

AGREEMENT

This Agreement is entered into as of this 12th day of January, 2000 (the "Effective Date") by and between MBNA AMERICA BANK, N.A., a national banking association having its principal place of business in Wilmington, Delaware (hereinafter referred to as "MBNA America"), and AMERICAN SOCIETY FOR MICROBIOLOGY, a District of Columbia corporation having its principal place of business at 1752 N Street NW, Washington, DC (hereinafter referred to as "ASM") 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.
- (b) "Credit Card Account" means a credit card account opened by a Member in response to marketing efforts made pursuant to the Program. A "Plus Miles Credit Card Account" is a Credit Card Account carrying the Plus Miles enhancement. A "Student Customer Credit Card Account" is a Credit Card Account where the primary applicant is a Student Customer.
- (c) "Customer" means any Member who is a participant in the Program. "Student Customer" means a Customer who is identified by ASM as an undergraduate or graduate student of ASM.
- (d) "Financial Service Products" means credit card programs, charge card programs, debit card programs and travel and entertainment card programs.
- (e) "Group Incentive Program" or "GIP" means any marketing or other program whereby ASM conducts solicitation efforts for the Program, and the parties mutually agree that such marketing or other program shall constitute a GIP.
- (f) "GIP Account" means a Credit Card Account opened by a Member pursuant to a GIP in which ASM complies with the GIP provisions of this Agreement.
- (g) "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 and e-mail addresses of Members segmented by zip codes or reasonably selected membership characteristics.
- (f) "Member" means undergraduate students, graduate students, alumni of ASM and/or other potential participants mutually agreed to by ASM and MBNA America.
- (i) "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.
- (j) "Royalties" means the compensation set forth in Schedule B.
- (k) "Trademarks" means any design, image, visual representation, logo, service mark, trade dress, trade name, or trademark used or acquired by ASM during the term of this Agreement.
- (l) "ASM Affiliate" means any entity controlling, controlled by or under the common control

with ASM.

2. RIGHTS AND RESPONSIBILITIES OF ASM

- (a) ASM agrees that during the term of this Agreement it will endorse the Program exclusively and that neither ASM nor any ASM Affiliate shall, by itself or in conjunction with others directly or indirectly (i) sponsor, advertise, aid, develop, market, solicit proposals for programs offering, or discuss with any organization (other than MBNA America) the providing of, any Financial Service Products of any organization other than MBNA America; (ii) license or allow others to license the Trademarks in relation to or for promoting any Financial Service Products of any entity other than MBNA America; and (iii) sell, rent or otherwise make available or allow others to sell, rent or otherwise make available any of its mailing lists or information about any current or potential Members in relation to or for promoting any Financial Service Products of any entity other than MBNA America. Notwithstanding anything else in this Agreement to the contrary, ASM may accept advertising from any financial institution provided that the advertisement does not contain an express or implied endorsement by ASM of said financial institution or the advertised Financial Service Product.
- (b) ASM agrees to provide MBNA America with such information and assistance as may be reasonably requested by MBNA America in connection with the Program.
- (c) ASM authorizes MBNA America to solicit its Members by mail, direct promotion, advertisements and/or telephone for participation in the Program.
- (d) ASM shall have the right of prior approval of all Program advertising and solicitation materials to be used by MBNA America, which contain ASM's Trademark; such approval shall not be unreasonably withheld or delayed. In the event that MBNA America incurs a cost because of a change in the Trademarks (*e.g.*, the cost of reissuing new credit cards), MBNA America may deduct such costs from Royalties due ASM. In the event such costs exceed Royalties then due ASM, ASM shall promptly reimburse MBNA America for all such costs.
- (e) Upon the request of MBNA America, ASM 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 ASM or its agents for an initial Mailing List or an update to that list, MBNA America may deduct such costs from Royalties due ASM. ASM shall provide the initial Mailing List, containing at least thirty-five thousand (35,000) non-duplicate names with corresponding valid postal addresses and, when available, telephone numbers and e-mail addresses, as soon as possible but no later than thirty (30) days after ASM's execution of this Agreement.
- (f) ASM 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 ASM. Notwithstanding the above, ASM 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 ASM. Any correspondence received by ASM 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) ASM 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. ASM shall provide MBNA America all Trademark production materials (*e.g.*, camera ready art) required by MBNA America for the Program, as soon as possible but no later than thirty (30) days after ASM's execution of this Agreement. Nothing stated in this Agreement prohibits ASM 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 ASM.
- (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 ASM.
- (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 List 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 ASM. 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 ASM.

4. REPRESENTATION AND WARRANTIES

- (a) ASM 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) ASM 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. ASM 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 ASM. Royalties will not be paid without a completed Schedule C (W-9 Form). Except as otherwise provided in Schedule B, payment of Royalties then due shall be made approximately forty-five (45) days after the end of each calendar quarter. Plus Miles Credit Card Accounts shall generate solely the Royalties specified in Schedule B, Section B, hereof.

(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 ASM with a statement showing the number of Credit Card Accounts opened, the number of Credit Card Accounts renewed and the retail purchase dollar volume (excluding those transactions that relate to refunds, returns and unauthorized transactions), made during the preceding calendar period.

6. PROGRAM ADJUSTMENTS

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

7. CONFIDENTIALITY OF AGREEMENT

The terms of this Agreement, any proposal, financial information and proprietary information provided by or on behalf of one party to the other party prior to, contemporaneously with, or subsequent to, the execution of this Agreement ("Information") are confidential as of the date of disclosure. Such Information will not be disclosed by such other party to any other person or entity, except as permitted under this Agreement or as mutually agreed in writing. MBNA America and ASM 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 March 31, 2005. This Agreement will automatically extend at the end of the initial term or any renewal term for successive two-year periods, unless either party gives written notice of its intention not to renew at least ninety (90) days, but not more than one hundred eighty (180) days, prior to the last date of such term or renewal term, as applicable.

9. STATE LAW GOVERNING AGREEMENT

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

10. TERMINATION

- (a) In the event of any material breach of this Agreement by MBNA America or ASM, 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 ASM 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 ASM to the Members. Such approval shall not be unreasonably withheld. Upon termination of this Agreement, ASM shall not attempt to cause the removal of ASM's identification or Trademarks from any person's credit devices, checks or records of any Customer existing as of the effective date of termination of this Agreement.
- (e) In the event that any material change in any applicable law, statute, operating rule or regulation, or any material change in any operating rule or regulation of either VISA or MasterCard makes the continued performance of this Agreement under the then current terms and conditions unduly burdensome, then MBNA America shall have the right to terminate this Agreement upon ninety (90) days advance written notice. Such written notice shall include an explanation and evidence of the burden imposed as a result of such change.
- (f) For a one (1) year period following the termination of this Agreement for any reason, ASM agrees that neither ASM nor any ASM Affiliate shall, by itself or in conjunction with others,

directly or indirectly, specifically target any offer of a credit or charge card or credit or charge card related product to persons who were Customers. Notwithstanding the foregoing, ASM may, after termination of this Agreement, offer persons who were Customers the opportunity to participate in another credit or charge card program endorsed by the ASM provided the opportunity is not only made available to such persons but rather as a part of a general solicitation to all Members and provided further no such persons are directly or indirectly identified as a customer of MBNA America, or offered any terms or incentives different from that offered to all Members.

11. MISCELLANEOUS

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

- (1) If to ASM:

AMERICAN SOCIETY FOR MICROBIOLOGY
1752 N Street NW
Washington, DC 20036

ATTENTION: Ms. Lorna Kent
Member Director

Fax #: 202-942-9346

- (2) If to MBNA America:

MBNA AMERICA BANK, N. A.
Rodney Square
Wilmington, Delaware 19884

ATTENTION: Mr. William P. Morrison
SEVP, Business Development

Fax #: 302-432-0805

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 ASM 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 ASM 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.

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 ASM pursuant to any GIP. In that regard, ASM 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 ASM 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 ASM 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 ASM 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 ASM pursuant to any GIP shall be deducted from any or all Royalty payments due ASM under this Agreement.

(e) ASM 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.

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

AMERICAN SOCIETY FOR MICROBIOLOGY

By: *[Signature]*
Name: LORNA D. KENT
Title: DIRECTOR, MEMBER SERVICES
Date: 1/12/00

MBNA AMERICA BANK, N.A.

By: *[Signature]*
Name: WILLIAM P. MORRISON
Title: SEVP
Date: 1/24/00

SCHEDULE A

TERMS AND FEATURES

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

A. CREDIT CARD ACCOUNTS

1. There is NO annual fee.
2. The current annual percentage rate for a Credit Card Account will be a fixed rate of 12.99%.
3. For Student Customers, the current annual percentage rate for a Platinum Credit Card Account will be a variable rate of prime plus 8.4%. For variable rate accounts, there may be an additional margin applied on account of the Student Customer's delinquency.
4. For Student Customers, the current annual percentage rate for a Premium or Preferred Credit Card Account will be a variable rate of prime plus 8.9%. For variable rate accounts, there may be an additional margin applied on account of the Student Customer's delinquency.
5. Customers may be offered opportunities to purchase a variety of communication services and to select credit insurance as a benefit under the Program.
6. Plus Miles Product Description
 - (i) \$35.00 (thirty-five dollar) Yearly Enrollment Charge for the Optional Plus Miles Enhancement.
 - (ii) The current annual percentage rate will be a fixed rate of 12.99%.

SCHEDULE B

ROYALTY ARRANGEMENT

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

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

- 1). \$1.00 (one dollar) for each new Credit Card Account (other than a Plus Miles Credit Card Account) opened, which remains open for at least ninety (90) consecutive days.
- 2). \$1.00 (one dollar) for each Credit Card Account (other than a 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 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.
- 3). 0.40% (forty one-hundredths of one percent) of all retail purchase transaction dollar volume generated by Customers using a Credit Card Account (other than a Plus Miles 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, money orders, bets, lottery tickets, or casino gaming chips)).

B. STUDENT 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.
- 2). \$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.
- 3). 0.40% (four tenths of one percent) of all retail purchase transaction dollar volume generated by a Student Customer 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, money orders, bets, lottery tickets, or casino gaming chips)).

C. PLUS MILES CARD ACCOUNTS

1). \$1.00 (one dollar) for each new Plus Miles Credit Card Account opened, which remains open for at least ninety (90) consecutive days and which is utilized by the Customer for at least one purchase or cash advance which is not subsequently rescinded, the subject of a charge back request, or otherwise disputed. This Royalty will not be paid for any Credit Card Account which, after opening, converts to a Plus Miles Credit Card Account.

2). \$1.00 (one dollar) 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.

3). 0.100% (this quarterly rate on an annualized basis is .40%) of the average monthly outstanding balance on a Plus Miles Credit Card Account, which average monthly outstanding balance shall be determined by taking the aggregate sum of the outstanding balances (excluding those transaction that relate to refunds, returns and unauthorized transactions) existing on a Plus Miles Credit Card Account on the last file maintenance day of each month within the calendar quarter and dividing by three.

D. GIP ACCOUNTS

1). \$25.00 (twenty-five dollars) for GIP Account opened, which remains open for at least ninety (90) consecutive days. Such GIP Accounts will not qualify for any other opening-of-an-account Royalty.

E. ROYALTY ADVANCE

Upon completion of the first Full Marketing Campaign (as defined herein) by MBNA America, MBNA America shall pay to ASM the sum of twenty-five thousand dollars (\$25,000) (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 ASM, be applied against the Advance until such time as the Advance is fully recouped. Any Royalties accrued thereafter shall be paid to ASM as set forth in this Agreement. Notwithstanding the foregoing, ASM 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 (iv) below should occur:

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

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

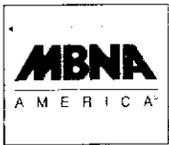
(iii) MBNA America is prohibited or otherwise prevented from conducting at least two (2) direct mail campaigns to the full updated Mailing List during each consecutive twelve month period during the term of the Agreement; and

(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.

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

F. ROYALTY GUARANTEE

ASM shall be guaranteed to accrue Royalties equal to or greater than twenty-five thousand dollars (\$25,000) (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 ASM has not accrued \$25,000 in Royalties, MBNA America will pay ASM an amount equal to the Guarantee Amount minus the sum of all compensation accrued by ASM during the initial term of this Agreement. Notwithstanding the foregoing, this Royalty Guarantee and any obligation of MBNA America hereunder shall be expressly contingent upon the continued satisfaction of each of the above conditions.



www.MBNA.com

MBNA America Bank, N.A.
Wilmington, Delaware 19884

(302) 453-9930

John Mendenhall
Lorna Kent
Member Director
American Society for Microbiology
1752 N. Street NW
Washington DC 20036

May 10, 2002

Dear Lorna Kent:

I have some exciting news!

Several of our endorsing partners have told us we could better serve them by offering a card on which points would be redeemable for air miles or merchandise. The good news is that we are rolling out a new program called *Plus Rewards* that will enable Customers to earn points redeemable for travel and merchandise. Unlike most other programs offering these benefits, the *Plus Rewards* card will offer no annual fee, and cardholders will continue to enjoy a 25-day grace period on purchases.

The program works this way: Customers will earn one point for each dollar of net retail purchases on the card, up to 1 million points per year. Redemption levels will begin at 5,000 points for merchandise and 25,000 points for travel. The travel rewards are redeemable on all major airlines, carry no blackout dates and have both domestic and international travel options. Merchandise rewards include more than 1,000 name-brand items that can be redeemed either by phone or online. Points will be updated monthly and will be shown on monthly billing statements. They can also be viewed online through *MBNA Net Access*.

Prior testing of *Plus Rewards* showed an increase in the number of people responding to the offer, as well as an increase in usage. While there was less frequency of a Customer revolving a balance, there was an increase in retail spending on the card. As a result, the compensation structure on these accounts will include payment on new and renewed accounts but will pay 2.50% of assessed finance charges. Your compensation on all other non-*Plus Rewards* accounts remains the same.

In order to begin marketing and seeing the results of *Plus Rewards* right away, we need your approval on the attached addendum by May 30, 2002. Please sign and return both originals to:

Karla Mendenhall
MBNA America Bank
1100 N. King Street
Wilmington, DE 19884-0176

Once we receive them, MBNA will then sign both originals and return one for your records. If you have any questions feel free to contact me at 800-441-7048 x20315 or karla.mendenhall@mbna.com.

Thank you for your continued support and endorsement of the MBNA Credit Card Program. We look forward to launching this new product with you.

Sincerely,

Karla Mendenhall
Karla Mendenhall
Account Executive

**PLUS REWARDS ADDENDUM
TO THE AMERICAN SOCIETY FOR MICROBIOLOGY**

THIS ADDENDUM (the "Addendum") is entered into this 12 day of July, 2002, by and between AMERICAN SOCIETY FOR MICROBIOLOGY ("ASM"), and MBNA America Bank, N.A. ("MBNA America"), for themselves and their respective successors and assigns.

WHEREAS, ASM and MBNA America are parties to an affinity agreement, as the same may have been amended (the "Agreement"), wherein MBNA America provides certain financial services to certain persons included in certain lists provided to MBNA America by or on behalf of ASM; and

WHEREAS, ASM and MBNA America mutually desire to amend the Agreement to include the loyalty reward enhancement (the "Reward Enhancement") as another aspect of ASM Program, MemberCard Program or Financial Service Program, as the case may be (the "Program"), under the Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreement contained herein, ASM 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. When used in this Addendum, the term "Reward Credit Card Account" means a credit card carrying Reward Enhancement (as hereinafter defined) opened pursuant to the Program.
3. The parties agree that the Reward Enhancement (as such credit card account enhancement is more fully described in Attachment #1) is now part of the Program (as such credit card account enhancement and Program may be adjusted or amended from time to time by MBNA America, in its sole discretion). MBNA America may, at its option, offer the Reward Enhancement to some or all persons included on the lists provided by ASM under the Agreement. The Reward Enhancement may be marketed under another name (e.g., MBNA AMERICA PLUS Rewards). MBNA America reserves the right to change the Reward Enhancement name(s), in its sole discretion, from time to time.
4. ASM agrees to not endorse, sponsor, promote, aid, advertise, or develop a rewards program similar to the Reward Enhancement (other than MBNA America programs). Subject to the foregoing, all of ASM's promises arising from its exclusive arrangement with MBNA America in the Agreement shall also apply to the Reward Enhancement.
5. During the term of the agreement, ASM will receive the royalties set forth on Attachment #1, Section II. for the Reward Credit Card Accounts. Reward Credit Card Accounts shall only generate the royalty compensation set forth on Attachment #1 notwithstanding any other provision of the Agreement.
6. Except as amended hereby, all the terms, conditions and covenants of the Agreement are valid, shall remain in full force and effect, and are hereby ratified and confirmed. Inconsistencies between this Addendum and the Agreement shall be governed by the Addendum. The Agreement, as amended by this Addendum, shall be governed by and subject to the laws of

the State of Delaware (without regard to its conflict of laws principles) and shall be deemed for all purposes to be made and fully performed in Delaware.

7. 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.

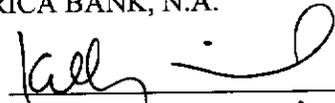
**AMERICAN SOCIETY FOR
MICROBIOLOGY**

MBNA AMERICA BANK, N.A.

By:



By:



Name:

LORNA D. KENT

Name:

Kelly Firment

Title:

DIRECTOR, MGR. SVCS.

Title:

SVP

Date:

July 12, 2002

Date:

8/7/02

Attachment #1

I. Reward Enhancement Brief Product Description

This description is subject in all respects to the agreement to be entered into between MNBA America and each customer, as the same may be amended from time to time. Further, this description may be adjusted or amended pursuant to MBNA America's rights under the Agreement, as amended by this Addendum.

- A. No Annual Fee.
- B. The current percentage rate is 12.99%. There may be an additional margin applied on account of the customer's delinquency.
- C. Customers may be able to select credit insurance as a benefit under the Program.

II. Reward Credit Card Account Royalties

During the term of this Agreement, MBNA America will pay ASM a Royalty calculated as follows, for those Reward Credit Card 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. \$1.00 (one dollar) for each new Reward Credit Card Account opened, which remains open for at least ninety (90) consecutive days. This Royalty will not be paid for any Credit Card Account which, after opening, converts to a Reward Credit Card Account.
- B. \$1.00 (one dollar) for each Reward Credit Card Account for which the annual fee is paid by the Customer. If no annual fee is assessed by MBNA America (other than as a result of a courtesy waiver by MBNA America), then such royalty will be paid for each Reward Credit Card which: 1) has a balance greater than zero as of the last business day of the annual anniversary of the month in which the Reward Credit Card Account was opened; and 2) has had active charging privileges for each of the preceding twelve months. A Reward Credit Cards Account may renew every twelve (12) months after the opening of the account.
- C. 2.50% of the finance charges assessed within a calendar quarter by the application of the relevant periodic rate(s) to the respective average daily balance(s) of certain Reward Credit Card Accounts (the "Finance Charges"). This payment shall be calculated as of the end of each calendar quarter. The rate(s) to the average daily balances measure as of the end of each of the preceding three months. The sum of the Finance Charges assessed during each of the three months within the calendar quarter times the above percentage rate is the quarterly payment due under this section. Each monthly measurement shall include only Finance Charges assessed during such month, and shall exclude Finance Charges assessed on Reward Credit Card Accounts which, as of the day of measurement, are thirty-five (35) or more days delinquent or are 10% or more over the assigned credit line for such Reward Credit Card Account.

**AMENDED AND RESTATED
AFFINITY AGREEMENT**

This Agreement is entered into as of this 1st day of April, 2011 (the "Effective Date") by and between FIA Card Services, N.A., f/k/a MBNA America Bank, N.A., a national banking association having its principal place of business in Wilmington, Delaware ("Bank"), and American Society for Microbiology a _____ having its principal place of business in Washington, DC (including its Affiliates, collectively, the "Group"), for themselves and their respective successors and assigns.

WHEREAS, Group and Bank are parties to that certain affinity agreement between the parties as the same may have 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 Group; and,

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

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

The initial term of this Agreement will begin on the Effective Date and end on March 31, 2013. This Agreement will automatically extend at the end of the initial term or any renewal term for successive two-year periods. After the full initial term, either party may terminate this Agreement, without cause, with ninety (90) day written notice to the other party.

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

American Society for Microbiology
By: [Signature]
Name: LORNA D. KENT
Title: DIR, MBR SVCS
Date: 10/18/2010

FIA Card Services, N.A.
By: [Signature]
Name: SANDRA WIRT
Title: SVP
Date: 11/4/10

Group Contact Information as pertaining to Schedule C, Section f(1):

Contact Name/Title: Ms. Lorna Kent/Member Director
Street: 1752 N. Street NW
City, State, Zip: Washington, DC 20036
Fax #: (202) 942-9346
E-mail address: imercurio@asmusa.org

1. USE OF BANK WEB PORTAL

- (a) Subject to the terms of this Agreement, Bank will provide Group with access to Bank's affinity web portal ("Web Portal") containing Bank-designed advertising, solicitation, and promotional material for Group's use in marketing the Program.
- (b) Group will only use materials provided by Bank in marketing the Program. All marketing materials generated by Bank for Group's marketing of the Program will be coded by Bank for tracking purposes. Marketing materials or inquiries from Members which do not contain or reference such coding will not be considered eligible for any Royalty.
- (c) Group will not deviate from the approved materials for any Program marketing without the prior written approval of Bank.
- (d) Bank has control over, in its sole discretion, the commencement and continuation of any marketing of the Program.

2. RIGHTS AND OBLIGATIONS OF GROUP

- (a) Group agrees to use reasonable efforts to market the Program to Members using the materials provided on the Web Portal.
- (b) Group agrees that during the term of this Agreement it will endorse the Program exclusively, and neither Group nor any Group 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 Group 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 Group sells any product or service, in connection with such sales, Group shall not favor any payment product or method of payment over any payment product or method of payment offered under the Program.
- (c) Group will 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 Group.
- (d) Any correspondence received by Group that is intended for Bank (e.g., applications, payments, billing inquiries, etc.) will be forwarded to Bank via overnight courier within twenty-four (24) hours of receipt. All reasonable overnight courier expenses incurred by Group will be paid by Bank.
- (e) Group hereby grants Bank and its Affiliates an exclusive license to use the Group 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 Group Trademarks, notwithstanding the transfer of such Group Trademarks by operation of law or otherwise to any permitted successor, corporation, organization, or individual. Group will provide Bank all Group Trademark production materials (e.g., camera ready art) required by Bank for the Program upon Bank's request. Nothing stated in this Agreement prohibits Group from granting to other persons a license to use the Group Trademarks in

conjunction with the providing of any other service or product, except for any Financial Service Products.

- (f) All Program Trademarks, with the exception of Program Trademarks that consist of or contain a Group 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(f). Group may not use any Program Trademark, except to promote the Program or any goods or services offered by Bank through the Program. Group shall not register or attempt to register any Program Trademark. Bank shall not register or attempt to register any Group Trademark. Bank may use Program Trademarks that contain Group 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.
- (g) Group will advertise the Program, for the purpose of generating new accounts, in at least one prominent location within the internet site(s) of Group at no cost to Bank. Bank may establish a hyperlink from such advertisements to another internet site to enable a person to apply for a Credit Card Account. Group will modify or remove such advertisements within twenty-four (24) hours of Bank's request. To enable Bank to view all Program material, Group will provide Bank with the ability to access any and all pages within the Group internet site(s), including without limitation any "members only" or other restricted access pages.
- (h) Group will comply with all applicable laws, including, without limitation, the Truth in Lending Act, the Equal Credit Opportunity Act and the CAN-SPAM Act of 2003, with respect to any Program marketing. Group will comply with Bank's instructions and all applicable law concerning Program advertisements or links included by Group in emails sent to Members, including without limitation the CAN-SPAM Act.
- (i) Group will complete an updated W-9 form and ACH form upon Bank's request. Bank will not pay Royalties until a W-9 Form and ACH Form or other IRS required form (e.g., W-8) is completed by Group and received by Bank.

3. RIGHTS AND RESPONSIBILITIES OF BANK

- (a) Bank will maintain and administer the Program for the Members.
- (b) Bank will design all advertising, solicitation, and promotional materials used in the Program.
- (c) Bank will make all credit decisions and will bear all credit risks with respect to each Customer's account(s) independently of Group.
- (d) 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 Group.
- (e) 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.
- (f) During the term of this Agreement, Bank will pay Royalties to Group. Except as otherwise provided in Schedule B, payment of Royalties then due will be made approximately forty-five (45) days after the end of each calendar quarter.

4. REPRESENTATIONS AND WARRANTIES

- (a) Group 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) Group 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 Group Trademarks to Bank for use as contemplated by this Agreement. Group 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 Group Trademarks license granted herein. Each party will promptly notify the other party upon learning of any claims or complaints relating to the license or the use of any Group Trademarks.

5. 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 and shall not be used for any purpose not related to the Program. 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 Group 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 5 by their Agents.

6. 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.

7. TERM/TERMINATION

- (a) In the event of any material breach of this Agreement by Bank or Group, 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 thirty (30) days after receipt of notice, as provided herein (the "Cure Period"), then this Agreement will terminate thirty (30) days after the Cure Period.
- (b) If either Bank or Group 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 7(d) of this Agreement, cease to use the Group 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 Group Trademarks.
- (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 Group or any Group Affiliate to the Members. Such approval will not be unreasonably withheld. Upon the expiration or earlier termination of this Agreement, Group will allow Bank to continue to use the Group Trademarks on, and will not attempt to cause the removal of Group Trademarks from, any person's credit devices, checks or records of any Customer existing as of expiration or earlier termination of this Agreement until their normally scheduled reissue date or exhaustion.

8. ADDITIONAL PROVISIONS

Schedules A, B and C are incorporated by reference.

Schedule A

DEFINITIONS

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

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

"Agreement" means this affinity agreement and Schedules A through C.

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

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

"Financial Service Product" means any credit card or charge card program.

"Group Affiliate" means any Affiliate of Group.

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

"Information" has the meaning ascribed to such word in Section 7.

"Member" means a member or customer of Group and/or other potential participants mutually agreed to by Group 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 a Group Trademark, with or without other elements.

"Royalties" means the compensation set forth in Schedule B.

Schedule B

ROYALTY ARRANGEMENT

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

A. CREDIT CARD ACCOUNTS

1. \$75.00 (seventy-five dollars) for each Credit Card Account opened, which remains open for at least sixty (60) consecutive days and which is utilized by the Customer within the first sixty (60) consecutive days of the Credit Card 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.
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. 0.20% (twenty 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)).

Schedule C

ADDITIONAL PROVISIONS

- (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(f), 2(h), 4(b), 5, 7(c), and 7(d) 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 (ii) three (3) business days after mailing by registered or certified mail, postage prepaid, return receipt requested, or (iii) via e-mail. All notices will be addressed as follows:
 - (1) If to Group

(as specified on signature page)
 - (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
E-mail : affinityteam@bankofamerica.com
 - (3) Any party may change the address, e-mail 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, if applicable. 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 other agreement. Without the prior written consent of Bank, which will not be unreasonably withheld, Group 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 Group. 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. Bank may utilize the services of any third party in fulfilling its obligations under this Agreement.
- (h) Bank and Group 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 Group and Bank, their successors and assigns, any rights or remedies under or by reason of this Agreement.
- (j) Group recognizes and agrees that Bank's goodwill and reputation in the marketplace are valuable and intangible assets; therefore, Group 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 Group 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. This section shall survive the termination or expiration of this Agreement.
- (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) 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.