____	Seller (California) _____
_____	Lessor (see notes on pages 2 - 4) _____
_____	Other (Specify) _____

and is registered with the below listed states and cities within which your firm would deliver purchases to us and that any such purchases are for wholesale, resale, ingredients or components of a new product or service¹ to be resold, leased, or rented in the normal course of business. We are in the business of wholesaling, retailing, manufacturing, leasing (renting) the following:

Description of Business: _____

General description of tangible property or taxable services to be purchased from the seller: _____

State	State Registration, Seller's Permit, or ID Number of Purchaser	State	State Registration, Seller's Permit, or ID Number of Purchaser
AL ²	_____	MO ¹³	_____
AR	_____	NE ¹⁴	_____
AZ ²²	_____	NV	_____
CA ³	_____	NJ	_____
CO ¹	_____	NM ^{1,15}	_____
CT ⁴	_____	NC ²⁵	_____
DC ⁵	_____	ND	_____
FL ²³	_____	OH ²⁶	_____
GA ⁶	_____	OK ¹⁶	_____
HI ^{1,7}	_____	PA ²⁷	_____
ID	_____	RI ¹⁷	_____
IL ^{1,8}	_____	SC	_____
IA	_____	SD ¹⁸	_____
KS	_____	TN	_____
KY ²⁴	_____	TX ¹⁹	_____
ME ⁹	_____	UT	_____
MD ¹¹	_____	VT	_____
MI ¹²	_____	WA	_____
MN	_____	WI ²¹	_____

I further certify that if any property or service so purchased tax free is used or consumed by the firm as to make it subject to a Sales or Use Tax we will pay the tax due directly to the proper taxing authority when state law so provides or inform the seller for added tax billing. This certificate shall be a part of each order which we may hereafter give to you, unless otherwise specified, and shall be valid until canceled by us in writing or revoked by the city or state.

Under penalties of perjury, I swear or affirm that the information on this form is true and correct as to every material matter.

Authorized Signature: _____
(Owner, Partner or Corporate Officer)

Title: _____

Date: _____

**INCOMM PREPAID TELECOMMUNICATIONS PROGRAM
PAYMENT AGREEMENT - ATTACHMENT 1**

This Attachment 1 is part of the InComm Prepaid Program Payment Agreement and subject to the terms and conditions thereof.

(1) Prepaid Long Distance Phone Cards:

POINT-OF-SALE ACTIVATED PREPAID PHONE CARDS*		
<u>Product Brand</u>	<u>Card Type</u>	<u>Customer's Discount</u>
Pennywise SM	Connect Fee	30%
Dial 4 Less [®]	No Connect Fee	30%
La Calidad SM	Disconnect Fee	22%
Carib Call ^{SM1}	No Connect Fee	22%
Discount World [®]	Disconnect Fee	22%

(2) Prepaid Wireless Replenishment Airtime Pins:

FASTPIN SM POINT-OF-SALE ACTIVATED PREPAID WIRELESS REPLENISHMENT AIRTIME PINS**	
<u>Product Brand</u>	<u>Customer's Discount</u>
Alltel	10%
Boost	6%
Cingular	13%
T-Mobile	10%
Tracfone	8%
Verizon	8%

† Notwithstanding anything contained herein to the contrary, Customer shall not be eligible nor authorized to sell Boost Prepaid Wireless Replenishment Airtime Pins unless and until InComm receives written notice of Boost's approval of Customer.

(3) Prepaid Napster Music Download Product:

POINT-OF-SALE ACTIVATED PREPAID NAPSTER MUSIC DOWNLOAD PRODUCTS**		
<u>Product</u>	<u>Denomination</u>	<u>Customer Discount</u>
Music Download Card	15 Downloads/\$14.85	5%

(4) PlayPhone Products:

POINT-OF-SALE ACTIVATED PLAYPHONE PRODUCTS**		
<u>Product</u>	<u>SRP</u>	<u>Customer Discount</u>
Super Game Pack (3 Downloads)	\$9.99	20%
Super Ringtone Pack (6 Downloads)	\$9.99	20%
Game Pack (Breakout)	\$9.99	20%
Game Pack (Rubik's)	\$9.99	20%
Game Pack (Scooby-Doo)	\$9.99	20%
Game Pack (King of Fighters)	\$9.99	20%
Universal Game Pack (Disney)	\$12.99	20%

