



# The Processing Agreement

THIS AGREEMENT is effective this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between Intelligent eCommerce, Inc. hereinafter ATMDepot.com, 119 N El Camino Real Ste #E-136 Encinitas, CA 92024 (the "Company") and \_\_\_\_\_ (the "Merchant") located at \_\_\_\_\_ . For the location \_\_\_\_\_.

You the Merchant agree that you own or lease an automated teller machine ("ATM"). ATMDepot.com hereinafter "Company" is in the business of providing processing services for ATM's. Merchant desires to engage Company to perform certain services as set forth herein. NOW, THEREFORE, In consideration of the foregoing Recitals and of the covenants and agreements hereinafter contained, it is hereby agreed as follows:

1. EQUIPMENT. If Merchant purchases an ATM from ATMdepot.com Merchant agrees they shall place an ATM on its premises in an indoor location pursuant to the location information ("Premises") as set forth on the printed ATM agreement.

2. AVAILABILITY. Merchant agrees that the ATM shall at all times remain available for use by Merchant's customers during Merchant's normal business hours for the term of this Agreement. However, Merchant shall make the ATM available during reasonable business hours so that the Company may perform maintenance or system improvements. Generally, such maintenance should not exceed two (2%) percent of available time per calendar month.

3. TRANSACTION PROCESSING FEES. The Company's processing center, Access To Money, hereinafter "A2M" agrees to pay Merchant for each surcharged transaction made on the ATM. A "transaction" shall mean any cash withdrawal made from a cardholder's account. A2M shall pay Merchant 110% of the stated ATM surcharge per transaction (up to \$1.50 surcharge). **If ATM surcharge exceeds \$1.50 A2M shall pay Merchant 100% of surcharge plus \$0.\_\_\_\_** of the "Interchange". Payments for transactions will be disbursed monthly by A2M to Merchant on or before the 20th of each calendar month following the calendar month in which the transactions occurred. The transaction fee and Interchange may be increased or decreased by Company upon at least 30 days prior notice to Merchant, provided such increase or decrease is directly related to a corresponding cost incurred by Company or A2M in providing such service as deemed by the ATM networks.

- a. MasterCard lowered the Interchange rate by \$0.18. MasterCard transactions are processed via the Cirrus ATM network, which accounts for approx. 5% of all ATM transactions on our network. Your percentage may be higher or lower depending on ATM cards used in your location. There is a MasterCard Interchange fee of \$0.18 for all MasterCard ATM transactions.
- b. Visa lowered the Interchange by \$0.15. Visa transactions are processed thru the Plus network, which accounts for approx 10% of all ATM transactions on our network. Your percentage may be higher or lower depending on ATM cards used in your location. There is a Visa Interchange fee of \$0.15 for all Visa ATM transactions.
- c. The NYCE network lowered the Interchange by \$0.03. NYCE transactions are processed thru the NYCE network. NYCE network is a regional network. If your ATM is used by customers with a NYCE card NYCE will charge an Interchange fee of \$0.03 for all NYCE ATM transactions.
- d. These Network Fees do not affect the ATM surcharge (the fee charged to ATM users); it only affects the amount you receive for your ATM surcharged transactions performed on these specific networks which is determined by the origin of your customers ATM cards.

5. PROCESSING SERVICES. Company agrees to provide data processing services, through its agreement with A2M and Lynk Systems Inc. or such other processing service as Company, in its sole discretion, may select, to process authorized ATM transactions. Merchant agrees to accurately complete, or has accurately completed, the ATMdepot.com Merchant Application, and has completed and delivered or shall complete and deliver such other Documents as are reasonable required to facilitate the implementation and delivery of such processing services.

6. INVENTORY REQUIREMENTS. Merchant shall, at its cost and expense, inventory an adequate supply of paper and ribbons at Merchant's Premises, which are available from Company or any other supplier. Merchant shall keep sufficient amounts of cash in ATM at all times, for normal expected transaction usage.

7. PHONE AND ELECTRICAL REQUIREMENTS. Merchant shall, at its expense, contract for and provide a local dedicated business telephone line and one (1) dedicated operating electrical power outlet (110V),

both within three (3) feet of the ATM site. Merchant shall pay for monthly charges incurred for connection with such telephone line and electrical power usage. ATM will dial a local or toll free number.

