

**SECOND AMENDED AND RESTATED  
AFFINITY AGREEMENT  
ST. JOHN'S UNIVERSITY**

This Agreement is entered into as of this 1st day of October, 2010 (the "Effective Date") by and between FIA Card Services, N.A., a national banking association having its principal place of business in Wilmington, Delaware ("**Bank**"), and St. John's University, New York having its principal place of business at 8000 Utopia Parkway, Queens, New York 11439 ("**STJ**"), for themselves and their respective successors and assigns.

WHEREAS, STJ and Bank are parties to that certain Amended and Restated Affinity Agreement entered into as of May 1, 1998, as the same has been amended, including without limitation by those certain letter agreements between the parties dated April 20, 2010 and July 23, 2010, respectively (the Amended and Restated Affinity Agreement together with all addenda and amendments thereto collectively, the "Original Agreement"), wherein Bank provides certain Financial Service Products to certain persons included in certain lists provided to Bank by or on behalf of STJ; and

WHEREAS, STJ and Bank mutually desire to amend and restate the Original Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, STJ 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:

**"Accountholder Information"** means any information relating to a Customer or their account under the Program ("Accountholder"), the Bank, or the Program.

**"Accountholder List"** means a list of Accountholder Information that Bank may furnish to STJ solely for the purposes of this Agreement. "Accountholder List" includes any whole or partial copies or compilations of an Accountholder List in any form or any medium, any information derived solely from an Accountholder List, and all Accountholder Information.

**"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 (including without limitation the Credit Card Accountability Responsibility and Disclosure Act of 2009), 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.

**“Bank Affiliate”** means an Affiliate of Bank.

**“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. **“Student Credit Card Account”** is a Credit Card Account opened through an application coded by Bank as a student application.

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

**“Financial Service Product”** means any credit card program or charge card program, including without limitation any travel and entertainment credit or charge card program (e.g., American Express, Diners Club, etc.), any debit card program, and the functional equivalent of any such products or programs.

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

**“Group Incentive Program”** or **“GIP”** means any marketing or other program whereby STJ 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.

**“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, telephone numbers (including area codes) and e-mail addresses of all Members who to STJ’s knowledge and without having made an independent investigation are at least eighteen years of age, segmented by zip codes or other mutually selected membership characteristics. The Marketing List will not contain the names of students of STJ unless such student is also an alumnus.

**“Member”** means an alumnus of STJ, friends, faculty and staff of STJ, fans and ticket holders of STJ athletic events and/or other potential participants mutually agreed to by STJ and Bank. **“Member”** does not include matriculated students of STJ.

**“Program”** means those programs and services, and the promotion thereof, of 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 an STJ 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 STJ complies with the GIP provisions of the Agreement.

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

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

**“STJ Trademarks”** means any design, image, visual representation, logo, service mark, trade dress, trade name, or trademark used or acquired by STJ or any STJ Affiliate prior to or during the term of this Agreement.

## 2. RIGHTS AND RESPONSIBILITIES OF STJ

- (a) STJ agrees that during the term of this Agreement it will endorse the Program exclusively and that neither STJ nor any STJ Affiliate will, 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 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 STJ Trademarks in relation to or for promoting any Financial Service Product 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 or students of STJ in relation to or for promoting any Financial Service Product of any entity other than Bank. Notwithstanding anything else in this Agreement to the contrary, STJ may accept print advertising from any financial institution provided that the advertisement does not contain an express or implied endorsement by STJ of said financial institution or advertising for a Financial Service Product.

STJ agrees that during the term of this Agreement it shall not, directly or indirectly, enter into any agreements to offer any financial service products of any third party (for clarity, these cannot be Financial Service Products, as such term is then currently defined) without first considering in good faith a proposal from Bank to offer similar product(s) on an exclusive basis pursuant to the Program.

- (b) STJ agrees to provide Bank with such information and assistance as may be reasonably requested by Bank in connection with the Program.
- (c) STJ authorizes Bank to solicit Members by mail, direct promotion, internet, email, advertisements, banking centers, telephone or any other means for participation in the Program. Notwithstanding the foregoing, STJ does not authorize Bank to hold direct promotion events on STJ's campus without STJ's express written consent in advance. Without limiting the generality of the first sentence, STJ shall not prohibit or prevent Bank from conducting up to four direct mail campaigns to the full updated Marketing List during each consecutive twelve (12) month period during the term of this Agreement. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed to prohibit or prevent Bank from marketing to or accepting applications from students under the Program.
- (d) STJ will have the right of prior approval of all Program advertising and solicitation materials to be used by Bank that contain an STJ Trademark; such approval will not be unreasonably withheld or delayed. Notwithstanding anything in this Agreement to the contrary, if STJ changes a STJ Trademark during the term, Bank shall be permitted to continue to use Program material that bear the old STJ Trademark (including without limitation credit card plastics that bear the old STJ Trademark), and shall be under no obligation to incur any costs because of such change in STJ Trademark, until such time that Bank has exhausted its inventory of Program material that bear the old STJ Trademark. Except as otherwise mutually agreed to by the parties in writing, in no event shall STJ require Bank to reissue and/or replace Customers' credit devices, checks and records that bear the old STJ Trademark with credit devices, checks and records that bear the new STJ Trademark. Subject to requirements of Applicable Law, and consistent with Bank's current practice, Bank shall communicate in Program advertising that STJ receives a monetary benefit under the Program.
- (e) At least once annually and within thirty (30) days following the request of Bank, STJ will provide Bank with a full updated Marketing List free of any charge; provided, however, that STJ will not include in any Marketing List the name and/or related information regarding any Member who has expressly requested that STJ not provide his/her personal information to third parties. In the event that Bank incurs a cost because of a charge assessed by STJ or its agents for an initial Marketing List or an updated Marketing List, Bank may deduct such costs from Royalties due STJ. STJ will provide the first Marketing List, containing the required information for at least seventy-two thousand (72,000) non-duplicate Member names, as soon as possible but no later than thirty (30) days after STJ's execution of this Agreement.

- (f) STJ will, and will cause any STJ 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 STJ. Notwithstanding the above, STJ may respond to individual inquiries about the Program from its Members on an individual basis, provided that said responses are consistent with the then-current materials provided by Bank to STJ. Any correspondence received by STJ that is intended for Bank (*e.g.*, applications, payments, billing inquiries, etc.) will be forwarded to the Bank account executive via overnight courier within two (2) University Business Days of receipt; provided, however, if at the time STJ receives such correspondence, STJ is or will be closed for business for more than two (2) consecutive calendar days, then STJ shall forward such correspondence to the Bank account executive via overnight courier on the second University Business Day immediately following such closure. "University Business Day" shall mean any day that the University is open for business. All overnight courier expenses incurred by STJ will be paid by Bank.
- (g) STJ hereby grants Bank and its Affiliates a limited, exclusive license to use the STJ 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 STJ Trademarks, notwithstanding the transfer of such STJ Trademarks by operation of law or otherwise to any permitted successor, corporation, organization, or individual. STJ will provide Bank all STJ 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 STJ's execution of this Agreement. Nothing stated in this Agreement prohibits STJ from granting to other persons a license to use the STJ Trademarks in conjunction with the providing of any other service or product, except for any Financial Service Products.
- (h) All Program Trademarks, with the exception of Program Trademarks that consist of or contain an STJ 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). STJ may not use any Program Trademark, except to promote the Program or any goods or services offered by Bank through the Program. STJ shall not register or attempt to register any Program Trademark. Bank shall not register or attempt to register any STJ Trademark. Bank may use Program Trademarks that contain STJ 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.
- (i) STJ will permit Bank, at no cost to Bank, to advertise the Program on prominent locations on the STJ alumni benefits pages within the internet site(s) of STJ, including without limitation via banner advertisement. If at any time during the term of this Agreement, STJ makes commercial advertising generally available on the homepage(s) within the internet site(s) of STJ, STJ will permit Bank, at no cost to Bank, to advertise the Program above the fold on such homepage(s). 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 STJ to the GIP compensation set forth in Schedule A, subject to the other terms and conditions of this Agreement. STJ will modify or remove such advertisements within two (2) University Business Days of Bank's request; provided, however, if at the time of Bank's request, STJ will be closed for business for more than two (2) consecutive calendar days, then STJ will modify or remove such advertisements on the first University Business Day immediately following such closure. To enable Bank to view all Program material, STJ will provide Bank with the ability to view any and all pages within the STJ internet site(s) containing reference to the Program.

- (j) STJ may from time to time during the term include messages on and/or include materials in Credit Card Account periodic billing statements (collectively "Inserts"). STJ shall be responsible for the costs to create, produce and deliver Inserts. Bank shall be responsible for the costs of inserting and mailing Inserts, provided, however, that the weight of the Inserts does not increase the postage costs over the normal and customary postage costs incurred by Bank in mailing periodic billing statements without the Inserts. All Inserts shall be subject to: (i) Bank's prior approval, in its sole discretion, of the scope, timing and content of Inserts; (ii) the then applicable Bank size, quality, scheduling, procedural and weight requirements; (iii) Bank's obligation to include in its billing statement any notices (in message or insert format) required by Applicable Law, or any other notice, including without limitation collection/delinquency notices; (iv) any Customer imposed restrictions on such Inserts; and (v) STJ delivering to Bank in the time period required by Bank (which may change from time to time) the approved Inserts in time for Bank to include in the requested billing period. STJ will indemnify 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 Inserts, including without limitation the content thereof, or from the products and services offered therein.

### 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 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 STJ.
- (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 STJ.

- (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. In conducting marketing campaigns for the Program using a Marketing List, Bank will make commercially reasonable efforts to use the most recent full updated Marketing List provided to Bank pursuant to Section 2(e). 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 STJ. 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 STJ.
- (f) Subject to Applicable Law, Bank has the right to place STJ Trademarks on gifts for individuals completing applications and on other premium items suitable in Bank's judgment for the solicitation of account applications and/or promotion of Credit Card Accounts. STJ will have approval of the use and appearance of the STJ Trademarks on such materials pursuant to its approval rights under Section 2(d), and the parties shall mutually agree upon the use of such approved materials. 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 STJ or an STJ Affiliate for such gifts or premiums. STJ 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.

#### 4. REPRESENTATIONS AND WARRANTIES

- (a) STJ 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) STJ 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 STJ 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. STJ 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 (collectively, "Claims"), and will reimburse Bank's costs, fees and expenses in connection therewith (including reasonable attorneys' fees and court expenses), arising from the STJ Trademarks license granted herein or from Bank's use of the STJ Trademarks in reliance thereon, or from Bank's use of the Marketing List(s) in accordance with this Agreement. Notwithstanding the foregoing, STJ shall have no obligation to indemnify Bank for a Claim arising from Bank's use of the Marketing List(s) to the extent such Claim was caused by Bank's use of a Marketing List other than the most recent Marketing List provided by STJ to Bank pursuant to Section 2(e) of this Agreement. Each party will promptly notify the other party upon learning of any Claims or complaints relating to the license or the use of any STJ Trademarks or Marketing Lists.

## 5. ROYALTIES

- (a) During the term of this Agreement, Bank will pay Royalties to STJ. 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 will be made approximately forty-five (45) days after the end of each calendar quarter.
- (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 STJ in writing of Bank's desire to renegotiate the Royalties and any other financial terms in the Agreement to address the Impact. If, within thirty (30) business days after STJ'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 STJ, upon ninety (90) days advance written notice.

- (c) STJ and Bank mutually agree that as of the Effective Date and for the current term and any renewal term, Bank will not pay Royalties to STJ for any Student Credit Card Accounts; however, pursuant to the terms of this Agreement including without limitation the trademark license granted by STJ to Bank under this Agreement, Bank will have the right to use STJ Trademarks in connection with Student Credit Card Accounts.

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 STJ 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 initial term of this Agreement will begin on the Effective Date and end on September 30, 2015.

9. Intentionally Omitted

10. TERMINATION

- (a) In the event of any material breach of this Agreement by Bank or STJ, 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.

- (b) If either Bank or STJ 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 STJ 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 STJ 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 STJ or any STJ Affiliate to the Members. Such approval will not be unreasonably withheld. Upon termination or earlier expiration of this Agreement, Bank will have up to ninety (90) calendar days from the termination or expiration date to: (i) suspend marketing and remove marketing materials from Bank's marketing channels; (ii) use STJ Trademarks in connection with accounts opened during such ninety (90) day period; and (iii) remove STJ Trademarks from Program collateral and account materials, such as statements, welcome packages, and card carriers. STJ shall not attempt to cause the removal of STJ Trademarks from any person's credit devices, checks or records of any Customer existing as of ninety (90) days following the termination or expiration date of this Agreement, and Bank shall have the right to use STJ Trademarks on such credit devices, checks and records 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 STJ in writing of Bank's desire to renegotiate the terms of the Agreement to address the Event. If, within thirty (30) business days after STJ'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 STJ, 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, STJ agrees that neither STJ nor any STJ 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, STJ 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 STJ, 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) STJ will design all advertising, solicitation and promotional material with regard to any GIP. Except if STJ solely will be using materials made available to STJ by Bank for such purpose, STJ 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 STJ 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 STJ 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 STJ pursuant to any GIP. Bank has control over, in its sole discretion, the scope, timing, content and continuation of any GIP. STJ will not deviate from the approved materials and plan for any GIP without the prior written approval of Bank.
- (d) All costs agreed to in writing in advance by STJ, and incurred by Bank, in producing and mailing materials created pursuant to any GIP or of supporting the marketing efforts of STJ pursuant to any GIP will be promptly reimbursed by STJ upon demand.
- (e) STJ will make all reasonably requested changes to materials to obtain Bank's consent and STJ 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), 11(e) and 13(b), 13(c), 13(d), 13(e), 13(f) and 13(g) 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 STJ:

St. John's University  
8000 Utopia Parkway  
Queens, New York 11439  
Tel: (718) 990-2509  
Attention: Victor Ramos  
Associate Vice President of Institutional Advancement

and

St. John's University  
8000 Utopia Parkway  
Queens, New York 11439  
Tel: (718) 990-1511  
Attention: Anne Marie Schettini-Lynch  
Assistant Vice President and Associate Treasurer

with a copy (excluding routine communications) to:

St. John's University  
8000 Utopia Parkway  
Queens, New York 11439  
Fax: (718) 990-6555  
Attention: Joseph E. Oliva  
General Counsel

- (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 Original 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, STJ may not assign any of its rights or obligations under or arising from this Agreement. Bank may not assign or transfer its rights and/or obligations under this Agreement without the written consent of STJ, which shall not be unreasonably withheld; provided however, that Bank may assign or transfer, without consent, any of its rights and/or obligations under this Agreement:
- (i) to any individual, corporation or other entity (other than a Bank Affiliate) pursuant to a sale (other than a sale as described in subsection (ii), below) as long as such prospective buyer has substantially similar customer satisfaction standards as Bank; or
  - (ii) to any individual, corporation or other entity (other than a Bank Affiliate) pursuant to a merger, consolidation, or a sale of all or substantially all the assets of Bank; or
  - (ii) to any Bank Affiliate.

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 through Bank's affiliates.

- (h) Bank and STJ 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.

- (i) Nothing expressed or implied in this Agreement is intended or will be construed to confer upon or give any person other than STJ and Bank, their successors and assigns, any rights or remedies under or by reason of this Agreement.
- (j) Intentionally Omitted
- (k) Neither party 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.
- (l) 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 by providing the delayed party with at least thirty (30) days prior written notice of such termination, which notice must be received by the delayed party within ten (10) days after the expiration of the one hundred twenty (120) day period.
- (m) 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.
- (n) 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.

13. ACCOUNTHOLDER LIST

- (a) Furnishing the Accountholder List. If no notice of termination has been given by either party, Bank will, upon request from STJ, but no more frequently than once in any consecutive twelve-month period during the term of this Agreement, furnish an Accountholder List of Accountholders of Credit Card Accounts to STJ. Notwithstanding any provision of the Agreement, Bank will not furnish any Accountholder List or Accountholder Information otherwise required to be provided by it to STJ, and may restrict any use by STJ of any Accountholder List or Accountholder Information that is furnished by Bank to STJ, if Bank is prohibited from disclosing the same or permitting

such use because of any law, regulation, bank-wide privacy policy, public privacy pledge, court order, rule, consent decree, or individual present or former Accountholder request, or if furnishing the Accountholder List or Accountholder Information or its intended use would create an additional regulatory compliance burden on Bank. Without limiting the foregoing, Bank shall append the STJ member identification number ("STJ ID") provided to Bank by STJ, to the Accountholder Information to be included in any Accountholder List to be provided to STJ pursuant to this Agreement. [Bank will make commercially reasonable efforts to match each STJ ID to the correct primary Accountholder of a Credit Card Account (the "Match"). Notwithstanding the foregoing, STJ hereby acknowledges and agrees Bank makes no representation or warranty, express or implied, as to the accuracy or completeness of the Match, and neither Bank nor any of its officers, directors, employees, agents, Affiliates, successors or assigns will have any liability to STJ or any other person for any inaccurate or incomplete Match.

- (b) Permitted Use of Accountholder List. STJ shall not use the Accountholder List for any purpose not expressly permitted by Bank in this Agreement or in a separate writing. STJ agrees to secure the Accountholder List in accordance with the requirements of this Section and Bank's instructions, as communicated by Bank to STJ from time to time. STJ will only permit access to the Accountholder List to those employees, volunteers, agents, and/or representatives of STJ who need such access to perform their duties relating to this Agreement. STJ shall instruct all those employees, volunteers, agents, and/or representatives who work with any Accountholder List of STJ's duties and limitations under this Agreement.
- (c) No Transfer of Accountholder List. All Accountholder Lists are confidential and remain the sole property of Bank even when in STJ's possession. STJ will keep all Accountholder Lists confidential and will not make any copies of any kind or transfer, provide, trade, give away, barter, lend, send, sell, or otherwise disclose (collectively "transfer") any Accountholder List to any other entity or individual for any reason, except as required by this Agreement or unless agreed to in writing by Bank prior to any such transfer. If STJ receives a request or demand to disclose an Accountholder List pursuant to a subpoena, order of court of competent jurisdiction or by judicial or administrative agency or legislative body or committee, STJ shall: (i) immediately notify Bank of the existence, terms, and circumstances surrounding such request; (ii) consult with Bank on the advisability of taking legally available steps to resist or narrow such request; and (iii) if disclosure of such Accountholder List is required or deemed advisable, exercise its best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the Accountholder List to be disclosed that Bank designates.
- (d) Detection of Unauthorized Use of Accountholder List. Any Accountholder List furnished to STJ may contain dummy information (*e.g.*, names, account information, addresses, *etc.*, unknown to STJ.) for the purpose of detecting unauthorized use of an Accountholder List. A violation of this Section is conclusively proven and the relief specified below will be deemed owed when Bank establishes the following conditions: (i) that Bank placed dummy information on the list (*e.g.*, name(s), account information, address(es), *etc.*); (ii)

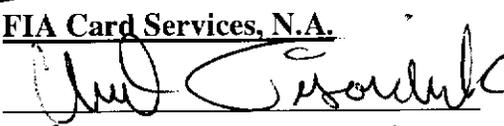
that the dummy information received any mailings which were sent or generated outside the scope of the permitted use of the Accountholder List; and (iii) that identical dummy information was not furnished by Bank or its affiliates to any third party.

- (e) Relief for Unauthorized Use of Accountholder List. Because the nature of the Accountholder List makes an evaluation of damages after a violation of this Section impossible, then if STJ or any of its Members, employees, volunteers, agents, and/or representatives uses an Accountholder List in a manner that violates this Section, Bank will be entitled to damages of twenty dollars (\$20.00) for each use of each category of information (*e.g.*, names, addresses, *etc.*) used in violation of this Section, with the amount of damages not to exceed one hundred fifty thousand dollars (\$150,000) per breach. In addition, Bank will be entitled to injunctive relief to prevent violation or further violation by STJ and/or its Members, employees, volunteers, agents, or representatives of this Section. Nothing in this Section will be construed as prohibiting Bank from pursuing any other remedy on account of such breach or threatened breach.
  
- (f) Return or Destruction of Accountholder List. STJ will return to Bank each Accountholder List, in the same form as received by STJ within forty-five (45) days of receipt of such Accountholder List. On or before the effective date of termination of the Agreement, STJ agrees that it will: (i) immediately destroy and purge from all its systems all Accountholder Lists and Accountholder Information; and (ii) return or destroy within forty-five (45) days all Accountholder Lists and Accountholder Information that is in tangible form, including any and all full or partial copies, or reproductions thereof in any medium whatsoever. STJ shall perform all destruction of Accountholder Lists and Accountholder Information in accordance with Bank's then current destruction policy.

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- (g) Notification and Treatment of Security Breach. STJ shall notify Bank in writing within twenty-four hours in the event of a breach of security or the detection of any suspicious activity relating to an information security breach or attempted breach that could include the Accountholder List or Accountholder Information. STJ shall cooperate fully with Bank to investigate, resolve and control security incidents. STJ shall reimburse Bank for its cost of producing and mailing any notice required by law or regulation that informs the Accountholders of a security breach. STJ shall monitor industry-standard information channels (bugtraq, CERT, OEMs, etc.) for newly identified system vulnerabilities and fix or patch any identified security problem in an adequate and timely manner. Unless otherwise expressly agreed in writing, "timely" shall mean that STJ shall introduce such fix or patch as soon as commercially reasonable after STJ becomes aware of the security problem. This obligation extends to all devices that comprise STJ's system, e.g., application software, databases, servers, firewalls, routers and switches, hubs, etc., and to all of STJ's other Information handling practices.

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

<u>St. John's University</u>		<u>FIA Card Services, N.A.</u>	
By: 	By: 		
Name: <u>Jacqueline A. Travisano</u>	Name: <u>Chad P. Sorchik</u>		
Title: <u>VP Business Affairs and CFO</u>	Title: <u>SVP</u>		
Date: <u>10/29/10</u>	Date: <u>10/29/10</u>		

## SCHEDULE A

### ROYALTY ARRANGEMENT

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

#### A. CREDIT CARD ACCOUNTS

1. \$3.00 (three dollars) for each new Credit Card Account opened, which remains open for at least ninety (90) consecutive days and that is utilized by the Customer within the first ninety (90) consecutive days of the Credit Card Account's opening for at least one (1) purchase or cash advance that is not subsequently rescinded, the subject of a charge back request, or otherwise disputed.
2. \$3.00 (three dollars) for each Credit Card Account for which the annual fee is paid by the Customer. If no annual fee is assessed by Bank (other than as a result of a courtesy waiver by Bank), then such Royalty will be paid for each Credit Card Account that: 1) has a balance greater than zero as of the last processing day of every twelfth month after the opening of that Credit Card Account; and 2) has had active charging privileges for each of the preceding twelve (12) months
3. 0.35% (thirty-five basis points) of all retail purchase transaction dollar volume generated by Customers using a 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, person to person money transfers, bets, lottery tickets, or casino gaming chips)).
4. \$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.

#### B. REWARD ACCOUNTS

Reward Account Royalty compensation provisions will not affect any other Royalty compensation provisions contained in the Agreement, and the Royalty compensation provisions referencing any other form of Credit Card Accounts will not apply to Reward Accounts.

1. \$3.00 (three dollars) for each new Reward Account opened, which remains open for at least ninety (90) consecutive days and that is utilized by the Customer within the first ninety (90) consecutive days of the Reward Account's opening for at least one (1) purchase or cash advance that is not subsequently rescinded, the subject of a charge back request, or otherwise disputed. This Royalty will not be paid for any account which, after opening, converts to a Reward Account, or for any Reward GIP Account.
2. \$3.00 (three dollars) for each Reward Account for which the annual fee is paid by the Customer. If no annual fee is assessed by Bank (other than as a result of a courtesy waiver by Bank), then such Royalty will be paid for each Reward Account which: 1) has a balance greater than zero as of the last processing day of every twelfth month after the opening of that Reward Account; and 2) has had active charging privileges for each of the preceding twelve (12) months. A Reward Account may renew every twelve (12) months after the opening of the account.
3. 0.22% (twenty-two basis points) of all retail purchase transaction dollar volume generated by Customers using a Reward 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, person to person money transfers, bets, lottery tickets, or casino gaming chips).
4. \$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.