

**UNIVERSITY OF MEMPHIS  
AFFINITY AGREEMENT**

This Agreement is entered into as of this 24<sup>th</sup> day of September 2008 (the "Effective Date") by and between FIA Card Services, N.A., a national banking association having its principal place of business in Wilmington, Delaware ("Bank"), and University of Memphis, a public university having its principal place of business at 105 Alumni Center, Memphis, Tennessee 38151 ("UM"), for themselves, and their respective successors and assigns.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, UM and Bank agree as follows:

1. DEFINITIONS

When used in this Agreement, the following initially capitalized words and phrases will have the meanings ascribed to them as set forth below:

**"Agreement"** means this agreement and Schedules A and B.

**"Applicable Law"** means, at any time, any applicable (i) federal, state, and local statutes, regulations, licensing requirements, regulatory bulletins or guidance, regulatory examinations, agreements or orders, (ii) regulations, by-laws and rules of any applicable self-regulatory organizations, (iii) rule, regulation, restriction, requirement or contractual term of VISA, MasterCard, American Express or other card network and (iv) judicial or administrative interpretations of any of the foregoing. Nothing in this document shall be construed to make any of the above-listed provisions applicable to UM if such provision is not otherwise applicable by operation of law.

**"Credit Card Account"** means a credit card account opened by a Member in response to marketing efforts made pursuant to the Program.

**"Customer"** means any Member who is a participant in the Program.

**"Deposits"** means consumer deposit products such as money market deposit accounts, certificate of deposit accounts, checking and savings accounts, checking accounts with debit card access and money market deposit account and certificate of deposit account individual retirement accounts.

**"Deposit Account"** means a consumer deposit account opened pursuant to the Program.

**"Eligible Royalties"** means all Royalties that accrue and are payable under Schedule A of the Agreement, except for those opening-of-account Royalties that accrue and are payable pursuant to Schedule A for any GIP Account, Reward GIP Account, Emerging Credit Card GIP Account, Emerging Credit Card Reward GIP Account, Gold Option GIP Account, and Gold Reserve GIP Account.

**“Emerging Credit Card Account”** means a Credit Card Account coded by Bank with one of Bank’s risk management identifiers.

**“Emerging Credit Card GIP Account”** means an Emerging Credit Card Account opened pursuant to a GIP in which UM complies with the GIP provisions of this Agreement.

**“Emerging Credit Card Reward Account”** means an Emerging Credit Card Account carrying the Reward Enhancement and opened pursuant to the Program.

**“Emerging Credit Card Reward GIP Account”** means an Emerging Credit Card Reward Account opened pursuant to a GIP in which UM complies with the GIP provisions of this Agreement.

**“Financial Service Product”** means any credit card program, charge card program, debit card program, installment loan program, revolving loan program, deposit program, including without limitation Deposits, and travel and entertainment card program marketed to Members. The definition of Financial Service Product does not include the Tiger Checking account program between University of Memphis and First Tennessee Bank National Association, as such checking account program is structured and delineated as of the Effective Date of this Agreement. In addition, this definition shall not include any type of student refund card, e.g., Intellicard, where financial aid/funds/refunds are distributed via a debit type card, or any other products offered to UM students currently or in the future.

**“GIP Account”** means a consumer Credit Card Account opened pursuant to a GIP in which UM complies with the GIP provisions of this Agreement.

**“Gold Option Account”** means a GoldOption® (as such service mark may be changed by Bank, in its sole discretion, from time to time) revolving loan account opened by a Member in response to marketing efforts made pursuant to the Program.

**“Gold Option GIP Account”** means a Gold Option Account opened pursuant to a GIP in which UM complies with the GIP provisions of this Agreement.

**“Gold Reserve Account”** means a GoldReserve® (as such service mark may be changed by Bank, in its sole discretion, from time to time) revolving loan account opened by a Member in response to marketing efforts made pursuant to the Program.

**“Gold Reserve GIP Account”** means a Gold Reserve Account opened pursuant to a GIP in which UM complies with the GIP provisions of this Agreement.

**“Group Incentive Program”** or **“GIP”** means any marketing or other program whereby UM conducts and funds solicitation efforts for the Program, and the parties mutually agree that such marketing or other program will constitute a GIP.

**“Information”** has the meaning ascribed to such word in Section 7.

**“Mailing List”** means an updated and current list and/or magnetic tape (in a format designated by Bank) containing non-duplicate names, with corresponding valid postal addresses and, when available, telephone numbers (including area codes) and e-mail addresses of all Members who are at least eighteen years of age, segmented by zip codes or reasonably selected membership characteristics.

**“Member”** means: (i) alumni of UM or any member of an alumni association of UM or any UM Affiliate; (ii) friends, faculty and staff of UM; (iii) fans, ticket holders, donors and contributors of any UM athletic team or athletic department; and/or (iv) other potential participants mutually agreed to by UM and Bank. No student Mailing List shall be furnished nor used for the purpose of soliciting members under this Agreement.

**“Program”** means those programs and services of the Financial Service Products Bank agrees to offer pursuant to this Agreement to the Members from time to time. **“Deposit Program”** means those programs and services of the Deposits Bank agrees to offer to Members pursuant to this Agreement. For the avoidance of doubt, unless the context requires otherwise, the parties shall read “Program” under the Agreement to include “Deposit Program.”

**“Reward Credit Card Account”** means a consumer Credit Card Account carrying the Reward Enhancement and opened pursuant to the Program.

**“Reward Enhancement”** means the loyalty reward consumer Credit Card Account enhancement as provided through Bank and offered as part of the Program for Reward Credit Card Accounts and Emerging Credit Card Reward Accounts. The Reward Enhancement may be marketed under another name (*e.g.*, World Points), as determined by Bank from time to time, in its sole discretion.

**“Reward GIP Account”** means a Reward Credit Card Account opened pursuant to a GIP in which UM complies with the GIP provisions of the Agreement.

**“Royalties”** means the compensation set forth in Schedule A.

**“Trademarks”** means any design, image, visual representation, logo, service mark, trade dress, trade name, or trademark used or acquired by UM or any UM Affiliate during the term of this Agreement.

**“UM Affiliate”** means any entity which, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with UM.

2. **RIGHTS AND RESPONSIBILITIES OF UM**

- (a) UM agrees that during the term of this Agreement it will endorse the Program exclusively and that neither UM nor any UM Affiliate will, 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 Bank) the providing of, any Financial Service Products of any organization other than Bank; (ii) license or allow others to license or use the Trademarks in relation to or for promoting any Financial Service Products of any entity other than Bank; 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 Bank. Notwithstanding anything else in this Agreement to the contrary, UM may accept print advertising from any financial institution provided that the advertisement does not contain an express or implied endorsement by UM of said financial institution or advertising for a Financial Service Product.

- (b) UM agrees to provide Bank with such information and assistance as may be reasonably requested by Bank in connection with the Program, and designates and authorizes the University of Memphis Alumni Association, which is part of UM's Department of Alumni Affairs, to perform UM's responsibilities and obligations under this Agreement on UM's behalf.
- (c) UM authorizes Bank to solicit Members by mail, direct promotion, internet, email, advertisements and/or telephone for participation in the Program. For the avoidance of doubt, Bank shall not knowingly solicit students currently enrolled at UM.
- (d) UM will have the right of prior approval of all Program advertising and solicitation materials to be used by Bank, which contains a Trademark; such approval will not be unreasonably withheld or delayed. In the event that Bank incurs a cost because of a change in the Trademarks (*e.g.*, the cost of reissuing new credit cards), Bank may deduct such costs from Royalties due UM. In the event such costs exceed Royalties then due UM, UM will promptly reimburse Bank for all such reasonable costs.
- (e) Within thirty days following the request of Bank, UM will provide Bank with the Mailing List free of any charge; provided, however, that UM will not include in any Mailing List the name and/or related information regarding any person who has expressly requested that UM not provide his/her personal information to third parties. In the event that Bank incurs a cost because of a charge assessed by UM or its agents for an initial Mailing List or an update to that list, Bank may deduct such costs from Royalties due UM. UM will provide the first Mailing List, containing at least one hundred fifteen thousand (115,000) non-duplicate names with all corresponding information, as soon as possible but no later than thirty days after UM's execution of this Agreement.
- (f) UM will, and will cause any UM Affiliates to, only provide information to or otherwise communicate with Members or potential Members about the Program with Bank's prior written approval, except for current advertising and solicitation materials provided by Bank to UM. Notwithstanding the above, UM 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 Bank to UM. Any

correspondence received by UM that is intended for Bank (*e.g.*, applications, payments, billing inquiries, etc.) will be forwarded to the Bank account executive via overnight courier within 24 hours of receipt. All charges incurred for this service will be paid by Bank.

- (g) UM hereby grants Bank and its affiliates a limited, exclusive license to use the Trademarks solely in conjunction with the Program, including the promotion thereof. This license will be transferred upon any permitted assignment of this Agreement. This license will remain in effect for the duration of this Agreement and will apply to the Trademarks, notwithstanding the transfer of such Trademarks by operation of law or otherwise to any permitted successor, corporation, organization, or individual. UM will provide Bank all Trademark production materials (*e.g.*, camera ready art) required by Bank for the Program, as soon as possible but no later than thirty (30) days after UM's execution of this Agreement. Nothing stated in this Agreement prohibits UM from granting to other persons a license to use the Trademarks in conjunction with any service or product associated with the sponsorship of events on the UM campus, except for any Financial Service Products .
- (h) UM will permit Bank to promote the Program on the University of Memphis Alumni Association home page and benefits page located within the internet site(s) of UM free of any charge. Bank may establish a hyperlink from such pages to another internet site to enable a person to apply for a Credit Card Account. Any Credit Card Accounts generated pursuant to such a hyperlink will entitle UM to the GIP compensation set forth in Schedule A, subject to the other terms and conditions of this Agreement. UM will modify or remove any reference and/or hyperlink to the Program within twenty-four hours of Bank's request. UM will provide Bank with the ability to access any and all pages within the UM internet site(s) that refer to and/or contain a hyperlink to the Program.
- (i) UM shall provide to Bank the marketing opportunities listed on Attachment #1, attached hereto and incorporated herein by reference, free of charge during each consecutive twelve month period during the term of this Agreement (each an "Annual Marketing Plan"). The parties agree that each obligation to provide each item of each Annual Marketing Plan is a material obligation of UM to Bank.

### 3. RIGHTS AND RESPONSIBILITIES OF BANK

- (a) Bank will design, develop, maintain, and administer the Program for the Members.
- (b) Bank will design all advertising, solicitation, and promotional materials with regard to the Program. Bank 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 UM.
- (c) Bank will bear all costs of producing and mailing materials for the Program.

