

WRIGHT STATE UNIVERSITY ALUMNI ASSOCIATION  
AFFINITY CREDIT CARD AGREEMENT

This agreement is entered into as of this   6   day of   October  , 2021, (the “Effective Date”) by and between WRIGHT-PATT CREDIT UNION a state-chartered credit union having its principal place of business at 3560 Pentagon Boulevard, Beavercreek, Ohio (“CU”), and the WRIGHT STATE UNIVERSITY ALUMNI ASSOCIATION, an alumni association having its principal place of business at 2455 Executive Park Blvd., Fairborn, Ohio (“WSUAA”) for themselves, and their respective successors and assigns.

WHEREAS, CU and WSUAA have agreed to engage in an affinity program pursuant to which CU shall provide certain financial services to certain persons included in certain lists provided to CU by or on behalf of WSUAA in exchange for certain compensation paid to WSUAA; and

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

I. DEFINITIONS

When used in this Agreement,

- (a) “Agreement” means this Agreement, together with any schedules and exhibits attached hereto, as amended from time to time.
- (b) “Credit Card Account” means a credit card account opened by a Member in response to marketing efforts (i) made pursuant to the Program and (ii) that include the Licensed Trademarks.
- (c) “Customer” means any member who is a participant in the Program.
- (d) “Financial Services Products” means Credit Card Accounts and all other financial products and services as mutually agreed by CU and WSUAA from time to time.
- (e) “Licensed Lists” means updated and current lists (in an industry-standard format designed or provided by CU) containing names, postal addresses and, when available, telephone numbers and electronic mail addresses or reasonably selected membership characteristics.
- (f) “Licensed Trademarks” means any and all designs, images, visual representations, logos, service marks, trade dress, trade names, and trademarks set forth in Exhibit A to this agreement (which is hereby incorporated by reference) and any design, image, visual representation, logo, service mark, trade dress, trade name, or trademark used or acquired by WSUAA during the term of this agreement.
- (g) “Member” means members of the WSUAA and alumni of Wright State University.
- (h) “Program” means the Financial Services Products CU agrees to offer pursuant to this Agreement to the Members from time to time.
- (i) “Royalties” means the compensation set forth in Schedule B (which is hereby incorporated by reference).

## II. RIGHTS AND RESPONSIBILITIES OF WSUAA

- (a) WSUAA recognizes and agrees that during the term of this Agreement: (i) it will endorse the Program exclusively and will not sponsor, advertise, aid, develop, or solicit any Financial Service Products of any organization other than CU; and (ii) it will not license or allow other persons or entities to license the Licensed Trademarks in relation to or for promoting any Financial Service Products of any person or entity other than CU; and (iii) it will not sell, rent, or otherwise make available or allow other persons or entities 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 person or entity other than CU. Notwithstanding anything else in this agreement to the contrary, WSUAA may accept advertising from any financial institution provided that the advertisement does not contain an express or implied endorsement by WSUAA of said financial institution or the advertised Financial Service Product.
- (b) WSUAA agrees to provide CU with such information and assistance as may be reasonably requested by CU in connection with the Program.
- (c) Subject to the other provisions of this Agreement, WSUAA authorizes CU to solicit Members by mail, direct promotion, advertisements, telephone, electronic mail, and other methods as mutually agreed to by WSUAA and CU for participation in the Program.
- (d) WSUAA shall have the right to prior review of CU's proposed uses of WSUAA's logos for conformity with WSUAA and Wright State University standards; such review shall be completed within 30 days of the logo being provided to WSUAA. Approval shall not be unreasonably withheld or delayed and any expenses associated with such review shall be paid for by WSUAA. In the event the CU incurs a cost because of a change in Trademarks, such as the cost of reissuing new credit cards, the CU may deduct such costs from Royalties due WSUAA. In the event the costs are greater than the Royalties, WSUAA will promptly reimburse the CU for such costs. However, WSUAA shall not be required to bear such costs if WSUAA (i) provides the CU with at least one hundred twenty (120) days advance notice of such change, (ii) permits the CU to exhaust its existing inventories of applications, marketing materials and plastics with respect to the Program, and (iii) does not require or request the CU to issue replacement credit cards that bear the new or altered trademark.
- (e) WSUAA shall have the right of prior approval of all Program advertising and solicitation materials, including the timing of solicitations, to be used by CU, which contain WSUAA's Trademark; such review shall be completed within 30 days of submission to WSUAA. Approval shall not be unreasonably withheld or delayed and any expenses associated with such review shall be paid for by WSUAA.
- (f) Upon the request of CU at any time during the term of this Agreement, but not more than once in a 30 day period, WSUAA shall provide CU with then-current Licensed Lists free of any charge. In the event that CU incurs a cost because of a charge assessed by WSUAA or its agents for an initial Licensed List or an update to that list, CU may deduct such costs from Royalties due WSUAA.
- (g) WSUAA shall only provide information to or otherwise communicate with Members or potential Members about the Program with CU prior written approval, except for current advertising and solicitation materials provided by CU to WSUAA. Notwithstanding the above, WSUAA may respond to individual inquires 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 CU to WSUAA. Notwithstanding anything to the contrary set forth in this Agreement, CU shall hold WSUAA and its employees, members, agents, and contractors harmless for any information provided to any third-party regarding the Program that is in error, where such erroneously conveyed information is the result of innocent error and not willful intent. Any correspondence received by WSUAA that is intended for CU

(i.e. applications, payments, billing inquiries, etc.) shall be forwarded to the CU account executive within 24 hours.

- (h) WSUAA hereby grants CU and its affiliates a limited, exclusive license to use the Trademarks solely in conjunction with the Program, including the promotion thereof. This license shall be transferred upon assignment of this Agreement. This license shall remain in effect for the duration of this Agreement and shall apply to the Trademarks, notwithstanding the transfer of such Trademarks by operation of law or otherwise to any permitted successor, corporation, organization or individual. Nothing in this Agreement prohibits WSUAA from granting to other persons a license to use the Licensed Trademarks in conjunction with the provision of any other service or product except for any Financial Service Products.
- (i) WSUAA shall make program materials available at member events.
- (j) WSUAA shall ensure a link (using a graphic link mutually acceptable to CU and WSUAA) to CU's web page promoting the Program shall be placed and maintained in a prominent location on the web site of WSUAA.
- (k) WSUAA's official web site will provide a hyperlink and acknowledgement of alumni benefits offered through CU.
- (l) Annually, WSUAA will provide CU with a list of events that CU can choose to sponsor and provide CU with first right of refusal to sponsor any event where sponsorship is still available. The details of events will be provided at a later date, once confirmed. The CU may elect to choose one or more events, upon agreement of both parties.

### III. RIGHTS AND RESPONSIBILITIES OF CU

- (a) CU shall design, develop, and administer the Program for the Members.
- (b) CU shall design all advertising, solicitation, and promotional materials with regard to the Program. CU reserves the right of prior written approval of the scope, timing, and content of advertising and solicitation materials concerning or related to CU or the Program which may be developed by or on behalf of WSUAA.
- (c) CU shall bear all costs of producing and mailing all advertising, solicitation and promotional materials, initiated by CU, for the Program. Costs from any production or mailing of advertising, solicitation and promotional materials initiated by WSUAA will be the responsibility of WSUAA, unless other arrangements have been agreed to by CU.
- (d) CU shall make all credit decisions and shall bear all credit risks with respect to each Customer's account(s) independently of WSUAA. CU shall make all decisions regarding any Credit Card Accounts, including, but not limited to, the rates, terms, approval, termination and all other matters related to such Credit Union Accounts.
- (e) CU shall use the Licensed Lists provided pursuant to this Agreement consistent with this Agreement and shall not permit any persons or entities handling these Licensed Lists to use them for any other purpose. CU shall have the sole right to designate Members on these Licensed Lists to whom promotional material will or will not be sent. These Licensed Lists are and shall remain the sole property of WSUAA. However, CU may maintain separately all information which it obtains from any person on any Licensed List as a result of an account/credit/membership relationship or an application for an account/credit/membership relationship; such separate information becomes a part of CU's own files and shall not be considered Confidential Information pursuant to Section VII of this

Agreement and shall not be subject to this Agreement, provided, however, that CU will not use this separate information in a manner that would imply an endorsement by WSUAA.

- (f) CU may utilize the services of any third party in fulfilling its obligations under this agreement, provided that CU shall remain bound by this Agreement as to all such obligations.
- (g) CU shall provide marketing copy and graphics for WSUAA's use in promoting the Program on Facebook, Twitter, and other online social networking in which WSUAA participates.

#### IV. REPRESENTATION AND WARRANTIES

- (a) WSUAA and CU each represents and warrants to the other that as of the Effective Date and throughout the term of this Agreement:
    - (1) It is duly organized, validly existing, and in good standing.
    - (2) It has all necessary power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.
    - (3) 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.
    - (4) No consent, approval, or authorization from any third party is required in connection with the execution, delivery, and performance of this Agreement, except such as have been obtained and are in full force and effect.
    - (5) 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.
    - (6) It shall comply with all applicable laws and regulations in performance of all its duties and obligations under this Agreement.
  - (b) WSUAA represents and warrants to CU as of the date hereof and throughout the term of this Agreement that it has the right and power to license the Licensed Trademarks to CU for use as contemplated by this Agreement. WSUAA will indemnify and hold CU, its directors, officers, agents, employees, affiliates, successors, and assigns harmless against all liability, causes of action and claims, and will reimburse CU's reasonable and actual costs in connection therewith, arising from the Licensed Trademark license granted herein or from CU's use of the Licensed Trademarks in reliance thereon. Each party shall promptly notify the other party in the manner provided herein upon learning of any claims or complaints relating to such license or the use of any Licensed Trademarks.
- #### V. ROYALTIES
- (a) During the term of this Agreement, CU shall pay Royalties to WSUAA as set forth in Schedule B. Except as otherwise provided in Schedule B, payment of Royalties then due shall be made within forty-five (45) days after the end of each calendar quarter.

- (b) On or after the forty-fifth (45<sup>th</sup>) day after the end of each calendar quarter during the term of the Agreement, CU will provide WSUAA with a statement showing the number of Credit Card Accounts opened and the retail purchase dollar volume (excluding those transactions that relate to refunds, returns, and unauthorized transactions), made during the preceding calendar period.

## VI. PROGRAM ADJUSTMENTS

A summary of the current features of the Program are set forth in Schedule A (which is hereby incorporated by reference). CU reserves the right to make periodic adjustments to the Program and its terms and features including, without limitation, all terms and conditions of all Credit Card Accounts. If CU wishes to provide any Financial Service Product as part of the Program for which no Royalties are specified in Schedule A, CU shall not commence to provide such new Financial Service Products until Schedule B has been amended by mutual agreement of CU and WSUAA to provide for Royalties related to such Financial Service Products.

## VII. CONFIDENTIALITY OF AGREEMENT

The terms of this Agreement, the Licensed Lists, and 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. CU and WSUAA shall be permitted to disclose such Information (i) to the accountants, legal, financial, and marketing advisors, and employees as necessary for the performance of their respective duties, provided that said persons agree to treat the Information as confidential in the above-described manner; and (ii) as required by law or by any governmental regulatory authority.

Pursuant to Federal Law and Regulation, any Information provided to either party is provided only to allow them to perform the services necessary under this Agreement, to process and/or service a transaction, or as required by Federal and/or State Law and/or Regulation. Once such Information is received by either party, whether it is directly or indirectly through an affiliate, the party may not disclose it to any person that is not affiliated with either the CU or WSUAA, unless the disclosure would be lawful if made directly by the disclosing party.

Each party agrees to restrict access to all Information received to employees who need to know this Information to provide products or services pursuant to this Agreement. The parties agree to maintain physical, electronic and procedural safeguards that comply with federal regulations, to provide at least the same degree of care in protecting the other party's Information as such party provides for its own Information, but in no event less than a reasonable degree of care, and totake any other appropriate measures to guard nonpublic personal Information to protect the confidentiality and security of the Information shared pursuant to this Agreement. The parties shall ensure that any non-affiliated third party in receipt of this Information will be bound by a written agreement containing provisions substantially similar to those contained in this Agreement. The parties agree to promptly notify one another in the event either is under the reasonable belief that the integrity of the confidentiality of this Information has been compromised.

## VIII. TERMS OF AGREEMENT

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

## IX. GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of Ohio (without regard to its conflict of laws principles). Any disputes regarding this Agreement shall be within the jurisdiction of the courts of Greene County, Ohio. If legal action is necessary to enforce this Agreement or collect any amounts owing under this Agreement, the prevailing party has the right, subject to applicable law, to payment by the other party of all reasonable attorney's fees and costs, including fees on any appeal and any post-judgment collection actions. The parties agree that such legal action shall be filed and heard exclusively in Greene County, Ohio, except as prohibited by applicable law.

## X. TERMINATION

- (a) In the event of any material breach of this Agreement by CU or WSUAA, the other party may terminate this Agreement by giving notice, as provided herein, to the breaching party. This notice shall (i) describe the material breach, and (ii) state the party's intention to terminate this Agreement. If the breaching party does not cure or substantially cure such breach within sixty (15) days after receipt of notice, as provided herein (the "Cure Period"), then this Agreement shall terminate thirty (30) days after the Cure Period.
- (b) Should the products and services described and offered in this Agreement become illegal or otherwise regulated through Truth in Lending or other government regulations which significantly or materially change the rights and responsibilities of the parties, then either party shall have the right to immediately terminate this Agreement.
- (c) If either CU or WSUAA becomes insolvent in that its liabilities exceed its assets, or 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.
- (d) Upon termination of this Agreement, CU shall, in a manner consistent with Section X(d) of this Agreement, cease to use the Licensed Trademarks. CU agrees that upon such termination it will not claim any right, title, or interest in or to the Licensed Trademarks or to the Licensed Lists provided pursuant to the Agreement. However, CU may conclude all solicitation that is required by law. CU shall not be required to remove WSUAA's identification or Licensed Trademarks from any person's credit cards, credit devices, check or records of any Customer existing as of the effective date of termination of this Agreement.
- (e) CU shall have the right to prior review and approval of any notice in connection with, relating or referring to the termination of this Agreement communicated by WSUAA to the Members. Such notice shall be factually accurate, and CU's approval shall be limited to remarks that could be considered disparaging to CU, its affiliates, the Program, or the Agreement. Upon termination of this Agreement, WSUAA shall not attempt to cause the removal of WSUAA's identification or Licensed Trademarks from any person's credit cards, credit devices, checks or records of any Customer existing as of the effective date of termination of this Agreement.

## XI. INDEMNITY

Except as otherwise expressly stated in this Agreement and as allowed by law, each party to this Agreement ("Indemnitor") shall indemnify and hold the other party ("Indemnitee") harmless from and against any and all losses, claims, damages, liabilities, regulatory or civil actions, costs or expenses (including any attorneys' fees or other expenses reasonably incurred by any Indemnitee in connection with investigating any claim against Indemnitee and defending any action and any amounts paid in settlement or compromise) that arise out of or are based upon (a) the failure of Indemnitor,

its officers, employees or agents to conform to the statutes, ordinances and other regulations and requirements of any governmental authority in connection with performance of this Agreement, (b) the willful misconduct or negligence of Indemnitor, its officers, employees and agents, and (c) any breach by Indemnitor, its officers, employees or agents of any term, condition, warranty, representation or any other portion of this Agreement. Indemnitor's duties as set forth in this paragraph shall survive termination of this Agreement for any reason.

## XII. 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 IV, VII, X(c), X(d), and XI shall survive any termination of this Agreement.
- (c) The failure of any party to exercise any rights under this Agreement shall not be deemed a waiver of such right or any other rights. Waiver by either party of any breach or default by the other party of the terms of this Agreement shall not be deemed to nor shall the same constitute a waiver of any subsequent breach or default by the other party.
- (d) The section captions are inserted only for convenience and are in no way to be construed as part of this Agreement.
- (e) If any part of this Agreement shall for any reason be found or held invalid or unenforceable by any court or governmental agency of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Agreement which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.
- (f) All notices relating to this Agreement shall be in writing and shall be deemed given (i) upon receipt by hand delivery, facsimile, or overnight carrier, or (ii) three (3) business days after mailing by registered or certified mail, postage prepaid, return receipt requested. All notices shall be addressed as follows:

- (1) If to Wright State University Alumni Association:

Wright State University  
Office of Alumni Relations  
2455 Executive Park Blvd.  
Fairborn, Ohio 45324

ATTENTION: Greg Sharer, Executive Director

- (2) If to Wright-Patt Credit Union:

Wright-Patt Credit Union  
3560 Pentagon Blvd.  
Beavercreek, OH 45431

ATTENTION: Eric Bugger, Chief Lending Officer

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

- (g) CU and WSUAA are not agents, representatives, or employees of each other, and neither party shall have the power to obligate or bind the other party in any manner except as otherwise expressly provided by this Agreement. Both parties are and shall be independent contractors with respect to the terms, provisions and operation of this Agreement. Nothing contained herein and no act done pursuant to the Agreement is intended to or shall be construed to create a partnership, joint venture, employment, principle –agent, or similar relationship between CU and WSUAA.
- (h) Neither party may assign this Agreement or any rights or obligations thereunder without the written consent of the other party.
- (i) This Agreement shall be binding upon and is an agreement only by and between CU and WSUAA and their successors and assigns as permitted by this Agreement. No other persons or party shall be a beneficiary hereof or have any rights hereunder, and no rights or remedies are conferred by this Agreement upon any other person or party.
- (j) This agreement contains a complete, final, exclusive and fully integrated 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. Each of the parties acknowledges that it has not executed this Agreement in reliance upon any promise, representation, or warranty not contained herein.
- (k) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (l) The parties hereby agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this contract.
- (m) .

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

Wright State University  
Alumni Association


By:   
Signature

Print Name: Greg Scharer

Title: Executive Director

Date: Oct. 6, 2021

Wright-Patt Credit Union

By:   
Signature

Print Name: Eric Bugger

Title: Chief Lending Officer

Date: Sept. 28, 2021



## EXHIBIT A – LICENSED TRADEMARKS

[INSERT ALL NAMES AND IMAGES OF ALL INTENDED NAMES, LOGOS, MARKS, ETC' OF THE ALUMNI ASSOCIATION]

Wright State University Alumni Association  
Wright State University Office of Alumni Relations  
WSU Alumni Association  
WSUAA

## SCHEDULE A – PROGRAM FEATURES

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

### A. LOW RATE PLATINUM CREDIT CARD ACCOUNTS

1. Each Credit Card Account will be a VISA Platinum Card.
2. There is no annual fee.
3. There is no balance transfer fee.
4. No cash advance fee.
5. The current Credit Card Account rates range from 6.25% to 14.25% as of September 27, 2021.
6. The current annual percentage rate will be a variable rate based on Prime Rate (which is 3.25% as of the Effective Date of this Agreement). When calculating the rate for each Customer, CU will base the rate on its Risk Based Pricing Model as outlined below:

<u>FICO Score Range</u>	<u>Margin</u>	<u>Customer Rate</u>
710 and up	3.00%	6.25%
680 to 709	5.00%	8.25%
650 to 679	7.00%	10.25%
600 to 649	9.00%	12.25%
599 and lower	11.00%	14.25%

### B. PLATINUM REWARDS CREDIT CARD ACCOUNTS

1. Each Credit Card Account will be a VISA Platinum Card.
2. There is no annual fee.
3. There is no balance transfer fee.
4. No cash advance fee.
5. Credit Card accounts shall include the Breakaway rewards points program for cash back dollars.
6. The current Credit Card Account rates range from 9.25% to 17.25% as of September 27, 2021.
7. The current annual percentage rate will be a variable rate based on Prime Rate (which is 3.25% as of the Effective Date of this Agreement). When calculating the rate for each Customer, CU will base the rate on its Risk Based Pricing Model as outlined below:

<u>FICO Score Range</u>	<u>Margin</u>	<u>Customer Rate</u>
710 and up	6.00%	9.25%
680 to 709	8.00%	11.25%
650 to 679	10.00%	13.25%
600 to 649	12.00%	15.25%
599 and lower	14.00%	17.25%

## SCHEDULE B – ROYALTIES

- A. During the term of this Agreement, CU will pay by check to WSUAA twenty percent (20%) of all interchange income earned by CU on retail purchases by Members using Credit Card Accounts. On or before the forty-fifth (45<sup>th</sup>) day after the end of each calendar quarter during the term of this Agreement, CU will (1) make payment to WSUAA of the Royalties earned during the previous calendar quarter and (2) provide WSUAA with a statement showing the Credit Card Accounts retail purchase dollar volume, the interchange fee income earned by CU on such purchase volume and the WSUAA Royalties calculated on such interchange income.

