

**THE JOHNS HOPKINS UNIVERSITY  
THIRD AMENDED AND RESTATED  
AFFINITY AGREEMENT**

This Agreement is entered into as of this 1<sup>st</sup> day of March, 2010 (the "Effective Date") by and between FIA Card Services, N.A. (f/k/a MBNA America Bank, N.A.), a national banking association having its principal place of business in Wilmington, Delaware ("Bank"), and The Johns Hopkins University, an educational institution having its principal place of business at San Martin Center, 2<sup>nd</sup> Floor, 3400 N. Charles St, Baltimore, Maryland 21218 ("JHU"), for the benefit of the JHU Alumni Association, a division of JHU ("JHUAA") for themselves and their respective successors and assigns.

WHEREAS, JHU and Bank are parties to that certain Amended and Restated Affinity Agreement dated as of October 16, 1998, as the same has been amended ("Second Amended and Restated Affinity Agreement"), wherein Bank provides certain Financial Service Products to certain persons included in certain Mailing Lists provided to Bank by or on behalf of JHU; and,

WHEREAS, JHU and Bank mutually desire to amend and restate the Second Amended and Restated Affinity Agreement; and

WHEREAS, this Agreement is intended to relate to the offer of programs and products to JHU alumni only, and not to JHU or any other division of JHU.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, JHU and Bank agree as follows:

1. DEFINITIONS

When used in this Agreement, the following initially capitalized words and phrases will have the meanings ascribed to them as set forth below:

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

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

**"Applicable Law"** means, at any time, any applicable (i) federal, state, and local statutes, regulations, licensing requirements, regulatory bulletins or guidance, regulatory examinations, agreements or orders, (ii) regulations, by-laws and rules of any applicable self-regulatory organizations, (iii) rule, regulation, restriction, requirement or contractual term of VISA, MasterCard, American Express or other card network and (iv) judicial or administrative interpretations of any of the foregoing.

**“Contract Year”** means the period from the Effective Date through and including February 28, and each twelve month period thereafter from March 1 through February 28 during the initial term of the Agreement, and if applicable, any renewal term.

**“Credit Card Account”** means an open-end consumer credit account opened pursuant to the Program that is accessed utilizing a card, plate and/or any other device or instrument.

**“Customer”** means any Member who is a participant in the Program.

**“Emerging Account”** means a Credit Card Account coded by Bank with one of Bank’s risk management identifiers. Emerging Accounts may carry a Reward Enhancement.

**“Emerging GIP Account”** means an Emerging Account opened pursuant to a GIP in which JHU complies with the GIP provisions of this Agreement.

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

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

**“Group Incentive Program”** or **“GIP”** means any marketing or other program whereby JHU conducts and funds solicitation efforts for the Program and the parties mutually agree that such marketing or other program shall constitute a GIP.

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

**“JHU Affiliate”** means any Affiliate of JHU.

**“JHU Trademarks”** means any design, image, visual representation, logo, service mark, trade dress, trade name, or trademark used or acquired by JHU or any JHU Affiliate during the term of this Agreement and used for the Program. The current JHU Trademarks are set forth on Schedule C.

**“Marketing List”** means an updated and current list (in a format designated by Bank) containing non-duplicate names, with corresponding valid postal addresses and, when available, home telephone numbers (including area codes) of all Members who are at least eighteen years of age, segmented by zip codes or other mutually selected membership characteristics. The Marketing List shall not contain the names of students or employees of JHU.

**“Member”** means (i) alumni of JHU or any JHU division, including people who have completed their service as medical housestaff and fellows at the School of Medicine; (ii) members of any alumni association of JHU or any JHU Affiliate; and/or (iii) other

potential participants mutually agreed to in writing by JHU and Bank. For the avoidance of doubt, Member will not include any person who is currently a full or part-time student or employee of JHU.

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

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

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

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

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

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

## 2. RIGHTS AND RESPONSIBILITIES OF JHU

- (a) JHU agrees that during the term of this Agreement the JHUAA will endorse the Program exclusively and that it will not, by itself or in conjunction with others, directly or indirectly: (i) sponsor, advertise, develop, market, solicit proposals for programs offering affinity credit cards, or discuss with any organization (other than Bank) the providing of, any Financial Service Product of any entity other than Bank; (ii) license, allow others to license, or use or allow to exist the use by others of the JHUAA Trademarks in relation to or for promoting any Financial Service Products of any entity other than Bank; and (iii) sell, rent or otherwise make available or allow others to sell, rent or otherwise make available any of its mailing lists or information about any current or potential Members in relation to or for promoting any Financial Service Products of any entity other than Bank. Notwithstanding the foregoing, in the event that JHUAA desires to offer current or potential Members any Financial Service Products, as defined herein, not currently offered pursuant to this Agreement, it shall so notify Bank in writing (“Offer Notice”) and provide Bank with such information as is reasonably necessary for Bank to evaluate whether it wishes to provide such Financial Service Product(s) under the Program. Bank shall provide JHU with written notice of its intent to evaluate the Offer Notice and related information within thirty (30) days of its receipt of the Offer Notice and such related information, and shall include in such notice a reasonable estimate as to when such

evaluation shall be completed ("Evaluation Period"). In the event that Bank wishes to provide such Financial Service Product(s) as part of the Program hereunder, the parties shall use commercially reasonable efforts to enter into an amendment to this Agreement for the purpose of adding such Financial Service Product(s) under this Agreement. If (i) Bank does not wish to provide such Financial Service Product(s) as part of the Program, and accordingly does not provide JHU with written notice of its intent to evaluate the Offer Notice and related information within the proscribed time period, or after furnishing to JHU written notice of its intent to evaluate the Offer Notice, does not provide JHU with its election to offer such product or service within the Evaluation Period; or (ii) the parties, acting in good faith, are unable to agree on the terms of an amendment to this Agreement, then JHU may engage another issuer to do so and such engagement will not be a violation of this Section 2 of this Agreement. JHU, in conducting any offer in accordance with the foregoing, shall not refer to Bank, Bank's Affiliates, the Program, or the fact that a Customer is a Cardholder without Bank's prior written consent. In addition, if JHUAA sells any product or service, in connection with such sales, JHUAA shall not, favor any payment product or method of payment over any payment product or method of payment offered under the Program. Notwithstanding anything else in this Agreement to the contrary, JHU may accept print advertising from any financial institution provided that the advertisement does not contain an express or implied endorsement by JHUAA of said financial institution or advertising for a Financial Service Product. This Agreement shall not apply in any way to JHU's relationship with the Johns Hopkins Federal Credit Union ("JHFCU") nor shall it limit in any way the programs, products or activities, offered thereunder.

- (b) JHU agrees to provide Bank with such information and assistance as may be reasonably requested by Bank in connection with the Program.
- (c) JHU authorizes Bank to solicit Members by mail, direct promotion, internet, advertisements, banking centers, or telephone, for participation in the Program. No other means may be used without the express written consent of JHU.
- (d) JHU will permit Bank to advertise the Program in four (4) JHU Alumni Association monthly email newsletters free of charge each year during the term of the Agreement and in one (1) Johns Hopkins Magazine issue each year during the term of the Agreement, such cost to JHUAA for the advertisements in Johns Hopkins University Magazine shall not exceed \$3,000. Such advertising may constitute GIP, and therefore certain Program accounts opened through these channels, subject to the GIP provisions of this Agreement, may qualify for GIP compensation in accordance with the terms of Schedule A.
- (e) JHU will have the right of prior approval of all Program advertising and solicitation materials to be used by Bank that contain a JHU Trademark; such approval will not be unreasonably withheld or delayed. In the event that JHU changes the JHU Trademarks, JHU may either: (1) permit Bank to continue using the previous JHU Trademarks until all inventory is exhausted, or (2) request that Bank replace Program materials, in which case Bank shall notify JHU of such costs (e.g., the cost of reissuing new credit cards), and may deduct such costs from any Royalties due JHU. In the event such costs exceed Royalties

then due JHU, if requested by Bank, JHU will promptly reimburse Bank for all such costs.

