

# **Queen Funding LLC**

## **Independent Sales Organization Agreement**

This Independent Sales Organization Agreement (the “Agreement”) is entered into as of this day \_\_\_\_ of \_\_\_\_\_ 2020, by and between Queen Funding LLC, (“Queen Funding”), and \_\_\_\_\_ (“ISO”), with offices at \_\_\_\_\_.

**WHEREAS**, Queen Funding purchases future accounts-receivable including, but not limited to, credit-card, debit card, bank card and/or other charge card receipts (collectively “Receipts”) from various merchants (“Merchants”), for an amount agreed to by Queen Funding and the Merchants (“Program”);

**WHEREAS**, the Program permits Merchants to sell an agreed-upon portion of their future Receipts;

**WHEREAS**, ISO wishes to promote the Program, assist with its implementation and refer potential Merchants to Queen Funding that may wish to participate in the Program, all subject to the terms thereof;

**NOW, THEREFORE** this Agreement witnesses that in consideration of the mutual covenants by each of the parties hereto, the parties hereby agree as follows:

1. **ISO OBLIGATIONS.** ISO will market and promote the Program and assist interested parties in completing and submitting to Queen Funding applications from Merchants, in a form acceptable to Queen Funding. Each Merchant submitted by ISO to Queen Funding shall comply in full with the requirements set forth in the rules and policies of Queen Funding as they may exist. Queen Funding will evaluate and, at its sole and absolute discretion, accept or deny such applications. ISO understands that ISO may not be the only or exclusive sales agent of the Program for Queen Funding. Queen Funding may, in its sole and absolute discretion, retain the services of other ISOs.

2. **ISO COMPENSATION.** In consideration for the services rendered by the ISO pursuant to the Agreement, Queen Funding agrees to pay ISO in accordance with the ISO Compensation Schedule, set out in Schedule “A” annexed hereto (“Compensation”).

- a) Compensation shall be paid to ISO for each Merchant referred to Queen Funding by ISO, for which Queen Funding and Merchant finalize a Merchant Agreement in a form provided by Queen Funding (“Merchant Agreement”) as a direct result of the referral by ISO. If ISO does not directly cause the Merchant Agreement to occur, no Compensation is owed by Queen Funding to ISO.
- b) Should a Merchant who was referred by ISO to Queen Funding breach the Merchant Agreement under its terms, Compensation shall terminate with respect to that Merchant. ISO agrees, acknowledges and understands that should the Merchant breach the Merchant Agreement within sixty (60) days of the date of Queen Funding’s payment of the Receipts, ISO must return Compensation to Queen

Funding within five (5) business days of Queen Funding notifying ISO of Merchants breach

- c) Queen Funding may withhold any Compensation due to ISO on any Merchant referral for any funds owed to Queen Funding from a referred Merchant that has breached the Merchant Agreement. This provision specifically includes offsetting Compensation owed to ISO for a performing Merchant for that of a defaulting Merchant.
- d) Queen Funding shall withhold any Compensation due to ISO if ISO breaches any of its obligations under this Agreement. Additionally, ISO must return any Compensation it has received to Queen Funding within five (5) business days of ISO's breach of this Agreement.
- e) Should ISO and a competitor to ISO approach Queen Funding with the same Merchant and same or similar terms for the Program, it shall be Queen Funding's sole discretion as to determining who referred the Merchant to them, either ISO or its competitor. If Queen Funding determines that ISO's competitor referred the Merchant, ISO shall not be entitled to Compensation under this Agreement.
- f) Should ISO and a competitor to ISO refer to Queen Funding the same Merchant and different terms, Queen Funding shall be permitted to enter into terms most favorable to Queen Funding. If Queen Funding enters into terms with ISO's competitor, ISO shall not be entitled to any Compensation under this Agreement.
- g) ISO shall have fifteen (15) calendar days from the receipt of Compensation to notify Queen Funding, in writing, of any errors in payment of Compensation. If ISO does not notify Queen Funding, in writing, within the fifteen (15) calendar day time period, ISO shall be deemed to have accepted without question such Compensation and may not in the future contest the amount it was paid or seek reimbursement for any discrepancies. Upon receipt of written notice, Queen Funding shall have thirty (30) business days to correct any errors in Compensation to ISO.
- h) ISO shall not be entitled to automatic renewal Compensation on any new Merchant contract for a Merchant that ISO has referred to at any time in the past. Each renewal Compensation must be approved and agreed by Queen Funding in writing.

3. **MERCHANT APPLICATION AND AGREEMENT.** ISO shall present to each potential Merchant only such marketing and promotional material that has been provided by Queen Funding or approved in advance by Queen Funding in writing. Included in such materials shall be a Merchant Application, in a form prescribed by Queen Funding and a Merchant Agreement. 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) that has not been supplied by or prior written approval by Queen Funding to any prospective Merchant, actual Merchant or any other third party. Queen Funding, in its sole discretion shall be authorized to accept, ratify or finalize any Merchant Agreement and include a Merchant in the Program. Queen Funding may, at its sole and absolute discretion may decline to accept any Merchant to the Program for any reason whatsoever. Under no circumstances shall ISO represent that it has any right or authorization to accept or decline a Merchant application for a Merchant Agreement nor shall it represent to any third party that it has the right or authorization to: (a) modify in any way or accept any Merchant

Agreement; (b) include a Merchant in the Program; or (c) bind Queen Funding legally or otherwise. Such representations by ISO shall be deemed a breach of this Agreement and result in a forfeiture of Compensation and a return of any Compensation already paid. No agreement made by or through ISO or its affiliates (as defined below) shall be legally or otherwise binding on Queen Funding until accepted in writing by a duly authorized officer of Queen Funding. 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. ISO acknowledges and agrees that Queen Funding may, at its sole discretion, amend the terms of the Program, including, without limitation the pricing thereof without prior notice or consent from ISO.

4. **ISO IDENTIFICATION.** ISO does not have an employment relationship in any form with Queen Funding and as such, in the course of carrying out its obligations hereunder, ISO must clearly identify itself with its own corporate name. ISO shall disclose that it is directing the third-party to Queen Funding for the promotion of the Program. ISO agrees that its actions and the actions of its shareholders, Affiliates (as defined below), directors, officers, employees, independent contractors, representatives, agents, principals and associates under or in connection with this Agreement (collectively “ISO Parties”) shall be governed, controlled and directed by, and shall be in full compliance with, the terms hereof and shall at all times 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 Queen Funding shall not be liable in any manner for any liability of ISO to any third party or Merchant for any reason. ISO shall be responsible to ensure that all ISO Parties are adequately trained to perform hereunder and conform to all of the provisions hereof. ISO covenants that ISO Parties shall abide by the obligations set forth within the Agreement.

5. **REPRESENTATION AND WARRANTIES.** 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 an entity organized, validly existing and in good standing under the laws of the State where its principal office is located and/or where it is authorized to do business;
- B. It has full authority and corporate power to enter into this Agreement and to perform its obligations under this Agreement.
- C. It’s 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 valid obligations and is fully enforceable;
- E. It is not a party to any pending litigation that would have an impact on this Agreement and have never been fined or penalized by Visa, MasterCard, NACHA or any other association in the credit, payments or banking industry; and
- F. It is not on the Member Alert to Control High-Risk merchants list of MasterCard or any other similar list.

6. **ISO COVENANTS, WARRANTS, AND REPRESENTATIONS.** during the term hereof and so long as ISO is bound by the non-interference provisions hereof, it shall:

- A. Comply with any and all policies and guidelines established by Queen Funding;

- B. Comply with all of Queen Funding's requests relating to a Merchant's breach;
- C. Where appropriate, inform potential Merchants that they are required to change credit-card processors or bank accounts in order to participate in the Program;
- D. Accurately describe the Program to all prospective Merchants;
- E. Immediately inform Queen Funding of any changes that become known to ISO in the address, ownership, business, or operations of itself or of any Merchant;
- F. Deliver to Queen Funding all documents required as part of a Merchant Application together with each application, including, without limitation; Merchant Agreement, Application Form, voided Merchant check, Merchant statements, Merchants future accounts receivables ledger and any other documents required according to Queen Funding guidelines, such as they may be from time to time;
- G. Not use any promotional material for the Program without the prior written consent from Queen Funding, including, without limitation, any logo, trademark or mark of any kind of Queen Funding, or any of its Affiliates;
- H. Remain cognizant and in agreement that this Agreement may be terminated immediately by Queen Funding upon breach of any obligation, covenant, representation or warranty set forth in this Agreement or if determined by Queen Funding, in its sole discretion, that ISO is causing a negative effect on the Program, Queen Funding or its affiliates;
- I. Not willfully cause or solicit a Merchant to terminate or alter its credit-card processing to another bank or processor, which has no contractual affiliation with Queen Funding or any of its affiliates, or in any way willfully interfere with a Merchant Agreement to which Queen Funding LLC is a party;
- J. Not introduce a Merchant to Queen Funding, knowing that Merchant plans on filing for bankruptcy or to breach the Merchant Agreement;
- K. Disclose to Queen Funding any interest it may have with any Merchant, including but not limited to any investment ISO may have in Merchants Receipts.

7. **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 Queen Funding upon ten (10) days written notice prior to the end of the then current term. This Agreement may be terminated immediately by Queen Funding upon breach by ISO of any of its obligations herein or if, as determined by Queen Funding, ISO or any of ISO Parties causes a detrimental effect to the Program, Queen Funding or any of its affiliates, other programs, officers, employees or Merchants.

8. **NON-INTERFERENCE.** During the term of this Agreement and for a period of twelve (12) months thereafter, or after ISO stops receiving Compensation hereunder, whichever comes last, ISO and ISO Parties shall not themselves willfully, nor willfully permit any respective subsidiary, Affiliate or successor in interest of their respective officers, employees, agents or nominees; (i) to interfere, in any manner whatsoever, either directly or indirectly by any arrangement whatsoever, with Queen Funding contractual relationship with any of its Merchants or clients; (ii) to cause or attempt to cause any Merchant or other Queen Funding client to terminate its relationship with Queen Funding or utilize the services of any entity other than Queen Funding. For the purposes of

this Agreement the term “Affiliate” or “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.

9. **NO SOLICITATION.** The parties agree that throughout the term of this Agreement and for twelve (12) months thereafter, neither party, nor any of their respective affiliates shall knowingly hire any of the current officers or employees or agents of the other party hereto or any of its Affiliates so long as such restricted employee or agent remains employed or retained by such party or its Affiliates, without the prior written consent of such party.

10. **REMEDIES.** Without limiting the foregoing, in the event of a breach of this Agreement by ISO or any ISO Party, Queen Funding shall be entitled to apply to a Court of competent jurisdiction for an injunction to restrain such breach, without the need for bond, and Queen Funding shall have no obligation to make any further Compensation or other payment to ISO that might otherwise come due; provided that ISO does not cure the breach within five (5) business days after notice thereof. Any remedies hereunder shall be in addition to any other remedies available to Queen Funding in law or in equity.

11. **ASSIGNMENT; SUCCESSORS; AMENDMENTS.** ISO may not assign any right or obligation under this Agreement to any third party without prior written consent of Queen Funding, including an assignment by virtue of a sale of ISO’s business. Queen Funding may assign its rights and obligations hereunder with notice to the ISO. This Agreement shall inure to the successors and permitted assigns of the parties hereto. With the exception of amendments to the Program and Compensation, which may be made at the discretion of Queen Funding, this Agreement may be amended only by a written agreement executed by both parties hereto.

12. **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. “Confidential Information” means all proprietary, secret or confidential information or data relating to either party, its affiliates, operations, employees, products or services, clients, customers and/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:

A. already known to the receiving party free of any restriction at the time it is obtained;

- B. subsequently learned from an independent third party free of any restriction and without breach of this Agreement;
- C. becomes publicly available through no wrongful act of the receiving party;
- D. independently developed by the receiving party without reference to any Confidential Information of the other; or
- E. required to be disclosed by law.

13. **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 Queen Funding or ISO 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 days after being sent, if sent by first class registered mail, return receipt requested.

14. **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.

15. **WAIVER OF TRIAL BY JURY.** 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.

16. **ATTORNEY FEES.** Should suit be brought to enforce or interpret any part of this Agreement, Queen Funding shall be entitled to recover its reasonable attorneys' fees and costs, including expert witness fees and fees on any appeal.

17. **OPTIONAL ARBITRATION.** Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, may be, upon the mutual agreement of the parties, determined by binding arbitration in New York City before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. In any arbitration arising out of or related to this Agreement, the arbitrator shall award to the prevailing party, if any, the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration. If the arbitrator determines a party to be the prevailing party under circumstances where the prevailing party won on some but not all of the claims and counterclaims, the arbitrator may award the prevailing party an appropriate percentage of the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

16. **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.

17. **RELATIONSHIP OF PARTIES.** Pursuant to this agreement, ISO is an independent contractor to Queen Funding, hereunder and their relationship shall not be construed as any other form of employer/employee relationship, joint venture or partnership. Queen Funding 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 workers compensation insurance coverage related to its employees and that Queen Funding shall have no responsibility for any such liabilities.

18. **LIMITATION OF LIABILITY.** Queen Funding 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.

19. **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.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the date first written above.

Queen Funding LLC

ISO\_\_\_\_\_

BY: \_\_\_\_\_

By \_\_\_\_\_

Name: Sara Shain

Name \_\_\_\_\_

Title: ISO Relations

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# **Schedule A**

## **ISO Compensation:**

This ISO Compensation Schedule sets out the terms of payment of Compensation under the Agreement. In the event of any discrepancy between the terms of this Schedule and the Agreement, the Agreement shall prevail. Queen Funding agrees to pay ISO a referral fee equal to \_\_\_\_\_ (\_\_\_\_%) of any and all funding provided to Merchants by Queen Funding and/or its funding sources. This amount may be increased on a case by case basis depending on the circumstances of each particular transaction. ISO may be paid Compensation, at Queen Funding's discretion, in the following forms:

**1) Front End Compensation.**

- a. ISO shall be paid via Front End Compensation with respect to a Merchant with which Queen Funding enters into a Merchant Agreement, within thirty (30) business days after the purchase price for the purchased amount of the Merchant's Receipts is paid by Queen Funding to the Merchant.

**2) Back End Compensation.**

- a. ISO shall be paid via Back End Compensation within thirty (30) business days after Queen Funding receives full payment of the purchased Receipts from Merchant.

**3) Renewal Compensation.**

- a. ISO shall be paid via Renewal Compensation when a Merchant that ISO has successfully referred and closed with Queen Funding, is approved by Queen Funding for an additional funding and Merchant Agreement. Renewal Compensation must be approved each time by Queen Funding in writing prior to the funding of the new Merchant Agreement for ISO to be eligible for this type of compensation. The payment timeframe of the Renewal Compensation shall follow either, Front End Compensation or Back End Compensation, at Queen Funding's sole discretion.