

AGREEMENT

THIS AGREEMENT, made and entered into this <DATE> (“Effective Date”) is between The Ohio State University, on behalf of its Office of Student Life, 3040 Ohio Union, 1739 North High Street, Columbus, Ohio 43210 and <MERCHANT> having a place of Business at <ADDRESS>. (“Merchant”).

RECITALS:

WHEREAS, commencing September 1, 1994, Student Life offered to its faculty, staff and students a discretionary spending program which is accessible through an automated debit card privilege access control system (the “BuckID Program”);

WHEREAS, under the BuckID 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 BuckID Program;

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

1. **TERM.**

This Agreement shall commence on the Effective Date, and shall terminate on DATE, (“Initial Term”) unless sooner terminated or extended as provided herein. After the expiration of the Initial Term, this Agreement will automatically renew on a month-to-month basis (“Renewal Term”) unless terminated by either party upon thirty (30) days written notice to the other party.

Notwithstanding the foregoing, both Student Life and Merchant shall have the right to terminate this Agreement at any time during the Initial Term by providing the other party with thirty (30) days prior written notice of such termination. Termination pursuant to this provision shall be effective thirty (30) days after the providing of such notice by the terminating party upon the non-terminating party. In the event either party to this Agreement exercises its right to terminate this Agreement as herein provided, as of the date of termination, neither party shall have any further obligation or liability hereunder.

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 BuckID system.

B. **Fees and Payment Terms.** During the Initial Term and any Renewal Term, Merchant agrees to pay to Student Life a service charge equal to 4% of gross BuckID debit card transaction sales at Merchant's business (“Service Charge”) in the manner provided hereinafter.

Student Life will pay Merchant on a monthly basis for the BuckID debit card transactions attributable to Merchant's business, fifteen (15) days after the end of the month.

Notwithstanding the foregoing, Student Life shall not be responsible or obligated to pay Merchant for any BuckID debit card transactions which are prohibited hereunder, or which are processed by Merchant on a stolen or invalid BuckID debit card.

C. **Card Inspection.** Merchant will verify by visual inspection that the person in the possession of the BuckID is the person pictured in the photo on that card prior to accepting a BuckID payment (or before delivering the food, in the case of deliveries). Merchant acknowledges and agrees that Student Life shall not be liable for payment to

Merchant for any BuckID transactions consummated by Merchant on a lost or stolen BuckID debit card, it being the expressly acknowledged and agreed by Merchant that Merchant shall be solely responsible for verifying the validity of any BuckID debit card presented to Merchant in payment for Merchant's goods.

- D. BuckID Off Line. If at any time, the BuckID equipment at Merchant's location indicates an off-line status or otherwise is operating improperly, Merchant shall notify the Student Life BuckID office immediately by telephone at (614) 292-0400. If Merchant continues to accept BuckID payments while in an "off line" mode without first notifying the BuckID office, then the University shall not make payment for any transaction which is later denied by the BuckID office due to insufficient funds or because the card was invalid. In no event shall the Student Life be liable for any losses, damages, claims, costs or expenses suffered or incurred by Merchant due to failure of the BuckID equipment or verification system to operate properly.
- E. Prohibited Transactions. Merchant shall not accept the BuckID card in payment for the purchase of alcoholic beverages. Merchant acknowledges and agrees that if Merchant accepts a BuckID card in payment for alcoholic beverages contrary to this covenant, Student Life will not provide Merchant payment for such purchases. Merchant shall not mark-up the purchase price or place any surcharges on goods purchased by a BuckID. If Merchant violates this Agreement by marking-up or placing a surcharge on goods purchased by BuckID Student Life may terminate this Agreement if Merchant does not cure such violation within five (5) days after written notice thereof from Student Life.
- F. Receipt to be Provided. Merchant shall make a receipt available to a BuckID cardholder at the time the cardholder initiates a BuckID 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.

3. **ASSIGNMENTS.**

Merchant shall not, without the prior written consent of Student Life, assign or transfer its interest under this Agreement in whole or in part. Any consent by Student Life to any assignment shall not constitute a waiver of any necessity for such consent to any subsequent assignments. Each assignee or transferee approved by Student Life shall assume the obligations of Merchant under this Agreement; provided, however, that no assignment approved by Student Life hereunder shall release Merchant from any liability or obligation under this Agreement, and Merchant shall remain liable for the payment of all commissions and for the due performance of all of the terms and conditions contained herein. No assignment consented to by Student Life shall be binding on Student Life unless such assignee or Merchant shall deliver to Student Life a copy of such assignment and an instrument which contains a covenant of assumption by the assignee.

4. **INDEMNIFICATION.**

Merchant shall indemnify and save and hold harmless The Ohio State University, its Board of Trustees and its officers, agents and employees from and against any loss or liability, damage, cost and expense, including but not limited to reasonable attorney fees, for injury, death, loss or damage of whatever nature to any person, property or any other claim by the Merchant or officers, employees, agents, customers, licensees, invitees, or any other person, firm or corporation resulting from the use of and participation in the Debit Card Program.

5. **DEFAULT.**

If Merchant fails to observe or perform any covenants, conditions or provisions of the Agreement to be observed or performed by Merchant, and such failure shall continue for a period of thirty (30) days after written notice thereof from Student Life to Merchant, then Student Life may elect

to terminate this Agreement by providing written notice thereof to Merchant. No delay or omission in the exercise of any right or remedy of Student Life upon any default by Merchant shall impair such right or remedy or be construed as a waiver.

6. **ADVERTISING.**

Merchant agrees that it shall not advertise any connection with The Ohio State University (“**University**”), its Board of Trustees, Student Life, nor use the University's name, symbols or any other identifying marks or property nor make any representations, either express or implied, as to the University's promotion or endorsement of Merchant or Merchant's business, unless it has received written permission from the University. Notwithstanding the foregoing, Merchant shall have a non-exclusive right use the official BuckID trademark logo in its advertising.

7. **NOTICE.**

Any notice, demand, request, consent, approval or communication required by this Agreement to be given in writing shall be sent by certified mail, return receipt requested, and shall be deemed to be given when received and shall be addressed to Student Life or Merchant at their respective address as follows:

If to Student Life: Joshua J. Bodnar
The Ohio State University
960 Kinnear Road
Columbus, OH 43212

or at such other address that Student Life may give notice of to Merchant.

If to the Merchant:
Name
Address
City, state zip

or at such other address that Merchant may give written notice of to Student Life.

8. **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 except as provided in Section 3.

9. **ENTIRE AGREEMENT.**

This Agreement constitutes the entire agreement between Student Life and Merchant and supersedes and cancels any and all previous negotiations, arrangements, understandings and agreements, if any, between Student Life 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 Student Life and Merchant.

10. **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 BuckID Program.

11. **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 Student Life and Merchant and neither the provisions contained in this Agreement nor any acts of the parties shall be deemed to create any such relationship.

12. **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.

13. **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.

14. **GOVERNING LAWS.**

This Agreement shall be governed by and in accordance with the laws of the State of Ohio. Any legal action arising pursuant to this Agreement shall be brought in a court of competent jurisdiction in the State of Ohio.

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

The Ohio State University

Merchant

Joshua J. Bodnar
Director, BuckID

Owner name
Owner