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# INDEPENDENT CONTRACTOR AGREEMENT

This IC Agreement ("Agreement") is made effective as of the date set forth below by and between Valued Merchant Services, P.O. Box 3911, Idaho Falls, Idaho 83401 ("VMS") and the entity and/or individual whose name and address are set forth below on the signature page for this Agreement ("IC").

WHEREAS, VMS is in the business of marketing credit card, debit card, gift card, loyalty card, leasing, ACH, POS equipment, software and related good and services (the "Services") and VMS wishes to retain IC to create qualified leads and pre-set appointments for the VMS independent contractor sales team to promote certain of the Services, and IC wishes to create qualified leads and pre-set appointments for the VMS independent contractor sales team to promote certain of the Services, all pursuant to the terms of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## AGREEMENT

### I. Marketing

1.01. Appointment. VMS hereby appoints IC as a remote lead generator subject to the terms of this Agreement. VMS grants IC a non-transferable right to create qualified leads and pre-set appointments for the VMS independent contractor sales team to promote, market and solicit orders for the Services from businesses wishing to utilize the Services ("Merchants"). IC shall solicit merchants that meet VMS's criteria as set forth in this Agreement and its general policies and procedures. IC will obtain all information and documentation reasonably required by VMS. IC shall promptly provide VMS with the current address of each of its offices and the offices of its agents.

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

1.03. Services Agreement. Merchants will be presented by VMS or IC with an online or written application and/or agreement that will govern the relationship between the Merchants, VMS and its vendors in regard to the Services ("Merchant Agreement"). IC shall use only that form of Merchant Agreement that has been approved and supplied by VMS. IC shall not make any changes or modifications to any Merchant Agreement without the prior written consent of VMS. VMS reserves the right to amend or change in any manner the agreements between Merchants, VMS, and its vendors to be used by IC, including changes to any and all fees due from Merchants. IC acknowledges and agrees that it will have no equity interest, ownership, or other rights in any Merchant Agreement or in the Services provided. Further, IC acknowledges and agrees that all Merchant Agreements, Merchant records, documentation, and the information contained therein are the property of and are owned by the VMS and/or its vendors.

1.04. Acceptable Merchants. IC shall market the Services only to bona fide and lawful businesses and in accordance with VMS's and its vendors' policies, procedures and standards and this Agreement. Further, IC shall promptly notify VMS in writing of any adverse information that IC receives relating to a Merchant.

1.05. Independent Contractors. The relationship of VMS and IC is that of independent contractors. Neither IC nor IC's employees, consultants, contractors or agents are agents, employees, partners or joint ventures of VMS, nor do they have any authority to bind VMS by contract or otherwise to any obligation. They will not represent to the contrary, either expressly, implicitly, by appearance or otherwise.

1.06. Compliance With Laws/Marketing Materials. IC agrees to comply with the rules and regulations of Visa, MasterCard, Discover, American Express and all other such associations, as they may exist from time to time, and the rules and regulations of any debit network or federal or state department or agency having jurisdiction over the activities of VMS or IC ("Rules"). In the event of any inconsistency between any provision of this Agreement and the Rules, the Rules shall govern. IC hereby agrees to accept and abide by any amendments and revisions to the Rules. IC will comply with all applicable laws and regulations in performing its duties hereunder. IC shall use only those marketing and promotional materials that comply with the Rules and that have been approved by VMS.

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

1.08. Branding. IC must market all Services under one of VMS's brand names. IC shall answer all phones and present business cards, letterhead, brochures, marketing materials and especially its website with one of the names owned by VMS. IC shall not alter any Merchant Agreement or merchant application, including, but not limited to, by removing any logos or identifying information.

1.09. Use of the Marks. IC may use the trademarks and service marks of VMS, Visa, MasterCard, Discover, American Express and all other such associations ("the "Marks") only in promoting the Services in conformance with the Rules subject to the sole discretion and approval of VMS.

