



National ATM Wholesale
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MERCHANT AGREEMENT FOR PROCESSING SERVICES

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Phone: 1-866-295-2329 Fax: 678-623-3471

AUTHORIZED DISTRIBUTOR / AGENT for ADS: National ATM Wholesale

This agreement (the Agreement), effective the _____ day of _____, 20_____, is entered into by and between ATM Deployer Services, LLC (ADS), whose address is 5220 Spring Valley Road, Suite 615 Dallas, TX 75254 and _____ (Customer), whose address is _____

1. **Definitions.** The following words shall have the meaning stated when used in this Agreement.
 - a) Products mean the Services, computer software programs, Documentation, and ADS supported files and databases utilized by ADS.
 - b) Documentation means the documentation for the Services provided to Customer, as amended from time to time.
 - c) Network means an electronic funds transfer network to which ADS at the time has access, is a participant in or that is supported by ADS.
 - d) Services means the automated teller machine services provided by ADS to Customer in accordance with this Agreement and may include terminals, terminal driving, electronic authorization, links to Networks, transaction switching, computer data processing and other support services.
2. **Products and Services.** ADS agrees to sell and/or license to Customer and Customer agrees to buy and/or license from ADS the Products listed on Schedule A attached hereto at the prices set forth on such schedule subject to any increases provided for in this Agreement.
3. **Term.** This Agreement will be effective as of the date first written above (the Effective Date) and will continue for 60 months following the Effective Date unless either party terminates the Agreement as provided for in Section 14 of this Agreement. After the initial term, this Agreement shall be renewed automatically for successive two year periods unless either party terminates the Agreement as provided for in Section 14 of this Agreement.
4. **Additional Products and Services.** ADS may offer to sell and/or license to Customer additional products and services at prices to be quoted at the time the products or services are offered, subject to any increases provided for in this Agreement.
5. **Software.** If ADS provides software to Customer, ADS hereby grants to Customer a personal, non-exclusive, non-transferable license to use that software during the term of this Agreement (including any renewal terms) solely in connection with the Services. ADS's sole obligation with respect to any such software is to replace any defective diskette provided at no charge to Customer.
6. **Hardware.** If Customer purchases equipment related to the delivery of the Services from ADS, such equipment shall be delivered FOB and shall carry with it the manufacturer's warranty, if any. ADS disclaims all other warranties, express or implied, with respect to the equipment supplied. ADS shall reserve a purchase money security interest in the equipment until all payments for the equipment are received. Customer agrees to cooperate with ADS and to execute such documents as ADS may request to protect ADS's security interest in any such equipment.
7. **Warranties.** ADS warrants that the Services will, during the term of this Agreement, meet the specifications described in ADS's Documentation. If the Services purchased by Customer include computer data processing, ADS agrees that it will provide accurate output from input material submitted for processing, except that ADS shall not be responsible for the accuracy or adequacy of input material nor the resultant output from inaccurate or inadequate input. The accuracy and adequacy of input and output shall be judged as received at and sent from the ADS data processing center. ADS's sole liability to Customer under this Agreement for breach of this warranty shall be, without additional charge to Customer, to make such corrections as may be necessary to keep the Services in operating order in accordance with the specifications described in ADS's Documentation. ADS shall use its best commercially reasonable efforts to resolve any performance problems. CUSTOMER ACKNOWLEDGES THAT IT HAS INDEPENDENTLY EVALUATED THE PRODUCTS AND APPLICATION OF THE PRODUCTS TO ITS NEEDS, AND THAT, EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THERE ARE NO WARRANTIES EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, FROM A COURSE OF DEALING OR USAGE OR TRADE, OR ARISING OTHERWISE BY LAW.
8. **Exclusivity.** Once Customer has ordered a specific Service from ADS, Customer agrees to obtain that Service exclusively from ADS through the term of the Agreement.
9. **File Ownership and Security.** ADS acknowledges that all data files provided by Customer are the property of Customer and that ADS's use thereof or access thereto does not create in ADS any right, title or interest therein. ADS will implement commercially reasonable security precautions with respect to the Customer data files. Upon request of Customer, and at ADS's then-applicable charges for such services, ADS shall provide Customer's existing data files to Customer, together with the file specifications regarding the same and, if so requested, in machine-readable format. This right will continue for 60 days following termination of this Agreement. Customer acknowledges that the Products are the property of ADS and that Customer's use thereof does not create in Customer any right, title or interest, except only as provided for in this Agreement. Customer will implement commercially reasonable security precautions and take appropriate action so as to enable Customer to satisfy its obligations under this Agreement and to prevent the loss, alteration or unauthorized access of Products.

