

**LOYOLA MARYMOUNT UNIVERSITY/ WELLS FARGO BANK, N.A.  
CAMPUS AFFINITY DEBIT CARD AGREEMENT**

**THIS AGREEMENT** (herein “Agreement”) is made and entered into effective as of the 10th day of October, 2011 (“Effective Date”) by and between Loyola Marymount University (herein “University”) and Wells Fargo Bank, National Association (herein “Bank”).

**WHEREAS**, Bank desires to provide checking account, ATM, debit (PIN-based and Visa based) transactions and deposit transfer services among other banking and financial services to Eligible University Community Members in association with and accessed through an access card (“Affinity Debit Card”), all as more particularly described herein; and

**WHEREAS**, Bank seeks to establish new account relationships through its affiliation with University including but not limited to checking accounts; and

**WHEREAS** the following definitions apply throughout this Agreement:

- “Affinity Debit Card” is defined as a co-branded Debit Card that is linked to a Bank checking account within the Bank’s system for the purpose of ATM, PIN-based (online) and Visa-based (offline) transactions and has been activated by the Eligible University Community Member.
- “Card Design Studio” is defined as a bank service offered within a bank account holder’s online banking session that allows users to customize their Debit Cards by selecting an image from a group of images available on the site or uploading an approved image onto it to create a co-branded Debit Card.
- “Affinity Debit Card Bank Account” is defined as a Bank checking account which has an Affinity Debit Card linked to it within the Bank’s system.

**NOW, THEREFORE**, for valuable consideration, the parties agree as follows:

**1. Term and Options to Extend.** The Term of this Agreement shall commence on October 1, 2011, and shall terminate on September 30, 2014, unless otherwise terminated as provided in Section 19 (the “Term”) or unless both parties elect to renew the Agreement upon mutually agreeable royalty payment terms for up to 5 additional one-year terms by giving notice no later than the first day of August prior to the end of the Term.

**2. Grant to Use University Name and Marks.** Subject to the terms and conditions set forth herein, University hereby grants Bank during the Term a, limited, exclusive, non-assignable, and irrevocable world-wide license to use, display, reproduce, and otherwise exploit the various logos and other identifying property and marks set forth on Exhibit “A” of this Agreement (collectively, the “University Marks”) for the sole purpose of offering and promoting the financial products and services to Eligible University Community Members through the Affinity

Debit Card program. All applications of the University Marks by the Bank must conform to Exhibit "A," along with any specifications established by the University which specifications may be amended from time to time. Bank is not authorized and will make no other use whatsoever of the University Marks or any other trademark or trade name owned by or associated with the University without, in each case, University's prior explicit written consent. Bank shall deliver all Affinity Debit Card designs and all promotional and informational materials prepared by Bank that contain any University Mark to University prior to publication for University's prior written consent which consent shall not be unreasonably withheld or unduly delayed. University also grants Bank authority to use published Affinity Debit Card marketing materials as examples for prospective Bank clients. Such examples will only be used if material has been previously used with the public such as printed brochures, flyers, banners and the like.

Bank acknowledges and agrees that University is the owner of the University Marks, that the limited right hereunder to use the University Marks does not confer upon Bank any license or right of ownership of the University Marks, and all use of the University Marks by Bank will inure to the benefit of University. Accordingly, Bank's limited right to the use of the University Marks for any purpose is solely by reason of this Agreement, and Bank shall not raise or cause to be raised any questions concerning, or objections to the validity of, or the right to the use of, the University Marks or the right of the University thereto, on any grounds whatsoever, or file any application for any mark, or obtain or attempt to obtain ownership of a mark or trade name, in any country of the world, which refers to or is confusingly similar to the University Marks or any mark, design or logo intended to identify the University. Upon expiration or termination of this Agreement for any reason, Bank will immediately cease any and all use of the University Marks or any variation of the University Marks on promotional and informational materials prepared by Bank in connection with this Agreement.

University does not make, and hereby disclaims, any representations or warranties with respect to the University Marks, or with respect to whether the University Marks infringe the rights of any other party, or with respect to the existence of any state or federal registration of the University Marks or design as a tradename, trademark or mark. If there is any claim against University or Bank that the University Marks or any modifications thereof, as authorized by University, infringe the rights of another party, University will, at its own expense, defend Bank's right to use of the University Marks as authorized under this Agreement. In the event any such claim is resolved adversely to University or Bank, or in the event University agrees to discontinue its use of the subject mark(s) in order to resolve any such claim, which it shall have the right to do in its sole discretion, then University agrees to indemnify Bank against any expenses Bank incurs in discontinuing use of the marks and adopting use of alternative non-infringing marks, subject to the limitation of liability set forth in Section 15. University further agrees to indemnify Bank against all liabilities Bank incurs to third parties (including, without limitation damage awards obtained by such third parties against Bank), together with Bank's reasonable costs of defending against such liabilities (including reasonable attorney fees), arising

from Bank's use of the University Marks, when such usage is in accordance with the terms of this Agreement. Subject to the foregoing, if requested by the University, Bank agrees to immediately discontinue the use of any University Marks where there has been a claim of infringement and the claim has been resolved adversely to University or Bank, or where University agrees to discontinue use of the marks in order to resolve the claim.

