

# West Virginia University

## Purchase Change Request

FY	Buyer	Date	Acct #	P. O Date	Order #
16	V	6/3/2016	various	3/24/2014	U14PNCBANK

<b>Document</b> <input type="checkbox"/> Requisition (Cancellation Only) <input type="checkbox"/> Regular Purchase Order <input type="checkbox"/> Contract Purchase Order <input type="checkbox"/> Open End Contract Purchase Order <input checked="" type="checkbox"/> Agreement	<b>Purpose of Change (Check boxes applicable)</b> <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Cancellation  <input type="checkbox"/> Increase/Decrease  <input type="checkbox"/> Unused Balance(\$25.00 Maximum)  <input type="checkbox"/> Freight  <input type="checkbox"/> Renewal  <input type="checkbox"/> Extension Error         </div> <div> <input type="checkbox"/> Error in Total Amount  <input type="checkbox"/> Change of Account  <input type="checkbox"/> Change of Vendor Name/ Address  <input checked="" type="checkbox"/> Other         </div> </div>
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<b>Vendor Name, Address, FEIN, Phone #</b> PNC Bank National Association One PNC Plaza 249 Fifth Avenue, 20th Fl Pittsburgh, PA 15222	<b>Spending Unit Name &amp; Address</b> West Virginia University Procurement, Contracting & Payment Services PO Box 6204 Morgantown, WV 26506
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Item#	Quantity	Unit M	Description	Unit Price	Extended Price
			Change Order # <u>3</u>  PLEASE REVISE CONTRACT AS FOLLOWS:  To incorporate the attached Third Amendment.  Effective Date: July 1, 2016		

<b>Reason for Change:</b> To incorporate the attached amendment.	Previous Total:	<u>Open-End</u>
	Increase	<u>                    </u>
	Decrease	<u>                    </u>
	New Total	<u>Open - End</u>

### Funding Paragraph

Service performed under this contract is to be continued in the succeeding fiscal year contingent upon funds being appropriated by the Legislature for this service. In the event funds are not appropriated for this service, this contract becomes of no effect and is null and void after

Approved

Procurement Officer

6/30/16

Date

**THIRD AMENDMENT TO THE**  
**UNIVERSITY BANKING SERVICES AGREEMENT**

THIS THIRD AMENDMENT to the University Banking Services Agreement (the "Third Amendment") is made and entered into this 30<sup>th</sup> day of June, 2016, (the "Third Amendment Effective Date"), by and between West Virginia University Board of Governors on behalf of West Virginia University, an agency and higher education institution of the State of West Virginia ("University") and PNC Bank, National Association, a national banking association with its principal office located at 300 Fifth Avenue, Pittsburgh, PA 15222, ("PNC Bank"). This Third Amendment amends the Agreement in accordance with the terms set forth herein and together, the Amendment(s) and the Agreement constitute a single revised Agreement. All capitalized terms used in this Third Amendment shall have the meaning given them in the Agreement unless otherwise defined herein or the context hereof clearly requires otherwise.

WHEREAS, University and PNC Bank entered into a University Banking Services Agreement dated April 1, 2014, as amended by First Amendment, dated October 9, 2015, and Second Amendment, dated February 2, 2016 (collectively the "Agreement");

WHEREAS, PNC Bank and University have agreed to amend certain terms of the Agreement in accordance with the provisions set forth in this Third Amendment.

NOW therefore, in consideration of the covenants, promises and representations set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Section 27. Notices, is hereby revised to update the addresses as follows:

If to University then to: West Virginia University Chief Procurement Officer Department of Purchasing, Contracts and Payments Services PO Box 6024 Morgantown, WV 26506-6024	It to PNC Bank, then to: PNC Bank, National Association 300 Fifth Avenue, 23 <sup>rd</sup> Floor Pittsburgh, PA 15222 Attn: Manager, University Banking
With a copy to: West Virginia University Office of the Vice President for Legal Affairs and General Counsel 105 Stewart Hall Morgantown, WV 26506-6204 Attn: General Counsel	With a copy to: PNC Bank, National Association 300 Fifth Avenue, 19 <sup>th</sup> Floor Pittsburgh, PA 15222 Attn: Chief Counsel, Retail Banking

2. New **Exhibit G**, Department of Education Cash Management Compliance Agreement, ("CM Agreement"), is hereby added and attached hereto and incorporated by reference into the Agreement.
3. The University may terminate the Agreement in accordance with the termination provisions set forth in the CM Agreement.
4. All provisions of the Agreement not specifically mentioned in this Third Amendment are hereby ratified and reconfirmed and the Agreement remains in full force and effect.

IN WITNESS WHEREOF, intending to be legally bound, each party hereto has caused its duly authorized representative to execute this Third Amendment on its behalf, as of the Third Amendment Effective Date.

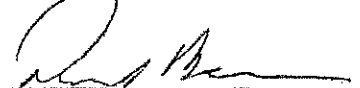
PNC Bank, National Association  
("PNC Bank")

By:   
Nickolas Certo

Title: Senior Vice President

Date: 6/30/16

West Virginia University  
("University")

By: 

Title: CPO

Date: 6/30/16

## EXHIBIT G

### DEPARTMENT OF EDUCATION CASH MANAGEMENT COMPLIANCE AGREEMENT

THIS DEPARTMENT OF EDUCATION CASH MANAGEMENT COMPLIANCE AGREEMENT ("CM Agreement"), is entered into this 30<sup>th</sup> day of June, 2016, by and between the West Virginia University Board of Governors on behalf of West Virginia University, an agency and higher education institution of the State of West Virginia, having a principal place of business in Morgantown, West Virginia, ("University"), and PNC Bank, National Association, a national banking association ("PNC Bank"). This CM Agreement is an exhibit to and an integral part of that certain University Banking Services Agreement dated April 1, 2014 between University and PNC Bank (the "Agreement"). Capitalized terms used in this CM Agreement and not otherwise defined herein, shall have the meaning given them in the Agreement.

WHEREAS, the parties have entered into the Agreement under which certain specified services create a Tier Two Arrangement; and

WHEREAS, the University has to comply with the DoE Regulation requirements for Tier Two Arrangements, that include the direct marketing of a Financial Account.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and intending to be legally bound hereby, it is agreed as follows:

#### 1. Definitions

- (a) "Access Device" shall mean a card, code, or other means of access to the PNC Financial Account, or any combination thereof, that may be used by a student to initiate electronic fund transfers.
- (b) "Award Year" shall mean each year during the Term of the Agreement in which the University is entitled to receive compensation as defined under the Agreement, (e.g., royalties, rent, etc).
- (c) "Customer Complaint" shall mean when a PNC Bank customer, prospective customer or other user of PNC Bank's or University's products or services who is also a full or part time student of the University, expresses dissatisfaction with PNC Bank's products, services and/or business practices within the scope of the engagement between the PNC Bank and University, regardless of whether such dissatisfaction is expressed verbally, in writing or by electronic or other means. Customer Complaints shall be handled according to the University policies.
- (d) "Direct Marketing" shall mean: (i) the University communicating information directly to its students about the PNC Financial Account and how it may be opened; (ii) The PNC Financial Account or Access Device is cobranded with the institution's name, logo, mascot, or other affiliation and is marketed principally to students at the institution; or (iii) A card or tool that is provided to the student for institutional purposes, such as a student ID card, is validated, enabling the student to use the device to access a financial account.



- (e) "DoE Regulation" shall mean the Department of Education Regulation for Cash Management, as amended from time to time, (34 CFR 668).
- (f) "Effective Date" shall mean July 1, 2016.
- (g) "Financial Account" shall mean a student's or parent's checking or savings account, prepaid card account, or other consumer asset account held directly or indirectly by the Financial Institution.
- (h) "Financial Institution" shall mean PNC Bank.
- (i) "PNC Financial Account" shall mean any Financial Account offered by PNC Bank under the Agreement, (which does not include credit cards).
- (j) "Tier Two Arrangement" shall mean that an institution located in a State has a contract with a financial institution, or entity that offers financial accounts through a financial institution, under which financial accounts are offered and marketed directly to students enrolled at the institution.
- (k) "Title IV" shall mean Title IV of the Higher Education Act of 1965, as amended, and any rule, regulation, instruction or procedure issued by the Secretary.

## **2. Student Choice**

- (a) By July 1, 2016, in accordance with the DoE Regulation, the University will establish a process which includes multiple options for students, to receive direct payments for Title IV program funds. Financial Institution does not provide any Title IV payment services on behalf of the University.
- (b) For the benefit of its students and in accordance with the DoE Regulation, the University shall provide a list of the major features and fees commonly assessed with the PNC Financial Account, (the "PNC List").
  - (1) In order to create the PNC List, the University and PNC shall, as applicable, comply with the provisions of Section 4 and 5 of this CM Agreement.
- (c) The parties, will use commercially reasonable efforts to ensure the PNC List satisfies the requirements regarding the format and content established by the Department of Education Secretary, on or after, July 1, 2017.

## **3. Customer Complaints**

In the event that University has a direct relationship with or direct contact with PNC's customers during the term of this Agreement and the University receives a Customer Complaint about PNC that (i) the University is unable to resolve, or (ii) becomes public knowledge (e.g., media), or (iii) raises questions related to compliance with applicable law, University shall immediately, notify PNC Bank and deliver to PNC Bank a written summary or copy of such Customer Complaint along with associated correspondence and information.

#### 4. University DoE Regulation Compliance

- (a) Student Consent. The University is required to ensure that student consent has been obtained by the Financial Institution prior to opening a PNC Financial Account. The Financial Institution complies with the applicable laws that govern the account opening process. Therefore, the Financial Institution always secures the student's consent prior to opening a PNC Financial Account. The Financial Institution has reviewed its account opening policy with the University and the University has concluded the student consent requirement is deemed satisfied.
- (b) Student Choice. The University shall provide the PNC List to the student as set forth in Section 2(b) above.
- (c) Agreement. In accordance with the effective date set forth in the DoE Regulation, the University shall disclose, on the University website, a copy of the Agreement.
  - (1) In order to satisfy the requirements of this Section 4(c), University shall comply with the provisions of Section 5 of this CM Agreement.
- (d) Compensation and PNC Financial Account Data
  - (1) In accordance with the effective date set forth in the DoE Regulation, the University may be required to disclose on the University website, in a manner defined by the Secretary of Education, certain information, which may include direct or indirect compensation, regarding the most recently completed Award Year under the terms of the Agreement.
  - (2) The University may also be required to disclose certain information regarding the number of students who had PNC Financial Accounts, the amount of fees incurred, at any time during the most recently completed Award Year, by students who have PNC Financial Account(s), as a result of the Agreement, ("PNC Financial Account Data"). In addition, and in accordance with the effective date set forth in the DoE Regulation, the University shall provide the Department of Education Secretary with an up-to-date URL so this information can be published in a centralized database accessible to the public.
  - (3) In order to satisfy the requirements of this Section 4(d), University shall comply with the provisions of Section 5 of this CM Agreement.
- (e) The University shall provide the Financial Institution with sixty (60) days prior notice of its intent to comply with Sections 2(b), 4(c), and 4(d). The University shall also provide, when requested, a copy of the Agreement or up-to-date URL that will be used to comply with the DoE Regulation.
- (f) ATMs. The University has determined the ATM requirements set forth by the DoE Regulation are satisfied pursuant to the ATM License Agreement which is an exhibit to the Agreement.
- (g) Best Interest of the Students. During the Term of the Agreement the University will conduct reasonable due diligence reviews in a manner and frequency defined by the Secretary of Education, to ascertain whether the fees charged by PNC Bank to customers

who have obtained the PNC Financial Account are, considered as a whole, consistent with or below prevailing market rates, (the "Review").

- (1) The University shall provide PNC Bank with a copy of the results of each Review within fifteen (15) days from the completion of the review.
- (2) The DoE Regulation requires the University have the right to terminate the Agreement should the findings of the Review disclose the PNC Financial Account fees are not considered as a whole, consistent with or below prevailing market rates. Additionally, the DoE Regulations requires that the University have the right to terminate the Agreement should it receive Customer Complaints from PNC customers who are full or part time students of the University. The Review or results from Customer Complaints shall be, collectively or individually, deemed a reason for termination by the University, ("DoE Cause for Termination")
  - (a) The University agrees that, prior to terminating the Agreement under this Section 4(g)(2), the University shall enter into a sixty (60) day discussion period with Financial Institution (the "Discussion Period"). During said Discussion Period the University and Financial Institution shall review the findings of the DoE Cause for Termination, to determine if it is inaccurate, non-conclusive, or if corrective action is necessary by the Financial Institution for those items deemed unsatisfactory by the or the result of Customer Complaints.
    - (i) if the parties mutually agree the findings are inaccurate or non-conclusive the Agreement shall remain in full force and effect;
    - (ii) if the parties determine corrective action is required they will negotiate in good faith to establish a commercially reasonable plan to address those items considered unsatisfactory in the Review or results from Customer Complaints, (the "Plan") and a timeline for implementation (the "Plan Implementation Period"). The Financial Institution shall begin implementation of the Plan promptly after the date upon which the parties mutually agree to the Plan in writing.
  - (b) If the parties cannot agree to a Plan or if the Financial Institution does not complete the Plan within the Plan Implementation Period, then the University may terminate the Agreement upon ninety (90) days written notice to the Financial Institution. The University shall provide such notice no later than fifteen (15) days after the expiration of the Discussion Period. This shall not be deemed a condition of default by the Financial Institution under the Agreement.

## **5. DoE Compliance Information**

In order to comply with the DoE Regulation, the University may be required to disclose information that is deemed by the Financial Institution to be proprietary and/or confidential in nature, ("DoE Compliance Information"). In order to ensure that no unintended harm is caused to either party, the University agrees to the following:

- (a) The University must always request any and all information regarding the Agreement or the PNC Financial Account(s) from the Financial Institution, including but not limited to:
  - (i) PNC Financial Account Data, or information related thereto;
  - (ii) information used to

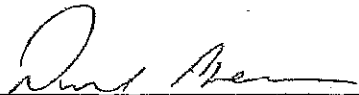
derive the PNC List; and (iii) any other information, including the Agreement, which is required to be disclosed under the DoE Regulation.

- (b) The University shall not provide any DoE Compliance Information which references PNC Bank, its products or services without the prior written approval of the Financial Institution, which approval shall not be unreasonably withheld.
- (c) The Financial Institution reserves the right to revise the DoE Compliance Information as deemed necessary to ensure the accuracy of any information that is provided by the University, regarding the Financial Institution, the PNC Financial Account, and any other information related thereto.
- (d) The Financial Institution shall provide to the University, in its reasonable discretion, all information requested under Section 5(a) of this Agreement to assist University with its DoE Regulation Compliance.


**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK AND  
SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF, intending to be legally bound, each party hereto has caused its duly authorized representative to execute this Department of Education Cash Management Compliance Agreement on its behalf, as of the Effective Date.

**WEST VIRGINIA UNIVERSITY**

By:   
Name: David Beaver  
Title: CPO  
Date: 6/30/16

**PNC BANK, NATIONAL ASSOCIATION**

By:   
Name: Nickolas Certo  
Title: Senior Vice President, University Banking  
Date: 6/30/16

# West Virginia University

## Purchase Change Request

FY	Buyer	Date	Acct #	P. O Date	Order #
16	V	6/3/2016	various	3/24/2014	U14PNCBANK

<b>Document</b> <input type="checkbox"/> Requisition (Cancellation Only) <input type="checkbox"/> Regular Purchase Order <input type="checkbox"/> Contract Purchase Order <input type="checkbox"/> Open End Contract Purchase Order <input checked="" type="checkbox"/> Agreement	<b>Purpose of Change (Check boxes applicable)</b> <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Cancellation  <input type="checkbox"/> Increase/Decrease  <input type="checkbox"/> Unused Balance(\$25.00 Maximum)  <input type="checkbox"/> Freight  <input type="checkbox"/> Renewal  <input type="checkbox"/> Extension Error         </div> <div> <input type="checkbox"/> Error in Total Amount  <input type="checkbox"/> Change of Account  <input type="checkbox"/> Change of Vendor Name/ Address  <input checked="" type="checkbox"/> Other         </div> </div>
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<b>Vendor Name, Address, FEIN, Phone #</b> PNC Bank National Association One PNC Plaza 249 Fifth Avenue, 20th Fl Pittsburgh, PA 15222	<b>Spending Unit Name &amp; Address</b> West Virginia University Procurement, Contracting & Payment Services PO Box 6204 Morgantown, WV 26506
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Item#	Quantity	Unit M	Description	Unit Price	Extended Price
			Change Order # <u>2</u>  PLEASE REVISE CONTRACT AS FOLLOWS:  To incorporate the attached agreement regarding student refund services.  Effective Date: June 30, 2016		

<b>Reason for Change:</b> To incorporate the attached agreement.	Previous Total:	<u>Open-End</u>
	Increase	<u>                    </u>
	Decrease	<u>                    </u>
	New Total	<u>Open - End</u>

### Funding Paragraph

Service performed under this contract is to be continued in the succeeding fiscal year contingent upon funds being appropriated by the Legislature for this service. In the event funds are not appropriated for this service, this contract becomes of no effect and is null and void after

Approved

  
 Procurement Officer

6/2/16  
 Date

## TERMINATION AGREEMENT AND RELEASE

This Mutual Termination Agreement and Release ("Termination Agreement") is made this 27th day of May, 2016, (the "Effective Date") by and between West Virginia University ("University") and PNC Bank, National Association with its principal place of business at 300 Fifth Avenue, Pittsburgh, PA 15222, for itself and on behalf of its Affiliates (collectively "PNC Bank").

WHEREAS, the parties have previously entered into a Payment Solutions Agreement, dated April 1, 2014, (the "Payment Solutions Agreement"); and

WHEREAS, PNC Bank pursuant to the Payment Solutions Agreement has been processing mutually agreed payments and disbursements to students and, in conjunction therewith, provide an on-line service for those payments and disbursements (the "Payment Solutions Service"); and

WHEREAS, PNC Bank and University now choose to mutually terminate the Payment Solutions Agreement and the Payment Solutions Services related thereto in accordance with the terms and conditions of this Termination Agreement; and

NOW, THEREFORE, in consideration of the terms and conditions hereof, and for other good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged by the parties, PNC Bank and University agree as follows:

1. The Termination Date of the Agreement shall be June 30, 2016, or an earlier date, as mutually agreed to in writing by the parties, (the "Termination Date").
2. PNC Bank shall be obligated to provide the Transition Services as further described on Exhibit A, (the "Transitions Services"), which is attached hereto and incorporated herein.
3. Release by University. University on behalf of itself, its directors, employees, agents, officers, successors and assigns, and all other persons who might claim by or through it (all of whom are hereinafter referred to, individually and collectively, as the "University Releasors"), does hereby remise, release and forever and absolutely discharge PNC Bank, its affiliates, subsidiaries, successors, assigns, officers, directors, agents or employees (all of whom are hereinafter referred to, individually and collectively, as the "PNC Bank Releasees"), from any and all actions and causes of action, judgments, complaints, liabilities, losses, damages, suits, costs, contracts, attorneys' fees, expenses, compensation, claims and demands whatsoever, of every kind, nature and description, whether now known or unknown, accrued or unaccrued, that the University Releasors now has or ever had against the PNC Bank Releasee, or any of them, from the beginning of the world to date of this Termination Agreement, by reason of any matter, cause or thing whatsoever arising out of or relating to the Payment Solutions Agreement.

4. Governing Law. This Termination Agreement shall be interpreted in accordance with the substantive laws of the State of West Virginia, without regard to principles of conflict of law.

5. Miscellaneous. This Termination Agreement contains the entire understanding between University and PNC Bank, and it supersedes any and all prior agreements or understandings between PNC Bank and University regarding the subject matter of this Termination Agreement. This Termination Agreement may not be amended except in a writing signed by both parties.

IN WITNESS WHEREOF, intending to be legally bound, each party hereto has caused its duly authorized representative to execute this Termination Agreement on its behalf, as of the Effective Date.

PNC Bank, National Association  
("PNC Bank")

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

Nickolas Certo

Title: Senior Vice President

Date: 5/30/2016

West Virginia University  
("University")

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

Title: CPO

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



## EXHIBIT A

### TRANSITION SERVICES

In order to facilitate the smooth transition of the Payment Portal Services to the University and/or its designee, the parties mutually agree to provide to the other certain services during the wind down period as described below (the "Transition Services").

