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VA 24315  
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688-4780  
DCJS 11-2915

## ATM AGREEMENT

This ATM Agreement (this "**Agreement**") is made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between **VENCO BUSINESS SOLUTIONS, INC.**, a Virginia corporation (the "**Company**"), located at the address listed above, and \_\_\_\_\_ (the "**Proprietor**"), located at \_\_\_\_\_ (Phone Number: \_\_\_\_\_).

### WITNESSETH:

In consideration of the mutual promises contained herein, and One Dollar (\$1.00) cash in hand paid by Company to Proprietor, the sufficiency and receipt of which is hereby acknowledged, the parties agree as follows:

**1. Equipment.** Company owns automated teller machines ("**ATMs**" or the "**Equipment**") and owns or has the right to utilize all software needed for the operation of the Equipment. Proprietor agrees that Company may install, service and maintain its Equipment at the Proprietor's premises located at \_\_\_\_\_ (the "**Premises**").

**2. Ownership.** All Equipment installed by Company at the Premises, and all contents of each therein shall remain the sole property of Company, and neither Proprietor nor any third party shall have any right or claim thereto. All said Equipment so placed with Proprietor shall bear the name or identification marks of Company and shall state thereon that said Equipment is the sole property of Company.

**3. Term.** This Agreement shall be for a term of five (5) years. This Agreement shall automatically renew for additional terms of five (5) thereafter, on the same terms and conditions provided herein, unless earlier terminated or canceled in accordance with Section 7 herein.

**4. Responsibility of Company.**

a. Installation and Maintenance. Company shall install, service and maintain such number and models of Equipment as Company, in its sole discretion, shall determine to be profitable to place at the Premises.

b. Transaction Fees. Company shall pay the Proprietor \$ \_\_\_\_\_ per surchargeable transaction made on the Equipment located at the Premises. For purposes of this Agreement, a transaction is defined as any cash withdrawal made at the Equipment from a cardholder's account when a surcharge fee is collected. Company will disburse payments for transactions to Proprietor on a monthly basis.

**5. Responsibility of Proprietor.**

a. Access. Proprietor shall provide such space for the Equipment as is necessary to enable customers to have unobstructed access to the Equipment, and enable Company to install, service and maintain the Equipment.

b. Exclusivity. The Proprietor shall not allow any other person or business to place or provide like competitive equipment on the Premises during the term of this Agreement.

c. Floor Space and Electrical Requirements. Proprietor shall provide sufficient floor space and all necessary electrical outlets for the operation of Equipment on the Premises. The Proprietor, at its sole cost and expense, shall provide and maintain a business telephone line and electrical power necessary to operate the Equipment.

d. Insurance. Proprietor shall maintain sufficient insurance to protect the Equipment from damage, loss, theft, or destruction and shall name Company or its assign as an additional loss payee. Proprietor waives any rights of recovery against Company or its processing providers arising from such loss, theft, damage, or destruction.

e. Notification. Proprietor shall notify Company promptly of any operating problems with the Equipment.

f. Compliance with Laws. The Proprietor agrees not to use the Equipment for any unlawful purpose or to violate any federal, state, local, or municipal law that appertains to the usage of the Equipment.

g. Property Ownership or Lease Term. The Proprietor represents and warrants that it is the owner of the Premises or that it holds a lease or option to renew the lease for the Premises in equal or greater length than the initial five (5) year term of this Agreement.

h. Equipment Relocation. In the event that Proprietor transfers or moves its business from the Premises, or if Proprietor sells its business, Proprietor shall notify the Company not less than thirty (30) days prior to such an event. At the Company's option, this Agreement may be deemed to apply to the Proprietor's new business location for the remaining term of this Agreement. The Proprietor shall pay for the de-installation and installation expenses.

i. Return of Equipment; Damage Responsibility. The Proprietor agrees to return all Equipment to the Company in the same condition as received, reasonable wear and tear accepted. Proprietor further agrees to be responsible for any and all damages to the Equipment, including those from, but not limited to fire, robbery, assault, flood, theft or confiscation

thereto for any reason.

**6. Breach by Proprietor.** In the event this Agreement is breached by Proprietor for any reason whatsoever, all sums which Company could have reasonably expected to collect in the remainder of the then current term of this Agreement shall immediately become owed and payable by Proprietor to Company without offset, plus twenty percent (20%) of the total of said sums, which is hereby agreed to be reasonable liquidated damages for early termination. In such event, it is further agreed that Company shall have no duty to mitigate damages.

**7. Early Termination; Cancellation.** Proprietor may terminate this Agreement by furnishing written notice of termination to Company no less than sixty (60) days prior to the end of any term. Company shall have the right to cancel this Agreement at any time during the term of this Agreement, without any written notice to Proprietor, if, in the opinion of the Company, the gross collection from the use and operations of the Equipment as proven unprofitable and or that Equipment have been abused in the opinion of Company.

**8. No Warranty, Consequential Damage Waiver, and Limitation of Liability.** EXCEPT AS SPECIFICALLY PROVIDED HEREIN, OWNER MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE. OWNER SHALL IN NO EVENT BE RESPONSIBLE FOR ANY LOST PROFITS OR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR INDIRECT DAMAGES THAT PROPRIETOR MAY INCURE, WHETHER ARISING UNDER CONTRACT, TORT, PRODUCT LIABILITY, STRICT LIABILITY OR OTHERWISE. OWNER'S SOLE LIABILITY TO PROPRIETOR HEREUNDER, EXCEPT AS OTHERWISE PROVIDED, SHALL BE TO REMEDY ANY BREACH OF THIS AGREEMENT IN A TIMELY MANNER. NEITHER PARTY WILL BE LIABLE FOR FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT IF SUCH FAILURE IS DUE TO ACTS OR EVENTS BEYOND SUCH PARTY'S REASONABLE CONTROL.

**9. General Provisions.**

a. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

b. Entire Agreement. This Agreement represents the entire agreement between the parties with respect to the Equipment and supersedes all prior agreements between the parties with respect to the Equipment. The Agreement may be amended or modified, or any provisions of this Agreement waived, only by an instrument signed by both parties.

c. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

d. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same Agreement. Signatures of the parties transmitted by facsimile or other electronic transmission shall be deemed to be their original signatures for all purposes.

e. No Waiver. The failure of either party to enforce any provision of this Agreement, or to seek relief for any breach or failure to comply with any representation, warranty, obligation or duty under this Agreement, shall not waive any right to enforce such provision in the future or to seek relief for any subsequent breach.

f. Successors and Assigns; Relationship of Parties. This Agreement shall be binding upon the parties hereto, their heirs, administrators, executors, successors and assigns. In the event Proprietor sells or assigns its interest in the Premises, its successor shall be fully bound by the terms and conditions of this Agreement. This Agreement shall not be construed to create a joint venture between the parties.

g. Notices. All notices shall be in writing and shall be deemed given upon personal delivery or upon deposit with the appropriate postal service, by registered or certified mail with postage and fees prepaid and addressed to the party at its respective address listed above. Either party may change its address upon written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

**COMPANY:**

**PROPRIETOR:**

VENCO BUSINESS SOLUTIONS, INC.

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

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

Its: \_\_\_\_\_

\_\_\_\_\_

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

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

Its: \_\_\_\_\_