



## ISO AGREEMENT

### Independent Sales Organization Agreement

This Independent Sales Organization Agreement (the “**Agreement**”) is made and effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by and between The Merchant Marketplace Corp., a New York company, with offices at 360 RXR Plaza Uniondale, NY 11556 (**The Merchant Marketplace**), and \_\_\_\_\_, a \_\_\_\_\_ company, with offices at \_\_\_\_\_ (“**ISO**”).

**WHEREAS**, The Merchant Marketplace, has a program whereby The Merchant Marketplace Corp. may purchase from a business (“**Seller**”) a specified amount of Seller’s right, title, and interest to receive payments from Seller’s customers or third parties in the form of cash, check, credit card, electronic fund transfer or other forms of payment which arise from sales of goods or services by Seller in the ordinary course of Seller’s business for an amount agreed to by The Merchant Marketplace and Seller with collections occurring on a daily basis via ACH debits from Seller’s primary bank account (“**Program**”); and

**WHEREAS**, ISO wishes to market and promote the Program and refer businesses to The Merchant Marketplace that may wish to participate in the Program and assist The Merchant Marketplace with the Program’s implementation subject to the terms hereof.

**NOW, THEREFORE** in consideration of the foregoing and for other good and valuable consideration and for the representations, warranties, covenants, and agreements hereafter contained, the parties agree as follows:

- 1) **ISO’s Marketing, Promotion and Origination Obligations.** ISO shall market and promote the Program on behalf of The Merchant Marketplace, refer businesses that wish to participate in the Program to The Merchant Marketplace, and assist such interested businesses in completing and submitting to The Merchant Marketplace an application and other materials required by The Merchant Marketplace shall evaluate and, at its sole discretion, accept or deny such applications. If The Merchant Marketplace preliminarily approves a Seller’s application, ISO shall assist Seller in completing a payments rights purchase and sale agreement in a form and with terms prescribed by The Merchant Marketplace (“**Seller Agreement**”). The completed Seller Agreement and other required information and documentation shall collectively be defined as a “**Seller Packet**”. In delivering each Seller Packet to The Merchant Marketplace, ISO warrants, to the best of ISO’s knowledge, that: (i) all of the Seller background and other information obtained from Seller and any third parties that is contained within the Seller Packet is true, genuine, complete and accurate in all respects; (ii) all of the signatures on behalf of Seller and any third parties that are contained within the Seller Packet are true, complete, accurate and genuine in all respects; and (iii) the Seller Agreement included within the Seller Packet has been duly authorized, executed and delivered by Seller. ISO may deliver a Seller Packet to The Merchant Marketplace in electronic format, provided that ISO delivers the originals of such electronic copy to The Merchant Marketplace prior to the completion of processing by The Merchant Marketplace. ISO shall not enter into any contract, whether written or oral, with any other organization or entity (other than with salespersons performing services on behalf of ISO) to market or promote the Program without The Merchant Marketplace prior written consent. Each such entity approved by The Merchant Marketplace must enter into a separate written agreement with The Merchant Marketplace.
- 2) **ISO’s Use of Approved Program Materials.** ISO shall present to each potential Seller only such marketing and promotional material and Program documents, including, but not limited to, a seller application and Seller Agreement, that have been provided by The Merchant Marketplace or approved by The Merchant Marketplace in advance in writing. Under no circumstances shall ISO have any right, in the course of carrying out its obligation hereunder, to offer or present any material (printed, electronic or otherwise) to any

prospective Seller, actual Seller or any other third party that has not been supplied by The Merchant Marketplace approved in advance in writing by The Merchant Marketplace.

