

MANDRAKE.ATM

ATM OWNERS AGREEMENT

MANDRAKE.ATM PTY LTD
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QLD, 4067, Australia

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Mandrake.ATM

ATM BUYER APPLICATION FORM

CUSTOMER DETAILS

Customer's Name

[individual (sole trader), company or partnership, please specify]

ABN

ACN

Business Name & Reg. No:

[If applicable]

Site Address

[ATM will be delivered to and must be operated from this address]

Telephone

Fax

Email

Mobile

Time Business Operated by Customer

Business Hours

No. Directors/Partners

[Where Customer is a company/partnership]

Bank

Bank Acc. Name (in full)

Bank Address

Account No

BSB

1st Director/Proprietor Details (Full Name)

Driver's Licence No.

D.O.B.

Address

Suburb

State

Postcode

Home Ph. No.

Mobile

APPLICATION FORM

2nd Director/Proprietor Details (Full Name)

Driver's Licence No.

D.O.B.

Address

Suburb

State

Postcode

Home Ph. No.

Mobile

PURCHASE OF ATM

ATM Model Selected: NH 2700 Through-the-Wall
ATM and NH 2700 CE Lobby Style

ATM Purchase Price (must be in full prior to delivery): \$

GST payable (includes tax on ATM and shipping): \$

Shipping:

Credit Card Enabled YES NO

BY SIGNING AND SUBMITTING THIS ATM BUYER APPLICATION FORM, THE CUSTOMER AGREES TO BE BOUND BY THE ACCOMPANYING TERMS AND CONDITIONS.

Special Conditions (insert here):

TRANSACTION PROCESSING FEE, PER (\$0.60) Not Including GST

TRANSACTION (Cash Withdrawals, Balance Inquiries and Declines).

Term: [60] months from the Commencement Date.

APPLICATION FORM

SIGNATURES

I/We the undersigned confirm that the information given by us in this application form is true and correct and I/we have read the accompanying Terms and Conditions and agree to those Terms and Conditions:

SIGNED BY CUSTOMER/S:

[If the Customer is a company (other than a sole director/secretary company), this form must be signed by 2 directors or 1 director and the company secretary]

Full Name(s) and Title(s):

Date:

The following person(s) agree to provide a guarantee and indemnity of the Customer's obligations in accordance with the ATM Ownership Terms and Conditions:

BACKGROUND

- A. The Customer has submitted an ATM Buyer Application Form (the "**Application Form**") which forms part of this document to Mandrake.ATM for the supply of an automatic teller machine and ongoing services to enable its operation for the initial term set out in the Application Form.
- B. This document sets out the terms and conditions of supply.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions unless the context otherwise requires:

"**ACL**" means the Australian Consumer Law as defined under section 4(1) of the *Competition and Consumer Act 2010* (Cth).

"**Activation Date**" means the date that the ATM commences trading (following installation and commissioning) as determined by Mandrake.ATM (acting reasonably).

"**Agreement**" means the agreement coming into effect upon Mandrake.ATM signing the acceptance section of the Application Form.

"**Average Monthly Revenue**" means that amount calculated by Mandrake.ATM and notified to the Customer which is equal to the Average Monthly Transactions multiplied by the Transaction Processing Fee.

"**Average Monthly Transactions**" means, as at the calculation date, the average monthly Transactions based on a period of six (6) months trading for the ATM preceding that calculation date, provided that if there has not been a history of six (6) months trading prior to the calculation date, then the average monthly Transactions as reasonably estimated by Mandrake.ATM based on location of the Premises and the typical number of Transactions for an automatic teller machine in a similar location.

"**ATM**" means the automatic teller machine referred to in clause 2.2 and, where applicable, includes any replacement of the original automatic teller machine that is procured by the Customer (whether as a result

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of the application of proceeds of insurance following damage or destruction of the equipment, or otherwise), and approved by Mandrake.ATM during the Term.

“**Customer**” means the person or entity referred to as the ‘Customer’ in the Application Form.

“**Customer’s Application**” means the Customer’s offer to Mandrake.ATM made by delivering the Application Form to Mandrake.ATM signed by the Customer (as applicant) and each person named as Customer.

