

## **AFFINITY MARKETING AGREEMENT**

This Affinity Marketing Agreement (the “Agreement”) is made and entered into as of \_\_\_\_\_ (the “Effective Date”), by and between ARVEST BANK, Fayetteville, Arkansas (“Arvest”), and \_\_\_\_\_ (“Endorser”), with reference to the following:

WHEREAS, Arvest desires to market and promote the use of its VISA debit cards (collectively, the “Cards”) to its current and prospective customers using Endorser’s name, trademarks, service marks and logo (collectively, the “Marks”) upon the terms and conditions set forth herein; and

WHEREAS, Endorser desires to have its Marks identified on the Cards pursuant to the terms of this Agreement (each, an “Affinity Card,” and collectively, the “Affinity Cards”).

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Marketing of Affinity Cards. Throughout the Term (as hereinafter defined), Arvest and Endorser shall cooperate to develop advertising, marketing strategies and materials to promote the use of the Affinity Cards. In connection therewith, Arvest may, from time to time, present to Endorser promotional and solicitation strategies. Endorser shall provide to Arvest the artwork to be included on the Affinity Cards. Prior to use, Arvest and Endorser must mutually approve in writing or via email, confirmed receipt, (a) the promotional and solicitation strategies and the artwork, and (b) all advertising and marketing materials relating to the Affinity Cards, which approvals shall not be unreasonably withheld or delayed. Endorser shall not independently undertake any marketing of the Affinity Cards without Arvest’s prior written consent.

2. Marks. For the duration of the Term, Endorser hereby grants to Arvest a non-transferable, non-exclusive and royalty-free license to use the Marks on its Cards and in its advertising and marketing materials promoting use of the Affinity Cards as contemplated in this Agreement. Arvest shall have the non-exclusive right to utilize the Marks in connection with debit cards during the Term. Endorser represents and warrants that (a) it is the owner of the Marks, (b) has authority to grant the license extended hereunder, and (c) the Marks do not infringe the rights of any third party. Endorser will deliver the Marks to Arvest within fifteen (15) days after execution of this Agreement. Nothing in this Agreement shall confer upon Arvest a proprietary interest of any kind in or to the Marks, other than the right to use the Marks in accordance with the terms and conditions of this Agreement.

3. Records. Endorser understands that Arvest shall not disclose to Endorser, and Endorser shall not have access to, any non-public, non-published customer information or other privacy protected data, which information shall remain confidential in all respects. Further, the terms of this Agreement and any proposal, financial information and/or proprietary information provided by or on behalf of one party to the other party are confidential. Such confidential information will not be disclosed by the recipient thereof to any other person or entity, except as permitted under this Agreement, as required by operation of law or as mutually agreed in writing.

4. Cardholders. Arvest will issue Affinity Cards to prospective customers based upon Arvest's customary practices and shall make all decisions and bear all risk with respect to each customer's account(s). Arvest shall be identified as the issuer of each Affinity Card and have the sole and **exclusive** right to make all determinations with respect to the terms and features and issuance of the Affinity Cards.

5. Term. The initial term of this Agreement shall begin on the Effective Date and continue for a period of twelve (12) months thereafter (the "Initial Term"). This Agreement shall automatically renew for successive periods of one (1) year each (each, a "Renewal Term"), unless either party delivers to the other party written notice, at least thirty (30) days prior to the expiration of the Initial Term or any Renewal Term, of its election not to extend this Agreement beyond the then-scheduled expiration date. The Initial Term and any Renewal Term(s) are collectively referred to herein as the "Term." Notwithstanding the foregoing, if there is a material default by either party under this Agreement, and such default shall continue for a period of fifteen (15) days after written notice thereof from the non-defaulting party to the defaulting party, the non-defaulting party shall have the right to terminate this Agreement upon at least fifteen (15) days' additional written notice.

Upon the expiration or termination of this Agreement, (a) Arvest shall discontinue use of the Marks; provided, however, that Arvest shall not be required to invalidate any Affinity Card issued during the Term prior to such Affinity Card's normal expiration or termination date, and (b) for a period of one (1) year following such expiration or termination, Endorser agrees that it shall not, by itself or in conjunction with others, directly or indirectly, specifically target any offer of a debit card to any persons who are holders of the Affinity Cards.

6. Condition. This Agreement is expressly made conditional upon Arvest's receipt of written approval of the transactions contemplated herein and the design of the Affinity Cards from VISA U.S.A. Inc. If approval is not obtained within thirty (30) days after the execution of this Agreement, this Agreement shall automatically terminate without further action by either party, and each party shall be released from its obligations hereunder.

7. Indemnity. Endorser shall defend, indemnify and hold Arvest and its affiliates harmless from and against any and all claims, losses, liability, damages, costs and expenses (including reasonable attorneys' fees) directly or indirectly arising from or related to any actual or alleged infringement (including contributory infringement), misappropriation or violation of **any** third party's patents, copyrights, trade secret rights, trademarks or other intellectual property or proprietary rights of any nature in any jurisdiction, resulting from the use of the Marks or other materials produced hereunder. The respective rights and obligations of the parties under this section shall survive termination of this Agreement.

8. Other Affinity Programs. Endorser acknowledges that Arvest is, and shall remain during the Term, the issuer of Cards through this and other affinity programs which may be in competition with the Affinity Cards contemplated hereunder. Endorser acknowledges that the other programs may contain benefits and terms that are different from those offered under this Agreement.

9. Miscellaneous.

9.1 Assignment. Neither party may transfer or assign its rights or delegate its duties under this Agreement without the prior written consent of the other; provided, however, that Arvest may assign any of its rights and obligations hereunder to an affiliate or successor if such affiliate or successor assumes, either expressly or by operation by law, all of Arvest's obligations hereunder.

9.2 Notices. Notices or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been given (a) when delivered in person, (b) one (1) business day after being sent by nationally recognized overnight courier, charges prepaid, (c) four (4) business days after being mailed, postage prepaid, by registered or certified mail, or (d) when sent by email, with confirmed receipt, in each case addressed as follows:

(a) If to Arvest:

Arvest Bank  
Contract Filing  
202 S. Goad Springs Rd  
Lowell, AR 72745  
Email: contractfilinggroup@arvest.com

(b) If to Endorser:

Attn: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_  
State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Email: \_\_\_\_\_

or to such other address as any party may from time to time designate by notice given to the other party in the manner provided herein. Courtesy or informational notices may be delivered by email only.

9.3 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Arkansas.

9.4 Amendment; Waiver. This Agreement may be amended only by a written agreement signed by the parties hereto. A waiver of a breach of any provision of this Agreement by any party shall not operate or be construed as a waiver of any subsequent breach.

9.5 Binding Effect. This Agreement shall be binding upon all parties and their respective successors and permitted assigns.

9.6 Severability. If any provision of this Agreement as applied to any party or to any circumstances shall be adjudged by a court of competent jurisdiction to be void or unenforceable, the same shall in no way affect any other provision of this Agreement or the validity or enforceability of this Agreement.

9.7 Counterparts; Electronic Transmission. This Agreement may be executed in counterparts, each of which will be deemed an original. An electronic transmission of a signed counterpart of this Agreement shall be sufficient to bind the party or parties whose signature(s) appear thereon.

9.8 No Agency. The parties are independent contractors. Nothing in this Agreement creates any agency, partnership, employment, joint venture, partnership or fiduciary relationship between the parties, and neither party shall have the right or authority to act for or on behalf of the other party.

9.9 Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, and there are no agreements, understandings, specific restrictions, warranties or representations relating to such subject matter between the parties other than those set forth herein.

EXECUTED as of the day and year first above written.

ARVEST:

**ARVEST BANK**



Name:

Title:

ENDORSER:

Organization:



Name:

Title: