

**AMENDED AND RESTATED  
AFFINITY AGREEMENT  
WAKE FOREST UNIVERSITY**

This Agreement is entered into as of this 1<sup>st</sup> day of July, 2014 (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 Wake Forest University, an educational institution having its principal place of business in Winston-Salem, North Carolina ("WFU"), for themselves and their respective successors and assigns.

WHEREAS, WFU and Bank are parties to that certain affinity agreement dated October 18, 1996, as the same may have been amended ("Original Agreement"), wherein Bank provides certain financial services to certain persons included in certain lists provided to Bank by or on behalf of WFU; and

WHEREAS, WFU and Bank are parties to that certain marketing agreement dated July 1, 2008, as the same may have been amended ("Marketing Agreement"); and

WHEREAS, the Original Agreement and the Marketing Agreement each will terminate simultaneously with the Effective Date of this Amended and Restated Affinity Agreement ("Agreement"); and

WHEREAS, WFU and Bank mutually desire to amend, restate and supersede the Original Agreement and the Marketing Agreement through this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, WFU 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:

**"Affiliate"** means, with respect to any entity or organization, any other entity or organization directly or indirectly controlling, controlled by, or under common control with such entity or organization. The term "controlling," "controlled by" and "under common control with" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies, whether through the ownership of voting securities, by contract or otherwise.

**"Agreement"** means this affinity agreement and Schedules A through 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.

**“Credit Card Account”** means an open-end consumer credit account opened pursuant to the Program that is accessed utilizing a card, plate and/or any other device or instrument. A **“Student Credit Card Account”** is a Credit Card Account opened through an application coded by Bank as a student application.

**“Credit Card Program”** means those credit card programs and services, and the promotion thereof, Bank agrees to offer pursuant to this Agreement to the Members from time to time.

**“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.

**“Deposit Program”** means those Deposits and related programs and services, and the promotion thereof, Bank agrees to offer pursuant to this Agreement to the Members from time to time.

**“Financial Service Product”** means any credit card program, charge card program, debit card program, installment loan program, revolving line of credit or loan program, deposit program, travel and entertainment card program or the functional equivalent of any such product, and any other financial service programs or products.

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

**“Group Incentive Program”** or **“GIP”** means any credit card marketing or program whereby WFU conducts and funds solicitation efforts for credit card products offered under the Program, and the parties mutually agree that such marketing or other program shall constitute a GIP.

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

**“Marketing List”** means an updated and current list (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 other than student Members who are at least eighteen years of age, segmented by zip codes or other mutually selected membership characteristics.

**“Member”** means (i) WFU alumni and/or (ii) other potential participants mutually agreed to by WFU and Bank.

**“Premium Reward Account”** means a Credit Card Account carrying a Premium Reward Enhancement.

**“Premium Reward Enhancement”** means a premium Reward Enhancement as provided through Bank and offered as part of the Program. A Premium Reward Enhancement may be

marketed under a name (e.g., BankAmericard Cash Rewards™), as determined by Bank from time to time, in its sole discretion.

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

**“Program”** means those programs and services, and the promotion thereof, of the Financial Service Products Bank agrees to offer pursuant to this Agreement to the Members from time to time.

**“Program Trademarks”** means any design, image, visual representation, logo, service mark, trade dress, trade name, or trademark developed either jointly or by either party (including its Affiliates) during the term of this Agreement and used to promote or identify products or services offered by Bank through the Program. Program Trademarks may but need not necessarily consist of a WFU Trademark, with or without other elements.

**“Reward Account”** means a Credit Card Account carrying a Reward Enhancement.

**“Reward Enhancement”** means a reward enhancement as provided through Bank and offered as part of the Program. A Reward Enhancement may be marketed under a name (e.g., World Points), as determined by Bank from time to time, in its sole discretion.

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

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

**“WFU Affiliate”** means any entity or organization directly or indirectly controlled by, or under common control with WFU. The term “controlled by” and “under common control with” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies, whether through the ownership of voting securities, by contract or otherwise.

**“WFU Trademarks”** means any design, image, visual representation (including any font), logo, service mark, trade dress, trade name, or trademark used or acquired by WFU or any WFU Affiliate prior to or during the term of this Agreement.

## 2. RIGHTS AND RESPONSIBILITIES OF WFU

- (a) WFU agrees that during the term of this Agreement it will endorse the Program exclusively and that neither WFU nor any WFU 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 entity other than Bank; (ii) license, allow others to license, or use or allow to exist the use by others of the WFU Trademarks 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. In addition, if WFU or any WFU Affiliate sells any product or service, in connection with such sales, WFU shall not, and shall cause WFU Affiliates not to, favor any payment product or method of payment over any payment product or method of payment offered under the Program. Notwithstanding anything else in this Agreement to the contrary, WFU may accept print advertising from any financial institution provided that the advertisement does not contain an express endorsement by WFU of said financial institution's Financial Service Product.

- (b) Bank acknowledges that WFU may entertain the offering of certain non-endorsed financial service products ("Certain Non-Endorsed FSPs") through certain financial institutions ("Certain FI") in the future at on-campus and athletics facilities. Therefore, notwithstanding anything in this Agreement to the contrary, such offerings will not be construed to violate the exclusivity obligations of Section 2(a), nor prohibit WFU from allowing a Certain FI to provide Certain Non-Endorsed FSPs at such facilities; provided, however, that WFU will not: (x) provide to or permit any Certain FI to use WFU Trademarks set forth on Schedule \_\_, and any successor or replacement trademark to such Trademark, in relation to or dedicated to the promotion of Certain Non-Endorsed FSPs; and/or (y) provide lists of Members to any Certain FI for the purpose of enabling it to solicit such Members for Financial Service Products, as same is defined in this Agreement. Furthermore, any such offering of Certain Non-Endorsed FSPs shall carry neither the express nor implied endorsement of WFU.
- (c) Notwithstanding the foregoing, Bank acknowledges that and BB&T Bank have a contractual arrangement whereby BB&T Bank owns the naming rights to WFU's football field. As a result of this arrangement BB&T Bank has exclusive rights to market its non-endorsed financial services products (credit cards, debit cards and deposits) within the football stadium grounds at WFU football games. As delineated herein as of the Effective Date, Bank agrees this relationship shall not be deemed to violate the exclusivity obligations described in Section 2(a) above. Further, Bank acknowledges the relationship between the city of Winston-Salem, owner of WFU's basketball arena, the Lawrence Joel Veterans Memorial Coliseum ("Joel Coliseum") and Wells Fargo Bank. Pursuant to that agreement, Wells Fargo Bank has rights to market its non-endorsed financial service products (credit cards, debit cards and deposits) through signage and tabling promotions at Joel Coliseum. As delineated herein as of the Effective Date, Bank agrees that this relationship with Wells Fargo, as well as any successor financial institution chosen by the city of Winston-Salem provided the promotion within Joel Coliseum occurs as described herein, shall not be deemed to violate the exclusivity obligations described in Section 2(a).
- (d) WFU agrees to provide Bank with such information and assistance as may be reasonably requested by Bank in connection with the Program.
- (e) WFU authorizes Bank to solicit Members by mail, direct promotion, internet, email, advertisements, banking centers, telephone or any other means for participation in the Program. Notwithstanding the foregoing, nothing contained herein shall prohibit or prevent Bank from fulfilling a WFU student's request for a Financial Service Product under the Program.
- (f) WFU will have the right of prior approval of all Program advertising and solicitation materials to be used by Bank that contain a WFU Trademark; such approval will not be unreasonably withheld or delayed. In the event that Bank incurs a cost because of a change in the WFU Trademarks (e.g., the cost of reissuing new credit cards), Bank may deduct such reasonable costs

from any Royalties due WFU. In the event such costs exceed Royalties then due WFU, if requested by Bank, WFU will promptly reimburse Bank for all such costs.

- (g) At least once annually and within thirty (30) days following the request of Bank, WFU will provide Bank with the Marketing List free of any charge; provided, however, that WFU will not include in any Marketing List the name and/or related information regarding any Member who has expressly requested that WFU not provide his/her personal information to third parties. In the event that Bank incurs a cost because of a charge assessed by WFU or its agents for an initial Marketing List or an update to the Marketing List, Bank may deduct such costs from Royalties due WFU. WFU will provide the first Marketing List, containing the required information for at least fifty thousand (50,000) non-duplicate Member names, as soon as possible but no later than thirty (30) days after WFU's execution of this Agreement.
- (h) WFU will, and will cause any WFU 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 WFU. Notwithstanding the above, WFU 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 WFU. Any correspondence received by WFU that is intended for Bank (*e.g.*, applications, payments, billing inquiries, etc.) will be forwarded to the Bank account executive via overnight courier within twenty-four (24) hours of receipt. All reasonable overnight courier expenses incurred by WFU will be paid by Bank.
- (i) WFU hereby grants Bank and its Affiliates a limited, exclusive license to use the WFU Trademarks solely in conjunction with the Program. This license transfers to the assignee of this Agreement. This license will remain in effect for the duration of this Agreement and will apply to the WFU Trademarks, notwithstanding the transfer of such WFU Trademarks by operation of law or otherwise to any permitted successor, corporation, organization, or individual. WFU will provide Bank all WFU 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 WFU's execution of this Agreement. Nothing stated in this Agreement prohibits WFU from granting to other persons a license to use the WFU Trademarks in conjunction with the providing of any other service or product, except for any Financial Service Products.
- (j) All Program Trademarks, with the exception of Program Trademarks that consist of or contain a WFU Trademark, with or without other elements, shall belong exclusively to Bank and Bank may use such Program Trademarks in any manner not prohibited by this Section 2(h). WFU may not use any Program Trademark, except to promote the Program or any goods or services offered by Bank through the Program. WFU shall not register or attempt to register any Program Trademark. Bank shall not register or attempt to register any WFU Trademark. Bank may use Program Trademarks that contain WFU Trademarks to promote or identify the Program and any products or services offered by Bank through the Program at no cost to Bank, but only during the term of this Agreement.

### 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 used in the Program except for materials used in any WFU Marketing Effort, as that term is defined in Section 11(g) of this Agreement. Bank reserves the right of prior written approval of all materials concerning or related to the Program that may be developed by or on behalf of WFU. All advertisements will receive the mutual approval of both parties.
- (c) Bank will bear all costs of producing and mailing materials for the Program except for materials used in any WFU Marketing Effort.
- (d) Bank will make all credit decisions and will bear all credit risks with respect to each Customer's account(s) independently of WFU.
- (e) Bank will use the Marketing Lists provided pursuant to this Agreement in a manner consistent with this Agreement and will not permit those entities handling the Marketing Lists to use them for any other purpose. Bank will have the sole right to designate Members on these Marketing Lists to whom promotional material will be sent. These Marketing Lists are and will remain the sole property of WFU. However, Bank may maintain separately and will own 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 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 WFU.
- (f) Notwithstanding anything contained in the Agreement to the contrary, WFU 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 Deposits and that such Bank Products are not subject to this Agreement. However, Bank agrees that it shall not, when using WFU's Marketing 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 WFU consents to Bank's use of the Marketing 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). Bank may maintain separately all information it obtains as a result of an account application for, and/or an account relationship in connection with, Deposits or a Bank Product. All such information becomes a part of Bank's own files and shall not be subject to the Agreement.

#### 4. REPRESENTATIONS AND WARRANTIES

- (a) WFU and Bank each represents and warrants to the other party that as of the Effective Date and throughout the term of this Agreement:
  - (i) It is duly organized, validly existing and in good standing;
  - (ii) It has all necessary power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement;
  - (iii) This Agreement constitutes a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, except as such enforceability may be

limited by bankruptcy, insolvency, receivership, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity;

(iv) No consent, approval, or authorization from any third party is required in connection with the 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) WFU represents and warrants to Bank as of the date hereof and throughout the term of this Agreement that Bank has the right to use the WFU Trademarks to wind down the Program that it has the right and power to license WFU Trademarks to Bank for use as contemplated by this Agreement, and to provide the Marketing List(s) to Bank for the promotion of the Program. WFU will indemnify, defend and hold harmless Bank, and its directors, officers, agents, employees, Affiliates, successors and assigns, from and against all liability, causes of action, and claims, and will reimburse Bank's costs, fees and expenses in connection therewith (including reasonable attorneys' fees and court expenses), arising from the license of WFU Trademarks granted herein, or from Bank's use of the WFU Trademarks in reliance thereon, or from the use of any Marketing List(s) by Bank for the Program. Each party will promptly notify the other party upon learning of any claims or complaints relating to the license or the use of any WFU Trademarks or Marketing Lists.

## 5. ROYALTIES

- (a) During the term of this Agreement, Bank will pay Royalties to WFU. Royalties will not be paid until a Schedule B (W-9 Form and ACH Form) or other IRS required form (e.g., W-8) is fully completed and returned to Bank. Except as otherwise provided in Schedule A, payment of Royalties then due (along with the delivery of Bank's Royalty report) will be made approximately forty-five (45) days after the end of each calendar quarter.
- (b) The parties agree that as of the Effective Date, Bank will not pay Royalties to WFU for any Student Credit Card Accounts, however, pursuant to the trademark license and/or sublicense granted by WFU to Bank pursuant to this Agreement, Bank will have the right to use the WFU Trademarks on all Financial Service Products offered under the Program during the term of the Agreement.
- (c) 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 businesses (including the businesses of any Bank Affiliate providing a product or service under this Agreement), as determined by Bank in its sole discretion ("Impact"), then Bank may notify WFU 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 (30) business days after WFU'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 either the Deposits Program or the Credit Card Program, or the Agreement in its entirety, without penalty or liability to WFU, upon ninety (90) days advance written notice. For the avoidance of doubt, in the event either the Deposit Program or Credit Card Program is terminated earlier than the

Agreement as provided for in this Section 5(b), such terminated program remains subject to the provisions described in the sections referenced in Section 12(b) of the Agreement and any other section in the Agreement that by its terms are meant to survive the termination of this Agreement, and the rights and obligations in any other provision of this Agreement with respect to the products offered under such program shall be null and void, in each case, as if the termination of such program was a termination or expiration of the Agreement for just that program.

6. PROGRAM ADJUSTMENTS

Bank has the right to make periodic adjustments to the Program, including, without limitation, changes to its terms and features. In addition, Customers may be offered, as a benefit under the Program, opportunities to select other ancillary products and 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 WFU will be permitted to disclose such Information (i) to their accountants, lawyers, financial advisors, marketing advisors, affiliates and employees (its "Agents") 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 or (ii) as required by law or requested by any governmental regulatory authority. Notwithstanding the foregoing, the party disclosing Information to its Agents shall be liable for any breach of this Section 7 by their Agents.

8. TERM OF AGREEMENT

- (a) The initial term of this Agreement will begin on the Effective Date and end on June 30, 2018. This Agreement will automatically extend at the end of the initial term or any renewal term for successive two-year periods, unless either party gives written notice of its intention not to renew at least ninety (90) and not more than one hundred eighty (180) days, prior to the end of the then current term or renewal term, as applicable.
- (b) Notwithstanding Section 8(a) above, the right to not renew the Agreement pursuant to this Section 8 of the Agreement may also be used by Bank to terminate the Deposit Program only or Credit Card Program only as of the end of any current term of the Agreement, with the exception that such non-renewal notice, to be valid and effective, must be received by WFU on or before one hundred twenty (120) days prior to the end of the then current term. For the avoidance of doubt, in the event the Deposit Program or Credit Card Program terminates earlier than the Agreement as provided for immediately above, such terminated program remains subject to the provisions described in the sections referenced in Section 12(b) of the Agreement and any other section in the Agreement that by its terms are meant to survive the termination of this Agreement, and the rights and obligations in any other provision of this Agreement with respect to the products offered under such program shall be null and void, in each case, as if the termination of such program was a termination or expiration of the Agreement for just that program.



9. STATE LAW GOVERNING AGREEMENT

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

10. TERMINATION

- (a) In the event of any material breach of this Agreement by Bank or WFU, the other party may terminate this Agreement by giving notice to the breaching party. This notice will (i) include a description of the material breach; and (ii) state the party's intention to terminate this Agreement. If the breaching party does not cure or substantially cure such breach within sixty (60) days after receipt of notice, as provided herein (the "Cure Period"), then this Agreement will terminate sixty (60) days after the Cure Period.
- (b) If either Bank or WFU 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, except as set forth in Section 10(d) of this Agreement, cease to use the WFU Trademarks for Program marketing purposes, provided that Bank may conclude all solicitations required by law. Upon the expiration or earlier termination of this Agreement, Bank will not claim any right, title, or interest in or to the WFU Trademarks or to the Marketing Lists.
- (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 WFU or any WFU Affiliate to the Members. Such approval will not be unreasonably withheld. Upon expiration or earlier termination of this Agreement, Bank will have up to ninety (90) calendar days from the termination or expiration date to: (i) suspend marketing and remove marketing materials from Bank's marketing channels; (ii) use WFU Trademarks in connection with existing Deposit Accounts, Credit Card Accounts and those opened during such ninety (90) day period; and (iii) remove WFU Trademarks from Program collateral and account materials, such as statements, welcome packages, and card carriers. WFU shall not attempt to cause the removal of WFU Trademarks from any person's credit devices, debit devices, checks or records of any Customer existing as of ninety (90) days following the termination or expiration date of this Agreement, and Bank shall have the right to use WFU Trademarks on such credit devices, debit devices, checks and records until their normally scheduled reissue date or exhaustion.
- (e) In the event that Applicable Law has or will have a material adverse effect on Bank's businesses (including the businesses of any Bank Affiliate providing a product or service under this Agreement), as determined in Bank's sole discretion ("Event"), Bank may notify WFU in writing of Bank's desire to renegotiate the terms of the Agreement to address the Event. If, within thirty (30) business days after WFU'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 either the Deposits Program or the Credit Card Program, or the Agreement

in its entirety, without penalty or liability to WFU, upon ninety (90) days advance written notice. For the avoidance of doubt, in the event either the Deposit Program or Credit Card Program is terminated earlier than the Agreement as provided for in this Section 10(e), such terminated program remains subject to the provisions described in the sections referenced in Section 12(b) of the Agreement and any other section in the Agreement that by its terms are meant to survive the termination of this Agreement, and the rights and obligations in any other provision of this Agreement with respect to the products offered under such program shall be null and void, in each case, as if the termination of such program was a termination or expiration of the Agreement for just that program.

- (f) For a one (1) year period immediately following the expiration or earlier termination of this Agreement for any reason, WFU agrees that neither WFU nor any WFU Affiliate will, by itself or in conjunction with others, directly or indirectly, target any offer of a Financial Service Product or a related product to persons who were Customers. Notwithstanding the foregoing, WFU may, after the expiration or earlier termination of this Agreement, offer persons who were Customers the opportunity to participate in another financial service program endorsed by WFU, 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 that persons are not directly or indirectly identified as a customer of Bank, or offered any terms or incentives that differ from those offered to all Members.

#### 11. GROUP MARKETING

- (a) WFU will design and produce, at its expense, all marketing material with regard to any Program marketing efforts being conducted, directly or indirectly, by WFU, including, but not limited to, any GIP ("WFU Marketing Effort"). WFU will give Bank sixty (60) days prior notice prior to engaging in any WFU Marketing Effort.
- (b) All GIP marketing materials will be coded by WFU as instructed by Bank for tracking purposes. Credit Card Accounts generated from any GIP will entitle WFU to the Royalty for GIP specified in Schedule A, subject to the other terms and conditions of this Agreement. Notwithstanding the above, marketing materials or telemarketing inquiries from Members which do not contain or reference such coding will not be eligible for any GIP Royalty.
- (c) Bank will have the right of prior approval of all marketing materials to be used in any WFU Marketing Effort. Such approval will not be unreasonably withheld. Bank has control over, in its sole discretion, the scope, timing, content and continuation of any WFU Marketing Effort. In furtherance of the above, WFU shall immediately discontinue any or all WFU Marketing Efforts upon receipt of, and in accordance with the, written notice from Bank requesting such discontinuance. WFU will not deviate from the approved materials and plan for any WFU Marketing Effort without the prior written approval of Bank.
- (d) All reasonable costs incurred by Bank in producing and mailing materials created pursuant to any WFU Marketing Effort or of supporting any WFU Marketing Effort will be promptly reimbursed by WFU upon demand.
- (e) WFU will comply with all applicable laws, including, without limitation, the Truth in Lending Act, the Truth and Savings Act and the Equal Credit Opportunity Act, with respect to any WFU Marketing Effort.

- (f) WFU will advertise all the products offered under the Program on WFU's alumni page, account profile pages and such other prominent locations within the internet site(s) of WFU as the parties shall mutually agree upon, all at WFU's expense. Bank may establish a hyperlink from each such advertisement to another internet site (an application site), or may provide a telephone number in each such advertisement, to enable a person to apply for each advertised Financial Service Product. Any Credit Card Accounts generated pursuant to such a hyperlink or telephone number will entitle WFU to the GIP compensation set forth in Schedule A, subject to the other terms and conditions of this Agreement. WFU will modify or remove such advertisements within twenty-four (24) hours of Bank's request. To enable Bank to view all Program material, WFU will provide Bank with the ability to access any and all pages within the WFU internet site(s), including without limitation any "members only" or other restricted access pages that display Program material.
- (g) During the term of this Agreement, WFU may conduct on its own, at its expense and on an ongoing basis the following WFU Marketing Efforts for Deposits offered under the Program: (i) online marketing efforts, which would include hyperlinks to a Bank Deposits application and/or Bank inbound application telephone number(s), which shall include, but not be limited to, standalone e-mails, e-newsletters, welcome kit e-mails, and digital magazines; and (ii) offline marketing efforts, which would include either Deposit applications and/or Bank inbound application telephone number(s), which shall include, but not be limited to, publication ads, magazine inserts, welcome kits, coupon books, member directories, statement messages, statement inserts, flyers, renewal notices, event notifications and VRU messaging.

## 12. 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 2(h), 4(b), 7, 10(c), 10(d), 10(f) and 11(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 is, for any reason, 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 and the parties hereto shall immediately commence negotiations in good faith to reform this Agreement to make alternative provisions herein that reflect the intentions and purposes of the severed provisions in a manner that does not run afoul of the basis for such unenforceability or invalidity.
- (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 (3) business days after

mailing by registered or certified mail, postage prepaid, return receipt requested. All notices will be addressed as follows:

- (1) If to WFU:

Wake Forest University  
P.O. Box 7227  
Winston-Salem, NC 27109

ATTENTION: ~~Emily Neese~~ Laura Davis  
~~Assoc. Vice President, Strategy &~~  
~~Operations~~ Executive Director, Strategy & Operations  
University Advancement  
neesecg@wfu.edu davislf@wfu.edu

- (2) If to Bank:

FIA Card Services, N. A.  
MS DE5-003-01-07  
1100 North King Street  
Wilmington, Delaware 19884

ATTENTION: Contract Administration

Fax #: (206) 585-9732

- (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 including, without limitation, the Original Agreement and the Marketing Agreement. This Agreement does not and is not intended to alter or amend any aspect or provision of any other agreement between the parties that survives termination of that agreement. Without the prior written consent of the other party, which will not be unreasonably withheld, neither party may assign any of its rights or obligations under or arising from this Agreement. Notwithstanding the above, Bank may assign any of its rights or obligations under this Agreement to any other person without the prior consent of WFU to: (A) any Bank Affiliate which effectively assumes all of the duties and obligations of Bank hereunder and possess all necessary ability, power, authority and resources to perform fully all such duties and obligations; (B) to any person or entity pursuant to a merger, consolidation, share exchange, or sale of all or substantially all of the assets of Bank in which such other person or entity, by operation of law or otherwise, effectively assumes all of the duties and obligations of Bank hereunder and possesses all necessary ability, power, authority and resources to perform fully all such duties and obligations, Bank may utilize the services of any third party 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 WFU 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 WFU and Bank, their successors and assigns, any rights or remedies under or by reason of this Agreement.
- (j) Neither party shall make any statement, whether written, oral or otherwise, to any person or entity which criticizes, disparages, condemns or impugns the reputation or character of the other or any of its Affiliates, whether or not the statement is true and whether or not it is characterized as confidential.
- (k) Neither party shall be held responsible for any delay or failure in performance to the extent such delay or failure is caused by fire, flood, explosion, terrorism, war, strike, embargo, government laws, rules, regulations or requirements, civil or military authority, act of God, act or omission of carriers or other similar causes beyond its control, that was not reasonably foreseeable or avoidable, and without the fault or negligence and/or lack of diligence of the delayed party ("force majeure condition"). The non-delayed party shall have the right to terminate this Agreement if such force majeure condition endures for more than one hundred twenty (120) days by providing the delayed party with least thirty (30) days prior written notice of such termination, which notice must be received by the delayed party within ten (10) days after the expiration of the one hundred twenty (120) day period.
- (l) This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. The parties hereto agree to accept a digital image of this Agreement, as executed, as a true and correct original and admissible as best evidence to the extent permitted by a court with proper jurisdiction.
- (m) This Agreement is the product of negotiations between the parties hereto and their respective counsel. No provision or section of this Agreement shall be read, construed or interpreted for or against either party by reason of ambiguity of language, rule of construction against the draftsman, or any similar doctrine.

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

Wake Forest University

FIA Card Services, N.A.

By: 

By: 

Name: Mark Petersen

Name: Jake Frey

Title: V.P., University Advancement

Title: Senior Vice President

Date: 6/20/14

Date: 8/4/14

## SCHEDULE A

### ROYALTY ARRANGEMENT

During the term of this Agreement, Bank will pay WFU a Royalty calculated as follows for those accounts with active charging privileges. For clarity, Royalties will not be paid for Student Credit Card Accounts. Bank may create a special class of consumer accounts for WFU employees under the Program, and will not pay compensation for such designated accounts. All Royalty payments due hereunder are subject to adjustment by Bank for any prior overpayment of Royalties by Bank:

#### A. CREDIT CARD ACCOUNTS

1. \$3.00 (three dollars) for each new Credit Card Account opened, which remains open for at least ninety (90) consecutive days and that is utilized by the Customer within the first ninety (90) consecutive days of the Credit Card Account's opening for at least one (1) purchase or cash advance that is not subsequently rescinded, the subject of a charge back request, or otherwise disputed.
2. \$3.00 (three dollars) for each 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 Credit Card Account that: 1) has a balance greater than zero as of the last processing day of every twelfth month after the opening of that Credit Card Account; and 2) has had active charging privileges for each of the preceding twelve (12) months.
3. 0.50% (50 basis points) of all retail purchase transaction dollar volume generated by Customers using a 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. \$100.00 (one hundred dollars) for each GIP Account opened, which remains open for at least ninety (90) consecutive days and which is utilized by the Customer within the first ninety (90) consecutive days of the GIP Account's opening for at least one (1) 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. REWARD ACCOUNTS

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 Reward Accounts.

1. \$3.00 (three dollars) for each new Reward Account opened, which remains open for at least ninety (90) consecutive days and that is utilized by the Customer within the first ninety (90) consecutive days of the Reward Account's opening for at least one (1) purchase or cash advance that is not subsequently rescinded, the subject of a charge back

request, or otherwise disputed. This Royalty will not be paid for any account which, after opening, converts to a Reward Account, or for any Reward GIP Account.

2. \$3.00 (three dollars) for each 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 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 Reward Account; and 2) has had active charging privileges for each of the preceding twelve (12) months. A Reward Account may renew every twelve (12) months after the opening of the account.
3. 0.20% (20 basis points) of all retail purchase transaction dollar volume generated by Customers using a 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. \$100 (one hundred dollars) for each Reward GIP Account opened, which remains open for at least ninety (90) consecutive days and which is utilized by the Customer within the first ninety (90) consecutive days of the 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.

#### C. PREMIUM REWARD ACCOUNTS

Premium 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 Premium Reward Accounts.

1. \$3.00 (three dollars) for each new Premium Reward Account opened, which remains open for at least ninety (90) consecutive days and that is utilized by the Customer within the first ninety (90) consecutive days of the Premium Reward Account's opening for at least one (1) purchase or cash advance that is not subsequently rescinded, the subject of a charge back request, or otherwise disputed. This Royalty will not be paid for any account which, after opening, converts to a Premium Reward Account, or for any Premium Reward GIP Account.
2. \$3.00 (three dollars) for each Premium 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 Premium 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 Premium Reward Account; and 2) has had active charging privileges for each of the preceding twelve (12) months. A Premium Reward Account may renew every twelve (12) months after the opening of the account.
3. 0.05% (five basis points) of all retail purchase transaction dollar volume generated by Customers using a Premium 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. \$100.00 (one hundred dollars) for each Premium Reward GIP Account opened, which remains open for at least ninety (90) consecutive days and which is utilized by the Customer within the first ninety (90) consecutive days of the Premium Reward GIP Account's opening for at least one (1) purchase or cash advance which is not subsequently rescinded, the subject of a charge back request, or otherwise disputed. Such Premium Reward GIP Accounts will not qualify for any other opening-of-an-account Royalty.

D. DEPOSIT ACCOUNTS

Deposits Royalty compensation provisions will only apply to the Deposit Accounts set forth below and shall not apply to any other Deposit Account. Further, Deposit Royalties will not be paid to WFU on any existing deposit account that is converted to the Program.

1. \$10.00 (ten dollars) for each new checking Deposit Account opened under the Program which has a positive balance of at least \$50.00 (fifty dollars) as of the ninetieth (90<sup>th</sup>) day from the account opening date.
2. An additional \$2.00 (two dollars) for every checking Deposit Account opened under the Program that has a positive balance of at least \$50.00 (fifty dollars) on each subsequent anniversary of the account opening date.

**SCHEDULE B**  
**(Insert W-9)**

As a convenience to our company, I hereby authorize Bank of America to initiate deposit (credit) entries and, if necessary, adjustments for any credit entries made in error, to our checking account indicated below. I further authorize the financial institution named below to credit and/or debit such entries to such account. If a payment sent to the supplied account information below is not accepted by the participating bank, Bank of America reserves the right to issue a check until the correct bank account information is obtained or adjust future compensation accordingly.

Financial Institution Information			
Financial Institution		Account Number: <input type="checkbox"/> Checking <input type="checkbox"/> Savings	
Address		Transit/ABA Number	
City	State	ZIP	

This authorization agreement remains in full force and effect until Bank of America has received notice from me of its termination. Such termination must be made in such time and in such manner as to afford Bank of America a reasonable opportunity to act on it.

- This represents setup authorization
- This represents a change of previously authorized information (please include only the information to be changed)

Affinity Partner Information	
Affinity Partner	
Contact Name	Telephone:
Address	
Signature	Print Name
Title	

**REQUIRED: PLEASE ATTACH VOIDED CHECK OR A COPY OF A VOIDED CHECK HERE**

If company policy prohibits attaching a check, Bank of America is authorized to set-up the ACH account based on the information provided as being true and correct. Supplier will not hold Bank of America liable if the information is incorrect.

**Treasurer or Other Officer:**

Signature \_\_\_\_\_ Print Name \_\_\_\_\_

**Return this form to:**

**Bank of America**  
**ATTN: Accounts Payable – Vendor Management**  
 125 DuPont Drive  
 Providence, RI 02907  
 Mailcode: R11-121-01-30

Telephone: 888.550.6433

Fax: 704-719-5191

SCHEDULE C  
(Insert WFU Trademarks)

WAKE FOREST  
UNIVERSITY