**3. Grant to Use Bank Name and Marks.** Bank hereby grants University during the Term a non-exclusive right and license to use the marks set forth on Exhibit "B" of this Agreement (collectively, the "Bank Marks") on all promotional and informational materials prepared by University in connection with the Affinity Debit Card under this Agreement. The Bank Marks shall appear on the Affinity Debit Card, which will be issued by Bank. University will make no other use of Bank Marks without Bank's prior written consent. University shall deliver all promotional and informational materials prepared by University that contain any Bank Mark to Bank prior to publication for Bank's prior written consent.

University acknowledges and agrees that Bank is the owner of the Bank Marks, that the limited right hereunder to use the Bank Marks does not confer upon University any license or right of ownership of the Bank Marks and all use of the Bank Marks will inure to the benefit of Bank. Accordingly, University's limited right to use of the Bank Marks for any purpose is solely by reason of this Agreement, and upon expiration or termination of this Agreement for any reason, University will immediately cease any and all use of the Bank Marks or any variation of the Bank Marks on promotional and informational materials issued after the effective date of such expiration or termination.

Bank does not make, and hereby disclaims, any representations or warranties with respect to the Bank Marks, or with respect to whether such Bank Marks infringe upon the rights of any other party, or with respect to the existence of any state or federal registration of the Bank Marks or design as a tradename, trademark or service mark. If there is any claim against Bank or University that the Bank Marks or any modifications thereof, as authorized by Bank, infringe the rights of another party, Bank will, at its own expense, defend University's right to use of the marks as authorized under this Agreement. In the event any such claim is resolved adversely to Bank or University, or in the event Bank agrees to discontinue its use of the marks in order to resolve any such claim, which it shall have the right to do in its sole discretion, then Bank agrees to indemnify University against any expenses University incurs in discontinuing use of the marks and adopting use of alternative non-infringing marks, subject to the limitation of liability set forth in Section 15. Bank further agrees to indemnify University against all liabilities University incurs to third parties (including, without limitation damage awards obtained by such third parties against University), together with University's reasonable costs of defending against such liabilities (including attorney fees), arising from University's use of the Bank Marks, when such usage is in accordance with the terms of this Agreement. Subject to the foregoing, if requested by Bank, University agrees to immediately discontinue the use of any Bank Marks

where there has been a claim of infringement and the claim has been resolved adversely to Bank or University, or where Bank agrees to discontinue use of the marks in order to resolve the claim.

#### **4. Royalties to University.**

In consideration of the license and grant of rights from the University given to the Bank described in the balance of this Agreement, Bank will make royalty payments to the University as follows:

##### **a. Initial Royalty Payment**

Bank will pay \$25,000 within thirty (30) days of the commencement of this Agreement.

##### **b. Account Royalty Payment**

Bank will pay the University an annual payment of \$11,000 during the initial term of the agreement.

#### **Royalty Payment Timeframes**

The upfront royalty payment to University of \$25,000 will be made within 30 days of the date the Agreement is executed. Bank will not have the opportunity to increase the number of its checking accounts through promotion of the program until the new card program is launched and Bank can open Affinity Debit Card Bank Accounts. Accordingly, payments will be made as follows:

- The first annual royalty payment will be calculated twelve (12) months from the program launch date (first card issuance).
- The annual royalty payment will be due to University within 60 days of the anniversary date of the program launch date (first card issuance).

The Agreement execution date is October 10, 2011 and the first Campus Affinity Debit Card is expected to be issued in November 2011, so the upfront royalty payment will be paid in December 2011 and the first royalty payment would be made by December 2012.

## **5. Affinity Debit Card Bank Account.**

During the Term, Bank will provide in accordance with this Section 5a checking account with a Campus Affinity Debit Card to Eligible University Community Members who have requested such an account and who meet Bank's usual checking account opening underwriting and other requirements, including without limitation a minimum opening deposit of \$100.00 by the Affinity Debit Card Bank Account holder. Nothing herein prohibits Bank from closing any Affinity Debit Card Bank Account in accordance with standard deposit account procedures. Eligible University Community Members may choose from a variety of checking accounts offered by Bank

- a. Some University Community members may not be eligible for the Affinity Debit Card Bank Account due to prior negative banking history, or other account opening requirements as Bank may establish from time to time in accordance with applicable law or Bank policy.
- b. The Affinity Debit Card Bank Accounts will be subject to the same terms and conditions (including funds availability) as the terms and conditions generally applicable to accounts of Bank's other customers of the same class, as amended from time to time.
- c. Should the University request, Bank shall provide at its own expense an informational web page, maintained by Bank on its website, with a customized URL residing on the University website, dedicated to the Affinity Debit Card, using a design and functionality subject to the approval of the University, which approval shall not be unreasonably withheld or unduly delayed. Bank shall be excused from its failure to perform any obligation under this subsection and shall not be responsible for any delay in such performance, to the extent that such failure or delay is due to the failure of University to provide any required approval. The website shall provide information as mutually agreed by University and Bank, which may include the following features:
  - i. Information about various account offerings for the Eligible University Community,
  - ii. Link to on-line application to open checking or savings accounts,
  - iii. Information regarding how to report lost/stolen cards including the 24/7 toll-free customer service phone number,
  - iv. Link to log-in for secure online banking session,
  - v. Information about and links to other Bank related products and services, and
  - vi. Appropriate disclosure respecting the fact that LMU is receiving financial benefits and royalties from the Bank in connection with the Affinity Debit Card program.

- g. University acknowledges that Bank reviews and revises the terms, conditions, and pricing generally applicable to its deposit accounts from time to time, and agrees that nothing in this Agreement prohibits Bank from making the same changes to the Affinity Debit Card Bank Accounts that it makes generally to its non Affinity Debit Card Bank Accounts.

#### **5a. Affinity Debit Card Bank Account Opening**

The Affinity Debit Card Bank Accounts may be opened by Bank using Bank personnel anywhere permitted by applicable law and regulations; provided however, that University shall have the right to determine the times, places and manner on the University's premises such accounts may be solicited or opened. Bank will make its personnel available when agreed to by the parties, at dates, times and places to be agreed upon by the parties, for the purpose of accepting Affinity Debit Card Bank Account applications from Eligible University Community members. Bank may accept deposits to Affinity Debit Card Bank Accounts anywhere and by any means permitted by law, including without limitation Bank's offices, mobile branches and messengers, and automated teller machines ("ATMs") or other electronic means of accepting deposits.

Bank shall be responsible for obtaining information from the Eligible University Community member in connection with the Affinity Debit Card Bank Account opening. University will not have authority or responsibility to open any accounts or accept any deposits on behalf of Bank.

Bank has the right to refuse to open an Affinity Debit Card Bank Account. Bank personnel shall provide support for the implementation of the financial services associated with the Campus Affinity Debit Card program, including the opening of checking accounts for Eligible University Community Members. Additional Bank personnel will be available and assigned as reasonably needed and as mutually agreed upon to support Affinity Debit Card Bank Account services during peak activity times, such as first year student orientations.

**6. New Affinity Debit Card Design and Specifications.** The Affinity Debit Card shall conform to the following specifications. The front side of the Affinity Debit Card will include the University Mark and design mutually selected by the parties to differentiate the new card from other CR80 size cards. The front side shall have these minimum requirements:

- i. The Affinity Debit Card holder's first and last name,
- ii. Wells Fargo logo,
- iii. embossed 16-digit ISO number,
- iv. the Visa brand and flying dove hologram
- v. the word "DEBIT" and
- vi. embossed expiration date
- vii. Approved University Image

The reverse side of the new Affinity Debit Card shall have these minimum requirements:

- i. magnetic three-track strip encoded to conform with ISO 7812 and 7813 Standards, with the new 16-digit ISO number encoded in track two,
- ii. Wells Fargo logo,
- iii. the appropriate ATM network “bugs,” which must meet networks’ minimum size requirements,
- iv. the appropriate Debit Point-of-Sale network “bugs,” which must meet networks’ minimum size requirements,
- v. instructions for reporting lost or stolen cards, and
- vi. a space for cardholder signature.

University and Bank shall cooperate to create a mutually agreed upon Affinity Debit Card design. Notwithstanding anything in this Agreement to the contrary, any provision contained in this Agreement regarding the design and/or specifications of the Affinity Debit Card shall be subject to any applicable card association rules and regulations (such as, without limitation, Visa, MasterCard and/or ATM networks) and subject to any other applicable law, rules or orders. No additional marks or logos shall be placed on the Card without prior Bank approval.

It is the University’s responsibility to conduct a trademark/service mark search of any new Affinity Debit Card name (and logo if applicable). Bank will assist University at University’s expense with an initial trademark/service mark search if requested by University. University agrees to indemnify and hold Bank harmless against all claims, liabilities and judgments Bank may incur to third parties in the event that the trademark/service mark search is not conducted or if such search indicates a possible trademark/service mark infringement and University elects to use the name or card design.

**7. Issuance of New Cards.** In order to achieve timely issuance of the new Affinity Debit Card, University shall, as soon as is practical following the Effective Date of this Agreement, cooperate with Bank to market the Affinity Debit Card. Bank and University will work together through mutually agreed upon communication methods including without limitation communications that the University will initiate such as email, campus newspaper, orientation and acceptance mailings, etc. for the purposes of educating Eligible University Community Members about the new Affinity Debit Card program and marketing the same. Bank and University shall engage in the following activities and take such other measures as are reasonably calculated and necessary to achieve first issuance of the new Affinity Debit Cards to all Eligible University Community Members in October 2011.

Step	Description of Activity	Approximate Time
1	University provides image to Wells Fargo for approval (includes Card Design Image Task Group, Legal , Compliance and Brand)	10 days
2	Upon Image approval, then image is loaded to Card Design Studio	2 – 7 days

3	Test card produced	7 days
4	Once test card approved, then image finalized onto Card Design Studio	2 - 3 days
5	Go live	2 - 5
	<b>Total Time to Affinity Debit Card Activation</b>	<b>30 - 35 days</b>

Eligible University Community Members can order their Affinity Debit Card online via the wells Fargo.com Card Design Studio within the Bank account holders online banking session. The Affinity Debit Card will be sent directly to the Bank account holder via U.S. mail 7-10 business days from card order. After the cardholder activates the Affinity Debit Card via telephone or Wells Fargo branch, it will be available for use at ATMs or for purchases.

**8. Affinity Debit Card Costs**

Bank will pay for the cost of the Affinity Debit Card for Eligible University Community Members during Term of Agreement. Bank will distribute via U.S. mail Affinity Debit Cards directly to Affinity Debit Card Bank Account holders within 7-10 business days.

**9. Matters Relating to Lost or Stolen Cards; Fraudulent Use.** Should an Affinity Debit Card be lost or stolen, the Bank shall provide for a system to immediately disable, upon notification of the loss or theft, the Affinity Debit Card’s capability for processing transactions through the Affinity Debit Card Bank Account. Bank shall provide Affinity Debit Card holders, without cost to the University, a toll-free phone number for the purposes of notifying the Bank of lost and stolen Affinity Debit Cards. Such system of notification and account disablement shall be available twenty-four hours a day, seven days a week. Bank shall also respond to lost/stolen card reports made in-person to Bank representatives during regular Bank business hours.

Bank shall assume financial liability for transactions conducted with lost or stolen Affinity Debit Cards in the same manner, pursuant to the same policies and to the same extent as such liability is assumed for Bank’s general population of checking account customers located in the state of California.

**10. ISO Number Ownership.** At all times, Bank shall be deemed to own the ISO numbers associated with the Affinity Debit Cards issued pursuant to this Agreement. The ISO number will be licensed to Bank per Visa’s Operating Regulations and will not be transferred to the University upon termination of this Agreement.

**11. Vendor Support.** Bank plans to continue its membership in various ATM network associations, POS network associations, and card associations, or any such successor organizations. University has no responsibility for, and no relationship with, third party vendors accepting the Affinity Debit Card as a result of this Agreement.



**12. Compliance with Applicable Law and Regulations.** The parties hereto agree to comply with all federal, state and local law to the extent that it is applicable to the entry and performance of this Agreement including all laws and regulations related to the providers of the financial services offered by the Bank and all laws and regulations related to the protection and security of any personal information gathered by the Bank, such as the Gramm Leach Bliley Act and the Family Education Rights and Privacy Act. For purposes of this Agreement, Bank will be considered the “issuer” of the Affinity Debit Card as it pertains to electronic funds transfers to or from any Card Bank Account and to the performance of any other financial transactions involving a Affinity Debit Card Bank Account. Bank will be responsible to the Affinity Debit Card holder for any unauthorized or erroneous transaction involving the Affinity Debit Card Bank Account to the extent provided for under federal Regulation E (12 C.F.R. 205.1, et seq.), to the extent applicable. University will not be responsible to Bank or to any Affinity Debit Card holder for any liability arising from Bank’s issuer responsibilities or for losses to any Affinity Debit Card Bank Account; provided however, that nothing herein will exonerate University from any unauthorized or erroneous transactions or losses involving a Affinity Debit Card Bank Account caused by University. In connection with the direct deposit of guaranteed student loan disbursements and other student financial aid or other University disbursements into the Affinity Debit Card Bank Accounts, if any, University will comply with all applicable laws and regulations.

**13. Marketing.** Bank and University shall reasonably cooperate in Bank’s efforts to promote the Affinity Debit Card program, including the Affinity Debit Card, through various marketing efforts. Both Bank and University shall approve the content, timing, and use of all promotional initiatives and marketing/advertising materials related to the services contemplated under this Agreement. In reasonable cooperation with Bank, University will, from time to time, allow Bank to promote services provided under this Agreement to Eligible University Community Members through various communication channels available to University. University will provide Bank with the opportunity to provide information about the Bank financial services associated with the Campus Affinity Debit Card Program to University Cardholders and new incoming University students through various methods, which may include without limitation emails, and orientation packets, letters, flyers and inserts. University agrees that such marketing materials will include both the Bank’s and University’s marks. University will provide Bank with the opportunity to include inserts funded by Bank in certain University mailings to University Cardholders and new incoming University students. All marketing materials, inserts and mailings shall be mutually agreed on and approved by the applicable University department and Bank. In addition, University will communicate during orientation the existence of the Affinity Debit Card program and associated Bank financial services to parents/guardians and students. As mutually agreed and subject to University’s restrictions respecting the times, places and manner of participation, Bank will actively participate in student orientations including but not limited to the presence of Bank representatives and presentations at the orientations. University agrees to reasonably cooperate with Bank in the Bank’s marketing of financial services available to current and future Eligible University Community Members, including, but

not limited to, the above marketing efforts and “tabling” on campus. Nothing stated in this Agreement or otherwise shall prohibit or limit the University’s right and ability to provide financial planning, credit, debt education and counseling sessions to members of the University Community in conjunction with or independent from the marketing of the Affinity Debit Card Program.

