

JOINT MARKETING AGREEMENT

This Joint Marketing Agreement (“Agreement”) effective June 24, 2014 (“Effective Date”), is made by and between First National Bank of Omaha (“FNBO”) with an address of 1620 Dodge Street, Omaha, Nebraska 68197 and Yale University (“Yale”) with an address of 232 York Street, New Haven, Connecticut 06511.

RECITALS:

WHEREAS, FNBO issues Consumer credit cards on the MasterCard network;

WHEREAS, FNBO desires to provide such cards to Yale Members;

WHEREAS, Yale desires to provide its Members with access to such cards; and

WHEREAS, Yale and FNBO have agreed to allow FNBO to provide such cards to Yale Members under the terms and conditions herein.

NOW, THEREFORE, in consideration of these premises, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

SECTION 1: DEFINITIONS

1.1 Incorporation of Recitals. The foregoing recitals are incorporated in and made a part of this Agreement.

1.2 Definitions. In this Agreement, the following terms shall have the following meanings:

“**Account**” means any credit card account originated pursuant to this Agreement subsequent to the Effective Date. All Accounts shall be issued on the MasterCard network.

“**Activated**” means a Cardholder has validly used an Account to make a purchase, cash advance or balance transfer within ninety calendar days from the origination of the Account.

“**Affiliate**” means, with respect to an entity, another entity that, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or common control with the first entity.

“**Applicable Law**” means any law, regulation or determination of a governmental authority applicable to this Agreement or the duties and obligations of the parties under the Program including consumer protection laws.

“**Breach**” means Recipient has concluded that any incident of unauthorized access to Discloser’s Confidential Information, including any unauthorized access to or disclosure of Discloser’s Confidential Information, breach of Section 7, or any breach of its security related to areas, locations or computer systems which contain Discloser’s Confidential Information, including without limitation any instance of theft, unauthorized access by fraud, deception or other malfeasance or inadvertent access, whether caused by Recipient’s employee, Subcontractor, FNBO’s subcontractor or any third party, has occurred that is likely to put any of Discloser’s Confidential Information at risk.

“**Business Day**” means any day other than a Saturday, a Sunday, a federal holiday or a day on which national banks located in Omaha, Nebraska, are required or authorized by law or regulatory order to close pursuant to 12 U.S.C. § 95.

“**Card**” means any credit card branded with the Yale Marks and issued by FNBO pursuant to this Agreement in connection with an Account and any credit card re-issued by FNBO in connection with an Existing Account.

“**Card Related Products and Services**” means debt deferment or protection products related to Card and Account balances, credit card registration services, insurance products related to Card and Account balances, identity theft products and services solicited in connection with Cards and Accounts and bill payment services related to Cards and Accounts.

“**Cardholder**” means a Person to whom an Account or Existing Account is or was issued or a Person authorized by the Cardholder to use any Card, Account or Existing Account.

“**Cardholder Information**” means any information pertaining to Cardholders, excluding information pertaining to or related to authorized users.

“**Claims**” means any and all proceedings, actions, claims, allegations, suits, damages, losses, costs, charges, fines, expenses or any liabilities of any nature, kind, and description whatsoever (including reasonable attorneys’ fees, court costs and expenses and the cost of enforcing an indemnity provision, which shall be reimbursed as incurred).

“**Confidential Information**” means any nonpublic information, including Nonpublic Personal Information, which the Recipient obtains, maintains, processes or otherwise is permitted to access from or about the Discloser, its Affiliates, or their respective Consumers.

“**Consumer**” means an individual, including an individual’s legal representative, who has obtained or applied for a financial product or service from either party or its Affiliates for personal, family or household purposes, or who is identified on a marketing or other list or file made available by one party to the other party.

“**Discloser**” means the party disclosing Confidential Information.

“**Existing Account**” means a credit card account purchased or to be purchased by FNBO as part of a portfolio of credit card accounts from Chase Bank USA, N.A. (“Chase”), that was originated prior to the Effective Date pursuant to the affinity bankcard agreement between Yale and Chase. Subsequent to the purchase and conversion of such accounts from Chase, FNBO will re-issue Cards on the MasterCard network for each Existing Account containing the same Yale Marks used on Cards for Accounts originated pursuant to this Agreement.

“**Fair Market Value**” means the amount mutually agreed upon by the parties, expressed as a percentage of the Receivables or, if no amount can be agreed upon by the end of the applicable Term or Renewal Term, then the current market value, expressed as a percentage of the Receivables (excluding Accounts typically excluded in like transactions), as determined through an independent evaluation of the portfolio. Such independent evaluation shall be conducted by FNBO and Yale or its designee each selecting an independent valuation firm of national standing within 10 calendar days of the end of the applicable Term or Renewal Term with each party paying the costs and expenses of the firm selected by such party. FNBO shall prepare and provide to the firms an identical set of information containing all of the relevant data that is normal and customary for portfolio valuations. The firms will independently determine the current market value. Within 30 calendar days of engagement, the firms shall send to FNBO and Yale or its designee a determination of the current market value, expressed as a percentage of Receivables, along with such documents and calculations that reasonably support such determination. If the difference between the values of the firms is equal to or less than 300 basis points, the fair market value shall be the average of the two opinions. If the difference between the values is greater than 300 basis points, and the parties do not mutually agree to use the average of such values as the Fair Market Value, the two independent valuation firms shall select a third firm within 5 calendar days after receiving the valuations with each party paying one half of the costs and expenses of the third firm. Such third firm will independently determine, within 30 calendar days of selection, the current market value and the Fair Market Value shall be the average of the three values. In determining the current market value, the firms shall (a) assume an arms-length transaction between a willing buyer and a willing seller; (b) value the portfolio as a going concern, subject to a new seven-year joint marketing agreement with a credit card issuer willing to extend credit to the same credit population segment; (c) assume the economics of the Program between Yale and the credit card issuer remains the same as delineated in this Agreement, as amended from time to time, including a market competitive rewards program, for the duration of the term of the joint marketing agreement; (d) assume that level of support from Yale and its next issuer remain at the same level as required under this Agreement for the duration of the term of the joint marketing agreement; and (e) consider such other factors as the appraiser determines, in the appraiser’s reasonable discretion, are consistent with then industry standards.

Notwithstanding the foregoing and any other provision in this Agreement, in no event shall the Fair Market Value be less than the following minimum values (each a “Minimum Value”) if Yale exercises the purchase option in any of the following Program Years under, and in accordance with, Section 4.10 for any reason other than breach of the Agreement by FNBO: (1) 106% of the Receivables if the purchase option is exercised prior to the end of the first Program Year; (2) 103% of the Receivables if the purchase option is exercised during the second Program Year; or (3) 100% of the Receivables if the purchase option is exercised during the third Program Year. If any independent evaluation of the portfolio results in a market valuation less than the applicable Minimum Value, the current market valuation of such independent valuation shall be deemed such Minimum Value for purposes of: (i) this Agreement; (ii) determining the basis point difference between the values of the firms; and (iii) determining any averages between various firms.

“**FNBO Generated Account**” means a new Account that is originated pursuant to this Agreement primarily through expenses paid by FNBO and subsequently Activated.

**“FNBO Proprietary Rights”** means: (a) Cardholder Information; (b) the information on the FNBO Website, excluding any Yale Proprietary Rights contained therein; (c) any domain names FNBO registers for FNBO’s use on the world wide web; (d) FNBO Marks; (e) the name of FNBO; (f) any and all information, ideas, concepts, artwork, graphics and other proprietary rights of FNBO used on the FNBO Website; (g) Marketing Materials, excluding any Yale Proprietary Rights contained therein; and (h) all materials related to Accounts and Existing Accounts and the Program in any form or medium including terms, conditions, cardmember agreements, agreements, servicing materials, disclosures, notices, Cardholder correspondence, statements, rewards program materials, and ancillary product materials, excluding any Yale Proprietary Rights contained therein.

**“FNBO Website”** means the applicable portions of FNBO’s relevant website located on the internet at a domain registered, owned and maintained by FNBO.

**“Indemnified Party”** means the party receiving indemnification from the Indemnifying Party under the terms of this Agreement.

**“Indemnifying Party”** means the party providing indemnification to the Indemnified Party under the terms of this Agreement.

**“Initial Term”** means the period commencing upon the Effective Date and continuing for seven Program Years.

**“Interchange Income”** means the amount of interchange on net purchase transactions as determined by the Networks, net of any cash rebate, point redemption and accrual for point accumulation. The interchange income will not include any rebates, incentives, or other rewards provided to FNBO by the Networks. The interchange rate(s) utilized to determine the amount of Interchange Income associated with the Accounts and Existing Accounts will be an actual or blended average of the Networks rates as utilized and determined by FNBO in the normal course of business, as amended from time to time.

**“Launch Date”** means the date upon which the Existing Accounts are converted to FNBO’s system. Promptly after the Launch Date, the parties will execute Exhibit 1, attached hereto and incorporated herein by this reference, acknowledging the Launch Date.

**“Marketing Committee”** has the meaning set forth in Section 2.1(a).

**“Marketing Materials”** means all advertising, promotional, marketing and solicitation materials in any form or medium associated with the solicitation or retention of new Accounts or the offering of Card Related Products and Services.

**“Marketing Plan”** has the meaning set forth in Section 2.1(b).

**“Marks”** means trademarks, service marks, trade names, names, logos, copyrights and other proprietary materials and information.

**“MasterCard”** means MasterCard International, Inc.

**“MasterCard Rules”** means the bylaws, procedures, rules, standards and regulations of MasterCard, and any determination or finding of MasterCard, applicable to or binding upon a party’s duties or obligations with respect to the Program.

**“Member”** means any Person who is, as of the date of such determination, a member of the Yale community, including, without limitation, members of the Yale Alumni Association, Yale faculty members, and employees, all as determined by Yale at its sole discretion.

**“Member Information”** means information pertaining solely to transactions or experiences between Yale and its Members.

**“Member List”** means a listing of the names, addresses, telephone numbers and email addresses of Members. The Member List shall exclude (a) Members who have not reached the age of majority; (b) Members who have exercised their right under Applicable Law to opt-out of marketing solicitations (or failed to opt-in where so required by Applicable Law); (c) Members who have opted out of marketing solicitations pursuant to Yale’s privacy policy; (d) Members not appropriate for inclusion on the Member List under Yale policies and practices; and (e) Members who are enrolled as students at Yale at the time of the compilation of such list.

**“Membership Employee”** means each of Yale’s employees that interact with Cardholders, Card applicants or potential applicants or otherwise perform services pursuant to this Agreement or in connection with the Program.

“**Net Purchase Volume**” means the aggregate amount of purchase transactions posted to applicable Accounts and Existing Accounts, net of all refunds and credits (such as credits for returned merchandise or disputed billing items) and excluding (a) those amounts and transactions representing annual fees, finance charges, and other fees or charges posted to Accounts and Existing Accounts (such fees include, but are not limited to, late fees, returned check fees, over limit fees, overdraft advance fees, payment dishonored fees, credit insurance premiums, cash advance fees, balance consolidation fees, collection costs and administrative fees); (b) the amount of all balance transfer transactions and balance transfer fees (which include the use of special checks or offers); (c) the amount of all cash advance transactions and/or cash advance transaction fees (which include the use of special checks or offers); (d) the amount of all overdraft advance transactions and/or overdraft advance fees (which include the use of special checks or offers); and (e) purchase transactions on any Account or Existing Account that is 60 or more days past due.

“**Networks**” means MasterCard, American Express Travel Related Services Company, Inc., DFS Financial Services LLC, and VISA U.S.A., Inc..

“**Nonpublic Personal Information**” means any information from or about Consumers that: (a) relates to any Consumer; (b) relates to, or derives from, any transaction between Discloser or its Affiliates and any Consumer; or (c) is a list, description or other grouping of Consumers, including Member Lists. Nonpublic Personal Information includes, but is not limited to, application, account and transaction information, Consumer names and addresses, consumer report information or information derived therefrom, and the fact that an individual is or was a Member of Discloser or any of its Affiliates.

“**Option Period**” means the period commencing 180 calendar days and ending 30 calendar days immediately preceding the end of the Initial Term or any Renewal Term or in the event of termination pursuant to Paragraph 4.3(a) or 4.4 of this Agreement, within 90 days following the written notice of termination.

“**PCI DSS**” means the Payment Card Industry Data Security Standard.

“**Person**” means any individual, sole proprietorship, partnership, corporation, joint venture, company, bank, trust, unincorporated organization, government or any department, agency or instrumentality thereof.

“**Program**” means the credit card program established pursuant to this Agreement including, but not limited to, all aspects of the solicitation, marketing, underwriting, delivery, administration, servicing, collection and termination of the Accounts, Existing Accounts and Card Related Products and Services through any medium as well as the respective obligations of the parties under the Agreement.

“**Program Manager**” has the meaning set forth in Section 2.1(a).

“**Program Year**” means the twelve calendar month period of time commencing with the Launch Date and each succeeding twelve calendar month period of time during the Term.

“**Receivable**” means, with respect to an Account and an Existing Account as of the date or time in question, all amounts owed on such Account or Existing Account by the Cardholder, including outstanding purchases, cash advances, billed finance charges and any other charges and fees assessed on the Account or Existing Account, less all adjustments, credits, credits related to disputed amounts, and (without duplication) credit balances owed to the Cardholders on such Account or Existing Account.

“**Recipient**” means the party receiving Confidential Information.

“**Renewal Term**” means each period of two Program Years following the conclusion of the Initial Term and any subsequent Renewal Terms.

“**Royalties**” means fees and revenue sharing amounts paid by FNBO to Yale pursuant to this Agreement.

“**Subcontractor**” means any Person that has a business arrangement with Yale, by contract or otherwise, to perform duties, conduct activities or provide services, or has any other responsibilities or obligations related to the Program in any way or that involves such Person obtaining, maintaining, viewing or accessing Nonpublic Personal Information.

“**Term**” means the Initial Term and each Renewal Term.

“**Yale Generated Account**” means a new Account that is originated and subsequently Activated primarily through (a) expenses paid by Yale; or (b) a take-one brochure obtained from a Yale location.

“**Yale Marks**” means the Marks of Yale.

“**Yale Proprietary Rights**” means (a) Member Lists and Member Information; (b) the information on the Yale Website excluding any FNBO Proprietary Rights; (c) any domain names Yale registers for Yale’s use on the world wide web; (d) Yale Marks and photographs or other depictions of Yale; (e) the name of Yale; and (f) any and all information, ideas, concepts, artwork, graphics, applications and other proprietary rights of Yale used on the Yale Website.

“**Yale Website**” means the applicable portions of Yale’s relevant website located on the internet at domains registered, owned and maintained by Yale.

## **SECTION 2: MARKETING**

2.1 Marketing Committee; Program Managers; Marketing Plan. (a) Each of the parties will appoint one relationship manager (each, a “Program Manager”). Each of the two Program Managers will serve as the principal point of contact for the other party on Program related issues and will lead the Program Manager’s respective team in executing the obligations of its party under this Agreement, including, without limitation, developing and documenting each Marketing Plan. Each Party will have appointed its initial Program Manager no later than the Effective Date. Within 30 days after the Effective Date, Yale and FNBO will establish a committee (the “Marketing Committee”) for the purpose of reviewing and advising the Program Managers regarding existing Marketing Plans, proposed revisions to Marketing Plans and other matters regarding the performance and operation of the Program. The Marketing Committee will be comprised of the Program Managers and one management-level employee representing each party. The Marketing Committee may meet in person, via telephone or video conference, or in any combination thereof. The Marketing Committee’s initial meeting will occur prior to the Launch Date, and the Marketing Committee will meet quarterly thereafter during each Program Year. In the event a majority of the full Marketing Committee cannot reach agreement on a matter of significance to the Program, such matter will be elevated to a senior executive of FNBO and a senior executive of Yale, who shall confer on such matter within a reasonable time and shall in good faith attempt to resolve such matter. Any such resolution by the senior executives will be deemed to be the action and approval of the Marketing Committee for purposes of this Agreement. In the event the senior executives cannot reach a resolution of the matter, such matter will be deemed to be rejected by the Marketing Committee.

(b) Prior to each of the first meetings of the Marketing Committee in each Program Year (and initially within the 120-day period after the Effective Date), the Program Managers will prepare a mutually-agreeable plan (each a “Marketing Plan”) that sets forth the parties’ marketing strategies for each Program Year. Each Marketing Plan should include proposed solicitation, origination and retention strategies and communication methods (i.e., print solicitation methods, electronic solicitation methods, premium promotions, prospective event marketing opportunities, etc.) and other information set forth on Exhibit 2.1. Each Marketing Plan should also include a marketing calendar setting forth the proposed dates for completing the proposed marketing initiatives and a projected budget for the applicable Marketing Plan.

(c) During each meeting of the Marketing Committee, the Program Managers will, as the case may be, present the upcoming Program Year’s Marketing Plan, or provide a quarterly review of the then-current Program Year’s Marketing Plan, as well as update the Marketing Committee on, among other matters, portfolio performance metrics, existing marketing efforts and, to the extent available, industry news and information regarding industry best practices and marketing trends; and the Marketing Committee will endeavor to provide the Program Managers guidance and recommendations regarding the Marketing Plan, as well as other short- and long-term marketing strategies, intended to maximize the origination of new Accounts and the revenues generated for the parties through the origination and retention of the Accounts and Existing Accounts.

(d) Notwithstanding the foregoing, neither the Marketing Committee nor the Program Managers will be authorized to amend any terms of this Agreement; and any amendments, modifications and substitutions to this Agreement proposed under any Marketing Plan, will not be effective to bind either party hereto except and to the extent expressly intended to be an amendment to this Agreement signed by authorized representatives of Yale and FNBO in accordance with Section 11.3 of this Agreement.

(e) Notwithstanding the provisions of this Agreement providing, or allowing, for the mutual consent of the parties, FNBO shall have sole discretion and final decision-making authority with respect to the form and content of all solicitations for, and promotions of, the Cards and Accounts as well as communications with Cardholders and prospective Cardholders (including, without limitation, all marketing materials, statements, cardmember agreements, adverse action letters and other communications required to service the Accounts and Existing Accounts), and notwithstanding that such materials contain Yale Marks, but FNBO shall have such discretion and decision-making authority only to the extent necessary to ensure compliance with Applicable Laws and MasterCard Rules, as determined by FNBO in its sole and absolute discretion, such determination to be provided to Yale in writing, upon request by Yale.

2.2 FNBO'S Participation. During the Term, FNBO shall use commercially reasonable efforts to expand the number of Cards issued and the aggregate Net Purchase Volume generated by the Cards. FNBO will continuously and diligently support and endorse the Card products and cooperate with Yale in promoting the Program, including by assigning qualified marketing resources to proactively analyze and plan for successful marketing of the Card products and by requiring the cooperation of other resources whose participation is necessary to implement FNBO's efforts under the Program. Without limiting the generality of the foregoing, FNBO agrees to: (a) conduct direct mail and, if Yale so requests, electronic mail solicitations, in accordance with the Marketing Plan for Accounts to Persons on Member Lists provided to FNBO by Yale; (b) perform other marketing and solicitation efforts including, without limitation, internet promotions, website links and participation in promotional events contemplated under the Marketing Plan; (c) offer from time to time in FNBO's discretion certain promotional features and benefits for Cards, including, but not limited to, promotional rates and promotional rewards bonuses; and (d) cooperate as reasonably requested by Yale in additional marketing and solicitation activities. FNBO shall not solicit Cardholders for any Card Related Products or Services without Yale's prior consent to FNBO's offering such product or service to Cardholders.

2.3 Yale's Participation. Yale agrees to continuously and diligently support and endorse the Card products and cooperate with FNBO in promoting the Program. Without limiting the generality of the foregoing, Yale agrees to: (a) train its Membership Employees, if any, on the features and benefits of Accounts and Cards and required disclosures; (b) utilize its personnel and resources to solicit Accounts and market Cards; (c) perform or participate in direct mail, electronic mail, newsletter and flyer solicitations, internet promotions, and promotional events contemplated under the Marketing Plan; (d) cooperate as reasonably requested by FNBO in promoting the Program through the new Member sign-up and "welcome" processes; and (e) cooperate as reasonably requested by FNBO in mutually agreed upon marketing and solicitation activities. Yale further agrees to establish and maintain prominent hyperlinks from Yale's Website to FNBO's Website prior to the Launch Date. Yale will provide FNBO with then-current Member Lists containing not less than one hundred thirty thousand (130,000) non-duplicated names, at no cost to FNBO, within thirty (30) days before each scheduled direct mail and electronic solicitation mailing date. Yale shall be the sole and exclusive owner of the Member Lists. Yale grants FNBO and its Affiliates a non-exclusive, non-transferable, and royalty free license to use free of charge each Member List during the Term of this Agreement. FNBO agrees that the Member Lists provided by Yale shall be used only to market the Program as set out in a Marketing Plan under this Agreement or as otherwise mutually agreed to by the parties in writing and for no other use or purpose. Such lists are and shall remain the exclusive property of Yale. Furthermore, FNBO shall ensure that any of its subcontractors with whom it shares the Member Lists for the provision of marketing services protects the confidentiality of such lists and only uses each such Member List for purposes of the Program and for no other use or purpose.

2.4 Electronic Mail Messages. Yale agrees, acknowledges, represents, and warrants that for all commercial electronic mail messages that Yale sends advertising, promoting, or sponsoring the Program, Yale shall: (a) comply with all requirements of the Controlling the Assault of Non-Solicited Pornography Act of 2003, 15 U.S.C. §7701 et. seq., and its implementing regulations, as amended from time to time ("CAN-SPAM Act"); (b) be and serve as the "designated sender" for purposes of the CAN-SPAM Act for any commercial electronic mail message that promotes or advertises Yale's products, services or internet website in addition to the Program, and (c) fulfill all requirements and obligations under the CAN-SPAM Act necessary for Yale's classification as the "designated sender" of such commercial electronic mail messages.

2.5 Applications. FNBO agrees to process all applications from Members submitted on FNBO's approved forms or through FNBO approved channels. All decisions regarding the approval of applications will be made in FNBO's sole and absolute discretion and Yale has no power or authority to bind FNBO to approve applications or establish Accounts. Yale shall not impose any fees whatsoever on applicants for Accounts or Cardholders. Yale will forward to FNBO all

applications within three Business Days following Yale's receipt of any application. The parties acknowledge, however, that it is not the intent of the parties that Yale will receive applications under the Program.

2.6 Marketing Materials. All Marketing Materials, card plastics, and billing statements will bear a Yale Mark. Unless required by Applicable Law, administrative legal notices, collection letters, delinquency notices, and adverse action communications shall not bear Yale Marks other than the name "Yale" for purposes of identifying that such communications are in connection with a Card or Account issued under the Program. Each party shall submit to the other for prior approval, samples of all Marketing Materials that the submitting party intends to use to market the Program. FNBO agrees to provide by electronic mail to Yale all Marketing Materials for electronic mail approval (such approval not to be unreasonably withheld, conditioned or delayed). Within ten Business Days after receipt of such Marketing Materials, Yale will provide its approval of or its reasonable objections to such Marketing Materials. If Yale fails to respond in writing (including email) within such ten Business Day period, then Yale shall be deemed to have granted an approval. If Yale objects or proposes changes, then FNBO will make such changes that are acceptable to FNBO and resubmit to Yale for approval. Upon resubmission, Yale shall have five Business Days to review and if FNBO does not receive approval or denial within such five Business Day period, then the use of such Marketing Materials shall be deemed approved. Notwithstanding the foregoing and for clarity, with the exception of Marketing Materials, the terms, conditions, cardmember agreements, agreements, servicing materials, disclosures, rewards program materials, ancillary product materials and any other materials associated with Accounts, Existing Accounts and the Program in any form or medium will not be subject to Yale approval. Yale shall not create, disseminate or use any Marketing Materials, materials promoting the Program or other Program materials without the express prior written consent of FNBO as to the form, content, process and use, which consent shall not be unreasonably delayed, conditioned, or withheld.

2.7 Exclusivity. During the Term, Yale shall not, by itself or through its Affiliates or in conjunction with others, directly or indirectly, offer, endorse, promote or enter into any agreement with others for the provision of, or otherwise make available, any credit cards, except that the foregoing shall not apply to credit cards that Yale provides to employees for work-related expenditures. The foregoing shall not be construed to prohibit Yale from providing Members with debit cards or engaging in or obtaining merchant processing activities. Following the termination of this Agreement, Yale may offer Members the opportunity to participate in another credit card affinity program that Yale endorses; provided, however, that Yale does not make such offer only to Cardholders, but rather as a part of a general solicitation to substantially all of its Members and provided further that no Cardholders are directly or indirectly identified as Cardholders or offered incentives different from that offered to substantially all other Members.

2.8 License. Yale hereby grants to FNBO for the Term (and for such additional period as is detailed in this Agreement) a non-exclusive, non-transferable and royalty-free license to use Yale's Marks solely for FNBO's marketing, issuance and servicing of the Cards and Accounts, including use by FNBO and its subcontractors. Yale will provide FNBO with camera-ready artwork of the Yale Marks in accordance with FNBO's specifications for use in the Program. In the event that FNBO incurs costs because of a change in the Yale Marks, FNBO may deduct the actual and direct costs resulting from such change from the Royalties due Yale. Notwithstanding the foregoing, Yale shall not be responsible for FNBO's costs resulting from a change in the Yale Marks if Yale: (i) permits FNBO to exhaust its existing inventories of Marketing Material and Cards bearing the superseded Yale Mark; and (ii) does not request or require FNBO to issue replacement Cards that bear the new or amended Yale Mark until its existing Card inventory has been exhausted and does not request or require that FNBO re-issue Cards bearing the new or amended Yale Mark prior to the Cards' respective, scheduled re-issue date. Yale will not use any references to FNBO, Accounts, Existing Accounts, Cards, Card Related Products and Services or the Program without FNBO's prior written authorization (including email) and FNBO's approval of the form, content, specifications and quality thereof.

### **SECTION 3: ACCOUNTS**

3.1 Establishment of Accounts. (a) FNBO agrees to originate Accounts for Persons as determined by FNBO from time to time in FNBO's sole discretion. Yale has no power or authority to bind FNBO to establish Accounts. Except to the extent set forth in this Section 3.1 regarding the Account features, Section 2.6 regarding Marketing Materials and solicitation procedures, and Section 3.7 regarding the features of the rewards program, FNBO has sole responsibility and control over the terms and conditions on which FNBO establishes Accounts and extends credit to Accounts and Existing Accounts, including, without limitation, terms and conditions pertaining to solicitation and application procedures, credit criteria and evaluation, , promotional rates, rewards, and all servicing, default, fraud, collection and termination policies and procedures; provided however, that, unless the parties mutually agree in writing otherwise, the Accounts shall have the "Required

Features” set forth in Exhibit 3.7. Accounts and Existing Accounts are FNBO’s sole and exclusive property and liability (subject to the participation or other interests FNBO may grant to others) and Yale is not a co-lender or joint owner of the Accounts or Existing Accounts and has no right or interest in the Accounts or Existing Accounts and shall have no liability in relation to the Accounts or Existing Accounts.

(b) With respect to each Existing Account purchased from Chase, FNBO shall re-issue Cards on the MasterCard network prior to the Launch Date. Thereafter, during the Term, FNBO shall cause all Cards to be issued as MasterCard credit cards and to remain as MasterCard credit cards and shall not convert any Card to a credit card on any other Network.

3.2 Account and Existing Account Terms & Conditions. Subject to the requirements of Sections 3.1 and 3.7, the terms and conditions for Accounts, Existing Accounts and Cards will be established by FNBO and are subject to change from time to time in FNBO’s sole discretion. Subject to the requirements of Sections 3.1 and 3.7, the terms of cardmember agreements, disclosures, rewards, and other terms, conditions and agreements between FNBO and Cardholders govern Accounts and Existing Accounts and, FNBO may revise such cardmember agreements, disclosures, rewards, and other terms, conditions and agreements from time to time. FNBO will issue new Accounts on and after the Launch Date having at least the features set forth in Exhibit 3.7.

3.3 Websites. FNBO and Yale will mutually agree upon the quantity, location, operation and other specifications of hyperlinks between the FNBO Website and Yale Website. In the event a party reasonably believes that any hyperlink with the website of the other party may create a security risk, such party may disable the hyperlinks to mitigate such risk. Upon a party taking such action it shall promptly notify the other party of the action taken and the reason for concern, and the parties shall work in good faith to promptly address any security risk and restore such links. Except as otherwise provided in this Agreement, neither party shall have responsibility with respect to (a) interruptions or inoperability of its Website; (b) interaction or interconnection of FNBO’s Website or systems with Yale’s Website or systems; or (c) unauthorized access to, or theft, alteration, loss or destruction of the other party’s Website or systems.

3.4 Cardholder Communications. Yale has no right or authority to receive on FNBO’s behalf notices or other communications from Cardholders including, without limitation, billing error notices and complaints. If Yale receives any such notice or communication intended for FNBO, Yale will promptly forward such notices and communications to FNBO. Subject to the requirements of Section 2.6, FNBO may communicate with Cardholders to the same extent and through the same channels that FNBO communicates with FNBO’s other cardholders.

3.5 Endorsement of Checks. Yale acknowledges that Cardholders may from time to time make payment to FNBO for Card purchases or fees by checks made payable to Yale. Yale acknowledges that FNBO may, but need not, permit such mode of payment as a Cardholder convenience only and that the presence of Yale’s name on such checks does not confer any right or interest therein to Yale and FNBO is the sole owner of such checks. During and after the Term, Yale authorizes FNBO’s endorsement of Yale’s name on all such checks.

3.6 Cardholder Information. Subject to Applicable Law, FNBO’s policies (including privacy policies), and FNBO system limitations, FNBO will provide Yale with Cardholder Information as mutually agreed upon by the parties from time to time. As between FNBO and Yale, FNBO is the sole and exclusive owner of the Cardholder Information and the Cardholder Information is FNBO’s Confidential Information. Without FNBO’s prior written approval, Yale shall not attempt to assemble or compile any list of Cardholders to be used for any purpose unless expressly permitted in this Agreement.

3.7 Rewards Program. FNBO shall make available a rewards program for Cardholders. FNBO will administer and fund such rewards program unless otherwise mutually agreed by the parties. Cardholders are eligible to earn points in such rewards program based on spending through Accounts and Existing Accounts. Any such rewards program will be subject to the terms and conditions of the rewards program. FNBO may change reward programs including the terms related thereto or revise such program at any time; provided, however, that, unless the parties mutually agree in writing otherwise, the rewards program shall have the “Required Features” set forth in Exhibit 3.7.

3.8 Service Levels. At all times during the Term of this Agreement, FNBO will maintain the Minimum Service Levels set forth in, and subject to, Schedule 3.8. The parties agree to review the customer service standards on an annual basis to ensure consistency with industry standards and Cardholder needs. FNBO will ensure that individuals providing support for the Program are trained with respect to the needs of Yale Members and the Program, including detailed



knowledge with respect to the Cards and the rewards program. During the Term, all customer-care call centers shall be located within the United States.

**SECTION 4: TERM AND TERMINATION**

4.1 Term. Following the Initial Term, this Agreement will automatically renew for successive Renewal Terms unless terminated as provided herein.

4.2 Non-Renewal. Either party may terminate this Agreement upon the expiration of the Initial Term or any Renewal Term by giving the other party written notice of non-renewal at least 180 calendar days prior to the end of the Initial Term or any Renewal Term.

4.3 Breach and Insolvency. (a) In the event that either party materially breaches this Agreement, the non-breaching party may provide notice of the breach to the breaching party, who shall then have 30 days to cure the breach. If the breach is not cured to the satisfaction of the non-breaching party by the 30<sup>th</sup> day, the non-breaching party may terminate this Agreement effective upon 30 days prior written notice to the breaching party. Material breach of this Agreement includes, without limitation: (i) the failure of a party to comply with Applicable Law; (ii) breach or default of any material obligation hereunder; (iii) the failure of Yale or Membership Employees to comply with any FNBO requirements related to FNBO instructions and training provided pursuant to the Program which failure, in the written opinion of FNBO's outside counsel, amounts to a violation of Applicable Law; (iv) fraudulent activity by a party; or (v) activity by Yale after notice by FNBO to cease that causes FNBO to violate MasterCard requirements.

(b) This Agreement shall be deemed immediately terminated, without the requirement of further action or notice by either party, in the event that the other party, or a direct or indirect holding company of such other party: (i) shall become subject to voluntary (or involuntary if such matter remains un-dismissed after a period of 60 days) bankruptcy, insolvency, receivership, conservatorship or like proceedings (including, but not limited to, the takeover of such party by the applicable regulatory agency) pursuant to applicable state or federal law; (ii) shall take any action to authorize commencement of any such proceeding; or (iii) ceases to conduct its normal and customary business operations.

4.4 Adverse Impact and Regulator Directive. (a) If any material change in Applicable Law or MasterCard Rule significantly and adversely impacts the Program (excluding a decrease in Interchange Income and in the Networks interchange rate(s) determined and utilized by FNBO outlined in Section 5.3) and a party desires to amend the Agreement to mitigate the effect of such impact, then the affected party must give 30 calendar days prior written notice to the other party and provide a detailed explanation of the material change in Applicable Law or MasterCard Rule and evidence of the significant and adverse impact on the party as a result of such change. Thereafter, the parties will immediately negotiate in order to amend this Agreement to mitigate any issues created by such material change. If the parties are unable to reach agreement on such amendment within 60 calendar days after the receipt of the 30 calendar day notice, then the affected party may terminate this Agreement by providing at least 30 days advance written notice to the other party.

(b) Notwithstanding any other provision of this Agreement, in the event that any of FNBO's governing regulators direct FNBO to terminate this Agreement, FNBO may terminate this Agreement without penalty effective upon written notice to Yale, and termination of this Agreement in such event shall not be deemed a breach of, or event of default under, this Agreement.

4.5 [Intentionally Omitted].

4.6 [Intentionally Omitted].

4.7 [Intentionally Omitted].

4.8 Accounts and Existing Accounts after Termination. Unless Yale exercises its rights under Section 4.10 below, termination of this Agreement for any reason will not alter or affect FNBO's ownership of and other rights and interests in the Accounts and Existing Accounts; and within 180 calendar days after the effective date of the termination of this Agreement FNBO will convert each Card to one of FNBO's proprietary cards/accounts or terminate such Account or Existing Account. The license to use Yale's Marks granted to FNBO under this Agreement shall continue and be extended for such period. FNBO may issue its proprietary cards to applicants whose applications are received after the termination of this Agreement.

4.9 Destruction of Marketing Materials; Cessation of Marketing. Upon termination of this Agreement, Yale will promptly: (a) destroy all Marketing Materials and all other materials in the possession or control of Yale; and (b) delete, remove, discontinue and cease all solicitations of Cards and Accounts.

4.10 Purchase Option. Subject to Applicable Law, MasterCard Rules, the terms and conditions of each Account and Existing Account and the terms and conditions of this Agreement, Yale or its designated credit card issuer shall have the option to purchase from FNBO, at Fair Market Value, the Accounts, Existing Accounts and related Receivables originated under this Agreement. FNBO shall not include in the terms and conditions of an Account or Existing Account a provision that would limit the assignability of such Account or Existing Account. During any request for proposals conducted by Yale to identify a purchaser for the Accounts, Existing Accounts, and Receivables, Yale shall be permitted to share certain key Program performance indicators for the previous 12 months, including without limitation, open and active accounts, total receivables, annual spend, new accounts and loss rate. Such purchase option is expressly contingent upon: (a) the execution of a mutually agreeable purchase agreement between FNBO and Yale (or the credit card issuer designated by Yale) for a purchase price of at least the Fair Market Value; (b) termination of this Agreement for any reason other than a breach by Yale; (c) the closing of any such purchase transaction occurring on a mutually agreed upon date no later than 180 days following the conclusion of the Option Period; (d) Yale's designee paying and assuming sole liability for its or its servicer's costs and expenses associated with converting the Accounts, Existing Accounts and related Receivables to its or its servicer's platform; (e) Yale providing FNBO written notice at or prior to the conclusion of the Option Period that Yale is exercising such purchase option; and (f) so long as Yale's exercise of the purchase option does not arise following the termination of the Agreement due to breach by FNBO, Yale or its designee reimbursing and paying FNBO for any direct and variable costs and expenses associated with converting the Accounts, Existing Accounts and related Receivables to a third party's platform, provided that the amount of such reimbursement shall not exceed two hundred fifty thousand dollars (\$250,000). In the event that Yale exercises the purchase option, the term of this Agreement shall be extended until the closing date of such transaction unless the parties agree upon an interim servicing arrangement, in which case the closing shall occur on a date mutually agreeable to the parties, subject in all events to the time period in Section 4.10(c).

## **SECTION 5: ROYALTIES, OTHER PAYMENTS AND REPORTING**

5.1 Royalties. During the Term, FNBO will pay Yale the Royalties set forth in the attached Royalties Schedule, which is hereby incorporated into and made a part of this Agreement. Royalties will be paid on a monthly basis, except as otherwise stated in the Royalties Schedule, and accompanied by FNBO's standard Royalties reports, to include, at least, reporting on the number of Yale and FNBO Generated Accounts and Net Purchase Volume during the applicable month. FNBO will not pay Yale any duplicate finder's fees including, without limitation, Accounts established: (a) due to the loss or theft of a Card; (b) as a result of joint Cardholders requesting or obtaining individual Accounts; (c) due to an upgrade of an existing Account or Existing Account; or (d) due to multiple Cards or accounts being issued or established under a single Account, Existing Account or Person.

5.2 Reporting. (a) During the Term, in addition to FNBO's standard Royalties reports, FNBO shall provide to Yale, the reports set forth in Exhibit 5.2.

(b) In accordance with Section 7.1 of this Agreement, Yale shall be permitted to share with MasterCard FNBO's monthly reports of the monthly number of new Accounts issued under the Program and the monthly Net Purchase Volume generate by all Accounts.

5.3. Interchange; Rewards. In the event that the amount of Interchange Income received by FNBO or any applicable Network interchange rate(s) determined and utilized by FNBO for net purchase transactions associated with the Accounts and Existing Accounts is decreased by at least 15% from the rates on the Launch Date for a period of 6 consecutive months due to Applicable Law, Network requirement, the settlement of litigation or any other reason, FNBO may, upon 30 days' advance written notice to Yale, and after exhausting other mutually agreeable options to mitigate the impact, decrease the Royalties paid to Yale, excluding the Annual Guarantee, as well as FNBO's redemption value for rewards points by a commensurate amount or percentage, as applicable, but only to the extent necessary to address the reduction in interchange, until such time as interchange rates are increased back to the rates on the Launch Date and then such adjustments shall be reversed.

5.4 Effect of Termination. Termination of this Agreement for any reason terminates Yale's right to receive Royalties, provided that previously accrued and unpaid Royalties will be reconciled and paid to the effective date of termination.

5.5 Third Parties. Notwithstanding anything in this Agreement to the contrary, in no event will FNBO be obligated to pay any Royalties, expenses, fees, costs or other amounts whatsoever to any Subcontractor or Person other than Yale as a result of this Agreement or the Program.

## **SECTION 6: PROPRIETARY RIGHTS**

6.1 Marks. Each party retains all right, title and interest in and to its own Marks. No party shall have any right or interest in or use the other party's Marks except as specified in this Agreement. Yale acknowledges MasterCard's ownership of its Marks.

6.2 FNBO Proprietary Rights. Except as specifically provided in this Agreement, no provision of this Agreement shall be construed to grant Yale any right, title, interest, or license in, to or under the FNBO Proprietary Rights (which are the sole property of FNBO or an Affiliate of FNBO). As between FNBO and Yale, FNBO is the sole and exclusive owner of its Proprietary Rights or has the right to use such Proprietary Rights and such Proprietary Rights are FNBO's confidential and proprietary information and trade secret.

6.3 Yale Proprietary Rights. Except as specifically provided in this Agreement, no provision of this Agreement shall be construed to grant FNBO any right, title, interest, or license in, to or under the Yale Proprietary Rights (which are the sole property of Yale). As between Yale and FNBO, Yale is the sole and exclusive owner of its Proprietary Rights and such Proprietary Rights are Yale's confidential and proprietary information and trade secret.

## **SECTION 7: CONFIDENTIALITY**

7.1 Use and Confidentiality of Confidential Information. Recipient shall: (a) use Discloser's Confidential Information solely for performing its obligations to Discloser under this Agreement; (b) not sell, rent, lease or otherwise directly or indirectly disclose Discloser's Confidential Information to any third party; (c) take all reasonable steps to protect the confidentiality of Discloser's Confidential Information, using the same standard of care used to protect its own confidential information and in no event using a standard of care considered less than reasonable under the circumstances; (d) give access to Discloser's Confidential Information only to those employees and agents who have a need to know in connection with the performance of Recipient's obligations under this Agreement; (e) not copy or duplicate Discloser's Confidential Information except as necessary to fulfill its obligations; (f) comply with laws and regulations applicable to its business, including but not limited to privacy laws and consumer protection laws; and (g) not store or allow access to Discloser's Confidential Information outside of the United States. If Recipient is permitted to retransmit any Confidential Information under the terms of this Agreement to any third party, the mode of retransmission must be at least as secure as the mode by which Discloser transmitted Confidential Information to Recipient. Upon request by Discloser, Recipient shall promptly destroy Discloser's Confidential Information or return Discloser's Confidential Information to Discloser in the same format as Discloser provided Confidential Information to Recipient. Nothing herein shall be construed to grant Recipient any rights, title or interest in or to any of Discloser's Confidential Information. Without limiting the generality of the foregoing, FNBO hereby consents to Yale sharing with MasterCard the reports described in Section 5.2(b).

7.2 Exclusions; Exceptions. The confidentiality obligations contained herein do not apply to Confidential Information that: (a) is, at the time of disclosure to Recipient or thereafter, becomes, through no act or omission of Recipient, a part of the public domain (except that Nonpublic Personal Information remains subject to such obligations regardless of its availability in the public domain); (b) was in Recipient's lawful possession without an accompanying secrecy obligation prior to the disclosure, as documented in Recipient's written records; (c) is hereafter lawfully disclosed to Recipient by a third party without an accompanying secrecy obligation or breach of any duty or agreement by which such third party is bound; or (d) is independently developed by Recipient. This Agreement shall not be deemed to prohibit disclosures: (i) required by Applicable Law or subpoena, provided that prior notice of any such disclosure, if allowed by Applicable Law, has been given to Discloser in time to permit Discloser to take legal action to prevent the disclosure or seek an appropriate protective order; (ii) as required in the course of an examination by governmental regulators with jurisdiction over Recipient; or (iii) to Recipient's professional auditors and counsel, provided that such advisors are obligated to maintain the confidentiality of the information they receive.

7.3 [Intentionally Omitted].

7.4 Subcontractors. Yale shall not provide FNBO Confidential Information to a Subcontractor without FNBO's prior written consent. If Yale is permitted by FNBO to provide Confidential Information to a Subcontractor, Yale is responsible for ensuring that such Subcontractor complies with the terms set forth herein and is subject to binding confidentiality obligations with respect to FNBO's Confidential Information which are at least as restrictive as those contained herein. Yale shall be liable for all acts and omissions of the Subcontractor as if such acts and omissions were attributable to Yale.

7.5 Information Security Standards; Nonpublic Personal Information; Sharing of Nonpublic Personal Information. (a) To the extent applicable, Recipient has in place and follows a comprehensive written information and data security program which includes appropriate administrative, technical, physical, and disaster recovery safeguards designed to meet the Interagency Guidelines Establishing Information Security Standards (12 C.F.R. 30, Appendix B), Gramm-Leach-Bliley Act, and the Fair Credit Reporting Act, as each may be amended from time to time, in order to (i) ensure the security and confidentiality of Discloser's Confidential Information; (ii) protect against anticipated threats or hazards to the security or integrity of Discloser's Confidential Information; (iii) protect against unauthorized access to, disclosure of, or use of Discloser's Confidential Information; and (iv) properly dispose of Discloser's Confidential Information.

(b) The parties acknowledge that it is their intent that no Nonpublic Personal Information be shared between them, other than the Nonpublic Personal Information contained in the Member Lists, and FNBO shall have no obligation to share with Yale any Nonpublic Personal Information unless expressly requested by Yale in writing.

7.6 Audit Responses. In the event Yale requests and receives Nonpublic Personal Information from FNBO, Yale will respond to the First National Third-Party Discovery Tools, including, but not limited to, any physical security questionnaires, information security questionnaires or architecture questionnaires. In the event Yale requests and receives Nonpublic Personal Information from FNBO, Yale shall monitor, and shall provide to FNBO upon request (a) its policies, procedures, internal controls and training materials used with its employees and Subcontractors in regard to such Nonpublic Personal Information; (b) its policies, procedures and internal controls used in connection with Yale's handling of such Nonpublic Personal Information, including its plan to manage Breaches; (c) the results of Yale's monitoring of any of the foregoing policies and controls; and (d) any corrective action made to its policies, procedures, internal controls, or training as a result of such monitoring.

7.7 Breach. Upon the occurrence of a Breach, Recipient shall notify Discloser within a reasonable period of time after discovery of such Breach, and at its sole expense, implement an action plan to correct the Breach and prevent the continuation of such Breach. In the event of a Breach, Recipient shall further provide to Discloser, in writing, such details concerning the Breach as Discloser may request.

7.8 Red Flags. To the extent applicable, each party shall establish reasonable policies and procedures designed to detect, prevent and mitigate the risk of identity theft relating to Consumers, including but not limited to policies and procedures to detect patterns, practices, or specific activities that indicate the possible existence of identity theft and each party shall ensure that any services related to the Program are conducted in accordance with such policies and procedures.

## **SECTION 8: REPRESENTATIONS AND WARRANTIES**

8.1 Yale Marks. Yale represents and warrants that during the period of license set forth in this Agreement: (a) Yale shall be the sole and exclusive owner of the Yale Marks and Yale has the exclusive authority to license the Yale Marks to FNBO for the Program; (b) Yale's Marks do not infringe the rights of any third party; (c) the Yale Marks are validly and duly registered, filed, approved and certified by the applicable federal and state agencies and authorities; (d) the license and use of the Yale Marks pursuant to the Program will not violate or breach any other contracts; and (e) Yale will not enter into any other contracts which would limit the license or use of Yale's Marks hereunder or cause a breach of this Agreement. A breach of any of the representations and warranties contained in this Section 8.1 constitutes a material breach of this Agreement. Yale shall immediately notify FNBO upon the breach of any of its representations and warranties contained within this Section 8.1.

8.2 Website Representations and Warranties. Each party represents and warrants that (i) any material, product, information, entity name, data or Mark provided or made available by a party to the other party in performance of this Agreement or (ii) any material presented by a party on the FNBO Website or (iii) any Yale Web page that displays Marketing Materials or references to Cards, Accounts or the Program, as applicable: (a) does not infringe in any manner any copyright, patent, trademark, name, trade secret or any other intellectual property right of any third party; (b) does not

contain any material or information that is obscene, defamatory, libelous or slanderous; (c) does not violate Applicable Law; (d) does not violate or breach any duty toward, or rights of any Person, including without limitation, rights of publicity, privacy or personality; and (e) has not resulted in any consumer fraud, product liability, tort, breach of contract, injury, damage or harm of any kind to any Person.

8.3 Legal Standing and Contract Authority. Each party represents and warrants: (a) that it is a duly incorporated or organized legal entity in good standing under the laws and regulations of the state or governmental agency of its incorporation or formation; (b) that it has the full power and authority to enter into and perform this Agreement; (c) that there is no contract, agreement, judicial or regulatory order, or understanding with any other Person which would interfere with the obligations assumed by each party hereunder; and (d) that its performance of the transactions contemplated hereby do not contravene, violate or conflict with, or constitute a default under, any provision of Applicable Law.

**SECTION 9: INDEMNIFICATION AND LIMITATION OF LIABILITY**

9.1 FNBO. FNBO shall indemnify, defend, and hold Yale and its Affiliates harmless from and against any and all Claims by third parties to the extent arising or resulting from: (a) breach by FNBO of any agreement, representation or warranty of FNBO contained in this Agreement; (b) any actual or alleged act or omission of FNBO in connection with or arising out of the marketing, offering, solicitation or issuance of Cards for Accounts and/or the administration of Accounts or Existing Accounts or any reward programs by FNBO, or FNBO's actual or alleged negligence or intentional misconduct related to its duties or obligations under any other aspect of this Agreement; (c) violation by FNBO of any Applicable Law or MasterCard Rule; (d) infringement of copyright, trademark, trade secret or other proprietary rights relating to FNBO Marks; (e) breach by FNBO of its obligations with respect to Confidential Information; (f) the actions or failure to act of FNBO subcontractors related to duties under the Program provided on behalf or at the direction of FNBO; and (g) duties, obligations and liabilities between FNBO and its subcontractors related to duties such subcontractors are performing under the Program on behalf or at the direction of FNBO.

9.2 Yale. Yale shall indemnify, defend, and hold FNBO and its Affiliates harmless from and against any and all Claims by third parties to the extent arising or resulting from: (a) breach by Yale of any agreement, representation or warranty of Yale contained in this Agreement; (b) Yale's actual or alleged negligence or intentional misconduct related to its duties or obligations under this Agreement; (c) violation by Yale of any Applicable Law or MasterCard Rule; (d) infringement of copyright, trademark, trade secret or other proprietary rights relating to Yale Marks; (e) breach by Yale of its obligations with respect to Confidential Information; (f) Yale authorizing FNBO to use the Member Lists as authorized and for the purposes specified herein; (g) the actions or failure to act of Yale's Subcontractors; and (h) duties, obligations and liabilities between Yale and Subcontractors.

9.3 Notice. If a party receives notice of any third party Claim for which indemnification or defense may be required under this Agreement, such party shall promptly give written notice to the other party; provided, however, that the failure to provide or a delay in providing such notice shall not relieve the Indemnifying Party of its obligation to indemnify except to the extent the Indemnifying Party is materially prejudiced by such failure or delay. Upon request, the Indemnified Party shall reasonably cooperate with and assist the Indemnifying Party and its counsel in the defense of any Claim and any reasonable direct costs and expenses associated with such cooperation or assistance shall be paid by the Indemnifying Party.

9.4 Procedure. The Indemnifying Party shall pay for and also have the right to assume and control the defense of any third party Claim and shall reasonably defend such Claim with diligence. In the event of an assumption of the defense by the Indemnifying Party, the Indemnified Party shall continue to have the right to employ its own counsel, at its expense. The Indemnifying Party shall not be entitled to settle or compromise any Claim that does not include a full and unconditional release of the Indemnified Party, that acknowledges liability by the Indemnified Party, or that imposes obligations on the Indemnified Party except after (a) having fully disclosed to the Indemnified Party the proposed terms and conditions of such settlement or compromise; and (b) having obtained the Indemnified Party's prior written consent thereto, which consent shall not be unreasonably withheld.

9.5 Limitation of Liability. EXCEPT TO THE EXTENT SUCH DAMAGES ARISE FROM A PARTY'S BREACH OF SECTION 7, OR ARE A PART OF A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 9, NEITHER PARTY WILL BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR EXEMPLARY DAMAGES.

**SECTION 10: AUDITING, MONITORING AND COMPLIANCE**

10.1 Audit. Upon the request of a party and at least ten calendar days notice and subject to Section 3.6, Applicable Laws, third party contractual limitations and each party's policies and procedures, the other party shall supply the requesting party (including its internal audit staff and external auditors, regulators and other representatives) with reasonable access during normal business hours to its facilities, applicable information and personnel and shall cooperate with the other party in the conduct of reasonable audits, assessments, and inspections in order to verify performance by the audited party with its obligations and representations contained within this Agreement, including, without limitation, the extent to which such party is complying with its obligations to keep Confidential Information private and secure in the manner required by this Agreement, Applicable Law and MasterCard Rules. The auditing party shall be responsible for its own expenses incurred in connection with such audit activity. Audit results shall be considered Confidential Information. Such audits shall be conducted at the audited party's relevant locations during normal business hours at times reasonably convenient for the audited party and not unreasonably interfere with the audited party's normal business operations. Auditing shall include a party completing self-audit questionnaires as requested by the other party from time to time.

10.2 Monitoring. (a) Yale acknowledges and agrees that FNBO must monitor the activity of Yale and its Membership Employees with respect to Yale's duties, responsibilities and obligations to comply with Applicable Law under this Agreement and Program and Yale agrees to allow reasonable monitoring by FNBO of Yale's compliance with Applicable Law. Yale agrees to use commercially reasonable efforts to monitor its Membership Employees in order to ensure that all such employees are complying with Applicable Law in the exercise and performance of Yale's rights, duties, responsibilities and obligations under this Agreement including, without limitation, by ensuring that its employees provide all required disclosures and documentation at the time and in the manner reasonably required by FNBO. Upon request by FNBO from time to time, Yale will provide FNBO with: (i) its policies, procedures and internal controls used with its Membership Employees; (ii) the results of monitoring of its Membership Employees; and (iii) any corrective action made to its policies, procedures or internal controls as a result of such monitoring.

(b) Yale acknowledges and agrees that Yale must and shall monitor, at its expense, the activity of each and every Subcontractor in order to ensure that each Subcontractor is complying with Yale's duties, obligations and warranties under this Agreement as well as FNBO's requirements, MasterCard Rules and Applicable Law in the exercise and performance by Subcontractor of any Program related duties, activities, services or responsibilities. Upon request by FNBO from time to time, Yale will provide FNBO with: (i) its policies, procedures and internal controls used with Subcontractors; (ii) the policies, procedures and internal controls used by Subcontractors; (iii) the results of monitoring of Subcontractors; (iv) all audits and monitoring reports of Subcontractors; (v) PCI DSS validation of Subcontractors, as required by FNBO; and (vi) any corrective action made to its policies, procedures or internal controls as a result of such monitoring.

10.3 Training. Yale shall use commercially reasonable efforts to ensure that each Membership Employee, and, if applicable, ensure that each Subcontractor (including its employees), periodically: (a) receives training from FNBO on all Applicable Law applicable to Yale's duties and responsibilities under the Program; (b) completes FNBO's required training with respect to the services Yale provides under the Program; and (c) is made aware of the applicable Yale responsibilities with respect to the services such Membership Employee and Subcontractors (including their employees) provides on Yale's behalf. Upon request by FNBO from time to time, Yale will provide FNBO with the training materials used by its Membership Employees and Subcontractors and any corrective action made to such training materials as a result of the monitoring required in this Agreement. Yale shall incorporate into its training any requirements of FNBO related to the Cards, Accounts, Existing Accounts, Marketing Materials and the Program.

10.4 Applicable Law and MasterCard Rules. FNBO and Yale agree to perform their respective duties and obligations under this Agreement and the Program in accordance with Applicable Law and MasterCard Rules. The parties agree not to engage and shall ensure each Subcontractor or subcontractor will not engage in any unfair, deceptive or abusive acts and practices in the course of its provision of products or performance of services and duties under the Program and this Agreement.

10.5 Suspension of Duties. In order to ensure compliance with Applicable Law or to prevent fraud, and subject to Section 2.6, in its sole discretion, and upon written notice to Yale, FNBO may suspend, discontinue or terminate specific responsibilities of Yale under this Agreement that involve interaction with applicants, Cardholders, prospective Cardholders or access to FNBO Nonpublic Personal Information.

10.6 Regulatory Authority. Each party acknowledges and agrees that any governmental authority with jurisdiction over a party may examine the other party with respect to such party's duties and responsibilities under this Agreement and the Program.

10.7 Litigation, Inquiry or Complaint. Yale shall notify FNBO upon receiving notice of litigation, regulatory inquiry or complaint with respect to the Program, FNBO, Accounts, Existing Accounts, Cards, applications, Marketing Materials or any duties performed by Membership Employees pursuant to this Agreement. A scanned copy of such document received by Yale shall accompany each notice and be sent by secure email transmission to FNBO within 48 hours of receipt by Yale. Yale agrees to cooperate with FNBO to the extent necessary for FNBO to adequately respond to such litigation, inquiry or complaint.

## **SECTION 11: MISCELLANEOUS**

11.1 Independent Contractors. The parties intend for their relationship to be that of independent contractors and, except as expressly provided otherwise in this Agreement, neither party is an agent, employee or joint venturer with the other party and neither party has the power or authority to bind the other.

11.2 No Third Party Beneficiaries. This Agreement is binding upon and inures to the benefit of FNBO and Yale and their respective successors and permitted assigns and is for the sole and exclusive benefit of FNBO and Yale and their respective permitted successors and assigns. Nothing in this Agreement shall be construed to grant to any other Person any right, remedy, or Claim under or in respect of this Agreement.

11.3 Amendment. Except as expressly provided otherwise, this Agreement may be amended only in a writing signed by both parties that specifically refers to this Agreement.

11.4 Assignment and Subcontracting. (a) Neither this Agreement, nor any rights hereunder, may be assigned by either of the parties without the prior written consent of the other party and such consent may be conditioned upon the assignee's written acknowledgment that assignee is bound by the terms and conditions contained herein. An attempted assignment by a party without the prior written consent of the other party is a material breach of this Agreement.

(b) FNBO may subcontract duties, responsibilities and obligations under the Program (e.g. printing of Cardholder statements, etc.). Without FNBO's prior written express consent, Yale may not use any Subcontractor. If Yale uses any Subcontractor without FNBO's prior written consent, it shall be deemed a material breach of this Agreement. In the event FNBO provides Yale written consent to use a Subcontractor, Yale may use such Subcontractor only as identified in the written consent; provided, however, that the Subcontractor shall, at all times, and agrees in writing with Yale to comply with all applicable terms, conditions and provisions of this Agreement, Applicable Laws, MasterCard Rules and FNBO requirements. Yale shall be and will remain liable for all acts and omissions of each and every Subcontractor. Upon written notice from FNBO, Yale shall immediately cease using a Subcontractor. For the purposes of this paragraph, Subcontractor shall not include a cloud-based document or data management vendor.

11.5 Complete Agreement. This Agreement is the complete and exclusive statement of the understanding between the parties relating to the subject matter hereof, and supersedes and merges all prior proposals, understandings, and agreements, oral or written, between the parties relating to the subject matter hereof. The waiver by any party of any term, covenant or condition herein is not a waiver of such term, covenant or condition on any subsequent breach of the same or any other term, covenant or condition herein. This Agreement may not be presumptively interpreted for or against either party by reason of that party having drafted or negotiated, or failed to draft or negotiate, all or any portion of this Agreement.

11.6 Governing Law & Venue. This Agreement is governed in all respects by the laws of the State of Delaware and the United States of America, but does not include any conflict of law rule that might direct or refer determination of any such matter to the laws of any other jurisdiction. Any dispute arising from this Agreement must be resolved in a court of competent jurisdiction in New Haven County Connecticut, if Yale is the defendant in such dispute, and Douglas County, Nebraska, if FNBO is the defendant in such dispute; and each party hereby submits to the personal jurisdiction of such courts.

11.7 Notices. Notices permitted or required under this Agreement must be given, in writing, by personal delivery or overnight carrier addressed to the parties at the addresses set forth below, or such other addresses as the parties may designate in writing from time to time by notice to the other party given pursuant to this Section. Notices are effective upon actual receipt by the party to be notified.

If to Yale:

Yale University  
232 York Street  
New Haven, Connecticut 06511  
Attention: Stephen Blum

If to FNBO:

First National Bank of Omaha  
1620 Dodge Street, Stop Code 3199  
Omaha, Nebraska 68197  
Attention: First Bankcard Legal Department

With a copy to:

Office of the General Counsel  
Yale University  
2 Whitney Avenue, 6<sup>th</sup> Floor  
New Haven, CT 06510

11.8 Expenses. Unless otherwise specifically provided in this Agreement, Yale and FNBO are solely responsible for their own costs and expenses of performance under this Agreement.

11.9 Survival. Sections 1, 2.4, the final sentence of 2.7, 2.8, 3.4, 3.5, 4.8, 4.10, 5.4, 5.5, 6, 7, 8, 9, 10.7, 11.4, 11.5, 11.6, 11.7, 11.9, and 11.10 shall survive the termination of this Agreement.

11.10 Severability. If any provision of this Agreement is otherwise held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

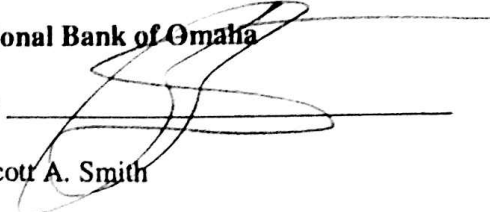
11.11 Insurance. During the Term, each party will, at their respective expense, maintain industry standard levels of insurance coverage and policies that will provide coverage related to any of their actions related to the Program as well as their rights, obligations, indemnification requirements and liabilities under this Agreement. Such insurance shall include, but not be limited to, maintaining the following insurance policies: Commercial General Liability (including personal injury and contractual liability), Workers' Compensation, Employer's Liability, Commercial Business Automobile Liability, Professional Services/Errors and Omissions, Employee Dishonesty/Fidelity Bond/Commercial Crime, excess or umbrella Casualty Liability, Cyber Risk/Data Security, Network Security and Privacy Liability, Employment Practices Liability, and, as to FNBO only, Technology/Technology Products and Services Errors and Omissions (including third party intellectual property infringement). The insurance shall be procured from insurance companies that (a) are permitted to do business where required to comply with the requirements of this Section, and (b) have a financial strength, credit and debt rating of at least an A, respectively, as rated by A.M. Best Company. Each party shall, upon request from the other party, provide copies of all current original certificates of insurance or access to an online memorandum of insurance evidencing compliance with this Section. The obligation of a party to provide the insurance coverage specified in this Agreement shall not limit in any way any obligation or liability of such party provided elsewhere in this Agreement.

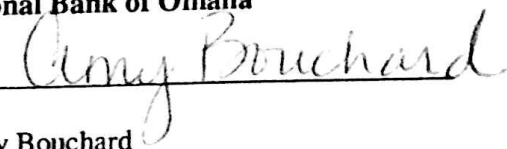
Yale shall ensure that and require each Subcontractor to maintain at all times industry standard levels of insurance coverage and policies including, at a minimum, those referenced in this Section related to any of their actions with respect to the Program and the rights, obligations and indemnification requirements and liabilities under this Program and Agreement.

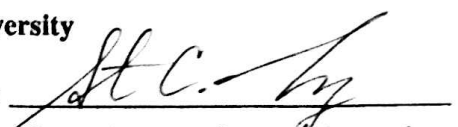
[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK – SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the undersigned have executed this Joint Marketing Agreement to be effective as of the Effective Date.

**First National Bank of Omaha**  
Signature:   
Name: Scott A. Smith  
Title: Sr. Vice President

**First National Bank of Omaha**  
Signature:   
Name: Amy Bouchard  
Title: Vice-President, Finance

**Yale University**  
Signature:   
Name: Stephen C. Murphy  
Title: Associate VP Finance

**EXHIBIT 1  
LAUNCH DATE ACKNOWLEDGMENT**

Pursuant to that certain Joint Marketing Agreement dated as of June 24, 2014, by and between First National Bank of Omaha and Yale University (the "Agreement"), the parties hereby acknowledge and agree that the Existing Accounts were converted to FNBO's system on \_\_\_\_\_, and that such date shall be the "Launch Date" for all purposes under the Agreement.

YALE UNIVERSITY

FIRST NATIONAL BANK OF OMAHA

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

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

DRAFT

## ROYALTIES SCHEDULE

- FNBO will pay Yale a one-time finder's fee of \$10 for each new Account that is a Yale Generated Account.
- FNBO will pay Yale Royalties in the following amounts during the following periods:
  - For Existing Accounts: (a) During the first three Program Years an amount equal to \$500,000 per year, payable in twelve, equal, monthly installments (collectively, each set of twelve monthly installments an "Annual Guarantee"); provided, however, that at the end of each of such Program Years FNBO will determine the amount equal to 0.50% (50 bps) of the aggregate Net Purchase Volume for the applicable Program Year ("Earned Amount"), and if such amount is greater than \$500,000, FNBO will also pay to Yale the difference between such amount and \$500,000, which payment shall be due from FNBO within 30 days following the conclusion of the applicable Program Year; and (b) beginning in the fourth Program Year and during each Program Year thereafter during the Term, an amount equal to 0.50% (50 bps) of the monthly Net Purchase Volume that FNBO receives on Existing Accounts (for clarification, in the event the Earned Amount in any of the first three Program Years does not equal or exceed the amount of the Annual Guarantee in such Program Year, Yale shall not be obligated to repay any deficiency); and
  - For Accounts: An amount equal to 0.50% (50 bps) of the monthly Net Purchase Volume that FNBO receives on Accounts.

**EXHIBIT 2.1**  
**ANNUAL MARKETING PLAN ELEMENTS**

- I. Program Objectives (for both parties)
- II. Program Strategy
- III. Year 1 - Program Launch
  - Timing
  - Operational process (e.g. plastics, lists, etc.)
  - Conversion of existing Chase accounts
- IV. Ongoing- Results Review
  - A. Acquisition, portfolio, and compensation performance vs. plan and previous year
  - B. Status and results for prior year initiatives
  - C. Key learnings and observations
- V. Marketing Plan Outline
  - A. Quantitative objectives
  - B. Target audience(s)
  - C. Product(s)
    - 1. Rewards
    - 2. Basic functionality
    - 3. Benefits & Features
  - D. Marketing communications (Program advertising)
  - E. Promotions
  - F. Acquisition
    - 1. Strategy
    - 2. New account totals by party
    - 3. Issuer channels (Direct Mail)
    - 4. Yale channels (website, email, etc.)
  - G. Portfolio
    - 1. Spend initiatives
    - 2. Activation
    - 3. Inactive strategy
  - H. Program management and reporting calendar

**EXHIBIT 3.7  
CARD AND REWARDS FEATURES**

<b>Required Features of Cards</b>	
Intro Rate	0% for 6 billing cycles on purchases and balance transfers
Go-To Rate	Risk-based
Fees	No annual fee No foreign transaction fees
<b>Required Features of Rewards Program</b>	
Earn Rate	1 point per \$1 on all purchases
Complete Rewards Bonus	2500 bonus points after \$1000 in spend within 90 days of issuance
Yale Complete Rewards Options	Include: <ul style="list-style-type: none"> <li>• Cash back rewards with redemption equivalent to 1% redemption value e.g., \$50 for 5,000 rewards points;</li> <li>• Travel rewards with no blackout periods;</li> <li>• Gift card rewards; and</li> <li>• General merchandise rewards</li> </ul>

## Schedule 3.8

### MINIMUM SERVICE LEVELS

FNBO agrees to make reasonable commercial efforts to achieve the service levels described below. FNBO agrees to provide Yale with a quarterly report setting forth the service levels herein and FNBO's performance during such quarter relative to the service levels. Notwithstanding anything to the contrary in this Schedule 3.8 or in the Agreement, these service levels establish target levels only and failure to achieve any target level will not be deemed to be a breach by FNBO. If, during any three consecutive months or five or more times in any twelve calendar months, FNBO fails to meet all minimum service level standards set forth in this Schedule (a "Significant Recurring Service Level Failure"), FNBO promptly upon becoming aware of such failure shall (i) investigate the root cause of such failure and identify commercially reasonable measures necessary to improve service levels to achieve at least the minimum service levels standards set forth in this Schedule, (ii) notify Yale, in writing, of the actual service levels attained in the relevant calendar months, the root cause of such failure to achieve minimum service levels standards, and the identified measures necessary to improve service levels, and (iii) take prompt action to improve the service levels to achieve at least the minimum service levels set forth in this Schedule. The notice to Yale shall be certified by a Senior Vice President or more senior officer of FNBO as true, complete and accurate to such officer's knowledge. If any service level does not improve and return to the minimum service level standard (or better) in the calendar month immediately following each occurrence of a Significant Recurring Service Level Failure, the matter shall, within five (5) business days, be escalated to First Bankcard's President for prompt resolution. First Bankcard's President shall report to Yale FNBO's planned course of action, keep Yale informed on FNBO's progress towards improving service levels, and remain involved until the minimum service levels standards are achieved for a least four consecutive months.

1. FNBO shall answer seventy-five percent (75%) of all customer care telephone calls received within thirty (30) seconds or less, measured on a monthly basis.
2. FNBO shall maintain an abandonment rate of four percent (4 %) or less of all customer care telephone calls received which have been on hold for at least thirty (30) seconds, measured on a monthly basis.
3. FNBO shall respond to eighty-five percent (85%) of all customer care e-mail inquiries within 24 hours and one hundred percent (100%) of all customer care e-mail inquiries within forty-eight (48) hours or less.
4. FNBO shall respond to ninety percent (90%) of all written correspondence to customer care, excluding returned mail, within five (5) days or less and one hundred percent (100%) of all customer care e-mail inquiries within ten (10) days or less.
5. FNBO shall respond to ninety-five percent (95%) of all billing disputes within 30 days.
6. FNBO shall: (a) issue ninety-five percent (95%) of Cards within five (5) business days of approval; and (b) issue ninety-five percent (95%) of replacement Cards within three (3) business days of Cardholder request for replacement.

**Exhibit 5.2**  
**FNBO Provided Reports**

1. Monthly Acquisition Reporting (to be received within 30 days after month close).
  - (a) Actual Metrics, for each Marketing Campaign by Channel, for the following:
    - (i) Quantities
    - (ii) Response Rate
    - (iii) Approval Rate
    - (iv) Gross (Approved) New Accounts
    - (v) Net (Activated) New Accounts
  - (b) Summary by Partner by Channel:
    - (i) Yale Gross (Approved) and Net New Accounts
    - (ii) Issuer Gross (Approved) and Net New Accounts
  
2. Monthly Portfolio Reporting (to be received within 30 days after month close).

Following Metrics for Actual Results:

  - (a) Total Open Accounts
  - (b) Total Active Accounts
  - (c) Total New Accounts
    - (i) Yale-Generated Accounts
    - (ii) FNBO-Generated Accounts
  - (d) Total Purchase Volume
  - (e) Total Outstandings
  - (f) Total Closed Accounts
  
3. Monthly Compensation Reporting (to be received within 30 days after month close).
  - (a) Number of first time Yale Acquired Activated Accounts
  - (b) New Account Finder's Fee Payments
  - (c) Net Purchase Volume
  - (d) Basis Points Fee Payment
  
4. Periodic Transactional Reporting. As mutually agreed by the parties, distribution of purchases, top merchants, all as made available through reporting provided by MasterCard. This reporting is subject to the timing and any changes made by MasterCard.