

## AGREEMENT

This Agreement is entered into as of this 24 day of Jan., 1995 (the "Effective Date") by and between MBNA AMERICA BANK, N.A. a national banking association having its principal place of business in Newark, Delaware (hereinafter referred to as "MBNA America"), and RUSSELL SAGE COLLEGE ALUMNAE ASSOCIATION, an alumnae association having its principal place of business in Troy, New York (hereinafter referred to as "RSCAA").

### 1. DEFINITIONS

When used in this Agreement,

- (a) "Agreement" means this agreement and Schedules A, B and C.
- (b) "Credit Card Account" means a credit card account opened by a Member in response to marketing efforts made pursuant to the Program.
- (c) "Customer" means any Member who is a participant in the Program.
- (d) "Financial Service Products" means credit card programs, charge card programs, debit card programs, revolving loan programs, travel and entertainment card programs, deposit programs.
- (e) "Mailing Lists" means updated and current lists, mutually agreed upon, containing names, postal addresses and, when available, telephone numbers of Members segmented by zip codes or reasonably selected membership characteristics.
- (f) "Member" means a member of RSCAA and/or other potential participants mutually agreed to by RSCAA and MBNA America.
- (g) "Program" means those programs and services of the Financial Service Products MBNA America agrees to offer pursuant to this Agreement to the Members from time to time.
- (h) "Royalties" means the compensation set forth in Schedule B.
- (i) "Trademarks" means any logo, servicemark, traddress, tradename, or trademark presently used or acquired by RSCAA during the term of this Agreement.

### 2. RIGHTS AND RESPONSIBILITIES OF RSCAA

- (a) RSCAA agrees that during the term of this Agreement: (i) it will endorse the Program exclusively and will not sponsor, advertise, aid or develop or solicit any Financial Service Products of any organization other than MBNA America; (ii) it will not license its Trademarks, nor sell, rent or otherwise make available its Mailing Lists or information about any current or potential Members in relation to or for promoting any other Financial Service Products of any entity other than MBNA America; and (iii) no RSCAA publication shall carry advertisements for any Financial Service Products of any entity other than MBNA America.
- (b) RSCAA agrees to provide MBNA America with such information and assistance as may be reasonably requested by MBNA America in connection with the Program.
- (c) RSCAA authorizes MBNA America to solicit its Members by mail, direct promotion, advertisements and/or telephone for participation in the Program.

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

(e) Upon the request of MBNA America, RSCAA shall provide MBNA America with Mailing Lists free of any charge. The initial Mailing List shall contain at least ten thousand (10,000) names with corresponding postal addresses and, when available, telephone numbers.

(f) RSCAA shall only provide any 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 RSCAA.

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

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

(i) RSCAA shall not allow, permit, license, condone or encourage the solicitation or advertisement of Financial Service Products by any organization, group or provider of Financial Service Products, other than MBNA America, on any property owned, leased or operated by RSCAA.

### **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 RSCAA.

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

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

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

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

#### **4. REPRESENTATION AND WARRANTIES**

(a) RSCAA and MBNA America each represent and warrant to the other that as of the Effective Date and throughout the term of this Agreement:

- (i) It is duly organized, validly existing and in good standing.
- (ii) It has all necessary power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.
- (iii) This Agreement constitutes a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, receivership, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.
- (iv) No consent, approval or authorization from any third party is required in connection with the execution, delivery and performance of this Agreement, except such as have been obtained and are in full force and effect.
- (v) The execution, delivery and performance of this Agreement by such party will not constitute a violation of any law, rule, regulation, court order or ruling applicable to such party.

(b) RSCAA represents and warrants to MBNA America as of the date hereof and throughout the term of this Agreement that it has the right and power to license the Trademarks to MBNA America for use as contemplated by this Agreement.

#### **5. ROYALTIES**

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

## **6. PROGRAM ADJUSTMENTS**

MBNA America reserves the right to make periodic adjustments to the Program and its terms and features. MBNA America shall implement such adjustments in accordance with Delaware and applicable federal law. Such law currently requires that if an adjustment increases the fees or finance charges, MBNA America will give each Customer the opportunity to reject the change and pay the existing balance under the prior terms. MBNA America agrees not to adjust royalty provisions set forth in Schedule B without written consent.

## **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 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 RSCAA shall be permitted to disclose such terms (i) to their accountants, legal, financial and marketing advisors, and, employees as necessary for the performance of their respective duties, provided that said persons agree to treat the information as confidential in the above described manner and (ii) as required by law or by any governmental regulatory authority.

## **8. TERM OF AGREEMENT**

(a)The initial term of this Agreement will begin on the Effective Date and end on January 31, 2000. This Agreement will automatically extend at the end of the initial term or any renewal term for successive two-year periods, unless either party gives written notice of its intention not to renew at least ninety (90) days, but not more than one hundred eighty (180) days, prior to the last date of such term or renewal term, as applicable.

## **9. STATE LAW GOVERNING AGREEMENT**

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

## 10. TERMINATION

(a) In the event of any material breach of this Agreement by MBNA America or RSCAA, 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 RSCAA becomes insolvent in that its liabilities exceed assets, or is adjudicated insolvent, or takes advantage of or is subject to any insolvency proceeding, or makes an assignment for the benefit of creditors or is subject to receivership, conservatorship or liquidation the other party may immediately terminate this Agreement.

<sup>10(d)</sup> (c) Upon termination of this Agreement, MBNA America shall, in a manner consistent with Section 11(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 Mailing Lists. However, MBNA America may conclude all solicitation that is required by law.

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

## 11. MISCELLANEOUS

(a) This Agreement cannot be amended except by written agreement signed by the authorized agents of both parties hereto.

<sup>10</sup> (b) The obligations in Sections 6, 8, 11(c) and 11(d) shall survive any termination of this Agreement.

(c) The failure of any party to exercise any rights under this Agreement shall not be deemed a waiver of such right or any other rights.

(d) The section captions are inserted only for convenience and are in no way to be construed as part of this Agreement.

(e) If any part of this Agreement shall for any reason be found or held invalid or unenforceable by any court or governmental agency of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Agreement which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

(f) All notices relating to this Agreement shall be in writing and shall be deemed received (i) upon actual 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:

(i) If to RSCAA:

RUSSELL SAGE COLLEGE ALUMNAE ASSOCIATION  
69 First Street  
Troy, New York 12180  
ATTENTION: President, Russell Sage Alumnae Association

(ii) If to MBNA America:

MBNA AMERICA BANK N. A.  
400 Christiana Road  
Newark, Delaware 19713  
ATTENTION: Mr. Howard Wallace, Executive Vice President

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

(g) This Agreement contains the entire agreement of the parties with respect to the matters covered herein and supersedes all prior promises and agreements, written or oral with respect to the matters covered herein. MBNA America may utilize the services of any third party in fulfilling its obligations under this Agreement.

(h) MBNA America and RSCAA 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 RSCAA and MBNA America, their successors and assigns, any rights or remedies under or by reason of this Agreement.

(j) Neither party shall be in breach hereunder by reason of its delay in the performance of or failure to perform any of its obligations herein if such delay or failure is caused by strikes, acts of God or the public enemy, riots, incendiaries, interference by civil or military authorities, compliance with governmental laws, rules, regulations, delays in transit or delivery, or any fault beyond its reasonable control or without its fault or negligence.

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

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

RUSSELL SAGE COLLEGE ALUMNAE ASSOCIATION

By: Janet W. Jones  
Title: President, Russell Sage College Alumnae Association

MBNA AMERICA BANK N.A.

By: Harold C. Wallace  
Title: Executive Vice President

## SCHEDULE A

### I. TERMS AND FEATURES

#### A. CREDIT CARD ACCOUNTS

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

\* There is NO Annual Fee for the Alumnae Members.

\* In the event the Annual Fee is applied, the Annual Fee is:

\$40.00 Gold Credit Card Account

\$20.00 Preferred Credit Card Account

\* The current Annual Percentage Rate for Alumnae Members of RSCAA will be a fixed rate of 17.9%, or a variable rate of prime plus 9.9%. The prime rate will be the highest U.S. prime rate as published on certain dates in the Money Rates Section of The Wall Street Journal. The variable rate will be determined quarterly as provided under the Cardholder Agreement entered into between MBNA America and each such Customer. For variable rate accounts, there may be an additional margin applied on account of the Customer's delinquency.

#### B. GOLD RESERVE ACCOUNTS

\* There is NO Annual Fee for the first six (6) months for the Members.

\* The Annual Fee for the second six (6) months, when applied, is \$10.00.

\* Thereafter the Annual Fee, when applied, is \$20.00.

\* The current Annual Percentage Rate is 17.9%.

Customers will be offered opportunities to select credit insurance as a benefit under the Program.

#### C. GOLD OPTION ACCOUNTS

\* There is NO Annual Fee for the Members.

\* The current Annual Percentage Rate is 15.9%.

## SCHEDULE B

### ROYALTY ARRANGEMENT

During the term of the Agreement, or any extension thereof, MBNA America will pay RUSSELL SAGE COLLEGE ALUMNAE ASSOCIATION a Royalty calculated according to the following schedule, for those accounts with active charging privileges. Except where otherwise provided, payment for the above sections shall be made approximately 45 days after the end of each calendar quarter.

#### A. CREDIT CARD ACCOUNTS

\* \$1.00 for every new Credit Card Account opened by a Member of RSCAA, which remains open for at least ninety (90) days.

\* \$1.00 each full twelve (12) month period that an Alumni Credit Card Account is renewed and an Annual Fee is paid by a Customer. If no annual fee is assessed by MBNA America (other than as a result of a courtesy waiver by MBNA America), then such royalty will be paid for each Credit Card Account which: 1) has a balance ~~other than~~ <sup>greater</sup> zero as of the last business day of every twelfth month after the opening of that Credit Card Account; and 2) has had active charging privileges for each of the preceding twelve months.

\* .40 of 1% of all retail purchase transactions made by Alumnae Customers (net refunds, returns or fraudulent transactions, which shall be deducted by MBNA America)

#### B. GOLD RESERVE REVOLVING LOAN ACCOUNTS

1. \$.50 for each Gold Reserve Account opened during each calendar year, as determined in each calendar quarter. This will be paid within 45 days of each quarter end.
2. 0.25% of the average of the 12 month-end outstanding balances in the calendar year for each Gold Reserve Account with active charging privileges. This amount will be paid annually within 60 days of the calendar year end.
3. \$2.00 for each Gold Reserve Account renewed, for each year that such account is renewed, applicable Annual Fee is paid and active charging privileges are in force. This amount will be paid approximately 45 days after the close of each calendar quarter.

### **C. GOLD OPTION REVOLVING LOAN ACCOUNTS**

1. \$.50 for each Gold Option Account opened during each calendar year, as determined in each calendar quarter. This will be paid within 45 days of each quarter end.
2. 0.25% of the average of the 12 month-end outstanding balances in the calendar year for each Gold Option Account active and in good standing throughout the same calendar year. This amount will be paid annually within 60 days of the calendar year end.
3. \$2.00 for each Gold Option Account renewed, for each year that such account is renewed, applicable Annual Fee is paid and active charging privileges are in force. This amount will be paid approximately 45 days after the close of each calendar quarter.

### **D. DEPOSIT ACCOUNTS**

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

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

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

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

11/29/94: dd  
Revised  
1/17/95 : dd

VIA OVERNIGHT MAIL

October 3, 2011

Helen Rodriguez Burmaster  
President  
Russell Sage Alumnae Association  
69 First Street  
Troy, New York 12180

Dear Ms. Burmaster:

I am writing to inform you that following a comprehensive review of the Russell Sage College Alumnae Association credit card program, FIA Card Services, N.A. (f/k/a MBNA America Bank, N.A.) ("FIA") has decided not to renew our Agreement dated January 24, 1995, as the same may have been amended ("Agreement").

This letter serves as FIA's written notice of non-renewal of the Agreement, as required by Section 8(a) of the Agreement.

The Agreement's expiration date is January 31, 2012.

We have appreciated your endorsement.

Sincerely,



Todd Seward  
Account Executive  
FIA Card Services, N.A.