### **Marketing Budget**

Bank will provide the marketing services function for marketing and promotion of the Affinity Check Card program. Bank estimates that its annual marketing budget for the promotion of the Affinity Check Card program will be approximately \$15,000 the first year to launch the program and approximately \$10,000 annually thereafter during the Term of this Agreement. This budget includes funding for initial and annual marketing materials including customized materials that will highlight the banking features of the new Affinity Check Card and the benefits of the Affinity Debit Card Account. These marketing materials can be updated to/will include information about electronic financial aid direct deposit when the University adds this functionality to the program.

**14. Insurance.** Bank represents and warrants that at all times during the Term, Bank shall maintain commercial general liability insurance, including coverage for bodily and personal injury, property damage, and products liability, in accordance with Bank operating guidelines and banking and financial services industry standards and practices for similarly situated financial services companies. Bank shall also obtain and keep in force workers’ compensation insurance to the extent required by law and furnish proof of such to University upon request. Bank represents that the financial strength, integrity and contractual obligations of Bank provide protection for its customers with respect to risk associated with the products and services to be provided by Bank. Bank further represents that at all times it will maintain a Professional Liability policy (also known as an Errors and Omissions policy), a Financial Institutions Bond (also known as a Fidelity Bond), and other policies with coverages and provisions considered within industry standards for similarly situated financial services companies. Bank has the right at any given time to self-insure any of the insurance coverage as long as it is a normal accepted practice for a financial services company of its financial strength.

University represents and warrants that at all times during the Term, University shall maintain through its regular business insurance program comprehensive general liability insurance, including coverage for bodily and personal injury, property damage, and products liability, in accordance with its operating guidelines. During business hours following reasonable request, University shall allow Bank to review such documents as are available pursuant to Public Records Laws to verify the existence and funding supporting said self-insurance program.

**15. Liability.** Bank will exercise reasonable care, which shall not be less than industry standard for similarly situated financial services companies, in providing electronic funds transfer services and other services to Affinity Debit Card holders as contemplated under this Agreement, subject

to breakdowns, operational failures, unavoidable delays, or similar causes beyond the party's reasonable control.

Bank does not control, and, except as provided in Federal Reserve Board Regulation E and state law to the extent applicable, is not responsible to University for any error, act, or omission with respect to ATMs or POS terminals not owned and operated by Bank.

Bank does not undertake to ensure that Affinity Debit Card holders will at all times be able to successfully accomplish transactions with Bank by any electronic means, including but not limited to ATMs, POS terminals, the Internet, or other existing or future technology associated with Affinity Debit Cards, Affinity Debit Card Bank Account holders' account numbers or personal identification, or otherwise (herein "Electronic Means"). Transactions cannot be processed during off-line periods. When the computer maintaining the on-line files is off-line or rendered inoperable at any time for maintenance or servicing, or due to mechanical failure, strike, lockout, riots, epidemics, war, acts of terror, governmental regulations or other cause beyond Bank's reasonable control, such that no on-line processing of transactions may be possible, no customer transactions will be processed by Electronic Means and Bank will have no liability as a result. Bank will, however, exercise reasonable care to promptly reinstate service.

IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, PUNITIVE OR INDIRECT LOSS OR DAMAGE WHETHER OR NOT ANY CLAIM FOR SUCH DAMAGES IS BASED ON TORT OR CONTRACT OR EITHER PARTY KNEW OR SHOULD HAVE KNOWN THE LIKELIHOOD OF SUCH DAMAGES IN ANY CIRCUMSTANCES.

**16. Representations and Warranties; Board Approval.** Each party hereby represents and warrants to the other that the party has full right, power and authority to fully perform its obligations under this Agreement, and that it has full right, power and authority to execute and deliver this Agreement, and that the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by all necessary corporate action required to be taken on the part of the party including, when necessary, approval thereof by the party's Board of Directors or Board of Regents, as applicable. Each party hereby further represents and warrants to the other that this Agreement constitutes a valid and binding obligation of the party enforceable in accordance with its terms except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting the enforcement of creditors' rights and except as courts of equity may limit certain remedies such as specific performance. Each party further represents and warrants to the other that the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not conflict with, or result in the violation of, any laws or regulations applicable to the party, or of the charter, articles of association or bylaws of a party, or any agreement or other instrument to which the party is subject or by which the party or any of its properties or assets are bound.

**17. Examinations.** Except to the extent applicable law prohibits such, all records maintained by University pertaining to Bank and its Affinity Debit Card Bank Account customers and relevant to the performance of this Agreement will be available for examination and audit by the United States Department of Treasury, Office of the Comptroller of the Currency. Bank will provide University or its duly authorized representatives with reasonable access to Bank's records for the purpose of enabling University to confirm Bank's compliance with the terms of this Agreement. All such records may be audited by the University or its designated representative(s) at any time during Bank's regular working hours upon reasonable notice. Bank may require persons obtaining access to Bank's records under this Section 17, as a condition to obtaining access, to execute written confidentiality agreements setting forth the matters as addressed Section 18.

To the extent authorized by law, University will give Bank access to student direct mail and email lists for the purpose of creating awareness to the Affinity Debit Card Program and Bank related services.

**18. Confidentiality.** University may be provided certain information concerning Bank and/or its affiliates or customers, or other information Bank deems proprietary (including, without limitation, customer account information, customer lists, business plans, data processing programs, and operating manuals), in connection with the transactions contemplated herein. Likewise, Bank may be provided certain information that University deems proprietary or confidential pursuant to the law or University policy. As a condition to being furnished such information by a party (herein the "Confidential Information"), the other party agrees as follows:

- a. Except for Affinity Debit Card Bank Account application data and Affinity Debit Card Bank Account transaction information, which shall automatically be deemed to be Confidential Information of Bank, all information deemed confidential or proprietary by a party shall be clearly labeled "Confidential Information" or otherwise identified as "Confidential Information" in writing contemporaneous with furnishing such Confidential Information to the other party.
- b. Each party will use the Confidential Information of the other party solely for the purposes expressly authorized in this Agreement or subsequently authorized by the other party in writing.
- c. Each party will keep the Confidential Information of the other party confidential and (except to the extent required by law or legal process) refrain from disclosing the Confidential Information of the other party to any other person or party or using the Confidential Information of the other party for any purpose not expressly authorized under this Agreement or subsequently authorized by the other party in writing. Each party will be fully responsible for the unauthorized use or disclosure of the Confidential

Information of the other party by any of its officers, directors, employees or other persons under its control.

- d. In the event a party is requested or legally compelled (by subpoena, warrant, legal process or other civil or criminal law, rule or procedure) to produce, disclose, or provide the Confidential Information of the other party, the party will promptly notify the other party of that fact as soon as reasonably possible, except to the extent such notification is prohibited by law.
- e. The parties agree that, to the extent applicable under the provisions of the Bank Service Company Act, they may be subject to examination by the OCC for the services provided in connection with this Agreement. The parties shall comply with the applicable requirements of 12 C.F.R. Part 30, and any other applicable law or regulation, by implementing and/or maintaining appropriate measures designed to: (1) ensure the security and confidentiality of Bank's Confidential Information; (2) protect against any anticipated threats or hazards to the security or integrity of such information; and (3) protect against unauthorized access to or use of such information that could result in harm or inconvenience to any Bank customer. These confidentiality and security provisions shall survive the termination of this Agreement.
- f. Throughout the Term, Bank shall implement and maintain appropriate safeguards, in conformity with applicable federal law and regulations, for all customer information, if any, owned by the University and delivered to the Bank pursuant to this Agreement. The Bank shall promptly notify the University, in writing, of each instance of (i) unauthorized access to or use of that customer information that could result in substantial harm or inconvenience to a customer of the University or (ii) unauthorized disclosure, misuse, alteration or other compromise of that customer information.

In addition, Bank's customer lists, including names of Eligible University Community Members who are Affinity Debit Card holders and who have Affinity Debit Card Bank Accounts, are Bank's Confidential Information, for which Bank retains exclusive ownership and right during the Term. Therefore, although University is not precluded from using or disclosing the names of its students, faculty members, staff members or other Eligible University Community Members for any purpose it deems appropriate, University would be precluded from using a list comprised of Affinity Debit Card holders who have obtained Affinity Debit Card Bank Accounts from Bank if such use was for a purpose prohibited by this Section 18; provided, however, that University will not be deemed to be in breach of this Agreement in the event it is legally required (by subpoena, warrant, legal process or other civil or criminal law, rule or procedure) to produce, disclose, or provide such a list, provided it has made reasonable efforts to give Bank the notice required under subsection d., if applicable.

Within fifteen (15) days of the expiration or earlier termination of this Agreement, the parties shall either return if requested or otherwise destroy Confidential Information including documents, data and other information provided to each other in connection with this Agreement. Notwithstanding any provision herein to the contrary, Bank shall be permitted and shall retain such University Confidential Information for so long as: (i) is required by law; or (ii) as may be consistent with its normal business practices not to exceed five years, unless otherwise required by law.

Nothing in this Section 18 or in this Agreement shall prevent University from disclosing that University is receiving financial benefits and royalties from Bank in connection with the Affinity Debit Card program.