### II. Residuals

2.01. Residuals. During any period of time in which this Agreement remains in full force and effect, IC will be paid as set forth in the attached Schedule A. VMS may only amend Schedule A to reflect any increases or decreases in the direct costs that it is charged by its vendors, Visa, MasterCard and other similar entities or increases associated with compliance with new Rules or laws. IC shall be liable for merchant chargebacks only



to the extent that any such merchant chargebacks are charged by VMS's vendors or are either directly or indirectly related to the fraudulent or grossly negligent conduct of IC or any of its employees, agents or representatives. IC authorizes VMS to deposit funds directly into IC's authorized VMS deposit account, and VMS will automatically deduct all amounts for IC's obligations under this Agreement. VMS shall only have to pay IC the amounts due to it under this Agreement if VMS is paid by its vendors. IC shall have sixty (60) days from the receipt of any compensation or residuals to notify VMS of any errors in payment of compensation or residuals, failing which IC shall be deemed to have accepted without question such residual or compensation payment and may not in the future contest the amount thereof. VMS shall have the right of offset against any funds credited to or owing from VMS to IC for any obligation of IC, or its affiliates, to VMS. IC shall pay, indemnify and hold VMS harmless from any and all taxes for which IC may be liable in relation to its performance hereunder.

### **III. Term**

3.01. Term and Termination. The initial term of this Agreement shall one (1) year, commencing on the date set out below. This Agreement shall then be automatically renewed for additional terms of one (1) year each unless either party notifies the other no later than thirty (30) days prior to the end of the current term that it does not wish to renew. Either party shall have the right to terminate this Agreement at any time if:

(a) the other party breaches any of the provisions of this Agreement and fails to cure such breach within thirty (30) days of its receipt of written notice; or

(b) the other party (i) fails to pay its debts or perform its obligations in the ordinary course of business as they mature; (ii) becomes the subject of any voluntary or involuntary proceeding in bankruptcy, liquidation, dissolution, receivership, attachment or assignment or composition for the benefit of creditors.

3.03. Failure to Comply with Rules. VMS may immediately terminate this Agreement, without a cure period, for any material default knowingly or intentionally caused by IC with respect to its obligations to comply with VMS policies or Rules if VMS reasonably determines that the default is of such a serious nature that an opportunity to cure such default is not practical or warranted.

3.04. Regulatory Demand. If Visa, MasterCard, NACHA or any federal, state or other type of regulatory agency having jurisdiction over the subject matter of this Agreement makes a demand that either VMS or any of its vendors discontinue or substantially modify any of the Services, either party may terminate this Agreement upon written notice to the other, without penalty.

3.05. Termination by VMS. VMS may terminate this Agreement for any reason, or no reason at all, by providing IC with seven (7) days notice.

3.06. Compensation to IC Following Termination. VMS shall pay compensation to IC following termination hereof except a termination pursuant to Sections 4.02, 4.03, 4.0 or 4.06 or (or a breach of such provisions occurs after termination), where compensation to IC shall terminate. Compensation to IC shall also terminate once IC's monthly payment falls below ten dollars (\$10.00).

### **IV. Confidentiality and Related Obligations**

4.01. Confidential Information. Each party acknowledges that it may directly or indirectly disclose Confidential Information to the other party in the course of negotiation of and performance of this Agreement. All such Confidential Information disclosed hereunder shall remain the sole property of the disclosing party (or other third party), and the receiving party shall have no interest in, or rights with respect thereto, except as set forth herein. Each party agrees to treat such Confidential Information with the same degree of care and security as it treats its most confidential information. Each party may disclose such Confidential Information to employees and agents who require such knowledge to perform services under this Agreement. Except as otherwise contemplated by this Agreement, neither party shall disclose the Confidential Information of the other party to any third party without the prior written consent of the disclosing party, and the duty of confidentiality created by this section shall survive any termination of the Agreement. This confidentiality provision shall survive termination of this Agreement.

For the purposes of this Agreement, "Confidential Information" means all proprietary, secret or confidential information or data relating to either party and its affiliates, operations, employees, products or services, clients, customers or potential customers. Confidential Information shall include customer lists, cardholder account numbers, pricing information, computer access codes, instruction and/or procedural manuals, 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.

4.02. Indemnification. Each party agrees to indemnify, defend, and hold harmless the other party, its employees, members, directors, managers, officers or agents from and against any loss, liability, damage, penalty or expense (including attorneys' fees, expert witness fees and cost of defense) they may suffer or incur as a result of (i) any failure by the party or any employee, agent or affiliate of the party to comply with the terms of this Agreement; (ii) any warranty or representation made by the party being false or misleading; (iii) any representation or warranty made by the party or any employee or agent of the party to any third person other than as specifically authorized by this Agreement, (iv) the manner or method in which the party performs its services pursuant to this Agreement, (v) negligence of the party or its subcontractors, agents or employees, or (vi) any alleged or actual violations by the party or its subcontractors, employees or agents of any governmental laws, regulations or rules.

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

4.04. Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO THIS



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

4.05. IC represents and warrants to VMS as follows:

(a) IC has the full power and authority to execute, deliver and perform this Agreement. This Agreement is valid, binding and enforceable against IC in accordance with its terms and no provision requiring IC's performance is in conflict with IC's obligations under any charter or any other agreement (of whatever form or subject) to which IC is a party or by which it is bound.

(b) If other than a sole proprietorship, IC is duly organized, authorized and in good standing under the laws of the state of its organization and is duly authorized to do business in all other states in which IC's business make such authorization necessary or required.

(c) Except as otherwise disclosed in writing by IC to VMS on or before the effectiveness of this Agreement, neither IC nor any principal has been subject to any (i) criminal conviction (excluding traffic misdemeanors or other petty offenses); (ii) bankruptcy filings; (iii) Internal Revenue Service liens; (iv) federal or state regulatory administrative or enforcement proceedings; or (v) restraining order, decree, injunction or judgment in any proceeding or lawsuit alleging fraud or deceptive practices.

4.06. Data Security Compliance. IC agrees to comply with privacy and security requirements under the Payment Card Industry Data Security Standard ("Association Requirements") with regards to IC's use, access, and storage of certain credit card non-public personal information ("Cardholder Information") on behalf of VMS. Visa, MasterCard, Discover, American Express, any ATM or Debit Networks, and the other financial service card organizations shall be collectively known herein as "Associations." IC shall comply with its obligations under any applicable state or federal law or regulations as may be in effect or as may be enacted, adopted or determined regarding the confidentiality, use, and disclosure of Cardholder Information

4.07. Non-Solicitation of Merchants. Without VMS's prior written consent IC shall not cause or permit any of their employees, agents, principals, affiliates, subsidiaries or any other person or entity (i) to solicit or provide services that compete with the Services to any Merchant that has been accepted by VMS; (ii) to solicit or otherwise cause any Merchant that has been accepted by VMS or its vendors to terminate its participation in any of the Services; or (iii) to solicit or market services to any Merchant that is already directly or indirectly provided any of the Services by VMS, whether or not such are provided under the terms of this Agreement. This section shall apply during the term of this Agreement and for Five (5) years after any termination, cancellation or expiration of this Agreement. IC will remain responsible for resulting damages from such prohibited solicitation.

4.08. Non-Solicitation. (a) During the period that this Agreement is in effect and for the Five (5) year period immediately following termination of this Agreement, IC shall not directly or indirectly through another entity (i) induce or attempt to induce any employee of, or consultant to, VMS or its subsidiaries to leave the employ of, or consultancy to, VMS or its subsidiaries, or in any way interfere with the relationship between VMS or its subsidiaries and any employee or consultant thereof, (ii) hire any person who was an employee of, or consultant to, VMS or its subsidiaries at any time during the twelve-month period immediately prior to the date on which such hiring would take place without the written consent of VMS (it being conclusively presumed by the parties so as to avoid any disputes under this section that any such hiring within such twelve-month period is in violation of clause (i) above); (iii) call on, solicit or service any customer, referral partner, affiliate, agent, supplier, licensee, licensor, consultant, contractor or other business relation of VMS or its respective subsidiaries in order to induce or attempt to induce such person to cease doing business with VMS or its subsidiaries, or in any way interfere with the relationship between any such customer, referral partner, affiliate, agent, supplier, licensee, licensor, consultant, contractor or other business relation and VMS or its subsidiaries (including, without limitation, making any negative statements or communications about VMS or its subsidiaries); or (iv) call on, solicit, or take away or attempt to call on, solicit, or take away any of VMS's customers, referral partners, affiliates, agents and vendors on whom IC called or with whom IC became acquainted during its contractual relationship with VMS, either on its behalf or that of other person, firm, or corporation.

(b) If, at the time of enforcement of the covenants contained in this section above (the "Protective Covenants"), a court shall hold that the duration, scope or area restrictions stated herein are unreasonable under circumstances then existing, the parties hereto agree that the maximum duration, scope or area reasonable under such circumstances shall be substituted for the stated duration, scope or area and that the court shall be allowed to revise the Protective Covenants to cover the maximum duration, scope and area permitted by law. IC agrees that the Protective Covenants are reasonable in terms of duration, scope and area restrictions and are necessary to protect the goodwill of VMS's businesses and agrees not to challenge the validity or enforceability of the Protective Covenants.

## **V. General**

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

5.02. Assignment. Neither party shall assign, delegate, subcontract, license, franchise, or in any manner attempt to extend to any third party any right or obligation under this Agreement except as otherwise permitted herein without the prior written consent of the other party; provided, however, VMS may assign this Agreement and its rights hereunder on notice to IC. IC seeks to sell its right to compensation to a third party, it shall provide VMS with written notice of the material terms of the third party offer, and VMS shall have thirty (30) days within which to notify IC if it will match said third party offer. If VMS elects to match the third party offer, IC shall sell its rights to compensation to VMS. In the event VMS does not elect to exercise this right of first refusal, IC may sell IC's compensation to the third party offeror on the same terms and conditions as set forth in the written notice to VMS. Upon any such assignment, IC shall remain bound by the non-solicitation and confidentiality provisions hereof.



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

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

5.05. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument. The signatures to this Agreement may be evidenced by scan or fax copies reflecting the party's signature hereto.

5.06. Entire Agreement; Binding Effect. This Agreement, including all schedules, exhibits and attachments thereto, sets forth the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein, and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, partner, employee or representative of any party hereto. This Agreement shall be binding upon and shall inure only to the benefit of the parties hereto and their respective successors and assigns. There shall be no third party beneficiaries hereto.

5.07. Dispute Resolution and Governing Law. All disputes arising under or in connection with the Agreement will be submitted to binding arbitration in Idaho pursuant to the Commercial Arbitration Rules of the American Arbitration Association ("AAA") with a single arbitrator who is a practicing business law attorney licensed in the State of Idaho. This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho (irrespective of its choice of law principles). The parties hereby agree that any suit to enforce any provision of this Agreement or arising out of or based upon this Agreement or the business relationship between the parties hereto shall be brought in federal or state court in Idaho. Each party hereby agrees that such courts shall have exclusive personal jurisdiction and venue with respect to such party, and each party hereby submits to the exclusive personal jurisdiction and venue of such courts.

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

5.09. Guaranty. IC and the principal(s) of IC (collectively, "Guarantors") hereby jointly and severally guarantee indefeasible payment and performance of all obligations (the "Obligations") of IC and principals under this Agreement, as hereafter amended. Guarantors' obligations under this section are independent of IC's and principals' obligations, and a separate action may be brought against Guarantors, whether or not IC or principals be joined in such action.

5.10. Survival. The following Sections shall survive termination of this Agreement: III, IV and V.

IN WITNESS THEREOF, this Agreement has been duly executed by the parties hereto, effective as of the date and year first below written.



## ***Exhibit A - Commissions***

<u>Commission</u> <u>Per Qualified Appointment</u>  (Paid Weekly on Friday)	1 – 10 Qualified Leads Per Month = \$25.00 each  11+ Qualified Leads Per Month = \$50.00 each  *An additional \$250 will be paid with the 11th qualified lead submitted per month	Leads are qualified when the solicited business owner provides needs analysis data and current credit card processing statement to VMS for analysis
<u>Commission</u> <u>Per Activated Account</u>  (Paid Weekly on Friday)	\$50 - \$350 Commission is based on 4.5x multiple of monthly net profit projected	Sales are considered activated after first 2 batches of customer transactions
<u>Monthly Residual Income</u>	10% of All Net Revenue Monthly	Residual Income is paid monthly on or around the 28 <sup>th</sup> of the month.