

## AGREEMENT

This Agreement is entered into as of this 2<sup>nd</sup> day of May, 1997 (the "Effective Date") by and between MBNA AMERICA BANK, N.A. a national banking association having its principal place of business at 400 Christiana Road, Newark, Delaware ("MBNA America"), and AVERETT COLLEGE, an educational institution having its principal place of business at 420 West Main Street, Danville, Virginia ("AC") for themselves, and their respective successors and assigns.

### 1. DEFINITIONS

When used in this Agreement,

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

## **2. RIGHTS AND RESPONSIBILITIES OF AC**

- (a) AC agrees that during the term of this Agreement: (i) it will endorse the Program exclusively and will not sponsor, advertise, aid, develop, or solicit any Financial Service Products of any organization other than MBNA America; and (ii) it will not license or allow others to license the Trademarks in relation to or for promoting any Financial Service Products of any entity other than MBNA America; and it will not sell, rent or otherwise make available or allow others to sell, rent or otherwise make available any of its mailing lists or information about any current or potential Members in relation to or for promoting any Financial Service Products of any entity other than MBNA America. Notwithstanding anything else in this Agreement to the contrary, AC may accept advertising from any financial institution provided that the advertisement does not contain an express or implied endorsement by AC of said financial institution or the advertised Financial Service Product.
- (b) AC agrees to provide MBNA America with such information and assistance as may be reasonably requested by MBNA America in connection with the Program.
- (c) AC authorizes MBNA America to solicit its Members by mail, direct promotion, advertisements and/or telephone for participation in the Program.
- (d) AC shall have the right of prior approval of all Program advertising and solicitation materials to be used by MBNA America, which contain AC's Trademark; such approval shall be in writing and shall not be unreasonably withheld or delayed.
- (e) Upon the request of MBNA America, AC shall provide MBNA America with Mailing Lists free of any charge. In the event that MBNA America incurs a cost because of a charge assessed by AC or its agents for an initial Mailing List or an update to that list, MBNA America may deduct such costs from Royalties due AC. Each Mailing List shall contain at least ten thousand (10,000) names with corresponding postal addresses and, when available, telephone numbers.
- (f) AC shall only provide information to or otherwise communicate with Members or potential Members about the Program with MBNA America's prior written approval, except for current advertising and solicitation materials provided by MBNA America to AC. Notwithstanding the above, AC 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 AC. AC shall use its best efforts to forward any correspondence received by AC that is intended for MBNA America (e.g., applications, payments, billing inquiries, etc.) to the MBNA America account executive via overnight courier within two business days of receipt. All charges incurred for this service will be paid by MBNA America.
- (g) AC hereby grants MBNA America and its affiliates a limited, exclusive license to use the Trademarks solely in conjunction with the Program, including the promotion thereof. This license shall be transferred upon assignment of this Agreement. This license shall remain in effect for the duration of this Agreement and shall apply to the Trademarks, notwithstanding the transfer of such Trademarks by operation of law or otherwise to any permitted successor, corporation, organization or individual. Nothing stated in this Agreement prohibits AC from granting to other persons a license to use the Trademarks in conjunction with the providing of any other service or product, except for any Financial Service Products.

### **3. RIGHTS AND RESPONSIBILITIES OF MBNA AMERICA**

- (a) MBNA America shall design, develop and administer the Program for the Members.
- (b) MBNA America shall design all advertising, solicitation and promotional materials with regard to the Program. MBNA America reserves the right of prior written approval of all advertising and solicitation materials concerning or related to the Program, which may be developed by or on behalf of AC.
- (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 AC.
- (e) MBNA America shall use the Mailing Lists provided pursuant to this Agreement consistent with this Agreement and shall not permit those entities handling these Mailing Lists to use them for any other purpose. MBNA America shall have the sole right to designate Members on these Mailing Lists to whom promotional material will not be sent. These Mailing Lists are and shall remain the sole property of AC. 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 AC.

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

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

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

(b) AC 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. AC will hold MBNA America, its directors, officers, agents, employees, affiliates, successors and assigns harmless from and against all liability, causes of action, and claims, and will reimburse MBNA America's reasonable and actual costs in connection therewith, arising from the Trademark license granted herein or from MBNA America's use of the Trademarks, as contemplated by this Agreement, in reliance thereon. MBNA America will hold AC, its directors, officers, staff, faculty, affiliates, successors and assigns harmless from and against all liability, causes of action, and claims, and will reimburse AC its actual costs in connection therewith, arising from MBNA America's improper use of the Trademark license granted herein. 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 AC. Royalties will not be paid without a completed Schedule C. Except as otherwise provided in Schedule B, payment of Royalties then due shall be made approximately forty-five (45) days after the end of each calendar quarter.

(b) On or before the forty fifth (45th) day after the end of each calendar quarter during the term of this Agreement, MBNA America will provide AC 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. Delaware and applicable federal law currently require each open-end credit account Customer be given the opportunity to reject a proposed change and pay the existing balance under the prior terms if the proposed adjustment increases the fees or finance charges on such account.

## **7. CONFIDENTIALITY OF AGREEMENT**

The terms of this Agreement, any proposal, financial information and proprietary information provided by or on behalf of one party to the other party prior to, contemporaneously with, or subsequent to, the execution of this Agreement ("Information") are confidential as of the date of disclosure. Such Information will not be disclosed by such other party to any other person or entity, except as permitted under this Agreement or as mutually agreed in writing. MBNA America and AC shall be permitted to disclose such Information (i) to their accountants, legal, financial and marketing advisors, and employees as necessary for the performance of their respective duties, provided that said persons agree to treat the Information as confidential in the above described manner and (ii) as required by law or by any governmental regulatory authority.

## **8. TERM OF AGREEMENT**

The initial term of this Agreement will begin on the Effective Date and end on April 30, 2002. This Agreement will automatically extend at the end of the initial term or any renewal term for successive two-year periods, unless either party gives written notice of its intention not to renew at least ninety (90) days, but not more than one hundred eighty (180) days, prior to the last date of such term or renewal term, as applicable.

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

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

## **10. TERMINATION**

(a) In the event of any material breach of this Agreement by MBNA America or AC, 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 forty-five (45) days after receipt of notice of breach, as provided herein (the "Cure Period"), then this Agreement shall terminate forty-five (45) days after the Cure Period.

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

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

(d) MBNA America shall have the right to prior review and approval of any notice in connection with, relating or referring to the termination of this Agreement to be communicated by AC to the Members. Such approval shall not be unreasonably withheld. Upon termination of this Agreement, AC shall not attempt to cause the removal of AC'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. Upon expiration of any credit device MBNA America will reissue another credit device not bearing AC's identification or Trademarks.

## **11. MISCELLANEOUS**

- (a) This Agreement cannot be amended except by written agreement signed by the authorized agents of both parties hereto.
- (b) The obligations in Sections 4 (b), 7, 10 (c), and 10 (d) shall survive for a period of three (3) years following 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 upon receipt by the addressee except that facsimile or overnight courier messages shall be deemed received as of the first business day following the day of actual receipt. All notices shall be addressed as follows

(1) If to AC:

AVERETT COLLEGE  
420 West Main Street  
Danville, Virginia 24541  
ATTENTION: Vice President of Institutional Development

(2) If to MBNA America:

MBNA AMERICA BANK N. A.  
1100 North King Street  
Wilmington, Delaware 19884  
ATTENTION: Mr. Howard C. Wallace, Senior Executive Vice President

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

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

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

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

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

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

AVERETT COLLEGE

By: Frank P. Campbell  
Title: President

MBNA AMERICA BANK N.A.

By: John A. [Signature]  
Title: Senior Executive Vice President



## SCHEDULE A

### **TERMS AND FEATURES**

#### **A. CREDIT CARD ACCOUNTS**

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

\* There is NO Annual Fee.

\* For Alumni Customers, the current annual percentage rate will be a variable rate of prime plus 8.9%. For variable rate accounts, there may be an additional margin applied on account of the Alumni Customer's delinquency.

\* The current annual percentage rate on Platinum Card Accounts will be a variable rate of prime plus 8.4%. For variable rate accounts, there may be an additional margin applied on account of the Alumni Customer's delinquency.

\* For Student Customers, the current annual percentage rate will be a variable rate of prime plus 9.9%. For variable rate accounts, there may be an additional margin applied on account of the Student Customer's delinquency.

\* Customers may be offered opportunities to select credit insurance as a benefit under the Program.

## **SCHEDULE B**

### **ROYALTY ARRANGEMENT**

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

#### **A. CREDIT CARD ACCOUNTS**

- \* \$1.00 (one dollar) for each new Credit Card Account opened, which remains open for at least ninety (90) consecutive days.
- \* \$1.00 (one dollar) for each Alumni Customer Credit Card Account for which the annual fee is paid by the Alumni Customer. If no annual fee is assessed by MBNA America (other than as a result of a courtesy waiver by MBNA America), then such royalty will be paid for each Alumni Customer Credit Card Account which: 1) has a balance greater than zero as of the last business day of every twelfth month after the opening of that Credit Card Account; and 2) has had active charging privileges for each of the preceding twelve months.
- \* \$1.00 (one dollar) for each Student Customer Credit Card Account for which the annual fee is paid by the Student Customer. If no annual fee is assessed by MBNA America (other than as a result of a courtesy waiver by MBNA America), then such royalty will be paid for each Student Customer Credit Card Account which: 1) has a balance greater than zero as of the last business day of every twelfth month after the opening of that Credit Card Account; and 2) has had active charging privileges for each of the preceding twelve months.
- \* .40% of all retail purchase transaction dollar volume generated by Alumni Customers using an Alumni Customer Credit Card Account (excluding those transactions that (1) relate to refunds, returns and unauthorized transactions, and/or (2) are cash equivalent transactions (*e.g.*, the purchase of wire transfers, money orders, bets, lottery tickets, or casino gaming chips)).
- \* .25% of all retail purchase transaction dollar volume generated by Student Customers using a Student Customer Credit Card Account (excluding those transactions that (1) relate to refunds, returns and unauthorized transactions, and/or (2) are cash equivalent transactions (*e.g.*, the purchase of wire transfers, money orders, bets, lottery tickets, or casino gaming chips)).

4/23/97: mmb

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March 28, 2011

Mr. Dan Hayes  
Director of Alumni Relations  
Averett University  
420 West Main Street  
Danville, Virginia 24541

RE: The Agreement by and between Averett University (f/k/a Averett College) ("AU") and FIA Card Services, N.A. (f/k/a MBNA America Bank, N.A.) ("FIA"), dated May 12, 1997, as the same may have been amended (the "Agreement")

Dear Mr. Hayes:

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

The Agreement shall be deemed terminated effective as of June 30, 2011 (the "Termination Date"). After the Termination Date, neither party shall have any rights or responsibilities arising under the Agreement unless such right or responsibility, in accordance with the terms of the Agreement, was to survive the termination of the Agreement. FIA and AU agree to keep confidential and not disclose to any person or entity the terms of this Letter or the circumstances which resulted in its execution.

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

The parties agree that Section 10(d) of the Agreement is hereby deleted and replaced with the following:

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

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devices, debit devices, checks or records of any Customer existing as of ninety (90) days following the termination or expiration date of this Agreement, and FIA shall have the right to use Trademarks on such credit devices, checks and records until their normally scheduled reissue date or exhaustion."

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

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

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

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

Sincerely,



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

ACCEPTED AND AGREED:

AVERETT UNIVERSITY

BY:



NAME: Director of Alumni Relations

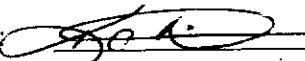
TITLE: Daniel C. Hayes

DATE: April 20, 2011

ACCEPTED AND AGREED:

FIA CARD SERVICES, N.A.

BY:



NAME: Christian Hammer-Scott

TITLE: SVP, Contract Printing Excellence

DATE: 5/2/11