

Exhibit B to the Merchant Agreement for Cougar 1Card

Equipment Lease Agreement

This Equipment Lease Agreement is made between Cougar 1Card Department (“Department”) a component of the University of Houston, and _____, a Merchant who desires to lease certain equipment for purposes of Merchant’s participation in the Cougar 1Card Program (“Program”) at the following location(s): _____.

For purposes of this Equipment Lease Agreement, the University of Houston shall be known as “Lessor” and Merchant shall be known as “Lessee.” Lessor and Lessee shall be known individually as the “Party” or a “Party” and collectively as the “Parties.” This Equipment Lease Agreement is incorporated by reference into the attached Merchant Agreement and includes Exhibit A to the Merchant Agreement, to which Parties have agreed to be bound.

Terms

Lessor and Lessee agree to the following mutual covenants, terms, provisions, and conditions contained in this Equipment Lease Agreement:

1. **Description of Equipment.** Lessor agrees to provide Lessee with the following equipment (“Equipment”), which shall be used by Lessee solely for purposes of Lessee’s participation in Program and for no other use:
 - a. _____
 - b. _____
 - c. _____
2. **Term.** This Equipment Lease shall be for the same term and shall be subject to the conditions, provisions, terms, and obligations set forth in the Merchant Agreement, including but not limited to all termination provisions set forth in Article 6 of the Merchant Agreement.
3. **Payment.**
 - a. Lessee shall pay to Lessor the sums set forth in Exhibit A of the Merchant Agreement, for purposes of Lessee’s use of Equipment.
 - b. Lessee shall bear sole responsibility for payment of any and all taxes applicable to this Equipment Lease.
4. **Warranty and Maintenance.** Lessee shall look solely to the manufacturer of Equipment and/or its component parts for warranties or guarantees of all parts and components and of Equipment against any defects and defective workmanship, all in accordance with the manufacturer’s instructions. Lessor shall be responsible for routine repairs and maintenance, as specified in Exhibit A and in the Merchant Agreement.
5. **Use and Alterations.** Lessee shall use Equipment in a prudent and lawful manner and shall not make any alterations, additions, or improvements to Equipment without the prior written consent of Lessor. All additions and improvements made to Equipment shall belong to Lessor.
6. **Delivery, Lessee’s Inspection, Labels, and Surrender.**
 - a. Lessor shall deliver Equipment, freight prepaid, in good working condition, to Lessee at its place of business at the following address
 - b. Lessor shall retain the right to inspect Equipment upon prior notice to Lessee.

- c. If Lessor supplies Lessee with labels stating that Equipment is owned by Lessor, Lessee shall affix and keep the same displayed on Equipment.
 - d. At the expiration or termination of the Agreement, Lessee shall deliver Equipment, freight prepaid, to Lessor at the following address: _____
_____ in as good condition as at the commencement of the term of the Equipment Lease Agreement, normal wear and tear excepted.
 - e. If the Equipment Lease Agreement is terminated by Lessor or if Lessee fails to return Equipment to Lessor as provided in Section 6.d. of this Equipment Lease Agreement, Lessor shall be entitled to enter upon the premises of Lessee, take possession of Equipment, and remove Equipment from Lessee's premises.
7. **Loss and Damage.** Lessee shall bear the risk of loss, theft, destruction, or damage of Equipment, provided such loss, theft, destruction, or damage arises out of Lessee's acts or omissions. Lessee shall not be relieved of its obligation to pay sums due for lease of Equipment, regardless of any such loss, theft, destruction, or damage; however, losses or damage to Equipment that are attributable to causes beyond the control or fault of Lessee that render Equipment unsuitable for further use with the Program shall cause a cessation of this Equipment Lease Agreement and abatement of further rental payments, as determined by Lessor.
8. **Assignment.**
- a. Without Lessor's prior written consent, Lessee shall not: (a) assign, transfer, pledge, or otherwise dispose of this Equipment Lease Agreement or any interest therein or (b) sublet or lend Equipment or permit it to be used by anyone other than Lessee or Lessee's employees for any purpose other than participation in the Program.
 - b. Lessor may assign this Lease and/or mortgage Equipment, in whole or in part, upon written notice to Lessee. Each such assignee and/or mortgagee shall have all of the rights and obligations of Lessor under this lease.
9. **Default, Remedies, and Termination.**
- a. In addition to the termination provisions set forth in the attached Merchant Agreement, this Equipment Lease Agreement may be terminated by any of the following acts or events:
 - (1) Lessee attempts to transfer or assign its interest, or if there is an involuntary transfer of Lessee's interest in this Equipment Lease Agreement by operation of law, this Equipment Lease Agreement shall automatically terminate, and Lessor may, with notice to Lessee, immediately take possession of equipment; or
 - (2) If Lessee fails to notify Lessor in a timely fashion of the need for repair or replacement of defects, defective workmanship, or defective materials covered by the manufacturer's warranty, Lessee may be considered in default of this Lease, and Lessor shall have the right to obtain repair or replacement of Equipment as it determines necessary. If Lessor must bear additional costs because of Lessee's failure to report such defects in a timely fashion, then Lessee shall be responsible for payment of these costs to Lessor.
10. **Ownership, Personal Property.** Equipment is, and shall at all times remain, the property of Lessor. Lessee shall have no right, title, or interest in Equipment.
11. **Notice.** Any notice from either Party must be given in accordance with the notice provisions in the Merchant Agreement.
12. **Severability.** If any provision of this Equipment Lease Agreement shall be determined to be void, invalid, unenforceable, or illegal for any reason, it shall be ineffective only to the extent of such prohibition, and the validity and enforceability of all the remaining provisions shall not be affected.

- 13. **Entire Agreement; Modification.** This Equipment Lease Agreement and the attached Merchant Agreement, with Exhibit A, contain all the terms between the Parties and may be amended only in writing signed by the authorized representatives of both Parties.
- 14. **Governing Law; Forum.** This Equipment Lease Agreement shall be governed by and construed under the laws of the State of Texas, without giving effect to its conflict of laws provisions.
- 15. **Time of Essence.** Time is of the essence in regard to all obligations set forth in this Agreement.
- 16. **Non Waiver.** No delay or failure to enforce any provision of this Agreement shall constitute a waiver or limitation of rights enforceable under this Agreement.
- 17. **Force Majeure.** In the event Equipment is rendered unsuitable for use by reason of Force Majeure, either Party may terminate this Equipment Lease Agreement by giving written notice within five (5) business days following knowledge of such casualty. "Force Majeure" shall mean fire, earthquake, flood, act of God, strikes, work stoppages, or other labor disturbances, riots or civil commotion, litigation, war or other act of any foreign nation, power of government, or governmental agency or authority, or any other cause beyond the control or authority of either Party.
- 18. **Entire Agreement.** This Agreement constitutes the entire Equipment Lease Agreement between the parties regarding the subject matter hereof and supersedes any and all other agreements, understandings, negotiations, or representations, whether oral or written, between the Parties.
- 19. **Agreement Execution.** Each multiple original of this document shall be deemed an original, but all multiple copies together shall constitute one and the same instrument.

In witness whereof, the authorized representatives of the Parties have executed this Equipment Lease Agreement in multiple originals as of _____.

UNIVERSITY OF HOUSTON

MERCHANT

 Signature Date
 Name: _____
 AVC/AVP for Administration

 Signature Date
 Name: _____
 Title: _____

PARENT CORPORATION

 Signature Date
 Name: _____
 Director, Cougar 1Card Program

 Signature Date
 Name: _____
 Title: _____

Note: Modification of this Form requires approval of OGC

Standard Form Approved
by the University of Houston System
Office of the General Counsel
Office of Contract Compliance