

AFFINITY CARD AGREEMENT

BY AND BETWEEN

Deserve, Inc.

and

New Jersey Institute of Technology

AFFINITY CARD AGREEMENT

THIS AFFINITY CARD AGREEMENT ("Agreement") is made and entered into as of the date of the last signature hereto (the "Effective Date"), by and between DESERVE, INC. ("DERVE"), a California company, located at P.O. Box 1286, Menlo Park, CA 94026 and New Jersey Institute of Technology ("NJIT"), a public research university, with an address of University Heights, Newark, NJ 07102, for themselves and their respective successors and permitted assigns. Derve and NJIT are at times hereinafter referred to as the "Parties" and individually as a "Party."

RECITALS:

WHEREAS, Derve offers certain consumer credit products to the public;

WHEREAS, Derve desires to make a consumer credit card product available to qualified members of NJIT, and/or other potential participants mutually agreed to by NJIT and Derve (collectively, the "NJIT Members," as defined below);

WHEREAS, NJIT is willing to make certain of its proprietary intellectual property and marketing channel access available to Derve and to make certain Lists (as such term is defined below) available to Derve in connection with Derve's offering of Derve's credit card product to NJIT Members, and

WHEREAS, NJIT and Derve desire that the marketing plans for the Mastercard credit card using NJIT Marks to be developed by the parties as hereinafter set forth will accomplish the respective goals of the parties;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties hereby agree as follows:

ARTICLE I: DEFINITIONS; RULES OF INTERPRETATION

1.1 Definitions. For purposes of this Agreement, the terms set forth below shall have the meanings set forth herein.

"AAA" has the meaning set forth in Section 10.3(b).

"AAA Rules" has the meaning set forth in Section 10.3(b).

"Account" means any credit card account originated pursuant to this Agreement subsequent to the Effective Date. All Accounts shall be issued on the Mastercard Network.

"Accountholder" has the meaning set forth in Article 2.1.

"Accountholder Information" means any information pertaining to Accountholders, excluding information pertaining to or related to authorized users.

"Activated" means an Accountholder has validly used an Account to make a purchase, cash advance or balance transfer within ninety calendar days from the origination of the Account.

"Affiliate" means, with respect to an entity, another entity that, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or common control with the first entity. With respect to NJIT, the Foundation at New Jersey Institute of Technology (a 501 (c) (3) public charity) is its only Affiliate for purposes of this Agreement (New Jersey Innovation Institute, Inc. and Healthcare Innovation Solutions, Inc. are excluded).

"Agreement" has the meaning set forth in the Preamble.

"Applicable Law" means, with respect to any Party, any certificate of incorporation, charter, or articles of association, by-laws or other organizational or governing documents of such Party, and any laws (including common law), codes, statutes, ordinances, rules, regulations, regulatory bulletins or guidance, regulatory examinations or orders, decrees and orders of any Governmental Authority as may be amended and in effect from time to time during the Term, including: (i) the Truth in Lending Act and Regulation Z; (ii) the Equal Credit Opportunity Act and Regulation B; (iii) the Fair Debt Collection Practices Act; (iv) the Fair Credit Reporting Act; (v) the Electronic Funds Transfer Act and Regulation E; (vi) the GLBA and its implementing regulations; (vii) the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), (viii) the Foreign Corrupt Practices Act; and (ix) the USA PATRIOT Act and its implementing regulations; and (x) applicable statutes, regulations and rules governing charitable solicitation and/or commercial co-ventures, including but not limited to the requirements of Georgia Code, Sec. 43-17; New Hampshire Code Sec. 7:28-d; and New Jersey Statutes Ch. 45:17 A-18 et seq.

"Arbitrators" has the meaning set forth in Section 10.3 (c).

"Basic Qualifications" has the meaning set forth in Section 10.3 (c).

"Business Day" means any day, except Saturday, Sunday, or a day on which federal banks are required or authorized by Applicable Law to be closed in the State of California.

"Card" means any credit card branded with the NJIT Marks, issued by Deserve's partner bank, and serviced by Deserve pursuant to this Agreement in connection with an Account including but not limited to the Deserve Pro Mastercard and Deserve Edu Mastercard initially issued pursuant to this Agreement.

"Card Holder Agreements" ("CHA") means the governing document setting forth the terms and conditions relating to the Card and Account.

"Celtic Bank" means the partner bank of Deserve. The partner bank is the issuer of Deserve Cards.

"Claim" means any claim (including any counter or cross-claim and allegations whether or not proven), assertion, suit, cause of action, event, condition, investigation, proceeding, allegation, charges, fines, expenses, or other proceeding by any third party (including any Governmental Authority) concerning any actual or potential liability or damage of any nature, kind, and description whatsoever as to which a Party may request indemnification under Article IX.

"Claim Notice" has the meaning set forth in Section 9.2.

"Confidential Information" has the meaning set forth in Section 6.1 (a).

"Consumer" means an individual, including an individual's legal representative, who has obtained or applied for a financial product or service from either Party or its Affiliates for personal, family or household purposes, or who is identified on a marketing or other list or file made available by one Party to the other Party.

"Converted Account" has the meaning set forth in Section 4.6 (b).

"Credit Card" has the same meaning as "Card" as set forth in the Definitions.

"Customer" means an individual that is or was a NJIT Member and in whose name an Account is opened.

"Disclosing Party" has the meaning set forth in Section 6.1(a).

"Deserve" has the meaning set forth in the Preamble.

"Deserve Card" means a Mastercard issued by Deserve's partner bank and serviced by Deserve.

"Deserve Marks" means the designs, images, visual representations, logos, service marks, trade dress, trade names, trademarks and/or other proprietary designations of Deserve listed or included on Schedule A attached hereto. Schedule A shall be deemed automatically amended without further action of the Parties to reflect any additional design, image, visual representation, logo, trademark, tradename, service mark, logo, trade dress or other proprietary designation of Deserve which is approved by Deserve in writing for use in connection with the Program.

"Deserve Proprietary Rights" means: (a) Accountholder Information; (b) the information on the Deserve Website, excluding any NJIT Proprietary Rights contained therein; (c) any domain names Deserve registers for Deserve's use on the world wide web; (d) Deserve Marks; (e) the name of Deserve; (f) any and all information, ideas, concepts, artwork, graphics and other proprietary rights of Deserve used on the Deserve Website; (g) Marketing Materials, excluding any NJIT Proprietary Rights contained therein; and (h) all

materials related to Accounts and Existing Accounts and the Program in any form or medium including terms, conditions, cardmember agreements, agreements, servicing materials, disclosures, notices, Accountholder correspondence, statements, rewards program materials, and ancillary product materials, excluding any NJIT Proprietary Rights contained therein.

"Deserve Website" means the applicable portions of Deserve's relevant website located on the internet at a domain registered, owned and maintained by Deserve.

"Directory Information" is defined in accordance with the Family Educational Rights and Privacy Act (FERPA) and means student information that is generally not considered harmful or an invasion of privacy if released. Directory Information may include the following data elements:

- Student's name
- Address
- Telephone listing
- Electronic mail address
- Photograph
- Date and place of birth
- Major field of study
- Dates of attendance
- Grade level
- Participation in officially recognized activities and sports
- Weight and height of members of athletic teams
- Degrees, honors, and awards received
- The most recent educational agency or institution attended
- Student ID number, user ID, or other unique personal identifier used to communicate in electronic systems but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a PIN, password, or other factor known or possessed only by the authorized user
- A student ID number or other unique personal identifier that is displayed on a student ID badge, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a PIN, password, or other factor known or possessed only by the authorized user.

"Dispute" has the meaning set forth in Section 10.1.

"Effective Date" has the meaning set forth in the Preamble.

"Exclusive Product(s)" means any open-end credit or charge card product or program branded with the use of NJIT Marks. For the avoidance of doubt, notwithstanding the previous sentence or any other provision herein, NJIT shall have the right to enter into an agreement (or agreements) with one or more third party banks through which NJIT may (i) enhance the utility of its brand, and/or (ii) engage in sponsorships with third party banks involving the use of NJIT's trademarks and logos (so long as such sponsorships do not

involve credit card or charge card programs for Alumni or Students), however, Deserve shall have the right of first refusal to offer any new agreements described in (i) and (ii). This definition shall not include any debit/prepaid card programs, corporate travel/entertainment credit cards, procurement cards issued by on-campus service providers or any on-campus student financial aid/student loan programs. Moreover, there is a federal credit union associated with NJIT (Atlantic Federal Credit Union) which is exempted from this Agreement.

"Force Majeure Event" has the meaning set forth in Section 12.16.

"GLBA" has the meaning set forth in Section 7.1 (a).

"Governmental Authority" means any government, any state or any political subdivision thereof and any Person exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government, whether federal, state, local or territorial, that has valid jurisdiction over the subject matter and/or Person at issue.

"Governmental Request" has the meaning set forth in Section 6.2 (b).

"Indemnified Losses" means any and all losses, liabilities, costs and expenses (including reasonable fees and expenses for attorneys, experts and consultants, reasonable out-of-pocket costs, interest and penalties), settlements, equitable relief judgments, damages (including liquidated, special, consequential, punitive and exemplary damages), related to any Claims, demands, offsets, defenses, actions or proceedings by whomsoever asserted.

"Indemnified Party" means the Party receiving indemnification from the Indemnifying Party under the terms of this Agreement.

"Indemnifying Party" means the Party providing indemnification to the Indemnified Party under the terms of this Agreement.

"Initial Term" means the period set forth in Section 8.1 (a) commencing upon the Effective Date.

"Launch" means the date on which a Credit Card as defined herein is initially marketed to NJIT Members or others either through NJIT Marketing Channels or Deserve Marketing Channels.

"List" means an updated and current list of NJIT Members containing non-duplicate names, with corresponding valid postal addresses, together with such other NJIT Members' information as reasonably requested by Deserve, including the campus email address of all NJIT Members who are at least eighteen (18) years of age, segmented by zip codes or as otherwise reasonably maintained by NJIT in the ordinary course of its business, via electronic file or other format designated by Deserve; provided however, that the List shall not include: (i) the name or related information of any Person who has expressly requested that NJIT not provide his/her personal information to third parties, or (ii) any e-mail address that has been the subject of an opt-out request.

"Marked Plastic" has the meaning set forth in Section 4.6 (a).

"Marketing Channels" means the various marketing channels as mutually agreed upon from time to time; through which NJIT and/or Deserve can promote and market the Credit Card, which may include online and print advertising, conferences, promotional events which NJIT Members attend, direct mail, e-mail, and/or other channels. For the avoidance of doubt, any e-mail marketing shall be transmitted by NJIT, and such e-mails may be authored by Deserve and shall be approved by both parties under their usual and customary processes. Deserve reserves the right to market to NJIT Members for the Credit Card, and such e-mails shall be approved by NJIT.

