

CARD SERVICES AGREEMENT  
BETWEEN  
NEW YORK UNIVERSITY  
AND

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AGREEMENT made as of the \_\_\_ day of \_\_\_\_\_, 2006 by and between New York University, a New York not-for-profit education corporation having its principal offices at 70 Washington Square South, New York, NY 10012 ("NYU"), and \_\_\_\_\_, having its principal place of business at \_\_\_\_\_ ("Merchant").

WHEREAS, NYU offers to its faculty, staff and students a discretionary pre-paid services program which is accessible through an automated card-based privileged access control system ("NYU Campus Cash Program"); and

WHEREAS, under the NYU Campus Cash Program, NYU faculty, staff and students are able to purchase goods and services at various locations by using a campus card issued by NYU ("Campus Card"); and

WHEREAS, Merchant desires to provide goods and services to NYU faculty, staff and students through the NYU Campus Cash Program as set forth further below.

NOW, THEREFORE, the parties mutually agree as follows:

**I. PARTICIPATION IN NYU CAMPUS CASH PROGRAM**

A. System Access. NYU grants Merchant access to the NYU Campus Cash Program for purposes of providing sale transaction(s) at the Merchant's location to participants in the Program holding Campus Cards. Merchant agrees to accept Campus Cards presented to Merchant for the purchase of goods or services at Merchant's location, subject to the terms and conditions set forth herein. Except as otherwise provided in this Agreement, Merchant shall not permit access to the NYU Campus Cash Program to any third party, including but not limited to any subsidiary or affiliate of Merchant, or any financial institution or entity, without the prior written consent of NYU, which consent may be withheld by NYU in its sole discretion.

B. Equipment and Installation. Merchant shall be responsible at its sole expense for acquiring, installing and maintaining all equipment and telecommunications lines necessary or required for participation in the NYU Campus Cash Program.

C. Card Inspection. Prior to accepting a Campus Card for a transaction, Merchant shall verify by visual inspection that the person presenting the Campus Card to Merchant is the

person pictured in the photo on the Campus Card. Merchant shall only accept the Campus Card for purchases made in-person; Merchant shall not accept the Campus Card for orders placed by phone, facsimile or other remote method. If it is determined that Merchant has accepted a lost or stolen Campus Card, Merchant will not be reimbursed by the NYU Campus Cash Program for the purchase.

D. Campus Cash Off-Line. If, at any time, the equipment at Merchant's location indicates off-line status or is otherwise operating improperly, Merchant shall not accept any NYU Campus Cash Program transactions until Merchant's equipment is restored to proper on-line status. In addition, Merchant shall immediately notify the Director of NYU Card Services. In no event shall NYU be liable for any losses, damages, claims, costs or expenses suffered or incurred by Merchant due to failure of the equipment or verification system to operate properly.

E. Receipts. Merchant shall make a receipt available to the Campus Card holder at the time the cardholder initiates an NYU Campus Cash Program transaction with Merchant, which receipt shall include the amount of the transaction, the date, the account number, and the location and identity of the Merchant.

F. Credits and Returns. Credits to correct an operator error ("Corrections") and/or merchandise returned for full value ("Returns") can be processed through the Campus Card reader. All credits for Corrections and Returns for the week will be subtracted from the debits for the week to determine the amount owed to Merchant pursuant to Section II of this Agreement. Merchant accepts responsibility for all credits processed through readers at Merchant's location(s). Merchant shall not exchange cash for a Return of merchandise purchased with the Campus Card.

G. Promotions; Sales Incentives. Merchant agrees not to charge any fees to any Campus Card holder for use of the Campus Card. Purchases of merchandise with the Campus Card shall be charged at the cash price, less any applicable discounts. Merchant shall not mark-up the purchase price or place any surcharges on goods purchased by a Campus Card. If Merchant violates section I.G of this Agreement, NYU may terminate this Agreement if Merchant does not cure such violation within three (3) days after receiving written notice thereof from NYU.