Transition Assistance: During the period between the Effective Date of this Termination Agreement and the Termination Date, each party shall provide the Transition Services set forth below:

#### A. PNC Bank:

- (i) PNC Bank will no longer accept demographic files and/or payment files from the University after June 28, 2016.
- (ii) PNC Bank will no longer permit student access to the Payment Portal after June 30, 2016.
- (iii) PNC Bank will permit no more than two (2) University staff members, identified in advance prior to the Payment Solutions Services Termination Date, administrative access to the Payment Portal, said access shall continue until December 31, 2016. Administrative access is permitted for the purposes of:
  - a.) clearing any miscellaneous items;
  - b.) viewing student activity history in the Payment Portal; and
  - c.) resolving all unclaimed payments that were issued pursuant to the Payment Solutions Services.
  - d) PNC will transfer funds to WVU via ACH/wire when unclaimed property is identified, which can be as often as weekly until December 31, 2016.
- (iv) Upon request, PNC Bank may, in its discretion, provide Preference Information to the University. "Preference Information" shall mean, refunding information provided to the University by the student through the Payment Portal Services. For students who elected ACH delivery of their refund, this may include: (a) bank routing number; (b) bank account number; and (c) bank account type. The Preference Information shall be provided, by PNC Bank to the University, no later than June 30, 2016.

#### B. University:

The University, and or its designee, shall provide any requested assistance to PNC Bank regarding the Transition Services.

**West Virginia University**  
**Purchase Change Request**

FY	Buyer	Date	Acct #	P. O Date	Order #
16	F	10/8/15		3/25/14	U14PNCBANK

<b>Document</b> <input type="checkbox"/> Requisition (Cancellation Only) <input type="checkbox"/> Regular Purchase Order <input type="checkbox"/> Contract Purchase Order <input type="checkbox"/> Open End Contract Purchase Order <input checked="" type="checkbox"/> Agreement	<b>Purpose of Change (Check boxes applicable)</b> <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Cancellation  <input type="checkbox"/> Increase/Decrease  <input type="checkbox"/> Unused Balance(\$25.00 Maximum)  <input type="checkbox"/> Freight  <input type="checkbox"/> Renewal  <input type="checkbox"/> Extension Error           </div> <div> <input type="checkbox"/> Error in Total Amount  <input type="checkbox"/> Change of Account  <input type="checkbox"/> Change of Vendor Name/ Address  <input checked="" type="checkbox"/> Other           </div> </div>
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<b>Vendor Name, Address, FEIN, Phone #</b>  PNC Bank National Association One PNC Plaza 249 Fifth Avenue, 20th fl Pittsburgh, PA 15222	<b>Spending Unit Name &amp; Address</b>  West Virginia University Procurement, Contracting, & Payment Services PO Box 6024 Morgantown, WV 26506
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Item#	Quantity	Unit M	Description	Unit Price	Extended Price
			<p style="text-align: center;"><b>Change Order #      1      </b></p> <p>To incorporate the attached changes regarding stale dated and unclaimed property process.</p> <p>Effective Date: October 1, 2015</p>		

<b>Reason for Change:</b>  to incorporate change.	<table> <tr> <td>Previous Total</td> <td>\$</td> <td>Open End</td> </tr> <tr> <td>Increase</td> <td>\$</td> <td></td> </tr> <tr> <td>Decrease</td> <td>\$</td> <td></td> </tr> <tr> <td>New Total</td> <td>\$</td> <td>Open End</td> </tr> </table>	Previous Total	\$	Open End	Increase	\$		Decrease	\$		New Total	\$	Open End
Previous Total	\$	Open End											
Increase	\$												
Decrease	\$												
New Total	\$	Open End											

Funding Paragraph

Service performed under this contract is to be continued in the succeeding fiscal year contingent upon funds being appropriated by the Legislature for this service. In the event funds are not appropriated for this service, this contract becomes of no effect and is null and void after June 30.

Approved

  
 Procurement Officer

10/13/15  
 Date

## EXHIBIT F

### STALE DATED CHECKS AND UNCLAIMED PROPERTY PROCESS

PNC Bank agrees to the following to support stale dated checks and unclaimed property:

1. On a monthly basis, PNC Bank will provide a list (report) to West Virginia University which will include all outstanding checks. Information will include:
  - a. Check Number
  - b. Check Date
  - c. Check Amount
  - d. Payee
  - e. WVUID #
2. PNC Bank will notify payee via regular mail and email, if applicable, of unclaimed amount.
3. Upon request by payee, PNC Bank will reissue funds to payee.
4. Any checks that remain uncashed that are deemed federal funds by West Virginia University will be returned to West Virginia University prior to becoming 240 days old.
5. Uncashed checks that are not deemed federal funds will be submitted to PNC Bank's Escheatment Department and will be processed to the state of the owner's last known address in accordance with that State's unclaimed property laws.
6. In the event that the University is levied penalties or fines as a result of PNC Bank's non-compliance with this Exhibit F, PNC Bank will be responsible for payment of the penalties or fines.

University shall have the right, upon providing reasonable notice, to audit the books, documents and records of PNC Bank. PNC Bank will provide copies to the University of such books, documents and records to the extent that same relate to PNC Bank's compliance with the escheatment process as set forth under this Agreement.

PNC Bank

  
Signature

Nickolas Certo

Printed Name

SVP, University Banking

Title

10/1/15

Date

West Virginia University

  
Signature

David Beaver

Printed Name

CPO

Title

10/6/15

Date

## EXHIBIT F

### STALE DATED CHECKS AND UNCLAIMED PROPERTY PROCESS

PNC Bank agrees to the following to support stale dated checks and unclaimed property:

1. On a monthly basis, PNC Bank will provide a list (report) to West Virginia University which will include all outstanding checks. Information will include:
  - a. Check Number
  - b. Check Date
  - c. Check Amount
  - d. Payee
  - e. WVUID #
2. PNC Bank will notify payee via regular mail and email, if applicable, of unclaimed amount.
3. Upon request by payee, PNC Bank will reissue funds to payee.
4. Any checks that remain uncashed that are deemed federal funds by West Virginia University will be returned to West Virginia University prior to becoming 240 days old.
5. Uncashed checks that are not deemed federal funds will be submitted to PNC Bank's Escheatment Department and will be processed to the state of the owner's last known address in accordance with that State's unclaimed property laws.
6. In the event that the University is levied penalties or fines as a result of PNC Bank's non-compliance with this Exhibit F, PNC Bank will be responsible for payment of the penalties or fines.

University shall have the right, upon providing reasonable notice, to audit the books, documents and records of PNC Bank. PNC Bank will provide copies to the University of such books, documents and records to the extent that same relate to PNC Bank's compliance with the escheatment process as set forth under this Agreement.

PNC Bank

  
Signature

Nickolas Certo

Printed Name

SVP, University Banking

Title

10/1/15

Date

West Virginia University

  
Signature

David Beaver

Printed Name

CPO

Title

10/6/15

Date



Procurement, Contracting, & Payment Services  
One Waterfront Place / 3rd Floor / Don Knotts Blvd  
PO Box 6024  
Morgantown WV 26506  
Ph: 304-293-5711

Number: U14PNCBANK

Please show this number on all packages  
and documents related to this Order.

Visit WVU PCPS on the internet: <http://pcps.wvu.edu>

Page 1 of 69

<b>Vendor:</b> PNC Bank, National Association One PNC Plaza 249 Fifth Avenue - 20th Floor Pittsburgh, PA 15222  Attn: Manager - University Banking  Supplier #:		<b>Ship To:</b> West Virginia University Procurement, Contracting, & Payment Services PO Box 6024 Morgantown, WV 26506-6024		<b>Invoice To:</b> West Virginia University Payment Services One Waterfront Pl / 3rd Fl / Don Knotts Blvd PO Box 6024 Morgantown WV 26506-6024 Ph: 304-293-5711  Itemize Invoices According to Purchase Order One (1) original invoice required	
Date of Order / Buyer: March 25, 2014 M Royce	Payment Terms: 30 Net	Ship Via: Best Way	FOB: Destination	Freight Terms: Prepay and Add	Delivery Date: Per Agreement

### AGREEMENT

This Agreement constitutes acceptance of contract by and between West Virginia University Board of Governors on behalf of West Virginia University and PNC Bank, National Association

for: Student Refund and On-Campus Banking Services

Services beginning April 1, 2014 and extending through June 30, 2021

All services shall be performed in accordance with the standard form of agreement attached hereto as a part hereof.

Service performed under this Agreement is to be continued in the succeeding fiscal year contingent upon funds being appropriated by the Legislature for this service. In the event funds are not appropriated for these services, this contract becomes of no effect and is null and void after June 30.

If 'Open-End' is stated in lieu of total purchase order amount - it is due to indefinite quantity or length of service required; but, only to the extent the services remain within the intended scope of work.

Total Amount  
of this Order: \$ Open-ended

Authorized Purchasing Agent Signature: Brenda Turwen

**WEST VIRGINIA UNIVERSITY BANKING SERVICE AGREEMENT**

**WEST VIRGINIA UNIVERSITY**

**(“UNIVERSITY”)**

**AND**

**PNC BANK, a national corporation**

**(“PNC Bank”)**

**DATED: APRIL 1, 2014**



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## WEST VIRGINIA UNIVERSITY BANKING SERVICES AGREEMENT

**THIS UNIVERSITY BANKING SERVICES AGREEMENT** ("Agreement") is effective as of the 1<sup>st</sup> day of April 2014, ("Effective Date"), and entered into by and between West Virginia University Board of Governors on behalf of West Virginia University, an agency and higher education institution of the State of West Virginia, having a principal place of business in Morgantown, West Virginia ("University") and PNC Bank, National Association, a national banking association, with its principal office at One PNC Plaza, 249 Fifth Avenue, Pittsburgh, Pennsylvania 15222 ("PNC Bank"). University and PNC Bank are sometimes individually referred to herein as a "Party" and collectively as the "Parties."

**WHEREAS**, the University issued a Request for Proposals (RFP) 90003081V to solicit offers from qualified vendors;

**WHEREAS**, PNC Bank responded to said RFP on October 29, 2013 and submitted the most advantageous proposal;

**WHEREAS**, the University wants PNC Bank to offer its Program on the University's campus; and

**NOW THEREFORE**, in consideration hereunder, the mutual covenants and agreements herein set forth by each Party to be kept and performed, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly acknowledged by each Party. WVU and PNC Bank hereby agree as follows with the intent to be legally bound:

### 1. INCORPORATED ATTACHMENTS.

The Parties agree that the Exhibits and Schedules referenced in this Section 1 and those additional Exhibits and Schedules that may be added later by written agreement of the Parties (collectively the "Attachment(s)"), contain the detail of each of the specific elements that embodies this overall Agreement. Each Attachment is hereby incorporated into this Agreement by this reference. The continuation of each Attachment is material to this Agreement. Any conflict in terms in an Attachment with those in this Agreement shall result in those contained in this Agreement taking precedent unless the intention otherwise is expressly stated in the Attachment.

Exhibit A: ATM Master License Agreement

Schedule A: Prototype

Schedule A-1 thru A-8: ATM Locations prior to Effective Date.

Exhibit B: On-Campus Branch Lease Agreement (Mountainlair Student Union)

Schedule A: Mountainlair Branch Premises

Exhibit C: University Marks

Exhibit D: PNC Bank Marks

Exhibit E: WebLinking Agreement

Schedule A: PNC Bank Marks

Schedule B: University Marks

### 2. DEFINITIONS.

For the purposes of this Agreement, the following terms shall have the following meanings:

- (a) “Account” shall mean any new University-affiliated student, faculty, or staff personal checking account opened after April 1, 2014.
- (b) “Affiliate” shall mean, with respect to either Party hereto, any entity which, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or common control with PNC Bank or University; “control” shall mean the power to direct the management of the affairs of the entity; and “ownership” means the beneficial ownership of more than 50% of the equity of the entity. Furthermore, the following entities are expressly excepted from any and all terms, conditions, or limitations contained in this Agreement and **shall not** be considered an Affiliate of University: the West Virginia University Research Corporation, the West Virginia University Foundation, Inc., the West Virginia University Alumni Association, West Virginia United Health System, West Virginia University Hospitals, Inc., and University Health Associates, Inc.
- (c) “Agreement” shall mean the West Virginia University Banking Services Agreement together with all Schedules and other attachments hereto all of which are attached and incorporated herein.
- (d) “Automated Teller Machine” or “ATM” shall mean an electronic terminal, together with such wiring, connections and hook-ups necessary to connect it to the STAR® or other appropriate network, that may perform one or more banking functions on behalf of customers, including, without limitation, dispensing cash, accepting deposits, making transfers between accounts and giving account balances.
- (e) “Constituents” shall mean University’s students, faculty, staff and then-graduating students, (as specified in the Graduation List), collectively.
- (f) “Covered Data and Information” or “CDI” shall mean paper and electronic student education record information supplied by University, as well as any data provided by University’s students to PNC Bank, or any data or record created by PNC Bank for the limited purpose of fulfilling those services defined herein as University Services. In no event, shall information provided directly to PNC Bank by University’s students for any purpose not related to the University Services be construed as being within the definition of CDI.
- (g) “Exceptions” shall mean (i) the agreements, contracts, and/or relationships the University, has, or may require, with other financial institutions for advertising, academic support, depository, payroll, or investment management, and the limited marketing opportunities ancillary to any of those services; (ii) marketing opportunities provided by WVU’s Department of Intercollegiate Athletics and excepted from this Agreement pursuant to Section 5(b) hereof; or (iii) tabling opportunities provided to no more than three county banks which shall be limited to 4 (four) days at the beginning of the Fall and Spring semesters, provided that PNC shall be given first choice of table location at all such tabling events.
- (h) “Financial Services” shall mean all consumer and wealth management services examples of which include, services offered through on-campus bank branch locations, ATMs, a student banking program, University ID Card, checking accounts, savings accounts, and



investments, as may now or hereafter be offered by PNC Bank. The Parties specifically agree that student credit card or student loan products and services are excluded from the definition of Financial Services for the purpose of this Agreement.

- (i) “Graduate List” shall mean, subject to all University requirements for disclosure, confidentiality, security, and privacy as dictated by the Board of Governor’s Policy, a list of University students at the campus that have graduated within the past six (6) months.
- (j) “ID Card Linking” shall mean an optional service (upon mutual agreement) whereby the University ID Card can be linked to a PNC Account or Accounts which will permit Constituents, who opt to obtain this service, to use the University ID Card, in conjunction with a PIN, as a debit card for purchases or ATM transactions globally.
- (k) “Mailing Lists” shall mean collectively the Graduate List, Student List and New Student List with current mailing addresses. The lists shall be used by the University to mail PNC Bank’s Program material.
- (l) “New Student List” shall mean an annual list of newly enrolled incoming first-year students at the University who have not opted-out of disclosure of their directory information pursuant to the University’s FERPA policy. This list shall be used by the University to mail PNC Bank’s Program materials in advance of the new student moving onto campus. The New Student List shall not be provided to PNC Bank, unless otherwise agreed to by the Parties by amending this Agreement.
- (m) “PNC Bank Marks” shall mean any designs, images, visual representations, logos, service marks, names, trade dress, trade names or trademarks used or acquired by PNC Bank, as set forth on [Exhibit D](#) attached hereto and incorporated herein by this reference.
- (n) “PNC Proprietary Intellectual Property” shall include, but may not necessarily be limited to, the PNC Bank Marks.
- (o) “Preferred Provider” shall mean PNC Bank is the only financial institution to which University will extend any of the Commitments (Section 5) and Joint Obligations (Section 8) set forth in this Agreement, subject to the Exceptions as defined herein.
- (p) “Program” shall mean the Financial Services and other services offered by PNC Bank to Constituents hereunder as further described in Section 5(a) below.
- (q) “Program Goals” shall mean the number of new checking Accounts that PNC Bank seeks to open for the Constituents.
- (r) “Royalty Fee” shall have the meaning given that term in Article 4.
- (s) “Student-List” shall mean a list of currently enrolled undergraduate and graduate students at the University. The Student List shall not be provided to PNC Bank, unless otherwise agreed to by the Parties by amending this Agreement, and in such event, the Student-List shall only include those undergraduate and graduate students who have not opted-out of disclosure of their directory information pursuant to the University’s FERPA policy.

- (t) “University ID Card” shall mean the University ID card owned and issued by University, or such other identification card issued by the University, even if the designation “Mountaineer Card” is renamed at a later date.
- (u) “University Marks” shall mean only those designs, images, visual representations, logos, service marks, names, trade dress, trade names or trademarks used or acquired by University which are set forth on Exhibit C attached hereto and incorporated herein by this reference.
- (v) “University Proprietary Intellectual Property” shall include, but may not necessarily be limited to, the Mailing Lists and the University Marks.
- (w) “Weblinking” shall have the meaning set forth on Exhibit E attached hereto and incorporated herein by this reference.

### 3. TERM.

- (a) Initial Term. This Agreement shall commence on the Effective Date and shall terminate on June 30, 2021 (“Initial Expiration Date”) unless this Agreement is terminated in accordance with its terms or is otherwise terminated by mutual written agreement of the Parties.
- (b) Options to Extend. Provided this Agreement has not been terminated in accordance with its terms or has not otherwise been terminated by mutual written agreement of the Parties, the Parties, by mutual agreement, shall have the option to extend this Agreement and PNC’s right to provide the Program to University for an additional one (1) five (5) year term commencing the day after the Initial Expiration Date (the “First Extension Term”).
- (c) PNC Bank may exercise the option to extend this Agreement as set forth in paragraph 3(b) only by delivering to University written notice of its request to renew no later than three hundred sixty five (365) days prior to the last day of the Initial Term, and only if, at the time of exercise, PNC Bank has not received from University a written notice of a default under this Agreement which remains uncured at the time of exercise. Upon notice of request to extend by PNC Bank, University shall, at its sole and absolute discretion, notify PNC Bank whether such First Extension Term will be granted and, if granted, the Parties will negotiate in good-faith to reach mutually agreeable terms and conditions of such extension.
- (d) Resulting Term. The period between and including the Effective Date and the Initial Expiration Date (“Initial Term”), together with the First Extension Term, if applicable, shall, collectively, constitute the “Term” of this Agreement.

### 4. ROYALTY, PAYMENT TERMS.

- (a) Initial Term Signing Bonus. As consideration for licenses granted hereunder relating to the rights to market the Program to Constituents and the use of University Proprietary Intellectual Property and Confidential Information (as defined below) in connection with the Program, PNC Bank shall pay University a one-time guaranteed signing bonus in the

amount of Five Hundred Thousand Dollars (\$500,000). Payment shall be made within sixty (60) days of the Effective Date of this Agreement.

- (b) Program Goals. Each January of the Term, beginning with January, 2015, the Parties shall conduct an annual review of the performance of the previous calendar year of the Program compared to the agreed upon Program Goals outlined below:

	2014	2015	2016	2017	2018	2019	2020
Student-New Checking Accounts	3,800	3,900	4,000	4,000	4,000	4,000	4,000
<sup>1</sup> Workplace Banking Accounts	150	170	190	200	200	200	200
<b>Total Program Goal</b>	3,950	4,070	4,190	4,200	4,200	4,200	4,200

Account numbers are based on a January-December calendar year. Program Goals may be adjusted by mutual written consent of the Parties.

<sup>1</sup>Notwithstanding anything to the contrary in this Agreement, Workplace Banking Accounts, in relation to this Section 4 for the evaluation of performance of the Program Goals and the calculation of Compensation to the University only, shall mean all West Virginia University Faculty, Staff, and WVU Healthcare employees.

- (c) Initial Term Financial Obligations. For each calendar year during the Initial Term of this Agreement, PNC Bank will pay to University an annual royalty license fee ("Annual Royalty Fee") calculated in accordance with this paragraph or, if applicable, paragraph (d) below. In the event that the Parties attain the Total Program Goal for a calendar year as specified in paragraph (b) above, PNC Bank will pay to University the following Annual Royalty Fee:

<u>Calendar Year</u>	<u>Annual Royalty Fee</u>	<u>Minimum Annual Royalty Fee</u>
2014	\$400,000.00	\$400,000.00
2015	\$400,000.00	\$400,000.00
2016	\$400,000.00	\$300,000.00
2017	\$400,000.00	\$300,000.00
2018	\$400,000.00	\$300,000.00
2019	\$400,000.00	\$300,000.00
2020	\$400,000.00	\$300,000.00

- (d) Agreed Upon Reduction of Annual Royalty Fee. Notwithstanding paragraph (c), in the event that the Parties do not attain the Total Program Goal for any calendar year as specified in paragraph (b) above, PNC Bank will pay to University for that calendar year an Annual Royalty Fee equal to the greater of (i) an amount equal to the Annual Royalty Fee stated in paragraph (c) above for the applicable calendar year multiplied by a fraction, the numerator of which is the number of Accounts for the calendar year and the denominator of which is the Total Program Goal for that calendar year; or (ii) the Minimum Annual Royalty Fee as stated in (b) above.

- (e) Annual Bonus Royalty Fees. In addition to the Annual Royalty Fee, PNC Bank will pay University calendar year performance royalty bonuses as outlined below for such calendar



year in which the cumulative increase/benchmark in Total Program Goal number of Accounts is achieved; such performance royalty bonus each calendar year may not exceed ten percent (10%) (“Annual Bonus Royalty Fee”):

	Total Program Goal							Bonus
Year	2014	2015	2016	2017	2018	2019	2020	
Base Goal	3950	4070	4190	4200	4200	4200	4200	
1.00%	3990	4111	4231.9	4242	4242	4242	4242	\$ 4,000.00
2.00%	4029	4151	4273.8	4284	4284	4284	4284	\$ 8,000.00
3.00%	4069	4192	4315.7	4326	4326	4326	4326	\$ 12,000.00
4.00%	4108	4233	4357.6	4368	4368	4368	4368	\$ 16,000.00
5.00%	4148	4274	4399.5	4410	4410	4410	4410	\$ 20,000.00
6.00%	4187	4314	4441.4	4452	4452	4452	4452	\$ 24,000.00
7.00%	4227	4355	4483.3	4494	4494	4494	4494	\$ 28,000.00
8.00%	4266	4396	4525.2	4536	4536	4536	4536	\$ 32,000.00
9.00%	4306	4436	4567.1	4578	4578	4578	4578	\$ 36,000.00
10.00%	4345	4477	4609	4620	4620	4620	4620	\$ 40,000.00

- (f) The Annual Royalty Fee and the Annual Bonus Royalty Fee is collectively the Royalty Fees.
- (g) All calendar year Royalty Fees will be paid no later than sixty (60) days after the close of the calendar year to which the payment relates. All payments made by PNC Bank hereunder shall be by ACH sent to the account designated in writing by the University, by check to the address designated by the University in writing from time to time, or delivered by hand.
- (h) PNC Bank shall maintain an accurate accounting and record system in connection with all transactions and activities occurring pursuant to this Agreement. PNC Bank shall provide quarterly reports with information pertaining to the number of Accounts opened under the Program. All information provided to University pursuant to this Section 4(h) shall be subject to applicable privacy laws and PNC Bank’s policies regarding the safeguarding of customer information.

## 5. PNC BANK PRODUCTS, SERVICES, AND COMMITMENTS.

- (a) Program. The Program is designed to attract Constituents that do not have an Account with PNC Bank, through informing them of the benefits of an Account, and does not include the solicitation of credit cards or student loans. PNC Bank shall actively advertise and promote the Program as authorized, by law, on the University campus, via approved University mediums and using approved University Marks, as provided herein. The Program shall include: presenting financial seminars to students and employees; establishing and operating a branch bank(s) on campus to provide Financial Services; offering debit card functionality for the University ID Card to access Accounts (in the University’s discretion); and opening new Accounts for University students, faculty, and staff. The debit card functionality if added to the University ID Card shall include point-of-sale debit and ATM transactions.



Notwithstanding the foregoing, the advertising and/or promotion of the Program shall not prohibit PNC Bank from marketing its financial products or services to Constituents who:

1. Are or become PNC Bank customers;
2. Solicits financial information within a PNC Bank branch; or
3. Independently utilizes electronic media for information regarding PNC Bank products and/or services.

**(b) NO RIGHTS GRANTED TO/AGREEMENT NOT APPLICABLE TO UNIVERSITY INTERCOLLEGIATE ATHLETIC OPERATIONS.**

1. PNC Bank hereby agrees and acknowledges that nothing contained in this Agreement provides to PNC Bank any rights or privileges to sponsorship, marketing, or advertisement of any activities related to University's Department of Intercollegiate Athletics ("University Athletics"), its coaches, its student-athletes, its athletic venues or its athletic events. For purposes of this Agreement, "athletic venues" include the WVU Coliseum (basketball/gymnastics/volleyball/wrestling arena); the football complex being Mountaineer Field at Milan Puskar Stadium, the Caperton Indoor Practice Facility, the Milan Puskar Center, and the adjacent outdoor practice fields; Dick Dlesk Soccer Stadium; Shell Building (indoor track and field); the WVU Natatorium (swimming); Hawley Field (baseball); the varsity Tennis Courts; the Boathouse (crew); any future venue, practice facility, or parking lot under the control of University Athletics; and any other immediately adjacent practice facility or parking lot of those venues already listed.
2. PNC Bank acknowledges that University Athletics has existing agreements, and the right to enter into future agreements, with any financial institution for services or sponsorship; a sponsorship may include, but is not limited to, exclusive advertising opportunities in University's athletic venues (signage, promotions), ATM locations at University's athletic venues, media advertising, including but not limited to radio, television, internet, publications and print; and use of University Marks in conjunction with any existing or future agreement with a financial institution.

**(c) PNC Bank Responsibilities.** At PNC Bank's cost, except as the Parties may otherwise agree from time to time, during the Term PNC Bank shall:

1. Offer and administer the Program for the benefit of Constituents;
2. Design all advertising, solicitation, promotional and other related materials concerning the Program (collectively "Program Materials"). Pursuant to the terms of this Agreement, University shall have the right of prior approval of all Program Materials, printed or otherwise that utilize University Marks; such approval shall not be unreasonably conditioned, delayed, or withheld. Notwithstanding the foregoing, it is expressly understood that once a Constituent has become a customer of PNC Bank, PNC Bank shall have the right to communicate information to any Constituent who is a customer which it normally sends to its other customers without having to obtain the prior approval of University. University shall have the right to approve any content and procedures for distributing messages via University systems such as E-Mail and E-News, etc.

3. Market throughout the Term, the Program through the use of mailings, University publications, e-mail, tabling at University new student orientation, and other events as mutually agreed upon by the Parties.
  4. Produce and distribute the Program Materials, including any costs of mailing that are solely attributable to the Program Materials.
  5. Process all applications for Financial Services as submitted by Constituents in accordance with PNC Bank policies and procedures.
  6. Provide all such Constituents with all information, including financial and other disclosures, as required by law.
  7. Provide the necessary technological and banking services to implement ID Card Linking, as determined by the University.
- (d) On-Campus Branch Locations. PNC Bank agrees to continue the operation of a full service on-campus bank branch located in the Mountainlair Student Union building. PNC Bank agrees to operate a new full service on-campus bank branch at a mutually agreed upon prominent location in the new Evansdale Crossing building, upon completion, to be located on University's Evansdale Campus. The Parties hereby agree that PNC Bank shall pay to University annualized rent in the amount of Fifty-Thousand Dollars specifically related to the Evansdale Crossing new branch bank location for each calendar year during the Term of this Agreement beginning upon the execution of the on-campus branch bank retail lease relating to Evansdale Crossing. The Parties may mutually agree to the strategic placement of additional bank branches at locations to be mutually determined. Each on-campus branch bank shall be subject to the terms contained in a separate retail lease substantially similar to the one attached as [Exhibit B](#), "Mountainlair Student Union", all branch bank retail leases shall be coterminous with this Agreement. To the extent that there is a conflict between the terms contained in this Agreement and any branch bank retail lease, the terms of this Agreement shall prevail.
- (e) On-Campus ATM Locations. University grants such licenses necessary to supply and install on the University campus and PNC Bank agrees to provide, install, and support a minimum of fourteen (14) ATMs at mutually agreed upon locations on campus, on the terms and conditions set forth in this Agreement and the ATM Master License Agreement attached hereto and incorporated by reference as [Exhibit A](#). Two (2) of such ATMs shall be located within the Branch Bank (Mountainlair Student Union) leased premise and the remaining ten (10) shall be governed by the terms of the ATM Master License Agreement. Two (2) additional ATMs shall be installed immediately prior to the opening of the Evansdale Crossing branch bank in a prominent location as mutually agreed upon by the Parties. University acknowledges PNC Bank's option to impose a surcharge for the use of its ATMs by any individual using a non-vendor provided debit card. The surcharge shall be in the same amount as the surcharge imposed for use of PNC Bank branch ATMs in the West Virginia area. In the event the branch ATM surcharge is increased, then the surcharge applicable to the ATMs hereunder shall also increase. In no event will PNC Bank impose a surcharge hereunder that is applicable only to Constituents.

- (f) On-Campus Branch Services. PNC Bank during the Term agrees to offer “in-person” Financial Services that include, but may not be limited to, Account Set-Up, Account Problem Resolution, Deposits, Check Cashing, Travelers Checks, Money Orders, Cashier Checks, Coin Services, Foreign Currency Exchange, and University Depository. At a minimum, two (2) PNC Bank branch representatives shall be present to assist in customer service, account maintenance, opening new Accounts, cash checks, make deposits, accept loan applications, and the issuance of traveler’s checks and money orders at each operational branch bank.
- (g) Visa Check Card Availability. Accounts established under this Agreement may be eligible for a co-branded Visa Check<sup>®</sup> Card. PNC Bank shall have the exclusive right to issue the co-branded Visa Check Card. University students, faculty and staff who open an Account pursuant to the Program and are issued a cobranded Visa check card will be allowed services of point of sale (POS) purchases and ATM transactions everywhere the Visa logo is displayed. PNC Bank will issue the Visa Check Card upon request by a PNC Bank Constituent Accountholder.
- (h) PNC Bank shall provide administrative, management, consulting, mechanical, and operational services and personnel sufficiently necessary to fulfill its obligations completely as described herein, in a competent, capable, qualified and professional manner. PNC Bank warrants that all services and activities to be provided by PNC Bank hereunder will be performed in accordance with sound and professional principles and practices, consistent with generally accepted industry standards, and shall reflect PNC Bank’s best professional knowledge, skill and judgment, all of which shall be at a level appropriate to University’s requirements for the services to be performed.
- (i) PNC Bank agrees to comply with all applicable laws in the performance of all actions taken in connection with this Agreement, including, but not limited to, compliance with the Credit Card Accountability Responsibility and Disclosure Act of 2009, 15 U.S.C. § 1601 et seq., including its requirements regarding the protection of young consumers; the Truth in Lending Act, 15 U.S.C. § 1650, 15 U.S.C. § 1637 as amended; the Truth in Savings Act, 12 U.S.C. § 4301 et seq., and the CAN-SPAM Act of 2003, 15 U.S.C. § 7701, and their implementing regulations.
- (j) PNC shall be duly licensed to provide services in the State of West Virginia, including maintaining the status of being an approved depository for the State of West Virginia (as authorized by the WV State Treasurers office).

#### 6. PNC BANK/UNIVERSITY EMPLOYEES.

- (a) University and PNC Bank shall have the sole and exclusive right to select, direct, discipline and terminate their own respective employees and to determine the terms and conditions of their employment in accordance with applicable law. Each Party shall have the right to inform the other Party of any employee of such other Party, whose conduct in its good faith opinion, violates the terms of this Agreement or is otherwise unsatisfactory. Within sixty (60) days of receiving an employee-related complaint, the Party receiving such complaint shall address such issues raised in accordance with its established employment policies.



- (b) PNC Bank shall only employ individuals to perform its obligations hereunder who are authorized to work in the United States.
- (c) When on or about the property of University, PNC Bank agrees that its employees, contractors and agents shall observe such reasonable rules and regulations as University shall reasonably prescribe from time to time for the general population of its campus and which upon request shall be made available to PNC Bank.
- (d) PNC Bank shall be fully responsible for the acts of its employees, contractors and agents and shall take all reasonable precautions to prevent injury or loss to persons and property and shall be responsible for all damage to persons or property caused by PNC Bank or its employees, contractors or agents. Further, PNC Bank assumes all liability arising out of dishonesty of its employees, contractors or agents.

## 7. COMMITMENTS OF UNIVERSITY.

University shall, during the Term of this Agreement:

- (a) Subject to Exceptions as outlined in existing contracts, permit PNC Bank the right to offer the Program to Constituents.
- (b) Subject to Exceptions as outlined in existing contracts provide marketing opportunities as shall be mutually agreed upon by the Parties in order to promote the Program, which marketing opportunities shall include, by way of example and not limitation:

### Students

1. On-campus tabling and promotions at least four (4) times a year, including distribution of Program materials at University locations and certain special University events such as freshmen orientations, student fairs, etc.
2. Annual communication describing the Program to all students (including incoming freshmen) via a delivery method that is mutually agreed upon by both Parties
3. Annual direct mail to New Student List.
4. Program announcements/communications to those on the Student List.
5. Support in scheduling and setting up on-campus personal financial management seminars.
6. On-campus promotions, give-aways, etc. by PNC Bank.
7. Inclusion in mutually agreed upon University publications and mailings.
8. Optional (upon mutual agreement), Web link on University's student focused web area to a customized site at [www.pnc.com/wvu](http://www.pnc.com/wvu).

### Faculty/Staff

1. On-campus tabling at University events such as direct deposit fairs, health & wellness/benefits fairs, etc.
2. Distribution of Program communications on a schedule that is reasonably acceptable to University.
3. Support in setting up on-campus financial seminars with Human Resources and individual departments.
4. Distribution of PNC Bank materials at new hire orientation programs.
5. Support of PNC Bank's Web based tool to attract new participants to the Program.

6. Advertising in University publications and mailings.
7. Optional (upon mutual agreement) Web link on University's employee-focused web area to a customized site at [www.pnc.com/wvu](http://www.pnc.com/wvu).

#### Graduates

1. Program announcements/communications to graduates.
  2. Permit on-campus tabling at certain University events specifically for graduating students.
  3. During the Program Period, University will grant to PNC Bank a limited, non-exclusive, non-transferable license to use certain University Marks in conjunction with the Program, including the promotion thereof, in accordance with the terms of this Agreement. Any and all proposed use of University Marks shall be presented for written approval to University's Trademark Licensing Unit prior to actual use in the market and such approval shall not be unreasonably withheld, conditioned or delayed. Such right and license to use University Marks shall not apply or extend to any other product or service offered by PNC Bank.
- (c) For the purpose of annual communication of the Program, University will provide opportunities to include Program Materials with mailings/publications directed to current students, faculty and staff on behalf of PNC Bank on a schedule and in a manner that is mutually acceptable to the Parties.
- (d) According to a mutually agreed schedule, University policies and procedures for privacy, security, and confidentiality, the Parties will implement an optional (upon mutual consent) ID Card Linking services.
- (e) Prohibit any other financial institution from establishing and/or operating a manned banking branch on campus.
- (f) For purposes of implementing the optional University ID Card-Linking, University will meet certain requirements pertaining to the design and encoding of the University ID Card. University will include the following elements when configuring the University ID Card:
1. Encoding of track 2 of the magnetic stripe on the back of the University ID Card.
  2. A disclosure statement printed on the back of the card to read as follows, "ATM function requires a linked PNC Bank deposit account."
  3. Logos required by PNC Bank or its vendors including Star®, Plus and PNC Bank.
  4. Displaying the issued card number on the front of the University ID Card
- (g) In addition to the provisions of this Section 7, University shall provide PNC Bank access to such University resources as may be appropriate and necessary to promote the Program in appropriate mailings and other applicable media that are provided to incoming and returning Constituents as mutually agreed upon. Notwithstanding the foregoing, University shall mail annually, at PNC Bank's expense, Program materials prepared by PNC Bank to then-graduating students pursuant to Section 7(b) above.

## 8. JOINT OBLIGATIONS.

(a) The Parties agree that they shall:

1. Issue a press release, jointly approved, upon execution of this Agreement;
2. Conduct, in good faith, quarterly and annual reviews of the success of the Program in accordance with Section 5(a); reviews shall be conducted throughout the Term of this Agreement;
3. Engage in good faith discussions regarding the best manner to implement a program linking the University ID Card to Accounts, upon the request of the University; and
4. Execute each agreement that constitutes an Attachment hereto and which is incorporated into this Agreement.

(b) Except as otherwise permitted pursuant to this Agreement, neither Party shall use the name or Proprietary Intellectual Property of the other Party in any advertising or promotional materials without the prior written consent of such other Party.

## 9. UNIVERSITY MARKS.

(a) Subject to the terms and conditions of this Agreement, University grants PNC Bank a non-exclusive license to use and publish University's name, logos, marks, symbols, graphics, artwork and photographs ("Licensed Marks"), as the same may be University-owned, used, developed or acquired during the Term solely in support of the Program; provided, however, Licensed Marks may not be placed on any apparel or other goods for sale or resale without University's express written permission, which shall not be unreasonably withheld, conditioned, or delayed.

(b) Use of Marks. The use of University Marks and the content of any message or advertising in any form whatsoever, including but not limited to broadcast media, print or electronic media, is subject to strict review and approval in advance by the University. University will permit PNC Bank to use the University logo in customized co-branded brochures, flyers, promotional materials, and letter of introduction to students, faculty and staff outlining the services offered by PNC Bank, subject to approval of such use in writing in advance by University (which approval shall not be unreasonably withheld). PNC Bank understands use of the Licensed Marks will be based on the following licensing and approval guidelines (all use must be approved in writing):

### Guidelines for the Use of Licensed Marks:

<b>SITUATION</b>	<b>CONTACT</b>	<b>ACTION</b>
Use of University marks contained within PNC Bank's logo		This is not available



Use of University marks on print ads, including program ads, billboard ads, newspaper flyers, promotional material, letters, brochures, etc.	Licensing Director (304) 293-8026	All items containing University marks must be approved prior to use of University marks.
Use of University Marks on commercial items for promotional give-away	Licensing Director (304) 293-8026 Collegiate Licensing Company (770) 956-0520	The royalty-bearing items must be produced by a University licensee who is in good standing with the Collegiate Licensing Company. All items containing University marks must be approved prior to use of mark.
Marks include:		See <a href="#">Exhibit C: "Mark Sheet"</a>  (All Use subject to University approval.)
Appropriate use of marks	Licensing Director (304) 293-8026	Refer to University Visual Identity Guidelines

- (c) University is and shall remain the owner of all rights in and to University Marks, as the same now exist or as they may hereafter be modified. Upon the termination of this Agreement, all license rights conveyed by University to PNC Bank with respect to the use of University Marks under this Article 9 shall cease.

#### 10. INSURANCE.

- (a) General Requirements. All insurance policies required by this Article 10 shall be issued by insurance carriers authorized to issue insurance in the State of West Virginia and who hold an A.M. Best rating of A- or better. If at any time during the Term an insurer issuing a required policy of insurance has an A.M. Best rating less than A-, the University may in its sole discretion require the PNC Bank to obtain a replacement policy of insurance issued by an insurance carrier with an A.M. Best rating of A- or better. The West Virginia University Board of Governors shall be named as additional insured on all liability policies hereunder and no policy may be cancelled without giving thirty (30) day written notice to the University.
- (b) Commercial General Liability Insurance. PNC Bank shall purchase and maintain Commercial General Liability and Property Insurance covering the types of claims set forth below which may arise out of or result from PNC Bank's operations under this Agreement and for which PNC Bank may be legally responsible: (i) claims for damages because of bodily injury, sickness or disease or death of any person other than PNC Bank's employees; (ii) claims for damages insured by usual personal injury liability coverage which are sustained: (a) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (b) by another person; (iii) claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom; (iv) claims for damages because of bodily injury, death of a person or property damages, including claims arising out of ownership, maintenance or use of a motor vehicle; (v) contractual liability insurance; (vi) completed operations and (vii) product liability. The University shall be an additional named insured on PNC Bank's

Commercial General Liability insurance policy. The minimum coverage amounts of the PNC Bank's Commercial General Liability insurance policy shall be Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) aggregate.

- (c) Workers Compensation Insurance; Employers Liability Insurance. PNC Bank shall purchase and maintain Workers' Compensation Insurance as will protect PNC Bank from claims under applicable workers' or workmen's compensation, disability benefit and other similar employee benefit acts. PNC Bank shall purchase and maintain Employer's Liability Insurance covering bodily injury (including death) by accident or disease to any employee which arises out of the employee's employment by PNC Bank. The Employer's Liability Insurance required of PNC Bank hereunder may be obtained by PNC Bank as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance required to be obtained and maintained by PNC Bank hereunder. The limits of liability for the Employer's Liability Insurance required hereunder shall be as set forth in the Special Conditions. Coverage amounts under the Workers Compensation Insurance shall be in accordance with applicable law. The minimum coverage amount under the Employers Liability insurance policy shall be Two Million Dollars (\$2,000,000).
- (d) Casualty Insurance. PNC Bank shall maintain in effect one or more policies of casualty insurance covering: (a) all improvement in, on or about the Branch premises and (b) trade fixtures, merchandise and other personal property from time-to-time in, on or about the Branch premises. Such policy(ies) shall include coverage and protection against any peril included in the definition of "fire and extended coverage," malicious mischief, theft, sprinkler leakage, earthquake sprinkler leakage, and flood damage. Proceeds of such insurance shall be used to repair or replace damaged/destroyed property.
- (e) PNC Bank Indemnity of the University. Unless arising solely out of the active negligence, gross negligence or willful misconduct the University, PNC Bank shall indemnify, defend and hold harmless the Indemnified Party from and against any and all damages, losses, claims, demands or liabilities whether for damages, losses or other relief, including, without limitation attorneys fees and costs which arise, in whole or in part, from this Agreement. or the acts, omissions or other conduct of PNC Bank or its officers, directors, employees, agents, independent contractors or representatives. PNC Bank's obligations under the foregoing include without limitation: (i) injuries to or death of persons; (ii) damage to property; or (iii) theft or loss of property; and (vi) other losses, liabilities, damages or costs resulting from, in whole or part, any acts, omissions or other conduct of PNC Bank or its officers, directors, employees, agents, independent contractors or representatives. For purposes of the preceding, the Indemnified Parties are the University and its Board of Directors, officers, employees, agents and representatives. If any action or proceeding, whether judicial, administrative, arbitration or otherwise, shall be commenced on account of any claim, demand or liability subject to PNC Bank's obligations hereunder, and such action or proceeding names any of the Indemnified Parties as a party thereto, PNC Bank shall, at its sole cost and expense, defend the named Indemnified Parties in such action or proceeding with counsel reasonably satisfactory to the named Indemnified Parties. In the event that there shall be any judgment, award, ruling, settlement, or other relief arising out of any such action or proceeding to which any of the Indemnified Parties are bound by, PNC Bank shall pay, satisfy or otherwise discharge any such judgment, award, ruling, settlement or relief; PNC Bank shall indemnify and hold harmless the Indemnified Parties from any and all liability or responsibility arising out of any such



judgment, award, ruling, settlement or relief. PNC Bank's obligations hereunder shall survive notwithstanding expiration of the Term or the earlier termination of this Agreement.

#### 11. REPRESENTATIONS AND WARRANTIES.

(a) University represents and warrants, as of the Effective Date and during the Term of this Agreement, that:

1. University is duly organized, validly existing and in good standing under the laws of the State of West Virginia and has the requisite power and authority to enter into this Agreement;
2. The execution, delivery and performance of this Agreement by University is within University's powers, has been duly authorized by all necessary action, and does not violate, conflict with or constitute a breach under any charter, bylaw, law, regulation, contract or obligation applicable to University;
3. This Agreement constitutes a legal, valid and binding obligation of University, enforceable against it in accordance with its terms;
4. No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the execution, delivery and performance by University of this Agreement;
5. University's employees, directors, officers or agents shall not make any representation, warranty, promise or statement to any customer regarding the approval, decline, collection, processing, or any other handling of customer's products or services as provided by PNC Bank. Any questions regarding PNC Bank's products or services shall be immediately referred to PNC Bank;
6. No information furnished or to be furnished by University to PNC Bank in connection with this Agreement is inaccurate in any material respect as of the date it is dated or contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not misleading; provided, however, that the Parties recognize that the nature of the information maintained by University with respect to the Constituents, and the Mailing Lists is subject to change and may be updated and outdated from time to time and that the information contained therein may not be completely accurate. University warrants that in the event that it undertakes to commence doing so, it shall provide PNC Bank with updated information in a timely manner;
7. University has not entered and will not enter any agreement that would prohibit University from fulfilling its duties and obligations under the terms of this Agreement; and
8. During the Term of this Agreement, University: (a) will promote the Program, and (b) has granted PNC Bank the exclusive right to market the Program to Constituents on campus and has not granted that right to any other financial institution.

(b) PNC Bank represents and warrants as of the Effective Date and during the Term of this Agreement that:

1. PNC Bank is a national banking association organized, validly existing and in good standing under the laws of the United States, and is FDIC insured, and has the requisite corporate power and authority to enter into this Agreement;
2. PNC Bank's execution, delivery and performance of this Agreement are within PNC Bank's corporate powers, have been duly authorized by all necessary corporate action and do not contravene PNC Bank's bylaws or charter or any law or contractual restrictions to which it is subject;
3. Any authorization or approval or other action by, or notice to or filing , any governmental authority or regulatory body that is required for the execution, delivery and performance by PNC Bank of this Agreement shall be obtained in a timely manner;
4. This Agreement constitutes a legal, valid and binding obligation of PNC Bank, enforceable against it in accordance with its terms;
5. No information, schedule, exhibit, financial information furnished or to be furnished by PNC Bank to University in connection with this Agreement is inaccurate in any material respect as of the date it is dated or contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not misleading; and
6. In its performance and activities hereunder, including but not limited to its creation and provision of the Program Materials used by PNC Bank to generate applications, Accounts or any and all other customer relationships, PNC Bank shall, at all times, comply with all applicable federal, state or local rules, laws or regulations.

## 12. SIGNAGE.

University shall permit PNC Bank to place signs advertising the Program in locations on University's campus that are mutually acceptable to both Parties. PNC Bank must have University's prior written approval for size, content and colors of any signs, which consent shall not be unreasonably withheld, conditioned or delayed. Written approval shall be provided within ten (10) business days of the request by PNC Bank. Trademark Licensing will need to review and provide written approval for use of the trademarks for such signage.

## 13. ADVERTISING, PROMOTION AND RELATED ACTIVITIES.

- (a) All advertisements and press releases pertaining to the Program shall be mutually agreed upon. In no event shall either Party produce any advertising or other materials that include references to the Program, the Agreement or the other Party or the other Party's Proprietary Intellectual Property, without such other Party's prior written consent. Written approval shall not be unreasonably withheld and a response shall be provided within ten (10) Business Days of the request of a Party.

- (b) The Parties may conduct or collaborate on such co-branded promotional activities or materials to which they may mutually agree. Further, the Parties agree in advance that all co-branded promotional activities or materials which are not targeted to University's students shall be restricted to University property only; however, co-branded promotional activities or materials that specifically target the University's students shall have no such restrictions.
- (c) PNC Bank is not permitted to use University Marks in conjunction with any preference to University Athletics, its events, teams, coaches or student-athletes; including but not limiting to, the use of photographs, illustrations, logos or other graphic material that, in the sole discretion of the University, implies reference to University Athletics or any of its programs.
- (d) PNC Bank is not permitted to conduct advertisements, marketing, promotions or tabling at any athletic venue or in conjunction with any University Athletics event, unless authorized.
- (e) PNC Bank may, but is not obligated to, purchase advertising in the Daily Athenaeum or on WWVU-FM 91.7, the University's radio station commonly referred to as "U92".

#### 14. INDEMNIFICATION.

- (a) Indemnification by PNC Bank. PNC Bank shall indemnify, defend and hold harmless University, its officers, directors, employees, and agents from and against all claims, suit, or proceedings ("Losses") arising directly or indirectly, out of or relating to the following:
  - 1. breach of any representation, warranty or obligation under this Agreement by PNC Bank, or any of its officers, directors, employees or agents;
  - 2. violation by PNC Bank, its officers, directors, and employees, of any applicable law, rule, regulation or administrative order or any statement, letter or guidelines issued by applicable bank regulatory authority in connection with performance under this Agreement;
  - 3. negligence, gross negligence or willful misconduct of PNC Bank or its officers, directors, employees, agents or subcontractors, in connection with its duties or obligations under the terms of this Agreement, except to the extent such Losses result from the negligence, gross negligence or willful misconduct of University; or
  - 4. the use and/or occupancy by PNC Bank of University premises in connection with the PNC Bank Program and other services to be rendered hereunder.
- (b) Indemnification Procedures for Third Party Claims. In any case where the University is seeking indemnification under this Agreement for a third party claim, suit or proceeding (herein referred to as a "Third Party Claim"), such indemnification will be conditioned on University's compliance with the following procedures:
  - 1. The University will give prompt written notice to PNC Bank from whom indemnification is sought of each Third Party Claim for indemnification under this Agreement, specifying the amount and nature of the claim (herein referred to as a

“Notice of Claim”). Provided that such Notice of Claim is given (unless the failure to provide such Notice of Claim does not prejudice the interests of PNC Bank), and PNC Bank has not contested in writing the University’s right to indemnification as set forth herein, PNC Bank, at its own expense and using counsel of its own choosing, will promptly defend, contest and otherwise protect against any such claim, suit or proceeding. If within a reasonable time period following the receipt of a Notice of Claim, PNC Bank contests in writing the University’s right to indemnification with respect to the Third Party Claim described in the Notice of Claim, the University will defend against and contest such Third Party Claim.

2. If PNC Bank is defending against the Third Party Claim, the University may, but will not be obligated to, participate in the defense of any such Third Party Claim, suit or proceeding, at its own expense and using counsel of its own choosing. The Parties will cooperate and provide such assistance as the other Party reasonably may request in connection with the defense of the Third Party Claim. PNC Bank will inform the University on a regular basis of the status of such claim, suit or proceeding and the PNC Bank’s defense thereof.
3. In any Third Party Claim the defense of which is controlled by PNC Bank, PNC Bank will not, without University Counsel’s prior written consent, compromise or settle such claim, suit or proceeding if: (a) such compromise or settlement would impose an injunction or other equitable relief upon the University; or (b) such compromise or settlement does not include the third party’s release of the University from all liability relating to such claim, suit or proceeding for which the University is entitled to be indemnified.
4. If PNC Bank fails to timely defend, contest, or otherwise protect against any Loss, and fails to contest in writing University’s right to indemnification, University may, but will not be obligated to, defend, contest or otherwise protect against the same, and make any compromise or settlement thereof and recover the entire costs thereof from PNC Bank, including reasonable fees and disbursements of counsel and all amounts paid as a result of such claim, suit or proceeding and the compromise or settlement thereof.
5. The obligation of PNC Bank to indemnify the University’s officers, directors, employees and agents in accordance with this Article 14 may be enforced exclusively by the University and nothing herein will be construed to grant such officers, directors, employees and agents any individual rights, remedies, obligations or liabilities with respect to PNC Bank. The Parties may amend or modify this Agreement in any respect without the consent of such officers, directors, employees and agents.

#### 15. LIMITATION OF LIABILITY.

**NO PARTY SHALL HAVE ANY LIABILITY FOR ANY INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOSS OF PROFIT OR BUSINESS OPPORTUNITIES, WHETHER OR NOT THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH; PROVIDED, HOWEVER, THAT THIS LIMITATION OF LIABILITY WILL NOT APPLY TO ANY CLAIM ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR**

**CONTRACTORS, ANY CLAIM ARISING FROM BREACH OF THE CONFIDENTIALITY PROVISIONS OF THIS AGREEMENT OR ANY THIRD PARTY CLAIM.**

**16. TAXES.**

- (a) PNC Bank shall pay all taxes properly assessed against it or its property by any taxing authority because of its operations and conduct of its business (including PNC Bank's income, employment of personnel, franchise, sales, use and excise taxes) and shall pay all personal property taxes assessed on its fixtures, equipment and furnishings. PNC Bank shall have no obligation to pay taxes related to University's operations or conduct of its business (including University's income, employment of personnel, franchise, sales, use and excise taxes).
- (b) University shall pay all taxes properly assessed against it or its property by any taxing authority because of its operations and conduct of its business (including University's income, employment of personnel, franchise, sales, use and excise taxes) and shall pay all personal property taxes assessed on its fixtures, equipment and furnishings. University shall have no obligation to pay taxes related to PNC Bank's operations or conduct of its business (including PNC Bank's income, employment of personnel, franchise, sales, use and excise taxes).
- (c) PNC Bank shall pay any and all taxes, assessments and other charges of whatever nature or kind (including but not limited to any business improvement district assessment) that are assessed, levied, imposed or may or do become a lien on University's premises as a direct result of PNC Bank's use or occupancy of University premises under the Master License Agreement.

**17. ASSIGNMENT/SUBLICENSE/BINDING EFFECT.**

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and permitted assigns; provided, however, that neither this Agreement, nor any of the rights and obligations hereunder, may be assigned without the prior written consent of the other Party. Notwithstanding anything provided in the foregoing sentence, PNC Bank may assign this Agreement to any affiliate of PNC Bank with thirty (30) days prior written notice to the University.

**18. RIGHTS OF TERMINATION.**

- (a) Either Party may terminate this Agreement upon a material breach of the other's obligations under the terms of this Agreement. The terminating Party shall so notify the other Party in writing and termination shall become effective ninety (90) calendar days after receipt of such notice unless the breaching Party has within such time cured the breach or, for matters that cannot be fully cured within such time, commenced and continued to diligently pursue appropriate corrective action. Subject to the limitations set forth in Article 15 "Limitation of Liability" above, either Party may pursue all available remedies at law or in equity to recover for or remedy a breach hereunder.
- (b) Either Party may, in its sole discretion, terminate this Agreement if the other Party is declared insolvent or adjudged bankrupt by any court of competent jurisdiction or makes



an assignment for the benefit of creditors or if a petition in bankruptcy, for reorganization of or an arrangement with creditors under any federal or state law is filed by or against such Party that has not been dismissed within thirty (30) days of its filing.

- (c) Either Party may terminate this Agreement if the Agreement is assigned without the prior written consent of the non-assigning Party if such consent is required pursuant to Article 17 above.
- (d) The termination or expiration of this Agreement shall not relieve either Party of any obligation or liability accrued hereunder prior to such termination, nor affect or impair the rights of either Party arising under the Agreement prior to such termination, except as expressly provided herein.
- (e) The Parties hereto agree that the obligations of Sections 14, 15, 16, 19 and 26 hereof shall survive the termination of this Agreement.
- (f) PNC Bank will amortize its capital expenditures pursuant to Generally Accepted Accounting Principles, for the future **Evansdale Connector Branch**, on a straight-line basis over the remaining Initial Term beginning as of the date the future Evansdale Connector Branch opens on the Evansdale campus. If termination is requested by University prior to the Initial Expiration Date, PNC Bank will be reimbursed for the unamortized cost of all capital expenditures made in connection with this Agreement, not otherwise removed or in PNC Bank's possession.

#### 19. CONFIDENTIALITY.

- (a) Except as expressly provided below, each Party agrees that all information, whether oral or written or via computer disk or electronic media, to which the other is given access or is made available to the other, including to each Party's directors, officers, employees, agents, auditors, legal counsel or representatives ("Representatives") pursuant to this Agreement, is referred to hereinafter as "Confidential Information." Confidential Information shall include, without limitation, relating to this Agreement, all technology, know-how, processes, software, databases, Constituent information, trade secrets, contracts, proprietary information, all historical and projected financial, business strategies, operating data and organizational and cost structures, product descriptions, pricing information, customer information, which includes, without limitation, names, addresses, telephone numbers, account numbers, demographic, financial and transactional information or customer lists, whether received before or after the date hereof. Confidential Information also includes information of any parent, subsidiary or Affiliate of PNC Bank or University.
- (b) Except as expressly provided below or with the other Party's prior written consent, each Party agrees to hold all Confidential Information of the other in confidence, that it will not disclose any Confidential Information of the other to any third party, other than its Representatives who have a need to know such information in connection with this Agreement and that it will not use any such Confidential Information for purposes other than in connection with this Agreement. Each Party agrees to inform its Representatives of the confidential and valuable nature of the Confidential Information and of its obligations under this Agreement. It is understood and agreed that the obligation to protect

Confidential Information shall be satisfied if the Party receiving such information utilizes the same control (but no less than reasonable control) as it employs to avoid disclosure of its own confidential and valuable information, including, without limitation, having the appropriate policies and procedures to (a) ensure the security and confidentiality of the Confidential Information, (b) protect against any anticipated threats or hazards to the security or integrity of such Confidential Information and (c) protect against unauthorized access to or use of such Confidential Information. As applicable to this Agreement, the Parties shall comply with the provisions of the Gramm-Leach-Bliley Act (Pub. L. 106-102), Section 628 of the Fair Credit Reporting Act, Section 216 of the Fair and Accurate Credit Transactions Act, the Family Educational Rights and Privacy Act (FERPA), and any implementing regulations or guidelines.

- (c) As a condition of this Agreement, it is agreed that neither Party (or their respective Representatives) without the prior consent of the other will disclose to any person any of the terms, conditions or other facts pertaining to this Agreement. The Parties may, however, make such disclosures to or as may be required by the appropriate local, state or federal agencies, courts, tribunals, or other regulatory or oversight authorities. Any media releases or public announcements or disclosures by either PNC Bank or University relating to this Agreement shall be coordinated with and approved by the other.
- (d) The Parties may disclose Confidential Information pursuant to a requirement or request of a governmental agency or pursuant to a court or administrative subpoena, order or other such legal process or requirement of law, or in defense of any claims or causes of action asserted against it; provided, however, that it shall (a) first notify the other of such request or requirement, or use in defense of a claim, unless such notice is prohibited by statute, rule or court order, (b) attempt to obtain the other's consent to such disclosure, and (c) in the event consent is not given, to agree to permit a motion to quash, or other similar procedural step, to frustrate the production or publication of information. Nothing herein shall require either Party to fail to honor a subpoena, court or administrative order, or a requirement on a timely basis. In the absence of consent of a Party as provided above, if a Party is, in the opinion of its counsel, compelled to disclose Confidential Information upon pain of liability for contempt or other censure or penalty, such Party may disclose such Confidential Information to the relevant court or other tribunal without liability hereunder.
- (e) With the exception of PNC Bank customer information and the Mailing Lists, which shall be protected in all circumstances, it is understood and agreed that no information shall be within the protection of this Agreement where such information: (a) is or becomes publicly available through no fault of the Party to whom such Confidential Information has been disclosed; (b) is released by the originating Party to anyone without restriction; (c) is rightly obtained from third Parties, who, to the best of a Party's knowledge, are not under an obligation of confidentiality; (d) was known by the receiving Party, prior to its disclosure, without any obligation to keep it confidential as evidenced by tangible records kept by the receiving Party in the ordinary course of business; or (e) is independently developed by the receiving Party without reference to the originating Party's Confidential Information.
- (f) Each Party shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted Confidential Information received from, or on behalf of, the other Party hereto.

- (g) Each Party shall report to the other Party any use, access or disclosure of Confidential Information not authorized by this Agreement. The report shall be made within one (1) business day after a Party learns of such use, access or disclosure. The report shall identify to the best of the Party's knowledge at the time of the report: (i) the nature of the unauthorized use, access or disclosure, (ii) who made the unauthorized use or access or received the unauthorized disclosure, (iii) what the Party has done or shall do to mitigate any deleterious effect of the unauthorized use, access or disclosure, and (iv) what corrective action the Party has taken or shall take to prevent future similar unauthorized use, access or disclosure. No public disclosure of such unauthorized use, access, or disclosure shall be made without the prior consultation with and consent of the other Party.
- (h) Each Party shall, upon request and as directed by the other Party, promptly deliver to the originating Party or destroy all documents and other tangible media that contain or reflect Confidential Information of the originating Party (including all copies, reproductions, digests, abstracts, analyses and notes) in its possession or control, including any related computer files.
- (i) The Parties hereto acknowledge that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and that the originating Party may be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction with respect to its Confidential Information.

## 20. ENTIRE AGREEMENT.

This Agreement and the Attachments incorporated herein, if any, constitutes the entire agreement and understanding among the Parties with respect to the subject matter herein and the transactions contemplated herein and any and all previous understandings, proposals, negotiations, agreements, commitments and representations, whether oral or written, are merged herein and are superseded hereby. If there is a conflict between the terms of this Agreement and any Attachments attached hereto and incorporated herein, the terms of this Agreement shall control.

## 21. AMENDMENT.

No modification, amendment or waiver of any provisions of this Agreement shall be valid unless it is in writing and signed by the Parties.

## 22. FORCE MAJEURE.

Neither Party shall be held liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control or without its fault or negligence, such as acts of God, acts of civil or military authority, government regulations, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accident, floods, power blackouts, volcanic action, major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities, or acts or omissions of transportation common carriers or suppliers.



## 23. HEADINGS, CAPTIONS, LINKS, ETC.

The headings contained in this Agreement are solely for the convenience of the Parties and should not be used or relied upon in any manner in the construction or interpretation of this Agreement.

## 24. SEVERABILITY.

Any provision of this Agreement held to violate a law or regulation shall be deemed void and all remaining provisions shall continue in full force and effect. The Parties shall in good faith attempt to replace an invalid or unenforceable provision with one that is valid and enforceable and which comes as close as possible to expressing or achieving the intent of the original provision.

## 25. FERPA.

- (a) Notwithstanding anything to the contrary contained in this Agreement, University's ability to provide any information to PNC Bank is subject to and conditioned upon the Family Education Rights in Privacy Act (FERPA), other applicable laws and regulations, and University's policies and procedures. Except for the files contemplated with respect to the linking service, University shall not be obligated to provide any information to PNC Bank which would require University to obtain the relevant individual's written consent prior to doing so.

## 26. GOVERNING LAW/JURISDICTION.

This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia without regard to its provisions relating to the conflict of laws. For the purpose of any suit, action or proceeding arising out of or relating to this Agreement, each of the University and PNC Bank hereby irrevocably consents and submits to the exclusive jurisdiction of any court of competent jurisdiction in the State of West Virginia.

## 27. NOTICES.

All notices which either Party may be required or desire to give to the other Party shall be in writing and shall be given and deemed served on the date when hand delivered in writing to the applicable Party, or if sent by certified mail, return receipt requested, or by courier service, notice shall be deemed served on the date received. Notices sent by mail or courier shall be sent to the following addresses:

If to University then to:

West Virginia University  
Chief Procurement Officer  
Department of Purchasing, Contracts and Payment Services  
P.O. Box 6024  
Morgantown, WV 26506-6024

With a copy to:

West Virginia University

Office of the Vice President for Legal Affairs and General Counsel  
105 Stewart Hall  
Morgantown, WV 26506-6204  
Attn: General Counsel

If to PNC Bank, then to:

PNC Bank, National Association  
Two PNC Plaza  
620 Liberty Avenue  
Pittsburgh, Pennsylvania 15222  
ATTN: Manager, University Banking

With a copy to:

PNC Bank, National Association  
One PNC Plaza  
249 Fifth Avenue  
P1-POPP-21-1  
Pittsburgh, Pennsylvania 15222  
ATTN: Chief Counsel, Consumer Bank

The names and addresses for the purpose of this Section may be changed by either Party giving written notice of such change in the manner herein provided for giving notice. Unless and until such written notice is actually received, the last name and address stated by written notice or provided herein, if no such written notice of change has been received, shall be deemed to continue in effect for all purposes hereunder.

#### 28. RELATIONSHIP.

Nothing in this Agreement is intended to nor does it create the relationship of employer and employee, principal and agent, partners or joint venturers between University and PNC Bank. Each Party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any person other than the Parties hereto.

#### 29. WAIVER.

Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by all Parties. The failure or delay of any Party to require performance of any provisions shall not constitute any waiver thereof, unless and until such performance has been waived by such Party in writing in accordance with the terms hereof. No waiver by any Party of any term or condition of this Agreement, in any one or more instances shall be deemed to be construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by law or otherwise afforded, shall be cumulative and not alternative.

#### 30. COUNTERPARTS.

This Agreement may be executed in two or more counterparts each of which shall be deemed a duplicate original.

**[SIGNATURE PAGE TO FOLLOW]**

**IN WITNESS WHEREOF**, intending to be legally bound, each Party hereto has caused its duly authorized representative to execute duplicate counterparts of this Agreement on its behalf, as of the Effective Date.

PNC Bank, National Association  
("PNC Bank")

X 

Print: Nickolas Certo

Title: SVP, university Banking

Date: 4/7/14

West Virginia University Board of  
Governors on behalf of West Virginia  
University ("University")

X 

Print: BRENDA MOWEN

Title: CFO

Date: 4/11/2014

## EXHIBIT A

### ATM MASTER LICENSE AGREEMENT

**THIS ATM MASTER LICENSE AGREEMENT** ("ATM Agreement"), is effective as of the 1st day of April 2014, ("Effective Date"), and entered into by and between and the West Virginia University Board of Governors on behalf of West Virginia University ("University"), and PNC Bank, National Association, ("PNC Bank"). This ATM Agreement is an exhibit to and an integral part of that certain West Virginia University Banking Services Agreement of even date herewith between University and PNC Bank (the "Agreement"). University and PNC Bank are sometimes individually referred to herein as a "Party" and collectively as the "Parties." Capitalized terms used in this ATM Agreement and not otherwise defined herein, shall have the meaning given them in the Agreement.

**WHEREAS**, The Parties have entered into the West Virginia University Banking Services Agreement pursuant to which PNC Bank has agreed to provide the Program, including ATMs, to Constituents; and

**WHEREAS**, the Parties agree that the ATMs shall be subject to the terms of the Agreement, this ATM Agreement and the specific Licenses (as defined below),

**NOW THEREFORE**, in consideration hereunder, the mutual covenants and agreements herein set forth by each Party to be kept and performed, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly acknowledged by each Party. WVU and PNC Bank hereby agree as follows with the intent to be legally bound:

#### 1. LICENSE.

The Parties shall from time to time enter into licenses, each such license to be in the form which is attached hereto as Schedule A which is a supplement to this ATM Agreement and which, when executed shall constitute a License ("License"), to cover such ATMs and to contain such special provisions respecting terms, covenants, conditions and provisions as the Parties may agree. Each such License shall, in addition to its special provisions, incorporate by reference all of the terms, conditions, covenants and provisions of this ATM Agreement and the Agreement, as applicable.

#### 2. GRANT OF LICENSE.

University hereby grants to PNC Bank, or its affiliate, the right, upon the terms and conditions hereinafter set forth, to install, maintain, service, repair, replace and operate ATMs, together with related Equipment and Installations, (as described in Section 5 hereof), on real property owned by the University ("University Property") at the location(s) (the "Locations") set forth in the Licenses.

#### 3. LOCATION OF ATMs.

The ATMs shall be located within or about the Locations as mutually agreed upon by the Parties. The initial Locations will be as indicated in the Licenses. The ATMs, together with related Equipment and Installations, may be relocated only upon the mutual agreement of the Parties, provided that the Party requesting relocation will bear the cost thereof including the cost of relocating the aforesaid Equipment and Installations. Requests for relocation hereunder must be



made no less than thirty (30) days prior to the date that relocation is desired. An ATM may be moved temporarily for security reasons, in the event of fire, casualty, riot or other emergency, provided that University uses reasonable efforts to promptly notify PNC Bank of such event, and to protect the security of the ATM(s) in accordance with University's customary security standards used for its facilities generally.

#### 4. ATMs.

- (a) PNC shall maintain twelve (12) ATMs under this Agreement. Eight (8) of the installed ATM(s) shall perform cash withdrawals, transfers and balance inquiries. Four (4) of those ATMs are also equipped to accept deposits and cash checks. (Ten (10) ATMs provided under the Agreement shall be governed by this ATM Agreement and two (2) shall be located in the Branch. An additional two (2) ATMs equipped to accept deposits and cash checks shall be located in the Second Branch, upon its opening, for a total of fourteen (14) ATMs.
- (i) All ATMs subject to this ATM Agreement will have the ability to be upgraded to provide additional capabilities as the Parties may mutually agree from time to time, including, without limiting the foregoing, the ability to display screen graphics approved by University. PNC Bank shall have the right, with University's approval, not to be unreasonably withheld, conditioned or delayed, to substitute a different make, model or type of ATM from time to time.
- (ii) The ATMs shall perform the functions described in Section (a) above for users holding valid access cards. The ATMs may be part of several networks pursuant to network agreements between PNC Bank and operators of regional networks, (the "Network Agreements"). PNC Bank is required to comply with the marketing standards set forth by the network operator in the Network Agreements.

#### 5. INSTALLATIONS.

- (b) PNC Bank shall, using its own independent contractors, at its own expense, and in accordance with all applicable building codes, permits, tax rules, and laws such as the West Virginia Prevailing Wage Law install at the Locations in accordance with the agreed upon plans (the "Plans"):
  - (i) ATMs and, at its option, additional modules to the ATMs thereafter;
  - (ii) such related machinery and equipment, including telecommunications equipment, alarm systems and signs, as are to be installed within the interior of the Locations as specified in the hereinafter described plans (the "Equipment"); and
  - (iii) such wiring, connections, and hook-ups as are required to connect the ATMs to the dominant regional ATM network (the "Installations").
- (c) PNC Bank shall submit its Plans (including plans for the proposed design and location of signs) for the related Equipment and Installations to University, prior to the commencement of the installation thereof (the "Work"), for University's review and approval. In order to facilitate development of the engineering drawings (or a reasonable facsimile or prototype

thereof) necessary for the Installation of the ATMs at the Location(s), University shall review the Plans, and shall be deemed to have approved the Plans if its written disapproval is not delivered to PNC Bank on or before the thirtieth (30<sup>th</sup>) day following PNC Bank's submission thereof to University. PNC Bank shall diligently proceed to complete the Work in accordance with the Plans.

(d) University shall permit PNC Bank to install the ATMs and related Equipment and Installations as follows:

(i) at the locations mutually agreed upon;

(ii) In any instance in which approval must be obtained from a third Party prior to an Installation hereunder, the Parties shall cooperate in good faith to determine the most expedient and equitable process by which to secure such approval in a timely manner and use commercially reasonable efforts to promptly execute such process.

(iii) PNC Bank will indemnify and save University, its Affiliates and its successors, assigns, trustees, officers, employees and agents harmless from and against all liability, loss, cost and expense arising in connection with the Work or any Installation; and

(iv) Upon termination or expiration of this ATM Agreement, PNC Bank shall within thirty (30) days of such termination or expiration remove the ATMs and all portions of the related Equipment and Installations not installed within utility company conduits or rights of way or within the walls, floors or ceiling of the Locations and may, at its option, remove any other portions of the related Equipment and Installations, provided that PNC Bank shall cap all pipes and conduits and restore any damage to the Locations caused by such removal and restore the Locations to their condition immediately prior to the time the ATMs were installed, reasonable wear and tear excepted.

(e) Signs may be installed only upon the mutual agreement of the Parties. PNC Bank shall pay the costs of the signs and costs of the installation, maintenance and removal of the signs.

## 6. TITLE.

Title to and ownership of the ATMs and the related Equipment and Installations shall at all times be and remain in PNC Bank free and clear of all rights, title, interest, liens, security interests or claims owned, held, created or suffered by any person or entity claiming under, by or through University and such property shall be deemed movable personal property and not fixtures. Nothing herein shall be deemed to constitute a conveyance from PNC Bank to University of the ATMs, related Equipment or Installations. Upon reasonable request of PNC Bank, University will request from any persons or entities owning or holding title to or liens upon or leases, security interests or other interests in the Locations written waivers or releases in form and substance acceptable to PNC Bank confirming that such Party has no legal claims or interests in the ATMs and further confirming PNC Bank's rights under this ATM Agreement. PNC Bank shall have the right to place a label on the ATMs indicating its interest in such machine and related Equipment and Installations which label University agrees not to disturb.



## 7. OPERATION, SERVICING, MAINTENANCE AND REPAIR.

The operation, servicing, maintenance and repair of the ATMs and the related Equipment and Installations shall be under the sole control of PNC Bank and its agents, employees and independent contractors. University shall permit free access to the ATMs and related Equipment and Installations for all of the foregoing purposes during all normal operating hours of the business at the Locations. PNC Bank shall require all of its employees, agents and independent contractors who perform any of the aforesaid tasks at the Locations to (a) carry and present identification upon University's request, and (b) cause as little disruption as possible to University's business. PNC Bank shall bear the expense of such operation, servicing, maintenance and repair.

University will:

- (f) pay for the electricity usage by the ATM(s) and install the necessary outlets and connections, if required, at its expense;
- (g) keep the ATMs and the area around the ATMs clean, presentable and free from obstruction, and with respect to the Locations generally, University will continue to maintain the same standards of cleanliness, maintenance, repair and operation as are in effect on the date of this ATM Agreement;
- (h) pay all costs and expenses for ownership, operation, maintenance and repair of the Locations and business (including real estate taxes and utilities) not expressly made payable by PNC Bank herein or in the Agreement; and
- (i) Maintain the Locations to allow for proper functioning of the ATMs.

## 8. COVENANTS.

(j) University hereby covenants as follows:

- (i) it shall not use or permit the use of the PNC Bank name or logo without prior approval of PNC Bank;
- (ii) it shall use and permit the use of the ATM logos only in compliance with the requirements of the holders of rights in such logo. University acknowledges that the ATM logos are registered trademarks where indicated; and
- (iii) upon performing all of its covenants and obligations hereunder, PNC Bank shall peacefully and quietly have, hold and enjoy the rights in each Location granted to it hereby subject to all of the covenants, terms and conditions herein contained.

(k) PNC Bank hereby covenants as follows:

- (l) its ATMs will (i) comply with all applicable legal requirements, including, without limitation, laws/regulations relating to consumer protection and the requirements of the Americans with Disabilities Act in ensuring that the ATMs are readily useable by disabled persons; (ii) remain technologically current and that PNC Bank's product offerings will reflect advances in the industry; and (iii) will be upgraded to permit the display of on-

screen messages which have been previously approved by University; and (iv) be of a high quality and attractively maintained; and

- (m) it shall not use or permit the use of University's Marks without prior written approval of University and subject at all times to University's policies concerning use of such marks.

#### 9. CERTAIN RIGHTS OF THE PARTIES.

- (n) PNC Bank reserves the right to impose a surcharge on users of its ATMs that are not PNC Bank cardholders. However, in no event, shall such surcharge exceed the surcharge imposed at PNC branches in the Western Pennsylvania area.
- (o) PNC Bank reserves the exclusive right to determine whether any fees shall be imposed upon PNC Bank cardholders.
- (p) During the Term of the Agreement, PNC Bank will have the first right to install or operate ATMs on University Property. In the event that University wishes to have additional ATM(s) installed on University Property, then University shall provide PNC Bank with information pertaining to the proposed Location of the additional ATMs (the "ATM Notice"), and PNC Bank shall have a right of first refusal ("ROFR") to deploy such ATMs. PNC Bank shall advise University within ten (10) Banking Days of receiving such ATM Notice whether PNC Bank shall exercise its ROFR and install such ATMs. If PNC Bank fails to respond to the ATM Notice within the stated time period or declines to make such ATM deployment, then University may solicit another ATM provider for such ATM. The ROFR shall be applicable in every instance in which University seeks to install a new ATM on University Property during the term of this ATM Agreement. Notwithstanding the foregoing, University may not offer the opportunity to any other ATM provider for any PNC Bank ATM Locations on University Property.

#### 10. PERFORMANCE; WARRANTY.

PNC Bank warrants that the ATMs in the Locations shall be fully operational ninety-six percent (96%) of the time, unless operation is prevented by Force Majeure or routine servicing of the ATMs. PNC Bank will provide University with quarterly reports of the performance of the ATMs.

#### 11. SECURITY.

- (a) University shall maintain security at University Locations in accordance with the standards for security generally at University's facilities; however, by providing such security university shall not be deemed to have any responsibility for the ATMs beyond that which is specifically set forth herein. Except as otherwise provided herein, all costs and expenses incurred in connection with such security measures shall be borne by University.
- (b) University shall notify PNC Bank of any damage to the Locations which adversely affects the operation or security of the ATMs, and University agrees to make, at its expense, such repairs to the Locations, as shall be necessary to correct such adverse effects.
- (c) In the event of fire, casualty, riot or other emergency, University shall use reasonable efforts to protect the security of any affected ATM. Once PNC Bank deems the affected

ATM machine secured, whether by relocation (which shall be by PNC Bank) or otherwise (for example, but not in limitation of the foregoing, by removal), University's security obligations hereunder shall again be governed by subsections (a) and (b) of this Section 11. The Parties agree that in the event of the emergency circumstances enumerated in this subsection 11 (c) University and PNC Bank shall each act as quickly as reasonably possible in fulfilling its obligations hereunder.

## 12. INSURANCE INDEMNITY AND LOSS.

University shall maintain or cause to be maintained, at no expense to PNC Bank, during the Term hereof, such fire and casualty insurance policies covering the Locations and related machinery, Equipment and improvements (excluding the ATMs and related Equipment and Installations), and general liability coverage with respect to the Locations, as is generally maintained by University at similar Locations. PNC Bank shall be responsible for maintaining or causing to be maintained, at its expense, such fire, casualty, theft, and public liability insurance of and with respect to the ATM(s) and related Equipment and Installations in such amounts and in such form and content and by such insurance company reasonably acceptable to University.

Each Party shall maintain, and shall require its independent contractors to maintain worker's compensation insurance with respect to their respective employees in the amounts required by applicable law.

Each Party shall, upon request, provide to the other such evidence as shall be reasonably requested of the maintenance of required insurance.

## 13. TERM AND TERMINATION.

The term of this ATM Agreement shall run concurrently with the Term of the Agreement. However, if the Agreement is not renewed at the end of its seven (7) year Term, this ATM Agreement shall automatically continue on a month-to-month basis unless either Party provides written notice to the non-terminating Party of its intent to terminate the ATM Agreement at least thirty (30) days in advance of the desired termination date.

## 14. GENERAL.

- (d) Access: University shall permit PNC Bank or its authorized service representative, to have access to the Location, subject to University's reasonable security requirements, if any.
- (e) ADA Compliance: During the Term of the Agreement, University shall comply with the Americans with Disabilities Act of 1990 ("ADA"), any amendments to the ADA, its implementing regulations, and applicable ADA Accessibility Guidelines for Buildings and Facilities, as well as all other federal, state and local laws regarding access to and service to individuals covered by the ADA. University's compliance obligation will include, but not be limited to, the design, construction and alteration of the Location as University may have to alter to be in compliance with the ADA.
- (f) Notices: All notices which either Party may be required or desire to give to the other under this ATM Agreement, Party shall be in writing and shall be given and deemed served on the date when hand delivered in writing to the applicable Party, or if sent by certified mail, return receipt requested, or by courier service, notice shall be deemed served on the date

received. Notices sent by mail or courier shall be sent to the following addresses:

If to PNC Bank:

PNC Bank, National Association  
Self Service Banking  
1600 Market Street, 9<sup>th</sup> Floor  
Philadelphia, PA 19103  
ATTN: Ken Justice, SVP  
Telephone: 215-585-5134

With a copy to:

PNC Bank, National Association  
One PNC Plaza  
249 Fifth Avenue  
P1-POPP-21-1  
Pittsburgh, Pennsylvania 15222  
ATTN: Chief Counsel, Consumer Bank

If to University then to:

West Virginia University  
Chief Procurement Officer  
Department of Purchasing, Contracts and Payment Services  
P.O. Box 6024  
Morgantown, WV 26506-6024

With a copy to:

West Virginia University  
Office of the Vice President for Legal Affairs and General Counsel  
105 Stewart Hall  
Morgantown, WV 26506-6204  
Attn: General Counsel

The names and addresses for the purpose of this Section may be changed by either Party giving written notice of such change in the manner herein provided for giving notice. Unless and until such written notice is actually received, the last name and address stated by written notice or provided herein, if no such written notice of change has been received, shall be deemed to continue in effect for all purposes hereunder.

(g) Entire ATM Agreement: This ATM Agreement constitutes the entire agreement and understanding among the Parties with respect to the subject matter herein and the transactions contemplated herein and any and all previous understandings, proposals, negotiations, agreements, commitments and representations, whether oral or written, are merged herein and are superseded hereby.

(h) Counterparts: This ATM Agreement may be executed in two or more counterparts each

of which shall be deemed a duplicate original.

**IN WITNESS WHEREOF**, intending to be legally bound, each Party hereto has caused its duly authorized representative to execute this ATM Agreement on its behalf, as of the Effective Date.

PNC Bank, National Association  
("PNC Bank")

West Virginia University Board of  
Governors on behalf of West Virginia  
University ("University")

x  \_\_\_\_\_

x  \_\_\_\_\_

Print: Nickolas Certo

Title: SVP, University Banking

Date: 4/7/14

Print: BRENDA MOWEN

Title: CFO

Date: 4/1/2014



SCHEDULE A-1 Thru A-8 TO "EXHIBIT A": LICENSE AGREEMENT

University hereby licenses to PNC Bank, National Association or its nominee, as appropriate, the right to install, maintain, service, repair, replace and operate an Automated Teller Machine ("ATM") together with related Equipment and Installations subject to the terms and conditions set forth herein.

1. Location for ATMs currently located on University property as of the Effective Date:

- (a) Mountainlair (Hatfields), Downtown Campus
- (b) Mountainlair Garage (Prospect Street), Downtown Campus
- (c) Mountaineer Station Garage, Evansdale Campus
- (d) Health Sciences Building, Health Sciences Campus
- (e) Mineral Resource Building, Evansdale Campus
- (f) Brooke Tower Lobby, Evansdale Campus
- (g) Katz Law School, Evansdale Campus
- (h) Student Recreation Center, Evansdale Campus
- (i) Potomac State College
- (j) WVU Institute of Technology

2. University's Interest in Location: Owner

3. Identity of owner(s) of record of the Location: West Virginia University

4. (a) Are there any mortgage liens on the Location? Yes \_\_\_\_\_ No X

(a) **If Yes**, list all holders of a mortgage lien. \_\_\_\_\_

(b) Are there any security interests in the fixtures, machinery, and equipment installed at the Location?

Yes \_\_\_\_\_ No X

**If Yes**, list all holders of a security interest. \_\_\_\_\_

5. Other:

By execution hereof, there are incorporated and made a part hereof for all purposes as though set forth herein at length each and all of the terms, conditions and provisions of the Master License Agreement dated \_\_\_\_\_ between PNC Bank and University.

PNC Bank, National Association  
("PNC Bank")

West Virginia University Board of  
Governors on behalf of West Virginia  
University ("University")

X 

X 

Print: Nickolas Certo

Print: Brenda Mowen

Title: SVP, University Banking

Title: CFO

Date: 4/7/14

Date: 4/1/2014

SCHEDULE A  
Prototype: DO NOT COMPLETE

University hereby licenses to PNC Bank the right to install, maintain, service, repair, replace and operate an Automated Teller Machine ("ATM") together with related Equipment and Installations subject to the terms and conditions set forth herein.

1. Location for ATMs to be Installed After the Effective Date:

2. University's Interest in Location:

3. Identity of owner(s) of record of the Location:

4. (a) Are there any mortgage liens on the Location? Yes \_\_\_\_\_ No \_\_\_\_\_

If Yes, list all holders of a mortgage lien. \_\_\_\_\_  
\_\_\_\_\_

(b) Are there any security interests in the fixtures, machinery, and equipment installed at the Location? Yes \_\_\_\_\_ No \_\_\_\_\_

If Yes, list all holders of a security interest. \_\_\_\_\_  
\_\_\_\_\_

**[UNIVERSITY MUST PROVIDE INFORMATION]**

Other:

By execution hereof, there are incorporated and made a part hereof for all purposes as though set forth herein at length each and all of the terms, conditions and provisions of the Master License Agreement dated \_\_\_\_\_ between PNC Bank and University.

PNC Bank, National Association  
("PNC Bank")

West Virginia University Board of  
Governors on behalf of West Virginia  
University ("University")

  X  \_\_\_\_\_

  X  \_\_\_\_\_

Print: \_\_\_\_\_

Print: \_\_\_\_\_

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

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

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

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

## EXHIBIT B: ON-CAMPUS BRANCH BANK LEASE (MOUNTAINLAIR STUDENT UNION)

THIS ON-CAMPUS BRANCH BANK LEASE (Mountainlair Student Union) (the "Mountainlair Branch Lease") is made and entered into by and between West Virginia University Board of Governors on behalf of West Virginia University (hereinafter referred to as the "LESSOR") and PNC Bank, N.A. (hereinafter referred to as the "LESSEE"). This Lease is an exhibit to and an integral part of that certain University Banking Services Agreement between University and PNC Bank (the "Agreement"). Capitalized terms used in this Lease and not otherwise defined herein shall have the same meaning given them in the Agreement.

### 1. GRANT OF LEASE.

Lessor, in consideration of the terms, covenants and conditions hereinafter set forth, does hereby lease unto Lessee certain portions of real property situated in the City of Morgantown, County of Monongalia, and State of West Virginia, and more commonly known as Mountainlair (hereinafter referred to as the "PREMISES") and more particularly described, attached hereto, made a part of, and incorporated herein as Schedule A.

### 2. TERM.

To have and to hold the Premises, with the appurtenances, for an initial term commencing on April 1, 2014 and shall be coterminous with the Agreement (the "Initial Term").

### 3. PAYMENT.

Lessee, in consideration of the leasing of the Premises and of the rights hereby granted to it, does hereby accept this Lease and agrees and covenants to pay to Lessor, Fifty Thousand Dollars (\$50,000) annually, payable in monthly installments of Four Thousand One Hundred Sixty-Six Dollars and Sixty-Six Cents (\$4,166.66) which payments shall be due on the first day of each calendar month. If this Lease does not commence on the first day of a calendar month, the monthly payment for the first calendar month of this Lease shall be appropriately prorated.

### 4. USE OF PREMISES.

Lessee shall use and occupy the Premises only for the purpose of operating a Branch. Lessee shall, at its own expense, obtain, prior to the commencement of the Term of this Lease, all licenses, permits and other approvals of all governmental authorities, necessary for the operation of a Branch on the Premises. During the term of this Lease, Lessee shall, at its own expense, maintain in full force and affect all such licenses, permits, and other approvals.

### 5. RULES AND REGULATIONS.

Lessee shall observe and comply with the building hours, rules and regulations annexed hereto and made a part hereof. Lessor reserves the right to make such other rules and regulations as, in its reasonable judgment may, from time to time, be necessary to ensure the safe and orderly use of the Premises and to preserve any property therein. Failure by Lessor to enforce any rules and regulations shall not constitute a waiver thereof. It shall be Lessee's obligation to see that Lessee's employees, invitees, and agents obey said rules and regulations.

## 6. IMPROVEMENTS.

At Lessee's expense, Lessee shall have the right to conduct any construction or remodeling of the Premises which may be required to use the Premises as a Branch, subject however to Lessor's written approval of the plans and specifications therefore which shall not be unreasonably withheld, conditioned, or delayed. Said additions, alterations, or improvements shall be made in a good and workmanlike manner, in accordance with any plans and specifications therefore, and in compliance with all applicable statutes, ordinances, rules and regulations. If the improvements to be completed by the PNC Bank consist of modifications, improvements or other alterations to the Premises, the PNC Bank shall have plans and specifications prepared by a licensed architect under West Virginia law, provided that the University shall have the right to review and approve of the scope of modifications, improvements or alterations depicted in any such plans or specifications. Construction of any modifications, improvements or alterations approved by the University shall be performed by the University or PNC Bank in accordance with laws, rules and regulations applicable to the University construction of public works of improvements, including without limitation engaging in the competitive bidding process, use of and payment of prevailing wages, and requirements of the WV Jobs Act. Notwithstanding the University's review/approval of plans and specifications and the University's retention of a construction contractor, if applicable, to construct the modifications, improvements or alterations, the University shall have no liability to the PNC Bank for the timely completion of plans, specifications or construction activities nor for the sufficiency, adequacy or quality of the plans, specifications or construction work-product. Lessee shall keep the leased Premises free from any liens, claims or encumbrances, and shall indemnify and save Lessor harmless from and against all loss, cost, and expense, including but not limited to reasonable attorney's fees, arising out of Lessee's additions, alterations, or improvements.

## 7. LESSEE'S PROPERTY.

All fixtures, furnishings, equipment, inventory and other personal property of Lessee located upon the Premises, and any additions, alterations, and improvements to the Premises made by Lessee shall be kept and maintained by Lessee at its sole risk, and Lessee shall bear all cost, loss and expense for any casualty or theft in connection with such fixtures, furnishings, equipment, inventory, and other personal property. Unless otherwise agreed to in writing, prior to the termination of the Lease Term Lessee shall be entitled to remove, or at the request of Lessor be required to remove, such fixtures, furnishings, equipment, and other personal property.

## 8. MAINTENANCE AND REPAIR.

- (a) Lessor, at its sole expense, shall maintain in good condition and repair the exterior portion of the Premises including the roof, foundation, structural components, public areas, reasonable wear and tear excepted, and except for such repairs as may be required by reason of the acts, misuse, or neglect of the Lessee, its employees, agents, invitees, licensees, or contractors, and except as otherwise provided in this Lease. Lessor shall also be responsible for providing and maintaining the heating, electrical, and ventilating systems, the life support systems (fire extinguishers, alarms, and sprinklers) and the lighting system except for bulbs. Lessor shall also provide trash removal and janitorial services on a regular basis. Lessee shall give Lessor notice of the necessity for any repairs coming to the attention of the Lessee.



- (b) Lessee shall be responsible for providing phone and data services to the Premises and, except as provided in subsection (a) above, for maintaining the interior of the Premises in good condition and repair. In furtherance of said obligation, and notwithstanding anything to the contrary provided in Paragraph 7 above, Lessee may make minor or routine repairs or improvements to the Premises without the consent and approval of the Lessor, as long as said improvement or repair does not (i) exceed Five Thousand Dollars (\$5,000.00) in value, (ii) impact the exterior of the Premises, or (iii) cause disruption to Mountainlair's operations.
- (c) In the event that any portion of the Premises shall be damaged because of improvements, additions or alterations installed by Lessee or in the event repairs and/or replacements are required by reason of the act, misuse or neglect of the Lessee, its employees, agents, invitees, licensees, or contractors, Lessee agrees to make such repairs and/or replacements promptly and properly at Lessee's sole cost and expense.

#### 9. MECHANIC'S LIENS.

If, as a result of any such additions, alterations, improvements, repairs or replacements, the Premises or any part thereof shall at anytime during the Term become subject to any vendor's, mechanic's, laborer's materialman's or other similar liens based upon furnishing of materials or labor to the Premises and not contracted for by Lessor, Lessee shall cause the same to be discharged at its sole cost and expense within sixty (60) days after Lessee shall have actual notice of the existence thereof. The foregoing notwithstanding, Lessee agrees that in the event any such liens are filed, they shall affect only the leasehold estate vested in Lessee and shall in no way affect Lessor's fee simple ownership of the Premises.

#### 10. DAMAGE OR DESTRUCTION.

If the Premises are partially destroyed in a manner that prevents the conduct of the Lessee's business within the Premises in a normal manner, and if the damage is reasonably repairable within ninety (90) days after the destruction, Lessor and Lessee shall repair the Premises and monthly lease payments shall abate during said repair period. However, if said damages are not repairable within ninety (90) days, or if the Premises are condemned, this Lease shall terminate upon twenty days of written notice of such event or condition by either Party.

#### 11. INSURANCE.

Reference is made to Article 10 of the Agreement for insurance that is required to be maintained during the Term of this Lease. In addition to any insurance required under the Agreement, Lessor and Lessee shall each maintain Casualty Insurance for a minimum amount of One Million Dollars (\$1,000,000) insuring their respective interest in the Premises and the fixtures, improvements, and personal property located on the Premises. Each Party shall upon request, provide to the other evidence of the maintenance of such required insurance.

#### 12. UTILITIES.

Lessor, at Lessor's sole expense, shall provide to the Premises heat, electric, lighting, air conditioning and all other utilities with the exception of phone service and data. Lessee shall be



responsible for telephone installation and charges. Lessor shall not be responsible for the quality, quantity, interruption or failure in the supply of any utility to the Premises when said supply is so affected as a result of conditions beyond the control of the Lessor.

### 13. ASSIGNMENT AND SUBLETTING BY LESSEE.

Lessee shall not, without the prior written consent of Lessor, assign or transfer its interests under this Lease in whole or in part or sublet all or any part of the Premises. Transfer of this Lease by merger, consolidation, or liquidation shall not constitute an assignment for the purpose of this Lease and shall not require the written consent of Lessor. Any consent by Lessor to any assignment or subletting shall not constitute a waiver of the necessity of such consent to any subsequent assignment or subletting. Each assignee or transferee shall assume and be deemed to have assumed this Lease and shall remain liable jointly and severally with Lessee for the payment of all fees and for the due performance of all the terms, covenants, conditions, and agreements herein contained on Lessee's part for the Term of this Lease. No assignment shall be binding on Lessor unless such assignee or Lessee shall deliver to Lessor a counterpart of such assignment and an instrument in recordable form which contains a covenant of assumption by the assignee. No assignment or subletting by Lessee with the consent of Lessor shall relieve Lessee of its obligation hereunder unless Lessor expressly so agrees in writing.

Notwithstanding anything to the contrary contained above, Lessee shall have the right to assign this Lease without Lessor's consent to a corporation the outstanding stock of which is fifty percent (50%) or more owned or controlled by the Lessee, or to Lessee's wholly owned subsidiary, or to Lessee's parent corporation or Lessee's franchisee, or if Lessee merges or consolidates, then to the surviving entity. No such permitted assignment shall relieve Lessee of any of its obligations hereunder. Any such permitted Assignee shall be fully bound by the terms and conditions hereof.

Notwithstanding the above, Lessee warrants that the Premises shall at all times during the Term of this Lease, or any renewals thereof, operate as a Branch.

### 14. SUBORDINATION AND ASSIGNMENT BY LESSOR.

Lessor may, after signing this Lease, allow one or several mortgages to be recorded by any persons or entities (the "mortgagees") which encumber the Premises. In that event, Lessee agrees by signing this Lease that at the option of Lessor, this Lease and Lessee's interest hereunder will be subordinate or secondary to those mortgages; provided that the mortgagee agrees in writing that so long as the Lessee performs all of its obligations under this Lease, the mortgagee will not disturb Lessee's tenancy under this Lease.

### 15. ATTORNMEN BY LESSEE.

Lessor has the unrestricted right to assign its interests under this Lease or to sell or convey the Premises. However, Lessor shall provide notice to Lessee of such sale or transfer within fifteen (15) days of such assignment or sale, and Lessee shall for ninety (90 ) days thereafter have the right to terminate this Lease effective thirty (30) days from Lessor's receipt of notice of termination from Lessee.

### 16. LESSOR'S ACCESS TO PREMISES.

With at least twelve (12) hours prior notice to Lessee, Lessor and/or Lessor's agent may enter upon the Premises at all reasonable times for the purposes of inspecting the Premises, making repairs, alterations or additions to the Premises, and showing the Premises to prospective purchasers and/or Lessees.

#### 17. SURRENDER OF PREMISES.

Upon the expiration of this Lease, any extension thereof, or its termination in any way, Lessee shall surrender and deliver up the Premises in broom clean condition and in the same condition as the same shall have been at the commencement of the Term of this Lease reasonable wear and tear excepted.

Unless otherwise mutually agreed to in writing, Lessee shall remove such furniture, furnishings, equipment, trade fixtures (including signs) and other personal property of Lessee which have been placed in or affixed to the Premises by Lessee in accordance with Section 7 and 8 above, and Lessee shall, at its sole expense, repair any damage to the Premises caused by such removal.

#### 18. DEFAULT/TERMINATION:

- (d) Lessor may terminate this Lease if Lessee fails to pay monthly lease payments when due and has not cured said payment default within thirty (30) days after receipt of notice of default from the Lessor;
- (e) Either Party may terminate this Lease upon a material breach of the other's obligation under this Lease or the Agreement. The terminating Party shall so notify the other Party in writing and, except for breach of Lessee's obligation to pay rent which must be cured within thirty (30) days as stated in subparagraph (a) above, such termination shall become effective ninety (90) calendar days after receipt of such notice unless the breaching Party has within such time cured the breach or, for matters that cannot be fully cured within such time, commenced and continued to diligently pursue appropriate corrective action.
- (f) Either Party may terminate this Lease if the other Party is declared insolvent or adjudged bankrupt by any court of competent jurisdiction or makes an assignment for the benefit of creditors or if a petition in bankruptcy, for reorganization of, or an arrangement for the benefit of creditors under any federal or state law is filed by or against such Party that has not been dismissed within thirty (30) days of its filing.
- (g) Upon termination of this Lease, either Party may pursue any and all remedies to which it may be entitled under this Lease, the Agreement, or at law or at equity.

#### 19. QUIET ENJOYMENT.

So long as Lessee shall promptly pay the fees and keep and perform the terms, covenants and conditions of this Lease on its part to be kept and performed, Lessee shall peaceably and quietly hold, occupy and enjoy the Premises during the initial and any additional term hereof, without hindrance or molestation from Lessor or by any person lawfully claiming through or under Lessor.

#### 20. COMPETITION.

Subject to Exceptions, Lessor shall not, during the term of this Lease and any extension or renewal thereof, permit another financial institution to operate a Branch, or any other type of financial services branch, at Mountainlair or on any other property owned by the University.

21. ACCORD AND SATISFACTION.

No payment by Lessee or receipt by Lessor of a lesser amount than the monthly fees herein stipulated shall be deemed to be other than on account of the stipulated fees, nor shall any endorsement or statement or any check or any letter accompanying any check or payment as fee be deemed an accord and satisfaction, and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance of such fees or pursue any other remedies in this Lease provided.

22. ACTS BEYOND CONTROL OF LESSOR/LESSEE.

In the event that Lessor/Lessee shall be delayed or hindered or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, inadequate power, restrictive governmental laws or regulations, severe weather conditions, disaster, riots, insurrection, war or other reason of a like nature not the fault of Lessor or Lessee in performing work or doing acts required under the terms of this Lease, the performance of such acts shall be excused for the period of the delay.

23. NOTICE.

Notices under this Lease shall not be deemed valid unless given or served in writing and forwarded by certified mail, return receipt, postage prepaid, addressed as follows:

TO LESSOR:

West Virginia University  
Chief Procurement Officer  
Department of Purchasing, Contracts and Payment Services  
P.O. Box 6024  
Morgantown, WV 26506-6024

With Copy to:

West Virginia University  
Office of the Vice President for Legal Affairs and General Counsel  
105 Stewart Hall  
Morgantown, WV 26506-6204  
Attn: General Counsel

TO LESSEE:

PNC Bank, National Association  
Attn: Retail Leasing Manager  
620 Liberty Avenue

Two PNC Plaza, 19th Floor  
Pittsburgh, Pennsylvania 15222

Such addresses may be changed from time to time by either Party by providing notice as set forth above.

24. PUBLIC RELATIONS AND EMPLOYMENT.

Lessee acknowledges that satisfactory public relations with students, University staff, faculty, and visitors to the campus are an important part of its service and it shall instruct its personnel in appropriate standards of conduct and appearance and the proper handling of customer requests and complaints.

25. GOVERNMENTAL REGULATIONS.

Lessee shall comply with all laws, ordinances, and regulations of the Government of the United States, State of West Virginia, and county and municipal authorities with respect to the use, occupancy, or maintenance of the Premises and site by Lessee.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease to be effective as of the day and year aforesaid.

PNC Bank, National Association  
("PNC Bank")

West Virginia University Board of  
Governors on behalf of West Virginia  
University ("University")

x  \_\_\_\_\_

x  \_\_\_\_\_

Print: Nickolas Certo

Print: Brenda Mowen

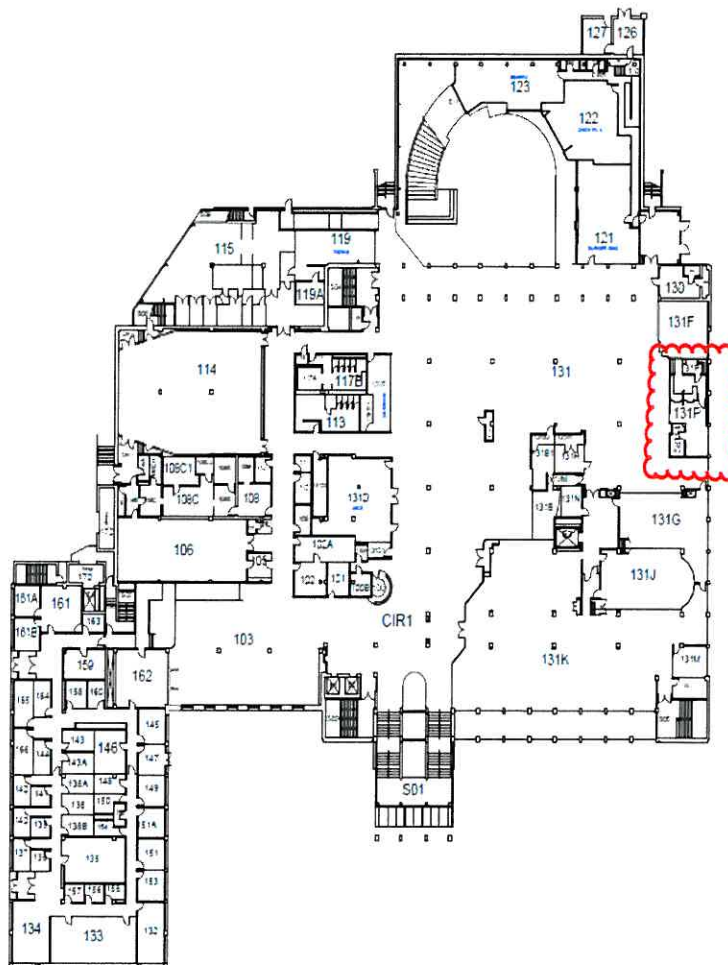
Title: SVP, University Banking

Title: CFO

Date: 4/7/14

Date: 4/1/2014

# SCHEDULE A "Mountainlair Branch - Premises"



0 60' 120'  
 SCALE 1" = 60'

	West Virginia University Downtown Campus 0201	Mountainlair Floor	0012 01	Drawn By M. Kralley	File Name 02010012.dwg	Click Here > Room Inventory Images MetaData Info...
				Date 7/16/2004	Last Revision 10/30/2012-L. Priceley	



# EXHIBIT C

## UNIVERSITY MARKS










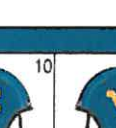

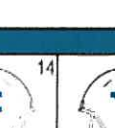





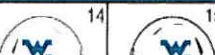






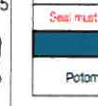
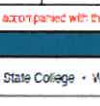
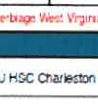
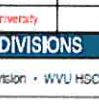
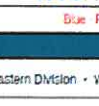
WEST VIRGINIA UNIVERSITY is the owner of all rights, title and interest in and to the following Indicia, which includes trademarks, service marks, trade names, designs, logos, seals and symbols.

JANUARY 3, 2014

# WEST VIRGINIA UNIVERSITY MOUNTAINEERS



**Flying WV Requirements**  
Has to be shown in its entirety • No verbiage over or behind Flying WV • Only one outline is permitted  
Must be a solid color; no prints, patterns, or design can be in the Flying WV Logo. Bing is acceptable










PRIMARY MARKS		
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WORD MARKS		
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HELMET MARKS		
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	14	
	15	

**Primary colors of product/garment cannot be green, red or orange**

COLOR INFORMATION		
You must use the approved university colors on the PANTONE colors listed on this page. The colors on this page are not intended to match the PANTONE color standards. For the PANTONE color standards, refer to the current editions of the PANTONE color guide books. PANTONE is a registered trademark of PANTONE, Inc.		
SCHOOL COLORS	PANTONE COLORS	THREAD COLORS
BLUE GOLD	PANTONE 285 PANTONE 124	MADEIRA-RAYON 1242 MADEIRA-RAYON 1172 POLYNEON 1742 POLYNEON 1971
BLUE		GOLD

NOTE: The marks of West Virginia University are controlled under a licensing program administered by The Collegiate Licensing Company. Any use of these marks will require written approval from The Collegiate Licensing Company.

In addition to the Indicia shown above, any Indicia adopted hereafter and used or approved for use by WEST VIRGINIA UNIVERSITY shall be deemed to be additions to the Indicia as though shown above and shall be subject to the terms and conditions of the Agreement.

VERBIAGE		GENERAL INFORMATION	
West Virginia University, West Virginia, Mountaineers, WVU, Mountaineer, Let's Go Mountaineers!	Mountaineer Field at Milan Puskas Stadium, Milan Puskas Stadium, Gold Rush,	LOCATION MORGANTOWN, WV MASCOT MOUNTAINEERS MASCOT NICKNAME THE MOUNTAINEER	ESTABLISHED DATE 1867 CONFERENCE BIG 12
MASCOT MARKS		YOUTH MARKS	
	16		17
	18		19
SCHOOL SEAL		INSTITUTIONAL MARK	
	20		21
	22		23
Seal must be accompanied with the verbiage West Virginia University			24
DIVISIONS			
Potomac State College • WVU HSC Charleston Division • WVU HSC Eastern Division • WVU Institute of Technology			

ADDITIONAL PERTINENT INFORMATION		
	Yes	No
• University seal permitted on products for resale	X	
• Alterations to seal permitted		X
• Overlaying / intersecting graphics permitted with seal		X
• Overlaying / intersecting graphics permitted with flying WV		X
• University licenses consumables	X	
• University licenses health & beauty products	X	
• University permits numbers on products for resale	X	
• Mascot caricatures permitted	X	
• Cross licensing with other marks permitted	X	
• Alterations to flying WV marks permitted		X
• Real Life Mountaineer image permitted		X
• NO USE of current player's name, image, or likeness is permitted on commercial products in violation of NCAA rules and regulations		
• NO REFERENCES to alcohol, drugs, or tobacco related products may be used in conjunction with University marks		

## EXHIBIT D

### PNC BANK MARKS

1. The PNC Bank Marks that are licensed under the terms of this Agreement are:



® (Powerlink Logo)

PNC Bank

PNC Advisors

2. University agrees to use the PNC Bank Marks in accordance with the standards set forth below:
  - a. Do not abbreviate the name to “PNC”
  - b. When using the PNC Bank name in text as it is here, always present it as two words and display the word “Bank” in upper and lower case
  - c. Use original reproduction artwork, never create your own PNC Bank logo, or alter the original in any way
  - d. The PNC Bank logo may ONLY be printed in black or in our corporate color PMS 287
  - e. The PNC Bank logo may be reversed out of a dark color to white

PNC Bank shall pre-approve all uses of the PNC Bank Marks.

## EXHIBIT E

### WEB LINKING AGREEMENT

This Web Linking Agreement (this “Web Agreement”), is effective upon date of mutual consent among Parties for implementation, and entered into by and between is entered into by and between West Virginia University Board of Governors on behalf of West Virginia University, an agency and higher education institution of State of West Virginia (“University”), and PNC Bank, National Association, a national banking association, (“PNC Bank”). This Web Agreement is an exhibit to and an integral part of that certain West Virginia University Banking Services Agreement of even date herewith between University and PNC Bank (the “Agreement”). Capitalized terms used in this Web Agreement and not otherwise defined herein shall have the meaning given them in the Agreement.

WHEREAS, PNC Bank maintains and operates a Website in which information regarding PNC Bank’s products and services is provided to the general public (“PNC Bank Website”);

WHEREAS, University maintains and operates a Website in which information regarding University is provided to the general public (“University Website”); and

WHEREAS, the Parties desire to provide a link between the PNC Bank Website and the University Website via a Hyperlink (as defined below).

NOW, THEREFORE, the Parties agree that a Hyperlink shall be established subject to the terms and conditions of this Web Agreement and the Agreement, as applicable.

#### 1. DEFINITIONS.

- (a) “Hyperlink” means an electronic pathway that may be displayed in the form of highlighted text, graphics or a button that connects one Webpage address with another Webpage address.
- (b) “Weblinking” or “Weblinks” means the linking of two or more Websites through the use of a Hyperlink.
- (c) “Webpage” means a viewable screen displaying information presented through a web browser in a single view sometimes requiring the user to scroll to review the entire page.
- (d) “Website” means one or more Webpages connected to the internet that may originate at one or more webserver computers.

#### 2. TERM AND TERMINATION.

The term of this Web Agreement shall run concurrently with the Term of the Agreement. In addition, this Web Agreement may be terminated by either Party upon thirty (30) days prior written notice to the other Party. The Parties agree that upon receipt by either Party of written notice of termination from the other Party, both Parties will immediately remove any and all Weblinks to the other Party’s Website from each of their respective Websites. In addition, either Party may



terminate this Agreement immediately if at any time content on the other Party's Website is reasonably deemed to be objectionable or inconsistent with the mission or philosophy of the terminating Party.

3. GRANT OF LICENSE.

- (e) PNC Bank grants to University a limited, nonexclusive and nontransferable license to use PNC Bank's Marks as set forth on the attached [Schedule A](#), for the sole and limited purpose of providing a Hyperlink between PNC Bank's and University's Websites. University agrees that it will comply with all of the requirements and restrictions set forth on [Schedule A](#) to this Exhibit E, which is attached hereto and incorporated herein.
- (f) University grants to PNC Bank a limited, nonexclusive and nontransferable license to use University's Marks as set forth on the attached [Schedule B](#), for the sole and limited purpose of providing a Hyperlink between University Website and PNC Bank Website. PNC Bank agrees that it will comply with all of the requirements and restrictions set forth on [Schedule B](#) to this Exhibit E, which is attached hereto and incorporated herein.

4. WARRANTIES.

- (g) University represents and warrants that it is the owner or has all necessary rights to license University Marks as specified in Section 3 above.
- (h) PNC Bank represents and warrants that it is the owner of or has all necessary rights to PNC Bank Marks as specified in Section 3 above.

**IN WITNESS WHEREOF**, intending to be legally bound, each Party hereto has caused its duly authorized representative to execute this Web Linking Agreement on its behalf, as of the Effective Date.

PNC Bank, National Association  
("PNC Bank")

West Virginia University Board of  
Governors on behalf of West Virginia  
University ("University")

X 

X 

Print: Nickolas Certo

Print: BRENDA MOWEN

Title: SVP, University Banking

Title: CFO

Date: 4/7/14

Date: 4/1/2014

SCHEDULE A: TO “EXHIBIT E” PNC BANK MARKS

1. The PNC Marks that are licensed under the terms of this Web Linking Agreement are:

**PNC Logo, PNC bank name in text form, pnc.com**



2. University agrees to use the PNC Marks in accordance with the standards set forth below:

- a. PNC must approve the “PNC” name being used.
- b. When using the PNC names, never alter (such as by changing the case or otherwise) or combine those names with any other words
- c. Use original reproduction artwork, never create your own PNC logo, or alter the original in any way
- d. The PNC logo may ONLY be printed in black or in a color or colors approved by PNC
- e. The PNC logo may be reversed out of a dark color to white

PNC Bank shall pre-approve all uses of the PNC Bank Marks.



## SCHEDULE B: TO "EXHIBIT E" UNIVERSITY MARKS

WEST VIRGINIA UNIVERSITY is the owner of all rights, title and interest in and to the following Indicia, which includes trademarks, service marks, trade names, designs, logos, seals and symbols.

JANUARY 3, 2014

# WEST VIRGINIA UNIVERSITY® MOUNTAINEERS®



Flying WV Requirements  
Has to be shown in its entirety • No verbiage over or behind Flying WV • Only one outline is permitted  
Must be a solid color, no prints, patterns, or design can be in the Flying WV Logo. Being is acceptable

PRIMARY MARKS					
	1		2		3
	4		5		6
WORD MARKS					
	7		8		9
HELMET MARKS					
	10		11		12
	13		14		15

Primary colors of product/paper cannot be green, red or orange

COLOR INFORMATION		
You must use the approved university colors on the PANTONE® colors listed on this page. The colors on this page are not intended to match the PANTONE® color standards. For the PANTONE® color standards, refer to the current edition of the PANTONE® color guide. PANTONE® is a registered trademark of PANTONE, Inc.		
SCHOOL COLORS	PANTONE COLORS	THREAD COLORS
BLUE GOLD	PANTONE 285 PANTONE 124	MADEIRA-RAYON 1242 MADEIRA-RAYON 1172 POLYNEON 1742 POLYNEON 1971
BLUE	GOLD	

NOTE: The marks of West Virginia University of are controlled under a licensing program administered by The Collegiate Licensing Company. Any use of these marks will require written approval from The Collegiate Licensing Company.

VERBIAGE		GENERAL INFORMATION	
West Virginia University, West Virginia Mountaineers, WVU, Mountaineer, Let's Go Mountaineers!	Mountaineer Field at Milan Puskar Stadium, Milan Puskar Stadium, Gold Rush,	LOCATION: MORGANTOWN, WV MASCOT: MOUNTAINEERS MASCOT NICKNAME: THE MOUNTAINEER	ESTABLISHED DATE: 1967 CONFERENCE: BIS 12
MASCOT MARKS		YOUTH MARKS	
	16		17
	18		19
SCHOOL SEAL		INSTITUTIONAL MARK	
	20		21
	22		23
		HEALTHCARE MARK	
			24
DIVISIONS			
Potomac State College • WVU HSC Charleston Division • WVU HSC Eastern Division • WVU Institute of Technology			

ADDITIONAL PERTINENT INFORMATION																																				
<ul style="list-style-type: none"> <li>University seal permitted on products for resale</li> <li>Alterations to seal permitted</li> <li>Overlaying / intersecting graphics permitted with seal</li> <li>Overlaying / intersecting graphics permitted with flying WV</li> <li>University licenses consumables</li> <li>University licenses health &amp; beauty products</li> <li>University permits numbers on products for resale</li> <li>Mascot caricatures permitted</li> <li>Cross licensing with other marks permitted</li> <li>Alterations to flying WV marks permitted</li> <li>Real Life Mountaineer Image permitted</li> <li>NO USE of current player's name, image, or likeness is permitted on commercial products in violation of NCAA rules and regulations</li> <li>NO REFERENCES to alcohol, drugs, or tobacco related products may be used in conjunction with University marks</li> </ul>	<table border="0"> <tr><td>Yes</td><td>No</td></tr> <tr><td>X</td><td></td></tr> <tr><td></td><td>X</td></tr> <tr><td></td><td>X</td></tr> <tr><td></td><td>X</td></tr> <tr><td></td><td>X</td></tr> <tr><td></td><td>X</td></tr> <tr><td></td><td>X</td></tr> <tr><td></td><td>X</td></tr> <tr><td></td><td>X</td></tr> <tr><td></td><td>X</td></tr> <tr><td></td><td>X</td></tr> </table>	Yes	No	X			X		X		X		X		X		X		X		X		X		X	<table border="0"> <tr><td>Restrictions</td></tr> <tr><td>_____</td></tr> <tr><td>_____</td></tr> <tr><td>_____</td></tr> <tr><td>_____</td></tr> <tr><td>_____</td></tr> <tr><td>_____</td></tr> <tr><td>_____</td></tr> <tr><td>_____</td></tr> <tr><td>_____</td></tr> </table>	Restrictions	_____	_____	_____	_____	_____	_____	_____	_____	_____
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In addition to the Indicia shown above, any Indicia adopted hereafter and used or approved for use by WEST VIRGINIA UNIVERSITY shall be deemed to be additions to the Indicia as though shown above and shall be subject to the terms and conditions of the Agreement.

## PAYMENT SOLUTIONS AGREEMENT

This PAYMENT SOLUTIONS AGREEMENT (the "Payment Solutions Agreement") is effective as of April 1, 2014, (the "Effective Date"), and is entered into by and between by and between West Virginia University Board of Governors on behalf of West Virginia University, an agency and higher education institution of the State of West Virginia, with its principal office at Morgantown, West Virginia, (the "University"), and PNC Bank, National Association, a national banking association, with its principal office at One PNC Plaza, 249 Fifth Avenue, Pittsburgh, Pennsylvania 15222 (hereinafter "PNC Bank").

WHEREAS, University desires that PNC Bank process all payments and disbursements to students and, in conjunction therewith, provide an on-line service for those payments and disbursements (the "Payment Solutions Service");

WHEREAS, PNC has agreed to provide the Payment Solutions Service;

NOW, THEREFORE, PNC Bank and University agree that a Payment Solutions Service shall be established subject to the terms and conditions of this Payment Solutions Agreement.

### 1. OBLIGATIONS OF PNC.

- (a) During the term of this Payment Solutions Agreement, PNC Bank will process payments and disbursements from the University to students. Examples of such payments include, but are not limited to, financial aid credits, tuition refunds, and emergency loans.
- (b) In order to process payments and disbursements, PNC Bank will maintain a database with information, provided by the University, about the students. Such information shall include, but not be limited, to student's name, ID number, payment preference, current mailing address and University e-mail address. PNC Bank will provide the file layouts in order that the University can provide the information needed to process the payments. All such student information provided by University shall be maintained by University in a separately encrypted data base and shall not be shared or used by PNC Bank for any purpose other than providing the Payment Solutions Services.
- (c) PNC Bank will design and provide access to a cobranded Payment Solutions website which shall be linked to the University's student website. Weblinking requirements, under this Payment Solutions Agreement, shall be governed by and in accordance with the provisions of that certain Web Linking Agreement between PNC Bank and University entered into contemporaneously with this Payment Solutions Agreement, which is attached hereto as Exhibit A and incorporated herein by this reference.

The website and payment options shall be subject to the approval of the University. The website will allow payees to select how they wish to receive payments from the University from among the following options:

- Direct deposit into a PNC Checking Account
- ACH to other bank account

Other future possible options may include (upon consent from the University)

- Reloadable Stored Value VISA® Card (if selected by the University)
- Paper check

If the paper check option is implemented (upon consent by the University and selected by the student, the payment shall be mailed to the student's address as provided by the University.

The timing of the Execution of Payment Delivery is based upon when the University delivers a Payment File and funding to PNC.

- (d) For purposes of this Payment Solutions Agreement the term Execution of Payment Delivery shall mean the point in time when a payment has been initiated by PNC Bank and the disbursement begins its required form of transmission to the student payee.

Payment Option	Execution of Payment Delivery no sooner than:
Direct Deposit to PNC Checking Account	1 business day
ACH to non-PNC bank account	2 business days
Reloadable Stored Value VISA Card	3 business days
Issuance of a paper check	3 business days

- (e) The practical timing of delivery of payments communicated to students can be set by the University and changed upon thirty (30) days written notice to PNC Bank. However, in no case shall University require payment delivery sooner than stated in the chart above.
- (f) PNC Bank will provide Customer Service to support the Payment Solutions Service from 6:00 A.M. to 12:00 midnight. EST seven (7) days a week, excluding federal holidays.
- (g) PNC Bank will provide the University with Technical Support from 8:00 A.M. to 5:00 P.M. EST, Monday through Friday.
- (h) PNC Bank will provide the Payment Solutions Administrator with monthly reports and online access to payment history and activity.
- (i) PNC Bank will remit any unclaimed Title IV (20 USC 1070 et. seq.) funds (that is, unclaimed, uncashed, or non-negotiated Title IV checks or Title IV payments disbursed to PNC prepaid cards which were never activated), as instructed by the University within the timeframes required by federal law. PNC Bank will, on behalf of University, escheat all other unclaimed student refunds held in the University's account in accordance with the requirements of applicable state law.
- (j) Throughout the Term, PNC Bank shall provide administrative, management, consulting, mechanical, and operational services and personnel sufficiently necessary to fulfill its obligations completely as described herein, in a competent, capable, qualified and professional manner. PNC Bank warrants that all services and activities to be provided by PNC Bank hereunder will be performed in accordance with sound and professional principles and practices, consistent with generally accepted industry standards, and shall reflect PNC Bank's best professional knowledge, skill and judgment, all of which shall be at a level appropriate to University's requirements for the services to be performed.



## 2. OBLIGATIONS OF UNIVERSITY.

University shall provide PNC Bank with the necessary information and funds in order that PNC may initiate the payment to the student.

- (a) Information shall be provided via two types of encrypted electronic flat files:
  - (i) Student file – Student’s name, local address, student ID, e-mail address. This data will include whatever information is mutually deemed by University and PNC Bank to be necessary, and shall include the entire student population and all subsequent first-time students - freshmen, transfer, graduate, and professional; and
  - (ii) Payment File – Student ID, payment amount, and requested disbursement date.

Notwithstanding anything to the contrary contained in this Agreement, University’s ability to provide any information to PNC Bank is subject to and conditioned upon the Family Education Rights in Privacy Act (FERPA), other applicable laws and regulations, and University’s policies and procedures. Except for the files contemplated with respect to the weblinking service, University shall not be obligated to provide any information to PNC Bank which would require University to obtain the relevant individual’s written consent prior to doing so.

- (b) Funding will be provided by a wire transfer through the Fedwire system to a designated account at PNC Bank. The method of funding may be changed by University by giving fifteen (15) days prior notice to PNC Bank, subject to such additional authorization verifications and certifications as PNC Bank may reasonably require. Regardless of the method of funding, payment must be received by PNC Bank at least one business day prior to the date that the funds will be disbursed to payee. Failure to provide funds at least one business day prior to the desired disbursement date will relieve PNC Bank from all responsibility to process the payment on the payment date desired by the University; however, PNC Bank shall be obligated to disburse said payment as soon thereafter as possible. Furthermore, nothing in this Agreement, or any course of dealing between us, shall be deemed to constitute a commitment or offer by PNC Bank to extend credit or grant overdraft privileges to the University even if PNC Bank has done so on one or more prior occasions.

## 3. TERM AND TERMINATION.

- (a) This Agreement shall commence on the Effective Date and shall terminate on June 30, 2021, (the “Term”), unless sooner terminated as otherwise provided herein.
- (b) If a Party breaches any material covenant in this Agreement and fails to remedy same within twenty (20) calendar days after receipt of written notice of such breach from the non-breaching Party, or if the same is not reasonably capable of being cured within twenty (20) calendar days, and the breaching Party fails to commence to remedy same within twenty (20) calendar days and diligently prosecute the remedying of the breach until the same is remedied, the non-breaching Party may, at its option, declare this Agreement terminated without prejudice to any additional remedy which may be available to the non-breaching Party.

(c) In the event that a Party shall become insolvent, bankrupt or make any assignment for the benefit of creditors, or if its interest hereunder shall be levied upon or sold under execution or other legal process, without prejudice to any additional remedy which may be available to the other Party, the other Party may declare this Agreement terminated.

4. FEES.

University agrees to pay PNC Bank the fees outlined in Schedule A, which is attached to and incorporated into this Payment Solutions Agreement. Fees will be invoiced on a monthly basis and will be due no later than thirty (30) days from the date of the invoice.

5. PAYMENT SOLUTIONS ADMINISTRATOR.

University shall designate a Payment Solutions Administrator to be the contact with PNC Bank in connection with the Payment Solutions Service. Such designation shall be in writing on the signature page of this Payment Solutions Agreement. The University hereby authorizes such Payment Administrator to give information and instructions to PNC Bank as may be required by the Payment Solutions Agreement or necessary for the operation and maintenance of the Payment Solution Service.

The Payments Solutions Administrator may be changed by the University with at least (7) seven days prior written notice to PNC Bank.

All actions or instructions of the Payment Solutions Administrator with respect to the Payment Solutions Service shall bind the University. The Payment Solutions Administrator may be changed by the University with at least seven (7) days prior written notice to PNC Bank.

6. FILE ERRORS.

University acknowledges that PNC Bank will not be responsible for detecting errors in any file transmitted to PNC Bank for payment processing and disbursements, including but not limited to duplicate payments. University shall be solely responsible for any and all errors in files transmitted to PNC Bank (for example, an error in the amount of payment, name or address of payee, type of payment, etc.).

7. DESIGNATION OF ADMINISTRATOR.

University hereby designates the person below as the Payment Solutions Administrator for the University.

Name:	Lisa A. Lively
Title:	Director, Financial Services
Mailing Address:	West Virginia University P.O. Box 6001 Morgantown, WV 26506-6001
E-mail address:	<a href="mailto:lisa.lively@mail.wvu.edu">lisa.lively@mail.wvu.edu</a>
Phone:	304-293-8638
Fax:	304-293-6856



8. RELATIONSHIP OF THE PARTIES.

- (a) PNC Bank and University are independent contractors and nothing in this Agreement shall be construed to create a partnership, joint venture or co-employer or joint employer relationship by and between University and PNC Bank.
- (b) University and PNC Bank shall have the sole and exclusive right to select, direct, discipline and terminate their own respective employees and to determine the terms and conditions of their employment in accordance with applicable law. Each Party shall have the right to inform the other Party of any employee of such other Party, whose conduct in its good faith opinion, violates the terms of this Agreement or is otherwise unsatisfactory. Within sixty (60) days of receiving an employee-related complaint, the Party receiving such complaint shall address such issues raised in accordance with its established employment policies.

9. INSURANCE.

- (a) During the Term, PNC Bank shall maintain at its own expense full and adequate insurance with insurance carriers licensed to do business in the State of West Virginia, having at least an A.M. Best rating (or similar rating) of at least an "A-", as follows:

COMMERCIAL GENERAL LIABILITY

\$1,000,000 Each Occurrence  
\$3,000,000 General Aggregate  
\$1,000,000 Products – Completed Operations  
\$1,000,000 Personal and Advertising Injury  
\$ 100,000 Fire Damage (any one fire)  
\$ 5,000 Medical Expense (any one person)

AUTOMOBILE LIABILITY (including all Owned, hired car and non-owned automobile)

\$1,000,000 Each Occurrence  
\$1,000,000 Aggregate

WORKERS COMPENSATION

Statutory

UMBRELLA/EXCESS LIABILITY

\$5,000,000 Each Occurrence  
\$5,000,000 Aggregate

EMPLOYER'S LIABILITY

\$1,000,000 Each Accident  
\$1,000,000 Disease-Policy Limit  
\$1,000,000 Disease-Each Employee

## COMPREHENSIVE CRIME

\$1,000,000 Employee Theft Coverage  
\$1,000,000 Premises Coverage  
\$1,000,000 Transit Coverage  
\$1,000,000 Depositors Forgery Coverage

PNC Bank shall name University as an additional insured on PNC Bank's General, Umbrella, Comprehensive and Automobile Liability policies. If PNC Bank fails to maintain any of this insurance, University shall have the right, but not the obligation, to purchase any such insurance at PNC Bank's expense. It is understood and agreed that PNC Bank's insurance applies on a "primary" basis with respect to the performance of any of PNC Bank's rights or obligations hereunder.

- (b) University shall maintain or cause to be maintained, at no expense to PNC Bank, during the Term hereof, such fire and casualty insurance policies and public liability coverage in such amounts and on such terms as University considers appropriate in an amount not less than \$1,000,000.00.

## 10. REPRESENTATIONS AND WARRANTIES.

- (a) University represents and warrants, as of the Effective Date and during the Term of this Agreement, that:
  - (i) University is duly organized, validly existing and in good standing under the laws of the state(s) in which it operates and has the requisite corporate power and authority to enter into this Agreement;
  - (ii) The execution, delivery and performance of this Agreement by University is within University's powers, has been duly authorized by all necessary corporate action, and does not violate, conflict with or constitute a breach under any articles of incorporation or charter, bylaw, law, regulation, contract or obligation applicable to University;
  - (iii) This Agreement constitutes a legal, valid and binding obligation of University, enforceable against it in accordance with its terms;
  - (iv) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the execution, delivery and performance by University of this Agreement;
  - (v) University's employees, directors, officers or agents shall not make any representation, warranty, promise or statement to any customer regarding the approval, decline, collection, processing, or any other handling of customer's products or services as provided by PNC Bank. Any questions regarding PNC Bank's products or services shall be immediately referred to PNC Bank;
  - (vi) No information, schedule, exhibit, or financial information furnished or to be furnished by University to PNC Bank in connection with this Agreement is inaccurate in any

material respect as of the date it is dated or contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not misleading;

- (vii) University has not entered and will not enter any agreement that would prohibit University from fulfilling its duties and obligations under the terms of this Agreement; and
  - (viii) During the Term of this Agreement, University (A) will promote the Payment Solutions Service, and (B) has granted PNC Bank the exclusive right to market the Payment Solutions Service to University's students, faculty and staff on campus and has not granted that right to any other financial institution.
- (b) PNC Bank represents and warrants as of the Effective Date and during the Term of this Agreement that:
- (i) PNC Bank is a national banking association organized, validly existing and in good standing under the laws of the United States, and is FDIC insured, and has the requisite corporate power and authority to enter into this Agreement;
  - (ii) PNC Bank's execution, delivery and performance of this Agreement are within PNC Bank's corporate powers, have been duly authorized by all necessary corporate action and do not contravene PNC Bank's bylaws or charter or any law or contractual restrictions to which it is subject;
  - (iii) Any authorization or approval or other action by, or notice to or filing with, any governmental authority or regulatory body that is required for the execution, delivery and performance by PNC Bank of this Agreement shall be obtained in a timely manner;
  - (iv) This Agreement constitutes a legal, valid and binding obligation of PNC Bank, enforceable against it in accordance with its terms;
  - (v) No information, schedule, exhibit, financial information furnished or to be furnished by PNC Bank to University in connection with this Agreement is inaccurate in any material respect as of the date it is dated or contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not misleading; and
  - (vi) In its performance and activities hereunder, including but not limited to its creation and provision of the marketing and advertising materials used by PNC Bank to generate applications, Accounts or any and all other customer relationships, PNC Bank shall, at all times, comply with all applicable federal, state or local rules, laws or regulations and use best efforts in the performance of the Program.

#### 11. ADVERTISING, PROMOTION AND RELATED ACTIVITIES.

- (a) The Parties may advertise the Program in such media and in such manner, as the Parties shall mutually agree. PNC Bank may identify University as its client in the ordinary course of its banking business. Notwithstanding the foregoing, University must have PNC Bank's

prior written approval for any advertising materials that include any references to PNC Bank's products or services, which consent shall not be unreasonably withheld, conditioned or delayed. Written approval shall be provided within ten (10) business days of the request by University.

## 12. INDEMNIFICATION.

- (a) Indemnification by PNC Bank. PNC Bank shall indemnify, defend and hold harmless University, its officers, directors, employees, and agents from and against all Losses arising directly or indirectly, out of or relating to the following:
  - (i) breach of any representation, warranty or obligation under this Agreement by PNC Bank, or any of its officers, directors, employees or agents;
  - (ii) violation by PNC Bank, its officers, directors, and employees, of any applicable law, rule, regulation or administrative order or any statement, letter or guidelines issued by applicable bank regulatory authority in connection with performance under this Agreement;
  - (iii) gross negligence or willful misconduct of PNC Bank or its officers, directors, employees, agents or subcontractors, in connection with its duties or obligations under the terms of this Agreement, except to the extent such Losses result from the negligence, gross negligence or willful misconduct of University; or
  - (iv) the use and/or occupancy by PNC Bank of University premises in connection with Financial Services to be rendered hereunder.
- (b) Indemnification Procedures for Third Party Claims. In any case where the person seeking indemnification under this Agreement (herein referred to as the "University") seeks indemnification for a third Party claim, suit or proceeding (herein referred to as a "Third Party Claim"), such indemnification will be conditioned on such University's compliance with the following procedures:
  - (i) The Indemnified Party will give prompt written notice to the person from whom indemnification is sought (herein referred to as the "PNC Bank") of each claim for indemnification under this Agreement, specifying the amount and nature of the claim (herein referred to as a "Notice of Claim"). Provided that such Notice of Claim is given (unless the failure to provide such Notice of Claim does not prejudice the interests of PNC Bank), and the University has not contested in writing the University's right to indemnification as set forth below, the University, at its own expense and using counsel of its own choosing, will promptly defend, contest and otherwise protect against any such claim, suit or proceeding. If within a reasonable time period following the receipt of a Notice of Claim, PNC Bank contests in writing the University's right to indemnification with respect to the Third Party Claim described in the Notice of Claim, the University will defend against and contest such Third Party Claim.
  - (ii) If PNC Bank is defending against the Third Party Claim, the University may, but will not be obligated to, participate in the defense of any such Third Party Claim, suit or proceeding, at its own expense and using counsel of its own choosing, but PNC Bank

will be entitled to control the defense thereof unless the University has relieved PNC Bank from liability with respect to the particular matter. The University will cooperate and provide such assistance as PNC Bank reasonably may request in connection with PNC Bank's defense and will be entitled to recover from PNC Bank the reasonable costs of providing such assistance. PNC Bank will inform the University on a regular basis of the status of such claim, suit or proceeding and the PNC Bank's defense thereof.

- (iii) In any Third Party Claim the defense of which is controlled by PNC Bank, the PNC Bank will not, without University Counsel's prior written consent, compromise or settle such claim, suit or proceeding if: (x) such compromise or settlement would impose an injunction or other equitable relief upon the Indemnified Party; or (y) such compromise or settlement does not include the third Party's release of the University from all liability relating to such claim, suit or proceeding for which the University is entitled to be indemnified.
- (iv) If the PNC Bank fails to timely defend, contest, or otherwise protect against any such claim, suit, or proceeding, and fails to contest in writing PNC Bank's right to indemnification, PNC Bank may, but will not be obligated to, defend, contest or otherwise protect against the same, and make any compromise or settlement thereof and recover the entire costs thereof from PNC Bank, including reasonable fees and disbursements of counsel and all amounts paid as a result of such claim, suit or proceeding and the compromise or settlement thereof.
- (v) The obligation of a Party to indemnify the other Party's officers, directors, employees and agents in accordance with this Section 13 may be enforced exclusively by the other Party and nothing herein will be construed to grant such officers, directors, employees and agents any individual rights, remedies, obligations or liabilities with respect to the Parties. The Parties may amend or modify this Agreement in any respect without the consent of such officers, directors, employees and agents.

### **13. LIMITATION OF LIABILITY.**

**NO PARTY SHALL HAVE ANY LIABILITY FOR ANY INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOSS OF PROFIT OR BUSINESS OPPORTUNITIES, WHETHER OR NOT THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH; PROVIDED, HOWEVER, THAT THIS LIMITATION OF LIABILITY WILL NOT APPLY TO ANY CLAIM ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR CONTRACTORS, ANY CLAIM ARISING FROM BREACH OF THE CONFIDENTIALITY PROVISIONS OF THIS AGREEMENT OR ANY THIRD PARTY CLAIM.**

### **14. TAXES.**

- (a) The University shall pay all taxes properly assessed against it or its property by any taxing authority because of its operations and conduct of its business (including University's income, employment of personnel, franchise, sales, use and excise taxes) and shall pay all



personal property taxes assessed on its fixtures, equipment and furnishings. University shall have no obligation to pay taxes related to PNC Bank's operations or conduct of its business (including PNC Bank's income, employment of personnel, franchise, sales, use and excise taxes).

- (b) PNC Bank shall pay all taxes properly assessed against it or its property by any taxing authority because of its operations and conduct of its business (including PNC Bank's income, employment of personnel, franchise, sales, use and excise taxes) and shall pay all personal property taxes assessed on its fixtures, equipment and furnishings. PNC Bank shall have no obligation to pay taxes related to University's operations or conduct of its business (including University's income, employment of personnel, franchise, sales, use and excise taxes).

#### 15. ASSIGNMENT/BINDING EFFECT.

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and permitted assigns; provided, however, that neither this Agreement, nor any of the rights and obligations hereunder, may be assigned without the prior written consent of the other Party. Notwithstanding anything provided in the foregoing sentence, PNC Bank may assign this Agreement to any affiliate of PNC Bank with thirty (30) days prior written notice to the University.

#### 16. CONFIDENTIALITY.

- (a) Each of PNC Bank and University agrees that all information, whether oral or written or via computer disk or electronic media, to which the other is given access or is made available to the other, including to each Party's director's, officers, employees, Affiliates, agents or representatives, is referred to hereinafter as "Confidential Information." Confidential Information shall include, without limitation, all technology, know-how, processes, software, databases, trade secrets, contracts, proprietary information, all historical and financial information, business strategies, operating data and organizational and cost structures, product descriptions, pricing information, customer or Constituent information, which includes, without limitation, names, addresses, telephone numbers, account numbers, demographic, financial and transactional information or customer or Constituent lists, whether received before or after the date hereof. Confidential Information also includes information of any parent, subsidiary or Affiliate of PNC Bank or University. Each Party, agrees to hold such Confidential Information in strictest confidence, not to make use thereof except in connection with the performance of this Agreement, and not to release or disclose any Confidential Information to any other Party with the exception of parent companies, subsidiaries and affiliated companies, consultants, auditors, attorneys and other professionals who need to know the Confidential Information in order to perform their services; regulators; and prospective assignees, transferees or other successor to the rights of the Parties, provided that in all such cases the third Parties receiving the Confidential Information shall agree to hold such Confidential Information in strictest confidence consistent with this Section 18. In the event of a breach of the foregoing, the non-breaching Party shall be entitled to specific performance, including the right to seek preliminary and permanent injunctive relief against the breaching Party, as its sole and exclusive remedy.

- (b) Notwithstanding the foregoing, either Party may disclose Confidential Information

pursuant to a requirement or request of a governmental agency or pursuant to a court of administrative subpoena, order or other such legal or administrative process or requirement of law, or in defense of any claims or causes of action asserted by the disclosing Party; provided, however, that prior to disclosing the Confidential Information, the disclosing Party shall (i) first notify the other Party of such request or requirement, or use in defense of a claim, unless such notice is prohibited by statute, rule or court order, (ii) attempt to obtain the consent of the non-disclosing Party to the disclosure of the Confidential Information, and (iii) in the event consent to disclosure is not given by the non-disclosing Party, the disclosing Party agrees that the non-disclosing Party shall have the right to pursue a motion to quash or other similar procedural step in order to try to prevent the production or publication of the specific Confidential Information. Notwithstanding anything herein to the contrary, nothing herein is intended to require, nor shall it be deemed or construed to require, either Party to fail to comply, on a timely basis, with a subpoena, court or administrative order or other process, or requirement.

- (c) It is understood and agreed that the obligation to protect Confidential Information shall be satisfied if the Parties utilize the same control (but no more than commercially reasonable controls) as it employs to avoid disclosure of its own confidential and valuable information and the Parties shall have appropriate policies and procedures to (a) ensure the security and confidentiality of the Confidential Information, (b) protect against any anticipated threats or hazards to the security or integrity of such Confidential Information, and (c) protect against unauthorized access to or use of such Confidential Information that could result in harm or inconvenience to the Parties or their customers or Constituents.

#### 17. ENTIRE AGREEMENT.

This Agreement and the exhibits attached hereto, if any, constitutes the entire agreement and understanding among the Parties with respect to the subject matter herein and the transactions contemplated herein and any and all previous understandings, proposals, negotiations, agreements, commitments and representations, whether oral or written, are merged herein and are superseded hereby. If there is a conflict between the terms of this Agreement and any Schedule or Exhibit attached hereto, the terms of this Agreement shall control.

#### 18. AMENDMENT.

No modification, amendment or waiver of any provisions of this Agreement shall be valid unless it is in writing and signed by the Parties.

#### 19. FORCE MAJEURE.

Neither Party shall be held liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control or without its fault or negligence, such as acts of God, acts of civil or military authority, government regulations, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accident, floods, power blackouts, volcanic action, major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities, or acts or omissions of transportation common carriers or suppliers.

## 20. HEADINGS.

The headings contained in this Agreement are solely for the convenience of the Parties and should not be used or relied upon in any manner in the construction or interpretation of this Agreement.

## 21. SEVERABILITY.

Any element of this Agreement held to violate a law or regulation shall be deemed void and all remaining provisions shall continue in force. The Parties shall in good faith attempt to replace an invalid or unenforceable provision with one that is valid and enforceable and which comes as close as possible to expressing or achieving the intent of the original provision.

## 22. GOVERNING LAW/JURISDICTION.

This Agreement shall be construed in accordance with and governed by the laws of the State of West Virginia, without regard to conflict of laws principles. For the purpose of any suit, action or proceeding arising out of or relating to this Agreement, each of University and PNC Bank hereby irrevocably consents and submits to the exclusive jurisdiction of any court of competent jurisdiction in the State of West Virginia.

## 23. NOTICES.

All notices which either Party may be required or desire to give to the other Party shall be in writing and shall be given and deemed served on the date when hand delivered in writing to the applicable Party, or if sent by certified mail, return receipt requested, or by courier service, notice shall be deemed served on the date received. Notices sent by mail or courier shall be sent to the following addresses:

If to University then to:

West Virginia University  
Chief Procurement Officer  
Department of Purchasing, Contracts and Payment Services  
P.O. Box 6024  
Morgantown, WV 26506-6024

With a copy to:

West Virginia University  
Office of the Vice President for Legal Affairs and General Counsel  
105 Stewart Hall  
Morgantown, WV 26506-6204  
Attn: General Counsel

If to PNC Bank, then to:

PNC Bank, National Association  
Two PNC Plaza  
620 Liberty Avenue

Pittsburgh, Pennsylvania 15222  
ATTN: Manager, University Banking

With a copy to:

PNC Bank, National Association  
One PNC Plaza  
249 Fifth Avenue  
P1-POPP-21-1  
Pittsburgh, Pennsylvania 15222  
ATTN: Chief Counsel, Consumer Bank

The names and addresses for the purpose of this Section may be changed by either Party giving written notice of such change in the manner herein provided for giving notice. Unless and until such written notice is actually received, the last name and address stated by written notice or provided herein, if no such written notice of change has been received, shall be deemed to continue in effect for all purposes hereunder.

24. RELATIONSHIP.

Nothing in this Agreement is intended to nor does it create the relationship of employer and employee, principal and agent, partners or joint venturers between University and PNC Bank. Each Party hereto intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any person other than the Parties hereto.

25. WAIVER.

Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by all Parties. The failure or delay of any Party to require performance of any provisions shall not constitute any waiver thereof, unless and until such performance has been waived by such Party in writing in accordance with the terms hereof. No waiver by any Party of any term or condition of this Agreement, in any one or more instances shall be deemed to be construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by law or otherwise afforded, shall be cumulative and not alternative.

26. REMEDIES.

All remedies provided for under the terms of this Agreement shall be cumulative and not alternative.

**IN WITNESS WHEREOF**, each Party hereto has caused its duly authorized representative to execute this Payment Solutions Agreement on its behalf, as of the Effective Date.

PNC Bank, National Association  
("PNC Bank")

West Virginia University Board of  
Governors on behalf of West Virginia  
University ("University")

X 

X Brenda Mowen

Print: Nickolas Certo

Print: BRENDA MOWEN

Title: SVP, University Banking

Title: CPO

Date: 4/7/14

Date: 3/26/2014



SCHEDULE A: FEES

<b>Direct Costs to [WVU]</b>	<b>Fee</b>	<b>Description</b>
Program Implementation Fee	\$20,000	Waived
Per student set up fee	\$0.15	Per new eligible student
ACH to PNC Bank Account	No Charge	
ACH to Non-PNC Bank account	\$0.25	Per item
PNC Bank VISA® Stored value card	\$2.25	Per card
VISA® Stored value card Reload Fee	\$0.25	Charged each time a card is loaded (refund)
Paper Checks		
First 9,000 Checks per year	\$1.00	Per check
Each check above 9,000 per year	\$1.00	Per check
<b>Direct Costs to Student</b>	<b>Fee</b>	<b>Description</b>
<b>Option A: PNC Checking</b>	No charge	Other ATM fees may apply at non PNC ATMs
Visa Check Card POS Fee	No charge	
Visa Check Card ATM Fee	No charge	
Non-PNC ATM Withdrawal	No charge	
PNC Visa Check Card Replacement	\$10.00	
<b>Option B: ACH (Non PNC Account)</b>	No charge	
<b>Option C: PNC Visa Prepaid Card</b>		
PNC Visa Prepaid Replacement	\$10.00	Monthly fee after five months of inactivity.
Inactivity Fee	\$3.00	
POS PIN Based Transaction	No charge	
ATM Withdrawal Fee	No charge	
		Other ATM fees may apply at non PNC ATMs