

# Mobile Kiosk Agreement

## GENERAL INFORMATION

Legal Business Name:			Business Name (DBA):		
Address:			Address:		
City:	State:	Zip:	City:	State:	Zip:
Corp. Phone:	Corp. Fax:		Loc. Phone:	Loc. Fax:	
Web Address:			In Business: Yr.'s _____ Mo.'s _____	No. of Locations:	
Email Address:			Federal Tax ID:	MCC:	

Principal 1: % of Ownership	Principal 2: % of Ownership
Name:	Name:
Home Address: <input type="checkbox"/> Own <input type="checkbox"/> Rent (5yrs.)	Home Address: <input type="checkbox"/> Own <input type="checkbox"/> Rent (5yrs.)
City:	City:
State:	State:
Zip:	Zip:
Phone: <input type="checkbox"/> If Cell	Phone: <input type="checkbox"/> If Cell
Fax:	Fax:
SSN:	DOB:
Address History: (Must equal 5 Years)	
(1)	(1)
(2)	(2)
(3)	(3)

## UNDERWRITING PROFILE

<b>Type of Bus:</b> <input checked="" type="checkbox"/> Delivery		<b>Products Sold</b>	
Monthly Volume:	\$	<input type="checkbox"/> Cannabis Medical	<input type="checkbox"/> Tobacco
Monthly Transactions:	#	<input type="checkbox"/> Cannabis Recreational	<input type="checkbox"/> E-Cigarette
Average Ticket:	\$	<input type="checkbox"/> CBD	<input type="checkbox"/> Alcohol
High Ticket:	\$	<input type="checkbox"/> Kratom	<input type="checkbox"/> Other Pharmaceutical
Current Chargeback %	Monthly Returns #	Copy of the license to sell any of the products must be provided	

## QUESTIONNAIRE

Describe the specific products/services sold:	
Max. # of days until the product or service is delivered:	
Describe your return policy:	
Are prescriptions required for products/services?	<input type="checkbox"/> No <input type="checkbox"/> Yes
Is the customer's signature obtained at time of delivery?	<input type="checkbox"/> No <input type="checkbox"/> Yes
Does customer charge for goods/services prior to fulfillment?	<input type="checkbox"/> No <input type="checkbox"/> Yes
Do any principles have a criminal history? (Excluding non-moving and cannabis related violations)	<input type="checkbox"/> No <input type="checkbox"/> Yes
Have credit cards been accepted before?	<input type="checkbox"/> No <input type="checkbox"/> Yes
Has processing ever been terminated?	<input type="checkbox"/> No <input type="checkbox"/> Yes
Do you have all licenses needed to legally operate? License # _____ State of Issue: _____ Issue Date: / /	<input type="checkbox"/> No <input type="checkbox"/> Yes
Have you ever filed for bankruptcy in the last 7 years?	<input type="checkbox"/> No <input type="checkbox"/> Yes

## REQUIRED DOCUMENT CHECKLIST

<input type="checkbox"/> Completed & Signed Kiosk Agreement	<input type="checkbox"/> Utility Bill	<input type="checkbox"/> Business Licenses	<input type="checkbox"/> Last 3 Months Business Bank Stmts or all Personal Signors Bank Stmts (If new business)
<input type="checkbox"/> Picture of Business (In/Out)	<input type="checkbox"/> Voided Bus. Ck. / Bank Letter		
<input type="checkbox"/> Photo Id of All Signors	<input type="checkbox"/> City, County or State Dispensary License		<input type="checkbox"/> Last 3 mo. CC Proc. Stmts (If applicable)



X\_\_\_\_\_ Customer Initial Here

<b>AUTHORIZATION TO ACH (Must include Voided Business Check or Signed Bank Letter)</b>		
Bank Name:	Transit # (ABA Routing – 9 digits):	Account #

<b>Fees</b>	Underwriting Fee	\$30.00
	Transaction Fee	5.95%+\$0.30
	Wireless Fee	\$0.48 per transaction
	Voucher Fee	\$2.00
	Assurance Fund	5%
	Reserve	0%
	Charge Back Fee	\$35.00
	Monthly Minimum Fee	\$50.00
	Shipping Fee: Standard Ground Additional Fees Apply to:    Overnight <input type="checkbox"/> , 2 <sup>nd</sup> Day <input type="checkbox"/> , Saturday <input type="checkbox"/>	\$20.00 per equipment
	<b>Electronic Reporting/Statement (No Charge) System Log-In ID will be provided.</b>	

