

**SMALL MERCHANT SERVICES, INC.  
ISO REFERRAL AGREEMENT**

Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2004, between Small Merchant Services, Inc. ("SMS"), 214 Commercial Street, Malden, Massachusetts, and \_\_\_\_\_ ("ISO").

**WHEREAS**, SMS is in the business of providing online credit card processing services for retail and online businesses through partnered processing services ("Processors"); and,

**WHEREAS**, SMS is desirous of obtaining new online merchant accounts ("OMA's") as an ongoing part of SMS' development plan; and,

**WHEREAS**, the ISO, having been fully satisfied as to SMS care, skill and business ethics, may refer new OMA's to SMS for which SMS agrees to provide certain monetary consideration;

**NOW THEREFORE**, based upon the mutual covenants contained herein, the parties agree as follows:

1. **Initial Qualifying Conditions for OMA's**

The ISO acknowledges that, subject to the provisions of Paragraph 3, which sets out the conditions describing the criteria for OMA's remaining qualified), in order to receive initial and residual compensation (as said terms are further defined herein), OMA's must meet the following conditions:

- a. The OMA written application, must be completed by the Merchant, (which term shall include any merchant or business whether engaged in the sale of goods or services).
- b. The application must be submitted on the Small Merchant application form only, and without any changes to the pre-printed provisions, unless same have been previously approved by SMS;
- c. SMS must be listed as the registered sales office/agent for the merchant applicant;
- d. The OMA application must be accepted by Processor. (It is acknowledged that neither this agreement, nor any portion thereof in any way or manner binds or purports to bind Processor to any obligations whatsoever and Processor may accept or reject applicants in its sole discretion.);

- e. The application must be submitted directly to SMS.
- f. The application shall be for online credit card processing only.

2. **Payment**

SMS shall pay the ISO a commission based on the conditions set forth in Exhibit A. The introduction of new fees and cost factors must be negotiated by both parties to bring them onto this agreement.

The commission is calculated on the basis of the net margin and shared in a certain percentage with the ISO. If the ISO has submitted an application to SMS on behalf of its' client, and has marked up the discount rate (buy rate), SMS shall pay the ISO 100% of increased margin. For instance, if the merchant has marked up the discount rate (buy rate) by 50 basis points, SMS shall pay all 50 basis points to the ISO.

For each qualifying OMA opened by SMS, the ISO will be paid this commission to the extent the OMA remains qualified and the ISO is otherwise not in material breach of this agreement, then the ISO shall receive the commission per month for each qualifying OMA for one hundred and twenty consecutive months following initial qualification (10 years). All payments are subject however, to receipt by SMS of servicing fee payments from the merchant. SMS shall have no obligation to pay the ISO for any monthly residual payment unless and until the corresponding monthly fee payment is received from the respective merchant and/or Processor.

3. **Conditions for Ongoing Qualification**

The OMA Merchant must meet the following conditions on an ongoing basis to remain a Qualified OMA for the purposes of the ISO's receipt of continuing residual payments as set out in Paragraph 2.

- a. The Merchant must remain at all times a client of SMS and remain a Processor certified merchant.
- b. The Merchant must remain a merchant in good standing, and maintain a continuously operated business without any business cessations of more than thirty (30) days, (except for seasonally operated businesses which must not cease operations during its normal and customary season for longer than fifteen (15) days).
- c. The Merchant must maintain positive processing revenue, such that, on a monthly basis, the money to be paid to the merchant shall be greater than the fees owed by the merchant for processing, or returns. Notwithstanding said requirement however, no merchant shall be disqualified for any failure to demonstrate positive processing revenue, unless same shall continue for more than two consecutive months.

- d. The Merchant must be current as to the payment of all processing fees. Notwithstanding this requirement, no Merchant shall be disqualified if outstanding payments are brought within ten (10) business days following the due date.

4. **Effect of Merchant Disqualification**

Upon the disqualification of a Merchant, all payments which would have otherwise been due to ISO shall cease and SMS shall have no further payment obligations with respect to the disqualified OMA. The disqualification of one Merchant referred by ISO shall have no effect on any other referred Merchant or have any effect on any payment obligations to ISO other than those respecting the disqualified Merchant.

5. **Services to be Provided by SMS**

- a. SMS shall be responsible to assure the receipt of, and action upon, all applications by Processor, it being understood that SMS has no control over the acceptance or rejection of merchants by Processor.
- b. SMS shall provide customer and technical support to referred merchants.
- c. SMS will refrain from attempting to interfere with its Merchants' relationships with ISO.
- d. SMS shall maintain accurate records of all OMA's for which ISO is entitled to payment. SMS shall provide ISO with quarterly summary activity statements.

6. **ISO's Obligations to SMS**

- a. ISO will not engage in any conduct intended to influence any referred Merchant to terminate as an OMA or to terminate its relationship with Processor.
- b. ISO will not disparage SMS;
- c. ISO will not hold itself out as being an affiliate or agent of SMS, nor represent the existence of any relationship between the parties, except that ISO may disclose the fact that the parties have a referral relationship.
- d. ISO shall not engage in any illegal, unethical or unconscionable business practices, nor engage in any conduct which would result in an unfavorable business reputation.

