

**CALIFORNIA ALUMNI ASSOCIATION  
AMENDED AND RESTATED  
AFFINITY AGREEMENT**

This Amended and Restated Agreement is entered into as of this 30th day of October, 1996 (the "Effective Date") by and between MBNA AMERICA BANK, N.A., a national banking association having its principal place of business in Newark, Delaware ("MBNA America"), and CALIFORNIA ALUMNI ASSOCIATION, an educational institution having its principal place of business in Berkeley, California ("CAA"), for themselves, and their respective successors and assigns.

WHEREAS, CAA and MBNA America mutually desire to amend and restate the Original Agreement;

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

1. DEFINITIONS

When used in this Agreement,

- (a) "Agreement" means this agreement and Schedules A, B, and C.
- (b) "Credit Card Account" means a credit card account opened by a Member in response to marketing efforts made pursuant to the Program.
- (c) "Customer" means any Member who is a participant in the Program.
- (d) "Financial Service Products" means credit card programs with the exception of the IMCO secured line, charge card programs, debit card programs with a credit feature, revolving loan programs, deposit programs, and travel and entertainment card programs which contain a credit feature.
- (e) "Mailing Lists" means updated and current lists and/or magnetic tapes (in a format designated by MBNA America) containing names, postal addresses and, when available, telephone numbers of members of CAA segmented by zip codes or reasonably selected membership characteristics.
- (f) "Member" means a member of CAA, students of the University of California Berkeley and/or other potential participants mutually agreed to by CAA and MBNA America.
- (g) "Program" means those programs and services of the Financial Service Products MBNA America agrees to offer pursuant to this Agreement to the Members from time to time.
- (h) "Royalties" means the compensation set forth in Schedule B.

(i) "Trademarks" means any design, image, visual representation, logo, service mark, trade dress, trade name, or trademark used or acquired by CAA during the term of this Agreement.

## 2. RIGHTS AND RESPONSIBILITIES OF CAA

(a) CAA agrees that during the term of this Agreement: (i) it will endorse the Program exclusively and will not sponsor, advertise, aid, develop or solicit any Financial Service Products of any organization other than MBNA America; and (ii) it will not license or allow others to license the Trademarks in relation to or for promoting any Financial Service Products of any entity other than MBNA America; and it will not sell, rent or otherwise make available or allow others to sell, rent or otherwise make available any of its mailing lists or information about any current or potential Members in relation to or for promoting any Financial Service Products of any entity other than MBNA America. Notwithstanding anything else in this Agreement to the contrary, CAA may accept advertising from any financial institution provided that the advertisement does not contain an express or implied endorsement by CAA of said financial institution or the advertised Financial Service Product.

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

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

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

(e) Upon the request of MBNA America, CAA shall provide MBNA America with Mailing Lists free of any charge. In the event that MBNA America incurs a cost because of a charge assessed by CAA or its agents for an initial Mailing List or an update to that list, MBNA America may deduct such costs from Royalties due CAA. The initial Mailing List shall contain at least two hundred thousand (200,000) names with corresponding postal addresses and, when available, telephone numbers.

(f) CAA shall only provide information to or otherwise communicate with Members or potential Members about the Program with MBNA America's prior written approval, except for current advertising and solicitation materials provided by MBNA America to CAA. Notwithstanding the above, CAA may respond to individual inquiries about the Program from its Members on an individual basis, provided that said responses are accurate and consistent with the materials provided by MBNA America to CAA. Any correspondence received by CAA that is intended for MBNA America (e.g., applications, payments, billing inquiries, etc.) shall be forwarded to the MBNA America account executive via overnight courier within 24 hours of receipt. All charges incurred for this service will be paid by MBNA America.

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

### 3. RIGHTS AND RESPONSIBILITIES OF MBNA AMERICA

(a) MBNA America shall design, develop and administer the Program for the Members.

(b) MBNA America shall design all advertising, solicitation and promotional materials with regard to the Program. MBNA America reserves the right of prior written approval of all advertising and solicitation materials concerning or related to the Program, which may be developed by or on behalf of CAA.

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

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

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

#### 4. REPRESENTATIONS AND WARRANTIES

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

(i) It is duly organized, validly existing and in good standing.

(ii) It has all necessary power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.

(iii) This Agreement constitutes a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, receivership, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

(iv) No consent, approval or authorization from any third party is required in connection with the execution, delivery and performance of this Agreement, except such as have been obtained and are in full force and effect.

(v) The execution, delivery and performance of this Agreement by such party will not constitute a violation of any law, rule, regulation, court order or ruling applicable to such party.

(b) CAA represents and warrants to MBNA America as of the date hereof and throughout the term of this Agreement that it has the right and power to license the Trademarks to MBNA America for use as contemplated by this Agreement. CAA will hold MBNA America, its directors, officers, agents, employees, affiliates, successors and assigns harmless from and against all liability, causes of action, and claims, and will reimburse MBNA America's reasonable and actual costs in connection therewith, arising from the Trademark license granted herein or from MBNA America's use of the Trademarks in reliance thereon. Each party shall promptly notify the other party in the manner provided herein upon learning of any claims or complaints relating to such license or the use of any Trademarks.

#### 5. ROYALTIES

(a) During the term of this Agreement, MBNA America shall pay Royalties to CAA. Except as otherwise provided in Schedule B, payment of Royalties then due shall be made approximately forty-five (45) days after the end of each calendar quarter.

(b) On or before the forty fifth (45th) day after the end of each calendar quarter during the term of this Agreement, MBNA America will provide CAA with a statement showing the number of Credit Card Accounts opened, the number of Credit Card Accounts renewed and the retail purchase dollar volume (excluding those transactions that relate to refunds, returns and unauthorized transactions), made during the preceding calendar period.

6. PROGRAM ADJUSTMENTS

A summary of the current features of the Program are set forth in Schedule A. MBNA America reserves the right to make periodic adjustments to the Program and its terms and features. Delaware and applicable federal law currently require each open-end credit account Customer be given the opportunity to reject a proposed change and pay the existing balance under the prior terms if the proposed adjustment increases the fees or finance charges on such account. MBNA America agrees to use best efforts to notify CAA in advance of any change which will require the Customer's consent.

7. CONFIDENTIALITY OF AGREEMENT

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

8. TERM OF AGREEMENT

This Agreement contains the entire agreement of the parties with respect to the matters covered herein and supersedes all prior promises and agreements, written or oral, with respect to the matters covered herein, including, without limitation, the original agreement. The initial term of this Agreement will begin on the Effective Date and end on October 30, 2001. This Agreement will automatically extend at the end of the initial term or any renewal term for successive one-year periods, unless either party gives written notice of its intention not to renew at least ninety (90) days, but not more than one hundred eighty (180) days, prior to the last date of such term or renewal term, as applicable.

9. STATE LAW GOVERNING AGREEMENT

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

10. TERMINATION

(a) In the event of any material breach of this Agreement by MBNA America or CAA, the other party may terminate this Agreement by giving notice, as provided herein, to the breaching party. This notice shall (i) describe the material breach; and (ii) state the party's

intention to terminate this Agreement. If the breaching party does not cure or substantially cure such breach within sixty (60) days after receipt of notice, as provided herein (the "Cure Period"), then this Agreement shall terminate sixty (60) days after the Cure Period.

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

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

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

#### 11. MISCELLANEOUS

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

(b) The obligations in Sections 4(b), 7, 10(c), and 10(d) shall survive any termination of this Agreement.

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

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

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

(f) All notices relating to this Agreement shall be in writing and shall be deemed given

(i) upon receipt by hand delivery, facsimile or overnight courier, or (ii) three (3) business days after mailing by registered or certified mail, postage prepaid, return receipt requested. All notices shall be addressed as follows:

(1) If to CAA:

CALIFORNIA ALUMNI ASSOCIATION  
Alumni House  
Berkeley, California 94720

ATTENTION: Mr. James Burk  
Executive Director

(2) If to MBNA America:

MBNA AMERICA BANK, N. A.  
400 Christiana Road  
Newark, Delaware 19713

ATTENTION: Howard C. Wallace  
Senior Executive Vice President

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

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

(h) MBNA America and CAA are not agents, representatives or employees of each other and neither party shall have the power to obligate or bind the other in any manner except as otherwise expressly provided by this Agreement.

(i) Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or give any person other than CAA and MBNA America, their successors and assigns, any rights or remedies under or by reason of this Agreement.

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

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

## 12. CUSTOMER LIST

(a) Upon the request of CAA, but in no event more than once per twelve (12) month period, MBNA America shall provide a list of names and addresses of customers holding credit card accounts opened as a direct result of marketing efforts made pursuant to the Agreement and such other types or categories of information as may be mutually agreed upon by the parties (hereinafter the "Customer List"). CAA shall return to MBNA America each Customer List provided, in the same form as received along with any whole or partial copies or compilations thereof, within thirty (30) days of receipt of such Customer List.

(b) Each Customer List is confidential, proprietary information which is and shall remain the sole property of MBNA America. CAA shall not make any use of the Customer List nor make any Customer List available in whole or in part to any person or entity other than MBNA America without receiving prior written approval from MBNA America. In view of the confidential nature of each Customer List, CAA warrants that CAA and all its employees, volunteers, agents and/or representatives of CAA who work with any Customer List shall be made aware of the obligations contained in this Section and shall be under strict legal obligation not to copy any Customer List, disclose the Customer List or make any other use of any Customer List other than as specifically approved in writing by MBNA America. CAA shall comply with any reasonable requests of MBNA America with respect to security precautions to maintain the security of the Customer Lists.

(c) Because the nature of each Customer List makes an evaluation of damages after a violation of this Section impossible, then in the event that any Customer List is handled or used in a fashion that violates this Section by CAA or its employees, volunteers, agents, and/or representatives, MBNA America will be entitled to damages of twenty dollars (\$20.00) for each use of each name, address or other type or category of information used in violation of this Section, with the amount of damages not to exceed one hundred thousand dollars (\$100,000.00) per breach. In addition, CAA agrees that MBNA America shall be entitled to injunctive relief to prevent violation or further violation by CAA and/or its employees, volunteers, agents or representatives of this Section.

## 13. CROSS INDEMNIFICATION

CAA and MBNA America each will indemnify and hold harmless the other party, its directors, officers, agents, employees, parent, subsidiaries, affiliates, successors and assigns from and against any and all liability, causes of action, claims, and the reasonable and actual costs incurred in connection therewith, which result from the breach of this Agreement by CAA or MBNA America, respectively as the case may be, or its directors, officers or employees. Each party shall notify the other party in writing (in the manner provided for in this Agreement) of notice of any claims or complaints that may result in the indemnification by the other party.



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

CALIFORNIA ALUMNI ASSOCIATION

MBNA AMERICA BANK, N.A.

By: James R. Burk

By: Howard C. Wallace

Name: JAMES R. BURK

Name: HOWARD C. WALLACE

Title: EXECUTIVE DIRECTOR  
SECRETARY/TREASURER

Title: SENIOR EXECUTIVE  
VICE PRESIDENT

## SCHEDULE A

### TERMS AND FEATURES

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

#### A. CREDIT CARD ACCOUNTS

1. There is NO annual fee.
2. The current annual percentage rate will be a variable rate of prime plus 7.9%. For variable rate accounts, there may be an additional margin applied on account of the Customer's delinquency.
3. The current annual percentage rate for Platinum Credit Card Accounts will be a variable rate of prime plus 7.4%. For variable rate accounts, there may be an additional margin applied on account of the Customer's delinquency.
4. Customers may be offered opportunities to select credit insurance as a benefit under the Program.

#### B. PLUS MILES BRIEF PRODUCT DESCRIPTION

This description is subject in all respects to the agreement to be entered into between MBNA America and each customer, as the same may be amended from time to time. Further, this description may be adjusted or amended pursuant to MBNA America's rights under the Agreement, as amended by this Addendum.

1. \$35.00 (Thirty-Five Dollar) Yearly Enrollment Charge for the Optional Plus Miles Enhancement.
2. The current annual percentage rate will be a variable rate of prime plus 7.4%. There may be an additional margin applied on account of the customer's delinquency.
3. Customers may be able to select credit insurance as a benefit under the Program.

#### C. GOLD RESERVE ACCOUNTS

"Gold Reserve Account" means a GoldReserve® (as such service mark may be changed by MBNA America, in its sole discretion, from time to time) revolving loan account opened by a Member in response to marketing efforts made pursuant to the Program.

1. There is NO annual fee for the first six months.
2. The annual fee for the second six (6) months, when applied, is \$10.00.
3. Thereafter the annual fee, when applied, is \$20.00.
4. The current annual percentage rate is 18.9%.

## SCHEDULE B

### ROYALTY ARRANGEMENT

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

#### A. CREDIT CARD ACCOUNTS

1. \$1.00 (one dollar) for each new Credit Card Account opened, which remains open for at least ninety (90) consecutive days.
2. \$3.00 (three dollars) for each Credit Card Account for which the annual fee is paid by the Customer. If no annual fee is assessed by MBNA America (other than as a result of a courtesy waiver by MBNA America), then such royalty will be paid for each Credit Card Account which: 1) has a balance greater than zero as of the last business day of every twelfth month after the opening of that Credit Card Account; and 2) has had active charging privileges for each of the preceding twelve months.
3. 0.50% (one half of one percent) of all retail purchase transaction dollar volume generated by Customers using a Credit Card Account (excluding those transactions that (1) relate to refunds, returns and/or unauthorized transactions, and/or (2) are cash equivalent transactions (e.g., the purchase of wire transfers, money orders, bets, lottery tickets, or casino gaming chips)).
4. 0.50% (one half of one percent) of all cash advance and cash equivalent transaction dollar volume generated by Customers using a Credit Card Account (excluding those transactions that relate to refunds, returns and/or unauthorized transactions).

#### B. PLUS MILES CREDIT CARD ACCOUNT ROYALTIES

1. \$1.00 (one dollar) for each new Plus Miles Credit Card Account opened, which remains open for at least ninety (90) consecutive days. This Royalty will not be paid for any Credit Card Account which, after opening, converts to a Plus Miles Credit Card Account.
2. \$17.00 (seventeen dollars) for each Plus Miles Credit Card Account for which the annual fee is paid by the Customer. If no annual fee is assessed by MBNA America (other than as a result of a courtesy waiver by MBNA America), then such royalty will be paid for each Plus Miles Credit Card Account which: 1) has a balance greater than zero as of the last business day of the annual anniversary of the month in which the Plus Miles Credit Card Account was opened; and 2) has had active charging privileges for each of the preceding twelve months. A Plus

Miles Credit Card Account may renew every twelve (12) months after the opening of the account.

C. GOLD RESERVE REVOLVING LOAN ACCOUNTS

1. \$0.50 (fifty cents) for each Gold Reserve Account opened, which remains open for at least ninety (90) consecutive days.
2. 0.25% (twenty-five one-hundredths of one percent) of the average of all month-end outstanding balances (excluding transactions that relate to credits and unauthorized transactions) in the calendar year for each Gold Reserve Account. This Royalty will be paid within sixty (60) days of the calendar year end.
3. \$2.00 (two dollars) for each applicable twelve (12) month period that a Customer pays the annual fee on a Gold Reserve Account.

D. DEPOSIT ACCOUNTS

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

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

1. 0.10% (ten one-hundredths of one percent) on an annualized basis, computed monthly (periodic rate of 0.0083330%) of the average MMDA Deposits.
2. 0.05% (five one-hundredths of one percent) on an annualized basis, computed monthly (periodic rate of 0.004167%) of the average CD Deposits.

E. ONE -TIME SIGNING BONUS

If this Agreement is fully executed by November, 1 1996, then within thirty (30) days of such full execution of this Agreement, MBNA America shall pay CAA a one-time signing bonus of two hundred fifty thousand dollars (\$250,000). Such One-Time signing bonus shall be separate from and not considered part of any Royalty Advance or Guarantee Payments.

F. ROYALTY ADVANCE

Upon full execution of this Agreement by MBNA America, MBNA America shall pay to CAA the sum of two million dollars (\$2,000,000) (the "Advance"), as an advance against future Royalties, subject to the provisions set forth below. All Royalties accrued shall, in lieu of direct payment to CAA, be applied against the Advance until such time as the Advance is fully recouped. Any Royalties accrued thereafter shall be paid to CAA as set forth in this

Agreement. Notwithstanding the foregoing, CAA hereby promises to pay MBNA America upon demand an amount equal to the difference between the amount of the Advance and the total amount of accrued Royalties credited by MBNA America against the Advance 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 initial term as stated in this Agreement as of the Effective Date;
- (ii) CAA breaches any of its obligations under this Agreement;
- (iii) MBNA America is prohibited or otherwise prevented from conducting at least two (2) direct mail campaigns to the full updated Mailing List during each consecutive twelve month period during the term of the Agreement;
- (iv) MBNA America is prohibited or otherwise prevented from conducting at least two (2) telemarketing campaigns to the full updated Mailing List during each consecutive twelve month period during the term of the Agreement.

G. ROYALTY GUARANTEE.

CAA shall be guaranteed to accrue Royalties (including without limitation the amount of the Advance) equal to or greater than two million seven hundred fifty thousand dollars (\$2,750,000) (the "Guarantee Amount") by the end of the full initial term of the Agreement, subject to the provisions set forth below. If on the last day of the full initial term of this Agreement CAA has not accrued \$2,750,000 in Royalties, MBNA America will pay CAA an amount equal to the Guarantee Amount minus the sum of all compensation accrued by CAA during the initial term of this Agreement and the amount of any unrecovered Advance. Notwithstanding the foregoing, this Royalty Guarantee and any obligation of MBNA America hereunder shall be expressly contingent upon the non-occurrence of any of the conditions set forth in Subsection F. above.

## ADDENDUM No. 1

THIS ADDENDUM (the "Addendum") is entered into this 15<sup>th</sup> day of AUGUST, 1997 by and between California Alumni Association ("CAA"), and MBNA America Bank, N.A. ("MBNA America"), for themselves and their respective successors and assigns.

WHEREAS, CAA and MBNA America are parties to an Amended and Restated Affinity Agreement dated October 30, 1996, as the same may have been amended (the "Agreement"), wherein MBNA America provides certain financial services to certain persons included in certain lists provided to MBNA America by or on behalf of CAA; and

WHEREAS, CAA and MBNA America mutually desire to extend the term of the Agreement and to modify the certain provisions relating to the Advance and the Guarantee Amount;

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

1. The above recitals are incorporated herein and deemed a part of this Addendum. Capitalized terms used but not otherwise herein defined are used as defined in the Agreement.
2. The current term of the Agreement is hereby extended to end on June 30, 2002. Thereafter, the Agreement shall automatically extend at the end of the current term or any renewal term for successive one-year periods, unless either party gives written notice of its intention not to renew at least ninety (90) days, but not more than one hundred eighty (180) days, prior to the last date of such term or renewal term, as applicable.
3. MBNA America agrees to increase the Advance by one million one hundred thousand dollars (\$1,100,000.00) so that the total Advance under the Agreement equals three million one hundred thousand dollars (\$3,100,000.00). The parties acknowledge and agree that two million dollars of the three million one hundred thousand dollars (\$3,100,000.00) has already been paid. The remaining one million one hundred thousand dollars (\$1,100,000.00) of the additional Advance will be paid to CAA upon the full execution of this Addendum. The Advance and the Guarantee Amount, for all purposes under the Agreement (as amended by this Addendum), shall be deemed to be three million one hundred thousand dollars (\$3,100,000.00); provided however that, notwithstanding anything in the Agreement to the contrary, CAA shall only be entitled to payment of additional Royalties in accordance with the Agreement after Royalties accrued have exceeded four million one hundred thousand dollars (\$4,100,000.00).
4. Section 2 of this Addendum shall replace all provisions concerning the term of the Agreement, the renewal of the Agreement, and all notices required to not renew this Agreement. Except as amended by this Addendum, all the terms, conditions and covenants of the Agreement are valid, shall remain in full force and effect, and are hereby ratified and confirmed. Any inconsistencies between this Addendum and the Agreement shall be governed by this Addendum. Notwithstanding anything to the contrary in the Agreement, the Agreement, as amended by this Addendum, shall be governed by and subject to the laws of the State of Delaware (without regard to its conflict of laws principles) and shall be deemed for all purposes to be made and fully performed in Delaware. This Addendum may be executed in any number of counterparts, each of which shall be considered an original, and all of which shall be deemed one and the same instrument. The Agreement, as amended by this Addendum, contains the entire agreement of the parties with respect to the matters covered and no other prior promises, negotiations or discussions, oral or written, made by any party or its employees, officers or agents shall be valid and binding.

IN WITNESS WHEREOF, each party hereto, by its representative, has duly executed this Addendum as of the date first above written, and such party and its representative warrant that such representative is duly authorized to execute and deliver this Addendum for and on behalf of such party.

CALIFORNIA ALUMNI ASSOCIATION

MBNA AMERICA BANK, N.A.

By:

James R. Burk

By:

John C. Richmond

Name:

JAMES R. BURK

Name:

JOHN C. RICHMOND

Title:

EXECUTIVE DIRECTOR

Title:

Sr. Ex. V.P.



AGREEMENT  
BETWEEN  
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA  
AND  
MBNA AMERICA BANK, N.A.

This Agreement is entered into as of this 30<sup>th</sup> day of June, 1997 (the "Effective Date"), by and between MBNA AMERICA BANK, N.A., a national banking association having its principal place of business at 1100 North King Street, Wilmington, Delaware 19801 ("MBNA America"), and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, on behalf of its Department of Intercollegiate Athletics and Recreational Sports, Berkeley, California ("the University").

1. DEFINITIONS

When used in this Agreement,

(a) "Agreement" means this agreement and Schedules attached herein as identified as follows:

- A. Program Summary
- B. Royalties
- C. W-9 Tax Identification Form
- D. University of California, Berkeley, Intercollegiate Athletics And Recreational Sports (IARS) Marketing and Promotion Opportunities

(b) "Member" means generally an individual who is associated with any of the formal and informal groups or identifiable groups or target audiences which support University of California, Berkeley Athletics and/or other potential participant groups mutually agreed to by the University

and MBNA America in writing to be contacted or solicited during the term of this Agreement. Not all individual members in a Member group will become a Customer, as defined below.

(c) "Program" means those programs and services of Credit Card Services MBNA America agrees to offer pursuant to this Agreement to the Members from time to time and set forth in the following Schedules:

1. Credit Card Accounts (Other than Plus Miles Credit Card Accounts)
2. Plus Miles Credit Card Accounts
3. Gold Reserve Accounts
4. Gold Option Accounts

(d) "Customer" means any individual who becomes a participant in the Program by taking advantage or becoming enrolled, or by applying for the benefits of the Program offered by MBNA America pursuant to this Agreement.

- (i) "Student Customer" means a Customer who is identified by the University or the Customer as either an undergraduate or graduate student of University of California, Berkeley.
- (ii) "Non-student Customer" means a Customer who is not a Student Customer.

(e) "Credit Card Services" means, MasterCard and/or Visa charge or credit card programs, including Credit Card Accounts, Plus Miles Credit Card Accounts, and also the loan products Gold Reserve Accounts, Gold Option Accounts, which now exist or will be created during the term of this Agreement. Presently, the Program is defined in the attached Schedules as set forth above in the definition of Program.

(f) "Credit Card Account" means a credit card account opened by a Customer in response, either directly or indirectly, to a marketing efforts made pursuant to the Program.

- (f.1) A "Non-student Customer Credit Card Account" is a Credit Card Account where the application approved is an application for Non-student Customers.
- (f.2) A "Student Customer Credit Card Account" is a Credit Card Account where the application approved is an application for Student Customers.
- (f.3) A "Plus Miles Credit Card Account" is a Credit Card Account carrying the Plus Miles enhancement.

(g) "Mailing Lists" means Department of Intercollegiate Athletics and Recreational Sports, Berkeley, updated and current lists and/or magnetic tapes containing names, postal addresses and, when available, telephone numbers of Members segmented by zip codes or reasonably selected membership characteristics. Mailing Lists shall not be released to MBNA America, however, the conditions of soliciting Members of a list are set forth in detail in the Schedule D.



(h) "Telemarketing Lists" means updated and current lists and/or magnetic tapes containing names and telephone numbers of Members who have given the University written consent to be contacted by telephone regarding opportunities for Credit Card Services as described in Schedule D.V.1.

(i) "Royalties" means the compensation paid to the University set forth in Schedule B, attached herein.

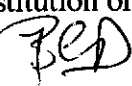
(j) "Trademarks" means any design, image, visual representation, logo, service mark, trade dress, trade name, or trademark owned, used, or acquired by the University during the term of this Agreement.

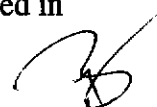
(k) "Active Charging Privileges" means, with respect to a given Credit Card Account, a Credit Card Account which (i) is not in default under the relevant Credit Card Agreement; (ii) does not have a status code which blocks further charges (e.g., overlimit, closed by grantor, closed by Customer, etc.); (iii) has at least one plastic which has been issued and validated; and (iv) has been issued to the person(s) who requested the Credit Card Account and such person(s) was the person(s) to whom MBNA America intended to extend credit.

## 2. RIGHTS AND RESPONSIBILITIES OF THE UNIVERSITY

(a) The University grants to MBNA a license to use its Trademarks, but only in connection with the advertising, marketing, and promotion of MBNA's Program and on the Credit Cards while this Agreement is in effect.

(b) During the term of this Agreement, the University may not enter into an agreement with any third party on behalf of the Berkeley campus' Department of Intercollegiate Athletics and Recreational Sports which allows said third party to use its Trademarks for the purpose of soliciting, advertising, promoting, developing, or sponsoring Credit Card Services. During the term of this Agreement, the University may not enter into an agreement with any third party which allows that third party to use the Mailing Lists for the purpose of soliciting, advertising, promoting, or developing Credit Card Services.

(c) Nothing contained in this Agreement shall preclude or restrict the University from entering into an agreement with a third party on behalf of any department or unit other than the Department of Intercollegiate Athletics and Recreational Sports for identical or similar services offered by MBNA America hereunder. Further, this Agreement is not intended to and shall not be construed to effect in any way any existing or future agreements or relationships the University currently has or may in the future have with any financial institution or entity which offers financial services, except as set forth in (b) <sup>above and (d)</sup> *of this section* 

(d) The University grants MBNA America the exclusive right to promote and market the Program to Customers and Members at the locations and through the mailings specified in 

Schedule D, attached hereto and incorporated herein. All advertising, promotional, solicitation, and marketing related materials related to the Program must be submitted to the University thirty (30) days before their proposed use and may not be used without the University's prior written approval. The University will not grant to any other credit card or charge card issuer the right to promote any credit card at the locations and the mailings as specified in Schedule D.

*on charge card BCD*

(e) Except for the mailings referenced in subparagraph (d) above and current advertising and solicitation materials provided by MBNA to the University, the University shall not provide information or otherwise communicate with Members or potential members about the Program without MBNA's prior written approval. The University shall forward to MBNA any correspondence intended for MBNA, e.g. applications, payments, billing inquiries, within one (1) business day of receipt by overnight delivery service. All charges for such service shall be paid promptly by MBNA America.

### 3. RIGHTS AND RESPONSIBILITIES OF MBNA AMERICA

- (a) MBNA America may design, develop and administer the Program for the Members.
- (b) MBNA America shall design all advertising, solicitation and promotional materials with regard to the Program. MBNA America reserves the right of prior written approval of all advertising and solicitation materials concerning or related to the Program, which may be developed by the University.
- (c) MBNA America shall bear all costs of producing materials for the Program. If MBNA America produced inserts are mailed by the University, MBNA shall compensate the University as stated in Section D. V. 2.
- (d) MBNA America shall make all credit decisions and shall bear all credit risks with respect to each Customer's account(s) independently of the University.
- (e) MBNA America may use any Telemarketing Lists which may be provided to MBNA America consistent with this Agreement. Such Telemarketing Lists may only be used for the sole purpose of marketing to Members the Program and Credit Card Services as set forth in this Agreement, and MBNA shall not permit any entities handling these Telemarketing Lists to use them for any other purpose. All telemarketing presentations must clearly identify MBNA America as the originator of the call. All telemarketing contacts will be conducted in a professional and respectful manner. The University reserves the right to remotely listen to telemarketing presentations to ensure that they are of the highest quality. These Telemarketing Lists shall remain the sole property of the University.

### 4. REPRESENTATIONS AND WARRANTIES

- (a) The University and MBNA America each represent to the other 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, approval or authorization from any third party is required in connection with the execution, delivery and performance of this Agreement, except such as have been obtained and are in full force and effect.
- (v) The execution, delivery and performance of this Agreement by such party will not constitute a violation of any law, rule, regulation, court order or ruling applicable to such party.

(b) The University represents to MBNA America as of the date hereof and throughout the term of this Agreement that it has the right and power to license the Trademarks to MBNA America for use as contemplated by this Agreement. The University will hold MBNA America, its directors, officers, agents, employees, affiliates, successors and assigns harmless from and against all liability, causes of action, and claims, and will reimburse MBNA America's reasonable and actual costs in connection therewith, arising from the Trademark license granted herein or from MBNA America's use of the Trademarks in reliance thereon. Each party shall promptly notify the other party in the manner provided herein upon learning of any claims or complaints relating to such license or the use of any Trademarks.

(c) MBNA America represents and warrants to the University that it will not use the University's Trademarks, including, but not limited to, the names 'University of California', 'University of California, Berkeley', 'UC Berkeley', 'CAL' or any other abbreviation of the University's name in any manner whatsoever other than that specifically allowed under this Agreement.

## 5. INDEMNIFICATION

(a) MBNA America shall defend, indemnify and hold University, its officers, agents and employees harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of MBNA America, its officers, agents, or employees.



(b) University shall defend, indemnify and hold MBNA America, its officers, agents and employees harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the University, its officers, agents, or employees.

6. UNIVERSITY NAME

Except as specifically allowed in this Agreement, MBNA America may not use the University's Trademarks, including, but not limited to, the names 'University of California', 'University of California, Berkeley', 'UC Berkeley', 'CAL' or any other abbreviation of the University's name, in any manner whatsoever other than as specifically allowed under this Agreement. MBNA is prohibited by this Agreement and California Education Code Section 92000 from implying, either directly or indirectly, indicating, or otherwise suggesting that MBNA America or any of its products or services is connected or affiliated with or is endorsed, favored, or supported by the University. The University retains all rights, title, and interest in its Trademarks and provides to MBNA America the limited right to use its Trademarks only as set forth herein. The University will determine which Trademarks are used, which shall only be those Trademarks related to the Department of Intercollegiate Athletics and Recreational Sports, Berkeley.

7. ROYALTIES

(a) During the term of this Agreement, MBNA America shall pay Royalties to the University. Royalties will not be paid without a completed Schedule C. Except as otherwise provided in Schedule B, payment of Royalties then due shall be made approximately forty-five (45) days after the end of each calendar quarter. Plus Miles Credit Card Accounts shall generate solely the Royalties specified in Schedule B, Section B hereof.

(b) On or before the forty-fifth (45th) day after the end of each calendar quarter during the term of this Agreement, MBNA America will provide the University with a statement showing the number of Credit Card Accounts opened, the number of Credit Card Accounts renewed and the retail purchase dollar volume (excluding those transactions that relate to refunds, returns and unauthorized transactions), cash advances (for Non-student Credit Card Accounts only) made during the preceding calendar period.

8. PROGRAM ADJUSTMENTS

A summary of the current features of the Program are set forth in Schedule A. MBNA reserves the right to make periodic adjustments to the Program and its terms and features as set forth in Schedule A. Delaware and applicable federal law currently require each open-end credit account Customer be given the opportunity to reject a proposed change and pay the existing balance under the prior terms if the proposed adjustment increases the fees or finance charges on such account.



9. CONFIDENTIALITY OF AGREEMENT

(a) The University and MBNA America shall provide copies of and/or disclose the terms of this Agreement only to those employees and individuals, for example, accountants, attorneys, and financial and marketing advisors, who need access to such information for the performance of their duties, except as otherwise agreed in writing by the parties or as such disclosure is required by law.

(b) This contract shall be subject to the examination and audit of the Auditor General of the State of California for a period of three years after the final payment under the contract. The examination and audit will be confined to those matters connected with the performance of the contract including but not limited to the costs of administering the contract.

10. TERM OF AGREEMENT

The initial term of this Agreement will begin on the Effective Date and end on December 31, 2002.

11. STATE LAW GOVERNING AGREEMENT

(This section intentionally omitted.)

12. TERMINATION

(a) In the event of any material breach of this Agreement by MBNA America or the University, the other party may terminate this Agreement by giving notice, as provided herein, to the breaching party. This notice shall (i) describe the material breach; and (ii) state the party's intention to terminate this Agreement. If the breaching party does not cure or substantially cure such breach within thirty (30) days after receipt of notice, as provided herein (the "Cure Period"), then this Agreement shall terminate sixty (60) days after the Cure Period.

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

(c) Upon termination of this Agreement, MBNA America shall, in a manner consistent with Section 12 (d) of this Agreement, cease to use the Trademarks. MBNA America agrees that upon such termination it will not claim any right, title, or interest in or to the Trademarks or to any Telemarketing Lists provided pursuant to this Agreement.

(d) MBNA America shall have the right to prior review of any notice in connection with, relating or referring to the termination of this Agreement communicated with, relating or referring to the termination of this Agreement communicated by the University to the Members.



Such notice shall be factually accurate and MBNA America's comments shall be limited to remarks that could be considered disparaging to MBNA America, its affiliates, the Program or the Agreement. Upon termination of this Agreement, the University shall not attempt to cause the removal of the University's identification or Trademarks from any person's credit devices, checks or records of any Customer existing as of the effective date of termination of this Agreement. *University agrees to make no derogatory or negative remarks about MBNA America, its officers or the employees of MBNA America.*

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jun*

13. INSURANCE REQUIREMENTS

MBNA America agrees to keep in full force and effect during the term of this Agreement at the expense of MBNA America:

General Liability Insurance or an equivalent funded program of self-insurance as follows:

Comprehensive or Commercial Form (Minimum Limits)

(1) Each Occurrence	\$1,000,000
(2) Products/Completed Operations Aggregate	\$3,000,000
(3) Personal and Advertising Injury	\$1,000,000
(4) General Aggregate*	\$3,000,000
*(not applicable to comprehensive form)	
(5) Excessive/Umbrella Occurrence/Aggregate	\$10,000,000

If the above insurance is written on a claims made form, it shall continue for three years following termination of the Agreement. The insurance shall provide for a retroactive date of placement prior to or coinciding with the effective date of the agreement.

2. Business Automobile Liability: (Minimum Limits) for Owned, Scheduled, Non-Owned, or Hired Automobiles with a combined single limit of not less than \$1,000,000 per occurrence.

3. Workers' Compensation: as required under California State Law.

Within ten (10) days of the execution of this Agreement, MBNA America shall file a Certificate of Insurance or self-insurance with University naming The Regents of the University of California as an additional insured but only with respect to liability arising from the acts or failure to act of MBNA America. Such certificate or certificates shall make provision for thirty (30) days advance written notice to University of cancellation or any modification in the above insurance or program of self-insurance.

14. ENTIRE AGREEMENT

This Agreement and the Schedules attached hereto constitute the entire agreement between the parties regarding the subject matter herein and supersedes all prior promises and agreements, written

*[Handwritten signature]*



or oral, regarding the subject matter. No amendment to this Agreement shall be binding unless it is in writing signed by both parties.

15. MISCELLANEOUS

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

(b) The obligations in Sections 4(b), 7, <sup>(9) BLD</sup> 12(c), 12(d), and Schedule B shall survive any termination of this Agreement.

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

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

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

(f) All notices relating to this Agreement shall be in writing and shall be deemed given (i) upon receipt by hand delivery, facsimile or overnight courier, or (ii) three (3) business days after mailing by registered or certified mail, postage prepaid, return receipt requested. All notices shall be addressed as follows:

(1) If to the University:

(Programmatic - Budget & Finance)  
University of California, Berkeley  
DEPARTMENT OF INTERCOLLEGIATE ATHLETICS &  
RECREATIONAL SPORTS  
209 Memorial Stadium #4426  
Berkeley, CA 94720-4426

ATTENTION:  
Director of Budget and Finance  
Mike Weinberger

(Programmatic - Marketing and Promotions)  
University of California, Berkeley



DEPARTMENT OF INTERCOLLEGIATE ATHLETICS &  
RECREATIONAL SPORTS  
209 Memorial Stadium #4426  
Berkeley, CA 94720-4426

ATTENTION:  
Director of Marketing & Promotions  
Kelli P. Wilder

(Contractual)

University of California, Berkeley  
PROCUREMENT AND BUSINESS CONTRACTS  
6701 San Pablo Avenue #5600, Suite 218  
Berkeley, CA 94720-5600

ATTENTION:  
Business Contracts Administrator  
Brian C. Donohue

(2) If to MBNA America:

MBNA AMERICA BANK, N. A.  
1100 North King Street  
Wilmington, DE 19801

ATTENTION:  
Senior Executive Vice President  
John C. Richmond

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

(g) This Agreement contains the entire agreement of the parties with respect to the matters covered herein and supersedes all prior promises and agreements, written or oral, with respect to the matters covered herein. Without the prior written consent of MBNA America, which shall not be unreasonably withheld, the University may not assign any of its rights or obligations under or arising from this Agreement. MBNA America may not assign or transfer any of its rights or obligations under or arising from this Agreement without the written consent of the University, which shall not be unreasonably withheld; provided however that MBNA America may assign or transfer, without the University's consent, any of its rights and/or obligations under this Agreement:



- (i) to a subsidiary or an entity controlling, controlled by or under common control with MBNA America (an "MBNA Affiliate") so long as MBNA America warrants that such MBNA Affiliate can fully perform the obligations of MBNA America as assigned or transferred to such MBNA Affiliate; or
- (ii) to any individual, corporation or other entity (other than an MBNA Affiliate) pursuant to a merger, consolidation, or a sale of all or substantially all the assets of MBNA America (each, a "Transaction"), subject to the following. MBNA America shall provide the University with notice of such Transaction within thirty (30) days of the consummation of such Transaction. Upon receipt of such notice, the University shall have one hundred and eighty (180) days to determine in good faith if it is reasonably satisfied with the post-Transaction relationship. In the event that the University reasonably determines in good faith that it is not satisfied, the University may terminate the Agreement by notice to the successor entity to MBNA America, which notice shall specify in detail the basis for the University's dissatisfaction. After receiving such notice, the successor entity shall have sixty (60) days in which to address the University's issues and thereby satisfy the University. If after such period the University's issues remain unaddressed, then the Agreement shall immediately terminate.

(h) MBNA America and the University are not agents, representatives or employees of each other and neither party shall have the power to obligate or bind the other in any manner except as otherwise expressly provided by this Agreement.

(i) Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or give any person other than the University and MBNA America, their successors and assigns, any rights or remedies under or by reason of this Agreement.

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

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

Handwritten signature and initials, possibly "R" and "30", in the bottom right corner of the page.

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

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: Trudy S. Tuan

Name: Trudy S. Tuan

Title: Director, Materiel Management

Date: June 30, 1997

MBNA AMERICA BANK, N.A.

By: John C. Richmond

Name: John C. Richmond WILLIAM P. MORRISON

Title: Senior Executive Vice President Senior Exec. Vice President

Date: 7/2/97



**SCHEDULE A**  
**PROGRAM SUMMARY**

**TERMS AND FEATURES**

Subject to (i) MBNA America's right to vary the Program and its terms and features in accordance with Section 8, and (ii) the applicable agreement entered into between MBNA America and each Customer, the Program shall include the following features:

**A. CREDIT CARD ACCOUNTS (Other than Plus Miles Credit Card Accounts)**

1. There is NO annual fee.
2. For Non-student Customers the current annual percentage rate will be a variable rate of prime plus 7.9% Annual Percentage Rate.
3. For Student Customers the current annual percentage rate will be a variable rate of prime plus 9.9%. Annual Percentage Rate.
4. Customers may be offered opportunities to select credit insurance as a benefit under the Program.
5. 5.9% introductory Annual Percentage Rate (APR) on all cash advances, access checks, balance transfers and retail purchases for five (5) months

**B. PLUS MILES CREDIT CARD ACCOUNTS**

1. \$35.00 (thirty-five dollars) Yearly Enrollment Charge for the Optional Plus Miles Enhancement.
2. The current annual percentage rate will be a variable rate of prime plus 7.4%. There may be an additional margin applied due to the customer's delinquency.

**C. GOLD RESERVE ACCOUNTS**

"Gold Reserve Account" means a GoldReserve® (as such service mark may be changed by MBNA America, in its sole discretion, from time to time) revolving loan account or comparable account, opened by a Member in response to marketing efforts made pursuant to the Program.

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



2. The annual fee for the second six (6) months, when applied, is \$ 10.00 (ten dollars).
3. Thereafter the annual fee, when applied, is \$20.00 (twenty dollars).
4. The current annual percentage rate is 18.9%.

D. GOLD OPTION ACCOUNTS

<sup>SM</sup>

"Gold Option Account" means a GoldOption (as such service mark may be changed by MBNA America, in its sole discretion, from time to time) revolving loan account, or comparable account, opened by a Member in response to marketing efforts made pursuant to the Program.

1. There is NO annual fee.
2. The current annual percentage rate is 14.99%.



## SCHEDULE B

### ROYALTIES

#### I. ROYALTY ARRANGEMENT DURING TERM OF AGREEMENT

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

##### A. CREDIT CARD ACCOUNTS (Other than Plus Miles Credit Card Accounts)

1. \$1.00 (one dollar) for each new Credit Card Account opened, which remains open for at least ninety (90) consecutive days.
2. \$3.00 (three dollars) for each Non-student Customer Credit Card Account for which the annual fee is paid by the Non-student Customer. If no annual fee is assessed by MBNA, then such royalty will be paid for each Non-student Customer Credit Card Account which: 1) has a balance greater than zero as of the last business day of every twelfth month after the opening of that Credit Card Account; and 2) has had active charging privileges for each of the preceding twelve months.
3. \$3.00 (three dollars) for each Student Customer Credit Card Account for which the annual fee is paid by the Student Customer. If no annual fee is assessed by MBNA America, then such royalty will be paid for each Student Customer Credit Card Account which: 1) has a balance greater than zero as of the last business day of every twelfth month after the opening of that Credit Card Account; and 2) has had active charging privileges for each of the preceding twelve months.
4. 0.50% (one half of one percent) of all retail purchase transaction dollar volume generated by Customers using a Non-student Credit Card Account, (excluding those transactions that relate to refunds, returns and unauthorized transactions).
5. 0.50% (one half of one percent) of all retail purchase transaction dollar volume generated by Student Customers using a Student Credit Card Account (excluding those transactions that relate to refunds, returns and unauthorized transactions).
6. 0.50% (one half of one percent) of all cash advance volume generated by Non-student Customers using an Non-student Customer Credit Card Account, (excluding those transactions related to unauthorized transactions).

