

Merchant Agreement for Zip Card
(Version 05/07)

This Agreement, made and entered into on this _____ day of _____, 200____ between The University of Akron, a State of Ohio institution of higher education located at 302 Buchtel Avenue, Akron, Ohio 44325-4607 (University) and _____ (Merchant).
(Legal name of Merchant)

Recitals:

Whereas the University’s Auxiliary Business Operations offers debit card services to its faculty, staff and students that are accessible through an automated debit card privilege access control system (the Zip Card).

Whereas, under the Zip Card program, faculty, staff and students are able to purchase goods and services at on and off campus locations. Faculty, staff and students may credit their “All Campus” Zip Card accounts for the purpose of using their Zip Card to purchase goods and services both on and off the University’s campus. However, dedicated dining/Meal Plan dollars credited on the Zip Card may only be used at University operated facilities.

Whereas, Merchant desires to provide such goods and services to The University’s faculty, staff, and students through the Zip Card Program.

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

1. **MERCHANT DATA**

Please print the following information:

Legal Name of Business: _____

Full Name of Signing Authority: _____

Title of Signing Authority: _____

Address and Telephone Number where Merchant is doing Business: _____

Address and Telephone Number where Payment should be mailed:

Address and Telephone Number to be used for Notices, Per Section 9 of this agreement:

2. TERM

This agreement shall commence on the Effective Date, and shall terminate on June 30, 2008 (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 prior written notice to the other party.

Notwithstanding the foregoing, both the University and Merchant shall have the right to terminate this Agreement with or without cause 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.

3. RESPONSIBILITIES OF MERCHANT

- a. Equipment and Data Lines. During the initial term and any renewal term, Merchant agrees to furnish at its cost and expense, analog telephone line(s) necessary or required for use by the Zip Card System readers. The cost of the reader rental after the initial six months of operation is also a cost to the merchant.
- b. Installation Charge. After the telephone line(s) have been installed by the Merchant, Merchant will pay University a \$200.00 setup/installation charge. Installation process will include transmitting test transactions, training of Merchant's staff and review of troubleshooting procedures and report capabilities.
- c. Fees and Payment Terms. During the initial term and any renewal term, Merchant agrees to pay the University a transaction fee equal to ___% (Per the Fees and Payment Option Chart Appendix 1) of gross Zip Card debit card sales at Merchant's business. The University will pay Merchant on a monthly or weekly basis (per the schedule selected from Appendix 1) for the Zip Card debit transactions attributable to Merchant's business, less the service charge. Notwithstanding the foregoing, the University shall not be responsible or obligated to pay Merchant for any Zip Card transactions which are prohibited hereunder, or which are processed by Merchant on a stolen or invalid Zip Card.

- d. Card Inspection. Merchant will verify by visual inspection that the person in the possession of the Zip Card is the person pictured in the photo on that card before accepting a Zip Card payment. Marketing Partners may take orders over the telephone and then must obtain valid verification in person when the item is delivered. Merchant acknowledges and agrees that the University shall not be liable for payment to Merchant for any Zip Card transactions consummated by Merchant on a lost or stolen Zip Card, it being expressly acknowledged and agreed by Merchant that Merchant shall be solely responsible for verifying the validity of any Zip Card presented to Merchant in payment for Merchant's goods.
- e. Zip Card Off Line. If at any time the Zip Card equipment at Merchant's location indicates an off line status or otherwise is operating improperly, Merchant shall notify the Zip Card Office immediately by telephone at (330) 972-5637. If Merchant continues to accept Zip Card payments while in the "off line" mode without first notifying the Zip Card office, then The University shall not make payment for any transaction which is later denied by the Zip Card office due to insufficient funds or because the card was invalid. In no event shall the University be liable for any losses, damages, claims, costs or expenses suffered or incurred by Merchant due to failure of the Zip Card equipment or verification system to operate properly.
- f. Prohibited Transactions. Merchant shall not accept the Zip Card in payment for the purchase of prohibited products including but not limited to alcoholic beverages and drug paraphernalia. Merchant acknowledges and agrees that if Merchant accepts a Zip Card payment for alcoholic beverages it is contrary to this covenant, and the University will not provide Merchant payment for such purchases. This may also provide cause for termination of this agreement. Merchant shall not mark-up the purchase price or place any surcharges on goods purchased by the Zip Card. If Merchant violates this Agreement by marking-up or placing a surcharge on goods purchased by cardholders, then the University may terminate this Agreement if Merchant does not cure such violation within five (5) days after written notice thereof from Zip Card office.
- g. Receipt to be provided. Merchant shall make a receipt available to a Zip Card cardholder at the time the cardholder initiates a Zip Card transaction with the Merchant, which receipt shall include the amount of the transaction, the date, the account number, and the location and identity of the Merchant.