7. **Confidentiality**

ISO shall treat and hold as confidential all information disclosed to it by SMS, including, without limitation, fee schedules, processing protocols, relationships with third parties, financial information, trade secrets, operation plans, business plans, methods of operation, know how, techniques, concepts, ideas, systems or processes disclosed to it. It shall hold in the strictest confidence all such confidential material and will not disclose same to any third party whatsoever, whether directly or indirectly nor shall it use or exploit same for its own use or the use of any other person or entity. No right or license, whether express or implied, is granted hereunder with respect to confidential material or proprietary rights. ISO acknowledges that any disclosure of the confidential information described hereinabove will cause SMS significant economic harm, and further acknowledges that such disclosure will cause SMS to suffer irreparable harm for which monetary damages may be inadequate. In the event of any breach of this agreement, ISO agrees that SMS shall be entitled to an injunction restraining it, its agents, employees, affiliates and others from such disclosure or misuse. Nothing shall be construed as prohibiting SMS from pursuing any other available remedies for such breach or threatened breach including recovery of damages.

This Paragraph 7 shall be deemed, and is intended to, survive termination of this Agreement.

8. **Term and Termination**

This agreement shall remain in full force and effect until terminated by either party. Subject to the provisions of paragraph 8, hereinbelow, a termination of this agreement, without cause, shall be effectuated by a party providing notice in writing to the other party, of its intent to terminate this agreement, such notice to be sent by certified or registered mail, receipted hand delivery or facsimile, at least ninety (90) days prior to the effective date of termination.

9. **Early Termination**

This Agreement may be terminated under and according to any of the following contingencies:

- a. Breach of Material Agreement Term: If either party fails to comply with a material term of this Agreement or otherwise fails to meet its obligations hereunder, that party shall be deemed in default. If the defaulting party does not cure the default within thirty (30) days after receipt, in writing, of notice of same, the other party may terminate the Agreement forthwith by providing written notice thereof to the defaulting party.
- b. Insolvency: If a receiver shall be appointed for a party or it shall become insolvent or seek protection under any state or federal bankruptcy or

insolvency law or it shall be involuntarily placed into bankruptcy or make an assignment for the benefit of creditors, or go out of business, this Agreement shall immediately terminate.

- c. Mutual Consent: This Agreement may be terminated sooner than ninety days should the parties so agree.

10. **Obligations of Parties Following Termination**

Following termination as set out hereinabove, and subject to the limitations contained in paragraphs 3 and 4, SMS shall remain obligated for the payment of any residual fees still owing for OMA's generated by ISO up to the date of contract termination. Said fees shall be paid in the same manner as if the agreement were still in force and effect. ISO shall remain bound under paragraph 7, herein.

11. **Effect of Illegality**

In the event that this agreement or any of the obligations undertaken pursuant to it, shall have been determined to be unlawful, then this agreement shall cease forthwith without further obligation or resource to either party, except for the confidentiality obligations contained in paragraph 7, above.

12. **Independent Contract**

Nothing contained herein shall be construed as creating any relationship other than independent contractors, and no partnership nor agency relationship is created hereby. Neither SMS nor ISO shall have any right or authority to enter into any contract or commitment in the name of or on behalf of the other, nor to bind or purport to bind the other party in any manner whatsoever. References to "ISO" herein do not constitute a legal designation of the business relationship intended.

13. **Non-Exclusive Agreement**

This Agreement does not imply an exclusive referral arrangement by both parties. Either party may enter into other referral arrangements that does not violate the obligations of this Agreement. Parties shall remain bound under paragraph 5, 6, and 7, above.

14. **Prior Agreements**

This Agreement shall supersede any prior understanding, agreement or arrangement between SMS and ISO regarding the same subject matter. This Agreement may be amended or extended only by written agreement or amendment signed by both parties.

15. **No Assignment**

ISO may not assign this Agreement or the rights or benefits thereunder without the express permission of SMS.

16. **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, United States of America.

17. **Successors and Assigns**

This Agreement shall bind and inure to the benefit of the parties to this Agreement and their respective successors, heirs and assigns.

18. **Compliance With Laws**

Each party shall comply with applicable laws and regulations concerning each parties' respective activities contemplated or permitted pursuant to this Agreement.

19. **Arbitration**

Any dispute arising from or growing out of this agreement shall be submitted to arbitration, in Boston, Massachusetts under the Commercial Dispute Resolution Rules of the American Arbitration Association. In addition to damages, the prevailing party shall be entitled to recover all costs, including reasonable attorney's fees.

20. **Headings**

Headings contained in this Agreement are merely for ease of reference and shall not be considered part of the Agreement.

21. **SIGNATORIES AUTHORIZED**

The signatories to this agreement each warrant and represent that they are duly authorized to execute this agreement on behalf of their respective parties, that they have binding authority and that all votes, resolutions and other acts required for the due authorization to enter into this agreement have been taken or completed.

In Witness whereof, the parties, acting through their authorized agents, have set their hands and seals as of the date first set out above.

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

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

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title