

# AGREEMENT

This Agreement is entered into between MBNA AMERICA BANK, N.A. a national banking association having its principal place of business in Newark, Delaware (hereinafter referred to as "MBNA America"), and CHADRON STATE FOUNDATION, an educational institution having its principal place of business in Chadron, Nebraska (hereinafter referred to as "CSF") for themselves, their successors and assigns.

## 1. DEFINITIONS

When used in this Agreement,

- (a) "Agreement" means this Agreement and Schedule A .
- (b) "Anniversary Date" means August 31, 1999 or the final day of the term of any extension of this Agreement, whichever occurs later.
- (c) "Financial Services" means credit card program(s).
- (d) "Customer" means any Member who is a participant in the Program.
- (e) "Mailing Lists" means updated and current lists, magnetic tapes and/or labels (in a format designated by MBNA America), containing names, postal addresses and telephone numbers of Members segmented by zip codes or reasonably selected membership characteristics.
- (f) "Member" means members of CSF plus other participants mutually agreed to by CSF and MBNA America.
- (g) "Program" means those programs and services of the Financial Services MBNA America agrees to offer from time to time to the Members.
- (h) "Trademarks" means any logo, servicemark, tradedress, tradename, or trademark presently used or acquired by CSF during the term of this Agreement.

## 2. AGREEMENT TO PROVIDE FINANCIAL SERVICES

In accordance with the terms and conditions of this Agreement, MBNA America agrees to offer the Program to the Members, and to directly compensate CSF with Royalties generated thereby, and CSF agrees to exclusively endorse the Program and provide MBNA America with information, licenses and general assistance for solicitation and administration of the existing and new Financial Services to Members.

### **3. RIGHTS AND RESPONSIBILITIES OF CSF**

(a) CSF agrees that during the term of this Agreement and any extension, it does and will continue to endorse the Program exclusively and will not sponsor, advertise, aid or develop any Financial Services of any organization other than MBNA America. CSF will not license its Trademarks, nor sell, rent or otherwise make available its Mailing Lists or information about its current or potential Members in relation to or for promoting any other Financial Services. CSF further agrees that during the term of this Agreement, no CSF publication shall carry advertisements for any other Financial Services.

(b) CSF authorizes MBNA America to solicit its Members by mail, advertisements and/or telephone for participation in the Program.

(c) CSF shall have the right of prior approval of all Program advertising and solicitation materials to be used by MBNA America which contain either CSF's Trademark or the endorsement of CSF which shall not be unreasonably withheld or delayed.

(d) CSF shall provide MBNA America with current and updated Mailing Lists free of charge. In the event there is a cost to MBNA America for an initial mailing list or an update to that list, the cost shall be deducted from the Royalties earned by CSF.

(e) CSF shall not provide any information to or otherwise communicate with Members or potential Members about the Program without MBNA America's prior written approval, except for current advertising and solicitation materials provided by MBNA America to CSF.

(f) CSF warrants and represents that it has the right and power to license the Trademarks to MBNA America for use as contemplated by this Agreement. CSF hereby grants MBNA America a limited, non-exclusive license to use its 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 of any successor corporation or organization as well as any Trademarks used or acquired by CSF during the term of this Agreement. Nothing stated in this Agreement prohibits CSF 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 Services.

(g) CSF shall provide MBNA America with a subscription without charge to any and all CSF publications.

(h) CSF shall not allow, permit, license, condone or encourage the solicitation or advertisement of Financial Services by any organization, group or provider of Financial Services, other than MBNA America, on any property owned, leased or operated by CSF."

### **4. 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 approval of all advertising and solicitation materials concerning or related to the Program.

(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 an individual Customer's or Member's accounts independent of CSF.

(e) MBNA America shall use the Mailing Lists consistent with this Agreement, and shall not permit those entities handling the Mailing Lists to use them for any other purpose. MBNA America shall have the right to designate persons on the Mailing Lists to whom promotional material may not be sent including, without limitation, based on appropriateness of product offered, Members who have been denied credit from previous mailings, who reside in a foreign country or reside in states where credit card solicitations are prohibited by law or subject to prohibitive legal or logistic conditions. The Mailing Lists are and shall remain the sole property of CSF. 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 which shall not be subject to this Agreement and will not imply or suggest an endorsement by CSF.

(f) MBNA America intends to use Kessler Financial Services, Limited Partnership, to assist in fulfilling its obligations under this Agreement.

## **5. ROYALTIES**

During the term of this Agreement, MBNA America shall pay to CSF all Royalties set forth in Schedule A, attached and incorporated herein. CSF shall submit a completed IRS W-9 form immediately following execution of this Agreement. Royalties will not be paid without a completed IRS W-9 form.

## **6. CROSS INDEMNIFICATION**

CSF and MBNA America each will indemnify and hold harmless the other party, its directors, officers, agents, employees, parent, subsidiaries, affiliates, successors and assigns from and against any and all liability, causes of action, claims, and the reasonable and actual costs incurred in connection therewith, which result from the breach of this Agreement by CSF or MBNA America, respectively as the case may be, or its directors, officers or employees. This provision includes the Trademark license granted herein. Each party shall notify the other party in writing ( in the manner provided for in this Agreement ) of notice of any claims or complaints that may result in the indemnification of the other party.

## **7. RATE AND BENEFITS**

MBNA America reserves the right to make periodic adjustments to the terms and features of the MBNA America Program. MBNA America shall inform CSF prior to such an adjustment. In the event the change increases the fees or finance charges to be paid by the Customer, MBNA America shall, as is required by Delaware and applicable federal law, give each Customer the opportunity to reject the change and pay the existing balance under the prior terms, in accordance with Delaware and applicable federal law.

## **8. CONFIDENTIALITY OF AGREEMENT**

MBNA America and CSF expressly agree that the terms of this Agreement shall remain confidential as of the issue date of the proposal and will not be disclosed to the general public or any third person, except by mutual written consent ( assignment of this Agreement shall not be a violation of this provision ). However, MBNA America and CSF shall be permitted to disclose such terms to their accountants, legal, financial and marketing advisors as are necessary for the performance of their respective duties, or as required by law, provided that said advisors agree to be bound by the provisions of this Section 8.

## 9. TERM OF AGREEMENT

- (a) The initial term of this Agreement will be for a five (5) year period beginning August 31, 1994 until August 31, 1999. This Agreement will be automatically extended on the Anniversary Date or any extension thereof for successive two-year periods. After the initial term either party may terminate this Agreement by providing written notice to the other party, as provided herein.\*\*
- (b) Schedule A is accurate as of August 1, 1994, and MBNA America shall not adjust the rate provisions of these Schedule A for 90 days from such date.
- (c) 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 communicated by CSF to the Members. Upon termination or expiration of this Agreement, CSF shall not take action with MBNA America or any other person to cause the removal of CSF's identification or Trademarks from the credit devices or records of any Customer prior to the expiration of the Customer's credit device.

## 10. STATE LAW GOVERNING AGREEMENT

This Agreement shall be governed by and subject to the laws of the State of Delaware and shall be deemed for all purposes to be made and fully performed in Delaware.

## 11. TERMINATION

- (a) In the event of any material breach or default of this Agreement by MBNA America or CSF, the other party if affected by this breach may, in its sole discretion, cancel this Agreement by giving sixty (60) days written notice to the defaulting party, provided that the defaulting party has been given a reasonable opportunity to cure the breach or default.
- (b) If either MBNA America or CSF becomes insolvent in that its liabilities exceed assets, or is adjudicated insolvent, takes advantage of or is subject to any insolvency proceeding, makes an assignment for the benefit of creditors or is subject to receivership, conservatorship or liquidation this Agreement shall immediately terminate. Any licenses granted or Mailing Lists provided under this Agreement shall not constitute assets or property in such proceeding which may be assigned or which may accrue to any trustee, receiver, creditor, or to any court or creditor appointed committee or receiver.
- (c) Upon expiration or termination of this Agreement, MBNA America shall in a manner consistent with Section 9 (c) of this Agreement, immediately cease to use the Trademarks. MBNA America agrees that upon such expiration or termination it will not claim any right, title, or interest in or to the Trademarks.

## 12. MISCELLANEOUS

- (a) This Agreement cannot be amended except by written agreement signed by the authorized officers of both parties hereto.
- (b) The obligations in Sections 6, 8 and 9 (c) shall survive any termination or expiration of this Agreement.
- (c) The waiver or failure of any party to exercise any rights under this Agreement shall not be deemed a waiver of any other right or any future rights.

*AAA* *DO* *11/8/94*  
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.

(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 received upon actual receipt of overnight courier delivery, registered or certified mail, postage prepaid, return receipt requested by:

(i) If to CSF:

CHADRON STATE FOUNDATION  
1000 Main Street  
Chadron, NE 69337  
ATTENTION: Ms. Connie Rasmussen, Director of Annual Giving

(ii) If to MBNA America:

MBNA AMERICA BANK N. A.  
400 Christiana Road  
Newark, Delaware 19713  
ATTENTION: Mr. Richard K. Struthers, Senior Executive Vice President

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

(g) This Agreement contains the entire agreement of the parties with respect to the matters covered and no other or prior promises, negotiations or discussions, oral or written, made by either party or its employees, officers or agents shall be valid and binding. MBNA America may utilize the services of any third party in fulfilling its obligations under this Agreement.

(h) It is agreed and understood that MBNA America and CSF are not agents, representatives or employees of each other.

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



## SCHEDULE A

### I. TERMS AND FEATURES

#### A. CREDIT CARD ACCOUNTS

Subject to MBNA America's right to vary the terms and features of the Program, and to the terms and conditions entered into between MBNA America and each Customer:

- \* There is NO Annual Fee for the first year for the Members.
- \* The Annual Fee when applied, is : \$40.00 Gold Credit Card Account  
\$20.00 Preferred Credit Card Account
- \* The current Annual Percentage Rate for Alumni Members of CSF will be a fixed rate of 17.9%, or a variable rate of prime plus 9.9%. The prime rate will be the highest U.S. prime rate as published on certain dates in the Money Rates Section of The Wall Street Journal. The variable rate will be determined quarterly as provided under the Cardholder Agreement entered into between MBNA America and each such Customer. For variable rate accounts, there may be an additional margin applied on account of the Customer's delinquency.
- \* The current Annual Percentage Rate for student Members of CSF will be a fixed rate of 17.9%, or a variable rate of prime plus 10.9%. The prime rate will be the highest U.S. prime rate as published on certain dates in the Money Rates Section of The Wall Street Journal. The variable rate will be determined quarterly as provided under the Cardholder Agreement entered into between MBNA America and each such Customer. For variable rate accounts, there may be an additional margin applied on account of the Customer's delinquency.

### II. ROYALTY ARRANGEMENT

During the term of the Agreement, or any extension thereof, MBNA America will pay CHADRON STATE FOUNDATION a Royalty calculated according to the following schedule, for those accounts with active charging privileges:

#### A. CREDIT CARD ACCOUNTS

- \* \$1.00 for every new Credit Card Account opened by a Member of CSF, which remains open for at least ninety (90) days.
- \* \$3.00 for each year a Credit Card Account is renewed by a Member of CSF, and an Annual fee is paid by Customer.
- \* .20 of 1% of all retail purchase transactions made by Alumni Members of CSF (net refunds and returns).
- \* .15 of 1% of all retail purchase transactions made by Student Members of CSF (net refunds and returns).

Except where otherwise provided, payment for the above sections shall be made approximately 45 days after the end of each calendar quarter.

8/17/94: dd



MBNA Marketing Systems, Inc.  
16001 North Dallas Parkway  
Dallas, Texas 75248-3399

(800) 435-9672

November 15, 1994

Ms. Mary Lou Lecher  
Chadron State College  
1000 Main Street  
Chadron, NE 69337

Dear Ms. Lecher:

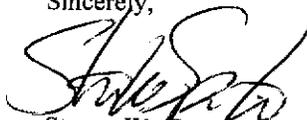
We are pleased to announce some changes to the credit card program that will significantly improve the quality of the product for your Alumni. The most significant change will be eliminating the Annual Fee for all current and future Alumni cardholders. We believe that doing so will enable us to significantly improve participation in the program.

We need to update the royalty provision of the agreement to provide for this important change. As you will see, the dollar amount per account has not been changed. This new calculation will be effective for all your accounts as of January 1, 1995, and is implemented by replacing the current renewal compensation language with the following:

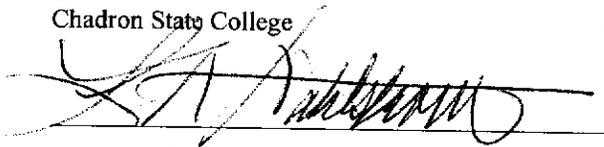
If no fee is assessed by MBNA America (other than as a result of a courtesy waiver by MBNA America), then such royalty will be paid for each Credit Card Account which: 1) has a balance greater than zero as of the last business day of every twelfth month after the opening of that Credit Card Account; and 2) has had active charging privileges for each of the receding twelve months.

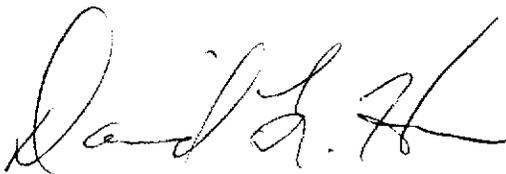
In order to continue to offer this enhancement, we need you to countersign and return this letter, keeping a copy for your records. If you would like to discuss any aspect of our program, I hope you will not hesitate to call.

Sincerely,

  
Steven W. Spartin  
Assistant Vice President

Chadron State College

  
President, Chadron State Foundation



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01/14

## ADDENDUM TO THE CHADRON STATE FOUNDATION AGREEMENT

THIS ADDENDUM and Attachment #1 (the "Addendum") is entered into this 24<sup>th</sup> day of August, 2001, by and between Chadron State Foundation ("CSF"), and MBNA America Bank, N.A. ("MBNA America"), for themselves and their respective successors and assigns.

WHEREAS, CSF 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 CSF; and

WHEREAS, CSF and MBNA America mutually desire to extend the term of the Agreement and amend the Agreement as provided for herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreement contained herein, CSF 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 August 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 subsection (i):
  - (i) "Credit Card Account" means a credit card account opened by a Member in response to marketing efforts made pursuant to the Program. A "Student Credit Card Account" is a Credit Card Account opened through an application coded by MBNA America as a student application. An "Alumni Credit Card Account" is a Credit Card Account opened through an application coded by MBNA America as an alumni application.
4. Effective August 24, 2001, Schedule A of the Agreement is amended by deleting Section II in its entirety and replacing it with Attachment #1.
5. In addition to CSF's obligations under the Agreement to exclusively endorse the Program, CSF 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.
6. 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. Certain Financial Service Products or services under the Agreement may be offered through MBNA America's affiliates. For example, business credit cards are currently issued and administered by MBNA America (Delaware), N.A., and certain marketing services are currently provided by MBNA Marketing Systems, Inc.

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.

CHADRON STATE FOUNDATION

By:

Name: Lee Wahlstrom

Title: President

Date:

8/8/01

MBNA AMERICA BANK, N.A.

By:

Name:

Michael Durroin

Title:

SEVP

Date:

August 21, 2001

## ATTACHMENT #1

### ROYALTY ARRANGEMENT

During the term of this Agreement, MBNA America will pay CSF a Royalty calculated as follows, for those accounts with active charging privileges. MBNA America may create a special class of accounts for CSF 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

1. \$1.00 (one dollar) for each new Credit Card Account opened, which remains open for at least ninety (90) consecutive days.
2. \$3.00 (three dollars) for each Credit Card Account for which the annual fee is paid by the Customer. If no annual fee is assessed by 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. 0.30% of all retail purchase transaction dollar volume generated by Customers using an Alumni 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)).
4. 0.15% of all retail purchase transaction dollar volume generated by Customers using a Student 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)).

**FIA CARD SERVICES™**

November 16, 2010

Ms. Connie Rasmussen  
Chadron State Foundation Executive Director  
Chadron State Foundation  
1000 Main Street  
Chadron, NE 69337

RE: The Agreement by and between Chadron State Foundation ("CFS") and FIA Card Services, N.A. (f/k/a MBNA America Bank, N.A.) ("FIA") with the initial term beginning August 31, 1994, as the same may have been amended (the "Agreement").

Dear Ms. Rasmussen:

It is my understanding that FIA and CFS both desire to terminate the Agreement. To facilitate this termination we have prepared this letter ("Letter") to be executed by both parties, setting forth the terms upon which FIA and CFS agree to terminate the Agreement. Capitalized terms used but not otherwise herein defined are used as defined in the Agreement.

The Agreement shall be deemed terminated effective as of March 31, 2011 (the "Termination Date"). After the Termination Date, neither party shall have any rights or responsibilities arising under the Agreement unless such right or responsibility, in accordance with the terms of the Agreement, was to survive the termination of the Agreement. FIA and CFS agree to keep confidential and not disclose to any person or entity the terms of this Letter or the circumstances which resulted in its execution.

Notwithstanding anything to the contrary in the Agreement, FIA and CFS agree that, as of the date this Letter has been fully executed, CFS may solicit proposals for programs offering and/or discuss with any organization other than FIA the providing of any Financial Service Products of any entity other than FIA; provided, however, CFS shall not, directly or indirectly, prior to the Termination Date: (i) endorse, advertise, offer or market any Financial Service Products of any entity other than FIA, or (ii) license or allow others to use or license the Trademarks for use in relation to or for promoting or supporting any Financial Service Products of any entity other than FIA.

Notwithstanding anything else in the Agreement to the contrary, upon termination or earlier expiration of this Agreement, FIA will have up to ninety (90) calendar days from the termination or expiration date to: (i) suspend marketing and remove marketing materials from FIA's marketing channels; (ii) use CFS Trademarks in connection with Credit Card Accounts opened during such ninety (90) day period; and (iii) remove CFS Trademarks from Program collateral and account materials, such as statements, welcome packages, and card carriers. CFS shall not attempt to cause the removal of CFS 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 FIA shall have the right to use CFS Trademarks on such credit devices, checks and records until their normally scheduled reissue date or exhaustion.

**FIA CARD SERVICES™**

Within forty-five (45) days after the end of the first calendar quarter after the Termination Date, FIA shall pay any remaining Royalty compensation due to CFS under the Agreement through and including the Termination Date. Thereafter, no compensation shall be due to CFS.

This Letter shall legally bind and inure to the benefit of the successors and assigns of the parties. Any inconsistencies between this Letter and the Agreement shall be governed by this Letter. This Letter will be governed by, subject to and construed in accordance with the laws of the State of Delaware. If any portion of this Letter is deemed to be invalid, the balance of the Letter will remain in force as if such invalid portion was not contained herein.

Please execute both this and the enclosed copy of this Letter and forward them to me. I will obtain the appropriate signatures and send you a fully executed original.

If you have any questions, please contact me at 804-627-7081.

Sincerely,



Alex J. McLaughlin  
Vice President  
FIA CARD SERVICES, N.A.

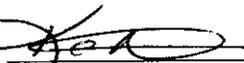
ACCEPTED AND AGREED:

CHADRON STATE FOUNDATION

BY:   
NAME: CONNIE LAMUSSED  
TITLE: EXECUTIVE DIRECTOR, CSF  
DATE: 11-29-10

ACCEPTED AND AGREED:

FIA CARD SERVICES, N.A.

BY:   
NAME: KRISTIAN HAMMERSCOTT  
TITLE: SVP  
DATE: 12/16/10

cc: Ms. Karen Pope  
Director of Alumni and Annual Giving  
Chadron State Foundation  
1000 Main Street  
Chadron, NE 69337