

PowerQwest Financial

General Terms and Conditions

1. **Applicability:** These General Terms and Conditions apply to the Services provided by PowerQwest Financial, LLC (COMPANY) to MERCHANT. In the event of a conflict between the terms of these General Terms and Conditions and the ATM Service Agreement, the terms of the ATM Service Agreement shall govern and control. The terms “herein” and “hereof” shall mean these General Terms and Conditions and the ATM Service Agreement collectively.
2. **Definitions:** Any capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the ATM Service Agreement. “ATM Service Agreement” means any agreement for the Services concluded between COMPANY and MERCHANT, together with any Exhibits thereto, and these General Terms and Conditions. “COMPANY” means PowerQuest Financial, LLC. “MERCHANT” means the owner and/or operator of the Locations where the ATMs are installed. “Services” means, as applicable, the installation, operation and maintenance of ATMs at MERCHANT’s Locations, all as more particularly described in the ATM Service Agreement.
3. **Installation, Moving and Re-Installation:** COMPANY agrees to install the ATM, wraps, signage and Network logos at no charge to MERCHANT. To the extent that MERCHANT desires to move the ATM to another location and COMPANY accepts such request, COMPANY shall move and re-install the ATM at the new location at MERCHANT’s sole cost and expense. In such event, the term of the ATM Service Agreement shall be automatically extended on a day for day basis for each day the ATM is out of operation due to moving to a new location.
4. **Maintenance, Repair and Removal:** COMPANY and/or its Authorized Service Provider agree to provide all parts and labor for the repair and maintenance of the ATM. Upon termination of this Agreement, the COMPANY shall remove the ATM and any other of its devices or machines within a reasonable amount of time thereafter; provided, however, that MERCHANT acknowledges that there may be some minor wear and tear in and around the Location and that the COMPANY shall not have any responsibility to repair such wear and tear.
 - a. In the event of any ATM failure, damage or other problem, MERCHANT shall notify COMPANY and/or Authorized Service Provider within twenty-four (24) hours of the occurrence of the failure, damages or other problems.
 - b. COMPANY and/or Authorized Service Provider shall respond within twenty-four (24) hours of such notice.
 - c. COMPANY and/or Authorized Service Provider shall at any reasonable time and at all times during business hours have the right to enter the Premises for the purpose of inspecting, repairing, maintaining or upgrading the ATM (and any other of its devices or machines) and observing its use.
5. **Bank Branding:** COMPANY will have the right to enter into branding agreements with financial institutions and to place branding signage on the ATM and on any available interior or exterior space.

6. **Digital Screens & Marketing:** COMPANY has the right, at its cost, to install digital screens on top of its ATMs to display advertising and to install such other devices within the Location to enable proximity and other marketing uses and functionalities.
7. **Communication & Electrical Requirements:** MERCHANT shall, at its own expense, contract for and provide one (1) operating dedicated electrical power outlet (110V) within two (2) feet of the Location; provided, however, that if additional electrical outlets or other power sources are required, MERCHANT and COMPANY shall evenly split the costs of obtaining and installing such additional source. MERCHANT shall pay monthly charges incurred in connection with such electric and shall take all commercially reasonable steps to ensure uninterrupted service. COMPANY will provide cellular modem and monthly data service at no charge to MERCHANT.
8. **Ownership:** COMPANY represents that they, or entities affiliated with COMPANY, are the owners of the ATM and any other devices or machines installed within the Location. As such, MERCHANT hereby acknowledges COMPANY's ownership of the ATM(s) and agrees to cooperate and take such reasonable actions during the term of this Agreement to affirm such ownership, including, but not limited to, not contesting COMPANY's right to file a UCC-1 on the ATM(s) affirming ownership.
9. **MERCHANT's Sale of Business:** If the MERCHANT (i) transfers or moves its business from the Premises to a new premises, (ii) sells, transfers or assigns substantially all of its assets or (iii) any owners of Equity Interests transfer any of their Interests to anyone or any entity that is not currently an owner of the Equity Interests, then at COMPANY's sole option, the ATM Service Agreement may be automatically deemed amended to apply to the MERCHANT's new premises or the transferees of the Equity Interests for the remaining term of the ATM Service Agreement unless otherwise agreed to by the Parties in writing; provided, that MERCHANT shall remain responsible under the terms of the ATM Service Agreement until the new owners sign an assumption agreement relieving MERCHANT of such obligations. MERCHANT shall notify the COMPANY by certified mail not less than thirty (30) days prior to any such event. The MERCHANT shall assume all costs and expenses to transfer and install the ATM and any other devices or machines in the new premises, which transfer and installation shall be effected by COMPANY or by a third-party provider of COMPANY's choosing. If for any reason the ATM is not re-installed within thirty (30) days due to no fault of COMPANY's or any transferee (or purchaser) fails to assume the ATM Service Agreement and COMPANY is obligated to remove the ATM, then MERCHANT shall, as an early termination fee and not a penalty, pay COMPANY the Liquidated Damages described in the ATM Service Agreement.
10. **Termination:** Upon a termination or expiration of this Agreement, COMPANY shall: (a) immediately pay to MERCHANT all amounts due and owing under this Agreement through the date of termination or expiration as the case may be, and (b) use commercially reasonable efforts to promptly remove its ATM(s) and other devices or machines from the Premises. MERCHANT: (i) shall immediately pay to COMPANY all amounts due and owing COMPANY under this Agreement as of the date of termination or expiration, (ii) will continue to provide COMPANY unimpeded access to the Location and Premises during business hours in order to facilitate the prompt removal of the ATM(s) and the cash therein, and (iii) shall continue to secure the ATM and other devices or machines as required hereunder. Accordingly, MERCHANT agrees and hereby authorizes and empowers COMPANY, with the aid or assistance of persons designated by COMPANY, to enter any Location or such other place where an ATM is installed and take possession of and remove the cash therein without process of law and without affecting any of the other rights and/or remedies of COMPANY

hereunder. If MERCHANT fails to provide COMPANY or its third-party contractors with access to any ATM, then the MERCHANT shall be liable to GENERAL TERMS AND CONDITIONS 3 COMPANY for the amount of all cash contained in the ATMs to which MERCHANT is not allowing COMPANY access within ten (10) days after attempting to gain access to the applicable ATM(s). The amount of such cash shall be determined by COMPANY's records and payable by MERCHANT to COMPANY within twenty (20) days after written request therefor.

11. **Attorney Fees:** If suit or action is instituted to enforce or interpret any of the terms of this Agreement, the COMPANY may recover reasonable attorneys' fees and court costs from MERCHANT.
12. **Disclaimer:** EXCEPT AS EXPRESSLY SET FORTH HEREIN, IN PROVIDING THE SERVICES AND PRODUCTS DESCRIBED HEREIN, COMPANY MAKES NO IMPLIED OR EXPRESS REPRESENTATIONS OR WARRANTIES (WRITTEN, ORAL OR OTHERWISE) IN REGARD TO THE SUITABILITY, ECONOMIC BENEFITS, OR FITNESS FOR USE OF THE ATMS, PRODUCTS OR SERVICES PROVIDED HEREUNDER, AND ALL OF THE ATMS, PRODUCTS AND SERVICES ARE PROVIDED "AS IS". ADDITIONALLY, COMPANY SHALL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE, WHETHER ARISING UNDER CONTRACT, TORT, STRICT LIABILITY, OR OTHER FORM OF ACTION BY, THROUGH OR UNDER THIS AGREEMENT, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS. COMPANY'S (AND/OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, SUBCONTRACTORS AND PROCESSOR'S) SOLE LIABILITY TO MERCHANT HEREUNDER, SHALL BE TO CURE ANY BREACH IN A TIMELY MANNER, AND WITHOUT LIMITATION OF THE FOREGOING, UNDER NO CIRCUMSTANCES WILL COMPANY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE LESSER OF: (A) SIX (6) MONTHS OF REVENUE EARNED BY COMPANY HEREUNDER OR (B) \$500.00.
13. **Right of Offset:** COMPANY shall have the right to offset, any and all amounts that MERCHANT owes to COMPANY from any amounts owed by COMPANY to MERCHANT hereunder, including, but not limited to, "Transaction Fees" contemplated herein.
14. **Assignment and Transfer of Equity Interests:** MERCHANT shall not assign, delegate or in any way dispose of all or any part of its rights or obligations under this Agreement without the prior written consent of the COMPANY; provided, however, COMPANY is permitted to assign this Agreement. In addition, MERCHANT shall not permit any of the Equity Interests to be transferred without obtaining the COMPANY's prior written consent.
15. **Waiver:** A waiver by either party of a breach of any provision of this Agreement shall not constitute a waiver or prejudice of the Parties rights to otherwise demand strict compliance with this Agreement and any and all provisions hereof.
16. **Governing Law, Forum Selection and Waivers:** The parties agree that this Agreement is accepted and executed in the State of New York. This Agreement will be governed by and enforced in accordance with the laws of the State of New York, without regard to principles of conflict of laws to the extent such principles would require application of any other law. Both parties agree that all legal proceedings and any other action or claim arising out of or relating to this Agreement, or a transaction

that is subject, or relates in any way, to this Agreement, whether based in contract, statute, tort or otherwise, shall be held in the mandatory and exclusive forum and venue of the Supreme Court of New York, County of New York or, if the dispute is subject to federal court jurisdiction, in the GENERAL TERMS AND CONDITIONS United States District Court for the Southern District of New York. This forum selection clause and choice of law provision shall be construed as mandatory, rather than permissive, and no action may be brought in any other state or jurisdiction. The parties hereby waive any claim against, or objection to, venue in, and in person jurisdiction of, the Supreme Court of New York, County of New York. The parties hereby irrevocably waive any objection, defense and any right of immunity on the grounds of venue or the inconvenience of the forum or to the jurisdiction of such courts, or from the execution of judgments resulting therefrom. ALL PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY LAWSUIT ARISING OUT OF, OR RELATED, IN ANY WAY, TO THIS AGREEMENT, OR ANY TRANSACTION ARISING OUT OF, THAT IS THE SUBJECT OF, OR RELATES IN ANY WAY TO THIS AGREEMENT.

17. **Force Majeure:** If either party hereto shall be delayed or prevented from the performance of any obligation imposed herein by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations, electrical outages or other cause without fault and beyond the control of the party obligated, then upon written notice to the other party, the performance of such act shall be excused for the period of delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such cause of delay.
18. **Severability:** In the event any provision of this agreement is determined to be unenforceable, the balance of the agreement shall nonetheless be enforceable.
19. **Security Interest and UCC Financing Statements:** At the option of COMPANY, MERCHANT or COMPANY shall execute, deliver, file and record (in such manner and form as COMPANY shall require, (i) all financing statements and continuation statements, (ii) all carbon, photographic or other reproductions of financing statements, continuation statements or this Agreement (which shall be sufficient as a financing statement hereunder), and (iii) all specific assignments or other papers that may be necessary or desirable, or that COMPANY may request, in order to create, preserve, perfect or validate any security interest granted hereunder or to enable COMPANY to exercise and enforce its rights hereunder with respect to any of the Collateral. In addition, in the event that any of the Collateral consists of or is represented by instruments or other evidences of ownership such as would require physical possession of same in order to perfect the security interests therein, MERCHANT shall promptly, at its sole expense, deliver the same to COMPANY upon request, with any necessary endorsements thereon. COMPANY reserves the right to obtain reimbursement from MERCHANT of all costs associated with the filing of any financing statements, continuation statements or amendments thereto and MERCHANT ratifies the filing of any financing statement filed by COMPANY prior to the effectiveness thereof.