

## ATM INDEPENDENT SALES REPRESENTATIVE AGREEMENT

This Independent Sales Representative Agreement (the "Agreement") dated as of \_\_\_\_\_, 201\_ (the "Effective Date") is between Total Payment Solutions, Inc., dba ATM Express located at 1 Maxwell, East Rockaway, NY 11518 ("TPS") and \_\_\_\_\_, with its' principal place of business located at \_\_\_\_\_ ("ISR"). Each may be referred to herein as a "Party" or collectively as "Parties".

### RECITALS

The background of this Agreement is as follows:

(a) MetaBank, dba Meta Payment Systems ("Bank") is a member of the Network and is in the business of sponsoring ISO's.

(b) TPS is an Independent Sales Organization sponsored by Bank which sponsorship allows certain Terminals to be connected to the Network.

(c) ISR desires to act as an Independent Sales Representative of TPS and TPS desires to render processing services, data compilation and customer support for ISR, all in accordance with the terms and conditions of this Agreement.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby fully and completely acknowledged, the Parties hereto, intending to be legally bound, agree as follows:

### ARTICLE I - DEFINITIONS

#### SECTION 1.1 Definitions

Except as otherwise specifically indicated, the following terms shall have the following meanings in this Agreement (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

(a) "ACH Account" means a deposit account maintained by ISR and/or an ATM Operator for the express purpose of settling funds, paying fees payable to ISR as provided in Section 7.2 of this Agreement and paying, deducting or offsetting Expenses as provided in this Agreement.

(b) "Account" means (i) a depository account which is maintained with an Issuer and which may be accessed by a Cardholder, including, without limitation, a checking, savings, or such other depository account as may be legal under applicable law or regulation, or (ii) a credit card account which is maintained with an Issuer and which may be accessed by a Cardholder.

(c) "Acquirer" means a Network member that sponsors and is responsible for the operational control of a Terminal in accordance with the rules and regulations of each Network.

(d) "Adjustment" means a change in the amount of any Transaction implemented after the time the Transaction occurs, either to correct a Transaction due to a dispute under Regulation E, or due to a balancing settlement error.

(e) "ATM" or "Automated Teller Machine" means any electronic device that when activated by a Cardholder, is capable of dispensing the legal currency of the country in which such device is located directly from such device or other ATM Transactions for which it is designed for and which is acceptable and approved by the Networks.

(f) "ATM Operator". For purposes of this Agreement, ATM Operators (i) own, operate or lease Terminals that are connected to a Network, (ii) maintain an ACH Account with TPS, and (iii)(A) receive Transaction Rebates or Surcharge Fees; (iii)(B) manage cryptographic functions, or (iii)(C) stock Terminals with cash. (Armored car firms and encryption service and support organizations are not considered to be ATM Operators herein).

(g) "ATM Transactions" means any of the following functions initiated by a Cardholder at an ATM(i)"Withdrawal" means the dispensing of money by an ATM to a Cardholder from a Cardholder's Card, depository account or other accounts from which Cardholder is legally entitled to make a Withdrawal; (ii) "Cash Advance" means the dispensing of money by an ATM to a Cardholder from the Cardholder's credit card account; (iii) "Transfer" means the transfer of funds by a Cardholder between two depository accounts maintained with the same Issuer; or (iv) "Inquiry" means an inquiry by a Cardholder as to the balance of the Cardholder's account.

(h) "By-Laws and Operating Rules" means the By-Laws and Operating Rules of the Network as amended from time to time.

(i) "Card" means a credit card, charge card, bankcard, stored value card, or debit card that is issued by a member of any Network Issuer with the prior express written approval of a financial institution.

(j) "Cardholder" means (i) the person who maintains or is authorized to access an Account or a Card with an Issuer (and if such Account or Card is maintained with an Issuer in the name of, or may be accessed by, more than one person, all of such persons), and (ii) uses a Card to originate a Transaction.

(k) "Compliance Regulations" means Regulation E, any other federal, state, or local statute, law, regulation, or Government Requirements and/or Rules that may be applicable to the Network, Bank, TPS, any Participant or a Transaction.

(l) "Debit Transaction" means a Transaction by which a Cardholder pays a Terminal use fee for cash received through the use of the Cardholder's Card. The Cardholder authorizes payment by an electronic debit from the Cardholder's account in the amount of the cash received plus a Transaction Surcharge Fee.

(m) "Expenses" means expenses, costs, fees, charges, fines, penalties, attorney's fees and courts costs, of whatever sort or nature, excluding from such definition Surcharge Fees, Processing Fees or Transaction Rebates.

(n) "Government Requirements" means collectively all statutes, codes, ordinances, laws, regulations (including Regulation E), rules, orders and decrees of all Regulatory Authority or other governmental authorities (including without limitation federal, state and local governments, governmental agencies and quasi-governmental agencies).

(o) "Independent Sales Organization" or "ISO" means an entity that is not a Member but is registered with the Network by the Bank or another sponsoring bank to deploy ATMs.

(p) "Issuer" means a Network member that issues Cards to Cardholders for use in performing Transactions.

(q) "Item" means the electronic messages which communicate and effect a Transaction between an Issuer and its Cardholder through the use of a Terminal.

