

COMMERCIAL TERMINAL BUILDING LEASE

FOR AUTOMATED TELLER MACHINES

THIS LEASE, made and entered into this ____ day of _____ 20____, by

and between the following:

CITY OF BILLINGS, MONTANA, hereinafter
designated "Lessor"

and

HK PARTNERSHIP AND ATM SALES AND SOLUTIONS,
hereinafter designated "Lessee"

W I T N E S S E T H

RECITALS

- 1) Lessor owns and operates BILLINGS LOGAN INTERNATIONAL AIRPORT (hereinafter called the Airport) situated in the City of Billings, Montana, and
- 2) Lessor deems it advantageous to itself and the operation of the Airport to lease to the Lessee Terminal Building space hereinafter described together with certain privileges, rights, uses and interests, and
- 3) Lessee, a service provider wishing to engage in certain commercial activities, proposes to lease on a net basis from Lessor said Terminal Building space and to avail itself of the same privileges, rights, uses, and interests contemplated herein, and
- 4) Lessee has indicated a willingness and ability to properly keep, maintain, and improve said Terminal Building space in accordance with standards established by Lessor.

NOW THEREFORE, the Parties hereto covenant and agree as follows:

ARTICLE I

PREMISES AND PRIVILEGES

A. Description of the Premises. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor that certain Terminal Building space, together with improvements (hereinafter called the premises), for its use and specifically described as:

Approximately a two-foot by three-foot (2' x 3') area of floor space at two (2) locations in the Terminal Building; the first location to be on the main floor of the Terminal, the second location to be on the second floor concourse level of the Terminal Building.

B. General Privileges, Uses, and Rights. Lessor hereby grants to Lessee the following general privileges, uses, and rights, all of which shall be subject to the terms, conditions and covenants herein set forth. Said rights shall be subject to such Federal, State, or Local ordinances, rules or regulations as now or may hereafter have application at the Airport.

1) The general unrestricted use of all public Airport facilities and improvements, which are now or may hereafter be connected with or appurtenant to said Airport, except as hereinafter provided, to be used by Lessee for commercial activities as herein defined. For the purpose of this Lease, public airport facilities shall include all roadways, sidewalks, terminal facilities, or other public facilities appurtenant to said Airport.

2) The right of ingress to and egress from the premises over and across public roadways serving the Airport for Lessee, Lessee's agents, employees, patrons and invitees, suppliers of service and furnishers of material.

C. Specific Privileges, Uses, and Rights. In addition to the general privileges, uses, and rights described above and without limiting the generality thereof, Lessor hereby grants to Lessee the right to engage in commercial activities on the premises as defined in subparagraphs 1 through 4 below, subject to the conditions and covenants hereafter set out:

1) The operation and maintenance of Lessee owned Automated Teller Machines (ATMs) on the premises, which shall dispense cash, perform transfers, and respond to balance inquiries.

2) Lessee may remove a particular ATM from the premises if the number of ATM Transactions (excluding balance inquiries, and hereinafter referred to as "Transactions") does not average at least one thousand (1,000) per month during the previous year. Lessee shall give Lessor ninety (90) days written notice prior to removal of an ATM.

3) Lessee shall use its best efforts to have the ATMs continuously operational during the hours of the day the Terminal Building is open to the public for business.

4) The aforementioned rights shall apply to the persons, firms, or corporations having actual possession and occupancy of the premises described herein, and the agents, employees, and invitees of such persons, firms, or corporations.

D. Concessions Excluded. The following concessions and services and the establishment thereof shall be specifically excluded from this Lease:

1) Equipment rental services.

2) For hire display advertising. This exclusion does not include specific branding or logos for banks with which the Lessee has either a contract or other affiliation concerning ATM service.

E. Reservation of Right-of-Way. Lessor hereby reserves a right-of-way easement for access purposes over the above described leasehold for access purposes. Said reserved right-of-way may be used by Lessor and all of Lessor's representatives, agents, and employees.

F. Depreciation and Investment Credit. Neither Lessee nor any successor of Lessee under this Lease may claim depreciation or an investment credit with respect to the premises under the Internal Revenue Code of 1986, as amended. Lessee hereby makes an irrevocable election binding on it and its successors in interest under this Lease, not to claim such depreciation or investment credit with respect to the premises.

G. Useful Life of the Facility. Lessee and Lessor agree that the term of this Lease does not exceed eighty percent (80%) of the reasonably expected economic life of the property or facilities covered by this Lease. Lessee represents and acknowledges that it has no option or right to purchase or acquire any interest in the personal or real property subject to this Lease.

ARTICLE II

TERM OF LEASE

A. Term. The term of this Lease shall be for a period of three (3) years, commencing on the 1st day of June 2011, and terminating on the 31st day of May 2014.

B. Annual Renewal. This Lease shall renew automatically for successive one-year periods, provided either party may terminate this Lease by providing ninety (90) days advance written notice to the other.

C. National Emergency. In the event the rights and privileges hereunder are suspended by reason of war or other national emergency, the term of this Lease shall be extended by the amount of the period of such suspension.

ARTICLE III

RENTAL AND FEES

A. Rental. For the premises described in Article I, Paragraph A, Lessee shall pay to Lessor each month \$0.01 for each Transaction (net of balance inquiries) at the ATMs. Rent shall be payable on or before the tenth (10th) day of the following month.

B. Interest Penalty. Without waiving any other right or action available to the Lessor, in the event of default in the payment of Lease rentals herein, or any other rentals, fees, or charges owed Lessor, the amount due shall accrue interest at the rate of one and one-half percent (1.5%) per month from the date such rentals, fees, or charges were due and payable, until paid in full. Said interest shall not apply with respect to items being contested in good faith by Lessee and which are resolved in Lessee's favor.

ARTICLE IV

OBLIGATIONS OF LESSOR

A. Lessor Warranties. Lessor warrants all things have happened and have been done to make its granting of said Lease effective and that Lessee shall have peaceful possession and

quiet enjoyment of the leased premises during the term hereof, upon performance of Lessee's covenants herein.

B. Operation as Public Airport. Lessor shall during the term hereof, operate and maintain the Airport and its public facilities, as defined hereinabove, as a public airport consistent with and pursuant to the sponsor's assurances given by Lessor to the United States Government under the Federal Airport Act.

C. Condition and Maintenance of Premises. Lessor shall maintain the premises in the same condition as the surrounding Terminal Building space. Lessor shall maintain all existing roads on the Airport giving access to the leased premises. Lessor will not maintain Lessee's equipment, which shall be the sole responsibility of the Lessee.

ARTICLE V

OBLIGATIONS OF LESSEE

A. Condition of Premises. It shall be the sole responsibility of the Lessee to develop, keep, maintain, and operate the entirety of the premises and all improvements placed thereon at Lessee's sole cost and expense. Lessee accepts the premises in its present condition and will repair and maintain any installations thereon except as provided in Article IV, Paragraphs B.-C., and will remove or cause to be removed any debris to the extent required for its continuing use thereof. The Lessee will repair and pay for any City owned property damaged or destroyed through the use, negligence or wrongful conduct of the Lessee and Lessee's representatives, agents, and employees.

B. Improvements. Lessee shall have the right to and shall provide for the construction, alteration, and maintenance of its own improvements, in any lawful manner, upon or in

the premises, for the purpose of carrying out any of the activities provided for herein, but shall obtain the prior written approval of Lessor for any such construction or alteration activities, which approval shall not be unreasonably withheld.

C. ATMs located in Secured Areas. All technicians or ATM maintenance staff that will be required to access or service any ATM located in a secured area of the Airport, shall meet all security requirements in effect at the Airport prior to servicing or maintaining an ATM. Security, access, and badge requirements are available through the Airport Police Office located in Room 210 of the Airport Terminal Building. Airport Police Office hours are 8:00 a.m. to Noon, and 1:00 p.m. to 5:00 p.m., Monday through Friday.

D. Maintenance. Lessee shall, at its sole cost and expense, maintain the premises, improvements, and appurtenances thereto in a presentable condition free of refuse and debris consistent with good business practice, and install and maintain the ATMs in an attractive manner and good state of repair. Lessee shall have the right to install, maintain, and repair utility and/or communication lines in the premises as may be necessary for the proper operation of the ATMs; however, Lessor shall have the right to approve the location and specifications of such lines prior to installation. Lessor agrees that it may not move or relocate the ATMs from their original location, without having received prior written permission from the Lessee, which permission shall not be unreasonably withheld. Lessor agrees that the costs associated with any relocation of the ATMs, made at its request, will be at the Lessor's expense.

E. Service. Lessee represents and warrants that the operation of the ATMs is constantly monitored and that if the ATMs fail to perform, that a service representative(s) will be sent,

without notice from the Lessor, to promptly correct such malfunction. The service representative(s) shall identify themselves to a representative of the Lessee prior to any maintenance/service work being commenced. Lessee shall be solely responsible for the cleaning and servicing of the ATMs and shall provide all currency necessary for proper operation of the ATMs.

F. Utilities. Lessee shall pay for electrical hook-up of the ATMs, any exterior signs, and illumination. After initial hook-up, the Lessor shall provide for electrical utilities to point of outlet presently existing in the premises, and heating and air conditioning of the premises. Additional electrical outlets, telephone lines, cable, and other communication or data service shall be the responsibility of Lessee.

G. Signs. Any signs or other advertising in the Airport Terminal Building shall be reviewed and receive prior written approval from Lessor prior to installation or placement. Lessee may affix to the ATMs informational signs concerning the operation of the ATMs.

H. Permits. Lessee shall obtain all permits, licenses, certificates, or other authorization required in connection with the use of the ATMs and the premises.

I. Monthly Activity Reports. On or before the tenth (10th) day of each month, Lessee shall provide Lessor an accurate report of Transaction activity at the Airport certifying the number of Transactions made during the preceding month, and submit Transaction Rent, if such is due, as provided in Article III, Paragraph A. Lessor reserves the right to make a special audit of Lessee's books and records of Transactions at the premises. If a discrepancy is found in the number of Transactions, an adjustment shall promptly be made in the Transaction Rent payment and Lessee shall

pay Lessor's costs with respect to such audit. Lessor shall have the right to audit Lessee's books and records for a period of six (6) months after receipt of each monthly Transaction report.

J. Books and Records. Lessee agrees that it shall keep accurate books and records of all Transactions conducted on the premises, in accordance with generally accepted accounting principles and banking methods and shall make such records available to Lessor at Lessee's main office.

K. Federal, State, and Local Regulations. Lessee acknowledges that the right to use said Airport facilities in common with others authorized to do so shall be exercised subject to and in accordance with the laws of the United States of America, the State of Montana, and the City of Billings. All rules and regulations, and ordinances of Lessor now in force or hereafter prescribed or promulgated by authority or by law shall be closely observed during the full term of this Lease.

L. Hazardous Substances. Lessee assumes full responsibility for the proper and legal use, handling, storage, and disposal of any hazardous substances used or consumed in the conduct of its business. "Hazardous substance" shall be interpreted broadly to mean any substance or toxic material, hazardous or toxic or radioactive substance, or other similar term by any Federal, State or Local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease. Lessee will hold Lessor harmless from and indemnify Lessor against and from any damage, loss, expenses, or liability resulting from any breach of this representations and warranty including all attorneys' fees and costs incurred as a result thereof.

ARTICLE VI

INSURANCE AND INDEMNIFICATION

A. Indemnification. Lessor shall stand indemnified by Lessee as herein provided.

It is expressly understood and agreed that Lessee is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions and that Lessor shall in no way be responsible therefore. It is further agreed that in the use of the Airport, in the construction, alteration, or maintenance of any improvements thereon, and in the exercise or enjoyment of the privileges herein granted, Lessee shall indemnify and save harmless the Lessor from any and all losses or claims that may result to the Lessor because of any negligence, act or omission on the part of the Lessee, and shall indemnify Lessor against any and all mechanic's and materialmen's liens or any other types of liens or encumbrances imposed upon the premises resulting from Lessee's use and occupancy of the premises. The obligations of the Lessee hereunder arising by reason of any such occurrence taking place while this Lease is in effect, shall survive any termination of this Lease.

Lessee expressly agrees that Lessor shall not be liable to Lessee, for personal injury, bodily injury, or for any loss or damage to real or personal property occasioned by flood, fire, earthquake, lightning, windstorm, hail, explosion, riot, strike, civil disobedience or commotion, aircraft, smoke, vandalism, malicious mischief, or acts of civil authority, unless caused by the fault or negligence of Lessor, its officers, agents or employees.

In the event of interruption of the use of the ATMs, the parties agree that to the extent the interruption is within its control, it shall use diligent efforts to repair such interruption to

restore use, and neither party shall be liable to the other for any loss or damage that results from such interruption.

B. Insurance. Lessee shall provide and keep in force for the term of the Lease a commercial general liability policy (occurrence form only), providing coverage for personal injury, bodily injury, death, and property damage, in amounts not less than \$750,000 per claim, and \$1,500,000 per occurrence.

The commercial general liability policy shall be endorsed to include the CITY OF BILLINGS as a **PRIMARY ADDITIONAL INSURED**. The City of Billings' general liability policy will be excess and noncontributory. At the time of execution of this Lease, Lessee shall furnish a Certificate of Insurance on a form acceptable to the City and showing that required insurance is in full force, and copies of all endorsements. The issuer(s) of the policy or policies shall also provide thirty (30) day advance written notification to Lessor of any reductions in the policy coverage, cancellations, or other adverse amendments to the policy or policies impacting the risks covered, except notice for non-payment of premium shall be ten (10) days. Should the cancellation notice provision require a policy endorsement, a copy of said endorsement shall be provided with the Certificate of Insurance. Insurance coverage shall be maintained with insurance underwriters authorized to do business in the State of Montana and that are satisfactory to the Lessor.

If, in the Lessor's opinion, the minimum limits of the insurance coverage herein required become inadequate during the term of this Lease, Lessee agrees that it will increase such minimum limits by reasonable amounts on request of the Lessor.

C. Currency and Property Coverage. Lessee shall maintain insurance with coverage for destruction or theft of the currency within the ATMs and property damage of the ATMs.

ARTICLE VII

TERMINATION OF LEASE, AND TRANSFER

A. Termination. This Lease shall terminate at the end of the full term hereof without any notice by either party, except as indicated in Article II, Paragraph B. A holding over by the Lessee beyond the expiration of the term shall not be permitted without the written consent of the Director of Aviation and Transit, and then only on a month-to-month basis.

Upon the termination of this Lease, Lessee shall have the right to remove all moveable fixtures, machinery and equipment, and all other personal property installed by it on the premises, and all expenses connected with such removal shall be borne by the Lessee. Said property shall be removed within ten (10) days after termination of Lease. In the event the Lessee elects not to remove said property upon termination of the Lease, the disposition of the property will be left to the sole discretion of the Lessor. Removal of property by Lessor because of failure of Lessee to do so, shall be at Lessee's expense.

B. Cancellation by Lessee. This Lease shall be subject to cancellation by Lessee after the occurrence of one or more of the following events:

- 1) The permanent abandonment of the Airport as an Air Terminal.
- 2) The lawful assumption of the United States Government or any other authorized agency thereof, of the operation, control or use of the Airport, or any

substantial part or parts thereof, in such a manner that substantially restricts Lessee for a period of at least ninety (90) days from operating in a normal manner.

3) Issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport, and the remaining in force of such injunction for a period of at least ninety (90) days.

4) The default by Lessor in the performance of any covenant or agreement herein required to be performed by Lessor and the failure of Lessor to remedy such default for a period of ninety (90) days after receipt from Lessee or written notice to remedy same.

Lessee may exercise such right of termination by written notice to Lessor at any time after the lapse of the above applicable periods of time and this Lease shall terminate as of that date. Rental due hereunder shall be payable only to the date of the happening of the event which results in said termination. Upon termination under the provisions of this Paragraph, Lessee shall have the same rights as described in Article VII, Paragraph A. herein.

C. Cancellation by Lessor.

1) This Lease shall be subject to cancellation by Lessor in the event Lessee shall:

a) Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after payment is due.

b) File a voluntary petition of bankruptcy.

c) Make a general assignment for the benefit of creditors.

d) Default in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after written notice from Lessor of said default.

2) In the event of termination because of the happening of any of the aforesaid events, Lessor may take immediate possession of the premises and remove Lessee's effects, without being deemed guilty of trespassing. Upon said entry, this Lease shall terminate.

3) It is agreed that failure of Lessor to declare this Lease terminated or to reenter and take possession upon the default of Lessee for any of the reasons set out shall not operate to bar or destroy the right of Lessor to declare this Lease null and void by reason of any subsequent violation of the terms of this Lease.

D. Suspension of Lease. During the time of war or declared national emergency, Lessor shall have the right to lease the landing area or any part thereof to the United States Government for military use. If any such lease is executed, any provisions of this instrument which are inconsistent with the provisions of the lease to the Government shall be suspended, provided that the term of the Lease shall be automatically extended by the amount of the period of suspension.

E. Subleasing, Transferring or Assigning. The rights conferred by this Lease or any part thereof, cannot be subleased, transferred, or assigned by the Lessee without the express written consent of the Lessor, which consent shall not be unreasonably withheld.

ARTICLE VIII

GENERAL PROVISIONS

A. Attorney's Fees. Should either party employ an attorney or attorneys or utilize the services of in-house attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this Lease, the nonprevailing party in any action pursued in a court of competent jurisdiction agrees to pay to the prevailing party all reasonable costs, damages, expenses, and attorney's fees, including fees for in-house attorneys, expended or incurred in connection therewith.

B. Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of Montana. Venue in any proceedings held hereunder shall be in the State of Montana Thirteenth Judicial District Court, Yellowstone County, Montana.

C. Taxes. Lessee shall pay any taxes or assessments which may be lawfully levied against Lessee's occupancy or use of the premises or any improvements placed thereon as a result of Lessee's occupancy; however, Lessee as independent contractor reserves the right to contest the levy of any tax or assessment which it feels is unjust.

D. Subordination of Lease.

1) This Lease shall be subordinate to the provisions of any existing or future agreements between Lessor and the United States relative to the administration, operation, or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport.

2) Any mortgagee or beneficiary shall have the right to cure any default on the part of Lessee in the payment of rent hereunder and, in the event of default, to assume the Lessee's position under this Lease. Lessor in no event shall be liable for the payment of the sum secured by such mortgage or trust indenture, nor for any expenses in connection with the same. Furthermore, such mortgage or trust indenture shall expressly provide that the mortgagor or beneficiary will seek no monetary judgment against Lessor. The mortgage or trust indenture shall also contain provisions requiring the holder of the indebtedness secured by such mortgage or trust indenture to mail to Lessor by certified mail a copy of each notice of breach of covenant, default or foreclosure given by the holder or the trustee under such mortgage or deed of trust.

E. Nondiscrimination. Lessee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree:

1) That no person, on the grounds of race, color, creed, political ideas, sex, age, or physical or mental disability, shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of Airport facilities, or the exercise of its rights and privileges under this Lease.

2) That, in the construction, alteration, or maintenance of any improvements on behalf of Lessee and the furnishing of services, no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination on the grounds of race, color, creed, political ideas, sex, age, or physical or mental disability.

3) That Lessee shall use the Airport facilities in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

F. Modification and Amendments. Changes or modifications to this Lease will be done in the form of a lease amendment to be agreed upon and signed by both Lessee and Lessor.

G. Paragraph Headings. The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease or the particular paragraphs.

H. Notices. Notices to Lessor provided for herein shall be sufficient if sent by certified mail, postage prepaid, addressed to:

Director of Aviation and Transit
Billings Logan International Airport
1901 Terminal Circle, Room 216
Billings, MT 59105

and notices to Lessee, if sent by certified mail, postage prepaid, addressed to:

HK Partnership
Attn: Bill Huyser
3205 Deer Pass Trail
Billings, MT 59101

Additional Contact Information:
406-698-2335 (Cell)
406-896-1639 (Home)
billhuyser@usadig.com

and

ATM Sales & Solutions
Attn: Tracy Reiter
5425 Corner Stone Ave
Billings, MT 59106

Additional Contact Information:
406-698-4011 (Cell)
tracy_leird@msn.com

or to such other addresses as the parties may designate to each other in writing from time to time.

I. Effect of Invalid Provision. If any term or provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have hereunto set their hands this ____ day of _____ 20__.

ATTEST:

CITY OF BILLINGS

BY _____
CITY CLERK

BY _____
MAYOR

APPROVED AS TO FORM

HK PARTNERSHIP

BY _____
CITY ATTORNEY

BY _____
BILL HUYSER

ATM SALES AND SOLUTIONS

BY _____
TRACY REITER