INDIANA UNIVERSITY MERCHANT PARTICIPATION AGREEMENT
CRIMSONCARD

WHEREAS the business identified below ("Merchant") provides goods and/or services to students, faculty, staff and their guests at Indiana University ("University"); and WHEREAS University operates a campus expense management program ("*CrimsonCard* Program") which allows Customers to pay for goods and services at or near the University through the use of a *CrimsonCard* and associated accounts (each, a "*CrimsonCard* Account"); and

WHEREAS Merchant wishes to participate in the *CrimsonCard* Program and to accept *CrimsonCards* presented by Customers in payment for goods and/or services; University and Merchant agree to enter into this Agreement under the terms and conditions set forth herein.

The words "we," "our," and "us" mean Indiana University. "You" and "your" mean the Merchant named below, located at or near University. "*CrimsonCard*" and "Card" mean any card issued by us bearing the name, "Indiana University" and "*CrimsonCard*." "Customers" means the persons whose name and photograph are displayed on the face of the Cards. "Transactions" means purchases made with the Card. This Agreement applies to the acceptance of *CrimsonCards* by you.

You agree to accept the Card at your locations identified in Exhibit A (each, an "Establishment"), in payment for allowed purchases of goods and services made by Customers.

I. TERM AND TERMINATION

This Agreement shall commence on this _____ day of _____ , 201___ (the "Effective Date") and shall remain in effect unless terminated by either party, for any reason or for no reason, upon thirty (30) days' prior written notice to the other party. The parties shall review this Agreement approximately every five (5) years unless one or both of the parties have terminated this Agreement in accordance with the terms herein, before such interval.

Our rights under the sections entitled "Fees and Payment Terms," "Disputed Transactions or Refunds," "Confidentiality" and "Indemnification," shall survive termination of this Agreement; otherwise, neither party shall have any further obligations or liability under this Agreement after the date of termination.

Upon termination of this Agreement, you shall remove all *CrimsonCard* Program signage or other identification.

II. THE *CRIMSONCARD* PROGRAM

A. <u>Equipment and Data Lines</u>   Merchant and University agree to the equipment and maintenance terms identified in Attachment 1 to this Agreement for continuous interface with the *CrimsonCard* system. Merchant shall be responsible, at its cost and expense, for replacement of equipment damaged through negligent, careless or rough usage. Merchant

also agrees to furnish, at its cost and expense, analog dial-up telephone service or approved internet service for IP data connectivity as needed to interface with the system. The *CrimsonCard* office will establish an interface with system compatible equipment and program such equipment to work with the system.

B. <u>Fees and Payment Terms</u>   Merchant agrees to pay to University a service charge equal to 5% of gross *CrimsonCard* transaction sales at Merchant's business ("Service Charge") in the manner provided hereinafter.

On or about the fifteenth (15th) day of each month, University will remit to Merchant the aggregate amount of all *CrimsonCard* transactions completed during the previous calendar month, less the Service Charge, based upon the *CrimsonCard* system records of activity. Merchant and University agree to meet, confer and act in good faith to reconcile accounts regarding any perceived discrepancies. Notwithstanding the foregoing, University shall not be responsible or obligated to pay Merchant for any *CrimsonCard* transactions which are prohibited hereunder, or which are processed by Merchant on a stolen or invalid *CrimsonCard.*

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).

Merchant assumes complete responsibility for all taxes and fees associated with the business covered under this Agreement.

C. <u>Card Acceptance Procedures</u>   Prior to accepting a *CrimsonCard* for payment, Merchant will verify by visual inspection that: (1) the Card bears the name and logo of the University and has the photograph of the Customer who is presenting it; and (2) the Card is not visibly altered or mutilated. Merchant will complete the Transaction through the *CrimsonCard* transaction system and must confirm that it has received electronic confirmation that the value (including all applicable taxes) has been deducted from the amount recorded in the *CrimsonCard* Account.

For transactions where the Cardholder cannot physically present the Card at the time of ordering the goods or services (referred to as "card not present" transactions – e.g., deliveries ordered by Internet or phone), Merchant shall manually enter the Card number provided by the Customer into the *CrimsonCard* payment terminal. Upon delivery, Merchant personnel shall verify that the Card number provided in advance matches the Card presented, and that the Card presented has the photograph of the Customer who is presenting it.

Merchant acknowledges and agrees that University shall not be liable for payment to

Merchant for any *CrimsonCard* Transactions consummated by Merchant on a lost or stolen *CrimsonCard*. Merchant expressly acknowledges and agrees that it shall be solely responsible for verifying the validity of any *CrimsonCard* presented to Merchant in payment for Merchant's goods.

You shall honor *CrimsonCard* cards properly presented in accordance with this Agreement. When a Customer asks you what payment methods are accepted, you shall mention the *CrimsonCard*. When a Customer makes or requests to make a purchase with the *CrimsonCard*, you shall not try, in any way, to persuade the Customer to use any other payment method, except during times when the *CrimsonCard* equipment is "off-line".

Transactions occur only through deductions of value from a *CrimsonCard* Card Account. No other method of instituting Card Transactions will be valid. If Customer/Card has reached the limit before or during a Transaction with Merchant, that Transaction will simply be denied. If there is a question or dispute about the volume, nature or amount of any Transaction, the *CrimsonCard* transaction system records shall be given precedence over other forms of evidence in terms of resolving the question or dispute, except where there are signs of record-tampering or fraud involving the records.

D. <u>Off Line</u> If at any time the *CrimsonCard* equipment at Merchant's location indicates an offline status or otherwise is operating improperly, Merchant shall notify the Crimson Card office immediately by telephone at 317-274-0400. If Merchant continues to accept *CrimsonCard* payments while in an "off line" mode, then the University shall not make payment for any transaction which is later denied by the Crimson 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 *CrimsonCard* equipment or verification system to operate properly.

E. <u>Receipts</u> Merchant shall make a receipt available to each Customer initiating a transaction with Merchant using Customer's *CrimsonCard*. This receipt shall include the amount of the transaction, the date, the account number, and the location and identity of the Merchant.

F. <u>Refund Procedures</u> When you give a refund to a Customer for a Transaction made with a Card, you must issue a refund to that Customer's *CrimsonCard* Account. You will not allow cash refunds. Refund Transactions can be entered at the terminal in accordance with our instructions. If we are unable to deduct such amount from your payment, you must pay us promptly upon receipt of our invoice. You agree to issue refunds to *CrimsonCard* Accounts only for Transactions made with the associated Card. Your refund policy for Transactions incurred with the Card must be at least as favorable as your refund policy for Transactions executed with other forms of payment. You shall disclose your refund policy to Customers at the time of the purchase and in a manner that complies with applicable law.

G. <u>Disputed Transactions or Refunds</u> We do not enter into negotiations or mediations between Customers and Merchants regarding disputed Transactions. In the event a Customer inquires about a Transaction or a refund made at your Establishment, we will provide the Customer with any records we may have of the Transaction and will advise the Customer to contact

Merchant directly. You agree to handle any inquiries from Customers regarding Transactions or refunds, in good faith and in accordance with applicable local, state and federal laws, including but not limited to consumer protection laws. University reserves the right to deduct losses arising from Transactions or refunds in which there is evidence of misconduct, fraud or tampering by you and/or your staff.

H. <u>Prohibited Transactions</u>   You shall <u>not</u> accept the Card for purchases of alcohol, tobacco, adult products, gift cards, or gift certificates, or for cash advances, gambling services, gambling chips, gambling refunds, lottery tickets, sales made under a different name or business affiliation other than Merchant's, sales by third parties, or amounts which do not represent bona fide Transactions. Merchant shall not mark-up the purchase price or place any surcharges on goods purchased with a *CrimsonCard*.

III.   PERMITS AND AUTHORIZATIONS

Merchant shall, at its own cost, procure all permits, licenses, certificates, or other authorizations necessary to conduct the business covered under this Agreement.

IV.   INDEPENDENT CONTRACTOR

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. No acts performed or representations, whether oral or in writing, made by Merchant with respect to third parties will be binding on University.

V.   ADVERTISING

Merchant shall not advertise or promote its business or operation through the use of University's name or Marks as defined below in Section VI unless such advertising is reviewed and approved in advance by designated University personnel. Upon approval from University, Merchant may advertise for business covered under this Agreement. Upon execution of this Agreement by University and Merchant, University will apprise its students of their ability to purchase products from Merchant with a *CrimsonCard*. Thereafter, University will advertise and promote the business covered under this Agreement in conjunction with normal *CrimsonCard* advertising; provided, however, that University shall be obligated, upon notice by Merchant, to discontinue the publication of any advertising materials described hereunder to which Merchant reasonably objects, excepting any materials that have been previously reviewed and approved by Merchant. In any event, University agrees that it shall not continue to use any Mark of Merchant after Merchant has notified University that such Mark is no longer in use by Merchant.

VI.   TRADEMARK AND SERVICE MARKS

This Agreement does not give either party any rights of ownership or license to use the other party's name, logo, service marks, trademarks, trade names, taglines or any other proprietary

designation ("Marks"), other than as expressly set forth herein or as specifically authorized in writing by the holder of the Mark. Neither party shall have the right to use, and shall not use, Marks of the other party to express or imply any endorsement of the other party's goods or services. Where Merchant mentions the *CrimsonCard* Card as a payment method, it may use our Marks in accordance with our instructions.

VII. CONFIDENTIALITY

We and you shall both keep confidential, to the extent permitted by law, and not disclose to any third party any confidential information received from the other that is not publicly available.

You agree that the Customers' names and addresses and any Transaction details are the sole and exclusive property of the Customers and the University. You may not use or disclose any Customer's name, address, Card number, Transaction details, or hardware and software descriptions except as provided in this Agreement.

VIII. NOTICES

Whenever any notice is required or permitted under this Agreement, such notice shall be in writing. Any notice or document required or committed to be delivered under this Agreement shall be deemed to be delivered when actually received by the designated addressee or five (5) days after being deposited in the United States Mail, postage pre-paid, Certified Mail, Return Receipt Requested, addressed to the parties hereto at the respective addresses set forth below or at such other addresses as have therefore been specified by written notice.

<u>Merchant</u>   Indiana University
Name

_____

_____

<u>On-Site Representative</u>

_____
                     Name

_____
                  Telephone

_____
                 Store Email

<u>Organization Contact/Official Correspondence</u>

_____   Indiana University
                     Name   CrimsonCard Administration
                                                        420 University Boulevard
_____   Campus Center, Suite #217
              Street Address   420 University Boulevard
                                                        Indianapolis, IN 46202
_____   (317)278-2507 phone
               City, State, Zip   (317)278-7761 fax
                                                        cardops@iu.edu

_____
                  Telephone

_____
                    Email

IX. NON-DISCRIMINATION

The Merchant, while performing activities required by this Agreement, shall not discriminate against any Customer because of race, creed, sex, national origin, age, sexual preference, disability, or other circumstance in violation of federal, state, or local laws. The Merchant, including all employees and agents, agrees to abide by, and comply with, all federal, state, and local policies, regulations, and laws that pertain to sexual harassment and non-discrimination.

X. INDEMNIFICATION

Each party agrees to indemnify and hold harmless the other party, its parent, subsidiaries, affiliates, licensees, successors and assignees from and against all damages, losses and expenses including, but not limited to, reasonable attorneys' fees and costs, arising from any suit or claim arising or alleged to have arisen out of the indemnifying party's actions or failure to act and/or in connection with the relationship established by this Agreement, including but not limited to the breach hereof. PROVIDED, HOWEVER, University's obligations hereunder shall be limited in substance by statutes and constitutional provisions designed to protect the exposure and liability of University as an instrumentality of the State of Indiana (e.g., actions and conditions as to which the University is immunized by the Indiana Tort Claims Act, dollar limits stated in such Act, exemption from punitive damages, the continued ability to defeat a claim by reason of contributory negligence or fault of claimant), so that its liability to indemnify, defend and hold harmless shall not exceed what might have been its liability to a claimant if sued directly by the claimant and all appropriate defenses had been raised by the University.

XI. DEFAULT

If Merchant breaches this Agreement and fails to cure such breach within five (5) days after written notice thereof by University to Merchant, then University may elect to terminate this Agreement immediately. No delay or omission in the exercise of any right or remedy of University upon any default by Merchant shall impair such right or remedy or be construed as a waiver.

XII. COMPLIANCE WITH LAWS

Each party agrees to comply with all applicable laws, regulations and rules pertaining to its obligations under this Agreement.

XIII. GOVERNING LAW AND VENUE

This Agreement will be governed by and construed in accordance with the laws of the State of Indiana. Any lawsuit arising out of or connected with this Agreement shall be brought in the Circuit Court of Monroe County and the parties hereby consent to the jurisdiction of that Court.

XIV. ASSIGNMENT

Merchant shall not assign, mortgage, pledge or encumber this Agreement in whole or in part. In the event that Merchant is sold or leased, this Agreement will not be included as part of the

transaction, and this Agreement will automatically and immediately be terminated unless University agrees in writing to continue this Agreement with Merchant's buyer or lessor.

XV. OTHER AGREEMENTS

This Agreement is separate and apart from any other agreements between Merchant and University. This Agreement shall in no way affect, supersede, interfere with, or otherwise impinge upon any obligations of Merchant and University pursuant to other agreements.

XVI. FORCE MAJEURE

University and Merchant agree that if, by reason of strike or other labor disputes, civil disorders, inclement weather, acts of God or other unforeseeable circumstances beyond the control of the affected party, either University or Merchant is unable to completely perform its obligations under this Agreement, that such nonperformance will not be considered a breach of this Agreement. If Merchant finds that it cannot completely perform under the terms of this Agreement as a result of such unforeseeable circumstances, Merchant shall immediately notify University in writing as to the cause and expected duration of the nonperformance.

Notwithstanding the above, it is agreed that prolonged or frequent nonperformance under this Agreement may result in termination of this Agreement prior to expiration.

XVII. NO WAIVER

Failure to enforce any term or condition of this Agreement shall not be a waiver of the right to later enforce such term or conditions or any other term or condition of this Agreement.

XVIII. MODIFICATION

We have the right to modify the terms of this Agreement at any time by giving you at least thirty (30) days' written notice prior to the new terms taking effect. If the new terms are not acceptable to you, you must provide written notice of that fact within fifteen (15) days of receiving our notice of the new terms. In such case, we will try to work with you to resolve any issues; however, if the parties cannot resolve those issues by the date the new terms take effect and we are not willing to delay the effective date of the new terms, you will either need to accept the new terms or terminate the Agreement by giving us thirty (30) days' written notice. During such a notice period prior to termination, you will not be subject to the new terms. If you do not provide written notice to us that the new terms are not acceptable to you within fifteen (15) days of receiving our notice, you agree that you will be deemed to have accepted those new terms.

XIX. SEVERABILITY

If any provision of this Agreement is found contrary to law or unenforceable by any court of law, the remaining provisions shall be severable and enforceable in accordance with the terms.

XX. CONFLICT OF INTERESTS

Private and non-profit corporations are bound by state statute regarding conflicts of interest by employees in the conduct of state agreements. A completed non-collusion certificate must accompany the signing of this Agreement.

XXI. ENTIRE AGREEMENT

This Agreement is the entire agreement with respect to the subject matter hereof and supersedes any previous agreement with respect to the subject matter hereof.

The undersigned hereby agrees to participate in the *CrimsonCard* Program at University in accordance with the Terms and Conditions set forth above. The undersigned warrants and represents that the information provided is accurate and complete, and that he/she is duly authorized to execute this agreement for and on behalf of the Merchant.

<u>Merchant</u>

By: _____   Title: _____
            Printed Name

                                          Date: _____
_____
            Signature

<u>Indiana University</u>

By: _____<u>CrimsonCard</u>_____

_____   Title: _____
            Printed Name

_____   Date: _____
            Signature

By: _____<u>Indiana University Purchasing</u>_

_____   Date: _____
            Signature

_____   Title: _____
            Printed Name

Exhibit A

Merchant Locations

1)   _____

        _____

2)   _____

        _____

3)   _____

        _____

4)   _____

        _____

5)   _____

        _____

6)   _____

        _____

7)   _____

        _____

NON-COLLUSIVE CERTIFICATE

By submission of this document, each person signing certifies, and in the case of a joint submittal, each party thereto certifies, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

1. The content of this Agreement has been arrived at independently without collusion, consultation, communications, or agreement for the purpose of restricting competition as to any matter relating to service or cost with any other Merchant (s) or with any competitor;

2. No attempt has been made or will be made by Merchant to influence any other person, partnership or corporation for the purpose of restricting competition and;

3. No employee, agent or consultant of Indiana University has received or will receive any payment or any other form of compensation from Merchant as a result of the execution of this Agreement.

Name: _____

Signature: _____

Title: _____

Company: _____

Date: _____

Attachment 1
INDIANA UNIVERSITY CRIMSONCARD PROGRAM
EQUIPMENT/MAINTENANCE OPTIONS

Merchant agrees to the following identified option for equipment required to interface with the *CrimsonCard* Transaction system at:

Merchant Location(s):

_____

❑ **Equipment Option #1 Lease and Maintenance of IP terminal including Software License**

Merchant elects to lease _____ Aero Terminal(s) from Indiana University for $25 per month per terminal.
Terminal lease payments will be deducted from the monthly Merchant reimbursement. In the event, the Merchant reimbursement amount does not adequately allow for deduction, Merchant will be invoiced for the lease amount. This option includes the System Provider's annual software license required for each Aero terminal. The terminals remain the property of Indiana University and Merchant agrees to return the terminals to Indiana University upon the expiration or termination of this Agreement.

❑ **Equipment Option #2 Purchase of IP terminal**

Merchant elects to purchase _____ Aero terminal(s) from Indiana University at $1,430.00 per terminal, payable within 30 days of invoice.

> *Merchant agrees to the following maintenance option needed to support interaction with the CrimsonCard system for IP Terminal equipment purchased outright by the Merchant:*
>
> Indiana University will provide labor and equipment to maintain operation of _____ Aero terminal(s) for $120 annually per terminal, at $10.00 per month deducted from Merchant's reimbursement.

❑ **Equipment Option #3**

Merchant elects to purchase dial up VeriFone Tranz reader(s) and compatible receipt printer(s) sourced by Indiana University and invoiced to Merchant at University cost. Cost dependent on supply.

Indiana University does not provide maintenance on Merchant owned dial up VeriFone equipment.

_____   _____
          Signature   Date   Printed Name of Merchant