

# BRIDGEWATER STATE COLLEGE CONNECT CARD MERCHANT AGREEMENT

THIS AGREEMENT is made on the \_\_\_\_ day of \_\_\_\_\_, 2008, by and between Bridgewater State College, an agency of the Commonwealth of Massachusetts, having its principal place of business in Bridgewater, Massachusetts (the "College"), \_\_\_\_\_(the "Merchant").

**WHEREAS**, the College operates a debit card program (the "Connect Card Program") by which it offers its students and employees the ability to deposit funds into a Connect Card account, to access those funds by means of a debit card (the "Connect Card") that it issues to them ("Cardholders") and, by means of the Connect Card, to use those funds to purchase goods and services from on-campus and off-campus merchants; and

**WHEREAS**, the Merchant desires to participate in the Connect Card Program and to sell permitted goods and services to Cardholders.

**NOW, THEREFORE**, in consideration of the mutual promises set forth in this Agreement, and intending to be legally bound hereby, the College and the Merchant agree as follows:

- 1. ACCEPTANCE OF CONNECT CARDS.** The Merchant shall honor at its place(s) of business identified on Appendix A every valid Connect Card when properly tendered by the Connect Card Cardholder for the purchase of and payment for Permitted Goods and Services, including all taxes on such purchases and any gratuities offered by the Cardholder. The Merchant shall not accept the Connect Card if there are insufficient funds in the Cardholder's Connect Card account. For purposes of this Agreement, the term "Permitted Goods and Services" shall mean all lawful goods and services **exclusive of any alcohol or alcoholic beverage**.
- 2. PROCESSING CONNECT CARD PURCHASES.** The Merchant shall complete all Connect Card transactions in accordance with the terms of this Agreement. The Merchant specifically agrees that:
  - a. The Merchant shall use point-of-sale equipment (an Omni 3200 SE card reader) provided by and at the cost of the Merchant to process all Connect Card transactions. In all Connect Card sales in which a card number is entered manually rather than by means of a magnetic card swipe, the Merchant shall obtain the Cardholder's signature and shall match the entered card number with the number on the Connect Card presented by the Cardholder.
  - b. All sales to Cardholders for which the Connect Card is accepted as payment will be valid in form and will be completed in accordance with this Agreement.
  - c. The Merchant will not set any minimum or maximum dollar limitations, or impose any minimum or maximum purchase amount requirements, on the use of any Connect Card. The Merchant shall not charge Cardholders any separate or additional fee(s) or charge(s) for accepting the Cardholder's Connect Card or processing the Cardholder's transaction by or through the Connect Card Program. The Merchant shall not offer Cardholders discounts for using cash in lieu of the

Connect Card or do any other thing or take any other measure to discourage use of the Connect Card by a Cardholder.

- d. Each Connect Card transaction to which the Merchant is party and by which any purchase is effected will represent and give rise to an indebtedness on the part of the Cardholder only for the amount charged to the Cardholder for the purchase of Permitted Goods and Services from the Merchant, including all taxes thereon and any gratuities offered by the Cardholder in connection therewith.
- e. The Merchant will charge to the Cardholder's Connect Card account only the exact amount charged to the Cardholder for the purchase of Permitted Goods and Services from the Merchant, including all taxes on such purchase and any gratuities offered by the Cardholder in connection therewith. The Merchant shall make a record of all transactions at the point of sale on a cash register or similar recording device.
- f. Subject to the provisions of paragraphs (j) and (k) of this section 2, the Merchant agrees that it will honor all requests for refunds of purchases that a Cardholder has made with a Connect Card and will do so in accordance with the Merchant's then-standard refund policy as it applies to the return of goods or rejection of services, whether for fraud or damage or destruction of the goods or for any other reason whatever.
- g. The Merchant will deliver to the Cardholder any Permitted Goods and Services that the Cardholder has purchased with a Connect Card and shall do so in accordance with the Merchant's underlying agreement with the Cardholder. The Merchant shall accord Cardholders using the Connect Card at least the same level of service as that it provides to its other customers.
- h. The Merchant may reject a Cardholder's tender of a Connect Card for payment only if permitted to do so under this Agreement.
- i. For each transaction made in person, the Merchant shall:
  - 1. Verify that the card contains the College's name and logo and the photograph of the Cardholder who is presenting it.
  - 2. Verify that the card is not visibly altered or manipulated.
  - 3. Complete the transaction by running the card through the terminal and receiving electronic confirmation that the value was deducted from the value stored on the card.
  - 4. Obtain the Cardholder's signature on the Merchant's copy of the receipt of charge (ROC). Obtaining signatures is not mandatory; however, if a dispute occurs and there is no signature, there is no recourse for the Merchant.
  - 5. Give the Cardholder the Cardholder's copy of the ROC.

Transactions effected by means of a Connect Card are effected through the Connect Card Program only as deductions made from funds then held in the Connect Card account of the Cardholder. The Connect Card Program does not offer, and Connect Cards are not themselves, credit cards or charge cards. If there is a question or dispute about the volume, nature, or amount of any transaction, the

records the College maintains in the system through which it operates the Connect Card Program shall conclusively answer such question and determine such dispute.

- j. In accordance with the preceding paragraph (f), the Merchant shall give refunds due any Cardholder for any purchase made with a Connect Card by issuing a refund to the Cardholder's Connect Card. The Merchant shall not issue cash refunds to Cardholders for returns or cancellations of Permitted Goods and Services that a Cardholder has purchased with a Connect Card, and the Merchant shall issue refunds to a Cardholder's Connect Card only for purchases made with the Cardholder's Connect Card. The Merchant will issue refunds to a Cardholder's Connect Card at the point-of-sale terminal in accordance with instructions the College shall issue from time to time for the purpose. The College will deduct the full amount of the refund from any payment then due the Merchant from the College; and if no payment is then due the Merchant from the College, or if the payment so due is less than the amount of such refund, the Merchant shall promptly make payment to the College, for the account of the Cardholder, of an amount equal to the amount of such refund.
- k. Transactions, both purchases and refunds that occur at point-of-sale terminals are automatically transferred to the College at the time that they are confirmed at the terminal, and the value is deducted from or added to the amount then recorded on the Cardholder's card. In the event that the Merchant cannot accept and submit transactions and refunds electronically because of a malfunction in the system of communications lines, the Merchant shall immediately notify the Connect Card Office by calling (508) 531-2897. The Connect Card Office may then permit the Merchant to effect a transaction other than electronically in accordance with instructions then provided.

The College will provide the Merchant with periodic reports summarizing all transactions, both purchases and refunds, effected at the Merchant's location and depicting any inquiries or complaints (but subject always to any rights of privacy and confidentiality) the College receives regarding such transactions or the Merchant's participation in the Connect Card Program. The College will provide the Merchant with a detailed record of each transaction upon a request in writing being made therefore to the College's Connect Card Office.

- 3. POINT OF SALE EQUIPMENT.** The Merchant, at its cost and not at the College's, shall acquire the equipment needed to effect transactions at the point of sale (an OMNI 3200 SE Card Reader) (the "POS terminal") and shall use the POS terminal to process all point-of-sale transactions that are effected by means of a Connect Card. The Merchant shall provide a telephone jack and line for the use of the POS terminal or a wireless device. The Merchant assumes the entire risk of loss or damage to the POS terminal during the term of this Agreement.

The College will install and program the POS terminal. The College shall thereafter provide dial-up or wireless access to its Connect Card network in order to enable the Merchant to verify availability of funds in an individual Cardholder's Connect Card account. The College shall provide technical support for the card reader during the term

of this Agreement only in accordance with and subject to the limitations set out in Appendix B.

- 4. PAYMENT OF CONNECT CARD CHARGES TO MERCHANT.** For accounting purposes, the monthly reconciliation period shall coincide with the period of each calendar month. No later than the tenth (10<sup>th</sup>) day of each such month, the College will provide to the Merchant a report of, and issue a check made payable to the Merchant in the amount due for, all authorized Connect Card transactions properly accepted and processed by the Merchant during the immediately preceding month minus a commission of 6%. Checks will be sent via first class mail to the business address listed in Appendix A.

The College shall earn a commission of 6% on the net amount of all transactions (purchases minus refunds) the Merchant effects through the Connect Card Program as compensation for the services furnished by the College under this Agreement. The commission is a fixed operating cost and is not subject to waiver. The commission will be subtracted from each payment made to Merchant in accordance with this section 4.

- 5. MERCHANT'S REPRESENTATIONS AND WARRANTIES.** The Merchant represents and warrants that, at all times while this agreement is in force:
- a. The Merchant is engaged in a lawful business and is duly licensed under the laws of the State, County and City where the Merchant's premises are located to conduct such business.
  - b. No financial institution or governmental agency has ever terminated the authority of the Merchant (under its current or former business names), its owners, officers or managers to conduct, effect, participate in or make any deposit in connection with any debit or bankcard sales.
  - c. On the date that each transaction is made by a Cardholder through the Connect Card Program, the Merchant knows of no defense, right of setoff, claim or counterclaim (collectively a "counterclaim") which the Cardholder has or can assert against the Merchant in connection with such transaction, and the Merchant will indemnify, defend and hold the College harmless from and against any such counterclaim or any other claim arising by reason thereof.

- 6. PROMOTIONAL MATERIALS AND ADVERTISING.** The College shall identify the Merchant as a participating merchant in its Connect Card Program and will highlight Merchant's promotional sales involving the use of the Connect Card in the College's sales and promotional materials distributed to Cardholders and to the College community. The Merchant will also prominently display the logo of the Connect Card Program at its establishment as a reminder to Bridgewater State College students and faculty/staff that it is a participant in the Connect Card Program. The College may from time to time furnish the Merchant with sales and promotional materials of the Connect Card Program for display in the Merchant's participating establishment. The Merchant shall remove from display and cease use of these sales and promotional materials immediately upon the termination or expiration of this Agreement. THE MERCHANT MAY INDICATE THAT IT ACCEPTS CONNECT CARD PURCHASES IN THE MERCHANT'S OWN SALES AND PROMOTIONAL MATERIALS; HOWEVER, THE MERCHANT SHALL NOT MAKE ANY

STATEMENTS IN ITS SALES OR PROMOTIONAL MATERIALS SUGGESTING THAT EITHER THE CONNECT CARD PROGRAM OR THE COLLEGE ENDORSES, WARRANTIES OR APPROVES IN ANY WAY THE GOODS OR SERVICES PROVIDED BY THE MERCHANT. NOTHING IN THIS AGREEMENT SHALL OR BE CONSTRUED TO GRANT TO THE MERCHANT A LICENSE OR ANY OTHER RIGHT OR ENTITLEMENT WHATEVER TO USE THE NAME, SEAL OR OTHER SYMBOLS OF THE COLLEGE OR THE CONNECT CARD PROGRAM EXCEPT AS IN THIS SECTION PROVIDED.

**7. TERM AND EARLY TERMINATION.** This Agreement will commence with effect on the date on which an authorized representative of the College executes the same and will continue in force for a period of two (2) years, then to be extended or to expire, unless terminated by either party in a manner permitted under this Agreement.

- a. The College may terminate this Agreement at any time, with immediate effect and without prior notice to the Merchant if, in the College's sole judgment: (i) the Merchant fails to provide Permitted Goods and Services to Cardholders in accordance with the terms of this Agreement; (ii) the Merchant breaches any material term of this Agreement; (iii) any adverse action is taken against the Merchant or the College by any federal, state, county, city or other governmental agency, authority or regulatory body on account of any act or omission of the Merchant; (iv) any claim is made against the College by any party for funds owed by the Merchant; and/or (v) the College receives complaints from Cardholders about the quality of goods or services provided by the Merchant.
- b. Either party may terminate this agreement for any reason upon thirty (30) days' advance written notice to the other party.

Any moneys due and payable to either party by the other party on the date on which the Agreement shall terminate or expire, including any moneys (and further including any refunds) that come to be due and payable thereafter by reason of any transaction that was initiated prior to such date, shall remain due and payable, and shall be paid, after such date as if, for those purposes, the Agreement remained in full force and effect.

Sections 4, 5(c), 10, 18, 21, and 25 shall survive the expiration or early termination of this Agreement.

**8. BREACH OF PROHIBITION AGAINST SALE OF ALCOHOL.** This Agreement shall terminate with immediate effect should the Merchant permit a Cardholder to purchase alcohol or any alcoholic beverage with a Connect Card. The College shall determine at its sole discretion whether the Merchant has sold alcohol or any alcoholic beverage in violation of this section 8 and shall give the Merchant prompt notice if the Agreement is to terminate by reason thereof.

**9. FORCE MAJEURE.** In the event the College is unable to perform any of the terms or conditions of this Agreement due to events or causes outside the College's control (including but not limited to failure of electronic, mechanical or computer equipment, communication lines, or telephone or other interconnection facilities), the College shall

not be deemed to be in breach of this Agreement or liable to the Merchant for damages arising therefrom or in connection therewith.

**10. INDEMNITY.** To the extent permitted by the law, the Merchant shall defend, indemnify and hold harmless the Commonwealth of Massachusetts, the Massachusetts Board of Higher Education, the College, and the successors, assigns, trustees, officers, employees and agents of each of them from and against all actions, causes of action, claims, demands, costs, damages, expenses, charges, debts and liabilities whatsoever (including without limitation compensatory damages and reasonable attorneys' fees), whether known, or unknown, present or future, that arise from or are connected with the negotiation, execution, performance, nonperformance, or breach of this Agreement, except as to those acts, errors and omissions that are due to the sole negligence of the College.