(r) "Location" means any site or building that is duly submitted to TPS for rendering TPS Services pursuant to Article VI hereof.

(s) "Mark" means the service marks and trademarks of Networks, Bank and TPS, as the case may be, including, but not limited to, the names and any other distinctive marks or logos which identify the Networks, Bank and TPS.

(t) "Member" or "Membership" means the membership in a Network and licensing rights thereto obtained by Bank or other financial institution.

(u) "Merchant" means the owner of any Location who is not an ISR or ATM Operator.

(v) "Network" means the credit, debit, and stored value card proprietary Network for transmitting Items and other electronic messages and settling Transactions between Participants and includes, but is not limited to, a Switch, Terminals, Cards, all related computer hardware and software, telecommunications facilities and equipment, Rules, Regulatory Authorities, technical specifications, logos, and Marks.

(w) "Participant" means an Issuer, Acquirer, processor or ISO.

(x) "Principal" means any person directly or indirectly (i) owning ten percent (10%) or more of ISR, ISR's clients, or ATM Operators; or (ii) any officer or director of ISR, ISR's clients, or ATM Operators; or (iii) any person actively participating in the control of ISR's business, ISR's clients or ATM Operators.

(y) "Processing Fees" means all fees due and payable to TPS under Section 7.1 of this Agreement, or otherwise.

(z) "Processing Services" means those services which are necessary to operate a Terminal in accordance with the By-Laws and Operating Rules of the Networks, including without limitation, Transaction processing, Settlement, Fees, Network access, Cardholder dispute resolution, Terminal support and Transaction reporting to Networks.

(aa) "Regulation E" means (i) the regulation, all amendments thereto and official interpretations thereof (12 C.F.R. Part 205) issued by the Board of Governors of the Federal Reserve System implementing Title IX (Electronic Funds Transfer Act) of the Consumer Credit Protection Act as amended (15 U.S.C. 1601 et seq.) and (ii) the Electronic Fund Transfer Act and any amendments thereto.

(bb) "Regulatory Authority" means, as the context requires, the State of South Dakota (as it applies to Bank), the State of New York (as it applies to TPS); Federal Deposit Insurance Corporation, Office of the Comptroller of Currency, the Office of Thrift Supervision, and any other federal or state agency having jurisdiction over Bank, Network, TPS or ISR.

(cc) "Rules" means By-Laws or Operating Rules and procedures of any Network, the Payment Card Industry Data Security Standards, the published policies and procedures of Bank, as promulgated by Bank's Board of Directors in good faith to ensure the continued safety and soundness of Bank as amended from time to time.

(dd) "Sales Representative" and/or "Independent Sales Representative" means an individual or a company not directly employed by TPS that markets Terminal hardware or the rights and privileges of Network Membership under TPS's supervision, as granted to TPS by Bank.

(ee) "Scrip" means an authorized document, internally generated and printed by a Scrip Dispensing Terminal that is redeemable at designated locations for (i) U.S. legal tender at par in local currency, or (ii) goods and/or services. The dispensing of Scrip from a Terminal is and processed through the Network as a point of sale purchase Transaction and not as a cash disbursement.

(ff) "Scrip Dispensing Terminal" means any unattended Cardholder-operated Card-activated Terminal at which a Cardholder may obtain Scrip.

(gg) "Settlement" means the movement and reconciliation of funds between Participants in accordance with the Rules.

(hh) "Surcharge Fee" means a fee deducted from a Cardholder's account for a withdrawal Transaction initiated at a Terminal.

(ii) "Switch" means a computer that recognizes electronic Transactions and transmits them to the appropriate bank, Network, or Issuer.

(jj) "System" means an on-line Terminal support system operated by TPS, including, but not limited to *atmreports.com* and all other rights in internet web sites and internet domain names presently used by TPS, which system shall provide ISR with TPS Services.

(kk) "Terminal" means an Automated Teller Machine (ATM) or Scrip Dispensing Terminal.

(ll) "Transaction" means any transaction that is initiated at a Terminal through the use of a Card to include but not limited to cash withdrawals, balance inquiries, and Scrip purchases.

(mm) "Transaction Rebates" shall mean ISR's or ATM Operator's portion of any Processing Fees due according to Article VII of this Agreement, or otherwise.

## **ARTICLE II – EXHIBITS AND ANCILLARY AGREEMENTS**

The parties hereto agree and acknowledge that the foregoing exhibits and ancillary agreements are part of this Agreement and are incorporated herein by reference (unless the terms otherwise provide):

- *Exhibit 1 – ATM Processing Fees*
- *Exhibit 2 – ATM Operator Application*
- *Exhibit 3 – ACH Authorization Form*
- *Exhibit 4 – ATM Installation Form*
- *Exhibit 5 – Installation Check List*

## **ARTICLE III – DUTIES OF INDEPENDENT SALES REPRESENTATIVE**

### **SECTION 3.1 Terminal Deployment**

ISR may, from time to time, market, deploy and install Terminals in Locations as an Independent Sales Representative in accordance with this Agreement. All contracts for the deployment and installation of Terminals by ISR under this Agreement shall reflect that TPS is the registered ISO. ISR shall have each applicable ATM Operator execute the ATM Operator Application & Installation Form, as defined in Exhibit 2 for each Terminal that is deployed hereunder.