H. Prohibited Transactions. Merchant shall not accept the Campus Card in payment for the purchase of alcoholic beverages or tobacco products. Merchant acknowledges and agrees that if Merchant accepts a Campus Card in payment for alcoholic beverages or tobacco products, NYU will not provide Merchant payment for such purchases.

I. Confidentiality of Information. Merchant shall, and shall cause its employees, agents, and representatives to, hold in confidence and not disclose, distribute, sell, copy, or otherwise disseminate or use any information gathered and/or available to Merchant about NYU or its students, faculty or staff as a result of Merchant's participation in the NYU Campus Cash Program ("Confidential Information") other than as may be required for purposes of accepting and processing transactions pursuant to this Agreement. Confidential Information includes but is not limited to student, faculty or staff identification numbers, account numbers, names, classification,

telephone numbers and addresses. This Section shall survive termination of this Agreement.

J. Retention of Records. Merchant and NYU shall maintain a record of each transaction covered by this Agreement for a period of seven (7) years.

## II. PAYMENT.

A. Merchant agrees to pay NYU a service fee ("Service Fee") equal to \_\_\_% of the gross Campus Card purchases (before netting any Credits or Returns as set forth in Section I.F of this Agreement) executed by Merchant through the NYU Campus Cash Program. The Service Fee shall be deducted by NYU from the weekly payment due to Merchant hereunder. NYU reserves the right to change the Service Fee percentage by providing Merchant at least thirty (30) days prior written notice. Merchant will have the option of continuing or terminating participation in the NYU Campus Cash Program in the event of a change in the Service Fee.

B. NYU will pay Merchant on a weekly basis for the NYU Campus Cash Program transactions attributable to Merchant's business, less the Service Charge. The payment will be made no later than Friday for transactions conducted for the previous week. For purposes of this Agreement, a week is defined as Monday through Sunday.

III. TERM. This Agreement shall commence as of the date first written above and shall, unless earlier terminated in accordance with the Section IV, continue for one year. Thereafter, the Agreement shall automatically renew for additional one-year terms.

## IV. TERMINATION.

A. Either party may terminate this Agreement, with or without cause, upon sixty (60) days prior written notice.

B. Upon material breach of any term of this Agreement by a party hereto (the "Breaching Party"), the other party (the "Non-Breaching Party") may give written notice to the Breaching Party describing in detail such breach. If the Breaching Party shall not have cured such breach within thirty (30) days of receiving notice thereof, the Non-Breaching Party may give written notice to the Breaching Party that it elects to terminate this Agreement and shall specify a date upon which such termination shall take effect, which date shall not be less than thirty (30) days from the date of such notice.

C. Each party shall have the right to immediately terminate this Agreement upon the insolvency or bankruptcy of the other party.

D. In the event of termination for any reason, NYU shall have no responsibility or liability for any loss, costs or damage, whether direct, indirect or consequential, incurred by Merchant resulting from termination.

V. **INDEMNIFICATION**. The Merchant shall defend, indemnify and save and hold harmless NYU and its trustees, officers, employees and students from and against any loss or liability, damage, cost and expense, including but not limited to reasonable attorneys' fees and costs, for injury, death, loss or damage of whatever nature to any person, property or any other claim by the Merchant or its officer, employees, agents, customers, licensees, invitees or any other person, firm or corporation arising out of, or in any way connected with, the Merchant's participation in the NYU Campus Cash Program.

VI. **NOTICES**. All notices to the parties required hereunder shall be in writing and shall be delivered by messenger or by certified or registered mail, return receipt requested, to:

To NYU

New York University  
383 Lafayette Street  
New York, New York 10003  
Attn: Director of NYUCard Services

To the Merchant

VII. **RELATIONSHIP OF PARTIES**. Each of the parties shall perform its obligations hereunder as an independent contractor. Nothing contained in this Agreement shall create any agency, partnership, association or joint venture between the parties hereto. Neither party shall have the right or authority to create any obligation or responsibility, express or implied, on behalf of or in the name of the other party, or to bind the other party contractually in any manner whatsoever. Under no circumstances, as a result of this Agreement, shall any officer, agent, employee or representative of one party be considered an officer, agent, employee or representative of the other party.

VIII. **DISCLAIMERS; LIMITATION OF LIABILITY.**

A. NYU IS A NOT-FOR-PROFIT EDUCATION CORPORATION AND IS PROVIDING THE SERVICES HEREUNDER IN SUCH CAPACITY. AS SUCH, NYU MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE EQUIPMENT OR SERVICES PROVIDED HEREUNDER INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NONINFRINGEMENT OR OTHERWISE. IN NO EVENT SHALL NYU BE LIABLE FOR INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE LOSS, DAMAGE OR EXPENSES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT OR TORT (INCLUDING NEGLIGENCE).

B. The sole liability of NYU to Merchant for any claims arising out of or in connection with this Agreement, whether based on breach of contract or tort (including negligence), shall be to furnish correct monthly payments, and to correct such payments as necessary. The sole liability of NYU for money damages resulting from claims related to this Agreement caused by NYU and its officers, employees or agents in performing services under this Agreement shall be limited to the previous month's Service Fee under this Agreement.

IX. **ASSIGNMENT.** The Merchant shall not assign or transfer its interest or any obligation or right under this Agreement to any third party without the prior written consent of NYU. Any purported assignment without such consent shall be null and void. Each assignee or transferee shall assume and be deemed to assume all obligations under this Agreement and Merchant shall remain jointly and severally liable with its assignee for the payment of all commissions and for the performance of all of the terms and conditions contained herein.

X. **NEW YORK LAW.** This Agreement shall be interpreted in accordance with the laws of the State of New York. By execution of this Agreement, the parties hereby consent that they shall be subject to the exclusive jurisdiction of the federal and state courts located in New York County, New York State, for the resolution of any disputes arising from this Agreement, regardless of the place of execution or performance of this Agreement.

XI. **USE OF NAME.** The Merchant shall not use NYU's name, insignia or symbol, or any variation thereof, including NYU Campus Cash Program, in any publication or advertisement, without the prior written consent of NYU.

XII. **FORCE MAJEURE.** The parties acknowledge and agree that the provision of services hereunder may be delayed or prevented due to causes beyond the control and without the fault or negligence of NYU. Such causes may include, but shall not be limited to, the failure of any third party to deliver goods or services to NYU, fires, strikes, unavailability of energy, communication lines or resources, delay in transportation, acts of God or of the public enemy or acts of civil or military authority.

XIII. **MISCELLANEOUS**. This Agreement constitutes the entire agreement of the parties regarding its subject matter, and it supersedes any and all prior and collateral negotiations, agreements and understandings between the parties, whether written or oral regarding the subject matter. This Agreement shall be binding on the parties and their respective successors and permitted assigns. Neither this Agreement nor any provision hereof may be modified or waived orally but only by an instrument in writing signed by both parties. Any waiver of any term, provision or condition of this Agreement in any one or more instances shall not be deemed to be or construed as a further or continuing waiver of such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement. If any provision of this Agreement is determined to be invalid, void or unenforceable in any respect, the remaining provisions hereof shall continue in full force and effect. This Agreement is not for the benefit of any third party. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Any Appendices attached hereto are made part of this Agreement as if fully set forth in the text hereof.

IN WITNESS WHEREOF, the parties have signed this Agreement in their official capacities as of the day and year first written above.

**FOR AND ON BEHALF OF  
NEW YORK UNIVERSITY**

**FOR AND ON BEHALF OF  
MERCHANT**

By: \_\_\_\_\_  
Name: Ann Marie Powell  
Title: Director of NYUCard Services

By: \_\_\_\_\_  
Name:  
Title: