

me → Alumni Association of the University of South Dakota

9/30/96

AGREEMENT

This Agreement is entered into as of this 22nd day of August, 1996 (the "Effective Date") by and between MBNA AMERICA BANK, N.A. a national banking association having its principal place of business at 400 Christiana Road, Newark, Delaware ("MBNA America"), and UNIVERSITY OF SOUTH DAKOTA, an educational institution having its principal place of business at 414 EAST CLARK STREET, VERMILLION, SOUTH DAKOTA 57069 ("USD") for themselves, and their respective successors and assigns.

1. DEFINITIONS

When used in this Agreement,

- (a) "Agreement" means this agreement and Schedules A, B and C (W-9 Tax Identification Form).
- (b) "Credit Card Account" means a credit card account opened by a Member in response to marketing efforts made pursuant to the Program. An "Alumni Customer Credit Card Account" is a Credit Card Account where the primary applicant is an Alumni Customer. A "Student Customer Credit Card Account" is a Credit Card Account where the primary applicant is a Student Customer. A "Plus Miles Credit Card Account" is a Credit Card Account carrying the Plus Miles enhancement.
- (c) "Customer" means any Member who is a participant in the Program.
 - (i) "Student Customer" means a Customer who is identified by USD or the Customer as an undergraduate student of the University of South Dakota.
 - (ii) "Alumni Customer" means a Customer who is not a Student Customer.
- (d) "Financial Service Products" means credit card programs, charge card programs, debit card programs, installment loan programs, revolving loan programs, deposit programs, long distance calling card programs and travel and entertainment card programs.
- (e) "Mailing Lists" means updated and current lists and/or magnetic tapes (in a format designated by MBNA America) containing names, postal addresses and, when available, telephone numbers of Members segmented by zip codes or reasonably selected membership characteristics.
- (f) "Member" means undergraduate students, graduate students, alumni of the University of South Dakota and/or other potential participants mutually agreed to by USD and MBNA America.
- (g) "Program" means those programs and services of the Financial Service Products MBNA America agrees to offer pursuant to this Agreement to the Members from time to time.
- (h) "Royalties" means the compensation set forth in Schedule B.

(i) "Trademarks" means any design, image, visual representation, logo, servicemark, tradename, or trademark used or acquired by USD during the term of this Agreement.

2. RIGHTS AND RESPONSIBILITIES OF USD

(a) USD agrees that during the term of this Agreement: (i) it will endorse the Program exclusively and will not sponsor, advertise, aid, develop, or solicit any Financial Service Products of any organization other than MBNA America; and (ii) it will not license or allow others to license the Trademarks in relation to or for promoting any Financial Service Products of any entity other than MBNA America; and it will not sell, rent or otherwise make available or allow others to sell, rent or otherwise make available any of its mailing lists or information about any current or potential Members in relation to or for promoting any Financial Service Products of any entity other than MBNA America. Notwithstanding anything else in this Agreement to the contrary, USD may accept advertising from any financial institution provided that the advertisement does not contain an express or implied endorsement by USD of said financial institution or the advertised Financial Service Product.

(b) USD agrees to provide MBNA America with such information and assistance as may be reasonably requested by MBNA America in connection with the Program.

(c) USD authorizes MBNA America to solicit its Members by mail, direct promotion, advertisements and/or telephone for participation in the Program.

(d) USD shall have the right of prior approval of all Program advertising and solicitation materials to be used by MBNA America, which contain USD's Trademark; such approval shall not be unreasonably withheld or delayed.

(e) Upon the request of MBNA America, USD shall provide MBNA America with Mailing Lists free of any charge. In the event that MBNA America incurs a cost because of a charge assessed by USD or its agents for an initial Mailing List or an update to that list, MBNA America may deduct such costs from Royalties due USD. The initial Mailing List shall contain at least forty thousand (40,000) names with corresponding postal addresses and, when available, telephone numbers.

(f) USD shall only provide information to or otherwise communicate with Members or potential Members about the Program with MBNA America's prior written approval, except for current advertising and solicitation materials provided by MBNA America to USD. Notwithstanding the above, USD may respond to individual inquiries about the Program from its Members on an individual basis, provided that said responses are accurate and consistent with the then-current materials provided by MBNA America to USD. Any correspondence received by USD that is intended for MBNA America (e.g., applications, payments, billing inquiries, etc.) shall be forwarded to the MBNA America account executive via overnight courier within 24 hours of receipt. All charges incurred for this service will be paid by MBNA America.

(g) USD hereby grants MBNA America and its affiliates a limited, exclusive license to use the Trademarks solely in conjunction with the Program, including the promotion thereof. This license shall be transferred upon assignment of this Agreement. This license shall remain in effect for the duration of this Agreement and shall apply to the Trademarks, notwithstanding the transfer of such Trademarks by operation of law or otherwise to any permitted successor, corporation, organization or individual. Nothing stated in this Agreement prohibits USD from granting to other persons a license to use the Trademarks in conjunction with the providing of any other service or product, except for any Financial Service Products.

3. RIGHTS AND RESPONSIBILITIES OF MBNA AMERICA

(a) MBNA America shall design, develop and administer the Program for the Members.

(b) MBNA America shall design all advertising, solicitation and promotional materials with regard to the Program. MBNA America reserves the right of prior written approval of all advertising and solicitation materials concerning or related to the Program, which may be developed by or on behalf of USD.

(c) MBNA America shall bear all costs of producing and mailing materials for the Program.

(d) MBNA America shall make all credit decisions and shall bear all credit risks with respect to each Customer's account(s) independently of USD.

(e) MBNA America shall use the Mailing Lists provided pursuant to this Agreement consistent with this Agreement and shall not permit those entities handling these Mailing Lists to use them for any other purpose. MBNA America shall have the sole right to designate Members on these Mailing Lists to whom promotional material will not be sent. These Mailing Lists are and shall remain the sole property of USD. However, MBNA America may maintain separately all information which it obtains as a result of an account relationship or an application for an account relationship. This information becomes a part of MBNA America's own files and shall not be subject to this Agreement; provided however that MBNA America will not use this separate information in a manner that would imply an endorsement by USD.

4. REPRESENTATION AND WARRANTIES

(a) USD and MBNA America each represents and warrants to the other that as of the Effective Date and throughout the term of this Agreement:

- (i) It is duly organized, validly existing and in good standing.
- (ii) It has all necessary power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.
- (iii) This Agreement constitutes a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, receivership, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

- (iv) No consent, approval or authorization from any third party is required in connection with the execution, delivery and performance of this Agreement, except such as have been obtained and are in full force and effect.
- (v) The execution, delivery and performance of this Agreement by such party will not constitute a violation of any law, rule, regulation, court order or ruling applicable to such party.

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

5. ROYALTIES

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

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

6. PROGRAM ADJUSTMENTS

A summary of the current features of the Program are set forth in Schedule A. MBNA America reserves the right to make periodic adjustments to the Program and its terms and features. Delaware and applicable federal law currently require each open-end credit account Customer be given the opportunity to reject a proposed change and pay the existing balance under the prior terms if the proposed adjustment increases the fees or finance charges on such account.

7. CONFIDENTIALITY OF AGREEMENT

The terms of this Agreement, any proposal, financial information and proprietary information provided by or on behalf of one party to the other party prior to, contemporaneously with, or subsequent to, the execution of this Agreement ("Information") are confidential as of the date of disclosure. Such Information will not be disclosed by such other party to any other person or entity, except as permitted under this Agreement or as mutually agreed in writing. MBNA America and USD shall be permitted to disclose such Information (i) to their accountants, legal, financial and marketing advisors, and employees as necessary for the performance of their

respective duties, provided that said persons agree to treat the Information as confidential in the above described manner and (ii) as required by law or by any governmental regulatory authority.

8. TERM OF AGREEMENT

The initial term of this Agreement will begin on the Effective Date and end on October 31, 2001. This Agreement will automatically extend at the end of the initial term or any renewal term for successive two-year periods, unless either party gives written notice of its intention not to renew at least ninety (90) days, but not more than one hundred eighty (180) days, prior to the last date of such term or renewal term, as applicable.

9. STATE LAW GOVERNING AGREEMENT

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

10. TERMINATION

(a) In the event of any material breach of this Agreement by MBNA America or USD, the other party may terminate this Agreement by giving notice, as provided herein, to the breaching party. This notice shall (i) describe the material breach; and (ii) state the party's intention to terminate this Agreement. If the breaching party does not cure or substantially cure such breach within sixty (60) days after receipt of notice, as provided herein (the "Cure Period"), then this Agreement shall terminate sixty (60) days after the Cure Period.

(b) If either MBNA America or USD becomes insolvent in that its liabilities exceed its assets, or is adjudicated insolvent, or takes advantage of or is subject to any insolvency proceeding, or makes an assignment for the benefit of creditors or is subject to receivership, conservatorship or liquidation then the other party may immediately terminate this Agreement.

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

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

11. MISCELLANEOUS

- (a) This Agreement cannot be amended except by written agreement signed by the authorized agents of both parties hereto.
- (b) The obligations in Sections 4 (b), 7, 10 (c), and 10 (d) shall survive any termination of this Agreement.
- (c) The failure of any party to exercise any rights under this Agreement shall not be deemed a waiver of such right or any other rights.
- (d) The section captions are inserted only for convenience and are in no way to be construed as part of this Agreement.
- (e) If any part of this Agreement shall for any reason be found or held invalid or unenforceable by any court or governmental agency of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Agreement which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.
- (f) All notices relating to this Agreement shall be in writing and shall be deemed given (i) upon receipt by hand delivery, facsimile or overnight courier, or (ii) three (3) business days after mailing by registered or certified mail, postage prepaid, return receipt requested. All notices shall be addressed as follows:

- (1) If to USD:

UNIVERSITY OF SOUTH DAKOTA
414 East Clark Street
Vermillion, South Dakota 57069-2390
ATTENTION: Ms. Nancy McCahren, Director of Alumni

- (2) If to MBNA America:

MBNA AMERICA BANK N. A.
1100 North King Street
Wilmington, Delaware 19884
ATTENTION: Mr. William P. Morrison, Senior Executive Vice
President

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

- (g) This Agreement contains the entire agreement of the parties with respect to the matters covered herein and supersedes all prior promises and agreements, written or oral, with respect to the matters covered herein. MBNA America may utilize the services of any third party in fulfilling its obligations under this Agreement.
- (h) MBNA America and USD are not agents, representatives or employees of each other and neither party shall have the power to obligate or bind the other in any manner except as otherwise expressly provided by this Agreement.
- (i) Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or give any person other than USD and MBNA America, their successors and assigns, any rights or remedies under or by reason of this Agreement.
- (j) Neither party shall be in breach hereunder by reason of its delay in the performance of or failure to perform any of its obligations herein if such delay or failure is caused by strikes, acts of God or the public enemy, riots, incendiaries, interference by civil or military authorities, compliance with governmental laws, rules, regulations, delays in transit or delivery, or any event beyond its reasonable control or without its fault or negligence.
- (k) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

ALUMNI ASSOCIATION OF THE
UNIVERSITY OF SOUTH DAKOTA

By: M. S. Chaney
Title: Treasurer

MBNA AMERICA BANK N.A.

By: Howard C. Wallace
HOWARD C. WALLACE
Title: Senior Executive Vice President

SCHEDULE A

TERMS AND FEATURES

A. CREDIT CARD ACCOUNTS (OTHER THAN PLUS MILES CREDIT CARD ACCOUNTS)

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

- * There is no Annual Fee for both the Alumni and Student Members.
- * For Alumni Customers, the current annual percentage rate will be a variable rate of prime plus 7.9%. For variable rate accounts, there may be an additional margin applied on account of the Alumni Customer's delinquency.
- * For Student Customers, the current annual percentage rate will be a variable rate of prime plus 9.9%. For variable rate accounts, there may be an additional margin applied on account of the Student Customer's delinquency.
- * Customers may be offered opportunities to select credit insurance as a benefit under the Program.

B. PLUS MILES CREDIT CARD ACCOUNTS

1. \$35.00 (Thirty-Five Dollar) Yealy Enrollment Charge for the Optional Plus Miles Enhancement.
2. The current annual percentage rate will be a variable rate of prime plus 7.4%. There may be an additional margin applied on account of the customer's delinquency.

C. GOLD RESERVE ACCOUNTS

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

- * There is NO annual fee for the first six (6) months.
- * The annual fee for the second six (6) months, when applied, is \$10.00.
- * Thereafter the annual fee, when applied, is \$20.00.
- * The current annual percentage rate is 17.9%.

D. GOLD OPTION ACCOUNTS

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

- * There is NO Annual Fee.
- * The current annual percentage rate is 14.99%.

SCHEDULE B

ROYALTY ARRANGEMENT

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

A. CREDIT CARD ACCOUNTS (OTHER THAN PLUS MILES CREDIT CARD ACCOUNTS)

- * \$1.00 (one dollar) for each new Credit Card Account (except a Plus Miles account) opened, which remains open for at least ninety (90) consecutive days.
- * \$1.00 (one dollar) for each Alumni Customer Credit Card Account (except a Plus Miles account) for which the annual fee is paid by the Alumni Customer. If no annual fee is assessed by MBNA America (other than as a result of a courtesy waiver by MBNA America), then such royalty will be paid for each Alumni Customer Credit Card Account which: 1) has a balance greater than zero as of the last business day of every twelfth month after the opening of that Credit Card Account; and 2) has had active charging privileges for each of the preceding twelve months.
- * \$1.00 (one dollar) for each Student Customer Credit Card Account for which the annual fee is paid by the Student Customer. If no annual fee is assessed by MBNA America (other than as a result of a courtesy waiver by MBNA America), then such royalty will be paid for each Student Customer Credit Card Account which: 1) has a balance greater than zero as of the last business day of every twelfth month after the opening of that Credit Card Account; and 2) has had active charging privileges for each of the preceding twelve months.
- * .50% of all retail purchase transaction dollar volume generated by Alumni Customers using an Alumni Customer Credit Card Account (excluding those transactions that (1) relate to refunds, returns and unauthorized transactions, and/or (2) are cash equivalent transactions (e.g., the purchase of wire transfers, money orders, bets, lottery tickets, or casino gaming chips)).
- * .40% of all retail purchase transaction dollar volume generated by Student Customers using a Student Customer Credit Card Account (excluding those transactions that (1) relate to refunds, returns and unauthorized transactions, and/or (2) are cash equivalent transactions (e.g., the purchase of wire transfers, money orders, bets, lottery tickets, or casino gaming chips)).
- * .50% of all cash advance and cash equivalent transaction dollar volume generated by Alumni Customers using an Alumni Customer Credit Card Account (excluding those transactions that relate to refunds, returns and unauthorized transactions).

B. PLUS MILES CREDIT CARD ACCOUNTS

1. \$1.00 (one dollar) for each new Plus Miles Credit Card Account, which remains open for at least ninety (90) consecutive days. This Royalty will not be paid for any Credit Card Account which, after opening, converts to a Plus Miles Credit Card Account.
2. \$14.00 (fourteen dollars) for each Plus Miles Credit Card Account for which the annual fee is paid by the Customer. If no annual fee is assessed by MBNA America (other than as a result of a courtesy waiver by MBNA America), then such royalty will be paid for each Plus Miles Credit Card Account which: 1) has a balance greater than zero as of the last business day of the annual anniversary of the month in which the Plus Miles Credit Card Account was opened; and 2) has had active charging privileges for each of the preceding twelve months. A Plus Miles Credit Card Account may renew every twelve (12) months after the opening of the account.

C. GOLD RESERVE REVOLVING LOAN ACCOUNTS

1. \$.50 (fifty cents) for each Gold Reserve Account opened, which remains open for at least ninety (90) consecutive days.
2. 0.25% (twenty-five one-hundredths of one percent) of the average of all month-end outstanding balances (excluding transactions that relate to credits and unauthorized transactions) in the calendar year for each Gold Reserve Account. This Royalty will be paid within sixty (60) days of the calendar year end.
3. \$2.00 (two dollars) for each applicable twelve (12) month period that a Customer pays the annual fee on a Gold Reserve Account.

D. GOLD OPTION REVOLVING LOAN ACCOUNTS

1. \$.50 (fifty cents) for each Gold Option Account opened, which remains open for at least ninety (90) consecutive days.
2. 0.25% (twenty-five one-hundredths of one percent) of the average of all month-end outstanding balances (excluding transactions that relate to credits and unauthorized transactions) in the calendar year for each Gold Option Account. This Royalty will be paid within sixty (60) days of the calendar year end.
3. \$2.00 (two dollars) for each applicable twelve (12) month period that each Gold Option Account remains open.

E. DEPOSIT ACCOUNTS

"CD Deposits" means those deposits in the certificate of deposit accounts opened by Members in response to marketing efforts pursuant to the Program.

"MMDA Deposits" means those deposits in the money market deposit accounts opened by Members in Response to marketing efforts made pursuant to the Program.

1. 0.10% (ten one-hundredths of one percent) on an annualized basis, computed monthly (periodic rate of 0.008333%) of the average MMDA Deposits.
2. 0.05% (five one-hundredths of one percent) on an annualized basis, computed monthly (periodic rate of 0.004167%) of the average CD Deposits.

F. ROYALTY ADVANCE

1. Upon the completion of the first Full Marketing Campaign (as defined herein) by MBNA America, MBNA America shall pay to USD the sum of one hundred thousand dollars (\$100,000) (the "Advance"), as an advance against future Royalties, subject to the provisions set forth below. All Royalties accrued shall, in lieu of direct payment to USD, be applied against the Advance until such time as the Advance is fully recouped. Any Royalties accrued thereafter shall be paid to USD as set forth in this Agreement. Notwithstanding the foregoing, USD hereby promises to pay MBNA America upon demand an amount equal to the difference between the amount of the Advance and the total amount of accrued Royalties credited by MBNA America against the Advance as of the date of such demand, in the event any of the conditions set forth in Clauses (i) through (v) below should occur:

(i) the Agreement is terminated prior to the end of the initial term as stated in this Agreement as of the Effective Date;

(ii) USD breaches any of its obligations under this Agreement;

(iii) MBNA America is prohibited or otherwise prevented from conducting at least two (2) direct mail campaigns to the full updated Mailing List during each consecutive twelve month period during the term of the Agreement;

(iv) MBNA America is prohibited or otherwise prevented from conducting at least two (2) telemarketing campaigns to the full updated Mailing List during each consecutive twelve month period during the term of the Agreement;

(v) MBNA America is prohibited from conducting on-campus promotion campaigns (e.g., tabling and postering) at major events during each consecutive twelve month period during the term of the Agreement

2. A "Full Marketing Campaign" consists of a direct mail campaign to the full Mailing List and a telemarketing campaign using the full updated Mailing List.

ROYALTY GUARANTEE

USD shall be guaranteed to accrue Royalties (including without limitation the amount of the Advance) equal to or greater than one hundred thousand dollars (\$100,000) (the "Guarantee Amount") by the end of the full initial term of the Agreement, subject to the provisions set forth below. If on the last day of the full initial term of this Agreement USD has not accrued \$DD in Royalties, MBNA America will pay USD an amount equal to the Guarantee Amount minus the sum of all compensation accrued by USD during the initial term of this Agreement and the amount of any unrecouped Advance. Notwithstanding the foregoing, this Royalty Guarantee and any obligation of MBNA America hereunder shall be expressly contingent upon:

- (a) this Agreement shall not be terminated prior to the end of the initial term as stated in this Agreement as of the Effective Date;
- (b) USD shall not breach this Agreement;
- (c) MBNA America shall not be prohibited or otherwise prevented from conducting at least two (2) direct mail campaigns to the full updated Mailing List during each consecutive twelve month period during the term of the Agreement;
- (d) MBNA America shall not be prohibited or otherwise prevented from conducting at least two (2) telemarketing campaigns to the full updated Mailing List during each consecutive twelve month period during the term of the Agreement; and
- (e) MBNA America shall not be prohibited from conducting on-campus promotion campaigns (e.g., tabling and postering) at major events during each consecutive twelve month period during the term of the Agreement
- (f) USD shall use its best efforts to assist MBNA America in opening a minimum of fifteen hundred (1,500) new Credit Card Accounts each year during the first 3 years of the term of the Agreement

07/29/96:mjh

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**ADDENDUM TO THE ALUMNI ASSOCIATION OF
THE UNIVERSITY OF SOUTH DAKOTA AGREEMENT**

THIS ADDENDUM (the "Addendum") is entered into this 29 day of August 2000, by and between the Alumni Association of University of South Dakota ("USD"), and MBNA America Bank, N.A. ("MBNA America"), for themselves and their respective successors and assigns.

WHEREAS, USD and MBNA America are parties to an affinity agreement dated August 22, 1996 (the "Agreement"); and

WHEREAS, USD and MBNA America mutually desire to amend the Agreement as provided for herein;

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

1. The above recitals are incorporated herein and deemed a part of this Addendum. Capitalized terms used but not otherwise herein defined are used as defined in the Agreement.
2. The current term of the Agreement is hereby extended to end on October 31, 2006. Thereafter, the Agreement shall automatically extend at the end of the current term or any renewal term for successive two-year periods, unless either party gives written notice of its intention not to renew at least ninety (90) days, but not more than one hundred eighty (180) days, prior to the last date of such term or renewal term, as applicable. This Section shall replace all provisions concerning the term of the Agreement, the renewal of the Agreement, and all notices required to not renew this Agreement.
3. Section 1 of the Agreement is hereby amended by adding the following new subsections (j) and (k):
 - (j) "Group Incentive Program " or "GIP" means any marketing or other program whereby USD conducts solicitation efforts for the Program, and the parties mutually agree that such marketing or other program shall constitute a GIP.
 - (k) "GIP Account" means a Credit Card Account opened by a Member pursuant to a GIP in which USD complies with the GIP provisions of this Agreement.
4. The Agreement is hereby amended by adding the following new Section 12:
 12. GROUP INCENTIVE PROGRAM
 - (a) MBNA America shall design all advertising, solicitation and promotional material with regard to the Program, except with respect to those materials designed by USD pursuant to any GIP. In that regard, USD shall give MBNA America sixty (60) days prior notice of its desire to engage in marketing efforts regarding the Program itself,

specifying that accounts generated from such efforts will entitle USD to the Royalty specified in Schedule B, subject to the other terms and conditions of this Agreement.

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

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

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

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

5. Schedule B of the Agreement is hereby amended by adding the following new Section G:

G. GIP ACCOUNTS

\$20.00 (twenty dollars) for each GIP Account opened, which remains open for at least ninety (90) consecutive days and which is utilized by the Customer within the first ninety (90) consecutive days of the GIP Account's opening for at least one purchase or cash advance which is not subsequently rescinded, the subject of a charge back request, or otherwise disputed. Such GIP Accounts will not qualify for any other opening-of-an-account Royalty.

6. In addition to USD's obligations under the Agreement to exclusively endorse the Program, USD agrees that during the term of this Agreement it will not market, solicit proposals for programs offering, or discuss with any organization (other than MBNA America) the providing of, any Financial Service Products of any organization other than MBNA America.

7. Except as amended by this Addendum, all the terms, conditions and covenants of the Agreement are valid, shall remain in full force and effect, and are hereby ratified and confirmed. Any inconsistencies between this Addendum and the Agreement shall be governed by this Addendum. This Addendum may be executed in any number of counterparts, each of which shall be considered an original, and all of which shall be deemed one and the same instrument. The Agreement, as amended by this Addendum, contains the entire agreement of the parties with respect to the matters covered and no other prior promises, negotiations or discussions, oral or written, made by any party or its employees, officers or agents shall be valid and binding.

IN WITNESS WHEREOF, each party hereto, by its representative, has duly executed this Addendum as of the date first above written, and such party and its representative warrant that such representative is duly authorized to execute and deliver this Addendum for and on behalf of such party.

ALUMNI ASSOCIATION OF THE
UNIVERSITY OF SOUTH DAKOTA

By: Nancy Mc Carren

Name: NANCY Mc CARREN

Title: Alumni Director

Date: August 29, 2000

MBNA AMERICA BANK, N.A.

By: Michael Durroh

Name: Michael Durroh

Title: Senior Executive Vice Pres.

Date: September 6, 2000

FIA CARD SERVICES™

Via Overnight Delivery

July 23, 2010

Ms. Nancy McCahren
Director of Alumni
Alumni Association of the University of South Dakota
414 East Clark Street
Vermillion, South Dakota 57069-2390

Dear Ms. McCahren:

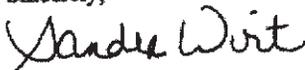
I am writing to inform you that following a comprehensive review of the Alumni Association of the University of South Dakota credit card program, FIA Card Services, N.A. (f/k/a MBNA America Bank, N.A.) ("FIA") has decided not to renew our Agreement dated as of August 22, 1996, as the same may have been amended ("Agreement").

This letter serves as FIA's written notice of non-renewal of the Agreement, as required by Section 8 of the Agreement, as amended by that certain Addendum to the Agreement dated as of August 29, 2000

The Agreement's expiration date is October 31, 2010.

We have appreciated your endorsement. If you have any questions, please call Tom Antonelli at 302-235-5945.

Sincerely,



Sandra Wirt
Senior Vice President
FIA Card Services, N.A.

C: Ms. Kersten Johnson
Executive Director
Alumni Association of the University of South Dakota
414 East Clark Street
Vermillion, South Dakota 57069

**AMENDED AND RESTATED
AFFINITY AGREEMENT
ALUMNI ASSOCIATION OF THE UNIVERSITY OF SOUTH DAKOTA**

This Agreement is entered into as of this 1st day of November, 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 Alumni Association of the University of South Dakota, a non-profit corporation having its principal place of business at Vermillion, South Dakota ("AAUSD"), for themselves and their respective successors and assigns.

WHEREAS, AAUSD and Bank are parties to that certain Affinity Agreement dated as of August 27, 1996, as the same has been amended ("Original Agreement"), wherein Bank provides certain financial services to certain persons included in certain lists provided to Bank by or on behalf of AAUSD; and

WHEREAS, Bank's notice of non-renewal of the Agreement dated as of July 23, 2010 is hereby rescinded and is of no further force or effect; and

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

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

"**AAUSD Affiliate**" means any Affiliate of AAUSD.

"**AAUSD Trademarks**" means any design, image, visual representation (including any font), logo, service mark, trade dress, trade name, or trademark used or acquired by AAUSD or any AAUSD Affiliate prior to or during the term of this Agreement.

"**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 through 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.

“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.

“Credit Card Program” means those credit card programs and services, and the promotion thereof, Bank agrees to offer pursuant to this Agreement to the Members from time to time.

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

“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 or the functional equivalent of any such product, and any other financial service programs or products.

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

“Group Incentive Program” or **“GIP”** means any credit card marketing or program whereby AAUSD conducts and funds solicitation efforts for credit card products offered under 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 are at least eighteen years of age, segmented by zip codes or other mutually selected membership characteristics.

“Member” means a member of AAUSD, an alumnae of the University of South Dakota, and/or other potential participants mutually agreed to by AAUSD and Bank.

“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 AAUSD 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 AAUSD complies with the GIP provisions of the Agreement.

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

2. RIGHTS AND RESPONSIBILITIES OF AAUSD

- (a) AAUSD agrees that during the term of this Agreement it will endorse the Program exclusively and that neither AAUSD nor any AAUSD 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 Products of any entity other than Bank; (ii) license, allow others to license, or use or allow to exist the use by others of the AAUSD 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. In addition, if AAUSD or any AAUSD Affiliate sells any product or service, in connection with such sales, AAUSD shall not, and shall cause AAUSD Affiliates not to, 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, AAUSD may accept print advertising from any financial institution provided that the advertisement does not contain an express or implied endorsement by AAUSD of said financial institution or advertising for a Financial Service Product.
- (b) AAUSD agrees to provide Bank with such information and assistance as may be reasonably requested by Bank in connection with the Program.
- (c) AAUSD authorizes Bank to solicit Members by mail, direct promotion, internet, email, advertisements, banking centers, telephone or any other means for participation in the Program.
- (d) AAUSD will have the right of prior approval of all Program advertising and solicitation materials to be used by Bank that contain an AAUSD Trademark; such approval will not be unreasonably withheld or delayed. In the event that Bank incurs a cost because of a change in the AAUSD Trademarks (e.g., the cost of reissuing new credit cards), Bank may deduct such costs from any Royalties due AAUSD. In the event such costs exceed Royalties then due AAUSD, if requested by Bank, AAUSD will promptly reimburse Bank for all such costs.
- (e) At least once annually and within thirty (30) days following the request of Bank, AAUSD will provide Bank with the Marketing List free of any charge; provided, however, that AAUSD will not include in any Marketing List the name and/or related information regarding any Member who has expressly requested that AAUSD not provide his/her personal information to third parties. In the event that Bank incurs a cost because of a charge assessed by AAUSD or its agents for an initial Marketing List or an update to the Marketing List, Bank may deduct such costs from Royalties due AAUSD. AAUSD will provide the first Marketing List, containing the required information for at least eighteen thousand (18,000) non-duplicate Member names, as soon as possible but no later than thirty (30) days after AAUSD's execution of this Agreement.
- (f) AAUSD will, and will cause any AAUSD 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 AAUSD. Notwithstanding the above, AAUSD 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 AAUSD. Any correspondence received by AAUSD 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 AAUSD will be paid by Bank.

- (g) AAUSD hereby grants Bank and its Affiliates a limited, exclusive license to use the AAUSD 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 AAUSD Trademarks, notwithstanding the transfer of such AAUSD Trademarks by operation of law or otherwise to any permitted successor, corporation, organization, or individual. AAUSD will provide Bank all AAUSD 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 AAUSD's execution of this Agreement. Nothing stated in this Agreement prohibits AAUSD from granting to other persons a license to use the AAUSD 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 AAUSD 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). AAUSD may not use any Program Trademark, except to promote the Program or any goods or services offered by Bank through the Program. AAUSD shall not register or attempt to register any Program Trademark. Bank shall not register or attempt to register any AAUSD Trademark. Bank may use Program Trademarks that contain AAUSD 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.

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 AAUSD Marketing Effort. 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 AAUSD.
- (c) Bank will bear all costs of producing and mailing materials for the Program except for materials used in any AAUSD Marketing Effort.
- (d) Bank will make all credit decisions and will bear all credit risks with respect to each Customer's account(s) independently of AAUSD.
- (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 AAUSD. 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 AAUSD.

- (f) Subject to applicable law and regulation, Bank has the right to place AAUSD Trademarks on gifts for individuals completing applications and on other premium items suitable in Bank's judgment for the solicitation of Credit Card Account applications. AAUSD will have approval of the use and appearance of the AAUSD 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 AAUSD or an AAUSD Affiliate for such gifts or premiums. AAUSD 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) AAUSD 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) AAUSD represents and warrants to Bank as of the date hereof and throughout the term of this Agreement and any period thereafter that Bank has the right to use the AAUSD Trademarks to wind down the Program that it has the right and power to license AAUSD 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. AAUSD 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 AAUSD Trademarks license granted herein or from Bank's use of the AAUSD 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 AAUSD Trademarks or Marketing Lists.

5. ROYALTIES

- (a) During the term of this Agreement, Bank will pay Royalties to AAUSD. 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 businesses (including the businesses of any Bank Affiliate providing a product or service under this Agreement), as determined by Bank in its sole discretion ("Impact"), then Bank may notify AAUSD 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 AAUSD'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 the Agreement in its entirety, without penalty or liability to AAUSD, 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 AAUSD 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

- (a) The initial term of this Agreement will begin on the Effective Date and end on October 31, 2012. 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 AAUSD, 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 AAUSD 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 AAUSD 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 AAUSD 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 AAUSD or any AAUSD 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 AAUSD Trademarks in connection with Credit Card Accounts opened during such ninety (90) day period; and (iii) remove AAUSD Trademarks from Program collateral and account materials, such as statements, welcome packages, and card carriers. AAUSD shall not attempt to cause the removal of AAUSD Trademarks from any person's credit devices, debit 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 AAUSD 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 businesses (including the businesses of any Bank Affiliate providing a product or service under this Agreement), as determined in Bank's sole discretion ("Event"), Bank may notify AAUSD in writing of Bank's desire to renegotiate the terms of the Agreement to address the Event. If, within thirty (30) business days after AAUSD'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 the Agreement in its entirety, without penalty or liability to AAUSD, 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, AAUSD agrees that neither AAUSD nor any AAUSD 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, AAUSD 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 AAUSD, 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 MARKETING

- (a) AAUSD will design and produce, at its expense, all marketing material with regard to any Program marketing efforts being conducted, directly or indirectly, by AAUSD, including, but not limited to, any GIP (“AAUSD Marketing Effort”). AAUSD will give Bank sixty (60) days prior notice prior to engaging in any AAUSD Marketing Effort.
- (b) All GIP marketing materials will be coded by AAUSD as instructed by Bank for tracking purposes. Credit Card Accounts generated from any GIP will entitle AAUSD to the Royalty for GIP specified in Schedule A, subject to the other terms and conditions of this Agreement. Notwithstanding the above, marketing materials or telemarketing inquiries from Members which do not contain or reference such coding will not be eligible for any GIP Royalty.
- (c) Bank will have the right of prior approval of all marketing materials to be used in any AAUSD Marketing Effort. Bank has control over, in its sole discretion, the scope, timing, content and continuation of any AAUSD Marketing Effort. In furtherance of the above, AAUSD shall immediately discontinue any or all AAUSD Marketing Efforts upon receipt of, and in accordance with the, written notice from Bank requesting such discontinuance. AAUSD will not deviate from the approved materials and plan for any AAUSD Marketing Effort without the prior written approval of Bank.
- (d) All costs incurred by Bank in producing and mailing materials created pursuant to any AAUSD Marketing Effort or of supporting any AAUSD Marketing Effort will be promptly reimbursed by AAUSD upon demand.
- (e) AAUSD will comply with all applicable laws, including, without limitation, the Truth in Lending Act, the Truth and Savings Act and the Equal Credit Opportunity Act, with respect to any AAUSD Marketing Effort.
- (f) AAUSD will advertise all the products offered under the Program on AAUSD’s home page, account profile pages and such other prominent locations within the internet site(s) of AAUSD as the parties shall mutually agree upon, all at AAUSD’s expense. Bank may establish a hyperlink from each such advertisement to another internet site (an application site), or may provide a telephone number in each such advertisement, to enable a person to apply for each advertised

Financial Service Product. Any Credit Card Accounts generated pursuant to such a hyperlink or telephone number will entitle AAUSD to the GIP compensation set forth in Schedule A, subject to the other terms and conditions of this Agreement. AAUSD will modify or remove such advertisements within twenty-four (24) hours of Bank's request. To enable Bank to view all Program material, AAUSD will provide Bank with the ability to access any and all pages within the AAUSD internet site(s), including without limitation any "members only" or other restricted access pages that display Program material.

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 AAUSD:

Alumni Association of the University of South Dakota
414 East Clark Street
Vermillion, South Dakota 57069

ATTENTION: Ms. Kersten Johnson
Executive Director

Fax #: (605) 677-6717

- (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 and Bank's notice of non-renewal of the Agreement dated as of July 23, 2010. 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, AAUSD 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 AAUSD. 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 AAUSD 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 AAUSD and Bank, their successors and assigns, any rights or remedies under or by reason of this Agreement.
- (j) AAUSD recognizes and agrees that Bank's goodwill and reputation in the marketplace are valuable and intangible assets; therefore, AAUSD agrees that it will not conduct itself or engage in any activity in a manner that may adversely affect these assets. In the event Bank determines that AAUSD does not so conduct itself, Bank may terminate this Agreement, effective immediately.
- (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

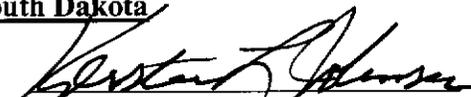
by providing the delayed party with least thirty (30) days prior written notice of such termination, which notice must be received by the delayed party within ten (10) days after the expiration of the one hundred twenty (120) day period.

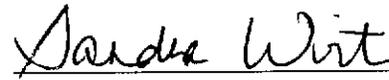
- (m) This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. The parties hereto agree to accept a digital image of this Agreement, as executed, as a true and correct original and 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.

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

Alumni Association of the University
of South Dakota

FIA Card Services, N.A.

By: 

By: 

Name: Kersten L Johnson

Name: SANDRA WIRT

Title: Executive Director

Title: SVP

Date: 9-17-2010

Date: 10/7/10

SCHEDULE A

ROYALTY ARRANGEMENT

During the term of this Agreement, Bank will pay AAUSD a Royalty calculated as follows, for those accounts with active charging privileges. Bank may create a special class of consumer accounts for AAUSD 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. \$1.00 (one dollar) 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. \$1.00 (one dollar) 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. \$75.00 (seventy-five 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. \$1.00 (one dollar) 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. \$1.00 (one dollar) 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. 0.15% (fifteen 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. \$75.00 (seventy-five 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.