

BEARCAT CARD

AGREEMENT

THIS AGREEMENT, made and entered into this day of (Month), (Year) is between University of Cincinnati on behalf of its Campus Services, 265 Tangeman University Center, Cincinnati, Ohio 45221 and Name of company located at address, City, State, Zip (hereafter referred to as "Merchant").

RECITALS:

WHEREAS, commencing September 1, 2000, University of Cincinnati, Campus Services offered to its faculty, staff and students a discretionary spending program, which is accessible through an automated debit card privilege access control system (the "Bearcat Campus Card Program");

WHEREAS, under the Bearcat Campus Card Program, faculty, staff and students are able to purchase goods and services at various locations;

WHEREAS, Merchant desires to provide such goods and services to the University's faculty, staff and students through the Bearcat Campus Card Program;

NOW, THEREFORE, in consideration of the foregoing, the parties mutually agree as follows:

1. **TERM.**

This Agreement shall commence on the date it is executed by both parties, as indicated in the signature block hereto, (the "effective date") and shall continue in force unless terminated by either party upon thirty (30) days written notice given to the other.

Upon the termination of the agreement University of Cincinnati shall pay any outstanding balance to Merchant within 30 days. Paragraphs 2c and 5 shall survive termination of this agreement.

2. **RESPONSIBILITIES OF MERCHANT.**

A. **Equipment and Data Lines.** During the Initial Term and any Renewal Term, Merchant agrees to furnish, at its costs and expense, the equipment and phone lines, as necessary or required to interface with the Bearcat Campus Card system.

B. **Fees and Payment Terms.** During the Initial Term and any Renewal Term, Merchant agrees to pay to University of Cincinnati a service charge equal to 4% of net sales (net sales equal gross sales minus sales returns) paid monthly and 5% of net sales if paid weekly.

Merchant also agrees to pay an initial installation, set up, software and training fee of \$500. This fee shall be submitted with the application for Merchant participation and is non-refundable unless the University denies the application.

C. **Card Inspection.** Merchant will verify by visual inspection that the person in the possession of the Bearcat Campus Card is the person pictured in the photo on that card prior to accepting a Bearcat Campus Card payment (or before delivering the food, in the case of deliveries). Merchant acknowledges and agrees that University of Cincinnati shall not be liable for payment to Merchant for any Bearcat Campus card transactions consummated by Merchant on a lost or stolen Bearcat Campus debit card, it being expressly acknowledged and agreed by Merchant that Merchant shall be solely responsible for verifying the validity of any Bearcat Campus Card presented to Merchant in payment for Merchant's goods or services. Merchant shall reimburse University of Cincinnati for any amounts University of Cincinnati may have paid to merchant for lost or stolen card purchases.

- D. Bearcat Campus Card Off Line. If at any time, the Bearcat Campus Card equipment at Merchant's location indicates an off-line status or otherwise is operating improperly, Merchant shall notify the Bearcat Campus Card office immediately by telephone at (513) 556-2000. If Merchant continues to accept Bearcat Campus Card payments while in an "off line" mode without first notifying the Bearcat Campus Card office, then the University shall not make payment for any transaction which is later denied by the Bearcat Campus Card office due to insufficient funds or because the card was invalid. In no event shall the University of Cincinnati be liable for any losses, damages, claims, costs or expenses suffered or incurred by Merchant due to failure of the Bearcat Campus Card equipment or verification system to operate properly.
- E. Prohibited Transactions. Merchant shall not mark-up the purchase price or place any surcharges on goods purchased by a Bearcat Campus Card. If Merchant violates this Agreement by marking-up or placing a surcharge on goods purchased by Bearcat Campus Card, University of Cincinnati may terminate this Agreement if Merchant does not cure such violation within five (5) days after written notice thereof from University of Cincinnati.
- F. Receipt to be Provided. Merchant shall make a receipt available to a Bearcat Campus Card cardholder at the time the cardholder initiates a Bearcat Campus card transaction with Merchant, which receipt shall include the amount of the transaction, the date, the account number, and the location and identity of the Merchant.
- G. Use of Merchant name. The Merchant hereby authorizes the University to include the name of Merchant in any materials produced by the Bearcat Campus Card office to promote the authorized locations for the Bearcat Campus Card.

3. **RESPONSIBILITIES OF THE UNIVERSITY**

- A. Fees and Payment of terms. University of Cincinnati shall pay Merchant on a monthly basis for the Bearcat Campus Card debit card transactions attributable to Merchant's business, less the Service Charge, fifteen (15) days after end of the month for debit card transactions attributable to Merchant's business. Notwithstanding the foregoing, University of Cincinnati shall not be responsible or obligated to pay Merchant for any Bearcat Campus Card transactions which are prohibited hereunder, or which are processed by Merchant on a stolen or invalid Bearcat Campus Card.
- B. Initial training and system installation for Merchant. The University shall provide consulting services regarding pre-installation requirements, but shall not be responsible for actual pre-installation set-up. The University shall set up required equipment to accept the Bearcat Campus Card at Merchant's participating location and provide training to the Merchant upon initial installation.
- C. Advertising. Commencing no later than 45 days after the effective date of this Agreement, University may include Merchant's name in specified newspaper advertisements, promotional flyers, and electronic/internet media produced by the Bearcat Campus Card Office with the specific purpose of listing the Bearcat Campus Card authorized locations. The costs of these specified advertising opportunities shall be borne by the University. The selected medium and frequency of promotion shall be at the sole discretion of the University. Promotional material that is produced one time per year may be updated at the time of publication.

Additional promotional opportunities may be made available for a fee.

If to the Merchant:

or at such other address that Merchant may give written notice of to University of Cincinnati.

9. **SUCCESSORS AND ASSIGNS.**

All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the parties hereto and their successors and assigns.

10. **ENTIRE AGREEMENT.**

This Agreement constitutes the entire agreement between University of Cincinnati and Merchant and supersedes and cancels any and all previous negotiations, arrangements, understandings and agreements, if any, between University of Cincinnati and Merchant in connection with the subject matter of this Agreement. This Agreement together with any Exhibits attached hereto contains all the agreements of the parties with respect to the subject matter hereof, and cannot be amended or modified except by a written agreement signed by University of Cincinnati and Merchant.

11. **COMPLIANCE WITH LAWS.**

Merchant shall comply with all federal, state, county and municipal laws, ordinances and regulations with respect to Merchant's participation in the Bearcat Campus Card 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 or of partnership or of joint venture or of any association between University of Cincinnati and Merchant and neither the provisions contained in this Agreement nor any acts of the parties shall be deemed to create any such relationship.

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 breach.

15. **GOVERNING LAW.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

IN WITNESS WHEREOF, the University of Cincinnati and Merchant have executed this Agreement effective as of the day and year first written above.

University of Cincinnati

By Steve Sayers, Senior Associate Vice President,
Campus Services

By _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

Revision I July, 2002

