

This Affinity Credit Card Agreement ("**Agreement**") is entered into as of the ~~28<sup>th</sup>~~ day of August, 2005, by and between BOARD OF TRUSTEES OF WESTERN MICHIGAN UNIVERSITY, a constitutional body corporate ("University"), for itself and on behalf of the Western Michigan University Alumni Association, ("WMUAA") with its principal offices at 1903 West Michigan Avenue, Kalamazoo, Michigan 49008-5404 and **NATIONAL CITY BANK d/b/a National City Card Services**, a national banking association, with offices at 1 National City Parkway, Kalamazoo, Michigan 49009 ("**National City**").

## INTRODUCTION

WMUAA and National City are entering into this Agreement to enable National City to offer and issue Visa® credit cards issued to students and alumni of Western Michigan University and others (the "Audience"). National City will establish and administer the credit card program as described in this Agreement (the "**Program**") for such audience. For good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, WMUAA and National City hereby agree as follows:

## ARTICLE I. DEFINITIONS

"**Active Credit Card Account**" means a Credit Card Account to which at least one purchase of goods or services has posted.

"**Affiliate**" of WMUAA or National City means any entity that directly or indirectly controls, is controlled by or which is under common control with WMUAA or National City, as the case may be.

"**Alumni**" means graduates and former students of Western Michigan University.

"**Business Day**" means a day on which National City's main office is open to the public for carrying on substantially all of its banking functions, but shall not include Saturdays, Sundays, or legal holidays.

"**Cardholder**" means an applicant and/or co-applicant in whose name a Credit Card Account is established.

"**Cardholder Agreement**" means an agreement between National City and a Cardholder containing the terms and conditions of the Credit Card Account.

"**Cardholder Information**" means any and all information, which National City obtains as a result of the submission of an application for a Credit Card Account or establishing a Credit Card Account, including but not limited to nonpublic personal information under Privacy Law.

"**Confidential Information**" means all information provided by a party (the "**Disclosing Party**") to the other party (the "**Recipient**") in connection with the Agreement. Confidential Information shall include without limitation all alumni information and lists provided by WMUAA, all sales and marketing information; training and operations materials; information relating to customers or suppliers; personnel records; all technical and non-technical data; programs; processes; business practices; plans or proposals; financial information; and pricing and other financial information relating to the business or affairs of the Disclosing Party. Cardholder Information shall be Confidential Information of National City. Confidential Information shall not include any information of the Disclosing Party that: (i) enters the public domain through no fault of the Recipient; (ii) is known by the Recipient at the time it is disclosed; (iii) is independently developed by the Recipient; or (iv) is rightfully obtained by the Recipient from an independent third party who does not have an obligation of confidentiality to the Disclosing Party.

"**Credit Card**" means a Visa credit card issued by National City pursuant to this Agreement without regard to whether the Cardholder previously had another credit card issued by National City.

"**Credit Card Account**" means an account, which was opened on National City's books pursuant to this Agreement.

"**Credit Card Enhancements**" means products and services which are related to a Credit Card Account or which are commonly offered by credit card issuers in conjunction with a credit card account, including travel services, credit card registration, and auto rental discounts and excluding life and health insurance, including travel insurance, due to an exclusive agreement between WMUAA and another entity.

"**Good Standing**" means that a Credit Card Account (i) has not been assigned a closed status by National City, (ii) is not deemed by National City to be thirty (30) or more days delinquent, and (iii) is not in excess of the approved credit limit.

"Net Purchases" means purchases of goods or services made by Cardholders through the use of Credit Cards for personal purposes, minus merchant credits and plus or minus appropriate purchase adjustments posted to Credit Card Accounts. Net Purchases does not include finance charges, cash advance transactions (including convenience checks, ATM disbursements and transactions), quasi-cash transactions, balance transfer, insurance premiums, debt cancellation fees, late fees, overlimit fees or other fees and charges assessed on Credit Card Accounts.

"Privacy Law" means state and federal privacy laws and regulations, including but not limited to the Gramm-Leach-Bliley Act and applicable regulations, interpretations or issuances promulgated thereunder, and National City's published privacy notice pursuant to such laws and regulations.

"Students" means individuals enrolled at Western Michigan University from time to time.

## ARTICLE II. THE CREDIT CARD PROGRAM

### 2.1 Terms of the Credit Card Program

National City shall determine the terms and conditions applicable to the Credit Card Accounts. National City reserves the right from time to time during the term of this Agreement to make any adjustments and additions to the Credit Card Account terms, including the annual percentage rate, the annual fee (if any, other account fees, repayment terms, reward features, and other features and benefits offered under the Program as National City may determine are necessary or appropriate. National City shall notify WMUAA and provide an explanation of the change(s) thirty (30) days prior to implementing any change(s).

### 2.2 Marketing of the Program

- (a) To enable National City to solicit Alumni for new Credit Card Accounts at National City's request, WMUAA has agreed to provide list of Alumni excluding those who have requested no mail, telephone solicitation or email correspondence, for National City's use. National City will market the Program to the Audience using a variety of methods approved by WMUAA including direct mail, email, take-one brochures, website applications, event marketing including Student events, National City branches, and other techniques developed by National City. National City, except as may be ordered by a Court of competent jurisdiction, shall keep and maintain as confidential any Alumni list used by National City in any type of marketing program under this Section 2.2.
- (b) Students and others may be included in the marketing of the Program, however WMUAA is not obligated to and shall not provide any lists of Students.
- (c) National City shall design and produce advertising, solicitation, and promotional materials with regard to the Program. National City shall obtain WMUAA's prior written approval of advertising and solicitation materials for the Program. If there is ever any reference to the Program in WMUAA materials, WMUAA shall obtain National City's prior written approval of all such materials. Such approvals shall not be unreasonably withheld or delayed.

### 2.3 Mark

- (a) During the term of this Agreement, National City shall have the limited, non-exclusive right and license to use the respective name, trademarks, service marks, copyrights, and logo of the University and of WMUAA set forth in Exhibit A attached hereto as they now exist or as they may be modified during the term hereof, solely in connection with its marketing of Credit Cards under this Agreement. Such right and license is restricted to the Program and shall not apply or extend to any other product or service offered by National City. The University and WMUAA hereby agree that the Marks may be used on Credit Cards as well as free (not for sale) merchandise used to encourage individuals to apply for or use Credit Cards ("Premiums") and which are approved by WMUAA in advance, which approval shall not be unreasonably withheld. Except for amounts paid to WMUAA pursuant to this Agreement, National City shall not be required to pay any additional amounts to the University or WMUAA in connection with the use of Marks in conjunction with this Program. Following termination of this Agreement, Credit Cards(s) issued during the term hereof may continue to bear the Marks until the earlier of (i) the normal expiration date thereof, or (ii) one year from the date of termination expiration. For the term of this Agreement, National City shall have a limited, non-exclusive license to use the names and trademarks and service marks as they appear on Exhibit A: (i) on the Credit Cards; (ii) on periodic statements, Cardholder

Agreements, applications, customer service communications, and other communications to Cardholders with respect to the Credit Card Accounts; (iii) for solicitations pursuant to Section 2.2; and (iv) for identification purposes in any collection efforts related to a Credit Card Account. During the period of use authorized herein, National City shall use the Marks solely in the forms and formats and on forms as WMUAA shall approve in accordance with Section 2.2 herein. The authorization contained herein shall be assignable by National City to an Affiliate or to a third party who purchases the Credit Card Accounts from National City, provided that such Affiliate or third party agrees in writing to be bound by the terms herein applicable to National City. National City is not permitted to sublicense or otherwise authorize any other party to make any use of the Marks without WMUAA's prior written consent. In addition to the Marks set forth in Exhibit A, upon approval by WMUAA, National City shall have the right to use images and photographs of Western Michigan University for the products and services described herein.

- (b) Subject to the foregoing, each of the parties hereto is and shall remain the owner of all rights in and to its name and logo, as the same now exist or as they may hereafter be modified, including all rights in and to any copyright, trademark, service mark, and/or like rights pertaining thereto. Any and all rights to Marks not herein specifically granted and licensed to National City are reserved to the University or WMUAA. Except as otherwise specifically provided for in Paragraph 2.3(a) hereof, upon the termination of this Agreement, all rights conveyed by the University and WMUAA to National City with respect to the use of the Marks shall cease. Upon termination of this Agreement, National City shall have no further right to market its credit card products using the Marks or the further utilize any promotional materials containing the Marks. However, nothing contained herein shall require National City to cancel any Account or to terminate any Credit Card issued in connection with this Agreement.

## 2.4 Rights and Responsibilities of National City and WMUAA

- (a) National City shall be the creditor on all Credit Card Accounts established under the Program, shall have the right to receive all payment on all accounts, shall make all credit decisions independent of the University and WMUAA, and shall provide the Credit Cards and related services to Cardholder. National City shall have the right to approve or decline cash advances requested by Cardholders on the Credit Card Accounts. National City shall perform all such credit card issuer functions for Cardholders as may be necessary to operate the Credit Card Accounts, and shall provide such services in accordance with its standard policies and practices in effect from time to time for its other credit card accounts. National City shall comply with all applicable laws and regulations relating to the Credit Card Accounts, including but not limited to the Gramm-Leach-Bliley Act, and shall hold the University and WMUAA harmless from all claims.
- (b) All Cardholder Information shall be the exclusive property of National City.
- (c) National City may offer Credit Card Enhancements to Cardholders in conjunction with their Credit Card Accounts. Credit Card Enhancements are subject to change from time to time

## 2.5 Reserved Marketing Rights

Subject to any operational constraints, upon WMUAA's request, with National City's approval as to frequency and timing, WMUAA may include statement inserts in billing statements for Credit Card Accounts and place statement messages on billing statement of Credit Card Accounts in order to publicize the activities of WMUAA. WMUAA shall, at its own expense, supply any such statement inserts. If such inserts would require National City to increase the postage amount on the statement, WMUAA shall reimburse National City for the additional postage required. WMUAA shall bear any and all costs incurred as a result of WMUAA changing its name or electing to use an assumed name or other tradename, including, but not limited to, costs associated with the preparation, printing, and issuance of replacement credit cards, Cardholder applications, and Cardholder Agreements.

## ARTICLE III. ROYALTIES

### 3.1 Royalties

- (a) During the term of this agreement and in consideration of WMUAA endorsement and of the use of the Marks and WMUAA lists, and the exclusivity set forth in this Agreement, National City shall pay to the WMUAA certain royalties as set forth below.

- (b) New Accounts. During the term of this Agreement, National City shall pay to WMUAA ten dollars (\$10) for each new "Audience" Active Credit Card Account generated through the efforts of National City.
- (c) Usage. During the term of this Agreement, National City shall pay to WMUAA usage royalties at the following rates:
- (i) Three quarters of one percent (0.75%) of Net Purchases for all non-rewards Credit Cards.
  - (ii) Thirty-five one-hundredths of one percent (0.35%) on all rewards Credit Cards.
- (d) Renewal. In January of each calendar year during the term of this Agreement, National City will pay to WMUAA: Four dollars (\$4) annually for each active Credit Card Account that was both (i) open on the immediately preceding December 31 and (ii) on which at least one (1) purchase was made during the month of December.

### 3.2 Guarantee; Payment

- (a) National City guarantees that royalties to WMUAA pursuant to Section 3.1 will be at least two million dollars (\$2,000,000) during the Initial Term. National City will pay royalties to WMUAA as follows: (i) An initial payment of one million dollars (\$1,000,000) will be payable to WMUAA thirty (30) days after the date this Agreement is signed; and (ii) five subsequent payments in the amount of two hundred thousand dollars (\$200,000) each will be payable on the second, third, fourth, fifth and sixth anniversaries of this Agreement. Each such payment is referred to hereunder as an "Advance"; collectively the "Advances."
- (b) Royalties earned under Section 3.1 shall first be applied against the Advances, with additional royalties to be remitted to WMUAA only if and after the value of the royalties under Section 3.1 exceeds \$2,000,000. Once the royalties under Section 3.1 exceeds \$2,000,000, then royalties shall be paid to WMUAA on a quarterly basis within twenty-five (25) Business Days of the end of the calendar quarter. In no event shall the University or WMUAA be required to return, refund, or pay back the Advances except as provided for in Section 3.2(c).
- (c) In the event this Agreement is terminated by National City pursuant to Section 5.1(b)(i), the outstanding amount of the Advances (i.e. the portion of the Advances paid to date that has not been offset by royalties earned under the Program) will become immediately due and payable, and WMUAA will refund all said amounts to National City in twelve equal monthly payments beginning within thirty (30) days of any such termination.

### 3.3 Reports

National City shall provide to WMUAA on a quarterly basis information to enable WMUAA to substantiate the royalties earned pursuant to Section 3.1.

## ARTICLE IV. COVENANTS OF WMUAA AND NATIONAL CITY

### 4.1 Exclusivity

WMUAA, the University, and National City agree that until the termination of this Agreement, National City shall have the exclusive right to offer and solicit the Audience for the Program. During the term of this Agreement, WMUAA and the University covenant that it will endorse the Program and not sponsor, solicit, sell, aid, or otherwise arrange for or make available the Alumni list or the names, addresses or telephone numbers of Alumni or Students, unless required to do so by law, to a third party offering or providing any credit card, charge card, unsecured installment loan programs and/or secured or unsecured revolving loan or line of credit program. Furthermore, during the term of this Agreement, WMUAA and the University will not sponsor, endorse, solicit, or assist other financial institutions or credit card issuing companies, or their agents or representatives, for the purpose of soliciting credit card, unsecured loans or line of credit accounts from the Audience; provided, however, that WMUAA and the University may permit other financial institutions or credit card companies, or their agents or representatives to participate in campus events, such as a booth at Bronco Bash, for the purpose of soliciting credit cards or unsecured loans or line of credit accounts, so long as such participation does not otherwise violate this Agreement.

## 4.2 Confidentiality and Privacy

- (a) National City and WMUAA each agree that all Confidential Information of the other party shall be held in the strictest confidence and will not be disclosed by the Recipient, except as specifically permitted by the terms hereof. National City and WMUAA agree that the Recipient will use the Confidential Information solely for the purpose of performing under and in compliance with the terms of this Agreement, will not use the Confidential Information for any other purpose, and will not disclose or communicate the Confidential Information, in any manner whatsoever, directly or indirectly, to any non-affiliated third party without the prior written consent of the Disclosing Party, except as required by applicable law or regulation. Notwithstanding the foregoing, National City may disclose Confidential Information to a third party who purchases the Credit Card Accounts from National City, provided that such third party agrees in writing to be bound by the requirements of this Section 4.2 and by the other terms herein applicable to National City.
- (b) WMUAA agrees and acknowledges that: (i) National City will not disclose any Cardholder Information to WMUAA except as permitted by Privacy Law and as requested by WMUAA no more than semi-annually; (ii) WMUAA will take all necessary steps to assure that all Cardholder Information received from National City will be held in the strictest confidence; (iii) WMUAA will not sell, transfer, disclose or otherwise make available any Cardholder Information received from National City, in any manner whatsoever, directly or indirectly, to any non-affiliated third party without the prior written consent of National City, except as required by applicable law or regulation; and (iv) WMUAA will maintain physical, electronic and procedural security measures to protect against unauthorized access to or use of Cardholder Information. WMUAA shall implement and maintain adequate security measures consistent with industry standards to protect against unauthorized access to or use of any Cardholder Information in its possession. WMUAA shall promptly notify National City of any unauthorized access to Cardholder Information of which WMUAA becomes aware. National City acknowledges the Western Michigan University is subject to the provisions of the Michigan Freedom of Information Act (the "Act") and nothing herein shall limit or preclude the University and WMUAA from complying with said Act and compliance with said Act shall not constitute a breach of this Agreement.
- (c) Neither the University or WMUAA is a "financial institution" under Privacy Law.
- (d) Subsections (a) and (b) of this Section 4.2 shall survive the termination of this Agreement.

## ARTICLE V. MISCELLANEOUS

### 5.1 Term and Termination

- (a) This Agreement shall commence on the day following the date of this Agreement and shall continue in full force and effect for a period of seven (7) years (the "**Initial Term**") from the effective date of this Agreement. Thereafter, this Agreement shall automatically renew for successive terms of one (1) year each (a "**Renewal Term**"), unless WMUAA provides written notice to National City or National City provides written notice to WMUAA at least ninety (90) days prior to the end of the Initial term or a Renewal Term, as the case may be, of any intent to terminate this Agreement. The termination of this Agreement shall not terminate, affect, or impair any rights, obligations, or liabilities of either party hereto which may accrue prior to such termination or which, under the terms of the Agreement, continue after the termination.
- (b) WMUAA or National City may terminate this Agreement reserving all other remedies and rights hereunder in whole or in part, upon the following conditions:
- (i) Event of Default. Upon the occurrence of an Event of Default caused by either party, the other party may terminate this Agreement by giving not less than thirty (30) days prior written notice to the defaulting party of its intent to terminate this Agreement. Such written notice shall describe in detail the Event of Default. For purposes of this Agreement, an "**Event of Default**" hereunder shall occur in the event a party materially defaults in the performance of any of its duties or obligations under this Agreement. If the defaulting party corrects the condition which resulted in the Event of Default within thirty (30) days after notice from the other party, this Agreement shall not terminate but shall remain in full force and effect. If the defaulting party does not correct the condition which resulted in the Event of Default within said thirty (30) day period, the non-defaulting party may terminate this Agreement immediately upon notice to the defaulting party.
- (ii) Bankruptcy. WMUAA or National City may terminate this Agreement at any time upon ten (10) days notice to the other party after the filing of any petition in bankruptcy or for reorganization or debt consolidation under the

federal bankruptcy laws or under any comparable law by or against the other party, or upon the other party's making of an assignment of its assets for the benefit of creditors, or upon the application of the other party for the appointment of a receiver or trustee of its assets. The party that becomes subject to any proceeding under this Section shall promptly so notify the other party.

- (c) Upon the expiration or termination of this Agreement, National City shall retain ownership of all Credit Card Accounts and all unpaid and outstanding balances.

## 5.2 Indemnification

- (a) Each party (the "Indemnitor") shall indemnify the other party and its directors, officers, agents or employees (each, an "Indemnitee") and hold the Indemnitee harmless from and against any and all losses, damages, expenses (including reasonable attorneys' fees), fines, and penalties arising from, and shall defend the Indemnitee in connection with, any and all claims, actions, and suits brought by third parties in connection with the Indemnitor's breach of this Agreement or the Indemnitor's act or failure to act with respect to the Program, unless the sole basis for such claim, action, or suit is the negligence, gross negligence or willful misconduct of the Indemnitee.
- (b) The terms of this Section 5.2 shall survive the expiration or termination of this Agreement.

## 5.3 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan. The governing law with respect to the Credit Card Accounts will be as provided in the Cardholder Agreement.

## 5.4 Use of Proprietary Marks; Publicity

Except as otherwise provided herein, neither party shall use the registered trademarks, service marks, logo, name, or any other proprietary designations of the other party without that party's prior written consent and shall submit to the other party for prior approval any advertising or promotional materials in which any other party's trademarks, service mark, logo, name, or any other proprietary designations are to be used, which approval shall not be unreasonably withheld or delayed. Neither party will issue or permit to be issued any publicity, advertisement, or other public statement concerning the subject matter of this Agreement, except as required by law, regulation, or the rules and regulations of Visa U.S.A., Inc., without obtaining the prior written consent of the other party, which shall not be unreasonably withheld or delayed.

## 5.5 Relationship of the Parties

The parties agree that in performing their responsibilities pursuant to this Agreement, they are in the position of independent contractors. This Agreement is not intended to create, nor does it create and shall not be construed to create, a partnership or joint venture or any association for profit between WMUAA and National City.

## 5.6 Force Majeure

In the event that either party fails to perform its obligations under this Agreement in whole or in part as a consequence of acts of God, fire, explosion, public utility failure, accident, flood, embargo, war, nuclear disaster, terrorism or riot, such failure to perform shall not be considered a breach of this Agreement during the period of such disability. In the event of any occurrence as set forth in this paragraph, the disabled party shall use its best efforts to meet its obligations under this Agreement.

## 5.7 Modifications and Changes

This Agreement, together with any exhibits attached hereto, constitutes the entire agreement among the parties relating to the subject matter hereof. This Agreement may only be amended by a written document signed by the parties. In the course of the planning and coordination of this Agreement, written documents have been exchanged between the parties. Such written documents shall not be deemed to amend or supplement this Agreement.

## 5.8 Assignment

This Agreement may be assigned by National City to any Affiliate of National City or to a third party who purchases the Credit Card Accounts from National City without the consent of WMUAA or to any other organization or person only

upon the prior written consent of WMUAA, which consent shall not be unreasonably withheld or delayed. This Agreement may not be assigned by WMUAA without the prior written consent of National City, which consent shall not be unreasonably withheld or delayed. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**5.9 Notices**

All notices permitted or required to be delivered hereunder shall be addressed to the other party at the address set forth in the first paragraph of this Agreement and shall be deemed to have been given (a) three (3) Business Days after being sent by certified mail, return receipt requested, or (b) twenty-four (24) hours after being sent by national overnight courier.

**5.10 Waivers; Remedies Cumulative**

Neither party shall be deemed to have waived any of its rights or remedies hereunder unless such waiver is approved in writing by the waiving party. The failure of either party at any time to require performance of any obligation hereunder shall in no manner affect the right at a later time to enforce the same. The remedies set forth in this Agreement are not exclusive. Election of one remedy shall not preclude the use of other remedies.

**5.11 Severability**

If any provision or portion thereof in this Agreement is held invalid, illegal, void, or unenforceable by reason of any rule of law, administrative, or judicial provision or public policy, such provision shall be ineffective only to the extent invalid, illegal, void, or unenforceable, and the remainder of such provision and all other provisions of this Agreement shall nevertheless remain in full force and effect.

WMUAA and National City, intending to be legally bound, have duly executed this Agreement as of the date first above written.

**BOARD OF TRUSTEES OF WESTERN MICHIGAN UNIVERSITY, for itself and on behalf of the Western Michigan University Alumni Association**

By: Robert M. Beam  
[Robert M. Beam, Treasurer]

DATE: 8/12/05

**NATIONAL CITY BANK**

By: Paul M. Reiff  
Paul M. Reiff, Vice President

DATE: August 2, 2005

Exhibit 1 - WMU Logos

# WESTERN MICHIGAN UNIVERSITY



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