

**GRAND VALLEY STATE UNIVERSITY  
AFFINITY AGREEMENT**

This Agreement is entered into as of this 31 day of May, 2002, (the "Effective Date") by and between MBNA AMERICA BANK, N.A., a national banking association having its principal place of business in Wilmington, Delaware ("MBNA America"), and GRAND VALLEY STATE UNIVERSITY, a non-profit educational institution having its principal place of business at 1 Campus Drive, Allendale, Michigan ("GVSU") for themselves, and their respective successors and assigns.

**1. DEFINITIONS**

When used in this Agreement,

- (a) "Agreement" means this agreement and Schedules A, B and C.
- (b) "Credit Card Account" means a credit card account opened by a Member in response to marketing efforts made pursuant to the Program. An "Alumni Credit Card Account" is a Credit Card Account opened through an application coded by MBNA America as an alumni application. A "Plus Rewards Credit Card Account" is a Credit Card Account carrying the Plus Rewards enhancement.
- (c) "Customer" means any Member who is a participant in the Program.
- (d) "Financial Service Products" means credit card programs, charge card programs, debit card programs and travel and entertainment charge card programs.
- (e) "Group Incentive Program" or "GIP" means any marketing or other program whereby GVSU conducts solicitation efforts for the Program, and the parties mutually agree that such marketing or other program shall constitute a GIP.
- (f) "GIP Account" means a Credit Card Account opened by a Member pursuant to a GIP in which GVSU complies with the GIP provisions of this Agreement.
- (g) "Mailing List" means an updated and current list and/or magnetic tape (in a format designated by MBNA America) containing names, postal addresses and, when available, telephone numbers and e-mail addresses of Members who are at least eighteen (18) years of age, segmented by zip codes or reasonably selected membership characteristics.
- (h) "Member" means alumni of GRAND VALLEY STATE UNIVERSITY and members of the Alumni Association (each an "Alumni Member").
- (i) "Program" means those programs and services of the Financial Service Products MBNA America agrees to offer pursuant to this Agreement to the Members from time to time.

- (j) "Royalties" means the compensation set forth in Schedule B.
- (k) "Trademarks" means any design, image, visual representation, logo, service mark, trade dress, trade name, or trademark used or acquired by GVSU during the term of this Agreement.
- (l) "GVSU Affiliate" means any entity controlling, controlled by or under common control with GVSU.

## **2. RIGHTS AND RESPONSIBILITIES OF GVSU**

- (a) GVSU agrees that during the term of this Agreement it will endorse the Program exclusively and that neither GVSU nor any GVSU Affiliate shall, by itself or in conjunction with others, directly or indirectly: (i) sponsor, advertise, aid, develop, market, solicit proposals for programs offering, or discuss with any organization (other than MBNA America) the providing of, any Financial Service Products of any organization other than MBNA America; (ii) license or allow others to license the Trademarks in relation to or for promoting any Financial Service Products of any entity other than MBNA America; and (iii) sell, rent or otherwise make available or allow others to sell, rent or otherwise make available any of its mailing lists or information about any current or potential Members in relation to or for promoting any Financial Service Products of any entity other than MBNA America. Notwithstanding anything else in this Agreement to the contrary, GVSU may accept print advertising from any financial institution provided that the advertisement does not contain an express or implied endorsement by GVSU of said financial institution or the advertised Financial Service Product.
- (b) GVSU agrees to provide MBNA America with such information and assistance as may be reasonably requested by MBNA America in connection with the Program.
- (c) GVSU authorizes MBNA America to solicit its Members by mail, direct promotion, internet, advertisements, e-mail and/or telephone for participation in the Program.
- (d) GVSU shall have the right of prior approval of all Program advertising and solicitation materials to be used by MBNA America, which contain GVSU's Trademark; such approval shall not be unreasonably withheld or delayed. In the event that MBNA America incurs a cost because of a change in the Trademarks (e.g., the cost of reissuing new credit cards), MBNA America may deduct such costs from Royalties due GVSU. In the event such costs exceed Royalties then due GVSU, GVSU shall promptly reimburse MBNA America for all such costs.
- (e) Upon the request of MBNA America, GVSU shall provide MBNA America with the Mailing List free of any charge; provided, however, that GVSU shall not include in any Mailing List the name and/or related information regarding any person who has expressly requested that GVSU not provide his/her personal information to third parties. In the event that MBNA America incurs a cost because of a charge assessed by GVSU or its agents for an initial Mailing List or an update to that list, MBNA America may deduct such costs from Royalties due GVSU. GVSU shall provide the initial Mailing List, containing at least forty-three thousand (43,000)

non-duplicate alumni names (of persons at least eighteen years of age) as well as additional names of donors and parents of students, with corresponding valid postal addresses and, when available, telephone numbers and e-mail addresses of Alumni Members as soon as possible but no later than thirty (30) days after GVSU's execution of this Agreement.

(f) GVSU shall only provide information to or otherwise communicate with Members or potential Members about the Program with MBNA America's prior written approval, except for current advertising and solicitation materials provided by MBNA America to GVSU. Notwithstanding the above, GVSU may respond to individual inquiries about the Program from its Members on an individual basis, provided that said responses are accurate and consistent with the then-current materials provided by MBNA America to GVSU. Any correspondence received by GVSU that is intended for MBNA America (e.g., applications, payments, billing inquiries, etc.) shall be forwarded to the MBNA America account executive via overnight courier within 24 hours of receipt. All charges incurred for this service will be paid by MBNA America.

(g) GVSU hereby grants MBNA America and its affiliates a limited, exclusive license to use the Trademarks solely in conjunction with the Program, including the promotion thereof. This license shall be transferred upon assignment of this Agreement. This license shall remain in effect for the duration of this Agreement and shall apply to the Trademarks, notwithstanding the transfer of such Trademarks by operation of law or otherwise to any permitted successor, corporation, organization or individual. GVSU shall provide MBNA America all Trademark production materials (e.g., camera ready art) required by MBNA America for the Program, as soon as possible but no later than thirty (30) days after GVSU's execution of this Agreement. Nothing stated in this Agreement prohibits GVSU from granting to other persons a license to use the Trademarks in conjunction with the providing of any other service or product, except for any Financial Service Products.

(h) GVSU shall permit MBNA America to advertise the Program on the Alumni home page and at other prominent locations within the Alumni internet site of GVSU. MBNA America may establish a "hot-link" from such advertisements to another internet site to enable a person to apply for a Credit Card Account. Any Credit Card Account generated pursuant to such a "hot-link" shall entitle GVSU to the GIP compensation set forth on Schedule B, subject to the other terms and conditions of this Agreement. GVSU shall modify or remove such advertisements within twenty-four (24) hours of MBNA America's request.

### 3. RIGHTS AND RESPONSIBILITIES OF MBNA AMERICA

(a) MBNA America shall design, develop and administer the Program for the Members.

(b) MBNA America shall design all advertising, solicitation and promotional materials with regard to the Program. MBNA America reserves the right of prior written approval of all advertising and solicitation materials concerning or related to the Program, which may be developed by or on behalf of GVSU.

- (c) MBNA America shall bear all costs of producing and mailing materials for the Program.
- (d) MBNA America shall make all credit decisions and shall bear all credit risks with respect to each Customer's account(s) independently of GVSU.
- (e) MBNA America shall use the Mailing Lists provided pursuant to this Agreement consistent with this Agreement and shall not permit those entities handling these Mailing Lists to use them for any other purpose. MBNA America shall have the sole right to designate Members on these Mailing Lists to whom promotional material will not be sent. These Mailing Lists are and shall remain the sole property of GVSU. However, MBNA America may maintain separately all information which it obtains as a result of an account relationship or an application for an account relationship. This information becomes a part of MBNA America's own files and shall not be subject to this Agreement; provided however that MBNA America will not use this separate information in a manner that would imply an endorsement by GVSU.

#### **4. REPRESENTATIONS AND WARRANTIES**

(a) GVSU and MBNA America each represents and warrants to the other that as of the Effective Date and throughout the term of this Agreement:

- (i) It is duly organized, validly existing and in good standing.
- (ii) It has all necessary power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.
- (iii) This Agreement constitutes a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, receivership, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.
- (iv) No consent, approval or authorization from any third party is required in connection with the execution, delivery and performance of this Agreement, except such as have been obtained and are in full force and effect.

(v) The execution, delivery and performance of this Agreement by such party will not constitute a violation of any law, rule, regulation, court order or ruling applicable to such party.

(b) GVSU represents and warrants to MBNA America as of the date hereof and throughout the term of this Agreement that it has the right and power to license the Trademarks to MBNA America for use as contemplated by this Agreement and to provide the Mailing List(s) to MBNA America for the promotion of the Program. GVSU will hold MBNA America, its directors, officers, agents, employees, affiliates, successors and assigns harmless from and against all liability, causes of action, and claims, and will reimburse MBNA America's reasonable and actual costs in connection therewith (including attorneys' fees), arising from the Trademark

license granted herein or from MBNA America's use of the Trademarks in reliance thereon, or from the use of any Mailing List(s) by MBNA America for the promotion of the program. Each party shall promptly notify the other party in the manner provided herein upon learning of any claims or complaints relating to such license or the use of any Trademarks.

5. **ROYALTIES**

(a) During the term of this Agreement, MBNA America shall pay Royalties to GVSU. Royalties will not be paid without a completed Schedule C (W-9 Form and EFT Form). Except as otherwise provided in Schedule B, payment of Royalties then due shall be made approximately forty-five (45) days after the end of each calendar quarter. Plus Rewards Credit Card Accounts shall generate solely the Royalties specified in Schedule B, Section B hereof.

(b) On or before the forty fifth (45th) day after the end of each calendar quarter during the term of this Agreement, MBNA America will provide GVSU with a statement showing the number of Credit Card Accounts opened, the number of Credit Card Accounts renewed and the retail purchase dollar volume (excluding those transactions that relate to refunds, returns and unauthorized transactions), made during the preceding calendar period.

6. **PROGRAM ADJUSTMENTS**

A summary of the current features of the Program are set forth in Schedule A. MBNA America reserves the right to make periodic adjustments to the Program and its terms and features.

7. **CONFIDENTIALITY OF AGREEMENT**

The terms of this Agreement, any proposal, financial information and proprietary information provided by or on behalf of one party to the other party prior to, contemporaneously with, or subsequent to, the execution of this Agreement ("Information") are confidential as of the date of disclosure. Such Information will not be disclosed by such other party to any other person or entity, except as permitted under this Agreement or as mutually agreed in writing. MBNA America and GVSU shall be permitted to disclose such Information (i) to their accountants, legal, financial and marketing advisors, and employees as necessary for the performance of their respective duties, provided that said persons agree to treat the Information as confidential in the above described manner and (ii) as required by law or by any governmental regulatory authority.

**8. TERM OF AGREEMENT**

The initial term of this Agreement will begin on the Effective Date and end on July 31, 2007. This Agreement will automatically extend at the end of the initial term or any renewal term for successive two-year periods, unless either party gives written notice of its intention not to renew at least ninety (90) days, but not more than one hundred eighty (180) days, prior to the last date of such term or renewal term, as applicable.

**9. STATE LAW GOVERNING AGREEMENT**

This Agreement shall be governed by and subject to the laws of the State of Delaware (without regard to its conflict of laws principles) and shall be deemed for all purposes to be made and fully performed in Delaware.

**10. TERMINATION**

(a) In the event of any material breach of this Agreement by MBNA America or GVSU, the other party may terminate this Agreement by giving notice, as provided herein, to the breaching party. This notice shall (i) describe the material breach; and (ii) state the party's intention to terminate this Agreement. If the breaching party does not cure or substantially cure such breach within sixty (60) days after receipt of notice, as provided herein (the "Cure Period"), then this Agreement shall terminate sixty (60) days after the Cure Period.

(b) If either MBNA America or GVSU becomes insolvent in that its liabilities exceed its assets, or is adjudicated insolvent, or GVSU takes advantage of or is subject to any insolvency proceeding, or makes an assignment for the benefit of creditors or is subject to receivership, conservatorship or liquidation then the other party may immediately terminate this Agreement.

(c) Upon termination of this Agreement, MBNA America shall, in a manner consistent with Section 10(d) of this Agreement, cease to use the Trademarks. MBNA America agrees that upon such termination it will not claim any right, title, or interest in or to the Trademarks or to the Mailing Lists provided pursuant to this Agreement. However, MBNA America may conclude all solicitation that is required by law.

(d) MBNA America shall have the right to prior review and approval of any notice in connection with, relating or referring to the termination of this Agreement to be communicated by GVSU or any GVSU Affiliate to the Members. Such approval shall not be unreasonably withheld. Upon termination of this Agreement, GVSU shall not attempt to cause the removal of GVSU's identification or Trademarks from any person's credit devices, checks or records of any Customer existing as of the effective date of termination of this Agreement.

(e) In the event that a material change in any applicable law, statute, operating rule or regulation, or any material change in any operating rule or regulation of either VISA or

MasterCard makes the continued performance of this Agreement under the then current terms and conditions unduly burdensome, then MBNA America shall have the right to terminate this Agreement upon ninety (90) days advance written notice. Such written notice shall include an explanation of the burden imposed as a result of such change.

(f) For a one (1) year period following the termination of this Agreement for any reason, GVSU agrees that neither GVSU nor any GVSU Affiliate shall, by itself or in conjunction with others, directly or indirectly, specifically target any offer of a credit or charge card, or a credit or charge card related product to persons who were Customers. Notwithstanding the foregoing, GVSU may, after termination of this Agreement, offer persons who were Customers the opportunity to participate in another credit or charge card program endorsed by the GVSU provided the opportunity is not only made available to such persons but rather as a part of a general solicitation to all Members and provided further no such persons are directly or indirectly identified as a customer of MBNA America, or offered any terms or incentives different from that offered to all Members.

#### 11. MISCELLANEOUS

(a) This Agreement cannot be amended except by written agreement signed by the authorized agents of both parties hereto.

(b) The obligations in Sections 4(b), 7, 10(c), 10(d) and 10(f) shall survive any termination of this Agreement.

(c) The failure of any party to exercise any rights under this Agreement shall not be deemed a waiver of such right or any other rights.

(d) The section captions are inserted only for convenience and are in no way to be construed as part of this Agreement.

(e) If any part of this Agreement shall for any reason be found or held invalid or unenforceable by any court or governmental agency of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Agreement which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

(f) All notices relating to this Agreement shall be in writing and shall be deemed given (i) upon receipt by hand delivery, facsimile or overnight courier, or (ii) three (3) business days after mailing by registered or certified mail, postage prepaid, return receipt requested. All notices shall be addressed as follows:

(1) If to GVSU:

GRAND VALLEY STATE UNIVERSITY  
1 Campus Drive  
Allendale, Michigan 49401-9403

ATTENTION: Ms. Nancee Miller  
Director of Alumni Relations

Fax #: 616-895-3596

(2) If to MBNA America:

MBNA AMERICA BANK, N. A.  
Rodney Square  
Wilmington, Delaware 19884

ATTENTION: Mr. William P. Morrison  
Division President

Fax #: 302-432-0805

Any party may change the address to which communications are to be sent by giving notice, as provided herein, of such change of address.

(g) This Agreement contains the entire agreement of the parties with respect to the matters covered herein and supersedes all prior promises and agreements, written or oral, with respect to the matters covered herein. MBNA America may utilize the services of any third party in fulfilling its obligations under this Agreement. Certain Financial Service Products or services under this Agreement may be offered through MBNA America's affiliates. For example, business credit cards are currently issued and administered by MBNA America (Delaware), N.A., and certain marketing services are currently provided by MBNA Marketing Systems, Inc.

(h) MBNA America and GVSU are not agents, representatives or employees of each other and neither party shall have the power to obligate or bind the other in any manner except as otherwise expressly provided by this Agreement.

(i) Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or give any person other than GVSU and MBNA America, their successors and assigns, any rights or remedies under or by reason of this Agreement.

(j) Neither party shall be in breach hereunder by reason of its delay in the performance of or failure to perform any of its obligations herein if such delay or failure is caused by strikes, acts of God or the public enemy, riots, incendiaries, interference by civil or military authorities,



compliance with governmental laws, rules, regulations, delays in transit or delivery, or any event beyond its reasonable control or without its fault or negligence.

(k) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

## 12. GROUP INCENTIVE PROGRAM

(a) MBNA America shall design all advertising, solicitation and promotional material with regard to the Program, except with respect to those materials designed by GVSU pursuant to any GIP. In that regard, GVSU shall give MBNA America sixty (60) days prior notice of its desire to engage in marketing efforts regarding the Program itself, specifying that accounts generated from such efforts will entitle GVSU to the Royalty specified in Schedule B, subject to the other terms and conditions of this Agreement.

(b) All marketing materials generated as a result of such GIP programs shall be coded by GVSU for tracking purposes. Marketing materials or telemarketing inquiries from Members which, in either case, do not contain or reference such coding shall not be considered eligible for any of the GIP Royalty as set forth in Schedule B.

(c) In addition to all other rights it may have under this Agreement, MBNA America shall have the right of prior approval of all advertising and solicitation materials distributed by GVSU pursuant to any GIP. MBNA America shall have approval and control of the scope, timing, content and continuation of any GIP.

(d) All costs incurred by MBNA America in producing and mailing materials created pursuant to any GIP or of supporting the marketing efforts of GVSU pursuant to any GIP shall be deducted from any or all Royalty payments due GVSU under this Agreement.

(e) GVSU shall comply with MBNA America's instructions and all applicable laws, including, without limitation, the Truth in Lending Act and the Equal Credit Opportunity Act, with regard to any GIP.

IN WITNESS WHEREOF, each of the parties, by its representative, has executed this Agreement as of the Effective Date.

GRAND VALLEY STATE  
UNIVERSITY

MBNA AMERICA BANK, N.A.

By: Jim Bachmeier

By: William P. Morrison

Name: Jim Bachmeier

Name: William P. Morrison

Title: Assistant Treasurer

Title: Division President

Date: 5/30/02

Date: 6/26/02

## SCHEDULE A

### TERMS AND FEATURES

Subject to (i) MBNA America's right to vary the Program and its terms and features, and (ii) the applicable agreement entered into between MBNA America and each Customer:

#### A. CREDIT CARD ACCOUNTS

1. There is NO annual fee.
2. For Alumni Credit Card Accounts, the current annual percentage rate will be a fixed rate of 11.99%.
3. Customers may be offered opportunities to purchase a variety of communication services and to select credit insurance as a benefit under the Program.

#### B. PLUS REWARDS CREDIT CARD ACCOUNTS

1. There is NO annual fee.
2. The current annual percentage rate will be a fixed rate of 11.99%.

#### C. BUSINESSCARD CREDIT CARD ACCOUNTS

"BusinessCard Credit Card Account" means a business Credit Card Account (currently referred to as a Platinum Plus for Business account) opened by a Member in response to marketing efforts made pursuant to the Program. MBNA America reserves the right to change the product name(s) (e.g., Platinum Plus for Business), in its sole discretion, from time to time.

1. There is no annual fee for each business card issued to an individual or business entity pursuant to the BusinessCard Credit Account program. MBNA America reserves the right to make special pricing offers for BusinessCard Credit Card Accounts to select GVSU Customers and/or Members at its own discretion.
2. The current Annual Percentage Rate for BusinessCard Credit Card Accounts is a fixed rate of 14.99%.

## SCHEDULE B

### **ROYALTY ARRANGEMENT**

During the term of this Agreement, MBNA America will pay GVSU a Royalty calculated as follows, for those accounts with active charging privileges. MBNA America may create a special class of accounts for GVSU employees under the Program, and will not pay compensation for such designated accounts. All Royalty payments due hereunder are subject to adjustment by MBNA America for any prior overpayment of Royalties by MBNA America:

#### **A. CREDIT CARD ACCOUNTS**

1. \$1.00 (one dollar) for each new Credit Card Account opened (except a Plus Rewards Credit Card Account), which remains open for at least ninety (90) consecutive days.
2. \$1.00 (one dollar) for each Alumni Credit Card Account (except a Plus Rewards Credit Card Account) for which the annual fee is paid by the Customer. If no annual fee is assessed by MBNA America (other than as a result of a courtesy waiver by MBNA America), then such royalty will be paid for each Alumni Credit Card Account which: 1) has a balance greater than zero as of the last business day of every twelfth month after the opening of that Alumni Credit Card Account; and 2) has had active charging privileges for each of the preceding twelve months.
3. 0.50% (one half of one percent) of all retail purchase transaction dollar volume generated by Customers using an Alumni Credit Card Account (except a Plus Rewards Credit Card Account and excluding those transactions that (1) relate to refunds, returns and/or unauthorized transactions, and/or (2) are cash equivalent transactions (e.g., the purchase of wire transfers, money orders, bets, lottery tickets, or casino gaming chips)).

#### **B. PLUS REWARDS CREDIT CARD ACCOUNTS**

1. \$1.00 (one dollar) for each new Plus Rewards Credit Card Account opened, which remains open for at least ninety (90) consecutive days and which is utilized by the Customer for at least one purchase or cash advance which is not subsequently rescinded, the subject of a charge back request, or otherwise disputed. This Royalty will not be paid for any Credit Card Account which, after opening, converts to a Plus Rewards Credit Card Account.
2. \$1.00 (one dollar) for each Plus Rewards Credit Card Account which the annual fee is paid by the Customer. If no annual fee is assessed by MBNA America (other than as a result of a courtesy waiver by MBNA America), then such royalty will be paid for each Plus Rewards Credit Card Account which: 1) has a balance

greater than zero as of the last business day of the annual anniversary of the month in which the Plus Rewards Credit Card Account was opened; and 2) has had active charging privileges for each of the preceding twelve months. A Plus Rewards Credit Card Account may renew every twelve (12) months after the opening of the account.

3. 2.50% of the finance charges assessed within a calendar quarter by the application of the relevant periodic rate(s) to the respective average daily balance(s) of certain Plus Rewards Credit Card Accounts (the "Finance Charges"). This payment shall be calculated as of the end of each calendar quarter. The Finance Charges are assessed based upon the application of the relevant periodic rate(s) to the average daily balances measured as of the end of each of the preceding three months. The > sum of the Finance Charges assessed during each of the three months within the calendar quarter times the above percentage rate is the quarterly payment due under this section. Each monthly measurement shall include only Finance Charges assessed during such month, and shall exclude Finance Charges assessed on Plus Rewards Credit Card Accounts, which as of the day of measurement, are thirty-five (35) or more days delinquent or are 10% or more over the assigned credit line for such Plus Rewards Credit Card Accounts.

#### C. BUSINESSCARD CREDIT CARD ACCOUNTS

BusinessCard Credit Card Account compensation provisions shall not affect any other compensation provision contained in the Agreement, and the compensation provisions referencing any other form of Credit Card Accounts shall not apply to BusinessCard Credit Card Accounts; provided, however, that BusinessCard Credit Account Royalties accrued hereunder shall be treated as Royalties for purposes of Schedule B, hereof.

0.20% (two tenths of one percent) of the retail purchase transaction dollar volume generated by Customers using a BusinessCard Credit Card Account with active charging privileges, excluding those transactions that (i) relate to refunds, returns and/or unauthorized transaction, and/or (ii) are cash equivalent transactions (e.g., the purchase of wire transfers, money orders, bets, lottery tickets, or casino gaming chips.))

#### D. GIP ACCOUNTS

\$30.00 (thirty dollars) for each GIP Account opened, which remains open for at least ninety (90) consecutive days and which is utilized by the Customer within the first ninety (90) consecutive days of the GIP Account's opening for at least one purchase or cash advance which is not subsequently rescinded, the subject of a charge back request, or otherwise disputed. Such GIP Accounts will not qualify for any other opening-of-an-account Royalty.