4. **SELECTION OF MERCHANTS PARTICIPATING IN THE ZIP CARD PROGRAM**

The University, in its sole discretion, retains the right to review and approve or reject the applications of Merchants desiring to participate in the Zip Card Program as well as to discontinue the participation of any current Merchant from the Zip Card Program.

5. **ASSIGNMENTS**

Merchant shall not, without the prior written consent of the University assign or transfer its interest under this Agreement in whole or in part. Any consent by the University to any assignment shall not constitute a waiver of any necessity for such consent to any subsequent assignments. Each assignee or transferee approved by the University shall assume the obligations of Merchant under this Agreement; provided, however, that no assignment approved by the University 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 the University shall be binding on the University unless such assignee or Merchant shall deliver to the University a copy of such assignment and an instrument which contains a covenant of assumption by the assignee. This agreement covers the location listed in Section 1.

6. **INDEMNIFICATION**

Merchant shall indemnify and save and hold harmless The University of Akron, 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, licenses, invitees, or any other person, firm or corporation resulting from the use of and participation in the Zip Card debit card program.

7. **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 the University to Merchant, then the University 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 the University upon any default by Merchant shall impair such right or remedy or be construed as a waiver.

8. ADVERTISING

Merchant agrees that it shall not advertise any connection with The University of Akron, 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 to the official Zip Card trademark logo in its advertising and merchant may receive promotional material from time to time.

9. 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 the University or Merchant at their respective addresses.

If to the University:

Dean Goumas, Director, Auxiliary Business Operations, 248 E. Buchtel Avenue, Akron, Ohio 44325-4607; and

Andy Roth, Director of Purchasing, The University of Akron, 214 Lincoln Building, Akron, Ohio 44325-9001.

Or at such other address that University may give to the Merchant. If to the Merchant, notices shall be mailed to the address in Section 1.

10. 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.

11. ENTIRE AGREEMENT

This Agreement to include Appendix 1, constitutes the entire agreement between the University and Merchant and supersedes and cancels any and all previous negotiations, arrangements, understandings and agreements, if any, between the University 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 the University and Merchant.

12. COMPLIANCE OF LAWS

Merchant shall comply with all federal, state, county and municipal laws, ordinances and regulations with respect to Merchant’s participation in the Zip Card Program.

13. 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 University and Merchant and neither the provisions contained in this Agreement nor any acts of the parties shall be deemed to create any such relationship.

14. SEVERABILITY

If any provision of this Agreement or any application thereof shall be invalid or unenforceable, by a court of competent jurisdiction, the remainder of this Agreement and any application of such provision shall not be affected thereby.

15. 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.

16. GOVERNING LAW

The terms of this Agreement shall be construed and governed by the laws of the State of Ohio.

THE UNIVERSITY OF AKRON

(Name of Merchant)

By: _____
Eugene Stephens
Director of Purchasing

Signature: _____

Name (printed): _____

Date: _____

Title: _____

Telephone#: _____

Date: _____

Appendix 1 Fees and Payment Options

Basic Access with monthly reimbursement	5%
Basic Access with weekly reimbursement	6%
Marketing Partner with monthly reimbursement	10%
Marketing Partner with weekly reimbursement	11%
Unclassified Option	Negotiable %

This option may be utilized in certain situations to accommodate unique circumstances related to competitive business pressures, to meet the temporary or long term needs of The University, and to address other unforeseen circumstances. These matters will be reviewed by the ASAT committee for recommendation and will be subject to review of University Purchasing and General Counsel office for appropriateness.

Basic Access

Access to the Zip Card debit network and all campus card account. The Zip Card must be swiped on merchant's premises only, no delivery services are available. This does not cover telephone authorization. The Merchant's name, address and phone number will be listed on the Zip Card Merchant web page.

Marketing Partner

Basic access plus inclusion in additional marketing venues as specified by the Zip Card office. These venues include but are not limited to the following:

- Merchant may take orders over the telephone and merchant must obtain valid verification in person when the item is delivered.
- Link to Merchant's web page from Zip Card Merchant web page.
- Merchant will be selected as a "featured Merchant" on a rotating basis with the other marketing partners.
- Access to University of Akron marketing goods and services at the Merchant's place of business.
- Inclusion in calendars, cardholder directories, newspaper advertising, direct mail pieces as appropriate and in compliance with other University agreements.
- Merchant may provide coupons or special offers to Zip Cardholders on a periodic basis that are included in the Zip Card office marketing efforts.