

protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information by such court or tribunal.

8. *Equitable Relief*

Notwithstanding Section 9, User covenants, represents and warrants that any violation of Sections 3 or 5 by User shall cause irreparable injury to ACES and shall entitle ACES to extraordinary and equitable relief by a court, including, but not limited to, temporary restraining orders and preliminary and permanent injunctions, without the necessity of posting bond or security. The opinions, findings, determinations and orders of any court with respect to permanent equitable relief granted consistent with this Section 8 shall have binding effect upon any arbitration and shall otherwise have res judicata and collateral estoppel effect upon any arbitration; provided, however, that the arbitrator shall give any court opinion, finding, determination or order granting temporary or preliminary equitable relief persuasive juridical authority.

9. *Dispute Resolution*

SUBJECT TO SECTION 8, THE PARTIES SHALL ENDEAVOR TO FIRST SETTLE ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, ANY BREACH OF THIS AGREEMENT) CLAIM BY MEDIATION CONDUCTED IN CLARK COUNTY, NEVADA. IF ANY CLAIM IS NOT OTHERWISE RESOLVED THROUGH DIRECT DISCUSSIONS OR MEDIATION, SUCH CLAIM(S) SHALL BE RESOLVED BY ARBITRATION CONDUCTED IN CLARK COUNTY, NEVADA IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF NEVADA REVISED STATUTES, EXCEPT THAT THE ARBITRATOR SHALL BE AN EXPERIENCED ARBITRATOR LICENSED TO PRACTICE LAW IN NEVADA. EACH PARTY COVENANTS, REPRESENTS AND WARRANTS THAT SUCH PARTY HEREBY WAIVES SIGNIFICANT RIGHTS ALLOWED PURSUANT TO NEVADA LAW BY AGREEING TO SUCH ARBITRATION PROVISIONS.

10. *Disclaimer of All Warranties and Representations*

THE SERVICES AND SUBSCRIPTION PROPERTY ARE PROVIDED "AS IS." ACES MAKES NO REPRESENTATIONS, WARRANTIES, OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED AND DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, WHETHER OR NOT IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SERVICES, SUBSCRIPTION PROPERTY, OR ANY OF THE TRANSACTIONS REASONABLY CONTEMPLATED BY THE PARTIES PURSUANT TO THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES (some jurisdictions do not allow the exclusion of implied warranties, so the exclusion of implied warranties may not apply to the User) OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT ACES KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED OR IS OTHERWISE, IN FACT, AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOMER USAGE IN THE TRADE OR BY COURSE OF DEALING.

11. *Limitations on Liability*

NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, ACES (AND ITS REPRESENTATIVES', AFFILIATES' AND LICENSORS') MAXIMUM AGGREGATE LIABILITY TO USER (OR TO ANY PERSON CLAIMING ANY RIGHT, TITLE OR INTEREST DERIVED FROM OR THROUGH USER) FOR ANY CAUSE WHATSOEVER (EXCEPT FOR WILLFUL MISCONDUCT AGAINST NATURAL PERSONS OR PROPERTY OR GROSS NEGLIGENCE OF ACES), REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT, OR ANY OTHER THEORY OF LAW OR EQUITY), SHALL BE LIMITED TO THE LESSER OF : (A) FEES, IF ANY, RECEIVED BY ACES FROM USER WITHIN SIX (6) MONTHS PRIOR TO THE TERMINATION OF THIS AGREEMENT OR (B) \$1000. IN ADDITION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR LOST PROFITS OR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED IN CONTRACT, TORT, OR ANY OTHER THEORY OF LAW OR EQUITY (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) AND WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY REPRESENTS THE ALLOCATION OF RISK OF FAILURE BETWEEN THE PARTIES AS REFLECTED IN THE PRICING HEREUNDER AND IS AN ESSENTIAL ELEMENT OF THE BARGAIN BETWEEN THE PARTIES.

12. *Termination*

12.1. Client/User may terminate this Agreement at any time by requesting in writing that ACES cancel Client/User's subscription.

CONFIDENTIAL/PROPRIETARY INFORMATION
OF ATM HOLDING CO. LLC

Initials