



**HARBORTOUCH**  
A SHIFT4 COMPANY

# ATM OPERATOR APPLICATION & AGREEMENT

Please sign and fax this document to 973-630-6671 or email to [atmsupport@harbortouch.com](mailto:atmsupport@harbortouch.com)

DATE RECEIVED BY HARBORTOUCH:

AGENT USE ONLY	OFFICE CODE:	REP CODE:
	SALES REP NAME:	SALES REP TELEPHONE:

SELECT ONE:  NEW MERCHANT  NEW LOCATION FOR EXISTING OPERATOR  CHANGE OF TERMINAL ID  CHANGE OF ATM OWNER  CHANGE OF CASH OWNER

**"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 agrees that it completed Section A of this Agreement with accurate information and that it will provide customers access to the subject ATM.

**"ATM Operator/Owner"** who owns the "ATM", and by its signature below, agrees that it completed Section B with accurate information and represents and warrants that it owns the ATM.

**"ATM Operator/Cash Owner"** who owns the cash placed in the ATM, and by its signature below, agrees that it completed Section C with accurate information and represents and warrants that it owns the cash in the ATM.

**"ISO"** is the Independent Sales Organization with which the ATM Operator/Owner and/or ATM Operator/Cash Owner is affiliated. By its signature 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 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 WHERE ATM IS LOCATED	DBA (NAME OF THE BUSINESS IF OTHER THAN LEGAL NAME)	LOCATION TELEPHONE NUMBER
2. TERMINAL LOCATION - ADDRESS	CITY	STATE ZIP
3. I HAVE READ BOTH PAGES OF THIS AGREEMENT AND UNDERSTAND MY OBLIGATIONS - MERCHANT AND/OR LOCATIONS OWNER SIGNATURE	DATE PLEASE PRINT FULL NAME CLEARLY	MERCHANT CERTIFICATION <input type="checkbox"/> 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

## SECTION B - ATM OPERATOR\*/OWNER INFORMATION

4. WHO OWNS THIS ATM? <input type="checkbox"/> ISO (COMPLETE SECTION A, THIS LINE 4, AND SIGN LINE 8) <input type="checkbox"/> MERCHANT <input type="checkbox"/> A BANK, <input type="checkbox"/> OR THIRD PARTY, COMPLETE ALL OF SECTION B	IF ATM OWNER IS A BUSINESS OR A BANK, LIST NAME	HOW IS THE COMPANY ORGANIZED? <input type="checkbox"/> CORP <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> LLC <input type="checkbox"/> NONPROFIT <input type="checkbox"/> TRIBAL <input type="checkbox"/> SOLE PROPRIETOR
5. BUSINESS TAX IDENTIFICATION # BUSINESS STREET ADDRESS	BUSINESS CITY	STATE ZIP
6. ATM OWNER FIRST NAME** OWNER LAST NAME	% OF 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 THE AGREEMENT AND UNDERSTAND MY OBLIGATIONS - ATM OWNER SIGNATURE***	DATE	HAVE YOU EVER BEEN A DEFENDANT IN A CRIMINAL PROCEEDING? <input type="checkbox"/> YES <input type="checkbox"/> NO

## SECTION C - ATM OPERATOR\*/CASH OWNER INFORMATION

9. WHO OWNS THE CASH IN THIS ATM? <input type="checkbox"/> ISO, <input type="checkbox"/> A BANK, <input type="checkbox"/> MERCHANT, <input type="checkbox"/> THIRD PARTY COMPLETE ALL OF SECTION C	IF CASH OWNER IS A BUSINESS OR A BANK, GIVE NAME	HOW IS THE COMPANY ORGANIZED? <input type="checkbox"/> CORP <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> LLC <input type="checkbox"/> NONPROFIT <input type="checkbox"/> TRIBAL <input type="checkbox"/> SOLE PROPRIETOR
10. BUSINESS TAX IDENTIFICATION # BUSINESS STREET ADDRESS	BUSINESS CITY	STATE ZIP
11. NAMES ON THE "CASH" SETTLEMENT ACCOUNT	1.	2.
12. ATM CASH OWNER FIRST NAME** OWNER LAST NAME	% OF 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 THE AGREEMENT AND UNDERSTAND MY OBLIGATIONS - ATM OWNER SIGNATURE***	DATE	HAVE YOU EVER BEEN A DEFENDANT IN A CRIMINAL PROCEEDING? <input type="checkbox"/> YES <input type="checkbox"/> 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, as applicable. The ATM will not be activated until (i) this fully completed and executed Agreement has been submitted 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, an updated Agreement must immediately be submitted to Prosperity Bank.**

NAME OF ISO: \_\_\_\_\_ SIGNATURE OF ISO: \_\_\_\_\_ DATE: \_\_\_\_\_

\*ATM Operator is defined as 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 10% or more of the business. If more than one person owns 10% or more, copy this page and complete Sections B or C 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. Bank and its agents are hereby authorized 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 principal involved in this Application, 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.

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 ATM as a part of the Networks' systems.
  - c. "Material Adverse Condition" means any ATM Operator or any principal of an ATM Operator 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 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. ATM Operator and Merchant each agree that 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. ATM Operator and Merchant each agree 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. ATM Operator shall promptly inform ISO and Bank in writing of any changes in any information provided by this Agreement.
  - d. ATM Operator 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. 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 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. **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/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/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 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 of payment, warranty, governing law, and waiver of jury trial, and from the confidentiality and indemnity provisions hereof.

Agreement to be submitted to:

ISO Name: \_\_\_\_\_

ISO Initials: \_\_\_\_\_

Terminal #: \_\_\_\_\_