### **SECTION 3.2 Terminal Installation, Maintenance, Repair and Upgrades**

ISR will be solely responsible for installation, maintenance and repair, and upgrades of each Terminal (including, without limitation, all electrical and communication line hook-up) in compliance with the Terminal manufacturer specifications, Rules and Compliance Regulations.

### **SECTION 3.3 Expenses of ISR**

ISR shall be solely responsible for the following:

- (a) purchase or lease of Terminals;
- (b) deployment, installation, maintenance and repair of Terminals including, but not limited to, any upgrades required under Section 3.2;
- (c) federal and state registration, licensing or other similar fees;
- (d) marketing and advertising (including signage);
- (e) cash servicing;
- (f) Cardholder Service (including Transaction disputes, Cardholder complaints and Adjustment);
- (g) Network penalties and fines assessed against TPS or Bank that are a direct cause of ISR's action or inaction;
- (h) any sales, use, excise, privilege, value added, income, property or other taxes, of whatever sort or nature, assessed or imposed based upon ISR's deployment and installation of Terminals;
- (i) maintaining adequate workers' compensation insurance on any persons employed by ISR and general liability insurance with respect to his/her business operations and ISR shall furnish TPS proof of such coverage upon request. Neither ISR nor his/her employees or agents shall be eligible for, and TPS shall have no obligation to provide for the ISR, his/her employees or agents, salary, severance pay, employee benefit plan contributions, sick pay, vacation pay, or hospital, medical, or other insurance benefits or any other employee benefits and
- (j) reimbursement to TPS for any Expenses TPS incurs on behalf of ISR, including any Expenses for Bank, Network or processor audits required by Bank or any Network. If TPS fails to require ISR to reimburse TPS pursuant to this Section 3.3, such failure shall not constitute a waiver or otherwise impair TPS's right to reimbursement under this Section 3.3.
- (k) ISR shall be liable to TPS and Bank for any and all liabilities and every loss, claim, demand, Expense and cause of action (including, without limitation, the cost of investigating the claim, the cost of litigation and reasonable attorneys' fees, whether or not legal proceedings are instituted and whether paid or incurred, as the case may be) by or on behalf of any Cardholder as a result of the failure of ISR or any of ISR's ATM Operator's to comply with the Rules, Network or applicable Regulatory Authority.

### **SECTION 3.4 Access to Documents and Information**

(a) ISR shall provide TPS with notification of all new Terminal installations and changes to existing installations, including without limitation, all applicable information required pursuant to this Agreement and such additional ownership and collateral documentation, as requested by TPS; All submitted Exhibits shall be complete and accurate;

(b) ISR shall have fifteen (15) business days to provide TPS the information in this Section, after notification by TPS that the information was not received or incomplete. If ISR does not provide TPS with all information required by this Section within such fifteen (15) business day period, TPS may terminate or suspend Processing Services for any applicable Terminals in accordance with Article IX or conduct an on site compliance review.

(c) ISR shall have ten (10) business days to respond to an on site compliance review after receiving any exception report from TPS and/or the Bank. No Terminals may be installed by ISR while ISR is out of compliance or has not provided acceptable dates to the Network as to when ISR will be in compliance. If ISR remains out of compliance for more than ten (10) business days after receiving the exception report, ISR will be terminated in accordance with Article IX.

### **SECTION 3.5 Release of Information**

By signing this Agreement, ISR hereby gives consent and authorization to TPS to release any and all Terminal information that is required by any Network.

### **SECTION 3.6 Terminal Activation**

(a) ISR agrees that all Terminals deployed and installed pursuant to this Agreement will be sponsored by Bank.

(b) TPS reserves the right to refuse TPS Services to any consumer, ATM Operator, Merchant, Terminal owner/operator that, in TPS's or Bank's opinion, presents excessive financial or reputation risk.

### **ARTICLE IV - REPRESENTATIONS AND WARRANTIES OF ISR**

ISR represents and warrants to TPS and Bank as follows:

(a) ISR operates as a business duly formed, validly existing and in good standing under the laws of the state where licensed and registered and is authorized to do business in each state in which the nature of ISR's activities makes such authorization necessary.

(b) ISR has the full power and authority to execute and deliver this Agreement and to perform all of its obligations under this Agreement. The provisions of this Agreement and the performance by ISR of its obligations under this Agreement are not in conflict with any of ISR's governing documents or any other agreement, contract, lease or obligation to which ISR is a party or by which it is bound.

(c) There is not pending or threatened against ISR or ISR's Principals, any litigation or proceeding, judicial, tax or administrative, the outcome of which might materially adversely affect the continuing operations of ISR. Attached to this Agreement is a list and brief description of all pending lawsuits in which ISR is a party.

(d) ISR owns all of the Terminals subject to this Agreement unless documentation is provided detailing ownership or a percentage of ownership by ATM Operators.

(e) A written contractual agreement exists or will exist between ISR and all ATM Operators and Merchants to maintain the Terminals for each Location in accordance with all TPS, Bank, Network Rules, Regulatory Authority and Government Requirements and to provide a safe and secure environment at each Location.

(f) ISR is and shall also be solely responsible for security of Cardholder data, Network compliance and signage at each Location.

