

St. Mary's College of Maryland Off Campus Merchant Agreement

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005, ("Effective Date") is between St. Mary's College of Maryland, on behalf of its One-Card Office (herein referred to as the "College") and \_\_\_\_\_ (herein referred to as the "Merchant").

The parties to this Agreement, in consideration of the mutual covenants and stipulations set out herein, agree as follows:

- (1) SCOPE OF SERVICE: The Merchant and College agree to enter into this operating Agreement to permit use of the One-Card for purchases of goods and services from the Merchant as set forth in Attachment A.
  - (2) TERM: This Agreement shall commence on the Effective Date, and shall terminate one year from the Effective Date ("Initial term"), unless sooner terminated or extended as provided herein. After the expiration of the Initial Term, this Agreement will automatically renew on a month-to-month basis ("Renewal Term") unless terminated by either party upon thirty (30) days notice to the other party.
  - (3) COMPENSATION: Compensation, including commissions and revenue payments, shall be paid as set forth in Attachment B and as otherwise provided in (19) below.
  - (4) ASSISTANCE: The College agrees upon request of the Merchant to furnish, or otherwise make available to the Merchant, copies of existing public and non-proprietary materials in the possession of the College that are reasonably related to the subject matter of this Agreement and are necessary to the Merchant for completion of its performance under this Agreement.
- The Merchant shall provide designated College personnel reasonable access to related facilities in order to provide the College with the ability to inspect the One-Card system operations and for other reasons that may arise in regards to this Agreement.
- (5) MARYLAND LAW PREVAILS: The place of performance of this contract shall be the State of Maryland. This contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland. All claims shall be brought to court only in the State of Maryland in either the District Court of St. Mary's County or the Circuit Court for St. Mary's County.
  - (6) TERMINATION OF CONTRACT FOR DEFAULT: If the Merchant fails to fulfill its obligations under this contract properly and on time, or otherwise violates any provision of the contract, the College may terminate the contract by written notice to the Merchant. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Merchant shall, at the College's option, become College property. The College shall pay the Merchant fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Merchant's breach. If the damages are more than the compensation payable to the Merchant, the Merchant will remain liable after termination and the College can affirmatively collect damages.
  - (7) TERMINATION OF CONTRACT FOR CONVENIENCE OR WITH NOTICE: (A) The performance of work under this contract may be terminated by the College in accordance with this clause in whole, or from time to time in part, whenever the College shall determine that such termination is in the best interest of the College. The College will pay all reasonable costs associated with this Contract that the Merchant has incurred up to the date of termination and all reasonable costs associated with termination of this Contract. However, the Merchant shall not be reimbursed for any anticipatory profits

which have not been earned up to the date of termination. (B) This contract may be terminated by either party without cause by giving 30 days written notice of termination.

(8) INDEMNIFICATION: The College has no obligation to provide legal counsel or defense to the Merchant or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Merchant or its subcontractors as a result of or relating to this Contract. The College has no obligation for the payment of any judgments or the settlement of any claims against the Merchant or its subcontractors as a result of or relating to the Merchant's obligations under this contract. The Merchant shall immediately notify the Purchasing Agent at 240-895-4307 of any claim or suit made or filed against the Merchant or its subcontractors regarding any matter resulting from or relating to the Merchant's obligations under the contract and will cooperate, assist, and consult with the College in the defense or investigation of any claim, suit, or action made or filed against the College as a result of or relating to the Merchant's performance under this Contract.

(9) ASSIGNMENTS: Merchant shall not, without the prior written consent of St. Mary's College of Maryland, assign or subcontract its interest under this Agreement in whole or in part. Each assignee or subcontractor approved by the College shall assume the obligations of Merchant under this Agreement; provided, however, that no assignment approved by the College hereunder shall release Merchant from any liability or obligation under this Agreement, and Merchant shall remain liable for the payment of all commissions and for the due performance of all of the terms and conditions contained herein.

(10) INTEGRATION AND MODIFICATION: This Agreement and Attachments A and B constitute the entire Agreement between the Merchant and the College. No alteration, amendment or modification in the provisions of this Agreement shall be effective unless it is reduced to writing, signed by the parties and attached hereto.

(11) COLLATERAL CONTRACTS: Where there exists any inconsistency between this Agreement and other provisions of Attachments A or B which are made a part of this Agreement by reference or otherwise, the provisions of this Agreement shall control.

(12) SEVERABILITY: Each paragraph and provision of this Agreement is severable from the entire agreement; and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.

(13) COMPLIANCE WITH LAWS: The Merchant hereby represents and warrants that: a) it is qualified to do business in the State of Maryland and that it will take such action as, from time to time, may be necessary to remain so qualified; b) it is not in arrears with respect to the payment of any monies due and owing the State of Maryland or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract; c) it shall comply with all Federal, State and local laws, regulations and ordinances applicable to its activities and obligations under this Contract; and d) it shall procure, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

(14) TAXES: The Merchant assumes complete responsibility for all taxes and fees associated with the services covered under this Agreement.

