

Processing & Management Agreement

This agreement is made this _____ between _____ located at _____ hereinafter referred to as “CONTRACTING PARTY”, and Ocean ATM NJ, LLC located at 416 Richmond Ave, Point Pleasant, NJ 08742.

WHEREAS, Ocean ATM is affiliated with Nyce and or other third-party electronic funds transfer (EFT) Processor for Credit Cards and ATM Debit Card transactions, hereinafter referred to as “Processor” and, **WHEREAS, Ocean ATM** has the ability to offer ATM processing to CONTRACTING PARTY through its affiliate relationship with Processor, and other services, and CONTRACTING PARTY is desirous of engaging Ocean ATM for such processing services, and other services described herein, NOW THEREFORE, in consideration of the mutual covenants and promises herein, Ocean ATM and CONTRACTING PARTY do hereby agree as follows:

1. **AUTOMATED TELLER MACHINE PROCESSING:** Ocean ATM agrees to provide CONTRACTING PARTY twenty-four (24) Hour, Three Hundred sixty-five (365) Day per Year access to ATM processing for ATM machine(s) listed by serial number(s) in Exhibit “A” attached hereto and incorporated by reference herein, except when maintenance is necessary or when events beyond the control of Ocean ATM occur. CONTRACTING PARTY acknowledges that Ocean ATM will provide such processing services through its affiliate relationship with Processor(s), and that CONTRACTING PARTY hereby agrees to use Ocean ATM as CONTRACTING PARTY’s exclusive provider for such ATM processing services for said ATM machines for the term of this Agreement. Ocean ATM shall reserve the right to utilize other processor(s) to perform identical functions.
2. **NETWORK AVAILABILITY:** Ocean ATM will make available, to CONTRACTING PARTY, through Ocean ATM’s Processor, the following Credit Card and ATM Debit Card Networks for processing on CONTRACTING PARTY’s ATM machines listed in Exhibit “A” attached hereto, and incorporated by reference herein: VISA, MasterCard, Discover, American Express, Cirrus, and Plus and other regional networks.
3. **SETTLEMENT:** Ocean ATM processors will facilitate the transfer of funds via the ATM networks to the CONTRACTING PARTY’s account in the event that CONTRACTING PARTY is the cash provider for the CONTRACTING PARTY’s ATM using the Automated Clearing House (ACH) on a two (2) day delay basis. If CONTRACTING PARTY provides cash replenishment, CONTRACTING PARTY shall be responsible for terminal balancing on a periodic basis. Ocean ATM maintains daily transaction data to assist in the process. In accordance with Regulation E and NACHA rules, requests for adjustments of transaction amounts may not be made more than ninety (90) days from the transaction date.
4. **INCOME:** CONTRACTING PARTY shall be entitled to the income generated by Operator’s ATM as set forth below. Ocean ATM shall pay CONTRACTING PARTY’s surcharge and other income on or before the 15th day of the month for the income due from the previous month’s transactions.

TABLE 1

ATM TERMINAL SURCHARGE

EXPENSES:

PROCESSING COST PER TRANSACTION (minus)

MAINTENANCE FEE PER SURCHARGE TRANSACTION (minus)

Accepted by
CONTRACTING PARTY

Owner

Date

Phone:

Social Security or Federal Tax Identification Number

Accepted By

Todd Schager
Ocean ATM

Date

Ocean ATM NJ, LLC

1038 Route 88, Suite 2
Point Pleasant, NJ 08742
877-538-2860 fax 877-538-8929

5. **TERM:** The initial term of this Agreement shall be for a minimum period of _____ years starting on the date that ATM is installed at location and starts doing customer transaction or the date of this agreement, whichever is later, and shall automatically renew for additional recurring _____ year periods unless terminated by either party by giving the other party written notice within a sixty (60) day period of the expiration date of the initial term or renewal thereof. The term will be extended if no transactions occur for a period of thirty (30) days or more, for any reason including, but not limited to renovations, construction, or natural disasters. In the event the CONTRACTING PARTY sells, leases or otherwise transfers its interest in the business the CONTRACTING PARTY will insure that this Agreement is assumed by the new CONTRACTING PARTY, lessee or transferee. If the CONTRACTING PARTY fails to ensure that the purchaser or other transferee assumes the Agreement, then the CONTRACTING PARTY will pay OCEAN ATM Liquidated Damages. The Liquidated Damages will be calculated by determining the average monthly income generated by the ATM to OCEAN ATM, and multiplying that amount by the number of months remaining under the term of the Agreement. The CONTRACTING PARTY shall also be liable to OCEAN ATM for all expenses, including reasonable legal fees and court costs, incurred as a result of a breach of this paragraph. CONTRACTING PARTY must notify Ocean ATM 30 days prior to change in CONTRACTING PARTY. In the event that CONTRACTING PARTY issues a notice of non-renewal as described above, Ocean ATM shall, for a period of 180 days following the expiration of the Term, have a first right of refusal to match any offers received by CONTRACTING PARTY for ATM processing services.
6. **EXCLUSIVITY:** CONTRACTING PARTY agrees to use Ocean ATM as the exclusive provider for the locations included in this agreement. CONTRACTING PARTY agrees not to remove ATM or place any other ATM's on the premises. CONTRACTING PARTY agrees it will not subscribe to any other data processing services for processing ATM Transactions during the term of this agreement except as may be agreed by Ocean ATM in writing. Ocean ATM may provide miscellaneous advertising including but not limited to Digital Signage Advertising or similar communications and may retain the revenue from these ancillary functions. CONTRACTING PARTY agrees that Ocean ATM has the exclusive right to provide and/or place Digital Signage Advertising and/ or Bill Payment Kiosks to/ location.
7. **CONFIDENTIAL INFORMATION:** Ocean ATM agrees not to disclose any confidential information about CONTRACTING PARTY, including but not limited to banking information, social security or tax id numbers or any other information that may be deemed confidential and that CONTRACTING PARTY notifies Ocean ATM in writing as to such confidentiality, except as required by law or by court order, and CONTRACTING PARTY agrees not to disclose any confidential information about Ocean ATM, including but not limited to banking information, trade secrets and any other information that Ocean ATM may from time to time inform CONTRACTING PARTY in writing of such confidential information or material, except as required by law or court order.
8. **OTHER SERVICES – OPERATIONS AND ADMINISTRATION:** Ocean ATM agrees to oversee the operations of CONTRACTING PARTY's ATM machine(s) identified in Exhibit "A" and as accepted in Table 1. Ocean ATM also agrees to provide for "second line" services, maintenance, and repairs defined as all mechanical, hardware, and software repairs, inclusive of parts and labor as agreed in Table 1. Second line maintenance will only be provided to those terminals that have agreed to pay a fee for such services that are greater than zero. CONTRACTING PARTY may elect to purchase a service contract in lieu of having Ocean ATM provide such service. In any event Ocean ATM shall not be responsible for the cost of any repairs that result from vandalism, abuse or acts of God. CONTRACTING PARTY agrees to provide "first line" services defined as receipt paper replenishment, correcting paper jams, ink cartridge replacements and minor cleanings. Ocean ATM will use whatever resources and personnel it has available to ensure continuous operation of CONTRACTING PARTY's ATM's. Ocean ATM will provide a toll free service line to be used by CONTRACTING PARTY or CONTRACTING PARTY's employees in the event of equipment or service problems. Ocean ATM agrees to provide training to CONTRACTING PARTY or CONTRACTING PARTY's employees in daily ATM terminal balancing and first line service at no cost to CONTRACTING PARTY. CONTRACTING PARTY is responsible to comply with all Federal, State and Local guidelines and laws for ATM.
9. **SUCCESSOR AND ASSIGNS:** This agreement may be assigned under the same terms and conditions contained herein by either Ocean ATM or CONTRACTING PARTY upon Thirty (30) days notice in writing by the assigning party to other party, and this Agreement shall insure to the benefit of and be binding upon the parties named herein and their respective heirs, executors, administrators, successors, and assigns.
10. **SEVERABILITY:** If any portion of this Agreement is held illegal, unenforceable, void, or voidable by any Court, each of the remaining terms hereof shall nevertheless remain in full force and effect as a separate contract. This agreement shall be deemed modified and amended to the extent necessary to render it valid and enforceable. To that end, the parties further agree to replace any void or unenforceable provisions of this Agreement with valid and enforceable provisions that will achieve, to the fullest extent possible, the economic, business and other purposes of any void or unenforceable provision.
11. **LIQUIDATED DAMAGES:** In the event of a termination of the Processing Agreement prior to the term outlined in section 5, Processor shall than be entitled to liquidated damages to be paid by the CONTRACTING PARTY under the terms of this agreement equal to revenue per transaction of \$ 0.35 cents multiplied by the average monthly transaction volume for the preceding twelve (12) months or such lesser periods of time, is acceptable. This resulting monthly figure (or lesser period of time if applicable) shall then be multiplied by the number of months or fractions thereof remaining under the terms of the agreement. The CONTRACTING PARTY shall also be liable to OCEAN ATM for all expenses, including reasonable legal fees and court costs, incurred as a result of a breach of this contract.
12. **OBLIGATIONS OF THE PARTIES:** The parties hereto agree that each will use its best efforts to comply with all applicable federal, state, local laws, ordinances, rules and regulations of the Networks and any provider, of an affiliated service under this Agreement. Each party agrees that, at the request of the other he or she will execute and deliver any instrument, furnish any information, or perform any other act reasonably necessary to carry out the provisions of this agreement. If reductions of income or increases in fees are required from networks or state or local governments by OCEAN ATM, OCEAN ATM may pass thru these fees or reductions of income to CONTRACTING PARTY.

13. **LOCATION:** CONTRACTING PARTY agrees to keep ATM in a mutually agreed location within the establishment. ATM shall be visible to customers and not blocked by boxes, other equipment, etc. CONTRACTING PARTY agrees to provide the necessary funds for the ATM cash machine to facilitate customer transactions. Owner shall be responsible for ensuring there is a surcharge disclosure sticker on the ATM. Owner shall be responsible for notifying Ocean ATM if the surcharge sticker has been removed for any reason. This fee sticker should be physically and visibly posted on the ATM in addition to any on-screen notices of fees.
14. **NOTICES:** All notices, requests demands and other communication pursuant to this Agreement shall be deemed to have been duly given if they are delivered by hand or mailed with postage prepaid, return receipt requested to the address of the parties hereto.
15. **CAPTION HEADINGS:** The headings to the Sections of this Agreement are inserted for reference only, and are not to be construed as limiting or extending the provisions hereof.
16. **MISCELLANEOUS:** The Agreement shall be governed by and construed and enforces in accordance with laws of the state of New Jersey both substantive and remedial, with venue in Freehold, New Jersey. The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of the Agreement. This Agreement represents the entire understanding and Agreement between the parties hereto with respect to the subject matter hereof and cannot be amended, supplemented, or modified except by an instrument in writing signed by the parties against whom enforcement of any such amendment, supplement, or modification is sought. No provisions of this Agreement shall be construed against a party because of draftsmanship of such provisions, it being agreed that this Agreement has been fully negotiated by the parties and such parties have had full and complete opportunity to consult with legal counsel.
17. **LIMITATIONS OF LIABILITY:** Except for insuring that funds are transferred to reimburse CONTRACTING PARTY for cash dispensing transactions in the event that the CONTRACTING PARTY is the cash provider and that funds for surcharges revenue are paid to CONTRACTING PARTY as set forth in section 4 above, Ocean ATM's liability, if any, arising out of or related to its performance under this Agreement, including but limited to liability for authorizing or failing to authorize transaction charges on behalf of CONTRACTING PARTY's customers, shall be limited to general money damages in an amount not to exceed the total transaction charge collected by Ocean ATM hereunder during the six (6) months immediately preceding the date upon which the CONTRACTING PARTY's claim for such damages arose. Such general damages shall be the exclusive remedy of CONTRACTING PARTY and Ocean ATM shall have no liability for special, incidental, or consequential damages or sums paid by CONTRACTING PARTY to third parties and Ocean ATM agree that damage limitation by Ocean ATM under this Agreement and the possible amount of actual damage to CONTRACTING PARTY. No action arising out of this agreement may be brought either party more than one year after the action has occurred. In the event that Ocean ATM is required to appear in, or is made a defendant in, any legal action with respect to cash dispensing services, CONTRACTING PARTY shall indemnify and hold Ocean ATM harmless from all loss, liability and expense, except for any loss liability or expense arising out of Ocean ATM own lack of reasonable care, in which case Ocean ATM liability shall be limited as provided above. CONTRACTING PARTY agrees that Ocean ATM will not be liable for any loss, expense or cost incurred by CONTRACTING PARTY, customers, or any persons entity as a result of any cause beyond reasonable control of Ocean ATM including be not limited to, weather and all other Acts of God, war, fire, explosion, power failure, Government priorities, labor stoppages, supplier failure or delay, civil disorder, or breakdown or malfunctioning of machinery, transportation facilities or other equipment or any nature. Ocean ATM's performance shall be excused during time of such event, but Ocean ATM shall use its best efforts to limit the duration of any such delay.
- OCEAN ATM MAKES NO WARRANTIES EXPRESS OR IMPLIED, WITH RESPECT TO THE CASH DISPENSING SERVICES, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT. NO ORAL OR WRITTEN REPRESENTATION OR STATEMENTS MADE BY OCEAN ATM OR ANY OF ITS AGENTS OR EMPLOYEES INCLUDING, BUT NOT LIMITED TO, ANY SPECIFICATIONS DISCRETIONS OR STATEMENTS CONTAINED IN USER GUIDE PROVIDED TO CONTRACTING PARTY, SHALL BE BINDING UPON OCEAN ATM AS A WARRANTY PROMISE OR PERFORMANCE UNLESS EXPRESSLY CONTAINED IN THIS AGREEMENT.**
18. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof, and may not be changed orally, but only be written instrument signed by authorized officer of each party.

Accepted By
CONTRACTING PARTY

Accepted By
OCEAN ATM

EXHIBIT A

LOCATION OF TERMINAL	 Add  Change
Location Name:	
Address:	Terminal Model:
City/State/Zip:	Terminal Serial #: TBD
Phone No.: Fax No.:	Terminal Phone #:
Store Hours:	Surcharge Amount:
	Denomination:  \$10  \$20
Corporate Name:	
Corporate Address:	
City/State/Zip:	

Distributor/ISO:	Customer Name:
Ocean ATM NJ, LLC	
By:	Customer Signature:

