

# THE NATIONAL ALUMNI ASSOCIATION OF THE UNIVERSITY OF ALABAMA

## AFFINITY AGREEMENT

This Agreement is entered into as of this 1<sup>st</sup> day of July, 2001 (the "Effective Date") by and between MBNA AMERICA BANK, N.A., a national banking association having its principal place of business in Wilmington, Delaware ("MBNA America"), and The National Alumni Association of the University of Alabama, an Alabama non-profit corporation having its principal place of business in Tuscaloosa, Alabama ("NAAUA") for themselves, and their respective successors and assigns.

WHEREAS, Regions Financial Corporation, as successor in interest to First Alabama Bank, is a party to an agreement with NAAUA dated October 27, 1986, as the same may have been amended and to an agreement with the Student Government Association of the University of Alabama dated September 25, 1987 (the "Original Agreements"); and

WHEREAS, NAAUA and MBNA America individually and in its capacity as assignee of any and all of Regions Financial Corporation's rights under the Original Agreements mutually desire to amend and restate the Original Agreements;

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

### 1. DEFINITIONS

When used in this Agreement,

- (a) "Agreement" means this agreement and Schedules A, B, C D and E.
- (b) "Alumni Association Trademarks" means any design, image, visual representation, logo, service mark, trade dress, trade name, or trademark used or acquired by NAAUA during the term of this Agreement.
- (c) "Contract Year" means each consecutive twelve month period during the term of this Agreement beginning on July 1<sup>st</sup> up through and including June 30<sup>th</sup> of the following year.
- (d) "Credit Card Account" means a credit card account opened by a Member in response to marketing efforts made pursuant to the Program. An "Alumni Credit Card Account" is a Credit Card Account where the primary applicant is an Alumni Member. A "Student Credit Card Account" is a Credit Card Account where the primary applicant is a Student Member.
- (e) "Customer" means any Member who is a participant in the Program. "Student Customer" means a Customer who is identified by NAAUA or the Customer as an undergraduate or graduate

student of the University of Alabama. "Alumni Customer" means a Customer who is not a Student Customer.

(f) "Direct Promotion Event" means tabling and poster for the Program at an event.

(g) "Financial Service Products" means credit card programs, charge card programs, debit card programs, installment loan programs, revolving loan programs, deposit programs and travel and entertainment card programs. This definition shall not include (i) the University's "Bama Cash" or "Action Card" stored value/debit card programs or successor stored value/debit card programs; (ii) the University's MCI/Worldcom long distance calling card program or successor long distance calling card programs; (iii) the University's travel and entertainment card program; and (iv) the Financial Service Products issued or offered by Alabama Credit Union in conjunction with the University, provided that credit card program and charge card program and their access devices do not utilize or bear a Trademark, as the same are currently structured and delineated as of the date of this Agreement.

(h) "Group Incentive Program" or "GIP" means any marketing or other program whereby NAAUA conducts solicitation efforts for the Program, and the parties mutually agree that such marketing or other program shall constitute a GIP.

(i) "GIP Account" means a Credit Card Account opened by a Member pursuant to a GIP in which NAAUA complies with the GIP provisions of this Agreement.

(j) "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, with the approval of NAAUA, e-mail addresses) of Members segmented by zip codes or reasonably selected membership characteristics other than the membership characteristic that such Member is a contributor to the University's athletics department or the University's donor priority seating program known currently as the Tide Pride Program.

(k) "Member" means an undergraduate or graduate student (each a "Student Member") or a member of NAAUA, alumni of the University, students' parents and/or other potential participants mutually agreed to by NAAUA and MBNA America (each an "Alumni Member").

(l) "NAAUA Acquired Credit Card Account" means a credit card account endorsed by NAAUA and purchased by MBNA America from Regions Financial Corporation. Such NAAUA Acquired Account will not qualify for any opening-of-account Royalty and is not subject to Schedule A.

(m) "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.

(n) "Royalties" means the compensation set forth in Schedule B.

(o) "Trademarks" means the Alumni Association Trademarks and the University Trademarks.

(p) "Sites" means Legion Field in Birmingham, Alabama, and Bryant-Denny Stadium, Coleman Coliseum, and other athletic facilities under the control of the University's Athletics Department located on the University's campus in Tuscaloosa, Alabama and the Ferguson Center or other on-campus location agreed to by the parties.

(q) "University" means the University of Alabama.

(r) "University Trademarks" means any design, image, visual representation, logo, service mark, trade dress, trade name, or trademark used or acquired by the University during the term of this Agreement.

(s) "Affinity Credit Card Program" means a credit card program or a charge card program.

## 2. RIGHTS AND RESPONSIBILITIES OF NAAUA

(a) NAAUA agrees that during the term of this Agreement it will endorse the Program exclusively and that it shall not: (i) sponsor, advertise, aid, develop, market, or solicit proposals for programs offering or providing for, any Financial Service Products of any organization other than MBNA America; (ii) license or allow others to license or use the Alumni Association Trademarks in relation to or for promoting any Financial Service Products of any entity other than MBNA America; (iii) sublicense the University Trademarks in relation to or for promoting any Financial Service Products of any entity other than MBNA America; and (iv) sell, rent or otherwise make available or allow others (excluding the University) 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.

(b) NAAUA further agrees that it shall use its best efforts to prevent the University from: (x) sponsoring, advertising, aiding, developing, or marketing any Affinity Credit Card Program of any organization other than MBNA America; (y) licensing or allowing others to license or use the University Trademarks for promoting any Affinity Credit Card Program of any entity other than MBNA America; and (z) selling, renting or otherwise making available or allowing 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 Affinity Credit Card Program of any entity other than MBNA America. Notwithstanding anything else in this Agreement to the contrary, NAAUA and the University may accept radio, television, internet and print advertising from any financial institution provided that: (i) the advertisement does not contain an express endorsement by NAAUA of said financial institution or the advertised Financial Service Product or in the case of the University an express endorsement of an Affinity Credit Card Program; and (ii) for internet advertisements the advertisements are placed in a position that is less prominent than the advertisements and other solicitations for the Program. Nothing in this Agreement is intended to prohibit or limit the University's ability to solicit financial institutions for scholarships or other contributions to the University that may be named for the donating

financial institution or that may otherwise constitute a qualified sponsorship payment as that term is defined in Internal Revenue Code Section 513(i) and related regulations. Notwithstanding anything else in this Agreement to the contrary, USC may accept advertising or sponsorships (e.g., sponsorship of events, naming rights of facilities) from any financial institution provided that the advertisement or sponsorship does not contain an express endorsement by USC of any Financial Service Product. Further nothing in this Agreement shall prohibit or limit the University from entering into agreements with third parties for promotions, sponsorships, and broadcast rights and scoreboard and athletic facilities signage advertising rights (the "University Advertising") provided the Advertising does not contain an express endorsement by the University for Affinity Credit Card Programs.

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

(d) NAAUA authorizes MBNA America to solicit its Members by mail, direct promotion, Internet, advertisements and/or telephone for participation in the Program. The parties hereto agree that MBNA America will not solicit the Members by telephone for participation in the Program during the two (2) months per calendar year in which NAAUA actively solicits its Members by telephone. Such two months will be mutually agreed to by NAAUA and MBNA America no later than the first month of each calendar year. Notwithstanding the foregoing, MBNA America agrees that it will use its current procedures to place Members who notify MBNA America in writing or those Members names furnished in writing by NAAUA that they do not want to receive promotional materials from MBNA America on its customer master suppression list.

(e) NAAUA shall have the right of prior approval of all Program advertising and solicitation materials, including, without limitation, all premium and gift items, to be used by MBNA America, which contain a 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) that was requested by NAAUA, MBNA America may deduct such costs from Royalties due NAAUA. In the event such costs exceed Royalties then due NAAUA, NAAUA shall promptly reimburse MBNA America for all such costs.

(f) Upon the request of MBNA America, NAAUA four (4) times per year shall provide MBNA America with the Mailing Lists free of any charge; provided, however, that NAAUA shall not include in any Mailing List the name and/or related information regarding any person who has expressly requested that NAAUA not provide his/her personal information to third parties. In the event that MBNA America incurs a cost because of a charge assessed by NAAUA or its agents for an initial Mailing List or an update to that list, MBNA America may deduct such costs from Royalties due NAAUA. NAAUA shall provide the following initial Mailing Lists: (i) a Mailing List containing at least One Hundred Eighty Thousand (180,000) non-duplicate names of Alumni Members who are at least eighteen years of age, with corresponding valid postal addresses and, when available, telephone numbers and, with NAAUA approval, e-mail addresses; and (ii) a Mailing List containing at least Eighteen Thousand (18,000) non-duplicate names of Student Members who are at least eighteen years of age, with corresponding valid postal addresses and, when available, telephone numbers and, with NAAUA approval, e-mail

addresses, as soon as possible but no later than thirty (30) days after NAAUA's execution of this Agreement. Upon termination of this Agreement if so requested by NAAUA in writing, MBNA America will destroy the Mailing Lists in its possession and provide to NAAUA written certification that such Mailing Lists have been destroyed. However, MBNA America may conclude all solicitation that is required by law prior to such destruction. This provision shall survive termination of this Agreement

(g) NAAUA shall, and shall cause the University to, 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 NAAUA. Notwithstanding the above, NAAUA 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 NAAUA. Any correspondence received by NAAUA 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, except when NAAUA is closed for holidays observed by the University in which case the correspondence shall be forwarded to MBNA America within two (2) business days after NAAUA re-opens. All charges incurred for this service will be paid by MBNA America.

(h) NAAUA hereby grants MBNA America and its affiliates a limited, exclusive license to use the Alumni Association Trademarks depicted on Schedule D hereof and a limited exclusive sublicense to use the University Trademarks depicted on Schedule E hereof solely in conjunction with the Program, including the promotion thereof. Schedules D and E shall be deemed automatically amended without further action of the parties to include any additional Alumni Association Trademark or University Trademark which NAAUA approves for use by MBNA America in connection with the Program, and any intellectual property developed as a successor or replacement of, or as a modification to, any Alumni Association Trademark depicted on Schedule D or University Trademark depicted on Schedule E. The limited exclusive sublicense for use of the University Trademarks shall be on the same terms, conditions, and limitations as are found in the license between NAAUA and the University, a copy of which is attached hereto as Attachment I. These licenses shall be transferred upon assignment of this Agreement in accordance with Section 13(1) hereof. This license and sublicense 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. NAAUA 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 NAAUA's execution of this Agreement. Nothing stated in this Agreement prohibits NAAUA from granting to other persons a license to use the Alumni Association Trademarks in conjunction with the providing of any other service or product, except for any Financial Service Products or the University from granting to other persons a license to use the University Trademarks in conjunction with the providing of any other service or product, except for an Affinity Credit Card Program of any organization other than MBNA America.

(i) NAAUA with its prior written approval shall allow MBNA America the opportunity when and/or where available to advertise the Program on its home page and at other prominent locations within the Internet site of NAAUA. MBNA America may establish a "hot-link" from such advertisements to another Internet site to enable a person to apply for a Credit Card Account. Any Credit Card Accounts generated pursuant to such a "hot-link" shall entitle NAAUA to the GIP compensation set forth in Schedule B, subject to the other terms and conditions of this Agreement. NAAUA shall modify or remove such advertisements from NAAUA's Internet site within twenty-four (24) hours of MBNA America's request.

(j) NAAUA agrees to provide MBNA America with information, material and assistance so as to assist MBNA America with its marketing of the Program. NAAUA agrees, except as otherwise provided for herein, to make reasonable efforts to provide to or arrange for MBNA America all of the following marketing opportunities and items (each such opportunity or item, an "Element") free of charge during each Contract Year of this Agreement (each such annual package of Elements is hereinafter referred to as an "Annual Marketing Plan"). The parties agree that the obligation of NAAUA to provide each item of each Annual Marketing plan is a material obligation of NAAUA to MBNA America. MBNA America acknowledges that many of the Elements described below are arranged, scheduled, and run by the University or by third parties under contract with the University or others and therefore may be cancelled or discontinued. As a consequence, NAAUA does not promise that it can provide any or all of the Elements nor guaranteed that any particular Element will occur annually throughout the term of this Agreement.

(i) NAAUA shall provide MBNA America with the necessary access, during each Contract Year of this Agreement, for MBNA America to conduct Direct Promotion Events: (1) at all home football games held in Bryant-Denny Stadium in Tuscaloosa, Alabama (2) at home football game Quad Jamborees, (3) on campus a minimum of two (2) weeks per semester at mutually agreed upon areas, and (4) at least five (5) other home sports events held on the University's campus, including, but not limited to, home basketball games, baseball games, and gymnastic meets. Direct Promotion Events may be allowed at other mutually agreed upon events.

(ii) NAAUA will use reasonable efforts to secure for MBNA America Direct Promotion Event Locations at Legion Field in Birmingham, Alabama, during University home football games held at that facility.

(iii) Subject to space availability and safety concerns, when conducting Direct Promotion Events at Bryant-Denny Stadium, MBNA America may have as many as four (4) direct promotion locations (each a "Location") and at the other Sites one (1) Location within or at those Sites, unless additional Locations are agreed to by University officials. The Locations, to the extent possible and subject to space availability and safety concerns, shall be at prominent locations and will be mutually agreed upon by MBNA America and NAAUA.

(iv) NAAUA shall distribute a maximum of twenty-five (25) employee passes to MBNA America employees and agents that are conducting the Direct Promotion Event

(from game to game the number of passes available may be limited by the Athletic Department due to availability). To the extent that they are informed of the rules and regulations, MBNA America agrees that all MBNA America employees and agents will follow NAAUA's and University rules and regulations when conducting Direct Promotion Events.

(v) NAAUA shall provide MBNA America with four (4) parking permits/passes, if available, and four (4) tickets for each home football game at Bryant-Denny Stadium at which MBNA America will be conducting Direct Promotion Events.

(vi) NAAUA, prior to the event or contest, shall provide MBNA America with reasonable vehicular access to the Site in which MBNA America will be conducting Direct Promotion Events. Such vehicular access shall to the extent possible provide the MBNA America vehicle a convenient position, in relation to each Location, before and after the game or event, to unload/load.

(vii) NAAUA shall permit MBNA America to set up each Location at least one (1) hour or other agreed upon time period prior to the gates opening for the Site.

(viii) Any issues concerning Direct Promotion Events not specifically mentioned in this Agreement will be mutually agreed upon by MBNA America and NAAUA and both parties agree to be reasonable.

(ix) NAAUA also agrees that MBNA America may give away gifts for individuals completing applications and on other premium items, including, but not limited to t-shirts and hats, that have the Trademarks on them subject to NAAUA's prior approval set forth in Section 2(e). MBNA America agrees that all gift and premium items bearing any of the Trademarks must be licensed by NAAUA and the University, as the case may be. MBNA America agrees to abide by the University policy made known to MBNA America in advance and in writing, regarding the giving away of free gifts or premiums to individuals who complete applications for Financial Service Programs under the Program.

### 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 NAAUA.

(c) Except as otherwise provided in Section 11, 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 NAAUA.

(e) MBNA America shall use the Mailing Lists provided pursuant to this Agreement solely for the purposes of promoting the Program consistent with this Agreement or as otherwise approved by NAAUA and shall not permit those entities handling these Mailing Lists to use them for any other purpose. MBNA America shall require its subcontractors or other entities that may handle the Mailing Lists in conjunction with the Program to hold the Mailing Lists as confidential information and to agree to neither disclose, sell, rent, or otherwise transfer the Mailing Lists to anyone 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 NAAUA. 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 NAAUA.

#### 4. REPRESENTATIONS AND WARRANTIES

(a) NAAUA 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) Except as stated herein, 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) NAAUA 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 Alumni Association Trademarks and to sublicense the University Trademarks to MBNA America for use as contemplated by this Agreement, and to provide the Mailing List(s) to MBNA America for the promotion of the Program. NAAUA further represents and warrants to MBNA America as of the date hereof and throughout the term of this Agreement that, except as specified in this Agreement, it knows of no entity or organization (including the University) that is authorized to

use, license or sub-license the University Trademarks in connection with an Affinity Credit Card Program. NAAUA 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 costs in connection therewith (including attorneys' fees), arising from the Trademark license and sublicense granted herein or from MBNA America's approved use of the Trademarks in reliance thereon, or from the authorized use of any Mailing List(s) by MBNA America for the promotion of the Program. 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 NAAUA. Royalties will not be paid without a completed Schedule C (W-9 Form and EFT 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.

(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 NAAUA 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 NAAUA shall be permitted to disclose such Information (i) to their accountants, legal, financial and marketing advisors, current board of directors, and employees and those of the University 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 June 30, 2008. 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. Notwithstanding the foregoing, in the event this Agreement is not terminated at the end of the initial term, NAAUA shall be permitted to cancel this Agreement for its convenience at any time during the first thirty (30) days of the first renewal term by providing written notice to MBNA America within such thirty (30) day period, and the Agreement will terminate ninety (90) days after MBNA America's receipt of such notice.

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. None of the terms of this Agreement shall constitute nor are intended as a waiver of the University's immunity from suit under article I, section 14, Constitution of Alabama of 1901 and the Eleventh Amendment of the U.S. Constitution with regard to any claim or demand arising out of or resulting from this Agreement that is asserted against the University.

10. TERMINATION

(a) In the event of any material breach of this Agreement by MBNA America or NAAUA, 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 NAAUA 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 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) Upon any termination of this Agreement, the parties shall jointly develop and approve a single, joint notice to be communicated in writing to all Customers. Approval of such joint notice shall not be unreasonably withheld by either party. The notice shall be factually accurate and shall not contain any statement concerning either party or the Program which either party considers to be disparaging of itself or the Program. All direct expenses incurred in producing and distributing such notice shall be equally shared by the parties. Upon termination of this Agreement, NAAUA shall not attempt to cause the removal of NAAUA'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, NAAUA agrees that NAAUA shall not, by itself or in conjunction with others, directly or indirectly, specifically target any offer of a credit or charge card, or a credit or charge card related product to persons who were Customers. Notwithstanding the foregoing, NAAUA 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 NAAUA provided the opportunity is not only made available to persons who were Customers but rather as a part of a general solicitation to Student Members and University alumni and provided further no such persons who were Customers are directly or indirectly identified as a customer of MBNA America, or offered any terms or incentives different from that offered to Student Members and University alumni who were solicited.

#### 11. 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 NAAUA pursuant to any GIP. In that regard, NAAUA 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 NAAUA 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 NAAUA 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 NAAUA pursuant to any GIP. MBNA America shall have approval and control of the scope, timing, content and continuation of any GIP.

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

(e) NAAUA 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.

## 12. CUSTOMER LIST

(a) Each month until September 2001, and thereafter, if requested by NAAUA in writing, not to exceed four (4) requests per year during the term of the Agreement (provided that notice of a party's intention to terminate the Agreement has not been given), MBNA America shall provide NAAUA with a list of information (*e.g.*, names and addresses) about Customers as may be mutually agreed upon by the parties (hereinafter the "Customer List"). When used in this Addendum, the term "Customer List" includes any whole or partial copies or compilations of a Customer List in any form or any medium, any information derived solely from a Customer List, and all Customer Information, as hereinafter defined. Notwithstanding any provision of the Agreement, MBNA America shall not provide any Customer List or Customer Information otherwise required to be provided by it to NAAUA, and may restrict any use by NAAUA of any Customer List or Customer Information which is provided by MBNA America to NAAUA, if MBNA America is prohibited from disclosing the same or permitting such use because of any law, regulation, bankwide privacy policy, public privacy pledge, court order, rule, consent decree, or individual present or former Customer request, or if the provision of such information or its intended use would create an additional regulatory compliance burden on MBNA America.

(b) NAAUA shall return to MBNA America each Customer List, in the same form as received by NAAUA within thirty (30) days of receipt of such Customer List. On or before the effective date of termination of the Agreement, NAAUA agrees that it shall: (i) immediately destroy and purge from all its systems all information within each Customer List to the extent that such information in any way relates to MBNA America, the Program or Credit Card Accounts ("Customer Information"); and (ii) return or destroy within thirty (30) days all Customer Information that is in tangible form, including any and all full or partial copies, or reproductions thereof in any medium whatsoever. All destruction of Customer Lists shall be done in strict accordance with MBNA America's then current destruction policy.

(c) Any Customer List provided to NAAUA may contain "dummy" information (*e.g.*, names, account information, addresses, *etc.*) so that unauthorized use of a Customer List may be determined. This information will be unknown to NAAUA. A violation of this Section is conclusively proven and damages shall be deemed owed when MBNA America establishes the following:

- (i) that MBNA America placed "dummy" information on the list (*e.g.*, name(s), account information, address(es), *etc.*);
- (ii) that the "dummy" information received any mailings which were sent or generated outside the scope of the permitted use of the Customer List; and
- (iii) that identical "dummy" information was not provided by MBNA America or its affiliates to any third party.

(d) All Customer Lists are (i) confidential and proprietary and (ii) shall remain the sole property of MBNA America. NAAUA expressly acknowledges and agrees that NAAUA has no property right or interest whatsoever in any Customer List. NAAUA shall hold all Customer Lists in strict and absolute confidence and shall not provide, trade, give away, barter, lend, send, sell or otherwise disclose (collectively "transfer") any Customer List and shall not make any copies of a Customer List of any type whatsoever except as expressly approved in a separate writing by MBNA America. At all times NAAUA shall keep in confidence and trust all Customer Lists. NAAUA further agrees that it shall not transfer any Customer List to any other organization or individual under any circumstances, and NAAUA specifically but not by way of limitation agrees that no subcontractors and/or affiliates shall be transferred any Customer List unless agreed to in writing by MBNA America prior to any such transfer. (This paragraph would prohibit, by means of example only, transferring any list of MBNA America cardholders to any financial institution during the term of the Agreement or after the termination of the Agreement.)

(e) NAAUA shall have no authority to use the Customer List for any purpose not expressly permitted by MBNA America in a separate writing. NAAUA shall comply with any reasonable request of MBNA America with respect to security precautions to maintain the security of the Customer List. NAAUA agrees to secure and safeguard the Customer List in strict accordance with the requirements of this Section and MBNA America's instructions, as communicated by MBNA America to NAAUA from time to time. NAAUA shall only permit access to the Customer List to those employees, volunteers, agents and/or representatives of NAAUA who need such access to perform their duties for NAAUA. In view of the confidential nature of the Customer List, NAAUA warrants that NAAUA and all its employees, volunteers, agents and/or representatives who work with any Customer List shall be made aware of the obligations contained in this Section and shall be under strict legal obligation not to copy any Customer List, transfer any Customer List or make any other use of any Customer List other than as specifically approved by this Section.

(f) In the event that any Customer List is handled or used in a fashion that violates this Section by NAAUA or its employees, volunteers, agents, and/or representatives, MBNA America will be entitled to injunctive relief to prevent violation or further violation by NAAUA and/or its employees, volunteers, agents or representatives of this Section, and consents to submit to jurisdiction of the courts of the State of Delaware and of the United States of America located in the State of Delaware for any actions, suits or proceedings arising out of or related to this Section or the Agreement. Nothing herein shall be construed as prohibiting MBNA America from pursuing any other remedy on account of such breach or threatened breach.

(g) In the event NAAUA receives a request to disclose a Customer List pursuant to a subpoena, order of court of competent jurisdiction or by judicial or administrative agency or legislative body or committee, NAAUA agrees to: (i) immediately notify MBNA America of the existence, terms and circumstances surrounding such request; (ii) consult with MBNA America on the advisability of taking legally available steps to resist or narrow such request; and (iii) if disclosure of such Customer List is required or deemed advisable, exercise its best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the Customer List to be disclosed which MBNA America designates.

13. 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), 10(f), 12(b), 12(c), 12(e), 12(f) and 12(g) 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 NAAUA:

National Alumni Association of the University of Alabama  
P.O Box 861928  
Tuscaloosa, Alabama 34586-0017

ATTENTION:David Wilson,  
Manager of Alumni Funds

Fax #: (205) 348-5958

(2) If to MBNA America:

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

ATTENTION:Division Manager,  
Group Administration/Sales

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 and the Schedules and Attachments thereto contain 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 Agreements which shall be deemed revoked and cancelled as of the Effective Date. MBNA America may utilize the services of any third party in fulfilling its obligations under this Agreement.

(h) MBNA America and NAAUA 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 NAAUA 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 or other labor disputes, 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.

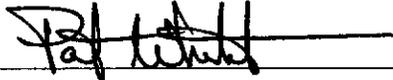
(k) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(l) Without the prior written consent of MBNA America, which shall not be unreasonably withheld, NAAUA may not assign any of its rights or obligations under or arising from this Agreement. MBNA America may not assign or transfer its rights and/or obligations under this Agreement without the written consent of NAAUA; provided, however, that MBNA America may assign or transfer, without written consent, its rights and/or obligations under this Agreement:

- (i) to any individual, corporation or other entity (other than a subsidiary or an entity controlling, controlled by, or under common control with MBNA America (an "MBNA Affiliate")) pursuant to a sale (other than a sale as described in subsection (ii), below), as long as such prospective buyer has substantially similar customer satisfaction standards as MBNA America; or
- (ii) to any individual, corporation or other entity (other than an MBNA Affiliate) pursuant to a merger, consolidation, or a sale of all or substantially all of the assets of MBNA America; or
- (iii) To any MBNA Affiliate.

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

THE NATIONAL ALUMNI ASSOCIATION  
OF THE UNIVERSITY OF ALABAMA

By: 

Name: PAT Whetstone

Title: Director of Alumni Affairs

Date: August 2, 2001

MBNA AMERICA BANK, N.A.

By: 

Name: Michael Durrell

Title: SEVP

Date: Aug 16, 2001

## 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. CONSUMER CREDIT CARD ACCOUNTS

1. There is NO annual fee.
2. For Alumni Credit Card Accounts, the current annual percentage rate will be a fixed rate of 14.99%.
3. For Student Credit Card Accounts, the current annual percentage rate will be a fixed rate of 15.99%.
4. Customers may be offered opportunities to purchase a variety of communication services and to select credit insurance as a benefit under the Program.

#### B. BUSINESS CREDIT CARD ACCOUNTS

"BusinessCard Credit Card Account" means a business Credit Card Account (currently referred to as a *Platinum Plus for Business* account) opened by a Member in response to marketing efforts made pursuant to the Program. MBNA America reserves the right to change the product name(s) (e.g., Platinum Plus for Business), in its sole discretion, from time to time.

1. There is no annual fee for each business card issued to an individual or business entity pursuant to the BusinessCard Credit Card Account program. MBNA America reserves the right to make special pricing offers for BusinessCard Credit Card Accounts to select NAAUA Customers and/or Members at its own discretion.
2. The current Annual Percentage Rate for BusinessCard Credit Card Accounts is a fixed rate of 14.99%.

#### C. GOLD RESERVE ACCOUNTS

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

1. There is NO annual fee for the first six months.
2. The annual fee for the second six (6) months, when applied, is \$10.00.
3. Thereafter the annual fee, when applied, is \$20.00.

4. The current annual percentage rate is 14.99%.

*Colvard*  
8/16/01

D. GOLD OPTION ACCOUNTS

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

1. There is NO annual fee.
2. The current annual percentage rate is as low as 14.99%.

*Colvard*  
8/16/01

## SCHEDULE B

### ROYALTY ARRANGEMENT

During the term of this Agreement, MBNA America will pay NAAUA a Royalty calculated as follows, for those accounts with active charging privileges. In the event that the parties agree to create a special class of accounts for University employees under the Program, MBNA America 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. CONSUMER CREDIT CARD ACCOUNTS (OTHER THAN NAAUA ACQUIRED CREDIT CARD ACCOUNTS)

1. \$1.00 (one dollar) for each new consumer Credit Card Account opened, which remains open for at least ninety (90) consecutive days.
2. \$1.00 (one dollar) for each consumer 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 consumer 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 consumer Credit Card Account; and 2) has had active charging privileges for each of the preceding twelve months.
3. 0.50% (one half of one percent) of all retail purchase transaction dollar volume generated by Alumni 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. 0.40% (four tenths of one percent) of all retail purchase transaction dollar volume generated by Student 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)).
5. 0.50% (one half of one percent) of all cash advance and cash equivalent transaction dollar volume generated by Alumni Customers using an Alumni Credit Card Account (excluding those transactions that relate to refunds, returns and/or unauthorized transactions).

B. NAAUA ACQUIRED CREDIT CARD ACCOUNTS

1.0% (one percent) of all retail purchase transaction dollar volume generated by NAAUA Acquired Credit Card Accounts (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. BUSINESS CREDIT CARD ACCOUNTS

BusinessCard Credit Card Account compensation provisions shall not affect any other compensation provisions contained in the Agreement, and the compensation provisions referencing any other form of Credit Card Accounts shall not apply to BusinessCard Credit Card Accounts; provided, however, that BusinessCard Credit Card Account Royalties accrued hereunder will be treated as Royalties for purposes of Schedule B, Section H hereof.

0.20% (two tenths of one percent) of the retail purchase transaction dollar volume generated by Customers using a BusinessCard Credit Card Account with active charging privileges, excluding those transactions that (i) relate to refunds, returns and/or unauthorized transactions, and/or (ii) are cash equivalent transactions (e.g., the purchase of wire transfers, money orders, bets, lottery ticket, or casino gaming chips).

D. GOLD RESERVE REVOLVING LOAN ACCOUNTS

1. \$0.50 (fifty cents) for each Gold Reserve Account opened, which remains open for at least ninety (90) consecutive days.
2. 0.25% (twenty-five one-hundredths of one percent) of the average of all month end outstanding balances (excluding transactions that relate to credits and unauthorized transactions) in the calendar year for each Gold Reserve Account. This Royalty will be paid within sixty (60) days of the calendar year end.
3. \$2.00 (two dollars) for each applicable twelve (12) month period that a Customer pays the annual fee on a Gold Reserve Account.

E. GOLD OPTION REVOLVING LOAN ACCOUNTS

1. \$0.50 (fifty cents) for each Gold Option Account opened, which remains open for at least ninety (90) consecutive days.
2. 0.25% (twenty-five one-hundredths of one percent) of the average of all month-end outstanding balances (excluding transactions that relate to credits and unauthorized transactions) in the calendar year for each Gold Option Account. This Royalty will be paid within sixty (60) days of the calendar year end.

3. \$2.00 (two dollars) for each applicable twelve (12) month period that each Gold Option Account remains open.

F. DEPOSIT ACCOUNTS

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

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

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

G. GIP ACCOUNTS

\$30.00 (thirty dollars) for each GIP 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 within the first ninety (90) consecutive days of the GIP Account's opening which is not subsequently rescinded, the subject of a charge-back request, or otherwise disputed. Such GIP Accounts will not qualify for any other opening-of-an-account Royalty.

H. ROYALTY ADVANCES

1. Within forty five (45) days of: (i) the full execution of this Agreement and (ii) upon each annual anniversary of the Effective Date during the initial term of this Agreement, MBNA America shall pay to NAAUA the sum of One Million Dollars (\$1,000,000.00) (each, an "Advance"), as an advance against future Royalties, subject to the provisions set forth below. All Royalties accrued shall, in lieu of direct payment to NAAUA, be applied against each of the Advances until such time as all Advances are fully recouped. Any Royalties accrued thereafter shall be paid to NAAUA as set forth in this Agreement. Notwithstanding the foregoing, (x) MBNA America shall no longer be obligated to pay any additional Advances to NAAUA hereunder and (y) NAAUA hereby promises to pay MBNA America within thirty (30) days after demand an amount equal to the difference between the total amount of the last Advance paid by MBNA America minus the total amount of accrued Royalties credited by MBNA America against such Advance as of the date of such demand, in the event any of the conditions set forth in Clauses (i) through (v) below should occur:

- (i) the Agreement is terminated prior to June 30, 2008;
- (ii) NAAUA breaches any of its obligations under this Agreement;

- (iii) MBNA America is prohibited or otherwise prevented by NAAUA or the University from conducting at least four (4) direct mail campaigns to the full updated Mailing List during each consecutive twelve-month period during the term of the Agreement;
- (iv) MBNA America is prohibited or otherwise prevented by NAAUA or the University from conducting at least four (4) telemarketing campaigns to the full updated Mailing List during each consecutive twelve-month period during the term of the Agreement; or
- (v) the University, except as permitted by this Agreement, enters into, endorses, sponsors or promotes any Affinity Credit Card Program with any entity other than MBNA America.

2. If during any given year(s) during the initial term of this Agreement MBNA America recoups all prior Advances paid by it to NAAUA in prior years, and pays NAAUA Royalties accrued by NAAUA over and above the Royalties used by MBNA America to recoup such prior Advances (the "Paid Out Royalties"), then MBNA America may reduce the amount of any subsequent Advance(s) due by the amount of any such Paid Out Royalties.

3. If during any given Contract Year, NAAUA does not provide at least three (3) new and updated Mailing Lists containing the Student Members as required by Section 2(f) of the Agreement, or MBNA America is prohibited by NAAUA from conducting on-campus Direct Promotion Events as more fully described in Sections 2(j)(i)(3), 2(j)(iii) and 2(j)(ix) of the Agreement, then the next Advance to be paid on the annual anniversary date of the Effective Date shall be reduced by One Hundred Thousand Dollars (\$100,000.00) (the "List Reduction"). If during any Contract Year, MBNA America is prohibited by from conducting Direct Promotion Events at the University of Alabama athletic events described in Sections 2(j)(i)(1), (2) and (4), 2(j)(ii), 2(j)(iii) and 2(j)(ix) of the Agreement, then the next Advance to be paid on the annual anniversary date of the Effective Date shall be reduced by Two Hundred Thousand Dollars (\$200,000.00) (the "Event Reduction This right to reduce the amount of the Advance is in addition to all other rights MBNA America may have).

#### I. ROYALTY GUARANTEE.

NAAUA shall be guaranteed to accrue Royalties (including without limitation the amount of the Advances) equal to or greater than Seven Million Dollars (\$7,000,000.00) (the "Guarantee Amount") by the end of the full term of the Agreement, subject to the provisions set forth below. The Guaranteed Amount shall be reduced by an amount equal to the amount of any and all List Reduction and/or Event Reduction, and such reduced amount shall constitute the Guarantee Amount for purposes of this Agreement. If on the last day of the full term of this Agreement NAAUA has not accrued the Guaranteed Amount in Royalties, MBNA America will pay NAAUA an amount equal to the Guarantee Amount minus the sum of all compensation accrued by NAAUA during the term of this Agreement and all unrecouped Advances. Notwithstanding the foregoing, this Royalty Guarantee and any

obligation of MBNA America hereunder shall be expressly contingent upon the non-occurrence of any of the conditions set forth in Subsection H.1., above. This right to reduce the Guarantee Amount is in addition to all other rights MBNA America may have.

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SCHEDULE D

[Attach The National Alumni Association of the University of Alabama Trademarks]

Schedule D

NAA Letterhead

National Alumni Association

THE UNIVERSITY OF  
**ALABAMA**  
A L U M N I

Schedule D  
New NAA Letterhead

Alumni Hall  
P.O. Box 861928  
Tuscaloosa, Alabama 35486-0017  
(205) 348-5963  
FAX (205) 348-5958



**Alabama**  
Alumni Association

*Crimson  
Pride*



**Alabama**  
Alumni Association

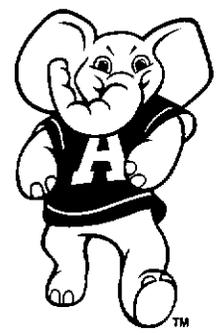
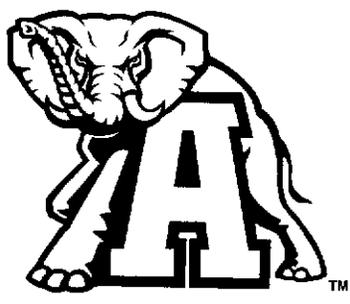
PRIMARY MARK

6/98



SECONDARY MARKS

KID'S MARK



PEELABLES



WORD MARKS

**THE UNIVERSITY OF ALABAMA**

**ALABAMA CRIMSON TIDE**



*NOTE: The marks of The University of Alabama are controlled under a licensing program administered by The Collegiate Licensing Company. Any use of these marks will require written approval from The Collegiate Licensing Company.*

SCHEDULE E

[Attach the University of Alabama Trademarks]

AUG-14-2001 TUE 02:09 PM AONTA MBNA MKT. SYS.  
Sent By: ALABAMA ALUMNI ASSOCIATION; 2053485958;

FAX NO. 44612050  
Aug-14-01 13:01;

P. 03  
Page 2

## LICENSE AGREEMENT TO USE LICENSED INDICIA

This is an Agreement between The University of Alabama National Alumni Association, a corporation organized under the laws of the State of Alabama, having its principal place of business at Alumni Hall, Box 870148, Tuscaloosa, Alabama 35487-0148 ("Licensee"), and The Board of Trustees of The University of Alabama, a constitutional instrumentality of and organized under the laws of the state of Alabama, having its principal place of business at Box 870393, Tuscaloosa, Alabama 35487-0393 ("University").

WHEREAS, The University of Alabama National Alumni Association has entered into an Affinity Agreement with MBNA America of Wilmington, Delaware ("the "Affinity Agreement") and has requested that the University allow the National Alumni Association to use the University's Licensed Indicia on and in conjunction with an Affinity Credit Card Program (as that term is defined in the Affinity Agreement) that MBNA America proposes to provide for the University's National Alumni Association pursuant to the Affinity Agreement; and

WHEREAS Licensee desires to be licensed to utilize the University's Licensed Indicia in connection with the Affinity Credit Card Program conducted pursuant to the Affinity Agreement, and the University is willing, subject to certain conditions, to grant such a license.

NOW, THEREFORE, in consideration of the parties' mutual covenants and undertakings, the sum of One Dollar (\$1.00) and other good and valuable consideration the receipt and sufficiency of which are acknowledged, the parties agree as follows:

### 1. DEFINITIONS

(a) "Licensed Indicia" means the names and identifying indicia of the University including, without limitation, the designs, images, visual representations, logos, trademarks, service marks, trade dress, and trade names associated with or referring to the University. Licensed Indicia consist of those shown in Appendix A, modifications of the Licensed Indicia approved for use by the University, and any newly adopted Licensed Indicia approved for use by the University.

(b) "Licensed Articles" means an Affinity Credit Card Program offered or conducted by MBNA America pursuant to the Affinity Agreement.

### 2. GRANT OF LICENSE

(a) **Grant:** Subject to the terms of this Agreement, the University grants to Licensee an exclusive, revocable, nontransferable license to use the Licensed Indicia on and in connection with the Affinity Card Program during the Term. This license applies only to the approved use of the Licensed Indicia shown in Appendix A and any approved changes thereto. The exclusivity herein granted shall be a limitation solely on the University's licensing or allowing others to license the use of the Licensed Indicia for promoting an Affinity Credit Card Program, but shall not limit or prevent the University from licensing any other Financial Service Products (but excluding credit cards and charge cards).

(b) **Term:** This Agreement shall begin effective on the last date of signature below (the "Effective Date") and shall run concurrently with the term of the Affinity Agreement, unless terminated sooner in the manner provided in this Agreement.

(c) Limitations on License: This license is subject to the following limitations and obligations:

(1) Licensee shall not use the Licensed Indicia for any purpose other than upon or in connection with the Licensed Articles. Licensee shall, upon notice by the University, immediately remove any unauthorized items, advertising, or other materials containing Licensed Indicia within five (5) days of receiving notice from the University.

(2) Licensee may issue a written sublicense to MBNA America for the use of the Licensed Indicia in connection with the Licensed Articles on the same terms and conditions as are contained in this License. Licensee agrees to monitor and ensure that MBNA America uses the Licensed Indicia in the manner that is consistent with and permitted by this Agreement. Licensee shall not otherwise sublicense or permit others to use the Licensed Indicia without the prior written consent of the University.

(3) Without the prior written approval of the University, Licensee shall not use any of the Licensed Indicia in connection with any sweepstake, lottery, game of chance or any similar promotional or sales program. In the event Licensee desires to use Licensed Indicia for acceptable promotional purposes in connection with the Licensed Articles, Licensee shall first obtain prior written approval from the University.

(4) The National Collegiate Athletic Association (NCAA) rules prohibit the use of the name or likeness of any person who has collegiate athletic eligibility on or in connection with the sale or promotion of any commercial product or service. Therefore, in conducting activity under this Agreement, Licensee shall not encourage or participate in any activity that would cause an athlete or the University to violate any such rule of the NCAA or other governing body of any intercollegiate athletic conference.

3. NON-EXCLUSIVITY

Except in connection with an Affinity Credit Card Program, the University retains all rights to use and license its Licensed Indicia for any other purpose.

4. OWNERSHIP OF LICENSED INDICIA AND PROTECTION OF RIGHTS

(a) Licensee acknowledges and agrees that the University owns each of the Licensed Indicia shown in Appendix A, modifications of the Licensed Indicia, as well as any other Licensed Indicia adopted and used or approved for use by the University, and that each of the Licensed Indicia is valid. Further, the University has the exclusive right to use each of its Licensed Indicia subject only to limited permission granted to Licensee to use the Licensed Indicia pursuant to this Agreement. Licensee acknowledges the validity of the state and federal registrations the University owns, obtains or acquires for its Licensed Indicia. Licensee shall not, at any time, file any trademark application with the United States Patent and Trademark Office, or with any other governmental entity for the Licensed Indicia, regardless of whether such Licensed Indicia is shown in Appendix A. Licensee shall not use any of the Licensed Indicia or any similar mark as, or as part of, a trademark, service mark, trade name, fictitious name, company or corporate name anywhere in the world. Any trademark or service mark registration obtained or applied for that contains the Licensed Indicia or any similar mark shall be transferred to the University without compensation. Licensee shall not oppose or seek to cancel or challenge, in any forum, including, but not limited to, the United States Patent and Trademark

AUG-14-2001 TUE 02:09 PM AT MBNA MKT. SYS.  
Sent By: ALABAMA ALUMNI ASSOCIATION; 2053485956;

FAX NO. 4612050  
Aug-14-01 13:02;

P. 05  
Page 4/7

Office, any application or registration of the Licensed Indicia of the University.

(b) Licensee agrees to assist the University in the protection of the rights of the University in and to the Licensed Indicia and shall provide, at reasonable cost to be borne by the University, any evidence, documents, and testimony concerning the use by Licensee of the Licensed Indicia, which the University may request for use in obtaining, defending, or enforcing rights in any Licensed Indicia or related application or registration. Licensee shall notify the University in writing of any infringements or imitations by others of the Licensed Indicia of which it is aware. The University alone shall have the right to determine whether any action shall be taken on account of any such infringements or imitations.

(c) Licensee acknowledges that any original designs, artwork or other compilations or derivatives ("Works") created by it pursuant to this Agreement that contain the Licensed Indicia are compilations or derivatives as those terms are used in Section 103 of the Copyright Act. Therefore, any rights, including copyrights, that Licensee might have in those original Works do not extend to any portion or aspect of the Licensed Indicia or any derivatives thereof, and do not in any way dilute or affect the interests of the University in the Licensed Indicia or any derivatives thereof. Licensee shall not copy, use, assign or otherwise transfer any rights in any Works with any portion or aspect of the Licensed Indicia or any derivatives thereof included, except as expressly permitted under this Agreement. Licensee shall not affix a copyright notice to any product bearing the University's Licensed Indicia, or otherwise attempt to obtain or assert copyright rights in any artwork or design which contains the University's Licensed Indicia, without the express prior written authorization of the University.

(g) In the event of any breach or threatened breach of this Agreement by Licensee or infringement of any rights, if the University employs attorneys or incurs other expenses, Licensee shall reimburse the University for its reasonable attorney's fees and other expenses.

#### 5. DISPLAY AND APPROVAL OF LICENSED INDICIA

(a) Licensee shall use the Licensed Indicia properly on the Licensed Articles, and in all approved print and electronic advertisements and promotional literature, and television and radio commercials promoting the Licensed Articles that displays the Licensed Articles (collectively "Advertising").

(b) Licensee shall display on each Licensed Article or in the Advertising the trademark and license notices required by the University's written instructions in effect as of the date of development.

#### 6. PROCEDURE FOR APPROVAL

(a) All Licensed Articles, Advertising and/or designs containing the Licensed Indicia must receive prior written quality control approval by the University as provided herein. Prior to the reproduction, distribution, display, use or performance of any Licensed Article, Advertising and/or designs containing the Licensed Indicia, Licensee shall submit to the University for approval, at Licensee's expense, at least one sample of each proposed Licensed Article, Advertising and/or design as the same would be distributed, displayed, or sold. If the University approves in writing the proposed Licensed Article, Advertising and/or design, Licensee may distribute, use, or display such Licensed Article, Advertising and/or design in strict conformity with the approved sample. Licensee shall bear the expense of developing and shipping the required samples of Licensed Articles, Advertising and/or designs to the destination(s) designated

an assignment for the benefit of creditors or is subject to receivership, conservatorship or liquidation then the University may immediately terminate this Agreement.

(e) Upon termination of this Agreement, Licensee shall cease to use the Licensed Indicia. Licensee agrees that upon such termination it will not claim any right, title, or interest in or to the Licensed Indicia. However, the University agrees that MBNA America may conclude all solicitation that includes the Licensed Indicia that is required by law.

(d) 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 Licensee 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.

(e) This Agreement shall terminate automatically upon the expiration or earlier termination of the Affinity Agreement, except that MBNA America may conclude all solicitation that includes the Licensed Indicia that is required by law. This termination shall be without prejudice to any other rights the University may have, whether under the provisions of this Agreement, in law, in equity, or otherwise.

#### 10. EFFECT OF EXPIRATION OR TERMINATION

After expiration or termination of this Agreement for any reason, Licensee and any permitted sublicensee shall immediately discontinue the development, distribution, use, or display of all Licensed Articles, Advertising, the use of all Licensed Indicia, and all similar marks, unless expressly authorized by the University or necessary to conclude by MBNA America all solicitation that includes the Licensed Indicia that is required by law.

#### 11. NOTICES

All notices and statements to be given and all payments to be made, shall be given or made to the parties at their respective addresses set forth herein, unless notification of a change of address is given in writing. Any notice shall be sent by U.S. certified mail, return receipt requested, first class mail, facsimile, the receipt of which is confirmed by return facsimile, personal delivery, nationally recognized overnight delivery service, or by mailgram, telex, TWX or telegram, and shall be deemed to have been given at the time it is mailed or sent.

#### 12. CONFORMITY TO LAW AND POLICY

(a) Licensee shall comply with all laws, regulations, standards, and requirements applicable to this Agreement

(b) Licensee undertakes and agrees to obtain and maintain all required permits and licenses at Licensee's expense.

(c) Licensee shall pay all federal, state and local taxes due on or by reason of the development, distribution or sale of the Licensed Articles.

#### 13. NON-ASSIGNABILITY

AUG-14-2001 TUE 02:10 PM AT MBNA MKT. SYS.  
Sent By: ALABAMA ALUMNI ASSOCIATION; 2053485958;

FAX NO. 4612050  
Aug-14-01 13:03;

P. 08  
Page 7/7

This Agreement is personal to Licensee, and except as permitted herein Licensee shall not sublicense or franchise any of its rights. Neither this Agreement nor any of Licensee's rights shall be sold, transferred or assigned by Licensee without the University's prior written approval, and no rights shall devolve by operation of law or otherwise upon any assignee, receiver, liquidator, trustee or other party. Subject to the foregoing, this Agreement shall be binding upon any permitted or approved sublicensee, assignee or successor of Licensee and shall inure to the benefit of the University, its successors and assigns.

14. ENTIRE AGREEMENT / NO WAIVER

This Agreement or any renewal, including appendices, constitutes the entire agreement and understanding between the parties and cancels, terminates, and supersedes any prior agreement or understanding, written or oral, relating to the subject matter hereof between Licensee and the University. There are no representations, promises, agreements, warranties, covenants or understandings other than those contained herein. None of the provisions of this Agreement may be waived or modified, except expressly in writing signed by both parties. However, failure of either party to require the performance of any term in this Agreement or the waiver by either party of any breach shall not prevent subsequent enforcement of such term nor be deemed a waiver of any subsequent breach.

15. MISCELLANEOUS

When necessary for appropriate meaning, a plural shall be deemed to be the singular and singular shall be deemed to be the plural. The attached appendices are an integral part of this Agreement. Paragraph headings are for convenience only and shall not add to or detract from any of the terms or provisions of this Agreement. This Agreement shall be construed in accordance with the laws of the state of Alabama, which shall be the sole jurisdiction for any disputes. This Agreement shall not be binding on the University until signed by an officer of the University.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement.

THE UNIVERSITY OF ALABAMA NATIONAL ALUMNI ASSOCIATION:

By: [Signature] [Seal]  
(Signature of officer, partner, or individual duly authorized to sign)

Title: Director of Alum. Affairs

Date: August 7, 2001

THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA

By: [Signature]  
Robert A. Wright  
Vice President for Financial Affairs and Treasurer  
The University of Alabama  
Tuscaloosa, Alabama

Date: \_\_\_\_\_

## LICENSE AGREEMENT TO USE LICENSED INDICIA

This is an Agreement between The University of Alabama National Alumni Association, a corporation organized under the laws of the State of Alabama, having its principal place of business at Alumni Hall, Box 870148, Tuscaloosa, Alabama 35487-0148 ("Licensee"), and The Board of Trustees of The University of Alabama, a constitutional instrumentality of and organized under the laws of the state of Alabama, having its principal place of business at Box 870393, Tuscaloosa, Alabama 35487-0393 ("University").

WHEREAS. The University of Alabama National Alumni Association has entered into an Affinity Agreement with MBNA America of Wilmington, Delaware ("the "Affinity Agreement") and has requested that the University allow the National Alumni Association to use the University's Licensed Indicia on and in conjunction with an Affinity Credit Card Program (as that term is defined in the Affinity Agreement) that MBNA America proposes to provide for the University's National Alumni Association pursuant to the Affinity Agreement; and

WHEREAS Licensee desires to be licensed to utilize the University's Licensed Indicia in connection with the Affinity Credit Card Program conducted pursuant to the Affinity Agreement, and the University is willing, subject to certain conditions, to grant such a license.

NOW, THEREFORE, in consideration of the parties' mutual covenants and undertakings, the sum of One Dollar (\$1.00) and other good and valuable consideration the receipt and sufficiency of which are acknowledged, the parties agree as follows:

### 1. DEFINITIONS

(a) "Licensed Indicia" means the names and identifying indicia of the University including, without limitation, the designs, images, visual representations, logos, trademarks, service marks, trade dress, and trade names associated with or referring to the University. Licensed Indicia consist of those shown in Appendix A, modifications of the Licensed Indicia approved for use by the University, and any newly adopted Licensed Indicia approved for use by the University.

(b) "Licensed Articles" means an Affinity Credit Card Program offered or conducted by MBNA America pursuant to the Affinity Agreement.

### 2. GRANT OF LICENSE

(a) Grant: Subject to the terms of this Agreement, the University grants to Licensee an exclusive, revocable, nontransferable license to use the Licensed Indicia on and in connection with the Affinity Card Program during the Term. This license applies only to the approved use of the Licensed Indicia shown in Appendix A and any approved changes thereto. The exclusivity herein granted shall be a limitation solely on the University's licensing or allowing others to license the use of the Licensed Indicia for promoting an Affinity Credit Card Program, but shall not limit or prevent the University from licensing any other Financial Service Products (but excluding credit cards and charge cards).

(b) Term: This Agreement shall begin effective on the last date of signature below (the "Effective Date") and shall run concurrently with the term of the Affinity Agreement, unless terminated sooner in the manner provided in this Agreement.

(c) Limitations on License: This license is subject to the following limitations and obligations:

(1) Licensee shall not use the Licensed Indicia for any purpose other than upon or in connection with the Licensed Articles. Licensee shall, upon notice by the University, immediately remove any unauthorized items, advertising, or other materials containing Licensed Indicia within five (5) days of receiving notice from the University.

(2) Licensee may issue a written sublicense to MBNA America for the use of the Licensed Indicia in connection with the Licensed Articles on the same terms and conditions as are contained in this License. Licensee agrees to monitor and ensure that MBNA America uses the Licensed Indicia in the manner that is consistent with and permitted by this Agreement. Licensee shall not otherwise sublicense or permit others to use the Licensed Indicia without the prior written consent of the University.

(3) Without the prior written approval of the University, Licensee shall not use any of the Licensed Indicia in connection with any sweepstake, lottery, game of chance or any similar promotional or sales program. In the event Licensee desires to use Licensed Indicia for acceptable promotional purposes in connection with the Licensed Articles, Licensee shall first obtain prior written approval from the University.

(4) The National Collegiate Athletic Association (NCAA) rules prohibit the use of the name or likeness of any person who has collegiate athletic eligibility on or in connection with the sale or promotion of any commercial product or service. Therefore, in conducting activity under this Agreement, Licensee shall not encourage or participate in any activity that would cause an athlete or the University to violate any such rule of the NCAA or other governing body of any intercollegiate athletic conference.

### 3. NON-EXCLUSIVITY

Except in connection with an Affinity Credit Card Program, the University retains all rights to use and license its Licensed Indicia for any other purpose.

### 4. OWNERSHIP OF LICENSED INDICIA AND PROTECTION OF RIGHTS

(a) Licensee acknowledges and agrees that the University owns each of the Licensed Indicia shown in Appendix A, modifications of the Licensed Indicia, as well as any other Licensed Indicia adopted and used or approved for use by the University, and that each of the Licensed Indicia is valid. Further, the University has the exclusive right to use each of its Licensed Indicia subject only to limited permission granted to Licensee to use the Licensed Indicia pursuant to this Agreement. Licensee acknowledges the validity of the state and federal registrations the University owns, obtains or acquires for its Licensed Indicia. Licensee shall not, at any time, file any trademark application with the United States Patent and Trademark Office, or with any other governmental entity for the Licensed Indicia, regardless of whether such Licensed Indicia is shown in Appendix A. Licensee shall not use any of the Licensed Indicia or any similar mark as, or as part of, a trademark, service mark, trade name, fictitious name, company or corporate name anywhere in the world. Any trademark or service mark registration obtained or applied for that contains the Licensed Indicia or any similar mark shall be transferred to the University without compensation. Licensee shall not oppose or seek to cancel or challenge, in any forum, including, but not limited to, the United States Patent and Trademark

Office, any application or registration of the Licensed Indicia of the University.

(b) Licensee agrees to assist the University in the protection of the rights of the University in and to the Licensed Indicia and shall provide, at reasonable cost to be borne by the University, any evidence, documents, and testimony concerning the use by Licensee of the Licensed Indicia, which the University may request for use in obtaining, defending, or enforcing rights in any Licensed Indicia or related application or registration. Licensee shall notify the University in writing of any infringements or imitations by others of the Licensed Indicia of which it is aware. The University alone shall have the right to determine whether any action shall be taken on account of any such infringements or imitations.

(c) Licensee acknowledges that any original designs, artwork or other compilations or derivatives ("Works") created by it pursuant to this Agreement that contain the Licensed Indicia are compilations or derivatives as those terms are used in Section 103 of the Copyright Act. Therefore, any rights, including copyrights, that Licensee might have in those original Works do not extend to any portion or aspect of the Licensed Indicia or any derivatives thereof, and do not in any way dilute or affect the interests of the University in the Licensed Indicia or any derivatives thereof. Licensee shall not copy, use, assign or otherwise transfer any rights in any Works with any portion or aspect of the Licensed Indicia or any derivatives thereof included, except as expressly permitted under this Agreement. Licensee shall not affix a copyright notice to any product bearing the University's Licensed Indicia, or otherwise attempt to obtain or assert copyright rights in any artwork or design which contains the University's Licensed Indicia, without the express prior written authorization of the University.

(g) In the event of any breach or threatened breach of this Agreement by Licensee or infringement of any rights, if the University employs attorneys or incurs other expenses, Licensee shall reimburse the University for its reasonable attorney's fees and other expenses.

## 5. DISPLAY AND APPROVAL OF LICENSED INDICIA

(a) Licensee shall use the Licensed Indicia properly on the Licensed Articles, and in all approved print and electronic advertisements and promotional literature, and television and radio commercials promoting the Licensed Articles that displays the Licensed Articles (collectively "Advertising").

(b) Licensee shall display on each Licensed Article or in the Advertising the trademark and license notices required by the University's written instructions in effect as of the date of development.

## 6. PROCEDURE FOR APPROVAL

(a) All Licensed Articles, Advertising and/or designs containing the Licensed Indicia must receive prior written quality control approval by the University as provided herein. Prior to the reproduction, distribution, display, use or performance of any Licensed Article, Advertising and/or designs containing the Licensed Indicia, Licensee shall submit to the University for approval, at Licensee's expense, at least one sample of each proposed Licensed Article, Advertising and/or design as the same would be distributed, displayed, or sold. If the University approves in writing the proposed Licensed Article, Advertising and/or design, Licensee may distribute, use, or display such Licensed Article, Advertising and/or design in strict conformity with the approved sample. Licensee shall bear the expense of developing and shipping the required samples of Licensed Articles, Advertising and/or designs to the destination(s) designated

by the University. Licensee shall not depart from the approved sample in any material respect without the prior written approval of the University. Licensed Articles, Advertising and/or designs not conforming to the approved sample shall not be distributed, or displayed under any circumstances without the University's prior written consent.

(b) The use of the Licensed Indicia in conjunction with original artwork supplied by the Licensee requires the express written approval of the University. Licensee may submit sketches of proposed artwork for preliminary approval before submitting finished samples.

(c) If the University notifies Licensee of any deviation from the approved sample or use of any of the Licensed Indicia, Licensee shall have five (5) days from the date of notification from the University to correct every noted deviation. Licensed Articles, Advertising and/or designs that deviate from the approved sample or use shall not be distributed or displayed and shall, upon request by the University, be immediately removed from the Program until all deviations are corrected.

#### 7. NO JOINT VENTURE OR ENDORSEMENT OF LICENSEE

Nothing in this Agreement shall be construed to place the parties in the relationship of partners, joint venturers or agents, and Licensee shall have no power to obligate or bind the University in any manner whatsoever.

#### 8. INDEMNIFICATION

(a) Licensee is solely responsible for, and will defend, indemnify and hold harmless the University and its officers, agents, and employees (collectively "Indemnified Parties") from any claims, demands, causes of action or damages, including reasonable attorney's fees, arising out of (i) any unauthorized use of or infringement of any patent, copyright, trademark or other proprietary right by Licensee in connection with the Licensed Articles, Advertising and/or designs covered by this Agreement, (ii) alleged defects or deficiencies in said Licensed Articles, Advertising and/or designs or the use thereof, or false advertising, fraud, misrepresentation or other claims related to the Licensed Articles, Advertising and/or designs not involving a claim of right to the Licensed Indicia, (iii) the unauthorized use of the Licensed Indicia or any breach by Licensee of this Agreement, and/or (iv) agreements or alleged agreements made or entered into by Licensee to effectuate the terms of this Agreement. The indemnifications hereunder shall survive the expiration or termination of this Agreement.

#### 9. TERMINATION

(a) In the event of any material breach of this Agreement by Licensee, the University may terminate this Agreement by giving notice, as provided herein, to the Licensee. This notice shall (i) describe the material breach; and (ii) state the party's intention to terminate this Agreement. If the Licensee 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 Licensee 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 University may immediately terminate this Agreement.

(c) Upon termination of this Agreement, Licensee shall cease to use the Licensed Indicia. Licensee agrees that upon such termination it will not claim any right, title, or interest in or to the Licensed Indicia. However, the University agrees that MBNA America may conclude all solicitation that includes the Licensed Indicia that is required by law.

(d) 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 Licensee 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.

(e) This Agreement shall terminate automatically upon the expiration or earlier termination of the Affinity Agreement, except that MBNA America may conclude all solicitation that includes the Licensed Indicia that is required by law. This termination shall be without prejudice to any other rights the University may have, whether under the provisions of this Agreement, in law, in equity, or otherwise.

#### 10. EFFECT OF EXPIRATION OR TERMINATION

After expiration or termination of this Agreement for any reason, Licensee and any permitted sublicensee shall immediately discontinue the development, distribution, use, or display of all Licensed Articles, Advertising, the use of all Licensed Indicia, and all similar marks, unless expressly authorized by the University or necessary to conclude by MBNA America all solicitation that includes the Licensed Indicia that is required by law.

#### 11. NOTICES

All notices and statements to be given and all payments to be made, shall be given or made to the parties at their respective addresses set forth herein, unless notification of a change of address is given in writing. Any notice shall be sent by U.S. certified mail, return receipt requested, first class mail, facsimile, the receipt of which is confirmed by return facsimile, personal delivery, nationally recognized overnight delivery service, or by mailgram, telex, TWX or telegram, and shall be deemed to have been given at the time it is mailed or sent.

#### 12. CONFORMITY TO LAW AND POLICY

(a) Licensee shall comply with all laws, regulations, standards, and requirements applicable to this Agreement

(b) Licensee undertakes and agrees to obtain and maintain all required permits and licenses at Licensee's expense.

(c) Licensee shall pay all federal, state and local taxes due on or by reason of the development, distribution or sale of the Licensed Articles.

#### 13. NON-ASSIGNABILITY

This Agreement is personal to Licensee, and except as permitted herein Licensee shall not sublicense or franchise any of its rights. Neither this Agreement nor any of Licensee's rights shall be sold, transferred or assigned by Licensee without the University's prior written approval, and no rights shall devolve by operation of law or otherwise upon any assignee, receiver, liquidator, trustee or other party. Subject to the foregoing, this Agreement shall be binding upon any permitted or approved sublicensee, assignee or successor of Licensee and shall inure to the benefit of the University, its successors and assigns.

14. ENTIRE AGREEMENT / NO WAIVER

This Agreement or any renewal, including appendices, constitutes the entire agreement and understanding between the parties and cancels, terminates, and supersedes any prior agreement or understanding, written or oral, relating to the subject matter hereof between Licensee and the University. There are no representations, promises, agreements, warranties, covenants or understandings other than those contained herein. None of the provisions of this Agreement may be waived or modified, except expressly in writing signed by both parties. However, failure of either party to require the performance of any term in this Agreement or the waiver by either party of any breach shall not prevent subsequent enforcement of such term nor be deemed a waiver of any subsequent breach.

15. MISCELLANEOUS

When necessary for appropriate meaning, a plural shall be deemed to be the singular and singular shall be deemed to be the plural. The attached appendices are an integral part of this Agreement. Paragraph headings are for convenience only and shall not add to or detract from any of the terms or provisions of this Agreement. This Agreement shall be construed in accordance with the laws of the state of Alabama, which shall be the sole jurisdiction for any disputes. This Agreement shall not be binding on the University until signed by an officer of the University.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement.

THE UNIVERSITY OF ALABAMA NATIONAL ALUMNI ASSOCIATION:

By: \_\_\_\_\_ [Seal]  
(Signature of officer, partner, or individual duly authorized to sign)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA

By: \_\_\_\_\_  
Robert A. Wright  
Vice President for Financial Affairs and Treasurer  
The University of Alabama  
Tuscaloosa, Alabama

Date: \_\_\_\_\_

**PLUS REWARDS ADDENDUM  
TO THE NATIONAL ALUMNI ASSOCIATION OF THE UNIVERSITY OF ALABAMA  
AGREEMENT**

THIS ADDENDUM (the "Addendum") is entered into this 11 day of Sept, 2002, by and between NATIONAL ALUMNI ASSOCIATION OF THE UNIVERSITY OF ALABAMA ("NAAUA"), and MBNA America Bank, N.A. ("MBNA America"), for themselves and their respective successors and assigns.

WHEREAS, NAAUA 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 NAAUA; and

WHEREAS, NAAUA and MBNA America mutually desire to amend the Agreement to include the loyalty reward enhancement (the "Reward Enhancement") as another aspect of NAAUA's 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, NAAUA 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 the Reward Enhancement (as hereinafter defined) opened pursuant to the Program.
3. When used in this Addendum, the term "Reward GIP Account" means a Reward Credit Card Account opened by a person pursuant to a GIP in which NAAUA complies with the GIP provisions of the Agreement.
4. The parties agree that the Reward Enhancement (as such credit card account enhancement is more fully described on 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 of the persons included on the lists provided by NAAUA under the Agreement. The Reward Enhancement may be marketed under another name (e.g., MBNA Select Rewards). MBNA America reserves the right to change the Reward Enhancement name(s), in its sole discretion, from time to time.
5. NAAUA 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 NAAUA's promises arising from its exclusive arrangement with MBNA America in the Agreement shall also apply to the Reward Enhancement.

6. During the term of the Agreement, NAAUA will receive the royalties set forth on Attachment #1, Section II. for the Reward Credit Card Accounts and the Reward GIP Accounts. Reward Credit Card Accounts and Reward GIP Accounts shall only generate the royalty compensation set forth on Attachment #1 notwithstanding any other provision of the Agreement.

7. 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 this 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. Certain Financial Service Products or services under the Agreement may be offered through MBNA America 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

8. 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.

NAAUA

MBNA AMERICA BANK, N.A.

By: David Wilson  
Name: David Wilson  
Title: DIRECTOR, ALUMNI FUNDS  
Date: 6/10/02

By: Michael Durrah  
Name: Michael Durrah  
Title: Senior Executive Vice President  
Date: July 9, 2002

## Attachment #1

### I. Reward Enhancement Brief Product Description

This description is subject in all respects to the agreement to be entered into between MBNA 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. \$0.00 (Zero Dollars) Annual Fee.
- B. The current annual 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 NAAUA 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 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 Reward Credit Card Account was opened; and 2) has had active charging privileges for each of the preceding twelve months. A Reward Credit Card Account may renew every twelve (12) months after the opening of the account.
- C. 0.20% (two tenths of one percent) of all retail purchase transaction dollar volume generated by Alumni Customers using a Reward 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)).

- D. 0.20% (two tenths of one percent) of all cash advance and cash equivalent transaction dollar volume generated by Alumni Customers using an Reward Credit Card Account (excluding those transactions that relate to refunds, returns and/or unauthorized transactions).
  
- E. \$29.00 (twenty-nine dollars) for each Reward GIP Account opened, which remains open for at least ninety (90) consecutive days and which is utilized by the Customer within the first ninety (90) consecutive days of the Reward GIP Account's opening for at least one purchase or cash advance which is not subsequently rescinded, the subject of a charge back request, or otherwise disputed. Such Reward GIP Accounts will not qualify for any other opening-of-an-account Royalty.

## TERM EXTENSION ADDENDUM

THIS ADDENDUM (the "Addendum") is entered into this 19th day of December, 2006, by and between the National Alumni Association of the University of Alabama ("NAAUA"), and FIA Card Services, N.A., f/k/a MBNA America, N.A. ("Bank"), for themselves and their respective successors and assigns. Except for Sections 4 and 6 hereof which shall be effective immediately upon execution of this Addendum, the other terms of this Addendum will be effective as of July 1, 2008.

WHEREAS, NAAUA and Bank, individually are parties to an affinity agreement dated as of July 1, 2001, as the same may have been amended (the "Agreement"), wherein Bank provides certain financial services to certain persons included in certain lists provided to Bank by or on behalf of NAAUA; and

WHEREAS, NAAUA and Bank mutually desire to extend the term of the Agreement and amend certain financial terms and other provisions of the Agreement as set forth below;

NOW, THEREFORE, in consideration of the mutual covenants and agreement contained herein, NAAUA and Bank 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 June 30, 2015. 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. Sections 1(h) and 1(i) are hereby deleted in their entirety.
4. Section 2(a) of the Agreement is amended to add the following text:

In addition to NAAUA's obligations under the Agreement to exclusively endorse the Program, NAAUA agrees that during the term of this Agreement (except for the six months prior to the end of the term in June of 2015) it will not market, accept or solicit proposals for programs offering, any Financial Service Products of any organization other than Bank.
5. The third sentence of Section 2(i) is hereby deleted in its entirety.
6. Section 2(j)(iii) is hereby deleted in its entirety and the following text will be added as Section 2(j)(iii):

(iii) Subject to safety concerns, when conducting Direct Promotion Events at Bryant-Denny Stadium, Bank may have as many as six (6) direct promotion locations (each a "Location") within Bryant-Denny Stadium and at the other Sites one (1) Location within or at those Sites, unless additional locations are agreed to by University officials. The

Locations, to the extent possible and subject to safety concerns, shall be prominently located as mutually agreed upon between Bank and NAAUA.

7. Section 11 shall is hereby deleted in it entirety.
8. On Schedule B, Section A(5) is hereby deleted in its entirety.
9. On Schedule B, Section G is hereby deleted in its entirety.
10. On Schedule B, Section H and I are hereby deleted in their entirety and the following text will be added as Section G and H to Schedule B:

G. ROYALTY ADVANCES.

1. Within forty five (45) days of July 1, 2008, and within forty five days of each of July 1, 2009, July 1, 2010, July 1, 2011, July 1, 2012, July 1, 2013 and July 1, 2014, Bank shall pay to NAAUA the sum of nine hundred and sixty thousand dollars (\$960,000) (each, an "Advance"), as an advance against future Royalties, subject to the provisions set forth below. All Royalties accrued shall, in lieu of direct payment to NAAUA, be applied against each of the Advances until such time as all Advances are fully recouped. Any Royalties accrued thereafter shall be paid to NAAUA as set forth in this Agreement. Notwithstanding the foregoing, (x) Bank shall no longer be obligated to pay any additional Advances to NAAUA hereunder, and (y) NAAUA hereby promises to pay Bank within thirty (30) days after demand an amount equal to the difference between the total amount of the Advance(s) paid by Bank and the total amount of accrued Royalties credited by Bank against such Advance(s) as of the date of such demand, in the event any of the conditions set forth in Clauses (i) through (v) below should occur:

- (i) the Agreement is terminated prior to June 30, 2015;
- (ii) NAAUA breaches any of its obligations under this Agreement;
- (iii) Bank is prohibited or otherwise prevented by NAAUA or the University of Alabama from conducting at least four (4) direct mail campaigns to the full updated Mailing List during each consecutive twelve month period during the term of the Agreement;
- (iv) Bank is prohibited or otherwise prevented by NAAUA or the University of Alabama from conducting at least four (4) telemarketing campaigns to the full updated Mailing List during each consecutive twelve month period during the term of the Agreement; and
- (v) the University, except as permitted by this Agreement, enters into, endorses, sponsors, or promotes any Affinity Credit Card Program with any entity other than Bank.

2. If during any given year(s) during the initial term of this Agreement, Bank recoups all prior Advances paid by it to NAAUA in prior years, and pays NAAUA Royalties accrued by NAAUA over and above the Royalties used by Bank to recoup such prior Advances (the "Paid Out Royalties"), then Bank may reduce the amount of any subsequent Advance(s) due by the amount of any such Paid Out Royalties.

3. If during any Contract Year, NAAUA does not provide at (i) least three (3) new and updated Mailing Lists of all Members excluding Student Members; and (ii) one (1) new and updated Mailing List containing Student Members, as required by Section 2(f) of the Agreement, or Bank is prohibited by NAAUA or the University of Alabama from conducting on campus Direct Promotion Events as more fully described in Sections 2(j)(i)(3), 2(j)(iii) and 2(j)(ix) of the Agreement, then the next Advance to be paid pursuant to this Section G shall be reduced by one hundred thousand dollars (\$100,000) (the "List Reduction"). If during any Contract Year, Bank is prohibited by NAAUA or the University of Alabama from conducting Direct Promotion Events at the University of Alabama athletic events described in Sections 2(j)(i)(1), (2) and (4), 2(j)(ii), 2(j)(iii) and 2(j)(ix) of the Agreement, then the next Advance to be paid pursuant to this Section G shall be reduced by two hundred thousand dollars (\$200,000) (the "Event Reduction"). The List Reduction and/or Event Reduction are in addition to any other rights Bank may have as set forth in the Agreement.

#### H. ROYALTY GUARANTEE.

NAAUA shall be guaranteed to accrue Royalties (including without limitation the amount of the Advances) equal to or greater than six million seven hundred and twenty thousand dollars (\$6,720,000) (the "Guarantee Amount") by June 30, 2015, subject to the provisions set forth below. If on June 30, 2015 NAAUA has not accrued the Guarantee Amount of \$6,720,000 in Royalties, Bank will pay NAAUA an amount equal to the Guarantee Amount minus the sum of all compensation accrued by NAAUA during the term of this Agreement and all unrecouped Advances. Notwithstanding the foregoing, this Royalty Guarantee and any obligation of Bank hereunder shall be expressly contingent upon the non-occurrence of any of the conditions set forth in Subsections G.1., above. Additionally, the amount of the Guarantee shall be reduced by the amount of any List Reduction or Event Reduction incurred during the term of the Agreement.

11. 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. Notwithstanding anything to the contrary in the Agreement, 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. 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 Bank's affiliates.

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.

**The National Alumni Association of the  
University of Alabama**

**FIA Card Services, N.A.  
f/k/a MBNA America Bank, N.A.**

By:

Pat White

Name:

Pat Whetstone

Title:

Executive Director

By:

Jaime D. Fyfe

Name:

Jake Frego

Title:

SVP