(15) ADVERTISING: Merchants shall not advertise or promote its business or operation through use of the College name, except that the Merchant may advertise and promote its business or operation through use of the One-Card name using advertising which has been reviewed and approved in advance by the College. The College will advertise and promote that the One-Card is honored at "participating off-campus merchants" through on-campus media in conjunction with normal College advertising. Individual Merchants may/may not be named in College advertising.

(16) AUDIT: The Merchant hereby agrees to retain all books, records and other documents relative to this Agreement for three (3) years after final payment, or termination of the agreement, whichever is sooner. The College, its authorized agents and/or State auditors shall have full access to and the right to examine any of said materials during said period.

(17) AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that the College shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Agreement. It is further understood that the availability of funds to sustain this Agreement is a decision to be made at the discretion of the College or the State of Maryland.

(18) CONTINGENCY: The College's performance of this contract is contingent upon its procurement of satisfactory equipment and associated operating systems for the College system's compliance to the One-Card Program. The College shall use its best efforts to procure such equipment and systems. If the College is unable to procure such equipment and system, the Agreement shall immediately terminate. It is the Merchant's responsibility to procure and maintain the equipment required to communicate and process transactions on our One-Card system.

(19) COMMISSION RATE: Commission rate adjustments are permitted to recover the College's cost of materials and labor for performance of services related to this Agreement. The College will provide the Merchant approximately 30 days advance written notice prior to the effective date of a new commission increase. The College will document the basis for the change in the rate.

(20) NON-EXCLUSIVITY: This agreement is non-exclusive. The College reserves the right to enter into agreements with other merchants, retailers and Merchants.

(21) WRITTEN NOTICE: Whenever any notice is required or permitted under this Agreement, such notice shall be in writing. Notices required or permitted under this Agreement shall be delivered by certified mail (return receipt requested) as follows or at such other addresses as have therefore been specified by written notice.

COLLEGE

One Card Administrator  
St. Mary's College of MD  
One-Card Office  
18952 E. Fisher Road  
St. Mary's City, MD  
20686-3001

MERCHANT

Contact: \_\_\_\_\_  
Merchant: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City, State: \_\_\_\_\_  
Zip Code: \_\_\_\_\_  
Phone: \_\_\_\_\_

cc: St. Mary's College of MD  
Business Office  
18952 E. Fisher Road  
St. Mary's City, MD  
20686-3001

(22) FORCE MAJEURE: The College and Merchant agree that if by any reason of strike or other labor disputes, civil disorders, inclement weather, acts of God or any other unavoidable cause, either the College or the Merchant is unable to completely perform its obligations under this Agreement, that such nonperformance will not be considered a breach of this Agreement. If the Merchant finds that it cannot completely perform under the terms of this Agreement, the College must be notified immediately in writing as to the cause and expected duration of the nonperformance.

Notwithstanding the above, it is agreed that prolonged or frequent nonperformance under this Agreement may result in termination of this Agreement prior to expiration.

(23) ETHICS IN PUBLIC CONTRACTING: By signature to this Agreement, the Merchant certifies that this Agreement is made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other business, supplier, manufacturer or subMerchant in connection with this Agreement, and that they have not conferred on any public employee having official responsibility for this procurement transaction and payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

IN WITNESS THEREOF the parties have caused the Agreement to be executed by the following duly authorized officials:

**BY:** \_\_\_\_\_  
Merchant

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

(All College contracts  
require two signatures.)

**BY:** St. Mary's College of Maryland

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Approved as to Form and Legal Sufficiency this \_\_\_\_ Day of \_\_\_\_\_, 2005.

Signed: \_\_\_\_\_

**ATTACHMENT A – Scope of Service**

1. **PURPOSE:** St. Mary's College of Maryland enters into this Agreement to provide a method for College participants in the One-Card program to purchase goods and services from the Merchant through the use of the One-Card, which is a debit card.

2. **BACKGROUND:** The One-Card is a College sponsored program wherein the participants deposit funds into a declining balance account. The College establishes and maintains an account balance in the participant's name. The College also validates and issues the participants the One-Card for use in the Merchant provided VeriFone readers. The participants may then use these funds for purchases wherever the One-Card is accepted. Sales made at participating, local, off-campus Merchants through the One-Card program are reimbursed to the Merchants at the end of each revenue period, as defined in Attachment B. The One-Card Office, 18952 E. Fisher Rd., St. Mary's City, MD 20686-3001, telephone 240-895-4469, is the College proponent responsible for operations of the One-Card program. The One-Card office is open from 8:00 AM to 5:00 PM, Monday through Friday.

3. **ONE-CARD GENERAL REQUIREMENTS:** The Merchant agrees that the retail prices of goods and services sold to participants under this Agreement, including any discounts, special promotions and/or sales, or coupons will be no higher than the retail prices charged to the general public.

Purchases will not be allowed with a damaged or non-working One-card or during system malfunctions (offline).

The Merchant must contact the One-Card office as soon as possible to report any One-Card found by the Merchant.

The One-Card is non-transferable. Only the individual in whose name the One-Card account was opened may use the card for authorized purchases. The authorized account holder must be present at the time of the sale/delivery. Deliveries require the account holder to sign a receipt printed from the card reader (see ATTACHMENT B). The Merchant must make a visual comparison of the intended card user to the photo identification contained on the One-Card to ensure that the purchaser is the authorized account holder. The Merchant bears the risk of loss for sales to unauthorized persons. The College assumes no responsibility for Merchant sales performed with the One-Card when the account holder is not present. The College is also not responsible for Merchant sales performed while the system is offline. All manual account entry transactions are at the Merchant's sole risk and expense.

4. **COMMISSION:** The Merchant will make payments to St. Mary's College of Maryland during the term of this Agreement. The College will be paid five percent (5%) commission on Merchant's monthly gross sales transactions. The payments will be an amount equal to the above percentage of the Merchant's total sales processed through the One-Card program. Commission rate adjustments by the College are permitted to recover the College's cost of materials and labor for performance of services related to this Agreement. The College will provide the Merchant approximately 30 days advance written notice prior to the effective date of a new commission increase. The commission payment is not related in any manner to maintenance or technical systems services performed on the One-Card system. The procedure for determining the correct commission payment is described in ATTACHMENT B (Ordering and Accounting Procedures).

5. **ORDERING PROCESS:** One-Card participants will place orders and make sales transactions directly with the Merchant. The Merchant will have in place a card reader linked to the One-Card system to verify, as the order is placed, that adequate funds are available in the One-Card account to pay for the order. The procedures contained herein and in ATTACHMENT B are to be adhered to during the term of this Agreement.

6. **REQUIREMENTS FOR CONNECTION TO THE ONE-CARD SYSTEM:** Connectivity to and operation within the One-Card program requires a VeriFone card reader (Tranz330, Tranz380 or Tranz380x2 terminal), printer (VeriFone 250 or 900) and dedicated phone line. Merchants accepting telephone orders and making deliveries must print receipts for account holders to sign upon delivery.

The College will configure the VeriFone to communicate with the One-Card System.

**RESPONSIBILITIES OF MERCHANT:**

Equipment and Data Lines. During the Initial Term and any Renewal Term, Merchant agrees to furnish, at its cost and expense, the equipment, communication and phone lines, as necessary or required to interface with the One-Card System.

The Merchant is responsible for the procurement of any and all consumable supplies necessary to operate this equipment.

A description of the equipment and corresponding serial numbers used by the Merchant are listed below:

VeriFone: \_\_\_\_\_ /Serial #: \_\_\_\_\_

Printer: \_\_\_\_\_ /Serial #: \_\_\_\_\_

As the system evolves at the College and/or technological advances/upgrades are made in the system’s equipment or software, the College may require the Merchant to purchase and install additional equipment in order to continue operations under this agreement.

The College will be responsible for configuring the software into the Merchant’s card reader(s) and the Merchant is responsible for the maintenance, repair and operations of its card reader(s) and printers.

The following header (to be provided by the Merchant) will be programmed onto the receipt:


The College will provide training pertaining to the proper use of the One-Card system to the Merchant.

7. ONE-CARD SYSTEM MALFUNCTIONS: If at any time the One-Card system at the Merchant’s location malfunctions or otherwise indicates improper operation, the Merchant shall not utilize the system to conduct business under this Agreement. The Merchant should follow the procedures given to test the system before notifying the One-Card Office at 240-895-4469. If the One-Card Office hours of operation are altered to such a degree that would affect the business covered under this Agreement, notification will be furnished to the Merchant by the College.

Upon notification of a malfunction, the College will inspect the system to determine if the problem is due to a College software or hardware failure. In either instance, the College will make its best effort to correct a One-Card system malfunction. If the problem is determined by the College to be caused by the Merchant’s hardware, the Merchant must make its best effort to correct the malfunction. The College is not responsible for repair or maintenance of the Merchant’s hardware.

8. SURRENDER OF ONE-CARD SOFTWARE: Upon termination of this Agreement, the Merchant agrees to allow the College access to any equipment purchased/leased to conduct business under this agreement in order to remove the One-Card software application from that equipment.