<b>Hardware</b>	Quantity	Terminal Description	Equip Code:	Purchase/Financing	Purchase Price Ea.	Monthly Hardware Fee Ea.	Total
		ID Tech Audio Swipe	IDA	Purchase	\$89.00	N/A	\$
		Magtek USB Swipe	MUSB	Purchase	\$89.00	N/A	\$
		Blue Bamboo P25 Printer	BBP	<input type="checkbox"/> Purchase <input type="checkbox"/> Financing	\$349.00	\$21.95	\$
		Third-Party Hardware	TPH	N/A	N/A	N/A	N/A

This Mobile Kiosk Agreement (the “Agreement”) is entered into, effective as of the date set forth on the cover page of the Agreement, by and between \_\_\_\_\_ and \_\_\_\_\_ (collectively, the “Customer”) and Potential LLC, a Wyoming limited liability company (the “Company”).

WHEREAS, the Company is a reseller of a kiosk solution,(the “Kiosk”) that allows for credit/debit card purchases of Vouchers; and

WHEREAS, the Customer is unwilling or unable to accept debit/credit cards as a form of payment for the merchandise/services the Customer offers for sale; and

WHEREAS, to provide Purchasers with ability to pay with debit/credit cards, the Customer wishes to use the Kiosk.

NOW THEREFORE, in considerations of mutual promises and covenants contained herein, and hereto agree as follows:

**Section 1 – Definitions**

“ACH Credit” means an Automatic Clearing House transfer from ATM’s bank account to the Customer’s Account.

“ACH Debit” means an Automatic Clearing House transfer from the Customer’s Account to ATM’s bank account.

“Association” means VISA, MasterCard, American Express, Discover, PayPal, Inc. and any other similar credit or debit card association.

“ATM” means Voucher ATM LLC.

“ATM Fee” means the value of the Assurance Fund reduced by all Chargeback Amounts that accumulate after the Agreement expires or is terminated for any reason.

“Customer” means all entities and individuals listed in the General Information field on the cover page of this Agreement, who sign this Agreement.

“Customer Account” means a Customer’s bank or credit card account.

“Chargeback” is a process wherein the funds related to a debit/credit Voucher purchase transaction(s) are returned (or subject to return) to the Purchaser.

“Chargeback Amounts” means an amount of a Chargeback plus any associated fees, fines or penalties assessed by third parties.

“Excessive Chargebacks” means Chargebacks in excess of one percent (1%) of the average monthly dollar amount of Voucher purchase transactions.

“Hardware” means a specified number of items set forth on the cover page of this Agreement.

“Proceeds” means proceeds of each approved Voucher purchase transaction, equal to the face value of the purchased Voucher.

“Purchaser” means an individual who makes a Voucher purchase.

“Transaction Fee” means a fee charged to a Customer with respect to each Voucher purchase transaction, as set forth on the cover page of this Agreement.

“Voucher” means a ticket, purchased with a credit or debit card utilizing a Kiosk, that can be used as a form of payment for Customers’ services and/or merchandise.

“Voucher Fee” shall be the fee charged to each Purchaser for the use of the Kiosk and purchase of Voucher(s).

“Wireless Fee” is a per transaction fees charged to the Customer.

## **Section 2 – Underwriting**

Upon execution of this Agreement, the Customer shall provide to the Company all documents and information required by the Company to enable the Company to conduct underwriting audit of the Customer. The Company will review the documents and information so provided to determine, in its sole and absolute discretion, whether the Customer is eligible to receive services pursuant to this Agreement. In making its determination, the Company is authorized to obtain credit reports, consumer reports, and request Customer’s identity verification. The Company may share information about the Customer, obtained pursuant to this Section, with various third parties. If the Customer is approved to receive services, the Company may set limits on the amount of Voucher purchase transactions, and the Customer shall comply with such limits at all times. The Customer shall be charged a Non-refundable Underwriting Fee, set forth on the cover page of this Agreement.

The Customer agrees and understands that if the Company concludes that the Customer is not eligible to receive services contemplated herein, this Agreement shall become null and void, except Section 11 of the Agreement, which shall remain in full force and effect and binding on the parties.

