

ATM Operator Application and Agreement

ISO Name: ATM Concepts, Inc. Processor _____ Terminal ID _____

(SELECT ONE) New Merchant, Change of Terminal ID, Change of ATM Owner, Change of Cash Owner

Whereas, Merchant agrees to complete and sign Section A of this Agreement and provide customers with an ("ATM") automated teller machine at that location,
 Whereas, ATM Operator/Owner agrees they completed Section B, with true and factual information and they own the ATM,
 Whereas, ATM Operator/Cash Owner agrees they completed Section C, with true and factual information and they own the cash in the ATM, and
 Whereas, ISO agrees that the ATM is being deployed pursuant to the ATM ISO Sponsorship Agreement ("ISO Agreement") between the Bank and the ISO,
NOW THEREFORE, for good and valuable consideration, the Merchant, ATM Operator(s), ISO, and Bank hereby agree as follows:
 Application (Page 1 of 2) Merchants and ATM Operators signing this page agree to the terms on pages 1 & 2

SECTION A Merchant / Location Information					
1. Full Legal Name of Business (Location of the ATM)		DBA (Name of the Business if other than Legal Name)		Location Telephone #	
2. Terminal Location – Address		City		State	ZIP
3. I have read both pages of this Application & Agreement and understand my obligations - Location Owner Signature X		Date	Please Print Full Name Clearly	Merchant Certification I OWN this ATM <input type="checkbox"/> , I do not OWN this ATM <input type="checkbox"/> I put CASH in this ATM <input type="checkbox"/> , I do not put CASH in this ATM <input type="checkbox"/>	
SECTION B ATM Owner Information					
4. Who <u>owns</u> this ATM? ISO <input type="checkbox"/> , complete Section A, this line 4, and sign line 8 Merchant <input type="checkbox"/> , or Third Party <input type="checkbox"/> Complete all of Section B		Business Name		How is the company organized? Corp <input type="checkbox"/> , Partnership <input type="checkbox"/> , LLC <input type="checkbox"/> , Nonprofit <input type="checkbox"/> , Tribal <input type="checkbox"/> , Sole Proprietor <input type="checkbox"/>	
5. Business Tax Identification #	Business Street Address		Business City		State Zip
6. ATM Owner First Name **		Owner Last Name	% Owner of Business**	Date of Birth	Social Security Number (Mandatory - <i>Please Print Clearly</i>)
7. Current Home Address (No PO Box Allowed)		City	State	Zip	Business/Location Telephone Number
8. I have read both pages of this Agreement and understand my obligations - ATM Owner Signature** X		Print Full Name Clearly	Date	Email Address:	Have you ever been a defendant in a criminal proceeding? Yes or No
SECTION C ATM Cash Owner Information					
9. Who <u>owns</u> the Cash in this ATM? ISO <input type="checkbox"/> , Funding Bank <input type="checkbox"/> , complete Section A, this line 4, and sign line 8 Merchant <input checked="" type="checkbox"/> , Third Party <input type="checkbox"/> Complete all of Section C		Business Name		How is the company organized? Corp <input type="checkbox"/> , Partnership <input type="checkbox"/> , LLC <input type="checkbox"/> , Nonprofit <input type="checkbox"/> , Tribal <input type="checkbox"/> , Sole Proprietor <input type="checkbox"/>	
10. Business Tax Identification #	Business Street Address		Business City		State Zip
11. What names are on the "Cash" Settlement Account		1.		2.	
12. ATM CASH Owner First Name **		Owner Last Name	% Owner of Business**	Date of Birth	Social Security Number (Mandatory - <i>Please Print Clearly</i>)
13. Current Home Address (No PO Box Allowed)		City	State	Zip	Business/Location Telephone Number
14. I have read both pages of this Agreement and understand my obligations - ATM Cash Owner Signature** X		Print Full Name Clearly	Date	Email Address:	Have you ever been a defendant in a criminal proceeding? Yes or No
SECTION D – ISO Certification – ISO certifies that the information provided herein was obtained from, the owner of the ATM, the Owner of the cash in the ATM and the Merchant location. The ATM will not be activated until (i) this fully executed Application & Agreement has been submitted for underwriting and (ii) all of the other conditions and requirements for activation of the ATM as described in the ISO Agreement have been satisfied. If any information on this Application changes, an updated Agreement will be immediately provided.					
Name of ISO: ATM Concepts, Inc.		Signature: _____		Date: _____	
(The above signature binds the Bank and the ISO to this Agreement)					
*ATM Operator includes any company or individual that owns, leases or operates the ATM or that owns the cash placed in the ATM. **Owner includes any principal that owns more than 10% of the business. If more than one person owns more than 10%, copy this page and complete Sections B or C as appropriate.					
Credit and Background Check: Bank requires underwriting investigations. Bank and its nominees are hereby authorized to perform and/or obtain credit and background checks on each ATM Operator and each principal involved in this Application including consumer credit reports and investigative consumer reports. The nature and scope of these investigations may include information concerning driving record, civil and criminal records, credit reports, identities, past addresses and social security numbers.					
This Agreement will be sent to ATM Concepts, Inc., 191 Lost Lake Lane, Campbell, CA 95008 Incomplete or illegible applications will be returned, and will be subject to an additional charge!					

See page 2 for additional provisions of this Agreement

THIS ATM Operator Application and Agreement (this "Agreement") is between Prosperity Bank, 1401 Avenue Q, Lubbock, Texas 79401, ("Bank") the Registered Independent Sales Organization ("ISO"), ATM Concepts, Inc. each ATM Operator (jointly and severally) and Merchant as identified in the Application on the reverse side, which is also a part of this Agreement.

1. **Recitals:** Bank is a member of electronic fund transfer systems ("Networks"). Bank sponsors the ISO with the Networks to enable the ISO to deploy the ATMs. Each ATM Operator owns, leases, operates or provides cash to the ATMs covered by this Agreement.
 2. **Definitions:**
 - a. **ATM Operator**, as used herein, refers to each ATM Operator, jointly and severally.
 - b. **Regulations** means the (i) applicable federal and state statutes and (ii) rules, regulations, requirements, orders and policies and pronouncements of the FDIC, OCC, FRB, Texas Department of Banking and other federal and state agencies ("**Regulatory Authorities**") having jurisdiction over any activities being conducted pursuant to this Agreement.
 - c. **Rules** means the operating rules, regulations, by-laws, and other written documents of the Networks which govern the deployment of ATMs as a part of the Networks systems.
 - d. **Material Adverse Condition** means any ATM Operator or any principal of an ATM Operator is the subject of: (i) a criminal felony prosecution or conviction; (ii) an excessive federal or state tax lien; (iii) an administrative or enforcement proceedings commenced by any state or federal Regulatory Authority; (iv) multiple misdemeanors relating to fraud, gaming, or illegal drugs.
 3. **ATM Operator Warranties.** ATM Operator represents and warrants to the Bank and the ISO:
 - a. All information contained in this Application and in all other documents now or hereafter furnished by ATM Operator is true and correct in all material respects.
 - b. ATM Operator lawfully operates, is validly existing, and is in good standing under the laws of the state where formed and is authorized to do business in each state in which the nature of ATM Operators activities make such authorization necessary or required.
 - c. As executed, this Agreement is a valid and binding obligation of each ATM Operator and is enforceable in accordance with its provisions.
 - d. There are no Material Adverse Condition which exist other than those which have been disclosed in writing to Bank.
 4. **Covenants:** ATM Operator covenants and agrees with the Bank and the ISO as follows:
 - a. This Agreement and the deployment of the ATMs are subject to the Rules and Regulations which may be imposed from time to time. In the event of conflict between the terms and conditions of this Agreement and the terms and conditions of any Rules or Regulations of any Regulatory Authority and/or Network, the Rules and Regulations shall control.
 - b. ATM Operator will remain in compliance at all times with all Rules of each applicable Network and all Regulations of each Regulatory Authority having jurisdiction over the Bank, the ATM Operator and/or the deployment and operation of the ATMs including all federal and state consumer protection laws and the Bank's interpretation of same;
 - c. Changes in any information provided by this Agreement, by way of example only, business name change, business telephone and/or address change, or any other relevant information regarding ATM Operator and the deployment of the ATMs shall be promptly submitted in writing to the ISO and the Bank.
 - d. A full written disclosure will be made immediately to the Bank upon the occurrence of a Material Adverse Condition at any time during the continuation of this Agreement.
 5. **Deactivation and Termination:** The ATMs may be immediately deactivated and the rights of the parties to deploy the ATMs under this Agreement may be terminated without prior written notice at any time the Bank determines in its sole discretion that: (i) the ISO or any ATM Operator has failed to satisfy all of the underwriting requirements, (ii) the occurrence of a Material Adverse Condition, (iii) the ISO or an ATM Operator is otherwise in default under this Agreement or (iv) the ISO is in default under the ISO Agreement. Additionally, either party may terminate this Agreement, at any time for any reason, or for no reason, upon thirty (30) days prior written notice given to the other party.
 6. **Waiver/Indemnification:**
 - a. ATM Operator, jointly and severally, agree to immediately reimburse Bank, upon demand, for all expenses, charges, fees, fines or penalties assessed upon Bank by any entity, Network or Regulatory Authority, for any failure by any ATM Operator to comply with any Rules or Regulations in connection with the deployment of the ATMs contemplated by this Agreement and/or transactions processed at such ATMs and Bank shall have the right to settle these items by deducting, setting off or applying same against any and all transaction fees payable to ATM Operator.
 - b. ATM Operator, jointly and severally, agree to indemnify and hold Bank and all affiliates of Bank, and their respective officers, directors, employees and agents and their respective heirs, executors, successors and assigns, ("**Bank Group**") harmless from and against any and all liability, obligation, loss, cost, claim, demand, penalty, judgment, cause of action and expense of any kind or nature whatsoever (collectively "**Claims**") (including, without limitation, the cost of investigating any Claims, the cost of litigation, amounts paid in settlement, and reasonable attorneys' fees), imposed on, incurred by or asserted against any one or more of The Bank Group arising from, attributable to, or in any way connected with, (i) acts or omissions of an ATM Operator including those related to the deployment of the ATMs, (ii) any negligence or other wrongful act or omission of the ATM Operator, (iii) actions taken or omitted by Bank in accordance with or in good faith reliance on information or instructions provided by ATM Operator, (iv) any breach by ATM Operator of this Agreement and (v) any failure by ATM Operator to comply with all applicable Rules and Regulations. Bank shall not be liable for any acts or omissions on the part of the ISO or ATM Operator and shall not be responsible for any losses or damages incurred by or caused by the ISO or the ATM Operator. The provisions of this section 6 shall survive termination of this Agreement.
 7. **Assignment:** ATM Operator may not assign any rights or duties created by this Agreement without the ISO's and Bank's prior written consent. A transfer of control of a majority interest in ATM Operator's entity shall be deemed such an assignment. Bank may assign this Agreement.
 8. **Compliance with Privacy Regulations:** ATM Operator is responsible for maintaining compliance with all rights of financial privacy and other consumer protection laws.
 9. **Merchant Also Agrees.** Merchant additionally covenants and warrants:
 - a. The ATMs may not be moved to another location.
 - b. No warranties of transactions, applicability, performance, or income were provided.
 - c. They are the owner of the premises; hold a valid lease, or a right to conduct business for a greater length of time than the term of this Agreement.
 - d. If Merchant moves from this location, ISO will be notified 60 days before the move and this Agreement at Banks option will be replaced or modified to apply to the new location.
 - e. To provide a clean, safe place for cardholders to use the ATMs, mindful of cameras, street windows, or other hazards where the card or PIN could be compromised.
 - f. To maintain an adequate inventory of supplies if required by the ISO to do so.
 - g. To cooperate in providing good service on the ATMs, but shall not allow anyone other than authorized personnel to open, perform service, or repair without ISOs prior written consent.
 - h. Not to provide assistance to a cardholder with entering a PIN number, touch a card or money withdrawn from the ATMs and will only instruct cardholder to contact Issuing Bank if they have a problems using the ATMs, or to contact the acquirer at the telephone number located on the ATMs which details Bank information.
 10. **Equipment – ATM Operator/Owner –** Section B of the Application covenants and agrees as follows:
 - a. Equipment provided under this Agreement is placed in service with the assurance that the equipment has not been altered or subject to unauthorized modifications or tampering at the time placed into service and is in compliance with and will remain in compliance with all system standards; and
 - b. ATM Operator is in compliance with and will remain in compliance with applicable PCI PIN Security Requirements and the use of PCI approved EPPs for the ATMs.
 - c. Scrip terminals will be activated and operated only in compliance with the Rules of each Network.
 11. **ATM Cash Owner -** Section C of Application- Terms, conditions and fees for placing cash in ATMs are outside this Agreement. The cash owner is responsible if cash is stolen, lost or destroyed and is required to keep sufficient amounts of cash in the ATMs. A clear record of account withdrawals/ISO settlement may be required to show that the cash was obtained solely from the resources of the cash owner and no third party. If the Merchant is the cash owner, it may not use third parties to obtain and place cash in an ATM.
 12. **Texas Law/Venue:** This Agreement shall be construed in accordance with the laws of the state of Texas, notwithstanding its choice of law provisions. Any proceeding related directly or indirectly to this Agreement whether in contract, tort or otherwise, shall be brought in a state of federal court situated in Harris County, Texas and each party consents to and waives any objection to personal jurisdiction and of and venue in such courts.
 13. **Waiver of Right of Trial by Jury:** Each party hereby waives any right to trial by jury with regard to any claim, counterclaim or other action or proceeding filed by any of them, whether in contract, tort or otherwise, related directly or indirectly to this Agreement.
 14. **Binding Effect:** This Agreement is binding upon and inure solely to the benefit of the parties hereto and their respective heirs, executors, permitted successors and permitted assigns.
 15. **Limited Authority of ATM Operator and ISO:**
 - a. The ATM Operator is not an agent for Bank and has no authority to obligate Bank to any person or entity nor to otherwise act for and on behalf of Bank in any way or manner.
 - b. Except for the execution of this Agreement by the ISO on behalf of Bank and in discharging obligations of Bank to the Network, the ISO is not an agent for Bank and has no authority to obligate Bank to any person or entity nor to otherwise act for and on behalf of Bank in any way or manner.
 - c. The relationship between ISO and Bank and between ATM Operator or Merchant and Bank is that of an independent contractor, and nothing herein contained shall be construed or inferred to create the relationship of employer and employee, partnership, joint venturer, agency, consultant or any other relationship between Bank and the ISO or between Bank and any ATM Operator or Merchant.
- Agreement to be submitted to:**
ATM Concepts, Inc.
191 Lost Lake Lane
Campbell, CA 95008
Phone: 1-800-299-3035
Email: Service@atmconcepts.com
Re: Prosperity Bank

ISO Initials _____
ISO Name ATM Concepts, Inc.
Terminal # _____