

## UNIVERSITY BANKING SERVICES AGREEMENT

THIS UNIVERSITY BANKING SERVICES AGREEMENT (“Agreement”) is effective as of the 1st day of June, 2015, (“Effective Date”), and entered into by and between Marshall University, an institution of higher education organized and operated under the laws of the state of West Virginia, having offices at 1 John Marshall Drive, Huntington, WV 25755 (“University”) and PNC Bank, National Association, a national banking association, with its principal office at One PNC Plaza, 249 Fifth Avenue, Pittsburgh, Pennsylvania 15222 (“PNC Bank”).

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.

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### 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 or Virtual Wallet as set forth in Exhibit G.

(b) “Affiliate” shall mean, with respect to either party hereto, any entity which, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or common control with PNC Bank or University; “control” shall mean the power to direct the management of the affairs of the entity; and “ownership” means the beneficial ownership of more than 50% of the equity of the entity.

(c) “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.

(d) “Constituents” shall mean University’s students.

(e) “Exceptions” shall mean all those agreements, contracts, and/or relationships, the University has with other financial institutions on the Effective Date of this Agreement and which have been disclosed to PNC Bank, including but not limited to such agreements and/or relationships for athletic sponsorship or non-PNC Bank ATM deployers (See Exhibit B to the ATM Agreement).

(f) “Financial Services” shall mean the financial services to be offered by PNC Bank to Constituents hereunder as part of the Program.

(g) “Force Majeure” shall have the meaning given that term in Section 21 below.

(h) “New Student List” shall mean an annual list of newly enrolled incoming first-year undergraduate and graduate students at the University who have not opted-out of disclosure of their directory information pursuant to the University’s FERPA policy. This list shall be used by the University to mail PNC Bank’s Program materials in advance of the new student moving onto campus. The New Student List shall not be provided to PNC Bank, unless otherwise agreed to by the parties by amending this Agreement.

(i) “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 C** attached hereto and incorporated herein by this reference.

(j) “Preferred Provider” shall mean PNC Bank is the only financial institution to which University will extend any of the Commitments (Section 6) and Joint Obligations (Section 8) set forth in this Agreement.

(k) “Program” shall mean the Financial Services and other services offered by PNC Bank to Constituents hereunder as further described in Section 4(b) below.

(l) “Program Goals” 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.

(m) “Royalty” shall have the meaning given that term in Section 3(b).

(n) “Student-List” shall mean a list of currently enrolled undergraduate and graduate students at the University. This list shall be used by the University to mail PNC Bank’s Program material. The Student List shall not be provided to PNC Bank, unless otherwise agreed to by the parties by amending this Agreement, and in such event, the Student-List shall only include those undergraduate and graduate students who have not opted-out of disclosure of their directory information pursuant to the University’s FERPA policy.

(o) “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 D** attached hereto and incorporated herein by this reference.

(p) “Weblinking” shall have the meaning set forth on **Exhibit E** attached hereto and incorporated herein by this reference.

## 2. TERM

This Agreement shall commence on the Effective Date and shall terminate on May 31, 2020 (“Initial Term”) unless sooner terminated as otherwise provided herein. Upon mutual agreement of the parties, this Agreement may be extended for one (1) additional five (5) year term (each a “Renewal Term”) unless the Agreement is earlier terminated in accordance with Section 17 below. University shall provide PNC Bank with ninety (90) days prior written notice of its intent to renew the Agreement. The Initial Term and the Renewal Term may be referred to herein as a “Term”.

### 3. ROYALTY, PAYMENT TERMS

(a) Each year of the Term, beginning with June 1, 2016, 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. Account numbers are based on a June through May calendar year. Program Expectations may be adjusted only by mutual consent.

	2015-16	2016-17	2017-18	2018-19	2019-20
Student-New Checking Accounts	1000	1050	1100	1200	1200
<b>Program Expectations</b>	1000	1050	1100	1200	1200

(b) In exchange for the consideration provided under this Agreement, PNC Bank will pay to University an annual license fee (“Royalty”) calculated in accordance with this paragraph or, if applicable, paragraph (c) below. In the event the Program Expectations are met for a calendar year as specified in paragraph (a) above, PNC Bank will pay to University the following Royalty:

<u>Fiscal Year</u>	<u>Amount</u>
2015-16	\$ 50,000.00
2016-17	\$ 70,000.00
2017-18	\$ 90,000.00
2018-19	\$ 110,000.00
2019-20	\$ 110,000.00

- (i) Signing Bonus: PNC Bank shall also pay University a one-time guaranteed signing bonus in the amount of Fifty Thousand Dollars (\$50,000.00). The guaranteed signing bonus shall be paid not later than thirty (30) days after this Agreement is fully signed.
- (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, 2019, 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
2015	100%
2016	75%
2017	50%
2018	25%
2019	0%

(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 Total Program Expectations are not attained 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 fiscal year multiplied by a fraction, the numerator of which is the number of new Accounts for the fiscal year and the denominator of which is the Program Expectations Total for that fiscal year; or (ii) an amount equal to seventy five percent or (3/4<sup>ths</sup>) of the Royalty stated in paragraph 3(b) for the applicable calendar year.

(i) PNC Bank will have the right to propose an alternate Royalty for the remaining Term of the Agreement, (“Revised Royalty”), if the Total Program Expectations for any calendar year is less than seventy five percent (75%). If the parties cannot mutually agree to the Revised Royalty either party may terminate the Agreement by providing thirty (30) days advance written notice to the other.

(e) As of the Effective Date of this Agreement for any fiscal year in which the Program Goal Total is exceeded for any calendar year, additional Royalty payments would be available as follows:

Percentage Program Expectations Total is Exceeded	Percentage of then-current Royalty to constitute Additional Royalty (Maximum allowed - 10%)
1% -1.99%	1%
2% - 2.99%	2%
3% - 3.99%	3%
4% - 4.99%	4%
5% - 5.99%	5%
6% - 6.99%	6%
7% - 7.99%	7%
8% - 8.99%	8%
9% - 9.99%	9%
10% or greater	10%
20% or greater	20%

(f) The Annual Royalty will be paid no later than the first day of July of the year following the fiscal year to which the payment relates.

FISCAL YEAR	Due Date
2015-16	July1, 2016 for 2015-16
2016-17	July1, 2017 for 2016-17
2017-18	July1, 2018 for 2017-18
2018-19	July1, 2019 for 2018-19
2019-20	July1, 2020 for 2019-20

(g) The Program's failure to meet the Expectations for each category delineated above, shall not adversely affect the University's ability to receive payments as set forth in this Section 3 for any year in which the Program Expectations Total is met.

(h) 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 (30) 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
5%	3%	3%	3%	6%	14%	16%	29%	11%	4%	3%	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).

(i) PNC Bank shall pay University annual rent for the ATM Locations hereunder in the amount of Ten Thousand Dollars (\$10,000.00) each year of the Term, to be invoiced on a monthly or quarterly basis.

(j) 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 the solicitation of credit cards or student loans. PNC Bank shall actively advertise and promote the Program as authorized, by law, on the University campus, via approved University mediums and using approved University Marks. The Program shall include: presenting financial seminars to students and employees; issuing co-branded Visa<sup>®</sup> Debit Cards; and opening new Accounts for University students. The debit card functionality shall include point-of-sale debit and ATM transactions. 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. Solicits financial information within a PNC Bank branch; or
3. Independently utilizes electronic media for information regarding PNC Bank products and/or services.

(c) Accounts established under this Agreement may be eligible for a co-branded Visa<sup>®</sup> Debit Card. PNC Bank shall have the right to issue the co-branded Visa<sup>®</sup> Debit Card. PNC Bank will issue the Visa<sup>®</sup> Debit Card upon request by a PNC Bank Accountholder.

(d) 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.

(e) 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.

## 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 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 on or before the Effective Date hereof.

(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 and student parents, as mutually agreed with PNC Bank.

(ii) Permit PNC Bank the right to market the Program and Financial Services, to Constituents and student parents;

(iii) Provide a University officer as a signatory to a letter of introduction to Constituents authored by PNC Bank which names PNC Bank as the University's Contract Provider and which explains the Program, which letter shall be subject to University's prior written consent which consent shall not be unreasonably withheld, conditioned or delayed;

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

(v) Permit PNC Bank physical access on campus at previously approved locations and campus events necessary for PNC Bank to exercise the marketing rights enumerated herein, such approval shall not be unreasonably withheld, conditioned or delayed.

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

(ii) It is understood and agreed to by the parties that Marshall University reserves the right to permit other financial institutions to access the University's campus during Welcome Week. However, such participation shall be limited to two (2) days during Welcome Week. In addition, it is also understood and agreed that "Other Financial Institutions", as set forth on Exhibit B "NON-PNC BANK ATMS" have a contractual right to access the campus during Orientation. However, PNC Bank will have exclusive rights to participate in the Student Services Browse portion of Parent Orientation. The University will not grant/extend any student access or student marketing rights during orientation to any financial institutions not listed on Exhibit B during the Term of this Agreement. Provided that, it is understood and agreed that Exhibit B may be modified as vendors or contracts are renewed or changed.

Students:

1. Permitting on-campus access 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. Permitting the conduct by PNC Bank of direct mailings to the University or home addresses to the New Student List.
3. Permitting semi-annual mailings by PNC Bank to the Student List.
4. 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 at no additional cost to PNC Bank.
5. 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).
6. Providing PNC Bank access to common areas, at no cost to PNC Bank, for mutually-agreed upon tabling events throughout the year.
7. 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.
8. Mentioning of PNC Bank and the Program from time to time in agreed upon University publications and mailings.
9. Supporting agreed-upon student events to be sponsored by PNC Bank



10. Providing a web link from University's key student web areas on the University's web site to a customized site at [www.pnc.com/marshall](http://www.pnc.com/marshall)

11. Faculty/Staff:

1. Permitting promotions of availability of the Program to its Faculty and Staff, as mutually agreed with PNC Bank

(c) With the University's prior approval, which shall not be unreasonably withheld, conditioned or delayed, permit PNC Bank to use University's name and the University Marks in press releases and when marketing the Program. Marketing may include, by example and not limitation, proposals and presentations to other potential clients;

(d) Grant PNC Bank ATM deployment privileges on campus for Four (4) ATMs as of the Effective Date. The 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. Notwithstanding the foregoing, it is expressly understood and agreed by the parties that, as of the Effective Date, six (6) ATMs, (the "non-PNC ATMs") exist on the University Campus. The non-PNC ATMs exist on the University Campus as set forth on EXHIBIT B and will remain at their present or comparable locations.

(e) During the term of this Agreement the University may not lease or rent on campus space to another commercial bank, credit union or savings and loan institution for the establishment of a branch or office.

(f) "Notwithstanding the rights granted to PNC Bank to provide Four (4) ATMs on University's campus in Section 9(a) of the ATM Agreement attached as Exhibit A to the Agreement, PNC Bank shall agree to the Exceptions (See Exhibit B to the ATM Agreement) as defined in Section 1 of the Agreement, subsection (e) as of the Third Amendment Effective Date. Such Exceptions shall include existing non-PNC Bank ATMs on University's current campus. PNC Bank will have the first right of refusal on all proposed new ATM locations and any expired non-PNC Bank ATM lease location, PNC to provide their decision within five (5) business days of University notification. PNC Bank shall pay University monthly rent for any ATM deployed under the conditions of this Section.

(g) Acknowledge PNC Bank's option to impose a surcharge for the use of its ATM(s). The surcharge shall be in the same amount as the surcharge imposed for use of PNC Bank branch ATMs in the West Virginia area. In the event the branch ATM surcharge is increased, then the surcharge applicable to the ATMs hereunder shall also increase. In no event will PNC Bank impose a surcharge hereunder that is applicable only to University's Constituents; and Notwithstanding anything to the contrary contained in this Agreement, University's ability to provide any information to PNC Bank is subject to and conditioned upon the Family Education Rights in Privacy Act (FERPA), other applicable laws and regulations, and University's policies and procedures.

## 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® (Co-branded) 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;
  - Exercising the Provider rights and privileges for the Program with respect to Constituents;
  - 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.
- (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.

## 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) PNC shall have the right to issue the co-branded Visa<sup>®</sup> Debit Card. PNC Bank will issue the Visa<sup>®</sup> Debit Card upon request by a PNC Bank Accountholder.

9. INSURANCE

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

COMMERCIAL GENERAL LIABILITY

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

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

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

WORKERS COMPENSATION

Statutory

UMBRELLA/EXCESS LIABILITY

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

EMPLOYER’S LIABILITY

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

COMPREHENSIVE CRIME

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

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

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

#### 10. REPRESENTATIONS AND WARRANTIES

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

(i) University is duly organized, validly existing and in good standing under the laws of the state in which it operates and has the requisite corporate power and authority to enter into this Agreement;

(ii) The execution, delivery and performance of this Agreement by University is within University's powers, has been duly authorized by all necessary corporate action, and does not violate, conflict with or constitute a breach under any articles of incorporation or charter, bylaw, law, regulation, contract or obligation applicable to University;

(iii) This Agreement constitutes a legal, valid and binding obligation of University, enforceable against it in accordance with its terms;

(iv) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the execution, delivery and performance by University of this Agreement;

(v) University's employees, directors, officers or agents shall not make any representation, warranty, promise or statement to any customer regarding the approval, decline, collection, processing, or any other handling of customer's products or services as provided by PNC Bank. Any questions regarding PNC Bank's products or services shall be immediately referred to PNC Bank;

(vi) No information, schedule, exhibit, or financial information furnished or to be furnished by University to PNC Bank in connection with this Agreement is inaccurate in any material respect as of the date it is dated or contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not misleading;

- (vii) University has not entered and will not enter any agreement that would prohibit University from fulfilling its duties and obligations under the terms of this Agreement; and
  - (viii) During the Term of this Agreement, University (A) will promote the 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 advertising the Program in locations on University's campus that are mutually acceptable to both parties. PNC Bank must have University's prior written approval for size, content and colors of any signs, which consent shall

not be unreasonably withheld, conditioned or delayed. Written approval shall be provided within ten (10) business days of the request by PNC Bank.

## 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 exclusive 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. (a) Indemnification by PNC Bank. PNC Bank shall indemnify, defend and hold harmless University, its officers, directors, employees, and agents from and against all Losses arising directly or indirectly, out of or relating to the following:

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

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

(iii) Gross negligence or willful misconduct of PNC Bank or its officers, directors, employees, agents or subcontractors, in connection with its duties or obligations under the terms of this Agreement, except to the extent such Losses result from the negligence, gross negligence or willful misconduct of University.

## 14. LIMITATION OF LIABILITY

Intentionally Omitted

## 15. TAXES

(a) The University is a tax exempt entity and has been fully advised by University's counsel and/or tax consultant of any tax implications resulting from this Agreement.

(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 or successor in interest 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) A party may elect not to renew this Agreement at the end of the Initial Term or first Renewal Term, as applicable, by providing written notice of non-renewal to the other party at least ninety (90) calendar days prior to the expiration of the Initial Term or Renewal Term, as applicable, and, in such case, this Agreement shall be terminated as of the end of the Initial Term or first Renewal Term, as applicable.

(d) Upon thirty (30) 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).

## 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 Chapter 29B, Freedom of Information 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 to the extent possible. 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.

(b) 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.

- (c) Upon termination or expiration of this Agreement, PNC Bank shall return to the University (i) all current and prior New Student Lists and Student Lists in PNC Bank's possession and (ii) all contact data for faculty and staff, provided by University except for those students/faculty/staff who have already utilized a Financial Service prior to the date of the expiration/termination (collectively the "Returned Information") except as required for record keeping purposes, but PNC Bank shall not use such material for any other purpose. PNC Bank shall not retain any copies of the Returned Information. PNC Bank shall provide a sworn statement within thirty (30) days after termination/expiration regarding its compliance with this section.

#### 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 West Virginia 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 and federal courts in the State of West Virginia 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:

Attn: Office of Purchasing  
Marshall University  
1 John Marshall Drive  
Huntington, WV 25755

With copies to:

Attn: Bursar  
Marshall University  
1 John Marshall Drive  
Huntington, WV 25755

Attn: General Counsel  
Marshall University  
1 John Marshall Drive  
Huntington, WV 25755

If to PNC Bank, then to:

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

With a copy to:

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

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

26. 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.

27. 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.

28. REMEDIES

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

29. COUNTERPARTS

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

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

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

By: 

Name: Nickolas Certo

Title: Senior Vice President

Date: 6/8/15

**Marshall University**  
**("University")**

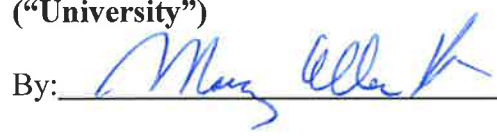
By: 

Name: Stephanie Smith

Title: Director Office of Purchasing /CPO

Date: 6-10-15

**Marshall University**  
**("University")**

By: 

Name: Mary Ellen Heuton

Title: Senior Vice President of Finance and  
Chief Financial Officer

Date: 6/10/15

**LIST OF EXHIBITS**

**EXHIBIT A**  
MASTER LICENSE AGREEMENT

**EXHIBIT B**  
NON-PNC BANK ATMS

**EXHIBIT C**  
PNC BANK MARKS

**EXHIBIT D**  
UNIVERSITY MARKS

**EXHIBIT E**  
WEBLINKING AGREEMENT

**EXHIBIT F**  
SUPPLEMENTALS

**EXHIBIT G**  
FEE DISCLOSURE FOR VIRTUAL WALLET

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

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

THIS MASTER LICENSE AGREEMENT (“ATM Agreement”), is effective as of the 1st day of June, 2015, (“Effective Date”), and entered into by and between Marshall University, an institution of higher education organized and operated under the laws of the State of West Virginia, having offices at 1 John Marshall Drive, Huntington, WV 25755 (“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. The ATMs, together with related Equipment and Installations, may be relocated only upon the mutual agreement of the parties, provided that PNC Bank and University will determine each of their obligations to pay 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) At least one ATM will be an Advanced Function ATM that can dispense cash, accept deposits, cash checks, transfer funds between accounts and provide statements. 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, 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.

## **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**

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

University will:

- (a) pay for the electricity usage by the ATM(s) and install the necessary outlets and connections, if required, at its expense;



(b) keep the ATMs and the area around the ATMs clean, presentable and free from obstruction, and with respect to the Locations generally, University will continue to maintain the same standards of cleanliness, maintenance, repair and operation as are in effect on the date of this ATM Agreement;

(c) pay all costs and expenses for ownership, operation, maintenance and repair of the Locations and business (including real estate taxes and utilities) not expressly made payable by PNC Bank herein;

(d) Maintain the Locations to allow for 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) Except as set forth in Exhibit B, which is attached hereto and incorporated herein PNC Bank shall be the provider of ATM service on University's campus.

(b) PNC Bank reserves the right to impose a surcharge on users of its ATMs that are not subject to this ATM Agreement.

(c) PNC Bank reserves the exclusive right to determine whether any surcharge hereunder shall be imposed upon PNC Bank cardholders.

(d) PNC Bank shall have the first right of refusal to deploy ATMs at any new University Campus location. If PNC Bank declines to deploy an ATM at the new location, the University may solicit other financial institutions to place an ATM at the location. PNC Bank to provide its decision within five (5) business days of notification.

#### **10. Performance; Warranty**

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

#### **11. Security**

(e) University shall maintain security at the Locations in accordance with the standards for security generally at University's facilities; University shall not be required to post a security guard for any ATM hereunder. Except as otherwise provided herein, all costs and expenses incurred in connection with such security measures shall be borne by University.

(f) University shall notify PNC Bank of any damage to the Locations which adversely affects the operation or security of the ATMs, and University agrees to make, at its expense, such repairs to the Locations, as shall be necessary to correct such adverse effects.

(c) In the event of fire, casualty, riot or other emergency, University shall use reasonable efforts to protect the security of any affected ATM. Once PNC Bank deems the affected ATM machine secured, whether by relocation (which shall be by PNC Bank) or otherwise (for example, but not in limitation of the foregoing, by removal), University's security obligations hereunder shall again be governed by subsections (a) and (b) of this Section 11. The parties agree that in the event of the emergency circumstances enumerated in this subsection 11 (c) time is of the essence and University and PNC Bank shall each act as quickly as reasonably possible in fulfilling its obligations hereunder.

## 12. Insurance; Indemnity and Loss

University shall maintain or cause to be maintained, at no expense to PNC Bank, during the Term hereof, such fire and casualty insurance policies covering the Locations and related machinery, Equipment and improvements (excluding the ATMs and related Equipment and Installations), and general liability coverage with respect to the Locations, as is generally maintained by University at similar Locations. In the event University is self-insured for the coverage hereunder, it shall provide PNC Bank with proof of self-insurance by submitting (a) a letter stating that fact, (b) University's most recent financial statement, and (c) a state certification from University's state of incorporation. PNC Bank shall be responsible for maintaining or causing to be maintained, at its expense, such fire, casualty, theft, and public liability insurance of and with respect to the ATMs and related Equipment and Installations as PNC Bank considers appropriate.

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

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

## 13. Term and Termination

The term of this ATM Agreement shall run concurrently with the Term of the 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, University shall comply with the Americans with Disabilities Act of 1990 ("ADA"), any amendments to the ADA, its implementing regulations, and applicable ADA Accessibility Guidelines for Buildings and Facilities, as well as all other federal, state and local laws regarding access to and service to individuals covered by the ADA. University's compliance obligation will include, but not be limited to, the design, construction and alteration of the University owned Location as University may have to alter to be in compliance with the ADA.
- 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: 215-585-5134

With a copy to:

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

If to University then to:

ATTN: Office of Purchasing  
Marshall University  
1 John Marshall Drive  
Huntington, WV 25755

With a copy to:

Attn: Bursar  
Marshall University  
1 John Marshall Drive  
Huntington, WV 25755

Attn: General Counsel  
Marshall University  
1 John Marshall Drive  
Huntington, WV 25755

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 Certo

Title: Senior Vice President

Date: 6/8/15

**Marshall University**  
**("University")**

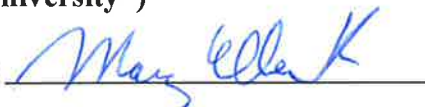
By: 

Name: Stephanie Smith

Title: Director Office of Purchasing/CPO

Date: 6-10-15

**Marshall University**  
**("University")**

By: 

Name: Mary Ellen Heuton

Title: Senior Vice President and  
Chief Financial Officer

Date: 6/10/15

**SCHEDULE A**  
**Prototype: Not To Be Completed by University**

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

1. Location for ATMs to be Installed after the Effective Date:
  
2. University's Interest in Location:
  
3. Identity of owner(s) of record of the Location:
  
4. (a) Are there any mortgage liens on the Location? Yes \_\_\_\_\_ No \_\_\_\_\_  
**If Yes, list all holders of a mortgage lien.** \_\_\_\_\_  
 \_\_\_\_\_
  
- (b) Are there any security interests in the fixtures, machinery, and equipment installed at the Location? Yes \_\_\_\_\_ No \_\_\_\_\_  
**If Yes, list all holders of a security interest.** \_\_\_\_\_  
 \_\_\_\_\_

**[UNIVERSITY MUST PROVIDE INFORMATION]**

5. Other:

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

**University:** \_\_\_\_\_

**PNC Bank:** \_\_\_\_\_

**SCHEDULE A-1  
TO "EXHIBIT A"  
LICENSE AGREEMENT**

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

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

Memorial Student Center

2. University's Interest in Location:

Owner

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

Marshall University

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

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

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

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

5. Other: \_\_\_\_\_

By execution hereof, there are incorporated and made a part hereof for all purposes as though set forth herein at length each and all of the terms, conditions and provisions of the Master License Agreement dated June 1, 2015 between PNC Bank and University.

University: 

PNC Bank: 



**SCHEDULE A-2  
TO "EXHIBIT A"  
LICENSE AGREEMENT**

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

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

Drinko Library

2. University's Interest in Location:

Owner

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

Marshall University

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

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

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

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

5. Other:

By execution hereof, there are incorporated and made a part hereof for all purposes as though set forth herein at length each and all of the terms, conditions and provisions of the Master License Agreement dated June 1, 2015 between PNC Bank and University.

University: \_\_\_\_\_

PNC Bank: \_\_\_\_\_

**SCHEDULE A-3  
TO "EXHIBIT A"  
LICENSE AGREEMENT**

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

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

Twin Towers West

2. University's Interest in Location:

Owner

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

Marshall University

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

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

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

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

5. Other:

By execution hereof, there are incorporated and made a part hereof for all purposes as though set forth herein at length each and all of the terms, conditions and provisions of the Master License Agreement dated June 1, 2015 between PNC Bank and University.

University:



PNC Bank:



**SCHEDULE A-4  
TO "EXHIBIT A"  
LICENSE AGREEMENT**

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

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

Mid Ohio Valley Campus

2. University's Interest in Location:

Leased

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

Ohio Valley Bank Co.

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

**If Yes**, list all holders of a mortgage lien. Ohio Valley Bank Company.  
\_\_\_\_\_

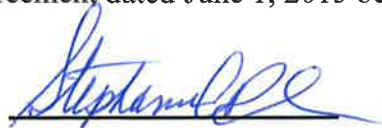
(b) Are there any security interests in the fixtures, machinery, and equipment installed at the Location? Yes  No

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

5. Other: Nothing in the Lease Agreement with Ohio Valley Bank Company prohibits University from entering into the Agreement.

By execution hereof, there are incorporated and made a part hereof for all purposes as though set forth herein at length each and all of the terms, conditions and provisions of the Master License Agreement dated June 1, 2015 between PNC Bank and University.

University:



PNC Bank:



**EXHIBIT B****NON-PNC BANK ATMs  
UNIVERSITY CAMPUS LOCATIONS**

<b>Location Address</b>	<b>Owner</b>
Memorial Student Center	United Bank
Drinko Library	United Bank
Memorial Student Center	Chase Bank
Memorial Student Center	BB & T Bank
Harris Hall	United Bank
Towers East	United Bank

**EXHIBIT C****PNC BANK MARKS**

1. The PNC Marks that are licensed under the terms of this 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 D****UNIVERSITY MARKS**

**[UNIVERSITY MUST PROVIDE PRIOR TO PNC BANK DRAFTING THE FINAL AGREEMENT]**

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



PNC Bank agrees to use the Marshall University marks, logos and other graphics in accordance with the standards set forth below:

- (a) The original artwork supplied by Marshall University must be used; PNC Bank may not create its own Marshall University logo or alter the original in any way;
- (b) All uses of the Marshall University marks, logos and other graphics must adhere to the Marshall University Graphics Standards Guidelines; and
- (c) Marshall University must pre-approve all uses of the “Marshall University” marks, logos and other graphics.

**EXHIBIT E**  
**WEB LINKING AGREEMENT**

THIS WEB LINKING AGREEMENT (this “Web Agreement”), is effective as of the 1<sup>st</sup> day of June, 2015, (“Effective Date”), and entered into by and between Marshall University, an institution of higher education organized and operated under the laws of the state of West Virginia, having offices at 1 John Marshall Drive, Huntington, WV 25755 (“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 E**, 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 Exhibit D, for the sole and limited purpose of providing a Hyperlink between University Website and PNC Bank Website. PNC Bank agrees that it will comply with all of the requirements and restrictions set forth on **Schedule B to this Exhibit E**, which is attached hereto and incorporated herein.

### 4. **WARRANTIES**

(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.

**MARSHALL UNIVERSITY**

By: 

Name: Stephanie Smith

Title: Director Office of Purchasing/CPO

Date: 6-10-15

**MARSHALL UNIVERSITY**

By: 

Name: Mary Ellen Heuton

Title: Senior Vice President and Chief Financial Officer

Date: 6/10/15

**PNC BANK, NATIONAL ASSOCIATION**

By: 

Name: Nickolas Certo

Title: Senior Vice President

Date: 6/8/15

**SCHEDULE A  
TO “EXHIBIT E”  
PNC BANK MARKS**

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

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



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

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

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

**SCHEDULE B  
TO “EXHIBIT E”  
UNIVERSITY MARKS**

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



PNC Bank agrees to use the Marshall University marks, logos and other graphics in accordance with the standards set forth below:

- (a) The original artwork supplied by Marshall University must be used; PNC Bank may not create its own Marshall University logo or alter the original in any way;
- (b) All uses of the Marshall University marks, logos and other graphics must adhere to the Marshall University Graphics Standards Guidelines; and
- (c) Marshall University must pre-approve all uses of the “Marshall University” marks, logos and other graphics.

## EXHIBIT F

Supplemental Documents incorporated by reference:

- MU15REFUNDSEER RFP
- Response to Request for Student Account Refund and Banking Services Program  
MU15REFUNSER Submitted by PNC Bank
- State of West Virginia Purchasing Affidavit

## EXHIBIT G

### Fee Disclosure for Virtual Wallet:



# VIRTUAL WALLET STUDENT

## Understanding Important Account Information

We provide this summary to help you understand the basic terms and conditions of your account. Please be sure to read the full *Virtual Wallet Features and Fees* and the *Virtual Wallet Fine Print "What You Need to Know"* for details concerning your account. *Features and Fees subject to change.*

ACCOUNT OPENING AND USAGE		
Minimum Deposit Needed to Open Account	\$25	
No Monthly Service Charge <sup>1</sup> if you meet the following	Yes	Provide proof of active enrollment in a qualifying educational institution (expires 6 years after the account is enrolled in the student banking)
Interest-Bearing	Yes	While the Spend account does not earn interest, both the Reserve and Growth accounts earn interest on balances of \$1 or more
ATM Fees	\$0	per transaction at PNC Bank ATMs
	\$2.50	per transaction at non-PNC Bank ATMs within the United States, Canada, Puerto Rico and the U.S. Virgin Islands
	\$5	per transaction at non-PNC Bank ATMs in all other countries
	2	number of fees reimbursed when using non-PNC Bank ATMs
ATM Surcharge Fee Reimbursement	None	Fees charged by other financial institutions' for using their ATMs are not
Early Closure Fee	\$25	if Spend account is closed within 180 days of opening

OVERDRAFT OPTIONS AND FEES		
Standard Overdraft Practices for All Accounts (Default)		If your account balance is not enough to cover a withdrawal from your account: <ul style="list-style-type: none"> <li>Overdrafts for <b>checks, automatic bill payments or other transactions using your account number</b> may be authorized and paid, on a case by case basis. Standard overdraft and returned item fees apply.</li> <li>Overdrafts for <b>ATM transactions or everyday one-time check card transactions</b> are not authorized and paid, unless you allow PNC to do so. These are declined at</li> </ul>
Overdraft Fee and Returned Item (NSF) Fee	\$36	per item
Courtesy Refund	1	courtesy fee refund on your first overdraft/NSF event occurring within the first 12 months after opening your account
Overdraft Balance Threshold	\$5	If your account is overdrawn by <b>\$5 or less after all transactions are posted for the day</b> , any overdraft item fees for that day will be
Maximum Number of Total Overdraft and Returned Item	4	No more than 4 total fees will be charged per business day.
Continuous Overdraft Fee	\$7	per day your account remains overdrawn for a period of <b>5 or more</b> consecutive calendar days, <b>up to a maximum of \$98</b> (in addition to any
Option 1: Overdraft Protection		Your Virtual Wallet Spend account is automatically linked first to your Reserve account and then to your Growth account to cover overdrafts. You may choose another type of account as overdraft protection in place of your Growth account.
Overdraft Protection Transfer Fee	\$0	There are no Overdraft Protection Transfer fees for transfers from a linked Reserve, Growth, other deposit or credit card account. Transfers from lines of credit are subject to the applicable account agreement.
Option 2: Overdraft Coverage		With your authorization, PNC may cover ATM and debit card overdrafts on a case by case basis. <b>Standard overdraft fees apply.</b>
Option 3: Both Overdraft Protection and Overdraft Coverage		Overdraft Protection account is used first and Overdraft Coverage would apply only if Overdraft Protection funds have been used in full. <b>Fees for Overdraft Coverage, if</b>

## DEPOSIT AND WITHDRAWAL POLICIES

<b>Posting Order</b> <i>The order in which deposits and withdrawals are processed</i>	Generally, PNC will <b>first add all deposits</b> made to your account and <b>then subtract any checks, withdrawals and other payments</b> from your account according to the date and time the bank receives notice of the transaction. See your Virtual Wallet Fine Print referenced above for details.	
<b>Funds Availability</b> <i>When funds deposited to your account are available</i>	<b>Type of deposit</b> Cash with teller or at certain PNC Bank ATMs Direct deposit or wire transfer Check from an account at PNC	<b>Funds will be available...</b> Same business day
	Check from an account at another bank	Same business day to cover items in nightly processing Remainder – next business day \$100 - same business day Remainder - next business
	Large deposit (\$50,000 or more in one day) New account holders (30 days or less)	\$100 - same business day \$100 - next business day Remainder - second business
	Deposits of cash or other items at non-PNC Bank	Fourth business day
In some situations, you may be notified that your funds may not be available for up to 5 business days after you make your deposit.		

## ACCOUNT BENEFITS

- Spend account is your primary checking account
- Reserve account earns interest and is for your short-term savings
- Growth account is for your long-term savings and has a relationship rate option
- Integrated suite of online banking and money management tools
- Interest on balances of \$1 or more on your Reserve account<sup>2</sup> Minimum Daily Balance to Obtain Annual Percentage Yield
  - \$1 +
- Interest on balances of \$1 or more on your Growth account<sup>2</sup> Minimum Daily Balance to Obtain Annual Percentage Yield
  - \$1 - \$24,999.99
  - \$25,000 +
- Unlimited check-writing on your Spend Account
- One courtesy fee refund on your first overdraft/NSF event occurring within the first 12 months after opening your account
- Free PNC Bank ATM transactions
- Reimbursement of first 2 transaction fees for non-PNC Bank ATMs per statement period
- Integrated Overdraft Protection, with free set up and transfers
- Automatic enrollment for online statements the first time you sign-on
- PNC Bank Visa® Debit Card (Required)

## DISPUTE RESOLUTION THROUGH ARBITRATION

If you have a claim and we are unable to resolve it informally, you or we may elect to resolve it by individual binding arbitration in accordance with the terms of the *Arbitration Provision*. If a claim is arbitrated, it will proceed as an individual action, and neither you nor we will have the right to participate in a class action in court. You have the right to opt out of the arbitration process by providing timely notice to PNC. Please refer to the *Arbitration Provision* located within the *Virtual Wallet Fine Print "What You Need to Know"* for complete details.

**LEARN MORE – ASK QUESTIONS – RESOLVE ISSUES**

<b>Online</b>	Visit <a href="http://pnc.com/virtualwallet">pnc.com/virtualwallet</a> .
<b>In Person</b>	Visit us at any branch. Find the location nearest you at <a href="http://pnc.com/locatepnc">pnc.com/locatepnc</a> or by using our
<b>Finder App. By Phone</b>	1-800-352-2255 Para servicio en español, 1-866-HOLA-PNC (1-866-465-2762)

- 1 Virtual Wallet Student has no minimum balance requirement or monthly service charge for active students for six years. At the end of the six years, your account will be subject to the features and fees as described in the Virtual Wallet Features and Fees in effect at that time.
- 2 See our Virtual Wallet Fine Print "What You Need to Know", "Interest Payment and Balance Computation" section for details. For current interest rate and Annual Percentage Yield information, call 1-888-PNC-BANK (1-888-762-2265).

Visa is a registered trademark of Visa International Service Association and used under license.

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EFORM160912-1014



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

THIS FIRST AMENDMENT to the University Banking Services Agreement (the "First Amendment") is made and entered into this 30th day of April 2016, (the "First Amendment Effective Date"), by and between Marshall University, ("University") and PNC Bank, National Association, a national banking association with its principal office located at 300 Fifth Avenue, Pittsburgh, PA 15222, ("PNC Bank"). This First Amendment amends the Agreement in accordance with the terms set forth herein and together, the Amendment(s) and the Agreement constitute a single revised Agreement. All capitalized terms used in this First Amendment shall have the meaning given them in the Agreement unless otherwise defined herein or the context hereof clearly requires otherwise.

WHEREAS, University and PNC Bank entered into a University Banking Services Agreement dated June 1, 2015, (the "Agreement");

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

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

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

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

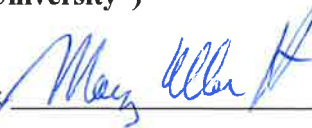
**PNC Bank, National Association**  
("PNC Bank")

By:   
Nickolas Certo

Title: Senior Vice President

Date: 5/10/2016

**Marshall University**  
("University")

By: 

Title: SVP Finance / CFO

Date: 5/10/16



## EXHIBIT H

### DEPARTMENT OF EDUCATION CASH MANAGEMENT COMPLIANCE AGREEMENT

THIS DEPARTMENT OF EDUCATION CASH MANAGEMENT COMPLIANCE AGREEMENT (“CM Agreement”), is entered into this 30th day of April, 2016, by and between Marshall University, an institution of higher education organized and operated under the laws of the State of West Virginia, having offices at 1 John Marshall Drive, Huntington, WV 25755, (“University”), and PNC Bank, National Association, a national banking association (“PNC Bank”). This CM Agreement is an exhibit to and an integral part of that certain University Banking Services Agreement dated June 1, 2015 between University and PNC Bank (the “Agreement”). Capitalized terms used in this CM Agreement and not otherwise defined herein, shall have the meaning given them in the Agreement.

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

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

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

#### 1. Definitions

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

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

## **2. Student Choice**

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

## **3. Customer Complaints**

In the event that University has a direct relationship with or direct contact with PNC’s customers during the term of this Agreement and the University receives a Customer Complaint about PNC that (i) the University is unable to resolve, or (ii) becomes public

knowledge (e.g., media), or (iii) raises questions related to compliance with applicable law, University shall immediately, notify PNC Bank and deliver to PNC Bank a written summary or copy of such Customer Complaint along with associated correspondence and information.

#### **4. University DoE Regulation Compliance**

(a) Student Consent. The University is required to ensure that student consent has been obtained by the Financial Institution prior to opening a PNC Financial Account. The Financial Institution complies with the applicable laws that govern the account opening process. Therefore, the Financial Institution always secures the student's consent prior to opening a PNC Financial Account. The Financial Institution has reviewed its account opening policy with the University and the University has concluded the student consent requirement is deemed satisfied.

(b) Student Choice. The University shall provide the PNC List to the student as set forth in Section 2(b) above.

(c) Agreement. In accordance with the effective date set forth in the DoE Regulation, the University shall disclose, on the University website, a copy of the Agreement.

(1) In order to satisfy the requirements of this Section 4(c), University shall comply with the provisions of Section 5 of this CM Agreement.

#### **(d) Compensation and PNC Financial Account Data**

(1) In accordance with the effective date set forth in the DoE Regulation, the University may be required to disclose on the University website, in a manner defined by the Secretary of Education, certain information, which may include direct or indirect compensation, regarding the most recently completed Award Year under the terms of the Agreement.

(2) The University may also be required to disclose certain information regarding the number of students who had PNC Financial Accounts, the amount of fees incurred, at any time during the most recently completed Award Year, by students who have PNC Financial Account(s), as a result of the Agreement, ("PNC Financial Account Data"). In addition, and in accordance with the effective date set forth in the DoE Regulation, the University shall provide the Department of Education Secretary with an up-to-date URL so this information can be published in a centralized database accessible to the public.

(3) In order to satisfy the requirements of this Section 4(d), University shall comply with the provisions of Section 5 of this CM Agreement.

(e) The University shall provide the Financial Institution with sixty (60) days prior notice of its intent to comply with Sections 2(b), 4(c), and 4(d). The University

shall also provide, when requested, a copy of the Agreement or up-to-date URL that will be used to comply with the DoE Regulation.

- (f) ATMs. The University has determined the ATM requirements set forth by the DoE Regulation are satisfied pursuant to the ATM License Agreement which is an exhibit to the Agreement.
- (g) Best Interest of the Students. During the Term of the Agreement the University will conduct reasonable due diligence reviews in a manner and frequency defined by the Secretary of Education, to ascertain whether the fees charged by PNC Bank to customers who have obtained the PNC Financial Account are, considered as a whole, consistent with or below prevailing market rates, (the “Review”).
  - (1) The University shall provide PNC Bank with a copy of the results of each Review within fifteen (15) days from the completion of the review.
  - (2) The DoE Regulation requires the University have the right to terminate the Agreement should the findings of the Review disclose the PNC Financial Account fees are not considered as a whole, consistent with or below prevailing market rates. Additionally, the DoE Regulations requires that the University have the right to terminate the Agreement should it receive Customer Complaints from PNC customers who are full or part time students of the University. The Review or results from Customer Complaints shall be, collectively or individually, deemed a reason for termination by the University, (“DoE Cause for Termination”)
  - (a) The University agrees that, prior to terminating the Agreement under this Section 4(g)(2), the University shall enter into a sixty (60) day discussion period with Financial Institution (the “Discussion Period”). During said Discussion Period the University and Financial Institution shall review the findings of the DoE Cause for Termination, to determine if it is inaccurate, non-conclusive, or if corrective action is necessary by the Financial Institution for those items deemed unsatisfactory by the or the result of Customer Complaints.
    - (i) if the parties mutually agree the findings are inaccurate or non-conclusive the Agreement shall remain in full force and effect;
    - (ii) if the parties determine corrective action is required they will negotiate in good faith to establish a commercially reasonable plan to address those items considered unsatisfactory in the Review or results from Customer Complaints, (the “Plan”). 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. The University shall provide such notice no later than fifteen (15) days after the expiration of the Discussion Period. This shall not be deemed a condition of default by the Financial Institution under the Agreement.

## **5. DoE Compliance Information**


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

- (a) The University must always request any and all information regarding the Agreement or the PNC Financial Account(s) from the Financial Institution, including but not limited to: (i) PNC Financial Account Data, or information related thereto; (ii) information used to derive the PNC List; and (iii) any other information, including the Agreement, which is required to be disclosed under the DoE Regulation.
- (b) The University shall not provide any DoE Compliance Information which references PNC Bank, its products or services without the prior written approval of the Financial Institution, which approval shall not be unreasonably withheld.
- (c) The Financial Institution reserves the right to revise the DoE Compliance Information as deemed necessary to ensure the accuracy of any information that is provided by the University, regarding the Financial Institution, the PNC Financial Account, and any other information related thereto.
- (d) The Financial Institution shall provide to the University, in its reasonable discretion, all information requested under Section 5(a) of this Agreement to assist University with its DoE Regulation Compliance.


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

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

**MARSHALL UNIVERSITY**

By:   
Name: Mary Ellen Hewton  
Title: Senior VP of Finance / Chief Financial Officer  
Date: 5/10/16

**PNC BANK, NATIONAL ASSOCIATION**

By:   
Name: Nickolas Certo  
Title: Senior Vice President, University Banking  
Date: 5/10/2016

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

THIS SECOND AMENDMENT to the University Banking Services Agreement (the “Second Amendment”) is made and entered into this 6th day of May, 2016, (the “Second Amendment Effective Date”), by and between Marshall University, (“University”) and PNC Bank, National Association, a national banking association with its principal office located at 300 Fifth Avenue, Pittsburgh, PA 15222, (“PNC Bank”). This Second Amendment amends the Agreement in accordance with the terms set forth herein and together, the Amendment(s) and the Agreement constitute a single revised Agreement. All capitalized terms used in this Second Amendment shall have the meaning given them in the Agreement unless otherwise defined herein or the context hereof clearly requires otherwise.

WHEREAS, University and PNC Bank entered into a University Banking Services Agreement dated June 1, 2015, (the “Agreement”);

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

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

1. Section 2, Term, is hereby deleted in its entirety and replaced in its entirety as follows:

This Agreement shall commence on the Effective Date and shall terminate on May 31, 2017 (“Initial Term”) unless the Agreement is earlier terminated in accordance with Section 17 below. Upon mutual agreement of the parties, this Agreement may be extended for four (4) additional one (1) year terms (each a “Renewal Term”). University shall provide PNC Bank with sixty (60) days prior written notice of its intent to renew the Agreement. The Initial Term and any Renewal Term may be referred to herein as a “Term”.

2. Section 3, subsection (b) (ii) is hereby modified as follows:

(ii) The University shall repay to PNC Bank a certain percentage of the Signing Bonus, described above, should the Agreement be cancelled for any reason prior to completion of the June 1, 2016 - May 31, 2017 Term, 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
2016-2017	50%

3. All provisions of the Agreement not specifically mentioned in this Second Amendment are hereby ratified and reconfirmed and the Agreement remains in full force and effect.

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

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

By:   
Nickolas Certo

Title: Senior Vice President

Date: 5/6/2016

**Marshall University**  
**("University")**

By: 

Title: SVP Finance / CFO

Date: 5/6/16