

Merchant Agreement for Zip Card

(Version 07/09)

This Agreement, made and entered into on this _____ day of _____, 20____ between The University of Akron, a State of Ohio institution of higher education, on behalf of its Auxiliary Services unit, located at 302 Buchtel Avenue, Akron, Ohio 44325-4607 (University) and _____, having a place of business at _____
(Legal name of Merchant)

RECITALS

Whereas the University offers a discretionary spending program to its faculty, staff, and students that is 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.

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: _____

Federal Tax Identification Number: _____

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: _____

Email notices: yes _____ no _____ email address: _____

Fax notices: yes _____ no _____ Fax number: _____

Marketing contact: _____

Type of Business: _____

Membership: Better Business Bureau _____ Chamber of Commerce _____ Other _____

2. TERM

This agreement shall commence upon the Effective Date, and shall terminate on June 30, 2021 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. The Agreement shall renew upon the then-current University terms and conditions as approved by Merchant.

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, or any renewal thereof, 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, internet service for IP data connectivity needed to interface with the Zip Card system. The cost of the annual equipment fee, per reader, is also a cost to the merchant payable upon annual contract renewal. Merchant shall be responsible for replacement of equipment damaged through its own negligence.
- b. New Location Installation Charge. After Merchant has installed the internet service and paid the University a one-time \$200.00 setup/installation charge and the first year's annual per reader rental fee, the University will install the Zip Card system at Merchant's location. The University installation process includes: transmitting test transactions; training of Merchant's staff; and, review of troubleshooting procedures and report capabilities.
- c. Fees and Payment Terms. Merchant agrees to pay the University a transaction fee equal to ___% (per the Appendix) of gross Zip Card sales. The University will pay Merchant either monthly or bi-monthly, less fees selected from the Appendix for the Zip Card transactions. Negative reimbursement amounts and/or reimbursement totals under \$5.00 will be added to future reimbursements. 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.

In addition to the Service Charge and refunds, we shall be entitled to deduct, recoup and/or offset from payments to you the following amounts: (1) any losses we incur arising directly out of your failure to comply with any term or condition of this Agreement, and/or (2) any losses we incur with respect to any disputed Transaction as to which there is evidence of misconduct, fraud or tampering, by you or your staff. If we are unable to offset such amounts, you shall pay us promptly upon receipt of our invoice and supporting documentation (as determined in good faith by us).

- 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.
 - 1. 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 immediate termination of this agreement.
 - 2. 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.
 - 3. Merchant understands and consents to unannounced and anonymous visits by The University of Akron during normal business hours to verify compliance with the Program and Agreement.
 - 4. The University understands that full compliance with this Section3(f) may be impossible and shall work with Merchant in good faith to remedy and control any failure prior to exercising any rights herein.

- 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, the receipt shall include the amount of the transaction, the date, the account number, and the location and identity of the Merchant.

- h. Refunds/Returns. In accordance with Merchant's refund policy, in the event of a return, refund or overcharge for goods or services purchased with a Zip Card, the Merchant assumes liability for settling such occurrences. Merchant agrees to credit card holders All Campus account as the sole means of refund and not to provide cash back to the cardholder.

- i. Taxes. The Merchant shall have sole responsibility for the collection and remittance of all appropriate sales taxes.

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, in accordance with the terms and conditions of this Agreement.

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.

The University is a state of Ohio educational institution whose liability only can be determined in the Ohio Court of Claims pursuant to Ohio law as set forth in Ohio Revised Code Section 2743.02. To the extent permitted by law, including, but not limited to, Ohio Revised Code Chapter 2743, the University shall be responsible for any and all claims, actions, damages, expenses awarded by a court of competent jurisdiction, for the negligent acts and omissions of its officers and employees engaged in the scope of their employment and arising under this Agreement. The parties agree that nothing in this provision shall be construed as a waiver of the sovereign immunity of University and/or the State of Ohio beyond the waiver provided in Ohio Revised Code Section 2743.02.

7. DEFAULT

If either party fails to observe or perform any covenants, conditions, or provisions of the Agreement to be observed or performed by the other party, and such failure shall continue for a period of five (5) days after written notice thereof, then the non-breaching party may elect to terminate this Agreement by providing written notice thereof. Notwithstanding the foregoing, if Merchant allows a prohibited transaction, as defined in Section 3.f.1, University may immediately terminate this Agreement. 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 thereof.

8. ADVERTISING

Both parties agree that it shall not advertise any connection with the other, nor use the other's name, symbols or any other identifying marks or property nor make any representations, either express or implied, as to the promotion or endorsement of the other, unless it has received written permission. 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 upon request and approval from the Zip Card Office and the University may identify the Merchant to Zip Card holders as a participating member of the Zip Card system.

9. REIMBURSEMENT POLICY

Reimbursements made through the ACH system will not be subject to additional charges.

10. 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:

Edward Peel
Assistant Director of Auxiliary Business Operations
248 E. Buchtel Avenue
Akron, OH 44325-4607

and

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 with copy to legal.

11. 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.

12. ENTIRE AGREEMENT

This Agreement include Appendix, 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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: _____

Signature: _____

Luba Cramer, M.A.Ed.
Director of Purchasing

Name (printed): _____

Date: _____

Title: _____

Telephone#: _____

Appendix

Fees, Payment and Equipment Options

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 service or phone authorizations are available. The Merchant's name, address and phone number will be listed on the Zip Card Merchant web page. Merchant may provide coupons or special offers to Zip Cardholders on a periodic basis that are included in the Zip Card office marketing efforts.

Marketing Partner Access

Basic Access plus the 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.
- Access to University of Akron marketing goods and services at the Merchant's place of business.
- Inclusion in rotating visual displays, campus advertising, on campus events and other media ads 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.

Monthly and Bi-Monthly payment options may be ACH or check.

Check one option:

- | | |
|--------------------------------------------------------------------------------------------------------|-----|
| <input type="checkbox"/> Basic Access with monthly reimbursement (no manual entry for phone orders) | 7% |
| <input type="checkbox"/> Basic Access with bi-monthly reimbursement (no manual entry for phone orders) | 8% |
| <input type="checkbox"/> Marketing Partner with monthly reimbursement (manual entry allowed) | 10% |
| <input type="checkbox"/> Marketing Partner with bi-monthly reimbursement (manual entry allowed) | 11% |

Connectivity Level

- Access to the Zip Card system requires the merchant provide internet service and power source. The equipment fees are as follows:

Equipment Fees

Rentals Options per reader – Check one option: Annual Fees

Option 1: VeriFone Vx570 with built-in printer (IP network¹) \$ 300.00

¹ Requirements for IP Network Setup

- Assign a static IP address for each reader that will be on the merchant network. NAT translation is supported, but a static external IP address is required – DHCP is not acceptable.
- Provide a live Ethernet network jack for each terminal on merchant network.
- Configure merchant firewall for reader to communicate properly with Zip Card hosts for processing transactions.

Zip Card Policy per Merchant Agreement.

As an accepting merchant, I agree to the following:

- No alcohol or drug paraphernalia sales using Zip Card funds
- No surcharges will be applied to any Zip Card purchases
- Sales receipts will be provided

Signature

Please Print

Date

Attachment: ACH deposit form, Vendor Registration Form, W-9 Form