



UL LAFAYETTE CAJUN CARD MERCHANT AGREEMENT

This Agreement (“Agreement”) is made effective this [] day of [], 20 [] (“Effective Date”), by and between University of Louisiana at Lafayette (“University”) and [] (“Merchant”).

Commented [ASL1]: Insert date information

Commented [ASL2]: Insert full legal name of Merchant

WHEREAS, University has implemented a discretionary spending account program entitled “Cajun Cash” which is accessible through an automated debit card privilege system (“Cajun Card Program”); and

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

WHEREAS, Merchant desires to become an authorized participating location where Cardholders can purchase goods and services from Merchant;

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

I. TERM

This Agreement shall commence on the Effective Date and shall terminate one (1) year thereafter, unless sooner terminated in accordance with Section XV herein.

II. RESPONSIBILITIES OF MERCHANT

A. Card Acceptance

1. Merchant agrees to require Cardholders to present their Cajun Card for processing through the Heartland Campus Solutions Data Collection Terminal to process all sales transactions on the Cajun Card Program. Sales transactions based on verbal authorization where the Cardholder’s Cajun Card is not physically presented to Merchant are not permitted. For each Cajun Card sales transaction, Merchant is required to obtain the Cardholder’s signature on Merchant’s copy of the sales receipt and to retain that sales receipt for a period of one (1) year. Merchant agrees that University shall have no responsibility or liability to pay Merchant for any sales transaction which is accepted and processed by 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, 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. Merchant agrees that if University determines that Merchant's failure to perform such verification resulted in Merchant's acceptance of a lost or stolen Cajun Card for a sales transaction, University may deny payment to Merchant for such sales transaction.
3. Prior to accepting the Cajun Card for a sales transaction, Merchant is responsible for verifying that sufficient funds are available in the Cardholder's account by using Touchnet API and Touchnet OneCard, or by telephoning the Cajun Card Office. When 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 Merchant assumes the risk of loss by accepting the Cajun Card for that sales transaction, and University will not be liable to Merchant for payment of that sales transaction which later is denied for insufficient funds.
4. 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 University for information regarding sales transactions which are disputed by Cardholders.
5. If the Cajun Card Program indicates that the Cajun Card has been reported as lost or stolen, Merchant shall attempt to retain the Cardholder's Cajun Card. 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 wrongfully attempting to use that card. Merchant shall promptly return any Cajun Cards retained or left by Cardholders to the Cajun Card Office.

B. Equipment and Connection

1. At Merchant's request, University will make available to Merchant certain Heartland Campus Solutions equipment ("Equipment") which will facilitate Cajun Card Program transactions. It is the responsibility of Merchant to determine the appropriate number of terminals and printers that will best suit Merchant's location. All Equipment must be returned to University at the expiration or termination of the Agreement in the same condition as received, normal wear and tear excepted.
2. The Equipment requires either a wired internet connection or a private (non-public) Wi-Fi network in order to access the Cajun Card System. If wired, Merchant must 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. If Merchant operates exclusively by mobile application or website, then Merchant at its sole cost is responsible for integration with and continued compatibility with University's vendor, Touchnet API, and the Touchnet Ready Partner program.
4. Merchant, at its cost, is responsible for providing electrical power and network connectivity for all Equipment located at Merchant's place(s) of business as well as all printer paper and any other supplies and materials.
5. If at any time the Cajun Card Program's software indicates a malfunction, Merchant, upon learning of such malfunction, immediately shall notify the Cajun Card Office by telephone at (337) 482-1430 or (337) 851-2273 of the malfunction. 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 University reserves its right to deny payment to Merchant for any of those Cajun Card sales transactions which are later denied for insufficient funds. Merchant agrees that in no event shall University be liable to Merchant for any loss of revenues or profits incurred or suffered by Merchant resulting from or attributable to the Cajun Card Program's software's failure to operate properly or from Merchant's acceptance of a Cajun Card sales transaction without an on-line authorization shown by the card authorization equipment.
6. Merchant will be responsible for any damage to, loss, or theft of the Equipment. If damage, loss, or theft occurs, Merchant shall pay a reasonable amount, not to exceed the replacement cost of the Equipment. University, at its cost and expense, is responsible for support and maintenance when resulting from normal wear and tear of all Equipment used in conjunction with University's Cajun Card Program. In the event Merchant fails to return the equipment in a timely fashion, Merchant agrees that University may elect to treat the failure to return as the act of conversion and that University may file suit for the recovery of the value of the Equipment, along with attorney fees and costs.
7. University is solely responsible for paying the cost of any upgrades of Equipment and/or related software required to assure continued compatibility with the Cajun Card Program.
8. Merchant acknowledges that 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. University will give 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), University's priority will be the timeliness of reinstating the system, without regard to notifying each

participating merchant. 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. Merchant agrees that in no event shall University be liable to Merchant for any loss of revenues or profits incurred or suffered by Merchant resulting from or attributable to the Cajun Card Program's software's failure to operate properly or from Merchant's acceptance of a Cajun Card sales transaction without an on-line authorization shown by the card authorization equipment or while the Cajun Card Program is not functioning.

C. Fees/Payments

1. Merchant agrees to pay an annual maintenance fee of Five Hundred and No/100 Dollars (\$500.00) for each terminal provided at Merchant location(s). This fee must be paid before the terminal set-up date and annually from the date of set up. Cajun Card Services will invoice merchant annually. This annual maintenance fee shall not be subject to proration, refund, or credit.
2. Merchant agrees that University shall be entitled to charge and retain as a transaction service charge percent (%) of Merchant's Net Sales from each Cajun Card sales transaction ("Transaction Service Charge"). 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 Merchant's acceptance of the Cajun Card for a sales transaction. "Merchant Net Sales" shall mean pre-tax sales receipts from Cajun Card sales transactions.
3. University shall pay 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 III(B) hereof. Prior to payment, the Cajun Card Office within fifteen (15) calendar days will verify 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 University's Business Services Department. Merchant agrees that University may deduct and retain from each Cajun Card Program sales payment due to Merchant the Transaction Service Charges as well as any other charges or amounts which may be due and owing to University by Merchant pursuant to this Agreement. University shall be entitled to withhold payment of those sales transactions which University is unable to verify or which are disputed by the Cardholder until the sales transaction is verified to University's satisfaction or the inquiry into the disputed sales transaction is completed. Merchant must notify the Cajun Card Office within sixty (60) days of its receipt from University of a Cajun Card Program sales payment of any objection that Merchant has to the amount paid.

Commented [ASL3]: Insert percentage (both places)

4. Merchant is responsible for timely submission of Cajun Card Program sales transaction payment requests to the Cajun Card Office.
 5. Merchant assumes the risk of non-payment for any sales transaction that is denied for processing by the Cajun Card Program. Merchant's failure to adhere to and comply with the terms of this Agreement may result in denial of payment by University for sales transactions, which later are disputed by the cardholder.
- D.** Returns of purchases made with Cajun Cash shall be accepted according to the Merchant's return policy. Notwithstanding the foregoing, in no event shall cash refunds be made for returns of Cajun Cash purchases. Credits to the Cardholder's Cajun Card account are permitted.

III. RESPONSIBILITIES OF UNIVERSITY

- A.** 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.** University shall pay Merchant for verified Cajun Card Program sales transactions, less the Transaction Service Charges, as follows:

For Cajun Card Program sales the Cajun Card Office will reconcile and produce payments to Merchant on a basis.

Commented [ASL4]: Insert frequency applicable to Merchant (monthly, bimonthly, etc.)

- C.** 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 thirty (30) days of the date of this Agreement, the Cajun Card Office will make available to Merchant one (1) training session at 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.** University, upon request from Merchant, will provide Merchant with detailed and summarized transaction reporting to include amounts, times, and dates of transactions.

IV. ASSIGNMENT

Merchant shall not, without the prior written consent of University, assign or transfer in whole or in part its interest under this Agreement, provided however, that claims for

money due or to become due to Merchant from University may be assigned to a bank, trust company, or other financial institution without such prior written consent. Notice of any assignment or transfer shall be furnished promptly to University. Additionally, Merchant shall not subcontract any of its obligations under this Agreement to any other party without the prior written consent of University.

V. INDEMNIFICATION

Merchant agrees to indemnify, defend, and to hold the State of Louisiana, the Louisiana Board of Regents, the University of Louisiana System, University of Louisiana at Lafayette, and each of their respective employees, directors, officers, members, student workers, student interns, volunteers, representatives, institutions, departments, and agents (the "University Indemnified Parties") harmless from and against any and all losses, liabilities, demands, suits, judgments, claims, damages, and costs, including reasonable attorney's fees, relating to personal injury or damage to real or personal tangible property (the "Claims") to the extent that such Claims arise out of or result from the act, fault, omission, or negligence of Merchant, or that of Merchant's officers, directors, agents, or employees, in performing Merchant's business operations, activities, or the obligations under this Agreement; provided, however, that Merchant shall not be liable to University for any consequential damages, including without limitation lost profits or lost revenues, or Claims arising out of University's act, fault, omission or negligence or that of its officers, directors, agents, or employees.

VI. DEFAULT

If Merchant defaults in the performance of any material term or condition of this Agreement, including the failure of 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 University, then University may terminate this Agreement. Notwithstanding the foregoing, in extraordinary circumstances where the giving of such notice would result in damage to University or be detrimental to the Cajun Card Program or University's interests, then University shall be entitled to terminate this Agreement effective upon delivery of written notice to Merchant.

VII. ADVERTISING

Except as provided for in this Agreement, Merchant agrees not to advertise or represent that University of Louisiana at Lafayette or the Cajun Card Program endorses Merchant's business or its goods and services, nor shall Merchant use University's name, trademarks, or any other identifying marks to promote or otherwise endorse Merchant or Merchant's business unless it has received the prior written permission from University's Office of Communications and Marketing. University will grant to Merchant a royalty-free, non-exclusive license to use and display the official Cajun Card logo in its advertising; provided, however, 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; Merchant first must obtain the Cajun Card Office's approval of the advertisement. The Cajun Card Office will notify Merchant within seven (7) calendar days after its receipt of the proposed advertisement of its approval or disapproval of the advertisement. Such license shall terminate upon the expiration or earlier termination of this Agreement.

VIII. NOTICE

Any notice required or permitted under this Agreement shall be deemed to have been duly delivered when made in writing and mailed by certified United States mail with postage prepaid and return receipt requested to the intended recipient at the address set forth for that party below:

If to University: Director, Cajun Card Office

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

If to Merchant: _____

Commented [ASL5]: Insert Merchant contact information for mail notice

IX. AMENDMENT

Any alteration, variation, modification, or waiver of the provisions of this Agreement shall be valid only when it has been reduced to writing and executed by the duly authorized representatives of all parties.

X. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties with respect to the subject of this Agreement and contains all of the terms and conditions agreed upon with respect to the subject of this Agreement, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties; it being the intent of the parties that neither shall be bound by any term, condition, or representations not herein written.

XI. NON-DISCRIMINATION

Neither party shall discriminate on the basis of race, color, national origin, citizenship, genetic information, age, religion, sex (including pregnancy, gender identity, and transgender status), sexual orientation, disability, or military or veteran status in any manner prohibited by law, including in the admission to, access to, treatment in, or

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employment, in accordance with state and federal law, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Age Discrimination Act of 1975, the Equal Pay Act of 1963, Title IX of the Education Amendments of 1972, Executive Order 11246, the Rehabilitation Act of 1973, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Genetic Information Nondiscrimination Act of 2008, and the 1990 Americans with Disabilities Act, and amendments thereto.

XII. 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 University and 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.

XIII. SEVERABILITY

If any term or condition of this Agreement or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

XIV. 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.

XV. TERMINATION

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

XVI. PRIVACY OF INFORMATION

- A. Protection of Data.** If any data is made available or accessible to Merchant in connection with this Agreement or the performance of services, pertaining to

University's students, alumni, employees, visitors, guests, projects, transactions, clients, or contractors, Merchant shall not collect, access, store, copy, analyze, monitor, disclose, transfer, or otherwise use that data except as necessary to perform under this Agreement or as authorized by the data subject or in accordance with law. Merchant shall comply fully with all applicable federal and state privacy and data protection laws, including but not limited to the Family Educational Rights and Privacy Act ("FERPA"), as well as all other applicable regulations and directives relating to personally identifiable data ("PII") and data privacy with respect to any such data. Merchant shall protect all PII and the privacy and legal rights of University's students, alumni, employees, visitors, guests, projects, transactions, clients, and customers. Additionally, Merchant shall maintain a secure environment for all Cajun Cards which, at a minimum, satisfies all Payment Card Industry Data Security Standards.

B. Security Breach. Merchant shall take all reasonable steps and use best efforts to immediately remedy any security breach of the data described herein and prevent any further security breach at Merchant's expense in accordance with applicable privacy rights, laws, regulations, and standards. The parties shall cooperate with one another in providing notifications to individuals affected by any security breach. Merchant shall reimburse University for actual costs incurred by University in responding to, and mitigating damages caused by, any security breach attributable to Merchant, including all costs of notice and/or remediation. Merchant agrees to cooperate at its own expense with University in any litigation or other formal action deemed necessary by University to protect its rights relating to the use, disclosure, protection, and maintenance of PII.

XVII. AUDIT

It is hereby agreed that the Legislative Auditor of the State of Louisiana, and/or the Office of the Governor, Division of Administration auditors shall have the option of inspecting and auditing all data, records, and accounts of Merchant which relate to this Agreement, upon request.

XVIII. COUNTERPARTS AND ELECTRONIC SIGNATURES

This Agreement may be executed in one or more counterparts, each of which individually shall be deemed original but all of which together shall constitute one and the same document. An electronic (e.g., Portable Document Format or PDF) copy of the original signature of the representative of a party shall have the same validity as an original signature for the purpose of this Agreement. In accordance with La. R.S. § 9:2605B(1) and (2), the parties hereto each agree that this transaction may be conducted by electronic means; and electronic signatures of the parties to this Agreement shall be acceptable and satisfactory for all legal purposes, as authorized by the Louisiana Uniform Electronic Transactions Act, La. R.S. § 9:2601 through 9:2621.

XIX. GOVERNING LAW

This Agreement and all claims arising out of or relating to this Agreement shall exclusively be governed by and interpreted in accordance with the laws of the State of Louisiana, without regard to conflict of laws principles.

[Remainder of page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, University and Merchant by their duly authorized representatives have executed this Agreement.

UNIVERSITY OF LOUISIANA
AT LAFAYETTE

By:

Dr. E. Joseph Savoie, President

Date

[MERCHANT]

By:

Signature

Printed Name

Date

Title

Commented [ASL6]: Delete and replace with full name of Merchant