

**SECOND AMENDED AND RESTATED
Affinity Agreement**

This Agreement ("**Agreement**") is entered into as of the first day of July, 2020 (the "**Effective Date**") by and between **Bank of America, N.A.**, a national banking association having an office in Wilmington, Delaware ("**Bank**"), and **New York University**, a New York not-for-profit education corporation having its principal place of business in New York, New York ("**University**" or "**NYU**"), on behalf of **New York University Alumni Association** ("**NYUAA**", and collectively with Bank and University, "**Party**" or "**Parties**"), for themselves and their respective successors and assigns.

WHEREAS, University and Bank are parties to that certain Amended and Restated Affinity Agreement dated July 1, 2013, as the same has been amended ("**Previous Agreement**"), wherein Bank provides certain financial services to NYU alumni and others in affiliation with NYUAA; and,

WHEREAS, the Parties mutually desire to amend and restate the Previous Agreement in its entirety as of the Effective Date in accordance with the terms and conditions set forth in this Agreement.

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

1. **DEFINITIONS AND RULES OF INTERPRETATION**

For the purposes of this Agreement and except as otherwise specifically set forth herein, capitalized terms have the meanings set forth below, whether used in the plural or singular, in any tense or part of speech, and regardless of gender. Other terms defined herein have the meanings set forth in the context of their use.

"**Activated Account**" means a Credit Card Account which remains open for at least 90 consecutive days and that is used by the Customer within the first 90 consecutive days of it's opening for at least one purchase or cash advance that is not subsequently rescinded, the subject of a charge back request, or otherwise disputed.

"**Affiliate**" means, with respect to any entity or organization, any other entity or organization directly or indirectly controlling, controlled by, or under common control with such entity or organization. The term "controlling," "controlled by" and "under common control with" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies, whether through the ownership of voting securities, by contract or otherwise.

"**Agents**" means a Person's accountants, lawyers, financial advisors, marketing advisors, Affiliates and employees.

"**Agreement**" means this agreement, and Schedules A, B, and C as may be amended or supplemented from time to time.

"**Applicable Law**" means, with respect to a Person any applicable: (i) federal, state, or local law (including common law), ordinance, statute, treaty, rule, judgment, regulation, regulatory bulletin or guidance, regulatory examinations, licensing requirements, agreements, formal direction, or orders including judicial or administrative interpretations (whether written or verbal) of any of the foregoing; (ii) regulations, by-laws and rules of self-regulatory organizations; (iii) with respect to Bank, any

applicable rule, regulation, restriction, requirement or contractual term of VISA, MasterCard, American Express or other card network; and, (iv) rulings, injunctions, judgments, orders, consent decrees, determinations or findings of, or agreements with, any arbitrator, court or other Governmental Authority applicable to, or binding upon, a Party or to which such Party is subject, as the same may be amended and in effect from time to time.

“Bank Marketing Channel” means any account acquisition channel other than NYUAA Marketing Channels”

“Business Day” means any day, except Saturday, Sunday or a day on which national banks are authorized or obligated by Applicable Law to be closed.

“Consumer Complaint” means any submission (using whatever means or media) by or on behalf of an individual (including consumers, Members, and Customers) that expresses dissatisfaction with, or communicates suspicion of wrongful conduct by, an identifiable Person related to such individual’s personal experience with any aspect of the Bank’s products, policies or services including the Program and the conduct of GIP.

“Contract Year” means the consecutive twelve (12) month period following the Effective Date and each consecutive twelve (12) month period following the anniversary of the Effective Date during the term of the Agreement.

“Credit Card Account” means an open-end consumer credit account opened pursuant to the Program that is accessed utilizing a card, plate and/or any other device or instrument.

“Credit Card Program” means those credit card programs and services, and the promotion thereof, Bank agrees to offer pursuant to this Agreement from time to time.

“Customer” means any participant in the Program.

“Deposits” means consumer deposit products such as money market deposit accounts, certificate of deposit accounts, checking and savings accounts, checking accounts with debit card access and money market deposit account and certificate of deposit account individual retirement accounts.

“Deposit Account” means a consumer deposit account opened pursuant to the Program.

“Deposit Program” means those Deposits and related programs and services, and the promotion thereof, Bank agrees to offer pursuant to this Agreement from time to time.

“ECOA” means the Equal Credit Opportunity Act (15 U.S.C. §1691 *et. seq.*) and its implementing regulation, Regulation B (12 C.F.R. Part 1002), as each are amended.

“Effective Date” has the meaning given such phrase in the preamble.

“Eligible Royalties” means all Royalties that accrue and are payable pursuant to Schedule A, except those Royalties described in Sections A.4, B.4, and C.4 of Schedule A.

“Event” has the meaning ascribed to such word in Subsection 11(e).

“Financial Service Product” means any credit card program, charge card program, debit card program (including pre-paid card program), installment loan program, revolving line of credit or loan program, financial brokerage products or services program, deposit program, travel and entertainment card program or the functional equivalent (e.g., token, digital wallet, or card-not-present transaction) of any product or service in the foregoing, and any other financial service programs or products mutually agreed upon by the Parties.

“GIP Account” means a Credit Card Account opened pursuant to a GIP in which NYU complies with the GIP provisions of this Agreement.

“GLBA” refers to the Gramm-Leach-Bliley Act and its implementing regulation, Regulation P (12 C.F.R. 1016.1 et. seq.), as each may be amended from time to time and includes, when effective, the framework that replaces the Department of Commerce International Safe Harbor Privacy Principles.

“Governmental Authority” means, with respect to any Person, any nation or government, any State or other political subdivision thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any court or arbitrator having jurisdiction over such Person. With respect to the Bank, Governmental Authority includes the Bureau of Consumer Financial Protection (a/k/a Consumer Financial Protection Bureau) and the Office of the Comptroller of the Currency.

“Governmental Entity” means any federal, state, local or foreign government or any court of competent jurisdiction, administrative agency or commission or other governmental authority or instrumentality, domestic or foreign.

“Group Marketing Effort” or **“GIP”** means account acquisition marketing using any one or more NYUAA Marketing Channels.

“Information” means the terms of this Agreement, any proposal, financial information, performance information, proprietary information (including trade secrets), legally privileged information, Marketing Lists, Nonpublic Personal Information, and information of third parties provided by or on behalf of one Party (the **“Disclosing Party”**) to the other party (or, to the extent applicable, its Subcontractors or any of their respective Representatives, and collectively with the other Party, **“Recipient”**) prior to, contemporaneously with, or subsequent to, the execution of this Agreement are confidential as of the date of disclosure. Information shall be deemed to include information developed, produced or derived from any of the foregoing.

“Impact” has the meaning ascribed to such word in Subsection 11(f).

“Marketing List” means an updated and current list (in a format designated by Bank) containing non-duplicate names, with corresponding valid postal addresses and, when available, telephone numbers (including area codes) and e-mail addresses of all Members who are at least eighteen years of age (except twenty-one years of age for residents of the Commonwealth of Puerto Rico), segmented by zip codes or other mutually selected membership characteristics.

“Member” means (i) alumni of NYU, (ii) members of NYUAA who are not matriculated students at NYU, and (iii) other potential participants mutually agreed to by NYUAA and Bank.

“Net Retail Spend” means with respect to a Credit Card Account in good standing, as of a given date of determination and for a given period of time during the Term, the aggregate retail purchases (in U.S. dollars) debited to a Credit Card Account, net of: (i) transactions that relate to refunds, returns and/or unauthorized transactions; (ii) transactions that are cash advances or equivalents (*e.g.*, bank cash advances, direct deposit cash advances, wire transfers, balance transfers, access checks, the purchase of wire transfers, person to person money transfers, money orders, bets, ATM withdrawals, off-track wagers, lottery tickets or transactions, casino gaming chips, or crypto-currencies); and/or (iii) Credit Card Account fees, costs and charges (*e.g.*, balance transfer fees, finance charges, late fees, overlimit fees, annual fees, returned check, cash advance transaction fees, credit insurance premiums, debt cancellations charges, non-product or service-related transactions).

“Nonpublic Personal Information” has the meaning ascribed to such phrase in 12 C.F.R. §1016.3(p) (1) and includes (a) information relating to the customers of the Bank or their accounts with Bank, and (b) any record about an individual that is a consumer report as such term is defined in the Fair Credit Reporting Act (15 USC 1681 et seq.) or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of the Bank. Nonpublic Personal Information includes any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available such as the fact that such consumers are or were Customers.

“NYUAA Activities” means any duties or obligations of, or undertaken by NYU (including such services further delegated to or undertaken by any Subcontractor (including their respective Representatives)) pursuant to this Agreement or in furtherance of the Program (including Group Marketing Efforts).

“NYU Affiliate” means any Affiliate of NYU operating solely within the United States.

“NYUAA Marketing Channels” means NYUAA events and digital channels (*e.g.* e-newsletter and website) and any other marketing channels mutually agreed upon by the Parties.

“NYUAA Trademark” means any design, emblem, image, visual representation (including any font), logo, service mark, trade dress, trade name, or trademark and other indicia of origin used or acquired by NYU or its Affiliates and any variation thereof and any translation of any of the foregoing prior to or during the Term, as set forth on Schedule C, including any revised, replacement, or successor trademarks of such NYUAA Trademarks. Schedule C will be deemed automatically amended without further action of the Parties to include any additional design, image, visual representation, logo, service mark, trade dress, trade name, or trademark that NYU approves for Bank’s use in connection with the Program, and any new NYUAA Trademark developed as a successor or replacement of, or as a modification to, any NYUAA Trademark.

“Party” or ***“Parties”*** has the meaning ascribed to each such word in the preamble.

“Person” means and includes an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, other business entity or a Governmental Entity (including any department, agency or political subdivision thereof).

“Premium Reward Account” means a Credit Card Account carrying a Premium Reward Enhancement.

“Premium Reward Enhancement” means a premium Reward Enhancement as provided through Bank and offered as part of the Program. A Premium Reward Enhancement may be marketed under a name (e.g., Bank of America Cash Rewards™), as determined by Bank from time to time, in its sole discretion.

“Premium Reward GIP Account” means a Premium Reward Account opened pursuant to a GIP in which NYU complies with the GIP provisions of this Agreement.

“Program” means those programs and services, and the promotion thereof, of those Financial Service Products Bank offers pursuant to this Agreement to the Members from time to time.

“Program Trademarks” means any design, image, visual representation, logo, service mark, trade dress, trade name, or trademark developed either jointly or by either Party (including its Affiliates) during the Term and used to promote or identify products or services offered by Bank through the Program. Program Trademarks may but need not necessarily consist of one or more NYUAA Trademarks, with or without other elements.

“Representative” means, with respect to a Person, any employee, officer, director, or agent of such Person. In the case of a partnership, Representative also includes general and limited partners thereof. In the case of a limited liability company or corporation, Representative also includes members of such company or corporation.

“Reward Account” means a Credit Card Account carrying a Reward Enhancement.

“Reward Enhancement” means a reward enhancement as provided through Bank and offered as part of the Program. A Reward Enhancement may be marketed under a name (e.g., Cash Rewards™), as determined by Bank from time to time, in its sole discretion.

“Reward GIP Account” means a Reward Account opened pursuant to a GIP in which NYU complies with the GIP provisions of this Agreement.

“Royalties” means the compensation designated as such and set forth in Schedule A.

“Subcontractor” means each Person (including an Affiliate of NYU) to which a Party has directly or indirectly delegated or subcontracted or who have undertaken all or any portion of its obligations or activities under this Agreement. “Subcontractor” includes a Subcontractor of a Subcontractor.

“Term” has the meaning ascribed to such word in Subsection 8(b).

“Training” has the meaning ascribed to such word in Subsection 2(j)(1).

Rules of Construction and Interpretation. Except as otherwise expressly provided in this Agreement, the following rules apply:

- the singular includes the plural and the plural includes the singular;
- “or” is disjunctive, but not necessarily exclusive, except where clearly indicated by the context;
- “and” is conjunctive only;
- “include” and “including” are not limiting;
- “any” means “any or all”;

- a reference to any agreement (including this Agreement) or other contract includes any permitted modifications, supplements, amendments and replacements;
- any copy of any contract (including this Agreement) or other document refer to a correct and complete copy;
- the “transactions contemplated by this Agreement” refer, collectively, to each transaction contemplated by or provided for in this Agreement.
- a reference in this Agreement to a Section, Schedule or Exhibit is to the Section of or Schedule or Exhibit to this Agreement unless otherwise expressly provided (for example, where a particular Section, Schedule or Exhibit is the intended reference);
- the Schedules and Exhibits referred to herein shall be construed with and as an integral part of this Agreement to the same extent as if they were set forth verbatim herein.
- a reference to a Section or paragraph in this Agreement shall, unless the context clearly indicates to the contrary, refer to all sub-parts or sub-components of any said Section or paragraph;
- “hereunder,” “hereto,” “hereof,” and “herein,” and other words of like import shall, unless the context clearly indicates to the contrary, refer to the whole of this Agreement and not to any particular clause hereof;
- “days” means calendar days unless otherwise noted through the use of the phrase “Business Days”;
- references to “months” and “years” means calendar months and years unless otherwise specified;
- text enclosed in parentheses has the same effect as text that is not enclosed in parentheses;
- any reference made in this Agreement to a statute or statutory provision means such statute or statutory provision as it has been amended through the date as of which the particular portion of this Agreement is to take effect, or to any successor statute or statutory provision relating to the same subject as the statutory provision so referred to in this Agreement, and to any then applicable rules or regulations promulgated thereunder, unless otherwise provided;
- unless the context otherwise requires or unless otherwise provided herein, all references in this Agreement to a particular agreement, instrument or document also shall refer to all schedules or exhibits, renewals, extensions, modifications, amendments and restatements of such agreement, instrument or document;
- references to any amount as on deposit or outstanding on any particular date means such amount at the close of business on such day;
- any payment that otherwise would be due on a day that is not a Business Day shall be deemed to be due on the first Business Day thereafter;
- References to money or dollar amounts (“\$”) means United States Dollars unless otherwise specified;
- A reference to any Person includes such Person’s successors and assigns;
- accounting terms not otherwise defined shall be construed in accordance with United States generally accepted accounting principles;
- terms other than those defined within this Agreement shall be given their plain English meaning, and those terms, acronyms and phrases known in the applicable industry and business contexts shall be interpreted in accordance with their generally known meanings in those industries or other business contexts; and,
- when calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded and, if the last day of such period is not a Business Day, the period shall end on the next succeeding Business Day.

2. RIGHTS AND RESPONSIBILITIES OF NYU

(a)(i) NYU agrees that during the Term it will endorse the Program exclusively and that neither it nor NYU Affiliate will, by itself or in conjunction with others, directly or indirectly, within the United States: (A) endorse, sponsor, advertise, aid, develop, market, solicit proposals for programs offering, or discuss with any organization (other than Bank) the providing of, any Financial Service Products of any entity other than Bank to Members; (B) license, allow others to license, or use or allow to exist the use by others of the NYUAA Trademarks in relation to or for promoting any Financial Service Products (or the use of any Financial Service Products) of any entity other than Bank to Members; and (C) sell, rent or otherwise make available or allow others to sell, rent or otherwise make available any of its marketing lists, 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 Bank. In addition, if any NYUAA Activities consists of selling any product or service to Members, such sales shall not prefer any payment product or method of payment over any Financial Service Products offered under the Program. Notwithstanding anything else in this Agreement to the contrary, (y) NYU may accept or permit advertising from any financial institution provided that the advertisement does not contain an express or implied endorsement by NYU of said financial institution or advertising for a Financial Service Product to Members and (z) NYU may accept or permit advertising from any financial institution provided that the advertisement does not contain advertising for a Financial Service Product to Members. This Subsection 2(a)(i) will not apply to activities by NYU or any NYU Affiliates outside the United States and its territories.

(ii) Bank acknowledges that NYU has a relationship with New York University Federal Credit Union (the “**Credit Union**”) and that the Credit Union provides financial products and services to students, alumni, faculty, and staff of NYU and uses certain NYU Trademarks in connection with the providing of such financial products and services. Notwithstanding anything in this Agreement to the contrary, this Agreement will not be construed to prohibit NYU from allowing the Credit Union to provide such services, utilize certain trademarks of NYU in conjunction with the Credit Union’s products and services, provided that NYU will not provide Marketing Lists or other lists of Members to the Credit Union for the purpose of soliciting Financial Service Products.

(iii) Notwithstanding anything contained in this Agreement to the contrary, Bank acknowledges and agrees that NYU may solicit proposals for and offer programs for financial service products to its employees (both faculty and staff) and make available mailing lists or information about its employees in relation to or for promoting any such programs, and that certain Members who are currently employed as faculty or staff may be included in such mailing lists or promotions solely in their capacity as employees of NYU. Such programs and promotions offered to NYU faculty and staff are not subject to this Agreement.

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

(c) Subject to NYU’s approval rights as set forth in this Section 2, NYU authorizes Bank to solicit Members for participation in the Program by mail, direct promotion, internet, email, advertisements, banking centers, ATMs, telephone or any other means agreed to by NYU. In addition, NYU will permit Bank to conduct promotion campaigns at least two major alumni events each year to be determined by NYU in its discretion and with terms of Bank’s attendance to be determined by NYU in its discretion.

(d) NYU will have the right of prior approval of the depiction of an NYUAA Trademark in all Program advertising and solicitation materials to be used by Bank. If NYU requests that Bank reissue Program materials, including reissuing new credit cards, because of a change in the NYUAA Trademarks and Bank is unable to use up inventory of collateral and similar materials, Bank will inform NYU of the costs of such request. If the Parties are unable to agree on an allocation of the cost for such reissuance then Bank, in its sole discretion, may refuse NYU's request. If the Parties agree on an allocation of costs for the reissuance, Bank may deduct such costs from any Royalties due NYU. If such costs exceed Royalties then due NYU, upon demand NYU shall promptly reimburse Bank for all such costs.

(e) At least once annually and within 30 days of Bank's request, NYU shall provide Bank with its entire and complete updated Marketing List free of any charge; provided, however, that NYU shall not include in any Marketing List the name and/or related information regarding any Member who has expressly requested that NYU not provide his/her personal information to third parties or who is under the age of eighteen at the time the information was collected. In the event that Bank incurs a cost because of a charge assessed by NYU or its agents for an initial Marketing List or an update to the Marketing List, Bank may deduct such costs from any payments (including Royalties) then due NYU. If such costs exceed such payments, upon demand NYU shall promptly reimburse Bank for all such costs. Within 30 days of the Effective Date, NYU shall provide the first Marketing List, containing the required information for at least one hundred eighty thousand (180,000) non-duplicate Member names, as soon as possible but no later than 30 days after NYU's execution of this Agreement. With each delivery to Bank, NYU represents and warrants that the Marketing List has been prepared in accordance with Applicable Law and Bank's instruction.

(f) NYU shall, and shall cause any NYU Affiliates to, only provide information to or otherwise communicate (including chat and social media) with Members or potential Members about the Program with Bank's prior written approval, except for current advertising and solicitation materials provided by Bank to NYU. Notwithstanding the above, NYU 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 Bank to NYU. Any correspondence received by NYU that is intended for Bank (e.g., applications, payments, billing inquiries) shall be forwarded to the Bank account executive via overnight courier within 24 hours of receipt. All reasonable overnight courier expenses incurred by NYU shall be paid by Bank. For any inquiries or requests received by NYU that are intended for Bank (e.g. general questions, name/address changes, deceased notifications), the person making the inquiry will be referred to contact the Bank.

(g) NYU hereby grants Bank and its Affiliates a limited, non-exclusive license to use the NYUAA Trademarks in connection with the Program. Subject to Section 13(g), this license transfers to the permitted assignees of this Agreement. This license will remain in effect for the Term and as provided in Subsection 11(d). This license shall apply to the NYUAA Trademarks, notwithstanding the transfer of such NYUAA Trademarks by operation of law or otherwise to any permitted successor, corporation, organization, or individual. NYU will provide Bank all NYUAA Trademark production materials (e.g., camera ready art) required by Bank for the Program as soon as possible but no later than thirty (30) days after NYU's execution of this Agreement. Nothing stated in this Agreement prohibits NYU from granting to other persons a license to use the NYUAA Trademarks in conjunction with the providing of any other service or product, except for any Financial Service Products offered to Members as provide for in Subsection 2(a). As of the Effective Date and throughout the Term, NYU represents, warrants and covenants to Bank it has the exclusive right to grant such license to the Bank for use as contemplated hereby. The foregoing sentence shall survive the expiration or earlier termination of this Agreement.

(h) All Program Trademarks, with the exception of Program Trademarks that consist of or contain a NYUAA Trademark, with or without other elements, shall belong exclusively to Bank. NYU may not (and shall cause their Subcontractors and their respective Representatives not to) use any Program Trademark, except to promote the Program or any goods or services offered by Bank through the Program and only to the extent consistent with this Agreement. NYU shall not (and shall cause their Subcontractors and their respective Representatives not to) register or attempt to register any Program Trademark. Bank will not register or attempt to register any NYUAA Trademark. The provisions of this Subsection 2(h) shall survive the expiration or earlier termination of this Agreement.

(i) Within two Business Days of receipt, NYU shall refer (and shall require its Subcontractors and their respective Representatives to refer) each Consumer Complaint received to Bank, along with all relevant documentation and information reasonably related thereto to the extent within the possession or control of NYU (or its Subcontractors and their respective Representatives). To the extent reasonably requested, NYU shall (and shall require its Subcontractors and their respective Representatives to) reasonably assist Bank in the Bank's resolution and remediation of each Consumer Complaint. The provisions of this Subsection 2(i) shall survive the expiration or earlier termination of this Agreement for a period of two years.

(j)(1) From time to time, Bank shall provide procedures, training and guidelines regarding Applicable Law as applied to Bank concerning certain NYUAA Activities conducted in furtherance of or related to the Program ("**Training**"). Initially and on an annual basis NYU shall and shall require its Subcontractors and their respective Representatives to successfully complete such Training. Upon Bank's request, NYU shall cease to perform, and shall cause any Subcontractors (and their respective Representatives) to cease performing NYUAA Activities if Training, as initially or periodically required thereafter, is not completed by NYU, such Subcontractor (and their respective Representatives), as the case may be, to the Bank's satisfaction.

(2) Upon periodic request from Bank, NYU agrees to affirm (and to cause its Subcontractors and their respective Representatives to affirm) continued compliance with the obligations, responsibilities, representations and warranties under this Agreement (including Training) in writing. NYU grants (and to cause its Subcontractors and their respective Representatives to grant) Bank the right to monitor and review such compliance on the part of NYU and its Subcontractors (and its and their respective Representatives).

(3) NYU shall, and shall require its Subcontractors (and their respective Representatives) to provide NYUAA Activities in accordance with the terms and conditions of the Agreement, Applicable Law, the Training and Bank's reasonable instruction. NYU shall be responsible for the full, faithful, complete, accurate and timely performance of all NYUAA Activities, whether performed by NYU or any Subcontractor (including their respective Representatives). NYU shall be liable to Bank as provided herein for any act or omission of its Subcontractors (and its Representatives) in connection with the performance or failure to properly perform any of NYU's obligations under this Agreement, including the NYUAA Activities. The provisions of this paragraph (3) shall survive the expiration or earlier termination of this Agreement for a period of two years.

(k) Upon prior written notice, NYU shall permit Bank and shall require its Subcontractors (and their respective Representatives) to permit, facilitate, and cooperate with Bank's (including Bank's Representatives) audit, inspection, monitoring, testing, and review of NYU and Subcontractors (and their respective Representatives) with respect to NYU's and its Subcontractor's (and their respective Representative's) policies, procedures and controls in connection and compliance with Applicable Laws

and records as they relate to the Program, Information security, NYUAA Activities and performance of NYU's duties and obligations hereunder (including NYUAA Activities and whether undertaken or conducted by or delegated to NYU's Subcontractors and their respective Representatives). Bank shall have the right to determine the scope of such audits, tests, or inspections, provided that such audits, tests, or inspections are consistent: (i) with Applicable Law and (ii) with how Bank would conduct such audit, test, or inspection under the relevant circumstances across its US retail consumer credit card program. Bank shall bear all costs associated with such audits, tests, or inspections. The Parties shall mutually determine the date, time, location and duration of the audit, tests or inspection, provided such date is within 30 days of Bank's written notice. NYU shall promptly remediate and require its Subcontractors (and their respective Representatives) to promptly remediate any deficiencies found with respect to compliance with Applicable Laws, and this Agreement as a result of such audits, tests or inspections. NYU's failure or refusal to (1) cooperate and require its Subcontractors (and their respective Representatives) to cooperate as aforesaid or (2) promptly remediate any such deficiencies and require its Subcontractors (and their respective Representatives) to promptly remediate as aforesaid within 30 days of written notice to NYU shall be deemed a material breach by NYU of this Agreement. The provisions of this Subsection 2(k) shall survive the expiration or earlier termination of the Term for a period of two years.

(l) Each Party shall maintain (and, to the extent permitted by Applicable Law, make available) at no additional cost to other Party, in a reasonably accessible location, all records pertaining to the Program for the greater of: (i) a period of 7 years from the date of creation or the date to which such records relate; or (ii) as required by Applicable Law. Records available for review shall exclude any records: (i) pertaining to Members not in connection with the Program; and (ii) that are proprietary or confidential and unrelated to the Program. For the avoidance of doubt, Bank shall not, and is under no obligation to, make available any records pertaining to Customers, Credit Card Accounts, Deposit Accounts, portfolio information, or Nonpublic Personal Information. Each Party will give prior notice to the other Party of requests by any Governmental Authority for the other Party's Information within the Party's possession or control (including, if applicable, that of its Subcontractors and their respective Representatives), provided that, with respect to Bank, Bank is authorized by Applicable Law or such Governmental Authority to give such notice. At the other Party's written request, the Party shall reasonably cooperate with the other Party in seeking a protective order with respect to such Information. The provisions of this Subsection 2(l) shall survive the expiration or earlier termination of the Term and the conclusion of the Wind-Down Period.

(m) If any NYU Subcontractor refuses or fails to timely perform any NYUAA Activity required by NYU pursuant to this Agreement, including for example Training, NYU shall promptly notify Bank and cease utilizing such Subcontractor for any NYUAA Activities.

(n) NYU acknowledges that Bank has directed NYU's attention to 12 C.F.R. § 1026.57(b).

3. RIGHTS AND RESPONSIBILITIES OF BANK

(a) Bank shall design, develop, maintain, and administer the Program in substantial compliance with Applicable Law. The Parties agree that this Agreement may not be terminated pursuant to Section 11(a) herein for a breach of this Section 3(a) unless such breach causes material adverse impact to the Program, NYU, or a majority of Customers under the Program.

(b) Bank shall design all advertising, solicitation, and promotional materials used in the Program including, if Bank provides specimen marketing materials pursuant to Subsection 10(a). Bank reserves

the right of prior written approval of all materials concerning or related to the Program that may be developed by or on behalf of NYU.

(c) Bank shall bear all costs of Bank's production and mailing materials for the Program used in Bank Marketing Channels.

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

(e) Bank shall use the Marketing Lists provided pursuant to this Agreement in a manner consistent with this Agreement and shall not permit those entities handling the Marketing Lists to use them for any other purpose. Bank shall have the sole right to designate Members on these Marketing Lists to whom promotional material shall or shall not be sent. These Marketing Lists are and shall remain the sole property of NYU. However, Bank may maintain separately and shall own all information that it obtains as a result of an account relationship or an application for an account relationship. This information becomes a part of Bank's files and shall not be subject to this Agreement; provided however that Bank shall not use this separate information in a manner that would imply an endorsement by NYU.

(f) Notwithstanding anything contained in the Agreement to the contrary, NYU acknowledges and agrees that Bank may market any financial service products or services that Bank or any Bank Affiliate offers (e.g., credit cards and deposit products, collectively "**Bank Products**") contemporaneously with the promotion of Deposits and that such Bank Products are not subject to this Agreement. However, Bank agrees that it will not, when using NYU's Marketing Lists to market Deposits, include reference to Bank Products (excluding Deposits Offers, as defined below) in the initial solicitation material without NYU's consent. "**Deposits Offers**" means any and all Deposits benefits and features and any and all other products and services that relate to or have a connection with Deposits (e.g. Online Banking and \$0 Trade). Bank may maintain separately all information it obtains as a result of an account application for, and/or an account relationship in connection with, Deposits or a Bank Product. All such information becomes a part of Bank's own files and will not be subject to the Agreement.

(g) Bank's use of any Subcontractor or third party shall not relieve the Bank of any of its obligations under this Agreement. Bank shall be liable for the performance of its Subcontractors in connection with Bank's duties or obligations in this Agreement to the extent provided for herein. No provisions of the Agreement shall create or be construed as creating any contractual relation between NYU and any Bank Subcontractor. This Subsection shall survive the expiration or termination of this Agreement for a period of two years.

4. REPRESENTATIONS AND WARRANTIES

(a) The Parties each represent and warrant to the other Party that as of the Effective Date:

(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, release, approval, or authorization from any third-party is required in connection with the negotiation, execution, delivery and performance of this Agreement, except such as have been obtained and are in full force and effect; and,

(v) The execution, delivery and performance of this Agreement by such Party shall not constitute a violation of Applicable Law.

(b) As of the Effective Date, throughout the Term, and during the period that NYUAA Trademarks remain in use hereunder, NYU represents and warrants to Bank that NYU has the right and power to license NYUAA Trademarks to Bank for use as contemplated by this Agreement and to provide the Marketing List(s) to Bank for the promotion of the Program. Each Party shall promptly notify the other Party upon learning of any claims or complaints relating to the license or the use of any NYUAA Trademarks or Marketing Lists. The provisions of this Subsection 4(b) shall survive the expiration or earlier termination of this Agreement.

(c) As of the Effective Date and throughout the Term, NYU represents and warrants that it is not the subject of any sanctions imposed by Applicable Law administered or enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority (collectively, "**Sanctions**"). NYU represents and warrants that during the Term it will not violate any Sanctions. The provisions of this Subsection 4(c) shall survive the expiration or earlier termination of this Agreement.

5. ROYALTIES

(a) During the Term and subject to the terms and conditions of this Agreement, Bank shall pay Royalties as described in Schedule A to University for the benefit of NYU with respect to accounts in good standing.

(b) No compensation or payments shall be paid to NYU for the benefit of NYUAA until a Schedule B (W-9 Form and ACH Form) or other IRS required form (*e.g.*, W-8) is fully completed and returned to Bank. Except as otherwise provided in Schedule A, payment of Royalties then due shall be made, in arrears, approximately 45 days after the end of each calendar quarter.

(c) Notwithstanding anything in this Agreement to the contrary, if a student should become a Customer, Bank will not be required to pay Royalties or any other compensation to NYU for the benefit of NYUAA with regard to, as a result of opening, or based upon any student Credit Card Accounts.

6. PROGRAM ADJUSTMENTS

Bank has the right to make periodic adjustments to the Program, including changes to its terms and features (including the terms and features of the Financial Service Products offered pursuant to the Program).

7. CONFIDENTIALITY

(a) Information will not be disclosed by the Recipient to any other Person, except as expressly permitted under this Agreement or as mutually agreed in writing. These obligations of confidentiality will not apply to Information that: (a) is or comes to be in the public domain other than as a consequence of a breach of this Agreement by the Recipient; (b) at the time of disclosure was known to

the Recipient through lawful means; (c) is obtained by the Recipient after the time of disclosure from a third party who is free to make such disclosure without restriction; (d) was independently developed by an employee of the Recipient that has not had access directly or indirectly to Information; or (e) is disclosed pursuant to a lawful order or request of a court, regulatory agency, or accrediting body, provided that the Recipient has given prompt written notice to the Disclosing Party to enable the disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure and, in the event that the Disclosing Party is unable to prevent or restrict such disclosure, has only disclosed that portion of the Information that it is legally required to disclose. The Recipient acknowledges that the loss arising from a breach of these confidentiality obligations cannot adequately be compensated solely by money damages and will cause the Disclosing Party to suffer irreparable harm, such that a remedy at law for breach would not be adequate, and that the Disclosing Party will be entitled to seek injunctive relief for such breach in addition to all other available remedies.

(b) A Recipient shall be permitted to disclose such Information (i) to its Agents as necessary for the performance of their respective duties, provided that such Agents agree to treat the Information as confidential and such Agent is subject to enforceable confidentiality provisions at least as restrictive in this Agreement or (ii) as required by Applicable Law or requested by any Governmental Authority. Notwithstanding the foregoing, the Recipient shall be liable for any breach of the Section by its Agents.

(c) Each Recipient shall keep (and shall require its Subcontractors and their respective Representatives to keep) all Information (including Nonpublic Personal Information) confidential and shall not make any copies of any kind or transfer, provide, trade, give away, barter, lend, send, sell, or otherwise disclose (collectively “**transfer**”) (and shall require its Subcontractors and their respective Representatives not to make or transfer) any such information to any other entity or individual for any reason, (i) except as required by this Agreement or for uses agreed to in writing by the Disclosing Party prior to any such transfer or (ii) with respect to Bank, except as required or permitted by Applicable Law or Governmental Authority or in a manner implemented by Bank from time to time in the exercise of its reasonable judgment and consistently applied across its US retail consumer credit card program. For the avoidance of doubt, each Party shall be liable for any breach of this Section by its Subcontractors and their respective Representatives. If a Recipient receives a request or demand to disclose Information (including Nonpublic Personal Information) pursuant to a subpoena, order of court of competent jurisdiction or by judicial or administrative agency or legislative body or committee, the Recipient will (with respect to Bank, only to the extent permitted by Applicable Law or Governmental Authority): (i) immediately notify the Disclosing Party of the existence, terms, and circumstances surrounding such request; (ii) consult with the Disclosing Party on the advisability of taking legally available steps to resist or narrow such request; and (iii) if disclosure of such information 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 such information to be disclosed that the other Party designates.

(d) During the Term and thereafter until NYU and its Subcontractors and their respective Representatives and Agents no longer have in their possession or control Bank’s Information NYU will have, maintain and routinely assess (and require its Subcontractors and their respective Representatives and Agents to have, maintain and routinely assess) an information security program that is designed, among other things, to: (i) ensure the security, integrity and confidentiality of confidential information, including Information (ii) protect against any anticipated threats or hazards to the security or integrity of confidential information, including Information, which includes the use of up-to-date commercially available virus and malicious code detection and protection products; (iii) protect against unauthorized access to or use of confidential information, including Information, that could result in substantial harm

or inconvenience to a Member or applicant in respect of the Program; and (iv) ensure the proper return or disposal of confidential information, including Information.

(e) During the Term and thereafter until NYU and its Subcontractors and their respective Representatives and Agents no longer have in their possession or control Bank's Information NYU will (and require their Subcontractors and their respective Representatives and Agents to): (i) notify Bank in writing within twenty four hours; and (ii) promptly call the Bank of America Incident Response Team at (800) 207-2322, Option 1 (or such other toll-free number provided by Bank from time to time) in the event of a breach of security or the detection of any suspicious activity relating to an information security breach or attempted breach that could include Information, whether in NYU's possession or in the possession of an affiliate, employee, volunteer, agent, and/or Representative. NYU will cooperate fully (and require its Subcontractors and their respective Representatives and Agents to cooperate fully) with Bank to investigate, resolve and control security incidents. NYU will reimburse Bank for its cost of producing and mailing any notice required by Applicable Law that informs the Customer of a security breach and will pay for any credit monitoring service or other remedy that is provided to affected Customers. As of the Effective Date, and throughout the Term, NYU represents and warrants that it monitors industry standard information channels for newly identified system vulnerabilities and fixes or patches any identified security problem in an adequate and timely manner.

(f) The provisions of this Section 7 shall survive the expiration or earlier termination of this Agreement.

8. TERM OF AGREEMENT

(a) The initial term of this Agreement shall begin on the Effective Date and unless sooner terminated in accordance with this Agreement or by further agreement of the Parties, end on June 30, 2027 ("**Initial Term**").

(b) This Agreement shall automatically extend at the end of the Initial Term or any renewal term for successive two-year periods, unless sooner terminated in accordance with this Agreement or by further agreement of the Parties (each a "**Renewal Term**"; and together with the Initial Term, the "**Term**"), unless either Party gives written notice of its intention not to allow auto-renew at least 90 and not more than 180 days, prior to the end of the then current Term.

9. STATE LAW GOVERNING AGREEMENT

(a) This Agreement will be governed by and construed in accordance with the laws of the State of New York, without regard to principles relating to conflicts of law.

(b) The courts of the State of New York and the United States District Court for the Southern District of New York will have exclusive jurisdiction over the Parties with respect to any dispute or controversy between them arising under or in connection with this Agreement and, by execution and delivery of this Agreement, the parties to this Agreement submit to the jurisdiction of those courts, including, but not limited to, the in personam jurisdiction of those courts, and waive any objection to such jurisdiction on the grounds of venue or forum non conveniens, or the absence of in personam jurisdiction.

10. GROUP MARKETING

(a)(i) With Bank's prior written consent, NYU may conduct limited marketing and solicitation efforts for credit card products offered under the Program using NYUAA Marketing Channels; provided NYU pay for all marketing and solicitation expenses associated with such efforts other than the specimen marketing materials provided by Bank as described below; and further provided the Parties mutually agree that such marketing shall qualify for treatment pursuant to this Section 10 ("**Group Marketing Effort**" or "**GIP**"). Bank may provide, in its sole and unfettered discretion specimen marketing materials for NYU's use in connection NYU's Group Marketing Efforts. If Bank makes such specimens available, NYU will only use such specimens to prepare all marketing materials used in Group Marketing Efforts. Except for the specimen marketing materials, if any, provided by Bank, NYU will be responsible for all expenses with regard to any Group Marketing Effort. NYU will seek Bank's approval at least sixty (60) days prior to its desired date to engage in any GIP.

(ii) Throughout the term of this Agreement, and subject to Section 10(c), NYU will market the Program on NYUAA's home page, account profile or "members only" pages, and other prominent (i.e., high viewership) locations within the internet site(s) of NYUAA, as well as email promo boxes. The advertisements may include a hyperlink to another internet site (an application site) or may provide a telephone number to enable a person to apply for the advertised Financial Service Product. NYU has sole discretion in whether to add or remove marketing channels described in this Section 10(a)(ii), provided that such addition or removal complies with Section 10(c). NYU will modify or remove such advertisements within twenty-four (24) hours of Bank's request. To enable Bank to view all Program material, NYU will provide Bank with the ability (including unique login credentials) to access any and all pages within the NYUAA internet site(s), including any "members only" or other restricted access pages that display Program material. NYU will be eligible for the GIP royalties set forth on Schedule A for any Credit Card Accounts generated pursuant to such a hyperlink or telephone number.

(iii) NYU will place advertisements of the Program provided by Bank on the first page of NYUAA's electronic newsletters to Members at least four times per Contract Year during the term of the Agreement. The advertisements may include a hyperlink to another internet site (an application site) or may provide a telephone number to enable a person to apply for each Financial Service Product. NYU has sole discretion in whether to discontinue the advertising as provided in this Section 10(a)(iii), provided that such discontinuation complies with Section 10(c). NYU will be entitled to the GIP Royalty specified in Schedule A, subject to the other terms and conditions of this Agreement, for any Credit Card Accounts generated pursuant to such a hyperlink or telephone number.

(b) All GIP marketing materials must be coded by NYU as instructed by Bank for tracking purposes. Credit Card Accounts generated from any GIP will entitle NYU to the Royalty for GIP specified in Schedule A, subject to the other terms and conditions of this Agreement. Notwithstanding anything in this Agreement to the contrary, Credit Card Accounts opened from or arising out of marketing materials available to, or inquiries from, Members which do not contain or reference such coding shall not constitute GIP Accounts and will not qualify for any GIP Royalty.

(c) Bank will have the right of prior approval of all marketing materials to be used in any Group Marketing Effort. Notwithstanding anything in this Agreement to the contrary, Bank, in its sole and unfettered discretion, has control over the commencement, scope, timing, content, and continuation of any Group Marketing Effort. In furtherance of the above, NYU shall immediately discontinue any or all Group Marketing Efforts upon receipt of, and in accordance with any written notice from Bank requesting such discontinuance. NYU will not deviate from the approved materials and plan for any Group Marketing Effort.

(d) If NYU requests that Bank provide additional support beyond the activities described in Section 10(a) for any Group Marketing Effort, all mutually agreed upon costs incurred by Bank in producing and mailing materials created pursuant to any Group Marketing Effort or of supporting any such Group Marketing Effort will be promptly reimbursed by NYU upon demand.

(e) With respect to any Group Marketing Effort, NYU will comply and require its Subcontractors and their respective Representatives to comply with all Applicable Law, and Bank's instruction and Training.

(f) During the Term and as instructed by Bank, NYU may choose (but is not required) to conduct at its own expense additional mutually agreed upon Group Marketing Efforts for Deposits offered under the Program, including: (i) online marketing efforts (e.g., hyperlinks to a Bank Deposits application and/or Bank inbound application telephone number(s)), standalone e-mails, e-newsletters, welcome kit e-mails, and digital magazines; and (ii) offline marketing efforts, including placement of Deposit applications and/or Bank inbound application telephone number(s) within publication ads, magazine inserts, welcome kits, coupon books, member directories, statement messages, statement inserts, flyers, renewal notices, event notifications and VRU messaging.

(g) Subsections (c), (d), and (e) of this Section 10 shall survive the expiration or earlier termination of this Agreement.

11. TERMINATION

(a) In the event of any material breach of this Agreement by either Party, the other Party may terminate this Agreement by giving notice to the breaching Party. This notice shall (i) include a description of 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 60 days after receipt of notice, as provided herein (the "**Cure Period**"), then this Agreement shall terminate 60 days after the Cure Period.

(b) If either the Bank or NYU:

- (i) commences a voluntary case under Title 11 of the United States Code or the corresponding provisions of any successor laws;
- (ii) is subject to an involuntary case against such Party under title 11 of the United States Code or the corresponding provisions of any successor laws and either (A) the case is not dismissed by midnight at the end of the 60th day after commencement or (B) the court before which the case is pending issues an order for relief or similar order approving the case;
- (iii) is appointed a custodian by a court of competent jurisdiction, or such Party makes an assignment of all or substantially all of its assets to such a custodian (as that term is defined in title 11 of the United States Code or the corresponding provisions of any successor laws) for such Party or all or substantially all of its assets;
- (iv) fails generally to pay its debts as they become due (unless those debts are subject to a good-faith dispute as to liability or amount) or acknowledges in writing that it is unable to do so;
- (v) makes an assignment for the benefit of creditors or is subject to receivership, conservatorship or liquidation;
- (vi) becomes insolvent in that its liabilities exceed its assets; or
- (vii) ceases to conduct business for a period of over two weeks,

then the other Party may immediately terminate this Agreement upon written notice given by such Party as provided herein.

(c) Upon the expiration or earlier termination of this Agreement, Bank shall, except as set forth in Subsection 11(d), cease to use the NYUAA Trademarks for Program marketing purposes, provided that Bank may conclude all solicitations required by Applicable Law. Upon the expiration or earlier termination of this Agreement, Bank shall not claim any right, title, or interest in or to the NYUAA Trademarks or to the Marketing Lists. The provisions of this Subsection 11(c) shall survive the expiration or earlier termination of this Agreement.

(d) Bank shall have the right to prior review and approval of any notice in connection with, relating or referring to the expiration or earlier termination of this Agreement to be communicated by or on behalf of NYU or any NYU Affiliate to the Members. Upon expiration or earlier termination of this Agreement, Bank shall have until the later of (i) 120 days from the termination or expiration date (ii) or as soon as operationally reasonable by the Bank to: (x) suspend marketing and remove marketing materials from Bank's marketing channels; (y) use NYUAA Trademarks in connection with existing Deposit Accounts, Credit Card Accounts and those opened during such period; and, (z) remove NYUAA Trademarks from Program collateral and account materials in Bank's possession, such as statements, welcome packages, and card carriers. NYU shall not attempt to cause the removal of NYUAA Trademarks from any Person's credit devices, debit devices, checks or records of any Customer existing as of the day 90 days immediately following the expiration or earlier termination of the Term. Bank shall have the right to use NYUAA Trademarks on such credit devices, debit devices, checks and records until their normally scheduled reissue date or exhaustion and issue credit cards bearing NYUAA Trademarks until such date. The provisions of this Subsection 11(d) shall survive the expiration or earlier termination of this Agreement.

(e) If Applicable Law has or could have a material adverse effect on Bank's businesses (including the businesses of any Bank Affiliate providing a product or service under this Agreement), as determined in Bank's sole discretion ("**Event**"), Bank may notify NYU in writing of Bank's desire to renegotiate the terms of the Agreement to address the Event. If, within 30 business days after NYU's receipt of Bank's notice, the Parties have not, for whatever reason, fully executed an addendum that is satisfactory to both Parties, Bank shall have the right to terminate either the Deposits Program or the Credit Card Program, or the Agreement in its entirety, without penalty or liability to NYU, upon 90 days advance written notice. For the avoidance of doubt, in the event either the Deposit Program or Credit Card Program is terminated earlier than the Agreement as provided for in this Subsection 11(e), such terminated program remains subject to the Sections in the Agreement that by its express terms are meant to survive the expiration or earlier termination of this Agreement and the rights and obligations in any other provision of this Agreement with respect to the products offered under such program shall be null and void, in each case as if the termination of such program was a termination or expiration of the Agreement for just that program.

(f) If at any time during the Term any change in any card network's interchange rate(s) or similar rate(s), when measured separately or together with all other rate changes since the Effective Date, has more than a *de minimis* adverse impact on Bank's businesses (including the businesses of any Bank Affiliate providing a product or service under this Agreement), as determined by Bank in its sole discretion ("**Impact**"), then Bank may notify NYU in writing of Bank's desire to renegotiate the Royalties and any other financial terms in the Agreement to address the Impact. If, within 30 business days after NYU's receipt of Bank's notice, the Parties have not, for whatever reason, fully executed an addendum that modifies the Royalties and other financial terms to address the Impact, Bank shall have the right to terminate either the Deposits Program or the Credit Card Program, or the Agreement in its entirety, without penalty or liability to NYU and University, upon 90 days advance written notice. For the

avoidance of doubt, in the event either the Deposit Program or Credit Card Program is terminated earlier than the Agreement as provided for in this Subsection 11(f), such terminated program remains subject to the applicable survival provisions, if any and any other Section that by its terms are meant to survive the expiration or earlier termination of this Agreement and the rights and obligations in any other provision of this Agreement with respect to the products offered under such program shall be null and void, in each case as if the termination of such program was a termination or expiration of the Agreement for just that program.

(g) If ordered or requested to do so by any Governmental Authority, Bank may terminate this Agreement without further obligation or penalty upon reasonable prior notice to NYU effective as of the date specified in such notice or as required by such Governmental Authority.

(h) For the 1 year period immediately following the expiration or earlier termination of this Agreement for any reason, NYU agrees that neither NYU nor NYU Affiliate will, by itself or in conjunction with others, directly or indirectly, target any offer of a Financial Service Product or a related product to persons who were Customers. Notwithstanding the foregoing, NYU may, after the expiration or earlier termination of this Agreement, offer persons who were Customers the opportunity to participate in another financial service program endorsed by NYU, provided the opportunity is not only made available to such persons but rather as a part of a general solicitation to all Members and provided further that persons are not directly or indirectly identified as a customer of Bank, or offered any terms or incentives that differ from those offered to all Members. The provisions of this Subsection 11(h) shall survive the expiration or earlier termination of this Agreement.

(i) On or before the expiration or earlier termination of this Agreement, and with respect to Bank to the extent not inconsistent with Applicable Law or instruction from Governmental Authority, each Party agrees that it shall (and shall cause their Subcontractors and their respective Representatives to): (i) immediately destroy and purge from all its systems all Information, including Nonpublic Personal Information; and (ii) destroy within 30 days all such Information that is in tangible form, including any and all full or partial copies, or reproductions thereof in any medium whatsoever. Each Party shall have the right to retain a copy of the other Party's Information only to the extent required by Applicable Law or Governmental Authority provided that such retention is in accordance with and continues to be subject to the terms and conditions herein contained. The provisions of this Subsection 11(i) shall survive the expiration or earlier termination of this Agreement.

12. INSURANCE AND INDEMNIFICATION

(a) Insurance.

(i) Bank agrees to maintain at their own expense for the full duration of this contract:

1. Commercial General Liability Insurance with a combined bodily injury (including death), personal injury, and property damage limit of at least \$2,000,000 per occurrence (except as otherwise noted), including at least the following coverages: 1) Broad Form Blanket Contractual Liability for liability assumed by Company under this Agreement; 2) Broad Form Property Damage; 3) Personal Injury Liability; and 4) Products Liability and Completed Operations.
2. Workers' Compensation Insurance as required by applicable law for all employees engaged in the Services under this Agreement and Employers' Liability Insurance with a limit of at least \$500,000 for each occurrence.

3. Professional Liability (Errors and Omissions) Insurance of at least \$2,000,000 per occurrence.
 4. Cyber Liability Insurance, including network interruption insurance and security and privacy insurance of at least \$2,000,000 per claim.
- (ii) The Commercial General Liability policy shall:
1. Include NYU as an additional insured via blanket endorsement;
 2. Provide that any “other insurance” provisions in the policy will not apply to NYU and that Company’s insurance will be primary of any similar insurance carried by NYU; and
 3. Provide waiver of subrogation.
- (iii) If Bank fulfills any of the insurance requirements set forth herein by the use of a claims made policy, Bank will keep that policy in effect for at least three (3) years after the conclusion of this Agreement, and, if such claims made policy is cancelled during that three (3) year period, Bank will purchase discovery period coverage for the remainder thereof. Notwithstanding any provision herein to the contrary, Bank shall have the right to assume in whole or in part, through a program of self-insurance, any and all risks otherwise required by this Agreement to be insured against.
- (iv) Bank shall be responsible for payment of insurance premiums and deductibles for its own insurance policies.
- (v) Upon the execution of this Agreement, Bank will email to NYU’s designated insurance certificate monitoring company, Ebix, a certificate or certificates evidencing the procurement of the foregoing insurance policies. Each certificate will state: (a) the type(s) of insurance and the amount(s) of coverage; (b) the effective date and the date of expiration of the policy(s); and (c) the interest of NYU as an additional insured. Bank or their designee shall endeavor to notify Ebix of any cancellation, termination or material alteration within thirty (30) days after notification from insurer. Bank will also provide Ebix with the blanket additional insured endorsement for the policies for which NYU is included as an additional insured.
- (vi) Each year, Bank will be notified prior to the expiration date of their required insurance coverage (highlighted on their latest submitted insurance certificate on file). Updated certificates of insurance shall be emailed to Ebix via the email address below within fourteen (14) days post renewal. Questions on certificate submission should be directed to EBIX.

Certificate Monitoring Company: Ebix RCS
P.O. Box 100085-U2
Duluth, GA 30096
Phone: (951) 925-2854
Email: nyu@ebix.com
Website: www.ebixcerts.com

- (b) Bank will defend, indemnify, defend, and hold harmless NYU, its Affiliates, its Representatives, and its successors and assigns from and against any and all liability, causes of action, claims, demands, suits, and proceedings and will reimburse NYU its costs, damages, fees and expenses in connection therewith (including reasonable attorneys' fees and court expenses), resulting from or arising out of: (i)

the willful misconduct or gross negligence of Bank, its Representatives, or its Affiliates, (ii) the improper use of the NYUAA Trademarks or Marketing Lists in violation of this Agreement; or (iii) a material breach of this Agreement. The provisions of this Subsection shall survive the expiration or earlier termination of this Agreement.

(c) NYU will defend (at the Bank's option), indemnify, and hold harmless the Bank, its Affiliates, its Representatives, and its successors and assigns from and against any and all liability, causes of action, claims, demands, suits, and proceedings and will reimburse Bank its costs, damages, fees and expenses in connection therewith (including reasonable attorneys' fees and court expenses), resulting from or arising out of: (i) NYU's willful misconduct or gross negligence, and that of their Affiliates, Representatives, or Subcontractors; (ii) Bank's permitted use of the NYUAA Trademarks or Marketing List(s); or (iii) NYU's material breach of this Agreement. The provisions of this Subsection shall survive the expiration or earlier termination of this Agreement.

13. MISCELLANEOUS

(a) This Agreement cannot be amended, modified or supplemented except by written agreement signed by the authorized agents of all Parties. Emails, including emails that bear an electronic "signature block" identifying the sender, do not constitute signed writings for purposes of this Subsection 13(a); provided, however that changes of address/person may be accomplished by plain body of an e-mail delivered as provided below in Subsection 13(f).

(b) This Agreement (a) is a final, complete, and exclusive statement of the agreement and understanding of the Parties with respect to the subject matter hereof, (b) collectively constitute the entire agreement of the Parties with respect to the subject matter hereof, and (c) supersede(s), merge(s), and integrate(s) herein any prior and contemporaneous negotiations, discussions, representations, understandings, and agreements between any of the Parties (including the Previous Agreement except as expressly provided herein), whether oral or written, with respect to the subject matter hereof.

(c) Notwithstanding anything to the contrary herein, no waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The provisions of this Subsection 13(c) shall survive the expiration or earlier termination of this Agreement.

(d) Titles, captions, and headings included herein are for convenience of reference only and are not to affect the meaning, construction, or interpretation hereof or of any provision hereof.

(e) It is the desire and intent of the Parties that the provisions of this Agreement be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular provision of this Agreement shall be adjudicated by a court of competent jurisdiction or Governmental Authority to be invalid, prohibited or unenforceable for any reason, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction. Notwithstanding the

foregoing, if such provision could be more narrowly drawn so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

(f) All notices required by this Agreement must be given in writing in order to be valid. Notices shall be deemed given: (i) upon receipt if sent hand delivery or facsimile; (ii) 1 business day after sending prepaid by nationally or internationally recognized overnight or express courier or service; (iii) 3 business days after mailing by registered or certified mail, postage prepaid, return receipt requested; or (iv) at the time that notice of receipt is generated electronically as a result of the recipient opening the email (*i.e.*, read request receipt, which some recipients might be able to prevent) or at the time that the sender can demonstrate electronically that the email has been delivered (*i.e.*, by requesting a delivery receipt), or at such other time as the recipient acknowledges receipt. To be valid for purposes of this Agreement, all notices must be addressed as follows:

(1) If to NYU:

New York University Alumni Association
25 West Fourth Street, Room 402
New York, New York 10012

ATTENTION: Assoc. VP of Alumni Relations

Facsimile : (212) 995-4779
e-mail: bperillo@nyu.edu

With a copy to :

New York University
Office of the General Counsel
70 Washington Square South, 11th Floor
New York, NY 10012

ATTENTION : General Counsel

(2) If to Bank:

Bank of America, N.A.
1000 Samoset Drive
DE5-021-02-07
Newark, DE 19713

ATTENTION: Contract Administration

Facsimile: 206-585-9732
e-mail: cadminis@bankofamerica.com

(3) Any Party may change the mail and e-mail addresses to which communications are to be sent by giving notice, as provided herein, of such change of address. Communication sent using

e-mail properly addressed as required by this Subsection 13(f) shall be presumed properly sent notwithstanding the receipt by the sender of an undeliverable notice or similar automated response.

(g)(1) Without the prior written consent of Bank, NYU will not (and shall require its Subcontractors and their respective Representatives to not) assign any of their rights or delegate any of its (or their) obligations under or arising from this Agreement (including access to the Bank's data (including Information)) or grant access to Bank's operational systems. Any such attempted assignment, delegation, or grant shall be *void ab initio*.

(2) Bank may not assign or transfer its rights and/or obligations under this Agreement without the written consent of NYU; provided however, that Bank may assign or transfer, without consent or notice, its rights and/or obligations under this Agreement to any Person or Persons:

- (i) pursuant to order of, or reorganization by, any Governmental Authority;
- (ii) (other than a subsidiary or an entity controlling, controlled by, or under common control with Bank (an "**Bank Affiliate**")) pursuant to a sale or series of related sales (other than a sale as described in subsection (iii), below) as long as such prospective buyer (or buyers) has (or have) substantially similar customer satisfaction standards as Bank;
- (iii) (other than an Bank Affiliate) pursuant to a merger, consolidation, or a sale of all or substantially all the assets of Bank; or,
- (iv) which are Bank Affiliates.

(3) Certain Financial Service Products or services under this Agreement may be performed, offered or provided by or through Bank's Affiliates. Subject to Section 3(g), Bank may utilize the services of any third party in fulfilling its obligations under this Agreement.

(h) The Parties are not agents, joint or co-venturers, representatives or employees of each other. 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 in this Agreement is intended or shall be deemed to confer any rights or benefits upon any Person other than the Parties hereto or to make or render any such other Person a third-party beneficiary of this Agreement, except to the extent a Person has a right to be indemnified under this Agreement. The provisions of this Subsection 13(i) shall survive the expiration or earlier termination of this Agreement.

(j) Neither Party will be held responsible for any delay or failure in performance to the extent such delay or failure is caused by fire, flood, explosion, terrorism, war, strike, embargo, pandemic, government laws, rules, regulations or requirements, civil or military authority, act of God, act or omission of carriers, failure of common communication circuits, failure of utility services, or other similar causes beyond its control that was not reasonably foreseeable or avoidable and without the fault or negligence and/or lack of diligence of the delayed Party ("**force majeure condition**"). The non-delayed Party shall have the right to terminate this Agreement if such force majeure condition endures for more than 120 days by providing the delayed Party with least 30 days prior written notice of such termination, which notice must be received by the delayed Party within 10 days after the expiration of the 120 day period.

(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. The Parties agree to

accept a digital image of this Agreement, as executed, as a true and correct original and admissible as best evidence to the extent permitted by a court with proper jurisdiction. The Parties agree that if a representative of each of the Parties signs this Agreement (whether manually or electronically) and transmits such Agreement to the other Party or Parties via facsimile or electronically transmitted portable document format, the Agreement shall be treated in all manner and respects as having an original signature (or counterpart thereof) and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person. At the request of a Party, each other Party hereto shall re-execute original forms thereof and deliver them to all other Parties. No Party shall raise the use of a facsimile machine, electronic signature or electronic transmission in portable document format or the fact that any signature was transmitted or communicated through the use of facsimile machine or electronic transmission in portable document format as a defense to this Agreement and each such Person forever waives any such defense. The provisions of this Subsection 13(k) shall survive the expiration or earlier termination of this Agreement.

(l) This Agreement is the product of negotiations between the Parties hereto having the assistance of counsel and other advisors. No provision of this Agreement shall be read, construed or interpreted for or against either Party by reason of ambiguity of language, rule of construction against the draftsman, or any similar doctrine.

(m) NYU agrees to cooperate with (and to cause each NYU Subcontractor, and their respective Representatives, to cooperate with) each Governmental Authority with jurisdiction over Bank in connection with any examination or other supervisory activity by such Governmental Authority. The provisions of this Subsection 13(m) shall survive the expiration or earlier termination of this Agreement.

(n) Neither any submission of this document by one Party to the other, nor any correspondence or other communications between the Parties in connection therewith, is intended or shall be deemed to constitute an offer of any kind or to create any obligations between the Parties unless and until one or more duplicates of this document has been fully executed and delivered between the Parties hereto, whereupon this document shall become the binding Agreement. Accordingly, any such submission or communications or correspondence between the Parties or their respective agents or attorneys is intended only as non-binding discussions, and either Party shall have the absolute right to withdraw from such discussions at any time without any liability whatsoever to the other Party.

(o) Except as expressly provided otherwise in this Agreement, no right or remedy herein conferred upon or reserved to either Party (including any termination pursuant to Section 11) is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Agreement, or under law or regulation, whether now or hereafter existing.

(p)

(1) EXCEPT AS PROVIDED HEREIN OR IN (2) BELOW, IN NO EVENT SHALL ANY PARTY OR ANY OF ITS REPRESENTATIVES BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTIES OR ANY THIRD-PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE OF DATA, OR LOST REVENUE OR PROFIT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE

BREACHING PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(2) THE LIABILITY LIMITATION SET FORTH IN (1) ABOVE SHALL NOT APPLY TO DAMAGES OR LIABILITIES ARISING FROM THIRD-PARTY CLAIMS THAT ARE SUBJECT TO INDEMNIFICATION HEREUNDER NOR TO DAMAGES OR LIABILITIES ARISING FROM A MATERIAL BREACH OF THE CONFIDENTIALITY PROVISIONS OF THIS AGREEMENT.

(q) As of the Effective Date, the Parties hereby agree that the Previous Agreement is amended and restated by this Agreement, and the Parties, rights and obligations with respect to the Program shall be governed by the terms and conditions of this Agreement; provided, however, that the Previous Agreement shall govern the Parties' relationship with respect to any claim or obligation arising prior to the Effective Date.

[Remainder of this page intentionally blank – signature page follows]

IN WITNESS WHEREOF, each of the Parties, by its representative (who represents and warrants to the other Party that he or she has the necessary authority to bind his or her respective Party), has executed this Agreement as of the date first above written.

New York University, on behalf of
New York University Alumni Association

By:  _____

Name: Stephanie Pianka

Title: Chief Financial Officer

Bank of America, N.A.

By:  _____

Name: Jake Frego

Title: Senior Vice President

Schedule A

I. ROYALTY ARRANGEMENT

During the Term, Bank shall pay University for the benefit of NYUAA quarterly in arrears, a Royalty calculated as follows. Bank may create a special class of consumer accounts for NYU employees under the Program, and shall not pay compensation for such designated accounts. All Royalty payments due hereunder are subject to adjustment by Bank for any prior overpayment of Royalties by Bank:

A. CREDIT CARD ACCOUNTS

1. \$3.00 (three dollars) once for each new Credit Card Account opened (other than a GIP Account) after it becomes an Activated Account.
2. \$3.00 (three dollars) for each Credit Card Account for which the annual fee is paid by the Customer. If no annual fee is assessed by Bank (other than as a result of a courtesy waiver by Bank), then such Royalty will be paid for each Credit Card Account that: 1) has a balance greater than zero as of the last processing day of every twelfth month after the opening of that Credit Card Account; and 2) has had active charging privileges for each of the immediately preceding twelve (12) months.
3. 0.50% (fifty basis points) of the Net Retail Spend generated by Customers using Credit Card Accounts (other than reward accounts).
4. \$100.00 (one hundred dollars) once for each GIP Account opened after it becomes an Activated Account. Such GIP Accounts will not qualify for any other opening-of-an-account Royalty.

B. REWARD ACCOUNTS

Reward Account Royalty compensation provisions will not affect any other Royalty compensation provisions contained in the Agreement, and the Royalty compensation provisions referencing any other form of Credit Card Accounts will not apply to Reward Accounts.

1. \$3.00 (three dollars) once for each new Reward Account opened, after it becomes an Activated Account. This Royalty will not be paid for any account which, after opening, converts to a Reward Account, or for any Reward GIP Account.
2. \$3.00 (three dollars) for each Reward Account for which the Annual Fee is paid by the Customer. If no Annual Fee is assessed by Bank (other than as a result of a courtesy waiver by Bank), then such Royalty will be paid for each Reward Account which: 1) has a balance greater than zero as of the last processing day of every twelfth month after the opening of that Reward Account; and 2) has had active charging privileges for each of the preceding twelve (12) months. A Reward Account may renew every twelve (12) months after the opening of the account.
3. 0.20% (twenty basis points) of all Net Retail Spend generated by Customers using Reward Accounts.
4. \$100.00 (one hundred dollars) once for each Reward GIP Account opened after it becomes an Activated Account. Such Reward GIP Accounts will not qualify for any other opening-of-an-account Royalty.

C. **PREMIUM REWARD ACCOUNTS**

Premium Reward Account Royalty compensation provisions will not affect any other Royalty compensation provisions contained in the Agreement, and the Royalty compensation provisions referencing any other form of Credit Card Accounts will not apply to Premium Reward Accounts.

1. \$3.00 (three dollars) once for each new Premium Reward Account opened after it becomes an Activated Account. This Royalty will not be paid for any account which, after opening, converts to a Premium Reward Account, or for any Premium Reward GIP Account.
2. \$3.00 (three dollars) for each Premium Reward Account for which the Annual Fee is paid by the Customer. If no Annual Fee is assessed by Bank (other than as a result of a courtesy waiver by Bank), then such Royalty will be paid for each Premium Reward Account which: 1) has a balance greater than zero as of the last processing day of every twelfth month after the opening of that Premium Reward Account; and 2) has had active charging privileges for each of the preceding twelve (12) months. A Premium Reward Account may renew every twelve (12) months after the opening of the account.
3. 0.05% (five basis points) of all Net Retail Spend generated by Customers using a Premium Reward Account.
4. \$100.00 (one hundred dollars) once for each Premium Reward GIP Account opened after it becomes an Activated Account. Such Premium Reward GIP Accounts will not qualify for any other opening-of-an-account Royalty.

D. **DEPOSIT ACCOUNTS**

During the Term, University for the benefit of NYUAA will receive the Deposits Royalties set forth below. Deposits Royalty compensation provisions will only apply to Deposit Accounts and not to any other Financial Service Product. Except as set forth in this Section D, Deposit Accounts are not eligible for any other Royalty compensation provisions contained in the Agreement. Further, Deposit Royalties will not be paid to University for the benefit of NYUAA on any existing deposit account that is converted to the Program.

\$10.00 (ten dollars) for each new checking account opened under the Program which has a positive balance of at least \$50.00 (fifty dollars) as of the ninetieth (90th) day from the account opening date. An additional \$2.00 (two dollars) for every checking account opened under the Program that has a positive balance of at least \$50.00 (fifty dollars) on each subsequent anniversary of the account opening date. Payments will be made approximately forty-five (45) days after the end of each calendar quarter.

E. **ROYALTY ADVANCE**

1. Upon full execution of this Agreement by Bank, and upon each annual anniversary of the Effective Date in 2021 through 2022, respectively, during the Initial Term of this Agreement, Bank shall pay to University for the benefit of NYUAA as follows: one hundred ten thousand six hundred forty-six dollars and thirty cents (\$110,646.30) (representing a \$140,000.00 Advance minus \$29,353.70 in a separate 2020 third quarter Royalty payment) in 2020, one hundred forty thousand dollars (\$140,000.00) in 2021, and one hundred ten thousand dollars (\$110,000.00) in 2022 (each and in the aggregate, an “**Advance**”), as an advance against future Eligible Royalties, subject to the provisions set forth below. All Eligible Royalties accrued shall, in lieu of direct payment to University, be applied against each of the Advances

until the earlier of: (i) such time as all Advances are fully recouped or (ii) June 30, 2023. Any eligible royalties accrued thereafter shall be paid to University as set forth in this Agreement. Notwithstanding the foregoing, (x) Bank shall no longer be obligated to pay any additional Advances to University hereunder, and (y) University hereby promises to pay Bank upon demand an amount equal to the difference between the total amount of the Advance(s) paid by Bank and the total amount of accrued Eligible Royalties credited by Bank against such Advance(s) as of the date of such demand, in the event any of the conditions set forth in Clauses (i) through (iv) below should occur:

- (i) the Agreement is terminated prior to the end of the Term as stated in this Agreement as of the Effective Date;
- (ii) NYU breaches any of its obligations under this Agreement;
- (iii) Bank is prohibited or otherwise prevented from conducting at least six (6) direct mail campaigns to the full updated Marketing List during each consecutive twelve (12) month period during the Term; and
- (iv) NYU fails to agree in good faith that Bank may be permitted to conduct promotion campaigns at major alumni events during the Term in accordance with terms to be set by NYU in its discretion.

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

F. **ROYALTY GUARANTEE**

University for the benefit of NYUAA shall be guaranteed to accrue Eligible Royalties (including the amount of the Advances) equal to or greater than three hundred ninety thousand dollars (\$390,000.00) (the "**Guarantee Amount**") by June 30, 2023, subject to the provisions set forth below. If on June 30, 2023 University has not accrued \$390,000.00 in Eligible Royalties, Bank will pay University an amount equal to the Guarantee Amount minus the sum of all compensation accrued by University during the Term and all unrecouped Advances. Notwithstanding the foregoing, this Royalty Guarantee and any obligation of Bank hereunder shall be expressly contingent upon the non-occurrence of any of the conditions set forth in Subsection E.1., above.