

# INDEPENDENT SALES ORGANIZATION AGREEMENT

This Independent Sales Organization Agreement ("Agreement"), dated and effective as of [\_\_\_\_\_] ("Effective Date"), is made by and between Merchant People LLC, a Pennsylvania corporation, or its affiliates or assigns (the "Company"), and [\_\_\_\_\_] a [\_\_\_\_\_] (state) [\_\_\_\_\_] (entity type), including its owners, affiliates, successors, permitted assigns, and other related entities ("ISO") (Company and ISO may be collectively referred to herein as "Parties" and each individually as a "Party").

## RECITALS

WHEREAS, Company engages in the business of marketing services to business entities that accept credit and debit cards as payment for goods and services;

WHEREAS, Company wishes to expand its market share by retaining ISO to assist in marketing its credit and debit card processing, gift card, loyalty card, ACH, POS equipment, software, gateway, reporting tools and software, and related goods and services (collectively, the "Company Services") and ISO wishes to undertake certain duties and responsibilities for marketing the Company Services;

NOW, THEREFORE, subject to and in accordance with the terms and conditions of this Agreement, the Parties agree as follows:

## AGREEMENT

### SECTION 1 - MARKETING THE SERVICES

**1.01. Appointment.** Subject to the terms and conditions of this Agreement, Company hereby appoints ISO as a reseller of the Company Services. In connection with such appointment, Company grants ISO a non-transferable right to promote, market and solicit orders for the Company Services from businesses wishing to utilize the Company Services ("Merchants"). ISO shall identify prospective Merchants that meet both Company's criteria as set forth in this Agreement and its general policies and procedures. ISO shall obtain all information and documentation reasonably required by Company and perform site inspections at its own cost and expense, as required by Company. Unless otherwise agreed by the Parties in writing, ISO shall be responsible for boarding all new Merchant accounts with Company and/or its vendors; installing all credit and debit card processing software and equipment as necessary and training Merchants on how to use the Company Services; and servicing all Merchant accounts throughout the duration of the Merchant Processing Agreements (as hereinafter defined). ISO shall be required to utilize all the payment processing services set forth in the fee plan attached hereto as Schedule A for all Merchants developed hereunder and may not use any third party for any such services.

**1.02. Approval of Merchants.** ISO acknowledges that all Merchants must be approved by Company and its vendors in their sole discretion and that Merchants will be able to utilize the Company Services effective only upon such approval. ISO will therefore not make any promise to, or create any impression with a prospective Merchant that it will be approved prior to review and approval by Company. ISO further acknowledges that all aspects of the Company Services are subject to approval of Company and its vendors and that ISO shall make no representations to the contrary.

**1.03. Company Services Agreement.** Merchants will be presented by Company or ISO with an online or written application and/or agreement(s) that will govern the relationship between the Merchants, Company and its vendors in regard to the Company Services ("Merchant Processing Agreement"). ISO shall input all necessary information into Company's online application system as required by Company. ISO shall use only that form of Merchant Processing Agreement that has been approved and supplied by Company. ISO shall not make any changes or modifications to any Merchant Processing Agreement without the prior written consent of Company. Company reserves the right to amend or change in any manner the agreements between Merchants, Company, and its vendors, including changes to any and all fees due from Merchants. During the negotiation or pendency of all Merchant Processing Agreements, or at any other time Company shall be in possession, custody, or control of data or information collected by Merchants, Company agrees to exercise due care in avoiding or preventing harm to Merchants and the Merchants' consumers as third parties under this contract.

**1.04. Acceptable Merchants.** ISO shall endeavor to market the Company Services only to bona fide and lawful businesses and shall do so in accordance with the policies, procedures, and standards of the Company and its vendors, as well as this Agreement. Further, ISO shall promptly notify the Company in writing of any adverse information that ISO receives relating to a Merchant, including information regarding a Merchant's financial condition or any other information relating to Merchant that ISO reasonably believes could have a material effect on Merchant's ability to conform to the terms of its agreements. At all times during the Term of this Agreement, ISO shall comply with the unqualified/unacceptable businesses and high-risk merchant provisions set forth in the Credit Policies provided by the Company from time to time.

**1.05. Independent Contractors.** It is understood and agreed by the Parties that ISO is an independent contractor with respect to Company. Neither ISO nor ISO's employees, consultants, contractors or agents (collectively, "ISO Agents") are agents, employees, partners or joint ventures of Company, nor do they have any authority to bind Company by contract or otherwise to any obligation. Under no circumstances may ISO Agents represent to the contrary, either expressly, implicitly, by appearance or otherwise. Company will not provide, and ISO shall not be entitled to any benefits Company provides to its employees, including, but not limited to, health insurance, disability insurance, paid vacation, paid holidays, pension or any other employee benefit. Company will not pay or withhold any taxes, whether federal, state or local or payment of social security, Medicare, unemployment or workers' compensation, from fees paid to ISO for services rendered hereunder. ISO accepts responsibility for such taxes, withholdings and payments and shall indemnify Company for any losses or claims arising from ISO's failure to withhold, remit or pay such taxes. Any payments made to ISO shall be reported on an IRS Form 1099.

