

# CAJUN CARD MERCHANT AGREEMENT

THIS AGREEMENT, made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_, by and between The University of Louisiana at Lafayette, Louisiana, (hereinafter "the University") and \_\_\_\_\_ (hereinafter "the Merchant").

WHEREAS, commencing February 19, 2003, the University implemented a discretionary spending account program entitled, "Cajun Cash", which is accessible through an automated debit card privilege system (hereafter sometimes referred to as the "Cajun Card Program"); and

WHEREAS, under the Cajun Card Program cardholders with Cajun Cash accounts are able to purchase goods and services at various authorized participating locations; and

WHEREAS, the Merchant desires to become an authorized participating location so cardholders with Cajun Cash accounts can purchase goods and services from the Merchant;

NOW, THEREFORE, in consideration of the promises and obligations herein set forth, the University and the Merchant agree as follows:

## 1. TERM

This agreement shall commence on the Effective Date of equipment installation, and shall terminate (1) year from said date, unless sooner terminated or extended in accordance with Section 15 herein. After the expiration of the Initial Term, this Agreement will automatically renew on a month-to-month basis unless terminated by either party upon thirty (30) days written notice to the other party.

## 2. RESPONSIBILITIES OF MERCHANT

### A. EQUIPMENT AND CONNECTION

- (1) It is the responsibility of the Merchant to determine the appropriate number of terminals and printers that will best suit their location. All Heartland Campus Solutions equipment must be returned to the University at the expiration of the Agreement in the same condition as received, normal wear and tear is expected.

- (2) Heartland Campus Solutions equipment requires a wired internet connection in order to access the Cajun Card System. The Merchant must also have network connectivity where the terminal will be placed within the location and is responsible for any additional wiring or costs that may involve connecting the terminal.
- (3) The Merchant, at its cost, is responsible for providing electrical power and network connectivity for all Heartland Campus Solutions equipment located at the Merchant's place of business as well as all printer paper and any other supplies and materials.
- (4) If at any time the Cajun Card Program's software indicates a malfunction, the Merchant, upon learning of such malfunction, immediately shall notify the Cajun Card Office by telephone at (337) 482-1430 or (337) 482-1318 of the malfunction. The Merchant bears the risk of loss if it knowingly continues to accept Cajun Card sales transactions while the Cajun Card Program's software is malfunctioning, and the University reserves its right to deny payment to the Merchant for any of those Cajun Card sales transactions which are later denied for insufficient funds. The Merchant agrees that in no event shall the University be liable to the Merchant for any loss of revenues or profits incurred or suffered by the Merchant resulting from or attributable to the Cajun Card Program's software's failure to operate properly or from the Merchant's acceptance of an Cajun Card sales transaction without an on-line authorization shown by the card authorization equipment.
- (5) The Merchant will be responsible for any damage to, loss or theft of the equipment and if damage, loss or theft occurs, the Merchant shall pay a reasonable amount, not to exceed the replacement cost of the equipment. The University, at its cost and expense, is responsible for support and maintenance when resulting from normal wear and tear of all Heartland Campus Solutions equipment used in conjunction with the University's Cajun Card Program. In the event the merchant fails to return the equipment in a timely fashion, the University may elect to treat the failure to return as the act of conversion and retains the option of filing suit for the recovery of three times the value of the merchandise, attorney fees and, if applicable, lost income.
- (6) The University is solely responsible for paying the cost of any upgrades of equipment and/or software required to assure continued compatibility with the Cajun Card Program.
- (7) The Merchant acknowledges the University, from time to time, will take the Cajun Card Program down to perform necessary system maintenance or to ensure system integrity while loading large quantities of data. The University will give the Merchant advance notice of any scheduled down-time and attempt to be as convenient as possible. However, should the Cajun Card Program experience unanticipated down-time(s), the University's priority will be the timeliness of reinstating the system, without regard to notifying each participating merchant. The Merchant bears the risk of loss if it continues to accept Cajun Card sales transactions while the Cajun Card Program is down, whether such down-time is scheduled or unanticipated. The Merchant agrees that in no event shall the University be liable to

the Merchant for any loss of revenues or profits incurred or suffered by the Merchant resulting from or attributable to the Cajun Card Program's software's failure to operate properly or from the Merchant's acceptance of an Cajun Card sales transaction without an on-line authorization shown by the card authorization equipment or while the Cajun Card Program is not functioning.

**B. CARD ACCEPTANCE**

- (1) The Merchant agrees to require the cardholder to present his/her Cajun Card for swiping through the Heartland Campus Solutions Data Collection Terminal to process a sales transaction on the Cajun Card Program. Sales transactions based on verbal authorization where the cardholder's Cajun Card is not physically presented to the Merchant are not permitted. For each Cajun Card sales transaction, the Merchant is required to obtain the cardholder's signature on the Merchant's copy of the sales receipt and to retain that sales receipt for the specified period of one (1) year. The Merchant agrees that the University shall have no responsibility or liability to pay the Merchant for any sales transaction which is accepted and processed by the Merchant without the presentation of the cardholder's Cajun Card at the time the sales transaction occurs.
- (2) Prior to accepting the Cajun Card for a sales transaction, the Merchant is responsible for verifying that the person in the possession of the Cajun Card is the same person pictured in the photograph on the Cajun Card. The Merchant agrees that if the University determines that the Merchant's failure to perform such verification resulted in the Merchant's acceptance of a lost or stolen Cajun Card for a sales transaction, the University may deny payment to the Merchant for such sales transaction.
- (3) Prior to accepting the Cajun Card for a sales transaction, the Merchant is responsible for verifying that sufficient funds are available in the cardholder's account by using the Heartland Campus Solutions Data Collection Terminal linked to the Cajun Card system or by telephoning the Cajun Card Office. When the Merchant either fails to verify that sufficient funds are available in the cardholder's account for the sales transaction, or knowing that the cardholder's account has insufficient funds, proceeds to make the sale, then the Merchant assumes the risk of loss by accepting the Cajun Card for that sales transaction, and the University will not be liable to the Merchant for payment of that sales transaction which later is denied for insufficient funds.
- (4) The Merchant shall retain complete and accurate records of all Cajun Card Program sales transactions for a period of one (1) year and shall cooperate with all requests from the University for information regarding sales transactions which are disputed by cardholders.

If the Cajun Card Program indicates that the Cajun Card has been reported as lost or stolen, the Merchant shall attempt to retain the persons Cajun Card. The Merchant shall

report immediately any suspicious sales transactions or attempted sales transactions to the Cajun Card Office as well as information about the individual who was attempting to use that card. The Merchant shall promptly return any Cajun Cards retained or left by cardholders to the Cajun Card Office.

**C. FEES/PAYMENTS**

The Merchant is provided (1) terminal/printer at each location. The Merchant agrees to pay a onetime set up cost of \$500.00 for each additional terminal/printer requested at the merchant location. This fee must be paid before the terminal set-up date.

The Merchant agrees that the University shall be entitled to charge and retain as a transaction service charge 5% of the Merchant's net sales (sales price not including sales tax) from each Cajun Card sales transaction. The Merchant agrees not to charge or pass on to the cardholder at the time of purchase this transaction service charge or any other fee or surcharge as a condition of the Merchant's acceptance of the Cajun Card for a sales transaction. For the purposes hereof, the term "net sales from each Cajun Card sales transaction" means net receipts from Cajun Card sales transactions (sales price not including sales tax ) less the proposed transaction service fee (commission).

- (1) The University shall pay the Merchant for its verified Cajun Card Program sales, less the transaction services charges, on either a weekly, bi-weekly, or monthly basis in accordance with Section 3 hereof. Prior to payment, the Cajun Card Office within fifteen (15) calendar days will verify the Merchant's sales figures through the Cajun Card Program sales location reports, and if verified will send the request for payment for that sales period to the University's Business Services Department. The Merchant agrees that the University may deduct and retain from each Cajun Card Program sales payment due to the Merchant the transaction service charges as well as any other charges, or amounts which may be due and owing to the University by Merchant pursuant to this Agreement. The University shall be entitled to withhold payment of those sales transactions which the University is unable to verify or which are disputed by the cardholder until the sales transaction is verified to the University's satisfaction or the inquiry into the disputed sales transaction is completed. The Merchant must notify the Cajun Card Office within sixty (60) days of its receipt from the University of a Cajun Card Program sales payment of any objection that the Merchant has to the amount paid.
- (2) The Merchant is responsible for timely submission of Cajun Card Program sales transaction payment requests to the Cajun Card Office.
- (3) The Merchant assumes the risk of non-payment for any sales transaction that is denied for processing by the Cajun Card Program. The Merchant's failure to adhere to and comply with the terms of this Agreement may result in denial of payment by the University for Sales Transactions, which later are disputed by the cardholder.