“**Casualty Event**” has the meaning given to such term under clause 10.3.

“**Commencement Date**” has the meaning given to such term under clause 2.3.

“**Consumer**” means a consumer as defined under section 3 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

“**Discount Rate**” means the Cash Rate Target set by the Reserve Bank of Australia from time to time plus 2% per annum.

“**Early Termination Amount**” means the sum of:

- (a) the Average Monthly Revenue (net of GST, if any) multiplied by the number of remaining months in the Term (had the Agreement not been terminated early), reduced to a present value by applying the Discount Rate to that amount; plus
- (b) the amount of the cost of early termination of wireless or ADSL communication devices associated with the ATM; plus
- (c) an administration fee of \$330 (inclusive of GST) for early termination (being a genuine pre-estimate of the administrative costs incurred by Mandrake.ATM as a consequence of early termination of the Agreement).

“**Goods**” includes the initial ATM supplied by Mandrake.ATM to the Customer.

“**GST**” means goods and services tax or a like value-added tax.

“**Initial Term**” means the aggregate of the following:

- (a) the period from the Commencement Date until the Activation Date; plus
- (b) from the Activation Date, the period stated as the “term” in the Application Form (and if none stated, then on the day prior to the fifth (5) anniversary of the Activation Date).

“**Insolvency Event**” means the happening of any of the following events in respect of the Customer:

- (a) where the Customer is a corporation:
 - (i) a liquidator, provisional liquidator, administrator, official manager, receiver, manager, or receiver and manager or similar officer is appointed in respect of it or an application is made to a Court for an order for the appointment of such a person which is not dismissed by the Court within 14 days of the making of the application;
 - (ii) it enters into, or resolves to enter into, a scheme of arrangement or composition with or assignment for the benefit of, or it proposes a reorganisation, moratorium or other administration, involving it, its creditors or a class of its creditors or it resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention so to resolve, except to reconstruct or amalgamate on terms approved by Mandrake.ATM; or
 - (iii) it is or states that it is unable to pay its debts when they fall due or is presumed to be insolvent on any of the grounds in section 459C of the *Corporations Act 2001* (Cth);
- (b) where the Customer is (or in the case of a partnership, includes) a natural person, that person becomes an insolvent under

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administration as defined in section 9 of the *Corporations Act 2001* (Cth) or action is taken which could result in that event or the person becomes bankrupt or commits an act of bankruptcy.

“**Laws**” means laws, legislation, regulations, rules and industry codes of conduct (whether mandatory or voluntary).

“**Manufacturer**” means a manufacturer as defined under section 7 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

“**PPSA**” means the *Personal Property Securities Act 2009* (Cth) and the associated Regulations, as amended.

“**Premises**” means the premises specified as the ‘Site Address’ in the Application Form or such other premises as approved by Mandrake.ATM from time to time in writing for the location of the ATM during the Term.

“**Renewal Term**” has the meaning given to it under clause 2.4.

“**Replacement ATM**” has the meaning given to such term under clause 10.3(a).

“**Term**” means the term of the Agreement, being either the Initial Term or a Renewal Term (as the case may be), as extended (if applicable) under clause 10.4(a).

“**Transactions**” means all transaction activities via an automatic teller machine including successful and unsuccessful cash withdrawal transactions, balance enquiries and any other successful or unsuccessful transactions initiated by a card user.

“**Transaction Processing Fee**” means the transaction processing fee as stated on the Application Form as varied by Mandrake.ATM during the Term pursuant to clause 13.4 (if applicable).

1.2 In these terms and conditions, unless the context otherwise requires:

(a) headings are for convenience only and do not affect the interpretation of these terms and conditions;

(b) words importing the singular include the plural and vice versa;

(c) words importing a gender include any gender;

(d) references to persons include references to corporations and other bodies and entities;

(e) references to statutes include all statutes amending, consolidating or replacing such statutes and includes any subordinated legislation issued under them; and

(f) the use of the word “includes” or “including” is not used as form of limitation of the words that precede it.

2. COMMENCEMENT DATE AND TERM

2.1 Mandrake.ATM has absolute discretion to accept or refuse the Customer’s Application.

2.2 Where Mandrake.ATM accepts the Customer’s Application, then it agrees to supply an ATM in accordance with the specifications referred to in the Customer’s Application.

2.3 The Agreement commences when the Customer’s Application is accepted by Mandrake.ATM (the “Commencement Date”) and continues for the Initial Term.

2.4 The term of the Agreement will renew for a further period of five (5) years following expiry of the Initial Term, and thereafter for subsequent terms each of five (5) years’ duration (each a “Renewal Term”), unless either party gives notice in writing to the other, that it wishes for the Agreement to expire at the end of the then current term, at least three (3) months before the commencement of the Renewal Term.

3. PRICING AND PAYMENT

3.1 The price specified for the automatic teller machine in the Application Form is exclusive of GST.

Unless otherwise agreed by Mandrake.ATM the price is valid for a period of only 30 days.

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- 3.2 If the Customer requests any variation to the Agreement, Mandrake.ATM may increase the price to account for the variation.
- 3.3 Unless otherwise agreed by Mandrake.ATM in writing, payment of the ATM (and associated costs under clause 7.2) is required in full on or before delivery.
- 3.4 Payment is not taken to have been made until Mandrake.ATM receives the price as cleared funds.

4. PASSING OF PROPERTY

- 4.1 Until Mandrake.ATM receives full payment in cleared funds for the ATM and associated costs under clause 7.2:
- (a) title and property in the ATM remains vested in Mandrake.ATM and does not pass to the Customer;
- (b) the Customer must hold the ATM as fiduciary bailee and agent for Mandrake.ATM;
- (c) in addition to its rights under the PPSA, Mandrake.ATM may without notice, enter the premises where it suspects the ATM is located and remove it, notwithstanding that it may have been attached to other goods not the property of Mandrake.ATM, and for this purpose the Customer irrevocably licences Mandrake.ATM to enter such premises and also indemnifies Mandrake.ATM from and against all costs, claims, demands or actions by any person arising from such action.

5. PERSONAL PROPERTY SECURITIES ACT

- 5.1 Despite anything to the contrary, the PPSA applies to these terms and conditions.
- 5.2 For the purposes of the PPSA:
- (a) terms used in clause 5 that are defined in the PPSA have the same meaning as in the PPSA;

- (b) these terms and conditions are a security agreement and Mandrake.ATM has a Purchase Money Security Interest in all present and future goods supplied by Mandrake.ATM to the Customer and the proceeds of the goods;
- (c) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
- (d) the Customer must do whatever is necessary in order to give a valid security interest over the goods in a form which is able to be registered by Mandrake.ATM on the Personal Property Securities Register.

- 5.3 The security interest arising under this clause 5 attaches to the goods when the goods are collected or dispatched from Mandrake.ATM's premises and not at any later time.
- 5.4 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
- 5.5 Mandrake.ATM and the Customer agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these terms and conditions.
- 5.6 To the extent permitted by the PPSA, the Customer agrees that:
- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on Mandrake.ATM will apply only to the extent that they are mandatory or Mandrake.ATM agrees to their application in writing; and
- (b) where Mandrake.ATM has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

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- 5.7 The Customer must immediately upon Mandrake.ATM's request:
- (a) do all things and execute all documents necessary to give effect to the security interest created under the Agreement; and
 - (b) procure from any person considered by Mandrake.ATM to be relevant to its security position such agreements and waivers (including as equivalent to those above) as Mandrake.ATM may at any time require.
- 5.8 Mandrake.ATM may allocate amounts received from the Customer in any manner Mandrake.ATM determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by Mandrake.ATM.
- 5.9 For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these terms and conditions and any information pertaining to the sale of goods and details of the goods shall be kept confidential at all times. Neither party may disclose any information pertaining to these terms and conditions or the sale of the goods, except as otherwise required by law or that is already in the public domain.

6. RISK AND INSURANCE

- 6.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the Customer immediately on the goods being delivered to the Customer or taken from Mandrake.ATM's premises.
- 6.2 The goods are sold to the Customer on the basis that the Customer has obtained all necessary licences or permits under all relevant Laws in relation to the goods.
- 6.3 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use, installation or possession of any of the goods sold by Mandrake.ATM, unless recoverable from Mandrake.ATM on the failure of any statutory guarantee under the ACL.

7. DELIVERY, INSTALLATION AND LOCATION OF ATM

- 7.1 Unless otherwise agreed, Mandrake.ATM will deliver the ATM to the Premises.
- 7.2 The Customer is responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the goods to the Customer to the point of delivery.
- 7.3 If delivery is attempted and is unable to be completed the Customer is deemed to have taken delivery of the goods. The Customer is liable for storage charges, payable monthly on demand.
- 7.4 The Customer indemnifies Mandrake.ATM against any loss or damage suffered by Mandrake.ATM, its sub-contractors or employees as a result of delivery, except where the Customer is a Consumer and Mandrake.ATM has not used due care and skill.
- 7.5 In order to enable the ATM to be installed, the Customer will provide, at its expense, a dedicated, double, 240-volt (50 Hz) power circuit, within 1 metre of the proposed installation location. This circuit must consist of line, neutral and ground leads connected directly to a power circuit breaker panel. This circuit cannot be shared with any other equipment. The Customer will arrange at its expense, for the connection of a standard dedicated PSTN FAX quality telephone line, also within 1 metre of the proposed installation location, with a standard telephone wall jack (RJ11). The Customer will pay for any additional telephone line, electrical upgrades, services, wireless connection/s, or external monitoring of the device, as required.
- 7.6 The Customer agrees to provide adequate space around the ATM in order to ensure that:
- (a) the ATM is prominent;
 - (b) cash replenishment/maintenance and servicing can be easily performed;
 - (c) cardholders have easy access;

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- (d) the ATM is clear of hazards and will not suffer any damage as a result of its placement in that location; and
- (e) the ATM has good lighting and safety measures.

7.7 If the Customer wishes to relocate the ATM, then the Customer will provide Mandrake.ATM with at least one month's written notice of such intention. The Customer agrees to bear the cost of any relocation of the ATM, or de-installation, and or repairs or other required building works.

7.8 Mandrake.ATM will provide adequate promotional signage if requested by the Customer and at the Customer's expense.

7.9 Mandrake.ATM will arrange adequate staff training, instructional materials and initial stationery supplies in order for the ATM to be operated by the Customer after installation.

7.10 The Customer must ensure the prompt repair to any service, power or telecommunications devices that the ATM uses, including PSTN line, wireless connection or modem, or ADSL lines, as soon as the Customer discovers a fault or failure with any (service, power or telecommunications) equipment, that renders the ATM partially or totally inoperable, and this must be reported to Mandrake.ATM promptly, and in any event within 3 hours.

7.11 The Customer acknowledges and agrees that termination of the Agreement (other than termination due to Mandrake.ATM's breach) before the ATM is installed or the Customer's refusal to accept delivery of the ATM in breach of the Agreement will result in the Customer being immediately liable to pay the Early Termination Amount which is considered fair and reasonable compensation for damage suffered by Mandrake.ATM.

8. EXCLUSIVITY

8.1 The Customer will not permit the installation of another automatic teller machine on the Premises or its boundaries and agrees not to procure or permit the provision of services

which are the same as or similar to those provided by Mandrake.ATM under the Agreement by another person, agent, firm, or company on the Premises during the Term.

9. PROPERTY RIGHTS & RESPONSIBILITIES

9.1 The parties acknowledge that:

- (a) property in the ATM passes to the Customer following payment in full of the purchase price due from the Customer (as buyer) under the Agreement;
- (b) all of the ATM systems, software, functions and processes (such as the software, switching, staging keys, remote encryption services, security keys etc.) remain the property of Mandrake.ATM or its licensors at all times; and
- (c) any cash contained in the ATM is the property of the Customer (or the appointed agent of the Customer) and is the sole responsibility of the Customer.

9.2 The Customer agrees to keep sufficient cash amounts in the ATM so that it is available for use during the normal operating hours of the business.

9.3 The Customer agrees to inform Mandrake.ATM within 24 hours if for any reason:

- (a) the ATM is non-operational for any reason; or
- (b) the Customer is unable to load the ATM with cash.

9.4 Mandrake.ATM, on behalf of the Customer, may schedule sufficient down time in order to allow for maintenance or repair of the ATM.

9.5 Mandrake.ATM will use reasonable endeavours to ensure that the ATM is of sufficient reliability to offer an uninterrupted service.

9.6 The Customer will at all times ensure that its employees or clients will not damage, deface or vandalise the ATM, and will not allow interference with the ATM systems, functions

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or processes.

9.7 The Customer warrants that consent has been given by the landlord or owner of the Premises to install the ATM and that the installation of the ATM meets the requirements under applicable Laws (including any local council or state regulations).

10. INSURANCES & COMPLIANCE WITH LAW

10.1 The Customer is responsible for arranging for insurance to cover the amount of cash stored within the ATM at all times.

10.2 The Customer must:

- (a) take out insurance to cover the replacement cost of the ATM in case of accidental damage (such as flood, fire, damage caused by vermin and other damage) or intentional damage or loss (such as vandalism or theft) from the day of delivery of the ATM at the Premises and maintain such insurance during the Term; and
- (b) provide Mandrake.ATM with a certificate of currency for such insurance within 7 days of the Commencement Date.

10.3 If the ATM is stolen, destroyed or damaged (in which case a "Casualty Event" will have occurred):

- (a) the Customer must immediately notify Mandrake.ATM upon the occurrence of a Casualty Event;
- (b) the Customer must immediately lodge a claim under the policy of insurance effected under clause 10.2(a) and apply all insurance proceeds received towards purchasing a replacement automatic teller machine of equivalent or better functionality, in consultation with Mandrake.ATM ("Replacement ATM");
- (c) if insurance proceeds have not yet been received or are not available for any reason (including, as a result of the Customer breaching clause 10.2(a)) or where received, are insufficient to cover the entire cost of the

of the Replacement ATM, the Customer must pay for the Replacement ATM or top-up those insurance proceeds to the extent required (as the case may be) using its own monies to purchase a Replacement ATM within sixty (60) days of the Casualty Event occurring (or such other period as may be agreed by the parties in writing) (the "Due Replacement Date").

10.4 Where a Casualty Event has occurred then:

- (a) at the election of Mandrake.ATM the Term is extended for the period of days from the date of the Casualty Event until such time as the Replacement ATM is installed and fully operational, as notified by Mandrake.ATM to the Customer in writing;
- (b) if the Customer has not complied with its obligations under clause 10.3(c) by the Due Replacement Date then Mandrake.ATM may terminate the Agreement, in which case the Customer must pay to Mandrake.ATM the Early Termination Amount under clause 15.2.

10.5 The Customer must at all times during the Term comply with all Laws relating to the Customer as the operator of an automatic teller machine.

11. INDEMNITIES

11.1 The Customer indemnifies Mandrake.ATM from and against:

- (a) any claim, loss or liability, whether directly or indirectly arising from a breach of the Agreement or of any relevant Laws which the Customer is required to comply with;
- (b) any claim made by the Customer's employees from loss injury or damage suffered as a result of the ATM being installed or operated whether such compensation is made under the provisions to any workers compensation act or any other legislation; and
- (c) any claim, loss or liability arising from the negligence or wilful act or omission of the Customer, its employees, agents,

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contractors, customers or invitees.

11.2 The Customer releases Mandrake.ATM from, and indemnifies Mandrake.ATM against any claim, loss or liability as a result of equipment failure, telecommunications breakdown or disputed fund clearances between the Customer and any financial institution.

11.3 The Customer agrees that it can make no claim or otherwise have recourse against Mandrake.ATM if the Customer suffers a loss as a result of any error or discrepancy in respect of:

- (a) the amount of cash dispensed;
- (b) the amount paid to the Customer by the clearing bank;
- (c) any debiting from the Customer's daily settlement if a customer dispute of funds is not declined;
- (d) any disputed monies between the Customer's bank or any other financial institution.

11.4 The Customer indemnifies Mandrake.ATM from and against any claim, loss or liability arising from delays in the delivery or installation of the ATM that are caused or contributed to by the Customer.

