

## **AFFINITY CARD ROYALTY AGREEMENT**

THIS AFFINITY CARD ROYALTY AGREEMENT ("Agreement") is made and entered into as of the 09 day of September 2014 (the "Effective Date"), by and between **The University of South Alabama National Alumni Association** ("Association"), a Non-Profit Corporation organized in the State of Alabama, and **Commerce Bank** ("Commerce"), a Missouri bank and trust company.

**WHEREAS**, Association and Commerce desire to make available to the Association community (membership, employees, friends, trustees, officers, faculty, and staff), (hereinafter referred to collectively as "Members"), a Visa credit card upon the terms and conditions hereinafter set forth; and

**WHEREAS**, Association and Commerce desire that the marketing plans for the Visa credit card using Association Licensed Trademarks to be developed by the parties as hereinafter set forth will accomplish the respective goals of the parties;

**NOW, THEREFORE**, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the parties hereto as follows:

### **ARTICLE 1. Services**

1.1 Commerce shall open revolving credit accounts ("Association Accounts") and issue Visa Commerce Cards ("Association Visa Rewards Card") to individual Members of Association whose applications have been solicited under the terms of this Agreement and whose credit has been approved by Commerce and to whom a credit card has been issued (individually, an "Accountholder" and collectively "Accountholders"). The Association Visa Rewards Card shall be issued in accordance with the specifications generally described in Attachment "A" and as developed during the Initial Term and any Renewal Term of this Agreement. It is understood and agreed that Commerce will not solicit, nor is it under any obligation to accept or approve, individuals who reside outside of the United States of America or in states within the United States of America which have, or may have during the Initial Term or any Renewal Term of this Agreement, laws limiting, hindering or detrimentally affecting the solicitation of credit card accounts or the terms and conditions thereof or limitations on the provision of other financial services, all as determined by Commerce in its sole discretion.

1.2 The Association Visa Rewards Card shall be customized to include, as provided in this Agreement, Association's Licensed Trademarks as the parties may jointly agree in writing to utilize them on said cards from time-to-time.

1.3 Commerce agrees that all uses of Association's Licensed Trademarks on the Association Visa Rewards Card will bear proprietary trademark rights notices of Association as Association may reasonably direct.

1.4 Association understands and agrees that the terms and conditions of any credit relationship between the Accountholders and Commerce will be governed by a Cardholder Agreement.

1.5 Association understands and agrees that Commerce may from time-to-time during the Initial Term or any Renewal Term of this Agreement use third-party service providers to undertake, fulfill or complete its obligations pursuant to this Agreement. It is further understood and agreed that any such third-party service providers must agree to protect the Confidential Information and Confidential Customer Information entrusted to it, either by separate confidentiality agreement or as a part of a service contract.

## **ARTICLE 2. Acknowledgments, Representations and Agreements**

2.1 Association expressly acknowledges ownership of the mark "Visa" by Visa, U.S.A. and agrees that it will do nothing inconsistent with Visa's ownership of such mark.

2.2 Association represents that it is the owner of the Licensed Trademarks as hereafter described in Article 7 and that it presently has the exclusive authority to authorize the use of each of such Licensed Trademarks for the uses and purposes contemplated by this Agreement; further, Association represents that Commerce may regard this representation as a continuing representation by Association of its exclusive authority to authorize the use of each Licensed Trademark throughout the Initial Term and any Renewal Term of this Agreement, including Licensed Trademarks developed or created by Association during the Initial Term or any Renewal Term of this Agreement. Association agrees to provide, if requested, written evidence, satisfactory to Commerce, of the authority to authorize the use of such trademarks as Association intends to use in conjunction with the Association Visa Rewards Card and of any trademark rights notices required when such trademarks are used. In the event Association is not the owner of all or some of the Licensed Trademarks, Association agrees to provide, for each such Licensed Trademark owned by another person, an authenticated document from the owner of those trademarks to establish that Association has authority to use those Licensed Trademarks and, further, has continuing authority to authorize the use of the Licensed Trademarks with respect to the affinity cards and marketing materials associated with the promotion of affinity cards pursuant to this Agreement.

2.3 Association represents that the use of any of the Licensed Trademarks by Commerce as authorized herein by Association will not infringe upon or violate the patent, copyright or any other proprietary interest of any third party.

2.4 Association represents that disclosure by Association to Commerce of confidential or non-confidential information in its files pertaining to Association Members will not violate any law, regulation, restriction or contractual prohibition against disclosure by Association of such information. Association further acknowledges and agrees that it is authorized to disclose and make available to Commerce such member information, including but not limited to, names, addresses, e-mail addresses, etc. for the uses and purposes contemplated herein.

2.5 Association agrees that Commerce is, by the terms of this Agreement, authorized and permitted the non-exclusive use of approved, specified Association Licensed Trademarks in order to provide the Association Visa Rewards Card and any Enhancements thereto and for no other purposes except as provided in Section 5.4. Commerce agrees that it will obtain prior written approval, which approval will not be unreasonably withheld, conditioned or delayed, from Association for the specific use of the Association Licensed Trademarks on the Association Visa Rewards Card and any Enhancements. Association shall have the right to inspect the quality of goods and services provided under its mark and the right to inspect samples of how the trademark is used to assure that the quality of goods and services provided under the Association Licensed Trademarks is in accordance with the usage previously approved by Association pursuant to this paragraph, and in accordance with Association's industry quality standards. Commerce agrees to cooperate with Association in facilitating Association's control of the nature and quality of goods and services provided under the Association Licensed Trademarks.

2.6 Commerce and Association each warrants and represents that as of the date hereof and during the Initial Term or any Renewal Term of this Agreement:

a. it has and shall have the rights and power to enter into and perform all its obligations under this Agreement;

b. its proposed activities hereunder do not and shall not infringe any laws, regulations or other applicable codes of practice or procedural or regulatory requirements or the rights of any third party; and

c. it holds and shall hold any and all necessary licenses required under, and has otherwise complied and shall comply in all material respects with the requirements of all applicable statutes, laws and regulations applicable to the arrangements contemplated by this Agreement.

2.7 Commerce acknowledges that it shall be solely responsible for ensuring the truth and accuracy of all statements, warranties and representations of any kind about or relating to Commerce or its associates, or their business, products or services, made or included, expressly or impliedly, by Commerce or with its prior written consent, whether in any advertising, solicitation, promotional or publicity materials or editorials, or otherwise.

2.8 Association acknowledges and agrees that certain federal and state consumer protection laws and regulations prohibit, restrict or limit the solicitation or issuance of consumer credit cards to students, underage persons and others (collectively, the "Protected Consumers") as described in the Credit Card Accountability and Disclosure Act of 2009 and implementing regulations. Association further acknowledges and agrees that no Protected Consumers are, or are intended to be, included in the group identified herein as Members who may be identified or solicited to apply for a consumer credit card under this Agreement. Association agrees it will not provide to Commerce the names of any such Protected Consumers under this Agreement and Association agrees it will not, in any way, solicit or promote the Association Visa Rewards Card to any such Protected Consumers. As such, Association acknowledges and agrees that it will at all times comply with the provisions of the Truth-in-Lending Act (15 U.S.C.A. §1601 et seq.), the Credit Card Accountability and Disclosure Act of 2009 (Pub L. No. 111-24, 123 Stat. 1734 (2009)), the Fair Credit Reporting Act (15 U.S.C.A. 1681 et seq.), and the regulations adopted thereunder, as such acts or regulations may now exist or as may hereafter be amended, including such provisions for interpretation and enforcement of such acts and regulations by the Bureau of Consumer Financial Protection ("CFPB") or by any state agency enforcing state laws or regulations for the protection of consumers.

2.9 Association acknowledges that it shall be solely responsible for ensuring the truth and accuracy of all statements, warranties and representations of any kind about or relating to Association or its associates, or their business, products or services, made or included, expressly or impliedly, by Association or with its prior written consent, whether in any advertising, solicitation, promotional or publicity materials or editorials, or otherwise.

### **ARTICLE 3. Compensation and Reporting**

3.1 Commerce agrees that during the term of this Agreement Association shall earn and be paid Compensation in U.S. Dollars ("USD") in accordance with the rates, terms and provisions contained in Attachment "B".

3.2 Commerce shall provide Association with quarterly statements that set forth in sufficient detail such information regarding the Association Visa Rewards Card that forms the basis for calculating the amount of Compensation earned by Association according to the rates, terms and provisions of

Attachment "B". Association understands and acknowledges that Compensation will be calculated based upon dates or time periods when various transactions are reported to Commerce and processed through normal accounting cycles which dates or time periods may be different than the actual date of the particular transaction giving rise to entitlement to payment or fee.

3.3 Commerce shall keep and maintain true, correct, and complete books of account and records regarding the Association Visa Rewards Card that form the basis for the calculation of Compensation due Association. Such records for each calendar year during the term of this Agreement shall be kept and maintained for at least twelve (12) months after the end of each such year. Association shall have the right, upon written notice to Commerce, at any reasonable time during regular business hours of Commerce and at Commerce's offices in Kansas City, Missouri, to examine, inspect, and audit all such books and records, and all such other papers and files of Commerce relating to the performance of this Agreement, except as is limited or prohibited by law or regulation.

3.4 No Compensation shall be earned by Association as of and after the effective date of termination of this Agreement; provided, however, Compensation earned prior to such termination shall be payable to Association as provided in Attachment "B".

3.5 Association agrees to review the quarterly statements of Compensation earned provided to it by Commerce and to promptly report any errors or irregularities regarding the calculation, reporting or payment of Compensation and, in no event, later than one (1) year after the date of such statement. Failure to report any irregularities within one (1) year from the date of the quarterly statement is a presumption that such statement is correct. Association understands and acknowledges that Commerce loses the ability to completely reconstruct transactions after twelve (12) months from the date of the transaction, including an inability to retrieve supporting documentation and that such inability to reconstruct transactions may impede an audit should Association elect to perform such an audit from time-to-time. Association agrees that the inability of Commerce to reconstruct transactions or to retrieve supporting documentation after twelve (12) months from the date any transaction shall not, in and of itself, be a basis upon which Association can assert a claim for additional or adjusted Compensation.