(5) Prepaid Wireless Phone Kit Program:

PREPAID WIRELESS PHONE KITS***	
<u>Carrier/Make/Model</u>	<u>Customer Discount off Retail Face Value</u>
Subject to availability	10%

* Customer discount is based on the retail face value of prepaid phone cards. Available denominations and product brands may vary. Telecommunications services are provided to end-users required hereunder on a 24 hours a day, 7-days a week basis, and shall, at all times, be of a quality that is generally acceptable based on industry standards. Customer understands that the telecommunications services may be interrupted by a force majeure event (as provided herein), and Customer agrees that in such event, and in any other event that the telecommunications services to end users may be interrupted, the provider's sole liability shall be to the end-user. Pursuant to Section 276 of the Telecommunications Act of 1996, the Federal Communications Commission has prescribed regulations that establish a compensation plan to ensure that all payphone service providers are compensated for completed intrastate and interstate calls. Accordingly, all calls in connection with any products or services provided hereunder originated from a pay telephone shall be subject to additional charges for each call. Such additional charges shall be debited from the applicable card unit, or dollar balances, for all completed calls originated from a pay telephone. International and extended call coverage area rates and fees vary. Current international and extended call coverage area rates are available upon request.

** Discounts apply to retail face value of products and are subject to change upon thirty (30) days prior written notice by InComm as determined by the underlying service providers/carriers ("Providers"). Available denominations are determined by the Providers and subject to change upon notice. All purchases are subject to the terms and conditions and policies and procedures as set forth from time-to-time by the Providers. All services are provided by the applicable Provider and provision thereof is subject to the terms and conditions as set forth thereby. Availability of all products and services and program terms and conditions subject to change upon notice by InComm. In the event that InComm becomes subject to any charges, taxes, fees or other costs charged by any wireless carrier in connection the products and services sold by InComm to Customer hereunder ("Charges"), InComm shall pass any such Charges through to Customer, and Customer shall pay such Charges in accordance with the payment provisions contained herein; *provided, however*, that InComm shall provide Customer thirty (30) days prior written notice of any such Charges.

*** Phone model availability, pricing and discounts subject to change. Customer may accept return of phones from end-users only in connection with out-of-the-box failures. All other returns must be made directly to manufacturer under manufacturer's warranty or to carrier Company owned stores. Sale of phones subject to the terms and conditions and policies and procedures as set forth from time-to-time by the applicable carrier, including but not limited to, (i) sale of phones only in carrier approved coverage areas and (ii) sale of phones only in connection with and for use with carrier approved prepaid applications and programs. Minimum of three (3) phones kits are required per order per shipping destination. Customer shall sell phones only from locations pre-approved in writing by InComm based upon carrier coverage maps. Approved locations are subject to change upon notice by InComm based upon revised carrier coverage maps. If Customer (i) sells any phone(s) from any location not pre-approved in writing by InComm, or (ii) sells any phone(s) in connection with or for use with any application or program other than that approved by the applicable carrier, in addition to any other rights or remedies available pursuant to the Agreement or at law or in equity, InComm may, at its option and in its sole discretion, (i) charge Customer an additional fee of \$300.00 per phone and/or (ii) immediately terminate this Agreement.

INCOMM PREPAID PROGRAM AGREEMENT – STANDARD TERMS AND CONDITIONS

(1) Products and Services Offered. InComm will sell to Customer those products and services as described in each Attachment and in the InComm Prepaid Program Agreement (collectively, the “Agreement”). The availability of all products and services is subject to change upon notice. Customer agrees to pay all charges associated with InComm’s provision of such products and services in accordance with the payment provisions contained in the Agreement and this Standard Terms and Conditions.

(2) Term. The Agreement shall become effective upon Customer’s execution of the Agreement (the “Effective Date”). The term of the Agreement shall commence on the date which is thirty (30) days after the Effective Date (the “Commencement Date”) and shall continue for a period of three (3) years thereafter (the “Initial Term”). This Agreement shall be automatically extended after the Initial Term for successive consecutive terms of one (1) year (a “Renewal Term”) unless either party gives written notice of termination at least ninety (90) days prior to the expiration of the term in effect or unless otherwise terminated in accordance with the termination provisions hereof. The Initial Term and any Renewal Terms are sometimes collectively referred to herein as the “Term”.