B. PLUS MILES CREDIT CARD ACCOUNTS

1. \$ 1.00 (one dollar) for each new Plus Miles Credit Card Account opened, which remains open for at least ninety (90) consecutive days. This Royalty will not be paid for any Credit Card Account which, after opening, converts to a Plus Miles Credit Card Account.
2. \$17.00 (seventeen dollars) for each Plus Miles Credit Card Account for which the annual fee is paid by the Customer. If no annual fee is assessed by MBNA America, then such royalty will be paid for each Plus Miles Credit Card Account which 1) has a balance greater than zero as of the last business day of the annual anniversary of the month in which the Plus Miles Credit Card Account was opened: 2) has had active charging privileges for any of the preceding twelve months. A Plus Miles Credit Card Account may renew every twelve (12) months after the opening of the account.

C. GOLD RESERVE REVOLVING LOAN ACCOUNTS

1. \$0.50 (fifty cents) for each Gold Reserve Account opened, which remains open for at least ninety (90) consecutive days.
2. 0.25% (twenty-five one-hundredths of one percent) of the average of all monthend outstanding balances (excluding transactions that relate to credits and unauthorized transactions) in the calendar year for each Gold Reserve Account. This Royalty will be paid within sixty (60) days of the calendar year end.
3. \$2.00 (two dollars) for each applicable twelve (12) month period that a Customer pays the annual fee on a Gold Reserve Account.

D. GOLD OPTION REVOLVING LOAN ACCOUNTS

1. \$0.50 (fifty cents) for each Gold Option Account opened, which remains open for at least ninety (90) consecutive days.
2. 0.25% (twenty-five one-hundredths of one percent) of the average of all monthend outstanding balances (excluding transactions that relate to credits and unauthorized transactions) in the calendar year for each Gold Option Account. This Royalty will be paid within sixty (60) days of the calendar year end.
3. \$2.00 (two dollars) for each applicable twelve (12) month period that each Gold Option Account remains open.

E. ROYALTY ADVANCE



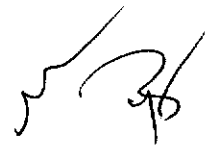
1. Upon full execution of this agreement (as defined herein) by MBNA America, MBNA America shall pay to the University, as an advance against future Royalties, the sum of \$1,000,000 (one million dollars) (the "Advance"). All Royalties earned by the University pursuant to this Agreement shall, in lieu of direct payment to the University, be applied by MBNA America against the amount of the Advance until such time as the Advance is repaid in full. Any Royalties earned once the Advance is **fully** repaid shall be paid to the University as provided in this Agreement. This Advance is in consideration for the following covenants:
  - (i) The University will not materially breach any of its obligations under this Agreement,
  - (ii) The University will support the Program as provided in Section 2 of this Agreement and Schedule D during the term of this Agreement.

F. ROYALTY GUARANTEE

1. The University shall be guaranteed to accrue Royalties (including without limitation the amount of the Advance) equal to or greater than \$1,000,000 (one million dollars) (the "Guarantee Amount") by the end of the full initial term of the Agreement.

II. ROYALTY ARRANGEMENT AFTER TERM OF AGREEMENT

Upon termination of this Agreement, MBNA America will pay the University a Royalty calculated at one and one-quarter percent (1.25%) of outstanding balances for those accounts with the University's trademark(s) that remain open with active charging privileges. Royalties earned shall be paid to the University on a quarterly basis, subject to repayment of the Advance as specified in above Section E.1.



## SCHEDULE D

### UNIVERSITY OF CALIFORNIA, BERKELEY Intercollegiate Athletics and Recreational Sports (IARS) Marketing & Promotion Opportunities

#### I. Table Solicitations

Intercollegiate Athletics and Recreational Sports will provide to MBNA America the following tabling opportunities for MBNA each year that the listed event is held throughout the term of the Agreement. The quantity of potential customers listed for each event represents IARS's best estimate, based on prior experience, but does not constitute a guarantee of event attendance. All tables will be located at IARS facilities. Opportunities to table at non-IARS locations cannot be guaranteed.

EVENT	TIMING	QUANTITY	STATUS
1) Calapalooza (move-in to dorms day, fall semester)	August	3,500 - 5,200 students	Pending approval from Housing & Dining Services
2) KGO Football Fun Fest	August	2,500 fans	1 table
3) Football Fun Zone (pre-game fan activity area)	August - November	unknown	1 table/5 dates per year
4) Football Games	August - November	41,000 fans	4 tables/5 dates per year
5) Midnight Madness (1st practice of the year celebration -Men's Basketball )	October	6,000 fans	1 table
6) Breakfast with the Bears (1st practice of the year celebration - Women's Basketball)	October	1,200 fans	1 table
7) Cal Day (campus wide open house/community visit day)	April	100,000 community	number of tables to be determined
8) Faculty/Staff Appreciation Day (campus-wide outdoor event)	June	10,000 faculty/staff	1 table
9) Men's Basketball games	November - March	11,000 fans	1 table (1997-98 season to be confirmed with Oakland Coliseum Arena)



10) Women's Basketball games	November - March	1,000 fans	1 table (1997-98 season to be confirmed with Henry J. Kaiser Auditorium)
11) 2 - 3 times per week, IARS facilities	August - May	varies	Sites to include Athletic Ticket Office and Recreational Sports Facility
12) Soccer (men's & women's)	August- November	Test	Confirmed
13) Tennis (men's & women's)	October - February	Test	Confirmed

## II. MBNA Produced Insertions in IARS Mailings

Intercollegiate Athletics and Recreational Sports will provide to MBNA America the following opportunities for Program Insertions produced by MBNA each year that the listed mailing occurs throughout the term of this Agreement. The quantity of potential customers listed for each event represents IARS's best estimate, based on prior experience and does not constitute a guarantee.

MAILING	TIMING	QUANTITY	STATUS
(1) Football Season Ticket Mailing	August	10,000 households	Confirmed
(2) Men's Basketball Season Ticket Mailing	October	6,000 households	Confirmed
(3) Women's Basketball Season Ticket Mailing	October	250 households	Confirmed
(4) Bear Backers - end of the year mailing	November	50,000 households	Confirmed
(5) Cal Adventures	Twice annually	11,000 households	Confirmed
(6) Cal Athletic Camps	March	5,000 households	Confirmed
(7) Cal Fit	Twice annually	8,000 households	Confirmed
(8) Cal Rec Club Members	One annual mailing	3,000 households	Confirmed

<b>(9) Golden Bear Gymnastics</b>	One annual mailing	5,000 households	Confirmed
<b>(10) Shape-Up</b>	On going distribution	n/a	Confirmed
<b>(11) Strawberry Canyon Summer Camps</b>	March	10,000 households	Confirmed

### III. Print Media

Intercollegiate Athletics and Recreational Sports will provide to MBNA America the following placement opportunities in print media:

- 1) One (1) half-page advertisement in *Cal Exclusive Magazine* (direct mailed to all football season ticket holders in August, 1997, to be confirmed annually) *4 color* *RED*
- 2) One (1) half-page advertisement in football game program five (5) insertions September through November).
- 3) Advertisement (size, color capabilities and insertion number to be determined based on format) in Men's Basketball program (November through March).
- 4) Article announcing partnership with MBNA America in *Cal Athletic News* ("The CAN"), mailed to 6000 donors a.k.a. "Bear Backers").

### IV. Promotions Specific to Football and Basketball

Intercollegiate Athletics and Recreational Sports will provide to MBNA America the following opportunities for general Program promotions each year, throughout the term of this Agreement. The promotions herein shall specifically be for "home games" for intercollegiate Football (between 5 and 6 games per season) and intercollegiate Men's and Women's Basketball (between 14 and 16 games per season each for Men's and Women's Basketball).

<b>(1) Electronic scoreboard messages with MBNA logo recognition (except Women's Basketball)</b>	September through March	Twice per game	Confirmed
<b>(2) Public address announcements</b>	September through March	Twice per game	Confirmed
<b>(3) Live radio drops (except Women's Basketball)</b>	September through March	Twice per game	Confirmed

## V. General

### (1) Assent to Solicitation

Pursuant to University of California policies RMP7, Privacy of and Access to Information Responsibilities and to RMP8 Legal Requirements on Privacy of and Access to Information, MBNA may contact only those Members who notify University of their consent to be solicited. To establish such consent University shall include in its future Bear Backer Applications the following section:

*Check here if you wish to be contacted by phone regarding additional financial opportunities in support of Cal Athletics.*

When the application is received with a signature, the name and phone number may then be provided to MBNA for direct Telemarketing contact as set forth under the guidelines agreed to in writing and added to the terms of this Agreement as an amendment.

### (2) Additional Costs for Mailings

If MBNA America produced inserts are mailed by the University, MBNA America shall reimburse the University for the insertion at the rate incurred by the University (\$0.05 per insert piece in 1997).





MBNA Marketing Systems, Inc.

44 Montgomery Street

Suite 4100

San Francisco, California 94104

(415) 835-6262

(800) 585-4956

(415) 835-6200 Fax

August 13, 1997

Mr. James Burk  
Executive Director  
California Alumni Association  
Alumni House  
Berkeley, California 94720

Dear Mr. Burk:

This letter memorializes MBNA America's and CAA's understanding that as long as the affinity agreement between MBNA America and CAA remains in full force and effect, MBNA America will not execute an affinity agreement to target market non-CAA endorsed credit cards to your members with any organization whose principal place of business is located on the University of California at Berkeley campus (e.g., the University of California Athletic Department) without CAA's prior approval.

CAA acknowledges and agrees that (1) organizations that already have a relationship with MBNA America are not subject to CAA's prior approval (e.g., the Associated Students of the University of California); and (2) it has already given MBNA America its approval to enter into an affinity agreement with the University of California Athletic Department.

Please sign this letter where indicated below and return it to me. I will then forward this letter on to MBNA America for signature and have a fully executed copy returned to you.

If you have any questions, please feel free to contact me at (415) 835-6280.

Sincerely,

Gina Berkley  
Vice President

**Accepted and Agreed:**

California Alumni Association  
By: James R. Burk  
Name: JAMES R. BURK  
Title: EXECUTIVE DIRECTOR

MBNA America Bank, N.A.  
By: John C. Richmond  
Name: JOHN C. RICHMOND  
Title: Sr. Ex. V.P.

## AFFINITY AGREEMENT

This Agreement is entered into as of this 1<sup>st</sup> day of July, 2002 (the "Effective Date") by and among MBNA AMERICA BANK, N.A., a national banking association having its principal place of business in Wilmington, Delaware ("MBNA America"), CALIFORNIA ALUMNI ASSOCIATION, a 501(c)(3) corporation independent of the University of California and having its principal place of business in Berkeley, California ("CAA"), and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, acting individually and for and on behalf of its Department of Intercollegiate Athletics and Recreational Sports, an educational institution with its principal place of business in Berkeley, California ("University"), for themselves, and their respective successors and assigns.

WHEREAS, CAA and MBNA America are parties to an Amended and Restated Affinity Agreement dated October 30, 1996, as amended (collectively, the "CAA Original Agreement"), wherein MBNA America provides certain financial services to certain persons included in certain lists provided to MBNA America by or on behalf of CAA; and

WHEREAS, University and MBNA America are parties to an Agreement dated June 30, 1997, as amended (collectively, the "University Original Agreement"), wherein MBNA America provides certain financial services to certain persons included in certain lists provided to MBNA America by or on behalf of University; and

WHEREAS, CAA and University had separate credit card programs with MBNA America in their aforementioned agreements and the parties now mutually desire to enter into this three-party Agreement, pursuant to which CAA, University and MBNA America contemplate offering card plastics bearing a CAA Trademark and a University Trademark on the front thereof (the actual final design(s) of such card plastics will be subject to the mutual agreement of the parties);

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, CAA, University and MBNA America agree as follows:

### 1. DEFINITIONS

When used in this Agreement,

- (a) "Affiliate" means, with respect to any given entity, any other entity which, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with the given entity.
- (b) "Agreement" means this agreement and Schedules A, B, C and D, which are attached hereto and incorporated by this reference.
- (c) "Credit Card Account" means a credit card account opened by an Associated Person or other person in response to marketing efforts made by MBNA America pursuant to the Program.
- (d) "Customer" means any CAA Group Member or University Group Member or other applicant who is a participant in the Program.

- (e) "Financial Service Products" means credit card programs; ; charge card programs; debit card programs; revolving loan programs; deposit programs (other than certificates of deposit, but only with respect to University and the University Mailing List); and travel and entertainment card programs which contain or access a credit feature.
- (f) "CAA Mailing Lists" means updated and current lists and/or magnetic tapes (in a format designated by MBNA America) containing names, postal addresses and, when available, telephone numbers and opted-in e-mail addresses of CAA Group Members who are at least eighteen years of age, segmented by zip codes or other mutually agreed upon, reasonably selected characteristics.
- (g) "Mailing Lists" means the CAA Mailing Lists and University Mailing Lists, which information will include, when available, telephone number and e-mail addresses in addition to names and postal addresses.
- (h) "Associated Persons" means CAA Group Members and University Group Members. "CAA Group Member" means a member of CAA, alumni, friends, supporters, faculty and staff of the University of California, Berkeley, and/or other potential participants mutually agreed to by CAA and MBNA America. "University Group Member" means generally an individual (excluding persons on any CAA Mailing List) who is associated with any of the formal and informal groups or identifiable groups or target audiences which support the University of California, Berkeley Athletics (*e.g.*, fans, single game ticket buyers, donors, or season ticket holders of University of California, Berkeley athletic events) and/or other potential participants mutually agreed to by University and MBNA America.
- (i) "Program" means those programs and services of the Financial Service Products MBNA America agrees to offer pursuant to this Agreement to the Associated Persons and others from time to time.
- (j) "Rewards Credit Card Account" means a Credit Card Account carrying the Rewards Enhancement, which is opened pursuant to the Program based upon a solicitation source code first utilized by MBNA America on or after the Effective Date.
- (k) "Royalties" means the compensation set forth in Schedule B.
- (l) "Trademarks" means any design, image, visual representation, logo, service mark, trade dress, trade name, or trademark used or acquired by CAA or any Affiliate thereof, including without limitation images of Sather Tower (a.k.a. the Campanile) (the "CAA Trademarks"), or by University or any Affiliate thereof, including without limitation the script "Cal" (the "University Trademarks") during the term of this Agreement.
- (m) "University Mailing Lists" means Department of Intercollegiate Athletics and Recreational Sports, U.C. Berkeley, updated and current lists and/or magnetic tapes (in a format designated by MBNA America) containing names, postal addresses and, when available, telephone numbers and opted-in e-mail addresses of University Group Members who are at least eighteen years of age, segmented by zip codes or other mutually agreed upon, reasonably selected characteristics.



2. RIGHTS AND RESPONSIBILITIES OF CAA AND UNIVERSITY

- (a) CAA and University each agree that during the term of this Agreement each has hereby entered into an exclusive contractual relationship for the Program and that neither CAA nor University shall, by itself or in conjunction with others, directly or indirectly: (i) sponsor, advertise, aid, develop, market, or solicit proposals for programs offering, or discuss with any organization (other than MBNA America) the providing of, any Financial Service Products of any organization other than MBNA America during the term of this Agreement; except, however, CAA and University, individually and/or collectively, may during the last twelve (12) months of this Agreement solicit proposals for comparable Financial Service Products programs, which program if selected would not begin until after the termination of this Agreement, and any such CCA and/or University solicitation for proposals shall include MBNA America; (ii) license or allow others to license or use the Trademarks in relation to or for promoting any Financial Service Products of any entity other than MBNA America; and (iii) sell, rent or otherwise make available or allow others to sell, rent or otherwise make available any of its mailing lists or information about any current or potential Associated Persons or other persons in relation to or for promoting any Financial Service Products of any entity other than MBNA America. Notwithstanding the foregoing, nothing contained in this Agreement shall preclude or restrict the University of California from entering into an agreement with a third party on behalf of any department or unit other than the Berkeley campus' Department of Intercollegiate Athletics and Recreational Sports for identical or similar services offered by MBNA America hereunder. Further, this Agreement is not intended to and shall not be construed to effect in any way any existing or future agreements or relationships the University currently has nor may in the future have with any financial institution or entity which offers financial services, except as contemplated by this Agreement. The University grants MBNA America the exclusive right to promote and market Financial Service Programs to Customers, Associated Persons and any other persons, as provided in this Agreement, including without limitation at the locations and through the mailings specified in Schedule D, attached hereto and incorporated herein. Notwithstanding anything else in this Agreement to the contrary, CAA or University may accept advertising from any financial institution provided that the advertisement does not contain an express or implied endorsement by CAA or University of said financial institution or any Financial Service Product. The parties acknowledge that University has a pre-existing relationship with Bank of the West as a sponsor. The parties do not consider this relationship, as it is structured and delineated as of the Effective Date, to be in conflict with the rights of MBNA America under this Agreement. University agrees not to grant any further rights to Bank of the West which would conflict with the rights granted to MBNA America under this Agreement.
- (b) CAA and University agree to provide MBNA America with such information and assistance as may be reasonably requested by MBNA America in connection with the Program.
- (c) CAA and University authorize MBNA America to solicit their respective Associated Persons (and any other person) by mail, direct promotion, internet, advertisements and/or telephone for participation in the Program, or any other marketing channels that are mutually agreed upon in writing by the applicable parties.

- (d) CAA and University shall have the right of prior approval of all Program advertising and solicitation materials to be used by MBNA America, which contain a Trademark; such approval shall not be unreasonably withheld or delayed. All such materials must be submitted to CAA thirty (30) days before their proposed use and may not be used without CAA's prior written approval. In addition to MBNA America's other rights as provided under this Agreement, CAA and the University will not grant to any other person the right to promote any credit card, charge card or other Financial Service Product at the locations and the mailings as specified in Schedule D. The parties agree that MBNA America shall obtain the approval required by this Section 2(d) only through CAA, and that the approval of CAA shall constitute approval as to both CAA and University, with no further action being required by MBNA America, for all purposes, and University agrees to be bound by any such approval granted by CAA. Subject to the foregoing, CAA agrees to seek prior approval from the University for all Program advertising and solicitation materials that mention or refer to the interests of University as such interests may be distinguishable from CAA. If CAA or University modifies any Trademark or acquires or creates a new Trademark and in either case requests MBNA America to reissue new credit cards, or to change existing marketing materials (or create new materials) reflecting the changed Trademark, MBNA America shall provide CAA or University, as applicable, with an estimate of the costs involved. If CAA or University thereafter requires MBNA America to reissue card plastics or to modify or create replacement marketing materials, MBNA America may deduct such costs from future Royalties due CAA or University. Notwithstanding the preceding sentence, if MBNA America is permitted by CAA or University to begin to use the new Trademark after then-existing and in-process marketing and card plastics inventories are exhausted in the ordinary course of business, then any such costs incurred by MBNA America in changing the Trademarks on credit card plastics in the ordinary course of business and on marketing materials will be borne by MBNA America.
- (e) Upon the request of MBNA America, CAA shall provide MBNA America with the CAA Mailing Lists free of any charge; provided, however, that CAA shall not include in any Mailing List the name and/or related information regarding any person who has expressly requested that CAA not provide his/her personal information to third parties. CAA agrees that the cost of providing the initial CAA Mailing List and updates to that list to MBNA America are included in the payment of Royalties described herein at no charge to MBNA America, and CAA agrees to cover all costs of providing or delivering the same to MBNA America. CAA shall provide the initial Mailing List, containing at least two hundred thousand (200,000) non-duplicate CAA Group Member names (of persons at least eighteen years of age), with corresponding valid postal addresses and, when available, telephone numbers and opted-in e-mail addresses, as soon as possible but no later than thirty (30) days after CAA's execution of this Agreement and, during each consecutive twelve month period during the term of this Agreement, CAA shall provide an updated CAA Mailing List of at least two hundred thousand (200,000) names as described above upon the request of MBNA America. The CAA Mailing Lists may contain names that are duplicated in the University's lists, which may be included in determining whether CAA has met its obligation to supply to MBNA CAA Mailing Lists with a certain minimum number of names.

- (f) Upon the request of MBNA America, University shall provide MBNA America with the University Mailing Lists free of any charge; provided, however, that University shall not include in any University Mailing List the name and/or related information regarding any person who has expressly requested that University not provide his/her personal information to third parties. University agrees that the cost of providing the initial University Mailing List and updates to that list to MBNA America are included in the payment of Royalties described herein at no charge to MBNA America, and University agrees to cover all costs of providing or delivering the same to MBNA America. University shall provide the initial Mailing List, containing at least forty-eight thousand (48,000) non-duplicate University Group Member names (of persons at least eighteen years of age), with corresponding valid postal addresses and, when available, telephone numbers and opted-in e-mail addresses, as soon as possible but no later than thirty (30) days after University's execution of this Agreement, and, during each consecutive twelve month period during the term of this Agreement, University shall provide an updated University Mailing List of at least forty-eight thousand (48,000) names as described above upon the request of MBNA America. The University Mailing Lists may contain names that are duplicated in the CAA list, which may be included in determining whether University has met its obligation to supply to MBNA University Mailing Lists with a certain minimum number of names.
- (g) CAA and University each shall, and shall cause its Affiliates to, only provide information to or otherwise communicate with Associated Persons, potential Associated Persons or any other person about the Program with MBNA America's prior written approval, except for current advertising and solicitation materials provided by MBNA America to CAA and/or University. Notwithstanding the above, CAA and University may respond to individual inquiries about the Program from its respective CAA Group Members and University Group Members on an individual basis, provided that said responses are accurate and consistent with the then-current materials provided by MBNA America to CAA and/or University. CAA and University shall use best efforts to forward any correspondence received by CAA or University that is intended for MBNA America (e.g., applications, payments, billing inquiries, etc.) to the MBNA America account executive via overnight courier within forty-eight (48) hours of receipt. All charges incurred for this service will be paid by MBNA America.
- (h) CAA and University each hereby grants MBNA America and its Affiliates a limited, exclusive license to use their respective Trademarks solely in conjunction with the Program, including the promotion thereof to CAA Group Members or University Group Members, including without limitation the right for MBNA America to utilize the "Cal" script and Sather Tower (Campanile) Trademarks in all Credit Card Account solicitations and marketing to University Group Members and CAA Group Members and on all Program credit card plastics, subject to CAA and University's approval rights as specified in this Agreement. This license shall be transferred upon assignment as permitted under this Agreement. This license shall remain in effect for the duration of this Agreement and shall apply to the Trademarks, notwithstanding the transfer of such Trademarks by operation of law or otherwise to any permitted successor, corporation, organization or individual. CAA and University shall utilize best efforts to provide MBNA America all Trademark production materials (e.g., camera ready art) required by MBNA America for the Program, as soon as possible after CAA and University's execution of this Agreement. Nothing stated in this Agreement prohibits CAA or University from granting to other persons a license to use the Trademarks in conjunction with the providing of any other service or product, except for any Financial Service Products.
- (i) CAA and University shall permit MBNA America to advertise the Program on CAA's and the University's Department of Intercollegiate Athletics' primary ISP home page and at other

prominent locations within the internet site(s) of CAA and University's Department of Intercollegiate Athletics where financial products may be advertised; the parties agree that MBNA has paid for its access to and usage of CAA and University's internet sites as part of the consideration set forth in this Agreement. MBNA America may establish a "hot-link" from such advertisements to another internet site to enable a person to apply for a Credit Card Account. CAA and/or University shall modify or remove such advertisements within twenty-four hours of MBNA America's request, if such modification or removal is necessary or appropriate for regulatory or other legal reasons, or to correct factual inaccuracy, and within five business (5) days of MBNA America's request, for all other change or removal requests.

- (j) University shall provide to MBNA America each of the sponsorship and marketing opportunities listed or referenced on Schedule D, attached hereto and incorporated herein by reference, free of charge during each consecutive twelve month period during the term of this Agreement (the "Annual Marketing Opportunity"). The parties agree that MBNA has paid for these marketing opportunities as part of the consideration set forth in this Agreement.
- (k) CAA shall defend, indemnify and hold MBNA America, its officers, agents, and employees harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of CAA, its officers, or employees.
- (l) University shall defend, indemnify and hold MBNA America, its officers, agents, and employees harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of University, its officers, or employees.

3. RIGHTS AND RESPONSIBILITIES OF MBNA AMERICA

- (a) MBNA America shall design, develop and administer the Program for the CAA Group Members and University Group Members, and all Customers.
- (b) MBNA America shall design all advertising, solicitation and promotional materials with regard to the Program. MBNA America reserves the right of prior written approval of all advertising and solicitation materials concerning or related to the Program. CAA and University shall not develop advertising or solicitation materials related to the Program. MBNA America shall have sole and exclusive right and authority to market the Program; CAA and University will not actively participate in the marketing for the Program.
- (c) MBNA America shall bear all costs of producing and mailing materials for the Program.
- (d) MBNA America shall make all credit decisions and shall bear all credit risks with respect to each Customer's account(s) independently of CAA or University.

- (e) MBNA America shall use the Mailing Lists provided pursuant to this Agreement consistent with this Agreement and shall not permit those entities handling such Mailing Lists to use them for any other purpose. MBNA America shall have the sole right to designate persons on these Mailing Lists to whom promotional material will not be sent. These Mailing Lists are and shall remain the sole property of CAA or University, whichever entity supplied the list, as applicable. However, MBNA America may maintain separately all information which it obtains as a result of an account relationship or an application for an account relationship. This information becomes a part of MBNA America's own files and shall not be subject to this Agreement; provided however that MBNA America will not use this separate information in a manner that would imply an endorsement by CAA or University.
- (f) Any Mailing List provided to MBNA America may contain "dummy" information (*e.g.*, names, addresses, *etc.*) so that unauthorized use of a Mailing List may be determined. This information will be unknown to MBNA America. A violation of this Agreement is conclusively proven and the damages named hereinafter shall be deemed owed to CAA or University when CAA or University establishes the following:
- (i) that CAA or University placed "dummy" information regarding a completely fictitious person on the Mailing List (*e.g.*, name(s), address(es), *etc.*);
  - (ii) that the "dummy" information received any mailings which were sent or generated outside the scope of the permitted use of the Mailing List; and
  - (iii) that CAA or University did not provide the "dummy" information to any other third party.
- (g) MBNA America expressly acknowledges and agrees that MBNA America has no property right or interest whatsoever in any Mailing List, except as expressly provided in this Agreement. MBNA America shall hold all Mailing Lists in confidence and shall not provide, trade, give away, barter, lend, send, sell or otherwise disclose (collectively "transfer") any Mailing List and shall not make any copies of a Mailing List of any type whatsoever except in the ordinary course of fulfilling its obligations or exercising its rights under this Agreement, or as expressly approved in a separate writing by CAA or University with respect to a list provided by that entity.
- (h) MBNA America shall have no authority to use a Mailing List for any purpose not contemplated herein or as expressly permitted by CAA or University in a separate writing. MBNA America shall comply with any reasonable request of CAA or University with respect to security precautions to maintain the security of the Mailing Lists. MBNA America agrees to secure and safeguard the Mailing Lists in accordance with the requirements of this section and CAA's and University's reasonable instructions with respect to lists provided by each entity, as communicated by CAA and University to MBNA America from time to time. MBNA America shall only permit access to the Mailing List to those employees, Affiliates, volunteers, agents, contractors and/or representatives of MBNA America who need such access to perform their duties for MBNA America. In view of the confidential nature of the Mailing Lists, MBNA America represents and agrees that MBNA America and all its employees, volunteers, agents and/or representatives who work with any Mailing List shall be made aware of the obligations contained in this section and shall be under legal obligation not to copy any Mailing List, transfer any Mailing List or make any other use of any Mailing List other than as specifically contemplated by this section.
- (i) Because the nature of the Mailing List makes an evaluation of damages after a violation of this Agreement very difficult or impossible, then in the event that any Mailing List is handled or used

in a fashion that violates this Agreement by MBNA America or its employees, agents, and/or representatives, CAA and/or University, individually with respect to a violation on a list provided by that entity, will be entitled to damages of twenty dollars (\$20.00) for each use of each category of information (e.g., names, addresses, etc.) used in violation of this Agreement, with the amount of damages not to exceed one hundred thousand dollars (\$100,000.00) per breach. In addition, MBNA America agrees that University and CAA shall be entitled to injunctive relief to prevent violation or further violation by MBNA America and/or its employees, volunteers, agents, representatives or Affiliates of this Agreement. Nothing herein shall be construed as prohibiting CAA from pursuing any other remedy on account of such breach or threatened breach.

- (j) The parties agree that the Reward Enhancements program (as such credit card account enhancements are more fully described on Schedule A) is now part of the Program (as such credit card account enhancement and Program may be adjusted or amended from time to time by MBNA America, in its sole discretion). MBNA America may, at its option, offer the Reward Enhancements to some or all of the persons included on the lists provided by CAA or University under the Agreement. The Reward Enhancements may be marketed under various names (e.g., PLUS Rewards or World Points) from time to time. MBNA America reserves the right to change the Reward Enhancement name(s), in its sole discretion, from time to time.
- (j) University and CAA will promote and seek opportunities for MBNA America to engage in business activities with other University and/or CAA corporate sponsors during the term of this Agreement. Such opportunities may be used to promote Credit Card Accounts to list sources and events derived from these sponsors.
- (k) MBNA America may use any Mailing List telephone contact information ("Telemarketing Lists") which may be provided to MBNA America consistent with this Agreement. Such lists may only be used for the sole purpose of marketing to CAA Group Members and University Group Members the Program as set forth in this Agreement, and MBNA shall not permit any entities handling these lists to use them for any other purpose. All telemarketing presentations must clearly identify MBNA America as the originator of the call. All telemarketing contacts will be conducted in a professional and respectful manner. Subject to applicable law and regulation, CAA and the University reserve the right to listen remotely to telemarketing presentations to ensure that they are of the highest quality. These Telemarketing Lists shall remain the sole property of CAA and the University, respectively. Telemarketing Lists are a subset of Mailing Lists as described herein, and all provisions in this Agreement relating to confidentiality of Mailing Lists shall be applicable to Telemarketing Lists.
- (l) MBNA America shall defend, indemnify and hold CAA and its officers, agents, volunteers and employees harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of MBNA America, its officers or employees.

- (m) MBNA America shall defend, indemnify and hold University and its officers, agents, volunteers and employees harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of MBNA America, its officers or employees.
- (n) The University retains all rights, title and interest in its Trademarks except as expressly provided in this Agreement, and provides to MBNA America the limited right to use its Trademarks only as set forth herein. The University will determine which University Trademarks are actually used, which shall only be those Trademarks related to the Department of Intercollegiate Athletics and Recreational Sports, Berkeley; provided, however, the parties agree that the "Cal" script and any images of Sather Tower held by the University and/or CAA will throughout the term (and thereafter, but only to the extent contemplated by this Agreement) be among the Trademarks useable by MBNA America in connection with the Program, as well as any modified, successor or replacement marks of any Trademark then-currently used in the Program.

4. REPRESENTATIONS

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

- (b) CAA represents to MBNA America as of the date hereof and throughout the term of this Agreement that it has the right and power to license the CAA Trademarks to MBNA America for use as contemplated by this Agreement, and to provide the CAA Mailing List(s) to MBNA America for the promotion of the Program. CAA will hold MBNA America, its directors, officers, agents, employees, Affiliates, successors and assigns harmless from and against all liability, causes of action, and claims, and will reimburse MBNA America's reasonable and actual costs in connection therewith (including attorneys' fees), arising from the Trademark license granted herein or from MBNA America's use of the CAA Trademarks in reliance thereon, or from the use of any CAA Mailing List(s) by MBNA America for the promotion of the Program. Each party shall promptly notify the other party in the manner provided herein upon learning of any claims or complaints relating to such license or the use of any CAA Trademarks.
- (c) University represents to MBNA America as of the date hereof and throughout the term of this Agreement that it has the right and power to license the University Trademarks to MBNA America for use as contemplated by this Agreement, and to provide the University Mailing List(s) to MBNA America for the promotion of the Program. University will hold MBNA America, its directors, officers, agents, employees, Affiliates, successors and assigns harmless from and against all liability, causes of action, and claims, and will reimburse MBNA America's reasonable and actual costs in connection therewith (including attorneys' fees), arising from the Trademark license granted herein or from MBNA America's use of the University Trademarks in reliance thereon, or from the use of any University Mailing List(s) by MBNA America for the promotion of the Program. Each party shall promptly notify the other party in the manner provided herein upon learning of any claims or complaints relating to such license or the use of any University Trademarks.

5. ROYALTIES

- (a) During the term of this Agreement, MBNA America shall pay Royalties to CAA and University, in each case for those Credit Card Accounts and other products opened through marketing source-coded by MBNA America for such party, as applicable. For example, applications obtained using a CAA Mailing List will be sourced so as to generate Royalties for CAA, and applications taken at direct promotions at University athletic events or at other direct promotion venues will be sourced so as to generate Royalties for University. In no event shall MBNA America be required to accrue or pay the same Royalty twice for any Credit Card Account. Royalties will not be paid without a completed Schedule C (W-9 Form and EFT Form). Except as otherwise provided in Schedule B, payment of Royalties then due shall be made approximately forty-five (45) days after the end of each calendar quarter.
- (b) On or before the forty fifth (45th) day after the end of each calendar quarter during the term of this Agreement, MBNA America will provide CAA and University with a statement showing the number of Credit Card Accounts opened, the number of Credit Card Accounts renewed and the retail purchase dollar volume (excluding those transactions that relate to refunds, returns and unauthorized transactions), made during the preceding calendar period. In addition, twice each calendar year MBNA America will provide to CAA and University the number of active Credit Card Accounts, Credit Card Account participation rate, average Credit Card Account balance, outstanding Credit Card Account balances, and information on campaigns conducted including type of campaign, aggregate profile of those solicited, date conducted, quantity of solicitations by segment, response rates, number of Credit Card Account applications and response rate.



6. PROGRAM ADJUSTMENTS

A summary of the current features of the Program are set forth in Schedule A. MBNA America reserves the right to make periodic adjustments to the Program and its terms and features in accordance with applicable legal requirements. MBNA America agrees to use best efforts to notify CAA and University in advance of any change in terms which will require the majority of the Customers' consent.

7. CONFIDENTIALITY OF AGREEMENT

- (a) The terms of this Agreement, any proposal, financial information and proprietary information provided by or on behalf of one party to the other parties prior to, contemporaneously with, or subsequent to, the execution of this Agreement ("Information") are confidential as of the date of disclosure. Such Information will not be disclosed by such other parties to any other person or entity, except as permitted under this Agreement or as mutually agreed in writing. MBNA America and CAA and University shall be permitted to disclose such Information (i) to their accountants, legal, financial and marketing advisors, and employees as necessary for the performance of their respective duties, provided that said persons agree to treat the Information as confidential in the above described manner and (ii) as required by law or by any governmental regulatory authority.
- (b) If a party receives a request to disclose Information pursuant to a subpoena, order of court of competent jurisdiction or by judicial or administrative agency or legislative body or committee, or is otherwise under potential legal obligation to disclose any Information, such party agrees to: (i) notify the other party(ies) immediately of the existence, terms and circumstances surrounding such request; (ii) consult with the other parties 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 the Information to be disclosed which the provider of such Information designates.

8. TERM OF AGREEMENT

The initial term of this Agreement will begin on the Effective Date and end on June 30, 2007. This Agreement will automatically extend at the end of the term (as it may have been extended as provided above) or any renewal term for successive two-year periods, unless either party gives written notice of its intention not to renew at least ninety (90) days, but not more than one hundred eighty (180) days, prior to the last date of such term or renewal term, as applicable.

9. STATE LAW GOVERNING AGREEMENT

This Agreement shall be governed by and subject to the laws of the State of Delaware (without regard to its conflict of laws principles).

10. TERMINATION

- (a) In the event of any material breach of this Agreement by MBNA America, on the one hand and either CAA or University on the other, the aggrieved party may terminate this Agreement by giving notice, as provided herein, to the breaching party. This notice shall (i) describe the material breach; and (ii) state the party's intention to terminate this Agreement. If the breaching party does not cure or substantially cure such breach within sixty (60) days after receipt of

notice, as provided herein (the "Cure Period"), then this Agreement shall terminate sixty (60) days after the Cure Period. In the event that a material breach of this Agreement has been committed by CAA or by University, MBNA America may elect in its discretion to terminate the Agreement only with respect to the party in breach, and to continue the Agreement and Program with the other party. MBNA America may make such election at any time prior to the expiration of the sixty-day period following the Cure Period, by sending written notice of such election to the parties. In the event MBNA America elects to continue the Agreement with the remaining party, such party and MBNA America agree to make such mutually agreed upon modifications, if any, to the Agreement as may be necessary or appropriate to reflect the new circumstances.

- (b) If either MBNA America, CAA or University becomes insolvent in that its liabilities exceed its assets, or it is unable to meet or it has ceased paying its obligations as they generally become due, or it is adjudicated insolvent, or takes advantage of or is subject to any insolvency proceeding, or makes an assignment for the benefit of creditors or is subject to receivership, conservatorship or liquidation then the other party may immediately terminate this Agreement.
- (c) Upon termination of this Agreement, MBNA America shall, in a manner consistent with Section 10(d) of this Agreement, cease to use the Trademarks. MBNA America agrees that upon such termination it will not claim any right, title, or interest in or to the Trademarks or to the Mailing Lists provided pursuant to this Agreement. However, MBNA America may conclude all solicitation that is required by law.
- (d) MBNA America shall have the right to prior review and approval of any notice in connection with, relating or referring to the termination of this Agreement or the Program to be communicated by either CAA or University or any Affiliate thereof to any of the Customers. Such approval shall not be unreasonably withheld. Upon termination of this Agreement, neither CAA nor University shall attempt to cause the removal of CAA's or University's identification or Trademarks from any person's credit devices, checks or records of any Customer existing as of the effective date of termination of this Agreement. After the effective date of termination, MBNA America shall make commercially reasonable best efforts to cause a statement message to appear on the periodic statements otherwise being issued for the Credit Card Accounts which continue to be represented by then-current valid card plastics bearing a Trademark, on three occasions per year for each of the three years following the effective date of termination. Such statement messages shall advise of the termination of this Agreement. Notwithstanding the foregoing, MBNA America shall not be required to provide such statement message notices if this Agreement is terminated due to the material breach of CAA or University, or pursuant to Section 10(b), or to provide such notices during any month in which MBNA America is disclosing any messages required by law, by other contractual requirement or by MasterCard or Visa, even if such exclusion should result in less than three such notices per applicable year being sent by MBNA America.
- (e) In the event that any material change in any applicable law, statute, operating rule or regulation, or any material change in any operating rule or regulation of either VISA or MasterCard makes the continued performance of this Agreement under the then current terms and conditions unduly burdensome, then MBNA America shall have the right to terminate this Agreement upon ninety (90) days advance written notice. Such written notice shall include an explanation and evidence of the burden imposed as a result of such change.
- (f) For a one (1) year period following the termination of this Agreement for any reason, CAA and University nor any Affiliate of either of them agrees that neither of them shall, by itself or in

conjunction with others, directly or indirectly, specifically target any offer of a credit or charge card, or a credit or charge card related product to persons who were Customers. Notwithstanding the foregoing, CAA or University may, after termination of this Agreement, offer persons who were Customers the opportunity to participate in another credit or charge card program supported by CAA and/or the University provided the opportunity is not only made available to such persons but rather as a part of a general solicitation to all Associated Persons and provided further no such persons are directly or indirectly identified as a customer of MBNA America, or offered any terms or incentives different from that offered to all Associated Persons and other persons.

- (g) For a one (1) year period following the termination of this Agreement for any reason, neither MBNA America nor any Affiliate thereof shall convert or target market the Credit Card Accounts established during the actual term of this Agreement to or for any other University of California-endorsed program. Notwithstanding the foregoing, MBNA America may, after termination of this Agreement, offer persons who were Customers the opportunity to participate in any other program provided such former Customers' identifying information is obtained by MBNA America from a source independent of CAA or University (Berkeley), and provided that no such persons are directly or indirectly identified as an Associated Person, or offered any terms or incentives different from that offered to the other persons marketed from such list or other source.

#### 11. CUSTOMER LIST

- (a) Upon the request of CAA during the term of the Agreement, but in no event more than once per twelve (12) month period (provided that notice of a party's intention to terminate the Agreement has not been given), MBNA America shall provide CAA and University with a list of information (e.g., names and addresses) about Customers as may be mutually agreed upon by the parties (hereinafter the "Customer List"). When used in this Agreement, the term "Customer List" includes any whole or partial copies or compilations of a Customer List in any form or any medium, any information derived solely from a Customer List, and all Customer Information, as hereinafter defined. Notwithstanding any provision of the Agreement, MBNA America shall not provide any Customer List or Customer Information otherwise required to be provided by it to CAA and University, and may restrict any use by CAA and University of any Customer List or Customer Information which is provided by MBNA America to CAA and University, if MBNA America is prohibited from disclosing the same or permitting such use because of any law, regulation, bankwide privacy policy, public privacy pledge, court order, rule, consent decree, or individual present or former Customer request, or if the provision of such information or its intended use would create an additional regulatory compliance burden on MBNA America. CAA and University agree to return or destroy within thirty (30) days of receipt all copies of the Customer List provided by MBNA America.
- (b) On or before the effective date of termination of the Agreement, CAA and University each agrees that it shall: (i) promptly destroy and purge from all its systems all information within each Customer List to the extent that such information in any way relates to MBNA America, the Program or Credit Card Accounts ("Customer Information"); and (ii) return or destroy within thirty (30) days all Customer Information that is in tangible form, including any and all full or partial copies, or reproductions thereof in any medium whatsoever. CAA and University shall comply with any reasonable requests of MBNA America with respect to security precautions to maintain the security of the Customer Lists.

- (c) Any Customer List provided to CAA and University may contain "dummy" information (e.g., names, account information, addresses, etc.) so that unauthorized use of a Customer List may be determined. This information will be unknown to CAA and University. A violation of this Agreement is conclusively proven and the damages named hereinafter shall be deemed owed when MBNA America establishes the following:
- (i) that MBNA America placed "dummy" information regarding a completely fictitious person on the list (e.g., name(s), address(es), etc.);
  - (ii) that the "dummy" information received any mailings which were sent or generated outside the scope of the permitted use of the Customer List; and
  - (iii) that MBNA America or its Affiliates did not provide the "dummy" information to any other third party.
- (d) Each Customer List is confidential, proprietary information which is and shall remain the sole property of MBNA America. CAA and University expressly acknowledge and agree that CAA and University have no property right or interest whatsoever in any Customer List, except as expressly provided in this Agreement. CAA and University shall hold all Customer Lists in confidence and shall not provide, trade, give away, barter, lend, send, sell or otherwise disclose (collectively "transfer") any Customer List and shall not make any copies of a Customer List of any type whatsoever except as expressly approved in a separate writing by MBNA America. Unless agreed to in writing by MBNA America prior to any such transfer, CAA and University further agree not to transfer any Customer List to any other organization or individual under any circumstances, and CAA and University specifically but not by way of limitation agree that no subcontractors and/or Affiliates shall be transferred any Customer List. (This paragraph would prohibit, by means of example only, transferring any list of MBNA America cardholders to any financial institution during the term of the Agreement or after the termination of the Agreement.)
- (e) CAA and University shall have no authority to use the Customer List for any purpose not expressly permitted by MBNA America in a separate writing. CAA and University shall comply with any reasonable request of MBNA America with respect to security precautions to maintain the security of the Customer List. CAA and University agree to secure and safeguard the Customer Lists in accordance with the requirements of this section and MBNA America's reasonable instructions, as communicated by MBNA America to CAA and University from time to time. CAA and University shall only permit access to the Customer List to those employees, volunteers, agents, contractors and/or representatives of CAA and University who need such access to perform their duties for CAA and University. In view of the confidential nature of the Customer List, CAA and University represent and agree that CAA and University and all their employees, volunteers, agents and/or representatives who work with any Customer List shall be made aware of the obligations contained in this section and shall be under legal obligation not to copy any Customer List, transfer any Customer List or make any other use of any Customer List other than as specifically contemplated by this section.
- (f) Because the nature of the Customer List makes an evaluation of damages after a violation of this Agreement very difficult or impossible, then in the event that any Customer List is handled or used in a fashion that violates this Agreement by CAA or University or its or their respective employees, volunteers, agents, and/or representatives, MBNA America will be entitled to damages of twenty dollars (\$20.00) for each use of each category of information (e.g., names, addresses, etc.) used in violation of this Agreement, with the amount of damages not to exceed one hundred thousand dollars (\$100,000.00) per breach. In addition, CAA and University agree that MBNA America shall be entitled to injunctive relief to prevent violation or further violation

by CAA or University and/or their employees, volunteers, agents or representatives of this Agreement. Nothing herein shall be construed as prohibiting MBNA America from pursuing any other remedy on account of such breach or threatened breach.

## 12. AUDIT

Upon the written request of CAA or University, but no more frequently than one (1) request in any twelve (12) month period, MBNA America shall provide CAA or University with system reports generated by MBNA America containing all the information which both (i) formed the basis of MBNA America's calculation of the Royalties due CAA or University since the last request was made or, if no previous request was made hereunder, for the last four (4) Royalty calculations performed by MBNA America, and (ii) may be disclosed by MBNA America without violating any legal rights of any third party or obligation of MBNA America. Such reports shall be certified by an officer of MBNA America as to their accuracy; provided, however, that the reports shall be certified as to their accuracy by the nationally recognized independent certified public accountants then being utilized by MBNA America, at CAA or University's expense, if CAA or University so requests such accountants' certification in its written request(s) for the generation of such reports hereunder. The entity requesting the certification shall pay the costs of providing the same unless a discrepancy of more than 10% is found by the auditor to exist between MBNA America's records and information disclosed by MBNA America to CAA or University or withheld from CAA or University, in which case MBNA America shall be responsible for all costs associated with providing the certification. CAA and University shall be entitled to exercise the rights conferred in this section for a period of two years following termination of the Agreement. MBNA America shall maintain any records relating to such certification in accordance with its standard record retention policies, but in no case for less than two years following the effective date of termination of this Agreement.

## 13. INSURANCE

MBNA America agrees to keep in full force and effect during the term of this Agreement at the expense of MBNA America:

(a) General Liability Insurance or an equivalent funded program of self-insurance as follows:

(1) Each Occurrence	\$1,000,000
(2) Personal and Advertising Injury	\$1,000,000
(3) General Aggregate	\$2,000,000

(b) Business Automobile Liability \$1,000,000 (Occurrence)

(c) Workers' Compensation Statutory Limits

(d) Excess/Umbrella Liability \$10,000,000 (Occurrence/Aggregate)

Within ten (10) days of execution of this Agreement, MBNA America shall file a Certificate of Insurance or self-insurance with CAA and the University naming CAA and the Regents of the University of California as additional insureds. Such certificate or certificates shall make provision for thirty (30) days advance written notice to CAA and University of cancellation in the above insurance or program of self-insurance.

14. MISCELLANEOUS

- (a) This Agreement cannot be amended except by written agreement signed by the authorized agents of the parties hereto.
- (b) The obligations in Sections 4(b), 7, 10(c), 10(d), 10(f), 10(g), 12 and 13 shall survive any termination of this Agreement.
- (c) The failure of any party to exercise any rights under this Agreement shall not be deemed a waiver of such right or any other rights.
- (d) The section captions are inserted only for convenience and are in no way to be construed as part of this Agreement.
- (e) If any part of this Agreement shall for any reason be found or held invalid or unenforceable by any court or governmental agency of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Agreement which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.
- (f) All notices relating to this Agreement shall be in writing and shall be deemed given (i) upon receipt by hand delivery, facsimile or overnight courier, or (ii) three (3) business days after mailing by registered or certified mail, postage prepaid, return receipt requested. All notices shall be addressed as follows:

(1) If to CAA:

CALIFORNIA ALUMNI ASSOCIATION  
Alumni House  
Berkeley, California 94720

ATTENTION: Mr. Randall Parent  
Executive Director

Fax #: (510) 642-6252

(2) If to the University:

(Programmatic – Budget & Finance)  
University of California, Berkeley  
DEPARTMENT OF INTERCOLLEGIATE ATHLETICS & RECREATIONAL  
SPORTS  
209 Memorial Stadium #4426  
Berkeley, California 94720-4426

ATTENTION: Associate Athletic Director  
Mr. Dan Coonan

Fax #: (510) 642-3399

(Programmatic – Marketing & Promotions)  
University of California, Berkeley  
DEPARTMENT OF INTERCOLLEGIATE ATHLETICS & RECREATIONAL  
SPORTS  
209 Memorial Stadium #4426  
Berkeley, California 94720-4426

ATTENTION: Executive Associate Athletic Director,  
Operations/Chief of Staff  
Mr. Mark Stephens

Fax #: (510) 642-3399

(Contractual)  
University of California, Berkeley  
BUSINESS CONTRACTS OFFICE  
6701 San Pablo Avenue #5600, Suite 218  
Berkeley, California 94720-5600

ATTENTION: Business Contracts Administrator  
Mr. Brian C. Donohue

Fax #: (519) 642-8604

(3) If to MBNA America:

MBNA AMERICA BANK, N. A.  
1100 North King Street  
Wilmington, Delaware 19884  
ATTENTION: Director of National Sales

Fax #: (302) 432-1054

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

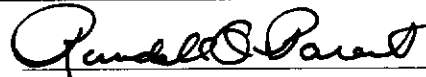
- (g) This Agreement contains the entire agreement of the parties with respect to the matters covered herein and supersedes all prior promises, correspondence and agreements, written or oral, with respect to the matters covered herein, including, without limitation, the CAA Original Agreement and the University Original Agreement, which are hereby terminated. MBNA America may utilize the services of any third party in fulfilling its obligations under this Agreement; however MBNA America shall remain responsible for the performance of its obligations hereunder. Certain Financial Service Products or services under this Agreement may be offered through MBNA America's Affiliates. For example, business credit cards are currently issued and administered by MBNA America (Delaware), N.A., and certain marketing services are currently provided by MBNA Marketing Systems, Inc. This Agreement may be assigned by any party without the consent of any other party; provided, however, that the assignee can fully perform its obligations under the Agreement to the extent assigned, and provided further, that MBNA America may not assign its obligations under this Agreement, without the written consent of University, to any entity with which University is prohibited to do business by University policy

(as such University policies exist on the day before the date University or CAA first learns of the possibility of such assignment by MBNA America). University agrees that it shall provide a written copy of the current relevant University policies to MBNA America, and shall update MBNA America promptly upon any changes thereto, and/or any additions to or deletions from such policies.


- (h) MBNA America, CAA and University are not agents, representatives or employees of each other and neither of the parties shall have the power to obligate or bind the other in any manner, except as otherwise expressly provided by this Agreement.
- (i) Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or give any person other than CAA, University and MBNA America, their successors and assigns, any rights or remedies under or by reason of this Agreement.
- (j) No party shall be in breach hereunder by reason of its delay in the performance of or failure to perform any of its obligations herein if such delay or failure is caused by strikes or other labor disputes, acts of God or the public enemy, riots, incendiaries, interference by civil or military authorities, compliance with governmental laws, rules, regulations, delays in transit or delivery, or any event beyond its reasonable control or without its fault or negligence.
- (k) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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

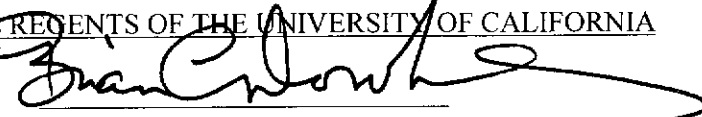
CALIFORNIA ALUMNI ASSOCIATION

By:   
Name: Randall O. Parent  
Title: Executive Director  
Date: 12/20/02

MBNA AMERICA BANK, N.A.

By:   
Name: Michael Durrah  
Title: SE VP  
Date: January 3, 2003

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By:   
Name: Brian C. Donohue  
Title: Business Contracts Officer  
Date: 12-23-02



## SCHEDULE A

### TERMS AND FEATURES

Subject to (i) MBNA America's right to vary the Program and its terms and features with written advance notice of such changes to CAA and University when required under Section 6, and (ii) the-applicable agreement entered into between MBNA America and each Customer:

#### A. CONSUMER CREDIT CARD ACCOUNTS

1. There is no annual fee.
2. The current annual percentage rate is a fixed rate of 9.99%, for direct mail and telemarketing.
3. The current annual percentage rate will be a fixed rate of 11.99% for direct promotions marketing.
4. Customers may be offered opportunities to purchase credit protection as a benefit under the Program.

#### B. REWARDS ENHANCEMENT

This description is subject in all respects to the agreement to be entered into between MBNA America and each Customer, as the same may be amended from time to time. Further, this description may be adjusted or amended pursuant to MBNA America's rights under the Agreement.

1. There is no annual fee.
2. The current annual percentage rate is 11.99%.
3. Customers may be able to select credit insurance or credit protection as a benefit under the Program.
4. WorldPoints program-- Subject to the other terms of this Agreement: (i) Customer will earn one point for each dollar of net retail purchases on their Rewards Credit Card Account; (ii) Customers can redeem points for travel (redemption starts at 25,000 points), merchandise – currently over a thousand brand-name merchandise items (redemption starts at 5,000 points) or cash (redemption starts at 5,000, and upon redemption a check is sent to the Customer); (iii) *WorldPoints Assist* concierge service offers all WorldPoints Customers free access to a personal assistant to help Customers arrange dinner reservations, gift and flower delivery, hard-to-get tickets, transportation, events, personal services, and a host of other special requests; and (iv) points will be updated monthly and will be shown on monthly card statements.

5. PLUS Rewards program—Subject to the other terms of this Agreement: (i) Customer will earn one point for each dollar of net retail purchases on their Rewards Credit Card Account, up to 1 million points per year; (ii) redemption levels currently begin at 5,000 points for merchandise and 25,000 points for travel; (iii) travel rewards are currently redeemable on all major airlines, carry no blackout dates and have both domestic and international travel options; (iv) merchandise rewards currently include more than 1,000 items that can be redeemed either by phone or online; (v) points will be updated monthly and will be shown on monthly card statements.

(each of WorldPoints and Plus Rewards, as currently described and as each may be amended by MBNA America during the term of this Agreement, a "Rewards Enhancement").

6. No Rewards Credit Card Account or other Credit Card Account will be eligible to carry both the Plus Rewards and World Points Rewards Enhancements at the same time.

#### C. GOLD RESERVE ACCOUNTS

"Gold Reserve Account" means a GoldReserve® (as such service mark may be changed by MBNA America, in its sole discretion, from time to time) revolving loan account opened by an Associated Person or other person in response to marketing efforts made pursuant to the Program.

1. Gold Reserve is currently a no annual fee revolving loan-type product.
2. Customers receive a supply of blank checks from MBNA America to be drawn upon a predetermined line of credit.
3. The Customer may request more checks from MBNA America on a periodic basis.

#### D. GOLD OPTION ACCOUNTS

"Gold Option Account" means a GoldOption® (as such service mark may be changed by MBNA America, in its sole discretion, from time to time) revolving loan account opened by an Associated Person or other person in response to marketing efforts made pursuant to the Program.

1. Gold Option is currently a no annual fee revolving loan-type product.
2. Customers can request that checks be drawn upon a predetermined line of credit.
3. MBNA America issues checks (for specific monetary amounts) to be sent to those third parties requested by the Customer.
4. Monthly payments may be tailored to individual Customer's needs.

## SCHEDULE B

### ROYALTY ARRANGEMENT

During the term of this Agreement, MBNA America will pay CAA and University, in each case for those Credit Card Accounts and other products referenced below sourced to it, a Royalty calculated as follows, for those accounts with active charging privileges, as applicable. All Royalty payments due hereunder are subject to adjustment by MBNA America for any prior overpayment of Royalties by MBNA America:

#### A. CONSUMER CREDIT CARD ACCOUNTS (EXCLUDING REWARDS CREDIT CARD ACCOUNTS)

1. \$1.00 (one dollar) for each new consumer Credit Card Account opened, which remains open for at least ninety (90) consecutive days.
2. \$3.00 (three dollars) for each consumer Credit Card Account for which the annual fee is paid by the Customer. If no annual fee is assessed by MBNA America (other than as a result of a courtesy waiver by MBNA America), then such royalty will be paid for each consumer Credit Card Account which: 1) has a balance greater than zero as of the last business day of every twelfth month after the opening of that consumer Credit Card Account; and 2) has had active charging privileges for each of the preceding twelve months.
3. 0.50% (one half of one percent) of all retail purchase transaction dollar volume generated by Customers using a consumer Credit Card Account (excluding those transactions that (1) relate to refunds, returns and/or unauthorized transactions, and/or (2) are cash equivalent transactions (e.g., the purchase of wire transfers, money orders, bets, lottery tickets, or casino gaming chips)).

#### B. REWARDS CREDIT CARD ACCOUNTS

1. \$1.00 (one dollar) for each Rewards Credit Card Account opened, which remains open for at least ninety (90) consecutive days and which is utilized by the Customer for at least one purchase or cash advance which is not subsequently rescinded, the subject of a charge back request, or otherwise disputed. This Royalty will not be paid for any Credit Card Account which, after opening, converts to a Rewards Credit Card Account.
2. \$3.00 (three dollars) for each Rewards Credit Card Account for which the annual fee is paid by the Customer. If no annual fee is assessed by MBNA America (other than as a result of a courtesy waiver by MBNA America), then such royalty will be paid for each Rewards Credit Card Account which: 1) has a balance greater than zero as of the last business day of the annual anniversary of the month in which the Rewards Credit Card Account was opened; and 2) has had active charging privileges for each of the preceding twelve months. A Rewards Credit Card Account may renew every twelve (12) months after the opening of the account.

3. 0.20% (two tenths of one percent) of all retail purchase transaction dollar volume generated by Customers using a Rewards Credit Card Account (excluding those transactions that (1) relate to refunds, returns and/or unauthorized transactions, and/or (2) are cash equivalent transactions (e.g., the purchase of wire transfers, money orders, bets, lottery tickets, or casino gaming chips)).

C. GOLD RESERVE REVOLVING LOAN ACCOUNTS

1. \$0.50 (fifty cents) for each Gold Reserve Account opened, which remains open for at least ninety (90) consecutive days.
2. 0.25% (twenty-five one-hundredths of one percent) of the average of all month-end outstanding balances (excluding transactions that relate to credits and unauthorized transactions) in the calendar year for each Gold Reserve Account. This Royalty will be paid within sixty (60) days of the calendar year end, or of the earlier termination of this Agreement.
3. \$2.00 (two dollars) for each applicable twelve (12) month period that a Customer pays the annual fee on a Gold Reserve Account.

D. GOLD OPTION REVOLVING LOAN ACCOUNTS

1. \$0.50 (fifty cents) for each Gold Option Account opened, which remains open for at least ninety (90) consecutive days.
2. 0.25% (twenty-five one-hundredths of one percent) of the average of all month-end outstanding balances (excluding transactions that relate to credits and unauthorized transactions) in the calendar year for each Gold Option Account. This Royalty will be paid within sixty (60) days of the calendar year end, or of the earlier termination of this Agreement.
3. \$2.00 (two dollars) for each applicable twelve (12) month period that each Gold Option Account remains open.

E. DEPOSIT ACCOUNTS

“CD Deposits” means those deposits in the certificate of deposit accounts opened by Associated Persons or others in response to marketing efforts made pursuant to this Program. MBNA will not market deposit accounts to University Group Members identified on the University Mailing Lists, except as such persons may be identified from another source (e.g. CAA Mailing Lists).

“MMDA Deposits” means those deposits in the money market deposit accounts opened by Associated Persons or others in response to marketing efforts made pursuant to this Program.

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

F. ROYALTY ADVANCES.

1. Subject to the other terms of this Agreement:

- (a) Within thirty (30) days following full execution of this Agreement by the parties, and again on July 1, 2003, MBNA America shall pay CAA One Million dollars (\$1,000,000), and shall pay University Two Hundred Forty Thousand dollars (\$240,000); and
- (b) On or before July 1st of each of 2004, 2005, and 2006, MBNA America shall pay CAA One Million dollars (\$1,000,000), and shall pay University One Hundred Forty Thousand dollars (\$140,000); and
- (c) For each year of any renewal term created by the automatic renewal of this Agreement pursuant to Section 8 hereof, MBNA America shall pay CAA One Million dollars (\$1,000,000), and shall pay University One-Hundred Eighty Thousand dollars (\$180,000), on July 1st of each such year, which amount shall be guaranteed in the same manner as set forth below in paragraph G.

(each of the foregoing, an "Advance"), each as an advance against future Royalties, subject to the provisions set forth below. All Royalties accrued shall, in lieu of direct payment to CAA and/or University, be applied against each of the Advances paid (regardless of to whom such Advance(s) was originally paid) until such time as all Advances paid are fully recouped. (For the avoidance of doubt, such recoupment of Advances paid shall take place even after the occurrence of any of the conditions set forth in Clauses (i) through (v) below, to the extent that any Advances paid remain unrecouped, and the Agreement has not been terminated in accordance with its terms.) Any Royalties accrued after all Advances paid are fully recouped shall be paid to CAA and University as set forth in this Agreement. If however, any of the five conditions set forth below occur, then MBNA shall have the opportunity to evaluate the impact of the occurrence and the option to cease paying any additional Advances (or provide the Guarantee Amount) for subsequent year(s), for the duration of the term (if any). If MBNA exercises the foregoing described option based on the occurrence of a condition other than Clause (ii), then CAA and/or University, individually, shall each have the option to terminate the Agreement as it applies to each party individually by providing MBNA with six months prior written notice of its decision to terminate the Agreement.

- (i) the Agreement is terminated prior to the end of the initial term as stated in this Agreement as of the Effective Date;
- (ii) CAA or University commits a material breach, not timely cured, of any of its obligations under this Agreement;
- (iii) MBNA is prohibited or otherwise prevented (other than due to its internal operations or marketing decisions) from conducting at least five (5) direct mail campaigns to the full updated Mailing List during each consecutive twelve month period during the term of the Agreement;
- (iv) MBNA is prohibited or otherwise prevented (other than due to its internal operations or marketing decisions) from conducting at least five (5) telemarketing campaigns to the full updated Mailing List during each consecutive twelve month period during the term of the Agreement; and/or

(v) MBNA is prohibited or otherwise prevented (other than due to its internal operations or marketing decisions) from conducting or utilizing a substantial portion of the marketing opportunities specified in Schedule D, at any time during the term of this.

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

G. ROYALTY GUARANTEE.

Subject to the other terms of the Agreement, CAA and University shall be guaranteed to collectively accrue Royalties (including without limitation the amount of the Advances) equal to or greater than Five Million, Nine Hundred Thousand dollars (\$5,900,000) (the "Guarantee Amount") by the end of the full initial term of the Agreement, subject to the provisions set forth below. If on the last day of the full initial term of this Agreement CAA has not accrued \$5,900,000 in Royalties, MBNA America will pay CAA and University an amount equal to the Guarantee Amount minus the sum of all compensation accrued by CAA and University (total amount previously received by CAA and University from MBNA) during the initial term of this Agreement and all unrecouped Advances. Notwithstanding the foregoing, this Royalty Guarantee and any obligation of MBNA America hereunder shall be expressly contingent upon the non-occurrence of any of the conditions set forth in Subsection F.1., above.

SCHEDULE D  
**Annual Marketing Opportunity**

In accordance with Section 2(j) of this Agreement, CAA and University, as applicable, shall provide the following marketing opportunities to MBNA America during each consecutive twelve month period during the term of this Agreement for purposes of marketing new Credit Card Accounts, at no additional cost to MBNA America because the cost for such marketing opportunities is built into the Royalty payments set forth herein to be paid by MBNA America to CAA and the University:

I. ADVERTISING AND SIGNAGE

- (a) One full-page 4-color ad in all football, men's basketball and baseball home athletic game-day programs, for every game where University produces such a program.
- (b) At least two in-game announcements during all home football, basketball, and baseball games. Such announcements will be accompanied by a jumbotron/scoreboard advertisement of the credit card plastic in venues where a functioning jumbotron/scoreboard is being utilized and has the capability to do so. (e.g., the baseball stadium currently does not have a jumbotron/scoreboard capable of providing the described service.)
- (c) One (1) half-page advertisement in *University's sports re-cap magazine* each year.
- (d) A factual article regarding this Agreement and an advertisement which will be designed by MBNA America in *Cal Athletic News*, mailed to 6000 donors (a.k.a. "Bear Backers")
- (e) Live radio drops for all football, men's basketball and baseball games twice per game during all games that are broadcast on radio.

II. PROMOTIONAL OPPORTUNITIES

- (a) Necessary access and the opportunity, during each year of this Agreement, for MBNA to conduct direct promotion events for the Program at all University home athletic events, including without limitation all such football, men's and women's basketball, baseball, men and women's soccer and men and women's tennis games. When conducting each direct promotion event, MBNA may have at least five (5) direct promotion locations (each a "Location") within the athletic facility holding the game or athletic event. The Locations shall be at prominent locations and will be mutually agreed upon by University and MBNA America.

Athletic events to which MBNA America will be permitted access and marketing opportunities as contemplated above include, without limitation, each of the following so long as such event is held during any year during the term of the Agreement and in accordance with the policies and procedures of the University of California, Berkeley (referred to in this instance as the greater University not limited to the athletic department):

- Calapalooza (Move in to dorms day, fall semester)
  - Football Fun Zone (or similar pre-game activity)
  - 1<sup>st</sup> practice of the year celebration—men's basketball
  - 1<sup>st</sup> practice of the year celebration—women's basketball

Cal Day (campus wide open house/community visit day)  
Faculty/Staff Appreciation Day (campus wide outdoor event)

- (b) In addition to and not in limitation of the other provisions of this Schedule D, and subject to applicable state and federal law, MBNA America shall be given access, during each University school year occurring during the term of this Agreement, to conduct direct promotions at two (2) on University campus locations for athletic events or CAA events, or such other locations as may be mutually agreed upon by the parties. MBNA America reserves the right to conduct such direct promotions up to twenty-five (25) days during each such University school year.
- (c) All necessary or appropriate passes to all MBNA America employees and agents that are conducting the direct promotion campaigns referenced above.
- (d) Four (4) parking permits/passes for each athletic event/game at which MBNA America will be conducting direct promotion events.
- (e) Reasonable vehicular access to the athletic and/or campus facility(ies) at which MBNA America will be conducting direct promotion events. Such vehicular access shall to the extent possible provide the MBNA America vehicle a convenient position, in relation to each Location, before and after the event to unload/load. University may provide a schedule of entry and exit times for such access necessary for public safety and coordination with other aspects of the event; MBNA America shall forfeit its right to vehicular access if MBNA America does not comply with such scheduling requirements (*e.g.*, if the MBNA America representative is late.)
- (f) MBNA America shall be permitted to set up each Location at least one (1) hour prior to the gates opening for each athletic event; however, in accordance with the previous paragraph, it may be necessary for MBNA America to set up more than one hour prior to gate opening. University's schedule requirements shall be reasonable.
- (g) Any issues concerning direct promotion events not specifically mentioned in this Agreement will be mutually agreed upon by MBNA America and University, and both parties agree to be reasonable.
- (h) MBNA America has the right to distribute applications for the Program with football, basketball and baseball ticket renewal invoice notices and season ticket mailings, and all other campaigns where alumni or friends of the University or CAA are solicited to purchase tickets to University athletic events. MBNA America has the right to distribute such Program insertions in all "Bear Backer" end of year mailings, as well as in all general mailings related to each of "Cal Adventures," Cal Athletic Camps, "Cal Fit," "Cal Rec Club" members, "Golden Bear Gymnastics", "Shape-Up", and "Strawberry Canyon Summer Camps".

Subject to applicable law and regulation, MBNA America has the right to place Trademarks on gifts for individuals completing applications and on other premium items, including without limitation t-shirts, hats, "bobbleheads," or other items suitable for the solicitation of Credit Card Account applications. CAA (acting individually and as agent for and on behalf of University), shall have final approval of the use and appearance of the Trademarks used on such materials, but grants MBNA America the right to use such approved materials at MBNA America's discretion. MBNA America shall purchase such premium items exclusively from vendors who are licensed by the University of California, Berkeley, to produce items bearing the University's trademarks.



### III. TICKETS

Eight (8) tickets to each University home football game, eight (8) tickets for each home basketball game, and two (2) parking passes for each such event.

## STAFF CARD AGREEMENT

THIS AGREEMENT (the "Agreement") is entered into as of the 28th day of July 2004, by and between CALIFORNIA ALUMNI ASSOCIATION ("CAA") and MBNA AMERICA (DELAWARE), N.A. ("MBNA Delaware"), for themselves and their respective successors and assigns.

WHEREAS, CAA and MBNA America Bank, N.A. ("MBNA America"), are parties to an Affinity Agreement dated July 1, 2002, as the same may have been amended (the "Affinity Agreement"), wherein MBNA America provides certain Financial Service Products, as defined therein, to certain persons included in certain lists provided to MBNA America by or on behalf of CAA; and

WHEREAS, CAA and MBNA Delaware desire that MBNA Delaware issue a staff credit card to employees of CAA.

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

### 1. Definitions

- (a) "CAA Affiliate" means any entity which, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with CAA.
- (b) "CAA Employees" means those employees designated by CAA to receive Staff Credit Card Accounts pursuant to this Agreement.
- (c) "Staff Credit Card Account" means a business credit card account opened by CAA for use by certain of its designated employees.
- (d) "Trademarks" means any design, image, visual representation, logo, service mark, trade dress, trade name or trademark used or acquired by CAA or any CAA Affiliate during the term of this Agreement.

### 2. Pricing

The pricing referenced below will be subject in all respects to the terms set forth in the Commercial Credit Agreement to be entered into between MBNA Delaware and CAA and/or each CAA Employee, as the same may be amended from time to time. This description may be adjusted or amended pursuant to MBNA Delaware's rights under such Commercial Credit Agreement, as amended. Terms of any benefits will be stated in the benefits brochure supplied to each CAA Employee. MBNA Delaware reserves the right to change its product name (*Platinum Plus for Business*), in its sole discretion, from time to time.

1. The current annual fee for each Staff Credit Card issued to a CAA Employee is \$0.
2. The current Annual Percentage Rate ("APR") is a fixed rate of 11.99%.

### 3. Exclusivity

CAA for itself and with the authority and on behalf of all applicable CAA Affiliates, hereby grants MBNA Delaware a limited, non-exclusive license to use the Trademarks solely in conjunction with this Agreement. This license shall be transferred upon assignment of this Agreement. This license shall remain in effect for the duration of this Agreement and shall apply to the Trademarks, notwithstanding the transfer of such Trademarks by operation of law or otherwise to any permitted successor, corporation, organization or individual. CAA shall provide MBNA Delaware all Trademark production materials (e.g., camera ready art)

required by MBNA Delaware, as soon as possible but no later than thirty (30) days after CAA's execution of this Agreement. Nothing stated in this Agreement prohibits CAA from granting to other persons a license to use the Trademarks in conjunction with the providing of any other service or product, except for any Staff Credit Card Account products or services.

#### 4. Trademark License

(a) CAA grants MBNA Delaware a license to use CAA's Trademarks solely in conjunction with production of the Staff Credit Cards. CAA shall provide written consent for such licensed use of its Trademarks, which consent shall not be unreasonably withheld. CAA indemnifies and holds harmless MBNA Delaware, its directors, officers, agents, employees, affiliates, successors, and assigns from and against any and all loss, liability, causes of action, claims, and the reasonable and actual costs incurred in connection therewith, arising from the Trademark license or from MBNA Delaware's use of the Trademarks in reliance thereon.

(b) In the event that MBNA Delaware incurs a cost because of a change in the Trademarks (e.g., the cost of reissuing new credit cards), CAA shall promptly reimburse MBNA Delaware for all such costs.

#### 5. Term

The initial term of this Agreement will begin on the Effective Date and end on June 30, 2007. This Agreement will automatically extend at the end of the initial term or any renewal term for successive 2-year periods, unless either party gives written notice of its intention not to renew at least ninety (90) days prior to the last day of such term or renewal term, as applicable.

#### 6. General Provisions

(a) Force Majeure. In the event that either party is unable to perform any of its obligations under this Agreement, or to enjoy any of its benefits because of fire, natural disaster, action or decrees of governmental bodies, or other event wholly beyond control of a party, the party that has been so affected shall immediately give written notice to the other party and shall do everything reasonably possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended or extended, as appropriate. If the period of nonperformance exceeds sixty (60) days from the receipt of notice of a force majeure event, the party whose ability to perform has not been so affected, may terminate this Agreement immediately.

(b) Notices. Whenever either party is required or permitted to give notice hereunder, the notice shall be in writing and shall be deemed given when delivered in hand, telecopied, or faxed to the other party and receipt is confirmed, when sent by overnight courier service, or when mailed by U.S. mail, certified or registered mail, postage prepaid, to the address specified below.

If to MBNA Delaware: MBNA America (Delaware), N.A  
1100 North King Street, MS 0464  
Wilmington, Delaware 19884-0464  
Attention: Director, Business Lending, Business Development  
Facsimile Number: 302-432-2491

If to CAA: California Alumni Association  
Alumni House  
Berkeley, California 94720  
Attn: Mr. Randall Parent  
Executive Director

Facsimile Number: 510-642-6252 643-6860

(c) Assignment. MBNA Delaware may assign this Agreement to any person at any time, including its parent, subsidiaries, affiliates, or to the surviving corporation of any such entity, all or part of its rights under this Agreement, including all or part of any balances owing on the Accounts. CAA shall not have the right to assign this Agreement unless it obtains the prior written consent of MBNA Delaware.

(d) Waiver. No term or condition of this Agreement shall be deemed waived and no breach excused unless a waiver or consent is in writing and signed by the party claimed to have waived or consented. Failure to exercise a right or remedy at law or granted hereunder shall not be deemed a waiver of the right or remedy. Failure to claim default hereunder shall not waive any default.

(e) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware and shall be deemed for all purposes to be made and fully performed in Delaware.

(f) Entire Agreement. This Agreement contains the entire agreement between the parties, and no oral or prior written statements or representations not contained in the Agreement shall have any force or effect with respect thereto. The Agreement supercedes any previous oral or written communications, representations, understandings or agreements between the parties with respect hereto. In the event that any provision(s) of the Agreement shall be declared invalid or unenforceable by any court or tribunal of any kind having jurisdiction with respect thereto, such determination shall not affect any other provision(s) thereof, all of which shall remain in full force and effect.


(g) No Partnership. Nothing herein shall be deemed or construed to create a partnership or joint venture between MBNA Delaware and CAA, or any affiliate of each. MBNA Delaware's services shall be rendered as an independent contractor and not as agent for CAA.

(h) Quality Monitoring. CAA and each cardholder consents to and authorizes MBNA Delaware and any of its affiliates or marketing associates to monitor and record, for quality assurance purpose, any of their telephone conversations relating to this Agreement or the Commercial Credit Agreement.

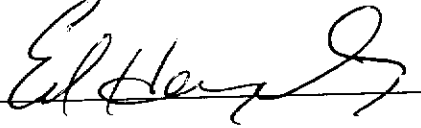
(j) Counterparts. The Agreement may be executed in multiple counterparts, each being deemed an original and this being one of the counterparts.

IN WITNESS WHEREOF, each party hereto, by its representative, has executed this Agreement as of the date first above written, and such party and its representative warrant that such representative is duly authorized to execute and deliver this Agreement for and on behalf of such party.

CALIFORNIA ALUMNI ASSOCIATION

By:   
Name: Randy Parent  
Title: Executive Director  
Date: 8/4/04

MBNA AMERICA (DELAWARE), N. A.

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ADDENDUM TO THE CALIFORNIA ALUMNI ASSOCIATION  
AMENDED AND RESTATED AFFINTY AGREEMENT**

THIS ADDENDUM (the "Addendum") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005 by and among MBNA AMERICA BANK, N.A., a national banking association having its principal place of business in Wilmington, Delaware ("MBNA America"), CALIFORNIA ALUMNI ASSOCIATION, a 501(c)(3) corporation independent of the University of California and having its principal place of business in Berkeley, California ("CAA"), and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, acting individually and for and on behalf of its Department of Intercollegiate Athletics and Recreational Sports, an educational institution with its principal place of business in Berkeley, California ("University"), for themselves, and their respective successors and assigns.

*PO*  
*B 12/13/05*

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

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

2. Section 1 of the Agreement is hereby amended by adding the following new subsections (n), (o), and (p):

(n) "Group Incentive Program" or "GIP" means any marketing or other program whereby CAA and/or University conducts and funds solicitation efforts for the Program, and the parties mutually agree that such marketing or other program shall constitute a GIP.

(o) "GIP Account" means a consumer Credit Card Account opened pursuant to a GIP in which CAA and the University comply with the GIP provisions of this Agreement.

(p) "Reward GIP Account" means a consumer Reward Credit Card Account opened pursuant to a GIP in which CAA and the University comply with the GIP provisions of the Agreement.

3. Section 4 of the Agreement is hereby amended by adding the following new subsection (d):

(d) The parties acknowledge the passage of a new piece of legislation in the State of California referred to as SB 569. Without limitation of the generality of any other representation or warranty contained herein, CAA and University represent and warrant to MBNA America that from and after the date hereof and throughout the remaining term of this Agreement, that each Mailing List and University Mailing List provided to MBNA America will be produced in compliance with all applicable law and regulation, including without limitation SB 569.

4. The Agreement is hereby amended by adding the following new Section 15:

15. GROUP INCENTIVE PROGRAM

(a) MBNA America shall design all advertising, solicitation and promotional material with regard to the Program, except with respect to those materials designed by CAA and/or the University pursuant to any GIP. In that regard, CAA or the University shall give MBNA America sixty (60) days prior notice of its desire to engage in marketing efforts regarding the Program itself, specifying that accounts generated from such efforts will entitle CAA or the University to the Royalty specified in Schedule B, subject to the other terms and conditions of this Agreement.

(b) All marketing materials generated as a result of such GIP programs shall be coded by CAA or the University as instructed by MBNA America for tracking purposes. Any account originating from CAA or the University website shall qualify as a GIP program. Marketing materials or telemarketing

inquiries from Members which, in either case, do not contain or reference such coding shall not be considered eligible for any of the GIP Royalty as set forth in Schedule B.

(c) In addition to all other rights it may have under this Agreement, MBNA America shall have the right of prior approval of all advertising and solicitation materials distributed by CAA and/or the University pursuant to any GIP. MBNA America shall have approval and control of the scope, timing, content and continuation of any GIP.

(d) All costs incurred by MBNA America in producing and mailing materials created pursuant to any GIP, supporting the GIP marketing efforts, or other costs incurred by MBNA America in support of the GIP marketing efforts (e.g. premium items such as fleece blankets but only if agreed to in advance by CAA) are the responsibility of CAA and/or the University pursuant to any GIP and such costs shall be deducted from any or all Royalty payments due CAA and the University under this Agreement.

(e) CAA and the University shall comply with MBNA America's instructions and all applicable laws, including, without limitation, the Truth in Lending Act and the Equal Credit Opportunity Act, with regard to any GIP.

5. Section A of Schedule B of the Agreement is hereby amended by adding the following new subsection 4:

4. \$50.00 (fifty dollars) for each consumer GIP Account opened, which remains open for at least ninety (90) consecutive days and which is utilized by the Customer within the first ninety (90) consecutive days of the consumer GIP Account's opening for at least one purchase or cash advance which is not subsequently rescinded, the subject of a charge back request, or otherwise disputed. Such consumer GIP Accounts will not qualify for any other opening-of-an-account Royalty.

6. Section B of Schedule B of the Agreement is hereby amended by adding the following new subsection 4:

4. \$50.00 (fifty dollars) for each Reward GIP Account opened, which remains open for at least ninety (90) consecutive days and which is utilized by the Customer within the first ninety (90) consecutive days of the Reward GIP Account's opening for at least one purchase or cash advance which is not subsequently rescinded, the subject of a charge back request, or otherwise disputed. Such Reward GIP Accounts will not qualify for any other opening-of-an-account Royalty.

7. The parties acknowledge and agree that MBNA America interpreted the Information Practices Act of 1977 to prevent MBNA America's use of the Mailing List, (an interpretation to which CAA and University do not subscribe). In compromise of the foregoing disagreement over interpretation of the Information Practices Act of 1977 (the "Dispute") and not admitting any wrongdoing, the parties have agreed MBNA America is no longer obligated to pay the Advance amount of \$1,000,000 that was due to CAA on or before July 1, 2005 ("July 1, 2005 Advance") pursuant to Schedule B of the Agreement, Section F.1(a). Each of MBNA America, CAA, and the University hereby releases, remises and forever discharges the other parties and their respective officers, directors, agents, employees, representatives, attorneys, successors and assigns (each, a "Releasee") from any and all claims, causes of action, obligations, damages, expenses, or judgments which such party or any of its affiliates has, had or may have against any Releasee, whether existing in contract, tort or under any other theory of recovery arising out of or in any way related to Dispute and irrevocably covenants to refrain from directly or indirectly asserting or voluntarily aiding the assertion of any claim or demand regarding the Dispute, or commencing, instituting or causing to be commenced or instituted, any proceeding regarding the Dispute with respect to any of the Releasees (or aiding the conduct of any such proceeding brought by any other entity or person). This release is intended to cover and does cover not only all presently known losses and damages relating to this mutual release, but also any further such losses and damages not presently known or anticipated

in connection with the Dispute and which may later be discovered, including all effects and consequences thereof.

8. (a) If CAA provides to MBNA America a full updated Mailing List which complies with the provisions of Section 4(d) of the Agreement (the "Revised Mailing List"), at any time between the effective date of this Addendum and June 15, 2006, then the parties acknowledge and agree that in lieu of July 1, 2005 Advance, MBNA America will pay to CAA a reduced Advance payment ("Advance") as an advance against future Royalties calculated as follows:

- (i) the number of full complete months remaining in the Contract Year (as hereinafter defined) after CAA provides the Revised Mailing List to MBNA America; *plus*
- (ii) if the Revised Mailing List is provided on or before the 15th of the month, the month in which the Revised Mailing List was received; *multiplied by*
- (iii) Eighty Three Thousand Three Hundred Thirty Three Dollars and Thirty Three Cents (\$83,333.33); *plus*
- (iv) Fifty Thousand Dollars (\$50,000).

For example, if CAA provides the Revised Mailing List to MBNA America on or prior to January 15, 2006, the month of January plus the number of full complete months remaining in the Contract Year is six (6) and MBNA America would be obligated to pay to CAA Five Hundred and Fifty Thousand Dollars (\$550,000) calculated as follows:  $\$83,333.33 \times 6 = \$499,999$ ;  $\$499,999 + \$50,000 = \$549,999$  (rounded up to \$550,000).

If CAA provides the Revised Mailing List to MBNA America after January 15, 2006, the number of months remaining in the Contract Year is five (5) and MBNA America would be obligated to pay to CAA Four Hundred Sixty Six Thousand Six Hundred Sixty Six Dollars (\$466,666) calculated as follows:  $\$83,333.33 \times 5 = \$416,666 + \$50,000 = \$466,666$ .

"Contract Year" means the consecutive twelve month period beginning on July 1, 2005 and ending on June 30, 2006.

(b) MBNA America acknowledges and agrees that it is obligated to pay the next Advance payment of \$1,000,000 due on July 1, 2006 in accordance with the terms of the Agreement and such payment will not be withheld based on any allegation of noncompliance with the Information Practices Act of 1977. Further, the parties acknowledge that MBNA America has not paid the Advance amount due to University on July 1, 2005, but MBNA agrees that it will make that payment in full upon receipt of the Revised Mailing List containing CAA and University information.

8. Section F of Schedule B of the Agreement is hereby amended by adding the following after every reference to "Royalties", "(other than Royalties accrued on GIP Accounts and Reward GIP Accounts)".

9. Schedule B of the Agreement is hereby amended by deleting Section G in its entirety and replacing it with the following new Section G:

G. ROYALTY GUARANTEE

Subject to the other terms of the Agreement, CAA and University shall be guaranteed to collectively accrue Royalties (other than Royalties accrued on GIP Accounts and Reward GIP Accounts) (including, without limitation the amount of the Advances) equal to the collective amount of the Advances to be paid to CAA and University during the full initial term of this Agreement (the "Guarantee Amount"). If on the last day of the full initial term of this Agreement, CAA and University have not collectively accrued the Guarantee Amount in Royalties (other than Royalties accrued on GIP Accounts and Reward GIP Accounts), MBNA America will pay to CAA and the University collectively an amount equal to

the Guarantee Amount minus the sum of all compensation previously received by CAA and the University from MBNA America during the full initial term of this Agreement, and all unrecouped Advances. Notwithstanding the foregoing, this Royalty Guarantee and any obligation of MBNA America hereunder shall be expressly contingent upon the non-occurrence of any of the conditions set forth in Subsection F.1., above.

10. Except as amended by this Addendum, all the terms, conditions and covenants of the Agreement are valid, shall remain in full force and effect, and are hereby ratified and confirmed. Any inconsistencies between this Addendum and the Agreement shall be governed by this Addendum. This Addendum may be executed in any number of counterparts, each of which shall be considered an original, and all of which shall be deemed one and the same instrument. The Agreement, as amended by this Addendum, contains the entire agreement of the parties with respect to the matters covered and no other prior promises, negotiations or discussions, oral or written, made by any party or its employees, officers or agents shall be valid and binding.

IN WITNESS WHEREOF, each party hereto, by its representative, has duly executed this Addendum as of the date first above written, and such party and its representative warrant that such representative is duly authorized to execute and deliver this Addendum for and on behalf of such party.

**CALIFORNIA ALUMNI ASSOCIATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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

By: Thomas W. Brooks

Name: Thomas W. Brooks

Title: Senior EVP

Date: 12/30/05

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA**

By: Brian C. Donohue

Name: BRIAN C. Donohue

Title: Business Contracts Office

Date: 12-28-05



**ADDENDUM TO THE CALIFORNIA ALUMNI ASSOCIATION  
AMENDED AND RESTATED AFFIDAVIT AGREEMENT**

THIS ADDENDUM (the "Addendum") is entered into this 28<sup>th</sup> day of December 2005 by and among MBNA AMERICA BANK, N.A., a national banking association having its principal place of business in Wilmington, Delaware ("MBNA America"), CALIFORNIA ALUMNI ASSOCIATION, a 501(c)(3) corporation independent of the University of California and having its principal place of business in Berkeley, California ("CAA"), and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, acting individually and for and on behalf of its Department of Intercollegiate Athletics and Recreational Sports, an educational institution with its principal place of business in Berkeley, California ("University"), for themselves, and their respective successors and assigns. RB 12/20/05

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

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

2. Section 1 of the Agreement is hereby amended by adding the following new subsections (n), (o), and (p):

(n) "Group Incentive Program" or "GIP" means any marketing or other program whereby CAA and/or University conducts and funds solicitation efforts for the Program, and the parties mutually agree that such marketing or other program shall constitute a GIP.

(o) "GIP Account" means a consumer Credit Card Account opened pursuant to a GIP in which CAA and the University comply with the GIP provisions of this Agreement.

(p) "Reward GIP Account" means a consumer Reward Credit Card Account opened pursuant to a GIP in which CAA and the University comply with the GIP provisions of the Agreement.

3. Section 4 of the Agreement is hereby amended by adding the following new subsection (d):

(d) The parties acknowledge the passage of a new piece of legislation in the State of California referred to as SB 569. Without limitation of the generality of any other representation or warranty contained herein, CAA and University represent and warrant to MBNA America that from and after the date hereof and throughout the remaining term of this Agreement, that each Mailing List and University Mailing List provided to MBNA America will be produced in compliance with all applicable law and regulation, including without limitation SB 569.

4. The Agreement is hereby amended by adding the following new Section 15:

**15. GROUP INCENTIVE PROGRAM**

(a) MBNA America shall design all advertising, solicitation and promotional material with regard to the Program, except with respect to those materials designed by CAA and/or the University pursuant to any GIP. In that regard, CAA or the University shall give MBNA America sixty (60) days prior notice of its desire to engage in marketing efforts regarding the Program itself, specifying that accounts generated from such efforts will entitle CAA or the University to the Royalty specified in Schedule B, subject to the other terms and conditions of this Agreement.

(b) All marketing materials generated as a result of such GIP programs shall be coded by CAA or the University as instructed by MBNA America for tracking purposes. Any account originating from CAA or the University website shall qualify as a GIP program. Marketing materials or telemarketing

inquiries from Members which, in either case, do not contain or reference such coding shall not be considered eligible for any of the GIP Royalty as set forth in Schedule B.

(c) In addition to all other rights it may have under this Agreement, MBNA America shall have the right of prior approval of all advertising and solicitation materials distributed by CAA and/or the University pursuant to any GIP. MBNA America shall have approval and control of the scope, timing, content and continuation of any GIP.

(d) All costs incurred by MBNA America in producing and mailing materials created pursuant to any GIP, supporting the GIP marketing efforts, or other costs incurred by MBNA America in support of the GIP marketing efforts (e.g. premium items such as fleece blankets but only if agreed to in advance by CAA) are the responsibility of CAA and/or the University pursuant to any GIP and such costs shall be deducted from any or all Royalty payments due CAA and the University under this Agreement.

(e) CAA and the University shall comply with MBNA America's instructions and all applicable laws, including, without limitation, the Truth in Lending Act and the Equal Credit Opportunity Act, with regard to any GIP.

5. Section A of Schedule B of the Agreement is hereby amended by adding the following new subsection 4:

4. \$50.00 (fifty dollars) for each consumer GIP Account opened, which remains open for at least ninety (90) consecutive days and which is utilized by the Customer within the first ninety (90) consecutive days of the consumer GIP Account's opening for at least one purchase or cash advance which is not subsequently rescinded, the subject of a charge back request, or otherwise disputed. Such consumer GIP Accounts will not qualify for any other opening-of-an-account Royalty.

6. Section B of Schedule B of the Agreement is hereby amended by adding the following new subsection 4:

4. \$50.00 (fifty dollars) for each Reward GIP Account opened, which remains open for at least ninety (90) consecutive days and which is utilized by the Customer within the first ninety (90) consecutive days of the Reward GIP Account's opening for at least one purchase or cash advance which is not subsequently rescinded, the subject of a charge back request, or otherwise disputed. Such Reward GIP Accounts will not qualify for any other opening-of-an-account Royalty.

7. The parties acknowledge and agree that MBNA America interpreted the Information Practices Act of 1977 to prevent MBNA America's use of the Mailing List, (an interpretation to which CAA and University do not subscribe). In compromise of the foregoing disagreement over interpretation of the Information Practices Act of 1977 (the "Dispute") and not admitting any wrongdoing, the parties have agreed MBNA America is no longer obligated to pay the Advance amount of \$1,000,000 that was due to CAA on or before July 1, 2005 ("July 1, 2005 Advance") pursuant to Schedule B of the Agreement, Section F.1(a).. Each of MBNA America, CAA, and the University hereby releases, remises and forever discharges the other parties and their respective officers, directors, agents, employees, representatives, attorneys, successors and assigns (each, a "Releasee") from any and all claims, causes of action, obligations, damages, expenses, or judgments which such party or any of its affiliates has, had or may have against any Releasee, whether existing in contract, tort or under any other theory of recovery arising out of or in any way related to Dispute and irrevocably covenants to refrain from directly or indirectly asserting or voluntarily aiding the assertion of any claim or demand regarding the Dispute, or commencing, instituting or causing to be commenced or instituted, any proceeding regarding the Dispute with respect to any of the Releasees (or aiding the conduct of any such proceeding brought by any other entity or person). This release is intended to cover and does cover not only all presently known losses and damages relating to this mutual release, but also any further such losses and damages not presently known or anticipated

Page 2 of 4 <sup>Rob</sup> B

in connection with the Dispute and which may later be discovered, including all effects and consequences thereof.

8. (a) If CAA provides to MBNA America a full updated Mailing List which complies with the provisions of Section 4(d) of the Agreement (the "Revised Mailing List"), at any time between the effective date of this Addendum and June 15, 2006, then the parties acknowledge and agree that in lieu of July 1, 2005 Advance, MBNA America will pay to CAA a reduced Advance payment ("Advance") as an advance against future Royalties calculated as follows:

- (i) the number of full complete months remaining in the Contract Year (as hereinafter defined) after CAA provides the Revised Mailing List to MBNA America; *plus*
- (ii) if the Revised Mailing List is provided on or before the 15th of the month, the month in which the Revised Mailing List was received; *multiplied by*
- (iii) Eighty Three Thousand Three Hundred Thirty Three Dollars and Thirty Three Cents (\$83,333.33); *plus*
- (iv) Fifty Thousand Dollars (\$50,000).

For example, if CAA provides the Revised Mailing List to MBNA America on or prior to January 15, 2006, the month of January plus the number of full complete months remaining in the Contract Year is six (6) and MBNA America would be obligated to pay to CAA Five Hundred and Fifty Thousand Dollars (\$550,000) calculated as follows:  $\$83,333.33 \times 6 = \$499,999$ ;  $\$499,999 + \$50,000 = \$549,999$  (rounded up to \$550,000).

If CAA provides the Revised Mailing List to MBNA America after January 15, 2006, the number of months remaining in the Contract Year is five (5) and MBNA America would be obligated to pay to CAA Four Hundred Sixty Six Thousand Six Hundred Sixty Six Dollars (\$466,666) calculated as follows:  $\$83,333.33 \times 5 = \$416,666 + \$50,000 = \$466,666$ .

"Contract Year" means the consecutive twelve month period beginning on July 1, 2005 and ending on June 30, 2006.

(b) MBNA America acknowledges and agrees that it is obligated to pay the next Advance payment of \$1,000,000 due on July 1, 2006 in accordance with the terms of the Agreement and such payment will not be withheld based on any allegation of noncompliance with the Information Practices Act of 1977. Further, the parties acknowledge that MBNA America has not paid the Advance amount due to University on July 1, 2005, but MBNA agrees that it will make that payment in full upon receipt of the Revised Mailing List containing CAA and University information.

8. Section F of Schedule B of the Agreement is hereby amended by adding the following after every reference to "Royalties", "(other than Royalties accrued on GIP Accounts and Reward GIP Accounts)".

9. Schedule B of the Agreement is hereby amended by deleting Section G in its entirety and replacing it with the following new Section G:

**G. ROYALTY GUARANTEE**

Subject to the other terms of the Agreement, CAA and University shall be guaranteed to collectively accrue Royalties (other than Royalties accrued on GIP Accounts and Reward GIP Accounts) (including, without limitation the amount of the Advances) equal to the collective amount of the Advances to be paid to CAA and University during the full initial term of this Agreement (the "Guarantee Amount"). If on the last day of the full initial term of this Agreement, CAA and University have not collectively accrued the Guarantee Amount in Royalties (other than Royalties accrued on GIP Accounts and Reward GIP Accounts), MBNA America will pay to CAA and the University collectively an amount equal to

the Guarantee Amount minus the sum of all compensation previously received by CAA and the University from MBNA America during the full initial term of this Agreement, and all unrecouped Advances. Notwithstanding the foregoing, this Royalty Guarantee and any obligation of MBNA America hereunder shall be expressly contingent upon the non-occurrence of any of the conditions set forth in Subsection F.1., above.

10. Except as amended by this Addendum, all the terms, conditions and covenants of the Agreement are valid, shall remain in full force and effect, and are hereby ratified and confirmed. Any inconsistencies between this Addendum and the Agreement shall be governed by this Addendum. This Addendum may be executed in any number of counterparts, each of which shall be considered an original, and all of which shall be deemed one and the same instrument. The Agreement, as amended by this Addendum, contains the entire agreement of the parties with respect to the matters covered and no other prior promises, negotiations or discussions, oral or written, made by any party or its employees, officers or agents shall be valid and binding.

IN WITNESS WHEREOF, each party hereto, by its representative, has duly executed this Addendum as of the date first above written, and such party and its representative warrant that such representative is duly authorized to execute and deliver this Addendum for and on behalf of such party.

**CALIFORNIA ALUMNI ASSOCIATION**

By: RO Parent  
Name: Randell O. Parent  
Title: Executive Director  
Date: 12/28/05

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

By: Thomas W. Brookes  
Name: Thomas W. Brookes  
Title: Senior EVP  
Date: 12/30/05

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ADDENDUM  
TO THE AMENDED AND RESTATED AFFINITY AGREEMENT**

THIS ADDENDUM (the "Addendum") is entered into as of the 22nd day of December, 2006, by and among California Alumni Association ("CAA"), The Regents of the University of California, acting individually and for and on behalf of its Departments of Intercollegiate Athletics and Recreational Sports within the University of California, Berkeley (collectively, "University") and FIA Card Services, N.A., formerly known as MBNA America Bank, N.A. ("Bank"), for themselves and their respective successors and assigns.

WHEREAS, CAA, University and Bank are parties to that certain Amended and Restated Affinity Agreement dated as of July 1, 2002, as the same has been amended on December 28, 2005 (the "Agreement") wherein Bank provides certain financial services to persons included in lists provided to Bank by or on behalf of CAA and University; and,

WHEREAS, CAA, University and Bank mutually desire to amend the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, including the Advances and the Guarantee Amount (as defined herein), CAA, University and Bank agree as follows:

1. The above recitals are incorporated herein and deemed a part of this Addendum. Capitalized terms not otherwise defined in this Addendum shall have the meanings assigned to them in the Agreement.
2. The current term of the Agreement is hereby extended to end on June 30, 2014. Thereafter, the Agreement shall automatically extend at the end of the current term or any renewal term for successive two-year periods, unless either party gives written notice of its intention not to renew at least ninety (90) days, but not more than one hundred eighty (180) days, prior to the last date of such term or renewal term, as applicable. This Section shall replace all provisions concerning the term of the Agreement, the renewal of the Agreement, and all notices required to not renew this Agreement.
3. Section 1(e) of the Agreement is hereby deleted in its entirety and replaced with the following: "**Financial Service Product**" means banking or financial product or service, including the following: **Credit and Debit Card Services** consisting of credit card programs, charge card programs, debit card programs, installment loan programs, revolving loan programs, travel and entertainment card programs which contain or access a credit feature, **Consumer Retail Banking Services** consisting of consumer checking accounts, saving accounts, online banking, personal loans, and business banking services consisting of commercial financing, treasury management services, international banking, financial engineering (e.g., interest rate swaps), SBA loans, payroll and cash management. **Business Retail Banking Services** consisting of a full line of deposit products, including free business checking, commercial financing, treasury management services, international banking, financial engineering (e.g., interest rate swaps), SBA loans, payroll and cash management. **Residential Real Property Loans** consisting of mortgage origination and loan services. **Financial Products and Services** consisting of full-service brokerage services that offer investment products, including individual retirement accounts (IRAs),

fixed and variable annuities, stocks, bonds, mutual funds, financial counseling, retirement and estate planning.

It is understood and accepted by the Bank and that CAA has enter into a sponsorship agreement with California Mortgage and Realty, Inc. that expires on December 31, 2010 to offer CAA members an investment fund that makes loans secured by deeds of trust of commercial and residential real estate.

4. Notwithstanding Section 3 above, the parties agree that for the sole purpose of applying Section 2(a) and the third sentence in Section 2(d) to the Department of Intercollegiate Athletics and Recreational Sports, "Financial Service Products" shall mean credit card programs, charge card programs, debit card programs, revolving loan programs, deposit programs and travel and entertainment card programs which contain or access a credit feature.

5. The third sentence in Section 1(h) is hereby deleted in its entirety and replaced with the following: "University Group Member" means generally an individual (excluding persons on any CAA Mailing Lists) who is associated with any formal and informal groups or identifiable groups or target audiences which support the University of California, Berkeley athletic teams (e.g., fans, single game ticket buyers, donors, or season ticket holders of University of California, Berkeley athletic events), constituents of the Department of Recreational Sports and/or potential participants mutually agreed to in writing by University and Bank.

6. Section 1(i) is hereby deleted in its entirety and replaced with the following:

"Program" means credit card programs, certificate of deposit programs, money market programs, consumer revolving lines of credit and installment loan programs and such other programs within Financial Service Products that (i) Bank agrees to offer pursuant to the Agreement to the Associated Persons and others from time to time and (2) CAA consents to including in the Program, which consent shall not be unreasonably withheld or delayed.

7. Notwithstanding Section 2(a), the parties acknowledge that CAA has a pre-existing student loan program ("Student Loan Program") with a financial institution and that such student loan program is not a breach of Section 2(a). University agrees to provide Bank or a Bank Affiliate with a right to bid with respect to any future student loan program. CAA shall be obligated to notify Bank in writing of the opportunity regarding the student loan program in advance of the expiration of the current Student Loan Program to afford Bank the opportunity to submit a timely response. Such notice at a minimum shall include all terms regarding scope and use of the Trademarks and the Mailing Lists, and CAA shall provide any other information requested by Bank.

8. Section 2(c) is hereby deleted in its entirety and replaced with the following:

CAA and University authorize Bank to solicit their respective Associated Persons by mail, direct promotion, banking centers, internet, advertisements, telephone and any

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other marketing channels that are mutually agreed upon in writing by the applicable parties.

9. CAA and University agree that Bank and its Affiliate shall have the sole and exclusive right to use, through the license granted in Section 2(h), any and all Trademarks in connection with the promotion of "Financial Service Product" with Bank and its Affiliates using the following designations: "Official Partner of the California Alumni Association"; "Proud Sponsor of the California Alumni Association"; "Official Bank and/or Official Financial Services Partner of California Alumni Association"; and other mutually agreed upon designations, which designations may include any of the Trademarks. Any such use of the Trademarks shall be subject to CAA's right of prior approval as set forth in Section 2(d).

10. Effective January 1, 2007, Sections A.4 and B.4 of Schedule B of the Agreement are hereby deleted in their entirety and replaced with the following:

A. 4. \$75.00 (seventy dollars) for each consumer GIP Account opened, which remains open for at least ninety (90) consecutive days and which is utilized by the Customer within the first ninety (90) consecutive days of the consumer GIP Account's opening for at least one purchase or cash advance which is not subsequently rescinded, the subject of a charge back request, or otherwise disputed. Such consumer GIP Accounts will not qualify for any other opening-of-an-account Royalty.

B.4. \$75.00 (seventy dollars) for each Reward GIP Account opened, which remains open for at least ninety (90) consecutive days and which is utilized by the Customer within the first ninety (90) consecutive days of the Reward GIP Account's opening for at least one purchase or cash advance which is not subsequently rescinded, the subject of a charge back request, or otherwise disputed. Such Reward GIP Accounts will not qualify for any other opening-of-an-account Royalty.

11. Sections F and G of Schedule B are hereby deleted in their entirety and replaced with Attachment #1, which is attached hereto and made a part hereof.

12. Except as amended by this Addendum, all of the terms, conditions and covenants of the Agreement are valid, shall remain in full force and effect, and are hereby ratified and confirmed. Any inconsistencies between this Addendum and the Agreement shall be governed by this Addendum.

13. This Addendum may be executed in any number of counterparts, each of which shall be considered an original, and all of which shall be deemed one and the same instrument. The Agreement, as amended by this Addendum, contains the entire agreement of the parties with respect to the matters covered and no other or prior promises, negotiations or discussions, oral or written, made by any party or its employees, officers or agents shall be valid and binding.

IN WITNESS WHEREOF, each party hereto, by its representative, has executed this Addendum as of the date first above written, and such party and its representative warrant that such representative is duly authorized to execute and deliver this Addendum for and on behalf of such party.

CALIFORNIA ALUMNI ASSOCIATION

FIA CARD SERVICES, N.A.

By: *R. Tucker Coop*

By: *[Signature]*

Name: R. TUCKER COOP

Name: JOSEPH A. DeSANTIS

Title: EXECUTIVE DIRECTOR

Title: SVP

Date: 12/27/06

Date: 12/30/06

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_




IN WITNESS WHEREOF, each party hereto, by its representative, has executed this Addendum as of the date first above written, and such party and its representative warrant that such representative is duly authorized to execute and deliver this Addendum for and on behalf of such party.

CALIFORNIA ALUMNI ASSOCIATION

FIA CARD SERVICES, N.A.

By: \_\_\_\_\_

By:  \_\_\_\_\_

Name: \_\_\_\_\_

Name: Joseph A. DeSantis

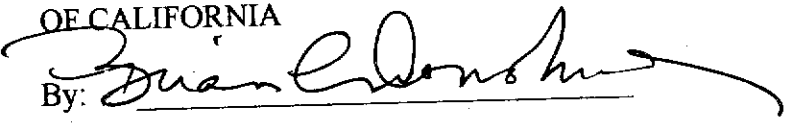
Title: \_\_\_\_\_

Title: SVP

Date: \_\_\_\_\_

Date: 12/30/06

THE REGENTS OF THE UNIVERSITY  
OF CALIFORNIA

By:  \_\_\_\_\_

Name: Brian C. Donohue

Title: Business Contracts Administrator

Date: 12-27-06



ATTACHMENT #1

F. ROYALTY ADVANCES.

1. Within thirty (30) days following the full execution of this Addendum, Bank shall pay to CAA six hundred seventy five thousand dollars (\$675,000) and Bank shall pay to CAA one million three hundred fifty thousand dollars (\$1,350,000) on or before July 1, 2007, July 1, 2008, July 1, 2009, July 1, 2010, July 1, 2011, July 1, 2012 and July 1, 2013, (each, an "Advance"), as advances against future Royalties, subject to the provisions set forth below. All Royalties (excluding the Royalties in Sections A.4 and B.4 of Schedule B) accrued shall, in lieu of direct payment to CAA and/or University, be applied against each of the Advances until such time as all Advances are fully recouped. Any Royalties accrued thereafter shall be paid to CAA and/or University as set forth in this Agreement. If, however, any of the five (5) conditions set forth below occur, then Bank shall have the opportunity to evaluate the impact of the occurrence and the option to cease paying any additional Advances (and cease providing the Guarantee Amount) for subsequent years, for the duration of the term (if any). If Bank exercises the foregoing described option based on the occurrence of a condition other than clause (ii), then CAA and/or University, individually, shall each have the option to terminate the Agreement as it applies to each party individually by providing Bank with six months prior written notice of its decision to terminate the Agreement.

(i) The Agreement is terminated prior to June 30, 2014;

(ii) CAA or University commits a material breach of any of its obligations under the Agreement;

(iii) Bank is prohibited or otherwise prevented by CAA or University or any of their Affiliates from conducting at least five (5) direct mail campaigns to the full updated Mailing List during each consecutive twelve month period during the term of the Agreement;

(iv) Bank is prohibited or otherwise prevented by CAA or University or any of their Affiliates from conducting at least five (5) telemarketing campaigns to the full updated Mailing List during each consecutive twelve month period during the term of the Agreement; and

(v) Bank is prohibited or otherwise prevented by CAA or University or any of their Affiliates from conducting or utilizing a substantial portion of the marketing opportunities specified in Schedule D, at any time during the term of this Agreement.

2. If during any given year(s) during the term of this Agreement Bank recoups all prior Advances paid by it to CAA and/or University in prior years, and pays CAA and/or University Royalties accrued by CAA and/or University over and above the 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.

G. ROYALTY GUARANTEE.

Subject to the terms of the Agreement, CAA and University shall be guaranteed to collectively accrue Royalties (including without limitation the amount of the Advances) equal to or greater than ten million one hundred twenty five thousand dollars (\$10,125,000) (the "Guarantee Amount") by June 30, 2014, subject to the provisions set forth below. If on June 30, 2014, CAA and University

have not collectively accrued \$10,125,000 in Royalties, Bank will pay CAA an amount equal to the Guarantee Amount minus the sum of all compensation collectively accrued by CAA and University between January 1, 2007 and June 30, 2014 and all unrecouped Advances. Notwithstanding the foregoing, this Guarantee Amount and any obligation of Bank hereunder shall be expressly contingent upon the non-occurrence of any of the conditions set forth in Subsection F.1., above.

*ATC*



MBNA America Bank, N.A.  
Wilmington, DE 19884-0164

(800) 441 7048  
(302) 432 0458  
(302) 432-1380 Fax

**Thomas W. Brooks**  
Senior Executive Vice President

January 12, 2006

Randall Parent  
Executive Director  
California Alumni Association  
1 Alumni House  
Berkeley, CA 94720-7520

RE: December 28, 2005 Addendum to the California Alumni Association  
Amended and Restated Agreement.

Dear Randy,

Thank you for your time yesterday to discuss our agreement.

The purpose of this letter is to acknowledge our mutual understanding of Section 8 of the addendum by and between the California Alumni Association and MBNA America Bank, N.A. dated December 28, 2005. Our mutual understanding is that the only Royalties being paid in addition to the Advance/Guarantee of the agreement are those outlined in Section 5 and Section 6 of the addendum.

Randy, MBNA values our 13 year partnership with the California Alumni Association and we look forward to the continued success of the credit card program.

Sincerely,

Thomas W. Brooks  
Senior Executive Vice President

Acknowledged on behalf of  
California Alumni Association  
Randall O. Parent  
Executive Director

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**DEPOSIT PROGRAM ADDENDUM  
TO THE CALIFORNIA ALUMNI ASSOCIATION  
AFFINITY AGREEMENT**

THIS ADDENDUM (the "Addendum") is entered into as of the 4<sup>th</sup> day of May, 2007, by and among CALIFORNIA ALUMNI ASSOCIATION ("CAA"), THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, acting individually and for and on behalf of its Departments of Intercollegiate Athletics and Recreational Sports within the University of California, Berkeley (collectively "University") and FIA CARD SERVICES, N.A., formerly known as MBNA AMERICA BANK, N.A. ("Bank"), for themselves and their respective successors and assigns.

WHEREAS, CAA, University and Bank are parties to that certain Affinity Agreement dated as of July 1, 2002, as the same has been amended (the "Agreement") wherein Bank provides certain Financial Service Products to persons included in lists provided to Bank by or on behalf of CAA and University; and,

WHEREAS, CAA, University and Bank mutually desire to amend the Agreement to include: **Consumer Retail Banking Services** consisting of consumer checking accounts, saving accounts, online banking, personal loans, and business banking services consisting of commercial financing, treasury management services, international banking, financial engineering (e.g., interest rate swaps), SBA loans, payroll and cash management. **Business Retail Banking Services** consisting of a full line of deposit products, including free business checking, commercial financing, treasury management services, international banking, financial engineering (e.g., interest rate swaps), SBA loans, payroll and cash management. **Residential Real Property Loans** consisting of mortgage origination and loan services. **Financial Products and Services** consisting of full-service brokerage services that offer investment products, including individual retirement accounts (IRAs), fixed and variable annuities, stocks, bonds, mutual funds, financial counseling, retirement and estate planning (described herein collectively as "Deposits" and "Deposit Accounts" and, individually, as a "Deposit Account"): (i) as a Financial Service Product provided by Bank; and (ii) as another part of CAA's and University's Program under the Agreement;

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

1. The above recitals are incorporated herein and deemed a part of this Addendum. Capitalized terms not otherwise defined in this Addendum shall have the meanings assigned to them in the Agreement.
2. The parties agree that Deposits are now Financial Service Products under the Program (as the features, terms and conditions of such Deposits, and/or the Program may be adjusted or amended from time to time by Bank, in its sole discretion). Bank may, at its option, offer Deposits to some or all of the University Group Members and CAA Group Members, including those Customers and Mailing Lists provided by CAA and/or University under the Agreement. Notwithstanding the foregoing, the parties agree that for the sole purpose of applying Section 2(a) and the third sentence in Section 2(d) of the Agreement to the Department of Intercollegiate Athletics and Recreational Sports, "Financial Service

Products" shall mean credit card programs, charge card programs, debit card programs, revolving loan programs, deposit programs and travel and entertainment card programs which contain or access a credit feature. No additional Financial Service Products shall be added to the Program without a written amendment executed by the parties. Bank will have exclusivity in the personal banking category for CAA only. Bank's exclusivity in the personal banking category does not include Cal Recreational Sports or Intercollegiate Athletics.

3. Certain Financial Service Products or services under this Agreement may be offered through Bank's affiliates. For example, deposit products are currently offered by Bank of America, N.A. The parties acknowledge that all of Bank's rights and responsibilities under the Agreement, as amended by this Addendum, relating to the Deposits apply equally to Bank of America, N.A., and its successors and assigns. Bank, and its affiliates, will determine in their discretion the type or types of Deposits, it will offer under the Program, and such may be adjusted or amended from time to time by Bank. Bank and its affiliates, may from time to time in their discretion add new features and terms and adjust or amend current features and terms of the Deposits. Deposits will be subject to Bank's standard Deposit agreements. CAA and/or University will not possess any ownership interest in the Deposits or any accounts or access devices established pursuant to the Deposits. Bank may or may not market all Deposits or the Program through all of Bank marketing channels, including the Banking centers. Bank will not use the "Cal" script logo on any checks that are part of the Deposits Program.
4. CAA and University agree to (i) enter into an exclusive contractual relationship for the Program Deposits; and (ii) not sponsor, promote, aid, advertise, or develop a deposit program that is similar to any Deposits that are or may be offered in connection with the Program. Notwithstanding anything in the Agreement to the contrary, CAA and University may accept advertising from any financial institution provided that the advertisement does not contain an express or implied endorsement by CAA or University of said financial institution or any Financial Service Product. Subject to the foregoing, all of CAA's and University's promises arising from their exclusive arrangement with Bank in the Agreement shall also apply to Deposits. The parties acknowledge that University has a pre-existing relationship with Bank of the West as a sponsor. The parties do not consider this relationship, as it is structured and delineated as of the Effective Date, to be in conflict with the rights of Bank under the Agreement. University agrees not to grant any further rights to Bank of the West which would conflict with the rights granted to Bank under this Agreement.
5. During the term of the Deposit Program, CAA and University will receive the Royalties set forth below for Program Deposit Accounts. CAA and University shall continue to receive the Royalties for certificate of deposit and money market deposit accounts described in Schedule B, subsection E of the Agreement. Deposit Account Royalties will not be paid to CAA and/or University on any existing non-endorsed deposit account that is converted to the Program. However, Bank, in its sole discretion, may compensate Customers owning such converted accounts in accordance with sub-section (b) below or otherwise.

(a) \$10 for each new checking account opened under the Program which has a positive balance of at least \$50.00 ninety (90) days from its opening date. An additional \$5 for every checking account opened under the Program that has a positive balance of at least \$50.00 on each subsequent anniversary of the account opening date. Payments will be made within forty-five (45) days after the end of each calendar quarter.

(b) Customers will be eligible to participate in Bank's Keep The Change (Keep The Change) savings program and, subject to the rules of the program, will receive a savings match of 15% under the program, or at least one thousand (1,000) basis points more than Bank's standard savings match for the period of time that Customers' participating Deposits Accounts are under the Program.

6. The Deposits compensation set forth in Section 5 of this Addendum shall not affect any other compensation contained in the Agreement, and the compensation referenced in the Agreement shall not apply to the Deposits. For the sake of clarity, Bank shall pay all Royalties that accrue pursuant to Section 5 of this Addendum directly to CAA and University and shall apply such Royalties against any Advance(s) and/or Guarantee Amount that CAA and University receive or may receive under the Agreement.
7. Notwithstanding anything contained in the Agreement to the contrary, CAA and University acknowledge and agree that Bank may market any financial service products or services that Bank offers (e.g., credit cards and deposit products, collectively "Bank Products") contemporaneously with the promotion of the Deposits and that such Bank Products are not subject to this Agreement. In addition, 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 shall not be subject to the Agreement, including, for the sake of clarity, any marketing or cross-selling restrictions imposed upon BANK under the Agreement.
8. The term of the Deposits Program shall run co-terminous with the term of the Program. The termination rights set forth in the Agreement may be exercised by the applicable party to terminate the Deposit Program only, or the Agreement, as amended by this Addendum, in its entirety.
9. Upon termination or expiration of the Deposit Program, Bank shall not be required to remove and CAA and/or University shall not take any action to cause the removal of CAA's and/or University's respective design, image, visual representation, identification, trademark, trade dress, service mark, logo or trade name (each, a "Mark") from the debit cards or other Deposit Account access devices, checks, statements or records of any Customer prior to (a) the expiration of said Customer's debit card or other Deposit Account access device containing such Mark; and (b) the exhaustion and clearing of such customer's check supply containing such Mark. Following termination, Bank may convert Members, in

its sole discretion, to any other Bank deposit product or service without notice to CAA and/or University.

10. Section 10(d) of the Agreement is deleted in its entirety and replaced with the following:

Bank shall have the right to prior review and approval of any notice in connection with, relating or referring to the termination of this Agreement or the Program to be communicated by either CAA or University or any Affiliate thereof to any of the Customers. Such approval shall not be unreasonably withheld. Upon termination of this Agreement, neither CAA nor the University shall attempt to cause the removal of CAA's or the University's Trademarks from any person's credit devices, checks or records of any Customer existing as of the effective date of termination of this Agreement. After the effective date of termination, Bank shall make commercially reasonable efforts to cause a statement message to appear on a periodic statement otherwise being issued for the Accounts which continue to be represented by then-current valid card plastics bearing a Trademark, on one occasion following the effective date of termination. Such statement message shall advise of the termination of this Agreement. Notwithstanding the foregoing, Bank shall not be required to provide such statement message notice if the Agreement is terminated due to the material breach of CAA or the University, or pursuant to Section 10(b), or to provide such notice during any month in which Bank is disclosing any messages required by law, by other contractual requirement or by MasterCard or Visa, even if such exclusion should result in no notice being sent by Bank.

11. Except as amended by this Addendum, all of the terms, conditions and covenants of the Agreement are valid, shall remain in full force and effect, and are hereby ratified and confirmed. Any inconsistencies between this Addendum and the Agreement shall be governed by this Addendum. Notwithstanding anything to the contrary in the Agreement, the Agreement, as amended by this Addendum, shall be governed by and subject to the laws of the State of Delaware and shall be deemed for all purposes to be made and fully performed in Delaware.
12. For a one (1) year period following the termination of the Deposit Program for any reason, CAA and University agree that neither CAA and/or University nor any CAA Affiliate and/or University Affiliate shall, by itself or in conjunction with others, specifically target any offer of a deposit product or service similar to the Deposits, including without limitation, any checking account or debit card, to Members who were Customers.
13. (a) Bank shall defend, indemnify and hold CAA and University and their officers, agents, volunteers and employees harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Addendum, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Bank, its officers and employees.



(b) CAA and University shall indemnify and hold Bank , its officers, agents , and employees harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this Addendum, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of CAA or University, their officers, and employees.

14. This Addendum may be executed in any number of counterparts, each of which shall be considered an original, and all of which shall be deemed one and the same instrument. The Agreement, as amended by this Addendum, contains the entire agreement of the parties with respect to the matters covered and no other or prior promises, negotiations or discussions, oral or written, made by any party or its employees, officers or agents shall be valid and binding.

IN WITNESS WHEREOF, each party hereto, by its representative, has executed this Addendum as of the date first above written, and such party and its representative warrant that such representative is duly authorized to execute and deliver this Addendum for and on behalf of such party.

CALIFORNIA ALUMNI ASSOCIATION

FIA CARD SERVICES, N.A.

By: *R. Tucker Coop* <sup>WWR</sup>

By: *[Signature]*

Name: R. TUCKER COOP

Name: JOSEPH A. DE SANTIS

Title: EXECUTIVE DIRECTOR

Title: SVP

Date: MAY 4, 2007

Date: MAY 17, 2007

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: *[Signature]*

Name: BRIAN C. DONOVAN

Title: Business Contracts Administrator

Date: 5-4-07

**AUTO LOAN PRODUCT ADDENDUM  
TO THE CALIFORNIA ALUMNI ASSOCIATION**

THIS ADDENDUM (the "Addendum") is entered into as of the 2nd day of January, 2009, (the "Addendum Effective Date") by and between California Alumni Association ("CAA"), The Regents of the University of California, acting individually and for and on behalf of its Departments of Intercollegiate Athletics and Recreational Sports within the University of California, Berkeley (collectively, "University") and FIA Card Services, N.A. (formerly known as MBNA America Bank, N.A.) ("Bank"), for themselves and their respective successors and assigns.

WHEREAS, CAA and Bank, are parties to that certain Affinity Agreement dated as of July 1, 2002, as the same has been amended (the "Agreement"), wherein Bank provides certain Financial Service Products to certain persons included in certain lists provided to Bank by or on behalf of CAA; and,

WHEREAS, CAA and Bank mutually desire to amend the Agreement to include "Auto Loan Products", as defined below, as part of the Program.

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

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

2. Section 1 of the Agreement is hereby amended to include the following definitions.

"Auto Loan Account" means a direct purchase money installment loan secured by an Auto Loan Product which is opened pursuant to the Program

"Auto Loan Products" means new or used automobile or light truck loans.

3. The parties agree that Auto Loan Products are now part of the Program (as such Auto Loan Products and Program may be adjusted or amended from time to time by Bank, in its sole discretion). Bank may, at its option, offer the Auto Loan Products to some or all of the CAA Group Members, including without limitation those persons included on the Mailing Lists provided by CAA under the Agreement. Bank may offer Auto Loan Products through an affiliate, including without limitation, Bank of America, N.A.

4. Notwithstanding anything in the Agreement to the contrary, CAA hereby grants Bank and its Affiliates a limited, exclusive license to use the Trademarks in

conjunction with the Auto Loan Products, including the promotion thereof. Bank's use of the Trademarks, which shall be at Bank's option, shall be subject to CAA's review and approval rights set forth in Section 2(d) of the Agreement. This license shall be transferred upon assignment of the Agreement. This license shall remain in effect for the duration of this Addendum and shall apply to the Trademarks, notwithstanding the transfer of such Trademarks by operation of law or otherwise to any permitted successor, corporation, organization or individual.

5. CAA agrees to exclusively endorse Auto Loan Products; and that neither CAA, nor any CAA Affiliate will, by itself or in conjunction with others, directly or indirectly 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, including Auto Loan Products, of any entity other than Bank. Subject to the foregoing, all of CAA's promises arising from its exclusive arrangement with Bank in the Agreement shall also apply to the Auto Loan Products.

6. CAA will communicate the availability of the Auto Loan Products through its website and provide hyperlinks from such announcements to a Bank website that provides additional information and an application for an Auto Loan Product. CAA will modify or remove such advertisements within twenty-four (24) hours of Bank's request. CAA will allow Bank to view all pages within CAA internet site(s) that communicate the Auto Loan Product.

7. Notwithstanding anything contained in the Agreement to the contrary, CAA acknowledges and agrees that Bank may market any financial products or services that Bank offers (e.g., credit cards and deposit products, collectively "Bank Products") contemporaneously with the promotion of the Auto Loan Products and that such Bank Products are not subject to this Agreement. In addition, Bank may maintain separately all information it obtains as a result of an account application for, and/or an account relationship in connection with, an Auto Loan Product or Bank Product. All such information becomes a part of Bank's own files and shall not be subject to the Agreement.

8. During the term of the Auto Loan Products Addendum, Bank will pay CAA the following Auto Loan Account Royalty: twenty-five (25) basis points of the amount initially funded for each Auto Loan Account opened pursuant to the Program and which remains open for a least ninety (90) consecutive days. Auto Loan 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 accounts in the Agreement will not apply to Auto Loan Accounts. Payments will be made approximately forty-five (45) days after the end of each calendar quarter and for the sake of clarity, will not be used to recoup the Royalty Guarantee of the Agreement. For the avoidance of doubt, Auto Loan Products shall not be eligible for GIP Royalties pursuant to this Agreement.

9. The term of this Addendum will begin on the Addendum Effective Date and end on the earlier of: (i) the first anniversary of the Addendum Effective Date, or (ii) upon the expiration or termination of the Agreement.

10. Subsection 14(f)(3) of the Agreement is hereby deleted in its entirety and replaced with the following:

“(3) If to Bank:

FIA Card Services, N. A.  
MS DE5-004-04-02  
1100 North King Street  
Wilmington, Delaware 19884

ATTENTION: Contract Administration

Fax #: (302) 432-1821”

11. Except as amended by this Addendum, all of the terms, conditions and covenants of the Agreement are valid, shall remain in full force and effect, and are hereby ratified and confirmed. Any inconsistencies between this Addendum and the Agreement shall be governed by this Addendum. The parties acknowledge that all of Bank’s rights and responsibilities under the Agreement relating to the Auto Loan Products apply equally to Bank of America, N.A. and its successors and assigns.

12. This Addendum may be executed in any number of counterparts, each of which shall be considered an original, and all of which shall be deemed one and the same instrument. The Agreement, as amended by this Addendum, contains the entire agreement of the parties with respect to the matters covered and no other or prior promises, negotiations or discussions, oral or written, made by any party or its employees, officers or agents shall be valid and binding.

IN WITNESS WHEREOF, each party hereto, by its representative, has executed this Addendum as of the date first above written, and such party and its representative warrant that such representative is duly authorized to execute and deliver this Addendum for and on behalf of such party.

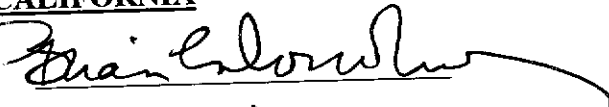
**CALIFORNIA ALUMNI ASSOCIATION**

By: *R. Tucker Coop*  
Name: R. TUCKER COOP  
Title: EXECUTIVE DIR.  
Date: 3/26/09

**FIA CARD SERVICES, N.A.**

By: *Stephen T. Doan*  
Name: Stephen T. Doan  
Title: S.J.P.  
Date: 4-14-09

**THE REGENTS OF THE UNIVERSITY  
OF CALIFORNIA**

By: 

Name: BRIAN C. Donohue

Title: Business Contracts Officer

Date: 2-19-09