## **19. Termination.**

- a. This Agreement may be terminated by either party (the “Non-Defaulting Party”) upon notice to the other party (the “Defaulting Party”) upon the Defaulting Party’s material breach of any provision of this Agreement and failure to cure the breach within 60 days after written notice describing the breach and the action necessary to cure the breach is given by the Non-Defaulting Party to the Defaulting Party. In the event the Defaulting Party is in good faith unable to cure such material breach within 60 days, it shall commence the cure in a commercially reasonable manner and notify the Non-Defaulting Party of the anticipated cure date which in no event shall be later than 120 days from the material breach.
- b. This Agreement may be terminated by either party without notice to the other party in the event a petition in bankruptcy (or similar law providing for the adjustment of debts, debt reorganization or liquidation of the party) is filed by the other party, a petition in bankruptcy (or similar law providing for the adjustment of debts, debt reorganization or liquidation of the party) is filed against the other party and is not dismissed within sixty (60) days, or a conservator or receiver is appointed for the other party or for all or a substantial portion of its assets.
- c. This Agreement may be terminated by either party at any time if: (i) the operation of the Affinity Debit Card Card program has or threatens to have a material adverse financial impact on Bank or University due to the use of one or more of the Affinity Debit Cards in a fraudulent manner or in a way which does not permit Bank or University to recover funds from the user(s) of the Affinity Debit Card(s); or (ii) Bank or University is notified by a regulatory agency that any aspect of the Campus Affinity Debit Card program does not comply with any applicable law, regulation, rule or policy applicable to Bank or University; or (iii) the continuance of such campus affinity debit card or similar programs in the opinion of the Bank or University will have a material adverse effect or impact upon the good will and reputation of Bank or University.

**20. Assignment.** This Agreement may not be assigned by either party in whole or in part, other than by operation of law, without in each event the other party's prior written consent. Any such permitted assignment will not, in any event, release the party from its obligations hereunder. Written consent will not be required for transfers resulting from corporate reorganization, consolidation or name change that is not the result of a change in control of the Bank .

**21. Subcontractors.** Each party is responsible for the actions of its respective subcontractors used to perform pursuant to this Agreement. The party seeking to engage a third party to perform any material obligation under this Agreement must obtain the advance written consent of the other party. The party intending to use a subcontractor as described herein shall include in the agreement with such subcontractor an acknowledgment that such subcontractor is subject to the applicable terms and conditions of this Agreement. No contractual relationship shall exist between any Bank subcontractor and University unless such is evidenced in a separate contract independent of this Agreement. Notwithstanding the foregoing, University acknowledges that certain Affinity Debit Card products and services to be provided by Bank may be supplied by or through Bank's parent corporation, entities directly or indirectly owned or controlled by Bank or its subsidiaries, entities affiliated with Bank or owned or controlled by entities affiliated with Bank, or vendors who provide certain card services and in such cases, no written consent or separate written contract shall be required for arrangements made with such entities.

**22. Notices.** Except as otherwise provided in this Agreement, all notices hereunder must be in writing and will be deemed given when mailed, or when delivered, if notice is given in any other manner, to the address of the party designated below or such other address as the party may designate by written notice to the other party. The date of mailing will be deemed to be the date appearing on the postmark.

If to Bank: Wells Fargo Bank, N.A.  
Attn: Linda Russell, Regional President  
2141 Rosecrans Ave  
4th Floor, Suite 4100  
El Segundo, CA 90245

With copy to Wells Fargo Bank, N.A.  
Kevin Duncan  
1220 Concord Ave, 5<sup>th</sup> Floor  
Concord, CA 94520

If to University: Loyola Marymount University

Attn: Thomas O. Fleming, Jr.  
Senior VP & Chief Financial Officer  
University Hall  
One LMU Drive, Ste. 4900  
Los Angeles, CA 90045

With copy to Harold A. Bridges  
Bridges & Bridges  
1715 Via El Prado, #606  
Redondo Beach, CA 90277

**23. Amendments and Waiver.** This Agreement may be amended only in writing signed by both parties. In the event of a default by either party under this Agreement, any delay, waiver or omission by the other party in exercising its rights under this Agreement or applicable law will not result in a waiver of the party's rights with respect to the same or any subsequent breach by the breaching party.

**24. Governing Law.** The laws of the State of California shall govern this Agreement. Nothing in this section shall be deemed to apply to any aspect of the agreement that is in place between Bank and an Eligible University Community Member regarding an Affinity Debit Card Bank Account.

**25. Force Majeure.** The parties shall not be considered in default should failure to perform be the result of any circumstances beyond their reasonable control, not occasioned by fault or negligence or due to compliance with any sovereign decrees, orders, acts, instructions or priority requests of any federal, state, or municipal governments or any department or agency thereof, civil or military, acts of God, fires, floods, strikes, lockouts, embargoes, acts or threats of terrorism, or wars. Upon the happening of any circumstances or causes aforesaid, non-performing party shall notify the other party without delay. Any relief granted shall be limited to an extension of delivery dates or times of performance.

**26. Relationship of Parties.** No agency, partnership or joint venture is created by this Agreement. The parties disclaim any intent to form such relationships.

