

Contract PART 1

MetroCard® Merchant Sales Agreement & Terms



Date _____ Retail Merchant Transit Benefit Provider Source _____
 Qualified NYC Agency Non-Selling Location/Employer Sales Rep _____
 School/Hospital Dept. of Education

Information above this line to be completed by NYC Transit representatives only.

Parties

The New York City Transit Authority, a public benefit corporation of the State of New York doing business as MTA New York City Transit ("MTA NYCT"); and Merchant (indicated as "Company Name" at beginning of Application.)
AGREEMENT made on the below date between MTA NYCT and Merchant.

WHEREAS, Merchant desires to be a merchant of MTA NYCT for the sale/distribution of MetroCards and MTA NYCT desires that Merchant sell/distribute MetroCards on its behalf.

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

MetroCard Merchant Sales Manual

MTA NYCT will provide Merchant with a MetroCard Merchant Sales Manual that will set forth operating policies and procedures for the sale of MetroCards by Merchant. From time to time MTA NYCT may modify or revise the Merchant Sales Manual and will notify Merchant of such modifications or revisions. Merchant agrees to comply with the policies and procedures set forth in the MetroCard Merchant Sales Manual. If Merchant does not wish to comply with modifications/revisions, Merchant may terminate this Agreement in accordance with "Termination (b)."

Ownership of Business/ Customer Relations

(a) Ownership of Business. Merchant represents and warrants that (i) all of the information provided and statements made in this Application & Contract are true, correct and complete, and (ii) the business identified on the Application as **Merchant** is owned in the manner set forth in the Application and that such business is the proprietor of the location(s) from which MetroCards will be sold/distributed. Merchant will give MTA NYCT not less than seven (7) calendar days' notice of any change to any of the information set forth in this Application, including any changes in the ownership of such business and the locations from which the MetroCards will be sold/distributed.

(b) Hours of Operation. Merchant agrees that MetroCards will be available for sale to all customers during all hours and days that the Merchant's business is open. Agencies, schools & hospitals may distribute MetroCards to their clients at their discretion.

(c) Customer Charges. Merchant will not charge in excess of the face value of MetroCards.

(d) Customer Relations. Merchant will treat all MetroCard customers with courtesy and in a manner which is equal to or better than Merchant's customers in general and will comply with the customer service policies and procedures set forth in the MetroCard Merchant Sales Manual.

MetroCard Purchases, Commissions, Orders and Deliveries

There are no commissions to agencies, schools, hospitals, and other non-selling locations.

Full Net Payment. On the day the Merchant places an order for MetroCards, Merchant must have on deposit in the bank account designated in the Electronic Funding section of this Agreement an amount available for payment equal to the purchase price of such MetroCards. MTA NYCT or its authorized Agent will debit Merchant's designated bank account in an amount equal to the purchase price of such MetroCards on the day the related order is placed, or later. The Merchant's purchase price of MetroCards equals the full face value of the MetroCards ordered, less the applicable commission. Merchant hereby authorizes MTA NYCT or its authorized Agent to initiate and complete such electronic funding in accordance with the terms of the Electronic Funding section on the next page. This does not apply to qualified agencies.

If for any reason the funds are not available to pay in full the amount due when the attempt is made to debit the Merchant's bank account, the debit may be adjusted to the amount available and Merchant shall be liable for all MTA NYCT bank charges, legal fees and other costs incurred in order to collect the amount not paid, and interest (at prime +1) from the date payment is due to the date payment is actually received.

The rules and procedures governing the ordering, minimums, delivery, acceptance, payment and products available for sale/distribution of MetroCards by merchants are set forth in the MetroCard Merchant Sales Manual. Periodic updates are provided to merchants. MTA NYCT reserves the right to limit the number of MetroCards sold to a Merchant.

No Refunds

Risk of loss for all MetroCards delivered to Merchant passes to Merchant upon delivery to Merchant. Merchant understands that MetroCards are prevalued and must be safeguarded in the same manner that Merchant would safeguard cash. Under no circumstances will MTA NYCT or any of its affiliates have an obligation to refund any amounts to Merchant or to redeem any MetroCards delivered to Merchant. The policies and procedures for handling problems with orders, deliveries, cards, and payment transactions are set forth in the MetroCard Merchant Sales Manual. Merchant acknowledges and agrees that if MetroCards in Merchant's possession are lost, stolen, tampered with, mutilated, or destroyed, (i) Merchant is liable in full to MTA NYCT for the value of such cards, and (ii) neither MTA NYCT nor any of its affiliates has any obligation to refund any amounts relating to such cards.

Marketing/Advertising and Site Inspection

This does not apply to NYC agencies, schools, hospitals, and qualified non-profit/non-selling locations.

(a) From time to time, MTA NYCT may require Merchants to carry special MetroCard promotions or transactions alone or in conjunction with other products ("special transactions"). The commercial terms of such special transactions as between MTA NYCT and Merchant and as between Merchant and customer, may be set forth as an amendment to the Merchant Sales Manual or as a separate transmittal to Merchant. MTA NYCT may designate Merchant's participation in special transactions as mandatory or voluntary.

(b) Merchant will display MTA NYCT's signage and materials in a prominent location on its premises. Merchant may include the MetroCard or other MTA NYCT logos in its own signage, advertising and promotional materials only if such materials: i) comply with MTA NYCT graphics standards; and ii) have been approved by MTA NYCT.

Merchant acknowledges that MTA NYCT and its representatives may conduct site inspections at Merchant's location, including an inspection of card stock and sales materials and will revise MTA NYCT-provided and Merchant displays as requested by MTA NYCT.

Merchant authorizes MTA NYCT, its agents and affiliates to use Merchant's name, likeness, business name and address, and comments in advertising and promotions for MetroCard, the Merchant Sales Program, and NYCT, MTA and their affiliates in general.

Termination

(a) MTA NYCT Termination. MTA NYCT has the right to terminate this Agreement upon thirty (30) days' notice to Merchant for any reason and immediately if Merchant has failed to comply with any term hereof or of the MetroCard Merchant Sales Manual.

(b) Merchant Termination. Merchant has the right to terminate this Agreement at any time upon thirty (30) days' notice to MTA NYCT.

Merchant/Agency Manual available on request.

Copies

White . . .File copy
Yellow . . .Credit copy
Pink . . .Merchant copy

Contract PART 2

Electronic Funding

Does not apply to qualified NYC agencies.

MTA NYCT has entered into an agreement with an Independent Sales Organization (ISO), under which said ISO, subject to the terms and conditions of such agreement, and as the authorized agent of MTA NYCT, will facilitate the electronic funding transactions for the payment of purchases of MetroCards by Merchant. Payments to MTA NYCT for MetroCard purchases by Merchant will be through the Automated Clearing House (ACH) and normally will be electronically debited directly from the checking account in the Depository Institution (Depository) indicated below.

Merchant hereby authorizes MTA NYCT and ISO to (i) access information from the checking account indicated below, (ii) initiate credit and/or debit entries by ACH transfer to such checking account, and (iii) authorize Depository to block or to initiate, if necessary, reversing entries and adjustments for any original entries made to the demand deposit account indicated below and to authorize Depository to provide such access and to credit and/or debit or to block the same to such account. This authorization is without respect to the source of any funds in the checking account and is irrevocable.

This authority extends to any purchase agreement that may exist between MTA NYCT and Merchant as well as to any fees, assessments, or penalties and amounts of whatever kind or nature due to MTA NYCT under the terms of the MetroCard Merchant Sales Agreement, whether arising during or after termination of the MetroCard Merchant Sales Agreement. This authority is to remain in full force and effect at all times unless and until MTA NYCT has consented to its termination in such time and in such manner as to afford MTA NYCT, ISO, and Depository a reasonable opportunity to act on it. In order to ensure that transactions are properly handled, a copy of a blank, voided company check must be attached. Merchant's bank must be able to process or accept electronic transfers via ACH, which transfers are processed utilizing the Federal Reserve System. In addition, Merchant understands and agrees that MTA NYCT or ISO shall charge Merchant a fee for each transaction that cannot be processed, is returned or is late, as outlined in the MetroCard Merchant Sales Manual.

Bank Information

ACH - Capable (For Credit Dept. use)

Does not apply to qualified NYC agencies.

Name on account _____

Name of bank _____ Contact _____

Address of bank _____ Phone _____

Account number (DDA) _____ Routing number (ABA) _____

Miscellaneous

(a) Assignment. This agreement will not be assigned by Merchant to any other party including through sale or other transfer of a controlling interest in Merchant without the prior written consent of MTA NYCT.

(b) Governing Law. This agreement has been entered into and will be governed by and construed and interpreted in accordance with the laws of the State of New York, excluding New York Conflict of Law Rules.

(c) Entire Agreement. This agreement, including the MetroCard Merchant Sales Manual as such may be amended from time to time, constitutes the entire agreement of the parties with respect to the subject matter hereof and, except as otherwise specifically provided herein, may be modified or amended only by a statement in writing signed by all of the parties hereto, which shall apply to this Agreement as of the date of the modification/amendment, except as expressly stated in the document.

(d) Notices. Any notices or other communications required or permitted under this Agreement will be in writing and will be deemed to have been duly given as follows: (i) upon receipt if personally delivered or (ii) upon deposit in the mail if sent by certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

If to MTA NYCT: MTA New York City Transit
MetroCard Sales, Room 5035F
130 Livingston Street
Brooklyn, NY 11201

If to Merchant: At the location listed on the Application, unless otherwise specified.

(e) Severability. If a court of competent jurisdiction should determine that any portion of this Agreement is illegal, invalid, or unenforceable, then such provision will be deemed to have been stricken from this Agreement, but the remaining portions of this Agreement will not be affected and will continue to be binding upon the parties hereto.

(f) Nonexclusivity. Merchant acknowledges that MTA NYCT has made no representations with respect to any territorial or geographical exclusivity and that MTA NYCT has the right to utilize other Merchants for the sale/distribution of MetroCards.

(g) No Fees. Merchant will not be charged any processing fees for applying to become or for being approved as a Merchant.

(h) Approval. A Merchant is not authorized to sell MetroCards and is not approved as a Merchant until MTA NYCT signs this Sales Agreement and notifies Merchant of its acceptance as a Merchant.

(i) Applicable Laws. Any dispute or litigation arising out of or connected in any way with this agreement shall take place exclusively in a state or federal court of competent jurisdiction in New York County, State of New York, United State of America.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their authorized officers, all as of the day and year written below.

Company name _____

Merchant signature _____ Title _____ Date _____

DO NOT WRITE BELOW THIS LINE _____

New York City Transit Authority doing business as MTA New York City Transit

By _____ Title _____ Date _____

Copies

White . . .File copy

Yellow . . .Credit copy

PinkMerchant copy