

TOTAL PAYMENT SOLUTIONS, INC.
MERCHANT SERVICES SALES AGENT AGREEMENT

This agreement (the “**Agreement**”) is made and entered into as of this _____ day of _____, 201_ by and between: Total Payment Solutions, Inc., dba: Total Merchant Services, ATM Express, United Bank Card, and Greenlight Merchant Capital, a company having its principal place of business at 1 Maxwell, East Rockaway, NY 11518 (“**TPS**”), and _____, with its principal place of business located at _____ (“**Agent**”).

WHEREAS TPS is in the business of promoting credit, debit card, and ATM Machine processing services for merchants directly or indirectly (the “**Services**”) for and on behalf of Total Merchant Services and ATM Express (the “**Bank**”).

WHEREAS, Agent is in the business of developing and maintaining revenue-generating client relationships and desires to establish an independent agent relationship whereby it will solicit and refer merchants to TPS for those Services according to the terms and conditions hereof.

NOW, THEN, THEREFORE, in consideration of the mutual promises and covenants herein contained, the TPS and the Agent hereby agree as follows:

1. AGENT OBLIGATIONS.

The following are, without limitation, the principal obligations of the Agent under this Agreement:

1.1 **Solicitation.** Agent shall use its best efforts to solicit applications from merchants that are potentially interested in procuring the Services (each such merchant that subsequently decides to procure the Services as a result of such solicitation shall be referred to herein as a “**Merchant**”).

1.2 **Bank Standards and Procedures.** TPS is governed by the rules and regulations of the Bank, Visa and MasterCard rules as well as other regulations applicable to the Bank and TPS (collectively, the “**Rules**”). Therefore, in performing hereunder Agent shall:

- (a) comply strictly with the Rules and Bank’s Standards and Procedures (“**Procedures**”), such as they may be amended from time to time, which procedures will be provided by TPS to Agent;
- (b) use only those marketing materials approved in writing in advance by TPS and Bank;
- (c) use only the name of TPS and not its own business name or any other name or identifying mark;
- (d) provide a business card featuring Bank logo and Bank’s name
- (e) answer and respond to all telecommunications or other correspondence using the name of the TPS;
- (f) make full and fair disclosure to all potential Merchants of any and all pricing and fees applicable under Merchant Agreements;
- (g) keep accurate records with respect to actual or potential Merchants’ inquiries, orders and contacts which Agent makes pursuant to this Agreement. However, under no circumstances shall Agent maintain any copies or extracts of any Merchant Agreement (as defined below) or other information relating to a Merchant after the Merchant Agreement has been submitted to TPS;
- (h) use best efforts to obtain the latest fiscal year business balance sheet and profit and loss statement on each Merchant and personal financial statements on principals;
- (i) perform an on-site inspection of each Merchant location for every Merchant it proposes to solicit (and other locations as appropriate), for the purpose of verifying the inventory, if applicable, and verifying the veracity of information provided by the Merchant in its application for Services;
- (j) use the logos and names of Visa, MasterCard and other bank associations and the Bank and TPS as expressly instructed by TPS from time to time;
- (k) not create any liability for TPS or Bank except as may be approved by them in writing in advance;
- (l) not cause TPS to be in breach of the terms of its agreement with Bank;
- (m) never make any representation to any third party that TPS is in the business of leasing equipment;
- (n) disclose to TPS the existence and nature of any relationships between Agents, or any of its affiliates, and any third parties that are competitors of TPS or Bank; and
- (o) not enter into an agreement directly with any Bank for which TPS promotes or offers Services.

1.3 **Merchant Application and Agreement.** If the Merchant is suitable to procure the Services, as per the Rules and Procedures, such as they may be amended from time to time, Agent will recommend the prospective Merchant to TPS. Once Agent recommends the prospective Merchant to TPS, Agent will

submit an application completed by the Merchant, in a form prescribed by TPS together with a merchant agreement also in a form prescribed by TPS (collectively, the “**Merchant Agreement**”), executed by the prospective Merchant. TPS shall review the credit profile, product and delivery method to determine whether to accept Merchant, which acceptance shall be determined in TPS's sole discretion. If TPS or Bank request additional information from Merchant, Agent shall obtain such information. Agent acknowledges and agrees that TPS and Bank each have the right to decline and/or terminate any Merchant accepted for processing by TPS or Bank.

- 1.4 **Honesty.** Agent shall provide TPS and Bank with information that Agent believes, on reasonable inspection, to be true and complete and accurate. Agent will perform its obligations honestly and in a good workmanship manner, with professional diligence and demeanour. Agent will uphold the good name of the TPS and Bank in the marketplace.
- 1.5 **Training.** Agent shall provide training to each Merchant and its employees in the Rules and Procedures applicable to the Services, the operation of any terminal equipment supplied by Agent, TPS or Bank, including all requirements relating to the security of cardholder and other non-public personal information.
- 1.6 **Service.** During the Term hereof and as long as Agent is receiving any compensation hereunder, Agent shall provide ongoing support to Merchants and remedy any customer service problems encountered by them. All requests for service by Merchants will receive a timely response from Agent.
- 1.7 **Sub-Agents.** Agent shall be wholly liable for all acts and omissions or any and all of its employees, agents or representatives (each a “**Sub-Agent**”). If requested by Bank or TPS, Agent shall oblige all of its agents and employees to enter into contracts with the Bank or TPS in order to protect their respective rights. Agent will register each such Sub-Agent with TPS by providing their name, address and telephone number. As of the date hereof, all Sub-Agents of the Agent are listed on **Schedule “B”** hereto. Agent shall exclusively bear all liability for compensation of Sub-Agent. Agent will immediately inform TPS of any termination of any relationship with a Sub-Agent or any default by a Sub-Agent under its agreement with Agent. Agent shall supervise all of its employees and agents. Agent guarantees that all of its Sub-Agents shall perform in a manner consistent with the terms hereof. Agent shall distribute to its employees and agents all changes in the Rules, Procedures or other guidelines of TPS received from TPS or Bank. Without limitation, Agent shall indemnify and hold TPS harmless from any and all claims made by any Sub-Agent against TPS or Bank or claims made by third parties on account of acts or omissions of Sub-Agents.
- 1.8 **Tax.** Agent shall be liable for any and all taxes payable on the revenue earned by it hereunder. The total amount of income the Agent receives hereunder, if any, shall be reported on an IRS Form 1099 at the end of each calendar year.
- 1.9 **Excluded Merchants.** Agent shall not offer the Services to any Merchant that is already procuring Services through the TPS or any of its affiliates. Agent shall follow the underwriting guidelines established set forth in the Rules and Procedures from time to time with respect to soliciting and servicing Merchants.
- 1.10 **Merchant Information.** During and following the Term hereof and so long as Agent is receiving any payments hereunder, Agent shall immediately notify TPS if Agent becomes aware of any adverse information concerning the financial condition of a Merchant or any other potential liabilities relating to Merchants.
- 1.11 **Expenses.** Agent shall be solely responsible for any and all expenses incurred while performing hereunder. Agent shall furnish its own office space and any other facilities, equipment, supplies or services, as shall be reasonably necessary for the performance of duties of Agent and each Sub-Agent hereunder. Agent shall not incur any debt in the name of TPS or the Bank, nor shall Agent enter into or hold out that it has the right to enter into any legally binding agreements on behalf of TPS or the Bank.
- 1.12 **Agent Registration as TPS.** If the Agent wishes to use its own name to promote the Services, and if Agent meets with the underwriting guidelines set forth in the Rules and Procedures and pays the necessary fees, then TPS shall support Agent’s application to register with Visa and MasterCard as an independent sales organization and member service provider. Only following such successful registration, subject to the Rules and Procedures, may Agent perform hereunder using its own name.
- 1.13 **PCI Definition.** For purposes of this Agreement, “**Data Security Requirements**” means the Payment Card Industry Data Security Standard developed by MasterCard and Visa and other similar requirements

that apply to entities that transmit, process or store cardholder, transaction card or bank account information, as may be promulgated or amended by a card or electronic payment association or any local, state or federal legislative, judicial or administrative authority from time to time, that TPS reasonably believes may result in harm to its reputation or financial liability to TPS or its any of its affiliates.

- 1.14 **PCI Compliance.** Agent represents and warrants that it and each of its Sub-Agents and third party service providers is, and during the Term of this Agreement will remain, in compliance in all material respects with all applicable Data Security Requirements, at the expense of Agent. Without liability TPS and Bank each have the right to withhold Services to Merchants or cease performing hereunder, in whole or in part, and immediately suspend connectivity to the Agent, if Agent, any of its Sub-Agents, is not in compliance in all material respects with all applicable Data Security Requirements until individual or entity is in compliance with all applicable Data Security Requirements. Agent shall notify TPS of any security breach or data compromise of Agent's computer system or the computer system of any of its Merchants.

2 **TPS OBLIGATIONS.**

The following are the principal obligations of the TPS under this Agreement:

- 2.1 **Merchant Applications.** TPS shall provide Agent with applications for Merchants to use in applying for the Services through Agent and TPS. TPS shall accept completed Merchant applications subject to the conditions set out above.
- 2.2 **Fees and Compensation.** TPS shall pay fees and compensation ("**Fees**") to Agent in accordance with **Schedule "A"** hereto, so long as: (a) Agent is in compliance with the terms hereof; (b) TPS is receiving its own compensation from Bank in respect of Merchants referred to TPS hereunder; and (c) such Merchants are continuing to process transactions through the Bank in conformity with their respective Merchant Agreements. TPS reserves the right to offset from Fees: (i) any amounts owed by Agent or any Sub-Agent to TPS or Bank; (ii) any revenue paid to Agent but that is uncollected from the Merchant or Bank; or (iii) any losses incurred by TPS due to the wrongful or negligent acts by Agent or any Sub-Agent. TPS shall pay all Fees due to Agent on or about the 1st day of the month for all Fees which become due and payable during the preceding calendar month. In order for a payment to become due and payable hereunder, Agent's total Fees for the month must equal or exceed \$100.00, otherwise balances will be carried over until the minimum is met. If after 180 days the monthly minimum is not met, no amounts will be payable hereunder and this Agreement shall automatically terminate. In the event that Agent disputes any Fee payment received hereunder, Agent agrees to notify TPS within thirty (30) days of the date of payment. Agent waives any claim against TPS regarding any payment that it fails to dispute within such thirty (30)-day period.
- 2.3 **Reporting to Agent.** So long as any Fees are payable to Agent hereunder, TPS shall provide a report to Agent setting forth the basis upon which the payment is computed.

3 **REPRESENTATIONS AND WARRANTIES.**

Agent represents, warrants and covenants the following to and for the benefit of the TPS for the Term hereof and so long as Agent is entitled to any Fees hereunder:

- 3.1 **Independently Established Business.** Agent is engaged in an independently established business, for the purpose of developing and maintaining revenue-generating client relationships with merchants. If the Agent is an individual engaged in a sole proprietorship, the Agent must have duly filed the required certificate of assumed business name, and must present a copy of the certificate to TPS. If the Agent is a corporation or otherwise incorporated or formed, it must comply with all corporate filing requirements, and must present a copy of its certificate of incorporation to TPS.
- 3.2 **Good Standing.** If the Agent is an individual, the Agent is above the age of twenty-one (21) and of the age of majority in the State where she or she is domiciled and is fully competent to enter into this Agreement. If the Agent is a corporation or otherwise incorporated or formed, it is validly existing and in good standing under the laws of the State where its principal office is located.

- 3.3 **Full Authority.** Agent has full authority and corporate power to enter into this Agreement and to perform its obligations under this Agreement.
- 3.4 **Sale of Information.** Agent shall not use, sell, purchase, provide, disclose or exchange credit card, debit card or bank account numbers or Merchant information, or any information collected or received hereunder, to any third party; any and all such information being the sole and exclusive property of TPS.
- 3.5 **No Violation.** Agent's performance of this Agreement will not violate any applicable law or regulation or any agreement to which it is bound as of the date hereof.
- 3.6 **Enforceability.** This Agreement represents a valid obligation of Agent and is fully enforceable against it.
- 3.7 **Compliance.** Agent will comply with the terms of this Agreement, with all applicable Rules and Procedures and any agreement between TPS and a Bank as well as all applicable Bank ethics statements and Data Security Requirements.
- 3.8 **No Litigation.** Neither Agent, nor its officers and/or directors, are a party to any pending litigation that would have an impact on this Agreement and have never been fined or penalized by Visa, MasterCard or any other association in the credit, payments or banking industry.
- 3.9 **No Crime.** Agent has never been convicted of a crime punishable by greater than 15 days of incarceration or of a crime of dishonesty. Prior to the execution of this Agreement, Agent has disclosed to TPS any and all information that may be relevant to TPS in its deciding whether or not to enter into this Agreement, such as prior dishonest or illegal activity by Agent.
- 3.10 **No Dishonesty.** Agent has never and will not falsify, alter or in any way change information provided by an actual or potential Merchant on an application or otherwise.

4 NON-SOLICITATION.

- 4.1 **Non-Solicitation.** Agent agrees that, during the Term hereof, so long as Agent is receiving Fees hereunder, and for a period of two (2) years thereafter, neither Agent nor any of its affiliates will directly or indirectly engage in the following conduct, or permit or assist any third party to engage in the following conduct, in any capacity including as an employee, employer, consultant, agent, principal, partner, stockholder, corporate officer, director, or in any other individual or representative capacity ("**Non-solicitation Obligations**"):
- (a) **Merchants.** Call on, solicit, take away, or attempt to call on, solicit, or take away any of the merchants, customers or Merchants of TPS or Bank (or TPS's other sponsoring banks or processors), whether boarded by the Agent or not, on whom Agent called or with whom Agent became acquainted during his/her association with TPS, either for himself/herself or for any other person, firm, or corporation;
 - (b) **Agents.** Entice, induce or in any manner influence any person or entity who is, or shall be in the direct or indirect service of TPS to leave the same for the purpose of engaging in a business or being employed by or associated with any other business; or
 - (c) **Non-Competition.** Engage or participate in any business that is in competition in any manner whatsoever with the business and/or contractual relationships of TPS, Bank or other sponsoring banks or processors of TPS.
- 4.2 **Breach.** Agent agrees and understands that any breach of its Non-solicitation Obligations will cause the forfeiture of all Fees owed by TPS to Agent as well as grave and irreparable damages to TPS. The time period referred to in Section 4.1 shall be stayed and extended during any violation or breach of the terms of this section.
- 4.3 **Interpretation.** In the event that any court shall finally hold that the time, territory or any other provision of this section constitutes an unreasonable restriction against the Agent, the Agent agrees that the provisions hereof shall not be rendered void but shall apply as to such time, territory and other extent as such court may judicially determine constitutes a reasonable restriction under the circumstances involved. TPS and Agent each request that any such court make a determination of what would constitute a reasonable restriction under the circumstances involved and to reform this Agreement accordingly. This

provision of this section shall survive termination of this Agreement and shall inure to the benefit of the TPS, its successors and assigns.

5 CONFIDENTIALITY OBLIGATIONS

5.1 **Confidentiality Obligations.** Agent agrees that, during the Term hereof, so long as Agent is receiving Fees hereunder and for a period of five (5) years thereafter neither Agent nor any of its affiliates will directly or indirectly engage in the following conduct itself nor permit or assist any third party to breach any of the following obligations (collectively, the “**Confidentiality Obligations**”):

- (a) **Confidential Information.** For the purposes of this Agreement, “Confidential Information” means all proprietary, secret or confidential information or data relating to TPS, Bank and any of their respective affiliates, operations, employees, independent sales organizations, agents, products or services, clients, customers or potential customers, merchants or Merchants. Confidential Information shall include, without limitation, Merchant lists, all Merchant Agreements and all parts thereof, Merchant pricing, customer lists, cardholder account numbers, pricing information, Rules (other than publicly available laws and regulations), acquiring bank or processor relationships, Merchant information, leasing information, financial or other data in any format, computer access codes, instruction and/or procedural manuals, payroll information, human resource or personnel information, business strategies and the terms and conditions of this Agreement. Information shall not be considered Confidential Information to the extent, but only to the extent, that such information is: (i) already known to the receiving party free of any restriction at the time it is obtained; (ii) subsequently learned from an independent third party free of any restriction and without breach of this Agreement; (iii) or becomes publicly available through no wrongful act of the receiving party; (iv) independently developed by the receiving party without reference to any Confidential Information of the other; or (v) required to be disclosed by law. In order for Agent to perform hereunder, TPS will be obliged to disclose to Agent certain Confidential Information concerning the Services and Merchants.
- (b) **Non-Disclosure.** Agent agrees that he or she will not, except as expressly required in the conduct of its obligations hereunder or as authorized in writing by TPS, publish or disclose, during Agent's provision of services to TPS or subsequent thereto, any trade secret or Confidential Information relating to Services (or TPS's sponsoring banks' or processors' products or services) that Agent may in any way acquire by reason of his or her association with TPS. Certain Confidential Information, such as, by example only, credit cardholder information must not only be kept strictly confidential, but must also be stored under lock and key and in encrypted format as is more fully spelled out in Visa and MasterCard Rules applicable to the business of TPS; the Agent shall comply and respect all such Rules. Agent shall not speak to or communicate with any media or journalist or make any public statements concerning this Agreement, the Services, TPS or Bank without the prior written consent of TPS.
- (c) **Legally Required Disclosure.** In the event that the Agent is required by law or legal process to disclose any of the trade secret or Confidential Information, the Agent shall provide TPS with prompt oral and written notice, unless notice is prohibited by law (in which case such notice shall be provided as early as may be legally permissible), of any such requirement so that TPS may seek a protective order or other appropriate remedy.
- (d) **No Misappropriation of Trade Secrets/No Unfair Competition.** Agent further promises and agrees not to engage in competition with TPS (or TPS's sponsoring banks or processors), at any time after the termination of this agreement, while making use of Confidential Information relating to Merchants, TPS or Bank. Agent acknowledges and agrees that the names and addresses of TPS's (or TPS's sponsoring banks' or processors'), Merchants, customers and all other Confidential Information relating to those Merchants and customers, including but not limited to account numbers, leasing information, financial information and special needs, are provided in confidence and constitute trade secrets of TPS and that the sale or unauthorized use or disclosure of any of TPS' trade secrets obtained by Agent during his/her association with TPS constitutes unfair competition. Agent promises and agrees not to engage in any unfair competition with TPS.
- (e) **Return of Confidential Information.** Upon any termination of this Agreement, Agent shall surrender to TPS all Confidential Information and materials furnished to Agent by TPS and any materials developed by Agent during the course of the Agreement's term including but not limited

to the following: (1) Rules and Procedures, (2) all lists of Merchants and prospective Merchants, (3) forms, office supplies, manuals and any other material previously furnished or made available by TPS to Agent. In addition, upon any termination hereof, Agent shall cease any and all contact with any Merchant, agent or employee of TPS and shall no longer promote the Services.

6 TERM AND TERMINATION

6.1 **Term.** The term of this agreement shall be for an initial term of one year commencing on the date signed below (the “Initial Term”). Thereafter, this Agreement shall automatically renew for successive, additional one (1) year terms (each a “Renewal Term”) unless otherwise terminated. The Initial Term together with each Renewal Term shall be referred to herein as the “**Term**”).

6.2 **Termination.** Notwithstanding the above, the parties will have the following rights:

- (a) **Automatic Termination.** This Agreement will automatically terminate if: (i) Visa or MasterCard prohibits TPS from providing, or prohibits Bank from allowing TPS to provide, the services set forth in this Agreement; (ii) TPS ceases to be registered as an independent sales organization or member service provider with Visa or MasterCard; (iii) Bank stops providing merchant services; or (iv) Bank is no longer a member of MasterCard or Visa.
- (b) **Termination Without Cause.** Either party may terminate this Agreement at the end of the Initial Term or any Renewal Term upon written notice of termination to the other party at least 90 days prior to the end of the Initial Term or any Renewal Term. TPS may terminate this Agreement without cause on thirty (30) days prior notice to Agent.
- (c) **Termination For Cause.** Any party may terminate this Agreement upon the occurrence of an Event of Default, as defined below.

6.3 **Event of Default.** Each of the following occurrences will constitute an “Event of Default” under this Agreement:

- (a) **Goodwill.** Agent engages in any act or omission that may damage the reputation, business, or goodwill of TPS.
- (b) **False Representation.** Any representation or warranty made by either party or any of its employees, officers, or directors proves to have been false or misleading in any material respect as of the date made, or becomes false or misleading at any time.
- (c) **Breach.** Either party fails to observe any material obligation specified in this Agreement, and such failure is not cured within 30 days of receipt of written notice thereof from the non-breaching party. Notwithstanding the previous sentence, the fourth such breach automatically will be deemed an Event of Default without notice or the opportunity to cure.

6.4 **Injunctive Relief.** If Agent breaches any of the Non-solicitation Obligations or Confidentiality Obligations of this Agreement, TPS will suffer irreparable harm and the total amount of monetary damages for any injury to such party will be impossible to calculate and therefore an inadequate remedy. Accordingly, Agent agrees and understands that upon its actual or threatened breach of any of the provisions contained in Section 4.1 or 5.1, TPS shall be entitled to the immediate grant of injunctive relief without the requirement of posting a bond enjoining such actual or threatened violation by Agent, or any person acting in concert with Agent; and that TPS may exercise any other rights and seek any other remedies to which TPS may be entitled to at law, in equity and under this Agreement for any violation of such obligations.

6.5 **Fee Obligations in Event of Breach.** The Fees payable to Agent as set forth in Section 2.2 of this Agreement will be due to Agent for as long as TPS is deriving revenue from Bank in respect of any Merchant, unless: (i) this Agreement is terminated by TPS due to a breach of the Agreement by Agent; or (ii) Agent is in breach of this Agreement (before or after termination of the Agreement), in which cases the TPS’s obligation to pay Fees to the Agent shall terminate.

6.6 **Ownership of Merchants.** The parties understand and agree that: (i) TPS has full ownership rights in the Merchant Agreements, (ii) TPS may have the right to cause the Bank to assign Bank’s rights in all or any of the Merchant Agreements to any third party at any time and for any reason, in accordance with the sponsorship agreement between Bank and TPS, (iii) TPS may dispose of its right to receive compensation in respect of the Merchants, in which case TPS would not be under any further obligation to pay Fees to Agent, and (iv) TPS may assign its rights and obligations hereunder to a third party or pay Agent a single

lump sum payment equivalent to the Agent's pro rata share of the net consideration received by TPS for its rights in the Merchant Agreements, reasonably calculated by TPS, without consent of Agent or prior notice to Agent. TPS also has the right to terminate its sponsorship with Bank and enter into sponsorship with another Bank at any time and without consent of Agent.

7 INDEMNIFICATION AND LIMITATION OF LIABILITY

7.1 **Indemnification.** Agent shall save, defend, indemnify, reimburse and hold TPS, Bank and their respective affiliates, shareholders, directors, officers, agents and employees harmless for all suits, actions, proceedings, losses, claims, liabilities, damages, costs and expenses (including all costs and reasonable attorney's fees) actually incurred in connection with any consultation, negotiation, or actual action, suit, claim, losses or proceeding to which TPS shall be made a party by reason of:

- (a) the acts or omissions of Agent or any Sub-Agent or any of their respective affiliates;
- (b) violation of this agreement, applicable Rule or Procedure, including, without limitation, any and all fines or fees imposed by Visa, MasterCard or any credit card association or payment network;
- (c) any fraudulent or dishonest conduct or misrepresentation of Agent or any Sub-Agent or any breach by Agent or any Sub-Agent of the terms hereof; or
- (d) taxes with respect to income received hereunder.

7.2 **Selection of Counsel.** In the event TPS makes any claim under this provision, TPS shall have the right (subject to its right of reimbursement hereunder), but not the obligation, to defend the suit with counsel of its choice. Agent agrees to cooperate in such an action. Agent agrees not to settle any claim for which indemnification hereunder may be sought without prior written consent of TPS.

7.3 **Limitation of Liability.** Under no circumstances shall TPS be liable for any indirect, consequential or punitive damages hereunder. Under no circumstances shall the aggregate liability of TPS to Agent hereunder exceed the aggregate actual amount of Fees actually paid by TPS to the Agent hereunder in the three (3) months preceding the event giving rise to liability.

7.4 **Merchant Losses.** One-hundred percent of all losses due to Merchant fraud and chargebacks (collectively, "Merchant Losses") incurred by TPS or Bank will be borne by TPS. Notwithstanding the previous sentence, or any other provision hereof, Agent will be liable to TPS for any liability or loss incurred by TPS or Bank arising out of Agent's or any Sub-Agent's breach hereof, negligence, fraud, intentional wrongdoing or submission of a Merchant application containing information that was in any way false or misleading.

7.5 **Security Interest.** At any time that Agent is receiving Fees from TPS, TPS shall have a security interest in any such commission(s) or incentives owed by TPS to Agent. Agent agrees that such amount of Fees may be offset, utilized and applied to the payment of any outstanding accounts receivable balance or to satisfy any other of Agent's obligations to TPS or Bank under this Agreement including, but not limited to, the payment of monetary reimbursement to Merchants or sales representatives, or the legal expenses associated with any claims against TPS or Bank for which Agent bears responsibility as determined by TPS in its sole discretion following a thorough investigation of the facts and circumstances.

8 RELATIONSHIP OF THE PARTIES.

8.1 **Independent Contractor.** It is understood that Agent is an independent contractor, and is not, and shall not be deemed to be, an employee of TPS for any purpose. Nothing in this Agreement or the parties' relationship shall be construed to give either party the power to direct and control the day-to-day activities of the other. The general conduct of work performed by Agent and its representatives and/or Sub-Agents under this Agreement shall be under Agent's sole control. Agent further understands and agrees that Agent shall be fully responsible for all tax obligations related to the payment of all Fees earned by Agent hereunder. Agent is not entitled to workers compensation insurance, unemployment compensation insurance, pension or profit sharing or other benefits or rights of any kind or nature from or through TPS or Bank. Nothing in this Agreement or the course of dealing of the parties shall be construed to constitute the parties hereto as partners, joint ventures or as agents or employees of one another or as authorizing either party to obligate the other in any manner. Agent shall not (1) bind TPS or Bank to any contract or agreement, (2) incur any obligation on behalf of TPS or Bank, (3) release, assign or transfer any agreement, claim, security or any other asset of TPS or Bank, (4) borrow or lend any money in the name of TPS or Bank, or (5) submit to any claim or liability related to the Merchant Agreements, allow judgment to be

taken or confessed against TPS or Bank. Agent, being an Independent Contractor, shall not receive as compensation, or be reimbursed, for any of the following: (i) additional work materials other than provided by the required Procedures, (ii) business facilities, telephone, automobile or any other equipment, (iii) any TPS or Bank employee benefit, (iv) reimbursement for any other cost or expense incurred by Agent in its sales and marketing of the products and services on behalf of TPS or Bank at TPS's or Bank's direction.

8.2 **Compliance with Third Party and Legal Obligations.** Agent understands and acknowledges that all independent sales organizations selling or promoting Visa and MasterCard services must be properly registered with Visa and MasterCard, and that all agents associated with an TPS must comply with the Rules and Procedures, including all federal, state and local laws that impose requirements on Agent when dealing with merchants pursuant to this Agreement. Agent shall be bound to comply with all Rules and Procedures. Any failure by the Agent to comply with the terms of this Section 8.2 shall constitute a material breach of this Agreement.

8.3 **Independent Obligations.** The parties' independent obligations to comply with these legal and third-party obligations shall not be construed to give either party the power to direct and control the day-to-day activities of the other.

9 GENERAL PROVISIONS

9.1 **Only Agreement.** This Agreement supersedes all prior agreements and understandings between the Agent and TPS and its directors, officers, shareholders, Agents, agents or representatives and constitutes the whole agreement between the Parties hereto. Agent also represents that prior to this Agreement Agent was neither employed by TPS or any of its affiliates nor has it acted in the role of independent contractor for TPS or any of its affiliates.

9.2 **Force Majeure.** Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

9.3 **No Other Representations.** Except as required by the Rules, this Agreement is the entire Agreement between the parties respecting the subject matter hereof and there are no representations, warranties or commitments other than those expressed herein.

9.4 **Amendments and Waivers.** No modification, amendment or waiver under this Agreement shall be valid unless in a writing and signed by the Agent and an officer of TPS.

9.5 **Notice.** Any notices or other communications required or permitted to be given pursuant to this Agreement shall be sufficient if hand delivered or sent by regular or certified mail, return receipt requested, or by Federal Express or other nationally recognized express delivery service, (postage or other commercial delivery fees prepaid), or by facsimile transmission (provided that transmission is confirmed), to TPS at its address appearing on the first page hereof and to Agent at the address appearing on the first page hereof or at such other address as a party may designate for such purpose by notice so given to the other party. Hand-delivered notices, notices sent by regular mail and notices sent by facsimile shall be deemed given and received when actually received. All other notices shall be deemed given and received on the date of the first attempted delivery as shown on the certified mail or delivery service receipt.

9.6 **Successors and Assigns.** Agent may not assign this Agreement without the prior written consent of the TPS and any unauthorized attempted assignment will be null and void. TPS may assign its rights and obligations hereunder to a third party. If Agent enters into an asset sale, purchase or stock sale or exchange agreement with a third party which would effectuate a sale or merger of Agent's business or rights hereunder without TPS's written consent, TPS will have the right to terminate this Agreement immediately. Except as set forth above, this Agreement shall inure to the successors and permitted assigns of the parties hereto.

9.7 **Governing Law, Choice of Law and Forum.** This Agreement shall be construed in accordance with and governed by the laws of the State where the TPS has its principal place of business identified on the first page hereof without regard to conflicts of law principles. Any legal actions or proceedings brought to

enforce the terms of this Agreement shall be filed in a court of competent jurisdiction within such state in the county where the TPS has its principal place of business identified on the first page hereof.

- 9.8 **Attorney Fees.** As a consequence of any action, suit or proceeding brought under this Agreement, the prevailing party shall be entitled to its costs, expenses, and if law permits, its reasonable attorneys fees. In the event that TPS retains an attorney to enforce compliance with the terms hereof or to collect any amounts owing from Agent hereunder, TPS may deduct the fees for such attorney from amounts payable to Agent hereunder.
- 9.9 **Scan Signature.** This Agreement may be executed in counterparts, each which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by fax or the exchange of scanned copies of signed copies hereof, provided that Agent provides TPS with an original signature within ten (10) days of the electronic copy.
- 9.10 **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.
- 9.11 **Construction Capacity and Counsel.** For purposes of construction, this Agreement will be deemed as being drafted by both parties, equally. Agent is executing this Agreement in its/his/her capacity as a business and not as an individual consumer. Agent has had opportunity to seek legal advice prior to the execution hereof.

IN WITNESS WHEREOF, this Agreement is executed by duly authorized officers of the parties and shall be effective as of the date appearing on the first page hereof.

Agent

Total Payment Solutions, Inc.