Following the initial audit, the Company may periodically request additional information and obtain additional reports to determine the Customer’s continued eligibility. If at any time during the term of this Agreement, the Company determines that the Customer is no longer eligible to receive services, the Company may terminate the Agreement pursuant to Section 12 below.

## **Section 3 – Hardware**

The Customer shall purchase or finance the Hardware, as indicated on the cover page of this Agreement. The Company shall ship the Hardware to the Customer, and the Customer shall be responsible for the shipping cost, as set forth on the cover page of this Agreement. All shipping fees shall be withheld from the Proceeds. The Company shall provide to the Customer a video tutorial, containing information about installation, connection or configuration of the Hardware (whichever applies) and use of Kiosk. The Customer shall be responsible for installation, connection or configuration of the Hardware in accordance with the instructions provided in the video tutorial. The Customer shall be responsible for all expenses related to such installation, connection or configuration. The Customer shall be responsible for the cost of the data plan necessary for the operation of the Kiosk. If indicated on the cover page of the Agreement, the Customer shall be responsible for the purchase of Android Tablet(s) or Android phone(s), as recommended by the Company. The Customer understands that the Android Tablet(s) or Android phone(s) is an integral part of the Kiosk.

**THE COMPANY HAS MADE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, NATURE, OR DESCRIPTION, EXPRESS OR IMPLIED, WITH RESPECT TO THE HARDWARE INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE HARDWARE, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE.** The Hardware is provided “as is.” The Company does not warrant that the Hardware will meet the Customer’s requirements or expectations or that the Hardware will work without failures. The Company shall not be liable for any

failure of the Hardware to operate or faulty operation of the Hardware. The Company shall not be liable for any loss, damage or destruction of the Hardware occasioned by any cause, circumstance, or event (except Company's negligence), including, but not limited to, improper installation, connection or configuration, theft, fire or water or other cause of like or unlike nature. Should the Hardware fail to operate or suffer any damage or destruction, the Customer shall provide an email or fax notice to the Company as soon as possible, and the Company shall arrange for repair or replacement of the Hardware, at Company's sole discretion. The Customer shall be responsible for the cost of such repair or replacement, as well as all shipping cost. No failure, faulty operation, loss, damage or destruction of the Hardware shall relieve the Customer of any obligation to perform under this Agreement.

If the Customer elects that the Hardware is financed by a third party, the financing shall be in accordance with the terms and conditions set forth in Schedule A. Schedule A shall constitute a separate agreement, distinct from this Agreement, except certain terms of this Agreement shall be deemed part of Schedule A, as set forth in Section A.6 of Schedule A.

#### **Section 4 – Third-Party Hardware**

The Customer may elect to use hardware of a third-party provider that is unrelated to the Company, by selecting the relevant option on the cover page of this Agreement. The parties expressly agree and understand that if the Customer elects to use third party hardware (the "Third-Party Hardware"), the Company shall not have any responsibility for, or liability related to, such Third-Party Hardware. The Customer shall be responsible for all expenses related to the Third-Party Hardware, including, but not limited to, installation, connection, configuration, operation, maintenance and repair. Since the Company is not be a provider of the Third-Party Hardware, **THE COMPANY HAS MADE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, OF ANY KIND, NATURE, OR DESCRIPTION, EXPRESS OR IMPLIED, WITH RESPECT TO THE THIRD-PARTY HARDWARE INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE THIRD-PARTY HARDWARE, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE.**

The Company shall not be liable for any failure of the Third-Party Hardware to operate or faulty operation of the Third-Party Hardware. The Company shall not be liable for any loss, damage or destruction of the Third-Party Hardware occasioned by any cause, circumstance, or event. No failure, faulty operation, loss, damage or destruction of the Third-Party Hardware shall relieve the Customer of any obligation to perform under this Agreement.

#### **Section 5 – Software**

The Customer shall be responsible for download of the software (the "Software") provided by the Company. The Customer agrees and understands that the Company has a license to the Software from a third party (the "Licensor"). The Software and any and all related documentation, copyrights, trademarks, patents, trade secrets, Confidential Information, and any other proprietary rights shall remain the property of the Licensor. The Customer shall have no right, ownership, or title in the Software, or any, copyrights, trademarks, patents, trade secrets, Confidential Information, or any other proprietary rights related to the Software.