### **3. RESPONSIBILITIES OF THE UNIVERSITY**

- A. The University will support the Cajun Card Office to administer the Cajun Card Program which may include, but not be limited to, opening and closing cardholder accounts, taking account deposits, issuing cardholder account statements, answering questions, investigating disputed transactions or charges, managing the database of customer and merchant accounts, promoting and marketing the Cajun Card Program, and maintaining the CPU and related software.
- B. The University shall pay the Merchant for verified Cajun Card Program sales transactions, less the transaction service charges and other charges as outlined in paragraph 2C above, as follows:
  - For Cajun Card Program sales the Cajun Card Office will reconcile and produce payments to the merchant on a monthly basis or as otherwise agreed upon between the University and the merchant.
- C. The University will make reasonable efforts to market and advertise the Cajun Card program to new and current students, faculty and staff in University publications and in the Cajun Card website.
- D. Within 30 days of the date of this Agreement, the Cajun Card Office will make available to the Merchant one training session at the Merchant's business on the proper use of the Cajun Card Program, including card acceptance policies and procedures, and other aspects of the Cajun Card Program.
- E. The University, upon request from the Merchant, will provide it with detailed and summarized transaction reporting to include amounts, times, and dates of transactions.

### **4. ASSIGNMENT**

The Merchant shall not, without the prior written consent of the University, assign or transfer in whole or in part its interest under this Agreement. Any consent by the University to any assignment shall not constitute a waiver of the necessity of obtaining consent to any subsequent assignments. Each assignee or transferee shall assume and be deemed to assume this Agreement and shall remain liable jointly and severally with the assigning Merchant for all of the terms and conditions contained herein. No assignment shall be binding on the University unless such assignee or the Merchant shall deliver to the University a copy of such assignment, which contains a covenant of assumption by the assignee.

### **5. INDEMNIFICATION**

The Merchant agrees to indemnify and save and hold harmless the University and its officers, agents and employees from and against any claims by any person, firm, entity,

or governmental authority arising from or attributable to the Merchant's participation in the Cajun Card Program, the Merchant's business operations and activities, a breach of this Agreement by the Merchant, or the acts or omissions of the Merchant's employees, agents, or servants, including but not limited to, any claims of personal injury or death or loss or damage to property. In the event of any such claims, the Merchant agrees to defend the same with competent legal counsel and shall indemnify and hold harmless the University against all attorneys' fees, litigation costs and expenses, and court costs in connection therewith.

## **6. DEFAULT**

If the Merchant defaults in the performance of any material term or condition of this Agreement, including the failure of the Merchant to timely make any payment required by this Agreement and such default shall continue for a period of fourteen (14) days after written notice thereof from the University, then the University may terminate this Agreement. Notwithstanding the foregoing, in extraordinary circumstances where the giving of such notice would result in damage to the University or be detrimental to the Cajun Card Program or the University's interests, then the University shall be entitled to terminate this Agreement effective upon delivery of written notice to the Merchant.

## **7. ADVERTISING**

Except as provided for in this Agreement, the Merchant agrees not to advertise or represent that the University of Louisiana at Lafayette or the Cajun Card Program endorses the Merchant's business or its goods and services, nor shall the Merchant use the University's name, trademarks, or any other identifying marks to promote or otherwise endorse the Merchant or Merchant's business unless it has received the prior written permission from the University. The University will grant to the Merchant a royalty-free, non-exclusive license to use and display the official Cajun Card logo in its advertising; provided, however, the Merchant agrees that it will not include the Cajun Card logo in any advertisement or in close proximity to any advertisement for brewed or alcoholic beverages, tobacco, firearms, or drug paraphernalia. Prior to the publication or release of any advertisement that contains the Cajun Card logo; the Merchant first must obtain the Cajun Card Office's approval of the advertisement. The Cajun Card Office will notify the Merchant within seven (7) calendar days after its receipt of the proposed advertisement of its approval or disapproval of the advertisement. If the Cajun Card Office fails to notify the Merchant within the seven (7) calendar day review period, the Merchant may consider the advertisement in the form submitted as approved. Such license shall terminate upon the expiration or earlier termination of this Agreement.

## **8. NOTICE**

Any notice required by this Agreement shall be given either by the University or the Merchant to the other and shall be sent by certified mail, return receipt requested, and

shall be deemed to be given when received and shall be addressed to the University or the Merchant at their respective address as follows:

If to the University:

Director, Cajun Card Office

The University of Louisiana at Lafayette  
P.O. Box 43615  
Lafayette, LA 70504

If to the Merchant:

---

---

---

---

---

All notices, inquires, or payments required to be given to the Cajun Card Office should be given as follows:

Cajun Card Office  
P.O. Box 43615  
Lafayette, LA 70504  
Telephone: (337) 851-2273

**9. SUCCESSORS AND ASSIGNS**

Any term or condition of this Agreement which inures to the benefit of or is binding upon the Merchant shall also inure to the benefit of and be binding upon the successors and approved assigns of the Merchant.

**10. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the University and the Merchant and supersedes all prior agreements, if any, between the University and the Merchant in connection with the subject matter of this Agreement. Any subsequent addenda, modifications or alternations to this Agreement must be signed by both parties and should be attached to this Agreement.

**11. COMPLIANCE WITH LAWS**

The Merchant, at its cost, shall comply with all federal, state, county and municipal laws, ordinances and regulations with respect to the Merchant's participation in the Terminal Program.

## **12. RELATIONSHIP OF PARTIES**

Nothing contained in this Agreement shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent, partnership, joint venture, or of any other type of association between The University and the Merchant and neither the provisions contained in this Agreement nor any acts of the parties shall be deemed to create such relationship. The parties are independent contractors, and Merchant shall remain solely responsible for its acts and omissions and those of its employees and agents.

## **13. SEVERABILITY**

If any provisions of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any application of such provision shall not be affected thereby.

## **14. WAIVER**

No failure by either party to insist upon the strict performance by the other of any term or condition of this Agreement or to exercise any right to remedy contingent upon a breach thereof shall constitute a waiver of any such breach or of such term or condition of this Agreement and the term or condition shall continue in full force and effect with respect to any then existing or subsequent breach.

## **15. TERMINATION**

- A. ***TERMINATION BY UNIVERSITY.*** The University at any time may terminate this Agreement for its convenience without penalty or any financial obligation to the Merchant by giving the Merchant thirty (30) days prior written notice.
- B. ***TERMINATION BY MERCHANT.*** The Merchant at any time may terminate this Agreement by giving the University thirty (30) days prior written notice.

## **16. PRIVACY OF INFORMATION.**

- A. University agrees that for purposes of the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. § 1232g), as amended (“FERPA”), the Merchant will be considered a school official with a legitimate educational reason to have access to such limited personally identifiable information that may be contained on the Cajun Card. The Merchant agrees that it will not further disclose personally identifiable information about any student or other cardholder that it receives from that student’s or person’s Cajun Card pursuant to this Agreement, unless such disclosure is legally authorized under FERPA. The Merchant expressly



warrants and represents that it will not itself retain or use, or disclose, transfer, or sell to any third party any personally identifiable information obtained by the Merchant from the Cajun Card for any purpose other than those that are expressly permitted by the terms of this Agreement with University.

- B. Except as otherwise authorized in this Agreement, the Merchant agrees that it may not, directly or through any affiliate, disclose any nonpublic personal information about a cardholder to a nonaffiliated third party. For the purposes of this Agreement the term “nonpublic personal information” shall mean personally identifiable financial information. The term “personally identifiable financial information” shall have the same definition ascribed to that term in Section 313.3(o) of Part 313 of Title 16 Code of Federal Regulations. To the extent that the Merchant receives or collects any nonpublic personal information from either the University or the cardholder pursuant to this Agreement, the Merchant agrees that its disclosure and use of that information is expressly limited as follows: (1) The Merchant may disclose the information to its affiliates, but the Merchant’s affiliates may, in turn, disclose and use the information only to the extent that the Merchant may disclose and use the information and (2) The Merchant may disclose and use nonpublic personal information only as necessary in the ordinary course of business to effect, administer, or enforce, or in connection with (i) servicing, carrying out, or processing a Cajun Card sales transaction that a cardholder requests or authorizes; (ii) providing a confirmation, statement, or other record of the Cajun Card sales transaction to the cardholder; or (iii) authorizing, settling, billing, processing, clearing, transferring, reconciling or collecting amounts debited or otherwise paid using a Cajun Card. The Merchant agrees that it shall not, directly or through an affiliate, disclose a Cajun Card number or similar form of access number or access code for a cardholder’s Cajun Card account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the cardholder. The Merchant further agrees that it shall not, directly or through an affiliate, use a Cajun Card number or similar form of access number or access code for a cardholder’s Cajun Card account for telemarketing, direct mail marketing, or other marketing through electronic mail to the cardholder.

## **17. GOVERNING LAWS**

This Agreement plus any related or supplemental documents or notices shall be governed by, construed and enforced in accordance with applicable federal laws, and the laws, of the State of Louisiana without regard to conflict of laws principles.

IN WITNESS WHEREOF, the University and Merchant by their duly authorized officers have executed this Agreement on the day and year first above written.

THE UNIVERSITY OF LOUISIANA  
at Lafayette

By:

\_\_\_\_\_  
President

\_\_\_\_\_  
Date

MERCHANT

By:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date