- 3) **Changes to Program Materials.** ISO acknowledges that The Merchant Marketplace shall have full authority to change the Program (including, without limitation, any material or agreements utilized in the Program and the Program terms) or any other product offered at any time without prior notice to or consent from ISO.
- 4) **Non-Exclusivity.** ISO shall not be the only or exclusive person marketing and promoting the Program for The Merchant Marketplace may, at its sole discretion, retain the services of other person to assist The Merchant Marketplace in marketing and promoting the Program.
- 5) **ISO Compensation.** In consideration for the services rendered by the ISO hereunder, The Merchant Marketplace agrees to pay ISO in accordance with the ISO Compensation Schedule set out in Schedule A here to ("Compensation"). The Merchant Marketplace shall compensate ISO for each Seller Agreement entered into between The Merchant Marketplace and a Seller as a direct result of the referral by ISO. The Merchant Marketplace shall compensate ISO within five (5) business days after The Merchant Marketplace pays Seller the purchase price for the purchased amount of future payment rights provided for in the Seller Agreement. ISO shall not charge a Seller any processing, application or funding fee relating to the Program. This shall not, however, limit in any way ISO's right to charge Sellers fees for products and services provided by ISO that are unrelated to The Merchant Marketplace Program.
- 6) **ISO Commission Repayment.** In the event a Merchant defaults under the Merchant Agreement within a 30-day period of the execution of the Merchant Agreement, ISO shall immediately repay The Merchant Marketplace for all commissions paid to ISO for the referral of the Merchant. ISO hereby authorizes The Merchant Marketplace to initiate an automated clearing house (ACH) transaction debiting the said commission from ISO's bank account on file. If the ACH is returned due to insufficient funds, ISO shall initiate a bank wire forth sum of the commission paid within a 48 (forty-eight) period from the time of receipt of notice from The Merchant Marketplace
- 7) **ISO Authority. The Merchant Marketplace** only shall be authorized to accept, ratify, or finalize any Seller Agreement and accept a Seller's offer to sell future payment rights. The Merchant Marketplace may, in its sole and absolute discretion, decline to accept any Seller's offer to sell future payment rights for any reason whatsoever. Under no circumstances shall ISO hold out that it has any right to accept or decline a Seller's offer to sell future payment rights nor shall ISO hold out or represent to any third party that ISO has the right to: (i) modify in any way any Seller Agreement; or (ii) bind The Merchant Marketplace legally or otherwise. No agreement made by or through ISO or its Affiliates shall be legally or otherwise binding on The Merchant Marketplace until accepted in writing by a duly authorized officer of The Merchant Marketplace. For the purposes of this Agreement, the term "Affiliate" shall mean, with respect to a specified party, any party that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with the specified party.
- 8) **ISO Expenses.** ISO shall be solely responsible for any and all expenses incurred by ISO in performance of services hereunder including, but not limited to, expenses related to any ISO employees or consultants.
- 9) **ISO Identification.** In the course of carrying out its obligations hereunder, ISO shall clearly identify itself with its own corporate name, but also disclose to all third parties that ISO is promoting the Program on behalf of The Merchant Marketplace. ISO agrees that its actions and the actions of its shareholders, Affiliates, directors, officers, employees, independent contractors, representatives, agents, principals and associates (collectively "ISO Parties") that are taken in connection with the Program shall be governed, controlled

and directed by, and shall be in full compliance with, the terms hereof and shall always and in respect of all parties and third parties be construed as actions taken by ISO subject to the terms hereof. ISO acknowledges and agrees that The Merchant Marketplace shall not be liable in any manner for any liability of ISO to any ISO Party for any reason. ISO shall be responsible to ensure that all ISO parties are adequately trained to perform any obligations they may have in furtherance of marketing and promoting the Program in accordance with all of the provisions hereof.

**10) Representations, Warranties and Covenants.** Each party hereto represents and warrants to and for the benefit of the other party that as of the date hereof and during the term hereof:

- A. It is a corporation or limited liability company organized, validly existing and in good standing under the laws of the state where its principal office is located.
- B. It has full authority and power to enter into this Agreement and to perform its obligation under this Agreement.
- C. Its performance of this Agreement will not violate any applicable law or regulation or any agreement to which it may now be bound.
- D. This Agreement represents its valid obligation and is fully enforceable against it; and
- E. It is not a party to any pending litigation that would have an impact on this Agreement and has never been fined or penalized by Visa, MasterCard, NACHA or any other association in the credit, payments, or banking industry; and

ISO covenants that during the term hereof and so long as it is bound by the non-interference provisions hereof, it shall:

- A. Comply with all Program policies and guidelines established by The Merchant Marketplace from time to time and all applicable laws that govern its duties under this Agreement.
- B. Accurately describe the Program when marketing and promoting the Program on behalf of The Merchant Marketplace, which includes, but is not limited to, not describing the Program as a loan program.
- C. Immediately inform The Merchant Marketplace of any changes that become known to ISO with respect to ISO's or any Seller's address or ownership, or business operations that has a material impact on ISO's performance of its obligations under this Agreement or Seller's performance under any Seller Agreement.
- D. Immediately inform The Merchant Marketplace of any pending or threatened litigation against ISO which relate to the Program.
- E. Immediately inform The Merchant Marketplace in the event any regulatory authority, whether or not such regulatory authority is believed to have jurisdiction, begins any investigation or makes any inquiry of ISO, or commences or threatens to commence any legal proceedings which relate to the Program;
- F. Deliver to The Merchant Marketplace all documents that The Merchant Marketplace may require as part of a Seller's application, including, without limitation: Seller application form, Seller bank and/or payment card processing statement, and any other documents required by The Merchant Marketplace guidelines, as they maybe modified from time to time.

**11) Term and Termination.** The term of this Agreement shall begin on the date appearing on the first page hereof and will continue for an initial term of one (1) year. After such initial term, this Agreement shall automatically renew for successive one (1) year terms unless terminated by either party upon ninety (90) days written notice prior to the end of the then current term. This Agreement may be terminated immediately by The Merchant Marketplace upon breach by ISO of any of its obligations herein or if, as determined by The Merchant Marketplace, ISO or any ISO Party causes a detrimental effect to the Program, The Merchant Marketplace or any of its affiliates, other programs, officers, employees, or Sellers.

**12) Non-Interference.** During the term of this Agreement and for a period of two (2) years thereafter, or after ISO stops receiving Compensation hereunder, whichever comes last, ISO and ISO Parties shall not themselves or permit any respective subsidiary, Affiliate, successor in interest, officer, employee, agent or

nominee to: (i) engage in or establish any program or service that is similar to those provided by The Merchant Marketplace; (ii) interfere, in any manner whatsoever, either directly or indirectly by any arrangement whatsoever, with The Merchant Marketplace's contractual relationship with any of its Sellers or other clients; or  
(iii) cause or attempt to cause any Seller or other The Merchant Marketplace client to terminate its relationship with The Merchant Marketplace or utilize the services of any entity other than The Merchant Marketplace.

- 13) Non-Solicitation.** ISO agrees that throughout the term of this Agreement and for two (2) years thereafter, neither ISO nor any ISO Party, nor any of their respective Affiliates shall hire any of the current officers or employees of The Merchant Marketplace or any of The Merchant Marketplace's Affiliates so long as such officer or employee remains employed or retained by The Merchant Marketplace or any of its Affiliates, without the prior written consent of The Merchant Marketplace.
- 14) Remedies.** Without limiting the foregoing, in the event of a breach of this Agreement by ISO or any ISO Party, then The Merchant Marketplace shall be entitled to apply to a court of competent Jurisdiction for an injunction to restrain such breach, without the need for bond, and The Merchant Marketplace shall have no obligation to pay any further Compensation or other payment to ISO that might otherwise come due after such breach; provided that ISO or the ISO Party does not cure the breach within ten (10) calendar days after notice thereof. Any remedies hereunder shall be in addition to any other remedies available to The Merchant Marketplace in law or in equity.
- 15) Assignment; Successors; Amendments.** ISO may not assign any right or obligation under this Agreement to any third party without prior written consent of The Merchant Marketplace Corp including an assignment by virtue of a sale of ISO's business. The Merchant Marketplace may assign its rights and obligations hereunder with notice to ISO. This Agreement shall inure to the successors and permitted assigns of the parties hereto. Except for amendments to the Program and Compensation, which may be made at the discretion of The Merchant Marketplace, this Agreement may be amended only by a written agreement executed by both parties hereto.
- 16) Confidential Information.** Each party acknowledges that it may directly or indirectly disclose "Confidential Information" as defined below to the other party during 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. "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, card member 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.
- 17) Interference with Card Processor.** After ISO has received Compensation from The Merchant Marketplace with respect to a Seller, ISO shall not cause, facilitate, or influence Seller to switch Seller's payment card processor to a bank or processing network different from any bank or processing network approved by

The Merchant Marketplace, or otherwise adversely affect in any way Seller's payment card processing or The Merchant Marketplace's collection of funds arising from the specified amount of future payment rights purchased by, The Merchant Marketplace.

