

SALEM STATE UNIVERSITY CLIPPERCARD MERCHANT AGREEMENT

AGREEMENT made as of the ___ day of _____ by and between Salem State University, a Massachusetts state institution of higher learning having its principal offices at 352 Lafayette Street, Salem, MA 01970 ("SSU"), and _____ having its principal place of business at _____ ("MERCHANT").

WHEREAS, SSU offers to its faculty, staff and students a multi-application campus card program ("SSU ClipperCard Program") which includes an optional ClipperCash account (i.e., discretionary pre-paid debit account) and transactions managed via an automated card-based access control system; and

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

WHEREAS, the aforementioned MERCHANT desires to provide goods and services to SSU faculty, staff and student via the SSU ClipperCard Program as set forth further below.

NOW, THEREFORE, the parties mutually agree as follows:

I. **PARTICIPATION IN SSU CLIPPERCARD PROGRAM.**

A. System Access.

SSU grants MERCHANT access to the SSU ClipperCard Program for purposes of providing sales transactions at the MERCHANT location to authorized and valid cardholders in the SSU ClipperCard Program. MERCHANT agrees to accept ClipperCards presented to MERCHANT for the purchase of goods or services at MERCHANT location, subject to the terms and conditions set forth herein. Except as otherwise provided in this Agreement, MERCHANT shall not permit access to the SSU ClipperCard 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 SSU, which consent may be withheld by SSU at its sole discretion.

B. Equipment and Installation.

MERCHANT shall be responsible, at its sole expense, for all required card reading and communications equipment and data lines for participation in the SSU ClipperCard Program. See ATTACHMENT A for specific equipment and installation requirements.

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C. Card Inspection.

Prior to accepting a ClipperCard for a transaction, MERCHANT shall verify by visual inspection that the person presenting the ClipperCard to MERCHANT is the person pictured in the photo on the ClipperCard. If MERCHANT is conducting a delivery sale MERCHANT will be held responsible for verifying the person receiving the sales at the time of delivery is the person pictured on the ClipperCard that was used for payment. If it is determined that MERCHANT has accepted an unauthorized ClipperCard, MERCHANT will not be reimbursed by the SSU ClipperCard Program for the purchase. A MERCHANT violating this paragraph will receive one verbal and one written notice; a third violation shall result in automatic termination of the Agreement pursuant to paragraph IV D

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 SSU ClipperCard Program transactions until MERCHANT equipment is restored to proper "on-line" and functioning status. In addition, MERCHANT shall immediately notify the SSU ClipperCard Services Office of any such equipment problems. In no event shall SSU 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 provide a receipt upon request to the ClipperCard cardholder at the time of the transaction. The receipt shall include the amount of the transaction, the date, the card 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") are the responsibility of the MERCHANT. Any such issues are to be resolved via the SSU ClipperCard card reader (where applicable) or the SSU ClipperCard Services Office in a timely manner. MERCHANT accepts responsibility for all credits processed through ClipperCard card readers (where applicable) at MERCHANT-location(s). MERCHANT shall not exchange cash for a Return of merchandise purchased with the ClipperCard.

G. ClipperCard Customer Fees.

MERCHANT agrees not to charge any fees to any ClipperCard cardholder for ClipperCard transactions, which exceed the patron cash price. Any violations of this section must be

resolved in a timely manner or may result in immediate termination to this Agreement.

H. Prohibited Transactions.

MERCHANT shall not accept the ClipperCard as payment for the purchase of alcoholic beverages or tobacco products if the patron is under legal age as prohibited by law. MERCHANT is responsible for verifying legal age as required by law. MERCHANT acknowledges and agrees that if MERCHANT accepts a ClipperCard in payment for alcoholic beverages or tobacco products sold to a patron under the legal age, SSU will not provide MERCHANT payment for such purchases and will terminate the contract with the MERCHANT. Any violation of this section must be resolved in a timely manner and will result in immediate termination of this Agreement.

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 or available to MERCHANT about ClipperCard cardholders or SSU or its students, faculty or staff as a result of MERCHANT participation in the SSU ClipperCard 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, addresses, etc. This Section shall survive termination of this Agreement.

J. Retention of Records.

MERCHANT shall maintain a record of each transaction covered by this Agreement for a period of three (3) years.

II. **FEES & PAYMENTS.**

A. Transaction Fees.

MERCHANT agrees to pay SSU a Transaction Fee equal to 10% of gross ClipperCard purchases (before netting any Credits or Returns as set forth in Section I.F of this Agreement) executed by MERCHANT through the SSU ClipperCard Program. The Transaction Fee shall be deducted by SSU from the daily ACH (Automated Clearing House) transfer before it is deposited to the account the MERCHANT has designated. SSU reserves the right to change the Transaction Fee percentage by providing the MERCHANT at least thirty (30) days prior written notice. MERCHANT will have the option of continuing or terminating participation in the SSU ClipperCard Program in the event of a change in the Service Fee.

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B. Merchant Payments.

SSU will pay MERCHANT on a daily basis by way of an ACH (Automated Clearing House) transfer for the SSU ClipperCard Program transactions attributable to MERCHANT business, less any Transaction Fees, Equipment Rental Fees, and Service Fees previously agreed upon. The Settlement Date will be daily. Payment Date will occur approximately two days after the Settlement Date for each Transaction Period. SSU will be responsible for providing payment to the merchant and provide the MERCHANT with the ability to check sales and supporting documentation for review. The MERCHANT will be responsible to supply a valid bank account and routing information to process ACH transfer upon initiation of contract. Further, the MERCHANT is responsible to notify SSU immediately of any changes to such banking information in order to avoid delays in such processing. The MERCHANT can request a ClipperCard Service Manager to run a more in depth report for review on an "as needed" basis.

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 until the end of the fiscal year as deemed by SSU as 5:00pm on June 30. Thereafter, the Agreement shall automatically renew for additional one-year terms on July 1 of each year. Equipment Installation Fees (if any) must be paid for at the outset of the Agreement.

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. If the MERCHANT is found to have sold alcohol or tobacco products to a Patron who is under legal age as outlined by state law SSU will immediately terminate this agreement.

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D. Notwithstanding any other provision of this Agreement, violation by a MERCHANT of paragraph I (C), (H), or (I) or any provision of Massachusetts law shall constitute a material breach of this Agreement and shall be sufficient to warrant immediate termination by SSU.

E. In the event of termination for any reason, SSU 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 SSU 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 participation in the SSU ClipperCard 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:

SSU: Director of ClipperCard Services
Salem State University
352 Lafayette Street
Salem, MA 01970

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

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representative of one party be considered an officer, agent, employee or representative of the other party.

III. **DISCLAIMERS & LIMITATION OF LIABILITY.**

A. SSU is a state institution of higher learning and provides services hereunder in such capacity. As such, SSU 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, non-infringement or otherwise. In no event shall SSU 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 SSU 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 payments (as identified under section II B of this agreement), and to correct such payments as necessary.

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 SSU. Any purported assignment without such consent shall be null and void and be grounds for termination of this agreement. If consent is granted, 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. Any violations of this section must be resolved in a timely manner or may result in immediate termination to this Agreement.

X. **MASSACHUSETTS LAW.**

This Agreement shall be interpreted in accordance with the laws of the Commonwealth of Massachusetts. By execution of this Agreement, the parties hereby consent that they shall be subject to the exclusive jurisdiction of the state courts located in Essex County, Commonwealth of Massachusetts, 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 SSU's name, insignia or symbol, or any variation thereof, including SSU ClipperCard Program, in any publication or advertisement, without the prior

and written consent of SSU.

XII. **FORCE MAJEURE.**

The parties acknowledge and agree that the provision of services here under may be delayed or prevented due to causes beyond the control and without the fault or negligence of SSU. Such causes may include, but shall not be limited to, the failure of any third party to deliver goods or services to SSU, 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. **ENTIRE AGREEMENT.**

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.

IX. **SIGNATURE PAGE.**

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

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**FOR & ON BEHALF OF
SALEM STATE UNIVERSITY:**

**FOR & ON BEHALF OF
MERCHANT:**

(Signed)

(Signed)

Joseph FX Donovan
(Printed Name)

(Printed Name)

Associate Vice President of Finance _____
(Title)

(Title)

(Date)

(Date)

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ATTACHMENT A
"Equipment & Installation Requirements"

Required Equipment (by Merchant):

- (a) 1 PAX S80, Dual Comm Terminal

Installation Requirements (by Merchant):

- (a) Power outlets (with power surge protection) for all equipment.
- (b) One dedicated data port installed for PAX S80 Terminal

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ATTACHMENT B
"ClipperCard Merchant Settlement Details"

MERCHANT must have a valid bank account and provide the information to SSU upon signing the merchant contract so ACH (Automated Clearing House) deposits may be made. MERCHANT must immediately inform the ClipperCard Office of any changes in banking information to avoid processing delays.

ACH (Automated Clearing House) deposits will be deposited on a daily basis two days after a transaction is made. If no transactions were made, there will be no deposit.

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