- (f) Once annually and within thirty (30) days following the request of Bank, JHU will provide Bank with the Marketing List free of any charge; provided, however, that JHU will not include in any Marketing List the name and/or related information regarding any Member who has expressly requested that JHU not provide his/her personal information to third parties. In the event that Bank incurs a cost because of a charge assessed by JHU or its agents for an initial Marketing List or an update to the Marketing List, Bank may deduct such costs from Royalties due JHU. JHU will provide the first Marketing List, containing the required information for at least one hundred twenty thousand (120,000) non-duplicate Member names, as soon as possible but no later than thirty (30) days after JHU's execution of this Agreement.
- (g) JHU will, and will cause any JHU Affiliates to, only provide information to or otherwise communicate with Members or potential Members about the Program with Bank's prior written approval, except for current advertising and solicitation materials provided by Bank to JHU. Notwithstanding the above, JHU may respond to individual inquiries about the Program from its Members on an individual basis, provided that said responses are accurate and consistent with the then-current materials provided by Bank to JHU. Any correspondence received by JHU that is intended for Bank (*e.g.*, applications, payments, billing inquiries, etc.) will be forwarded to the Bank account executive via overnight courier within twenty-four (24) hours of receipt. All reasonable overnight courier expenses incurred by JHU will be paid by Bank.
- (h) JHU hereby grants Bank and its Affiliates a limited, exclusive license to use the JHU Trademarks with the Program. This license transfers to the assignee of this Agreement. This license will remain in effect for the duration of this Agreement and will apply to the JHU Trademarks, notwithstanding the transfer of such JHU Trademarks by operation of law or otherwise to any permitted successor, corporation, organization, or individual. JHU will provide Bank all JHU Trademark production materials (*e.g.*, camera ready art) required by Bank for the Program as soon as possible but no later than thirty (30) days after JHU's execution of this Agreement. Nothing stated in this Agreement prohibits JHU from granting to other persons a license to use the JHU Trademarks in conjunction with the providing of any other service or product, except for any Financial Service Products. JHU shall approve the particular JHU Trademark(s) to be utilized in connection with the Program in its sole discretion after obtaining the preferences of Bank.
- (i) All Program Trademarks, with the exception of Program Trademarks that consist of or contain a JHU Trademark, with or without other elements, shall belong exclusively to Bank and Bank may use such Program Trademarks in any manner not prohibited by this Section 2(h). JHU may not use any Program Trademark, except to promote the Program or any goods or services offered by Bank through the Program. JHU shall not register or attempt to register any Program Trademark. Bank shall not register or attempt to register any JHU Trademark. Bank may use Program Trademarks that contain JHU Trademarks

to promote or identify the Program and any products or services offered by Bank through the Program at no cost to Bank, but only during the term of this Agreement.

- (j) JHU will permit Bank, at no cost to Bank, to advertise the Program on JHU's Alumni Association home page through a rolling call out box and at other locations mutually agreed upon by the parties within JHU's Alumni Association web presence, such as the member benefits web page. Bank may establish a hyperlink from such advertisements to another internet site to enable a person to apply for any type of Credit Card Account. Any Credit Card Accounts generated pursuant to such a hyperlink will entitle JHU to the GIP compensation set forth in Schedule A, subject to the other terms and conditions of this Agreement. JHU will modify or remove such advertisements within twenty-four (24) hours of Bank's request. To enable Bank to view all Program material, JHU will provide Bank with the ability to access any and all pages within the JHU Alumni Association internet site(s), including without limitation any "members only" or other restricted access pages.

### 3. RIGHTS AND RESPONSIBILITIES OF BANK

- (a) Bank will design, develop, maintain, and administer the Program for the Members.
- (b) Bank will design all advertising, solicitation, and promotional materials used in the Program, except for materials used in any GIP. Bank shall include in all advertising, solicitation, and promotional materials disclosure of JHU's financial interest in this Program and this Agreement, subject to JHU's approval of the disclosure language. Bank reserves the right of prior written approval of all materials concerning or related to the Program that may be developed by or on behalf of JHU
- (c) Bank will bear all costs of producing and mailing materials for the Program except for materials used in any GIP.
- (d) Bank will make all credit decisions and will bear all credit risks with respect to each Customer's account(s) independently of JHU.
- (e) Bank will use the Marketing Lists provided pursuant to this Agreement in a manner consistent with this Agreement and will not permit those entities handling the Marketing Lists to use them for any other purpose. Bank will have the sole right to designate Members on these Marketing Lists to whom promotional material will be sent. These Marketing Lists are and will remain the sole property of JHU. However, Bank may maintain separately and will own all information that it obtains as a result of an account relationship or an application for an account relationship. This information becomes a part of Bank's files and will not be subject to this Agreement; provided however that Bank will not use this separate information in a manner that would imply an endorsement by JHU. Bank also agrees that it will not actively market the Program to current students of JHU using the Marketing List, nor shall Bank target market the Program to students at its Charles Village branch bank. Notwithstanding the foregoing, in the event that a JHU student requests the JHU Credit Card at the Charles Village Branch, their application will be taken and processed. For the avoidance of doubt, Bank shall be permitted to

market any of its products other than the JHU Credit Card at its Charles Village branch, and may market any of its products, including the JHU Credit Card, at all other Bank branches. Bank agrees that current full time or part time JHU students are not considered Members under the Program, but cannot prevent any applicant from applying for, nor deny any applicant any product or service under the Program because of the applicant's status as a JHU student.

(f) Subject to applicable law and regulation, Bank has the right to place JHU Trademarks on gifts for individuals completing applications and on other premium items, including without limitation t-shirts, hats, "bobbleheads," or other items suitable in Bank's judgment for the solicitation of Credit Card Account applications. JHU will have approval of the use and appearance of the JHU Trademarks used on such materials pursuant to Section 2(d), but grants Bank the right to use approved materials at Bank's discretion. Bank will not be required to pay any third party (e.g., any producer, licensor(ee), or manufacturer of such gifts and premiums) royalties or other compensation otherwise due directly or indirectly to or on behalf of JHU or a JHU Affiliate for such gifts or premiums. JHU waives such payments from any third party(ies) (and/or agrees to cause the recipient(s) of such payments to waive such payments), and will take (and/or will cause the recipient(s) of such payments to take) all actions to give effect to this waiver. If a third party should refuse to reduce the price to Bank for such gifts or premiums (or otherwise prevent the realization of this benefit by Bank) then Bank may deduct such amount(s) from Royalties.

(g) Bank will comply with the requirements of the Credit Card Accountability, Responsibility and Disclosure Act of 2009, to the extent it is applicable to this Agreement.

#### 4. REPRESENTATIONS AND WARRANTIES

(a) JHU and Bank each represents and warrants to the other party that as of the Effective Date and throughout the term of this Agreement:

(i) It is duly organized, validly existing and in good standing;

(ii) It has all necessary power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement;

(iii) This Agreement constitutes a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, receivership, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity;

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

(v) The execution, delivery and performance of this Agreement by such party will not constitute a violation of any law, rule, regulation, court order or ruling applicable to such party.

- (b) JHU represents and warrants to Bank as of the date hereof and throughout the term of this Agreement that it has the right and power to license the JHU Trademarks to Bank for use as contemplated by this Agreement, and to provide the Marketing List(s) to Bank for the promotion of the Program. JHU will indemnify, defend and hold harmless Bank, and its directors, officers, agents, employees, Affiliates, successors and assigns, from and against all liability, causes of action, and claims, and will reimburse Bank's costs, fees and expenses in connection therewith (including reasonable attorneys' fees and court expenses), arising from the JHU Trademarks license granted herein or from Bank's use of the JHU Trademarks in reliance thereon, or from the use of any Marketing List(s) by Bank for the Program. Each party will promptly notify the other party upon learning of any claims or complaints relating to the license or the use of any JHU Trademarks or Marketing Lists. JHU and Bank each will indemnify and hold harmless the other party, its directors, officers, agents, employees, affiliates, insurers, successors and assigns (the "Indemnitees") from and against any and all liability, causes of action, claims, and the reasonable and actual costs incurred in connection therewith ("Losses"), resulting from the material breach of this Agreement by JHU or Bank, respectively as the case may be, or its directors, officers and employees.

## 5. ROYALTIES

- (a) During the term of this Agreement, Bank will pay Royalties to JHU. Royalties will not be paid until a Schedule B (W-9 Form and ACH Form) or other IRS required form (e.g., W-8) is fully completed and returned to Bank. Except as otherwise provided in Schedule A, payment of Royalties then due, along with the delivery of Bank's Royalty report, will be made approximately forty-five (45) days after the end of each calendar quarter. Bank will not pay Royalties to JHU for new student credit card accounts and student Credit Card Accounts existing as of the Effective Date.
- (b) If at any time during the term of the Agreement any change in any card network's interchange rate(s) or similar rate(s), when measured separately or together with all other rate changes since the Effective Date, has more than a de minimis adverse impact on Bank's business, as determined by Bank in its sole discretion ("Impact"), then Bank may notify JHU in writing of Bank's desire to renegotiate the Royalties and any other financial terms in the Agreement to address the Impact. If, within sixty (60) business days after JHU's receipt of Bank's notice, the parties have not, for whatever reason, fully executed an addendum that modifies the Royalties and other financial terms to address the Impact, Bank shall have the right to terminate this Agreement, without penalty or liability to JHU, upon ninety (90) days advance written notice.

## 6. PROGRAM ADJUSTMENTS

Bank has the right to make periodic adjustments to the Program, including, without limitation, changes to its terms and features. In addition, Customers may, as a benefit under the Program, be offered opportunities to select credit protection and other products and services.



7. CONFIDENTIALITY OF AGREEMENT

The terms of this Agreement, any proposal, financial information and proprietary information provided by or on behalf of one party to the other party prior to, contemporaneously with, or subsequent to, the execution of this Agreement (“Information”) are confidential as of the date of disclosure. Such Information will not be disclosed by such other party to any other person or entity, except as permitted under this Agreement or as mutually agreed in writing. Bank and JHU will be permitted to disclose such Information (i) to their accountants, lawyers, financial advisors, marketing advisors, affiliates and employees (its “Agents”) as necessary for the performance of their respective duties, provided that said persons agree to treat the Information as confidential in the above described manner or (ii) as required by law or requested by any governmental regulatory authority. Notwithstanding the foregoing, the party disclosing Information to its Agents shall be liable for any breach of this Section 7 by their Agents.

8. TERM OF AGREEMENT

The term of this Agreement will begin on the Effective Date and end on February 28, 2017. This Agreement will automatically extend at the end of the initial term or any renewal term for successive two-year periods, unless either party gives written notice of its intention not to renew at least ninety (90) and not more than one hundred eighty (180) days, prior to the end of the then current term or renewal term, as applicable.

9. STATE LAW GOVERNING AGREEMENT

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

10. TERMINATION

- (a) In the event of any material breach of this Agreement by Bank or JHU, the other party may terminate this Agreement by giving notice to the breaching party. This notice will (i) include a description of the material breach; and (ii) state the party's intention to terminate this Agreement. If the breaching party does not cure or substantially cure such breach within sixty (60) days after receipt of notice, as provided herein (the “Cure Period”), then this Agreement will terminate sixty (60) days after the Cure Period ends.
- (b) If either Bank or JHU becomes insolvent in that its liabilities exceed its assets or it is unable to meet or it has ceased paying its obligations as they generally become due, or it is adjudicated insolvent, or takes advantage of or is subject to any insolvency proceeding, or makes an assignment for the benefit of creditors or is subject to receivership, conservatorship or liquidation then the other party may immediately terminate this Agreement.

- (c) Upon the expiration or earlier termination of this Agreement, Bank will, except as set forth in Section 10(d) of this Agreement, cease to use the JHU Trademarks for Program marketing purposes, provided that Bank may conclude all solicitations required by law. Upon the expiration or earlier termination of this Agreement, Bank will not claim any right, title, or interest in or to the JHU Trademarks or to the Marketing Lists.
- (d) Bank will have the right to prior review and approval of any notice in connection with, relating or referring to the expiration or earlier termination of this Agreement to be communicated by JHU or any JHU Affiliate to the Members. Such approval will not be unreasonably withheld. Upon the expiration or earlier termination of this Agreement, JHU will allow Bank to continue to use the JHU Trademarks on, and will not attempt to cause the removal of JHU Trademarks from, any person's credit devices, checks or records of any Customer existing as of expiration or earlier termination of this Agreement until their normally scheduled reissue date or exhaustion.
- (e) In the event that Applicable Law has or will have a material adverse effect on Bank's business (as determined in Bank's sole discretion) ("Event"), Bank may notify JHU in writing of Bank's desire to renegotiate the terms of the Agreement to address the Event. If, within sixty (60) business days after JHU's receipt of Bank's notice, the parties have not, for whatever reason, fully executed an addendum that is satisfactory to both parties, Bank shall have the right to terminate this Agreement, without penalty or liability to JHU, upon ninety (90) days advance written notice.
- (f) For a one (1) year period immediately following the expiration or earlier termination of this Agreement for any reason, JHU agrees that neither JHU nor any JHU Affiliate will, by itself or in conjunction with others, directly or indirectly, target any offer of a Financial Service Product or a related product to persons who were Customers. Notwithstanding the foregoing, JHU may, after the expiration or earlier termination of this Agreement, offer persons who were Customers the opportunity to participate in another financial service program endorsed by JHU, provided the opportunity is not only made available to such persons but rather as a part of a general solicitation to all Members and provided further that persons are not directly or indirectly identified as a customer of Bank, or offered any terms or incentives that differ from those offered to all Members.

#### 11. GROUP INCENTIVE PROGRAM

- (a) JHU will design all advertising, solicitation and promotional material with regard to any GIP. JHU will give Bank sixty (60) days prior notice of its desire to engage in marketing efforts for any GIP. Credit Card Accounts generated from such efforts will entitle JHU to the Royalty for GIP specified in Schedule A, subject to the other terms and conditions of this Agreement.
- (b) All marketing materials generated as a result of such GIP programs will be coded by JHU as instructed by Bank for tracking purposes. Marketing materials or telemarketing

inquiries from Members which do not contain or reference such coding will not be considered eligible for any GIP Royalty.

- (c) Bank will have the right of prior approval of all advertising and solicitation materials for use by JHU pursuant to any GIP. Bank has control over, in its sole discretion, the scope, timing, content and continuation of any GIP. JHU will not deviate from the approved materials and plan for any GIP without the prior written approval of Bank.
- (d) All costs incurred by Bank in producing and mailing approved materials created pursuant to any GIP or of supporting the marketing efforts of JHU pursuant to any GIP will be promptly reimbursed by JHU upon demand.
- (e) JHU will make all reasonably requested changes to materials to obtain Bank's consent and JHU will comply with all applicable laws, including, without limitation, the Truth in Lending Act and the Equal Credit Opportunity Act, with respect 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 2(h), 4(b), 7, 10(c), 10(d), 10(f) and 11(e) will survive the expiration or any earlier termination of this Agreement.
- (c) The failure of any party to exercise any rights under this Agreement will not be deemed a waiver of such right or any other rights.
- (d) The section captions are inserted only for convenience and are in no way to be construed as part of this Agreement.
- (e) If any part of this Agreement is, for any reason, found or held invalid or unenforceable by any court or governmental agency of competent jurisdiction, such invalidity or unenforceability will not affect the remainder of this Agreement which will survive and be construed as if such invalid or unenforceable part had not been contained herein and the parties hereto shall immediately commence negotiations in good faith to reform this Agreement to make alternative provisions herein that reflect the intentions and purposes of the severed provisions in a manner that does not run afoul of the basis for such unenforceability or invalidity.
- (f) All notices relating to this Agreement will be in writing and will be deemed given (i) upon receipt by hand delivery, facsimile or overnight courier, or (ii) three (3) business days after mailing by registered or certified mail, postage prepaid, return receipt requested. All notices will be addressed as follows:

- (1) If to JHU:

The Johns Hopkins University Alumni Association  
Office of Alumni Relations  
San Martin Center  
3400 N. Charles Street, 2<sup>nd</sup> Floor  
Baltimore, Maryland 21218

ATTENTION: Ms. Marguerite Ingalls Jones,  
Director of Alumni Services

Fax #: (410) 516-6858

With a copy to :  
The Office of  
Vice President and General Counsel  
113 Garland Hall  
The Johns Hopkins University  
3400 N. Charles St.  
Baltimore, Maryland 21218

ATTENTION: Frederick G. Savage

Fax #: 410-516-5448

(2) If to Bank:

FIA Card Services, N. A.  
MS DE5-004-04-02  
1100 North King Street  
Wilmington, Delaware 19884

ATTENTION: Contract Administration

Fax # : (302) 432-1821

(3) Any party may change the address and fax number to which communications are to be sent by giving notice, as provided herein, of such change of address.

- (g) This Agreement contains the entire agreement of the parties with respect to the matters covered herein and supersedes all prior promises and agreements, written or oral, with respect to the matters covered herein, including, without limitation, the Second Amended and Restated Affinity Agreement. This Agreement does not and is not intended to alter or amend any aspect or provision of any other agreement between the parties that survives termination of that agreement. Without the prior written consent of Bank, which will not be unreasonably withheld, JHU may not assign any of its rights or obligations

under or arising from this Agreement. Bank may assign any of its rights or obligations under this Agreement to any other person without the prior consent of JHU. Bank 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 or administered through Bank's Affiliates in accordance with changes in corporate structure that may occur from time to time.

- (h) Bank and JHU are not agents, representatives or employees of each other and neither party will have the power to obligate or bind the other in any manner except as otherwise expressly provided by this Agreement.

Nothing expressed or implied in this Agreement is intended or will be construed to confer upon or give any person other than JHU and Bank, their successors and assigns, any rights or remedies under or by reason of this Agreement.

- (i) Neither the staff of JHUAA nor Bank shall make any statement, whether written, oral or otherwise, to any person or entity which criticizes, disparages, condemns or impugns the reputation or character of the other or any of its Affiliates, whether or not the statement is true and whether or not it is characterized as confidential.
- (j) Neither party shall be held responsible for any delay or failure in performance to the extent such delay or failure is caused by fire, flood, explosion, terrorism, war, strike, embargo, government laws, rules, regulations or requirements, civil or military authority, act of God, act or omission of carriers or other similar causes beyond its control, that was not reasonably foreseeable or avoidable, and without the fault or negligence and/or lack of diligence of the delayed party ("force majeure condition"). The non-delayed party shall have the right to terminate this Agreement if such force majeure condition endures for more than one hundred twenty (120) days upon providing at least thirty (30) days written notice to the delayed party at any time after the expiration of the one hundred twenty (120) day period.
- (k) This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. The parties hereto agree to accept a digital image of this Agreement, as executed, as a true and correct original and admissible as best evidence to the extent permitted by a court with proper jurisdiction.
- (m) This Agreement is the product of negotiations between the parties hereto and their respective counsel. No provision or section of this Agreement shall be read, construed or interpreted for or against either party by reason of ambiguity of language, rule of construction against the draftsman, or any similar doctrine.

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

**The Johns Hopkins University**

By: James McGill  
Name: JAMES McGill  
Title: Sr. Vice Pres Fin + Adm  
Date: 3-31-10

**FIA Card Services, N.A.**

By: Chad Pisorchik  
Name: Chad Pisorchik  
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Date: 4-13-10

## SCHEDULE A

### ROYALTY ARRANGEMENT

During the term of this Agreement, Bank will pay JHU a Royalty calculated as follows, for those accounts with active charging privileges. All Royalty payments due hereunder are subject to adjustment by Bank for any prior overpayment of Royalties by Bank:

#### ANNUAL ROYALTY

Bank will pay JHU a Royalty which is determined by the Annual Loan Loss Rate (as such term is defined below) of the Credit Card Accounts (the "JHU Annual Royalty"). The JHU Annual Royalty is expressed as a percentage of Average Outstanding Balance (as such term is defined below) and will be calculated and paid by Bank approximately forty-five (45) days following the end of each Contract Years one through six (for clarity, the years ending February 28 of , 2011, 2012, 2013, 2014, 2015 and 2016) during the Initial Term of the Agreement based on the percentages set forth in the chart below as compensation to JHU for Contract Years two through seven.

For clarity, each payment is based on the previous year's performance of the Credit Card Accounts. For clarity the payment is made in advance each Contract Year for JHU's performance under the terms and provisions of the Agreement for that current Contract Year, (the amounts are paid by Bank, in advance, for JHU's performance under the terms and provisions of the Agreement).

Additionally, JHU will receive the JHU Annual Royalty of two hundred twenty-three thousand one hundred and two dollars (\$223,102) upon the full execution of this Agreement based upon performance of the Credit Card Accounts during the period from October 1, 2008 through September 30, 2009, as compensation for the initial Contract Year ending on February 28, 2011.

For purposes of this section, "Loan Loss Amount" means (a) the aggregate amount of the outstanding balances on all Credit Card Accounts that have been charged-off (written off as a bad debt by Bank), less (b) any recoveries against such amounts, and less (c) any interest or fees included in such amounts, expressed as a dollar amount. Loan Loss Amount is calculated each month at the close of business on the last day of the month.

For the purposes of this section, "Annual Loan Loss Rate" means the aggregate sum of all Loan Loss Amounts in a Contract Year divided by Average Outstanding Balance for the Contract Year. It is calculated annually and expressed as a percentage.

For purposes of this section, "Outstanding Balance" is determined by calculating the month-end outstanding balance of all Credit Card Accounts with active charging privileges on the last day of the month. It is calculated each month at the close of business on the last day of the month and expressed as a dollar amount.

For purposes of this section, "Average Outstanding Balance" means the aggregate sum of Outstanding Balance for the applicable Contract Year, divided by 12. It is calculated annually and expressed as a dollar amount.

The JHU Annual Royalty will be calculated as a percentage of Average Outstanding Balance, such percentage to be determined by the Annual Loan Loss Rate for the applicable Contract Year, as follows:

<b>ANNUAL LOAN LOSS RATE</b>	<b>JHU ANNUAL ROYALTY PERCENTAGE</b>
Less than 3.5%	0.95% (ninety-five basis points)
Greater than or equal to 3.5% but less than 4.00%	0.90% (ninety basis points)
Greater than or equal to 4.00% but less than 4.50%	0.85% (eighty-five basis points)
Greater than or equal to 4.50% but less than 5.00%	0.80% (eighty basis points)
Greater than or equal to 5.00% but less than 5.50%	0.75% (seventy-five basis points)
Greater than or equal to 5.50% but less than 6.00%	0.70% (seventy basis points)
Greater than or equal to 6.00% but less than 6.50%	0.45% (forty-five basis points)
Greater than or equal to 6.50% but less than 7.00%	0.35% (thirty-five basis points)
Greater than or equal to 7.00%	0.0% (zero basis points)

All Royalty payments, including, without limitation, the JHU Annual Royalty, are subject to adjustment by Bank for accidental overpayment of Royalties by Bank. No further JHU Annual Royalty Payments are due if any event described in (a) through (e) below occurs.

- (a) The Agreement shall terminate prior to February 28, 2017;
- (b) JHU shall breach the Agreement;
- (c) Bank shall be prohibited or otherwise prevented from conducting at least five (5) direct mail campaigns to the full updated Marketing List during each consecutive twelve (12) month period during the term of the Agreement;
- (d) Bank shall be prohibited or otherwise prevented from conducting at least five (5) telemarketing campaigns to the full updated Marketing List during each consecutive twelve (12) month period during the term of the Agreement; and
- (e) JHU fails to provide above the fold web site placement of Program marketing material during the term of the Agreement.



In the event that any of conditions a) through e) above occur, in addition to any other remedies Bank may have under this Agreement, JHU will refund to Bank the proportionate share of the JHU Annual Royalty Payment paid to JHU for the quarter in which the condition occurs, and any remaining quarters in the then current year. In the event that any such condition occurs during the first quarter of any year under the Agreement, JHU shall refund to Bank the entire JHU Annual Royalty Payment received by JHU for that year. Notwithstanding the foregoing, JHU shall not be required to refund to Bank the JHU Annual Royalty Payment paid to JHU for the current year if the Agreement is terminated by Bank pursuant to Sections 5(b) or 10(e) herein.

B. GIP ACCOUNTS

1. \$100.00 (one hundred dollars) for each GIP Account opened, which remains open for at least ninety (90) consecutive days and which is utilized by the Customer within the first ninety (90) consecutive days of the GIP Account's opening for at least one (1) purchase or cash advance which is not subsequently rescinded, the subject of a charge back request, or otherwise disputed. Such GIP Accounts will not qualify for any other opening-of-an-account Royalty.
2. \$100.00 (one hundred dollars) for each Reward GIP Account opened, which remains open for at least ninety (90) consecutive days and which is utilized by the Customer within the first ninety (90) consecutive days of the Reward GIP Account's opening for at least one purchase or cash advance which is not subsequently rescinded, the subject of a charge back request, or otherwise disputed. Such Reward GIP Accounts will not qualify for any other opening-of-an-account Royalty.
3. \$25.00 (twenty-five dollars) for each Emerging 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 Emerging GIP Account's opening for at least one (1) purchase or cash advance which is not subsequently rescinded, the subject of a charge back request, or otherwise disputed. Such Emerging GIP Accounts will not qualify for any other opening-of-an-account Royalty.