**27. Entire Agreement.** Except as expressly provided herein, this Agreement constitutes the entire agreement with respect to the transactions contemplated herein and supersedes and is in full substitution for any and all prior agreements and understandings between the parties hereto relating to such transactions. Each party disclaims reliance on any prior oral or written representations or undertakings by the other party in entering into this Agreement unless such representations or undertakings are expressly set forth in this Agreement. Wherever the parties agree to discuss a matter, there will be no implied agreement to agree, nor will any other standard be applied in determining a party's performance that is not expressly set forth in the



Agreement. However, University and Bank agree that the provisions of account agreements will govern the products and services to be provided by Bank pursuant to this Agreement.

## **28. Information System General Security**

- a. University and its employees shall comply with all Bank security policies, procedures, and standards, as it may promulgate from time to time, including, without limitation, those governing access to data, computer systems, and facilities and governing the removal of property from Bank's premises. Each of University's employees having access to Bank's computer systems will be required to sign Bank's system access agreement.
- b. With regard to any computer system owned, controlled, or used by University or any agent or subcontractor of University, which computer system is now or hereafter physically or logically connected to or able to access any computer system owned, controlled, or used by Bank or which is used to store any Bank's software or data, University shall comply with all Bank's security policies, procedures, and standards governing or related to the connection or access to Bank's computer systems as it may promulgate from time to time so long as University receives notice of such policies, procedures, and standards, and any relevant changes.
- c. In addition, University agrees: (i) not to alter any hardware or software security residing on any Bank's computer system and/or network; and (ii) not to allow unauthorized traffic to pass into Bank's networks. In addition to any other rights Bank may have under this Agreement, Bank may terminate an unauthorized access.

**29. Taxpayer Identification Number.** University shall provide Bank with a duly dated and executed certification of taxpayer identification number in the form attached as Exhibit C.

**30. License to Establish Link to Bank Web Site.** University would like to use the Bank "red box" logo on the University Internet web site as a link to Bank's Internet web site at [wellsfargo.com](http://wellsfargo.com) and has requested Bank's consent.

Bank hereby grants to University a worldwide, non-exclusive right and license to establish a normal (href) text based link on [www.lmu.edu](http://www.lmu.edu) to the [www.wellsfargo.com](http://www.wellsfargo.com) home page for the purpose described in the immediately preceding paragraph; provided, however, that University shall not "frame" the Bank web pages inside the University web site. Bank also hereby grants to University a non-exclusive right and license to use the WELLS FARGO "red box" logo ("the Logo") on the University Internet web site located at [www.lmu.edu](http://www.lmu.edu) for the exclusive purpose of linking from [www.lmu.edu](http://www.lmu.edu) to [www.wellsfargo.com](http://www.wellsfargo.com). University agrees that nothing herein shall give to it any right, title or interest in the Logo (except the right to use the Logo in accordance with the terms of this Agreement), that the Logo is the sole property of Bank and that any and all uses by University of the Logo shall inure to the benefit of Bank.

University acknowledges that Bank may terminate the above right to link and the right to use

the Logo if the content or structure of the University web pages and/or web site changes unless within ten (10) calendar days after receiving written notice of termination from Bank, University removes the materials to which Bank objects or revises the University web pages and/or site to return to the original format or a format that is acceptable to Bank. If the above right to link and use the Logo is terminated, University agrees to remove the link from the University web page to the Bank web page and cease all use of the Logo within ten (10) calendar days of receiving notice.

University agrees that it will not use any Logo design except the camera-ready or downloadable Logo design provided to University by Bank. University agrees that all products and/or services offered by University on its web site in the future shall be of a nature and quality commensurate with the nature and quality of its current products and/or services. Bank may monitor the University use of the Logo on the University web site. University shall deliver all web pages that reference Bank and/or contain the Logo to Bank prior to publication for Bank's consent.

This license to use Logo shall be royalty-free. This license to use Logo and any and all rights granted hereunder are personal in nature to University, are non-transferable by University, do not convey any sublicensing rights to University, and shall not inure to the benefit of any successor in interest of University. This license to use Logo shall be binding upon and inure to the benefit of Bank's successors and assigns. All rights not specifically granted or licensed to University are reserved to Bank.

**31. Student Loan Representation and Warranty.** University and Bank represent and warrant to one another that the pricing and other terms and conditions for the services provided under the Agreement are unrelated to whether the University refers student loans to Bank and to the amount of any such referrals. The parties further represent and warrant that royalty or other payments made by Bank to the University in accordance with the terms described herein are wholly unrelated to student loan activities, volumes, referrals or amount of referrals.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates designated below.

Wells Fargo Bank, National Association

Signature: \_\_\_\_\_

Name: Linda Russell

Title: Regional President.

Date: \_\_\_\_\_

Loyola Marymount University

Signature: \_\_\_\_\_

Name: Thomas O. Fleming, Jr.

Title: Senior VP & Chief Financial Officer

Date: \_\_\_\_\_

**EXHIBIT A**  
**UNIVERSITY MARKS**

**EXHIBIT B**  
**BANK MARKS**



(Black box with white letters)



(Red box with gold letters)

**EXHIBIT C**

**UNIVERSITY TAXPAYER IDENTIFICATION NUMBER**