

## UNIVERSITY BANKING SERVICES AGREEMENT

THIS UNIVERSITY BANKING SERVICES AGREEMENT ("Agreement") is effective as of the First day of July, 2018, ("Effective Date"), and entered into by and between Florida Atlantic University Board of Trustees, a public body corporate of the State of Florida and an institution of higher education organized and operated under the laws of the State of Florida ("University") and PNC Bank, National Association, a national banking association, with its principal office at One PNC Plaza, 300 Fifth Avenue, Pittsburgh, Pennsylvania 15222 ("PNC Bank").

WHEREAS, the University wants PNC Bank to offer its Program on the University's Campus.

This Agreement sets forth the terms pursuant to which PNC Bank will offer the Program to Constituents of University.

### 1. 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.

(b) "Athletic Facilities" shall mean Buildings and spaces operated by the University athletic department for inter-collegiate sports events and support

(c) "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.

(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<sup>®</sup> 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) "Campus" shall mean all buildings and common spaces, whether owned or leased by the University, used by the University for student housing, student services, institutional, educational and business purposes, excluding Athletic Facilities.

(f) "Constituents" shall mean University's students, faculty, and staff collectively.

(g) "Financial Services" shall mean the campus retail banking services to be offered by PNC Bank to Constituents hereunder as part of the Program.

- (h) "Force Majeure" shall have the meaning given that term in Section 21 below.
- (i) "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. The New Student List shall not be provided to PNC Bank, unless otherwise agreed to by the parties by amending this Agreement.
- (j) "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.
- (k) "Preferred Campus Retail Banking Provider" shall mean PNC Bank is the only financial institution to which University will extend any of the campus retail banking Commitments (Section 6) and Joint Obligations (Section 8) except as may be otherwise provided in this Agreement.
- (l) "Program" shall mean the Financial Services offered by PNC Bank to Constituents hereunder as further described in Section 4(b) below.
- (m) "Program Expectations" shall mean the number of new checking Accounts that PNC Bank seeks to open for the Constituents in a given time period of the Term.
- (n) "Royalty" shall have the meaning given that term in Section 3(b).
- (o) "Stadium ATMs" shall mean the ATMs located at Florida Atlantic Stadium, as further identified on Schedule A to Exhibit A hereto.
- (p) "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 E attached hereto and incorporated herein by this reference.
- (q) "Weblinking" shall have the meaning set forth on Exhibit F attached hereto and incorporated herein by this reference.

## 2. TERM

This Agreement shall commence on the Effective Date and shall terminate on the fifth (5<sup>th</sup>) anniversary of the Effective Date ("Initial Term"). Either party will have the right to notify the other it wishes to renegotiate the Agreement for a Renewal Term of no longer than five (5) years, by providing written notice of such intention not less than one hundred eighty (180) days prior to the termination of the Initial Term. Both parties will negotiate in good faith for a period of no more than forty-five (45) days from the date of such notification. If the parties cannot agree upon renegotiated terms within forty-five (45) days, the Agreement will terminate in accordance with its terms. The Initial Term and the Renewal Term may be referred to herein as a "Term."

### 3. ROYALTY, PAYMENT TERMS

(a) Each July of the Term, beginning with July, 2019, the parties shall conduct an annual Program review, which shall include a comparison of the performance of the applicable year to the agreed upon Program Expectations. In the event the parties agree to extend the Term, the program expectations and royalty shall be negotiated by the parties in good faith.

Program Expectations are set forth below. Account numbers are based on a July - June calendar year. Program Expectations may be adjusted only by mutual consent.

<b>Program Expectations</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>
New Student Checking Accounts	790	1,090	1,090	1,090	1,090
New Workplace Banking (Faculty/Staff) Accounts	90	90	90	90	90
<b>Total New Accounts</b>	<b>880</b>	<b>1,180</b>	<b>1,180</b>	<b>1,180</b>	<b>1,180</b>

(b) In exchange for the consideration provided under this Agreement, PNC Bank (or its Affiliate) will pay to University an annual license fee ("Royalty") calculated in accordance with this paragraph or, if applicable, paragraph (c) below. In the event that University attains the Program Expectations Total for a calendar year as specified in paragraph (a) above, PNC Bank (or its affiliate) will pay to University the following Royalty, within sixty (60) days of the end of the applicable year:

<b>Year</b>	<b>Guaranteed Minimum Royalty</b>	<b>Expected Annual Royalty</b>	<b>Financial Literacy Contribution</b>
1	\$57,750	\$175,000	
2	\$57,750	\$175,000	
3	\$57,750*	\$175,000*	\$25,000
4	\$57,750*	\$175,000*	\$25,000
5	\$57,750*	\$175,000*	\$25,000
<b>Totals</b>	<b>\$288,750</b>	<b>\$875,000</b>	<b>\$75,000</b>

\*This may be further reduced, in accordance with paragraph (e), below.

- (i) Signing Bonus: Within sixty (60) days of signing a formal agreement PNC Bank shall pay University a Signing Bonus of Two Hundred Fifty Thousand Dollars (\$250,000).
- (ii) The University shall repay to PNC Bank a certain percentage of the Signing Bonus, described above, should the final written agreement be cancelled for any reason prior to December 31, 2022, other than a default by PNC Bank. The percentage paid by the University shall be in accordance with the repayment chart set forth below.

Year Agreement Terminated	Signing Bonus Repayment Percentage
Contract year 1	100%
Contract year 2	75%
Contract year 3	50%

(c) In the event the University fails to achieve the Program Expectations by category as stated in subsections 3(a), but achieves the total Program Expectations for new accounts in any year of the Term, PNC Bank shall pay University as set forth in Section 3(b).

(d) Notwithstanding subsection 3(b), in the event that University does not attain the Program Expectations Total for any calendar year as specified in paragraph (a) above, PNC Bank will pay to University for any such calendar year a minimum guaranteed Royalty equal to the greater of (i) an amount equal to the Royalty stated in paragraph 3(b) above for the applicable calendar year multiplied by a fraction, the numerator of which is the number of new Accounts for the calendar year and the denominator of which is the Program Expectations Total for that calendar year; or (ii) an amount equal to fifty percent (33%) of the Royalty stated in paragraph 3(b) for the applicable calendar year.

(e) Notwithstanding anything to the contrary in this Agreement,

- (i) so long as the Stadium ATMs are in place, in the event that University does not attain the Program Expectations Total for any calendar year beginning in the second year of the Agreement, the Expected Annual Royalty shall be reduced by \$19,200.
- (ii) In the event the Expected Annual Royalty is reduced as set forth in subparagraph (i), above, the University may, in its sole discretion, elect to have the Stadium ATMs removed, as provided in Exhibit A hereto.

(f) As of the Effective Date of this Agreement for any calendar year in which the Program Expectations Total is exceeded for any calendar year, and 85% or more of the WorkPlace Expectations are attained, additional Royalty payments would be available as follows:

Percentage Program Goal Total is Exceeded	Percentage of Additional Royalty
1%	1%
2%	2%
3%	3%
4%	4%
5%	10%
6%	11%
7%	12%
8%	13%
9%	14%
10%	20%
> 10%	1% more for each 1% additional sales

(g) Notwithstanding anything to the contrary contained in this Agreement:

- (i) if any federal or state law is enacted, or regulation promulgated by a federal or state agency with supervisory or enforcement authority over University or PNC Bank, ("New Law"), and
- (ii) the New Law makes it impossible, impracticable or unduly burdensome for (a) PNC Bank to deliver the Financial Services under the Program, or (b) the University to satisfy its obligations under the Agreement, then
- (iii) either party shall promptly notify the other party in writing no later than thirty (45) days after learning of the pending implementation or passage of the New Law, then
- (iv) the parties shall meet as soon as practicable to discuss in good faith the continued viability of the Agreement as intended by the parties, and work together on mutually agreeable modifications to the Agreement to achieve the parties' mutual objectives consistent with such new law, and
- (v) within sixty (60) days from the date of the notice or the effective date of New Law, whichever is sooner, if the parties are unable to come to agreement per (iv) then the Agreement will be terminated in accordance with Section 17(d) of this Agreement.
- (vi) For each partial or total calendar year after the effective date of the New Law, but prior to the termination of the Agreement, PNC shall be excused from making to the University, any Royalty payment or additional Royalty payment under Section 3(b), if the making of such payment is illegal or otherwise prohibited by any such New Law.

(vii) If the Agreement is terminated a final Royalty payment shall be made to the University within sixty (60) days calculated as the applicable annual target Royalty payment multiplied by the sum of expected volume percentages for the months elapsed in the royalty calculation period as shown in the table below.

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4%	2%	2%	2%	4%	26%	18%	32%	3%	2%	2%	3%

Example: a contract which calculates Royalties on a calendar year basis is terminated in May. The final Royalty payment would be calculated as target Royalty, (sum of % Jan – May).

(h) 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, or delivered by hand.

#### 4. PRODUCTS AND SERVICES

- (a) PNC Bank shall provide Financial Services during the Term.
- (b) The Program is designed to attract Constituents that do not have an Account with PNC Bank, and does not include 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. The Program shall include: presenting financial seminars to students and employees and opening new Accounts for University students, and employees. It shall also include surcharge-free access to PNC ATMs for PNC Account holders, ATMs shall be provided pursuant to a separate Master License Agreement, Exhibit A, which is attached hereto and incorporated herein by this reference.

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. Solicit financial information within a PNC Bank branch; or
- 3. Independently utilize telephone or electronic media for information regarding PNC Bank products and/or services.

(c) 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.

(d) 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.

(e) The parties agree that marketing materials related to the Program will be communicated electronically from time to time. In order for either party to become the designated "Sender" with respect to CAN SPAM, the party must meet certain defined requirements.

1. Each party to this Agreement will comply with the following provision when engaging as the Sender under CAN-SPAM:

- (i) the header information must not be materially false or misleading and it must accurately identify the sending computer (15 U.S.C. 7704(a)(1));
- (ii) the subject heading cannot mislead a reasonable recipient as to a material fact about the contents of the e-mail (15 U.S.C. 7704(a)(2));
- (iii) the e-mail must include a valid opt-out mechanism (15 U.S.C. 7704(a)(3)(A)(i)); and
- (iv) the e-mail must include a clear commercial identifier, opt-out notice, and physical address (15 U.S.C. 7704(a)(5)(A)).

2. No sexually oriented e-mails will be sent by either party under this Agreement.

3. The parties will agree, prior to the distribution of materials which entity shall be considered the Sender.

4. The Sender will be responsible for all claims or losses resulting from any email communication(s) that violate CAN-SPAM.

## 5. PNC BANK'S EMPLOYEES

(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.

(c) PNC Bank shall only employ individuals to perform its obligations hereunder who are authorized to work in the United States.

(d) When on or about the property of University, PNC Bank agrees that its employees, contractors and agents shall observe such reasonable policies, rules and regulations as University shall reasonably prescribe from time to time for the general population of its Campus and which are made available to PNC Bank from time to time.

(e) 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.

## 6. COMMITMENTS OF UNIVERSITY

University shall, during the Term of this Agreement:

(a) Work in good faith to generally support the Program as follows:

(i) Promote the availability of the Program to its students, faculty and staff as mutually agreed with PNC Bank.

(ii) Permit PNC Bank the right to market the Program and Financial Services as Preferred Campus Retail Banking Provider to Constituents;

(iii) As may be required for PNC Bank to fulfill its commitments hereunder, permit PNC Bank to work with University's vendors; and

(iv) Permit PNC Bank physical access on Campus and presence at Campus events necessary for PNC Bank to exercise the marketing rights enumerated herein at no additional cost to PNC Bank.

(b) Make available the following marketing rights for the Program, subject to pre-approval by the University of each specific activity:

### Students:

1. Permitting preferred on-Campus access to common areas, at no cost to PNC Bank, including tabling by PNC Bank at mutually-agreed upon University events such as freshmen orientations, student fairs, etc.
2. Mailing, at PNC Bank's expense, to the New Student List, which shall be mailed to the student's home address, the timing of such mailing to be mutually agreed upon.
3. Permitting on-Campus promotions, giveaways, etc. sponsored by PNC Bank, provided such events are: (i) in compliance with applicable laws; (ii) are limited to locations designated by the University for such activities; and (iii) are scheduled through the normal



University process for reserving space.

4. Permitting the distribution by PNC Bank of Program communications, via distributions methods approved by the University, (which Program communications bearing University Marks shall be approved in writing in advance by University, and such approval shall not be unreasonably withheld, conditioned or delayed).
5. Permitting from time to time on-Campus financial seminars at mutually agreed upon venues, pre-approved by University and at no cost to PNC Bank.
6. Mentioning of PNC Bank and the Program from time to time in agreed upon University publications and mailings.
7. Supporting agreed-upon student events to be sponsored by PNC Bank
8. Providing a web link from University's Business Services web page on the University's web site to a customized site at [www.pnc.com/fau](http://www.pnc.com/fau).

Faculty/Staff:

1. Permitting the distribution of materials by PNC Bank at new hire orientations
2. Permitting on-Campus promotions, giveaways, etc. sponsored by PNC Bank, provided such events are: (i) in compliance with applicable laws; (ii) are limited to locations designated by the University for such activities; and (iii) are scheduled through the normal University process for reserving space.
3. Permitting on-Campus tabling by PNC Bank, at no cost to PNC Bank, at University events including but not limited to benefit-related fairs via tabling, and new hires.
4. Facilitating up to three (3) mailings per year by PNC Bank to faculty and staff to the address provided by the University.
5. Endorsing PNC Bank's presenting agreed-upon on-Campus financial seminars from time to time at times and places to be approved in advance by the University including with individual University departments and student clubs.
6. Mentioning of PNC Bank and the Program from time to time in agreed upon University publications and mailings.
7. Permit advertising by PNC Bank in University publications and mailings at agreed-upon fees.
8. Providing a Web link from University's Human Resources web site and other key areas on the University's web site to a customized site at [www.pnc.com/fau](http://www.pnc.com/fau).

(d) Grant PNC Bank exclusive ATM deployment privileges on Campus (other than for the Athletic Facilities) and permit PNC Bank to install a minimum of eight (8) ATM at sites to be identified to the mutual satisfaction of PNC Bank and the University. All ATMs shall be governed by and in accordance with the provisions of the Master License Agreement between PNC Bank and University entered into contemporaneously with this Agreement, which is attached hereto as Exhibit A and incorporated herein by this reference;

(e) Under this Agreement, PNC Bank has the right to place ATMs on any Athletics Facilities; provided, however, that the University, in its sole discretion and at any time, may

provide 45 day advance written notice to PNC Bank to remove the Athletic Facilities from the scope of the Agreement and any ATMs located in Athletic Facilities;

(f) Acknowledge PNC Bank's option to impose a surcharge for the use of its ATM(s) by non-PNC customers. The surcharge shall be in the same amount as the surcharge imposed for use of PNC Bank branch ATMs in the Florida area. In the event the branch ATM surcharge is increased, then the surcharge applicable to the ATMs hereunder shall also increase;

(g) Prohibit any other financial institution from establishing and/or operating a manned or unmanned branch, e-office or banking kiosk on Campus; and

Notwithstanding anything to the contrary contained in this Agreement: (i) 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, University's policies and procedures; (ii) the University's affiliated foundation is currently a part of an affinity agreement ("Affinity Agreement") that contains certain limitations on University's ability to endorse, advertise, aid, or market programs (including, without limitation, on the use of University Marks), for the providing of financial services products, including without limitation consumer money market deposit accounts, certificate of deposit accounts, checking accounts, debit cards, savings accounts, individual retirement money market deposit accounts, and individual retirement certificate of deposit accounts, and no commitment of University or right of PNC Bank contained within this Agreement is intended to constitute a conflict with the Affinity Agreement and to the extent such conflict exists, such commitment or right in this Agreement shall be construed or modified in such a manner to negate any such conflict

#### 7. COMMITMENTS OF PNC BANK:

At its cost, except as the parties may otherwise agree from time to time, during the Term PNC Bank shall:

- (a) Offer the Program to Constituents;
- (b) Marketing of the Program, which shall include, among other things:
  - At times mutually agreed between the parties, providing materials for the mailing of PNC Bank's advertising and promotional information to Constituents;
  - Marketing the Program to Constituents as mutually agreeable during the Term, in accordance with Section 6 above;
  - At its sole cost and expense, designing and creating all marketing materials, as described above. Subject to the prior written approval of University which shall not be unreasonably withheld, conditioned or delayed;
  - Providing Constituents who open an Account pursuant to the Program with a PNC Bank Visa® Debit Card which will allow point of sale and ATM transactions everywhere the Visa® logo is displayed;

- At PNC Bank's sole cost and expense, marketing to Constituents through mailings, advertisements in University publications, tabling at new student orientation and similar events;
  - Providing University with a quarterly report of new Accounts opened and card transaction activity with de-identified, aggregated data; and
  - Collaborate with the University to develop educational programs geared towards developing student financial awareness and responsibility.
  - Assisting the University in meeting its compliance obligations under applicable state and federal regulations where information about the Program is required, including those Department of Education requirements further described in **Exhibit G** hereto.
- (c) Use PNC Bank's reasonable commercial efforts to identify Account applications as Constituents at the time of Account opening and record such Accounts as part of the Program.
- (d) PNC agrees to provide in-person banking services during hours mutually agreeable to PNC and the University and initially beginning Tuesdays from 9:30 to 11:30 and Thursdays from 2:30 to 4:30 during Fall and Spring Semesters at a mutually agreed upon location on Campus. In return, University agrees to provide PNC Bank with a location for PNC Bank personnel to provide banking services, electrical service sufficient for a copier to be supplied by PNC Bank, and access to University's Wi-Fi service and locked cabinet. PNC and University will agree to monitor these days and times to ensure that the initial proposed times are productive and reserve the right to alter these times if warranted. If, after two (2) years, PNC believes the presence of such an employee is not warranted, in its reasonable discretion, it may present to University a written justification and discontinue this service.

## 8. JOINT OBLIGATIONS

- (a) The parties agree that they shall:
- (i) Issue a press release, jointly approved, upon execution of this Agreement;
  - (ii) Conduct, in good faith, an annual review of the success of the Program in accordance with Section 3; reviews shall be quarterly throughout the Term of this Agreement;
  - (iii) Execute each agreement that constitutes an Exhibit hereto and which shall be incorporated herein
- (b) The University shall hereby comply with the requirement listed on **Exhibit G**, Department of Education Cash Management Compliance Agreement, which is attached hereto and incorporated herein by this reference.