X _____
Name (Print):
Title:
Date:
Business Name:

X _____
Name:
Title:
Date:

AGENT INFORMATION:

Home Address:

Social Security Number: _____

Business Phone: (_____) _____

Cell Phone Number: (_____) _____

Home Phone Number: (_____) _____

Fax Number: (_____) _____

E-Mail: _____

Schedule "A" – Agent Fees and Compensation

Merchant Account Program

Merchant Account Production Bonus Program

Agent will earn a \$100 production bonus for every Merchant Account Activation.

Residual Revenue Sharing Program (In addition to Production Bonus Program)

Each merchant account setup by Agent will be paid 50% of the net revenue earned after TPS is compensated by Bank. These payments will continue to be paid on a monthly basis as long as the Merchant maintains its Merchant Account with TPS.

Equipment and Terminal Sales

Agent will earn 100% of the profit above equipment and terminal costs.

Equipment Leasing

Lease factor rates determining profitability will be a variable formula based on the merchant's credit score, time frame of lease, as well as the amount of the lease payments. Any defaulted leases within 60 days, will incur a chargeback of amount funded to Agent.

Merchant Cash Advance Funding Program

Merchant Cash Advance Program

Agent will earn 3% of the total payback value of a cash advance once merchant is funded.

If a merchant previously referred by the Agent, defaults under its agreement with TPS within thirty (30) days after funding, the Agent shall immediately return to TPS the Compensation paid to Agent. If the merchant breaches or defaults in its agreement with TPS, fails to act in good faith, or changes merchant's credit card processor from the processor designated by TPS, Compensation to the Agent shall terminate in respect to that merchant.

Schedule "A" – Agent Fees and Compensation (Continued)

ATM Machine Program

ATM Machine Activation Bonus Program

Agent will earn \$100 bonus for every ATM Machine Activation.

Equipment and Terminal Sales

Agent will earn 100% of the profit above equipment and terminal costs.

Equipment Leasing

Lease factor rates determining profitability will be a variable formula based on the merchant's credit score, time frame of lease, as well as the amount of the lease payments. Any defaulted leases within 60 days, will incur a chargeback of amount funded to Agent.

Schedule "B" – Partners and Sub-Agents of Agent

Owners, Directors, Principals, Officers, Executive and Financial Managers

Name	Social Security Number	Address	Telephone	Title
1.				
2.				
3.				
4.				
5.				

Sub-Agents

The following are all of the employees and agents of Agent who will assist Agent in the performance of its obligations under this Agreement. Agent will immediately notify TPS in writing of any changes to the information below and of any additional or terminated Sub-Agents.

Name	Address	Telephone	Date Contracted
1.			
2.			
3.			
4.			
5.			



Representative Registration

Individual Name: _____

Home Address: _____

Home Telephone: _____

Business Address (if different than above): _____

Business Phone (if different than above): _____

Email Address: _____

X _____

Representative Signature

Date

ACH Authorization Form

Printed Name: _____

Company Name: _____

Bank Name: _____

Bank Telephone: _____

Routing Number: _____

Account Number: _____

Email Address: _____

Type of Account: *(check one)* Business Acct. Personal Acct.

(Please include a copy of voided check or a bank letter)

I authorize Total Payment Solutions, Inc. to ACH money (Debits and Credits) to my checking account stated above for compensation earned.

Signature _____ Date _____

PERSONAL GUARANTEE

TO: **Total Payment Solutions, Inc.**

Reference is made to that certain Total Payment Solutions, Inc. Services Sales Agent Agreement entered into between Total Payment Solutions, Inc. ("TPS") and _____ (the "Agent") as of _____, 201_ (the "Agreement"). Unless otherwise defined herein, capitalized terms herein shall have the meanings ascribed thereto in the Agreement. For good and valuable consideration, receipt of which is hereby acknowledged, the undersigned Guarantor hereby fully, irrevocably and unconditionally guarantees to TPS the full and complete performance by the Agent of all the Agent's obligations, present and future, to TPS (the "Guarantee") under or pursuant to the Agreement. The liability of the Guarantor under the Guarantee shall be joint and several with the Agent. TPS does not need to exhaust its recourses against the Agent or any other person or entity before being entitled to full payment from the Guarantor under this Guarantee.

SIGNED as of this _____ day of _____, 201_.

GUARANTOR:

X _____

Home Address:

Social Security Number: _____

Business Phone: (_____) _____

Cell Phone Number: (_____) _____

Home Phone Number: (_____) _____

Fax Number: (_____) _____

E-Mail: _____

ACKNOWLEDGED and ACCEPTED by:

Total Payment Solutions, Inc.

Name:

Title:

Date: