

**STATE OF FLORIDA  
OFFICE OF THE ATTORNEY GENERAL,  
DEPARTMENT OF LEGAL AFFAIRS**

**IN THE INVESTIGATION OF:**

**AG CASE NO. L12-3-1046**

**Groundhog Enterprises, Inc. d/b/a  
Merchant Lynx Services  
and John Kucyk, Individually,**

**Respondents**

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**ASSURANCE OF VOLUNTARY COMPLIANCE**

1. PURSUANT to the provisions of Chapter 501, Part II of the Florida Statutes, Florida's Deceptive and Unfair Trade Practices Act, the Office of the Attorney General, Department of Legal Affairs (hereinafter referred to as the "Department"), caused an investigation to be made into certain acts and practices of Groundhog Enterprises, Inc., a Georgia for-profit corporation doing business as Merchant Lynx Services, and its president, John Kucyk (hereinafter, "Respondents").

2. Groundhog Enterprises, Inc, d/b/a Merchant Lynx Services ("Merchant Lynx") provides payment processing solutions to businesses in Florida and elsewhere. Merchant Lynx's principal place of business is registered as 2000 Palm Beach Lakes Blvd, Suite 777, West Palm Beach, Florida 33409. John Kucyk ("Kucyk") is an individual residing in Florida and is the president of Merchant Lynx.

3. Respondents are prepared to enter into this Assurance of Voluntary Compliance (hereafter referred to as the "AVC") without an admission that Respondents violated Florida's Deceptive and Unfair Trade Practices Act or any other law and solely for the purpose of resolution of this matter with the Department.



4. Pursuant to Section 501.207(6), Florida Statutes, the Department agrees to accept this AVC in termination of its investigation as to Respondents solely as to the acts and practices that were the subject of the investigation.

I. STIPULATED FACTS

5. The Department and Respondents hereby agree and stipulate to the following:

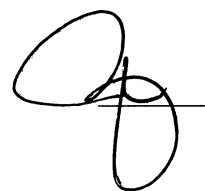
a. During the time frame beginning at least April 1999 through May 2013, Respondents have engaged in the business of offering and providing payment processing solutions to consumers in Florida and elsewhere.

b. Merchant Lynx leases payment processing equipment to consumers and businesses. Merchant Lynx also contracts with payment processing service companies on behalf of its consumer and business clients for those services.

c. The Department investigated allegations that some of Respondents' sales practices violated Florida's Deceptive and Unfair Trade Practices Act and that Respondents engaged in telemarketing without holding the telemarketing license required by the Florida Telemarketing Act.

6. Respondents represent that since Respondents became aware of the Department's investigation, by way of subpoena served on or about November 1, 2012, Respondents have cooperated fully and provided all responsive documents and information pursuant to the terms of the subpoena and supplemental requests, to the satisfaction of the Department.

7. This AVC is based upon the stipulated facts set forth herein. The Department shall not be estopped from taking further action in this matter in the event that the facts described herein are determined to be incorrect in any material way or in the event that this AVC is not

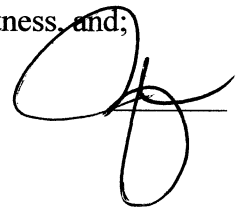
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complied with in full by Respondents. The parties agree that this AVC has been entered into based on the truthfulness of the information provided by Respondents.

## II. COMPLIANCE

8. Respondents, including their representatives, agents, employees, successors, assigns, independent contractors or any other person who acts under, by, through, or on behalf of Respondents, directly or indirectly, or through any corporate or other device:

- a. Shall not violate the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes;
- b. Shall not violate the Florida Telemarketing Act, Florida Statutes Section 501.601 *et seq.*, including obtaining all telemarketing licenses required by the statute prior to engaging in any conduct governed by the Florida Telemarketing Act;
- c. Shall not violate the Federal Trade Commission Telemarketing Sales Rule, 16 C.F.R., Part 310;
- d. Shall not alter contracts post-execution or forge contracts;
- e. Shall continue to provide a copy of the complete terms of service, including especially the Merchant Lynx "Program Guide", to each customer;
- f. Shall continue to allow each customer 30 days to cancel the contract, from the date of receipt of the Program Guide or other Terms of Service;
- g. Shall continue honoring customer requests to cancel services or for refunds as provided for in the contract, Program Guide, or other Terms of Service;
- h. Shall continue to clearly and conspicuously disclose the average rates customers are charged for processing, either in the contract, Program Guide, or other Terms of Service;
- i. Shall continue to clearly and conspicuously disclose lease terms for payment processing equipment, including especially cancellation fees and lease duration either in the contract, Program Guide, or other Terms of Service;
- j. Shall continue to clearly and conspicuously disclose any and all additional applicable fees either in the contract, Program Guide, or other Terms of Service;
- k. Shall not debit customer accounts without customer authorization;
- l. Shall respond to customer complaints with all reasonable promptness, and;

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- m. If handwritten notations indicating a deviation from the standard contract are made, the deviations shall be initialed by both parties. Where this process is followed, Respondents will honor the hand-written, initialed deviations to the standard contract.

### III. BUSINESS RECORDS

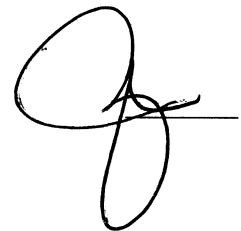
9. Respondents shall preserve and retain all relevant business and financial records relating to the acts and practices at issue in this AVC and other information reasonably sufficient to establish compliance with the provisions of this AVC for two (2) years from the date of this AVC, and shall provide reasonable access to such documents and information to the Department upon request.

### IV. CONSUMER RECORDS

10. Any personal or financial information of consumers in the custody, control or possession of Respondents shall be securely stored in such a manner as to reasonably protect against inadvertent disclosure of consumer information. Respondents, including any representatives, agents, employees, successors, and assigns, shall not, directly or indirectly, market, sell, share or otherwise disclose the name, contact information, or financial information of any consumer in the care, custody or control of Respondents.

### V. NOTICE

11. Respondents shall make the terms and conditions of this AVC known to any managers, members, officers, directors, employees, agents, independent contractors or anyone else acting for or on behalf of Respondents. The obligations imposed by this AVC are continuing in nature and shall apply to Respondents' successors and assigns as well as any and all new officers, employees, agents, representatives or any other persons who become engaged in the business or activities of Respondents.

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12. Respondents shall not affect any change in the form of doing business or the organizational identity of any of the existing business entities or create any new business entities as a method of avoiding the obligations and terms and conditions set forth in this AVC.

VI. PAYMENT

13. Respondents shall contribute a total of **\$40,000.00 (Forty Thousand Dollars)** (the "Contribution Amount") to the Department as follows:

a. **\$13,333.34 (Thirteen Thousand Three Hundred and Thirty Three Dollars and Thirty Four Cents)** shall be delivered simultaneous with the submission of Respondents' partially executed copy of this AVC;

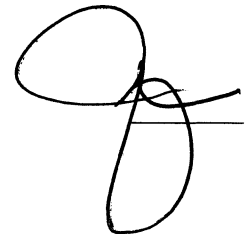
b. **\$13,333.33 (Thirteen Thousand Three Hundred and Thirty Three Dollars and Thirty Three Cents)** shall be delivered on or before the 30th (thirtieth) day following the Department's acceptance of this AVC;

c. **\$13,333.33 (Thirteen Thousand Three Hundred and Thirty Three Dollars and Thirty Three Cents)** shall be delivered on or before the 30th (thirtieth) day following the payment specified in subsection (b), above.

14. All payments shall be made via wire transfer or certified check, made payable to the **Department of Legal Affairs** and delivered Attn: Ronald Honick, Assistant Attorney General, 110 SE 6th Street, 10th Floor, Fort Lauderdale, Florida 33301.

VII. RESTITUTION

15. Respondents and the Department agree that **\$10,000.00 (Ten Thousand Dollars)** of the Contribution Amount is designated for restitution to consumers (the "Restitution Amount").

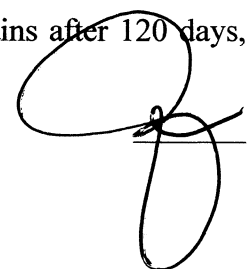
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16. In addition to the amount set forth in Paragraph 15, Respondents and the Department agree that **\$5,000.00 (Five Thousand Dollars)** is designated as a reserve fund (the "Reserve Fund"), which shall be utilized for restitution to consumers who file complaints and provide documentation during the period specified in Paragraph 17. The Department agrees to fully utilize the Reserve Fund for restitution prior to seeking additional amounts from Respondents under Paragraph 17.

17. Respondents shall issue refunds to any other consumer who files a complaint regarding Respondents with the Office of the Attorney General within 90 days of the effective date of this AVC. Upon the conclusion of 90 days following the effective date of this AVC, the Department shall provide Respondents with a list of consumers who submitted complaints or affidavits within 90 days of the effective date of this AVC and the amounts due to each consumer, and Respondents shall provide refunds within 30 days of receipt of said list. To the extent Respondents object to the listed refunds due additional consumers who file a timely complaint, such consumers shall be refunded as set forth on the list absent sufficient documentation provided by Respondents to establish to the Department's reasonable satisfaction that Respondents made full and timely payment of all appropriate amounts due to the consumer.

18. Within 10 days of payment of the refunds required in Paragraph 16, Respondents shall provide the Department with a sworn affidavit certifying the Respondents' compliance with the obligations set forth in Paragraph 16 and provide documentation substantiating said payments.

19. The Department shall allocate and distribute the Restitution Amount and the Reserve Fund as the Department determines is reasonable in its sole business judgment. In the event that any portion of the Restitution Amount or the Reserve Fund remains after 120 days,

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that portion shall revert to the Department of Legal Affairs Revolving Trust Fund for application toward attorneys' fees, costs and future enforcement costs.

VIII. FEES AND COSTS

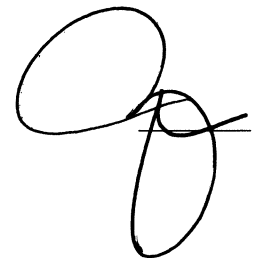
20. Respondents and the Department agree that **\$25,000.00 (Twenty Five Thousand Dollars)** of the Contribution Amount is designated as attorneys' fees, costs and costs of investigation and future investigative fees and costs pursuant to Section 501.2105, Florida Statutes.

IX. CIVIL PENALTIES

21. Subject to Respondents' full, complete and timely compliance with the terms of this AVC, the Department is waiving, pursuant to this settlement and in consideration of the Respondents' performance hereunder, the civil penalties that would otherwise be due for the acts and/or practices at issue under Sections 501.2075 or 501.2077, Florida Statutes, of up to \$15,000 per violation. The Department reserves the right to seek civil penalties for further violations of FDUTPA or for violations of the terms of this AVC.

X. FUTURE VIOLATIONS

22. It is hereby agreed by the parties that any failure to comply with the terms and conditions of this AVC by Respondents is by statute prima facie evidence of a violation of Chapter 501, Part II, Florida Statutes, and will subject Respondents to any and all civil penalties and sanctions authorized by law, including attorneys' fees and costs. In the event that a court of competent jurisdiction makes a determination that a violation of any condition of this AVC has occurred, then Respondents shall be liable in an amount to be determined by the court, encompassing civil penalties as well as attorney's fees and costs and any other legal or equitable relief as the court may deem appropriate.

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XI. EFFECTIVE DATE

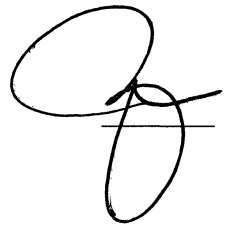
23. The Effective Date of this AVC shall be the date of its execution and delivery by the Department. Acceptance by the Department shall be established by the signature of the Director of the Consumer Protection Division, Richard Lawson. The receipt by the Department of any monies pursuant to the AVC does not constitute acceptance by the Department, and any monies received shall be returned to Respondents if this AVC is not accepted and fully executed by the Department.

XII. MISCELLANEOUS

24. It is further agreed that facsimile copies of signatures and notary seals may be accepted as original for the purposes of establishing the existence of this agreement, and this AVC may be executed in counterparts the compilation of which shall constitute the full and final agreement.

25. The original AVC bearing the notarized signatures of Respondents and the payment(s) due hereunder will be delivered to the attention of Assistant Attorney General Ronald Honick, Office of Attorney General, Consumer Protection Division, 110 SE 6th Street, 10th Floor, Fort Lauderdale, FL 33301.

26. Notice to any of the parties to this AVC as may be required shall made by certified mail and email at the addresses set forth below unless any party notifies the other parties in writing of another address to which notices should be provided.

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To Respondents:

T.C. Spencer Pryor  
Alston & Bird, LLP  
One Atlantic Center  
1201 W. Peachtree St.  
Atlanta, GA 30309  
*Attorney for Respondents*

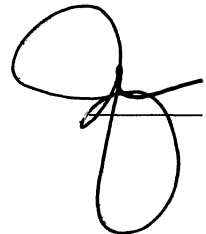
To the Department:

Ronald J. Honick  
Assistant Attorney General  
Office of the Attorney General  
110 Southeast 6<sup>th</sup> Street  
10<sup>th</sup> Floor  
Fort Lauderdale, FL 33301

27. Nothing in this AVC is to be construed as a waiver of any private rights of any person or release of any private rights, causes of action, or remedies of any person against Respondents or any other person or entity.

28. It is a condition of each of the Department's obligations under this AVC that the Respondents have fully and timely performed all of Respondents' obligations previously due under this AVC.

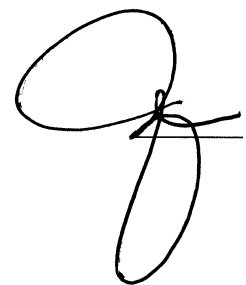
29. This AVC is the final, complete, and exclusive statement of the parties' agreement on the matters contained in this AVC, and it supersedes all previous negotiations and agreements. Other than any representation expressly stated in this AVC, the parties have not made any representations or warranties to each other, and neither party's decision to enter into this AVC is based upon any statements by the other party outside of those in this AVC.

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30. It is further agreed that the parties jointly participated in the negotiation of the terms of this AVC. No provision of this AVC shall be construed for or against any party on the grounds that one party had more control over establishing the terms of this AVC than another.

31. By my signature, I hereby affirm that I have authority to execute this AVC on behalf of the party indicated and, to the extent I am acting in a representative capacity, I am acting within the scope of my authority as corporate representative, and that by my signature I am binding the party/parties indicated to the terms and conditions of this AVC.

**SIGNATURE PAGES FOLLOW ON SEPARATE PAGES**

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For Respondents:

**GROUNDHOG ENTERPRISES, INC.**

Signed: \_\_\_\_\_

Its: \_\_\_\_\_

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

*[Handwritten signature]*

STATE OF FLORIDA )ss  
COUNTY OF ~~BROWARD~~ )ss  
Martin

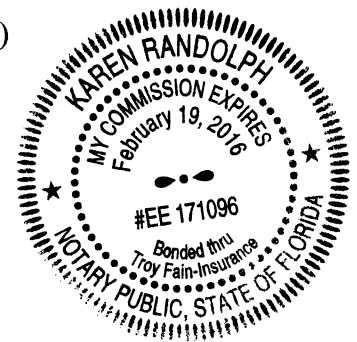
BEFORE ME, an officer duly authorized to take acknowledgments in the State of Florida, \_\_\_\_\_, appeared \_\_\_\_\_ of Groundhog Enterprises, Inc., who produced \_\_\_\_\_ as identification. S/he acknowledged before me that he executed the foregoing instrument for the purposes therein stated on the 3 day of April, 2014.

Subscribed to before me this 3 day of April, 2014.

NOTARY PUBLIC

*[Handwritten signature]*  
\_\_\_\_\_  
(print, type, or stamp commissioned Notary Public)

Personally known  or Produced Identification \_\_\_\_\_ (check one)  
Type of Identification Produced: \_\_\_\_\_



*[Handwritten signature]*

**JOHN KUCYK, Individually**

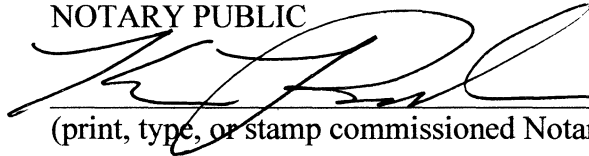
Signed: \_\_\_\_\_

STATE OF FLORIDA )ss  
COUNTY OF ~~BROWARD~~ )ss  
                  Martin

BEFORE ME, an officer duly authorized to take acknowledgments in the State of Florida, \_\_\_\_\_, appeared John Kucyk, who produced \_\_\_\_\_ as identification. S/he acknowledged before me that he executed the foregoing instrument for the purposes therein stated on the 3 day of April, 2014.


Subscribed to before me this 3 day of April, 2014.

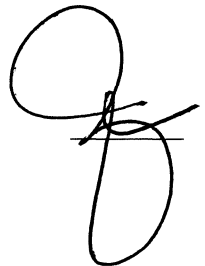
NOTARY PUBLIC

  
\_\_\_\_\_  
(print, type, or stamp commissioned Notary Public)

Personally known  or Produced Identification \_\_\_\_\_ (check one)  
Type of Identification Produced: \_\_\_\_\_

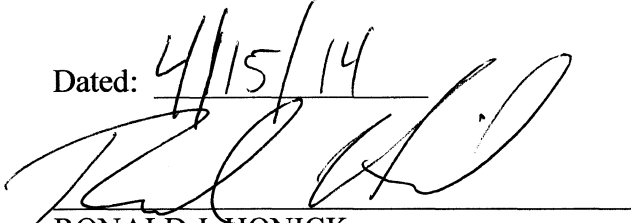


  
\_\_\_\_\_  
T.C. SPENCER PRYOR  
Georgia Bar No. 589251  
Alston & Bird, LLP  
One Atlantic Center  
1201 W. Peachtree St  
Atlanta, GA 30309  
*Attorney for Respondents*



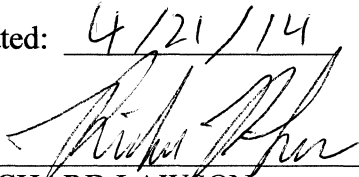
**OFFICE OF THE ATTORNEY GENERAL**

Dated: 4/15/14



RONALD J. HONICK  
Assistant Attorney General  
110 S.E. 6th Street, 9th Floor  
Fort Lauderdale, FL 33301  
(954) 712-4600  
(954) 527-3708 facsimile  
Ronald.Honick@myfloridalegal.com

Dated: 4/21/14



RICHARD LAWSON  
Director, Consumer Protection Division  
Department of Legal Affairs  
OFFICE OF THE ATTORNEY GENERAL  
The Capitol  
Tallahassee, FL 32399-1050  
(850) 245-0140

