

## AGREEMENT

This Agreement is entered into as of this 26<sup>th</sup> day of Aug, 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 TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA, an educational institution having its principal place of business at 3401 Walnut Street, Philadelphia, Pennsylvania ("PENN") 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. A "Plus Miles Credit Card Account" is a Credit Card Account carrying the Plus Miles Enhancement.
- (c) "Customer" means any Member who is a participant in the Program.
  - (i) "Student Customer" means a Customer who is identified by PENN or the Customer as an undergraduate student of the University of Pennsylvania.
  - (ii) "Alumni Customer" means a Customer who is not a Student Customer.
- (d) "Financial Service Products" means credit card programs (other than those only marketed to faculty and staff of the University of Pennsylvania), (including by way of illustration, not limitation, credit card functionality tied to the PENN Student campus card), charge card programs, debit card programs which carry a credit feature, and long distance calling card programs which carry a credit feature. Consistent with the foregoing, the term "Financial Service Products" shall not include the Procard and American Express programs offered to faculty and staff of the University of Pennsylvania as such programs are currently structured and delineated as of the Effective Date.
- (e) "Mailing Lists" means the best available (as of the date the Mailing List is provided to MBNA America) 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 as currently maintained by PENN in the ordinary course of business in accordance with its business practices, segmented by zip codes or mutually agreeable membership characteristics.
- (f) "Member" means undergraduate students, graduate students, alumni of the University of Pennsylvania and/or other potential participants mutually agreed to by PENN and MBNA America excluding employees and affiliates of the University of Pennsylvania Health System.
- (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 PENN during the term of this Agreement.

## 2. RIGHTS AND RESPONSIBILITIES OF PENN

I. PENN desires MBNA America to enhance the PENN Student/Alumni campus card by providing a credit card functionality. PENN agrees to provide MBNA America with all cooperation and assistance reasonably requested by MBNA America for the purpose of developing a credit card functionality feature.

(a) PENN 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, PENN may accept advertising from any financial institution provided that the advertisement does not contain an express or implied endorsement by PENN of said financial institution or the advertised Financial Service Products.

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

(c) PENN authorizes MBNA America to solicit its Members by mail, direct promotion events, advertisements and/or telephone for participation in the Program.

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

(e) Upon the request of MBNA America, PENN 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 PENN or its agents for an initial Mailing List or an update to that list, MBNA America may deduct such costs from Royalties due PENN. The initial Mailing List shall contain at least two hundred thirty three thousand (233,000) names with corresponding postal addresses and, when available, telephone numbers. Subsequent Mailing Lists shall contain at least one hundred seventy five thousand (175,000) names with corresponding postal addresses and, when available, telephone numbers.

(f) During the term of this Agreement, MBNA America shall develop a credit card component to the PENN Student Campus Card Program, as such program has been currently described to MBNA America. The "PENN Student Campus Card Program" is the card program coordinated by PNC Bank that will provide students of the University of Pennsylvania with on campus debit, credit and stored value access. MBNA America shall not be in breach of this obligation if PNC Bank or a system integrator cannot incorporate into the PENN Student Campus Card Program an otherwise functional credit card component developed by MBNA America.

(g) PENN 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 PENN. Notwithstanding the above, PENN 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 PENN. Any correspondence received by PENN 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 2 business days of receipt. All charges incurred for this service will be paid by MBNA America. Notwithstanding the above, PENN 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 materials provided by MBNA America to PENN.

(h) PENN 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 PENN 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. This license shall be transferred upon the assignment of the Agreement with the written permission of PENN unless the assignment is to an entity controlling, controlled by, or under the common control of MBNA America or pursuant to a sale of all or substantially all of MBNA America's assets.

### **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 PENN; provided that such approval shall not be unreasonably withheld.

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

(d) MBNA America shall make all credit decisions in substantial compliance with Delaware and federal law and it shall bear all credit risks with respect to each Customer's account(s) independently of PENN.

(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 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 PENN. 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 PENN.

#### 4. REPRESENTATION AND WARRANTIES

(a) PENN 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) PENN 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. PENN will hold MBNA America, its directors, officers, agents, employees, affiliates, successors and assigns harmless from and against all liability, causes of action, and claims, and will reimburse MBNA America's reasonable and actual costs in connection therewith, arising from the Trademark license granted herein or from MBNA America's use of the Trademarks in reliance thereon. Each party shall promptly notify the other party in the manner provided herein upon learning of any claims or complaints relating to such license or the use of any Trademarks.

(c) PENN assumes no liability to MBNA America or third parties with respect to the performance characteristics of the credit services provided by MBNA America pursuant to the Program. MBNA America agrees to indemnify and hold harmless PENN, its trustees, officers, employees and agents from any and all claims, demands, actions, causes of action, suits, damages, liabilities and costs and expenses of every nature, including attorney's fees, relating to or arising out of MBNA America's design, advertising, promotion, offering of the Program and/or the promotional material developed by MBNA America. MBNA America shall have the right to defend any such action or proceeding with attorneys of its own selection provided that such counsel is reasonably acceptable to PENN.

#### 5. ROYALTIES

(a) During the term of this Agreement, MBNA America shall pay Royalties to PENN. 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. Plus Miles Credit Card Accounts shall generate solely the Royalties specified in Schedule B, Section B hereof.

(b) On or before the forty fifth (45th) day after the end of each calendar quarter during the term of this Agreement, MBNA America will provide PENN 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 quarter.

(c) Upon the written request of PENN, but no more frequently than 1 (one) request in any twelve (12) month period, MBNA America shall provide PENN with system reports generated by MBNA America containing all the information which both (i) formed the basis of MBNA America's calculation of the Royalties due PENN since the last request was made or, if no previous request was made hereunder, for the last 4 (four) Royalty calculations performed by MBNA America, and (ii) may be disclosed by MBNA America without violating any legal rights of any third party or obligation of MBNA America. Such reports shall be certified by an officer of MBNA America as to their accuracy; provided, however, that the reports shall be certified as to their accuracy by the nationally recognized independent certified public accountants then being utilized by MBNA America, at PENN's expense, if PENN so requests such accountants' certification in its written request(s) for the generation of such reports hereunder.

## **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. MBNA America will provide PENN with thirty (30) days prior notice of any adjustments to the Program and its terms and features, which require Customer consent. 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 PENN 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 June, 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 6 months, 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. MBNA America will remain in substantial compliance with Federal and Delaware State regulations including, but not limited to, the Telephone Protection Act.

## 10. TERMINATION

(a) In the event of any material breach of this Agreement by MBNA America or PENN, 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 PENN 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 PENN to the Members. Such approval shall be factually accurate and MBNA America's approval shall be limited to remarks that could be considered disparaging to MBNA America, its affiliates, the Program or the Agreement. Such approval shall not be unreasonably withheld. Upon termination of this Agreement, PENN shall not attempt to cause the removal of PENN'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 or the end of the Termination Period (as defined below), whichever is later.

\* (e) Notwithstanding anything else in this Section 10, after termination of the Agreement, MBNA America may continue to reissue Credit Card Account card plastics bearing a Trademark for a one year period after such termination ("Termination Period"). Notwithstanding the foregoing, MBNA America agrees not to mass reissue the Credit Card Accounts with card plastics bearing a Trademark upon the termination of the Agreement. MBNA America may continue to reissue card plastics bearing a Trademark on a per account basis for a one year period after termination only for the purposes of earning the guarantee amount. If the total guarantee is earned prior to the expiration of this one year period, MBNA shall immediately cease to issue credit card plastics bearing a Trademark.

## 11. CUSTOMER LIST

(a) Each year during the term of the Agreement, MBNA America shall provide PENN 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 Agreement, 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.

(b) PENN shall return to MBNA America each Customer List, in the same form as received by PENN within sixty (60) days of receipt of such Customer List. PENN agrees that as soon as PENN is no longer providing the Customers with the enhancements that requires PENN to receive the Customer List or providing such enhancements as required by the Agreement, PENN 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 sixty (60) 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 PENN 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 PENN. A violation of this Section is conclusively proven and the damages named hereinafter 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. PENN expressly acknowledges and agrees that PENN has no property right or interest whatsoever in any Customer List. PENN 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 PENN shall keep in confidence and trust all Customer Lists. PENN further agrees that it shall not transfer any Customer List to any other organization or individual under any circumstances, and PENN 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) PENN shall have no authority to use the Customer List for any purpose not (i) directly necessary for the provision of the enhancements required by this Agreement (as determined by MBNA America and PENN); or (ii) expressly permitted by MBNA America in a separate writing. PENN shall comply with any reasonable request of MBNA America with respect to security precautions to maintain security of the Customer List. PENN 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 PENN from time to time. PENN shall only permit access to the Customer List to those employees, volunteers, agents and/or representatives of PENN who need such access to perform their duties for PENN. In view of the confidential nature of the Customer List, PENN warrants that PENN 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 paragraph.

(f) Because the nature of the Customer List makes an evaluation of damages after a violation of this Section impossible, then in the event that any Customer List is handled or used in a fashion that violates this Section by PENN or its employees, volunteers, agents, and/or representatives, MBNA America will be entitled to damages of twenty dollars (\$20.00) for each use of each category of information (*e.g.*, names, addresses, *etc.*) used in violation of this Section, with the amount of damages not to exceed one hundred fifty thousand dollars (\$150,000) per breach. In addition, PENN agrees that MBNA America shall be entitled to injunctive relief to prevent violation or further violation by PENN 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 PENN 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, PENN 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.

## **12. 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), 4(c), 7, 9, 10(c), 10(d), and 10(e) and 11(b), 11(c), 11(d), 11(e), 11(f), and 11(g) shall survive any termination of this Agreement. The obligations in Sections 5(a) and 5(b) shall survive any termination of this Agreement for the period necessary to provide PENN with all Royalties accrued but unpaid as of the date of termination.

(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) five (5) business days after mailing by registered or certified mail, postage prepaid, return receipt requested. All notices shall be addressed as follows:

(1) If to PENN:

UNIVERSITY OF PENNSYLVANIA  
3401 Walnut Street  
Philadelphia, Pennsylvania 19104-6226  
ATTENTION: Mr. Steven D. Murray, Vice President for Business  
Services

and:

University of Pennsylvania  
Center for Technology Transfer  
Suite 300  
3700 Market Street  
Philadelphia, Pennsylvania 19104-9519  
ATTENTION: Mr. Alfred Glessner, Director of Operation and Licensing

and:

The General Alumni Society University of Pennsylvania  
East Craig Sweeten Alumni Center  
3533 Locust Walk  
Philadelphia, Pennsylvania 19104-6226  
ATTENTION: Ms. Martha Z. Stachitas, Director of Alumni Relations &  
Executive Secretary of the General  
Alumni Society

(2) If to MBNA America:

MBNA AMERICA BANK N. A.  
1100 North King Street  
Wilmington, Delaware 19884  
ATTENTION: Mr. John Richmond 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 PENN 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.