**1.06. Compliance with Laws, Marketing Materials and Code of Ethics.** ISO agrees to comply with the rules and regulations of Visa, MasterCard, Discover, American Express and all other such card associations, as they may exist from time to time, and the rules and regulations of any debit network or federal or state department or agency having jurisdiction over the activities of Company or ISO ("Rules"). In the event of any inconsistency between any provision of this Agreement and the Rules, the Rules shall govern. ISO hereby agrees to accept and abide by any amendments and revisions to the Rules. ISO shall comply with all applicable international, national, state, regional and local laws and regulations in performing its duties hereunder and in any of its dealings with respect to the Company Services. ISO shall at all times comply with all anti-spam, privacy, advertising, marketing, sales, and telemarketing laws and regulations in connection with providing the Company Services. ISO shall use only those marketing and promotional materials that comply with the Rules and all state, local and any other applicable laws or regulations of the United States. ISO agrees to act at all times in conformity with the Company Code of Ethics, attached hereto as Exhibit A.

**1.07. Covenants of ISO.** ISO will: (i) conduct business in a manner that reflects favorably on the Company Services and the good name, goodwill and reputation of Company; (ii) avoid deceptive, misleading or unethical practices that are or might be detrimental to Company, the Company Services or the public; (iii) make no false or misleading representations with regard to Company or the Company Services; (iv) not publish or employ, or cooperate in the publication or employment of, any misleading or deceptive advertising material with regard to Company or the Company Services; (v) promote proper use of Company Services; and (vi) make no representation, warranties or guarantees to potential Merchants with respect to the specifications, features, or capabilities of the Company Services that are inconsistent with the literature distributed by Company.

**1.08. Registration and Certification.**

(a) In the event that ISO chooses to market the Company Services under ISO's own company name or brand, ISO will request that Company provide access to and assistance with registration, such registration to be at ISO's sole expense. ISO acknowledges that authorization for registration with Visa or MasterCard is at the discretion of Company's vendors. ISO agrees that Company is not responsible for ISO's acceptability for registration with Visa or MasterCard and that Company will only act as a conduit to assist ISO in said registration process. In the event that ISO's application for registration status is denied, ISO acknowledges that this Agreement shall remain valid. If ISO does obtain registration status, ISO shall maintain all certification, registration and related requirements (the "Registrations") required by the card brands and will provide Company, upon its request, with the information and documentation related to these Registrations. All costs, fees, charges, assessments, fines, and other financial commitments related to such Registrations shall be the responsibility of the ISO.

(b) ISO agrees and understands that in the event ISO does not become registered, ISO shall market all Company Services under one of Company's or its vendors' brand names. In such case, ISO shall answer all phones and present business cards, letterhead, brochures, marketing materials and its website with one of the names owned by Company or its vendors.

(c) ISO shall not alter any merchant processing agreement, including, removing any logos or identifying

information.

(d) ISO shall ensure that any entity hired by ISO to perform sales for ISO shall execute documents and become registered representatives of Company prior to marketing Company Services.

(e) ISO represents and warrants that all software developed by ISO or a third party on behalf of ISO that stores, transmits or processes credit card holder data and that is used by ISO in furtherance of this Agreement has received PA-DSS Certification or such other required certification as Company may reasonably advise from time to time.

**1.09. Use of the Marks.** ISO may use the trademarks and service marks of Company, Visa, MasterCard, Discover, American Express and all other such associations (the "Marks") only in promoting the Company Services in conformance with the Rules. Upon termination of this Agreement, ISO agrees that it shall no longer use the Marks or anything similar thereto. Notwithstanding anything to the contrary contained herein, nothing stated herein shall be construed as granting ISO any right, title, or interest in and to the Marks or the goodwill associated therewith, and ISO acknowledges that it will not, at any time, during or subsequent to the Term of this Agreement, do or cause to be done, any act or thing contesting or in any way impairing or intending to impair any part of the right, title and interest and the goodwill represented by the Marks or impugn in any fashion the reputation of Company or attack the validity of the Marks.

**1.10. Representations and Warranties of ISO.** ISO represents and warrants to Company that: (a) ISO is duly organized, validly existing and in good standing under the laws of its state of organization or incorporation and is authorized to do business in all other states in which ISO conducts business; (b) ISO has the right, power, and authority to execute, deliver, and perform this Agreement; (c) to ISO's knowledge, this Agreement does not violate or infringe on any rights whatsoever of any person or entity; (d) this Agreement, and upon their execution and delivery, the other agreements to be executed and delivered by ISO, will constitute the valid and binding obligations of ISO, enforceable against ISO in accordance with its or their terms; (e) ISO is not a party to or bound by any written or oral contract that limits or otherwise affects ISO's ability to comply with the terms and conditions of, or perform its obligations under, this Agreement; (f) except as otherwise disclosed in writing by ISO to Company on or before the Effective Date of this Agreement, neither ISO nor any principal of ISO has been subject to any (i) criminal conviction (excluding traffic misdemeanors or other petty offenses); (ii) bankruptcy filings; (iii) Internal Revenue Service liens; (iv) federal or state regulatory administrative or enforcement proceedings; (v) restraining order, decree, injunction, or judgment in any proceeding; (vi) or any lawsuit alleging fraud or deceptive practices.