"Marketing Materials" means all advertising, promotional, marketing and solicitation materials in any form or medium associated with the solicitation or retention of new Accounts or the offering of Card Related Products and Services.

"Marketing Plan" has the meaning set forth in Article 4.1 (a).

"Marks" means any name, design, image, visual representation, logo, service mark, trade dress, trade name, trademark, copyright, and other proprietary designation used or acquired by NJIT or any of its Affiliates during the Term that is approved by NJIT and included on Schedule B for use under this Agreement.

"Mastercard" means Mastercard International., Inc. or any other successor in interest thereto.

"Mastercard Rules" means the bylaws, procedures, rules, standards and regulations of Mastercard, and any determination or finding of Mastercard, applicable to or binding upon a Party's duties or obligations with respect to the Program.

"Member" means any Person who is, as of the date of such determination, a member of the NJIT community, including, without limitation, students and alumni members.

"Member Information" means information pertaining solely to transactions or experiences between NJIT and its Members.

"Member List" means a listing of the names, addresses, telephone numbers and e-mail addresses of Members. The Member List shall exclude (a) Members who have not reached the age of majority; (b) Members who have exercised their right under Applicable Law to opt-out of marketing solicitations (or failed to opt-in where so required by Applicable Law); (c) Members who have opted out of marketing solicitations pursuant to NJIT's privacy policy; and (d) Members not appropriate for inclusion on the Member List under NJIT policies and practices.

"Network" means Mastercard U.S.A., Inc. or any other successor in interest thereto.

"New NJIT Accounts" means any Account opened and issued a card by Deserve's partner bank to any Customer who was approved under the terms of this Agreement and the Credit Card has at least one image from Schedule B, regardless of whether such account was opened through NJIT or Deserve Marketing Channels.

"Nonpublic Personal Information" has the same meaning as set forth in Section 7.1 (a) and may include any information from or about Consumers that: (a) relates to any Consumer; (b) relates to, or derives from, any transaction between Discloser or its Affiliates and any Consumer; or (c) is a list, description or other grouping of Consumers, including Member Lists. Nonpublic Personal Information includes, but is not limited to, application, account and transaction information, Consumer names and addresses, consumer report information or information derived therefrom, and the fact that an individual is or was a Member of Discloser or any of its Affiliates.

"NJIT" has the meaning set forth in the Preamble.

"NJIT Communication Channels" means any Marketing Channels that are fully funded, staffed, or hosted by NJIT. E-mail marketing shall be transmitted by NJIT, and such e-mails shall be authored by NJIT or Deserve and approved by both parties under their usual and customary processes. E-mail marketing shall be considered a NJIT Communication Channel.

"NJIT Information" has the meaning set forth in Section 7.2 (c).

"NJIT Marks" means the Marks of NJIT.

"NJIT Members" means NJIT alumni, benefits-eligible full-time faculty and staff, students age 18 or older, and any other supporters of NJIT that may be interested.

"NJIT Proprietary Rights" means (a) Member Lists and Member Information; (b) the information on the NJIT Website excluding any Deserve Proprietary Rights; (c) any domain names NJIT registers for NJIT's use on the world wide web; (d) NJIT Marks and photographs or other depictions of NJIT; (e) the name of NJIT; and (f) any and all information, ideas, concepts, artwork, graphics, applications and other proprietary rights of NJIT used on the NJIT Website.

"NJIT Website" means the applicable portions of NJIT's relevant website located on the internet at domains registered, owned and maintained by NJIT or any Affiliate.

"Partner Advertisement" means any material, electronic or otherwise, promoting Deserve or its services.

"Person" means any individual, general or limited partnership, joint venture, corporation, limited liability company, bank, trust, unincorporated organization, or any government or any department, agency or instrumentality thereof.

"Privacy Policy" has the meaning set forth in Section 7.1(b).

"Program" means the credit card program established pursuant to this Agreement including, but not limited to, all aspects of the solicitation, marketing, underwriting, delivery, administration, servicing, collection and termination of the Accounts, and Card Related Products and Services through any medium as well as the respective obligations of the parties under the Agreement.

"Program Consumer Information" has the meaning set forth in Section 7.2 (b).

"Program Year" means the period of time commencing with the Effective Date through June 30, 2019, and each succeeding twelve-calendar month period of time thereafter from July 1 through June 30 during the Term.

"Receiving Party" has the meaning set forth in Section 6.1 (a).

"Regulations" has the meaning set forth in Section 7.1 (a).

"Recipient" means the party receiving Confidential Information.

"Referral" means an approved and activated (for revolving accounts) Deserve Account, received and electronically tracked directly and in an uninterrupted manner through a Partner Advertisement.

"Referred Member" means any person who is referred to Deserve and acquires a Deserve Card through or by the NJIT Program.

"Renewal Term" means each the period following the conclusion of the Initial Term and any subsequent Renewal Terms as set forth in Section 8.1 (b).

"Royalties" means New Account Fees and Interchange Sharing revenue amounts to be paid by Deserve to NJIT, pursuant to Schedule C of this Agreement.

"Subcontractor" means any Person that has a business arrangement with NJIT or Deserve, by contract or otherwise, to perform duties, conduct activities or provide services, or has any other responsibilities or obligations related to the Program in any way or that involves such Person obtaining, maintaining, viewing or accessing Nonpublic Personal Information.

"Term" means the Initial Term and each Renewal Term.

- 1.2 Rules of Interpretation. Except as otherwise expressly provided in this Agreement, the following rules shall apply hereto: (a) where appropriate, the singular includes the plural and the plural includes the singular; (b) all references to the masculine gender shall be deemed to include the feminine gender (and vice versa); (c) "include," "includes" and "including" are not limiting; (d) unless the context otherwise requires or unless otherwise provided herein, a reference to a particular agreement, instrument, document, or Applicable Law also references and includes all renewals, extensions, modifications, amendments and

restatements thereof; (e) a reference in this Agreement to an Article, Section or Schedule is to the Article, Section or Schedule to this Agreement unless otherwise expressly provided; (f) a reference to an Article, Section or Schedule in this Agreement shall, unless the context clearly indicates to the contrary, refer to all sub-parts or sub-components of any said article, section or schedule; (g) words such as "hereunder," "hereto," "hereof" and "herein," and other words of like import shall, unless the context clearly indicates to the contrary, refer to the whole of this Agreement and not to any particular section, subsection or clause hereof; and (h) a reference in this Agreement to a "third party" (whether in the singular or the plural) shall (unless otherwise indicated herein) include any Person other than a Party.

ARTICLE II: OFFERING OF CREDIT CARDS

2.1 Offering of Credit Cards.

(a) Subject to the terms and conditions of this Agreement, Deserve shall offer and service and Deserve's partner bank shall issue customized Deserve Mastercard Cards ("NJIT Card") to individual Members of NJIT whose applications have been solicited under the terms of this Agreement and whose credit has been approved by Deserve and to whom a NJIT Card has been issued (individually, an "Accountholder" and collectively "Accountholders"). All NJIT Cards offered under this agreement are unsecured, open-end, revolving credit card products, branded with the NJIT Mark and the Deserve Marks, and pursuant to which a Customer may make purchases and/or use any other similar such function generally supported by Deserve at its sole discretion, and subject to the terms of the Account agreement with Deserve (each, a "Credit Card"). Deserve in its capacity as the manager of the Program, will create a co-branded NJIT (primary brand) and Deserve (secondary brand) set of Credit Cards, to wit, two (2) for NJIT students (Edu and Classic) and two (2) for NJIT alumni (Pro and Classic) with the same features, underwriting models, and service levels that Deserve applies to its own singularly branded credit Cards. (Deserve Edu Mastercard, Deserve Pro Mastercard, and Deserve Classic Mastercard.) All facets of the Program including but not limited to underwriting to servicing will be provided by Deserve. Customer acquisition will be a joint effort and expense as described below.

(b) Deserve's standard consumer credit card issuance and administration policies and procedures and its credit, fraud, and collections practices shall be established, implemented and administered by Deserve in its sole discretion, and may be modified from time to time by Deserve with respect to the Credit Cards. Deserve shall make all credit risk management decisions and shall bear all credit risks with respect to each Customer's Account, independently of NJIT. Without limitation of the foregoing, Deserve shall have sole discretion to determine: which, if any, Credit Card shall be issued to a Customer or potential Customer; all credit limit assignments and adjustments with respect to any Account; whether to terminate, suspend, or reactivate credit privileges on any Account; and the manner and method of collections to be pursued, if any, on any Account.

(c) Credit Cards issued by Deserve's partner bank to approved Customers shall be serviced by Deserve and governed by the Card Holder Agreements entered into between such Persons and Deserve. Notwithstanding any other provision of this Agreement, (i)

Deserve shall have the right to amend the terms and conditions of such Account agreements at any time in its sole discretion; and (ii) Deserve reserves the right in its sole discretion to change any of the features and/or benefits of the Credit Cards, or, upon mutual consent of the Parties, of the Program, including the terms upon which new Credit Cards are marketed to NJIT Members, and/or to modify or add additional terms and conditions to any Credit Cards. Deserve shall not change the terms and conditions of this Agreement based on this Section 2.1(c).

(d) It is understood and agreed that Deserve will not solicit, nor is it under any obligation to accept or approve, individuals who reside outside of the United States of America or in states within the United States of America which have, or may have during the Initial Term or any Renewal Term of this Agreement, laws limiting, hindering or detrimentally affecting the solicitation of credit card accounts or the terms and conditions thereof or limitations on the provision of other financial services, all as determined by Deserve in its sole discretion.

(e) It is understood that Deserve may from time to time during the Initial Term or any Renewal Term of this Agreement use third-party service providers to undertake, fulfill, or complete its obligations pursuant to this Agreement.

2.2 Ownership of Accounts. Deserve is the sole and exclusive owner of all Accounts and related receivables./ Account agreements and associated books and records, and all Customer indebtedness and goodwill established thereunder, and shall have all rights and powers with respect thereto as such owner, including all rights to engage in securitization and other financing operations. For the avoidance of doubt, NJIT acknowledges and agrees that it does not possess any ownership interest in the Credit Cards issued, the Accounts established and/or the receivables generated thereunder.

ARTICLE III: REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of NJIT. NJIT makes the following representations and warranties to Deserve as of the Effective Date and at all times thereafter throughout the Term:

(a) It is duly organized, validly existing and in good standing under the laws of the State of New Jersey. It has all necessary power to execute and deliver this Agreement and to perform its obligations under this Agreement.

(b) The negotiation, execution, delivery and performance of this Agreement and all instruments and documents to be delivered thereunder by NJIT have been duly authorized by all necessary or proper organizational action of NJIT.

(c) This Agreement constitutes a legal, valid and binding obligation of NJIT, enforceable against NJIT in accordance with its terms, except as such enforceability may be

limited by bankruptcy, insolvency, receivership, reorganization, or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

(d) No consent, approval or authorization from any third party is required in connection with the negotiation, execution, delivery and performance of this Agreement by NJIT, except such as have been obtained and are in full force and effect.

(e) The negotiation, execution, delivery and performance of this Agreement by NJIT will not constitute a knowing violation of any Applicable Law applicable to NJIT.

(f) It has the right and power in the United States of America to license the Marks to Deserve for use as contemplated by this Agreement, and to provide the Lists to Deserve for the promotion of the Program.

(g) The negotiation, execution, delivery and performance of this Agreement and all instruments and documents to be delivered thereunder: (i) do not and will not contravene any provisions of its organizational documents; and (ii) will not conflict with or result in the breach of or constitute a default under any material agreement, or other instrument to which it is a party or by which it or any of its assets or property are bound.

(h) It is not in default in any material respect of any material contract, agreement, or other instrument to which it is a Party to the best of its knowledge nor has it received any notice of default under any such material contract, agreement, or other instrument, other than defaults which would not have a material adverse effect on its ability to execute this Agreement or perform its obligations under this Agreement.

(i) It expressly acknowledges ownership of the mark "Mastercard" by Mastercard U.S.A. Inc. and agrees that it will do nothing inconsistent with Mastercard's ownership of such mark.

(j) It represents and warrants that it has the authority to utilize the NJIT Marks as hereafter described in Article 9 and that it presently has the exclusive authority to authorize the use of each of such NJIT Marks in the United States of America for the uses and purposes contemplated by this Agreement; further, NJIT represents that Deserve may regard this representation as a continuing representation by NJIT of its exclusive authority to authorize the use of each NJIT Mark set forth in Schedule B throughout the Initial Term and any Renewal Term of this Agreement, including NJIT Marks developed or created by NJIT during the Initial Term or any Renewal Term of this Agreement added to Schedule B by written amendment to this Agreement. NJIT agrees to provide, if requested, written evidence, satisfactory to Deserve, of the authority to authorize the use of such trademarks used in conjunction with the NJIT Card and of any trademark rights notices required when such trademarks are used.

(k) It represents that the use of any of the NJIT Marks by Deserve as authorized herein by NJIT will not infringe upon or violate any United States of America patent, copyright or any other proprietary interest of any third party.

(l) It represents that disclosure by NJIT to Deserve of Confidential Information or non-confidential information in its files pertaining to NJIT Members will not knowingly violate any law, regulation, restriction or contractual prohibition against disclosure by NJIT of such information, provided Deserve uses such information in accordance with this Agreement. NJIT further acknowledges and agrees that it is authorized to disclose and make available to Deserve such Member information, including but not limited to the information provided as part of the Member List.

(m) It agrees that Deserve is, by the terms of this Agreement, authorized and permitted the non-exclusive use of NJIT Marks in order to provide the NJIT Card and for no additional purposes except the proposed design and layout for the Card which will prominently display a NJIT Mark.

3.2 Representations and Warranties of Deserve. Deserve makes the following representations and warranties to NJIT as of the Effective Date and at all times thereafter throughout the Term:

(a) It is duly organized, validly existing and in good standing under the laws of the State of California.

(b) It has all necessary power to execute and deliver this Agreement and to perform its obligations under this Agreement.

(c) The negotiation, execution, delivery and performance of this Agreement and all instruments and documents to be delivered thereunder by Deserve have been duly authorized by all necessary or proper corporate action of Deserve.

(d) This Agreement constitutes a legal, valid and binding obligation of Deserve, enforceable against Deserve in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, receivership, reorganization, or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

(e) No consent, approval or authorization from any third party is required in connection with the negotiation, execution, delivery and performance of this Agreement by Deserve, except such as have been obtained and are in full force and effect.

(f) The negotiation, execution, delivery and performance of this Agreement by Deserve will not constitute a violation of any Applicable Law applicable to Deserve.

(g) It has the right and power to license the Deserve Marks to NJIT for use as contemplated by this Agreement in connection with the Program.

(h) The negotiation, execution, delivery and performance of this Agreement and all instruments and documents to be delivered thereunder: (i) do not and will not contravene any provisions of its organizational documents; and (ii) will not conflict with or result in the breach of or constitute a default under any material agreement, or other instrument to which it is a party or by which it or any of its assets or property are bound.

(i) It is not in default in any material respect of any material contract, agreement, or other instrument to which it is a party nor has it received any notice of default under any such material contract, agreement, or other instrument, other than defaults which would not have a material adverse effect on its ability to execute this Agreement or perform its obligations under this Agreement.

(j) It acknowledges that it shall be solely responsible for ensuring the truth and accuracy of all statements, warranties and representations of any kind about or relating to Deserve or its Affiliates, or their business, products or services, made or included, expressly or implied, by Deserve or with its prior written consent, whether in any advertising, solicitation, promotional or publicity materials or editorials, or otherwise.

(k) It represents and warrants that it has the authority to utilize the Deserve Marks as hereafter described in Article 9 and that it presently has the exclusive authority to authorize the use of each of such Deserve Marks for the uses and purposes contemplated by this Agreement; further, Deserve represents that NJIT may regard this representation as a continuing representation by Deserve of its exclusive authority to authorize the use of each Deserve Mark throughout the Initial Term and any Renewal Term of this Agreement, including Deserve Marks developed or created by Deserve during the Initial Term or any Renewal Term of this Agreement. Deserve agrees to provide, if requested, written evidence, satisfactory to NJIT, of the authority to authorize the use of such trademarks used in conjunction with the NJIT Card and of any trademark rights notices required when such trademarks are used.

(l) It represents that the use of any of the Deserve Marks by NJIT as authorized herein by Deserve will not infringe upon or violate any patent, copyright or any other proprietary interest of any third party.

3.3 Representations and Warranties of both Parties. Deserve and NJIT make the following mutual representations and warranties to one another as of the Effective Date and at all times thereafter throughout the Term:

(a) Each Party acknowledges and agrees that certain federal and state consumer protection laws and regulations prohibit, restrict or limit the solicitation or issuance of consumer credit cards to students, underage persons and others (collectively, the "Protected Consumers") as described in those laws and implementing regulations. Each party further acknowledges and agrees that no Protected Consumers are, or are intended to be, included in the group identified herein as Members who may be identified or solicited to apply for a consumer credit card under this Agreement. Each Party agrees it will not, in any way, solicit or promote the NJIT Card to any such Protected Consumers. As such, each Party acknowledges and agrees that will at all times comply with the provisions of the Truth-in-Lending Act (15 U.S.C. §1601 et seq.), the Credit Card Accountability and Disclosure Act of 2009 (Pub L. No. 111-34, 133 Stat. 1734 (3009)), the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), and the regulations adopted thereunder, as such acts or regulations may now exist or as may hereafter be amended, including such provisions for interpretation and

enforcement of such acts and regulations by the Bureau of Consumer Financial Protection ("CFPB") or by any state agency enforcing state laws or regulations for the protection of consumers.

(b) Each Party acknowledges that it shall be solely responsible for ensuring the truth and accuracy of all statements, warranties and representations of any kind about or relating to its or its Affiliates, or their business, products or services, made or included, expressly or impliedly, by either Party or with its prior written consent, whether in any advertising, solicitation, promotional or publicity materials or editorials, or otherwise.

ARTICLE IV: MARKETING

4.1 Marketing by NJIT and Deserve.

(a) The parties shall jointly develop and agree to an annual marketing plan (each, a "Marketing Plan") within thirty (30) days of the Effective Date and at least sixty (60) days prior to the beginning of each following Term Year whereas, NJIT assumes the primary role in promoting NJIT Credit Cards on its campus. Notwithstanding the foregoing, Deserve shall design, develop and administer the Program for the Members. Deserve will provide best practices, compliance review, creative assets, and strategy suggestions with respect to all Marketing Plans and communication efforts.

(b) NJIT shall, at its own cost and expense, unless otherwise agreed upon by the Parties in writing, as NJIT deems appropriate from time to time, to support sustained marketing and advertising of the Program and Credit Cards, including: (i) providing prominent placement (exact location determined by NJIT) of information regarding the Program on the NJIT and NJIT Alumni Association websites and prominent, functioning hyperlinks from the NJIT and NJIT Alumni Association websites to web pages established by Deserve that promote the Program and Credit Cards and include application materials for the Credit Cards; (ii) reviewing all production materials prepared and provided by Deserve and bearing NJIT Marks within fifteen (15) business days prior to engaging in such promotional activities in order to submit for review and approval by Deserve's banking partner. If necessary, NJIT shall modify or remove Program information on its websites within one (1) business day of Deserve's request. NJIT shall provide Deserve with the ability to access any and all pages within NJIT website(s) that pertain to the Program for purposes of monitoring and viewing the Program related information and materials on such pages. Deserve hereby grants to NJIT a non-exclusive, non-transferable, royalty-free, worldwide license to use, reproduce, transmit, and publicly display Deserve's link during the Term of this Agreement solely for the purposes described herein. NJIT shall be permitted to take such action as it deems appropriate to maintain the integrity of its website and accordingly has the right to remove or temporarily restrict access to the links at any time. Deserve will use reasonable efforts to advise NJIT immediately of any activities which may adversely affect the Deserve link.

(c) Deserve shall, at its own cost and expense, unless otherwise agreed upon by the Parties in writing, design and develop such marketing, promotional and solicitation

materials as it deems appropriate from time to time to promote the Credit Cards among NJIT Members. Deserve shall market and promote the Credit Cards as it deems appropriate at its own cost and expense. NJIT shall endorse on an exclusive basis as provided herein all such promotions and solicitations by Deserve related to the Program. NJIT shall have the right to review and approve all Program marketing, promotional and solicitation materials that bear or contain a NJIT Mark, such approval not to be unreasonably withheld, conditioned or delayed; provided however, that NJIT's approval right shall not extend to content in such materials which Deserve determines to be required by Applicable Law. Notwithstanding anything else in this Agreement to the contrary, NJIT may accept print advertising from any financial institution provided that the advertisement does not contain an express or implied endorsement by NJIT or its Affiliates of said financial institution or advertising for an Exclusive Product.

(d) It is understood by both Parties that all marketing materials in any form must be approved by Deserve's banking partner prior to distribution, posting, mailing, e-mailing, or the dissemination thereof in any form or manner. Such approval can take up to fifteen (15) business days.

(e) The Parties agree that the Credit Cards shall be promoted and made available to NJIT Members through the Marketing Channels; provided, however, that Deserve shall have sole discretion to adjust and/or stop usage of any Marketing Channels as it deems reasonable or appropriate. For the avoidance of doubt, each Marketing Channel used by NJIT to market or promote the Credit Cards shall promote no other credit cards for NJIT Members. E-mail promotions frequency to be mutually agreed upon.

(f) NJIT shall, and shall cause any NJIT Affiliates to, only provide information to or otherwise communicate with NJIT Members or potential NJIT Members about the Program with the prior written approval of Deserve, except for current advertising and solicitation materials provided or approved by Deserve. Notwithstanding the above, NJIT may respond to individual inquiries about the Program from NJIT Members on an individual basis, provided that such responses are accurate and consistent with the then-current materials provided or approved by Deserve. Any and all correspondence received by NJIT that is intended for Deserve (e.g., applications, payments, billing inquiries, etc.) will be forwarded to Deserve's account executive via overnight courier within 24 hours of receipt. All charges incurred for this service will be paid by Deserve. Deserve will notify Members or potential Members in all advertising, solicitation, and disclosure materials that all Program correspondence should be directed solely to Deserve. .

4.2 Use of Marks.

(a) Grant of License to Use the NJIT Marks. During the Term, NJIT hereby grants to Deserve a limited License to use the NJIT Marks in the United States of America solely in connection with the Program and in connection with the Marked Plastics (as set forth in Section 4.6), including the creation, establishment, marketing, issuance and administration of and the provision of services related to the credit Cards and Marked Plastics, and pursuant to and otherwise permitted under this Agreement. Such services shall include, subject to the terms of this Agreement, the solicitation of Customers and potential

Customers, the advertisement, marketing, or promotion of the Credit Cards, acceptance of applications for the Credit Cards, the issuance and reissuance of Credit Cards and related materials, the provision of Account administration services, the provision of billing statements and other correspondence relating to Accounts to Customers, and the extension and administration of credit to Customers. All use of the Marks is subject to prior review and approval by NJIT, and Deserve shall submit requests for such review and approval no less than ten (10) business days in advance of its proposed use. Approvals shall not be unreasonably withheld, delayed or conditioned. The license hereby granted is solely for the use of Deserve and may be used as necessary to permit the exercise by Deserve of any of its rights under this Agreement, and/or the fulfillment of Deserve's obligations under this Agreement. The licenses granted hereby may not be sublicensed without the prior written approval of NJIT. Deserve shall cause any subcontractor or other third party utilizing any Mark on behalf of Deserve to comply with all of the standards and limitations on the use of the Marks contained in this Section 4.2 or as otherwise specified by NJIT. This license shall be transferred upon permitted assignment of this Agreement. Nothing stated in this Agreement prohibits NJIT from granting to other persons a license to use the Marks in conjunction with the provision of any other service or product, except for any Exclusive Product (as defined in Article I above).

(b) Termination of License. The license granted in this Section 4.2 shall remain in effect for the duration of this Agreement and shall apply to the Marks, notwithstanding the transfer of such Marks by operation of law or otherwise to any permitted successor Person. Upon termination of this license, all rights in the Marks shall revert to NJIT and its Affiliates, and the goodwill connected therewith shall remain the property of NJIT and its Affiliates; provided however that upon termination of this Agreement, NJIT shall not attempt to cause the removal of NJIT's identification or Marks from any person's form, Marked Plastic, or records of any Customer, or require the retrieval of any materials otherwise distributed and/or existing as of the effective date of termination of this Agreement.

(c) Ownership of the Marks. Deserve acknowledges and agrees that: (i) the Marks, all rights therein, and the goodwill associated therewith, are, and shall remain, the exclusive property of NJIT; (ii) it shall take no action which will adversely affect NJIT and its Affiliates' exclusive ownership of the Marks, or the goodwill associated with the Marks (it being agreed that the offering, administration, or collection of Accounts, any adverse action letters, and any changes in terms of Accounts as required by Applicable Law or pursuant to Deserve's rights thereunder or under the terms of this Agreement do not and shall not be deemed to adversely affect such goodwill); and (iii) any and all goodwill arising from use of the Marks by Deserve shall inure solely to the benefit of NJIT and its Affiliates. Nothing herein shall give Deserve any proprietary interest in or to the Marks, except the right to use the Marks in accordance with this Agreement, and Deserve shall not contest NJIT's or its Affiliates' title in and to the Marks, except as necessary to enforce its indemnification rights hereunder.

(d) Replacement of Marks. If as a result of a request by NJIT for a change in or replacement of any Mark used in the Program by NJIT, Deserve incurs a cost or expense (e.g., the cost of reissuing replacement credit card plastics, of creating new marketing materials and/or of disposal of obsolete inventories), then NJIT shall bear and/or promptly

reimburse Deserve for all such costs and expenses.

4.3 Deserve Marks.

(a) Grant of License to Use the Deserve Marks. Deserve hereby grants to NJIT a non-exclusive, royalty-free license to use the Deserve Marks in the United States of America solely in connection with the marketing of, and the provision of services related to, the Credit Cards under the Program, and pursuant to, and as otherwise permitted under, this Agreement. Deserve represents that it has permission from Mastercard to permit NJIT to use the Mastercard name and marks for the Credit Card and such services. Such services may include, subject to the terms of this Agreement, the solicitation of NJIT Members and the advertisement, marketing, or promotion of the Credit Cards and/or the Program. All use of the Deserve Marks by NJIT shall be subject to the prior written approval of Deserve. The license hereby granted is solely for the use of NJIT and may be used as necessary to permit the exercise by NJIT of any of its rights and/or the fulfillment of NJIT's obligations under this Agreement. The license granted hereby may not be sublicensed by NJIT without the prior written approval of Deserve. NJIT shall cause any subcontractor or other third party utilizing any Deserve Mark on behalf of NJIT to comply with all of the standards and limitations on the use of the Deserve Marks contained in this Section 4.3 or as otherwise specified by Deserve. This license shall be transferred upon permitted assignment of this Agreement. Nothing stated in this Agreement prohibits Deserve from granting to other persons a license to use the Deserve Marks in conjunction with the provision of any service or product.

(b) Termination of License. The license granted in this Section 4.2 shall remain in effect for the Term of this Agreement and shall apply to the Deserve Marks, notwithstanding the transfer of such Deserve Marks by operation of law or otherwise to any permitted successor Person. Upon termination of this license, all rights in the Deserve Marks shall revert to Deserve and/or its Affiliate(s), the goodwill connected therewith shall remain the property of Deserve and its Affiliates, and the NJIT shall discontinue immediately all use of the Deserve Marks, or any of them, or any colorable imitation thereof.

(c) Ownership of the Deserve Marks. NJIT acknowledges and agrees that: (i) the Deserve Marks, all rights therein, and the goodwill associated therewith, are, and shall remain, the exclusive property of Deserve; (ii) it shall take no action which will adversely affect Deserve's and/or its Affiliate's exclusive ownership of the Deserve Marks, or the goodwill associated with the Deserve Marks; and (iii) any and all goodwill arising from use of the Deserve Marks by NJIT shall inure to the benefit of Deserve and/or its Affiliates. Nothing herein shall give NJIT any proprietary interest in or to the Deserve Marks, except the right to use the Deserve Marks in accordance with this Agreement, and NJIT shall not contest Deserve's or its Affiliates' title in and to the Deserve Marks, except as necessary to enforce its indemnification rights hereunder.

4.4 Lists.

(a) At Deserve's request, NJIT shall promptly provide as complete a List as possible to Deserve, unless Deserve requests a portion of such List. Updated Lists shall be

supplied upon Deserve's request but no more than once every two (2) months during the Term. All such Lists shall be provided to Deserve by NJIT at no cost to Deserve. NJIT shall provide the first List, containing all non-duplicate names, with all corresponding information, as soon as possible but no later than thirty (30) days after NJIT executes this Agreement. Except as required by Applicable Law, NJIT shall not modify its privacy policy or business practices (nor permit any Affiliate to take any similar action) in a manner reasonably likely to reduce the number of NJIT Members included on the Lists, or to prevent NJIT from providing such Lists as contemplated by this Agreement. Notwithstanding the foregoing, Deserve recognizes that NJIT is bound to comply with the United States Family Educational Rights and Privacy Act (FERPA), as it may be amended from time to time, in the handling of all educational records of students. As such, only directory information as defined under FERPA may be release by NJIT in connection with the Directory Information.

(b) Deserve shall use Lists on a basis consistent with the terms of this Agreement to market the Credit Cards and the Program, and shall not rent, use or permit any third party handling such Lists to use them for any other purpose without the express written consent of NJIT. Deserve shall have the sole right to designate NJIT Members on the List(s) to whom marketing material will not be sent. Except as set forth in this Section 4.4, Lists provided by NJIT are and shall remain the sole property of NJIT. Notwithstanding the foregoing, to the extent that (i) such information is available to Deserve from another source, or (ii) Deserve obtains any information as a result of an Account relationship or an application for an Account relationship with any Customer, Deserve may retain all such information as a part of Deserve's own files and such information shall not be subject to the terms and conditions of this Agreement.

(c) Upon the termination of this Agreement, Deserve will, subject to Applicable Law or any standard policies and procedures of Deserve requiring their retention, return or destroy any Lists provided by NJIT. Any Lists not so returned or destroyed shall be maintained only to the extent required and in accordance with the confidentiality obligations set forth in Article VI.

4.5 Exclusivity.

(a) During the term of this Agreement, and unless Deserve shall specifically otherwise consent in writing or as otherwise permitted herein, NJIT shall endorse the Program and the Credit Cards exclusively and NJIT shall not, and shall cause each of its Affiliates to not, whether acting individually or in conjunction with others, directly or indirectly: (i) license or use, or allow any other Person to license or use, any of the Marks in relation to or otherwise for promoting, offering or using with, any Exclusive Product; (ii) sell, rent or otherwise make available or allow others to sell, rent or otherwise make available any of its Lists or information about any NJIT Members for the purpose of promoting any Exclusive Product; and (iii) sponsor, advertise, issue, support, develop, market, solicit proposals for programs offering, or discuss with any third party credit card provider (other than Deserve) the providing of, any Exclusive Product.

(b) Notwithstanding anything in this Agreement to the contrary, NJIT may, during the one hundred and eighty (180) days preceding the end of the current term or any renewal

term, as applicable, solicit proposals for programs offering and/or enter into discussions with any NJIT for the providing of Exclusive Products of any entity other than Deserve; provided however, that no such agreement(s) for the provision of Exclusive Products may have an effective date prior to the effective date of termination of this Agreement.

4.6 Marked Plastics.

(a) The Parties acknowledge and agree that notwithstanding any other provision of this Agreement, Deserve may in its discretion offer to Persons who are cardholders of Deserve credit card accounts established by Deserve outside of this Program, the opportunity to request, select and obtain a credit card plastic bearing the Marks approved by NJIT for use in connection with this Program (each, a "Marked Plastic"). NJIT agrees that, notwithstanding any other provision of this Agreement, its approval of Credit Card plastic designs utilizing a Mark for use in this Program shall also constitute its approval for Deserve to offer and use such card plastic designs for Marked Plastics in the manner contemplated by this Section 4.6.

(b) For the avoidance of doubt, and notwithstanding any other provision of this Agreement, credit card accounts established by Deserve outside of this Program in connection with which Marked Plastics are offered and provided as an option for cardholders thereof shall not be deemed Accounts under this Agreement, and any such Marked Plastics issued shall not be deemed Credit Cards under this Agreement; provided however, if the primary cardholder of such credit card account has selected a Marked Plastic as his or her most recently activated card plastic, such credit card account shall be deemed an Account under this Agreement, and such Marked Plastic shall be deemed a Credit Card hereunder, in each case so long as a Marked Plastic remains the last activated card plastic for such cardholder with respect to such credit card account (a "Converted Account"). Converted Accounts shall not generate Royalties (i.e., New Account Fees) under Schedule C. However, Converted Accounts will generate Interchange Sharing and count as active accounts for reaching the threshold described under Schedule C.

(c) Each Marked Plastic issued by Deserve as of the effective date of termination of this Agreement (which is not deemed a Credit Card under this Agreement as provided in Section 4.6 (b), above), may continue to be utilized through and including the next "valid thru" date (i.e., the expiration date) associated with such Marked Plastic, as applicable. Upon termination of this Agreement, NJIT shall not attempt to cause the removal of its Marks from any Marked Plastics existing as of the effective date of termination of this Agreement. This Section 4.6(c) shall survive the termination of this Agreement.

ARTICLE V: ECONOMICS AND REPORTING

5.1 Economics.

(a) During the term of this Agreement Deserve shall pay NJIT the Royalties (i.e., New Account Fees) and Interchange Sharing revenues as provided in Schedule C. All payments will be made within forty-five (45) days after the end of each Program Year quarter without invoice or further demand, deduction or offset, in lawful money of

the United States of America, payable to New Jersey Institute of Technology and shall be delivered to P O. Box 18110, Newark, New Jersey, 07191-8110, or to such other party and place as may be designated by notice, in writing, from NJIT to Deserve from time to time. With each payment, Deserve will provide NJIT with a statement showing the number of Accounts opened, the number of Accounts renewed and the retail purchase transaction dollar volume and cash advances and cash equivalent dollar volume (excluding transactions related to refunds, returns and unauthorized transactions), made during the preceding Program Year quarter on all Accounts.

(b) NJIT will utilize and Deserve will provide the unique URLs and other applicable tracking codes for reasonably identifying and monitoring the Referrals. Deserve will make a good faith effort to identify all Referrals.

(c) The usual and customary \$50,000.00 program set-up fee is waived and will not be charged to NJIT.

5.2 Reporting.

(a) During the Term and for a period of at least three (3) years thereafter, Deserve shall keep and maintain complete and accurate records reflecting transaction data with respect to the Credit Cards, number of Accounts, and the determination of the fees as set forth in Schedule C. Deserve shall keep such records in accordance with its own internal records retention policies and procedures. During such time, Deserve shall make all required records available for review, audit and verification by NJIT upon request, with reasonable advance notice and during ordinary business hours. Such approval will not be unreasonably withheld. The approved third party will be subject to Article VI Confidential Information and will execute a separate non disclosure agreement with Deserve prior to audit if needed to effect coverage of Article VI.

(b) NJIT makes no representations or warranties whatsoever with respect to the credit worthiness of any Credit Card applicant, alumni and/or Customer, including but not limited to the financial ability of the same to satisfy any debt owed Deserve. NJIT shall not be responsible for collection of any debt owed to Deserve by any cardholder and Deserve shall not name NJIT as a defendant in any collection lawsuit associated with the same. Deserve is solely responsible for making any and all underwriting decision(s) associated with the provision of credit under this agreement. Deserve promotes the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status or age (provided the applicant has the capacity to contract); or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act, and Deserve does not discriminate on the basis of any of these factors.

ARTICLE VI: CONFIDENTIALITY

6.1 Confidential Information.

(a) "Confidential Information" of a Party means: (i) information that is provided

by or on behalf of such Party (the "Disclosing Party") to the other Party or its agents or representatives (each, a "Receiving Party") in connection with the Credit Cards, the Program or this Agreement, and/or (ii) information about such Party or its Affiliate, or their respective businesses or employees, that is otherwise obtained by the other Party in connection with the Credit Cards, the Program or this Agreement; which is marked, identified and/or reasonably understood to be confidential, in each case including: (a) information concerning marketing plans, marketing philosophies, objectives and financial results; (b) information regarding business systems, methods, processes, financing data, programs and products; (c) information unrelated to the Credit Cards or the Program obtained by the other Party in connection with this Agreement, including by accessing or being present at the business location of the other Party; (d) proprietary technical information, including source codes; (e) competitive advantages and disadvantages, technological development, sales volume(s), business relationships and methods of transacting business, operational and data processing capabilities, and systems software and hardware and the documentation thereof; (f) other information regarding the business or affairs of the other Party or its Affiliates or the transactions contemplated by this Agreement that such other Party or its Affiliate reasonably considers confidential or proprietary; and (g) any copies, excerpts, summaries, analyses or notes of the foregoing. The Parties agree that the terms of this Agreement shall not be Confidential Information belonging to Parties.

(b) The obligations with respect to Confidential Information shall not apply to Confidential Information (other than the terms of this Agreement) that: (i) the Receiving Party or its personnel already know at the time it is disclosed, and is free of any obligation to keep such information confidential at the time of its disclosure, each as shown by their written records; (ii) is or becomes publicly known without breach of this Agreement provided that this exception does not apply to any non-public personal Customer information; (iii) the Receiving Party rightfully received from an unrelated third party authorized to disclose it without restriction; or (iv) the Receiving Party, its agents or subcontractors, developed independently without the use of or reference to any Confidential Information.

6.2 Limits on Use and Disclosure.

(a) Each Party shall comply with and use commercially reasonable efforts to cause its respective Affiliates, directors, officers, employees, representatives and other agents to comply with the provisions of this Section 6.2. The provisions of this Section 6.2 will apply during the Term of this Agreement and for a period of five (5) years thereafter. With respect to any non-public personal information, the obligation shall survive in accordance with any Applicable Law.

(b) A Receiving Party shall not use or disclose Confidential Information of the Disclosing Party except: (i) to perform its obligations or to exercise or enforce its rights with respect to this Agreement; (ii) as expressly permitted by this Agreement; (iii) with the prior written consent of the Disclosing Party; (iv) pursuant to a law, statute, subpoena, summons, civil investigative demand or other order requesting information that is issued through any judicial, executive or legislative process (each, a "Governmental Request"); or (v) based on advice of legal counsel, Receiving Party is required by Applicable Law to disclose. For the avoidance of doubt, NJIT may disclose this Agreement under the Credit

Card Accountability Responsibility and Disclosure Act of 2009 and/or the New Jersey Open Public Records Act.

(c) A Receiving Party shall use commercially reasonable efforts to: (i) limit access to the Disclosing Party's Confidential Information to those employees, authorized agents, vendors, consultants, service providers and contractors who have a reasonable need to access such Confidential Information in connection with the Credit Cards, the Program or other purposes permitted by this Agreement, and (ii) obtain contractual confidentiality commitments substantially similar to those set forth in this Section 6.2 from each vendor, consultant, service provider or contractor to which the Receiving Party provides access to the Disclosing Party's Confidential Information.

(d) Notwithstanding anything else contained in this Agreement, a Party will not be obligated to take any action with respect to the collection, use or disclosure of information with respect to the Credit Cards or the Program that such Party believes in good faith would cause, or is reasonably likely to cause, either Party to violate any Applicable Law (including privacy and security laws and the reuse and re-disclosure provisions of the GLBA).

6.3 Governmental Requests/Applicable Law Requirements.

(a) If a Receiving Party receives a Governmental Request to disclose any Confidential Information of the Disclosing Party, excluding requests received by Deserve from any regulatory agency with jurisdiction over Deserve or any of its activities, or the Receiving Party otherwise concludes based on advice of counsel that disclosure is otherwise required by Applicable Law, then the Receiving Party shall, to the extent allowed or not prohibited by Applicable Law: (i) notify the Disclosing Party thereof promptly after receipt of such request; (ii) consult with the Disclosing Party on the advisability of the Disclosing Party taking steps to resist or vary such request at its own expense; and (iii) if disclosure is required or deemed advisable, cooperate with the Disclosing Party in any attempt by the Disclosing Party at its own expense to obtain a protective order or other reliable assurance that confidential treatment will be accorded to the Confidential Information of the Disclosing Party.

(b) Each Party agrees, prior to disclosing Confidential Information of the other Party with any Governmental Authority, to consult with the other Party with respect to redacting, to the maximum extent practical and consistent with Applicable Law. Notwithstanding the foregoing, the provisions of this Section 6.3 shall not apply to disclosures made by Deserve to any regulatory agency, except in the event that a regulatory agency notifies Deserve that such agency is initiating a material inquiry specifically regarding the Credit Cards or the Program itself, and disclosure to NJIT of such notification and related communications by Deserve to such agency is not prohibited by Applicable Law.

6.4 Disposition of Confidential information. The Receiving Party shall comply with the Disclosing Party's reasonable instructions regarding the disposition of the Disclosing Party's Confidential Information after the effective date of termination of this Agreement. Such

instructions may include, to the extent reasonably practicable, the return or destruction of any and all of the Disclosing Party's Confidential Information (including any electronic or paper copies, reproductions, extracts or summaries thereof) and certification of compliance with this Section 6.4 by an officer; provided, that such return or destruction shall not be required for Confidential Information (a) required to be retained pursuant to the Receiving Party's disaster recovery plan, or (b) that has been submitted to the Receiving Party's board of directors or a Governmental Authority; and provided, further, that the Receiving Party in possession of the Disclosing Party's Confidential Information may retain a copy of such Confidential Information to the extent required by Applicable Law, which copy shall be used solely to comply with such Applicable Law.

- 6.5 Injunctive Relief. Each Receiving Party agrees that any unauthorized use or disclosure of Confidential Information of the Disclosing Party may cause immediate and irreparable harm to the Disclosing Party for which money damages may not constitute an adequate remedy. In that event, the Receiving Party agrees that injunctive relief may be warranted in addition to any other remedies the Disclosing Party may have. In addition, the Receiving Party agrees to promptly advise the Disclosing Party in writing of any unauthorized misappropriation, disclosure or use by any Person of the Confidential Information which may come to its attention and to take all steps at its own expense as mutually agreed in writing by the Parties hereto to limit, stop or otherwise remedy such misappropriation, disclosure or use.

ARTICLE VII PRIVACY AND DATA SECURITY

7.1 Privacy.

(a) Each Party shall comply with the applicable terms and provisions of Title V, Subtitle A of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801 et seq., as it may be amended from time to time ("GLBA") and the regulations issued thereunder, as the same may be amended from time to time ("Regulations"), including the provisions of the GLBA and the Regulations regarding the use and re-use, and the disclosure and re-disclosure, of "nonpublic personal information" as such term is defined in the GLBA and the Regulations ("Nonpublic Personal Information"). Without limiting the foregoing, each Party shall implement and maintain appropriate administrative, technical and physical safeguards to ensure and protect the security, confidentiality and integrity of all Nonpublic Personal Information received in connection with this Agreement against any anticipated or reasonably likely security threats or hazards.

(b) To the extent applicable, each Party shall comply with the privacy policy of Deserve, as may be amended from time to time by Deserve in its discretion (the "Privacy Policy").

(c) Each Party shall not disclose to any Person other than Affiliates without prior consent of the other Party or use any Nonpublic Personal Information that it obtains from a Customer or the other Party except to carry out the purposes for which the Nonpublic Personal Information was disclosed to such Party.

(d) Each Party shall have a program to detect and respond to any information security breach affecting Customer information, including procedures for notifying Customers affected by a security breach if and as required by Applicable Law.

7.2 Collection, Ownership and Use of Program Consumer Information.

(a) The Parties recognize that the Customers are or may be customers of both Parties and, thus, that each Party has certain ownership and use rights in the information relating to Customers that are customers of both Parties. The Parties acknowledge that the same or similar information may be included in Program Consumer Information and NJIT Information and, to the extent that information is both Program Consumer Information and NJIT Information: (i) Deserve shall retain its ownership and use rights in such Program Consumer Information and (ii) NJIT shall retain its ownership and use rights in such NJIT Information, subject to the limitations, if any, set forth in this Agreement.

(b) Deserve is the owner of all information that is provided to Deserve by potential Customers or Customers, or by third parties in connection with processing each Credit Card application, servicing each Account, or otherwise fulfilling its obligations under this Agreement, including any transaction information obtained by Deserve in processing transactions with Credit Cards or on Accounts. The information described in this Section 7.2(b), and the information derived therefrom, is referred to as "Program Consumer Information."

(c) NJIT is the owner of the information, and the information derived therefrom, that NJIT provides to Deserve for the Program or that NJIT collects outside of the Program pursuant to this Agreement with respect to NJIT Members, including but not limited to the List (collectively, the "NJIT Information").

ARTICLE VIII TERMINATION

8.1 Term.

(a) Initial Term. This Agreement, unless earlier terminated in accordance with its terms shall take effect on the Effective Date and shall remain in full force and effect until June 30, 2027 (the "Initial Term").

(b) Renewal Term. Following the Initial Term, this Agreement shall extend for successive one-year periods (each such period, a "Renewal Term" and together with the Initial Term, the "Term"), upon written agreement of both Parties.

(c) Agreement Termination. Upon termination of this Agreement, the Parties shall mutually cooperate to wind down the Program. No new Credit Card form factors will be issued by Deserve after the effective date of termination; provided, all Credit Card form factors issued by Deserve as of the date of termination of this Agreement will be permitted to continue to be used by card members in accordance with the terms of this Agreement through and including the next "valid thru" date (i.e., the expiration date)

associated with each such form factor.

(d) Survival. Any provisions of this Agreement, which by their nature extend beyond termination, e.g., without limitation, Articles 1, 2, 4, 6, 7, 9, 10 and 12, shall survive such termination.

8.2 Termination Rights.

(a) Default. Deserve or NJIT, as applicable, shall have the right to terminate this Agreement upon not less than sixty (60) days prior written notice if a material default by the other Party in the performance of its obligations under, or its compliance with the terms and conditions of this Agreement has occurred and continues for a period of sixty (60) days after receipt by the defaulting Party of written notice thereof from the non-defaulting Party (setting forth in reasonable detail the nature of the default).

(b) Insolvency. This Agreement shall be immediately terminated, without the requirement of further action or notice by either Party in the event that a Party : (i) shall become subject to voluntary or involuntary bankruptcy, insolvency, receivership, conservatorship or like proceedings (including the takeover of a Party by a Governmental Authority) pursuant to Applicable Law; (ii) shall take any action to authorize commencement of any such proceeding; or (iii) ceases to conduct its normal and customary business operations.

(c) Change in Applicable Law. Both Parties shall have the right to terminate this Agreement effective as specified in its written termination notice to the other Party in the event that the terminating Party reasonably determines that: (i) any material change in Applicable Law makes or foreseeably will make the continued performance of this Agreement under its current terms and conditions illegal for the terminating Party, or results or will foreseeably result in the terminating Party's inability to perform any of its material obligations and/or exercise any of its material rights under this Agreement, (ii) the terminating Party has given written notice of such material change to the other Party, and (iii) the Parties are unable to reach agreement on acceptable modifications to this Agreement after good faith negotiations for a period of sixty (60) days following receipt of the written notice set forth in clause (ii).

(d) Account Threshold. Deserve shall have the right to terminate this agreement on ninety (90) days advance written notice to NJIT if Deserve has not issued 5,000 Accounts under the Program(s) and NJIT shall have right to terminate this Agreement on ninety (90) days advance written notice to Deserve if Deserve has not issued 2,500 Accounts under the Program(s) under this Agreement within eighteen (18) months after the Launch of the first Program hereunder; provided, prior to exercising such termination right, the terminating Party shall first notify the other Party in writing of the underperforming nature of the Program(s) and shall work with the other Party for a period of six (6) months from the date of such initial notice to resolve the underperforming nature of the Program(s). If issued Accounts do not equal or exceed 5,000 or 2,500 Accounts, as applicable, by the end of such six (6) month period, the terminating Party may then exercise the termination right detailed in this Section 8.2(d).

(e) Effect of Agreement Termination. Upon and after the effective date of termination of this Agreement: (i) all Accounts that have been opened pursuant to this Agreement, together with all Accounts for which applications have been received but not yet processed by Deserve as of the effective date of termination, shall remain the property of Deserve; (ii) Deserve shall conclude all solicitation as may be required by Applicable Law; (iii) Deserve may issue non-NJIT branded credit cards to potential Customers whose applications are received after the effective date of termination; and (iv) Deserve may, but shall not be obligated to, replace the Credit Cards with any payment card product offered by Deserve or its Affiliate(s) and without reference to NJIT on any such replacement credit card; (v) all obligations of the Parties set forth in this Agreement shall cease on the effective date of termination except as specifically set forth herein; and (vi) Deserve's obligations to pay the fees and other amounts set forth in Schedule C shall cease immediately on the effective date of termination; provided, that any such fees and other amounts shall be reconciled and paid to the effective date of termination. Notwithstanding the foregoing, Deserve may issue NJIT branded cards post-termination to customers who apply for offers available in the market prior to termination if the respond-by date for the offer has not passed. Upon any notice of termination of this Agreement by NJIT, Deserve shall not undertake any new marketing campaigns to market Accounts under the Program. For the sake of clarity, active web pages and card design selection pages shall not be considered new marketing campaigns.

(f) Termination Notices to Members. Each Party shall have the right of prior review and approval of any notice to NJIT Members in connection with, relating or referring to the termination of this Agreement.

(g) Solicitations after Termination. NJIT agrees that neither NJIT nor any of its Affiliates shall, for a period of one (1) year immediately following the effective date of termination of this Agreement, by itself or in conjunction with others, directly or indirectly, target any offer of any Exclusive Product to Persons who were Customers. Notwithstanding the foregoing, NJIT may, after the effective date of termination of this Agreement, offer Persons who were Customers the opportunity to participate in another Exclusive Product endorsed by NJIT, provided the opportunity is not only made available to such Persons but rather as a part of a general solicitation to all NJIT Members, and provided further that no Persons are directly or indirectly identified as a customer of Deserve, or offered any term or incentive that is different from those offered to all NJIT Members.

ARTICLE IX INDEMNIFICATION

9.1 Indemnification.

(a) NJIT agrees to protect, indemnify, defend and hold harmless Deserve, its Affiliates, its partner bank, and each of their respective shareholders, employees, agents, subcontractors, representatives, officers, directors and assigns, from and against any and all Indemnified Losses to the extent such Indemnified Losses arise out of, are connected with, or result from (the following indemnities shall not apply to any third party claims that would be barred by the New Jersey Tort Claims Act or sovereign immunity if brought against NJIT

directly):

- (i) any material breach by NJIT of any of the terms, covenants, representations, warranties, or other provisions contained in this Agreement or any other instrument or document delivered by NJIT to Deserve in connection herewith or therewith;
- (ii) the failure by NJIT to comply with Applicable Law in connection with its obligations under this Agreement;
- (iii) the negligent act or omission, or the willful misconduct of NJIT or any of its employees, agents, subcontractors, representatives, officers, directors and assigns in connection with or relating to the Program; and/or
- (iv) the Mark license granted herein or from Deserve's use of the NJIT Marks in reliance thereon, or from the use of any List(s) by Deserve for the promotion of the Program, so long as such use is in compliance with the terms of this Agreement.

(b) Deserve, its employees, agents, subcontractors and representatives agree to protect, indemnify, defend and hold harmless NJIT, its Affiliates, and each of their respective shareholders, employees, agents, subcontractors, representatives, officers, directors and assigns, from and against any and all Indemnified Losses to the extent such Indemnified Losses arise out of or are connected with, or result from:

- (i) any material breach by Deserve of any of the terms, covenants, representations, warranties, or other provisions contained in this Agreement or any other instrument or document delivered by Deserve to NJIT in connection herewith or therewith;
- (ii) the failure by Deserve to comply with Applicable Law in connection with its obligations under this Agreement;
- (iii) the negligent act or omission, or the willful misconduct of Deserve or any of its employees, agents, subcontractors, representatives, officers, directors and assigns in connection with or relating to the Program; and/or
- (iv) the Deserve Mark license granted herein or from NJIT's use of the Deserve Marks in reliance thereon or from the use of any List(s) by Deserve that does not comport with the terms of this Agreement.

9.2 Notice. If a Party receives notice of any Claim (a "Claim Notice") for which indemnification may be available under this Agreement (the "Indemnified Party"), the Indemnified Party must promptly notify the other Party (the "Indemnifying Party") in writing of the Claim, including, if possible, the amount or estimate of the amount of liability arising from it. The Indemnified Party shall use its commercially reasonable efforts to provide notice to the Indemnifying Party no later than fifteen (15) days after receipt by the Indemnified Party in the event a suit or action has commenced, or thirty (30) days under all other circumstances; provided, that the failure to give such notice shall not relieve an Indemnifying Party of its obligation to indemnify except to the extent the Indemnifying Party is materially prejudiced by such failure.

9.3 Right to Defend Claims; Coordination of Defense.

(a) The Indemnifying Party shall have the right to defend any such Claim at its expense and in the name of the Indemnified Party, and shall select the counsel for the

defense of such Claim as approved by the Indemnified Party, such approval not to be unreasonably withheld, conditioned or delayed. The Indemnified Party shall reasonably cooperate with the Indemnifying Party in the conduct of the defense against such Claim.

(b) Notwithstanding the foregoing, the Indemnifying Party shall not have the right to defend any such Claim if: (i) it fails to employ counsel approved by the Indemnified Party to assume the defense of such Claim or refuses to replace such counsel upon the Indemnified Party's reasonable request, as provided for herein; or (ii) such Claim seeks an injunction, cease and desist order, or other equitable relief against the Indemnified Party. In each such case described in clauses (i) and (ii) above, the Indemnified Party shall have the right to direct the defense of the Claim and retain its own counsel, and the Indemnifying Party shall pay the reasonable cost of such defense, including reasonable attorneys' fees and expenses. The Parties agree to cooperate in good faith to coordinate the defense of any Claim that may give rise to indemnification obligations of more than one Party or that may include allegations that are not subject to indemnification.

- 9.4 Indemnifying Party Election. If the Indemnifying Party elects and is entitled to compromise or defend a Claim, it shall within thirty (30) days (or sooner, if the nature of the Claim so requires) notify the Indemnified Party of its intent to do so, and the Indemnified Party shall, at the expense of the Indemnifying Party, reasonably cooperate in the defense of such Claim. In such case, the Indemnified Party shall have the right to participate in the defense of any Claim with counsel selected by it; provided, that the fees and disbursements of such counsel shall be at the expense of the Indemnified Party.
- 9.5 Settlement of Claims. The Indemnifying Party shall have no obligation to pay the monetary amount of the settlement of any Claim entered into by the Indemnified Party without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, delayed or conditioned). Notwithstanding the Indemnifying Party's right to direct the defense against any Claim, the Indemnifying Party shall not have the right to compromise or enter into an agreement settling any Claim which imposes liability or obligations on the Indemnified Party without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld, delayed or conditioned), and shall not compromise or enter into an agreement settling any Claim, which does not impose liability or obligations, without prior written notice to, and consultation with, the Indemnified Party. Notwithstanding the foregoing, the Indemnifying Party may, upon prior written notice to and consultation with, the Indemnified Party, compromise or enter into a settlement agreement that involves solely the payment of money by the Indemnifying Party, provided such settlement includes a complete, unconditional, irrevocable release of the Indemnified Party with respect to such Claim.
- 9.6 Subrogation. The Indemnifying Party shall be subrogated to any Claims or rights of the Indemnified Party as against any other Persons with respect to any amount payable by the Indemnifying Party under this Article IX. The Indemnified Party shall reasonably cooperate with the Indemnifying Party, at the Indemnifying Party's expense, in the assertion by the Indemnifying Party of any such Claim against such other Persons.
- 9.7 Insurance. During the Term of this Agreement, Deserve shall procure and maintain the

following minimum, primary and non-contributory insurances: (a) Workers' Compensation at applicable statutory limits; (b) Employer's Liability at \$1M per accident/disease/policy limit; (c) Commercial General Liability with a combined single limit of \$1M each occurrence/\$2M aggregate; (d) Commercial Automobile Liability with a limit of \$1M each accident; and (e) Professional Liability with a limit of \$5M per claim/\$5M aggregate. Deserve will provide NJIT with certificates of all required insurances naming NJIT as an additional insured (excluding workers compensation and employer's liability) as permitted by the policies within ten (10) days of the Effective Date of this Agreement.

ARTICLE X DISPUTE RESOLUTION

10.1 Dispute Resolution. Except as provided in Section 10.4 hereof, any dispute, controversy, Claim or disagreement between the Parties hereto arising from, relating to or in connection with this Agreement, any agreement, certificate or other document referred to herein or delivered in connection herewith, or the relationships of the Parties hereunder or thereunder, including questions regarding the interpretation, meaning or performance of this Agreement, and including Claims based on contract, tort, common law, equity, Applicable Law or otherwise (each, a "Dispute") shall be resolved in accordance with this Article X.

10.2 Informal Dispute Resolution. Upon the written request of either Party, an authorized Vice President of NJIT will meet with a Deserve Vice President (by conference telephone call or in person at a mutually agreeable site) within seventy-two (72) hours after the receipt by the other Party of such written request for the purpose of resolving such unresolved Dispute.

10.3 Arbitration.

(a) If the Parties are unable to resolve the Dispute within thirty (30) days after commencement of the informal dispute resolution process set forth in Section 10.2, either Party may give the other Party notice of the existence of a continuing impasse and shall thereafter immediately submit the Dispute to binding arbitration in accordance with the following provisions of this Agreement, regardless of the amount in controversy or whether such Dispute would otherwise be considered justifiable or ripe for resolution by a court or arbitration panel.

(b) Any such arbitration shall be conducted by the American Arbitration Association ("AAA") in accordance with its current Commercial Arbitration Rules (the "AAA Rules"), except to the extent that the AAA Rules conflict with the provisions of this Agreement, in which event the provisions of this Agreement shall control.

(c) Unless otherwise agreed by the Parties, the arbitration panel (the "Panel") shall consist of three neutral arbitrators ("Arbitrators"), each of whom shall be an attorney having five or more years of experience in the primary area of law as to which the Dispute relates, and shall be appointed in accordance with the AAA Rules (the "Basic Qualifications"); except if the amount in controversy is reasonably likely to be less than \$1,000,000, in which case

the Panel shall consist of one Arbitrator.

(d) Should an Arbitrator refuse or be unable to proceed with arbitration proceedings, a substitute Arbitrator possessing the Basic Qualifications shall be appointed by the AAA. If an Arbitrator is replaced after the arbitration hearing has commenced, then a rehearing shall take place in accordance with the provisions of this Agreement and the AAA Rules.

(e) The arbitration shall be conducted in Newark, New Jersey.

(f) The Panel may in its discretion order a pre-exchange of information including production of documents, exchange of summaries of testimony or exchange of statements of position and shall schedule promptly all discovery and other procedural steps and otherwise assume case management initiative and control to effect an efficient and expeditious resolution of the Dispute.

(g) At any oral hearing of evidence in connection with any arbitration conducted pursuant to this Agreement, each Party and its legal counsel shall have the right to examine its witnesses and to cross-examine the witnesses of the other Party. No testimony of any witness shall be presented in written form unless the opposing Party shall have the opportunity to cross-examine such witness, except as the Parties otherwise agree in writing and except under extraordinary circumstances where, in the opinion of the Panel, the interests of justice require a different procedure.

(h) Within fifteen (15) days after the closing of the arbitration hearing, the Panel shall prepare and distribute to the Parties a written award. The Panel shall have the authority to award any remedy or relief that a court of competent jurisdiction could order or grant, and shall award interest on any monetary award from the date that the loss or expense was incurred by the successful Party. In addition, the Panel shall have the authority to decide issues relating to the interpretation, meaning or performance of this Agreement, any agreement, certificate or other document referred to herein or delivered in connection herewith, or the relationships of the Parties hereunder or thereunder, even if such decision would constitute an advisory opinion in a court proceeding or if the issues would otherwise not be ripe for resolution in a court proceeding, and any such decision shall bind the Parties in their performance of this Agreement and such other documents.

(i) Except as necessary in court proceedings to enforce this arbitration provision or an award rendered hereunder, to obtain interim relief, or as otherwise required by Applicable Law, neither of the Parties nor any arbitrator shall disclose the existence, content or results of any arbitration conducted hereunder without the prior written consent of the Parties.

(j) To the extent that the relief or remedy granted in an award rendered by the Panel is relief or a remedy on which a court could enter judgment, a judgment upon the award rendered by the Panel may be entered by any court specified in Section 12.14 hereof. Otherwise, the award shall be binding on the Parties in connection with their obligations under this Agreement and in any subsequent arbitration or judicial proceedings between the

Parties.

(k) The Parties agree to share equally the cost of any Arbitration, including the administrative fee, the compensation of the Arbitrators and the costs of any neutral witnesses or proof produced at the direct request of the Panel.

- 10.4 Recourse to Courts and Other Remedies. Notwithstanding the dispute resolution procedures contained in this Agreement, any Party may at any time apply to any court specified in Section 12.14: (a) to enforce the agreement to arbitrate; (b) to seek injunctive or other equitable relief with respect to any dispute involving: (i) misuse or release, or threatened misuse or release, of Confidential Information; (ii) the ownership, ability to utilize, or infringement of intellectual property; or (iii) other breach or threatened breach of the Agreement in connection with which a Party deems it necessary or advisable to seek injunctive or other equitable relief; (c) to avoid the expiration of any applicable limitation period; or (d) to preserve a superior position with respect to other creditors. The Parties expressly waive all rights whatsoever to file an appeal against or otherwise to challenge any award by the Arbitrators hereunder, provided that a Party may enforce an arbitration judgment in a court of competent jurisdiction.

ARTICLE XI LIMITED LIABILITY

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER IN CONTRACT, TORT (WHETHER IN NEGLIGENCE OR STRICT LIABILITY) OR OTHER LEGAL OR EQUITABLE THEORY, OR ANY LOSS OF PROFITS OR REVENUE, REGARDLESS OF WHETHER SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, PROVIDED THAT THIS LIMITATION SHALL NOT LIMIT A PARTY'S INDEMNITY OBLIGATIONS UNDER SECTIONS 9.1(a)(iv) OR 9(b)(iv), RESPECTIVELY. NJIT'S MAXIMUM LIABILITY FOR ANY ACTION UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT OF FEES RECEIVED BY NJIT HEREUNDER.

ARTICLE XII GENERAL PROVISIONS

- 12.1 Assignment. Any assignment by either Party of that Party's rights and/or obligations pursuant to this Agreement shall be subject to the prior written consent of the other Party to this Agreement, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, Deserve may, without the prior consent of NJIT but upon prior written notice, assign this Agreement and/or any of Deserve's rights and obligations hereunder: (i) to any financial institution upon the condition that the assignee shall expressly assume, all of Deserve's obligations hereunder to the extent assigned, upon the delivery of prior written notice thereof to NJIT; (ii) to an Affiliate with the necessary resources to undertake Deserve's obligations hereunder to the extent assigned; and/or (iii) to an entity that merges with Deserve or acquires all or substantially all the assets and obligations of Deserve.

Deserve may utilize the services of any third party in fulfilling its obligations under this Agreement and shall ensure that any such third party complies with all terms of this Agreement.

- 12.3 Entire Agreement/Amendment. This Agreement, together with the Schedules hereto, which are expressly incorporated by reference herein and made a part hereof contain the entire agreement of the Parties with respect to the subject matter hereof and thereof and supersede all other prior understandings and agreements between the Parties with respect to the subject matter hereof and thereof whether written or oral. This Agreement may not be amended except by written instrument signed by Deserve and NJIT. In the event of any express direct conflict between a provision in the body of this Agreement and in a Schedule, the provision in the Schedule shall prevail.
- 12.4 No Third Party Beneficiaries. Nothing in this Agreement is intended or shall be deemed to confer any rights or benefits upon any Person other than Deserve and NJIT, or to make or render any such other Person a third-party beneficiary of this Agreement.
- 12.5 Non-Waiver of Default. The failure of either Party to insist, in any one or more instances, on the performance of any term or condition of this Agreement shall not be construed as a waiver or relinquishment of any right granted hereunder or of the future performance of any such term or condition, and the obligations of the non-performing Party with respect thereto shall continue in full force and effect. No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon either Party unless in writing and executed by a duly authorized officer of each of the Parties. Neither the failure to insist upon strict performance of any of the agreements, terms, covenants or conditions hereof nor the acceptance of monies due hereunder with knowledge of a breach of this Agreement, shall be deemed a waiver of any rights or remedies that either Party may have or a waiver of any subsequent breach or default in any of such agreements, terms, covenants and conditions.
- 12.6 Severability. If any provision of this Agreement is held to be invalid, void or unenforceable, all other provisions shall remain valid and be enforced and construed as if such invalid provision was not a part of this Agreement.
- 12.7 Notices. All notices, demands and other communications hereunder shall be in writing and shall be sent by certified mail return receipt requested, by hand, by facsimile with confirmation of receipt, or by nationally recognized overnight courier service addressed to the Party to whom such notice or other communication is to be given or made at such Party's address as set forth below, or to such other address as such Party may designate in writing to the other Party from time to time in accordance with the provisions hereof as follows: Any notice provided pursuant to this Section 12.7 shall be deemed given:
- (i) if sent by certified mail, two Business Days after notice is sent,
 - (ii) if sent by nationally recognized overnight courier service, on the next day on which such courier service makes deliveries in the ordinary course of its business,
 - (iii) if delivered by hand, on the day of delivery, or
 - (iv) if delivered by facsimile with confirmation of receipt, upon receipt of such confirmation by the sending Party. Any notice of termination of this Agreement sent by a Party shall

also be sent by such Party to any other Person as may be required by Applicable Law.

- 12.8 Public Announcements. Except as otherwise set forth in this Agreement, as necessary to comply with Applicable Law, or with the prior written consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed), neither Party shall make, or cause to be made, any press release or make any public or private announcement in respect of the other Party, the Program or this Agreement or the transactions contemplated hereby, or otherwise communicate with any news media regarding the other Party, the Program or this Agreement. Notwithstanding the foregoing, NJIT agrees that during the Term Deserve may include NJIT's name and Marks in connection with any materials listing marketing partners that Deserve may publicize, provided any such use complies with the terms of Section 4.2 (a).
- 12.9 Effect of Headings. The headings and subheadings of the sections of this Agreement are inserted for convenience of reference only and shall not control or affect the meaning or construction of any of the agreements, terms, covenants and conditions of this Agreement in any manner.
- 12.10 Interpretation. This Agreement has been fully reviewed and negotiated by the Parties and their respective counsel. Accordingly, in interpreting this Agreement, no weight shall be placed upon which Party or its counsel drafted the provision being interpreted.
- 12.11 Multiple Counterparts and Facsimile Signatures. This Agreement may be executed in any number of multiple counterparts, all of which shall constitute but one and the same original. Facsimile signatures or portable document files (or "PDF") of signatures to this Agreement shall be effective.
- 12.12 No Agency. Except as specifically provided in this Agreement, nothing contained in this Agreement shall authorize, empower or constitute NJIT or Deserve as agent of the other in any manner; authorize or empower NJIT or Deserve to assume or create any obligation or responsibility whatsoever, express or implied, on behalf of or in the name of the other Party; or authorize or empower NJIT or Deserve to bind the other Party in any manner or make any representation, warranty, covenant, agreement or commitment on behalf of the other Party or permit NJIT or Deserve to hold itself out as having the authority to do any of the foregoing.
- 12.13 Governing Law. This Agreement and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by and construed in accordance with the laws of the State of New Jersey without regard to its conflicts of law provisions, and/or, if and as required, applicable federal law.
- 12.14 Consent to Jurisdiction. Each Party hereto agrees that all actions, proceedings or counterclaims arising out of or relating to this Agreement or any of the transactions contemplated hereby, for which access to court is permitted under this Agreement, shall be brought in the United States District Court for New Jersey (or, should such federal court lack competence to hear such actions, proceedings or counterclaims, in a state court with competent subject matter jurisdiction in New Jersey) and that it shall in connection with any such actions, proceedings or counterclaims, submit to the jurisdiction of, and agree to venue

in, either such court(s) and waives any objection to venue laid therein. For the purposes of such actions, proceedings, or counterclaims, service of process on a Party hereto shall be deemed effective if it is dispatched by certified mail return receipt requested to such Party's address as provided under the notice provisions of this Agreement.

- 12.15 WAIVER OF JURY TRIAL. EACH PARTY TO THIS AGREEMENT WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.
- 12.16 Force Majeure. Neither Party shall be in breach hereunder or liable for non-performance to the extent such Party's performance is prevented by fire, earthquake, tornado, flood, explosion, embargo, interference by civil or military authority, strikes or other labor disputes, delays in transit or delivery, terrorism or terrorist activity, war, riot, governmental regulation or act, act of God or of public enemy, or by any other cause beyond such Party's reasonable control and without its fault or negligence (each, a "Force Majeure Event"). A Party's obligations to perform will be excused to the extent, and for so long, that such performance is prevented by a Force Majeure Event. During the pendency of such Force Majeure Event, the other Party shall be excused from performing its obligations under the Agreement that are dependent upon the prior or parallel performance of the non-performing Party. If a Force Majeure Event shall occur and be continuing for a period of sixty (60) days or more, then the Party not directly prevented from performing due to such Force Majeure Event shall have the right, so long as the Force Majeure Event continues, to terminate this Agreement upon not less than ninety (90) days prior written notice to the non-performing Party.
- 12.17 Cumulative Remedies. Except as otherwise expressly provided herein, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party, whether at law, in equity, or otherwise.
- 12.18 Successors and Assigns. This Agreement shall be binding on the Parties hereto and their respective successors and permitted assigns.
- 12.19 Compliance with Laws. In addition to all Applicable Law, each Party shall perform this Agreement in accordance with all other applicable federal, state and local laws, including: (a) Non-Discrimination In Employment and Equal Employment Opportunity (N.J.S.A. 10:2-1 through 10:2-4 and N.J.S.A. 10:5-31 et seq.; (b) N.J. Public Law 2012, c. 25, Disclosure of Investment Activities In Iran; and (c) N.J. Public Law 2018, c. 9, Diane B. Allen Equal Pay Act.
- 12.20 Non-Discrimination. Deserve agrees that it will perform this Agreement and provide its services hereunder without regard to the age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, of any alumni, faculty, staff or student of NJIT. Deserve shall promptly report to NJIT any instance of such discrimination of which it becomes or reasonably should have become aware.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date.

John Collins
Signature

Kenneth Alexo, Jr.
Signature

John Collins
Name

Kenneth Alexo, Jr., PhD
Name

VP, Business Development
Title

VP for Development & Alumni Relations
Title

For Deserve, Inc

For New Jersey Institute of Technology

May 28, 2019
Date

5/28/2019
Date

SCHEDULE A
Deserve Marks



SCHEDULE B

NJIT Marks





SCHEDULE C

NJIT shall be compensated as follows:

New Account Fees

Pro Card - \$24 will be accrued upon 3rd month of new account in good standing \$3 each month will be accrued for up to the next 12 months as long as account remains in good standing for a total not to exceed \$60 per account.

Edu Card - \$26 will be accrued upon 3rd month of new account in good standing \$2 each month will be accrued for up to the next 12 months as long as account remains in good standing for a total not to exceed \$50 per account.

Classic Card - \$24 will be accrued upon 3rd month of new account in good standing \$1 each month will be accrued for up to the next 12 months as long as account remains in good standing for a total not to exceed \$36 per account.

NJIT may offer a welcome bonus to Referred members, who are approved and who activate a revolving account, at their own discretion financed by the referral commission they receive from Deserve.

Interchange Sharing

Upon the 1st of the month following the reaching the threshold of 5,000 active accounts across all NJIT Exclusive Products, NJIT will accrue 10 basis points (0.10%) on all net transactions, cash advances and cash equivalent purchases (excluding fees, returns, and interest) on all NJIT Exclusive Products.

As an Example: If the NJIT Product had \$10M in net transactions minus excluded purchases in the first month following the month that the account threshold of 5,000 accounts was crossed, NJIT would be paid \$10,000 based on 0.10% of the interchange for transactions for that period.

All payments to NJIT will be made quarterly within 45 days of the end of each Program Year quarter.

Payments can be segmented by card type or cardholder type (e.g. student or alumni).

Payments can be made to multiple AP departments as directed by NJIT. All payments will be supported by relevant financial reports.

New Accounts must meet the criteria established herein, in full; to qualify for compensation and reporting.

SCHEDULE D

Financial Education Cooperation

Parties will cooperate to provide personal financial literature and education to NJIT Alumni and Students throughout the Term of this Agreement.

Deserve will provide NJIT with the educational materials that is uses for customers and prospects of the Deserve Credit Cards under a non-exclusive, North America, royalty free license. Deserve, at its own expense, may also develop NJIT specific educational material that may include articles, blog post, seminars, webinars, etc. that would be covered under the same license above.

Deserve will annually deliver a minimum four (4) in-person seminars or webinars or any combination of the two types of events to satisfy the minimum. In person seminars will be on the NJIT campus and run by a Deserve Representative. Deserve will incur the expense of producing the seminars, personnel, and travel costs. NJIT will use reasonable efforts to promote these events to its Members.