

## Independent Sales Representative Application

REPRESENTATIVE CONTACT INFORMATION	
First Name:	Last Name:
Email Address:	
Home Phone:	Cell Phone:
Fax Number:	Social Security Number:

**\*\*NOTE: The below information will be used to send correspondence to you, including your residual check\*\***

REPRESENTATIVE MAILING ADDRESS:		
Street:	Suite or Apartment:	
City:	State:	Zip:

REPRESENTATIVE PROFILE INFORMATION	
Desired Residual Income:	Current Occupation:
Are You 18 Or Older:	Are You A Citizen Of The United States:

### “Lifetime Residual Income”

Representative shall receive monthly residual income, payable to Representative for the life of an account that Company is deriving revenue.

**Representative Compensation** – Representative shall be paid 10% of the total processing fee received by Participating Bank from every merchant that Representative signs-up for as long as that merchant continues to use Participating Bank as their processor and or Participating Bank is receiving compensation. This means that for every transaction that your merchant processes, you (The Representative) will earn 10% of the Participating Bank’s total processing income.

### “Confidentiality Agreement”

**Confidential Information** – Representative hereby acknowledges and agrees that certain items of information currently in the possession of the Company or later to come into the possession of the Company constitutes or shall constitute valuable trade secrets and/or proprietary business information of Company. Such items of information, which are hereinafter collectively referred to as “Confidential Information” shall include, but are not limited to the following: All customer data, marketing material, names of customers, names of participating banks, and other information related to prospects, merchant representatives, sub reps, business structure, business plans, marketing information, cost analysis, cost analysis format, methods of training and information related to training, style of doing business, commission structure and templates of information that are created in any computer software program by or for Company, and other information relating to Company’s business.

By signing below I have read, understand and agree to the Terms & Conditions contained in this Representative Agreement.

SIGNATURE	
Signature:	
Print Name:	Date:

**FAX THIS PAGE AND W-9 TO “858-764-5443”**

Company and "Representative" (Independent Sales Representative) ("ISR"), in consideration of the mutual covenants and agreements set forth herein, including, without limitation, the terms, and conditions, or the receipt and sufficiency of which is hereby acknowledged, do hereby agree as follows:

**SECTION I – ISR PROGRAM**

1.1 Appointment of ISR - Company hereby appoints ISR, as a marketing and sales representative of Company for the purpose of soliciting prospective merchants to make application to various member banks for merchant agreements, to solicit the sale of point of sale equipment and merchant account services on behalf of Company as more specifically set forth herein. Company appoints ISR on an exclusive basis and ISR accepts such appointment. ISR shall utilize its best efforts in the performance of its obligation hereunder, and shall at all times hereunder conduct himself in a reputable manner and in full compliance with all applicable laws, rules, regulations, decisions and order, including any and all applicable rules and regulations of Visa and MasterCard which the Company shall provide.

1.2 Marketing Materials - ISR shall use only those marketing and promotional materials that have received prior written approval from the Company. ISR must utilize the Participating Bank's name, logo, and bank disclosure on any marketing material used with Card Association trademark, including but not limited to business cards, letterhead or stationery when soliciting Merchants on behalf of Company. ISR may not present itself to prospective Merchants under any trade name other than Participating Bank.

1.3 Acceptable Merchants - ISR shall market the Merchant Program only to bona fide and lawful business and in accordance with the Participating Bank's credit policy manual, which will be provided upon execution of this Agreement. ISR shall promptly notify Company in writing of any adverse information that ISR receives relating to a Merchant, including but not limited to information regarding a Merchant's financial condition, use of Cards for any purpose other than payment for the bona fide sale of goods and services, changes in Merchant's method of doing business or types of goods or services or information that would have a material effect on Merchant's ability to conform to the terms of its Merchant Agreement.

1.4 Approval of Merchant Agreements - ISR acknowledges that all Merchant Agreements must be approved by Company and/or Member Bank, at their sole discretion, and will become effective only upon such approval. Therefore, ISR will not make any promise to or create any impression with a prospective Merchant that its Merchant Agreement will be approved prior to Member Bank's review and approval. Further, ISR acknowledges that all aspects of the Merchant Program are subject to the management and approval of Company and/or Member Bank, and ISR shall make no representations to the contrary.

1.5 Compliance with policies and procedures - ISR agrees to comply with Company and the Member Bank's policies and procedures and with Rules. ISR agrees that Company, Member Bank, the Card Associations and any federal or state regulatory agency having jurisdiction over Member Bank or Company may, from time to time, amend their Rules, policies and procedures. The Company will provide the ISR with updates and information in a timely fashion for compliance purposes. ISR agrees to accept and abide by all such amendments within (10) days after receipt of such revisions (or immediately if amendments to rules require immediate compliance).

1.6 Names and Trademarks - Neither party will use the other's name or trademarks in any promotional or marketing materials without prior written consent. Company grants to ISR a limited, non-exclusive license to use the name of the Participating Bank and to use the Company trademark when conducting business on behalf of Company under this Agreement. Until and unless ISR is registered as an MSP and Agent with the Card Associations, all telephone lines devoted exclusively to company business must be answered as the Participating Bank. The ISR shall identify himself in correspondence with Merchants as the Participating Bank. The parties understand and agree that this Agreement does not confer, and neither party shall obtain, any other right to either party's name or trademarks by virtue of such use.

1.7 Relationship of Parties - The parties acknowledge and agree that their respective relationship with one another is solely that of an independent contractor and nothing herein shall be construed to constitute a relationship between Company or Participating Bank and ISR as employer/employee, partners, joint ventures or otherwise. No party shall have any power, right or authority, expressed or implied, to represent act or otherwise create or assume any other obligation on behalf of, or binding upon, any party hereto.

1.8 ISR Expense - It is further understood and agreed that ISR is solely responsible for paying (and Company has no responsibility whatsoever) for any ISR's expenses including, but not limited to travel, entertainment, office expenses, dues and subscriptions, telephone, education, licenses and/or computers. ISR shall receive no fringe benefits, no insurance benefits, no disability income, no vacation pay, no holiday pay, no sick pay, no expense reimbursement, no profit sharing or pension retirement plan contribution or any other fringe benefits intended for the Company's employees.

1.9 Non-Solicitation of Merchants - ISR shall not cause or permit any of its employees, agents, principals, affiliates, subsidiaries, sales persons or any other person or entity to (a) solicit or otherwise cause any Merchant to terminate its participation in the Participating Bank's Merchant Program; or (b) to solicit or market services to any Merchant that is already directly or indirectly provided Merchant Card Services by Participating Bank, whether or not such are provided under the terms of this Agreement. This section shall survive for a period of 5 years following any termination of this Agreement.

**SECTION II – COMPENSATION AND EXPENSES**

2.1 Compensation to ISR - ISR shall receive monthly residual income, payable to ISR for the life of an account that Company is deriving revenue. Merchants signed by ISR must remain in compliance with the Merchant Service Agreement and the provisions of section 1.3 and the monthly compensation payments to ISR must exceed Fifty Dollars (\$50.00) per month not later than (45) days following each month for which compensation is due to ISR hereunder. Company will pay to ISR an amount equal to such compensation as is determined by this application hereto and incorporated herein for all purposes. Calculated compensation due for ISR hereunder shall be funded with a check via the U.S. Postal service for that purpose.

2.2 Financial Reporting - The Company will provide the ISR with timely deliverance of 1099 statements for tax purposes and will, upon written request by the ISR, provide accounting statements that are available to Company for reviewing detailed Merchant account processing fees should an ISR payment question or discrepancy occur.

2.3 Compensation to ISR Following Termination - Company shall continue to pay ISR for as long as Company is deriving revenue from any Merchant unless the Company has terminated this agreement for cause as described in 3.2 below.

2.4 Financial Loss - In the event Company suffers any loss, liability or damage relating to the fraudulent activity of an ISR in connection with the Merchant Program, Company may withhold amounts due to ISR under this Agreement until Company has fully recovered the amount of such loss including any and all legal fees. In the event an ISR submits an account that generates a negative monthly residual pass-through, the negative residual will be calculated at the same rate and passed-through to ISR and Company at that rate. In the event a negative residual is incurred, ISR has the right to submit a price adjustment form to be reviewed and approved by Company.

**SECTION III – TERM, TERMINATION, NOTICE AND SURVIVABILITY**

3.1 Term - The initial term of this Agreement shall be for a period of 1 year, commencing on the Effective Date. This Agreement shall be automatically renewed for additional terms of 1 year each unless either party notifies the other no later than 30 days prior to the end of the current term that it does not wish to renew this Agreement.

3.2 Termination - This Agreement may be terminated at any time as follows: (a) Voluntary Termination: This Agreement may be terminated without cause or prejudice by either party immediately upon receipt of written notice. All payments due to the ISR will continue and apply as per sections 2.1 and 2.3. (b) Termination for Cause: If the ISR commits a breach of this Agreement the Company shall provide written notice of such breach to ISR requiring the same to be cured within 30 days from the date of receipt of the notice. If the breach is not cured in said time period, the company may terminate this Agreement, in which event the ISR will not be entitled to payments as described per section 2.1. (c) Either party may terminate this Agreement if the other party (i) becomes insolvent; (ii) fails to pay its debts or perform its obligations in the ordinary course of business as they mature; (iii) becomes the subject of any voluntary or involuntary proceeding in bankruptcy, liquidation, dissolution, receivership, attachment or composition for the benefit of creditors.

3.3 Regulatory Demand - If Visa, MasterCard or any federal or state regulatory agency having jurisdiction over the subject matter of this Agreement makes a demand that either Company or Member Bank discontinue or substantially modify the Merchant Program, either party in its sole discretion may terminate this Agreement upon written notice to the other, in which case neither party shall be deemed to be in default by reason of such termination. ISR shall be entitled to continue to receive compensation as provided in Section 2.1 unless prohibited by the entity making the demand for discontinuance or modification.

3.4 Sale or Merger - Company may at any time sell or merge its business or Merchant portfolio, in the event Company chooses to exercise this option, if ISR is in good standing, they may either continue to be paid compensation by the successor company or they can be paid a one time buy out to be negotiated at the time of the buy out.

3.5 Notices - All notices and communications pursuant to this Agreement shall be in writing addressed to the parties and the addresses as listed on page 1 of this Representative Agreement. It is the responsibility of each party to notify the other of any updated address information within 30 days of change. All such notices shall be made via first class mail and deemed received five (5) days after deposit in the United States mail, first class postage prepaid. If notice is sent via facsimile it shall be deemed received on the date of dispatch if the sender has evidence of receipt. Additionally, both parties agree that they authorize each other to send and receive various facsimile communications during the term of this Agreement. This permission and authorization will survive this agreement indefinitely for communications relevant to the business.

3.6 Survivability - The following sections of this agreement shall survive termination for any reason: 1.9, 2.1, 2.3, 3.2, 4.1; 4.2, 4.3

**SECTION IV – INDEMNIFICATION, INTEGRATION AND ARBITRATION**

4.1 Indemnification - (a) ISR agrees to indemnify, defend, and hold harmless Company Participating Bank, its employees, agents and Member Banks from and against any loss, liability, damage, penalty or expense (including attorneys' fees and cost of defense) they may suffer or incur as a result of (i) any failure by ISR or any employees, Sales Person, or agent of ISR to comply with the terms of this Agreement; (ii) any warranty or representation made by ISR to Company being false or misleading; or (iii) any representation or warranty made by ISR or any employee, sales person or agent of ISR to any third person other than as specifically authorized by this Agreement. (b) Company agrees to indemnify, defend and hold harmless ISR, its employees and agents from and against any loss, liability, damage, penalty or expense (including attorneys' fees and cost of defense) they may suffer or incur as a result of any failure by Company or any employee or designated agent to comply with the terms of this Agreement. Company shall have no liability to provide indemnification hereunder to the extent of any loss, liability, damage, penalty or expense (including attorneys' fees and cost of defense) is caused or contributed to by ISR or any employee of ISR. (c) Each party shall promptly notify the other of any claim or threat of claim of which such party becomes aware and that may give rise to a request for indemnification under this section.

4.2 Arbitration - Under which both Company and ISR agree by supplying written notification that in the event a dispute involving monetary loss occurs the dispute between them arising under this agreement may be resolved by arbitration in accordance with the rules of the American Arbitration Association. The tribunal shall convene in San Diego County California. Each party may select one arbitrator and the two selected shall appoint a third. The decision shall be by majority decision and the tribunal shall award the prevailing party legal fees and costs.

4.3 Entire Agreement; Binding Effect - This Agreement, including all schedules, exhibits and attachments, embodies the entire understanding and agreement of the parties with respect to its subject matter. This Agreement shall be binding upon and shall inure only to the benefit of the parties and their respective successors and authorized assigns. Nothing in this Agreement, expressed or implied, is intended to confer or shall be deemed to confer any rights or remedies upon any persons or entities not parties to this Agreement.

## Request for Taxpayer Identification Number and Certification

**Give form to the  
requester. Do not  
send to the IRS.**

Print or type  
See Specific Instructions on page 2.

Name (as shown on your income tax return)	
Business name, if different from above	
Check appropriate box: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ ..... <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶	
Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
City, state, and ZIP code	
List account number(s) here (optional)	

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number
or
Employer identification number

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
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### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

#### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,