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 Florida 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. 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 are commercially reasonable, and subject to the requirements and limits of applicable law, including Chapter 284, Part II, Section 768.28, Florida Statutes, and any rules promulgated thereunder.

#### 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 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; and

(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.

(viii) 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:

(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, 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. LOCATIONS/SIGNS

University shall permit PNC Bank to place signs publicizing 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.

## 12. ADVERTISING, PROMOTION AND RELATED ACTIVITIES

(a) PNC Bank 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.

(b) The parties may conduct joint promotional activities if they mutually agree to do so.

(c) In addition to the provisions of Section 6, University shall provide PNC Bank access to such University resources as may be appropriate and necessary to promote the Program and the Financial Services in appropriate mailings and other applicable media that are provided to incoming and returning Constituents as mutually agreed upon.

## 13. INDEMNIFICATION

(a) Indemnification by University. To the extent provided under Section 768.28 of the Florida Statutes and without otherwise waiving any rights of sovereign immunity, University shall indemnify, defend and hold harmless PNC Bank, its Affiliates and their respective officers, directors, employees, and agents from and against all loss, cost, damage, liability, claim, expense (including reasonable legal fees and expenses), judgment and fine of any nature whatsoever (collectively "Losses") arising directly or indirectly, out of or relating to the following:

(i) Breach of any representation, warranty or obligation under this Agreement by University, or any of its officers, directors, employees or agents;

(ii) Violation by University, its officers, directors, and employees, of any applicable law, rule, regulation or administrative order or any statement, letter or guidelines issued by applicable regulatory authority in connection with performance under this Agreement; or negligence or willful misconduct of University 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 PNC Bank.

(b) 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; or

(iii) 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.

(c) Indemnification Procedures for Third Party Claims. In any case where the person seeking indemnification under this Agreement (herein referred to as the "Indemnified Party") 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 Indemnified Party'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 "Indemnifying Party") 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 the Indemnifying Party), and the Indemnifying Party has not contested in writing the Indemnified Party's right to indemnification as set forth below, the Indemnifying Party, 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, the Indemnifying Party contests in writing the Indemnified Party's right to indemnification with respect to the Third Party Claim described in the Notice of Claim, the Indemnified Party will defend against and contest such Third Party Claim.

(ii) If the Indemnifying Party is defending against the Third Party Claim, the Indemnified Party 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 the Indemnifying Party will be entitled to control the defense thereof unless the Indemnified Party has relieved the Indemnifying Party from liability with respect to the particular matter. The Indemnified Party will cooperate and provide such assistance as the Indemnifying Party reasonably may request in connection with the Indemnifying Party's defense and will be entitled to recover from the Indemnifying Party the reasonable costs of providing such assistance. The Indemnifying Party will inform the Indemnified Party on a regular basis of the status of such claim, suit or proceeding and the Indemnifying Party's defense thereof.

(iii) In any Third Party Claim the defense of which is controlled by the Indemnifying Party, the Indemnifying Party will not, without Indemnified Party's prior written consent, compromise or settle such claim, suit or proceeding if: (y) such compromise or settlement would impose an injunction or other equitable relief upon the Indemnified Party; or (z) such compromise or settlement does not include the third party's release of the Indemnified Party from all liability relating to such claim, suit or proceeding for which the Indemnified Party is entitled to



be indemnified.

(iv) If the Indemnifying Party fails to timely defend, contest, or otherwise protect against any such claim, suit, or proceeding, and fails to contest in writing the Indemnified Party's right to indemnification, the Indemnified Party 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 the Indemnifying Party, 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.

(vi) Nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida or its officers, employees, servants, agents, agencies, or public bodies corporate to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in section 768.28 of the Florida Statutes.

#### 14. 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 INDEMNIFICATION OBLIGATIONS ARISING FROM A BREACH OF THE CONFIDENTIALITY PROVISIONS OF THIS AGREEMENT OR ANY THIRD PARTY CLAIM.

#### 15. TAXES

(a) As applicable, 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).

16. 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, transferred or delegated by either party, without the prior written consent of the other party; and provided further, however, that this Agreement may be assigned by either party without the consent of the other party hereto to any Affiliate of the assigning party.

17. TERMINATION

(a) 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.

(b) 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.

(c) As set forth in Section 2, either party may indicate its desire to negotiate a Renewal Term by providing notice thereof no later than one hundred eighty (180) days prior to the expiration of the Initial Term. If the parties cannot agree upon renegotiated terms within forty five (45) days, the Agreement will terminate in accordance with its terms.

(d) Upon ninety (90) days prior written notice to the other party, either party may terminate this Agreement in the event that (i) any federal or state law is enacted, or any regulation is promulgated by a federal or state agency with supervisory or enforcement authority over University or PNC Bank, and (ii) such law or regulation makes it impossible, or impracticable for the terminating party to continue to perform its obligations under the Agreement. In any such notice of termination, the terminating party shall provide to the non-terminating party a description reasonably describing the basis for termination pursuant to subsections (i) and (ii) hereof. Upon the issuance of a notice of termination the parties shall promptly meet and make reasonable efforts to amend this Agreement. If no mutually acceptable alternative arrangement can be found then this Agreement and all related agreements shall be terminated, (i.e., ATM Master License).

(e) In addition, the University may terminate the Agreement in accordance with the termination provisions set forth in **Exhibit G**, Department of Education Cash Management Compliance Agreement and either party may terminate the Agreement at any time and for any reason, upon one-hundred and eighty (180) days written notice to other party.

#### 18. 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 directors, 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, including the Florida Public Records Act, 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 prior to the disclosing party's time for production, 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. GOVERNING LAW/JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to its provisions relating to the conflict of laws. Each party agrees that it is and shall remain subject to the in personam, in rem and subject matter jurisdiction of the state courts in the State of Florida for all purposes pertaining to this Agreement and all documents and instruments executed in connection or in any way pertaining hereto.

25. 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:

Director, Procurement  
Florida Atlantic University  
777 Glades Rd  
Boca Raton, FL 33431

With a copy to:

General Counsel  
Florida Atlantic University  
777 Glades Rd, ADM 370  
Boca Raton, FL 33431

If to PNC Bank, then to:

PNC Bank, National Association  
The Tower at PNC Plaza  
300 Fifth Avenue  
Pittsburgh, Pennsylvania 15222  
ATTN: Manager, University Banking

With a copy to:

PNC Bank, National Association  
The Tower at PNC Plaza  
300 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.

26. PUBLIC RECORDS

PNC Bank shall allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by PNC Bank in conjunction with the Agreement. Refusal by PNC Bank to allow such public access shall be grounds for cancellation of the Agreement by the University. To the extent PNC Bank is acting on behalf of the University, PNC Bank further agrees to: (i) keep and maintain public records required by the University to perform the service, (ii) upon request from the University's custodian of public records, provide the University with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law, (iii) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if PNC Bank does not transfer the records to the University, and (iv) upon completion of the Agreement, transfer, at no cost, to the University all public records in possession of PNC Bank or keep and maintain public records required by the public agency to perform the service. If PNC Bank transfers all public records to the University upon completion of the Agreement, PNC Bank shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements, except as they may be required to be maintained pursuant to applicable law. If PNC Bank keeps and maintains public records upon completion of the Agreement, PNC Bank shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the University, upon request from the University's custodian of public records, in a format that is compatible with the information technology systems of the University.

**IF PNC BANK HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO PNC BANK'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 561.297.2452, [publicrecords@fau.edu](mailto:publicrecords@fau.edu), Division of Public Affairs, Florida Atlantic University, 777 Glades Road, ADM, Boca Raton, FL 33431.**

27. STUDENT RECORDS.

To the extent PNC Bank has access to student data or information regarding University students in connection with this Agreement, such student data or information shall at all times constitute education records of the University. PNC Bank agrees to abide by the limitations on re-disclosure of personally identifiable information from education records set forth in The Family Educational Rights and Privacy Act (34 CFR § 99.33 (a)(2)), Florida Statutes §1006.52, FAU Regulation 4.008, and with the terms set forth herein:

(a) Covered data and information (CDI) includes paper and electronic student education record information supplied by the University, as well as any data provided by the University students to PNC Bank. PNC Bank agrees to hold CDI in strict confidence.

(b) PNC Bank shall not use or disclose CDI received from or on behalf of the University or its students except as permitted or required by the Contract, as required by law, or as otherwise authorized in writing by University or the student. PNC Bank agrees not to use CDI for any purpose other than the purpose for which the disclosure was made.

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. REMEDIES

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

31. 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")**

By: 

Name: Nickolas P. Certo

Title: Senior Vice President

Date: September 26, 2018

**Florida Atlantic University**  
**("University")**

By: 

Name: STACY VOLMICK

Title: Vice President, Admin. Affairs

Date: 9-27-18



**LIST OF EXHIBITS**

**EXHIBIT A**  
MASTER LICENSE AGREEMENT

**EXHIBIT B**  
E-BRANCH LEASE  
(INTENTIONALLY OMITTED)

**EXHIBIT C**  
NON-PNC ATMS  
(INTENTIONALLY OMITTED)

**EXHIBIT D**  
PNC BANK MARKS

**EXHIBIT E**  
UNIVERSITY MARKS  
(INTENTIONALLY OMITTED)

**EXHIBIT F**  
WEBLINKING AGREEMENT

**EXHIBIT G**  
DEPARTMENT OF EDUCATION CASH MANAGEMENT COMPLIANCE AGREEMENT

**[Remainder of page intentionally left blank]**

**EXHIBIT A**  
**MASTER LICENSE AGREEMENT**

THIS MASTER LICENSE AGREEMENT ("ATM Agreement"), is effective as of the \_\_\_\_ day of \_\_\_\_\_ 2018, ("Effective Date"), and entered into by and between Florida Atlantic University, an institution of higher education organized and operated under the laws of the State of Florida ("University"), and PNC Bank, National Association, a national banking association ("PNC Bank"). This ATM Agreement is an exhibit to and an integral part of that certain University Banking Services Agreement of even date herewith between University and PNC Bank (the "Agreement"). 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 Agreement which specified services include ATM deployment.

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

**1. License**

PNC Bank and University 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 PNC Bank and University may agree.

**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 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. Except as provided in section 3(e) of the Agreement, 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 its best efforts to promptly notify PNC Bank of such event, and to protect the security of the ATM(s).

#### 4. ATMs

(a) The ATMs that will be installed shall, at a minimum, perform cash withdrawals, transfers and balance inquiries. The ATMs will have the ability to be upgraded to provide additional capabilities as the parties may mutually agree from time to time.

(b) The ATMs shall perform the functions described in Section 4(a) 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

(a) PNC Bank shall, using its own independent contractors, subject to the written approval of the University, which approval shall not be unreasonably conditioned, withheld or delayed, and in coordination with University's information technology and facilities personnel, and subsection (d), below, install at the Locations:

(i) bolted 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").

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

(i) at the locations mutually agreed upon;

(ii) University will use its best efforts to obtain approval of the installation from any parties whose approval is required to place an ATM at the Locations. This applies to any ATM installed after the date of this ATM Agreement;

(iii) PNC Bank will be responsible for obtaining, at its expense, all approvals required in connection with the installation, provided that University will cooperate with PNC Bank, and secure the cooperation of any necessary other parties, as required by local ordinances and practice, in

making permit applications;

(iv) PNC Bank will indemnify and save University harmless from and against all liability, loss, cost and expense arising in connection with the Installation; and

(v) Upon termination of the Agreement, PNC Bank shall 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 Installations, provided that PNC Bank shall cap all pipes and conduits and restore any damage to the Locations caused by such removal.

(c) Signs may be installed only upon the mutual agreement of the parties. If the parties mutually agree to install signs, PNC Bank and University shall determine each of their obligations to pay the cost of the signs and costs of sign installation, maintenance and removal.

(d) PNC Bank shall supply a list of its independent contractors engaged for such installations upon University's request. Should the University provide reasonable, written objection to any such contractor, it shall promptly notify PNC Bank, and the parties shall work in good faith to address the objection.

## 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 the 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

(a) PNC Bank:

(i) The operation, servicing, maintenance and repair of the ATM and the related Equipment and Installations shall be under the sole control of PNC Bank and its agents, employees and independent contractors. Except

as otherwise provided herein, PNC Bank shall bear the expense of such operation, servicing, maintenance and repair, and shall keep the ATM and related Equipment and Installations in a safe and operable condition. PNC Bank shall require all of its employees, agents and independent contractors who perform any of the aforesaid tasks at the Location to: (1) carry and present identification upon University's request; and (2) perform their tasks with minimum disruption to University's business.

- (ii) First Line Maintenance: Upon receipt of notification from the University that the ATM has malfunctioned, PNC Bank or its agents will use commercially reasonable efforts to respond within three (3) hours or less for First Line Maintenance.
  - a. For purposes of the Agreement, First Line Maintenance is defined to mean paper jams, card jams, currency jams, deposit jams, low currency conditions, receipt failures, journal failure, dispenser malfunctions, replenishment of consumables including cash, communication failures, responses to extended "no activity" situations or any other problem preventing the completion of the cardholder transactions.
- (iii) Second Line Maintenance: Upon receipt of notification from the University that the ATM has malfunctioned, PNC Bank or its agents will use commercially reasonable efforts to respond within six (6) hours or less for Second Line Maintenance.
  - a. For purposes of this Agreement, Second Line Maintenance is defined to mean preventative maintenance, which will be scheduled on a regular basis for each ATM, and unscheduled and on-call remedial maintenance. Second Line Maintenance also will include, but is not limited to, lubrication, adjustment, and the replacement of any part necessary, with a part that meets the manufacturer's specifications, for the satisfactory operation of the ATMs.
- (b) University will provide the following services under this Agreement:
  - (i) pay the electricity usage for the ATM and related Equipment and Installations and install the necessary outlets and connections, if required, at its expense;
  - (ii) keep the ATM and the area around the ATM clean, presentable and free from obstruction, and, with respect to the Location generally, University will continue to maintain the same standards of cleanliness, maintenance, repair and operation as are in effect on the Effective Date;
  - (iii) pay all costs and expenses for ownership, operation, maintenance

- and repair of the Location (including real estate taxes and utilities) not expressly made payable by PNC Bank herein;
- (iv) maintain the Location in accordance with the environmental standards, if provided by PNC Bank, as required by the ATM manufacturer for the proper functioning of the ATM

## 8. Covenants

### (a) 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.

### (b) PNC Bank hereby covenants as follows:

- (i) 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
- (ii) 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

(a) During the term of this Agreement, and except as otherwise provided in the Agreement, University will not grant to any person other than PNC Bank the right to install or operate an ATM at the Location (excluding the Athletic Facilities).

(b) PNC Bank shall impose a surcharge on users, other than PNC Account

holders, of its ATM at the Location, which shall not exceed the surcharge it employs at ATMs in its branches in the Southeast Florida market. In the event PNC Bank increases the amount of the ATM surcharge it imposes for users of its ATMs at its branches in the Southeast Florida market, then PNC Bank reserves the right to increase the surcharge hereunder to reflect such change.

**10. Performance; Warranty**

PNC Bank warrants that the ATMs in the Locations shall be fully operational, and allow balance inquiries and access to funds reasonably available to accountholders, including at the times the University or its third-party servicer makes direct payments into them, 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 the University Location in accordance with the standards for security generally at University's facilities. 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 by telephone or electronic communication of any damage to the Location which adversely affects the operation or security of the ATMs. If the ATM is bolted, the University will use reasonable efforts to protect the ATM. For any Location in which an ATM is not bolted, the University may, only if approved by PNC Bank, temporarily relocate the ATM to a more secure area within the Location, in order to correct or avoid such adverse effects. The University agrees to repair the Location at its expense.

(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, which may include and not be limited to relocation or removal by PNC Bank, University's security obligations hereunder shall again be governed by subsections (a) and (b) of this Section 11.

**12. Insurance; Indemnity and Loss**

(a) 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 location and related machinery, Equipment and improvements (excluding the ATM, related Equipment, Installations and side cabinet which shall be insured by PNC Bank), and general liability coverage with respect to the Location in such amounts and on such terms as are commercially reasonable, and subject to the requirements and limits of applicable law, including Chapter 284, Part II, Section 768.28, Florida Statutes, and any rules promulgated thereunder. PNC Bank shall be responsible for maintaining or causing to be maintained, at its expense, such fire, casualty, theft, and

general/public liability insurance in an amount not less than \$2,000,000.00, of and with respect to the ATM, Installations and related Equipment or such other amount as agreed between the parties. PNC Bank shall name the University as an additional insured on its general liability policy applicable to this Agreement. In addition, PNC Bank shall: maintain workers compensation insurance with respect to their respective employees in the amounts required by applicable law.

(b) Each party shall, upon request, provide to the other such evidence as shall be reasonably requested of the maintenance of required insurance. PNC Bank, however, shall upon request provide a Memorandum of Insurance to University as evidence of the required insurance. Each party shall, to the extent available from their insurance carriers at no additional cost, cause the policies of insurance providing the aforesaid coverage to contain waivers of subrogation as against each other.

### **13. Term and Termination**

The term of this ATM Agreement shall run concurrently with the Term of the Banking Services Agreement, until the Banking Services Agreement expires or is otherwise terminated.

### **14. General**

- A. **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.
- B. **ADA Compliance:** During the Term of the Agreement, as applicable, 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. PNC Bank shall not be obligated to comply with the ADA Accessibility Guidelines for Buildings and Facilities (the "Guidelines"), or any federal, state or local laws enforcing said Guidelines at the Locations.
- C. **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  
1600 Market Street, 8<sup>th</sup> Floor  
Philadelphia, PA 19103  
ATTN: Ken Justice, SVP  
Telephone: 412-762-7791

With a copy to:

PNC Bank, National Association  
The Tower at PNC Plaza  
300 Fifth Avenue  
PT-PTWR-19-1  
Pittsburgh, Pennsylvania 15222  
ATTN: Chief Counsel, Consumer Bank

If to University then to:

Director, Procurement  
Florida Atlantic University  
777 Glades Rd  
Boca Raton, FL 33431

With a copy to:

General Counsel  
Florida Atlantic University  
777 Glades Rd, ADM 370  
Boca Raton, FL 33431

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.

- D. **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.
- E. **Counterparts:** This ATM 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 this ATM Agreement on its behalf, as of the Effective Date.

**PNC Bank, National Association**  
("PNC Bank")

By: 

Name: Nickolas P. Certo

Title: Senior Vice President

Date: September 26, 2018

**Florida Atlantic University**  
("University")

By: 

Name: STACY VOLNICIC

Title: VICE PRESIDENT, Administration Affairs

Date: 9/26/18

**SCHEDULE A  
TO "EXHIBIT A"  
ATM LOCATIONS**

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.

<b>Campus</b>	<b>Location (Address)</b>	<b>ATM Type</b>	<b>Location Owner</b>	<b>Blanket Liens or Mortgage (Yes or No)</b>	<b>Name of Lien/ Interest Holder</b>
Boca Raton	TBD, 777 Glades Rd. Boca Raton, FL 33431	Multi- Function			
Boca Raton	Student Union, 777 Glades Rd. Boca Raton, FL 33431	Multi- Function			
Boca Raton	College of Education, 777 Glades Rd. Boca Raton, FL 33431	Cash Dispensing			
Boca Raton	Food Court, 777 Glades Rd. Boca Raton, FL 33431	Cash Dispensing			
Boca Raton	Florida Atlantic Stadium, 777 Glades Rd. Boca Raton, FL 33431	Cash Dispensing			
Boca Raton	Florida Atlantic Stadium, 777 Glades Rd. Boca Raton, FL 33431	Cash Dispensing			
Davie	Student Union, 3200 College Ave. Davie, FL 33314	Cash Dispensing			
Jupiter	Student Resources, Jupiter, FL 33458	Cash Dispensing			

Nothing in the contract between Customer and any Landlord prohibits Customer from entering

into this Master License Agreement

**EXHIBIT D****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.

**EXHIBIT E**

**UNIVERSITY MARKS**  
**(INTENTIONALLY OMITTED)**

**EXHIBIT F****WEB LINKING AGREEMENT**

THIS WEB LINKING AGREEMENT (this "Web Agreement"), is effective as of the \_\_\_\_\_ day of \_\_\_\_\_ 2018, ("Effective Date"), and entered into by and between is entered into by and between Florida Atlantic University, an institution of higher education organized and operated under the laws of the State of Florida ("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 University Banking Services Agreement of even date herewith between University and PNC Bank (the "Banking Services Agreement"). Capitalized terms used in this Web Agreement and not otherwise defined herein shall have the meaning given them in the Banking Services 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 Banking Services 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 Banking Services 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**

(a) 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 F, which is attached hereto and incorporated herein.

(b) 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 F, which is attached hereto and incorporated herein.

## **4. WARRANTIES**

(a) University represents and warrants that it is the owner or has all necessary rights to license University Marks as specified in Section 3 above.

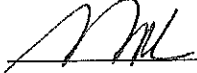
(b) PNC Bank represents and warrants that it is the owner of or has all necessary rights to PNC Bank Marks as specified in Section 3 above.

[Signature page to follow]



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.

**FLORIDA ATLANTIC UNIVERSITY**

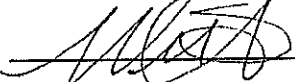
By: 

Name: STACY VOLMIC

Title: VICE President, Administrative Affairs

Date: 9/27/18

**PNC BANK, NATIONAL ASSOCIATION**

By: 

Name: Nickolas P. Certo

Title: Senior Vice President

Date: September 26, 2018

**SCHEDULE A  
TO "EXHIBIT F"  
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](http://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 F" UNIVERSITY MARKS

The University marks, logos and other graphics that are licensed under the terms of the Web Agreement are:

**Florida Atlantic University Logo, Florida Atlantic University name in text form, [fau.edu](http://fau.edu)**



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

- a. Florida Atlantic University must approve the "Florida Atlantic University" name being used.
- b. When using the Florida Atlantic University 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 Florida Atlantic University logo, or alter the original in any way
- d. The Florida Atlantic University logo may **ONLY** be printed in black or in a color or colors approved by Florida Atlantic University. View chart below.

The Florida Atlantic spirit logos are the preferred marks to represent FAU. The three spirit logos can be used interchangeably, and they should be used to add a distinctive to the identity guidelines in this manual.

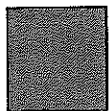
It is greatly preferred that the full or two-color spirit logos be used whenever possible. The full or two-color spirit logos can be reproduced in solid colors (FAU Blue, FAU Red and FAU Silver/Gray or FAU Blue and FAU Red) or their process

color equivalents. If the full or two-color versions are not possible then it is preferred that the logos be reproduced in the all FAU blue versions. It is not possible that the primary logos should be reproduced in all black. The primary logos should never appear in any colors other than those shown on this page.

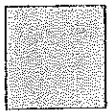
The banner in the primary logos' design must never be altered or replaced. *Note: The FAU spirit marks are also used as our main athletic marks.*



**FAU Blue**  
PANTONE 281  
CMYK (30, 0, 0, 25)  
RGB (0, 0, 255)



**FAU Red**  
PANTONE 286  
CMYK (0, 0, 0, 25)  
RGB (255, 0, 0)



**FAU Silver**  
PANTONE 427  
CMYK (0, 0, 0, 25)  
RGB (128, 128, 128)



**FAU Gray**  
PANTONE 425  
CMYK (0, 0, 0, 25)  
RGB (128, 128, 128)

### Permissible Color Variations



**Full-Color Spirit Logo**  
Use in all applications



**Two-Color Spirit Logo**  
Use in all applications



**FAU Blue Spirit Logo**  
Use in all applications



**Black Spirit Logo**  
Use in all applications

University Office of Trademark Licensing & Marketing shall pre-approve all uses of the Florida Atlantic University Marks.

**EXHIBIT G****DEPARTMENT OF EDUCATION CASH MANAGEMENT  
COMPLIANCE AGREEMENT**

THIS DEPARTMENT OF EDUCATION CASH MANAGEMENT COMPLIANCE AGREEMENT ("CM Agreement"), by and between the Florida Atlantic University Board of Trustees, a public body corporate of the State of Florida and an institution of higher education organized and operated under the laws of the State of Florida ("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 of even date herewith 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 the Effective Date of the Agreement.
- (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) In accordance with the DoE Regulation, promptly after execution of the Agreement, 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.

### 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 students 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 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 provide PNC with a copy of their Review and 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"). The Financial

Institution shall begin implementation of the Plan within sixty (60) days from the date upon which the parties mutually agree to the Plan in writing. The implementation period for the Plan shall not exceed forty-five (45) days from the date upon which the parties mutually agree to the Plan in writing, (the "Plan Implementation Period").

- (b) If the parties cannot agree to a Plan, then the University may terminate the Agreement upon ninety (90) days written notice to the Financial Institution. 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:

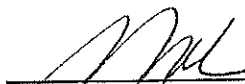
- (a) The University must always request any and all information regarding the PNC Financial Account(s) from the Financial Institution, including but not limited to: PNC Financial Account Data, or information related thereto; or (ii) information used to derive the PNC List.
- (b) The University shall not provide any DoE Compliance Information which references PNC Bank, its products or services, other than the Agreement 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 which references PNC Bank, its products or services, 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. PNC Bank currently employs a notice letter in the form attached as "Schedule A" to supply such information, though it reserves the right to revise or replace this form in its discretion.

**[SIGNATURE PAGE TO FOLLOW]**

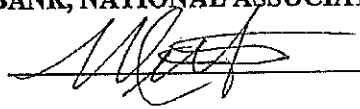


IN WITNESS WHEREOF, intending to be legally bound, each party hereto has caused its duly authorized representative to execute this Department of Education Cash Management Compliance Agreement on its behalf, as of the Effective Date.

**FLORIDA ATLANTIC UNIVERSITY**

By:   
Name: STACY VOLNICK  
Title: VICE PRESIDENT, ADMINISTRATIVE AFFAIRS  
Date: 9-27-18

**PNC BANK, NATIONAL ASSOCIATION**

By:   
Name: Nickolas P. Certo  
Title: Senior Vice President  
Date: September 26, 2018

**SCHEDULE "A"**  
**TO EXHIBIT "G"**

**TEMPLATE OF ANNUAL MEAN, MEDIAN AND CONSIDERATION COMMUNICATION**

To be delivered by the end of August annually to Schools with whom PNC Bank has an arrangement which qualifies as T2 under the Cash Management Regulation.

XX,XX,XXXX

[ADDRESS]

Dear XXXX:

On October 30, 2015, the Department of Education published final regulations amending its cash management rules (see, 34 CFR 668.161 – 668.167). In an effort to assist your institution in complying with the provisions under 34 CFR 668.164(e)(2)(vii), (e)(2)(vii), (e)(3), (f)(4)(iv), (f)(4)(v), and (f)(5), please refer to the information below.

The rules require, among other things, that an institution publicly post information on its website related to:

1. The total consideration paid or received by the parties under the contract between the institution and the financial account provider;
2. For any year in which the institution's enrolled students open 30 or more financial accounts under the agreement,
  - a. The number of students who had financial accounts under the contract at any time during the most recently completed award year (July 1 – June 30), and
  - b. The mean and median costs incurred by those student accountholders

This letter contains information you may choose to use in order to comply with these cash management regulation requirements.

On September 7, 2016, the DOE issued Dear Colleague letter GEN 16-16, entitled "Institutional Reporting of Fee Information under the New Cash Management Regulations" (the "Letter"). A copy of the Letter can be found here <https://ifap.ed.gov/dpcletters/GEN1616.html>. In the Letter, the DOE presents "guidance to institutions and financial account providers about complying with new provisions requiring institutions to publicly disclose information about the costs incurred by students who elect to use a financial account offered under a Tier One or Tier Two arrangement." The DOE provides the following three (3) specific methods institutions may choose to use for calculating the requested cost disclosure information shown above in #2:

1. Matching Directory Information
2. Accounts linked to Student IDs
3. Revenue Sharing

In addition, the DOE acknowledges that "many existing agreements already provide a convenient means by which the data required can be gathered." This would be the case for PNC Bank. Hence, using our available account coding would be a fourth (4<sup>th</sup>) method allowed by the DOE. In any event, the DOE expects institutions "to use the method that is most accurate in light of the information they have," and be able to evidence "that the cost information was calculated in a reasonable and reliable

manner.”

The fourth method, described in the Letter, though not specifically enumerated, expressly permits institutions to use a method already available from their bank. We believe that the account coding process long employed by PNC Bank qualifies as an acceptable method.

In the Letter, the DOE further permits institutions which must deal with the inability to eliminate non-students from the data “to include in the cost disclosures any student who held an account within the last two years. For example, the students identified by the institution as having an account under any of these approaches would be in a two-year cohort and the institution would disclose the number of students in that cohort and mean and median costs incurred by those students.” This two-year cohort calculation can be used to address any method the institution may choose to use wherein the elimination of non-students from the calculation is not administratively possible.

Therefore, in accordance with the Letter and other applicable law, PNC provides fee information and the number of student accountholders under the 4th method from a two-year cohort of customers whose student accounts were opened between July 1, 2016 and June 30, 2018. This information is provided for the sole purpose of reporting under the cash management regulation, and may not be revised, nor disseminated or employed for any other purpose.

In order to assist you in complying with the cash management regulations, PNC Bank reports as follows:

1. Total consideration paid in the period July 1, 20xx through June 30, 20xx: \$xxx,xxx; and branch rent: \$xx,xxx,
2. Total number of customers holding student financial accounts which originated under the contract from July 1, 20xx through June 30, 20xx: x,xxx
3. Mean student costs: \$xx.xx in the year ended June 30, 20xx.
4. Median student costs: \$x.xx in the year ended June 30, 20xx.

PNC Bank will permit posting this information to your website in a form and substance identical to the presentation of the information in the block above. If you have any questions or concerns as it may relate to the content provided in this letter, please reach out to me directly or through your University Banking Representative.

Sincerely,

**NICKOLAS CERTO**

Senior Vice President  
Manager – University Banking  
Off 412.762.6755 Cell 412.512