8. EXCLUSIVITY. Merchant shall not permit the installation of any other ATM on Merchant's Premises, nor permit the removal of the ATM from the Premises for the term of this Agreement, except as may be agreed by Company in writing or required by any lessor of the ATM.

9. INSURANCE REQUIREMENTS. Merchant agrees to protect the ATM from damage, loss, theft or destruction. Merchant shall provide and maintain property insurance against loss, theft, damage or destruction of the ATM in an amount not less than the full replacement value of the ATM. Merchant agrees it shall make no alteration or addition to the ATM, and shall not permit anyone, other than authorized representatives of the Company, to perform any service or repair work on the ATM unless it receives Company's prior written authorization.

10. TERM. This Agreement shall be for a term of 2 Years from the date of installation, unless amended or terminated by written agreement signed by both Company and Merchant or terminated by Company pursuant to paragraph 13 below. Notwithstanding anything contained herein to the contrary, Agreement will automatically renew for additional terms of 2 years unless Merchant provides written notice to the contrary ninety days prior to the end of the current term. Customer agrees that any terminal added to this agreement more than thirty (30) days after the date of this Agreement shall have independent terms, which shall commence on terminal's installation date and run for initial and renewal terms equal in length to those of the original terms.

11. WARRANTIES & REPRESENTATIONS OF MERCHANT. Merchant warrants represents as follows: (a) It is the owner of the Premises or that it holds a lease or option to renew the lease for said Premises of equal or greater length than the term of this Agreement. (b) It is engaged in a lawful business and is duly licensed under the laws of the State, County and City in which Merchant and the ATM is located, to conduct such business. (c) It has not been terminated from settlement or card transactions by any financial institution or determined to be in violation of MASTERCARD or VISA, to conduct such business. (d) It has the authority to enter into this Agreement with Company and that the person(s) signing for or on behalf of Merchant are specifically authorized and directed to do so by Merchant.

12. EQUIPMENT RELOCATION. In the event Merchant transfers or moves its business from the Premises, Merchant shall notify company not less than thirty (30) days prior to any such event. In such event, this Agreement shall be automatically deemed amended to apply to Merchant's new location for any remaining term(s) of this Agreement.

13. TERMINATION. This Agreement and all obligations of the Company hereunder may be canceled by Company in the event of Merchant's default under the terms of any lease for the ATM or in any event if Merchant fails to comply with the terms of this Agreement. Merchant may terminate this Agreement prior to the end of the then current term, provided Merchants gives Company 180 days advanced notice and pays Company a cancellation fee as follows: 30% of the average monthly commission charges which have been billed or collected by Company during the six (6) months prior to termination times the months remaining in the then current term of this Agreement. Merchant hereby authorizes Company to collect the cancellation fee on the termination date by electronic fund transfer from Merchant's clearing account.

14. ATTORNEY'S FEES. If suit or legal action is instituted to enforce or interpret any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to costs, such sums as the court may adjudge reasonable for legal fees at trial and on any appeal there from.

15. COMPANY NOT LESSOR'S AGENT. Merchant understands and agrees that Company is not an agent of any lessor of the ATM, that it has no authority to act on behalf of or for any lessor, and that it is not authorized to waive or alter any term or condition of any lease for the ATM.

16. COMPANY'S LIMITED LIABILITY TO MERCHANT.

a) Company will use ordinary care in providing transaction processing service and will, at Company's expense, correct any errors that are due solely to Company's personnel. However, the expense of correcting such errors incurred by Company shall be the only responsibility of Company occasioned by its performance or non-performance of its obligations under this Agreement, and Merchant agrees to accept the correction of errors by Company as its sole and exclusive remedy. Merchant may not assert any claim against Company after one (1) year from the date that Merchant has or should have had knowledge of facts giving rise to such claim or any loss.

(b) Company shall have no liability to third parties for any damages incurred by such third parties arising out of the performance or non-performance of services under this Agreement, and Merchant agrees to and hereby shall indemnify and hold Company harmless of, from and against any and all liability, claims, causes of actions or expenses relating thereto including Company's attorneys' fees in connection therewith.

(c) EXCEPT AS PROVIDED IN THIS PARAPGRAPH 16, MERCHANT UNDERSTANDS AND AGREES THAT COMPANY MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, AS TO ANY MATTER WHATSOEVER, INCLUDING THE CONDITION OF THE ATM, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OR THE SERVICES RENDERED TO MERCHANT. COMPANY SHALL IN NO EVENT BE RESPONSIBLE OR LIABLE FOR ANY LOST PROFITS OR DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, ADDITIONAL, OR PUNITIVE DAMAGES OF MERCHANT, OR ANY OTHER LIABILITY ARISING OUT OF ANY BREACH OF THIS AGREEMENT.

17. INDEMNIFICATION. Merchant shall indemnify Company and hold Company, and its officers, directors, employees, agents, and independent contractors, harmless of, from and against any and all claims, liabilities, costs, attorney's fees, losses or expenses, directly arising or resulting from the installation, use, maintenance, or removal of the ATM or the services covered by this Agreement accruing after the date hereof and/or from Merchant's breach of this Agreement, except to the extent such claim, liability, cost, loss or expense, or a portion thereof arises directly from the gross negligence or willful misconduct of Company, its officers, agents, or employees. This provision shall survive termination of this Agreement.

18. ASSIGNMENT. This Agreement may be assigned by Company but not by Merchant without Company's prior written consent. Company reserves the right, in its sole discretion, to delegate or assign to third parties the performance of certain of Company's servicing and settlement obligations to Merchant. In the event of any such delegation, the provisions of this Agreement applying to Company shall apply equally to such third party in the performance of such services including, but not limited to, the limited liability, indemnification, and force majeure provisions hereof.

18a. ASSIGNMENT. It is understood and agreed that if Location is sold and any of the original owners of aforementioned business are stockholders, owners, or have any vested interest in new business or corporation this agreement shall remain in force.

19. FORCE MAJEURE. Neither party shall be considered in default in the performance of its obligation should its performance thereof be delayed or prevented by force majeure. "Force majeure" shall include, but shall not be limited to: hostilities, restraint of rules or peoples, revolution, civil commotion or riots, strike or lockout, epidemic, accident, fire, flood, earthquake, wind storm or explosion, lack of or failure of transportation facilities, lack of or failure of power facilities, regulation or ordinance, demand or requirements of or denial of approval by any government or governmental agency having or claiming to have jurisdiction over the subject matter of this Agreement or the parties, or any act of God, or any act of government, or any cause, whether of the same or different nature existing or future, which is beyond the control and without the fault or negligence of the parties.

20. NETWORK CHARGEBACKS. Merchant acknowledges that Company does not process cash transactions, but that the same are processed by the cardholder's financial institution or others. In the event any transaction or daily settlement amount is disputed by a cardholder's (customer's) financial institution or the processor and, as a result, charged back by that financial institution or processor, Merchant hereby authorizes and approves charging the amount of any such dispute, plus any assessed fees, directly to the Merchant's clearing account, as identified in the ATMDepot ACH form or, the amount of any such dispute may, at Company's discretion, offset and reduce any transaction processing fees, daily settlements or remaining surcharge revenue due Merchant under paragraphs 3 and 4 above. Notwithstanding, Company shall exert reasonable efforts to assist in the resolution of any dispute.

21. TRADE SECRETS. The processing services provided by Company consist in part of computer programs, procedures, forms, and other related materials which have been acquired, licensed to or developed by Company at substantial expense. Merchant acknowledges that the foregoing are trade secrets which are of great value to Company, and disclosure to others of any of the programs, procedures, forms, and other related materials with respect thereto will result in loss and irreparable damage to Company. Merchant, therefore, agrees not to disclose to others any information regarding such process, except as required in the proper performance of this Agreement. All specifications, tapes, programs, service and trademarks, and related material developed by or for Company in connection with this Agreement shall be the property of Company and shall be returned to Company upon termination of this Agreement.

22. RELATIONSHIP OF PARTIES. It is not the intention or the purpose of this Agreement nor shall any provision herein create nor shall the same be construed as creating any type of partnership or joint venture of the parties hereto.

23. WAIVER. A waiver by either party of a breach of any provision of this Agreement shall not constitute a waiver or prejudice of the parties' rights to otherwise demand strict compliance with this Agreement and any and all provisions hereof.

24. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement of the parties hereto. There are no other promises, representations, terms, conditions or obligations other than those contained herein. This Agreement supersedes all prior communications, representations or agreements, oral or written, between the parties and shall not be modified except in writing signed by each party.

25. COUNTERPARTS. This Agreement may be executed in one or more counterparts, which counterparts shall together constitute one and the same instrument. A true and complete facsimile copy of this Agreement and any signature affixed hereto shall be legally effective for all purposes.

26. NOTICES. Any notices to be given under this Agreement shall be deemed adequate if given in writing and sent by certified or registered international mail, by recognized air courier, or by facsimile transmittal at a fax number known to be maintained by the party to whom notice is to be given, coupled with a copy of the fax confirmation sheet. Notice shall be deemed given when it is received.

27. MISCELLANEOUS. This Agreement shall bind and inure to the benefit of each of the parties and their successors, representatives, and heirs. This Agreement sets forth the entire agreement of the parties with respect to its subject matter and shall supersede any prior discussions, understandings and agreements. No waiver or modification to this Agreement shall be effective unless it is in writing, signed by the parties. This agreement shall be deemed to have been made in the State of New Jersey and shall be governed by its laws. No provision of this Agreement shall be interpreted or construed against any party because such party or its legal counsel was the drafter thereof. If any part of this Agreement is held invalid or unlawful by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned duly authorized representatives of the parties have executed this Agreement as of the day and year indicated above.

Merchant

By: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATMDepot.com:

By: \_\_\_\_\_ TO BE COMPLETED BY ATMDEPOT.COM

Title: \_\_\_\_\_ TO BE COMPLETED BY ATMDEPOT.COM

# ATM ADDENDUM

Between \_\_\_\_\_ and Access to Money

THIS ADDENDUM shall amend and shall constitute a part of, together with any exhibits or schedules attached hereto, that certain Processing Agreement (the "Agreement") made as of the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ by and between \_\_\_\_\_ ("ATM Operator") and Access to Money ("Registered ISO"). The terms hereof will for all purposes be deemed incorporated in the Agreement. In the event of any conflict between the terms of the Agreement and the terms of this Addendum, the terms of this Addendum shall control. All capitalized terms, unless otherwise indicated, shall have the meanings attributed to them in the Agreement.

The following provisions are added to the Agreement:

**Member Bank:** The Member financial institution sponsoring the ATM transactions under this Agreement is **Citizens Bank**, whose principal address is Citizen Financial Group, 1 Citizens Plaza, Providence RI 02903 and who can be reached for customer service at (888) 486-4949 (hereafter "Member Bank").

**Compliance with Rules and Regulations:** ATM operator and ISO each acknowledge that sponsorship of ATM operator and its activities under this Agreement may be terminated for failure to comply with the terms of this Agreement, which include provisions require by the rules and regulations of the applicable debit networks.

**Financial Information:** ATM operator hereby acknowledges that it is required to provide requested financial information to Member Bank under this Agreement since the transactions settled by Members Bank hereunder constitute "financial transactions" under Federal Law (e.g., USA Patriot ACT). Member Bank is therefore required to obtain, verify, and record the required information. A consumer report and criminal background investigation may also be required by Member Bank in connection wit sponsorship of the ATM Operator activities under this Agreement. ATM Operator hereby authorizes Member Bank or any of its agents to investigate information or data obtained from ATM Operator. ATM Operator further represents that all information provided to Member Bank and its agents are true and correct.

\_\_\_\_\_  
(Merchant Name - "ATM Operator")

by: \_\_\_\_\_  
Signature

Date: \_\_\_\_\_

Name: \_\_\_\_\_  
Print

Title: \_\_\_\_\_

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Office use only - Do not write below this line

**Access to Money**  
(**"ISO"**)

**Citizens Bank**  
(**"Member"**)

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_