This agreement ("Agreement") is made between the Regents of the University of California on behalf of its Los Angeles Campus UCLA BruinCard Center (referred to herein as “UCLA”) and the Merchant and the Merchant’s personnel (referred to individually and collectively herein as “Merchant”) for the processing and collection of BruinCard transactions.

1. MERCHANT RESPONSIBILITIES

1.1. Card Acceptance

1.1.1. Merchant shall promptly honor, without discrimination, all valid BruinCards.

1.1.2. It is the Merchant’s responsibility to verify the photo identity of Cardholders at the time transactions occur. The Merchant will be liable for all charges made using lost or stolen cards, which have been accepted at Merchant’s location.

1.1.3. Merchant agrees to comply with BruinCard policies and procedures contained in this Agreement, including the Information Technology Addendum, which is attached hereto as Exhibit A and incorporated herein by reference.

1.1.4. Whenever instructed by UCLA, or whenever Merchant determines that a BruinCard is altered, disfigured, or counterfeit, Merchant shall attempt to retain the BruinCard. In so doing, Merchant shall use the utmost prudence and care to avoid any breach of the peace or any injury to any person, property or reputation.

1.1.5. If a Cardholder presents a BruinCard with insufficient funds, the Merchant will be unable to process the sale and must decline the transaction. The Merchant should politely inform the Cardholder that if he/she wishes to continue to use his/her BruinCard, the Cardholder must deposit additional money into his/her account with UCLA.

1.2. Promotions and Advertisements

1.2.1. UCLA may from time to time provide advertising and promotional materials to Merchant at cost or no cost for the purpose of advising the public that BruinCards will be honored by Merchant. Merchant shall accept and display such materials when provided to Merchant at no cost. Merchant may decline to accept or display materials when provided to Merchant at cost.
1.2.2. Merchant shall not display any materials not provided by UCLA that use the BruinCard name or logo unless approved in writing by UCLA prior to display.

1.2.3. Merchant shall comply with all applicable laws, regulations, and UCLA policies concerning the use of service marks and copyrights owned by UCLA.

1.2.4. Merchant shall not indicate on promotional, printed, or broadcast materials, directly or indirectly, that UCLA endorses Merchant or the goods or services provided by Merchant.

1.2.5. If Merchant would like to create and use its own marketing materials to promote BruinCard use, Merchant must submit and receive written approval from the UCLA BruinCard Center before these materials are used. While UCLA encourages efforts to promote BruinCard use, UCLA policies, including without limitation UCLA branding guidelines, must be followed.

1.3. Disputes and Error Resolution

1.3.1. UCLA will assist Merchant in resolving only those disputes with Cardholders that involve the validity of a BruinCard or the availability of funds on a BruinCard.

1.3.2. Merchant is obliged to reconcile BruinCard transactions with internal point-of-sale information on a daily basis. If Merchant discovers errors, it is the responsibility of Merchant to report such errors to Operations and Accounting at the UCLA BruinCard Center within ten (10) business days of UCLA’s weekly payment to Merchant for Merchant’s BruinCard account activity. Merchant must provide a detailed explanation of the error. UCLA will provide information about investigation of the reported error within five (5) business days of the original notification. UCLA will correct a proven error, or, if there is no UCLA error, UCLA will provide a detailed explanation of the transaction within thirty (30) business days of the original notification. (See Exhibit B, which is incorporated by reference herein, for a sample Merchant Dispute/Error Slip.) UCLA reserves the right not to credit an erroneous transaction to Merchant’s account if the error is not reported within ten (10) business days.

1.3.3. Merchant assumes full responsibility for all Terminal entries at Merchant locations, including, without limitation, entries that are the result of error, insufficient funds on a BruinCard, or fraud.
1.4. Other

1.4.1. Merchant shall notify Operations and Accounting at the UCLA BruinCard Center immediately in writing in the event of: change of location, establishment of a new location, new management, and/or any change in Merchant’s type of business.

2. MERCHANT TRANSACTION PROCEDURES

2.1. BruinCard Debit Transaction Authorization

2.1.1. Before honoring any BruinCard, Merchant shall comply with Payment Card Industry Data Security Standards, as well as relevant fraud prevention duties and authorization procedures.

2.2. Miscellaneous Transaction Rules

2.2.1. 
Refund Policy. Merchant shall maintain the same policy for permitting or not permitting refunds (subject to Subsection 2.2.2 below), exchanges, returns, or price adjustments for BruinCard transactions as for credit cards. If Merchant does not permit refunds, Merchant shall legibly mark all sales slips “No Refunds.” UCLA does not represent that the foregoing procedures will protect Merchant from Cardholder challenges under federal, state, or local law.

2.2.2. Cash Advances. Merchant shall not make any cash advance, cash refund, or cash withdrawal for any purpose to any Cardholder in any BruinCard transaction.

2.2.3. Surcharges. Merchant shall not increase the price or impose any other fee or surcharge upon any customer who uses a BruinCard for payment of any transaction.

2.2.4. Minimum/Maximum Transactions. Merchant shall not establish minimum or maximum transaction amounts as a condition for honoring BruinCards.

2.2.5. Personal Cardholder Information. UCLA will not provide personal Cardholder information to Merchant. Merchant may not require personal Cardholder information as a condition of sale. Personal Cardholder information includes, but is not limited to, telephone number, address, driver’s license number, and date of birth. Information required to complete a transaction (such as a Cardholder’s address for a mail order transaction) may be requested of the Cardholder.
3. FEES AND CHARGES - CALCULATION AND COLLECTION

3.1. Fees and Charges

3.1.1. Merchant shall pay UCLA a fee for every BruinCard sales transaction. This fee shall be at the rate of 4.0% for a period of at least one year from the effective date of this Agreement. At any time thereafter, UCLA may exercise its option to increase this fee by providing notice and an Addendum to this Agreement to Merchant. Such notice and Addendum shall be provided to Merchant at least thirty (30) days prior to any fee increase. Merchant shall execute such an Addendum within thirty (30) days of receipt or may elect to terminate this Agreement per Section 5.

3.1.2. UCLA will collect the fees described above on a weekly basis. Fees will be collected by deducting them from UCLA’s weekly payment to Merchant for Merchant’s BruinCard account activity.

3.1.3. Merchant assumes complete responsibility for all sales, use, and other taxes and fees associated with business covered under this Agreement.

3.2. Other Fees.

3.2.1. Merchant shall pay any telecommunications fees required for supporting BruinCard Terminal(s) directly to the telecommunications service provider except as provided in Section 2 of the Information Technology Addendum (Exhibit A).

3.2.2. Merchant shall be liable to UCLA for all processing costs, charge backs and any other charges incurred by UCLA after termination of this Agreement.

4. UCLA RESPONSIBILITIES

4.1. Customer Accounts

4.1.1. UCLA shall establish and maintain Cardholder debit accounts for the purpose of processing transactions through the BruinCard System.

4.1.2. UCLA will manage all customer service issues with regard to Cardholders’ use of the BruinCard System.

4.2. BruinCard Transaction Processing

4.2.1. UCLA shall make a reasonable effort to provide BruinCard debit transaction services to Merchant during Merchant’s business hours. UCLA will not be responsible for system, communications, connectivity, hardware, or software problems that are beyond UCLA’s reasonable control.
4.2.2. UCLA shall make a reasonable effort to maintain network connections, BruinCard host processor and terminal maintenance as described in the Information Technology Addendum (Exhibit A).

4.2.3. If at any time the Terminal(s) at Merchant’s premises indicates an off-line status or otherwise is operating improperly, Merchant shall not utilize the BruinCard System to conduct business and shall immediately notify Systems Administration at the BruinCard Center. UCLA will make reasonable efforts to notify Merchant of any known problems with the Terminal(s) or network connectivity whether or not apparent to Merchant.

4.3. Merchant Accounts

4.3.1. UCLA shall maintain records of Merchant BruinCard transaction detail for a minimum period of one (1) month.

4.3.2. Upon reasonable Merchant request, UCLA shall provide Merchant with a daily statement of Merchant BruinCard transaction activity. UCLA may also (at UCLA’s option) provide a weekly statement of Merchant BruinCard transaction activity when making payment to the Merchant of the value of Merchant’s BruinCard sales.

5. TERM AND TERMINATION

This Agreement shall commence on the date on which it is executed by both parties and shall terminate on April 1, 2020 (“Initial Term”), subject to the right of UCLA and Merchant to terminate the Agreement for any reason upon thirty (30) days written notice to the other party, mailed or delivered to the addresses set forth in Section 10 and 11, herein. After expiration of the Initial Term, unless earlier terminated as set forth above, this Agreement will automatically renew for an additional five (5)-year term, subject to the right of UCLA and Merchant to terminate Agreement for any reason upon thirty (30) days written notice to the other party, mailed or delivered to the addresses set forth in Section 10 and 11, herein.

6. INDEMNIFICATION

6.1. Merchant shall defend, indemnify, and hold harmless the Regents of the University of California, UCLA, the UCLA BruinCard Center, and all officers, employees, and agents of any of the forementioned entities from and against any and all liability, loss, expense (including reasonable attorney’s fees), or claim for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent that such liability, loss, expense, attorney’s fees, or claim for injury or damages is caused by or results from the negligent or intentional acts or omissions of Merchant, its officers, agents, or employees.
6.2. UCLA shall defend, indemnify, and hold Merchant, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorney’s fees) or claim for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorney’s fees, or claim for injury or damages is caused by or results from the negligent or intentional acts or omissions of UCLA its officers, agents, or employees, provided, however, that in no event will UCLA be liable to Merchant for any sales lost due to the unavailability of debit transaction services, regardless of cause.

7. MISCELLANEOUS

7.1. Ownership of Data. Any cards, Cardholder names, and/or any and all information provided, generated, transferred, or made available to Merchant for use in the performance of obligations under this Agreement, including without limitation all intellectual property, is and shall remain the property of UCLA. Merchant shall not use, knowingly allow to be used, or cause to be used such materials for any purpose other than performance of Merchant’s obligations under this Agreement without the prior written consent of UCLA.

7.2. Right to Inspect. Merchant will provide designated UCLA personnel reasonable access to its facility and financial records during normal operating hours to allow UCLA to inspect Merchant’s facility, to audit revenues reported to UCLA and for any other reasons that may arise in regard to this Agreement.

7.3. Compliance with Laws. Merchant shall comply with all applicable statutes, regulations, orders, ordinances, and other federal, state, county, municipal, foreign, or other governmental body, authority, or agency laws with respect to Merchant’s services in connection with the UCLA BruinCard System. Merchant warrants that it has not received any notice that, or otherwise been advised that, it, or its services, are not in compliance with any statute, regulation, order, ordinance or other law. Merchant warrants that it holds all permits, licenses, and franchises from governmental entities required to conduct services as they are now being conducted and as contemplated to be conducted under this Agreement and that it has made all necessary government filings to enter into this Agreement and to perform in accordance with its terms.

7.4. Intellectual Property. Merchant has obtained all necessary rights, permissions and consents required to operate its business and provide the services contemplated hereunder. Merchant warrants that nothing contemplated by this Agreement will infringe any copyrights, intellectual property or other rights of any third party.
7.5. Independent Contractor. UCLA and Merchant agree that their relationship shall be that of independent contractors, and not that of agents, joint venturers, or employees of the other. Merchant acknowledges that it will conduct the business described herein as a separate entity and apart from UCLA. No acts performed or representations, whether oral or in writing, made by Merchant with respect to third parties will be binding on UCLA.

7.6. Severability. If any provision of this Agreement or any application thereof becomes invalid or unenforceable, the remainder of this Agreement and any application of such provision shall remain valid and enforceable.

7.7. Modification to This Agreement. Any proposed modifications or amendments to this Agreement must be made in writing. Modifications and amendments to this Agreement, including any exhibits or appendices, shall be enforceable only if they are in writing and signed by authorized representatives of both parties.

7.8. Assignment. Merchant shall not assign, mortgage, pledge, or encumber this Agreement in whole or in part.

7.9. Force Majeure. UCLA and Merchant agree that if by reason of strike or other labor disputes, civil disorders, inclement weather, acts of God, terrorism, or other unavoidable cause, either UCLA or Merchant is unable to completely perform its obligations under this Agreement, that such nonperformance will not be considered a breach of this Agreement. If Merchant finds that it cannot completely perform under the terms of this Agreement, Merchant shall immediately notify Operations and Accounting at the BruinCard Center in writing as to the cause and expected duration of the nonperformance. Notwithstanding the foregoing, it is agreed that any nonperformance under this Agreement may result in termination of this Agreement prior to expiration of the term.

7.10. Choice of Law; Arbitration; Attorneys’ Fees. This Agreement shall be governed by, and construed in accordance with, the laws (but not the laws of conflicts or choice of laws) of the State of California. If a claim, action or proceeding is filed to enforce this Agreement, the prevailing party therein shall be entitled to reasonable attorneys’ fees and costs. Any controversy arising hereunder shall be settled through arbitration by a panel of three arbitrators, one selected by each side who shall then jointly select the third, in accordance with the Commercial Arbitration Rules then in effect of the American Arbitration Association in Los Angeles, California, and judgment on the award may be entered in any court having jurisdiction.
7.11. **Counterparts.** This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Furthermore, facsimiles of signatures may be taken as the actual signatures, and each party agrees to furnish the other with documents bearing the original signatures within ten (10) days of the facsimile transmission.

8. **WAIVER OF DEFAULT**

8.1. Any failure of UCLA at any time, or from time to time, to enforce or require the strict keeping and performance by Merchant of any of the terms and conditions of this Agreement shall not constitute a waiver by UCLA or a breach of any such terms or conditions and shall not affect or impair such terms or conditions in any way, or the right of UCLA at any time to avail itself of such remedies as it may have for any such breach or breaches of such terms or conditions.

9. **GENERAL**

9.1. **Sole Agreement:** This Agreement and those matters expressly incorporated herein by reference, including but not limited to Exhibits A and B are the entire Agreement between the parties and supersede all oral negotiations or prior writing. In the event of any conflict between this Agreement and the incorporated Exhibit A or B, the Agreement shall take precedence.

10. **BRUINCARD CONTACTS**

*Operations and Accounting: Systems Administration:*

Chris Ramos Linda Lee  
Manager Systems Manager  
BruinCard Center BruinCard Center  
123 Kerckhoff Hall 123 Kerckhoff Hall  
Box 951669 Box 951669  
Los Angeles, CA 90095-1669 Los Angeles, CA 90095-1669  
(310) 825-2336 (310) 206-3542  
bruincard@finance.ucla.edu llee@finance.ucla.edu

*BruinCard Center Service Hours: 9:00am to 4:00pm - Monday through Friday*
11. MERCHANT INFORMATION

Business Name: ____________________________________________

Address: ________________________________________________

Business Owner
Or Manager
________________________________________________________

Phone Number (______) __________ Email Address ____________________

Accounting Contact
________________________________________________________

Phone Number (______) __________ Email Address ____________________

Marketing Contact
________________________________________________________

Phone Number (______) __________ Email Address ____________________

UCLA

Chris Ramos
Print Name

Print Name

Signature

Signature

Manager, BruinCard Center
Title

Title

Date

Date
Information Technology Addendum--Exhibit A

UCLA and Merchant hereby agree to the following Addendum, which modifies and supplements the terms and conditions of the Agreement, however designated, entered into by the parties. This Addendum shall become effective on the date executed or the date, on which the merchant connection to the BruinCard system becomes operative, whichever is later. In the event of any conflict, the terms of the Agreement shall take precedence over this Addendum.

1. Designation of Information Technology

1.1. In order to participate in any BruinCard Debit Service (hereafter “Service”) offered by UCLA, Merchant must have in its possession properly installed and programmed Terminal(s) and/or related equipment (hereafter all references to “Terminal(s)” shall include related peripheral equipment and interconnect devices) capable of electronically communicating data to and from the BruinCard system.

1.2. Merchant must purchase Terminal(s) from UCLA. UCLA will sell Terminal(s) to Merchant at manufacturer’s costs charged to UCLA with no markup. UCLA currently receives a significant discount of $190.00 off the retail price of $936.00 per unit from the manufacturer. Therefore, UCLA pays a net price of $746.00. UCLA will charge the Merchant the same net price of $746.00 plus any applicable sale tax until March 31, 2015, when the manufacturer’s committed pricing and discount ends. After this date, the price of the Terminal(s) may fluctuate up or down as it will be dependent on the manufacturer’s retail price and discount at that time.

1.3. Terminal(s) will be certified by UCLA and will meet the minimum operating standards for the Service elected.

1.4. A description of the Terminal(s) (as of November 6, 2014) is attached as Exhibit 1 to this Addendum.

2. Fees and Charges

2.1. Merchant shall pay charges and fees related to the costs of installing Terminal(s) except as provided in Subsection 2.2 below.

2.2. If Merchant participated in BruinCard Debit Service prior to the installation of new Terminal(s) expected to take place in March 2015, BruinCard UCLA will cover charges and fees related to the costs of installing new Terminal(s) during the changeover period. UCLA may use an authorized independent contractor to perform the installation and exchange of equipment.

2.3. Merchant shall be responsible for any and all telecommunications fees and charges related to BruinCard Debit Service except as specified in Subsection 2.4 below. Fees and charges for which Merchant is responsible may include but
are not limited to cellular telephone line installation and monthly charges, dedicated data circuit charges, charges related to any telecommunications cabling necessary to connect Merchant to the BruinCard system, and applicable taxes.

2.4. UCLA shall pay any monthly cellular service required to support BruinCard Terminal(s) for the first twelve (12) months following the installation of new Terminals expected to take place in March 2015. After this twelve (12) month period expires, UCLA will continue to cover this monthly cellular service if Merchant achieves an annual BruinCard sales volume of $5,000 or more per BruinCard Terminal. If annual BruinCard sales fall below $5,000 per BruinCard Terminal, Merchant shall pay the monthly cellular service fee.

3. Training

3.1. Either prior to or within thirty (30) days of the installation of BruinCard Terminal(s) (the “training period”), UCLA will provide Merchant training regarding use of the Terminal(s). During this training period, UCLA will also provide Merchant a written manual and how-to video regarding use of the Terminal(s). After expiration of the training period, Merchant shall have sole responsibility for providing any additional training regarding use of the Terminal(s).

4. Terminal and Equipment Operations

4.1. Merchant shall operate all Terminals subject to this Addendum according to the following guidelines:

4.1.1. Programming and System Support. UCLA will provide support for the systems and service provided through this Agreement to maintain Terminal(s) effectiveness and proper connectivity. UCLA may, at its option, retain an independent contractor to provide some or all system support services. Upon UCLA request, Merchant agrees to provide assistance with installation and testing. Merchant shall not allow any third party to program or service Terminal(s) unless authorized to do so in writing by UCLA.

4.1.2. Access. UCLA and its agents and independent contractors may enter Merchant’s premises at any time during Merchant’s normal working hours to program, inspect, or otherwise to gain access to Terminal(s), including any data circuit or telephone line connections.

4.1.3. Merchant Facilities. Merchant shall be solely responsible for providing a suitable location for installation and operation of Terminal(s). (As used in this paragraph, “suitable” means both satisfactory to Merchant and in accordance with the Terminal manufacturer and UCLA specifications).
4.1.4. **Telecommunications Regulations.** Merchant shall be solely responsible for compliance with applicable telecommunications regulations, including Federal Communication Commission regulations requiring notice to the local Telephone Company of installation or disconnection of any Terminal or electronic transmission device.

4.1.5. **Use of Terminals.** Merchant shall use and operate Terminal(s) only in accordance with the manufacturer’s specifications and the operating instructions provided or approved by UCLA. Merchant shall exercise reasonable care in operating Terminal(s) and shall provide adequate training to all employees who will operate Terminal(s). If there is any reason to believe that a Terminal or system is not functioning properly, Merchant agrees that the use of such Terminal or system shall be solely at Merchant’s risk. UCLA shall have no liability to Merchant for any malfunction or downtime of Terminal(s) or other components of the BruinCard system, or any loss of business alleged to result from any malfunction or downtime. Merchant shall not make or allow any modification or addition to any Terminal or system without the prior written consent of UCLA.

4.1.6. **Terminal Maintenance.** Merchant shall notify Systems Administration at the BruinCard Center immediately of any apparent failure, malfunction, damage, or loss arising from the use or operation of any Terminal.

4.1.7. **Terminals Purchased By Merchant.** Merchant is responsible for maintenance of all Merchant-purchased equipment including Terminals.

4.1.8. **Terminals Leased From UCLA – On-Campus Merchants Only.** Any existing leased equipment, including Terminal(s), shall be returned to the BruinCard Office.

4.1.9. **Terminal Warranty.** Manufacturer’s warranty applies to all equipment purchased by Merchant through UCLA for this program.

4.1.10. **Relocation.** After a Terminal has been properly installed and programmed, any costs incurred as a result of the relocation of the Terminal for any reason including re-connecting, re-programming, etc., shall be borne by Merchant.

4.1.11. **BruinCard System Problem Resolution.**

4.1.11.1. **Central Service Problem.** Systems Administration at the BruinCard Center will be responsible for coordinating the resolution of all hardware, software, security, and communications issues related to the central BruinCard system.

4.1.11.2. **Merchant-Related Problem Conditions.** The intent of the BruinCard program is to provide services specified in this agreement
to the benefit of all Merchants. Problems that originate on a particular Merchant’s connection that are caused by a malfunction in equipment, infrastructure, system, or network cannot be allowed to impact the operations of the central service or another merchant’s functionality or to jeopardize the integrity of the BruinCard System. When such a condition arises, UCLA will work closely with Merchant to attempt to resolve the problem. In certain cases, this condition may require that the failing loop or system component be disconnected from the system until the problem is resolved.

4.1.11.3. **Merchant Contact Person.** The Merchant is responsible for designing a primary and alternate contact person to act as liaison with UCLA for both administrative and technical issues.

4.1.11.4. **System Availability.** The BruinCard system will generally be available during Merchant’s working hours. Occasionally, maintenance needs will require system downtime. UCLA will use reasonable efforts to inform Merchant in advance of any system downtime, with the goal of minimizing disruption in service.
Exhibit B

UCLA BruinCard

Merchant Disputes/Error Slip

Date __________________________

Please check one:

___ Charge BruinCard (must include copy of receipt)
___ Credit BruinCard

Business Name_________________________________________ Phone________________________

Customer Name (if available) ____________________________________________________________

BruinCard ID # ___________________________ Amount $ _________________________________

Transaction Date & Time _________________________________________________________________

Explanation of Error ___________________________________________________________________

Store Manager's Approval ___________________________ ____________________________

Print Name ____________________________________ Signature ____________________________

Fax or mail slip to:
BruinCard Center, 123 Kerckhoff Hall, Box 951669, Los Angeles, CA 90095
Office (310) 825-2336; Fax (310) 825-7582

BRUINCARD OFFICE USE ONLY

SUPERVISOR APPROVAL ___________________________ DATE __________________

CRT DATE ___________________ OPERATOR DATE ___________ WKLY DATE ___________

COMMENT ________________________________________________________________

_________________________________________