

## Prosperity Bank ATM Operator Application and Agreement

(SELECT ONE)  New Merchant,  NEW Location for Existing ATM Operator,  Change of Terminal ID,  Change of ATM Owner,  Change of Cash Owner

ISO Name: \_\_\_\_\_ Processor: \_\_\_\_\_ Terminal ID: \_\_\_\_\_

"Merchant" is the entity or individual on whose premises the automated teller machine(s) ("ATM," whether one or more) will be located. By its signature below, Merchant represents and warrants that the information provided in Section A below is true and accurate and that Merchant will provide customers access to the subject ATM.

"ATM Operator/ATM Owner" by its signature in Section B below, represents and warrants that the information provided in Section B below is true and accurate.

"ATM Operator/Cash Owner" by its signature in Section C below, represents and warrants that the information provided in Section C below is true and accurate.

"ISO" is the Independent Sales Organization with which the ATM Operator is affiliated. By its signature in Section D below, the ISO agrees that each ATM is being deployed pursuant to the ATM ISO Sponsorship Agreement ("ISO Agreement") between Prosperity Bank and the ISO, which is hereby incorporated by reference.

**Application (Page 1 of 2) Merchants, ATM Operators, and ISOs signing this page agree to the terms on pages 1 & 2**

SECTION A – Merchant / Location Information				
1. Full Legal Name of Business where ATM is located	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 Agreement and understand my obligations – Merchant Signature	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 Operator/Owner and Principal** Information (If ATM owner and cash owner are different \$100.00 will be charged to process this Application)				
4. Who owns this ATM? ISO <input type="checkbox"/> , complete Section A, this line 4, and sign line 8 Merchant <input type="checkbox"/> , a bank <input type="checkbox"/> , or Third Party <input type="checkbox"/> Complete all of Section B	If ATM owner is a business or a bank, List 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. Principal of ATM owner First Name	Principal of ATM owner Last Name	% Ownership of Terminal	Date of Birth	Social Security Number ( <i>Please Print Clearly</i> )
7. Current Home Address	City	State	Zip	
8. I have read both pages of this Agreement and understand my obligations – Principal of ATM owner Signature***	Date	Have you ever been a defendant in a criminal proceeding? <b>Yes or No</b>		

SECTION C – ATM Operator/Cash Owner and Principal Information (If ATM owner and cash owner are different \$100.00 will be charged to process this Application)				
9. Who owns the Cash in this ATM? ISO <input type="checkbox"/> , a bank <input type="checkbox"/> , Merchant <input type="checkbox"/> , Third Party <input type="checkbox"/> Complete all of Section C	If cash owner is a business or a bank, List 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. Names on the "Cash" Settlement Account?	1.	2.		
12. Principal of cash owner First Name	Principal of cash owner Last Name	% Ownership of Cash	Date of Birth	Social Security Number ( <i>Please Print Clearly</i> )
13. Current Home Address	City	State	Zip	
14. I have read both pages of this Agreement and understand my obligations - cash owner Principal Signature***	Date	Have you ever been a defendant in a criminal proceeding? <b>Yes or No</b>		

**SECTION D – ISO Certification – ISO certifies that the Information provided herein was obtained from the ATM Operators and/or the Merchant, as applicable. The ATM will not be activated until (i) this fully completed and executed Agreement has been submitted to and approved by Prosperity Bank, 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, ISO will ensure that an updated Agreement will immediately be submitted to Prosperity Bank.**

Name of ISO	Signature of ISO	Date
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\*\*ATM Operator" means any entity or individual that owns, leases or operates the ATM or that owns the cash placed in the ATM.  
\*\* "Principal" means any owner of an ATM Operator owning 10% or more. If more than one person owns 10% or more, copy this page and complete Sections B or C for each such principal, as appropriate.

\*\*\* Credit and Background Investigation: Each individual signing above represents and warrants that he has the authority to execute this Agreement in the capacity in which he/she is executing, whether as an individual or on behalf of a named entity. Each such individual or entity authorizes Bank and/or its agents to perform and/or obtain consumer reports, searches of public, including criminal, records, and other financial, legal, or informational reports on each Merchant, ATM Operator, and each of their principals, both in connection with this initial application and from time to time thereafter, in Bank's sole discretion. The nature and scope of these investigations may include, by way of example but not limitation, information concerning driving record, civil and criminal records, credit reports, identities, past addresses and social security numbers.

*Please scan and send Application/Agreement to [ISO.Sponsorship@ProsperityBankUSA.com](mailto:ISO.Sponsorship@ProsperityBankUSA.com).*

**\$50 Will be charged for each ATM Operator Principal**

**A Statement will be provided by the 15<sup>th</sup> of the month following the month the Application/Agreement was received and deducted via ACH with ISO monthly billing. Incomplete or illegible applications will not be accepted, and a new Agreement/Application will be requested.**

THIS ATM Operator Application and Agreement (this "Agreement") is between Prosperity Bank, having a location at 1401 Avenue Q, Lubbock, Texas 79401, ("Bank"), the ISO, each ATM Operator (jointly and severally), and Merchant as described 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 and manage the ATM identified in the Application above. Each ATM Operator owns, leases, operates or provides cash to the ATM covered by this Agreement.
  2. **Definitions:**
    - a. "Laws" means the applicable (i) federal and state statutes and (ii) rules, regulations, requirements, orders and policies and pronouncements ("Regulations") 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, and (iii) federal or state or local administrative or judicial opinions by courts having jurisdiction over any activities being conducted pursuant to this Agreement.
    - b. "Rules" means the operating rules, regulations, by-laws, and other written documents of the Networks that govern the deployment and operation of the ATM as a part of the Networks' systems.
    - c. "Material Adverse Condition" means any ATM Operator or any principal thereof being the subject of: (i) a criminal felony prosecution or conviction; (ii) an excessive federal or state tax lien; (iii) an administrative or enforcement proceeding commenced by any state or federal Regulatory Authority; (iv) multiple misdemeanors relating to fraud, gaming, or illegal drugs.
  3. **Warranties.** ATM Operator and Merchant each represent and warrant to the Bank and the ISO:
    - a. All information contained in this Agreement and in all other documents now or hereafter furnished is true and correct in all material respects.
    - b. Each 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 the activities make such authorization necessary or required.
    - c. As executed, this Agreement is a valid and binding obligation of each ATM Operator and Merchant and is enforceable in accordance with its provisions.
    - d. There is no Material Adverse Condition that currently exists other than those that ATM Operator or Merchant, as applicable, have previously disclosed in writing to Bank.
  4. **Covenants:** ATM Operator and Merchant each covenants and agrees with the Bank and the ISO as follows, as applicable:
    - a. This Agreement and the deployment of the ATM are subject to the Rules and Laws as they may be imposed or amended 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 Laws, the Rules and Laws shall control.
    - b. Each agrees to remain in compliance at all times with all Rules of each applicable Network and all Laws and the Bank's interpretation of same, as they may be amended;
    - c. Each shall promptly inform ISO and Bank in writing of any changes in any information provided by this Agreement.
    - d. Each shall immediately make a full written disclosure to the Bank upon the occurrence of a Material Adverse Condition at any time during the continuation of this Agreement.
  5. **Deactivation and Termination:** Bank may immediately deactivate the ATM and terminate the rights of the parties to deploy the ATM under this Agreement without notice at any time the Bank determines in its sole discretion that continued operation will be harmful to the Bank or Network. This Agreement and each party's rights to deploy and/or operate the ATM will terminate automatically without notice if Bank is no longer the sponsor of the ISO or if the ATM has been inactive for at least two (2) years. 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 each other party.
  6. **Waiver/Indemnification of ATM Operator:**
    - a. Each ATM Operator, jointly and severally, agrees to reimburse Bank immediately upon demand for all expenses, charges, fees, fines, chargebacks or penalties incurred or assessed upon Bank by any entity in connection with this Agreement. Bank shall have the right to settle these items by deducting, setting off, or applying same against any and all transaction fees or settlements payable to ATM Operator.
    - b. EACH ATM OPERATOR, JOINTLY AND SEVERALLY, AGREES TO DEFEND AND 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 OR 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 WITHOUT LIMITATION THOSE RELATED TO THE DEPLOYMENT OR OPERATION OF THE ATM, (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 LAWS. BANK SHALL NOT BE LIABLE FOR ANY ACTS OR
  7. **Merchant Also Agrees.** Merchant additionally covenants and warrants:
    - a. No warranties of transactions, applicability, performance, or income were provided by Bank to Merchant or any other party.
    - b. Merchant is the owner of the premises or it holds a valid lease on the premises, and it has a right to conduct business on the premises for a greater length of time than the term of this Agreement.
    - c. If Merchant moves from this location, Merchant will notify ISO of such fact in writing at least 60 days before the move, and this Agreement at Bank's option will be replaced or modified to apply to the new location.
    - d. To operate the ATM only in its intended manner and provide a clean, safe place for cardholders to use the ATM, mindful of cameras, street windows, or other hazards where the card or PIN could be compromised.
    - e. Not to provide assistance to a cardholder with entering a PIN number, touch a card or money withdrawn from the ATM and will only instruct cardholder to contact Issuing Bank if they have a problems using the ATM, or to contact the Acquirer at the telephone number located on the ATM which details Bank information.
  8. **Equipment – ATM Operator/ATM owner** as described in Section B of the Application also covenants and agrees as follows:
    - a. Equipment provided and placed in service under this Agreement 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 encrypting PIN pads ("EPPs") for the ATM. ATM Operator/ATM owner specifically acknowledges and agrees that if the ATM is not able to accept EMV ("chip") cards, it may be liable for fraud chargebacks and satisfaction of disputes.
  9. **ATM Operator/cash owner** as described in Section C of Application also agrees that terms, conditions and fees for placing cash in ATM are outside this Agreement. The cash owner is responsible if cash is stolen, lost or destroyed and must maintain sufficient cash in the ATM to dispense in reasonable amounts. 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.
  10. **Assignment:** No party except Bank may assign this Agreement or any part thereof; provided, however, that ISO may submit a written request to Bank for assignment at least thirty (30) days prior to the assignment event, and Bank, in its sole discretion, may approve.
  11. **Transfer of Control:** A transfer of Control of the ATM Operator shall render this Agreement void unless Bank has provided its prior consent, which Bank may in its sole discretion withhold. For this Agreement, "Control" means a change of ownership of 10% or more of such business.
  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 or federal court situated in Harris County, Texas (the "Courts"), and each party consents to and waives any objection to personal jurisdiction 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 inures solely to the benefit of the parties hereto and their respective heirs, executors, permitted successors and permitted assigns.
  15. **No Authority of ATM Operator and ISO:**
    - a. Neither the ISO, ATM Operator, nor the Merchant is an agent for Bank and has no authority to obligate Bank to any person or entity or to otherwise act for and on behalf of Bank in any way or manner.
    - b. 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.
  16. **Survival.** Expiration or termination of this Agreement shall not release any ATM Party of its respective obligations off payment, warranty, governing law, limitation of liability, and waiver of jury trial, and from the confidentiality and indemnity provisions hereof.
- Agreement to be submitted to:**
- ISO Name: \_\_\_\_\_
- ISO Initials: \_\_\_\_\_
- Terminal # \_\_\_\_\_

## Prosperity Bank Third Party Sales Representative (TPSR<sup>1</sup>) Acknowledgment

### 1. Rules for ISO using TPSR

- TPSR must represent itself to others accurately.
- TPSR must only represent the ISO registered and sponsored by Prosperity Bank (the "Registered ISO" or "ISO") to prospective ATM locations. Merchant Location Agreement and ATM Operator Agreement ("ATMOA") must be in the name of the Registered ISO, not the TPSR.
- All ISO documentation, including but not limited to brochures, business cards, agreements, websites, and labels on the ATM, must identify the Registered ISO, using the full registered name.
- Any TPSR must perform in compliance with all applicable Network Rules and Laws.
- If the TPSR uses sales representatives that are not its direct employees but are third party individuals or entities performing sales functions on behalf of the TPSR, all such individuals and/or entities must also sign a Prosperity Bank Third Party Sales Representative (TPSR) Acknowledgment (an "Acknowledgment") with the Registered ISO and follow all applicable Network Rules, applicable Laws, and Prosperity Bank procedures.
- TPSRs may also be ATM Operators (own the ATM or the cash placed in the ATM), in which case an ATM Operator Agreement will also be required between the TPSR and Prosperity Bank.
- TPSRs may not store key components.
- Network fines against Prosperity for any person functioning as an unregistered ISO will be passed to the Registered ISO for payment.

### 2. Requirements

- TPSR Application at Section 3 below must be completed in full and signed by the TPSR and the Registered ISO.
- Registered ISO must send a copy of this properly executed and completed TPSR Acknowledgment form to [ISO.Sponsorship@ProsperityBankUSA.com](mailto:ISO.Sponsorship@ProsperityBankUSA.com) for Prosperity Bank's review and approval before TPSR begins any TPSR activities.
- If the Registered ISO completes due diligence "in house," the ISO must maintain completed TPSR Acknowledgment forms and completed due diligence documentation in a readily available manner, and this information must be readily available for review by Prosperity each quarter.

### 3. Application

Business Information (If operating on behalf of a Business)				
Business Legal Name		DBA		
Contact (if different than Principal)	Phone Number	Fax Number	E-Mail Address	
Address	City	State	Zip	
Business Tax ID		Ownership Type Corporation: _____ Other _____ Partnership _____ Sole Prop. _____ LLC _____		
Principal Information * Copy this page for each principal *				
First Name	Last Name		Title and % of Ownership (Ownership of Principals must equal 100%)	

<sup>1</sup> A "TPSR" is a individual or entity that is not a direct employee of a Registered ISO, but who solicits ATM locations, sells and/or places an ATM for a Registered ISO of Prosperity Bank. An affiliate, associate, investor, distributor or any similar separate individual or entity associated with a TPSR could be considered a TPSR if it places ATMs. "Network Rules" are all applicable operating rules, regulations, bylaws, and other written requirements of those electronic fund transfer systems for transmitting messages and settling transactions between participants. "Laws" are applicable federal, state, and local statutes, ordinances, regulations, and decisions.

Social Security Number*	Home Street Address*	City, State, Zip*
Driver's License Number & State Issued*	Date of Birth*	Home Telephone Number e-mail Address

**Have you ever been a defendant in a criminal proceeding? YES  NO  If yes, describe details on separate sheet and attach.**

\* Required

**4. Permission to obtain Credit and complete a Background Investigation Report.**

Each owner (with 10% or more ownership) must provide Principal Information and sign below. (Please make copies of this page if necessary). Prosperity Bank has the right (but not the obligation) to obtain, at the Registered ISO's expense, a consumer report on any individual TPSR or TPSR principal, a search of public records, including without limitation driving records, criminal and civil records, past addresses, and other financial, legal, or informational reports, and an OFAC check on the TPSR and any and all principals of the TPSR ("Investigations"), both in connection with this Acknowledgment and annually or at other intervals thereafter, in Prosperity Bank's sole discretion. TPSR and Registered ISO by their signatures below each authorize Prosperity Bank or its agents to conduct such Investigations. Registered ISOs will be solely responsible for paying all Investigation fees, which will be deducted via ACH debit.

**Please answer the following questions concerning how your company does business: This information will be verified!**

1. Do you own the cash in ATMs placed under this ISO? (Y/N) \_\_\_\_\_. If Yes, the ATM Operator Agreement for each location must so indicate, if No, the cash owner must be identified.
2. Do you own all ATMs? (Y/N) \_\_\_\_\_. If Yes, the ATM Operator Agreement for each location must so indicate, if No, the ATM owner must be identified.

*(If Merchants or third parties own the ATMs or the cash in the ATM an ATM Operator Agreement must be obtained with each of them. Fines of \$15,000 for each ATM for non-compliance can be charged to the ISO.)*

3. Do you activate ATMs (i.e. install Key Components)? (Y/N) \_\_\_\_\_. If yes, you must sign a Temporary Custodian Agreement for this ISO.

I have read and I consent to the terms and conditions herein and agree to follow all Network Rules, all applicable Laws, and Prosperity's procedures and practices, including without limitation any concerning the use of agents. All information I have provided herein is true and correct. I authorize the Investigations described above. I have the authority to sign below on behalf of the TPSR.

Name of TPSR \_\_\_\_\_

Signature of TPSR Principal \_\_\_\_\_ Date \_\_\_\_\_

By its signature below, the Registered ISO confirms the TPSR described above as its representative for the purpose of performing ATM sales and/or placement duties and authorizes the Investigations described above. Registered ISO agrees that TPSR constitutes a "Third Party" under the ATM ISO Sponsorship Agreement between Registered ISO and Prosperity Bank, that it is responsible to Prosperity Bank for the performance of the TPSR, it ratifies any previous performance of TPSR on behalf of Registered ISO, and shall ensure that such TPSR complies with the requirements of this TPSR Acknowledgment. Registered ISO represents that all information it has provided herein is true and accurate.

Name of Registered ISO \_\_\_\_\_

Registered ISO Signature \_\_\_\_\_ Date \_\_\_\_\_