

**AMENDED AND RESTATED  
AFFINITY AGREEMENT**

This Agreement is entered into as of this 24 day of May, 2004 (the "Effective Date") by and between MBNA AMERICA BANK, N.A., a national banking association having its principal place of business in Wilmington, Delaware ("MBNA America"), and AMERICAN COUNSELING ASSOCIATION, a Virginia corporation having its principal place of business in Alexandria, Virginia ("ACA"), for themselves, and their respective successors and assigns.

WHEREAS, ACA and MBNA America are parties to an Agreement last dated May 11, 1994, as amended (collectively, the "Original Agreement"), wherein MBNA America provides certain financial services to certain persons included in certain lists provided to MBNA America by or on behalf of ACA; and

WHEREAS, ACA and MBNA America mutually desire to amend and restate the Original Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, ACA and MBNA America agree as follows:

1. DEFINITIONS

When used in this Agreement,

- (a) "ACA Affiliate" means any entity which, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with ACA.
- (b) "Agreement" means this agreement and Schedules A, B and C.
- (c) "Credit Card Account" means a credit card account opened by a Member in response to marketing efforts made pursuant to the Program.
- (d) "Customer" means any Member who is a participant in the Program.
- (e) "Financial Service Product" means any credit card program, charge card program, debit card program, installment loan program, revolving loan program, deposit program, general bank card services and travel and entertainment card program.
- (f) "Group Incentive Program " or "GIP" means any marketing or other program whereby ACA conducts solicitation efforts for the Program, and the parties mutually agree that such marketing or other program shall constitute a GIP.
- (g) "GIP Account" means a Credit Card Account opened by a Member pursuant to a GIP in which ACA complies with the GIP provisions of this Agreement.

- (h) "Mailing List" means an updated and current list and/or magnetic tape (in a format designated by MBNA America) containing names, postal addresses and, when available, telephone numbers and e-mail addresses of Members who are at least eighteen (18) years of age, segmented by zip codes or reasonably selected membership characteristics.
- (i) "Member" means a member of ACA and/or other potential participants mutually agreed to by ACA and MBNA America.
- (j) "Program" means those programs and services of the Financial Service Products MBNA America agrees to offer pursuant to this Agreement to the Members from time to time.
- (k) "Reward Credit Card Account" means a Credit Card Account carrying the Reward Enhancement and opened pursuant to the Program.
- (l) "Royalties" means the compensation set forth in Schedule B.
- (m) "Trademarks" means any design, image, visual representation, logo, service mark, trade dress, trade name, or trademark used or acquired by ACA or any ACA Affiliate during the term of this Agreement.

## 2. RIGHTS AND RESPONSIBILITIES OF ACA

- (a) ACA agrees that during the term of this Agreement it will endorse the Program exclusively and that neither ACA nor any ACA Affiliate shall, 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 MBNA America) the providing of, any Financial Service Products of any organization other than MBNA America; (ii) license or allow others to license or use the Trademarks in relation to or for promoting any Financial Service Products of any entity other than MBNA America; 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 MBNA America. Notwithstanding anything else in this Agreement to the contrary, ACA may accept print advertising from any financial institution provided that the advertisement does not contain an express or implied endorsement by ACA of said financial institution or the advertised Financial Service Product.
- (b) ACA agrees to provide MBNA America with such information and assistance as may be reasonably requested by MBNA America in connection with the Program.
- (c) ACA authorizes MBNA America to solicit Members by mail, direct promotion, internet, advertisements and/or telephone for participation in the Program.
- (d) ACA shall have the right of prior approval of all Program advertising and solicitation materials to be used by MBNA America, which contain a Trademark; such approval shall not be unreasonably withheld or delayed. In the event that MBNA America incurs a cost because of a

change in the Trademarks (e.g., the cost of reissuing new credit cards), MBNA America may deduct such costs from Royalties due ACA. In the event such costs exceed Royalties then due ACA, ACA shall promptly reimburse MBNA America for all such costs.

(e) Upon the request of MBNA America, ACA shall provide MBNA America with the Mailing List free of any charge; provided, however, that ACA shall not include in any Mailing List the name and/or related information regarding any person who has expressly requested that ACA not provide his/her personal information to third parties. In the event that MBNA America incurs a cost because of a charge assessed by ACA or its agents for an initial Mailing List or an update to that list, MBNA America may deduct such costs from Royalties due ACA. ACA shall provide the first Mailing List, containing at least eighty thousand (80,000) non-duplicate names (of persons at least eighteen years of age) with corresponding valid postal addresses and, when available, telephone numbers and e-mail addresses, as soon as possible but no later than thirty (30) days after ACA's execution of this Agreement.

(f) ACA shall, and shall cause any ACA Affiliates to, only provide information to or otherwise communicate with Members or potential Members about the Program with MBNA America's prior written approval, except for current advertising and solicitation materials provided by MBNA America to ACA. Notwithstanding the above, ACA 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 MBNA America to ACA. Any correspondence received by ACA that is intended for MBNA America (e.g., applications, payments, billing inquiries, etc.) shall be forwarded to the MBNA America account executive via overnight courier within 24 hours of receipt. All charges incurred for this service will be paid by MBNA America.

(g) ACA hereby grants MBNA America and its affiliates a limited, exclusive license to use the Trademarks solely in conjunction with the Program, including the promotion thereof. This license shall be transferred upon assignment of this Agreement. This license shall remain in effect for the duration of this Agreement and shall apply to the Trademarks, notwithstanding the transfer of such Trademarks by operation of law or otherwise to any permitted successor, corporation, organization or individual. ACA shall provide MBNA America all Trademark production materials (e.g., camera ready art) required by MBNA America for the Program, as soon as possible but no later than thirty (30) days after ACA's execution of this Agreement. Nothing stated in this Agreement prohibits ACA from granting to other persons a license to use the Trademarks in conjunction with the providing of any other service or product, except for any Financial Service Products.

(h) ACA shall permit MBNA America to advertise the Program on its home page and at other prominent locations within the internet site of ACA. MBNA America may establish a "hot-link" from such advertisements to another internet site to enable a person to apply for a Credit Card Account. Any Credit Card Accounts generated pursuant to such a "hot-link" shall entitle ACA to the GIP compensation set forth in Schedule B, subject to the other terms and conditions of this Agreement. ACA shall modify or remove such advertisements within twenty-four (24) hours of MBNA America's request.

3. RIGHTS AND RESPONSIBILITIES OF MBNA AMERICA

- (a) MBNA America shall design, develop and administer the Program for the Members.
- (b) MBNA America shall design all advertising, solicitation and promotional materials with regard to the Program. MBNA America reserves the right of prior written approval of all advertising and solicitation materials concerning or related to the Program, which may be developed by or on behalf of ACA.
- (c) MBNA America shall bear all costs of producing and mailing materials for the Program.
- (d) MBNA America shall make all credit decisions and shall bear all credit risks with respect to each Customer's account(s) independently of ACA.
- (e) MBNA America shall use the Mailing Lists provided pursuant to this Agreement consistent with this Agreement and shall not permit those entities handling these Mailing Lists to use them for any other purpose. MBNA America shall have the sole right to designate Members on these Mailing Lists to whom promotional material will not be sent. These Mailing Lists are and shall remain the sole property of ACA. However, MBNA America may maintain separately all information which it obtains as a result of an account relationship or an application for an account relationship. This information becomes a part of MBNA America's own files and shall not be subject to this Agreement; provided however that MBNA America will not use this separate information in a manner that would imply an endorsement by ACA.

4. REPRESENTATIONS AND WARRANTIES

- (a) ACA and MBNA America 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.
  - (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 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) ACA represents and warrants to MBNA America as of the date hereof and throughout the term of this Agreement that it has the right and power to license the Trademarks to MBNA America for use as contemplated by this Agreement, and to provide the Mailing List(s) to MBNA America for the promotion of the Program. ACA will hold MBNA America, its directors, officers, agents, employees, affiliates, successors and assigns harmless from and against all liability, causes of action, and claims, and will reimburse MBNA America's reasonable and actual costs in connection therewith (including attorneys' fees), arising from the Trademark license granted herein or from MBNA America's use of the Trademarks in reliance thereon, or from the use of any Mailing List(s) by MBNA America for the promotion of the Program. Each party shall promptly notify the other party in the manner provided herein upon learning of any claims or complaints relating to such license or the use of any Trademarks.

## 5. ROYALTIES

(a) During the term of this Agreement, MBNA America shall pay Royalties to ACA. Royalties will not be paid without a completed Schedule C (W-9 Form and EFT Form). Except as otherwise provided in Schedule B, payment of Royalties then due shall be made approximately forty-five (45) days after the end of each calendar quarter.

(b) On or before the forty fifth (45th) day after the end of each calendar quarter during the term of this Agreement, MBNA America will provide ACA with a statement showing the number of Credit Card Accounts opened, the number of Credit Card Accounts renewed and the retail purchase dollar volume (excluding those transactions that relate to refunds, returns and unauthorized transactions), made during the preceding calendar period.

## 6. PROGRAM ADJUSTMENTS

A summary of the current features of the Program are set forth in Schedule A. MBNA America reserves the right to make periodic adjustments to the Program and its terms and features.

## 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. MBNA America and ACA 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.

## 8. TERM OF AGREEMENT

The initial term of this Agreement will begin on the Effective Date and end on May 31, 2009. 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) days, but not more than one hundred eighty (180) days, prior to the last date of such term or renewal term, as applicable.

9. STATE LAW GOVERNING AGREEMENT

This Agreement shall be governed by and subject to the laws of the State of Delaware (without regard to its conflict of laws principles) and shall 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 MBNA America or ACA, the other party may terminate this Agreement by giving notice, as provided herein, to the breaching party. This notice shall (i) describe the material breach; and (ii) state the party's intention to terminate this Agreement. If the breaching party does not cure or substantially cure such breach within sixty (60) days after receipt of notice, as provided herein (the "Cure Period"), then this Agreement shall terminate sixty (60) days after the Cure Period.

(b) If either MBNA America or ACA 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 termination of this Agreement, MBNA America shall, in a manner consistent with Section 10(d) of this Agreement, cease to use the Trademarks. MBNA America agrees that upon such termination it will not claim any right, title, or interest in or to the Trademarks or to the Mailing Lists provided pursuant to this Agreement. However, MBNA America may conclude all solicitation that is required by law.

(d) MBNA America shall have the right to prior review and approval of any notice in connection with, relating or referring to the termination of this Agreement to be communicated by ACA or any ACA Affiliate to the Members. Such approval shall not be unreasonably withheld. Upon termination of this Agreement, ACA shall not attempt to cause the removal of ACA's identification or Trademarks from any person's credit devices, checks or records of any Customer existing as of the effective date of termination of this Agreement.

(e) In the event that any material change in any applicable law, statute, operating rule or regulation, or any material change in any operating rule or regulation of either VISA or MasterCard makes the continued performance of this Agreement under the then current terms and conditions unduly burdensome, then MBNA America shall have the right to terminate this Agreement upon ninety (90) days advance written notice. Such written notice shall include an explanation and evidence of the burden imposed as a result of such change.

(f) For a one (1) year period following the termination of this Agreement for any reason, ACA agrees that neither ACA nor any ACA Affiliate shall, by itself or in conjunction with others, directly or indirectly, specifically target any offer of a credit or charge card, or a credit or charge card related product to persons who were Customers. Notwithstanding the foregoing, ACA may, after termination of this Agreement, offer persons who were Customers the opportunity to participate in another credit or charge card program endorsed by the ACA 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 no such persons are directly or indirectly identified as a customer of MBNA America, or offered any terms or incentives different from that offered to all Members.

#### 11. GROUP INCENTIVE PROGRAM

(a) MBNA America shall design all advertising, solicitation and promotional material with regard to the Program, except with respect to those materials designed by ACA pursuant to any GIP. In that regard, ACA shall give MBNA America sixty (60) days prior notice of its desire to engage in marketing efforts regarding the Program itself, specifying that accounts generated from such efforts will entitle ACA to the Royalty specified in Schedule B, subject to the other terms and conditions of this Agreement.

(b) All marketing materials generated as a result of such GIP programs shall be coded by ACA for tracking purposes. Marketing materials or telemarketing inquiries from Members which, in either case, do not contain or reference such coding shall not be considered eligible for any of the GIP Royalty as set forth in Schedule B.

(c) In addition to all other rights it may have under this Agreement, MBNA America shall have the right of prior approval of all advertising and solicitation materials distributed by ACA pursuant to any GIP. MBNA America shall have approval and control of the scope, timing, content and continuation of any GIP.

(d) All costs incurred by MBNA America in producing and mailing materials created pursuant to any GIP or of supporting the marketing efforts of ACA pursuant to any GIP shall be deducted from any or all Royalty payments due ACA under this Agreement.

(e) ACA shall comply with MBNA America's instructions and all applicable laws, including, without limitation, the Truth in Lending Act and the Equal Credit Opportunity Act, with regard to any GIP.

#### 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 4(b), 7, 10(c), 10(d) and 10(f) shall survive any termination of this Agreement.

(c) The failure of any party to exercise any rights under this Agreement shall not be deemed a waiver of such right or any other rights.

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

(e) If any part of this Agreement shall for any reason be found or held invalid or unenforceable by any court or governmental agency of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Agreement which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

(f) All notices relating to this Agreement shall be in writing and shall be deemed given (i) upon receipt by hand delivery, facsimile or overnight 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:

(1) If to ACA:

American Counseling Association  
5999 Stevenson Avenue  
Alexandria, VA 22304-3300

ATTENTION: Mr. Richard Yep  
Executive Director

Fax #: (703) 823-0252

(2) If to MBNA America:

MBNA AMERICA BANK, N. A.  
1100 North King Street  
Wilmington, Delaware 19884

ATTENTION: Director of National Sales

Fax #: (xxx) xxx-xxxx

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

(g) 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.

(h) MBNA America may utilize the services of any third party in fulfilling its obligations under this Agreement. Certain Financial Service Products or services under this Agreement may

be offered through MBNA America's affiliates. For example, business credit cards are currently issued and administered by MBNA America (Delaware), N.A., and certain marketing services are currently provided by MBNA Marketing Systems, Inc.

(i) MBNA America and ACA 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.

(j) Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or give any person other than ACA and MBNA America, their successors and assigns, any rights or remedies under or by reason of this Agreement.

(k) 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 or other labor disputes, 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.

(l) 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 representative, has executed this Agreement as of the Effective Date.

**AMERICAN COUNSELING  
ASSOCIATION**

**MBNA AMERICA BANK, N.A.**

By: Richard Yee

By: David Harris

Name: RICHARD YEE

Name: David Harris

Title: EXECUTIVE DIRECTOR

Title: Sr. Executive V.P.

Date: 5-24-04

Date: 6/14/04

## SCHEDULE A

### TERMS AND FEATURES

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

#### A. CONSUMER CREDIT CARD ACCOUNTS

1. There is no annual fee.
2. The current annual percentage rate for new Credit Card Accounts solicited via direct mail will be a fixed rate of 12.99%. There may be an additional margin applied on account of the Customer's delinquency.
3. Customers may be offered opportunities to purchase a variety of communication services and to select credit insurance as a benefit under the Program.

#### B. REWARD ENHANCEMENT

"Reward Enhancement" means the loyalty reward Credit Card Account enhancement as provided through MBNA America and offered as part of the Program for Reward Credit Card Accounts. The Reward Enhancement may be marketed under another name (e.g., World Points), as determined by MBNA America from time to time, in its sole discretion.

#### C. GOLD RESERVE ACCOUNTS

"Gold Reserve Account" means a GoldReserve® (as such service mark may be changed by MBNA America, in its sole discretion, from time to time) revolving loan account opened by a Member in response to marketing efforts made pursuant to the Program.

1. There is no annual fee.
2. Customers receive a supply of blank checks from MBNA America to be drawn upon a predetermined line of credit.
3. The customer may request more checks from MBNA America on a periodic basis.

#### D. GOLD OPTION ACCOUNTS

"Gold Option Account" means a GoldOption® (as such service mark may be changed by MBNA America, in its sole discretion, from time to time) revolving loan account opened by a Member in response to marketing efforts made pursuant to the Program.

1. There is no annual fee.

2. Customers can request that checks be drawn upon a predetermined line of credit.
3. MBNA America issues checks (for specific monetary amounts) to be sent to those third parties requested by the Customer.
4. Monthly payments may be tailored to Customers' needs.

## SCHEDULE B

### ROYALTY ARRANGEMENT

During the term of this Agreement, MBNA America will pay ACA a Royalty calculated as follows, for those accounts with active charging privileges. MBNA America may create a special class of accounts for ACA employees under the Program, and will not pay compensation for such designated accounts. All Royalty payments due hereunder are subject to adjustment by MBNA America for any prior overpayment of Royalties by MBNA America:

#### A. CONSUMER CREDIT CARD ACCOUNTS (excluding Reward Credit Card Accounts)

1. \$1.00 (one dollar) for each new consumer Credit Card Account opened, which remains open for at least ninety (90) consecutive days.
2. \$3.00 (three dollars) for each consumer Credit Card Account for which the annual fee is paid by the Customer. If no annual fee is assessed by MBNA America (other than as a result of a courtesy waiver by MBNA America), then such royalty will be paid for each consumer Credit Card Account which: 1) has a balance greater than zero as of the last business day of every twelfth month after the opening of that consumer Credit Card Account; and 2) has had active charging privileges for each of the preceding twelve months.
3. 0.50% (one half of one percent) of all retail purchase transaction dollar volume generated by Customers using a consumer 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, bets, lottery tickets, or casino gaming chips)).

#### B. GIP ACCOUNTS

\$30.00 (thirty 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 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.

#### C. REWARD CREDIT CARD ACCOUNTS

Reward Credit Card Accounts shall only generate the Royalty compensation set forth in this Schedule B, Section C., notwithstanding any other provision of this Agreement.

1. \$1.00 (one dollar) for each new Reward Credit Card Account opened, which remains open for at least ninety (90) consecutive days. This Royalty will not be

paid for any Credit Card Account which, after opening, converts to a Reward Credit Card Account. Schedule B, Section B. will apply, in lieu of this Section C.1., for those Reward Credit Card Accounts which are GIP Accounts.

2. \$3.00 (three dollars) for each Reward Credit Card Account for which the annual fee is paid by the Customer. If no annual fee is assessed by MBNA America (other than as a result of a courtesy waiver by MBNA America), then such royalty will be paid for each Reward Credit Card Account which: 1) has a balance greater than zero as of the last business day of the annual anniversary of the month in which the Reward Credit Card Account was opened; and 2) has had active charging privileges for each of the preceding twelve months. A Reward Credit Card Account may renew every twelve (12) months after the opening of the account.
3. 0.20% (two tenths of one percent) of all retail purchase transaction dollar volume generated by Customers using a consumer Reward 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, bets, lottery tickets, or casino gaming chips)).

D. GOLD RESERVE REVOLVING LOAN ACCOUNTS

1. \$0.50 (fifty cents) for each new Gold Reserve Account opened, which is utilized by the Customer for at least one transaction which is not subsequently rescinded or disputed.
2. 0.25% (twenty-five basis points) of the average of all month-end outstanding balances (excluding transactions that relate to credits and unauthorized transactions) in the calendar year for certain Gold Reserve Accounts. This payment shall be calculated as of the end of each calendar year, based upon outstanding balances measured as of the end of each of the preceding calendar months of that year occurring during the term. Each monthly measurement shall include outstanding balances for only those Gold Reserve Accounts which are open with active charging privileges as of the last day of such month. This royalty will be paid within sixty (60) days of the end of the calendar year.
3. \$2.00 (two dollars) for each Gold Reserve Account that is open with active charging privileges as of the last processing day of the twelfth month after the opening of that Gold Reserve Account, and/or of any twelfth month thereafter.

E. GOLD OPTION REVOLVING LOAN ACCOUNTS

1. \$0.50 (fifty cents) for each new Gold Option account opened, which is utilized by the Customer for at least one transaction which is not subsequently rescinded or disputed.

2. 0.25% (twenty-five basis points) of the average of all month-end outstanding balances (excluding transactions that relate to credits and unauthorized transactions) in the calendar year for certain Gold Option Accounts. This payment shall be calculated as of the end of each calendar year, based upon outstanding balances measured as of the end of each of the preceding calendar months of that year occurring during the term. Each monthly measurement shall include outstanding balances for only those Gold Option Accounts which are open with active charging privileges as of the last day of such month. This royalty will be paid within sixty (60) days of the end of the calendar year.
3. \$2.00 (two dollars) for each Gold Option Account that is open with active charging privileges as of the last processing day of the twelfth month after the opening of that Gold Option Account, and/or of any twelfth month thereafter.

F. ROYALTY ADVANCE

Upon the date of full execution and delivery of this Agreement by the parties, and again on or before one year from such date, MBNA America shall pay to ACA the sum of Seventy Thousand Dollars (\$70,000) (each, an "Advance") (for a combined total of one hundred forty thousand dollars), each as an advance against future Royalties, subject to the provisions set forth below. All Royalties accrued shall, in lieu of direct payment to ACA, be applied against the Advance until such time as the Advance is fully recouped. Any Royalties accrued thereafter shall be paid to ACA as set forth in this Agreement. Notwithstanding the foregoing, ACA hereby promises to pay MBNA America upon demand an amount equal to the difference between the amount of the Advances paid and the total amount of accrued Royalties credited by MBNA America against the Advance(s) as of the date of such demand, in the event any of the conditions set forth in Clauses (i) through (iv) below should occur:

- (i) the Agreement terminates and the amount of the Advance has not been fully recouped by MBNA America;
- (ii) ACA breaches any of its obligations under this Agreement;
- (iii) MBNA America is prohibited or otherwise prevented from conducting at least four (4) direct mail campaigns to the full updated Mailing List during each consecutive twelve month period during the term of the Agreement; and/or
- (iv) MBNA America is prohibited or otherwise prevented from conducting at least one (1) telemarketing campaigns to the full updated Mailing List during each consecutive twelve month period during the term of the Agreement.