[This Agreement must be executed substantially in the form below with any Merchant, or the following language must be substantially included in any agreement with a Merchant. NOTE: a Merchant is any entity that accepts payment cards bearing the logos of any of the five members of PCI SSC (American Express, Discover, JCB, MasterCard or Visa) as payment for goods and/or services.]

[Consider carving data breaches out of any limitation on liability provision. Most of the damages from a data breach may be classified as consequential damages. Consider requiring tech errors and omissions insurance to cover data breach damages, including consequential, vicarious and direct liabilities. Contact Risk Management to discuss. The provisions are required in order for OSU to comply with the Payment Card Industry Data Security Standards and its agreement with its merchant processor]

PCI Agreement with Merchant

This Agreement is made as of the ___ day of _____, 20__ by and between The Ohio State University ("OSU") and _____, a _____ corporation (the "Merchant").

For purposes of this Agreement, the following terms have the following definitions:

(i)   "cardholder data" refers to primary account number, cardholder name, expiration date and/or service code, and security-related information (including but not limited to card validation codes/values, full track data, PINs and PIN blocks) used to authenticate cardholders and/or authorize payment card transactions;

(ii)   "cardholder data services" means services provided by Merchant to OSU that are directly involved in transmitting, processing or storing cardholder data on behalf of OSU or that control or could impact the security of cardholder data or possession of cardholder data by Merchant on behalf of OSU;

(iii)   "Merchant Account" means the account assigned to a Merchant (as defined in PCI DSS) by Merchant's acquiring bank (as defined in PCI DSS) to process cardholder payments for such Merchant;

(iv)   "Merchant Processor" means OSU's payment card processing servicer, which is Banc of America Merchant Services, LLC as of the date hereof; and

(v)   "PCI DSS" means the Payment Card Industry (PCI) Data Security Standard requirements as then in effect.

A. PCI Acknowledgment. Merchant acknowledges to OSU that Merchant is responsible for (i) the security of cardholder data that it possesses or otherwise stores, processes or transmits on behalf of OSU, or to the extent that it could impact the security of OSU's cardholder data environment; (ii) providing all cardholder data payment processing services for every Merchant Account for which it is processing such payments; and (iii) managing and maintaining all PCI DSS requirements. Merchant shall at all times comply with PCI DSS.

B.   Notice of Data Breach. In the event of any suspected, alleged or confirmed loss, disclosure, theft or compromise of cardholder data or card transaction information relating the cardholder data services (a "Compromised Data Event"), Merchant shall immediately notify (i) the Office of the Chief Information Officer by leaving a voicemail at 614-688-5650 and sending an email to security@osu.edu, (ii) the Office of the Treasurer by sending

a fax to 614-292-7568, and (iii) in the manner required in the PCI DSS requirements and applicable law. Merchant shall fully cooperate with any examinations provided for in the preceding paragraph. Upon Merchant's suspected or actual discovery of a Compromised Data Event, Merchant will not alter or destroy any related records and will maintain complete and accurate documentation regarding any modifications made to the records.   If the systems under control of Merchant or a direct or indirect third party vendor under contract with Merchant or any additional parties under contract with the third party are at fault in connection with the Compromised Data Event, Merchant agrees to indemnify, defend and hold OSU harmless for any loss, damage or costs (including reasonable attorneys' fees) and liabilities directly or indirectly resulting therefrom. As required by Ohio law, Merchant's defense of any claim shall be subject to the Ohio Attorney General's right to appoint counsel and approve settlements.

C. <u>Business Continuity</u>. Merchant shall maintain appropriate business continuity procedures and systems to ensure security of cardholder data in the event of a disruption, disaster or failure of Merchant's primary data systems.

D. <u>Compliance with Applicable Law</u>. Merchant shall comply with all applicable laws relating to cardholder data services.

E. <u>Term</u>. The term of this Agreement shall commence on the date hereof and continue so long as Merchant provides cardholder data services.

[MERCHANT]   THE OHIO STATE UNIVERSITY

_____   _____
Name: Name:
Title: Title: