

## AFFINITY AGREEMENT

THIS AFFINITY AGREEMENT ("**Agreement**") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 201\_\_ (the "**Effective Date**") by and between German American Bank, an Indiana financial institution having its principal place of business in Jasper, Indiana ("**German American**"), and \_\_\_\_\_, having its principal place of business in \_\_\_\_\_ ("**School**"), for themselves and their respective successors and assigns.

1. **DEFINITIONS.** When used in this Agreement,

- (a) "**Agreement**" means this Affinity Agreement and any Schedules attached.
- (b) "**Cards**" shall mean debit cards issued to a Customer pursuant to the Program.
- (c) "**Constituent**" means the School or other potential participants mutually agreed to by the School and German American, which may include employees, staff, alumni or supporters of the School.
- (d) "**Customer**" means any Constituent who is a participant in the Program.
- (e) "**Debit Card Account**" means a debit card account opened by a Constituent in response to marketing efforts made pursuant to the Program.
- (f) "**Financial Service Products**" means debit card programs offered to Customers utilizing the School Marks.
- (g) "**Program**" means the offering by German American of the Financial Service Products to the Constituents pursuant to this Agreement from time to time, as follows:
  - i. German American may offer, to qualifying Constituents, debit cards featuring the logo and/or artwork representing and provided by the School ("**Program Cards**");
  - ii. The design(s) on the Program Cards will be approved mutually by both German American and the School;
  - iii. Once approved, the availability of the Program Cards may be promoted by both German American and the School;
  - iv. The Program Cards require a German American checking account and German American approval, in its sole discretion, of the Customer's debit card application; and

- v. Program Cards will be issued to any approved Customer requesting such card; however, the Customer must qualify for and maintain a German American checking account.

(h) "Royalties" means a royalty payment by German American to School pursuant to this Agreement, which royalty rate shall be Two Cents (\$.02) per point of sale transaction with a Program Card.

(i) "School Marks" means any design, image, visual representation, logo, service mark, trade dress, trade name, or trademark owned or acquired by the School and licensed by the School for the Program during the term of this Agreement. Artwork representing all such School Marks is attached here to as Schedule A, as amended from time to time.

## **2. RIGHTS AND RESPONSIBILITIES OF THE SCHOOL.**

2.1 School agrees to provide German American with such information and assistance relating to Constituents and the School Marks as may be reasonably requested by German American in connection with the Program.

2.2 School shall only provide information to or otherwise communicate with Constituents or potential constituents about the Program utilizing current advertising and solicitation materials provided by German American to the School. Any other communications by the School to the Constituents must be approved in advance in writing by German American. Notwithstanding the above, the School may respond to the individual inquiries about the Program from its Constituents on an individual basis, provided that said responses are accurate and consistent with the materials provided by German American to the School.

2.3 School hereby grants German American and its affiliates a limited, exclusive sublicense to use the School Marks solely in conjunction with the Program, including the promotion thereof. German American shall only use the specific School Marks provided by the School for the Program. This license shall be transferred upon permitted assignment of this Agreement. This license shall remain in effect for the duration of this Agreement and shall apply to the School Marks, notwithstanding the transfer of such School Marks by operation of law or otherwise to any permitted successor, corporation, organization or individual. Nothing stated in this Agreement prohibits the School from granting to other persons a license to use the School Marks in conjunction with the providing of any other service or product.

## **3. RIGHTS AND RESPONSIBILITIES OF GERMAN AMERICAN BANK.**

3.1 German American shall design, develop and administer the Program.

3.2 German American shall design all advertising, solicitation and promotional materials with regard to the Program subject to 2(b) and 2(d). German American shall provide these materials at its discretion. School shall provide such materials to the Constituents in a manner agreed upon by School and German American. In addition, German American may provide such information directly to the Constituents if approved by School.



3.3 German American shall make all debit and banking decisions and shall bear all debit and banking risks with respect to each Customer's account(s) independently of the School.

3.4 German American shall provide the number of Program Cards issued and the number of transactions eligible for payment of Royalties conducted on those Program Cards on a quarterly basis.

3.5 German American recognizes and acknowledges the proprietary right of ownership of the School Marks by the School. German American shall not at any time during the term of this Agreement or thereafter contest the School's right, title and interest in and to the School Marks or otherwise claim that German American's permitted use of the School Marks has created or vested in it any right, title or interest therein other than such rights as are expressly granted to German American by the School under this Agreement. German American shall not at any time apply for registration of the School Marks, either alone or in combination with any words, letters, symbols or designs. All uses of the School Marks by German American shall inure to the benefit of the School.

4. **ROYALTIES.** During the term of this Agreement, German American shall pay Royalties to the School. Royalties will not be paid without a completed Schedule B. Payment of Royalties then due shall be made approximately forty-five (45) days after the end of each calendar quarter. Upon the written request of the School, but no more frequently than one (1) request in any twelve month period, German American shall provide the School with system reports generated by German American containing all the information which both (i) formed the basis of German American's calculation of the Royalties due the School since the last request was made or, if no previous request was made hereunder, for the last four (4) Royalty calculations performed by German American, and (ii) may be disclosed by German American without violating any legal rights of any third party or obligation of German American. Such reports shall be certified by an officer of German American as to their accuracy.

5. **PROGRAM ADJUSTMENTS.** German American reserves the right to make periodic adjustments to the Program and its terms and features. Indiana and applicable federal law currently require each open-end debit account Customer be given the opportunity to reject a proposed change and pay the existing balance under the prior terms if the proposed adjustment increases the fees or finance charges on such account.

6. **REPRESENTATIONS AND WARRANTIES.**

6.1 School and German American each represents and warrants to the other that as of the Effective Date and throughout the term of this Agreement:

(i) It is duly organized, validly existing and in good standing in the State of its organization;

(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 debtors' rights generally and by general principles of equity;

(iv) No consent, approval or authorization from any third party is required in connection with the execution, delivery and performance of this Agreement, except such as have been obtained and are in full force and effect; and

(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.

6.2 School represents and warrants to German American as of the date hereof and throughout the term of this Agreement that it has the right and power to license the School Marks to German American for use as contemplated by this Agreement.

7. **MUTUAL INDEMNIFICATION.** School and German American each will indemnify and hold harmless the other party, its directors, officers, agents, employees, affiliates, successors and assigns (the "Indemnitees") from and against any and all liability, causes of action, claims, and the reasonable and actual costs incurred in connection therewith ("Losses"), resulting from the material breach of this Agreement by the School or German American, respectively as the case may be, or its directors, officers or employees in connection with the solicitation or performance by each party of its respective duties under this Agreement. School will indemnify and hold harmless German American and its Indemnitees from and against any and all Losses arising from the Trademark license granted herein or from German American's use of the School Marks in reliance thereon. Each party shall promptly notify the other party in the manner provided herein upon learning of any claims or complaints that may reasonably result in indemnification by the other party.

8. **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. German American and the School shall be permitted to disclose such Information: (i) to their accountants, legal, financial and marketing advisors, and employees as necessary for the performance of their respective duties, provided that said persons agree to treat the information as confidential in the above described manner and (ii) as required by law or by any governmental regulatory authority.

9. **TERM OF AGREEMENT.**



9.1 The initial term of this Agreement will begin on the Effective Date and will continue for one (1) year.

9.2 Subject at all times to sections herein below, this Agreement shall renew automatically for additional one-year terms if not specifically terminated in accordance with the following provisions or as provided in **Section 11**. Either party may terminate this Agreement in writing, at least thirty (30) calendar days prior to the end of the current term, of its intent not to renew this Agreement

**10. STATE LAW GOVERNING AGREEMENT.** This Agreement shall be governed by and subject to the laws of the State of ~~Indiana~~ (without regard to its conflict of laws principles) and shall be deemed for all purposes to be made and fully performed in Indiana.

**11. TERMINATION**

KENTUCKY

11.1 In the event of any material breach of this Agreement by German American or the School, the other party may terminate this Agreement as provided in this **Section 11**. The non-breaching party shall provide written notice to the breaching party, which notice shall: (i) describe the material breach; and (ii) state the party's intention to terminate this Agreement if such breach is not cured in accordance with this **Section 11.1**. If the breaching party does not cure or substantially cure such breach within sixty (60) days after receipt of notice, as provided herein (the "**Cure Period**"), then this Agreement shall terminate sixty (60) days after the Cure Period.

11.2 Either German American or School may immediately terminate this Agreement if the other party becomes insolvent, is adjudicated insolvent, or takes advantage of or is subject to any insolvency or bankruptcy proceeding, or makes an assignment for the benefit of debtors or is subject to receivership, conservatorship or liquidation.

11.3 Notwithstanding **Section 11.4**, below, upon termination of this Agreement all Trademark rights granted under this Agreement shall cease. German American agrees that upon termination it will not claim any right, title or interest in or to the School Marks provided pursuant to this Agreement. However, German American may conclude all solicitation that is required by law.

11.4 German American 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 the School to the Constituents. Upon termination of this Agreement, the School shall not attempt to cause the removal of the School identification or trademarks from any person's debit devices or records of any Customer existing as of the effective date of termination of this Agreement. Upon termination of this Agreement, German American may, in its discretion, remove the School identification or the trademarks from any person's debit devices or records of any

Customer, however, German American will continue to pay the School royalties for those accounts represented by cards that bear the School identification or trademark. Otherwise German American shall, upon termination of this Agreement shall cease to use the Trademark upon the expiration of all outstanding Program Cards.

**12. MISCELLANEOUS.**

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

12.2 Upon termination of this Agreement for any reason, nothing herein shall be construed to release either party from any obligation that matures prior to the effective date of such termination, including but not limited to the payment by German American of any earned Royalties accrued and unpaid as of the date of such termination.

12.3 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.

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

12.5 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.

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

If to the School:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

If to German American:

German American Bank  
711 Main Street



Jasper, IN 47546

Attn: Digital Banking

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

12.7 This Agreement contains the entire agreement of the parties with respect to the matters covered herein and supersedes all prior promises and agreement, written or oral, with respect to the matters covered herein. Without the prior written consent of German American, which shall not be unreasonably withheld, the School may not assign any of its rights or obligations under or arising from this Agreement. German American may not assign or transfer any of its rights or obligations under or arising from this Agreement without the written consent of the School, which shall not be unreasonably withheld; provided however that German American may assign or transfer, without the School's consent, any of its rights and/or obligations under this Agreement:

(i) to a subsidiary or an entity controlling, controlled by or under common control with German American so long as German American warrants that such German American can fully perform the obligations of German American as assigned or transferred to such German American; or

(ii) to any individual, corporation or other entity (other than as described in **Section 12.7(i)**) pursuant to a merger, consolidation, or a sale of all or substantially all the assets of German American (each, a "**Transaction**"), subject to the following, German American shall provide the School with notice of such Transaction within thirty (30) days of the consummation of such Transaction. Upon receipt of such notice, the School shall have one hundred eighty (180) days to determine in good faith if it is reasonably satisfied with the post-Transaction relationship. In the event that the School reasonably determines in good faith that it is not satisfied, the School may terminate the Agreement by notice to the successor entity to German American, which notice shall specify in detail the basis for the School's dissatisfaction. After receiving such notice, the successor entity shall have sixty (60) days in which to address the School's issues and thereby satisfy the School. If after such period the School's issues remain unaddressed, then the Agreement shall immediately terminate.

German American may utilize the services of any third party in fulfilling its obligations under this Agreement which may include but not be limited to marketing, debit card processing, debit card printing.

12.8 German American and the School are not agents, representatives or employees of each other and neither party shall have the power to obligate or bind the other in any manner except as otherwise expressly provided by this Agreement.

12.9 Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or give any person other than the School and German American, their successors and assigns, any rights or remedies under or by reason of this Agreement.

12.10 Neither party shall be in breach hereunder by reason of its delay in the performance of or failure to perform any of its obligations herein if such delay or failure is caused by strikes, acts of God or the public enemy, riots, incendiaries, interference by civil or military authorities, compliance with governmental laws, rules, regulations, delays in transit or delivery, or any event beyond its reasonable control or without its fault or negligence.

12.11 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.

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

**"School"**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**"German American"**

German American Bank

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**SCHEDULE A**

**List of School Marks**

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**SCHEDULE B**

**Payment of Royalties**

German American will pay Royalties to the School on a quarterly basis. Royalties are to be paid as follows:

☐ By check:

Mail to:

\_\_\_\_\_  
Attention: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

☐ By automatic funds transfer into the School's German American account:

Credit to:

I/We hereby authorize German American, until this authorization is revoked by me or (either party) in writing, as agent to credit funds and make any appropriate adjustment entries to correct errors as follows:

☐ Checking Account

☐ Savings Account

Account Number: \_\_\_\_\_

Such transfer of funds shall continue until written authorization to make such transfers is revoked by me (us) in writing to German American.

\_\_\_\_\_  
German American

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_