(3) Title to InComm Technology. Title and ownership of the technology utilized to provide the services hereunder, including without limitation, any prepaid products or the underlying services, any Terminals provided by InComm, any communications specifications supplied by InComm for use in connection with the products and services hereunder, InComm’s FastCard POSA System, InComm’s FastPIN Electronic PIN Delivery System and any other services delivered by InComm to Customer or the end users under this Agreement, including any modifications or enhancements thereto or derivative works created therefrom (collectively, the “InComm Technology”), shall remain vested solely in InComm. Customer shall have no ownership rights or other rights in the InComm Technology.

(4) InComm Terminals. In the event that InComm agrees to provide terminals to Customer (the “Terminals”), InComm shall be responsible for Terminal hardware and software maintenance, and Customer shall not install or attempt to install any software other than that authorized by InComm. InComm shall at all times retain title to the Terminals and all related software, and Customer shall not create, incur or suffer to exist any mortgage, lien, pledge or other encumbrance or attachment of any kind whatsoever upon, affecting or with respect to the Terminals or any of InComm’s interest therein. All Terminals shall be immediately returned, at Customer’s cost, to InComm upon expiration or any termination of this Agreement. Customer shall pay to InComm a lost Terminal charge of Four Hundred and Ninety-Five Dollars each for any Terminals which are not returned within fifteen (15) days of the expiration or termination of this Agreement. Customer shall keep InComm informed at all times of the location of each Terminal, including notifying InComm in writing of a change of location of any Terminal. Customer shall protect all Terminals from deterioration other than normal wear and tear, and shall comply with all laws, ordinances regulations and rules with respect to the use and operation of the Terminals. Any Terminals which are damaged beyond repair, or which are lost or stolen, shall be replaced at a cost to Customer of Four Hundred and Ninety-Five Dollars each. In the event that InComm determines it is necessary to replace a Terminal, InComm will ship to Customer a replacement Terminal, along with an invoice and a call tag to be used by Customer for the return of the Terminal being replaced. Upon receipt by InComm of the Terminal being replaced, InComm will issue a credit to Customer so long as such Terminal is not damaged beyond repair.

(5) Billing Disputes. Customer shall have the right to reasonably dispute any of the charges contained in a reconciliation or an invoice for a period of thirty (30) days after the date of the reconciliation or invoice (the “Reconciliation Date”), provided that: (i) InComm receives payment in full for all charges on or before the date such payment is due, (ii) Customer presents a written statement of the purported billing discrepancies to InComm in reasonable detail on or before the thirtieth (30th) day after the Reconciliation Date, and (iii) Customer negotiates in good faith with InComm for the purpose of resolving such dispute. In the event such dispute is mutually agreed upon and resolved in favor of Customer, Customer will receive a credit for the disputed charges. InComm shall not be obligated to consider any Customer notice of any billing discrepancies which are received by InComm more than thirty (30) days after the Reconciliation Date.

(6) Creditworthiness. If at any time there is a material adverse change in Customer’s creditworthiness, then in addition to any other remedies available to InComm, InComm may elect, in its sole discretion, to condition the activation of products and services on Customer’s assurance of payment which shall be modified payment terms, a deposit and/or such other means to establish reasonable assurance of payment.

(7) Taxes. For purposes of all sales, use and other similar transaction taxes, InComm and Customer shall treat the sale of each product from InComm to Customer hereunder as a wholesale purchase by Customer in exchange for the applicable price(s) set forth herein, followed by a resale of such product by Customer to Customer’s patron. Customer shall have the sole responsibility to collect and remit all sales, use and other similar transaction taxes incurred upon the resale of such products by Customer to Customer’s patrons. Prior to or contemporaneously with Customer’s execution of this Agreement, Customer shall provide InComm with a tax exemption certificate, direct pay number or other legally sufficient ground for InComm to forgo collecting such tax; *provided, however,* that if any tax exemption certificate, direct pay number or other ground for exemption furnished by Customer to InComm is found to be insufficient and there is a claim against InComm for any sales, use or similar taxes because of such insufficiency, or if there is any other claim against InComm for any sales, use or similar taxes regarding which Customer has the responsibility to collect and

remit, Customer shall hold InComm harmless from and against all liabilities incurred in connection with the imposition of any such sales, use or other similar tax on InComm, including any associated interest, penalties and additions to tax.

(8) Commitment. Customer shall not, directly or indirectly, distribute, market, sell or otherwise promote any prepaid and/or stored value products or services other than those purchased by Customer from InComm.

(9) Marketing/Merchandising of Products and Services. Customer shall use its commercially reasonable efforts to market, promote and sell the products and services available hereunder to the same degree it would any of its other major products and services, including without limitation, maximizing retail placement of the products purchased hereunder, arranging and facilitating retail store-level placement, merchandising (point-of-sale materials) and promotional programs, positioning point-of-sale materials, correcting out-of-stock conditions, increasing retail distribution, assisting in educating and training retail staff where needed, and generally promoting retailer and customer acceptance of the products. Customer will post all point-of-sale materials provided by InComm to ensure compliance with applicable law.

(10) Marketing Agreements. Customer acknowledges that it may be required to complete and execute specific marketing agreements as required by certain wireless carriers and/or certain third-party gift card merchants in order to be eligible to offer airtime, handset phone-in-box, and/or third-party merchant gift card programs.

(11) Logos. Each party acknowledges and agrees that the products and services marketed, distributed, serviced or otherwise covered under or contemplated by this Agreement may contain the trade names, service marks, brands and trademarks of the other party or its affiliates (collectively, the “Marks”) or the trade names, service marks, brands and trademarks of third-party service providers (“Service Provider Marks”). Each party agrees not to display or use any of the Marks of the other party and shall not permit the same to be displayed or used by third parties, other than in connection with the sale, marketing, distribution or promotion of the products and services hereunder or otherwise in accordance with this Agreement. Customer agrees not to display or use any of the Service Provider Marks and shall not permit the same to be displayed or used by third parties, without the prior written approval of InComm or the applicable third-party service provider. In the absence of specific prior written consent from a party, the other party shall not use any part of any of the Marks as part of its own name or any in other manner not so approved by the other party. Each party’s Marks are proprietary to it and its affiliates and nothing in this Agreement constitutes the grant of a general license for their use. Upon termination of this Agreement, any and all rights or privileges of a party to use the Marks of the other party or the Service Provider Marks shall immediately expire, and each party shall immediately discontinue the use thereof. Each party shall indemnify, hold harmless and defend the other party and its affiliates in connection with any claim, damage, liability, loss, judgment or other deficiency against the other party and/or any of its affiliates arising out of, resulting from or related to any authorized use of the Marks or Service Provider Marks.

(12) Proprietary Information/Non-Disclosure. Except as expressly set forth below in this Section 12, InComm and Customer shall maintain in confidence the terms of this Agreement. It is expected that pursuant to discussions which have taken place prior to and following the Effective Date of this Agreement, the parties may disclose to one another certain information, as defined herein, which is considered by the disclosing party to be Proprietary Information (as hereinafter defined). “Proprietary Information” is defined as any information, communication or data, in any form, including, but not limited to oral, written, graphic or electronic forms, models or samples, which the disclosing party identifies as confidential or which is of such a nature that the receiving party should reasonably understand that the disclosing party desires to protect such information, communication or data against unrestricted disclosure or use, including without limitation, business information, financial data and marketing data. All Proprietary Information shall remain the sole property of the disclosing party and its confidentiality shall be maintained and protected by the receiving party with the same degree of care as the receiving party uses for its own confidential and proprietary information, but in no event, less than a reasonable degree of care. The receiving party shall not use the Proprietary Information of the other party except as necessary to fulfill its obligations under this Agreement, nor shall it disclose such Proprietary Information to any third party without the prior written consent of the disclosing party. The restrictions on the use or disclosure of any Proprietary Information shall not apply to any Proprietary Information: (i) after it has become generally available to the public without breach of this Agreement by the receiving party; (ii) is rightfully in the receiving party’s possession prior to disclosure as evidenced by competent written proof; (iii) is independently developed by the receiving party without reliance on the Proprietary Information; (iv) is rightfully received by the receiving party from a third party without a duty of confidentiality; or (v) is disclosed under operation of law. In the event the receiving party is required to disclose any Proprietary Information under operation of law, the receiving party shall: (i) give prior written notice of such disclosure to the disclosing party; (ii) limit such disclosure to the extent practicable; and (iii) make such disclosure only to the extent so required.