**NEITHER THE COMPANY, NOR THE LICENSOR, HAS MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, NATURE, OR DESCRIPTION, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** The Software is provided "as is." Neither the Company, nor the Licensor, warrants that the Software is accurate, reliable or correct; that the Software will meet the Customer's requirements or expectations; that the Software will work without interruptions, failures or errors; that any defects or errors will be corrected; or that the Software is free of any viruses or other harmful components.

The Customer shall provide an email or fax notice to the Company as soon as possible, in the event of any Software failures or problems with the Software. The Company's only liability to the Customer arising from any failures of, or problems with, the Software shall be to restore the operation of the Software as promptly as reasonably practicable. The Customer agrees that the Licensor shall have no liability whatsoever, related to, or arising out of, the Software. No failure of the Software to operate or faulty operation of Software shall relieve the Customer of any obligation to perform under this Agreement.

#### **Section 6 – Operation of Kiosk**

The parties agree that the Customer may only use the Kiosk as contemplated by this Agreement. The Customer shall: **(1) ensure that ninety eight percent (98%) of all Voucher purchase transactions per month are swiped transactions; (2) ensure that manual transactions are limited to two percent (2%) of all Voucher purchase transactions per month; (3) not allow a manual Voucher purchase transaction that exceeds three hundred and fifty dollars (\$350), unless the Customer obtains a copy of the Purchaser's driver's license, state I.D. or passport; (4) ensure that all Voucher purchase transactions are card present transactions; (5) if there is printing paper, promptly replace printing paper at Customer's own expense; (7) promptly notify the Company of any damage or disrepair of the Kiosk via email or fax; (8) not allow anyone to use the Kiosk to receive cashback and (9) not use any product similar to Kiosk that is provided by vendors other than the Company.**

#### **Section 7 – Processing Services and Assurance Fund**

The Customer shall allow Purchasers to use the Kiosk to purchase Voucher(s) and shall accept Voucher(s) as a form of payment for the Customer's merchandise and/or services. The Customer agrees and understands that the Company will charge the Customer

Transaction Fees, as set forth on the cover page of this Agreement, with respect to all Voucher purchase transactions. The Customer further agrees and understands that the Company will charge the Purchasers Voucher Fees with respect to all Voucher purchase transactions. In addition, if the total dollar amount of all Voucher purchase transactions is less than ten thousand (\$10,000) per calendar month, the Company may charge the Customer a Monthly Minimum Fee.

The Customer agrees and understands that the Company is a reseller of the Kiosk and not a provider of processing services, and that the processing services are provided by various third parties, including Voucher ATM LLC ("ATM"). Subject to the terms set forth in this Section and Section 8 of this Agreement, ATM will pay the Proceeds of all approved Voucher purchase transactions to the Customer. All such payments will be made via an ACH Credit to an account designated by the Customer. The ACH Credit shall be initiated four (4) business days after the date of the Voucher purchase transaction, unless the total amount of the Proceeds is less than fifty dollars (\$50), in which case, the Company may initiate the ACH Credit when the total amount of the Proceeds is fifty dollars (\$50) or more.

ATM shall have the right to withhold Transaction, Hardware Fees and all other fees provided for in this Agreement from the Proceeds before initiating an ACH Credit. In addition, ATM shall have the right to withhold 5% of all Voucher purchase transactions to create an assurance fund (the "Assurance Fund."). ATM may use amounts in the Assurance Fund to cover Chargeback Amounts. The Customer agrees that the value of the Assurance Funds shall be maintained at 5% of the combined value of all Voucher purchase transactions during the term of this Agreement. If at any time during the term of this Agreement, the value of the Assurance Fund drops below 5%, ATM shall have the right to withhold additional funds from the Proceeds, or, at ATM's sole discretion, ACH Debit necessary amounts from the Customer's Account, to restore the value of the Assurance Fund to 5% of all Voucher purchase transactions.

If after this Agreement expires or is terminated for any reason, and the Chargeback Amounts bring the value of the Assurance Fund into negative, the Customer shall immediately pay ATM the necessary amounts to bring the value of the Assurance Fund to zero (\$0) balance. ATM shall have the right, at any time after expiration or termination of this Agreement, to ACH Debit necessary amounts from the Customer's Account to bring the value of the Assurance Fund to zero (\$0) balance. The Customer agrees to pay all costs and expenses, including without limitation attorneys' fees, incurred by ATM in connection with collecting the necessary amounts to bring the value of the Assurance Fund to zero (\$0). The Customer agrees to pay ATM Fee following expiration or termination of this Agreement for any reason.

