



## MERCHANT AGREEMENT FOR ATM TRANSACTION PROCESSING SERVICES

Fax or email to Convenience ATMs, Inc. 204 East South Street, Suite 6057 Orlando, FL 32801  
Phone: 1-877-624-ATMS Fax: 1-866-757-2132 Email: info@convenienceatms.com

### **AUTHORIZED AGENT for ATM Deployer Services, LLC (ADS): Convenience ATMs, Inc**

This Merchant Agreement for ATM Transaction Processing Services (this "Agreement") is entered into as of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and among ADS, whose address is 5220 Spring Valley Road, Suite 300, Dallas, TX 75254; its Agent, Convenience ATMs, Inc, a Florida corporation, having its principal place of business at 204 E South Street, Suite 6057, Orlando, FL 32801 ("Convenience ATMs"); and the person or entity identified on the signature page hereto ("ATM Owner"). Convenience ATMs is an authorized agent of ADS.

**1. ATM Transaction Processing Services.** This Agreement is for automated teller machine ("ATM") transaction processing services only (as more fully described below), solely for the ATM(s) and at the locations identified on Exhibit A (the "ATM Set-up Form"), and does not include ATM equipment, ATM supplies, or telecommunication or internet protocol devices for the transmission of data. ATM Owner understands and agrees that it is responsible for the supply of ATM equipment (meeting then-current network standards), supplies and communication devices. Throughout the Term of this Agreement, ATM Owner shall keep all such equipment in good repair and continuously operational for its customers during regular business hours, excluding short periods of downtime necessary for cash loading and maintenance. Neither Convenience ATMs or ADS will be liable for equipment purchases or services provided from or through third parties, and ATM Owner agrees to indemnify and hold Convenience ATMs and ADS harmless from and against any and all claims, losses, expenses, liabilities, actions or damages (including reasonable attorneys' fees) (collectively, "Losses") arising from or in connection with such equipment or services. As part of the transaction processing services, ADS will procure services to drive the ATMs, link such ATMs with one or more debit networks ("Networks"), transmit transactions initiated at such ATMs through a Network, transmit electronic messages to such ATMs, and provide periodic electronic reports of such transactions (collectively, the "Services"). ADS may accept or reject any ATM Set-up Form for any reason in its sole discretion.

**2. ATM Operational Requirements; Compliance with Applicable Law.** ATM Owner will, either itself or through an arrangement with a reputable cash loading service, keep a sufficient amount of cash in the ATM to meet expected customer requirements, which may vary from time to time. ATM Owner will, at its expense, supply a dedicated business telephone line, or IP connection, as well as one standard electrical power outlet that is unaffected by unusual current draw from other machinery or equipment for each ATM. ATM Owner shall place the ATM in a physical location that maximizes customer access and ATM Owner shall adequately display on the ATM all program symbols, service marks, and names that inform the public of qualifying cards and networks. ATM Owner understands that its right to use and display such symbols, marks, and names will continue only so long as this Agreement is in effect and for such period of time as Convenience ATMs/ADS has the authority to use or display those symbols, marks, and names. ATM Owner will fully comply with (and bears all responsibility for any non-compliance of): (a) all requirements and procedures set forth in any Network or sponsoring financial institution rules or regulations, (b) all applicable local, state, or federal laws, rules, regulations orders and ordinances regarding the deployment, operation or placement of ATMs, (c) all ADS guidelines, policies and procedures related to ATM deployment or operation now existing or may be established or modified by ADS from time to time, and (d) any other legal or regulatory requirements that may be imposed, including those relating to the placement, lighting and other safety or security requirements that relate to ATMs (collectively, "Applicable Law"). ATM Owner shall not knowingly permit any ATM transaction involving a card that was not originated by a nationally recognized card issuer. To comply with current Network rules, the ATM must permit a maximum cash withdrawal limit of not less than two hundred dollars (\$200).

### **3. ATM Owner Duties and Responsibilities.**

a) **Responsibility for Use, Misuse or Unauthorized Use.** ATM Owner assumes all liability for any use, misuse or unauthorized use of any ATM, any card, Network or the Services by its customers or any other third party, and agrees to indemnify and hold Convenience ATMs and ADS harmless from any and all Losses arising from or in connection with any such use, misuse or unauthorized use. ATM Owner shall be responsible for auditing and balancing the data contained in reports issued by ADS and reconciling any out-of-balance condition. ATM Owner will notify ADS of any out-of-balance condition that ATM Owner 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 ATM Owner. ADS shall not be liable for any damages, interest or costs associated with any error as set forth on the ACH Authorization Release form.

b) **Cooperation.** The obligations of Convenience ATMs/ADS under this Agreement are subject to and conditioned upon the cooperation and timely performance by ATM Owner of its obligations, including compliance with Applicable Law. ATM Owner shall also ensure that its affiliates and users of the Services are trained to comply with all Applicable Law.

c) **Financial Obligations.** ATM Owner 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 ATM Owner Obligations.** If as a part of the Services, ATM Owner requests access to Networks or other third party service providers, ATM Owner agrees to enter into the appropriate agreements with such networks or third party service providers, including sponsoring financial institutions.

**4. 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, ATM Owner may terminate this Agreement, without penalty, by delivering to Convenience ATMs written notice of termination within 30 days after ATM Owner's receipt of updated documentation describing the changes, such termination to be effective 30 days after receipt by Convenience ATMs of timely written notice of termination from ATM Owner.

ATM Owner Initials \_\_\_\_\_

**5. Relocation of ATM.** ATM Owner agrees to place the ATM at a secure location as identified on the ATM Set-up Form (the "Sites"). In the event ATM Owner desires to move the ATM to another business location, it shall provide advance written notice to ADS/Convenience ATMs, it being understood by ATM Owner that the continuous reporting of the location of the ATM is a Network regulatory compliance requirement. At such time as ATM Owner delivers written location information to Convenience ATMs, and that written location information is accepted by ADS, this Agreement is deemed amended to apply to, and reflect the address of, the relocated ATM.

**6. Transaction Authorization Networks.** Upon the successful completion of all necessary authorization data and documents, Convenience ATMs/ADS shall provide ATM Owner's ATMs with access to Networks and processing switches, each as selected by Convenience ATMs/ADS in its sole discretion, as well as the settlement of transaction funds in the settlement account identified on the Settlement Distribution Form. Settlement shall typically occur within 48 hours, in accordance with Federal Reserve rules, and subject to special rules for weekends and holidays.

**7. ATM Surcharge Fee.** If an ATM surcharge fee is permitted by Applicable Law, and ATM Owner (and/or its cash loader) chooses to impose any such charge or surcharge upon the customer, notice of the imposition of any such charge or surcharge must be prominently displayed in a manner which makes the customer reasonably aware that such a charge or surcharge exists *prior* to the completion of a transaction. ATM Owner shall identify the surcharge on the Settlement Distribution Form and that surcharge fee is the sole revenue received by ATM Owner under this Agreement.

**8. Network fees and costs.** ADS or its third party processor shall provide the Services based on then-current national and regional Network fee and cost schedules, and Convenience ATMs/ADS agrees that it is responsible for changes in fees and costs from the Networks. With respect to any transaction that is disputed or charged back by a cardholder, Network, or processing switch, ATM Owner authorizes, or authorizes on behalf of its cash loader, the charging of the settlement account for the amount of the dispute, chargeback and assessed fees.

**9. Exclusivity.** This Agreement is for Services on any and all ATMs in use at the Sites. During the Term of this Agreement, Convenience ATMs/ADS shall be the sole and exclusive provider of ATM Owner's requirements for Services at ATMs located at the Sites and ATM Owner will not, directly or indirectly, obtain such Services at the Sites from any third party or provide such Services at the Sites on its own behalf. ATM Owner shall not permit the installation or removal of ATMs at the Sites, except as agreed in writing by Convenience ATMs or ADS, or convert any ATM with respect to which Convenience ATMs/ADS provides Services hereunder to any other processor.

**10. Term.** The term of this Agreement (the "Term") shall be for an initial period of five (5) years commencing on the Effective Date and shall thereafter automatically renew for successive five (5) year periods unless terminated in writing by either party not less than sixty (60) days prior to the expiration of the initial term or subsequent renewal term. Termination in writing must be made using U.S. Certified Mail; no other method is acceptable.

**11. Suspension of Services.** ADS may at any time suspend or terminate its Services with respect to any one or more of the ATMs if (a) ATM Owner has violated any Applicable Law, (b) ATM Owner has breached any representation, warranty covenant or obligation under this Agreement, (c) the ATM has not been properly maintained, is defective, does not dispense cash correctly or does not meet the requirements of any Network rule, regulation or procedure (collectively, "Network Rules") or other Applicable Law, (d) ADS's sponsoring bank withdraws or terminates the sponsorship of ADS or ATM Owner, (e) the ATM is not audited on a regular basis by ATM Owner, or (f) the ATM is moved from the Site as set forth on the applicable approval ATM Set-up Form. ADS's right to suspend Services as set forth herein shall be in addition to any other remedies ADS may have with respect to the matters described in this Section 11, whether pursuant to this Agreement or otherwise. Neither Convenience ATMs nor ADS shall have any liability to ATM Owner for any suspension of Services pursuant to this Section 11.

**12. Termination.** Either party shall have the right to terminate this Agreement for breach of a material condition of this Agreement by the other party if that other party has failed to resolve the breach within thirty days of receipt of written notification thereof. Further, either Convenience ATMs or ADS may terminate this Agreement effective immediately, without liability, upon written notice to ATM Owner if: (a) ATM Owner (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 or liquidation, or (iv) is adjudicated insolvent or bankruptcy, or (b) ATM Owner (i) engages in activities which violate any Network Rule or other Applicable Law, or which cause Convenience ATMs or ADS to violate any Network Rule or other Applicable Law; (ii) operates in an unsound, unsafe manner; (iii) participates in fraudulent activity, including, without limitation, making misrepresentations regarding its business operations; or (iv) any representation or warranty made to Convenience ATMs or ADS is false or misleading in any material respect as of the date made, or becomes false or misleading at any time. ADS may terminate this Agreement or curtail or restrict the provision of Services hereunder at any time or times, without liability, upon written notice to ATM Owner following the issuance of any order, rule or regulation, the enactment of any law or the decision of any court of competent jurisdiction over ADS that prohibits ADS from providing the Services or restricts the provision of such Services so as to make the continued provision thereof unprofitable or undesirable, or would be unduly restrictive to ADS's business or would require burdensome capital contributions or expenditures. If this Agreement is terminated without cause by ATM Owner, or the ATM ceases to process ATM transactions with Convenience ATMs/ADS prior to the expiration of the initial Term or any renewal Term, then: (1) ATM Owner shall be liable to Convenience ATMs and shall pay to Convenience ATMs a deactivation fee of \$150 as partial reimbursement to Convenience ATMs for its ATM setup and shut down expenses and network service charges; and (2) ATM Owner shall be liable to Convenience ATMs and shall pay to Convenience ATMs a termination fee for its loss of income based upon the following calculation: Average monthly ATM transactions for all months of the Term leading up to the month transactions when ceased *multiplied* by the number of months remaining in the Term of this Agreement *multiplied* by the sum of Convenience ATMs' average monthly interchange from Networks per transaction added to Convenience ATMs' share of surcharge per transaction (if any) or \$500, whichever is greater. ATM Owner authorizes Convenience ATMs to collect its deactivation fee and loss of income from unpaid surcharge revenue or by electronic funds transfer from ATM Owner's settlement or clearing account.

**13. Inactivity Fee.** ATM Owner expressly recognizes and agrees that if it fails to turn on and/or activate the ATM covered by this Agreement within sixty days after the Effective Date, ATM Owner shall pay \$100.00 to Convenience ATMs as reimbursement for set-up and related network service charges.

**14. Sale or Transfer of ATM Owner's Business.** Upon sale or transfer of all or part of ATM Owner's business it is the ATM Owner's responsibility to obtain the transfer of this Agreement to ATM Owner's transferee and obtain from Convenience ATMs written consent to such transfer. ATM Owner understands and agrees that this Agreement is separate and distinct from the ATM and the sale or transfer of one does not imply the sale or transfer of the other, and ATM Owner shall remain bound under the terms of this Agreement until its transferee consents in writing to such transfer. Convenience ATMs' consent shall not be unreasonably withheld provided said transferee has a good credit history and reputation and all necessary authorization data and documents are delivered to Convenience ATMs.

ATM Owner Initials \_\_\_\_\_

**15. Warranty Disclaimer.** CONVENIENCE ATMS/ADS MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, REGARDING THE SERVICES OR THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, FROM A COURSE OF DEALING OR USAGE OR TRADE OR ARISING OTHERWISE BY LAW. ATM OWNER ACKNOWLEDGES AND AGREES THAT IT IS SOLELY RESPONSIBLE FOR THE DEPLOYMENT OF THE ATM AND ASSOCIATED ATM EQUIPMENT, MEETING ALL THEN-CURRENT NETWORK and Regulatory STANDARDS, including Americans With disabilities Act ("ADA") and EMV compliance.

**16. No Consequential Damages.** TO THE FULLEST EXTENT PERMITTED BY LAW, CONVENIENCE ATMS/ADS WILL NOT BE LIABLE FOR ANY BUSINESS INTERRUPTION, LOSS OF PROFIT, DATA OR THE LIKE (WHETHER DIRECT OR INDIRECT IN NATURE) OR FOR ANY OTHER FORM OF INCIDENTAL, INDIRECT CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND (WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE) IN CONNECTION WITH OR ARISING OUT OF CONVENIENCE ATMS'S/ADS'S PERFORMANCE OR NON-PERFORMANCE (INCLUDING BREACH) UNDER, OR OTHERWISE ARISING IN CONNECTION WITH, THIS AGREEMENT, OR CAUSED BY THE USE, MISUSE OR INABILITY TO BENEFIT FROM ANY OF THE SERVICES, WHETHER ON ACCOUNT OF NEGLIGENCE OR OTHERWISE, EACH OF WHICH IS HEREBY PRECLUDED AND WAIVED BY AGREEMENT OF THE PARTIES, EVEN IF CONVENIENCE ATMS/ADS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EITHER CONVENIENCE ATMS'S OR ADS'S AGGREGATE AND CUMULATIVE LIABILITY FOR DAMAGES HEREUNDER EXCEED \$200. ATM OWNER FURTHER ACKNOWLEDGES AND AGREES THAT CONVENIENCE ATMS/ADS IS NOT RESPONSIBLE FOR ANY NETWORK OR PROCESSING SWITCH PROBLEMS OR DOWNTIME.

**17. Third Parties.** Neither Convenience ATMs or ADS shall have any liability to third parties, including without limitation for theft, vandalism, assault or any other misconduct of any person that occurs in the proximity of an ATM or at a Site, arising out of the performance or non-performance of the Services or the use or operation of the ATMs, and ATM Owner shall indemnify and hold Convenience ATMs and ADS harmless from any and all Losses relating thereto.

**18. Regulatory Access.** ATM Owner agrees to provide reasonable access for audit purposes to Convenience ATMs/ADS or any state or federal authority with jurisdiction thereof.

**19. Records and Information.** ATM Owner and its ATM cash loader authorize Convenience ATMs/ADS to share information regarding this Agreement and the ATM transactions processed pursuant to this Agreement as necessary to respond to a police or governmental request or court order or as required by Applicable Law. ATM Owner shall retain a copy of all ATM transaction logs and records evidencing any transaction involving the use of the ATM for a period of three (3) years, or longer if so required by Applicable Law.

**20. Indemnification.** ATM Owner will indemnify, defend, and hold Convenience ATMs and ADS harmless from any and all Loss that either Convenience ATMs or ADS may incur, suffer, or become liable for, directly or indirectly, arising from, or related to: (a) ATM Owner's breach of any of its representations, warranties, covenants or agreements under this Agreement; (b) ATM Owner's breach of any Network Rule or other Applicable Law; (c) acts or omissions of ATM Owner or its directors, officers, employees, independent contractors or customers; (d) any fines or other penalties assessed against Convenience ATMs, ADS, its third party processor, its sponsor bank or any Network, card association or governmental agency as a result of the actions or omissions of ATM Owner or its directors, officers, employees, independent contractors or customers; (e) the taking or failure to take by Convenience ATMs or ADS of any action based in whole or in part on information or documents provided to Convenience ATMs or ADS by an ATM or by or on behalf of ATM Owner, whether or not Convenience ATMs or ADS may have been negligent in any respect in acting or not acting on or pursuant to the information or documents in regard to whether the information or documents were complete and accurate; (f) transactions generated at the ATMs; or (g) fraud, intentional misconduct or negligence of ATM Owner or its directors, officers, employees, independent contractors or customers.

**21. Warranty of Authority and Non-Interference.** ATM Owner represents and warrants that it has full legal authority to enter into this Agreement and that (1) no prior contract exists with any entity or person, other than Convenience ATMs/ADS, for Services at ATMs located at the Sites, or in the event a prior contract exists, that the contract has been fully performed or released and ATM Owner has no further obligations thereunder, and (2) this Agreement does not interfere with any contractual or legal obligations ATM Owner may have with respect to any contract or agreement for the placement of an ATM and/or Services at ATMs located at the Sites. ATM Owner agrees to indemnify, defend and hold Convenience ATMs and ADS harmless from any and all Losses arising out of or in connection with this representation and warranty.

**22. Severability.** In the event any part of this Agreement is determined by any court or regulatory authority to be invalid or unenforceable, then this Agreement shall be automatically modified to eliminate that part which is affected thereby. The remainder of this Agreement, however, shall remain in full force and effect to the extent allowed by law.

**23. Right of Offset.** ATM Owner grants Convenience ATMs/ADS the right to apply any money or revenue due to ATM Owner under this Agreement to any late or unpaid invoices due to Convenience ATMs/ADS pursuant to other agreements with ATM Owner.

**24. Force Majeure.** Neither Convenience ATMs or ADS shall be in default of this Agreement or liable for any loss or damage of any kind resulting from any delay or failure to perform its responsibilities under this Agreement due to causes beyond its reasonable control, including without limitation any shortage of material, labor dispute or strike, act of God, weather conditions, war, embargo, fire, riot, failures or fluctuations in electrical power, heat, light, air conditioning, or telecommunications equipment.

**25. Choice of Law, Jurisdiction, Legal Fees, Costs and Expenses.** All disputes, disagreements and controversies between the parties regarding the terms, conditions, interpretation, performance or binding nature of this Agreement shall be governed and resolved in accordance with the laws of the state of Florida with sole and exclusive jurisdiction and venue in any court of Orange County, Florida that meets all necessary jurisdictional requirements, or otherwise the corresponding Federal District Court for Orlando, Florida. ATM Owner expressly agrees that the aforementioned court(s) of law can exercise personal jurisdiction over ATM Owner and that ATM Owner expressly waives the affirmative defense of lack of personal jurisdiction before said court. In any action at law or in equity relating to this Agreement, the prevailing party shall be entitled to recover from the other party its costs, expenses, legal fees and attorneys' fees as the court may deem reasonable and proper.

**26. Compliance with the United States Patriot Act.** ATM Owner authorizes Convenience ATMs/ADS or their designee to contact references, and to obtain credit reports, OFAC reports and other such information on ATM Owner and/or principal(s) of ATM Owner as may be required for compliance with the Patriot Act.

*ATM Owner Initials* \_\_\_\_\_

**27. Binding Effect; Assignment.** This Agreement is binding on the parties hereto and their respective successors and permitted assigns. ATM Owner may not assign this Agreement, in whole or in part, without the prior written consent of both Convenience ATMs and ADS, which consent shall not be unreasonably withheld.

**28. Entire Agreement.** This Agreement, along with Exhibit A which is made a part of this Agreement by this reference, and any amendments referencing this Agreement, is the complete agreement between Convenience ATMs/ADS and ATM Owner relating to the subject matter hereof, superseding all proposals or prior or contemporaneous representations, negotiations, understandings, or agreements, whether oral or written. Any modification of, or amendment to, this Agreement shall not be valid or effective unless it is set forth in writing, signed by ATM Owner and accepted by Convenience ATMs/ADS's authorized corporate representative in writing; provided however that ADS may modify this Agreement as needed to meet any requirements of Applicable Law, provided further that no such modifications shall affect the obligations of the parties prior to the modification. ADS shall provide all modifications of this Agreement in writing to ATM Owner.

**29. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one in the same agreement.

**30. Notices.** Except as provided herein, any notice required or permitted hereunder shall be in writing and may be given by personal service or by depositing same in the United States mail, first class postage prepaid, to the address of the party receiving notice as it appears on the signature page hereto, as such address may be changed through like written notice to the other party.

**31. Survival.** The terms and conditions set forth in this Agreement that by their terms or nature would continue beyond termination or expiration hereof shall survive termination or expiration of this Agreement.

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:**

**ATM OWNER:**

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

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

Name (PRINT): \_\_\_\_\_

Name (PRINT): \_\_\_\_\_

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

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

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

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

EIN / Social Security Number: \_\_\_\_\_

Date of Formation / Birth: \_\_\_\_\_

**AGENT FOR ADS: CONVENIENCE ATMS INC**



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

Name (PRINT): \_\_\_\_\_

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

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

*ATM Owner Initials* \_\_\_\_\_

# Merchant Agreement for ATM Transaction Processing Services “Exhibit A” ATM Set-up Form

The following is a list of locations subject to the Merchant Agreement for ATM Transaction Processing Services:

1. Location Name: \_\_\_\_\_

Location Address: \_\_\_\_\_

Date entered into Agreement (Effective Date): \_\_\_\_\_

*(Convenience ATMs use only):*

Terminal ID: \_\_\_\_\_

ATM Manufacturer: \_\_\_\_\_ ATM Serial Number: \_\_\_\_\_

2. Location Name: \_\_\_\_\_

Location Address: \_\_\_\_\_

Date entered into Agreement (Effective Date): \_\_\_\_\_

*(Convenience ATMs use only):*

Terminal ID: \_\_\_\_\_

ATM Manufacturer: \_\_\_\_\_ ATM Serial Number: \_\_\_\_\_

3. Location Name: \_\_\_\_\_

Location Address: \_\_\_\_\_

Date entered into Agreement (Effective Date): \_\_\_\_\_

*(Convenience ATMs use only):*

Terminal ID: \_\_\_\_\_

ATM Manufacturer: \_\_\_\_\_ ATM Serial Number: \_\_\_\_\_

4. Location Name: \_\_\_\_\_

Location Address: \_\_\_\_\_

Date entered into Agreement (Effective Date): \_\_\_\_\_

*(Convenience ATMs use only):*

Terminal ID: \_\_\_\_\_

ATM Manufacturer: \_\_\_\_\_ ATM Serial Number: \_\_\_\_\_

Each of the above listed ATMs is subject to all the terms of the Merchant Agreement for ATM Transaction Processing Services. If the physical location of any ATM listed is changed ATM Owner must give ADS/Convenience ATMs 30 days' notice of such change.

ATM Owner: \_\_\_\_\_

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

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

ATM Owner Initials \_\_\_\_\_