**18) Notices.** Unless otherwise specified herein, any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and delivered personally or sent by internationally recognized overnight courier, registered, or certified mail (postage prepaid with return receipt requested) to the address of The Merchant Marketplace or ISO as set forth below. Such notices or other communications shall be deemed received (i) on the date delivered, if delivered personally, (ii) on the business day after being sent by an internationally recognized overnight air courier or (iii) five (5) days after being sent, if sent by first class registered mail, return receipt requested.

**If to ISO:**

Company:	
Name:	
Address:	
City: State: Zip	
Phone: Fax: Email	

**If to:**

The Merchant  
Marketplace  
360 RXR Plaza  
Uniondale, NY 11556

**19) Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without regard to its principles of conflicts of laws) whose courts shall have sole jurisdiction over disputes arising hereunder. The parties hereto agree that issues arising hereunder are too complex to be addressed by a jury and covenant to elect for a non-jury trial in the event of a trial relating hereto. Should suit 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.

**20) Whole Agreement.** 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. No amendment or modification to this Agreement, nor any waiver of any rights hereunder, shall be effective unless assented to in writing by both parties. Nothing in this Agreement, express or implied, is intended to confer or shall be deemed to confer any rights or remedies upon any persons or entities not parties to this Agreement.

**21) Relationship of Parties.** The Merchant Marketplace and ISO are independent contractors hereunder and their relationship shall not be construed as any other form of employer/employee relationship, joint venture, or partnership. The Merchant Marketplace intends no contract of employment, express or implied, with either ISO or any ISO Party; neither ISO nor any ISO Party has obtained any right to employment or compensation as an employee or any other benefits of an employee by way of this Agreement. ISO agrees that it shall be solely responsible for the purchase and maintenance of employment or worker's compensation insurance coverage related to its employees and that The Merchant Marketplace shall have no responsibility for any such liabilities.

**22) Limitation of Liability. The Merchant Marketplace** shall not be liable hereunder to ISO or any third party for any liquidated, indirect, consequential, exemplary, or incidental damages (including damages for loss of Business profits, business interruption, loss of business information, and the like) arising out of this Agreement even if the party at fault has been advised of the possibility of such damages.

**23) Indemnification.** ISO shall indemnify and hold The Merchant Marketplace, its affiliates and their respective directors, offices, agents and employees harmless from and against all claims, demands, losses, damages and judgements, including court costs and attorneys' fees, arising out of or based upon any breach by ISO of any representation, warranty, certification, covenant, obligation or other agreement set forth in this Agreement as well as for any actual or alleged negligence or malfeasance acts on part of ISO, its employees or its agents.

**24) Severability.** If any provision hereof is for any reason determined to be invalid, such provision shall be deemed modified so as to be enforceable to the maximum extent permitted by law consistent with the intent of the parties as herein expressed, and such invalidity shall not affect the remaining provisions of this Agreement, which shall continue in full force and effect.

**25) Separate Counterparts.** This Agreement may be executed in separate counterparts which shall collectively and separately be considered one and the same Agreement.

**IN WITNESS WHEREOF,** THE PARTIES HERETO HAVE CAUSED THIS Agreement to be executed as of the date first written above. By signing below, ISO agrees this Agreement and the ISO Compensation Schedule attached at **Schedule A** hereto:

By: The Merchant		By ISO:	
Print Name:		Print Name:	
Title:		Title:	
Date:		Date:	

**Schedule A**

**2022 ISO Compensation**

ISO Compensation will be anywhere between 1-15 points depending on the deal and the maximum up sell. Points on any given deal will be determined by the buy rate and the ISO's discretion.