9. CONFIDENTIALITY: The merchant shall not, without the Cardholder’s and the College’s prior written consent, sell, purchase, provide, or exchange One-Card account information in the form of imprinted sales slips, carbon copies of sales slips, mailing lists, tapes, journal rolls, or any other media obtained by reason of a Transaction to any third party other than to the College, or as required by law.

10. EXCLUSION LIST: St. Mary’s College of Maryland’s One-Card program has been marketed to parents as a purchasing program where monies deposited for students are used for Collegiate-related

expenditures. Retailers whose primary products or services are alcohol and or tobacco may not participate in the One-Card program. Any determination of whether a particular business should participate in the One-Card program will be made by the College in the best interest of St. Mary's College of Maryland students and parents, and will be based on whether the primary products or services available are consistent with the College's criteria for appropriateness. The purchase of alcohol and tobacco products through the One-Card program is NOT to be permitted by a Merchant under any circumstance. If the Merchant is found to be in violation of these terms the College reserves the right to immediately terminate this agreement.

11. **QUALITY CONTROL:** The College reserves the right to dispatch quality control purchasers to any and all sites to assure that all of the aforementioned policies are being adhered to. These quality control purchasers will utilize the service plan of our debit program. The service plan involves the use of pseudo funds and the Merchant shall not expect to be reimbursed for such purchases.

## ATTACHMENT B Ordering and Accounting Procedures

### I. Ordering Procedures

1. Authorized cardholder requests goods or services from a Merchant using the One-Card. The Merchant must make a visual comparison of the intended card user to the photo identification contained on the One-Card to ensure that the purchaser is the authorized account holder.
2. Merchant totals amount of goods or services purchased, including tax, and notifies the cardholder of the total amount to be deducted.
3. Merchant enters the amount to be deducted into the reader which sends the information to the One-Card system.
4. Merchant swipes the ID card in the reader. All manual account entry transactions are to be logged and they are at the Merchant's own risk because of the increased risk of fraudulent use of the card or the possibility of unavailable funds.
5. If the cardholder has sufficient funds to cover the purchase, the message BALANCE will return to the display of the reader. A receipt will be printed showing the total amount deducted from the account and the balance remaining.
6. If there are NOT sufficient funds in the account to cover the purchase, the message BALANCE BELOW PLAN LIMITS \$ will return on the display of the reader.
7. If the card has been reported lost or stolen, the message LOST CARD will return on the display of the reader. When this occurs, reasonable attempts should be made to obtain the card so it can be returned to the College. If the Merchant is not able to obtain the card, information regarding this attempted transaction should be shared with the College. No transactions are to be manually processed if LOST CARD is the response message even if the cardholder and card match.
8. If a cardholder does not have a One-Card account established, the message CLOSED ACCOUNT/ NOT VALID will return to the display of the reader. NO transactions should be conducted in these cases.
9. Upon sale or delivery of merchandise, the Merchant must compare the photo ID on the card with the cardholder.
10. If all information matches, the cardholder must be given a copy of the receipt. During delivery transactions the cardholder must sign the receipt. A copy of the receipt is then provided to the cardholder and the Merchant retains the original.

## II. Accounting Procedures

1. The College provides accounting documentation to the Merchant.
  - a. In the first 3 months following a Merchant's acceptance of the One-Card, the One-Card office will generate a monthly transaction recap report and a summary report that will be sent to the Merchant for reconciliation. After the first three months, the summary report will continue to be sent out on a monthly basis, indicating the amount of reconciled transactions and the payment to be made to the Merchant.
  - b. If there is a discrepancy between the summary report and the Merchant totals, the Merchant should contact the One-Card Office immediately, to obtain the monthly transaction recap report to find the discrepancy.

- c. The College reserves the right to audit any One-Card transactions to determine if a sale or refund occurred.
2. The revenue payment due to the Merchant from the College will be determined as follows:
    - a. The College has established the first (1st) through the thirty-first (31st) of each month as revenue periods. Gross Revenue earned during the most recently completed period, less commission and previous differences (in that order), will be mailed or electronically transferred to the Merchant within twenty (20) days after the end of the revenue period.
    - b. The College will retain the negotiated percent of the Merchant's total gross sales during each revenue period (per ATTACHMENT A, item 4), and any other payment(s) due to the College (see c. below) and will remit the remaining percentage to the Merchant.
    - c. Interest will not be paid to the Merchant on sales made during any revenue period.

The College is not responsible for sales/revenue lost during any malfunction of the One-Card system or due to misuse of the system by the Merchant or its employees.

The Merchant, at its discretion, reserves the right to refuse service to any customer, except that the Merchant may not engage in unlawful discrimination.

  - d. The payments to Merchant are generated in Annapolis, Maryland via the State of Maryland. If Merchant has an outstanding debt with the State, the amount due to the Merchant may be offset or reduced by the State in order to recover any outstanding debts.