11.5 The indemnities in the Agreement are continuing obligations, independent of any other obligations under the Agreement. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under the Agreement.

12. MAINTENANCE & REPAIR

12.1 Unless Mandrake.ATM notifies the Customer that the Customer is to arrange for repair and maintenance of the ATM:

- (a) Mandrake.ATM will arrange for routine repair and maintenance, and such other repair and maintenance, as the need arises and charge the Customer for it (unless the ATM is faulty and is covered by the manufacturer's express warranty or there is an obligation on the part of Mandrake.ATM to repair or

replace under the ACL);

- (b) the Customer must pay for the charges invoiced by Mandrake.ATM under clause 12.1(a) within the period referred to in clause 12.8, and if not paid by the due date, Mandrake.ATM may exercise its set-off rights under clause 19.3

12.2 Where Mandrake.ATM notifies the Customer that it requires the Customer to arrange for routine maintenance, then the Customer must do so and ensure that this is carried out by a qualified technician and must inform Mandrake.ATM of the details of the technician and servicing schedule.

12.3 The Customer indemnifies Mandrake.ATM from and against the costs of all repairs or maintenance where such costs are a result (either directly or indirectly) of any negligence, wilful act, omission or error by any operator of the ATM or the Customer, its employees, customers, invitees, contractors or agents.

12.4 The Customer will not permit any person(s) to perform service on, tamper with, dismantle, move or otherwise deal with the ATM, without Mandrake.ATM's prior written consent (which may be given on conditions or withheld in its discretion).

12.5 The Customer agrees to allow reasonable access for Mandrake.ATM, its contractors and agents to inspect the ATM or perform maintenance and repairs, as requested by the Customer or as required by Mandrake.ATM.

12.6 The Customer agrees to order and replace the paper in the ATM, from Mandrake.ATM when required, and correct any paper mis-feeds or jams, so as to keep the ATM operational.

12.7 The Customer agrees to keep the exterior of the ATM clean and keep the space surrounding the ATM in good order.

12.8 The Customer must pay any invoice issued by Mandrake.ATM under this clause 12 within 7 days.

12.9 The Customer agrees to bear the cost of any upgrades to the hardware of the ATM, and any software required to operate any such hardware

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upgrades. Other regular and routine software updates will be provided at Mandrake.ATM's expense, during any Term.

13. DATA PROCESSING SERVICES

- 13.1 Mandrake.ATM, for as long as the ATM is located in the Premises, will direct all data traffic to a processor of Mandrake.ATM's choice. This data processing will direct where the Customer's data traffic is routed and which financial institution deposits funds into the Customer's bank account.
- 13.2 The Customer, where it is the owner of the ATM, has the right to set the level of surcharge per transaction for cash withdrawals and balance inquiries in accordance with applicable Laws. Mandrake.ATM will keep the Customer, informed of applicable laws, rules, market regulations and changes affecting the Customer in relation to such matters.
- 13.3 During the Term Mandrake.ATM, will charge a Transaction Processing Fee. The Transaction Processing Fee will be paid by the Customer from revenue collected by Mandrake.ATM on behalf of the Customer.
- 13.4 If during the Term, the fees applicable to Mandrake.ATM for data processing rise or fall, then Mandrake.ATM reserves the right to vary the transaction processing fee as set out in the Application Form.

14. DIRECT CHARGES

- 14.1 Mandrake.ATM will pay the Customer the direct charges collected for every successful cash withdrawal and balance inquiry, less the applicable Transaction Processing Fee.
- 14.2 The Customer acknowledges and agrees that the amount of direct charges is determined by the volume of customer usage at the ATM.
- 14.3 The Customer must provide Mandrake.ATM, with at least 7 days prior written notice of any intention to vary any surcharge amount. This notice is required to allow Mandrake.ATM

sufficient time to make the necessary data amendments for fee collection and correct payment to the Customer. The Customer further agrees that any such change will always take effect from the first day of the following month, which allows for correct payment processing to the Customer.

15. TERMINATION

- 15.1 Mandrake.ATM may terminate the Agreement if:
- (a) the Customer owes Mandrake.ATM monies under or in connection with the Agreement, and such amount remains outstanding for 14 days or more;
 - (b) the Customer is in breach of any other term of the Agreement and fails to cure such breach within 14 days of notice in writing from Mandrake.ATM; or
 - (c) an Insolvency Event occurs in respect of the Customer.
- 15.2 If Mandrake.ATM terminates the Agreement under clause 10.4(b) or clause 15.1 then the Customer must immediately pay to Mandrake.ATM the Early Termination Amount.
- 15.3 Termination of the Agreement is without prejudice to any remedies available to the party terminating and any rights or obligations of the parties that accrued prior to the time of termination.

16. GUARANTEE & INDEMNITY

- 16.1 In consideration of Mandrake.ATM entering into the Agreement at the request of the Customer, the Customer irrevocably and unconditionally guarantees to Mandrake.ATM:
- (a) the due and punctual payment of all amounts at any time owing by the Customer to Mandrake.ATM under or in connection with the Agreement; and
 - (b) the due and punctual performance by the Customer of all of the Customer's obligations under the Agreement.

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- 16.2 If as a result of the Customer's insolvency, any amounts payable by the Customer to Mandrake.ATM are not recoverable or, if paid, become repayable, then as a separate obligation, the Customer agrees to pay to Mandrake.ATM (by way of indemnity) an amount equal to the amount irrecoverable or repayable (as the case may be).
- 16.3 The guarantee and indemnity obligations of the Customer are principal and continuing obligations which will not be released until all monies payable under the Agreement have been paid in full and satisfied and all of the Customer's obligations under the Agreement have been performed.
- 16.4 The guarantee and indemnity obligations of the Customer will not be affected by anything which would otherwise reduce or discharge the Customer's liability, including:
- Mandrake.ATM granting time or any other indulgence or concession to the Customer;
 - Mandrake.ATM varying the Agreement;
 - any transaction or agreement or variation, novation or assignment of a transaction or agreement between the Customer and Mandrake.ATM;
 - the Customer's winding up, administration, bankruptcy or insolvency;
 - any judgment or order being obtained or made against the Customer;
 - an obligation of the Customer, or any provision of the Agreement, being void, voidable, unenforceable, released, waived, impaired, novated, enforced or impossible or illegal to perform;
 - any amount owing under the Agreement not being recoverable or the Customer's liability or the liability of any other person to Mandrake.ATM ceasing (including as a result of a release or discharge by us or by law);
 - Mandrake.ATM exercising or not exercising any rights under or in connection with the Agreement;
- any default, misrepresentation, negligence, breach of contract, misconduct, acquiescence, delay, waiver, mistake, failure to give notice or other action or inaction of any kind (whether or not prejudicial to the Customer) by Mandrake.ATM or any other person.
- 16.5 Any amount payable under this guarantee and indemnity must be paid by the Customer to Mandrake.ATM upon demand.
- 16.6 The Customer warrants that it will obtain a commercial benefit as a result of giving this guarantee and indemnity.
- 16.7 Where the Customer comprises more than one person, then the obligations of those persons are joint and several.

17. LIMITATION OF LIABILITY

- 17.1 Except as otherwise expressly stated in the Agreement, or as contained in any express warranty provided in relation to the goods or services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.
- 17.2 If the Customer is a Consumer nothing in the Agreement restricts, limits or modifies the Customer's rights or remedies against the Customer for failure of a statutory guarantee under the ACL.
- 17.3 Where the ACL applies, Mandrake.ATM's liability for failure to comply with a guarantee under the ACL (other than a guarantee under section 51, 52 or 53 of the ACL), is limited, to one or more of the following:
- in the case of the supply of goods:
 - the replacement of the goods or the supply of equivalent goods;
 - the repair of the goods;
 - the payment of the cost of replacing the

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goods or of acquiring equivalent goods;
(iv) the payment of the costs of having the goods repaired;

(b) in the case of the supply of services:

- (i) the supply of the services again;
- (ii) the payment of the cost of having the services supplied again.

17.4 To the full extent permitted by law:

- (a) Mandrake.ATM will not be liable to the Customer or any other person for any indirect, consequential or economic loss, damage or liability (including any loss of turnover, profits, business or goodwill) suffered by the Customer or any other person relating to or connected with any goods or services supplied or to be supplied by Mandrake.ATM, except to the extent of any liability imposed by the ACL; and
- (b) the maximum aggregate liability of Mandrake.ATM (whether in contract, negligence or otherwise) arising in connection with the Agreement or the supply or failure to supply of any goods or services by Mandrake.ATM under or in relation to the Agreement is limited to an amount that is equal to the amount paid or payable by Mandrake.ATM to the Customer under clause 14.1 during the Initial Term.

17.5 If the Customer on-supplies the goods to a Consumer and Mandrake.ATM is deemed to be the Manufacturer under the ACL, then if:

- (a) the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the amount specified in section 276A(1) of the ACL is the absolute limit of Mandrake.ATM's liability to the Customer; or
- (b) the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 of the ACL is the absolute limit of Mandrake.ATM's liability to the Customer,

howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Customer or any third party.

18. TRANSFER

18.1 The Customer must not assign or transfer its rights under the Agreement without Mandrake.ATM's prior written consent.

18.2 The Customer agrees and undertakes not to sell or otherwise assign, transfer or dispose of its interest in the ATM, the Premises or its business, without first obtaining agreement from the new owner, transferee or assignee ("**New Owner**"), an agreement in writing whereby the New Owner agrees to enter into an agreement with Mandrake.ATM on the same terms and conditions as the Agreement.

18.3 Where the New Owner enters into an agreement with Mandrake.ATM under clause 18.2 ("**New Agreement**"), then the Customer agrees that the Agreement is terminated with effect from the date of commencement of the New Agreement.

18.4 Termination of the Agreement under clause 18.3 will not affect any obligation of the Customer or Mandrake.ATM to pay the other monies due under the Agreement up to the date of termination. Settlement of outstanding monies as between the Customer and Mandrake.ATM must be made within 30 days of the date of termination.

18.5 Mandrake.ATM may assign its rights and obligations under the Agreement at any time by providing notice in writing to the Customer.

19. GENERAL

19.1 The Agreement will be governed by and construed in accordance with the laws of the State of Queensland and the parties submit to the nonexclusive jurisdiction of the courts of Queensland.

19.2 The Customer is liable to pay any GST due as a result of any goods or services supplied by

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- Mandrake.ATM or its agents (including, without limitation, any GST payable in connection with any Early Termination Amount).
- 19.3 Mandrake.ATM reserves the right to set off any amounts owed to the Customer against any monies owed by the Customer to Mandrake.ATM under the Agreement (including under any indemnity).
- 19.4 If a provision of the Agreement (or part of it) is held to be unenforceable or invalid, then it must be interpreted as narrowly as necessary to allow it to be enforceable or valid.
- 19.5 If a provision of the Agreement (or part of it) is held to be unenforceable or invalid and cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then:
- (a) the provision (or part of it) must be severed from the Agreement; and
 - (b) the remaining provisions (and remaining part of the provision) are valid and enforceable.
- 19.6 The Agreement binds and benefits the parties and their respective legal personal representatives, successors and permitted assigns.
- 19.7 A party may exercise its rights at any time and does not waive those even if that party:
- (a) previously waived a breach or default of all or part of the same or other provision; or
 - (b) delayed or omitted to exercise its rights.
- 19.8 A waiver is only effective:
- (a) if it is signed by the party granting the waiver; and
 - (b) to the extent set out in the waiver.
- 19.9 The Customer agrees not to disclose to any person:
- (a) the terms of the Agreement except to its officers and employees and for the purpose of obtaining legal or accounting advice or as otherwise permitted under the Agreement or where Mandrake.ATM has given its prior written consent (such consent not to be unreasonably withheld); or
 - (b) any confidential information of Mandrake.ATM that comes into the possession of the Customer (being information not otherwise already available in the public domain), without Mandrake.ATM's prior written consent.
- 19.10 The Customer must comply with the *Privacy Act 1988* (Cth) and the Australian Privacy Principles in connection with any personal information supplied to it in connection with the Agreement.