Notwithstanding the existence of the Assurance Fund, should ATM (or a third-party financial entity) need to conduct an investigation or resolve any dispute related the Voucher purchase transactions, ATM may defer payout of the Proceeds or restrict the Customer's access to the Proceeds for as long as it may be necessary in ATM's discretion. Notwithstanding the existence of the Assurance Fund, ATM may defer payout of the Proceeds or restrict the Customer's access to the Proceeds for as long as it may be necessary to comply with applicable law or court order, or if otherwise requested by any law enforcement or governmental entity.

Neither the Company, nor ATM shall be liable for any delays in receipt of Proceeds, or errors in credit entries, caused by third parties. If the Customer believes that an adjustment should be made with respect to any ACH Credit/Debit, the Customer shall provide a written notice to the Company within sixty (60) days after any credit/debit was (or should have been) effected. If the written notice to the Company is provided at a later time, the Company may, in its discretion and at the Customer's expense, research whether any adjustment is appropriate, but the Company shall not have any obligation to research or effect any such adjustment.

The processing services are provided on "as is" and "as available" basis. **THE PROCESSING SERVICES ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Neither the Company, nor ATM or any other third party provider under this Agreement, warrant that the processing services are accurate, reliable or correct; that the processing services will meet the Customer's requirements or expectations; that the processing services will be available at any particular time or location; that the processing services will work without interruptions, failures or errors; that any defects or errors will be corrected; or that the processing services are free of any viruses or other harmful components.

#### **Section 8 – Chargebacks**

Voucher purchase transactions may be reversed or Chargedbacked by the Purchasers. ATM shall provide Chargeback information to the Customer as soon as it becomes available to ATM. Chargeback Fee, in the amount of thirty five dollars (\$35) shall apply to each Chargeback. The Customer agrees that neither the Company, nor ATM or any other third party provider under this Agreement, shall have any liability whatsoever for Chargeback Amounts. The Customer agrees to assume full liability for Chargeback Amounts, regardless of the reasons for the Chargeback. The Customer agrees and understands that neither the Company, nor ATM or any other third party provider under this Agreement, shall have an obligation to attempt to reverse any Chargeback, or to take any steps whatsoever to re-present the Chargebacked transaction for clearance.

ATM shall cover Chargeback Amounts using the funds in the Assurance Fund. Notwithstanding the existence of the Assurance Fund, if ATM reasonably believes that a Chargeback is likely with respect to any Voucher purchase transaction, ATM may withhold the

amount of the potential Chargeback from the Proceeds until such time that ATM determines that the potential Chargeback will not occur.

### **Section 9 – Representation and Warranties**

The Customer represents and warrants that the Customer: (a) has the right, power, and ability to enter into and perform under this Agreement; (b) accurately described merchandise and/or services the Customer sells and intends to sell to Purchasers; (c) accurately described Customer's MCC; (d) will fulfill all obligations to each Purchaser; (e) will not use the Kiosk, directly or indirectly, for any fraudulent undertaking; (f) will not have Excessive Chargebacks; (g) shall comply with the limits set by the Company on the amounts of Voucher purchase transactions at all times.

The Company represents that it shall comply with the IRS requirements related to Form 1099k and shall provide to the Company 1099k, if so required by the IRS.

### **Section 10 – Term**

The initial term of this Agreement shall be for a period of three (3) years, commencing on the Effective Date. Thereafter, **THE AGREEMENT SHALL BE AUTOMATICALLY RENEWED FOR ADDITIONAL TERMS OF ONE (1) YEAR EACH, UNLESS EITHER PARTY NOTIFIES THE OTHER, NO LATER THAN THIRTY (30) DAYS PRIOR TO THE END OF THE CURRENT TERM THAT IT DOES NOT WISH TO RENEW THIS AGREEMENT.**

The Customer may terminate this Agreement (but not the Financing Agreement (Schedule A)), only if: (a) the Company fails to comply with any of the material provisions of this Agreement, the Customer provides a written notice to the Company describing the alleged failure, and the Company does not cure the alleged failure within ninety (90) days of receipt of the written notice or (b) another U.S. provider approves the Customer and offers transaction fees lower than Transaction Fees under this Agreement, a copy of the written offer and approval is provided to the Company in writing, the processing used by the provider is U.S.-based processing, all other terms of the offer are comparable to the terms of this Agreement and the Company is not able to match the offer within sixty (60) days of the Customer notifying the Company of the offer. The Company shall not be in breach of this Agreement unless the Company does not cure the alleged failure within ninety (90) days after receipt of the written notice. The Company may terminate this Agreement at any time upon an email or fax notice to the Customer. Notwithstanding the foregoing, the Company may terminate the Agreement immediately without notice, upon any Event of Default.

### **Section 11 – Confidential Information**

At all times, during the term of this Agreement and after its expiration or termination, the parties shall (1) keep in confidence and trust each other's Confidential Information; (2) not use or disclose Confidential Information without a prior written consent of the other party; (3) use Confidential Information only to the extent reasonably necessary in furtherance of this Agreement. In the event of a termination or expiration of this Agreement each party shall immediately cease using all Confidential Information belonging to the other party. For the purposes of this Agreement, "Confidential Information" shall include all information, knowledge or data relating to the business of a party, including, but not limited to, trade secrets; inventions (whether patentable or not); financial information; pricing information; plans and methods; customer lists and names of customers; Customers and prospective Customers' lists and names; plans and techniques; technology; ideas; know-how; processes; concepts and other information from which secrecy a party derives or may derive economic benefit. "Confidential Information" shall also include information, knowledge or data of any third party doing business with a party hereto (actively and prospectively), which such third party identified as being confidential. The parties expressly agree that "Confidential Information" shall include existence and provisions of this Agreement, and it shall be a material term of this Agreement. In the event that any court, governmental agency or other party seeks to compel or require a party, through legal process, to disclosure of Confidential Information, the party shall provide a prompt notice of such fact to the other party.

### **Section 12 – Events of Default and Remedies**

The following events shall constitute an "Event of Default": (a) any representation made or given by Customer in connection with this Agreement was false or misleading when made; (b) breach of any warranty made or given by the Customer; (c) Excessive Chargebacks; (c) material failure by the Customer to comply with any other provisions or perform any of its other obligations under this Agreement; or (d) Company's determination pursuant to Section 2 of the Agreement that the Customer is no longer eligible to receive services.

Upon any Event of Default, the Company may, with or without notice, exercise any one or more of the following remedies: (a) terminate this Agreement; (b) terminate some or all services provided pursuant to the Agreement; (c) demand that the Customer immediately pays any and all amounts due under this Agreement; (d) exercise any other right or remedy available at law or in equity.

The Customer agrees that if the Company asserts a claim against the Customer (including any and all appeals), arising out of or related to this Agreement, the Company shall be entitled to recover from the Customer all amounts the Company incurs related to litigation (including actual attorneys' fees and costs) if the Company prevails on the claim in whole or in part. Company shall have the right to collect from the Customer attorneys' fees and cost incurred by the Company in handling any administrative or informal disputes with the Customer, if the Company prevails in such dispute, in whole or in part.

### **Section 13 – Liability**

This Agreement is executed by Potential LLC, a Wyoming limited liability company, and no personal liability shall be asserted or enforceable against any members, employees, officers, directors or independent contractors of said company, all such personal liability being expressly waived by the Customer. **EACH INDIVIDUAL SIGNING THIS AGREEMENT AS CUSTOMER WILL BE JOINTLY AND SEVERALLY LIABLE UNDER THIS AGREEMENT.** References to “Customer” will include all such individuals collectively and individually.

No action at law or in equity arising out of or related to this Agreement shall be brought by the Customer against the Company, including but not limited to breach of this Agreement and/or violation of any law now in effect or hereafter enacted, unless the Customer provides the Company with a written notice describing the breach or violation, within thirty (30) days from the date of such alleged breach or violation, and provided Company does not remedy or correct the breach or violation within sixty (60) days from receipt of the written notice.

In no event shall the Company, or any of its members, employees, officers, directors or independent contractors, shall be liable under any legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is hereby excluded by agreement of the parties, regardless of whether such damages were foreseeable or whether the Company has been advised of the possibility of such damages.