## SCHEDULE A

### I. TERMS AND FEATURES

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

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

\* There is NO Annual Fee.

\* For Alumni Customers, the current annual percentage rate will be a variable rate of prime plus 7.9%. For variable rate accounts, there may be an additional margin applied on account of the Alumni Customer's delinquency. The current introductory annual percentage rate on cash advance and balance transfers and retail purchase balances will be a fixed rate of 5.9% for a five month period.

\* The current annual percentage rate on Platinum Card Accounts will be a variable rate of prime plus 7.4%. For variable rate accounts, there may be an additional margin applied on account of the Alumni Customer's delinquency. The current introductory annual percentage rate on cash advance and balance transfers and retail purchase balances will be a fixed rate of 5.9% for a five month period.

\* 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. The current introductory annual percentage rate on cash advance and balance transfers will be a fixed rate of 5.9% for a five month period.

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

#### B. PLUS MILES CREDIT CARD ACCOUNTS

\* \$35.00 (Thirty-Five Dollar) Yearly Enrollment Charge for the Optional Plus Miles Enhancement.

\* The current annual percentage rate will be a variable rate of prime 7.4%. There may be an additional margin applied on account of the Customer's delinquency.

#### 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.

\* There is NO annual fee for the first six (6) months.

\* 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%.

D. GOLD OPTION ACCOUNTS

"Gold Option Account", means a GoldOption<sup>sm</sup> (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 14.99%.

## SCHEDULE B

### ROYALTY ARRANGEMENT

During the term of this Agreement, MBNA America will pay PENN a Royalty calculated 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 (OTHER THAN PLUS MILES CREDIT CARD ACCOUNTS)

\$1.00 (one dollar) for each new Credit Card Account opened, which remains open for at least ninety (90) consecutive days.

\$3.00 (three dollars) for each Alumni Customer Credit Card Account or Student 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 Alumni Customer Credit Card Account or Student Credit Card Account; and 2) has had active charging privileges for each of the preceding twelve months.

.50% 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 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).

.50% of all cash advance and cash equivalent transaction dollar volume generated by Alumni Customers using an Alumni Customer Credit Card Account (excluding those transactions that relate to refunds, returns and unauthorized transactions).

.40% 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 unauthorized transactions, and/or (2) are cash equivalent transactions (*e.g.*, the purchase of wire transfers, money orders, bets, lottery tickets, or casino gaming chips).

#### B. PLUS MILES CREDIT CARD ACCOUNTS

1. \$1.00 (one dollar) for each new Plus Miles Credit Card Account, 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 Plus Miles Credit Card Account.
2. \$17.00 (seventeen dollars) for each Plus Miles Credit Card Account for which the annual fee is paid by the Customer. If no annual fee is assessed by MBNA America (other than as a result of a courtesy waiver by MBNA America), then such royalty will be paid for each Plus Miles Credit Card Account which: 1) has a balance greater than zero as of the last business day of the annual anniversary of the month in which the Plus Miles Credit Card Account was opened; and 2) has had active charging privileges for each of the preceding twelve months. A Plus Miles Credit Card Account may renew every twelve (12) months after the opening of the account.

C. GOLD RESERVE REVOLVING LOAN ACCOUNTS

1. \$.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.

D. GOLD OPTION REVOLVING LOAN ACCOUNTS

1. \$.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.

E. 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.

F. ROYALTY ADVANCE

1. Upon implementation of the first Full Marketing Campaign (as defined herein) by MBNA America, MBNA America shall pay to PENN four million dollars (\$4,000,000) and upon each annual anniversary of the Effective Date during the initial term of this Agreement, MBNA America shall pay to PENN four hundred seventy-five thousand dollars (\$475,000) (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 PENN, be applied against the Advances until such time as the Advances are fully recouped. Any Royalties accrued thereafter shall be paid to PENN as set forth in this Agreement. Notwithstanding the foregoing, MBNA America shall no longer be obligated to pay any additional Advances to PENN hereunder, and PENN hereby promises to pay America upon demand an amount equal to the difference between the total amount of the Advance(s) paid by MBNA American and the total amount of accrued Royalties credited by MBNA America against such Advance(s) as of the date of such demand, in the event any of the conditions set forth in Clauses (i) through (vi) below should occur:

(i) the Agreement is terminated by PENN prior to the end of the initial term as stated in this Agreement as of the Effective Date unless PENN has properly terminated the Agreement pursuant to Section 10(a) or 10(b).

(ii) PENN materially breaches any of its obligations under this Agreement and MBNA provides notice and a 60 day cure period for any breach by PENN.

(iii) MBNA America is prohibited or otherwise prevented by PENN or its affiliates from conducting at least three(3) direct mail campaigns to the updated Mailing List containing the names of alumni and students during each one year period during the term of the Agreement except PENN may prevent MBNA America from conducting a direct mail campaign if MBNA America is then in material breach of the Agreement;

(iv) MBNA America is prohibited or otherwise prevented by PENN or its affiliates from conducting at least two (2) telemarketing campaigns to the updated Mailing List containing the names of alumni and students during one year period during the term of the Agreement except PENN may prevent MBNA America from conducting a telemarketing campaign if MBNA America is then in material breach of the Agreement;

(v) MBNA America is prohibited from conducting on-campus promotion campaigns (e.g., tabling and postering) at major events during each one year period during the term of the Agreement except PENN may prevent MBNA America from conducting a direct promotion event if MBNA America is then in material breach of the Agreement; and

(vi) PENN or an affiliate of the University of Pennsylvania, directly or indirectly markets or permits the marketing of any product that is the same as a Financial Service Product(s).

2. If during any given year(s) during the initial term of this Agreement MBNA America recoups all prior Advances paid by it to PENN in prior years, and pays PENN Royalties accrued by PENN 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. A "Full Marketing Campaign" consists of a direct mail campaign to the full Mailing List and/or a telemarketing campaign using the full updated Mailing List.

4. When used in this Agreement, the term "telemarketing" shall mean the initial marketing of the Program whereby a representative of MBNA America uses the telephone to solicit a Member for participation in the Program.

**G. ROYALTY GUARANTEE**

PENN shall be guaranteed to accrue Royalties (including without limitation the amount of the Advances) equal to or greater than six million three hundred seventy-five thousand dollars (\$6,375,000) (the "Guarantee Amount") by the end of the full initial term of the Agreement. If on the last day of the full initial term of this Agreement PENN has not accrued \$6,375,000 in Royalties, MBNA America will pay PENN an amount equal to the Guarantee Amount minus the sum of all compensation accrued by PENN during the initial term of this Agreement and all unrecovered 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 Schedule B, Section F., herein.

8/15/97:mmb



## TERM EXTENSION ADDENDUM

THIS ADDENDUM (the "Addendum") is entered into this 30<sup>th</sup> day of ~~September~~ 2002 by and between Trustees of the University of Pennsylvania ("PENN"), and MBNA America Bank, N.A. ("MBNA America"), for themselves and their respective successors and assigns.

WHEREAS, PENN and MBNA America are parties to an affinity agreement dated August 28, 1997 (the "Original Agreement"); and

WHEREAS, PENN and MBNA America mutually desire to extend the term of the Original Agreement and modify some of its terms;

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

- I. 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 Original Agreement.
- II. Section 8 of the Original Agreement is hereby amended to read in its entirety as follows:

The initial term of this Agreement will begin on the Effective Date and end on June 30, 2002. The second term of this Agreement will begin immediately upon the conclusion of the initial term (such that the Agreement remains in full force and effect) and will end on June 30, 2007. This Agreement will automatically extend at the end of the second term or any renewal term for successive two-year periods, unless either party give 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.
- III. Effective July 1, 2002,
  - A. The Introductory Paragraph and Sections A and B of Schedule B of the Original Agreement shall be replaced in their entirety with the Introductory Paragraph and Sections A and B contained on Exhibit 1 of this Addendum, attached hereto and incorporated herein by reference;
  - B. Sections H and I as set forth in Exhibit 2 of this Addendum, attached hereto and incorporated herein by reference, shall be added to the end of Schedule B of the Original Agreement; and
  - C. In accordance with the following chart, MBNA America shall pay PENN an opening of account bonus for each new Credit Card Account opened over two thousand five hundred (up to five thousand) in any Contract Year. A "Contract Year" shall mean

the twelve month period beginning on July 1<sup>st</sup> of one year and ending June 30<sup>th</sup> of the following year during second term of this Agreement.

Bonus Payment per Credit Card Account opened in the Bonus Range	Bonus Account Range
\$25.00	2,501-3,000
\$30.00	3,001-3,500
\$35.00	3,501-4,000
\$50.00	4,001-5,000

For example, MBNA America would pay PENN a bonus payment of \$31,000 if MBNA America opened 3,600 new Credit Card Accounts during a Contract Year.

Payment of any bonus amount due shall be made approximately forty-five days after the end of the applicable Contract Year.

D. Section 1(c) of the Original Agreement is hereby amended to read in its entirety as follows:

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

(i) "Student Customer" means a Customer who is identified by PENN or the Customer as an undergraduate or graduate student of the University of Pennsylvania.

(ii) "Non-Student Customer" means a Customer who is not a Student Customer, including, but not limited alumni of the University of Pennsylvania, members of the faculty of the University of Pennsylvania and employees of the University of Pennsylvania.

E. All references in the Original Agreement to the term "Alumni Customer" are hereby replaced with the term "Non-Student Customer".

F. The second sentence of Section 1(d) of the Original Agreement is hereby amended to read in its entirety as follows:

Consistent with the foregoing, the term "Financial Service Products" shall not include the PNC debit card program, or the Procard and American Express programs offered to Non-Student Customers (e.g., the faculty and staff of the University of Pennsylvania), as such programs are currently structured and delineated as of the Effective Date.

G. Section 1(e) of the Original Agreement is hereby amended to read in its entirety as follows:

(e) "Mailing Lists means PENN's best available (as of the date the Mailing List is provided to MBNA America) data, files and lists, including any whole or partial copies or compilations of such data, files and lists so furnished, containing names, postal addresses and, when available, telephone numbers of Members and segmented by zip codes or by membership characteristics, as agreed to by PENN and MBNA America, in any form or in any medium, and any information derived solely from such data, files or lists, all as currently maintained by PENN in the ordinary course of business in accordance with its business practices.

H. Section 1(f) of the Original Agreement is hereby amended to read in its entirety as follows:

(f) "Member" means undergraduate students, graduate students, alumni of the University of Pennsylvania, members of the faculty of the University of Pennsylvania, parents of students attending the University of Pennsylvania, employees of the University of Pennsylvania and/or other potential participants mutually agreed to by PENN and MBNA America, excluding employees and affiliates of the University of Pennsylvania Health System.

I. Section 1(i) of the Original Agreement is hereby amended by adding the following sentence to the end of such Section:

Each Trademark developed or acquired after July 1, 2002, shall be licensed to MBNA America pursuant to Section 2(h) of this Agreement only with the prior written approval of PENN.

J. A new Section 1(j) is hereby added to the Original Agreement as follows:

(j) "Promotion" means any solicitation, proposal, offer or other effort, oral or written, by MBNA America or its affiliates to a Customer or prospective Customer.

K. The last sentence of Section 2(a) of the Original Agreement is hereby to read in its entirety as follows:

Notwithstanding anything else in this Agreement to the contrary, PENN may accept advertising from any financial institution for a Financial Service Product provided that the advertisement for the Financial Service Product does not contain an express or implied endorsement by PENN of said financial institution or the advertised Financial Service Product.

L. Section 2(g) of the Original Agreement is hereby amended by deleting its last sentence.

M. Section 2(h) of the Original Agreement is hereby amended by adding the following after the third sentence and before the fourth sentence:

No Trademark shall be altered by MBNA America in any communications under the Program and no Trademark shall be used by MBNA America in combination with any other person's design, image, servicemark, trademark, trademark or logo except as approved in writing by PENN.

N. Section 3(e) of the Original Agreement is hereby amended by deleting its first sentence.

O. A new Section 3(f) is hereby added to the Original Agreement as follows:

(f) In any new account acquisition direct mail piece regarding the Program to a person whose name is on a Mailing List, MBNA America shall provide information on how the person may exercise his or her right not to receive future direct mail offers regarding the Program and a disclosure similar to the following:

**For information concerning the University of Pennsylvania's Privacy Practices and Your Options please visit the University on the web at [www.business-services.upenn.edu/optout](http://www.business-services.upenn.edu/optout), or by calling the University's Business Services and Alumni Relations telephone line, 215 898 IDEA.**

MBNA America shall set off the above referenced disclosures with a heading to alert the reader to their content (e.g., "Privacy Information"). The content of any PENN Privacy Practices web page or PENN telephone script that refers to MBNA America or the Program shall be mutually agreed upon by the parties (but only that portion of that page or script that refers to MBNA America or the Program).

P. A new Section 3(g) is hereby added to the Original Agreement as follows:

(g) At PENN's request, MBNA America shall provide MBNA America's then current credit education materials to newly acquired Customers in a manner to be mutually agreed upon by the parties. Alternatively, PENN may prepare mutually agreed upon materials and furnish them to MBNA America for transmittal to Customers.

Q. Section 4(b) of the Original Agreement is hereby amended by deleting its second and third sentences.

R. Section 4(c) of the Original Agreement is hereby amended by deleting its second and third sentences.

S. A new Section 4A is added to the Original Agreement as follows:

**4A. INDEMNIFICATION**

(a) PENN will defend, with attorneys of its own choosing who shall be acceptable to MBNA America when evaluated against a reasonable standard, and 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 allegations by third parties that the Trademarks licensed hereunder, when used by MBNA without alteration or as otherwise approved by PENN, infringe upon the trademark of such third parties, provided that PENN is promptly notified by MBNA in the manner provided herein upon MBNA America's learning of such claim and provided further that MBNA is not in arrears in any Advance or Royalty due under this Agreement (unless PENN is in breach of the Agreement, in which case, PENN shall still be required to indemnify MBNA America as provided herein) and provided MBNA America gives PENN reasonable assistance in the defense.

(b) MBNA America will defend, with attorneys of its own choosing who shall be acceptable to PENN when evaluated against a reasonable standard, and hold PENN, its directors, officers, agents, employees, affiliates, successors and assigns harmless from and against all liability, causes of action, and claims, and will reimburse PENN's reasonable and actual costs in connection therewith, arising from allegations by third parties relating to the design, advertising, promotion, offering of the Program and/or promotional material developed by MBNA America, provided that MBNA America is promptly notified by PENN in the manner provided herein upon PENN's learning of such claim and provided further that PENN gives MBNA America reasonable assistance in the defense.

T. The last sentence of Section 5(c) of the Original Agreement is hereby amended by inserting the phrase "with financial responsibility" immediately after the phrase "by an officer".

U. The penultimate and final sentences of Section 10(e) of the Original Agreement is hereby amended by replacing the term "guarantee amount" and "total guarantee", respectively, with "the Second Term Guarantee Amount".

V. Section 11 of the Original Agreement is hereby deleted in its entirety.

W. Section 12(b) of the Original Agreement is hereby amended by replacing the reference to "4(b), 4(c)" with "4A" and deleting the references to Sections 11(b), 11(c), 11(d), 11(f), and 11(g).

X. A new Section 14 is added to the Original Agreement as follows:

**14. MAILING LISTS; STUDENT PRIVACY**

(a) The Mailing Lists furnished by PENN hereunder are and shall remain the sole property of PENN.

(b) The Mailing Lists shall be as currently maintained by PENN in the ordinary course of business in accordance with its usual business practices, and shall be provided in a format as agreed upon by Penn and MBNA America from time to time.

(c) PENN has certain obligations under 20 U.S.C. Sec. 1232 (g), and regulations issued thereunder, to protect its students' right to privacy. Any student has the right to decline to allow PENN to furnish personal information about himself to any third party. Accordingly, PENN will update its Mailing Lists on a regular basis by removing names of students, alumni, faculty and staff from said lists in order to comply with its obligations under said law and to those Members and prospective Members who have opted out of receiving information about the Program. Penn shall provide, and MBNA America shall request, new Mailing Lists for use in each new account acquisition Promotion under the Program that requires such lists.

(d) Upon completion of a Promotion under the Program, MBNA America shall promptly destroy any Mailing List used for that activity.

(e) After PENN has furnished a Mailing List to MBNA America hereunder, if PENN is informed by a Member that he or she desires to have his name removed from said list so that he will not receive mailings or not receive telemarketing calls, PENN will so advise MBNA America. MBNA America shall forthwith remove the name from the Mailing List entirely or from that portion related to new account acquisition mailings or telemarketing calls, as the case may be, to prevent MBNA America from conducting the applicable form of new account acquisition of that Member. PENN understands that the lead times involved in conducting marketing campaigns does not allow for immediate removal of a Member's name from a particular campaign (e.g., it often takes 6-8 weeks to process a direct mail new account acquisition campaign).

(f) All Mailing Lists are (i) confidential and proprietary and (ii) shall remain the sole property of PENN. MBNA America expressly acknowledges and agrees that MBNA America has no property right or interest whatsoever in any Mailing List. MBNA America shall hold all Mailing Lists in strict and absolute confidence, including maintaining adequate security safeguards against unauthorized access, use, or disclosure, and shall not provide, trade, give away, barter, lend, send, sell

or otherwise disclose (collectively, "transfer", as used in this paragraph and in paragraph (g)) any Mailing List and shall not make any copies of a Mailing List of any type whatsoever, in readable or encrypted form, or in individually identifiable or aggregate form except to perform its obligations hereunder or for a subcontractor performing duties for MBNA America in furtherance of MBNA America's rights or obligations hereunder, or except as expressly approved in a separate writing by Penn.


(g) MBNA America shall have no authority to use the Mailing List for any purpose not (i) necessary for the design, development, administration of the Program; or (ii) expressly permitted by PENN America in a separate writing. MBNA America shall only permit access to the Mailing Lists to those employees, volunteers, agents and/or representatives of MBNA America and its affiliates who need such access to perform their duties under this Agreement for MBNA America and its affiliates. In view of the confidential nature of the Mailing List, MBNA America warrants that MBNA America and all its employees, volunteers, agents, subcontractors or representatives who work with any Mailing List shall be made aware of the obligations contained in this Section and shall be under strict legal obligation not to copy any Mailing List, transfer any Mailing List or make any other use of any Mailing List other than as specifically approved under this paragraph.


IV. Except as amended by this Addendum, all the terms, conditions and covenants of the Agreement are valid, shall remain in full force and effect, and are hereby ratified and confirmed. Any inconsistencies between this Addendum and the Agreement shall be governed by this Addendum. This Addendum may be executed in any number of counterparts, each of which shall be considered an original, and all of which shall be deemed one and the same instrument. The Agreement, as amended by this Addendum, contains the entire agreement of the parties with respect to the matters covered and no other prior promises, negotiations or discussions, oral or written, made by any party or its employees, officers or agents shall be valid and binding. Certain Financial Service Products or services under the Agreement may be offered through MBNA America's affiliates. For example, business credit cards are currently issued and administered by MBNA America (Delaware), N.A., and certain marketing services are currently provided by MBNA Marketing Systems, Inc. To the extent any Financial Service Product or service is so offered, all the terms, conditions and covenants of the Agreement shall be binding on said 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.

TRUSTEES OF THE  
UNIVERSITY OF PENNSYLVANIA

MBNA AMERICA BANK, N.A.

By: 

By: 

Name: LEROY D. NUNERY II

Name: Michael Darrin

Title: VICE PRESIDENT, BUSINESS SERVICES

Title: Senior Executive Vice President

Date: 9.30.02

Date: 11/27/02



## Exhibit 1

### ROYALTY ARRANGEMENT

During the term of this Agreement, MBNA America will pay PENN a Royalty calculated 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 (OTHER THAN PLUS MILES CREDIT CARD ACCOUNTS)

1. \$1.00 (one dollar) for each new Credit Card Account opened, which remains open for at least ninety (90) consecutive days.
2. \$3.00 (three dollars) for each Alumni Customer Credit Card Account or Student 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 Alumni Customer Credit Card Account or Student 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 Customer 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 Customer Credit Card Account (excluding those transactions that (1) relate to refunds, returns and/or unauthorized transactions, and/or (2) are cash equivalent transactions (e.g., the purchase of wire transfers, money orders, bets, lottery tickets, or casino gaming chips)).

**B. PLUS MILES CREDIT CARD ACCOUNTS**

1. 2.5% (two and one half percent) of the finance charges assessed by the application of the relevant periodic rate(s) to the respective average daily balance(s) of certain Plus Miles Credit Card Accounts (the "Finance Charges"). This payment shall be calculated as of the end of each calendar quarter, based upon average daily balances measured as of the end of each of the preceding three months. Each such monthly measurement shall include only Finance Charges assessed during such month, and shall exclude Finance Charges assessed on Plus Miles Credit Card Accounts which, as of the day of measurement, are thirty-five (35) or more days delinquent or are 10% or more over the assigned credit line for such Plus Miles Credit Card Account.
  
2. Plus Miles Credit Card Accounts shall only be eligible for the compensation set forth in this Section B; Plus Miles Credit Card Accounts are not eligible for the compensation set forth in Section A., above.

## Exhibit 2

### H. ROYALTY ADVANCES FOR THE SECOND TERM

1. On July 1, 2002, and each July 1<sup>st</sup> up to, and including, July 1, 2006 during the second term of this Agreement, MBNA America shall pay to PENN the sum of five hundred seventy-five thousand dollars (\$575,000.00) (each, a "Second Term Advance"), as an advance against future Royalties, subject to the provisions set forth in Section I, below. One hundred twenty five thousand dollars (\$125,000.00) of each Second Term Advance shall be used by PENN for Program enhancement opportunities that are mutually agreed upon by the parties. All Royalties accrued during the second term shall, in lieu of direct payment to PENN, be applied against each of the Second Term Advances until such time as all Second Term Advances are fully recouped. Any Royalties accrued thereafter shall be paid to PENN as set forth in this Agreement. Notwithstanding the foregoing, MBNA America shall no longer be obligated to pay any additional Second Term Advances to PENN hereunder, and PENN hereby promises to pay MBNA America upon demand an amount equal to the difference between the total amount of the Second Term Advance(s) paid by MBNA America and the total amount of accrued Royalties credited by MBNA America against such Second Term Advance(s) as of the date of such demand, in the event any of the conditions set forth in Clauses (i) through (vi) below should occur:

- (i) the Agreement is terminated by PENN prior to the end of the second term as stated in this Agreement unless PENN has properly terminated the Agreement pursuant to Section 10(a) or 10(b).
- (ii) PENN materially breaches any of its obligations under this Agreement and MBNA America provides notice and a 60 day cure period for any material breach by PENN and PENN fails to effect the required cure.
- (iii) MBNA America is prohibited or otherwise prevented by PENN or its affiliates from conducting at least three (3) direct mail campaigns to the full updated Mailing List containing the names of alumni and students during each one year period during the term of the Agreement except PENN may prevent MBNA America from conducting a direct mail campaign if MBNA America is then in material breach of the Agreement.
- (iv) MBNA America is prohibited or otherwise prevented by PENN or its affiliates from conducting at least two (2) telemarketing campaigns to the full updated Mailing List containing the names of alumni and students during each one year period during the term of the Agreement except PENN may prevent MBNA America from conducting a telemarketing campaign if MBNA America is then in material breach of the Agreement.

(v) MBNA America is prohibited prevented by PENN or its affiliates from conducting at least (10) on-campus promotion campaigns (e.g., tabling and postering) at major events during each one year period during the term of the Agreement except PENN may prevent MBNA America from conducting a direct promotion event if MBNA America is then in material breach of the Agreement.

(vi) PENN or an affiliate of the University of Pennsylvania, directly or indirectly markets or permits the marketing of any product that is the same as a Financial Service Product(s).

2. If during any given year(s) during the second term of this Agreement MBNA America recoups all prior Second Term Advances paid by it to PENN in prior years, and pays PENN Royalties accrued by PENN 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 Second Term Advance(s) due by the amount of any such Paid Out Royalties.

1. ROYALTY GUARANTEE FOR THE SECOND TERM

PENN shall be guaranteed to accrue Royalties (including without limitation the amount of the Second Term Advances) equal to or greater than two million eight hundred seventy five thousand dollars (\$2,875,000.00) by the end of the full second term of the Agreement (the "Second Term Guarantee Amount"), subject to the provisions set forth below. If on the last day of the full second term of this Agreement PENN has not accrued \$2,875,000.00 in Royalties, MBNA America will pay PENN an amount equal to the Second Term Guarantee Amount minus the sum of all compensation accrued by PENN during the second term of this Agreement and all unrecovered Second Term Advances. Notwithstanding the foregoing, this Second Term Guarantee Amount and any obligation of MBNA America hereunder shall be expressly contingent upon the non-occurrence of any of the conditions set forth in Section H.1., above.

## TERM EXTENSION ADDENDUM

THIS ADDENDUM (the "Addendum") is entered into as of the 1<sup>st</sup> day of July, 2006 by and between Trustees of the University of Pennsylvania ("PENN"), and MBNA America Bank, N.A. ("MBNA America"), for themselves and their respective successors and assigns.

WHEREAS, PENN and MBNA America are parties to an agreement, dated as of August 28, 1997, as amended, (collectively with all amendments, supplements and addenda, the "Agreement"), wherein MBNA America provides Financial Services Products to persons included in certain lists provided to MBNA America by or on behalf of PENN; and

WHEREAS, PENN and MBNA America mutually desire to enter into a "Third Term" of the Agreement and adjust the royalty advances and payment guarantee for all MBNA America's Financial Services Products;

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

I. The above recitals are incorporated herein and deemed a part of this Addendum. Capitalized terms used but not otherwise herein defined are as defined in the Agreement.

II. The second term of the Agreement expires on June 30, 2007. The Third Term of the Agreement will begin immediately upon the termination of the second term (such that the Agreement will remain in full force and effect) and will end on June 30, 2014. Thereafter, the Agreement shall automatically extend at the end of the Third 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. 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.

### III. ROYALTY ADVANCES FOR THE THIRD TERM

A. On July 1, 2007, and thereafter, annually on July 1, 2008, and for subsequent years up to and including July 1, 2013, (or the next business day if any such date is not a business day) MBNA America shall pay to PENN the sum of five hundred twenty five thousand dollars (\$525,000) (each an "Advance" and collectively, the "Advances") as an advance against future Royalties, subject to the provisions set forth below. All Royalties accrued in the Third Term shall, in lieu of direct payment to PENN, be applied to each of the Third Term Advances until such time as all of the Third Term Advances are fully recouped. Thereafter, any Royalties accrued shall be paid to PENN as provided in this Agreement.

B. One hundred and twenty five thousand dollars (\$125,000) of each Third Term Advance shall be used by PENN for Program enhancement opportunities as described in Exhibit A hereto. MBNA America and Penn acknowledge that building awareness of their relationship, supporting Penn's academic priorities, and making Financial Services Products available to the Penn community are in the mutual interests of the parties..

### IV. BREACH BY PENN.

Notwithstanding the foregoing, (1) MBNA America shall no longer be obligated to pay any additional Advances to PENN hereunder, and (2) PENN hereby promises to pay MBNA America upon demand an amount equal to the difference between the total amount of the third term Advance(s) paid by MBNA America and the

total amount of accrued Royalties credited by MBNA America against such Third Term 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:

- JJA 5/24/00*  
*CB 5/16/00*  
*JJA 5/24/00*  
*CB 5/16/00*
- (i) the Agreement is terminated by PENN prior to the end of the Third Term as stated in this Addendum unless PENN has terminated the Agreement in accordance with the provisions of Sections 10(a) or 10(b) of the Agreement;
  - (ii) PENN materially breaches any of its obligations under the Agreement and fails to cure such breach in the sixty (60) day period following discovery or notice of such breach;
  - (iii) MBNA America is prohibited or otherwise prevented by PENN or its affiliates from conducting at least three (3) direct mail campaigns to the full updated Mailing Lists containing the names of the students and alumni during each consecutive twelve month period during the term of the Agreement, provided that MBNA America is not in material breach of the Agreement;
  - (iv) MBNA America is prohibited by PENN or its affiliates from conducting at least ten (10) on-campus promotion campaigns (e.g., tabling and postering) at major events during each consecutive twelve month period during the term of the Agreement, provided that MBNA America is not in material breach of the Agreement; and
  - (v) PENN or an affiliate of the University of Pennsylvania endorses, sponsors or promotes any Financial Service Product to Members with any entity other than MBNA America.

*JJA 5/24/00*  
*CB 5/16/00*

V. MBNA AMERICA AFFILIATES.

Certain Financial Services Products under the Agreement may be offered through MBNA America's affiliates. For example, business credit cards are currently issued and administered by MBNA America (Delaware), N.A., and certain marketing services are currently provided by MBNA Marketing Systems, Inc.

VI. ROYALTY GUARANTEE

PENN shall be guaranteed to accrue Royalties during the third term equal to three million, six hundred seventy five thousand dollars (\$3,675,000) (the "Third Term Guarantee Amount"). Forty five (45) days after the last day of the third term, MBNA will pay to PENN the difference, if positive, between the Third Term Guarantee Amount minus the sum of all Advances and Royalties paid to PENN. Notwithstanding the foregoing, this Third Term Guarantee Amount and any representation, warranty, covenant, responsibility or obligation of MBNA America hereunder shall be expressly contingent upon the continued satisfaction by PENN of all representations, warranties, covenants, responsibilities and obligations set forth in the terms and provisions of the Agreement as modified by the Addendum.

VII. 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.

IN WITNESS WHEREOF, each party hereto, by its representative, has duly executed this Addendum as of July 1, 2006 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.

**TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA**

By: Marie D. Witt  
Name: Marie D. Witt  
Title: Vice President  
Date: 4-3-06

**MBNA AMERICA BANK, N.A.**

By: Jake Frege  
Name: Jake Frege  
Title: SVP  
Date: 5/24/06

## Exhibit A - Enhancement Funds Activities

MBNA America has committed to expend One Hundred Twenty Five Thousand Dollars (\$125,000) in each year of this Addendum for promotion and marketing opportunities under the Agreement.

I. MBNA America and Penn shall support and pursue opportunities on an annual basis that include, at a minimum, the schedule of activities set forth below, provided, however, that such activities are not in conflict with any Penn policies or practices that are implemented subsequent to the effective date of this Addendum. In the event of such a conflict, the parties shall use their best efforts to select a replacement activity.

II. Penn and MBNA America shall seek to use all enhancement funds provided for hereunder in a coordinated and mutually agreeable manner and to use them fully in each year. Upon termination of the Third Term, any unused enhancement funds shall belong to Penn.

### III. Sponsorship Opportunities

Penn shall be responsible for providing MBNA America marketing opportunities that may include: placement of ads in printed materials, offering MBNA America staff presence at events (e.g. student orientations, of advertising athletic games, and on-campus tabling). In instances where MBNA America desires event staffing, the costs of such event staffing, including materials associated with the application process, shall be at the expense of MBNA America and shall not be deducted from the enhancement funds. These activities, along with their associated allocations, which are to be deducted from the enhancement funds, may include:

- |    |                                  |          |
|----|----------------------------------|----------|
| 1) | Penn New Student Orientation     | \$10,000 |
| 2) | Wharton MBA Orientation Event    | \$10,000 |
| 3) | Penn Athletics On-Site Marketing | \$20,000 |

### III. Support for Office of Student Financial Services

In Penn's communications regarding its partnering with MBNA America, Penn will include specific mention that a portion of the proceeds from the relationship go directly to undergraduate grants, providing financial support to undergraduate students that otherwise may not be able to go to Penn.

Allocation from enhancement funds: \$25,000

### IV. Discretionary Funds

A. Any amount of the enhancement funds the parties do not designate for specific use per the provisions above will be considered "discretionary funds". The amount and nature of such expenditures shall require agreement by the parties in advance and in writing. Such funds will be available for expenses that may include, but are not limited to, publications, creative design, marketing collateral, additional sponsorship opportunities, or other promotions intended to sustain the viability of the relationship.