(g) All operational responsibilities have been and will be completed in compliance with Rules and Regulations, and ISR has policies and procedures in place to document compliance.

### **ARTICLE V - COVENANTS OF ISR**

ISR covenants and agrees with TPS and Bank as follows:

(a) ISR will comply with all applicable laws, Government Requirements, the Rules and any rules, orders and regulations issued by the Regulatory Authorities that relate to the matters, Transactions, and Terminals contemplated by this Agreement which govern the specific market where Terminals are located.

(b) Terminals subject to this Agreement are placed in service with the assurance that the Terminals have not been altered or subject to unauthorized modifications or tampering at the time placed into service and are in compliance and will remain in compliance with all Network standards.

(c) Scrip Terminals will not be activated. Incorrect activation, programming changes, or any other attempt on the part of ISR to fraudulently identify, activate, or operate the Terminal will result in (i) full repayment of all fees collected from the date the Terminal was activated; (ii) all fines assessed by the Networks; and (iii) termination of the Agreement pursuant to Article IX.

(d) ISR will provide to TPS any information requested by Bank, Network or any Regulatory Authority.

(e) ISR will immediately give notice to TPS of any information which would make any of the representations and warranties contained in Article IV to be untrue or inaccurate at any time during this Agreement.

(f) ISR agrees that at TPS's sole discretion, TPS, Bank, their authorized representatives, or agents and any government entity with regulatory or supervisory authority over Bank or TPS (collectively the "Auditing Party"), shall have the right to inspect, audit, and examine all of ISR's facilities, records and personnel relating to this Agreement at any time during normal business hours upon reasonable notice.

(g) ISR agrees to notify TPS immediately if any Terminal has a change in ownership.

(h) ISR shall use TPS's trade name, trademarks, and logo in connection with all solicitation under this Agreement, and may use the names and trademarks of the Card Associations during the term of this Agreement. All such use shall be in compliance with all applicable Rules and Government Regulations.

### **ARTICLE VI - DUTIES OF TPS**

#### **SECTION 6.1 Sponsorship**

TPS shall use its best efforts to retain sponsorship by Bank or other comparable bank sponsorship.

#### **SECTION 6.2 Processing Services**

(a) Subject to the terms and conditions of this Agreement, TPS shall provide Processing Services for the Terminals which ISR has submitted all of the information and documentation required by Section 3.4, all of which TPS may accept or reject in its sole discretion.

(b) TPS shall provide Processing Services on a 24 hour per day basis, seven days a week, except for down time (i) for maintenance or equipment installation, (ii) facility or system modifications or upgrades, (iii) Network unavailability, (iv) power failures or (v) any other events beyond the control of TPS.

(c) TPS shall promptly notify ISR of any required repairs, maintenance or upgrades of which TPS becomes aware.

(d) The duties of TPS contained in this Article VI may collectively be referred to as "TPS Services".

### **SECTION 6.3 Data Compilation**

(a) TPS agrees to provide summary reports to ISR. ISR shall access all summary reports electronically through *atmreports.com*.

## **ARTICLE VII - FEES AND EXPENSES**

### **SECTION 7.1 Fees Payable to TPS**

(a) TPS and ISR agree and acknowledge that TPS has the sole and exclusive right, title and interest in and to all Processing Fees, payable in accordance with the attached Exhibit 1, ATM Processing Fees. The parties agree and acknowledge that the foregoing Processing Fees are earned by TPS for TPS Services rendered in the State of New York via electronic means.

(b) In the event that ISR owes any Expense or other amount to TPS, of whatever sort or nature, TPS may (i) suspend transfer of any Transaction Rebates, Surcharge Fees, vault cash or other amounts, of whatever sort or nature, until such Expense or other payment is paid in full; and (ii) deduct or offset all Expenses or other amounts owing TPS, of whatever sort or nature, from Transaction Rebates, Surcharge Fees, vault cash and/or ACH Account(s) of ISR and/or ISR's ATM Operator.

(c) ISR shall pay any amount invoiced by TPS within ten (10) days of the mailing of such invoice. Any amounts outstanding after thirty (30) days of the mailing of such invoice shall bear interest from the due date to the date of payment at a rate equal to the lesser of fifteen percent (15%) per annum or the highest legally allowable rate (the "Late Charge"). Further, whether this Agreement is currently in effect, or has been terminated in accordance with Article IX, any Expense or other amount owing to TPS, of whatever sort or nature, shall continue to be subject to the Late Charge.

### **SECTION 7.2 Fees Payable to ISR**

(a) Subject to the terms and conditions of this Agreement, TPS shall transmit all Surcharge Fees generated by ISR's Terminals

(b) Subject to the terms and conditions of this Agreement, TPS shall transmit all Transaction Rebates in accordance with the attached Exhibit 1, ATM Processing Fees.

(c) For Settlement on behalf of ISR and ISR's ATM Operator's Terminals, and for payment of Expenses due and owing under this Agreement, ISR and ATM Operator shall establish and maintain one or more ACH Account(s). Settlement of vault cash will be settled daily to the designated vault cash ACH Account Monday through Friday unless the banks are closed for a holiday. Settlement on non-banking days is held in queue at processor until the bank system opens for business.