**1.11. Other Services.** Company may, in its sole discretion, make equipment, equipment leasing, and other services available to ISO through its own vendor agreements at the sole cost of ISO at prices set from time to time by Company in Company's sole discretion ("Other Services"). ISO shall be responsible for all costs and expenses related to such Other Services, including, but not limited to, equipment hardware costs, shipping costs, and Merchant lease buybacks. Any payment owed by ISO to Company for such services shall be due from ISO to Company immediately, but in no case more than ten (10) days after the day that Company incurs the expense with the applicable vendor ("Due Date").

If ISO fails to satisfy payment by such Due Date, Company shall have the right to immediately offset any outstanding amounts against any funds credited to or owing from Company to ISO for any obligation of ISO to Company. This right of offset may be exercised by Company at any time and without prior notice to ISO. Additionally, any such obligation remaining unpaid as of any Due Date shall accrue interest at a rate of one percent (1%) per month until such outstanding obligation is paid in full.

**1.12. PCI Program.** The Company, itself or through a third-party provider ("PCI Provider"), will provide Payment Card Industry Data Security Standard ("PCI") audit, scan and other services to Merchants hereunder (the "PCI Program"). The Company or its PCI Provider will run a comprehensive communications campaign to inform merchants about their responsibility to comply with PCI and how to certify and validate their PCI compliance and the fees associated with the PCI Program. ISO shall be required to use the PCI Program hereunder and pay the PCI related fees set forth in Schedule A hereto and may not contract with any other third party to provide services similar to the PCI Program to Merchants.

## **SECTION 2 - THE SERVICE**

**2.01. Non-Exclusive Services.** ISO shall promote, market and solicit orders for the Company Services on a non-exclusive basis. ISO may enter into agreements to solicit merchants for the merchant acquiring program of any processor or financial institution other than the Company and its vendors.

**2.02. Ownership of Merchant Processing Agreements and Merchant Program.** ISO acknowledges and agrees that it will have no equity interest, ownership, or other rights in any Merchant Processing Agreement, Merchant account, or the Company Services provided hereunder. Further, ISO acknowledges and agrees that all Merchant Processing Agreements, Merchant records, documentation, and the information contained therein are the property of and are owned by the Company and/or its vendors. The Company acknowledges that ISO owns and has the rights to its compensation earned under this Agreement for approved Merchants solicited by ISO although ownership of the Merchant Processing Agreements and Merchant accounts belongs solely to the Company and/or its vendors.

**2.03. Portability and Program Transfer.** Notwithstanding any other terms or conditions of this Agreement, after thirty-six (36) months from the Effective Date hereof (the "Program Transfer Date"), ISO may elect to transfer and assign all right, title, and interest in and to the Independent Sales Organization Agreement to any third-party Merchant Acquirer designated by ISO ("Program Transfer"); provided, however, that ISO shall (a) comply with the Company's exclusive Right of First Refusal set forth in Section 3.03 hereof; and (b) pay to Company the conversion fees as set forth in Schedule A hereto ("Conversion Fees"). Upon ISO's election to proceed with a Program Transfer after the Program Transfer Date and payment to the Company of the Conversion Fees, the Company shall transfer and assign all of the ISO's right, title, and interest in and to the Independent Sales Organization Agreement to the designated third-party Merchant Acquirer designated by ISO, provided that all amounts due in connection with each Merchant Processing Agreement and under this Agreement have been paid to the Company and the Program Transfer complies with all applicable Rules, laws, and regulations. For purposes of this Agreement, a "Merchant Acquirer" means a reputable third-party able to meet all obligations of this Agreement. For the avoidance of doubt, ISO shall have no right to a Program Transfer at any time prior to the Program Transfer Date.

**2.04. Method of Performing the Services.** Subject to the terms and conditions of this Agreement, ISO will determine the method, details, and means of performing the Company Services, including the determination of the need for and hiring of employees, at ISO's own expense. Company may not control, direct, or otherwise supervise ISO or its employees in the performance of those services, save and except to ensure that policies, procedures, and standards of Company and its vendors are properly applied.

**2.05. Tools, Equipment and Supplies.** Unless otherwise provided in this Agreement, ISO shall supply all tools, equipment, and supplies required to perform the services under this Agreement.

## **SECTION 3 - FEES**

**3.01. ISO Fees.** Subject to the terms and conditions of this Agreement, the Company will pay to ISO, for each Merchant referred by ISO to the Company, a fee in accordance with the fee plan attached hereto as Schedule A. The fee plan set forth in Schedule A shall be held in strict confidence by ISO. The Company may amend the fees as set forth in Schedule A in its sole discretion for any reason, including to reflect any increases in the underlying costs attributable to its vendors, Visa, MasterCard and other similar entities, or if false or misleading representations made by ISO result in Merchant attrition or retention efforts being performed by the Company. The Parties understand and agree that ISO may be fully liable to the Company for the value of any and all Merchant chargebacks, Merchant or cardholder fraud, and any and all other Merchant losses at Company's sole and absolute discretion. The Parties further understand and agree that the Company will have no obligation to pay any fees to ISO hereunder in any given month in connection with any Merchant that has unpaid fees, charges or any other types of losses if such unpaid fees, charges or other types of losses exceed the revenue earned in connection with the Merchant in that month. ISO authorizes the Company to deposit funds directly into ISO's authorized deposit account provided by ISO to the Company, and the Company will automatically deduct all amounts for ISO's obligations under this Agreement or any other agreement or arrangement between the Parties. The Company shall only be obligated to pay ISO the amounts due to it under this Agreement if the Company is first paid by its vendors. If the Company is not paid any amounts due by its vendors, it has no duty or obligation to pay any corresponding monies to ISO. ISO shall have sixty (60) days from the receipt of any compensation or residuals to notify the Company in writing of any errors in payment of fees or residuals. If ISO does not notify the Company within said 60-day period, ISO shall be deemed to have accepted without question such fee or residual payment and waives any right to contest the amount paid or seek reimbursement for any discrepancies. Upon receipt of any such notice, the Company shall have sixty (60) days to correct any errors. The Company shall have no further obligation to pay any fees to ISO hereunder once the fees due to ISO drop below Two Hundred and Fifty Dollars (\$250.00) per month.

### **3.02. Offset Rights, Security Interests.**

(a) Company shall have the right of offset against any funds credited to or owing from Company to ISO for any obligation of ISO due or owing to Company, including, without limitation, any and all obligations of ISO under this Agreement or any other agreement or arrangement between the Parties. This right of offset may be exercised by Company at any time and without notice to ISO.

(b) In order to satisfy any obligations of ISO to Company under this Agreement or any other agreements or arrangements between the Parties, ISO authorizes Company to (i) initiate electronic debit or credit entries through the Automated Clearing House (ACH) to any bank account maintained by ISO and/or (ii) charge any credit card ISO has placed on file with Company.

(c) As security for all of ISO's obligations under this Agreement, now existing or hereafter created, ISO hereby assigns and grants to Company a continuing security interest in all right, title, and interest of ISO in and to all payments owing to, and rights to payments in favor of, ISO pursuant to this Agreement and any other agreement or arrangement between the Parties (collectively, the "Residuals"), including any proceeds (in the form of cash, property or otherwise therefrom or relating thereto) (collectively, the "Collateral"). Company is authorized to file any financing statement or amendment thereto naming the ISO as debtor, and describing the Collateral. Each of the officers of Company is hereby, subject to the last sentence of this Section, irrevocably made, constituted and appointed the true and lawful attorney for ISO (without requiring any of them to act as such) with full power of substitution to do the following: (a) execute in the name of the ISO any financing statements, security agreements, schedules, assignments, instruments, documents and statements that ISO is obligated to give Company hereunder or are necessary to perfect Company's security interest or lien in the Collateral; (b) verify the validity, amount or any other matter relating to the Collateral by mail, telephone, telecopy or otherwise; (c) execute such documents and take such actions as Company reasonably deems necessary to effectuate the objects and intentions of this Agreement; (d) endorse the name of ISO upon any and all checks, drafts, money orders and other instruments for the payment of monies that are payable to the ISO and constitute collections on the ISO's accounts and sign the ISO's name on any invoices or bills of lading; (e) notify the post office authorities to change the address for delivery of such entity's mail to an address designated by Company, and to receive and open and dispose of all mail addressed to ISO; (f) execute customs declaration and such other documents as may be required; and (g) do such other and further acts and deeds in the name of the ISO that Company may reasonably deem necessary or desirable to enforce any Collateral. ISO hereby ratifies and approves all acts of the attorney. Neither Company nor the attorney will be liable for any acts or omissions or for any error of judgment or mistake of fact or law, except to the extent of such person's gross negligence or willful misconduct. This power, being coupled with an interest is irrevocable until the all obligations of ISO to Company have been satisfied in full.

**3.03. Right of First Refusal.** During the Term of this Agreement and for a period of three (3) years following its termination for any reason (the "Right of First Refusal Period"), Company or Company's successors or assigns shall have the exclusive right of first refusal to purchase all or any part of ISO's rights to fees under this Agreement or to provide a loan or any other type of financing to ISO on the same terms and conditions as any offer ISO shall receive regarding the same. ISO shall promptly give written notice (the "Offer Notice") to Company of the terms and conditions of each such offer, including, without limitation, the price or financing amount, as applicable. If Company desires to exercise its rights under this Section, it will give written notice to ISO within twenty (20) business days of receipt of the Offer Notice. The failure by Company to notify ISO within such 20-day period of its intent to exercise its rights hereunder shall be deemed a waiver of such right. Any changes in the terms of any such offer as well as any subsequent offer received by ISO during the Right of First Refusal Period shall require full compliance by ISO with the procedures in this Section. ISO shall not grant to any third party a security interest in the rights, title or interest in the fees hereunder, nor will it pledge, assign, or permit any lien to attach to its rights, title or interest in the fees without the prior written consent of Company, which consent may be withheld in the Company's sole and absolute discretion.

## **SECTION 4 - TERM AND TERMINATION**

**4.01. Term.** The initial term of this Agreement shall be for a period of three (3) years ("Initial Term"), commencing on the Effective Date, and shall thereafter be automatically renewed for additional terms of two (2) years each (each, a "Renewal Term") (the Initial Term and each Renewal Term together, the "Term"), unless either Party notifies the other no later than thirty (30) days prior to the end of the then current Term that it does not wish to renew this Agreement.

### **4.02. Termination.**

(a) Company shall have the right to immediately terminate this Agreement by written notice upon the occurrence of any of the following: (i) Material Breach (as hereinafter defined) of this Agreement; (ii) repeated breach of any Rule by ISO which is not cured by ISO within fifteen (15) days of receipt of written notice from Company or breach of any material Rule by ISO; (iii) fraudulent activity by ISO or any of its agents or any action by ISO or any of its agents that is injurious to cardholders, the card brands, or Company's vendors; provided, however, that Company may suspend ISO's activities under this Agreement based on Company's good faith and reasonable belief that such fraudulent activity has occurred; (iv) if at any time and in good faith, Company reasonably believes that there has been a material adverse change in ISO's financial condition or there is any material impairment in the prospect of performance by ISO of any of its obligations under this Agreement, and

ISO fails to cure such material adverse change or material impairment of performance within fifteen (15) days of receipt of written notice from Company; (v) insolvency or bankruptcy of ISO which is not dismissed within sixty (60) days; (vi) termination of any of Company's member banks' status as a licensed full processing bank or the insolvency of any such member bank; or (vii) cessation by Company of the provision of the Company Services. A "Material Breach" shall mean a breach of this Agreement which (a) involves a failure by ISO to perform one of its obligations which, by nature, is essential to the execution of this Agreement, (b) causes or is likely to cause irreparable harm to Company, (c) constitutes a breach of ISO's representations and warranties set forth in this Agreement, or (d) involves a breach of the Rules.

(b) ISO shall have the right to immediately terminate this Agreement by written notice upon the occurrence of any of the following: (i) Material Breach of this Agreement by Company which is not cured by Company within thirty (30) days of receipt of written notice from ISO; or (ii) insolvency or bankruptcy of Company which is not dismissed within sixty (60) days.

**4.03. Failure to Comply with Rules.** The Company may immediately terminate this Agreement for any material default knowingly or intentionally caused by ISO with respect to its obligations to comply with Section 1.06 hereof if the Company reasonably determines that the default is of such a serious nature that an opportunity to cure such default is not practical or warranted. The Company may, in its sole discretion, effect such termination upon delivery of written notice to ISO without regard to any provisions for cure of default.

**4.04. Regulatory Demand.** If Visa, MasterCard, NACHA or any federal, state or other type of regulatory agency having jurisdiction over the subject matter of this Agreement makes a demand that either Company or its vendors discontinue or substantially modify any of the Company Services, 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.

**4.05. Termination by Company.** Subject to the terms and conditions of this Agreement, Company may terminate this Agreement with or without cause by providing ISO with thirty (30) days prior notice.

**4.06. Compensation to ISO Following Termination.** Unless this Agreement is terminated for the reasons as set forth in Section 4.02(a)(i)-(iii), Section 4.03 or Section 4.04 hereof, Company agrees to make payments to ISO as set forth in this Agreement for any Merchant obtained by Company through ISO's performance of this Agreement for any period of time during which the respective Merchant Processing Agreements continue in effect. Company shall have no further obligation to make any payments to ISO under this Agreement once the Merchant Agreement is terminated (provided that any amount owed or payable to ISO at the time of such termination shall be paid by Company).

**4.07. Termination of Compensation.** If (a) this Agreement is terminated by Company under Section 4.02(a)(i)-(iii), Section 4.03, or Section 4.04, or (b) before or after termination or expiration of this Agreement, ISO or any of its employees, agents or representatives (i) engage in fraudulent conduct or (ii) violate Section 5.01, Section 5.07, or Section 5.08 hereof, then Company shall have no further obligations for payment of any compensation to ISO under this Agreement.

## **SECTION 5 - OBLIGATIONS**

### **5.01. Confidential Information.**

(a) The Parties acknowledge that in their performance of their duties hereunder either Party may communicate to the other (or its designees) certain confidential and proprietary information, including, without limitation information concerning the Company Services and the know-how, technology, techniques, or business or marketing plans related thereto (collectively, the "Confidential Information"), all of which are confidential and proprietary to, and trade secrets of, the disclosing Party. Confidential Information does not include information that: (i) is public knowledge at the time of disclosure by the disclosing Party; (ii) becomes public knowledge or known to the receiving Party after disclosure by the disclosing Party other than by breach of the receiving Party's obligations under this Section or by breach of a third party's confidentiality obligations; (iii) was known by the receiving Party prior to disclosure by the disclosing Party other than by breach of a third party's confidentiality obligations; or (iv) is independently developed by the receiving Party.