10. **Customer Duties and Responsibilities.**

a) **Responsibility for Customer Instructions and Information.** Customer assumes responsibility for the consequence of any instructions given to its customers by Customer. Customer shall be responsible for auditing and balancing the data contained in reports issued by ADS and reconciling any out-of-balance condition. Customer will notify ADS of any out-of-balance condition that Customer believes or reasonably should have believed to be caused by a failure of the Services by midnight of the working day immediately following the day of receipt by Customer.

b) **Cooperation.** The obligations of ADS under this Agreement are subject to and conditioned upon the cooperation and timely performance by Customer of its obligations, including compliance by Customer with any requirements contained in the Documentation. Customer shall provide ADS with information required to meet the specifications of installation and implementation of the Products not less than 30 business days prior to installation. Customer shall also ensure that its affiliates and users of the Services are trained to comply with the rules and regulations as specified by the Networks, banking systems and other third parties whose services are used in connection with the performance of the Services and any other legal or regulatory requirements that may be imposed.

c) **Financial Obligations.** Customer will maintain account(s) with such financial institutions as may be required for Network sponsorship and to maintain such balances as may be required for settlement of transaction activity, authorized adjustments or any other financial obligations arising under the Services.

d) **Other Customer Obligations.** Customer shall use its best efforts to (i) comply with all applicable federal, state and local laws, ordinances, rules and regulations, as well as all rules and regulations of any Network, banking system or other third party whose services are used in connection with the performance of the Services hereunder; and (ii) cause all of its actions and transactions to be in continuing conformity with all current and future by-laws, rules, regulations, manuals and other promulgations of any entity having an interest in the Services, and applicable laws, ordinances, regulations, tariffs, treaties, conventions, additional contracts and other sources of equitable or legal duty. If as a part of the Services, Customer requests access to Networks or other third party service providers, Customer agrees to enter into the appropriate agreements with such networks or third party service providers, including sponsoring financial institutions.

11. **Payment.** Customer agrees to pay upon presentation by ADS of an electronic funds transfer debit for such amount, the then applicable charges for the Services covered thereby. Unless specified otherwise, all amounts are due when the Service has been completed or Products provided. Set-up fees and annual fees may be invoiced in advance. Amounts outstanding after their due date are subject to an interest charge to date of payment of the lesser of 18% per annum or the highest legally allowable rate. ADS may adjust its fees annually, effective January 1, upon at least 60 days prior written notice to Customer; provided that if the aggregate amount of any such annual increase exceeds 10% (without regard to any increase in rates for professional services), Customer may cancel the Agreement, without penalty, by delivering to ADS written notice of termination within 30 days after Customer's receipt of the notice of proposed increase, such termination to be effective December 31 of the year in which the notice of proposed increase was received. Notwithstanding the foregoing, ADS reserves the right to adjust telecommunications charges without limit at any time, on 60 days written notice to Customer.

12. **Changes to Services.** ADS reserves the right to modify the Services provided during the term of this Agreement. If any such modification constitutes a material change, Customer may cancel the Agreement, without penalty, by delivering to ADS written notice of termination within 30 days after Customer's receipt of updated Documentation describing the changes, such termination to be effective 30 days after receipt by ADS of timely written notice of termination from Customer.

13. **Regulatory Access.** ADS agrees to provide access for audit purposes to any state or federal agencies with jurisdiction over Customer.

14. **Termination of Agreement.** This Agreement may be terminated by Customer or by ADS as set forth in this Article and elsewhere in this Agreement.

a) **End of Term.** This Agreement may be terminated by either party by giving no less than 180 days prior written notice of termination effective at the end of the initial term or any renewal term.

b) **Default.** Either party may terminate this Agreement in its entirety by giving written notice of termination to the other party upon the occurrence of a material breach or default by the other party, provided that such breach or default continues for more than 30 days after receipt of notice of such breach or default from the non-defaulting party; and provided further, however, that if the default is Customer's failure to timely pay any invoice hereunder, ADS's right to terminate shall arise 10 days after Customer's receipt of the notice of default if such invoices are not paid within that period.

c) **Other Conditions.** A party may terminate this Agreement immediately upon written notice to the other if the other party: (i) makes a general assignment for the benefit of creditors; (ii) applies for the appointment of a trustee, liquidator or receiver for its business or property, or one is assigned involuntarily; (iii) is subject to a proceeding for bankruptcy, receivership, insolvency, dissolution or liquidation; or (iv) is adjudicated insolvent or bankrupt.

d) **Continuing Obligations.** Termination by either party shall not relieve either party from any obligation accrued through the date of termination. In addition, the terms and conditions set forth in this Agreement that by their nature would continue beyond termination of this Agreement, including by way of illustration only and not limitation, the provisions with respect to confidentiality, shall survive the termination of this Agreement.

e) **Transition Assistance.** Upon termination of this Agreement, ADS will provide reasonable transition assistance to Customer, including providing any Customer files in machine readable format, at its then current charges for professional services. ADS shall not be obligated to provide such assistance in the event of termination of this Agreement by ADS pursuant to Section 14(b) or Section 14(c).

15. **Customer's Remedies.** ADS and Customer acknowledge that circumstances could arise entitling Customer to damages or rescission arising from a failure by ADS to perform its obligations and have agreed in all such circumstances that Customer's remedies and ADS's liabilities will be limited to those set forth in this Agreement. Such limitation will survive termination of this Agreement notwithstanding Customer's election to rescind or otherwise be discharged from this Agreement. For a material breach or default of this Agreement, ADS's sole obligation shall be to use all commercially reasonable efforts to remedy the breach. In no event will ADS be liable for any loss of profits, incidental, consequential, special, or indirect damages that Customer or others may incur, whether Customer's cause of action arises in contract, tort or otherwise. Except as expressly provided in this Agreement, Customer agrees that ADS shall have no duty of indemnity or contribution for a third party claim against Customer arising from the use of the Products or ADS's performance of any Services hereunder. Customer and ADS agree that the remedy and damage limitation provisions contained in this Agreement are reasonable in light of all present and predictable circumstances, including, but not limited to, the amount of fees charged by ADS under this Agreement and the possible amount of actual damages to Customer.

16. **Customer Liability For Third Party Claims.** Customer agrees to defend, indemnify and hold ADS harmless from any claim by a third party for any damages, including lost profits, direct, incidental, consequential, special, indirect or punitive damages arising out of or relating to Customer's participation in or use of the Products, Networks, and/or Services; provided ADS promptly notifies Customer of any such claims and Customer is provided an opportunity to fully participate in the defense or settlement of any such claims.

17. **Confidentiality Obligations.** Confidential Information means a party's proprietary or confidential information designated in writing as such or that by nature of the circumstances surrounding the disclosure ought in good faith be treated as proprietary or confidential, including Products and any trade secrets contained therein. Each party agrees (a) that during the course of its performance of this Agreement it may have access to or be provided with Confidential Information of the other party; (b) that the Confidential Information of the other shall remain the property of the other, that such Confidential Information is made available on a limited use basis solely in connection with this Agreement and that such Confidential Information shall be disclosed only to authorized employees and agents; (c) that it will advise its employees to whom the information is disclosed of their obligations under this Agreement; (d) that it will not sell, disclose or otherwise make available any such Confidential Information, in whole or in part, to any third party without the prior written consent of the other party; (e) that it will not use such Confidential Information except pursuant to this Agreement; (f) that it will use the same degree of care it uses for its own confidential information, but in no case less than a reasonable degree of care, to prevent disclosure of such Confidential Information to any unauthorized person or entity. Upon termination of this Agreement, all copies of Confidential Information shall be returned to the owner thereof. The restrictions under this Section shall not apply to information that: (i) is or becomes publicly known through no wrongful act of the party receiving the Confidential Information; or (ii) becomes known to a party without confidential or proprietary restriction from a source other than the disclosing party; or (iii) a party can show by written

records was in its possession prior to disclosure by the other party. If a party is legally compelled to disclose any Confidential Information it will be entitled to do so provided it gives the other party prompt notice and assists the other party, at the other party's expense, in obtaining any protective order.

18. **Miscellaneous.** If any provision of the Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder shall not in any way be affected. Neither party shall be considered in default in performance of its obligations should their execution be delayed by any act or cause that is beyond the reasonable control of the party. Neither party shall be deemed the agent, partner or co-venture of the other by reason of this Agreement or Customer's use of the Products. Any taxes based upon this Agreement or the Services or Products provided, except taxes upon the income of ADS, shall be paid by Customer.

19. **Governing Law.** This Agreement shall be governed by the laws of the State of Louisiana, applicable to contracts made and to be performed wholly within such state, without regard to conflicts of laws provisions.

20. **Compliance With the United States Patriot Act:** The Customer authorizes ADS, Columbus Data Services or their designee to contact references, and to obtain credit reports, OFAC reports and other such information on the Customer and/or principal(s) of Customer as may be required for compliance with the Patriot Act.

21. **Entire Agreement.** This Agreement constitutes the entire Agreement of the parties with respect to the subject matter hereof and supersedes all existing agreements and all other communications, written or oral. This Agreement may not be released, discharged or modified in any manner except in writing signed by all parties. No purchase order or other form of the Customer will modify, supersede, add to or in any way vary the terms of this Agreement. Any acknowledgment by an employee of ADS of such a Customer form shall be solely for informational purposes.

IN WITNESS WHEREOF, the parties hereto have duly caused this Agreement to be executed by their undersigned representatives, thereunto duly authorized.

ATM DEPLOYER SERVICES, LLC

CUSTOMER

Signature: _____

Signature: _____

Name (PRINT): _____

Name (PRINT): _____

Title: _____

Title: _____

Date: _____

Date: _____

Social Security Number: _____

Date of Birth: _____

AGENT: National ATM Wholesale



Signature: _____

Name (PRINT): _____

Title: _____

Date: _____



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Merchant Agreement for Processing Services Schedule B

The following is a list of locations subject to this Agreement:

- 1. _____ Date entered into Agreement: _____
- 2. _____ Date entered into Agreement: _____
- 3. _____ Date entered into Agreement: _____
- 4. _____ Date entered into Agreement: _____
- 5. _____ Date entered into Agreement: _____
- 6. _____ Date entered into Agreement: _____
- 7. _____ Date entered into Agreement: _____
- 8. _____ Date entered into Agreement: _____
- 9. _____ Date entered into Agreement: _____
- 10. _____ Date entered into Agreement: _____

Each of the above listed ATMs is subject to all the terms of the Processing Agreement. Terms of the agreement cannot be renegotiated at any period during the initial term unless required by ADS / National ATM Wholesale. If the physical location of any ATM listed is changed Customer must give ADS / National ATM Wholesale 30 days notice of such change, the agreement remains in force at the new location. Customer breach of any aspect of this Agreement may result in penalties including but not limited to processing fee losses, admin fees, ATM discount losses, setup fees, legal fees, etc.

Signature: _____

Date: _____