

# Kent State University FlashCard Agreement

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## **AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_ ("**Effective Date**") between Kent State University ("**KSU**"), 026 KSC, Kent, Ohio 44242 \_\_\_\_\_ located at \_\_\_\_\_

## **RECITALS:**

WHEREAS KSU offers to its faculty, staff and students a discretionary spending program which is accessible through an automated debit card privilege access control system (the "**FLASHcard Program**");

WHEREAS under the FLASHcard Program, faculty, staff and students are able to purchase goods and services, exclusive of cash withdrawals and gift cards, at various merchant locations;

WHEREAS Merchant desires to provide such goods and services to the University's faculty, staff and students through the FLASHcard Program;

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

## **1. TERM.**

This Agreement shall commence on the Effective Date and shall terminate on \_\_\_\_\_ ("**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 written notice to the other party. Notwithstanding the foregoing, both KSU and Merchant shall have the right to terminate this Agreement 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 providing 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.

## 2. 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, the equipment (card reader) and data connection as necessary or required to interface with the FLASHcard system. Costs include a card reader of \$150.00, an installation fee of \$150.00 and a yearly maintenance fee of \$150.00. The yearly maintenance fee includes KSU providing support under the Agreement. If Merchant wishes to furnish their own the equipment KSU will waive the cost of the card reader.

### B. Fees and Payment Terms. Option selected \_\_\_\_\_

Option A - During the Initial Term and any Renewal Term, Merchant agrees to pay to KSU a service charge equal to 5% of gross FLASH debit card transaction sales at Merchant's business ("**Service Charge**") in the manner provided hereinafter. KSU will pay merchant on a monthly basis for the FLASH debit card transactions attributable to Merchant's business, less the Service Charge, within fifteen (15) days after the last day of the month, either by check or direct wire (ACH).

Option B - During the Initial Term and any Renewal Term, Merchant agrees to pay to KSU a service charge equal to 5% plus 1% of gross FLASH debit card transaction sales at Merchant's business ("**Service Charge**") in the manner provided hereinafter. KSU will direct wire (ACH) payment to Merchant on a weekly basis for the FLASH debit card transactions attributable to Merchant's business, less the Service Charge, within 7 business days after the last day of the week. One week's business activity considered to commence on Sunday and be completed on the next Saturday following.

- C. Card Inspection. Merchant will verify by visual inspection that the person in the possession of the FLASHcard is the person pictured in the photo on that card prior to accepting a FLASH cash payment (or before delivering the food, in the case of deliveries). Merchant acknowledges and agrees that KSU shall not be liable for payment to Merchant for any FLASH transactions consummated by Merchant on a lost or stolen FLASH debit card, it being expressly acknowledged and agreed by Merchant that Merchant shall be solely responsible for verifying the validity of any FLASH debit card presented to Merchant in payment for Merchant's goods.
- D. FLASH Offline. If at any time, the FLASH equipment at Merchant's location indicates an offline status or otherwise is operating improperly, Merchant shall notify the KSU FLASHcard office immediately by telephone at (330) 672-2273. If Merchant continues to accept FLASHcard payments while in an "offline" mode without first notifying the FLASHcard office, then the University shall not make payment for any transaction which is later denied by the FLASHcard office due to insufficient funds or because the card was invalid. In no event shall KSU be liable for any losses, damages, claims, costs or expenses suffered or incurred by Merchant due to failure of the FLASHcard equipment or verification system to operate properly.

- E. Receipt to be Provided. Merchant shall make a receipt available to a FLASH cardholder at the time the cardholder initiates a FLASHcard transaction with Merchant. Said receipt shall include the amount of the transaction, the date, the account number, and the location and identity of the Merchant.

### **3. ASSIGNMENTS.**

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

### **4. LIABILITY.**

To the extent permitted by Ohio law, each party agrees only to be liable for the acts and omissions of its own officers and employees engaged in the scope of their employment arising under this Agreement, as may be determined by a court of competent jurisdiction, and each party hereby agrees only to be responsible for certain claims with respect to that party's actions in connection with this Agreement. It is specifically agreed that neither party shall indemnify the other party and each party agrees to be responsible for its own defense. The parties agree that nothing in this provision shall be construed as a waiver of the limitations to liability provided to KSU by statute including but not limited to the sovereign or qualified immunity of KSU, its employees, and/or the State of Ohio.

### **5. 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 KSU to Merchant, then KSU 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 KSU upon any default by Merchant shall impair such right or remedy or be construed as a waiver.

### **6. ADVERTISING.**

Merchant agrees that it shall not advertise any connection with Kent State University, its Board of Trustees, KSU, or use the University's name, symbols or any other identifying marks or property, or 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. Furthermore, promoting or advertising alcohol, tobacco or drug related paraphernalia in conjunction with the FLASHcard is prohibited. Notwithstanding the foregoing, Merchant shall have a non-exclusive right to use the official FLASHcard trademark

logo in its advertising.

## **7. NOTICE.**

Any notice, demand, request, consent, approval or communication required by this Agreement to be given in writing shall be sent by overnight delivery by an established delivery service with delivery confirmation, and shall be deemed to be given when received and shall be addressed to KSU or Merchant at their respective address as follows:

Kent State University  
Michael O'Karma, Senior Director  
FLASHcard Office  
1075 Risman Drive  
026 KSC  
Kent, OH 44242  
330-672-2273

or at such other address that KSU may give notice of to Merchant.

Company Name: \_\_\_\_\_  
Company Contact Person: \_\_\_\_\_  
Mailing  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Email Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_

or at such other address that Merchant may give written notice of to KSU.

## **8. 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.

## **9. ENTIRE AGREEMENT.**

This Agreement constitutes the entire agreement between KSU and Merchant and supersedes and cancels any and all previous negotiations, arrangements, understandings and agreements, if any, between KSU 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 KSU and Merchant.

## **10. COMPLIANCE WITH LAWS.**

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

#### **11. RELATIONSHIP OF PARTIES.**

Nothing contained in this Agreement shall be deemed or construed by the parties or by any thirdperson to create the relationship of principal and agent or of partnership or of joint venture or of any association between KSU and Merchant and neither the provisions contained in this Agreement nor any acts of the parties shall be deemed to create any such relationship.

#### **12. SEVERABILITY.**

If any provisions of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any application of such provision shall not be affected thereby.

#### **13. WAIVER.**

No failure by either party to insist upon the strict performance by the other party 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

#### **14. GOVERNING LAWS.**

This Agreement shall be governed by and in accordance with the laws of the State of Ohio. Any legal action arising pursuant to this Agreement shall be brought in a court of competent jurisdiction in the State of Ohio.

#### **15. BREACH.**

If a party experiences or otherwise becomes aware of a security breach of their electronic information systems, or any form of unauthorized disclosure of personally identifiable information and/or data, such party will immediately notify the other party (not more than 72 hours from the discovery of the breach) and take immediate steps to limit and mitigate such security breach to the extent possible. Company will notify Institution even if the breach does not directly impact University data or systems containing University data. Once notified that a breach has occurred, University may request Merchant to provide information pertaining to what data was breached, and a listing of the Institution accounts impacted. With respect to security breaches that pertain to University's data, University will be responsible for contacting individuals whose data was breached and will require that Merchant give advance notice to Institution prior to releasing any information publicly regarding the breach.

#### **16. CONFIDENTIALITY & NON-DISCLOSURE.**

Merchant agrees to keep confidential and will not copy, publish, sell, exchange, disclose or provide to others or use any information, documents or data, provided or disclosed to Merchant, or any account information (including account numbers) related to FLASHcard or cardholders for any purpose other than performing Merchant's obligations under this Agreement. In addition, Merchant

shall not disclose to any third party and shall retain in strictest confidence all information belonging to or relating to the business of KSU (including without limitation, the terms of this Agreement), and shall safeguard such information by using the same degree of care that Merchant uses to protect its own confidential information.

Upon termination of contract, to the extent permitted by law and except as otherwise may be provided in this Agreement, each party shall return and/or destroy all data or information received from the other party upon, and in accordance with, direction from that respective party. Neither party shall retain copies of any data or information received from the other party, unless such retention is required by law. Furthermore, each party shall ensure that they dispose of any and all data or information in a manner that maintains the confidentiality of the contents of such records (e.g. shredding paper records, erasing and reformatting hard drives, erasing and/or physically destroying any portable electronic devices). All data and media sanitization efforts shall meet the requirements as set forth in NIST.SP.800-88 Rev 1 Guidelines for Media Sanitization.

IN WITNESS WHEREOF, the KSU and Merchant have executed this Agreement effective as of the day and year first written above.

**Kent State University**

**Merchant – Authorized signor**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Last revised 3/29/22