(13) Material Breach; Failure to Pay. Except for Customer’s obligation to pay all amounts when due hereunder, either party may terminate this Agreement upon a material breach by the other party, which the breaching party does not cure within thirty (30) days after receiving written notice thereof from the other party. InComm shall have the right to terminate this Agreement if Customer fails to pay InComm any and all amounts due hereunder; *provided*

however, that InComm provides Customer with written notice of its failure to pay and Customer fails to cure such failure within five (5) days after its receipt of InComm's notice.

(14) Adverse Regulatory Determination. If any regulatory authority, including the Federal Communications Commission, state public service commissions, or other authority having jurisdiction over any of the products and services provided hereunder, determines, at any time, that the distribution of any of the products or services hereunder, or any other services provided by InComm, are unlawful, all applicable portions of this Agreement shall immediately terminate, with no termination liability to either party in accordance with the applicable authority's order.

(15) Accrued Rights. No termination of this Agreement shall affect any accrued rights or obligations of either party as of the effective date of such termination, nor shall it affect any rights or obligations of either party, which are intended by the parties to survive any such termination.

(16) Terminal Usage. In the event that InComm provides Terminals to Customer and the total value of products and services activated by Customer's stores through the use of Terminals provided by InComm hereunder averages less than Five Hundred Dollars per month per store for three consecutive months, InComm may, at its option and in its sole discretion, terminate the Agreement without liability upon providing thirty (30) days prior written notice to Customer.

(17) Notice. Any notice required by this Agreement from InComm to Customer shall be in writing and shall be delivered by United States mail. Any notice required by this Agreement from Customer to InComm shall be in writing and shall be delivered in person or by a nationally recognized overnight carrier where proof of delivery is obtainable. Any such notice delivered to Customer shall be delivered to the corporate headquarters address identified in the Agreement. Any such notice delivered to InComm shall be delivered to: InComm, 250 Williams Street, Suite M-100, Atlanta, Georgia 30303, Attn: President, with a copy to InComm's Legal Department, or at such other address as the intended recipient previously shall have designated by written notice to the other party.

(18) DISCLAIMER; LIMITATION OF LIABILITY. INCOMM MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, TO CUSTOMER, ITS CUSTOMERS OR TO ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING THE MERCHANTABILITY, SUITABILITY, ORIGINALITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, OF ANY SERVICES, MATERIALS OR TERMINALS PROVIDED UNDER THIS AGREEMENT. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, INCOMM SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION, ANY DAMAGES CLAIMED FOR LOSS OF INCOME, REVENUE, OR PROFITS OR FOR LOSS OF GOODWILL) ARISING FROM OR RELATED TO IN ANY MANNER ANY SERVICES, MATERIALS OR TERMINALS PROVIDED PURSUANT TO THIS AGREEMENT. UNLESS OTHERWISE EXPRESSLY INDICATED, NONE OF THE UNDERLYING PRODUCTS OR SERVICES ARE PROVIDED BY INCOMM. UNDER NO CIRCUMSTANCES SHALL INCOMM BE LIABLE TO CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR ANY LOSS, INJURY OR DAMAGE, OF WHATEVER KIND OR NATURE, RESULTING FROM OR ARISING OUT OF ANY MISTAKES, ERRORS, OMISSIONS OR DELAYS ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS AND SERVICES OR USE OF ANY PRODUCTS OR SERVICES.

(19) No waiver of rights. Failure of either party at any time to require the other party's performance of any obligation under this Agreement shall not affect the right to require performance of this obligation. Any waiver by either party of any breach of any provision hereof shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver or modification of the provision itself, or a waiver of modification of any right under this Agreement.

(20) Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Georgia, regardless of conflict of law principals. The parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of the State of Georgia located in Fulton County or in the United States District Court for the Northern District of Georgia, Atlanta Division for the purposes of any suit, action or other proceeding arising out of this Agreement or the subject matter hereof brought by any party hereto; and (b) hereby waive and agree not to assert as a defense or otherwise, in any such suit action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced by such court.

(21) Force Majeure. InComm shall be excused from performance of this Agreement, or any obligation hereunder, if and to the extent its performance or obligation is either directly or indirectly prevented, restricted, or interfered with by reason of acts of God, wars, revolution, civil commotion, explosion, fiber cuts, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, failure of equipment, delays or non-performance of suppliers or carriers, changes requested by Customer, or any other circumstances beyond the reasonable control and without the fault or negligence of InComm. InComm shall provide Customer verbal notification of any "force majeure" event which may affect InComm's ability to perform its obligations under this Agreement.

InComm Proprietary

(22) Indemnification. Customer agrees to defend, hold harmless, and indemnify InComm and its affiliates, directors, officers and employees ("InComm Indemnified Parties"), from and against all claims of any third-party (and all liabilities associated therewith, including reasonable attorneys' fees and the expenses of litigation) threatened, asserted or filed (collectively, "Third Party Claims") against any InComm Indemnified Party, to the extent that any Third Party Claim arises out of or relates to (i) any breach of this Agreement by Customer or (ii) any acts or omissions of Customer.

(23) Severability. In the event any portion of this Agreement may be determined by any governmental body having jurisdiction hereover, or by any court of competent jurisdiction, to be unenforceable, the balance of the Agreement shall be severed therefrom and shall remain in full force and effect unless a failure of consideration would thereby result.

(24) Attorneys' Fees. If any legal action is necessary in order to enforce any of the terms of the Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party.

(25) Assignment. Customer may not assign its rights, obligations or liabilities under this Agreement to any other party without the prior written consent of InComm, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Customer must assign this Agreement in connection with the merger or sale of substantially all of its stock or assets; *provided, however,* that in such event Customer shall promptly notify InComm in writing of any such assignment. At any time after commencement of service hereunder, InComm may assign its rights, obligations or liabilities under this Agreement to any other party, without the consent of Customer, provided that the assignee or delegee of such rights, obligations or liabilities agrees to perform fully all of InComm's obligations under this Agreement.

(26) No Agency/Independent Contractor Status. This Agreement does not create an employer-employee relationship between Customer and InComm. Nothing in the Agreement will be construed to create, authorize or constitute a partnership, joint venture or agency relationship of any kind. Neither party shall have the authority to bind the other to any obligation or liability except as provided in this Agreement.

(27) Customer's Representations. Customer shall not make any representation to any person or entity with respect to the products and services provided hereunder that goes beyond the representations made by InComm herein or in any marketing materials that InComm may provide to Customer.

(28) Amendment. This Agreement may be amended or modified only by an instrument in writing signed by authorized representatives of the parties hereto.

(29) Headings/Counterparts. The headings of the items and paragraphs contained in this Agreement are for convenience of reference only and do not form a part hereof and in no way modify the meaning of such items and paragraphs. Any number of counterparts of this Agreement may be signed and delivered and each shall be considered an original and together they shall constitute one agreement.

(30) Corporate Authority. Each of the parties represents and warrants that the individual executing this Agreement on their behalf has the full corporate power, authority and right to enter into this Agreement and to perform the acts contemplated herein.

(31) Press Releases. Any press releases or public announcements regarding the subject matter hereof must have prior written approval of both parties prior to distribution, which approval shall not be unreasonably withheld or delayed.

(32) Conflicts Between Agreements. In the event of a conflict between the provisions of this Standard Terms and Conditions and the Agreement, the Agreement shall control. In the event of a conflict between either this Standard Terms and Conditions or the Agreement and any sub-dealer, marketing participant or other agreement required by any carrier, this Standard Terms and Conditions or the Agreement shall control.

(33) Survival. The representations, warranties and covenants of the parties hereto shall survive the expiration or termination of this Agreement, subject to any express limitations on survivability contained in this Agreement.

(34) No Third-Party Beneficiary Rights. The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and each party's successors or assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other person. No third party, whether a customer of Customer or otherwise, may enforce or rely upon any obligation of, or the exercise of or failure to exercise any right of, Customer or InComm in this Agreement.

(35) General. This Standard Terms and Conditions, together with the Agreement, will govern the terms of Customer's purchase of products and services from InComm.

(36) Entire Agreement. This Standard Terms and Conditions and the Agreement set forth the entire understanding and supersedes prior agreements between the parties relating to the subject matter contained herein and merges all prior discussions between them, and neither party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated herein or in the Agreement or as contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the party to be bound thereby.

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