## **ARTICLE VIII - LIMITATION OF LIABILITY**

### **SECTION 8.1 No Special Damages**

Neither Party shall be liable to the other for any special, indirect, incidental, consequential, punitive or exemplary damages, including, but not limited to, lost profits, even if such Party has knowledge of the possibility of such damages provided, however, that the limitations set forth in this Section 8.1 shall not apply to or in any way limit the third party indemnity obligations under this Agreement.

### **SECTION 8.2 Warranties and Disclaimer of Warranties**

TPS agrees to pass on any applicable manufacturers' warranty in effect at the date of transfer of any Terminal acquired by ISR from TPS. ISR and ATM Operators agree to accept all the terms and conditions of the manufacturers' warranty. ISR accepts the responsibility of providing labor in accordance with any applicable manufacturers' warranty. TPS SPECIFICALLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES.

### **SECTION 8.3 ISR Verification Obligation**

ISR shall complete all exhibits and other forms submitting by ISR to TPS in good faith. It is the responsibility of ISR to verify that all information contained in the exhibits and all other forms submitted by ISR to TPS or any modification thereof is correct and complete, to the best of ISR's knowledge. TPS has no responsibility to verify any such information and will not be responsible for any Expenses, claims, damages, liability, loss, demands or any causes of action arising out of or related to any incorrect information submitted to TPS or any notice of change related thereto. ISR shall audit and balance the data contained in the periodic statements and summary reports provided by TPS and shall promptly notify TPS of any disputed item or items on such periodic statements and summary reports. If following ISR's timely notice TPS determines that the disputed item was credited or debited in error by TPS, TPS shall correct the error. However, TPS shall not be liable for any recovery of any amounts which were transmitted in error over thirty (30) days prior to the date TPS receives notice from ISR, although TPS will use its best efforts, but shall be under no obligation to incur any Expense, to

recover the same on ISR's behalf. TPS shall not be liable for any damages, interest or Expenses associated with any error by TPS which occurred over thirty (30) days prior to the date TPS receives notice from ISR.

#### **SECTION 8.4 Third Parties**

TPS shall have no liability to third parties, including without limitation for theft, vandalism, assault or any other misconduct of any person that occurs in the proximity of a Terminal or at a Location, arising out of the performance or non-performance of TPS Services or the use or operation of the Terminals, and ISR shall indemnify and hold TPS harmless from any and all liability or Expenses or claims of third parties relating thereto.

### **ARTICLE IX – TERM AND TERMINATION OF THIS AGREEMENT AND SUSPENSION OF TERMINALS**

#### **SECTION 9.1 Term and Termination of Agreement Without Cause**

(a) The term of this Agreement (the "Term") shall commence on the date hereof and shall continue for a period of thirty (30) days and shall automatically renew thereafter for successive thirty (30) day terms.

(b) This Agreement may be terminated without cause by either Party giving the other at least thirty (30) days notice of its intent to terminate this Agreement.

#### **SECTION 9.2 Termination of Agreement For Cause or Suspension of Terminals**

(a) Either TPS or ISR shall have the right to immediately terminate this Agreement by giving the other Party (the "Breaching Party") notice following the occurrence of one or more of the following events (an "Event of Default"): (i) Failure by the Breaching Party to observe or perform, in any material respect, the Breaching Party's obligations to the other Party (the "Terminating Party"), so long as the failure is not due to the actions or failure to act of the Terminating Party; (ii) In the event any representation, warranty, statement or certificate furnished to the Terminating Party by the Breaching Party in connection with or arising out of this Agreement is materially adverse to the Terminating Party and intentionally untrue as of the date made or delivered; (iii) The Breaching Party (A) voluntarily commencing any proceeding or filing any petition seeking relief under Title 11 of the United States Code or any other Federal, state or foreign bankruptcy, insolvency, liquidation or similar law, (B) applying for or consenting to the appointment of a receiver, trustee, custodian, sequestrator or similar official for such party or for a substantial part of its property or assets, (C) making a general assignment for the benefit of creditors, or (D) taking corporate action for the purpose of effecting any of the foregoing; (iv) The commencement of an involuntary proceeding or the filing of an involuntary proceeding or the filing of an involuntary petition in a court of competent jurisdiction seeking (A) relief in respect of the Breaching Party, or of a substantial part of the Breaching Party's property or assets under Title 11 of the United States Code or any other Federal, state or foreign bankruptcy, insolvency, receivership or similar law, (B) the appointment of a receiver, trustee, custodian, sequestrator or similar office for the Breaching Party or for a substantial part of the Breaching Party's property or assets, or (C) the winding up or liquidation, of the Breaching Party, if such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall continue unstayed and in effect for sixty (60) days; (v) Upon any change to or enactment of or change in interpretation or enforcement of any law or regulation which would have a material adverse effect upon the Breaching Party's ability to perform its obligations or the Breaching Party's costs/revenues with respect to this Agreement; (vi) Violation by the Breaching Party of any federal or applicable state law relating to the performance of this Agreement; (vii) Bank or Network requests termination for any reason; or (viii) Bank's Membership is involuntarily terminated.

(b) TPS may at any time suspend or terminate Processing Services with respect to any one or more of Terminals if (i) TPS, in its sole discretion, so elects when an Event of Default has occurred, (ii) any Terminal has not been properly maintained, is defective, does not dispense cash correctly or does not meet the requirements of any Rules, (c) Bank withdraws or terminates sponsorship of TPS, (d) Bank or Network requests suspension for any reason, (e) any Terminal is not audited on a regular basis by ISR, or (f) any Terminal is moved from the Location set forth on the applicable Terminal Set-Up Form.

(c) It is the policy of TPS not to provide TPS Services for any Terminal or Location which has been submitted to TPS for TPS Services by ISR but is currently running under a different Independent Sales Representative Agreement between TPS and another ISR (the "Other ISR"). If TPS inadvertently accepts such a Terminal or Location, TPS may immediately suspend or terminate such Terminal or Location, in TPS's sole and absolute discretion, upon notice by the Other ISR.

### **ARTICLE X – CONFIDENTIALITY**

#### **SECTION 10.1 Confidential Information**

The term "Confidential Information" shall mean this Agreement and all proprietary information, data, trade secrets, business information and other information of any kind whatsoever which (a) a party ("Discloser") discloses, in writing, orally or visually, to the other Party ("Recipient") or to which Recipient obtains access in connection with the negotiation and performance of this Agreement, and which (b) relates to (i) the Discloser, (ii) in the case of ISR, TPS, Bank and their customers and or associates, or (iii) consumers who have made confidential or proprietary information available to ISR. The definition of Confidential Information shall include Customer Information as described below.

#### **SECTION 10.2 Disclosure**

Each of the Parties, as Recipient, hereby agrees on behalf of itself and its Principals, employees, officers, affiliates and subcontractors that Confidential Information will not be disclosed or made available to any person for any reason whatsoever, other than on a "need to know basis" and then only to: (a) its Principals, employees and officers; (b)

subcontractors and other third-parties specifically permitted under this Agreement, provided that all such persons are subject to a confidentiality agreement which shall be no less restrictive than the provisions of this Article; (c) independent contractors, agents, and consultants hired or engaged by Recipient, provided that all such persons are subject to a confidentiality agreement which shall be no less restrictive than the provisions of this Article; and (d) as required by law or as otherwise permitted by this Agreement, either during the term of this Agreement or after the termination of this Agreement. Prior to any disclosure of Confidential Information as required by law, the Recipient shall (i) notify the Discloser of any, actual or threatened legal compulsion of disclosure, and any actual legal obligation of disclosure immediately upon becoming so obligated, and (ii) cooperate with the Discloser's reasonable, lawful efforts to resist, limit or delay disclosure. Nothing in this Section shall require any notice or other action by TPS or Bank in connection with requests or demands for Confidential Information from Regulatory Authorities, bank examiners or for compliance purposes. With the exception of the obligations related to Customer Information, the obligations of confidentiality in this Article shall not apply to any information which a Party rightfully has in its possession when disclosed to it by the other Party, information which a Party independently develops, information which is or becomes known to the public other than by breach of this Article or information rightfully received by a Party from a third party without the obligation of confidentiality.

#### **ARTICLE XI – GUARANTY**

All Principals of ISR (the “Guarantors”) hereby personally and unconditionally guaranty the performance of any and all terms and conditions of this Agreement including any addendum or attachments thereto by ISR and payment of all sums due and owing to TPS by ISR including any fees, costs and expenses including any attorney fees and all costs of collection associated with enforcement of the terms of this Agreement for the full term of this Agreement, any subsequent renewals and as otherwise provided for in Section 12.8, Survivals. The foregoing guaranty shall continue until all obligations of ISR are fully satisfied. The Guarantors agree that this guaranty is not affected by any modification (including assignment) of this Agreement and TPS need not institute legal action or exhaust its remedies against ISR in order to proceed against the Guarantors. This is a continuing guarantee and shall bind the Guarantor’s heirs, administrators, representatives and assigns and may be enforced by or for the benefit of any successor or assignee of TPS Guarantor hereby authorizes TPS or any of our affiliates or assigns to obtain credit bureau reports regarding Guarantor’s personal credit, and make other credit inquiries that TPS determines are necessary. Presentment, notice of dishonor and protest are waived.

#### **ARTICLE XII - GENERAL PROVISIONS**

##### **SECTION 12.1 Indemnification**

(a) ISR agrees to indemnify and hold harmless TPS and Bank, and their respective parents, subsidiaries or affiliates, and their respective officers, directors, employees and permitted assigns, as such, against any losses or Expenses arising from any legal action, claim, demand or proceedings brought against any of them as a result of any misrepresentation, breach of warranty or failure to fulfill a covenant of this Agreement on the part of ISR, any act or omission of ISR or its providers which violates any law, By-laws or Governmental Requirements, or any claim relating to obligations owed to or by ISR or any third party retained by it; provided, that this provision shall not apply if such claim arises out of (i) an act of fraud, embezzlement or criminal activity by TPS or Bank, (ii) negligence, willful misconduct or bad faith by TPS or Bank, or (iii) the failure of TPS to comply with, or to perform its obligations under this Agreement. ISR agrees to obtain all insurance coverage as may be dictated by prudent business practices in connection with the operation of the Terminals. All insurance coverage obtained herein by ISR shall name TPS and Bank as additionally insured. (b) If any claim or demand is asserted against TPS and/or Bank (individually or collectively, the “Indemnified Party”) by any person who is not a party to this Agreement in respect of which the Indemnified Party may be entitled to indemnification under the provisions of subsections (a) or (b) above, notice of such claim or demand shall promptly be given to any Party or Parties (individually or collectively, the “Indemnifying Party”) from whom indemnification may be sought. The Indemnifying Party shall have the right, by notifying the Indemnified Party within ten (10) days of its receipt of the notice of the claim or demand, to assume the entire control (subject to the right of the Indemnified Party to Participate at the Indemnified Party’s expense and with counsel of the Indemnified Party’s choice) of the defense, compromise or settlement of the matter, including, at the Indemnifying Party’s expense, employment of counsel of the Indemnifying Party’s choice. If the Indemnifying Party gives notice to any Indemnified Party that the Indemnifying Party will assume control of the defense, compromise or settlement of the matter the Indemnifying Party will be deemed to have waived all defenses to the claims for indemnification by the Indemnified Party with respect to that matter. Any damages to the assets or business of the Indemnified Party caused by a failure of the Indemnifying Party to defend, compromise or settle a claim or demand in a reasonable and expeditious manner, after the indemnifying Party has given notice that it will assume control of the defense, compromise or settlement of the matter, shall be included in the damages for which the Indemnifying Party shall be obligated to indemnify the Indemnified Party.

##### **SECTION 12.2 Disclosure**

Each Party shall promptly notify the other of any action, suit, proceeding, facts and circumstances, and the threat of reasonable prospect of same, which might give rise to any indemnification hereunder or which might materially and adversely affect either Party’s ability to perform this Agreement.

### **SECTION 12.3 Relationship of Parties**

The authority of ISR shall extend no further than is expressly stated in this Agreement. Nothing in this Agreement or in the contractual relationship being established and developed hereunder shall be deemed, nor shall it cause, TPS and ISR to be treated as employer and employee, principal and agent, partners, joint venturers, or otherwise as joint associates for profit.

### **SECTION 12.4 Regulatory Examinations and Financial Information**

ISR agrees to submit to any examination which may be required by any Regulatory Authority or Network with audit and examination authority over TPS and/or Bank, to the fullest extent of such Regulatory Authority or Network. ISR shall also provide to TPS and/or Bank any information, which may be required by any Regulatory Authority or Network in connection with their audit or review of TPS and/or Bank or this Agreement and shall reasonably cooperate with such Regulatory Authority or Network in connection with any audit or review of TPS and/or Bank. ISR shall also provide such other information as TPS, Bank, Regulatory Authorities, or the Network may from time to time reasonably request with respect to the financial condition of ISR and such other information as TPS and Bank may from time to time reasonably request with respect to third parties contracted with ISR.

### **SECTION 12.5 Governing Law and Forum Selection**

This Agreement shall be governed by the laws of the State of New York applicable to contracts made and to be performed wholly within such State, without regard to principles of conflicts of laws. Except as may be otherwise required in Section 12.7, ISR hereby irrevocably and unconditionally consents and submits to the in person jurisdiction of any court in New York State having jurisdiction over matters relating to this Agreement. Such courts (or any applicable arbitrator under Section 12.7(c)), shall be the exclusive forum for the resolution of any and all disputes between the Parties, unless otherwise mutually agreed by the parties. ISR agrees that service of process in any action or proceeding hereunder may be made upon ISR by certified mail, return receipt requested, to the address for notice set forth herein. ISR irrevocably waives any objection it may have to the venue of any action, suit or proceeding brought in such courts or to the convenience of the forum, and waives the right to proceed in any other jurisdiction. If it becomes necessary for any party to commence any proceeding or action to enforce the provisions of this Agreement, either seeking injunctive relief or damages, the prevailing Party shall also be entitled to recover all reasonable attorneys' fees, court costs and other Expenses incurred in connection therewith.

### **SECTION 12.6 Disputes**

(a) Duty to Notify. In the event of any dispute, controversy, or claim arising out of or relating to this Agreement or the construction, interpretation, performance, breach, termination, enforceability or validity thereof (hereinafter, a "Dispute"), the Party raising such Dispute shall notify the other promptly and no later than thirty (30) days from the date of its discovery of the Dispute.

(b) Cooperation to Resolve Disputes. Prior to the initiation of any suit or action by either Party and for up to thirty (30) days following the notice of Dispute required by Section 12.6(a) above (or such additional time as the Parties may mutually agree), the Parties shall make reasonable attempts to cooperate and attempt in good faith to resolve any Dispute promptly by negotiating between persons who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration and performance of the provisions or obligations of this Agreement that are the subject of the Dispute.

(c) Confidentiality of Proceedings. The proceedings contemplated by this Section 12 shall be as confidential and private as permitted by law. To that end, the Parties shall not disclose the existence, content or results of any proceedings conducted in accordance with this Section 12, and materials submitted in connection with such proceedings shall not be admissible in any other proceeding, provided, however, that this confidentiality provision shall not prevent a petition to vacate or enforce an arbitral award, and shall not bar disclosures required by any laws or regulations.

### **SECTION 12.7 Severability**

In the event that any part of this Agreement is deemed by a court, Regulatory Authority, Network, or other public or private tribunal of competent jurisdiction to be invalid or unenforceable, such provision shall be deemed to have been omitted from this Agreement. The remainder of this Agreement shall remain in full force and effect, and shall be modified to any extent necessary to give such force and effect to the remaining provisions, but only to such extent.

### **SECTION 12.8 Survival**

All representations and warranties herein shall survive any termination or expiration of this Agreement. In addition, Article V, Article VII, Article VIII, Article X, Articles XI and Article XII shall survive the termination or expiration of this Agreement.

### **SECTION 12.9 Successors and Third Parties**

Except as limited by Section 12.10, this Agreement and the rights and obligations hereunder shall bind, and inure to the benefit of the Parties and their successors and permitted assigns.

### **SECTION 12.10 Assignments**

ISR may not assign any of its rights under this Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law or any other manner, without TPS's prior consent. For the purposes of this provision, a

change of control is deemed an assignment of rights. Any assignment in violation of this provision is void. No assignment of ISR's rights under this Agreement shall be binding on TPS until TPS has consented to the same.

**SECTION 12.11 Notices**

All notices and other documents required or permitted under this Agreement or related to this Agreement shall be deemed sufficient if in writing and delivered personally, or sent by certified mail, return receipt requested, to TPS or ISR, as the case may be, at the mailing set forth below, except that TPS or ISR may change such mailing by giving the other Party notice of such change of address and such changed address shall be used for mailed notices from and after that date or dates so changed. All notices shall be effective on the date of personal delivery, or in the case of mailing, on the date set forth on the receipt of certified mail. In computing any time under this Agreement, the date of the act, event or default from which the designated period of time begins to run shall not be included, and the last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday in New York, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday in New York.

TPS to: Total Payment Solutions, Inc.  
1 Maxwell  
East Rockaway, NY 11518  
Phone Number: (866) 295-0009  
Local Phone: (516) 279-6060  
Facsimile Number: (866) 608-6265

ISR to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Facsimile Number: \_\_\_\_\_

**SECTION 12.12 Waivers**

Neither Party shall be deemed to have waived any of its rights, power, or remedies hereunder except in an instrument signed by an authorized agent or representative of the Party to be charged. Either Party may, by an instrument, waive compliance by the other Party with any term or provision of this Agreement on the part of the other Party to be performed or complied with. The waiver by either Party of a breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach.

**SECTION 12.13 Entire Agreement; Amendments**

This Agreement constitutes the entire Agreement between the Parties and supersedes all prior agreements, understandings, and arrangements, oral or written, between the Parties with respect to the subject matter hereof. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by the Party against whom enforcement of any such modification or amendment is sought. TPS, HOWEVER, MAY, UPON THIRTY (30) DAYS NOTICE, CHANGE ANY FEES OR SERVICES PROVIDED UNDER THIS AGREEMENT.

**SECTION 12.14 Counterparts and Facsimile**

This Agreement may be executed and delivered by the Parties in counterpart, each of which shall be deemed an original and both of which together shall constitute one and the same instrument. A facsimile copy of this Agreement, or any document required pursuant to this Agreement, containing the signature of both parties, or either party, shall be treated as the original.

**SECTION 12.15 Limitation of Liability**

Neither ISR, TPS nor any of their respective Principals, directors, officers, employees, agents, representatives or controlling persons shall be liable for any action taken or for refraining from taking any action in good faith pursuant to this Agreement; provided, however, that this provision shall not protect ISR or TPS against any breach of their respective representations, warranties or covenant made herein, or against any specific liability imposed pursuant hereto, or against any liability which would otherwise be imposed by reason of willful misfeasance, bad faith or gross negligence in the performance of duties or by reason of reckless disregard of obligations or duties hereunder. ISR and TPS may rely in good faith on any document, electronic file or other electronic or telephonic communication of any kind, which appears bona fide, submitted by any appropriate person respecting any matters arising hereunder.

**IN WITNESS WHEREOF**, this Agreement is executed by the Parties' authorized officers or representatives and shall be effective as of the date first above written.

**ISR**  
Signature: X \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Total Payment Solutions, Inc.**  
Signature: \_\_\_\_\_  
Name: \_\_\_\_\_

**Personal Guarantee (MUST BE SIGNED)**

**Guarantor**  
Signature: X \_\_\_\_\_  
Print Name (no title): \_\_\_\_\_

# Exhibit 1

## ATM Processing Fees

### Set up fee:

Underwriting, Approval, and Issuance of Terminal ID Number **NO CHARGE**

### Monthly:

ATM Processing Services and Technical Support **NO CHARGE**

Standard Visa II protocol-based dial-up and IP based ATMs  
(Triton, Tranax (Hantle), Hyosung, Diebold CSP, Tidel, Cross,  
Greenlink, etc.)

### Transaction Processing:

100% of Surcharge Income

### Equipment and Terminal Sales:

100% Above Equipment and Terminal Costs

### Internet Based Reports:

[www.atmreports.com](http://www.atmreports.com) **NO CHARGE**

### Other:

Terminal Sponsorship, Technical Support, Settlement,  
and Toll Free Telecom are included in the above fees.

All conversion costs are the responsibility of ISR

Agreed to by:

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

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