(b) As a condition to the receipt of the Confidential Information from the disclosing Party, the receiving Party shall: (i) not disclose in any manner, directly or indirectly, to any third party any portion of the disclosing party's Confidential Information; (ii) not use the disclosing Party's Confidential Information in any fashion except as necessary to perform its duties hereunder or with the disclosing Party's express prior written consent; (iii) disclose the disclosing Party's Confidential Information, in whole or in part, only to employees and agents who need to have access thereto to perform their duties hereunder; (iv) take all necessary steps to ensure that its employees and agents are informed of and comply with the confidentiality restrictions contained in this Agreement; and (v) take all necessary precautions to protect the confidentiality of the Confidential Information received hereunder and exercise at least the same degree of care in safeguarding the Confidential Information as it would with its own confidential information, and in no event shall apply less than a reasonable standard of care to prevent disclosure. The receiving Party shall promptly notify the disclosing Party of any unauthorized disclosure or use of the Confidential Information. The receiving Party shall cooperate and assist the disclosing Party in preventing or remedying any such unauthorized use or disclosure. More specifically, ISO must immediately notify Company of the loss or theft of any electronic device or computer, which may contain Confidential Information. Nothing in this Agreement shall prohibit the receiving Party from making legally required disclosures pursuant to subpoena, court order, or the order of any other authority having jurisdiction; provided, that the receiving Party shall provide the disclosing Party with prompt notice thereof so that disclosing Party may seek an appropriate protective order or other remedy for its Confidential Information. If, in the absence of a protective order or other remedy or waiver of the terms of this Agreement, the receiving Party determines in its sole discretion that it is required by law, regulation, legal process or regulatory authority to disclose any Confidential Information, the receiving Party may disclose such Confidential Information upon written notice to the disclosing Party. All Confidential Information shall be deemed the property of the disclosing Party, and upon request, the receiving Party will return all Confidential Information received in tangible form to the disclosing Party or destroy and confirm the destruction of all such Confidential Information in writing, signed by an authorized officer.

**5.02. Indemnification.** ISO agrees to indemnify, defend, and hold harmless the Company and its principals, officers, directors, managers, employees, agents, successors, and assigns (in context, collectively "Indemnified Party") from and against any loss, liability, damage, penalty or expense (including attorneys' fees, expert witness fees and cost of defense) suffered or incurred by a third party and alleged against the Indemnified Party to the extent arising out of: (a) any failure by ISO or any employee, agent, or affiliate of ISO to comply with the terms of this Agreement; (b) any warranty or representation made by ISO or any employee, agent, or affiliate of ISO being false or misleading; (c) any representation or warranty made by ISO or any employee, agent, or affiliate of ISO to any third person other than as specifically authorized by this Agreement; (d) the manner or method in which ISO or any employee, agent, or affiliate of ISO performs its services pursuant to this Agreement, including, but not limited to, sales practices of ISO and Merchant pricing programs selected by ISO; (e) negligence of ISO or any employee, agent, or affiliate of ISO; (vi) any alleged or actual violations by ISO or any employee, agent, or affiliate of ISO of any governmental laws, regulations or rules; or (v) any matter whatsoever arising out of any agreements similar to this Agreement to which ISO is a party, including, without limitation, any liabilities or other amounts owed as a result of ISO's failure to achieve minimum production requirements or pricing adjustments under any such agreements. For the avoidance of doubt, this Section 5.02 shall not limit or otherwise affect the Company's right to recovery from ISO directly for loss, liability, damage, penalty or expense (including attorneys' fees, expert witness fees and cost of defense) incurred by the Company arising from the actions or activities of ISO.

**5.03. Disclaimer of All Warranties.** THE COMPANY SERVICES ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY WHATSOEVER. COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, TO ISO AS TO ANY MATTER WHATSOEVER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY COMPANY OR ITS EMPLOYEES OR REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF COMPANY'S OBLIGATIONS.

**5.04. Limitation of Liability.** COMPANY SHALL NOT BE LIABLE TO ISO FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE COMPANY SERVICES, WHETHER FORESEEABLE OR UNFORESEEABLE, AND WHETHER BASED ON BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT, OR OTHER CAUSE OF ACTION (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF DATA, GOODWILL, PROFITS, USE OF MONEY, INVESTMENTS, OR USE OF FACILITIES; INTERRUPTION IN USE OR AVAILABILITY OF DATA; STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS; OR LABOR CLAIMS), EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UNDER NO CIRCUMSTANCES SHALL COMPANY'S TOTAL LIABILITY TO ISO ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED TEN THOUSAND DOLLARS (\$10,000.00) REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON WARRANTY, CONTRACT, TORT, OR OTHERWISE,

EXCEPT THAT SUCH LIMITATION SHALL NOT APPLY TO LIABILITY FOR FAILURE TO PAY FEES TO ISO PURSUANT TO SECTION 3.01 HEREOF.

**5.05. Taxes.** ISO shall pay, indemnify and hold Company harmless from any sales, use, excise, import or export, value-added, or similar tax or duty, and any other tax or duty not based on Company's income.

**5.06. Audit Rights.** (a) Company shall have the right, at its sole cost and expense, to have an independent certified public accountant or other representative conduct during normal business hours and upon reasonable notice, an audit of financial statements, banking records, contracts, and other appropriate financial and business records of ISO. ISO shall provide all such records in accordance with this Section to Company immediately upon request, but no in case later than ten (10) days after such request. (b) Company shall have the right, at its sole cost and expense, to perform complete personal credit and background checks of ISO, before and during the term of this Agreement.

**5.07. Non-Solicitation of Merchants.** Without Company's prior written consent (which consent may be withheld in Company's sole and absolute discretion), ISO shall not cause or permit any of its principals, officers, directors, employees, agents, affiliates, subsidiaries, successors, assigns, or any other person or entity (a) to solicit or provide services that compete with the Company Services to any Merchant; (b) to solicit or otherwise cause any Merchant that has been accepted by Company or its vendors to terminate its participation in any of the Company Services; or (c) to solicit or market services to any Merchant that is already directly or indirectly provided any of the Company Services by Company, whether or not such services are provided under the terms of this Agreement. This Section shall apply during the term of this Agreement and for three (3) years after any termination, cancellation or expiration of this Agreement for any reason whatsoever. ISO shall remain responsible for resulting damages from such prohibited solicitation. For each breach by ISO of this Section, ISO shall pay Company on demand the value of the Merchant solicited in violation of this Section as determined in the Company's discretion or fifteen hundred dollars (\$1,500.00), whichever is greater, per breach as liquidated damages. The Parties agree that the actual damages likely to result from a breach of this Section are impossible to compute as of the date of this Agreement and would be difficult for Company to prove, and that the foregoing liquidated damages amount represents a fair, reasonable, and appropriate estimate thereof. Such liquidated damages are intended to represent estimated actual damages sustained by Company for a breach of this Section and are not intended to represent a penalty. If, at the time of enforcement of the protective covenants contained in this Section, a court shall hold that the duration, scope or area restrictions stated herein are unreasonable under circumstances then existing, the Parties hereto agree that the maximum duration, scope, or area reasonable under such circumstances shall be substituted for the stated duration, scope, or area and that the court shall be allowed to revise the such covenants to cover the maximum duration, scope, and area permitted by law. ISO agrees that the protective covenants in this Section are reasonable in terms of duration, scope, and area restrictions and are necessary to protect the goodwill of Company's businesses and agrees not to challenge the validity or enforceability of such protective covenants.

**5.08. Non-Solicitation of Employees, Agents, Etc.** During the period that this Agreement is in effect and for the three (3) year period immediately following termination of this Agreement, neither ISO nor any of its principals, officers, directors, employees, agents, affiliates, subsidiaries, successors, or assigns shall directly or indirectly through another entity (a) induce or attempt to induce any employee, agent, or consultant of Company or its affiliates to leave the employ, agency, or consultancy of Company or its affiliates, or in any way interfere with the relationship between Company or its affiliates and any employee, agent, or consultant thereof; (b) hire any person who was an employee, agent, or consultant of Company or its affiliates at any time during the twelve (12)-month period immediately prior to the date on which such hiring would take place without the written consent of Company (it being conclusively presumed by the Parties so as to avoid any disputes under this Section that any such hiring within such twelve (12)-month period is in violation of clause (a)(i) above); or (c) knowingly or intentionally solicit or service any customer, referral partner, affiliate, agent, supplier, licensee, licensor, consultant, contractor, vendor, or other business relation of Company or its affiliates in order to induce such person or entity to cease doing business with Company or its affiliates, or in any way interfere with the relationship between any such referral partner, affiliate, agent, supplier, licensee, licensor, consultant, contractor, vendor, or other business relation of Company or its affiliates (including, without limitation, making any negative statements or communications about Company or its affiliates). If, at the time of enforcement of the protective covenants contained in this Section, a court shall hold that the duration, scope or area restrictions stated herein are unreasonable under circumstances then existing, the Parties hereto agree that the maximum duration, scope, or area reasonable under such circumstances shall be substituted for the stated duration, scope, or area and that the court shall be allowed to revise the such covenants to cover the maximum duration, scope, and area permitted by law. ISO agrees that the protective covenants in this Section are reasonable in terms of duration, scope, and area restrictions and are necessary to protect the goodwill of Company's businesses and agrees not to challenge the validity or enforceability of such protective covenants.

**5.09. Intellectual Property.** "Intellectual Property" means all of the following owned by a Party: (a) trademarks and service marks (registered and unregistered) and trade names, and goodwill associated therewith; (b) patents, patentable inventions, computer programs, and software; (c) databases; (d) trade secrets and the right to limit the use or disclosure thereof; (e) copyrights in all works, including software programs; and (f) domain names. The rights owned by a Party in its Intellectual Property shall be defined, collectively, as "Intellectual Property Rights." Other than the express licenses granted by this Agreement, Company grants no right or license to ISO by implication, estoppel or otherwise to the Company Services or any Intellectual Property Rights of Company. Each Party shall retain all ownership rights, title, and interest in and to its own products and services (including in the case of Company, in the Company Services) and all Intellectual Property Rights therein, subject only to the rights and licenses specifically granted herein. Company (and not ISO) shall have the sole right, but not the obligation, to pursue copyright and patent protection, in its sole discretion, for the Company Services and any Intellectual Property Rights incorporated therein. ISO will cooperate with Company in pursuing such protection, including, without limitation, executing and delivering to Company such instruments as may be required to register or perfect Company's interests in any Intellectual Property Rights and any assignments thereof. ISO shall not remove or destroy any proprietary, confidentiality, trademark, service mark, or copyright markings or notices placed upon or contained in any materials or documentation received from Company in connection with this Agreement.

## **SECTION 6 - GENERAL PROVISIONS**

**6.01. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable for any reason, the remaining provisions not so declared shall nevertheless continue in full force and effect, but shall be construed in a manner so as to effectuate the intent of this Agreement as a whole, notwithstanding such stricken provision or provisions.

**6.02. Drafting.** No provision of this Agreement shall be construed against any Party merely because that Party or counsel drafted or revised the provision in question. All Parties have been advised and have had an opportunity to consult with legal counsel of their choosing regarding the force and effect of the terms set forth herein. This Agreement shall be deemed to be jointly prepared by the Parties and therefore any ambiguity or uncertainty shall be interpreted accordingly.

**6.03. Waiver.** No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other Party, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any different or subsequent breach.

**6.04. Assignment.** ISO shall not assign, delegate, subcontract, license, franchise, bequeath, or in any manner attempt to extend to any third party any right or obligation under this Agreement except as otherwise permitted herein without the prior written consent of Company. Company may assign this Agreement and its rights and obligations hereunder to any third party in its sole and absolute discretion.

**6.05. Amendments.** Except as otherwise provided in this Agreement, no provision of this Agreement may be amended, modified, or waived except by a written agreement signed by both Parties.

**6.06. Notices.** All notices and other communications required or permitted under this Agreement shall be in writing and given by personal delivery; telecopy or electronic mail (confirmed by a mailed copy); or first-class mail, postage prepaid, sent to the addresses set forth herein.

**6.07. Section Headings.** The section headings contained in this Agreement are for convenient reference only, and shall not in any way affect the meaning or interpretation of this Agreement.

**6.08. Counterparts/Facsimile Signatures.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument. The signatures to this Agreement may be evidenced by facsimile or electronic copies reflecting the Party's signature hereto, and any such facsimile copy shall be sufficient to evidence the signature of such Party as if it were an original signature.

**6.09. Entire Agreement; Binding Effect.** This Agreement, including all schedules, exhibits and attachments thereto, sets forth the entire agreement and understanding of the Parties hereto in respect of the subject matter contained herein, and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or

warranties, whether oral or written, by any officer, partner, employee or representative of any party hereto. This Agreement shall be binding upon and shall inure only to the benefit of the Parties hereto and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended to confer or shall be deemed to confer upon any persons or entities not parties to this Agreement, any rights or remedies under or by reason of this Agreement.

**6.10. Jurisdiction/Venue; Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Pennsylvania (irrespective of its choice of law principles). The Parties hereby agree that any suit to enforce any provision of this Agreement or arising out of or based upon this Agreement or the business relationship between the Parties hereto may be brought in federal or state court in Pennsylvania. Each Party hereby agrees that such courts shall have personal jurisdiction and venue with respect to such Party, and each Party hereby submits to the personal jurisdiction and venue of such courts.

**6.11. Attorney's Fees.** Should suit or arbitration be brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, including expert witness fees and fees on any appeal.

**6.12. Personal Guaranty.** The principals of ISO (collectively, "Guarantors") hereby jointly and severally guarantee the indefeasible payment and performance of all obligations (the "Obligations") of ISO and principals under this Agreement, as amended. Guarantors' Obligations under this Section are independent of ISO's and principal's obligations, and a separate action may be brought against Guarantors, whether or not ISO or principals be joined in such action. This is a guarantee of payment and not of collection. This is an absolute, unconditional, primary, and continuing obligation and will remain in full force and effect until all of the Obligations have been indefeasibly paid in full, and Company has terminated this Guaranty. Each Guarantor waives all notices to which the Guarantor might otherwise be entitled by law, and also waives all defenses, legal or equitable, otherwise available to the Guarantor. This Personal Guaranty shall be construed in accordance with the laws of the State of Pennsylvania, and shall inure to the benefit of Company, its successors and assigns. To the extent not prohibited by applicable law, each of the Guarantors waives its right to a trial by jury of any claim or cause of action based upon, arising out of or related to this Guaranty, the Agreement and all other documentation evidencing the Obligations, in any legal action or proceeding. Any such claim or cause of action shall be tried by court sitting without a jury in Pennsylvania.

**6.13. Survival.** All representations, covenants and warranties shall survive the execution of this Agreement, and Sections 1.09, 2.01, 2.02, 3.02, 3.03, 4.06, 4.07, 5.01, 5.02, 5.03, 5.04, 5.05, 5.06, 5.07, 5.08, 5.09, 6.10, 6.11, 6.12, and 6.13 shall survive termination of this Agreement.

[SIGNATURE PAGE FOLLOWS]

# ISO AGREEMENT

All notices and other communications required or permitted to be given by this Agreement must be in writing and must be given and will be deemed received if and when either hand-delivered, by electronic mail, facsimile or mailed by registered or certified U. S. mail, return receipt requested, postage prepaid, if to:

**Merchant People, LLC (DBA Merchant Service Company)**

28 W Flagler St  
Ste 300B  
Miami, FL 33130 USA  
Attn: ISO Dept / [ISO@merchantservicecompany.com](mailto:ISO@merchantservicecompany.com)

**ISO**

---

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized officers, all as of the day and year first above written.

**Merchant People, LLC (DBA Merchant Service Company)**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**ISO:**

---

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

**ISO GUARANTOR(S)**

---

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

Name: \_\_\_\_\_

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

Home Address: \_\_\_\_\_

\_\_\_\_\_

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

Name: \_\_\_\_\_

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

Home Address: \_\_\_\_\_

\_\_\_\_\_