**11. DUE CARE; LIMIT OF RECOVERY AGAINST COLLEGE.** The performance by the College of all services called for in this agreement shall be consistent with industry standards. THE COLLEGE SHALL NOT BE LIABLE TO THE MERCHANT FOR ANY DIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OF PUNITIVE DAMAGES (INCLUDING LOST PROFITS) EVEN IF THE COLLEGE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE COLLEGE'S CUMULATIVE LIABILITY TO THE MERCHANT EXCEED THE GROSS AMOUNT OF THE MERCHANT'S SALE IN THE TRANSACTION(S) AT ISSUE, INCLUDING ALL APPLICABLE SALES, USE AND OTHER TAXES DUE FROM THE MERCHANT.

**12. NOTICES.** All notices or other communications required or permitted to be given under this Agreement shall be deemed duly given if in writing and delivered personally or sent by registered or certified mail, return receipt requested, first-class postage prepaid,

If to the College:            Director, Administrative Support Services  
   Bridgewater State College  
   Boyden Hall, Room 100  
   131 Summer Street  
   Bridgewater, MA 02325

If to the Merchant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notices will be deemed given on the date of delivery (in the case of personal delivery) or at the time of mailing (in the case of mail delivery). Either party may change its notice address by giving the other party notice of such change in accordance with this section.

**13. NO JOINT VENTURE.** Nothing in this Agreement shall or shall be construed to create a joint venture or partnership between the parties, or to constitute either party an agent of the other for any purpose whatsoever other than as set forth in this Agreement, or to render one party liable for any duties, obligations or liabilities of the other party. The

Merchant is an independent contractor engaged on its own in an entirely separate business from the College.

- 14. NONDISCRIMINATION.** In carrying out the work covered by this Agreement, the Merchant will not discriminate against any Cardholder or any employee or applicant for employment because of race, creed, color, sex, sexual preference, handicap, age or national origin. The Merchant will take affirmative action to ensure that applicants for employment are employed, and that employees are treated during their employment, without regard to their race, color, creed, sex, sexual preference, age or national origin. Such action shall include, but not be limited to, the following: employment, demotion or transfer, upgrading, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training. The Merchant agrees to post in conspicuous places, accessible to employees and applicants for employment, notices to be provided by the Government setting for the provisions of this nondiscrimination clause. The Merchant will state that all qualified applicants will receive consideration for employment without regard to race, color, creed, sex, sexual preference, age or national origin.
- 15. TRANSFERS AND ASSIGNMENT.** All the terms and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the College, its successors and permitted assigns. The Merchant shall not transfer or assign this Agreement or any of the Merchant's rights under this agreement to any other person without the College's prior written consent.
- 16. INTEGRATION.** This Agreement, and any schedules, appendixes and exhibits attached hereto, constitute the entire agreement between the parties. There are no agreements, understandings, promises, restrictions, warranties or representations between the parties other than those set forth in this Agreement.
- 17. OTHER INSTRUMENTS.** After the signing of this Agreement, the parties shall execute and deliver such other instruments and documents to one another as may be necessary to carry out the purposes of this Agreement.
- 18. CONFIDENTIALITY.** Except as may be required by law, the terms of this Agreement shall remain confidential, and the Merchant shall not disclose the terms of this Agreement or information on the Connection Card Program, on the workings of the POS terminal or on any Cardholder to any third party without the College's prior written consent; provided only that this section 18 shall not prohibit the Merchant from making credit reports on Cardholders to third persons in accordance with and subject to applicable provisions of law.
- 19. AMENDMENT AND WAIVER.** Except as provided for in this section, this Agreement may not be amended or modified, and no provisions may be waived, except by an instrument in writing executed by the College and the Merchant; provided only that the College may modify the terms of this Agreement, in whole or in part, at any time by providing the Merchant with at least thirty (30) days prior written notice thereof. The College may provide less than thirty days prior written notice of any modification to the Agreement if in the College's judgment such modification is required to comply with any governmental law, regulation or order. If the Merchant elects not to accept the modified term(s), the Merchant may terminate the Agreement by giving the College notice of its election no

later than the date on which the Agreement as modified will first have effect. IF THE MERCHANT CONTINUES TO PROCESS CONNECT CARD TRANSACTIONS AFTER THE DATE THE MODIFICATION FIRST HAS EFFECT (OTHER THAN TRANSACTIONS, INCLUDING REFUNDS, NEEDED TO CONSUMMATE TRANSACTIONS INITIATED PRIOR TO SUCH DATE), THE MERCHANT SHALL BE DEEMED TO HAVE ACCEPTED THE AGREEMENT AS MODIFIED. The failure of the College to enforce any of the terms of this Agreement shall not be or be construed to constitute a waiver of such term.

**20. SEVERABILITY.** If any of the provisions contained in this Agreement are in conflict with any applicable statute or rule of law, then such provision shall be deemed inoperative to the extent that it conflicts with, and shall be deemed to be modified to conform to, such statute or rule of law. If any provisions of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**21. CHOICE OF LAW AND FORUM.** The laws of the Commonwealth of Massachusetts shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the parties. The parties hereby agree that any disputes arising from this Agreement shall be submitted to a court of competent jurisdiction in the Commonwealth of Massachusetts.

**22. HEADINGS.** Headings contained in this Agreement are for convenience of reference only, and shall not affect, in any way, the meaning or interpretation of this Agreement.

**23. COUNTERPARTS.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**24. INSURANCE AND LIABILITIES.** The Merchant agrees, during the term of this agreement, to maintain, at its own expense, all insurance required by law for its employees' workers' compensation and unemployment compensation. The Merchant shall supply the College with the appropriate certificates of such insurance.

The Merchant agrees to carry and keep in force during the term of this Agreement Comprehensive General Liability insurance with limits of not less than:

Bodily Injury Liability	\$1,000,000 per person and \$1,000,000 per occurrence
Product Comprehensive	\$1,000,000 per person and \$1,000,000 per occurrence
Property Damage Liability	\$1,000,000 per occurrence

The certificate for each policy of insurance shall specify the date(s) when such insurance expires and shall further provide for not less than ten (10) days' prior written notice to the College of cancellation or material changes in coverage. Renewal certificates shall be in the possession of the College prior to the expiration dates of all such policies of insurance.

**25. EXAMINATION OF BOOKS.** The Governor or his/her designee, the secretary of administration and finance, and the state auditor or his/her designee shall have the right at reasonable times and upon reasonable notice to examine the books, records and other compilations of data of the Merchant which pertain to the performance of the provisions and requirements of this Agreement.

**IN WITNESS WHEREOF,** authorized representatives of the parties have signed and sealed this agreement on the date first set forth above.

**MERCHANT:**

**BRIDGEWATER STATE COLLEGE:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**BRIDGEWATER STATE COLLEGE CONNECT CARD MERCHANT AGREEMENT**

**APPENDIX A**

Merchant's Legal Business Name: \_\_\_\_\_

Merchant's Federal Tax ID Number: \_\_\_\_\_

Merchant's Business Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Merchant's Telephone: \_\_\_\_\_

Merchant's Fax: \_\_\_\_\_

Merchant's Contact Person: \_\_\_\_\_

Title: \_\_\_\_\_

# BRIDGEWATER STATE COLLEGE (BSC) CONNECT CARD MERCHANT AGREEMENT

## APPENDIX B

Bridgewater State College will provide technical support for business partners that have joined the Connect Card Off-Campus Program. The support listed below is provided to businesses that have the required card reader with modem and phone or card reader and wireless device (wibox):

- Technical installation support
  - College technical staff will program card readers for dialup and/or wireless access
  - College technical staff will test card readers to ensure a working system
- Same Day support
  - College technical staff will make a best faith effort to provide on-site assistance to repair technical problems when reported between 8am and 5pm Monday through Friday
- Next Business Day support
  - College technical staff will provide on-site assistance to repair technical problems on the next business day when problems are reported after 5pm on Monday through Friday or weekends
- 24X7 Monitoring
  - The College provides around the clock monitoring and remediation of its Connect Card host system to ensure availability of the service
- Connect Card Office/Help Desk support
  - All problems should be called into:
    - Connect Card Office at (508) 531-2897
      - Monday – Friday: 9am – 5pm
    - Help Desk at (508) 531-2555
      - Monday – Thursday: 5pm – 10pm
      - Friday: not available after 5pm
      - Saturday: 9am – 5pm (no summer hours)
      - Sunday: noon – 10pm (no summer hours)
  - The Connect Card Office provides remediation over the phone as well as dispatch to technicians on call
- Troubleshooting checklist
  - The College will provide a troubleshooting checklist to help businesses solve problems with their equipment and connection to the College. See attached.
- For information on the Connect Card program, please contact BSC Administrative Support Services at (508)-531-2877.