### **Section 14 – Integration and Severability**

This Agreement constitutes the complete and exclusive statement of the terms of the agreement between the parties regarding the subject matter hereof, and supersedes all prior and contemporaneous agreements, representations, discussions or undertakings of the parties, whether written or oral.

If any of the provisions of this Agreement, or portions thereof, are found to be invalid by a court of competent jurisdiction, the remainder of this Agreement shall nevertheless remain in full force and effect. The titles of the sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. All terms of the “whereas” clauses shall be incorporated in, and become part of, this Agreement. The Agreement will be binding on, and will inure to the benefit of, the successors and permitted assigns of the parties.

### **Section 15 – Governing Law**

This Agreement is to be governed by and construed in accordance with the laws of the State of Illinois. Any suit brought hereon shall be brought in the state or federal courts sitting in Chicago, Illinois. The parties hereby waive any claim or defense that such forum is not convenient or proper. Each party hereby agrees that any such court shall have in personam jurisdiction over it. The parties irrevocably waive any and all rights they may have to a trial by jury in any judicial proceeding involving any claim relating to this Agreement. The Customer additionally waives personal service of process and consents that service of process upon the Customer may be made by certified or registered mail, return receipt requested, at the address provided in this Agreement.

### **Section 16 – Waiver**

Unless otherwise provided in this Agreement, no modification of or addition to this Agreement shall be effective unless in writing and signed by the party against whom the enforcement is sought. One or more waivers of any right, obligation or default shall not be construed as a waiver of any subsequent or other right, obligation or default. A waiver will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver. No delay in exercise of, partial exercise of, or failure to exercise any right under or with respect to this Agreement shall be construed as a waiver of such right or preclude its further exercise.

### **Section 17 – No Presumption Against Drafter**

The Agreement shall be construed as if drafted jointly by the Company and Customer, and no presumption shall arise favoring any party by virtue of the authorship of any provision of this Agreement.

### **Section 18 – Notice**

Except as otherwise specifically provided in this Agreement, any notice provided hereunder shall be in writing, shall be sent by a nationally recognized overnight courier service, and shall be deemed to have been received the business day after deposit with the courier service.

### **Section 19 – Third-Party Beneficiaries**

The parties expressly agree that ATM is the intended third-party beneficiaries under this Agreement. The parties further agree that Gleike is the intended third-party beneficiary, if the Customer selected to finance the Hardware. The parties further agree that there are no other third party beneficiaries, and nothing in this Agreement is intended to confer upon any third party (except Gleike, ATM and the parties’ respective successors and assigns) any rights or obligations under or by reason of this Agreement.

**Section 20 – Counterparts and Survival**

This Agreement may be in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one instrument. The following Sections shall survive any termination or expiration of the Agreement: Section 1 (Definitions); Section 7 (Processing Services and Assurance Fund); Section 8 (Chargebacks) ; Section 9 (Representations and Warranties); Section 11 (Confidential Information); Section 12 (Events of Default and Remedies); Section 13 (Liability); Section 14 (Integration and Severability); Section 15 (Governing Law); Section 17 (No Presumption against Drafter); Section 19 (Third-Party Beneficiaries).

**Section 21 – ACH Debit/Credit Consent**

The Customer hereby authorizes the Company and ATM to initiate ACH Credits and ACH Debits entries and adjustments to the Customer’s Account through the ACH process, and/or through direct instructions to the financial institution where the Customer’s Account is maintained for the amounts and in accordance with the terms of this Agreement. The Customer hereby authorizes the financial institution where the Customer’s Account is maintained to effect all such debits and credits to the Customer’s Account. This authority will remain in full force and effect until the Company provides a written notice to the financial institution where the Customer’s Account is maintained that all outstanding amounts due under this Agreement and under any other agreements with the Company have been paid in full.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

**Company Name:** \_\_\_\_\_

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

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

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

**Name of the Principal 1:** \_\_\_\_\_

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

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

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

**Name of the Principal 2:** \_\_\_\_\_

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

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

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

**Potential LLC**

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

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

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





## Schedule A

### Financing Agreement

#### A.1. Hardware Financing

The Customer acknowledges that the Hardware provided under the Agreement is financed by Gleike Inc. (“Gleike”) under the terms of this Financing Agreement (the “Financing Agreement”). The parties expressly agree and understand that the Hardware will be supplied by the Company, and Gleike’s only role is to finance the Hardware for the Customer.

#### A.2. No Warranty

**Gleike is financing the Hardware “AS IS” and “WHERE IS.”** Gleike did not select, manufacture, supply, package, deliver or inspect the Hardware. Therefore, **GLEIKE MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED AS TO CONDITION OF THE HARDWARE, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.** Gleike shall not be responsible for faulty operation, improper installation, loss, damage or any other problems related to, or arising out of, the Hardware. The Customer shall have no remedy whatsoever against Gleike for any problems related to, or arising out of, the Hardware.

#### A.3. Hardware Ownership

The Customer shall be the owner of the Hardware and have title to the Hardware.

#### A.4. Fees

The Customer agrees to pay Gleike the Monthly Hardware Fees in the amount set forth on the cover page of the Agreement. Each Monthly Hardware Fee shall be due and payable on the 1st day of each month for the remainder of the term of the Agreement. The Company shall withhold from the Proceeds or ACH Debit each payment from the Customer’s Account every month on behalf of Gleike pursuant to Section 7 of the Agreement. If, prior to expiration of the term, the Agreement is terminated for any reason, the Customer shall pay Gleike the sum of the Monthly Hardware Fees for all the months remaining in the term at the time of termination. The payment in full shall be due and payable five (5) business days after the Agreement is terminated for any reason. If the Customer does not make the payment in full on the sixth (6<sup>th</sup>) business day following termination, a late fee of twenty dollars (\$20) shall apply on the first (1st) day of the next month and each following month until full payment is received.

The Customer’s obligation to make the payments to Gleike is absolute and unconditional. Therefore, the Customer shall make the payments even if the Hardware, or any part of the Hardware, fails to operate, sustains damage or loss, and regardless of any claim, grievance or complaint the Customer may have against the Company. The Customer understands that **THIS FINANCING AGREEMENT CANNOT BE TERMINATED OR CANCELLED BY THE CUSTOMER FOR ANY REASON.**

#### A.5. Default

The Customer will be in Default if: (1) the Company is not able to withhold from the Proceeds or ACH Debit a Monthly Hardware Fee, and the Customer fails to make the payment when due; (2) a material adverse change (as determined by Gleike) occurs in the Customer’s financial condition; or (3) Gleike believes that the prospect of receiving a payment is impaired. Upon Default, the sum of all unpaid and outstanding Monthly Hardware Fees shall become due and payable immediately upon Gleike’s e-mail or fax notice to the Customer. If Gleike does not receive the full amount specified in the notice within five (5) days after providing the notice, a late fee of twenty dollars (\$20) shall apply on the first (1st) day of the next month and each following month, until the payment is made in full. The Customer agrees to pay all costs and expenses related to collection, including but not limited to attorney fees. The Customer further agrees that, if Gleike asserts a claim against the Customer arising out of or related to this Financing Agreement, Gleike shall be entitled to recover from the Customer all amounts Gleike incurs related to litigation (including actual attorneys’ fees and costs).

#### A.6. Incorporation

The following Sections of the Agreement shall be incorporated and become part of this Financing Agreement: Whereas Clauses; Section 1 (Definitions); Section 3 (Hardware); Section 7 (Processing Services and Assurance Fund); Section 9 (Representations and Warranties); Section 10 (Term); Section 11 (Confidential Information); Section 13 (Liability); Section 14 (Integration and

Severability); Section 15 (Governing Law); Section 16 (Waiver); Section 17 (No Presumption against Drafter); Section 18 (Notice); Section 19 (Third-Party Beneficiaries); Section 20 (Counterparts and Survival); Section 21 (ACH Credit/Debit Consent).

**A.7. Assignment**

The Customer may not assign this Financing Agreement without Gleike’s prior consent. Gleike may, without prior notice, assign, sell or otherwise transfer this Financing Agreement.

THE CUSTOMER ACKNOWLEDGES THAT IT READ AND AGREES TO BE BOUND BY ALL THE TERM OF THIS FINANCING AGREEMENT.

**Company Name:** \_\_\_\_\_

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

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

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

**Name of the Principal 1:** \_\_\_\_\_

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

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

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

**Name of the Principal 2:** \_\_\_\_\_

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

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

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