- (d) Bank will make all credit decisions and will bear all credit risks with respect to each Customer's account(s) independently of UM.
- (e) Bank will use the Mailing Lists provided pursuant to this Agreement consistent with this Agreement and will not permit those entities handling these Mailing Lists to use them for any other purpose. Bank will have the sole right to designate Members on these Mailing Lists to whom promotional material will not be sent. These Mailing Lists are and will remain the sole property of UM. However, Bank may maintain separately all information that it obtains as a result of an account relationship or an application for an account relationship. This information becomes a part of Bank's own files and will not be subject to this Agreement; provided however that Bank will not use this separate information in a manner that would imply an endorsement by UM.
- (f) Subject to applicable law and regulation, Bank has the right to place Trademarks on gifts for individuals completing applications and on other premiums, including without limitation t-shirts, hats, "bobbleheads," or other items suitable in Bank's judgment for the solicitation of Credit Card Account applications. UM will have final approval of the use and appearance of the Trademarks used on such materials, but hereby grants Bank the right to use such approved materials at Bank's discretion. Bank will not be required to pay amounts to any third party (e.g., any producer, licensor(ee) or manufacturer of such gifts and premiums) as royalties or other compensation otherwise due directly or indirectly to or on behalf of UM or any UM Affiliate for such gifts or premiums. UM agrees that it will not require such payments from any such third party(ies) (and/or to cause the usual recipient(s) of such payments to not require such payments. If a third party should refuse to reduce the price to Bank for such gifts or premiums by the applicable amount (or any person will otherwise prevent the realization of this benefit by Bank), then Bank is entitled to deduct such applicable amount(s) from all Royalties and/or Advance payments otherwise due UM.
- (g) Notwithstanding anything contained in the Agreement to the contrary, UM acknowledges and agrees that Bank may market any financial service products or services that Bank or any Bank affiliate offers (e.g., credit cards and deposit products, collectively "Bank Products") contemporaneously with the promotion of the Deposit Accounts and that such Bank Products are not subject to this Agreement. However, Bank agrees that it shall not, when using UM's Mailing Lists for Deposits, market Bank Products (excluding "Deposits Offers", as defined below), in direct mail copy, in an e-mail or an outbound telemarketing solicitation, unless UM consents to Bank's use of the Mailing Lists for such purposes. "Deposits Offers" means any and all Deposits benefits and features and any and all other products and services that relate to or have a connection with Deposits (e.g, Online Banking and \$0 Trade).
- (h) Bank shall maintain documentation for all payments to UM or costs assessed to UM, under this Agreement. Such documentation shall be maintained during the term of this Agreement and for a period of three (3) full years from the date of final payment under this Agreement and shall be subject to review, at a time and place mutually agreed upon, by Bank and UM, or the Tennessee Comptroller of the Treasury or their duly appointed

representatives. No documentation shall be required to be produced under this provision if such production violates legal obligations of Bank under applicable statutory or regulatory law.

- (i) Bank has not and will not pay, directly or indirectly, to any officer or employee of UM as wages, compensation, or gifts in exchange for such individual acting as an officer, agent, employee, subcontractor or consultant to Bank in connection with this Agreement. Conversely, no officer or employee of UM has accepted nor will accept payment, directly or indirectly, from Bank as wages, compensation, or gifts in exchange for such individual acting as an officer, agent, employee, subcontractor or consultant to Bank in connection with this Agreement.
- (j) Bank will not pay Royalties due UM pursuant to this Agreement to any party other than UM.
- (k) Neither party shall discriminate against any individual including, but not limited to, employees or applicants for employment, and in the case of UM, students, because of race, religion, creed, color, sex, age, disability, national origin, or status as a disabled or Vietnam era veteran.

#### 4. REPRESENTATIONS

- (a) UM and Bank each represents 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 and, to the best of its knowledge, is unaware of any fact or circumstance that would preclude its ability to lawfully enter into 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 negotiation, 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) UM represents to Bank that as of the Effective Date and throughout the term of this Agreement that it has the right and power to license the Trademarks to Bank for use as contemplated by this Agreement, and to provide the Mailing List(s) to Bank for the promotion of the Program. UM further represents to Bank as of the Effective Date and throughout the term of this Agreement that there is no entity or organization other than UM that can use, license or sub-license the Trademarks in connection with promoting any Financial Service Products that has access to or that can grant access to the Mailing List in connection with promoting any Financial Service Products or that can grant marketing access to an Event in connection with any Financial Service Products. Each party shall promptly notify the other party in the manner provided herein upon learning of any claims or complaints relating to the trademark license granted hereunder or the use of any Trademarks or Mailing List(s).

5. ROYALTIES

- (a) During the term of this Agreement, Bank will pay Royalties to UM. Royalties will not be paid without a completed Schedule B (W-9 Form and ACH Form). Except as otherwise provided in Schedule A, payment of Royalties then due will be made approximately forty-five days after the end of each calendar quarter.
- (b) On or before the forty-fifth day after the end of each calendar quarter during the term of this Agreement, Bank will provide UM with a statement showing: (i) the number of consumer Credit Card Accounts opened, (ii) the number of consumer Credit Card Accounts renewed, and (iii) the retail purchase transaction dollar volume (excluding those transactions that relate to refunds, returns and unauthorized transactions), made during the preceding calendar quarter on consumer Credit Card Accounts.

6. PROGRAM ADJUSTMENTS

Bank reserves the right to make periodic adjustments to the Program and its terms and features. In addition, Customers may be offered opportunities to select credit protection as a benefit under the Program and other services.

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. Bank and UM shall be permitted to disclose such Information (i) to their accountants, legal, financial and marketing advisors, consultants, and employees (“Agents”) only to the extent necessary for the performance of their respective duties in connection with the Program, or (ii) as required by law or requested by any governmental regulatory authority. Bank and UM each agree that if the other party or the other party’s Agent discloses Information to another person or entity in violation of this Section 7, or uses such Information for a purpose not expressly permitted in this Section 7, such act by such party or such party’s Agent shall be deemed a material breach of this Agreement by such party and the non-breaching party may, in addition to any other right or remedy available at law or in equity and upon ten (10) days prior written notice to the other party, cease providing the other party with any reporting (other than the royalty report) or other information concerning the Program or the Agreement, whether or not a requirement of this Agreement. Bank acknowledges that UM is a state institution and as such is subject to the Tennessee Open Records Act. If UM receives a request to disclose Information pursuant to a proper public records request and UM, in its reasonable discretion, after consultation with Bank, determines that such Information qualifies as a public record, UM may disclose such Information. Prior to making a disclosure, UM will provide Bank with reasonable advance written notice, given its timing requirements under Applicable Law, of any such disclosure so that Bank may seek a protective order or other appropriate relief. For the purposes of this Agreement, as of the Effective Date and throughout the term of this Agreement, UM has no Agents outside of its own employees.

8. TERM OF AGREEMENT

The initial term of this Agreement will begin on the Effective Date and end seven (7) years and three (3) months thereafter (“Termination Date”). Notwithstanding the foregoing, the initial term of the Deposit Program will begin on the Effective Date and end two (2) years thereafter (“Deposit Program Initial Term”). The Deposit Program will automatically extend at the end of the Deposit Program Initial Term for additional two-year terms (“Deposit Program Renewal Term(s)”), unless either party gives written notice of its intention not to renew at least one hundred eighty (180) days prior to the scheduled expiration of the Deposit Program Initial Term or the applicable Deposit Program Renewal Term. Notwithstanding the above, (i) if the Agreement is terminated for any reason whatsoever, the term of the Deposit Program shall end simultaneously therewith, and (ii) the termination rights set forth in the Agreement may also be exercised by the applicable party to terminate the Deposit Program only.

9. TERMINATION

- (a) In the event of any material breach of this Agreement by Bank or UM, the other party may terminate this Agreement by giving notice, as provided herein, to the breaching party. This notice will (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 days after receipt of notice, as provided herein (the "Cure Period"), then this Agreement will terminate sixty days after the Cure Period.

- (b) If either Bank or UM becomes insolvent in that its liabilities exceed its assets or it is unable to meet or it has ceased paying its obligations as they generally become due, or it is adjudicated insolvent, or 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 the expiration or earlier termination of this Agreement, Bank will, in a manner consistent with Section 9(d) of this Agreement, cease to use the Trademarks. Bank agrees that with respect to the period following the expiration or earlier termination of this Agreement, it will not claim any right, title, or interest in or to the Trademarks or to the Mailing Lists. However, Bank may conclude all solicitation that is required by law.
- (d) Bank will have the right to prior review and approval of any notice in connection with, relating or referring to the expiration or earlier termination of this Agreement to be communicated by UM or any UM Affiliate to the Members. Such approval shall not be unreasonably withheld and shall relate to ensuring (i) the legal and factual accuracy of such communication and (ii) that such notice does not in Bank's reasonable opinion criticize, disparage, or impugn the reputation or character of Bank. Upon the expiration or earlier termination of this Agreement, UM will not attempt to cause the removal of UM's identification or Trademarks from any person's credit card plastics, debit cards or other account access devices, checks, statements or records of any Customer existing as of the effective date of expiration or earlier termination of this Agreement.
- (e) In the event that Applicable Law has or will have a material adverse effect on Bank's business (as determined in Bank's sole discretion) ("Adverse Event"), Bank may notify UM in writing of Bank's desire to renegotiate the terms of the Agreement to address the Adverse Event. If, within thirty (30) business days after UM's receipt of Bank's notice, the parties have not, for whatever reason, fully executed an addendum that is satisfactory to both parties, Bank shall have the right to terminate this Agreement, without penalty or liability to UM, upon ninety (90) days advance written notice.
- (f) In the event that Applicable Law has or will have a material adverse effect on UM's ability to comply with its obligations under this Agreement (as determined in UM's sole discretion) ("Adverse Event"), UM may notify Bank in writing of UM's desire to renegotiate the terms of the Agreement to address the Adverse Event. If, within thirty (30) business days after Bank's receipt of UM's notice, the parties have not, for whatever reason, fully executed an addendum that is satisfactory to both parties, UM shall have the right to terminate this Agreement, without penalty or liability to Bank, upon ninety (90) days advance written notice.

- (g) For a one year period immediately following the expiration or earlier termination of this Agreement for any reason, or in the case of termination of the Deposits Program only for a one year period immediately following the expiration or earlier termination of the Deposit Program for any reason, UM agrees that neither UM nor any UM Affiliate will, by itself or in conjunction with others, directly or indirectly, specifically target, as applicable, any offer of a credit or charge card or a credit or charge card related product, or deposit product or service similar to the Deposits, including without limitation, any checking account or debit card to persons who were Customers. Notwithstanding the foregoing, UM may, after the expiration or earlier termination of this Agreement or the Deposit Program, as the case may be, offer persons who were Customers the opportunity to participate in, as applicable, another credit or charge card program, or debit card or deposits program endorsed by UM 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 Bank, or offered any terms or incentives different from that offered to all Members.
- (h) If at any time during the term of the Agreement any change in any card network's interchange rate(s) or similar rate(s), when measured separately or together with all other rate changes since the Effective Date, has more than a de minimis adverse impact on Bank's business, as determined by Bank in its discretion ("Impact"), then Bank may notify UM in writing of Bank's desire to renegotiate the Royalties and any other financial terms in the Agreement to address the Impact. If within thirty business days after UM's receipt of Bank's notice, the parties have not, for whatever reason, fully executed an addendum that modifies the Royalties and other financial terms to address the Impact, Bank shall have the right to terminate this Agreement, without penalty or liability to UM for exercising such right of termination, upon ninety days advance written notice.

10. GROUP INCENTIVE PROGRAM

- (a) Bank will design all advertising, solicitation and promotional material with regard to the Program, except with respect to those materials designed by UM pursuant to any GIP. In that regard, UM will give Bank sixty days prior notice of its desire to engage in marketing efforts regarding the Program itself, specifying that accounts generated from such efforts will entitle UM to the Royalty specified in Schedule A, subject to the other terms and conditions of this Agreement.
- (b) All marketing materials generated as a result of such GIP programs will be coded by UM as instructed by Bank for tracking purposes. Marketing materials or telemarketing inquiries from Members which, in either case, do not contain or reference such coding will not be considered eligible for any of the GIP Royalty as set forth in Schedule A.
- (c) In addition to all other rights it may have under this Agreement, Bank will have the right of prior approval of all advertising and solicitation materials distributed by UM pursuant to any GIP. Bank will have approval and control of the scope, timing, content and continuation of any GIP.

- (d) All documented costs incurred by Bank in producing and mailing materials created pursuant to any GIP or of supporting the marketing efforts of UM pursuant to any GIP will be deducted from any or all Royalty payments due UM under this Agreement.
- (e) UM will comply with Bank'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.

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, 9(c), 9(d), 9(f) and 10(e) will survive the expiration or any earlier termination of this Agreement.
- (c) The failure of any party to exercise any rights under this Agreement will 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 will for any reason be found or held invalid or unenforceable by any court or governmental agency of competent jurisdiction, such invalidity or unenforceability will not affect the remainder of this Agreement which will survive and be construed as if such invalid or unenforceable part had not been contained herein.
- (f) All notices relating to this Agreement will be in writing and will be deemed given (i) upon receipt by hand delivery, facsimile or overnight courier, or (ii) three business days after mailing by registered or certified mail, postage prepaid, return receipt requested. All notices will be addressed as follows:

- (1) If to UM:

University of Memphis Alumni Association  
105 Alumni Center  
Memphis, Tennessee 38151

ATTENTION: Ms. Tammy Hedges  
Executive Director

Fax #: (901) 678-3035

(2) If to Bank:

FIA Card Services, N. A.  
1100 North King Street  
MS DE5-004-04-02  
Wilmington, Delaware 19884

ATTENTION: Contract Administration

Fax #: (302) 432-1821

(3) Any party may change the address and fax number 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. Without the prior written consent of Bank, which will not be unreasonably withheld, UM may not assign any of its rights and/or obligations under or arising from this Agreement. Bank may not assign its rights and/or obligations under this Agreement without the prior written consent of UM, which shall not be unreasonably withheld; provided however, that Bank may assign, without consent, any of its rights and/or obligations under this Agreement:

(i) to any individual, corporation or other entity (other than a subsidiary or an entity controlling, controlled by, or under common control with Bank (a "**Bank Affiliate**") pursuant to a sale of all or substantially all of the assets of any entity that controls Bank (other than a sale as described in subsection (ii), below) as long as such prospective buyer has substantially similar customer satisfaction standards as Bank as well as the ability necessary to fulfill the obligations and responsibilities of Bank such that UM's rights under the Agreement are not in any way adversely affected; or

(ii) to any individual, corporation or other entity (other than a Bank Affiliate) pursuant to a merger, consolidation, or a sale of all or substantially all the assets of Bank; or

(iii) to any Bank Affiliate.

Bank 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 Bank's affiliates.

- (h) Bank and UM are not agents, representatives or employees of each other and neither party will 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 will be construed to confer upon or give any person other than UM and Bank, their successors and assigns, any rights or remedies under or by reason of this Agreement.
- (j) Neither party will 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 or other labor disputes, 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 will be deemed an original, but all of which together will constitute one and the same instrument.
- (l) Tennessee Public Chapter No. 878 of 2006, TCA 12-4-124, requires that Bank attest in writing that Bank will not knowingly utilize the services of illegal immigrants in the performance of this Agreement and will not knowingly utilize the services of any subcontractor, if permitted under this Agreement, who will utilize the services of illegal immigrants in the performance of this Agreement. The attestation shall be made on the form, Attestation re Personnel Used in Contract Performance ("the Attestation"), which is attached and hereby incorporated by this reference and attached as Attachment 1.

If Bank is discovered to have breached the Attestation, the Commissioner of Finance and Administration shall declare that Bank shall be prohibited from contracting or submitting a bid to any Tennessee Board of Regents institution or any other state entity for a period of one (1) year from the date of discovery of the breach. Bank may appeal the one (1) year by utilizing an appeals process in the Rules of Finance and Administration, Chapter 0620.

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

University of Memphis

FIA Card Services, N.A.

By: Shirley C. Raine By: [Signature]  
Name: SHIRLEY C. RAINE Name: JEFFREY FINCHER  
Title: PRESIDENT Title: SVP  
Date: 9/19/08 Date: 11/5/08

The Tennessee Board of Regents signs this Agreement below to acknowledge its execution, validity and enforceability.

Tennessee Board of Regents

By: Charles W. Manning RHA  
Name: Charles W. Manning  
Title: Chancellor  
Date: 9-24-08

## SCHEDULE A

### ROYALTY ARRANGEMENT

During the term of this Agreement, Bank will pay UM a Royalty calculated as follows, for those accounts with active charging privileges. All Royalty payments due hereunder are subject to adjustment by Bank for any prior overpayment of Royalties by Bank:

#### A. CREDIT CARD ACCOUNTS

1. \$1.00 (one dollar) for each new consumer Credit Card Account opened, which remains open for at least ninety consecutive days and which is utilized by the Customer within the first ninety consecutive days of the consumer Credit Card 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.
2. \$1.00 (one dollar) for each consumer Credit Card Account for which the annual fee is paid by the Customer. If no annual fee is assessed by Bank (other than as a result of a courtesy waiver by Bank), then such Royalty will be paid for each consumer Credit Card Account which: 1) has a balance greater than zero as of the last processing day of every twelfth month after the opening of that consumer Credit Card Account; and 2) has had active charging privileges for each of the preceding twelve months.
3. 0.50% (fifty basis points) of all retail purchase transaction dollar volume generated by Customers using a consumer Credit Card Account (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, person to person money transfers, bets, lottery tickets, or casino gaming chips)).
4. \$75.00 (seventy-five dollars) for each GIP Account opened, which remains open for at least ninety consecutive days and which is utilized by the Customer within the first ninety 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.

#### B. EMERGING CREDIT CARD ACCOUNTS

Emerging Credit Card Account Royalty compensation provisions will not affect any other Royalty compensation provisions contained in the Agreement, and the Royalty compensation provisions referencing any other form of Credit Card Accounts will not apply to Emerging Credit Card Accounts.



1. \$1.00 (one dollar) for each new Emerging Credit Card Account opened, which remains open for at least ninety consecutive days and which is utilized by the Customer within the first ninety consecutive days of the Emerging Credit Card 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.
2. \$1.00 (one dollar) for each Emerging Credit Card Account for which the annual fee is paid by the Customer. If no annual fee is assessed by Bank (other than as a result of a courtesy waiver by Bank), then such Royalty will be paid for each Emerging Credit Card Account which: 1) has a balance greater than zero as of the last processing day of every twelfth month after the opening of that Emerging Credit Card Account; and 2) has had active charging privileges for each of the preceding twelve months.
3. 0.20% (twenty basis points) of all retail purchase transaction dollar volume generated by Customers using an Emerging Credit Card Account (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, person to person money transfers, bets, lottery tickets, or casino gaming chips)).
4. \$15.00 (fifteen dollars) for each Emerging Credit Card GIP Account opened, which remains open for at least ninety consecutive days and which is utilized by the Customer within the first ninety consecutive days of the Emerging Credit Card 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 Emerging Credit Card GIP Accounts will not qualify for any other opening-of-an-account Royalty.

C. EMERGING CREDIT CARD REWARD ACCOUNTS

Emerging Credit Card Reward Account Royalty compensation provisions will not affect any other Royalty compensation provisions contained in the Agreement, and the Royalty compensation provisions referencing any other form of Credit Card Accounts will not apply to Emerging Credit Card Reward Accounts.

1. \$1.00 (one dollar) for each new Emerging Credit Card Reward Account opened, which remains open for at least ninety consecutive days and which is utilized by the Customer within the first ninety consecutive days of the Emerging Credit Card Reward 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. This Royalty will not be paid for any Emerging Credit Card Account which, after opening, converts to an Emerging Credit Card Reward Account, or for any Emerging Credit Card Reward GIP Account.

2. \$1.00 (one dollar) for each Emerging Credit Card Reward Account for which the annual fee is paid by the Customer. If no annual fee is assessed by Bank (other than as a result of a courtesy waiver by Bank), then such Royalty will be paid for each Emerging Credit Card Reward Account which: 1) has a balance greater than zero as of the last processing day of every twelfth month after the opening of that Emerging Credit Reward Account; and 2) has had active charging privileges for each of the preceding twelve months. An Emerging Credit Card Reward Account may renew every twelve months after the opening of the account.
3. 0.20% (twenty basis points) of all retail purchase transaction dollar volume generated by Customers using an Emerging Credit Card Reward Account (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, person to person money transfers, bets, lottery tickets, or casino gaming chips)).
4. \$15.00 (fifteen dollars) for each Emerging Credit Card Reward GIP Account opened, which remains open for at least ninety consecutive days and which is utilized by the Customer within the first ninety consecutive days of the Emerging Credit Card Reward 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 Emerging Credit Card Reward GIP Accounts will not qualify for any other opening-of-an-account Royalty.

D. REWARD CREDIT CARD ACCOUNTS

Reward Credit Card Account Royalty compensation provisions will not affect any other Royalty compensation provisions contained in the Agreement, and the Royalty compensation provisions referencing any other form of Credit Card Accounts will not apply to Reward Credit Card Accounts.

1. \$1.00 (one dollar) for each new Reward Credit Card Account opened, which remains open for at least ninety consecutive days and which is utilized by the Customer within the first ninety consecutive days of the Reward Credit Card 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. This Royalty will not be paid for any Credit Card Account which, after opening, converts to a Reward Credit Card Account, or for any Reward GIP Account.
2. \$1.00 (one dollar) for each Reward Credit Card Account for which the annual fee is paid by the Customer. If no annual fee is assessed by Bank (other than as a result of a courtesy waiver by Bank), then such Royalty will be paid for each Reward Credit Card Account which: 1) has a balance greater than zero as of the last processing day of every twelfth month after the opening of that Reward Credit Card Account; and 2) has had active charging privileges for each of the

preceding twelve months. A Reward Credit Card Account may renew every twelve months after the opening of the account.

3. 0.20% (twenty basis points) of all retail purchase transaction dollar volume generated by Customers using a Reward Credit Card Account (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, person to person money transfers, bets, lottery tickets, or casino gaming chips)).
4. \$75.00 (seventy-five dollars) for each Reward GIP Account opened, which remains open for at least ninety consecutive days and which is utilized by the Customer within the first ninety consecutive days of the Reward 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 Reward GIP Accounts will not qualify for any other opening-of-an-account Royalty.

E. GOLD RESERVE REVOLVING LOAN ACCOUNTS

1. \$5.00 (five dollars) for each new Gold Reserve Account opened, which is utilized by the Customer for at least one transaction which is not subsequently rescinded or disputed.
2. 0.25% (twenty-five basis points) of the average of all month-end outstanding balances (excluding transactions that relate to credits and unauthorized transactions) in the calendar year for certain Gold Reserve Accounts. This payment will be calculated as of the end of each calendar year, based upon outstanding balances measured as of the end of each of the preceding calendar months of that year occurring during the term. Each monthly measurement will include outstanding balances for only those Gold Reserve Accounts which are open with active charging privileges as of the last day of such month. This Royalty will be paid within sixty days following the end of the calendar year in which it is earned.
3. \$25.00 (twenty-five dollars) for each Gold Reserve GIP Account opened, which remains open for at least ninety consecutive days and which is utilized by the Customer within the first ninety consecutive days of the Gold Reserve GIP Account's opening for at least one transaction which is not subsequently rescinded or disputed. Such Gold Reserve GIP Accounts will not qualify for any other opening-of-an-account Royalty.

F. GOLD OPTION REVOLVING LOAN ACCOUNTS

1. \$5.00 (five dollars) for each new Gold Option Account opened, which is utilized by the Customer for at least one transaction which is not subsequently rescinded or disputed.
2. 0.25% (twenty-five basis points) of the average of all month-end outstanding balances (excluding transactions that relate to credits and unauthorized transactions) in the calendar year for certain Gold Option Accounts. This payment will be calculated as of the end of each calendar year, based upon outstanding balances measured as of the end of each of the preceding calendar months of that year occurring during the term. Each monthly measurement will include outstanding balances for only those Gold Option Accounts which are open with active charging privileges as of the last day of such month. This Royalty will be paid within sixty days following the end of the calendar year in which it is earned.
3. \$25.00 (twenty-five dollars) for each Gold Option GIP Account opened, which remains open for at least ninety consecutive days and which is utilized by the Customer within the first ninety consecutive days of the Gold Option GIP Account's opening for at least one transaction which is not subsequently rescinded or disputed. Such Gold Option GIP Accounts will not qualify for any other opening-of-an-account Royalty.

G. DEPOSIT ACCOUNTS

During the term of the Deposit Program, UM will receive the Royalties set forth below for Deposit Accounts, except that Deposit Account Royalties will not be paid to UM on any consumer deposit account of Bank or Bank affiliate that is converted to the Deposit Program. However, Bank, in its sole discretion, may compensate Customers owning such converted accounts in accordance with sub-section 2 below, or otherwise.

1. \$3.00 (three dollars) for each new checking account opened under the Deposit Program which has a positive balance of at least \$50.00 (fifty dollars) as of the ninetieth day from the account opening date. An additional \$1.50 (one dollar and fifty cents) for every checking account opened under the Deposit Program that has a positive balance of at least \$50.00 (fifty dollars) on each subsequent anniversary of the account opening date. Payments will be made within forty-five days after the end of each calendar quarter.
2. 0.03 % (three basis points) of Net New Purchases (as defined below) paid within forty-five days after the end of each calendar quarter. Customers will also be eligible to participate in Bank's Keep The Change™ savings program and, subject to the rules of such savings program, will receive the Bank's standard savings match under such program.

Net New Purchases equals the sum of debit card purchase transactions on checking accounts under the Deposit Program minus (i) the sum of returns, credit vouchers and other credit adjustments, (ii) cash-back or cash withdrawals, (iii) purchases resulting from quasi-cash transactions, which are transactions convertible to cash and include the purchase of money orders, travelers checks or cards, foreign currency, cashier's checks, gaming chips and other similar instruments and things of value, (iv) purchases which relate to account funding transactions, including transfers to open or fund deposit, escrow, or brokerage accounts and purchases of stored-value cards from a bank (e.g., gift cards), and (v) any account fees or charges.

#### H. ROYALTY ADVANCES

1. Within forty-five (45) days of the Effective Date, and upon each annual anniversary of the Effective Date in years 2009 through 2014, Bank shall pay to UM the sum of one hundred thousand dollars (\$100,000) (each, an "Advance"), as an advance against future Eligible Royalties, subject to the other terms of this Section H of Schedule A. Except as otherwise provided in Section H.3, below, all Eligible Royalties accrued, shall, in lieu of direct payment to UM, be applied against each of the Advances until such time as all Advances are fully recouped. Any Eligible Royalties accrued thereafter shall be paid to UM as set forth in this Agreement.
2. Notwithstanding the foregoing, (x) Bank shall have no obligation to pay any additional Advances to UM hereunder, and (y) UM hereby promises to pay Bank upon demand an amount equal to the difference between the total amount of the Advance(s) paid by Bank and the total amount of accrued Eligible Royalties credited by Bank against such Advance(s) as of the date of such demand, if any of the conditions set forth in Clauses (i) through (v), below, occur:
  - (i) Bank terminates this Agreement prior to the Termination Date pursuant to Section 9(a) or 9(b) of this Agreement;
  - (ii) UM materially breaches any of its obligations under this Agreement and fails to cure such material breach within sixty (60) days after receipt of notice of material breach from Bank;
  - (iii) UM or any UM Affiliate prohibits or otherwise prevents Bank from conducting at least six (6) direct mail campaigns to the full updated Mailing List during each consecutive twelve month period during the term of this Agreement;
  - (iv) UM or any UM Affiliate prohibits or otherwise prevents Bank from conducting at least four (4) telemarketing campaigns to the full updated Mailing List during each consecutive twelve month period during the term of this Agreement; or

- (v) UM, any UM Affiliate, or any third party having control over any venue or facility that hosts Events (defined in Attachment #1) prohibits or otherwise prevents Bank from conducting direct promotion campaigns (e.g., tabling and postering) at such Events during each consecutive twelve month period during the term of this Agreement.
3. Notwithstanding anything contained in this Section H to the contrary, Bank shall have no obligation to pay any additional Advances to UM hereunder if any of the conditions set forth in Clauses (i) through (iv), below, occur:
- (i) The Agreement terminates prior to the Termination Date for any reason other than as specified in Section H.2, Clause (i), above;
  - (ii) Bank is prohibited or otherwise prevented for any reason, other than as specified in Section H.2, Clause (iii), above, from conducting at least six (6) direct mail campaigns to the full updated Mailing List during each consecutive twelve month period during the term of this Agreement;
  - (iii) Bank is prohibited or otherwise prevented for any reason, other than as specified in Section H.2, Clause (iv), above, from conducting at least four (4) telemarketing campaigns to the full updated Mailing List during each consecutive twelve month period during the term of this Agreement; or
  - (iv) Bank is prohibited or otherwise prevented for any reason, other than as specified in Section H.2, Clause (v), above, from conducting direct promotion campaigns (e.g., tabling and postering) at those Events specified on Attachment #1 during each consecutive twelve month period during the term of this Agreement.

In addition to the foregoing, if any of the conditions set forth in this Section H.3 occur, Bank shall have the right to continue to apply Eligible Royalties against any unrecouped portion of the last Advance that Bank paid to UM hereunder until such Advance has been fully recouped. Any Eligible Royalties accrued thereafter shall be paid to UM as set forth in this Agreement.

4. If during any given year(s) during the term of this Agreement Bank recoups all prior Advances paid by Bank to UM in prior years, and pays UM Eligible Royalties accrued by UM over and above the Eligible Royalties used by Bank to recoup such prior Advances (the "Paid Out Royalties"), then Bank may reduce the amount of any subsequent Advance(s) due by the amount of any such Paid Out Royalties. For example, if the total amount of all prior Advance(s) that Bank has paid to UM is \$100,000 and UM accrues \$150,000 in Eligible Royalties against such Advance(s), then the amount of Paid Out Royalties equals \$50,000 and Bank may reduce the amount of any subsequent Advance(s) due UM by an equivalent amount (i.e., \$50,000).

5. Except as otherwise provided in Section H.2, above, UM will have no obligation under this Section H to repay Bank for the unrecouped portion of any Advance(s) paid by Bank to UM hereunder if Bank has not fully recouped all such Advance(s) by the effective date of termination. Notwithstanding the foregoing, the parties acknowledge and agree that the remedies contained in this Section H are not exclusive and shall be in addition to any other remedy available to a party at law or in equity.
6. In the event that as of September 30, 2015 the aggregate outstanding balances on all Credit Card Accounts total at least six million four hundred thousand dollars (\$6,400,000), Bank will automatically extend the term of the Agreement for an additional three (3) years until September 30, 2018 with an increase in the Advances to one hundred twenty-five thousand dollars (\$125,000) per year during the remaining three (3) years of the Agreement. Should such automatic extension of the Agreement occur, the Guarantee Amount shall automatically be increased to one million seventy-five thousand dollars (\$1,075,000).

#### I. ROYALTY GUARANTEE

1. UM shall be guaranteed to accrue Eligible Royalties (including without limitation the amount of the Advances) equal to or greater than seven hundred thousand dollars (\$700,000) (the "Guarantee Amount") by the Termination Date, subject to the provisions set forth below and this Agreement remaining in effect through the Termination Date. If, as of the Termination Date, UM has not accrued \$700,000 in Eligible Royalties, Bank will pay UM an amount equal to the Guarantee Amount minus the sum of all Eligible Royalties accrued by UM under this Agreement and the amount of any unrecouped Advance(s). Notwithstanding the foregoing, this Guarantee Amount and any obligation of Bank hereunder shall be expressly contingent upon the non-occurrence of any of the conditions set forth in Sections H.2 or H.3, above. For example, assuming the non-occurrence of any of the conditions set forth in Sections H.2 or H.3, above, if as of the Termination Date, Bank has paid to UM Advances totaling \$700,000 and UM has accrued Eligible Royalties against such Advances in the amount of \$500,000 then UM will have earned the Guarantee Amount and Bank will have no further obligation to pay Eligible Royalties hereunder [ $\$700,000 - (\$500,000 \text{ (accrued Eligible Royalties)} + \$200,000 \text{ (unrecouped Advances)}) = \$0.00$ ] and UM will have no obligation to repay Bank for the unrecouped portion of any Advance(s) paid by Bank to UM hereunder.

Attachment #1

MARKETING OPPORTUNITIES

In accordance with Section 2(i) of this Agreement, UM shall provide the following to Bank at no additional cost:

- (a) Necessary access during each consecutive twelve month period during the term of the Agreement for Bank to conduct direct promotion campaigns for the Program at major University of Memphis Alumni Association events including without limitation University of Memphis Alumni Association events held in conjunction with UM athletic events (each, an "Event").
- (b) The parties shall mutually agree upon the number and placement of locations from which Bank may conduct a direct promotion campaign at each Event (each, a "Location"). Notwithstanding the foregoing, the parties agree to prominently display each Location at each Event.
- (c) Passes to all Bank employees and agents that are conducting the direct promotion campaign.
- (d) Reasonable vehicular access to the facility in which Bank will be conducting the direct promotion campaign. Such vehicular access shall to the extent possible provide the Bank vehicle a convenient position, in relation to each Location, before and after the event to unload/load.
- (e) Any issues concerning direct promotion campaigns not specifically mentioned in this Agreement will be mutually agreed upon by Bank and UM and both parties agree to be reasonable.