Upon reasonable notice, Commerce will allow Association, at its expense, to audit the books and records of Commerce to determine any inaccuracies in the payment of Compensation due Association. A copy of any audit performed by Association will be furnished to Commerce upon its request. If any audit performed by Association, or on Association's behalf, identifies an overpayment by Commerce in Compensation for any period, Association agrees to reimburse Commerce or permit Commerce to reduce the amount of future Compensation payments to recoup the amount of the overpayment or if any audit performed by Association, or on Association's behalf, identifies an underpayment by Commerce in Compensation for any period, Commerce agrees to reimburse Association the amount of the underpayment.

#### **ARTICLE 4. Term of Agreement; Termination Provisions**

4.1 The Initial Term of this Agreement shall commence on the Effective Date and continue for a term of three (3) years (the "Initial Term"). At the expiration of the Initial Term of this Agreement, it shall automatically renew for successive one hundred twenty (120) day periods (each a "Renewal Term") unless either party notifies the other in writing at least ninety (90) days prior to the expiration of the Initial Term of this Agreement or prior to the expiration of any Renewal Term, that it is terminating and canceling this Agreement.

4.2 This Agreement shall supersede and replace all co-branded and/or Affinity Group Bank Card Agreements between the parties, if any, entered into prior to the Effective Date.

4.3 Regardless of the termination of this Agreement, any Association Visa Rewards Card issued before such termination may continue to be held and used by Accountholders until the stated expiration date of those credit cards.

4.4 In the event of termination of this Agreement, all Association Accounts shall remain the exclusive property of Commerce, including its right to future receivables thereon without any obligation on part of Commerce to pay Royalties thereon. Notwithstanding the termination of this Agreement or the transfer of the Association Accounts, Commerce may thereafter solicit and offer credit card accounts or other financial services to Accountholders.

4.5 Either party may, upon thirty (30) days written notice, terminate this Agreement if: (1) a party fails to comply with or to perform any term, obligation, covenant or condition contained in this Agreement; or (2) a material adverse change occurs in a party's financial condition; or (3) commencement of proceedings, whether voluntary or involuntary, is begun for the dissolution or termination of a party's existence as a going business, the insolvency of a party, the appointment of a receiver for any part of a party's property, the assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against a party; or (4) commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, is begun by any creditor of a party or by any governmental agency against any of a party's property.

4.6 In the event that any of the following occurs: (1) a change in federal or state law (or in the interpretation or application thereof), applicable to this Agreement; (2) any new or revised legislation or regulations applicable to this Agreement become effective; or (3) a regulatory enforcement action with respect to legislation, regulations, or instructions applicable to this Agreement is commenced, and, in any such cases, only if such event affects the legality of any portion of this Agreement, then either party may by written notice to the other party hereto, propose an amendment (including the severance of any illegal provisions of this Agreement) to this Agreement to address such event. If notice of a proposed amendment is given and the parties are unable to agree upon the amendment within ninety (90) days after receipt of such notice, then either party may terminate this Agreement by giving thirty (30) days written notice to the other, unless a sooner termination is required by law.

## **ARTICLE 5. Accountholder Terms and Benefits**

5.1 (a) Commerce agrees to provide certain features and enhancements to Association Accountholders which shall include the minimum Visa standards for product enhancements associated with the Visa product category (collectively, the "Enhancements") and shall be available **only** for such period of time as the related services are available to Commerce and its cardholders from third party processors and providers. Without limiting the generality of the foregoing, Enhancements are subject to cancellation or change by Commerce at any time, with or without prior notice. Commerce reserves the right to add, delete, modify or withdraw Enhancements or change the specific features of any such Enhancements from time-to-time during the Initial Term and any Renewal Term of this Agreement. It is understood and agreed that from time-to-time one or more of the Enhancements offered by Commerce to the Accountholders are provided by third parties unrelated to Commerce and that such Enhancements,

including the availability and cost thereof to Commerce, may change from time-to-time and any such Enhancements may be added, deleted, modified or withdrawn in the sole discretion of Commerce.

(b) In addition to the Enhancements, Association Accountholders will participate in the Commerce rewards program generally available to individuals under affinity cards issued by Commerce.

5.2 Commerce may add, delete, modify or withdraw specific Enhancements to the Association Accounts during the Initial Term or any Renewal Term of this Agreement or during the term of any Accountholder Agreement with an Accountholder after providing written notification to affected Accountholders and Association as may be required by law or regulation.

5.3 Commerce agrees to have available for Accountholders a non-exclusive toll-free telephone number for use by any Accountholder to report and resolve a service complaint, lost or stolen credit cards or to make inquiry calls regarding a credit card account.

5.4 Commerce and its affiliates are authorized and permitted from time-to-time to offer to Accountholders financial services and products and to refer to the existence of the Association Visa Rewards Card in connection therewith, which reference may include depictions of the Association Visa Rewards Card or the Association Licensed Trademarks subject however to the provisions of Article 9, below.

#### **ARTICLE 6. Marketing Efforts**

6.1 Association agrees to cooperate with Commerce to actively market the Association Visa Rewards Card through commercially viable means including, at Association's expense, but not limited to: (1) e-mail and/or e-blast message on an annual basis to all Association Members to solicit potential Accountholders and make them aware of the Association Visa Rewards Card and its benefits; (2) the prominent placement of internet advertisements and Web links on the official Association internet website in order to direct applicants to a Association Visa Rewards Card application internet Web page located at Commerce or with its service provider throughout the Initial Term and any Renewal Term; (3) encouraging Accountholders to utilize the Association Visa Rewards Card once issued; (4) distribution of Association Visa Rewards Card solicitation materials and applications to potential Accountholders through, but not limited to, the new Member benefit welcome package, Member benefit renewal package and on social media and web advertising; and (5) advertising in various Association publications, magazines, periodicals and newsletters, as applicable. Association agrees that it will obtain prior written approval from Commerce for the use of all marketing materials, including the form and content of such marketing materials as well as the proposed media to be utilized, relating to the promotion of the Association Visa Rewards Card (including the use of bank's name, logo, trademarks, etc.) developed by or for Association in any marketing effort whether or not such marketing is contemplated by or undertaken pursuant to this Agreement.

6.2 Where appropriate, Association shall provide, at its expense, subject to prior approval by Commerce, artwork for card design, statements, applications and other collateral materials specifically associated with the sales, support, marketing and servicing of the Association Visa Rewards Card.

6.3 Commerce shall be responsible for all expenses associated with Commerce's Enhancements, except for those expenses for which Association shall be responsible as set forth in this Agreement or for any instance of special actions requested by Association, such as special mailings, additional postage,

special printouts or other similar actions, which are not part of Commerce's Routine Operations and not provided for herein (collectively, "Special Actions"). "Routine Operations" is defined herein as those activities performed in the usual conduct of acquiring, issuing, servicing, billing, funding and collecting credit card loans. Association shall reimburse Commerce for the direct costs of any such Special Actions requested by Association and, if requested by Commerce, Association shall deposit an amount reasonably requested by Commerce, in advance, to cover such anticipated direct costs.

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## **ARTICLE 7. Association Licensed Trademarks**

7.1 Association "Licensed Trademarks" means Trademarks (if any) consisting of designs, images, visual representations, logos depicting the name or likeness of the Association or the college or university with which it is affiliated provided to Commerce by Association for licensing in the United States of America in relation to credit card programs.

7.2 All art for the program material, including cards, advertising or solicitation materials, which contain one or more Licensed Trademarks must be provided by Association. Association will provide such art at no charge to meet the reasonable requirements of Commerce hereunder. All art which Association provides to Commerce, in whatever media and for whatever purpose, shall be promptly returned to Association upon the request of Association, except for art reasonably required for authorized current production of cards or advertising or solicitation materials. Commerce acknowledges that all such art is proprietary to Association, may only be used for Commerce's authorized activities under this Agreement, and Commerce agrees that such art shall not be delivered to or made available for use by any third party, unless such third party is required to assist Commerce in the fulfilling of its obligations under this Agreement.

7.3 Upon termination of this Agreement, Commerce shall cease to use the Association Licensed Trademarks. Commerce agrees that upon such termination it will not claim any right, title, or interest in or to the Association Licensed Trademarks. Upon termination of this Agreement, Commerce shall not attempt to cause the removal of Association's identification or Licensed Trademarks from any person's credit devices or records of any customer existing as of the effective date of termination of this Agreement. Commerce agrees that it will not seek or obtain any trademark or other protection or take any other action, which might affect Association's ownership of any of the rights in the Licensed Trademarks. Commerce understands and agrees that its use of the Licensed Trademarks shall inure to Association's exclusive benefit and that Commerce will not acquire any rights by virtue of any use Commerce may make of the Licensed Trademarks, other than as specifically set out in this Agreement.

7.4 Commerce agrees that all uses of the Licensed Trademarks shall bear such proprietary trademark rights notices of Association as Association may reasonably direct. All rights not specifically granted by Association are reserved.

7.5 Commerce "Licensed Trademarks" means Trademarks consisting of designs, images, visual representations, logos depicting the name or likeness of Commerce provided to Association by Commerce for licensing in the United States of America in relation to the Association Visa Rewards Card.

7.6 All art for the program material, including those materials which contain one or more Commerce Licensed Trademarks must be provided by Commerce. Commerce will provide such art at no charge to meet the reasonable requirements of Association hereunder. All art which Commerce provides to Association in whatever media and for whatever purpose, shall be promptly returned to Commerce

upon the request of Commerce, except for art reasonably required for authorized current production of approved marketing materials. Association acknowledges that all such art is proprietary to Commerce may only be used for Association's authorized activities under this Agreement, and Association agrees that such art shall not be delivered to or made available for use by any third party, unless such third party is required to assist Association in the fulfilling of its obligations under this Agreement.

7.7 Upon termination of this Agreement, Association shall cease to use the Commerce Licensed Trademarks. Association agrees that upon such termination it will not claim any right, title, or interest in or to the Commerce Licensed Trademarks. Upon termination of this Agreement, Association shall not attempt to cause the removal of Commerce's identification or Licensed Trademarks from any person's credit devices, checks or records of any Commerce customer existing as of the effective date of termination of this Agreement. Upon termination of this Agreement, Association agrees that it will no longer publish, distribute or authorize the use of any marketing or other material bearing any Commerce Licensed Trademark. Association agrees that it will not seek or obtain any trademark or other protection or take any other action, which might affect Commerce's ownership of any of the rights in the Commerce Licensed Trademarks. Association understands and agrees that its use of the Commerce Licensed Trademarks shall inure to Commerce's exclusive benefit and that Association will not acquire any rights by virtue of any use Association may make of the Commerce Licensed Trademarks, other than as specifically set out in this Agreement.

7.8 Association agrees that all uses of the Commerce Licensed Trademarks shall bear such proprietary trademark rights notices of Commerce as the Commerce may reasonable direct. All rights not specifically granted by Commerce are reserved.

#### **ARTICLE 8. Proprietary Property**

8.1 Both parties individually acknowledge and agree that the other party has and owns or uses certain names, trade names, trademarks, symbols, copyright marks, logos, designs, service marks, signs, processes, procedures and trade secrets (collectively, the "Proprietary Property") at the Effective Date and that each party may have access to or possession of such Proprietary Property during the Initial Term or a Renewal Term of this Agreement; and each further acknowledges and agrees that any Proprietary Property developed by the other party during the Initial Term or any Renewal Term of this Agreement shall, at all times be considered, held and included in the collective definition of Proprietary Property and will be owned by and remain the Proprietary Property of the other party during the term of this Agreement and at all times thereafter. Except as otherwise specifically provided in this paragraph, each party will at all times, both during and after the term of this Agreement, retain sole right, title and interest in and to all Proprietary Property created by it prior to entering into or during the Initial Term or any Renewal Term of this Agreement.

8.2 With respect to the Proprietary Property of the other party, each party agrees: (1) certain portions of the Proprietary Property are confidential and agrees to protect the confidentiality of all such Proprietary Property of the other party in its possession as Confidential Information; (2) it will not disseminate any Proprietary Property without the written authorization of the other party except in order to fulfill its obligations under this Agreement; (3) it will not remove or alter any copyright, trademark or other proprietary rights notice from any materials furnished to it in connection with this Agreement; (4) to promptly advise the other party in writing of any misappropriation or misuse by any person of any Proprietary Property that may come to its attention and agrees that it shall reasonably cooperate with the other party to regain possession of any Proprietary Property or prevent the further unauthorized use of



such Proprietary Property; (5) not to use the Proprietary Property for its own use or for any purpose other than to perform the terms of this Agreement; (6) to include, as appropriate, any and all copyright, trademark or other proprietary rights notices on material it prepares or uses in conjunction with the Proprietary Property; and (7) upon written request, to surrender all Proprietary Property in its possession to the other party at the end of the term of this Agreement without further notice or demand. Association and Commerce agree that Proprietary Property to be treated as confidential pursuant to this Article does not include any Proprietary Property which: (a) is or becomes publicly known or readily ascertainable by the public, through no wrongful act of the other party, or (b) is disclosed to a third party by the other party without similar restriction.

## **ARTICLE 9. Confidentiality.**

### **Part A: Confidential Information**

9.1 “Confidential Information” shall mean any processes, procedures, or business information furnished by one party to the other in connection with this Agreement, whether orally or in writing or in electronic form. Such Confidential Information shall include, without limitation, the existence and terms of this Agreement, trade secrets, business or financial information, product and marketing plans, and customer and supplier information. All Confidential Information disclosed to the other party is deemed to be confidential, restricted and proprietary to the disclosing party.

9.2 The party receiving Confidential Information of the other party must provide the same care to avoid disclosure or unauthorized use of the Confidential Information as it provides to protect its own similar confidential information, but in no event less than commercially reasonable care.

9.3 All Confidential Information, unless otherwise agreed in writing, (a) shall not be copied, distributed, disclosed, or disseminated in any way or form by receiving party without the prior written consent of the disclosing party; (b) shall be used by the receiving party only in connection with the performance of its obligations under this Agreement, unless otherwise consented to in writing by the disclosing party; (c) shall remain the property of and be returned together with all copies of such information, to the disclosing party or destroyed after the receiving party’s need for it has expired or upon request of the disclosing party, and, in any event, upon expiration or termination of this Agreement. At the request of the disclosing party, the receiving party will furnish a certificate of an officer of the receiving party certifying that Confidential Information not returned to disclosing party has been destroyed. Notwithstanding the above, the receiving party may retain a copy of the Confidential Information for regulatory reasons.

9.4 The parties agree that the term “Confidential Information” does not include information which (a) has been or may in the future be published or is now or may in the future be otherwise in the public domain through no fault of the receiving party; (b) prior to disclosure pursuant to this Agreement is property within the legitimate possession of the receiving party; (c) subsequent to disclosure pursuant to this Agreement is lawfully received from a third party having rights in the information without restriction of the third party’s right to disseminate the information and without notice of any restriction against its further disclosure; (d) is independently developed by the receiving party through parties who have not had access to such Confidential Information; or (e) is obligated to be produced under order of a court of competent jurisdiction or other similar requirement of a governmental agency.

Part B: Confidential Customer Information

9.5 The parties agree that the term “Confidential Customer Information” as used herein shall mean all nonpublic personal information as that term is used in the Gramm-Leach-Bliley Act (“GLB”), (15 U.S.C. §§6801-6809 ) all “consumer information” as that term is used in the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”) (15 U.S.C. §1681 et seq.) and any and all privacy regulations, guidelines and interpretations thereof adopted pursuant thereto by the appropriate regulatory authorities. A “Commerce Customer” as used herein includes an Accountholder.

9.6 While it is contemplated that Association will neither be furnished nor receive Confidential Customer Information, should Association come into possession of any Confidential Customer Information, Association agrees that it will not use or disclose such Confidential Customer Information that it receives or obtains from Commerce other than is necessary to carry out the purposes of this Agreement.

9.7 Association agrees that it will not disclose any Confidential Customer Information to any third-party except those who have a need to know and only to enable Association to provide the services under this Agreement and only to such third parties who have assumed confidentiality obligations consistent with those provided for herein.

9.8 Association agrees that it has in place certain security measures to protect the Confidential Customer Information and further agrees that it will implement such additional security measures and use such additional care as may be required to continually preserve and protect the Confidential Customer Information of Commerce’s Customers throughout the term of the Agreement and for such time beyond the term of the Agreement as it has in its possession any Confidential Customer Information of Commerce’s Customers.

9.9 Association agrees, as it deems reasonably required, to train its employees and staff regarding the need to keep the Confidential Customer Information of Commerce’s Customers from being used or disclosed other than for purposes of fulfilling the Agreement and to continually monitor its procedures, safeguards and training to protect the Confidential Customer Information.

9.10 Association agrees to notify Commerce immediately upon discovery of any loss, unauthorized use or improper disclosure of Confidential Customer Information and to notify Commerce of any demand, including any form of legal proceeding or process, made upon it for access to or disclosure of any Confidential Customer Information.

9.11 Association agrees that Commerce has the right to periodically review the security measures employed by Association to determine or verify Association’s compliance with its obligations under this Agreement and the right to pursue whatever legal remedies it has, including seeking equitable relief, to enforce the provisions hereof.

9.12 Association agrees to indemnify Commerce from and against all claims, demands, losses, damages, liabilities, lawsuits, costs and expenses, including attorneys fees, asserted against or incurred by, Commerce or for which Commerce is exposed for any loss, unauthorized use or improper disclosure of Confidential Customer Information due to the actions, inactions or negligence of Association.

9.13 When disposing of any Confidential Customer Information, whether upon termination of

this Agreement or as otherwise directed by Commerce, Association agree to either return to Commerce the media upon which such Confidential Customer Information is stored by Association, whether in a tangible or electronic form, or destroy the media in such a manner so that the information cannot be read or reconstructed.

#### Part C: General Provisions

9.14 The parties agree that monetary damages will be difficult to ascertain in the event of any breach of this Section, and that monetary damages alone would not be sufficient to compensate a party for such breach. The parties agree that in the event of violation of this Article, without limiting any other rights and remedies, an injunction may be brought against any party who has breached or threatened to breach this Article, without the requirement to post bond.

9.15 The obligations in this Article 9 shall survive the termination of this Agreement and will remain an obligation of each party.

#### **ARTICLE 10. Indemnity**

10.1 (a) Association hereby agrees that it shall defend, indemnify, and hold harmless Commerce and its affiliates, subsidiaries, directors, officers, employees, agents, and representatives from and against any and all liability, claims, damages, judgments, settlements, demands, fees, costs, and expenses (including reasonable attorney fees) to the extent that the same are the result of the negligence or willful misconduct of Association, its agents, employees or representatives, or arising out of the performance or non-performance by Association of its obligations under this Agreement. Upon becoming aware of a claim or potential claim covered by this indemnification provision, Commerce shall promptly notify Association thereof in writing. Association shall, at all times, have sole control over the defense, negotiation, settlement, and appeal strategy of any claim or suit. Commerce shall be entitled to participate in the defense of such claim or suit with separate counsel, but at Commerce's own expense. Association shall cause Commerce to be kept fully apprised of all material developments in the defense of any such claim or suit.

(b) Association agrees that it shall defend, indemnify, and hold harmless Commerce and its affiliates, subsidiaries, directors, officers, employees, agents, and representatives from and against any and all Losses arising out of or connected with any third party Infringement Claim based on the use or sale of the services, products, programs, systems, and/or materials ("Product"). "Infringement Claim" means any claim or action asserting that Commerce infringes, violates, or misappropriates any patent, copyright, trademark, trade dress, trade secret, or other alleged proprietary right. "Losses" means all costs, expenses, damages, and liabilities, including, but not limited to, compensatory damages, enhanced damages, attorneys' fees, and other losses including, without limitation, court costs, reasonable attorney fees and disbursements and the expenses of enforcing this provision. The covered Losses include any costs or losses caused by the entry of an injunction, including any costs associated with posting a bond during appeal, replacement costs, or business interruption losses.

10.2 Association shall have no liability to Commerce or any Accountholder for any of the operating or credit functions of the Association Accounts, including any responsibility for Accountholder delinquency or Accountholder disputes with Commerce.

10.3. The parties agree that the provisions of this Article 10 shall survive the termination of this

Agreement.

**ARTICLE 11. Exclusive Provider**

During the Initial Term or any Renewal Term of this Agreement, Association agrees that Commerce will be the exclusive provider of the Association Visa Rewards Card to Accountholders and potential Accountholders and that Association will not enter into any agreements which will be effective prior to the termination of this Agreement with any other person or company to offer, or make available, to any existing or potential Accountholders any charge card or open revolving credit card accounts, nor enter into any agreement with any other company which is in the nature of a royalty payment agreement for the marketing or solicitation of charge card or revolving credit card accounts.

**ARTICLE 12. Notices**

Except for invoices and billing related communications, any notice required or permitted to be given hereunder by either party to the other shall be in writing, shall be deemed given and effective when, (a) hand delivered; (b) three (3) Business Days following deposit if sent by first class or certified United States mail, postage prepaid, or (c) one (1) Business Day following deposit with any recognized overnight courier that produces written evidence of delivery, addressed as follows:

(a) To Association at:

The University of South Alabama National Alumni Association  
Office of Alumni Relations  
5930 USA Drive S.  
Mobile, Alabama 36688-0002  
Attention: Karen Edwards

(b) To Commerce at:

Commerce Bank  
c/o Commerce BankCard Center  
811 Main Street, 12th Floor  
P.O. Box 13607  
Kansas City, Missouri 64199  
Attention: Chad Doza

or at any other address that may be given by one party to the other by notice pursuant to this Article.

**ARTICLE 13. Business Day**

The term "Business Day" means a day on which commercial banks are open in the State of Missouri.

**ARTICLE 14. Force Majeure**

Any party's delay in, or failure of, performance under this Agreement shall be excused where such delay or failure is caused by an act of nature, fire, or other catastrophe, enemy, hostile governmental or terrorist action, electrical, computer software or mechanical failure, work stoppage, delays or failure to act of any carrier or agent, direction or effect of an order from a court or government agency or body, or

any other such cause beyond a party's direct control. Any party seeking to be excused for a delay in performing any obligation due to force majeure must promptly notify the other party of the same, exercise reasonable efforts to minimize the delay in performing such obligation, and to keep the other party regularly apprised of its efforts and expected resolution of the cause for the delay.

#### **ARTICLE 15. Assignment**

This Agreement may not be assigned by either party without prior written consent of the other party; provided, however, such consent shall not be required in the event this Agreement, or any rights or obligations hereunder, is assigned by a party to a person or entity which is an Affiliate of that party; provided, further, that, the assignee's financial condition is substantially similar to (or better than) the financial condition of the assigning party and the scope of the services is not materially altered. This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and permitted assigns. An Affiliate of, or person affiliated with, a specified party shall mean a person that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

#### **ARTICLE 16. Severability**

If any provision, or portion thereof, of this Agreement is invalid under applicable statute or rule of law, it is only to that extent to be deemed omitted.

#### **ARTICLE 17. Waiver**

No provision of this Agreement shall be deemed waived, amended, or modified by either party unless such waiver, amendment or modification is in writing and signed by the party against whom it is sought to enforce the waiver, amendment or modification. A single waiver by a party shall not act as, nor shall it be deemed to constitute, an ongoing waiver of the same provision.

#### **ARTICLE 18. Amendment**

This Agreement may be amended only by an instrument in writing, executed by Association and Commerce.

#### **ARTICLE 19. Governing Law**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Missouri.

#### **ARTICLE 20. Waiver of Jury Trial**

Each party to this Agreement hereby waives the right to any jury trial in any action, proceeding, or counterclaim brought by one party against any other party.

#### **ARTICLE 21. Entire Agreement**

This Agreement and the Attachments A and B incorporated herein constitutes the entire agreement between Commerce and Association.

**IN WITNESS WHEREOF**, this Agreement has been executed the day and year first written above.

Commerce Bank

By: Chad Doza

Name: Chad Doza

Title: Sr. Vice President

The University of South Alabama  
National Alumni Association

By: Karen Edwards

Name: Karen Edwards

Title: Executive Director

**ATTACHMENT "A"**  
**ASSOCIATION VISA REWARDS CARD**

1. Qualified Members of Association will be issued an Association Visa Rewards Card with one or more Association Licensed Trademarks included on the face of the cards, as approved by Visa, U.S.A., as appropriate.

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2. Subject to the terms of the Cardholder Agreement, Commerce shall make available a card with an interest rate to be determined at time of credit underwriting based on statistically valid determinants of credit risk derived during the credit underwriting process. The precise terms and conditions of the Cardholder Agreement will be consistent with rates and terms offered on other Commerce co-branded and affinity credit card products.

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3. All credit decisions, including but not limited to the initial approval of accounts, the establishment of credit lines and the closing of accounts, shall be within the exclusive discretion of Commerce.

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4. As the grantor of credit, Commerce assumes all credit risks and reserves the right to modify pricing set forth in paragraph 2, above, consistent with its underwriting criteria, prevailing economic and market forces, and the laws and regulations which apply.

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5. The Cardholder Agreement, which governs the terms of credit extension and which is provided to Accountholders at the time of issuance of an Association Visa Rewards Card will reflect the terms provided herein; except nothing contained herein shall preclude Commerce from including in such Cardholder Agreement its standard contractual terms including, without limitation, those terms relating to liability, default, cancellation, governing law, calculation of finance charge, payment application, surrender and other terms as appropriate.

**ATTACHMENT "B"**  
**COMPENSATION**

Commerce shall pay Association Compensation as follows:

1. Royalty fees:

a. For the period commencing on the Effective Date and continuing to the second annual anniversary of the Effective Date, a royalty fee ("Royalty") will be paid which is equivalent to the product of 10.8% of Commerce's most recently calculated Visa net interchange rate for the Visa Rewards Card multiplied by the total of Net Merchandise Purchases generated each month by the use of open, non-Statused Association Accounts (as of the Effective Date, equivalent to twenty cents (\$.20) per one hundred dollars (\$100.00) of Net Merchandise Purchases);

b. For the period commencing on the first annual anniversary of the Effective Date and on each subsequent annual anniversary of the Effective Date thereafter, a Royalty will be paid based upon the percentage set forth in the table below corresponding to the Annual Net Merchandise Purchases on Association Accounts for the preceding twelve (12) months (which percentage will be fixed until the next annual anniversary of the Effective Date) multiplied by the total of Net Merchandise Purchases generated each month by the use of open, non-Statused Association Accounts:

<u>Annual Net Merchandise Purchases</u>			<u>Percentage of Visa net interchange</u>
\$0	-	\$4,999,999	10.8%
\$5,000,000	-	\$14,999,999	13.5%
\$15,000,000	-	\$29,999,999	16.2%
\$30,000,000	-	\$49,999,999	18.9%
\$50,000,000	+		21.6%

The Visa net interchange rate is an internal rate calculated by Commerce for each rewards card program based upon Visa interchange income for each rewards card program as related to all accountholder total purchase volume for each rewards card program, with such rate generally recalculated each January 1 and July 1. Merchandise returns, credits and amounts in dispute are deducted from Accountholder total purchase volume to reach "Net Merchandise Purchases." "Merchandise Purchases" refers to transactions for goods or services, and excludes cash advances and quasi-cash transactions, such as, but not limited to, traveler's checks, convenience checks, wire transfers, money orders, balance transfers and gaming chips or fees or premiums for coverage or insurance to protect the balances of an Accountholder's account. As used in this Agreement, a "Statused" account is one that is lost, stolen, credit-revoked, closed, bankrupt, charged-off, over-limit and/or delinquent.

2. Commerce shall pay Association a fee for each new Association Account opened and Active (an "Active" account is one that is newly opened and activated, that is, a Association Account on which a Member initiated debit transaction, i.e., a purchase, balance transfer, cash advance or convenience check occurs within ninety (90) days of account opening), compensation ("New Account Fee") of thirty-five dollars (\$35.00) for each Active Association Account.



- a. Commerce and Association may jointly agree upon account marketing channels from time-to-time during the Initial Term or any Renewal Term of this Agreement, including, but not limited to, promotional advertising that does not contain a written application, or other marketing messages.
  - b. Marketing channels and strategies generating fees to Association for accounts produced through such channels and strategies may be discontinued by Commerce, in its sole discretion, if the average application approval rate produced by that strategy or channel for any three (3) consecutive months is less than fifteen percent (15%) per month. The approval rate is the number of all applications which are approved for an Association Account, using Commerce's normal credit approval processes, divided by the total number of applications received through the respective channel or strategy.
  - c. No New Account Fee will be due Association for newly activated Association Accounts acquired by Commerce pre-screened and/or direct mail efforts nor through Commerce branch advertisements/solicitations or through telephone solicitation or other marketing efforts initiated by Commerce.
  - d. Commerce may also decline to provide compensation to Association for an Association Account booked from any channel if the Accountholder has previously been issued a Association Visa Rewards Card as described in this Agreement or in cases of actual or suspected abuse, fraud, violations of any Commerce program or any actual or suspected abuse or fraud with respect to the credit card account.
3. Association shall not conduct any new account generation activity nor produce any credit card product or account related print, electronic or other material without the express oversight and approval of Commerce.