

AMENDED AND RESTATED MARKETING AGREEMENT

THIS AMENDED AND RESTATED MARKETING AGREEMENT ("Agreement"), is made this 31st day of January, 2019 (the "Effective Date"), by and between **THE PRESIDENT AND FELLOWS OF HARVARD COLLEGE** ("HARVARD"), a non-profit educational corporation, on behalf of the **HARVARD ALUMNI ASSOCIATION** ("HAA"), having its principal office at 124 Mount Auburn Street, Cambridge, Massachusetts 02138 and **HARVARD UNIVERSITY EMPLOYEES CREDIT UNION**, a Massachusetts-chartered credit union, having its principal offices at 104 Mt. Auburn St., Cambridge, Massachusetts 02138 ("HUECU"). Each of Harvard and HUECU is referred to herein individually as a "Party", and collectively as the "Parties".

RECITALS:

WHEREAS, HARVARD, on behalf of HAA, and HUECU are parties to that certain Marketing Agreement dated as of June 29, 2012 (the "Original Marketing Agreement"), the Initial Term (as defined therein) of which shall expire on June 16, 2019;

WHEREAS, pursuant to Sections 11(a) and 16 of the Original Marketing Agreement, the Parties wish to amend the Original Marketing Agreement by replacing it in its entirety with the terms of this Agreement effective as of June 17, 2019 (the "Commencement Date"), and the Parties acknowledge and agree that this Agreement therefore constitutes an "addendum" as contemplated by Section 11(a) of the Original Marketing Agreement;

WHEREAS, notwithstanding anything to the contrary contained in the Original Marketing Agreement, the Parties acknowledge and agree that upon the Commencement Date, subsections 11(a) and (f) of the Original Agreement shall not apply and shall be of no further force or effect;

WHEREAS, HUECU desires HARVARD to provide, and HARVARD desires to provide HUECU, certain promotional opportunities for an affinity credit card program in connection with a certain Amended and Restated Licensing Agreement of even date herewith by and between HARVARD and HUECU (the "Licensing Agreement") upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the Parties herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Defined Terms. Capitalized terms used herein or in any exhibit to this Agreement but not otherwise defined herein shall have the meaning ascribed thereto in the Licensing Agreement.

2. Promotional Opportunities. HARVARD agrees, in order to promote the success of the Rewards Program to provide reasonable assistance to HUECU related to HUECU's testing and development of promotions to HARVARD Members consistent with HARVARD's objectives and strategies.

3. Direct Solicitations by HARVARD. Upon request by HARVARD and with prior written approval by HUECU, which approval shall not be unreasonably withheld, conditioned or delayed, HUECU shall permit HARVARD, subject to reasonable restrictions set forth by HUECU, to directly and indirectly solicit applications for Credit Card Products from HARVARD Members without direct participation from HUECU. Unless otherwise agreed to by the Parties, all marketing expenses incurred by HARVARD shall be borne solely by HARVARD.

4. Privacy and Data Security.

(a) HARVARD hereby acknowledges that HUECU is subject to the privacy regulations under Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq. and information security regulations under 201 C.M.R. 17.00 (Standards for The Protection of Personal Information of Residents of the Commonwealth of Massachusetts), pursuant to which statute and regulations HUECU is required to obtain certain undertakings from HARVARD with regard to the privacy, use and protection of nonpublic personal financial information of HUECU's customers or prospective customers. Therefore, notwithstanding anything to the contrary contained in this Agreement, HARVARD agrees that (1) it shall not disclose or use any Customer Data except to the extent necessary to carry out its obligations under this Agreement and for no other purpose, (2) it shall not disclose Customer Data to any third-party, including, without limitation, its third-party service providers without the prior consent of HUECU and an agreement in writing from the third-party to use or disclose such Customer Data only to the extent necessary to carry out HARVARD's obligations under this Agreement and for no other purposes except in relation to the marketing and/or administration of a potential HAA Rewards Program as described in Section 2, (3) it has implemented and shall maintain, and shall require all third-parties approved under clause (2) to maintain, effective information security measures to protect Customer Data from unauthorized disclosure or use in compliance with 201 C.M.R. 17.00, and (4) it shall provide HUECU with information regarding such security measures upon the reasonable request for HUECU and promptly provide HUECU with information regarding any failure of such security measures or any security breach related to Customer Data. Provided that so long as HARVARD publishes a privacy policy explaining its use of customer's name and contact information and the customer's option in regard to that usage, HARVARD may use such information in a manner consistent with said privacy policy without violating clauses (1) and (2). The obligations set forth in this Section 4 shall be perpetual and shall survive termination of this Agreement. For the purposes of this Agreement, "Customer Data" shall mean the nonpublic personal information (as defined in 15 U.S.C. § 6809(4)) and personal information (as defined in 201 C.M.R. 17.00) of HUECU's customers or prospective customers received by HARVARD in connection with the performance of its obligations under this Agreement, including, but not limited to (i) an individual's name, address, e-mail address, IP address, telephone number and/or social security number, (ii) the fact that an individual has a relationship with HUECU, or (iii) an individual's account information. For purposes of this Section 4, HUECU Customer Data excludes nonpublic personal information provided by a consumer directly to HARVARD.

(b) HUECU hereby acknowledges that HARVARD is subject to the information security regulations under 201 C.M.R. 17.00 (Standards for The Protection of Personal Information of Residents of the Commonwealth of Massachusetts), pursuant to which HARVARD is required to obtain certain undertakings from HUECU with regard to the privacy, use and protection of nonpublic personal financial information of current or former HARVARD faculty

members, employees, students, prospective students, other persons associated with Harvard and other individuals. Therefore, notwithstanding anything to the contrary contained in this Agreement, HUECU agrees that, (1) it shall not disclose or use any Personal Data except to the extent necessary to carry out its obligations under this Agreement and for no other purpose, (2) it shall not disclose Personal Data to any third party, including, without limitation, its third party service providers without the prior consent of HAA and an agreement in writing from the third party to use or disclose such Personal Data only to the extent necessary to carry out HUECU's obligations under this Agreement and for no other purposes except in relation to the marketing and/or administration of a the Rewards Program as described in Section 6 above, (3) it has implemented and shall maintain, and shall require all third parties approved under clause (2) to maintain, effective information security measures to protect Personal Data from unauthorized disclosure or use in compliance with 201 C.M.R. 17.00, and (4) it shall provide HARVARD with information regarding such security measures upon the reasonable request of HARVARD and promptly provide HARVARD with information regarding any failure of such security measures or any security breach related to Personal Data. Provided that so long as HUECU publishes a privacy policy explaining its use of customer's name and contact information and the customer's option in regard to that usage, HUECU may use such information in a manner consistent with said privacy policy without violating clauses (1) and (2) of the preceding sentence. The obligations set forth in this Section 4 shall be perpetual and shall survive termination of this Agreement. For the purposes of this Agreement, "Personal Data" means the following types of personally identifiable information, in any form or media, about current or former HARVARD faculty members, employees, students, prospective students, other persons associated with Harvard and other individuals: (i) an individual's social security number, bank or other financial account numbers, credit or debit card numbers, driver's license number, passport number, and other government-issued identification numbers; (ii) identifiable individual financial information, employee benefits information, education records, HARVARD identification numbers, and any information about an individual that has been marked as private; and (iii) any additional types of personally identifiable information about individuals that Harvard from time to time designates in writing as Personal Data. For purposes of this Section 4, Personal Data excludes nonpublic personal information provided by a Harvard Member directly to HUECU or such information provided by HUECU to HARVARD pursuant to this Agreement.

5. Records. During the Term (as defined hereafter), and for a period of at least three (3) years thereafter (or for such longer period if required under applicable law), HUECU agrees that it will maintain accurate records with respect to its obligations under this Agreement. Such records, including source documentation, shall be open for inspection by representatives of HAA—if, and only to the extent that, such inspection would not violate any state or federal rule, regulation, statute or regulatory guidance applicable to HUECU—at such times as shall be agreed upon by HUECU, such agreement not to be unreasonably withheld, provided that any inspection shall be subject to such security procedures as HUECU may reasonably impose and subject to such limitation as may be required under applicable rules, regulations or statutes governing the conduct of HUECU'S business.

6. Relationship. Nothing in this Agreement is intended to or shall be construed to constitute or establish an agency, joint venture, partnership or fiduciary relationship between the Parties, and neither Party shall have the right or authority to act for or on behalf of the other Party.

7. Confidentiality.

(a) The Parties hereby acknowledge and agree that all information provided to or in connection with either Party's performance under this Agreement shall be considered confidential and proprietary information ("Confidential Information") and shall not be disclosed to any third-party without the prior written consent of the Party providing the Confidential Information ("Disclosing Party"). Confidential Information shall include, without limitation (i) names, addresses, and demographic, behavioral, and credit information relating to HUECU Cardmembers, potential HUECU Cardmembers, HARVARD alumni, or HARVARD customers, subscribers or employees acquired solely in connection with the Program (including, Customer Data), (ii) marketing materials, strategies and targeting methods relating to the Program, (iii) business objectives, assets and properties relating to the Program; and (iv) programming techniques and technical, developmental, cost and processing information relating to the Program; and (v) Personal Data.

(b) The Party receiving such Confidential Information ("Receiving Party") shall use Confidential Information only for the purpose of performing the terms of this Agreement and shall not accumulate in any way or make use of Confidential Information for any other purpose. The Receiving Party shall ensure that only its employees, authorized agents, or subcontractors who need to know Confidential Information to perform this Agreement will receive Confidential Information and that such persons agree to be bound by the provisions of this Section 7 and maintain the existence of this Agreement and the nature of their obligations hereunder strictly confidential.

(c) The obligations with respect to Confidential Information shall not apply to Confidential Information that: (i) either Party or its personnel already know at the time it is disclosed as shown by their written records; (ii) is publicly known without breach of this Agreement provided that this exception does not apply to customer information as described in subsection (a)(i) above; (iii) either Party received from a third-party authorized to disclose it without restriction; (iv) either Party, its agents or subcontractors, developed independently without use of Confidential Information; or (v) either Party is required by law, regulation or valid court or governmental agency order to disclose, in which case the Party receiving such an order must give notice to the other Party, allowing them to seek a protective order.

(d) Each Party agrees that any unauthorized use or disclosure of Confidential Information may cause immediate and irreparable harm to the Disclosing Party for which money damages may not constitute an adequate remedy. In that event, each Party agrees that injunctive relief may be warranted in addition to any other remedies the Disclosing Party may have. In addition, the Receiving Party agrees promptly to advise the Disclosing Party in writing of any unauthorized misappropriation, disclosure or use by any person of the Confidential Information which may come to its attention and to take all steps at its own expense reasonably requested by the Disclosing Party to limit, stop or otherwise remedy such misappropriation, disclosure or use.

(e) Upon either Party's demand, or upon the termination of this Agreement, the Parties shall comply with each other's reasonable instructions regarding the disposition of Confidential Information that may include return of any and all Confidential Information (including any copies or reproductions thereof). At the request of the Disclosing Party, such compliance shall be certified

in writing, including a statement that no copies of Confidential Information have been kept (excluding copies retained for archival purposes or in compliance with applicable law).

(f) Except as necessary for its performance under this Agreement, HAA shall not use the name of HUECU, its affiliates or subsidiaries in connection with any representation, solicitation, promotion, sales or marketing publication or advertisement, or make any public statement relating to HUECU, its affiliates or subsidiaries, without the prior full disclosure of same to HUECU, and the prior written consent of HUECU. Except as necessary for its performance under this Agreement, HUECU, its affiliates and subsidiaries shall not use the names "Harvard", "Harvard Alumni Association", "HAA" or words of similar import, in connection with any representation, solicitation, promotion, sales or marketing publication or advertisement, or make any public statement relating to HARVARD or HAA, without the prior full disclosure of same to HARVARD or HAA, and the prior written consent of HARVARD or HAA (as applicable); provided, however, that this subsection 6(f) will not be construed to restrict HUECU's use of its own name in any way.

(g) The obligations set forth in this section shall be perpetual and shall survive termination of this Agreement.

(h) Except as may be required by law, regulation or any Governmental Authority, neither (i) HARVARD (including, HAA), nor any of its affiliates, nor (ii) HUECU, nor any of its affiliates, shall issue a press release or make a public announcement or any disclosure to any third-party related to the transactions contemplated by this Agreement without the prior consent of the other Party hereto, which consent shall not be unreasonably withheld, conditioned or delayed.

8. Representations and Warranties.

(a) HUECU represents and warrants as of the Effective Date and during the Term that it is a credit union, validly existing and in good standing under the laws of the Commonwealth of Massachusetts. HUECU further represents and warrants that the execution and delivery by HUECU of this Agreement, and the performance by HUECU of the transactions contemplated hereby, are within HUECU'S corporate powers, have been duly authorized by all necessary corporate action, do not require any consent or other action by or in respect of, or filing with, any third-party or governmental body or agency, and do not contravene, violate or conflict with, or constitute a default under, any provision of applicable law or regulation or of the charter or by-laws of HUECU or of any agreement, judgment, injunction, order, decree or other instrument binding upon HUECU. HUECU further represents and warrants that it shall comply with all applicable law.

(b) HARVARD represents and warrants as of the Effective Date and during the Term that it is validly existing and in good standing under the laws of the Commonwealth of Massachusetts and the execution and delivery by HARVARD of this Agreement, and the performance by HARVARD of the transactions contemplated hereby, are within HARVARD's powers, have been duly authorized by all necessary action, do not require any consent or other actions by or in respect of, filing with, any third-party or any governmental body or agency, and do not contravene, violate or conflict with, or constitute a default under, any provisions of applicable law, regulation, or under any governing documents, charter or bylaw, or any agreement,

judgment, injunction, order, decree or other instrument binding on HARVARD and do not require the payment of any other fees or royalties on the part of HUECU.

9. Release and Indemnification.

(a) HUECU shall not be responsible in any way for any misrepresentation, negligent act or omission or willful misconduct of HARVARD, its affiliates, officers, directors, agents, or employees in connection with the entry into or performance of an obligation of HARVARD under this Agreement. Further, except for such third-party claims resulting in a claim for indemnity against HUECU pursuant to subsection 8(b) hereof, HARVARD shall indemnify, defend and hold HUECU harmless from and against all third-party claims, actions, suits or other proceedings, and any and all losses, judgments, damages, expenses or other costs (including reasonable counsel fees and disbursements), arising from or in any way relating to (i) any actual or alleged misrepresentation or breach of any representation or warranty of HARVARD contained in subsection 8(b) above, (ii) any actual or alleged infringement of any trademark, copyright, trade name or other proprietary ownership interest resulting from the use by HUECU of the Marks of HARVARD as contemplated by this Agreement, (iii) gross negligence or willful misconduct resulting in bodily injury or property damages to HUECU and (iv) any violation of applicable laws and regulations by HARVARD.

(b) HARVARD shall not be responsible in any way for any misrepresentation, fraudulent or negligent act or omission, or willful misconduct of HUECU, its affiliates, officers, directors, agents, or employees in connection with the entry into or performance of any obligation of HUECU under this Agreement. Further, except for such third-party claims resulting in a claim for indemnity against HARVARD pursuant to subsection 8(a) hereof, HUECU shall indemnify, defend and hold HARVARD harmless from and against all claims, actions, suits or other proceedings, and any and all losses, judgments, damages, expenses or other costs (including reasonable counsel fees and disbursements), arising from or in any way relating to (i) HUECU's performance of, or failure to perform any obligation under this Agreement, (ii) any actual or alleged misrepresentation or breach of any representation, warranty or covenant of HUECU contained in this Agreement, (iii) any act or omission of HUECU in connection with the issuance of Credit Card Products and/or the administration of Credit Card Product Accounts which constitutes a violation of banking or consumer credit laws or regulations, (iv) any negligent act or omission or willful misconduct of HUECU or its directors, officers, employees, agents or assigns in connection with the entry into or performance of this Agreement, (v) any breach of HUECU's confidentiality obligations hereunder, and (vi) any violation of applicable laws or regulations by HUECU.

10. Term/Termination.

(a) Subject to the terms and conditions herein, this Agreement shall be effective as of the Commencement Date and shall continue until the earlier to occur of the following: (i) seven (7) years from the Commencement Date (June 17, 2026) (the "Initial Term"), (ii) termination of the Licensing Agreement; and (iii) termination pursuant to any section of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Original Marketing Agreement shall remain in full force and effect until the Commencement Date. Following the natural expiration of the Initial Term, this Agreement may be renewed for renewal terms of one (1)

year each (each a "Renewal Term") unless, at least thirty (30) days prior to the termination of the Initial Term or the then current Renewal Term, either Party shall have notified the other in writing of its decision not to renew this Agreement (the Initial Term with any Renewal Term referred to collectively as the "Term"). If the terms hereof are to be amended in connection with any renewal, an appropriate addendum executed by all of the Parties hereto shall be added to this Agreement reflecting, as applicable, the revised terms hereof.

(b) If there is a material breach or default by either Party in the performance of the terms and conditions of this Agreement or the Licensing Agreement, and such default shall continue for a period of thirty (30) days after receipt by the defaulting Party of written notice thereof from the non-defaulting Party (setting forth in detail the nature of such default), then this Agreement shall terminate at the option of the non-defaulting Party as of the 31st day following the receipt of such written notice. If, however, the default cannot be remedied within such thirty (30) day period, such time period shall be extended for an additional period of not more than thirty (30) days, so long as the defaulting Party has notified the non-defaulting Party in writing and in detail of its plans to initiate substantive steps to remedy the default and diligently thereafter pursues the same to completion within such additional thirty (30) day period.

(c) This Agreement shall be deemed immediately terminated, without the requirement of further action or notice by either Party, in the event that (i) either Party, or a direct or indirect holding company of either Party, shall become subject to voluntary or involuntary bankruptcy, insolvency, receivership, conservatorship or like proceedings (including, but not limited to, the takeover of such Party by the applicable regulatory agency) pursuant to applicable state or federal law or ceases to conduct its normal and customary business operations or (ii) either Party is found in a court of competent jurisdiction, or executes a settlement with an appropriate governmental agency in which the Party admits, to have violated or to be in violation of federal, state or local laws or regulations relating to the services hereunder.

(d) In the event that any representation made by a Party set forth in Section 8 of this Agreement shall prove to be untrue, then the other Party shall have the right to immediately terminate this Agreement and all of its obligations contained herein by notice to the Party that made the false representation.

(e) Upon termination of this Agreement:

(i) Upon HUECU's reasonable request, HAA shall use reasonable efforts to return to HUECU take-one and other marketing materials that have been supplied to HAA by HUECU. HAA shall be permitted to maintain copies of such marketing materials for archival purposes or required by applicable law;

(ii) All Accounts which have been opened pursuant to the terms hereof, together with all Accounts for which applications have been received but not yet processed by HUECU as of the effective date of such termination, shall remain the sole and exclusive property of HUECU subject to HARVARD's rights to purchase or designate a buyer to purchase the Accounts as stipulated in the Licensing Agreement;

(iii) HUECU shall have the right, but not the obligation, to reissue Credit Card Products previously issued to Cardmembers pursuant to this Agreement and to issue Credit Card Products to applicants whose applications are received after the effective date of such termination, in HUECU'S own name and without any reference to HARVARD or HAA on such Credit Card Product(s).

(iv) Except as otherwise specifically stated herein, all obligations to HARVARD shall cease after the effective date of such termination.

11. Other Products. Notwithstanding anything herein to the contrary, nothing herein shall be construed to prevent HUECU from offering products to HARVARD Members who are eligible for membership in HUECU and of whom HUECU learns of independently of information provided to HUECU hereunder or independently from the Program (e.g., through other relationships or HUECU's marketing to persons eligible for HUECU membership in the ordinary course of business and not the Program). To the extent HUECU desires to specifically target any offer of another financial product to Cardmembers or HARVARD Members, the Parties shall agree on the products to be offered and the corresponding compensation to HARVARD.

12. Notices. Whenever any notice, demand, or request is required or permitted, such notice, demand, or request shall be in writing and shall be delivered by hand, be sent by registered or certified mail, postage prepaid, return receipt requested, or be sent by nationally recognized commercial courier for next business day delivery, to the addresses set forth in this Agreement and/or to such other addresses as are specified by written notice given in accordance herewith, or shall be transmitted by facsimile or electronic mail ("e-mail") to the number or e-mail address for each Party set forth in this Agreement or by HARVARD (or HAA) or to such other numbers as are specified by written notice given in accordance herewith (with a duplicate of the notice sent the same day by registered or certified mail, return receipt requested, or by nationally recognized commercial courier for next business day delivery). All notices, demands, or requests delivered by hand shall be deemed given upon the date so delivered; those given by mailing as hereinabove provided shall be deemed given on the date of deposit in the United States Mail; those given by commercial courier as hereinabove provided shall be deemed given on the date of deposit with the commercial courier; and those given by facsimile or e-mail transmittal shall be deemed given on the date of facsimile transmittal. Any notice, demand, or request not received because of changed address or facsimile number of which no notice was given as hereinabove provided or because of refusal to accept delivery shall be deemed received by the Party to whom addressed on the date of hand delivery, on the date of facsimile transmittal, on the first calendar day after deposit with commercial courier, or on the third calendar day following deposit in the United States Mail, as the case may be.

If to HUECU, to:

Harvard University Employees Credit Union
104 Mount Auburn Street
Cambridge, Massachusetts 02138
Fax No: 617-496-9804
Attention: Eugene J. Foley, President and Chief
Executive Officer

If to HARVARD or HAA, to:

Harvard Alumni Association
124 Mount Auburn Street
6th Floor
Cambridge, MA 02138
Attn: Deputy Executive Director
Fax No.: (617) 495-0434

With a copy to:

Harvard University
1350 Massachusetts Avenue
Cambridge, MA 02138
Fax No.: (617) 495-5079
Attn: Office of the General Counsel

13. Assignment. Any assignment by either Party of that Party's rights and/or obligations pursuant to this Agreement shall be subject to the prior written consent of the other Party to this Agreement, which consent shall not be unreasonably withheld, conditioned or delayed. In addition, and notwithstanding the foregoing, (i) HUECU may, with prior written consent of HARVARD, such consent not to be unreasonably withheld, conditioned or delayed, assign this Agreement and any of HUECU's rights and obligations, to any federally regulated financial institution upon the condition that the assignee shall assume, either expressly or by operation of law, all of HUECU's obligations hereunder, upon the delivery of prior written notice thereof to HARVARD; and (ii) HUECU may assign this Agreement to a corporate affiliate, subsidiary or parent with the necessary resources to undertake HUECU's obligation hereunder or to an entity that merges with HUECU or acquires all or substantially all the assets and obligations of HUECU; and (iii) HARVARD, without prior written notice of consent, may assign its rights to receive fees and royalties pursuant to this Agreement to a commercial lending institution which provides a credit facility to HARVARD as collateral security for such credit facility, or to an entity that merges with HARVARD or acquires all or substantially all of the assets of HARVARD.

14. Entire Agreement/Amendment. This Agreement, including any exhibits, attachments or amendments, constitutes the entire understanding between the Parties with respect to the subject matter, and supersedes all prior written and oral proposals, understandings,

agreements and representations, all of which are merged herein. No amendment or modification of this Agreement shall be effective unless it is in writing and executed by all of the Parties hereto.

15. Non-Waiver of Default. The failure of either Party to insist, in any one or more instances, on the performance of any terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or of the future performance of any such term or condition, and the obligations of the non-performing Party with respect thereto shall continue in full force and effect.

16. Severability. If any term, covenant, condition, or provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held to be invalid, illegal or unenforceable by a court or judicial officer, the provision shall remain in effect to the extent allowed by law, and in each such event the remainder of this Agreement or the application of such term, covenant, condition, or provision to any other person or any other circumstance (other than those as to which it has been deemed invalid or unenforceable) shall not be thereby affected and each term, covenant, condition, and provision thereof shall remain valid and enforceable to the fullest extent permitted by law.

17. Informal Dispute Resolution. HARVARD and HUECU hereby waive their rights to resolve disputes through any court proceeding or litigation and acknowledge that all disputes shall be resolved pursuant to this Section 17, except that equitable relief may be sought pursuant to Section 7 from any court of competent jurisdiction. Both Parties represent to the other that this waiver is made knowingly and voluntarily after consultation with and upon the advice of counsel and is a material part of this Agreement. Any controversy or claim between HARVARD, on the one hand, and HUECU on the other hand, arising from or in connection with this Agreement or the relationship of the Parties under this Agreement whether based on contract, tort, common law, equity, statute, regulation, order or otherwise ("Dispute") shall be resolved as follows:

(a) Upon written request of either HARVARD, on the one hand, or HUECU on the other hand, a duly appointed representative(s) of each party will meet for the purpose of attempting to resolve such Dispute. Should they be unable to resolve the Dispute, the Executive Director of the Harvard Alumni Association will meet with HUECU's President and Chief Executive Officer (the "Executives") in an effort to resolve the Dispute. Said meeting shall be in person or by telephone.

(b) The Executives shall meet as often as the Parties agree to discuss the problem in an effort to resolve the Dispute without the necessity of any formal proceeding.

(c) Formal proceedings for the resolution of a Dispute may not be commenced until the earlier of:

(i) the Parties concluding in good faith that amicable resolution through the procedures set forth in subsections 17(a) and (b) hereof does not appear likely; or

(ii) the expiration of the thirty-five (35) calendar day period immediately following the initial request to negotiate the Dispute;

provided, however that this Section 17 will not be construed to prevent a party from instituting formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors or to seek temporary or preliminary injunctive relief. The commencement of a proceeding pursuant to this provision does not relieve a Party from the executive consultation requirement contained in this Section 17.

18. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER IN CONTRACT, TORT (WHETHER IN NEGLIGENCE OR STRICT LIABILITY) OR OTHER LEGAL OR EQUITABLE THEORY, OR ANY LOSS OF PROFITS OR REVENUE, REGARDLESS OF WHETHER SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, PROVIDED THIS LIMITATION SHALL NOT LIMIT (i) A PARTY'S INDEMNITY OBLIGATIONS PURSUANT TO SECTION 9 HEREOF OR BREACH OF ITS CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 7 HEREOF OR (ii) THIRD-PARTY CLAIMS BASED UPON A PARTY'S FRAUD, GROSS NEGLIGENCE OR WILFUL MISCONDUCT ACTS OR ACTIONS.

19. Headings. The use of headings, captions, and numbers in this Agreement are solely for convenience of identifying and indexing various provisions and shall in no event be considered otherwise in construing or interpreting any provision.

20. Rights Cumulative. All rights, remedies, powers, and privileges conferred on the Parties under this Agreement shall be cumulative of, and in addition to, but not restrictive of or in lieu of, those conferred by law or equity.

21. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its rules of conflict of laws. Each of the Parties hereby irrevocably and unconditionally (a) consents to submit to the exclusive jurisdiction of the courts of the Commonwealth of Massachusetts and of the United States of America located in the Commonwealth of Massachusetts (the "Massachusetts Courts") for any litigation arising out of or relating to this Agreement and the transactions contemplated hereby (and agrees not to commence any litigation relating thereto except in such courts), (b) waives any objection to the laying of venue of any such litigation in the Massachusetts Courts and (c) agrees not to plead or claim in any Massachusetts Court that such litigation brought therein has been brought in an inconvenient forum. This Section 21 shall survive termination, cancellation, or expiration of this Agreement.

22. Interpretation. In this Agreement, unless the context otherwise requires, words describing the singular number shall include the plural and vice versa, and words denoting any gender shall include all genders, and words denoting natural persons shall include corporations and partnerships and vice versa. Whenever the words "include," "includes," or "including" are used in this Agreement, they shall be understood to be followed by the words "without limitation." The words "hereof," "herein," and "hereunder," and words of similar import, when used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement unless otherwise specified. All terms used herein with initial capital letters have the meanings ascribed to them herein, and all terms defined in this Agreement shall have such defined meanings

when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument, or statute defined or referred to herein, or in any agreement or instrument that is referred to herein, means such agreement, instrument, or statute as from time to time amended, modified, or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. Each of the Parties has participated in the drafting and negotiation of this Agreement. If any ambiguity or question of intent or interpretation arises, this Agreement must be construed as if it is drafted by all the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date.

THE PRESIDENT AND FELLOWS OF HARVARD
COLLEGE ON BEHALF OF HARVARD ALUMNI
ASSOCIATION

By: 

Philip W. Lovejoy
Executive Director

HARVARD UNIVERSITY EMPLOYEES CREDIT
UNION

By: 

Eugene J. Foley
President and Chief Executive Officer