

## UNIVERSITY BANKING SERVICES LICENSE AND ATM AGREEMENT

**THIS UNIVERSITY BANKING SERVICES LICENSE AND ATM AGREEMENT** (herein “Agreement”) is made and entered into effective as of June 1, 2019 (the “Effective Date”) by and between the Board of Regents of the University of Nebraska, a public body corporate (“University”), on behalf of its University of Nebraska at Kearney campus (“UNK”), and First National Bank of Omaha, a national banking association (“Bank”).

**WHEREAS**, the University issued Request for Proposal #19-02 (the “RFP”) to have exclusive access to make available bank account services to students at UNK new student enrollment and transfer days, use of UNK logo(s) for banking cards and first rights to ATM services on the UNK campus (the “Bank Services”). These Bank Services and associated fees, terms and accounts shall be made available to each current UNK student, faculty and staff member (collectively, “Eligible University Community Members”);

**WHEREAS**, Bank has submitted to the University, in the manner and at the time specified, a proposal in accordance with the terms of the RFP (the “Proposal”);

**WHEREAS**, the University, in the manner prescribed by law, has publicly advertised, opened and evaluated the proposals submitted in response to the RFP and, as a result, has determined to award the Bank Services contract to Bank. The bid opportunity detail, RFP and any Addenda thereto (the “Bid Documents”), along with a copy of the Proposal and Bank’s responses to the University’s request to clarify information are herein referred to as the “Contract Documents”; and

**WHEREAS**, Bank desires to perform the Bank Services as set forth in this Agreement.

**NOW, THEREFORE**, for valuable consideration, and in consideration of the mutual covenants, terms, conditions, privileges and obligations herein set forth and intending themselves to be legally bound thereby, the parties agree as follows:

### SECTION 1 TERM

**1.1 Term and Options to Extend.** The initial term of this Agreement shall commence on June 1, 2019 (the “Commencement Date”), and shall terminate on March 31, 2024, unless otherwise terminated as provided in Section 1.2 (the “Initial Term”). The Agreement may be extended for five (5) additional one (1) year terms by written agreement between the parties of their decision to extend no later than the 1<sup>st</sup> day of October prior to the extension. In addition, the University may extend any Term through May 31 in the year of termination in order to avoid cessation of Bank’s services in the middle of an academic year/term by written notice of the University of its decision to extend no later than the 1<sup>st</sup> day of October prior to the extension. The Initial Term and any extensions thereof shall be collectively referred to herein as the Term.

**1.2 Termination.**

- a. This Agreement may be terminated by either party if the other party materially breaches a term of this Agreement and fails to remedy or cure such breach within thirty (30) days after receipt of the non-breaching party’s written notice of the breach. In the event the defaulting party is in good faith unable to cure such material breach within thirty (30) days, it shall commence the cure in a commercially reasonable manner and notify the non-defaulting party

of the anticipated cure date, which in no event shall be later than ninety (90) days from the material breach.

- b. This Agreement may be terminated by either party immediately upon notice to the other party in the event a petition in bankruptcy (or similar law providing for the adjustment of debts, debt reorganization or liquidation of the party) is filed by the other party, a petition in bankruptcy (or similar law providing for the adjustment of debts, debt reorganization or liquidation of the party) is filed against the other party and is not dismissed within sixty (60) days, or a conservator or receiver is appointed for the other party or for all or a substantial portion of its assets.
- c. This Agreement may be terminated by the University upon sixty (60) days prior written notice to Bank in the event: (i) University, in its discretion, receives excessive complaints from UNK students regarding their Bank Accounts (as defined in Section 2.1) and Bank and University are not able to reach an agreement as to how to resolve such complaints; or (ii) University determines, based on its reasonable due diligence, that fees imposed by Bank on Bank Accounts are, considered as a whole, clearly not consistent with or are above prevailing market rates for similarly-situated financial accounts, and such determination by University is supported by data based on the relevant market, which shall be provided to Bank for review prior to termination; or (iii) if Bank does not maintain a local presence in the UNK community.
- d. This Agreement may be terminated by Bank at any time if Bank is notified by a regulatory authority that any aspect of the services provided by Bank under this Agreement do not comply with any applicable law, regulation, rule or policy.

## SECTION 2 BANK SERVICES

**2.1 Description of Bank Services.** During the Term, Bank will provide in accordance with this Section 2.1 an individual depository account (each, a “Bank Account”) to each *current* University student, faculty and staff member (each, an “Eligible University Community Member”) who has requested and actively consented to such an account. Nothing herein prohibits Bank from closing any Bank Account in accordance with the policies, procedures, practices and/or guidelines Bank uses when deciding whether to close Bank Accounts of other retail customers. The Bank Accounts herein described will be transaction accounts (as defined in Federal Reserve Board Regulation D), subject to Bank’s usual requirements for offering accounts. All Bank Accounts will be transaction accounts, and the holders thereof must be natural persons.

- a. Some Eligible University Community Members may not be eligible for the respective Bank Account due to prior negative banking history, or other account opening requirements as Bank may establish from time to time in connection with applicable law or Bank policy.
- b. Any and all Bank Accounts offered to Eligible University Community Members will, at a minimum, have the features (sometimes referred to herein as the “Services”) as set forth in Exhibit A, which is attached hereto and incorporated herein by this reference.
- c. Upon request, Bank will provide international students information on the process for closing their Bank Account at least sixty (60) days before the Bank terminates international students’ access to their Bank Account.

- d. Bank shall provide at its own expense an informational web page ("UNK Web Page") dedicated to Eligible University Community Members, using a design and functionality subject to the approval of the University, which approval shall not be unreasonably withheld. The UNK Web Page shall be consistently updated and provide the following minimum features:
  - i. List and identify the major features and commonly assessed fees associated with each Bank Account offered under this Agreement (no credit cards will be offered on the UNK Web Page – see Section 2.3 hereof).
  - ii. Provide a URL on which the terms and conditions associated with each Bank Account are provided.
  - iii. On-line application to open Bank Accounts offered under this Agreement.
- e. UNK acknowledges that Bank reviews and revises the terms, conditions, and pricing generally applicable to its retail deposit accounts from time to time, and agrees that nothing in this Agreement prohibits Bank from making the same changes to the Bank Accounts herein described that it makes generally to its other accounts.
- f. University is required to: (A) Disclose conspicuously on the University's website this Agreement establishing the T2 arrangement between the University and Bank in its entirety, except for any portions that, if disclosed, would compromise personal privacy, proprietary information technology, or the security of information technology or of physical facilities; and (B) Provide to the Secretary of the U.S. Department of Education an up-to-date URL for the Agreement for publication in a centralized database accessible to the public.

**2.2 Bank Account Opening.** The Bank Accounts may be opened by Bank using Bank personnel anywhere permitted by applicable law and regulations; provided however, that University shall have the right to determine where at UNK such Bank Accounts may be opened.

- a. When opening the Bank Accounts at UNK for students, Bank personnel will request a UNK email address to facilitate appropriate reporting pursuant to the requirements set forth in Section 2.5 ("Reporting").
- b. Bank will make its personnel available when agreed to by the parties, at dates, times and places to be agreed upon by the parties, for the purpose of accepting Bank Account applications and initial deposits. Bank may accept deposits to Bank Accounts anywhere and by any means permitted by law, including Bank's offices, correspondent banks, mobile branches and messengers, and automated teller machines ("ATMs") or other electronic means of accepting deposits, provided that Bank shall not be permitted to accept deposits at UNK without University's consent. The University may allow Bank to place a mobile branch at a mutually agreed location that would have the ability to process deposits. University Information Technology Services must authorize any devices connecting to University's network. Notwithstanding the foregoing, University acknowledges that in accordance with federal regulations governing Bank, while Bank may open Bank Accounts at, it may not accept deposits at, locations which are not Bank offices (with the exception of ATMs and mobile branch). In the event such mobile branch is allowed, the UNK Vice Chancellor for Business and Finance will provide written consent, stating the location and duration of the mobile branch.

- c. Bank shall be responsible for obtaining information from Eligible University Community Members in connection with Bank Account opening. University will not have authority or responsibility to open any Bank Accounts or accept any deposits on behalf of Bank.
- d. Bank has the right to refuse to open a Bank Account consistent with the requirements of any state or federal law that applies, or purports to apply, to Bank. Bank also has the right to refuse to open a Bank Account where Bank, applying account-opening standards and procedures comparable to those used for the same class of Bank's other customers, believes the Eligible University Community Member applicant presents an unacceptable risk of loss to Bank or Bank is unable to verify information in the Eligible University Community Member's application.
- e. Bank personnel shall provide support for the implementation of the financial services associated with this Agreement, including the opening of Bank Accounts for Eligible University Community Members. Additional Bank personnel will be available and assigned as needed to support Bank Account services during peak activity times, such as first-year and transfer student experiences.
- f. Once Bank's financial services associated with the Bank Accounts are implemented, Bank will assign an account manager to provide overall program assistance and to serve as a primary contact for all matters related to those services.
- g. Bank Accounts are not being opened by University on behalf of any Eligible University Community Members, University is not establishing a process Eligible University Community Members follow to open Bank Accounts, and University is not in any way assisting Eligible University Community Members in opening Bank Accounts. Further, this Agreement is not being established for the purpose of University's disbursement of Title IV funds or for Bank's specific purpose of receiving Title IV funds.

**2.3 Credit Card Programs.** The UNK student Bank Accounts under to this Agreement will not be marketed or portrayed as, or converted into, credit cards.

**2.4 Relationship to Campus ID Card (UNK ID Card).** During the Term, University will not cause or authorize any UNK student or employee identification card to be used as a device to perform electronic funds transfers to or from an account with a financial institution (including, without limitation, banks, savings banks, savings associations, and credit unions) or as a device for accessing a person's Bank Account with Bank. Nothing herein shall prevent UNK ID Card holders from using UNK ID Cards to access their UNK ID Card Campus Account as administered by UNK, as stored value cards, declining balance cards or smart cards.

**2.5 Reporting.**

- a. Annually by July 1, University will provide a file with name and UNK email address of each enrolled student to Bank. Bank will use provided file to authenticate all student Bank Accounts. The provided file and its information will be used only for these expressed reasons and will not be sold, transferred or in any other way released to a third party without prior approval from University.
- b. Bank will provide an annual reporting by August 31 each year during the Term of the number of UNK students with Bank Accounts for any portion of the year from July 1 of the previous year through June 30 of the current year (except the first annual reporting will contain the

number of UNK students with Bank Accounts from the Effective Date through June 30 of the current year), and will include the mean and median of the actual costs incurred by UNK student Bank Account holders. The process for calculating the Bank Account totals and the mean and median costs will be determined by written mutual consent of both parties.

Upon written request from Bank, the University shall, no more frequently than one (1) time each calendar year during the Term, provide Bank with a list of employees that have separated from the University since the last report to Bank.

On or before March 1 each year of the Term, Bank will provide UNK a list of Bank Account features and fees paid by UNK students on the Bank Accounts in the Student Account Features and Fees form, a copy of which is attached hereto and incorporated herein as Exhibit B. The University agrees the Student Account Features and Fees form is for informational purposes only for use by the University and Bank, and is not for distribution to any third parties without the prior written consent of Bank.

**2.6 Financial Counseling Services.** University and Bank agree to explore opportunities for financial counseling programs to provide to Eligible University Community Members.

- a. Faculty and Staff Financial Counseling Services. Bank will provide a financial counseling program, currently referred to as "First At Work Financial Wellness," to UNK employees. The program will provide education and tools designed to help UNK employees achieve their short term and long-term financial goals. Program topics will include, but not be limited to, financial wellness, lending, and investing.
- b. Online Resources. Bank will provide an Online Resource Center to UNK employees and students that includes financial tools and insight, including interactive educational sessions to allow for a personalized experience that assists users in personal money management and planning.

**2.7 Student Organizations Support.** During each year of the Term, Bank will work with UNK to provide to student groups financial wellness seminars. Seminars will be educational in nature and will not be designed to sell banking products or services to students. Programs topics will include, but not be limited to, managing personal finances, understanding credit, and financial planning. New courses and activities may be developed upon the reasonable request of the University.

### SECTION 3 ATM SERVICES

**3.1 ATMs.** Bank has the facilities for a system of electronic fund transfers through the use of satellite terminals known as Automated Teller Machines (hereinafter referred to as "ATMs"). These ATMs will permit Bank customers and customers of other banking institutions holding authorized cards to perform one or more of the following:

- a. Withdraw funds from checking or savings accounts;
- b. Transfer funds between checking and savings accounts; and
- c. Inquire about balances in either checking or savings accounts.

Bank agrees to ensure UNK students can execute balance inquiries and access funds deposited in Bank Accounts through surcharge-free in-network ATMs sufficient in number and housed and serviced such that funds are reasonably available to the accountholder, including at the times UNK makes direct payments into the Bank Accounts of those UNK students (generally the beginning of each semester).

**3.2 ATM Locations.** Bank will install, operate and maintain one (1) ATM, with option to install, operate and maintain additional ATMs as provided below. Bank is granted the right to determine the ATM and incidental equipment make, model and teller function capabilities. Full Service ATMs shall be capable of effecting currency withdrawals from checking and savings accounts, transferring funds between checking and savings accounts, and account balance verification. Bank shall operate one (1) Full Service ATM in the Nebraskan Student Union at a location to be mutually agreeable to the University and Bank. Any request by Bank to change the location of an ATM on the UNK campus shall require a 90-day written notice and be subject to mutual agreement between the University and Bank, with the cost of such relocation the responsibility of Bank.

**3.3 ATM Installation, Operation and Maintenance.**

- a. ATMs shall be maintained to accommodate peak usage during periods such as, but not limited to, the beginning of each semester, the last week of the academic year, and large campus events.
- b. All ATM equipment installed will be handicapped accessible and provide the customary complement of banking services. ATMs will honor all bankcards affiliated with Bank or Bank's subcontractor ATM networks and Statewide NETS networks. ATM installation costs, including electrical and phone lines and communications media service costs, shall be borne by Bank, subject to prior approval by the University for any facility or site modifications. Bank will promptly repair any and all damage caused by such installation.
- c. Bank shall have sole responsibility for maintenance of the ATMs and the incidental equipment necessary for operation thereof. The University agrees to notify Bank promptly of any known malfunction of the ATMs and incidental equipment, but the University shall not be liable to Bank should it fail to so notify Bank and the University shall have no duty of investigation. Bank shall not be liable to the University for any loss of business or profits or any other potential losses or damage, direct or indirect, consequential or otherwise, due to or caused by any malfunction in the ATM. The University shall not be liable for any loss of any kind whatsoever to Bank due to or caused by any malfunction in the ATM or the incidental equipment or utilities necessary for the operation of the ATM. Back-up equipment or on-site repair shall be reasonably available and prompt.
- d. During the University's business hours, the University shall permit Bank, and Bank's agents, to install, remove, service, repair or inspect the ATMs upon prior notification to the University. Bank shall at its cost be responsible for ensuring regular maintenance and service of all equipment provided by Bank, such service to be promptly available from 8:00 a.m. to 8:00 p.m., Central Time, seven days per week basis. Equipment service personnel must be easily identifiable as such. Bank shall be responsible for damage and loss to equipment or its contents due to vandalism, robbery, or any other actions or cause unless UNK is deemed to have caused such damage or loss.
- e. The University acknowledges that the ATMs and incidental equipment necessary for the operation thereof is the sole property of Bank, and that nothing in this Agreement or in the

relationship between the parties will give the University any proprietary interest in the ATMs and incidental equipment.

**3.4 Utilities.** The University shall provide without cost to Bank the electricity necessary to operate the ATMs. The University shall not be liable to Bank should electricity be interrupted, discontinued or canceled for any reason.

**3.5 Security.** UNK will provide security personnel to protect the equipment at the same level it customarily provides to the UNK campus in general. Bank shall provide such additional security service as Bank in its discretion shall determine to be necessary.

**3.6 Removal of ATM.** Upon the expiration of the Term, or upon the termination and cancellation of this Agreement as herein provided, Bank shall, at its own expense, remove all ATMs within sixty (60) days following termination or expiration of this Agreement. Bank will promptly repair any and all damage caused by such removal. Notwithstanding anything to the contrary herein, the University reserves the right to require that Bank remove the ATMs as soon as practically possible if there is a serious adverse occurrence attributed to it, including but not limited to financial, physical or reputational harm.

#### SECTION 4 MARKS; MARKETING

**4.1 Use of Marks.** Except as specifically set forth herein, Bank agrees that it shall not advertise any connection with UNK or any of its campuses, colleges, or other elements of UNK's organization, nor make use of UNK's name and other identifying marks or property nor make representation, either expressed or implied as to UNK's promotion or endorsement of Bank's operation, unless it has received prior written permission from UNK.

- a. **Grant to Use UNK Name and Marks.** University hereby grants Bank during the Term a non-exclusive, non-assignable, and irrevocable (provided Bank is performing its obligations under this Agreement) world-wide license to use, display, reproduce, and otherwise use the various logos and other identifying property and marks set forth on Exhibit C of this Agreement (collectively, the "University Marks") on all materials prepared by Bank in connection with the Bank Services, including use under The University of Nebraska at Kearney Athletics License Agreement dated June 1, 2016, as amended ("Athletics' Agreement"), for so long as such Athletics' Agreement is in effect. All applications of the University Marks by Bank must conform to Exhibit C along with any specifications established by the University which specifications may be amended from time to time. Bank will make no other use of the University Marks or any other trademark or trade name owned by or associated with UNK without, in each case, prior explicit written consent from the Communications and Marketing department of UNK. Bank shall deliver all materials prepared by Bank that contain any University Mark to University prior to publication for University's prior written consent.

Bank acknowledges and agrees that University is the owner of the University Marks, that the limited right hereunder to use the University Marks does not confer upon Bank any license or right of ownership of the University Marks, and all use of the University Marks by Bank will inure to the benefit of University. Accordingly, Bank's limited right to the use of the University Marks for any purpose is solely by reason of this Agreement, and Bank shall not raise or cause to be raised any questions concerning, or objections to the validity of, or the right to the use of, the University Marks or the right of the University thereto, on any grounds whatsoever, or file any application for any mark, or obtain or attempt to obtain ownership of

a mark or trade name, in any country of the world, which refers to or is confusingly similar to the University Marks or any mark, design or logo intended to identify the University. Bank shall cease any and all use of the University Marks or any variation of the University Marks as soon as possible, but no later than sixty (60) days after the effective date of expiration or termination of this Agreement.

University hereby represents and warrants that to its knowledge the University Marks do not infringe the rights of any other party, and with respect to the existence of any state or federal registration of the University Marks or design as a trade name, trademark or mark. To the extent permitted by law, if there is any claim against University or Bank that the University Marks or any modifications thereof, as authorized by University, infringe the rights of another party, University will, at its own expense, defend Bank's right to use of the University Marks as authorized under this Agreement. In the event any such claim is resolved adversely to University or Bank, or in the event University agrees to discontinue its use of the subject mark(s) in order to resolve any such claim, which it shall have the right to do in its sole discretion, then, to the extent allowed by law, University agrees to indemnify Bank against any expenses Bank incurs in discontinuing use of the marks and adopting use of alternative non-infringing marks, subject to the limitation of liability set forth herein. To the extent allowed by law, University further agrees to indemnify Bank against all liabilities Bank incurs to third parties (including, without limitation damage awards obtained by such third parties against Bank), together with Bank's reasonable costs of defending against such liabilities (including reasonable attorney fees), arising from Bank's use of the University Marks, when such usage is in accordance with the terms of this Agreement. Subject to the foregoing, if requested by the University, Bank agrees to immediately discontinue the use of any University Marks where there has been a claim of infringement and the claim has been resolved adversely to University or Bank, or where University agrees to discontinue use of the marks in order to resolve the claim.

Any change by University in the specifications for any of the University Marks will apply only to materials produced after notice of the change is given to Bank.

- b. Grant to Use Bank Name and Marks. Bank hereby grants University during the Term a non-exclusive, non-assignable, right and license to use the marks set forth on Exhibit D of this Agreement (collectively, the "Bank Marks") on all materials prepared by University in connection with this Agreement. University will make no use of Bank Marks or any other trademark or trade name owned by or associated with Bank without, in each case, prior explicit written consent of Bank. The University shall contact Bank's Director of Corporate Sponsorships or the local Marketing Manager to obtain such written consent. University agrees that all products and/or services offered under this Agreement shall be of a nature and quality commensurate with the nature and quality of the general University's student services program. University shall deliver all materials prepared by University that contain any Bank Mark to Bank prior to publication for Bank's prior written consent.

University acknowledges and agrees that Bank is the owner of the Bank Marks, that the limited right hereunder to use the Bank Marks does not confer upon University any license or right of ownership of the Bank Marks and all use of the Bank Marks will inure to the benefit of Bank. Accordingly, University's limited right to use of the Bank Marks for any purpose is solely by reason of this Agreement, and University shall not raise or cause to be raised any questions concerning, or objections to the validity of, or the right to the use of, Bank Marks or the right of Bank thereto, on any grounds whatsoever, or file any application for any mark, or obtain or attempt to obtain ownership of a mark or trade name, in any country of the world,

which refers to or is confusingly similar to the Bank Marks or any mark, design or logo intended to identify Bank. The University shall cease any and all use of the Bank Marks or any variation of the Bank Marks as soon as possible, but no later than sixty (60) days after the effective date of expiration or termination of this Agreement.

Bank hereby represents and warrants that the Bank Marks do not infringe upon the rights of any other party, and with respect to the existence of any state or federal registration of the service marks or design as a trade name, trademark or service mark. If there is any claim against Bank or University that the Bank Marks or any modifications thereof, as authorized by Bank, infringe the rights of another party, Bank will, at its own expense, defend University's right to use of the marks as authorized under this Agreement. In the event any such claim is resolved adversely to Bank or University, or in the event Bank agrees to discontinue its use of the subject mark(s) in order to resolve any such claim, which it shall have the right to do in its sole discretion, then Bank agrees to indemnify University against any expenses University incurs in discontinuing use of the marks and adopting use of alternative non-infringing marks, subject to the limitation of liability set forth in herein. Bank further agrees to indemnify University against all liabilities University incurs to third parties (including, without limitation damage awards obtained by such third parties against University), together with University's reasonable costs of defending against such liabilities (including reasonable attorney fees), arising from University's use of the Bank Marks, when such usage is in accordance with the terms of this Agreement. Subject to the foregoing, if requested by Bank, University agrees to immediately discontinue the use of any Bank Marks where there has been a claim of infringement and the claim has been resolved adversely to Bank or University, or where Bank agrees to discontinue use of the marks in order to resolve the claim.

Any change by Bank in the specifications for any of the Bank Marks will apply only to materials produced after notice of the change is given to University.

**4.2 University Check and Debit Card Designs.** University hereby grants Bank for the Term the exclusive right to offer for sale to all Bank Account holders debit cards utilizing the design mutually agreeable to the parties, incorporating one or more University Marks (the "University Debit Card Designs"), which Bank shall design at its cost. Bank agrees that University is the owner of the University Debit Card Designs, that the limited right hereunder to offer the University Debit Card Designs does not confer upon Bank any license or right of ownership or any other legal interest in the University Debit Card Designs. Upon expiration or termination of this Agreement for any reason, Bank's right to any use and/or distribution of the University Marks shall cease as soon as possible, but in no event later than sixty (60) days after the effective date of termination of the Agreement. Nothing in this Agreement shall prohibit a customer of Bank from using his or her debit card or store of printed checks after the termination of this Agreement, if such debit card and checks were acquired through Bank during the Term of the Agreement.

**4.3 Sponsor Designation.** The following slogans, identifying Sponsor as an official corporate sponsor of UNK, may be incorporated in all of Sponsor's media and promotional marketing and advertising pre-approved pursuant to Section 4:

- a. "An Official Bank of the University of Nebraska at Kearney"
- b. "An Official Bank of UNK"
- c. "Official Sponsor of the University of Nebraska at Kearney"

d. "Official Sponsor of UNK"

**4.4 Marketing.** Bank will provide marketing support for the products and/or services associated with this Agreement, coordinating such support with University in order to develop a comprehensive marketing plan. Specific marketing campaign components will be reviewed annually no later than February 28<sup>th</sup> during the Term and mutually agreed upon. All promotional materials, whether distributed through print, television, radio, internet or mobile device address shall be prepared by Bank at its own cost in connection with this Agreement. Marketing components and promotional materials developed by Bank should not be cobranded with University marketing campaigns. All such promotional and informational materials must be submitted to University for approval before printing or other distribution. University may withhold its approval for any reason at its sole discretion. Promotions using University Marks on any memorabilia item to be distributed to Bank customers (e.g. t-shirts, mugs, etc.) are not permitted without the specific explicit written permission of the University.

**4.5 Access to First Year Student Experiences.** University conducts introductory student experiences for first-year undergraduate (including International) and transfer students throughout each year with a majority of these experiences taking place each summer preceding the start of the academic year. Under this Agreement, no financial institution (including, without limitation, banks, savings banks, savings associations, and credit unions) other than Bank will be present at these University-sponsored first-year and transfer student experiences. These possible presentations, their content and length will be mutually agreed upon by both parties and will not hinder the overall purpose and effectiveness of the student experiences. These student experiences include New Student Enrollment, Transfer Days and other first-year activities as identified or introduced. The University and Bank will meet, at a minimum, on an annual basis during the Term to discuss any potential new opportunities. This exclusivity right is not applicable to University Welcome Week activities or programs and events that are not on University property nor sponsored by the University.

## SECTION 5 PAYMENTS

**5.1 Royalties to University.** In consideration of the license and grant of rights from the University given to Bank in this Agreement, Bank will make royalty payments (the "Royalties") to the University as follows:

Initial Royalty Payment (due within 30 days from date of fully executed Agreement):	\$60,000
Annual Royalty Payment for Marketing Expenses (due annually on March 1 <sup>st</sup> ):	\$5,000

Marketing Expenses will be mutually agreed upon by the parties and may include, but not be limited to, mailings, events, and other marketing activities promoting Bank Services. Payments described in this Section 5.1 shall be deemed paid upon receipt by the University by electronic funds transfer.

Bank and University intend that this Agreement be construed in a manner such that the revenue streams paid to the University hereunder are in compliance with the requirements of the Internal Revenue Code, and in particular IRC § 512-513 and the regulations pertaining to those sections, for revenue characterized as tax-exempt income, and not unrelated business taxable income.

SECTION 6  
INSURANCE

**6.1 Insurance.** Bank represents and warrants that at all times during the Term, Bank shall maintain the following listed coverage in the minimum limits as follows:

<u>Coverage</u>	<u>Minimum Limits</u>
Worker's Compensation (WC)	Statutory
Employer's Liability	\$500,000 bodily injury per occurrence \$500,000 bodily injury by disease per occurrence \$500,000 bodily injury by disease aggregate
<u>Commercial General Liability</u>	
General Aggregate	\$1,000,000 per occurrence \$3,000,000 aggregate Including Product
Completed Operations	\$1,000,000 per occurrence
<u>Automobile Liability (including hired and non-owned)</u>	
Combined Single Limit	\$1,000,000

Each policy shall be issued by companies reasonably acceptable to University. Bank's Commercial General Liability and Automobile Liability policies shall name the Board of Regents of the University of Nebraska as an additional insured. Representatives of Bank are required to notify the University in writing at least thirty (30) days before canceling any such policy. Certificates of such policy or policies of insurance shall be delivered to University promptly after the issuance of such policy or policies. Bank represents that the financial strength, integrity and contractual obligations of Bank provide protection for its customers with respect to risk associated with the products and services to be provided by Bank. Bank further represents that it maintains a Financial Institutions Bond (also known as a Fidelity Bond) and other policies with coverages and provisions considered within industry standards for similarly situated financial services companies.

University represents and warrants that at all times during the Term, University shall maintain through its self-insurance program comprehensive general liability insurance, including coverage for bodily and personal injury, property damage, and products liability, with limits of not less than \$1,000,000 each claim and \$3,000,000 aggregate. In addition, the University agrees to maintain Worker's Compensation insurance in amounts no less than the statutory benefits required by law. During business hours following reasonable request, University shall allow Bank to review such documents as are available pursuant to Nebraska Public Records Laws to verify the existence and funding supporting said self-insurance program.

SECTION 7  
GENERAL TERMS AND CONDITIONS

**7.1 Compliance With Applicable Law.** The parties hereto agree to comply with all federal, state and local laws to the extent they are applicable to the performance of this Agreement. In the event changes in

laws necessitate a material change to the terms of this Agreement, the parties agree to negotiate in good faith to amend the Agreement to maintain compliance

- a. Compliance with Laws and Regulations; Gramm Leach Bliley; University of Nebraska Policies. Performance under this Agreement shall comply with all applicable federal, state and local laws, specifically including all laws and regulations related to the providers of the financial services offered by Bank; all laws and regulations related to the protection and security of any personal information, such as the Gramm Leach Bliley Act implemented at the University of Nebraska by Presidential Executive Memorandum No. 26 through Exhibit E attached hereto and incorporated herein by this reference; and all other applicable policies of the University of Nebraska, accessible at <https://nebraska.edu/offices-policies/policies>. Bank agrees to indemnify University against any loss, cost, liability, or damage by reason of Bank's violation of any applicable law or regulation. Bank represents and warrants that it is qualified to conduct the business necessary to the performance of this Agreement in the State of Nebraska and shall remain so qualified throughout the Term. To the extent allowed by law, University agrees to indemnify Bank against any lost, cost, liability, or damage by reason of University's violation of any applicable law or regulation.
- b. Bank shall also observe and comply with the applicable policies, rules and regulations of UNK, accessible at <http://www.unk.edu/about/compliance/policies.php>. It shall be Bank's obligation to see that Bank's employees, invitees and agents obey the policies, rules and regulations of the University.

**7.2 Representations and Warranties; Board Approval.** Each party hereby represents and warrants to the other that the party has full right, power and authority to fully perform its obligations under this Agreement, and that it has full right, power and authority to execute and deliver this Agreement, and that the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by all necessary corporate action required to be taken on the part of the party including, when necessary, approval thereof by the party's Board of Directors or Board of Regents, as applicable. Each party hereby further represents and warrants to the other that this Agreement constitutes a valid and binding obligation of the party enforceable in accordance with its terms except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting the enforcement of creditors' rights and except as courts of equity may limit certain remedies such as specific performance. Each party further represents and warrants to the other that the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not conflict with, or result in the violation of, any laws or regulations applicable to the party, or of the charter, articles of association or bylaws of a party, or any agreement or other instrument to which the party is subject or by which the party or any of its properties or assets are bound.

**7.3 Liability.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, PUNITIVE OR INDIRECT LOSS OR DAMAGE WHETHER OR NOT ANY CLAIM FOR SUCH DAMAGES IS BASED ON TORT OR CONTRACT OR EITHER PARTY KNEW OR SHOULD HAVE KNOWN THE LIKELIHOOD OF SUCH DAMAGES IN ANY CIRCUMSTANCES.

**7.4 Examinations.** Except to the extent applicable law prohibits such, all records maintained by University pertaining to Bank and this Agreement will be available for examination and audit by Bank and/or its regulators. In addition, the University will provide Bank or its duly authorized representatives with reasonable access to the University's records for the purpose of enabling Bank to confirm the University's compliance with the terms of this Agreement. All such records may be audited by Bank or

its designated representatives at any time during the University's regular working hours upon reasonable notice. Except to the extent applicable law prohibits such, Bank will provide University or its duly authorized representatives with reasonable access as permissible to Bank's records for the purpose of enabling University to confirm Bank's compliance with the terms of this Agreement. All such records shall be maintained by Bank in accordance with Bank's record retention policy and may be audited by the University or its designated representative(s) at any time during Bank's regular working hours upon reasonable notice. The parties may require persons obtaining access to Bank or University records under this Section 7.4, as a condition to obtaining access, to execute written confidentiality agreements setting forth the matters as addressed in Section 7.5.

**7.5 Confidentiality.** Each party acknowledges that, in the course of the performance of this Agreement, it may have access to information and communications, including proprietary information claimed to be unique, secret, confidential, and which constitutes the exclusive property and trade secrets of the other party, including but not limited to personally identifiable information ("Confidential Information").

- a. Each party will use the Confidential Information of the other party solely for the purposes expressly authorized in this Agreement or subsequently authorized by the other party in writing.
- b. Each party will keep the Confidential Information of the other party confidential and (except to the extent required by law or legal process) refrain from disclosing the Confidential Information of the other party to any other person or party or using the Confidential Information of the other party for any purpose not expressly authorized under this Agreement or subsequently authorized by the other party in writing. Each party will be fully responsible for the unauthorized use or disclosure of the Confidential Information of the other party by any of its officers, directors, employees, authorized third-party vendors or other persons under its control.
- c. In the event a party is requested or legally compelled (by subpoena, warrant, legal process or other civil or criminal law, rule or procedure) to produce, disclose, or provide the Confidential Information of the other party, the party will promptly notify the other party of that fact as soon as reasonably possible, except to the extent such notification is prohibited by law.
- d. The parties shall comply with the applicable requirements of 12 C.F.R. Part 364, and any other applicable law or regulation, by implementing and/or maintaining appropriate measures designed to: (1) ensure the security and confidentiality of the other party's Confidential Information; (2) protect against any anticipated threats or hazards to the security or integrity of such information; and (3) protect against unauthorized access to or use of such information that could result in harm or inconvenience to any Bank customer. These confidentiality and security provisions shall survive the termination of this Agreement.
- e. Throughout the Term, the parties shall implement and maintain appropriate safeguards, in conformity with applicable federal law and regulations, for all customer information, if any, owned by the University and delivered to Bank pursuant to this Agreement or owned by Bank and delivered to the University. Each party shall promptly notify the other party, in writing, of each instance of (i) unauthorized access to or use of that customer information that could result in substantial harm or inconvenience to a customer of the University or (ii) unauthorized disclosure, misuse, alteration or other compromise of that customer information.

- g. Pursuant to the Nebraska Public Records Statutes (Neb. Rev. Stat. §§ 84-712 through 84-721.09), information or documents received by the University from Bank may be open to public inspection and copying unless exempt from disclosure. The parties agree that Confidential Information of Bank provided hereunder may include information or documents that contain "trade secrets" as such terms is defined by the Nebraska Trade Secrets Act, Neb. Rev. Stat. § 84-502(4), and/or other proprietary or commercial information, which, if released, would give advantage to business competitors and serve no public purpose, within the meaning of the Nebraska Public Records Statutes, Neb. Rev. Stat. § 84-712.05(3). If the University receives a request for access to such information or documents of Bank, the University shall notify Bank in writing of such request, and furnish Bank with a copy of all written materials pertaining to such request (including the request itself), prior to the request's approval if so granted, so that Bank may work with the University to properly protect such Confidential Information at law or in equity and, if deemed necessary or appropriate, pursue any remedies available to Bank under applicable law at Bank's expense.
- h. Within thirty (30) days of the expiration or earlier termination of this Agreement, the parties shall either return if requested or otherwise destroy Confidential Information including documents, data and other information provided to each other in connection with this Agreement. Notwithstanding any provision herein to the contrary, Bank shall be permitted and shall retain such University Confidential Information for so long as: (1) is required by law; or (2) as may be consistent with its normal business practices.

**7.6 Assignment.** This Agreement may not be assigned by either party in whole or in part, other than by operation of law, without the other party's prior written consent, which may be withheld in the sole discretion of such party. Any such permitted assignment will not, in any event, release the party from its obligations hereunder. Written consent will not be required for transfers resulting from corporate reorganization, consolidation or name change.

**7.7 Subcontractors.** Each party is responsible for the actions of its respective subcontractors used to perform pursuant to this Agreement. No contractual relationship shall exist between any Bank subcontractor and University unless such is evidenced in a separate contract independent of this Agreement. Notwithstanding the foregoing, UNK acknowledges that certain products and services to be provided by Bank may be supplied by or through Bank's parent corporation, entities directly or indirectly owned or controlled by Bank or its subsidiaries, or entities affiliated with Bank or owned or controlled by entities affiliated with Bank, and in such cases, no written consent or separate written contract shall be required for arrangements made with such entities.

**7.8 Notices.** Except as otherwise specifically provided in this Agreement, all notices hereunder must be in writing and will be deemed given when mailed, or when delivered, if notice is given in any other manner, to the address of the party designated below or such other address as the party may designate by written notice to the other party. The date of mailing will be deemed to be the date appearing on the postmark.

If to Bank:

First National Bank of Omaha  
ATTN: Darla Burnham  
801 Allen Drive  
Grand Island, NE 68848

With a copy to:

First National Bank of Omaha  
ATTN: Brenda Hermanek  
1620 Dodge Street, Stop 3150  
Omaha, NE 68197-3150

If to University:

University of Nebraska at Kearney  
ATTN: Director of Business Services  
2504 9<sup>th</sup> Ave  
Kearney NE 68849

With a copy to:

University of Nebraska at Kearney  
ATTN: Director of Finance  
2504 9<sup>th</sup> Ave  
Kearney NE 68849

**7.9 Amendments and Waiver.** This Agreement may be amended only in a writing signed by both parties. Any such written amendment must be signed, in the case of University, by UNK's Vice Chancellor for Business & Finance and in the case of Bank, by its local market President. In the event of a default by either party under this Agreement, any delay, waiver or omission by the other party in exercising its rights under this Agreement or applicable law will not result in a waiver of the party's rights with respect to the same or any subsequent breach by the breaching party. No payment by Bank or receipt by the University of a lesser amount than the amount owing hereunder shall be deemed to be other than on account, nor shall any endorsement or statement on any check or letter accompanying any check or payment be deemed an accord and satisfaction.

**7.10 Rights of Parties Cumulative.** All rights and remedies of the University and Bank hereunder, or in connection with this Agreement shall be cumulative and none shall be exclusive of any rights or remedies allowed by law.

**7.11 Indemnity.** To the extent allowed by law, each party (the "Indemnifying Party") shall indemnify and save harmless the other party (the "Indemnified Party") from and against any and all liabilities and losses whatsoever, including without limitation, costs and expenses in connection therewith, on account, or by reason of, injury to or death of, any person whosoever, or loss of or damage to any property whatsoever, suffered or sustained in the case of, or in connection with, the Indemnifying Party's performance of this Agreement, except for that liability and loss arising from the acts or omissions of the Indemnified Party or its agents.

**7.12 Governing Law.** The laws of the State of Nebraska shall govern this Agreement. This Agreement is entered into in Lancaster County, Nebraska, and proper venue for any legal proceeding regarding this Agreement shall be in Lancaster County, except for those federal appellate courts with jurisdiction over the State of Nebraska. The parties hereto waive any right they may have to transfer or change the venue of any litigation. Nothing in this Section shall be deemed to apply to any aspect of the agreement that is in place between Bank and an Eligible University Community Member and their Bank Account.

**7.13 Force Majeure.** The parties shall not be considered in default should failure to perform be the result of any circumstances beyond their reasonable control, not occasioned by fault or negligence or due to compliance with any sovereign decrees, orders, acts, instructions or priority requests of any federal, state, or municipal governments or any department or agency thereof, civil or military, acts of God, fires, floods, strikes, lockouts, embargoes, or wars. Upon the happening of any circumstances or causes aforesaid, non-performing party shall notify the other party without delay. Any relief granted shall be limited to an extension of delivery dates or times of performance.

**7.14 Sexual Harassment.** State and federal law, as well as the policies of the University, prohibit sexual harassment of members of the UNK community. Sexual harassment includes any unwelcome sexual advance, any request for a sexual favor, or any other verbal or physical conduct of a sexual nature that is so pervasive as to create a hostile or offensive environment. UNK contractors, subcontractors and suppliers for this project are required to exercise control over their employees so as to prohibit acts of sexual harassment of UNK employees, students and other members of the UNK community. If University in its reasonable judgment determines one of Bank's employees has committed an act of sexual harassment, Bank agrees as a term and condition of any contract awarded hereunder to cause such person to be removed from the project site and from UNK premises and to take such other action as may be reasonably necessary to cause the sexual harassment to cease. UNK will promptly inform Bank in writing of any sexual harassment complaint alleging that a Bank employee sexually harassed a UNK employee, student, or other member of the UNK community. Upon receipt of the complaint, Bank will remove the employee from UNK premises for the Term.

**7.15 Drug Free Workplace.** Bank agrees that neither Bank nor any of its employees shall engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity contemplated by this Agreement. University reserves the right to request a copy of Bank's Drug Free Workplace Policy.

**7.16 Weapons Policy.** Possession of dangerous weapons (concealed or unconcealed) on UNK property, on the work site, in UNK vehicles, or in personal vehicles when on UNK property shall be a violation of UNK policy. (A dangerous weapon shall include guns, knives, explosives, or any other device as determined by UNK, which in the manner used or intended is capable of producing death or bodily injury. Devices authorized by the UNK Vice Chancellor for Business and Finance and/or provided to its employees for the purpose of carrying out work responsibilities shall not be deemed dangerous weapons for the purpose of this policy.) Should UNK in its reasonable judgment determine that Bank or its employee or agent has committed an act in violation of this policy, Bank agrees to cause such person and weapon to be removed from UNK premises and to take such other action as may be reasonably necessary to ensure compliance with this weapons policy. UNK will promptly inform Bank in writing of any weapon policy violation allegation involving a Bank employee. Upon receipt of the complaint, Bank will permanently remove the employee from UNK premises for the Term.

**7.17 Equal Opportunity in Procurement and Contracts.** The University recognizes the importance of a strong culturally diverse business community and the positive impact that successful businesses have upon the people of the State of Nebraska. The University assumes a leadership role in actions that will provide business opportunities for all businesses in the State of Nebraska. Accordingly, the University reaffirms its policy of providing equal opportunity to small business enterprises and to minority, disadvantaged and women owned business enterprises in all aspects of the University's procurement and contracting activities. This includes procurement of contracts for operational supplies and equipment, construction projects and materials, service contracts and License agreements. It is also the University's policy that any person or business seeking the opportunity to do business with the University shall not be discriminated against on the basis of race, color, religion, sex, national or ethnic origin, age, disability,

marital status, or veteran status, and Bank agrees to comply with such policy in the performance of this Agreement.

**7.18 Relationship of Parties.** Bank shall operate as an independent contractor with respect to the University and UNK. No agency, partnership or joint venture is created by this Agreement. The parties disclaim any intent to form such relationships.

**7.19 Priority of Interpretation.** The provisions of this Agreement shall govern the relationship between the parties. In the event of conflicts or inconsistencies between this Agreement and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: first, this Agreement, including any subsequent amendments; second, the Exhibits in the order in which they appear; third, the Contract Documents and fourth, the Bid Documents.

**7.20 Entire Agreement.**

- a. Except as expressly provided herein, this Agreement constitutes the entire agreement with respect to the transactions contemplated herein and supersedes and is in full substitution for any and all prior agreements and understandings between the parties hereto relating to such transactions. Each party disclaims reliance on any prior oral or written representations or undertakings by the other party in entering into this Agreement unless such representations or undertakings are expressly set forth in this Agreement. Wherever the parties agree to discuss a matter, there will be no implied agreement to agree, nor will any other standard be applied in determining a party's performance that is not expressly set forth in the Agreement. However, the University and Bank agree that the provisions of Bank Account agreements will govern the products and services provided by Bank to Eligible University Community Members pursuant to this Agreement. The invalidity and unenforceability of any provision of this Agreement shall not invalidate or impair any other provision herein.
- b. Agreements between the University and Bank, which are separate from this Agreement:
  - i. University of Nebraska at Kearney Athletics License Agreement with an effective date of June 1, 2016
  - ii. Official Corporate Sponsorship Agreement with an effective date of July 15, 2017
  - iii. Sponsorship Agreement with an effective date of August 8, 2017

*[signature page follows]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**Board of Regents of the University of Nebraska**

By:   
\_\_\_\_\_  
Jon C. Watts  
Vice Chancellor of Business and Finance  
University of Nebraska at Kearney

Date: 8/30/19\_\_\_\_\_

**First National Bank of Omaha**

By:   
\_\_\_\_\_  
Jon Hoggatt  
Kearney and Grand Island Market President

Date: 8/28/19\_\_\_\_\_

### Exhibit A – First National Bank Checking Account Disclosure

A GUIDE TO YOUR ACCOUNT CHECKING ACCOUNT		FREE CHECKING <sup>1</sup>	PREMIER CHECKING
<b>Key Account Terms &amp; Fees</b>	Minimum Deposit to Open	\$0	\$0
	Monthly Maintenance Fee	\$0	\$15
	How to Avoid a Monthly Maintenance Fee	Does <b>Not</b> Apply	Maintain an average daily balance in related deposit accounts of \$15,000 per Premier Checking account <sup>2</sup>
	Pays Interest	No	Yes
<b>Overdraft Options &amp; Fees</b> <small>(Call, stop by or visit our Overdraft Options webpage for more information)</small>	Overdraft and Return Item Fee Forgiveness <sup>3</sup>	You will receive one free Overdraft or Returned Item Fee refund every 12 months from the date of your last automatic refund.	
	Overdraft Protection <sup>3</sup>	You may link an overdraft protection account which has no set-up fee or transfer fee.	
	Overdraft Service <sup>3</sup>	This service tells us in advance how to handle transactions that may overdraw your account.	
	Overdraft Item Fee <sup>3</sup>	\$33 for each item we pay with a maximum of 4 per day. This fee applies when your account is overdrawn by more than \$20 at the end of the business day and the amount of the item exceeds \$20.	
	Returned Item Fee	\$33 for each item we do not pay with a maximum of 4 per day. This fee applies when the amount of the item exceeds \$20.	
<b>ATM</b> <small>(If you use an ATM that is not operated by us, the operator of the machine and/or the network used may charge you a fee.)</small>	Cash Withdrawals	Free	
	Transfers	Free	
	Balance Inquiries	Free	
<b>Other Value Add Items</b>	Visa® Debit Card	Free	
	Debit Card Replacement	Free	
	Bank Logo Checks	Free	
	Statements (Paper & Online)	Free	
	Online Banking & Alerts	Free	
	Mobile Banking & Deposits	Free	
	Stop Payments	Free	
	Foreign Check Item Processing	Free	
	Photocopy of Checks	Free	
	Research	Free	
	Statement Reconciliation	Free	
	Cashier's Checks	Free	
	Dormant Account	Free	
	Account Closure	Free	
	Relationship Deposit Rates	Yes	
	Relationship Loan Rates	Yes	
	Mortgage Closing Cost Credit <sup>4</sup>	Yes	
	Safe Deposit Box Discount	Yes	
	Custom Check Design	Dependent on style ordered	

<b>Wire Transfers</b> <small>(Accepted until 4 PM CST)</small>	Incoming	Free
	Outgoing Domestic	\$15
	Outgoing Foreign (Foreign Funds)	\$25
	Outgoing Foreign (US Funds)	\$35
<b>PROCESSING POLICIES</b>	<b>Posting Order</b>	<p>Generally we process transactions received by the end of the business day in the following order: deposits or credits first, then withdrawals or debits. Deposits or credits are transactions that increase the balance in your account. Withdrawals or debits are transactions that decrease the balance in your account. Transactions received after our business day cutoff times will be processed the next business day.</p> <p>Generally, after we have processed all deposits to your account, we process withdrawals in the following categories and order:</p> <ul style="list-style-type: none"> <li>• Electronic payment transactions and items such as purchases for cashier's checks, certificates of deposit or foreign currency;</li> <li>• Debit card transactions (non ATM transactions);</li> <li>• ATM withdrawals and checks cashed from your account at one of our branches;</li> <li>• Transactions created by you through our BillPay system;</li> <li>• Checks processed and received that day in check number order and;</li> <li>• Miscellaneous adjustments</li> </ul> <p>Please remember that it is common that when you write a check, that check may be converted to an electronic item by the person, store or bank receiving the item. If it is converted, that item will be presented to us for payment more quickly than if it had been processed as a check. The posting order of deposits and withdrawals may change from time to time based upon regulatory requirements, technology or industry standards.</p> <p>We recommend that at all times you maintain an accurate record of balances and transactions that you authorize for deposit or withdrawal from your account so sufficient funds are always available.</p>
	<b>Funds Availability</b>	<p><b>Same Business Day</b></p> <ul style="list-style-type: none"> <li>• Cash deposits made at a branch, electronic direct deposits, wire transfer deposits and the first \$100 of checks deposited in person to one of our employees.</li> </ul> <p><b>Next Business Day</b></p> <ul style="list-style-type: none"> <li>• Funds from other deposits</li> </ul> <p>If a hold is placed on a deposit, the first \$200 will be available the next business day. You will be notified if there is a delay in the availability to withdraw funds and when they become available.</p>
<b>DISPUTE RESOLUTION</b>	<p>Please review your Deposit Agreement for information regarding Dispute Resolution. If you have any questions, please call or visit a branch location.</p>	

## Interest Information for INTEREST BEARING ACCOUNTS

- Interest begins to accrue on the business day we receive credit for the deposit of non-cash items/collected balances.
- Interest is calculated using the daily balance method. This method applies a daily periodic rate to the principal balance in the account each day.
- Interest is compounded and credited monthly.
- Where noted on the rate sheet, the applicable minimum balance must be maintained each day to obtain the disclosed Annual Percentage Yield (APY).
- Interest rates and Annual Percentage Yields may change daily at our discretion. Current interest rates and APYs are shown on the rate sheet.
- Fees may reduce earnings.
- Interest accrued will be paid, without penalty, at account closing.

## ADDITIONAL IMPORTANT INFORMATION

The words "you" and "your" refer to all persons named on the application for an account, on the account agreement/signature card for an account, on any checks or cards for an account, or who sign or use any checks or cards on an account. The words "we" and "us" refer to First National Bank of Omaha and our divisions that operate under the names First National Bank, First National Bank North Platte, and FNBO Direct.

<sup>1</sup> Includes First At Work Free Checking (limited to employees of companies in the First At Work Program), Access Checking (limited to Line of Credit accounts) and Employee Checking (limited to FNNI employees)

<sup>2</sup> Related deposit account balances include the balance of your Premier Checking account combined with balances in other accounts that are associated with your Premier Checking account. If you have more than one Premier Checking account, each account must meet the average daily balance requirement to avoid the Monthly Maintenance Fee. Multiple Premier Checking account balances will not be added together to meet this requirement. The average daily balance is calculated by adding the principal balance in related deposit accounts for each day of the statement period and dividing that figure by the number of days in the statement period.

<sup>3</sup> Refer to the Overdraft Options Document for more information available on overdraft Services and Protections. The payment of transactions into overdraft is discretionary and we reserve the right to not pay. Generally, we do not pay overdrafts if you are not making regular deposits, or you have excessive overdrafts, or based on your account history and how you maintain your account. We may change your overdraft privileges due to poor account management. Our Overdraft Item Fee is \$33 per item (max 4 per day). We will not charge you this fee if your balance is overdrawn by \$20 or less, or the transaction overdrawing the account is \$20 or less. Our Return Item Fee is \$33 per item (max 4 per day). We will not charge you this fee if the amount of the transaction being returned is \$20 or less. We may pay overdrafts for checks and other transactions using your account number and for automatic bill payments (ACH and recurring debit transactions), and if you give us permission, we may authorize and pay overdrafts for ATM transactions and everyday non-recurring debit transactions (individual debit card purchases such as grocery store or one-time online purchases). Our expectation is you bring your account to a positive balance immediately (including payment of all bank fees and charges)

<sup>4</sup> Free Checking customers receive a \$200 Mortgage Closing Cost Credit. First At Work Benefit Checking and Premier Checking customers receive a \$400 Mortgage Closing Cost Credit.





EXHIBIT C  
University Marks

UNIVERSITY  
OF NEBRASKA

**UNK**<sup>®</sup>  
KEARNEY

**UNK**<sup>®</sup>

**UNK**<sup>®</sup> UNIVERSITY  
OF NEBRASKA  
KEARNEY

**EXHIBIT D**  
**Bank Marks**





## **Executive Memorandum No. 26**

### **University of Nebraska Information Security Plan – Gramm Leach Bliley Compliance (effective May 23, 2003)**

#### **General Provisions**

This Information Security Plan ("Plan") describes the University of Nebraska's safeguards to protect covered data and information. These safeguards are provided to:

1. Ensure the security and confidentiality of covered data and information;
2. Protect against anticipated threats or hazards to the security or integrity of such information; and
3. Protect against unauthorized access to or use of covered data and information that could result in substantial harm or inconvenience to the individual to whom the information pertains.

This Plan also provides for mechanisms to:

1. Identify and assess the risks that may threaten covered data and information maintained by the University;
2. Develop written policies and procedures to manage and control these risks;
3. Implement and review the Plan; and
4. Adjust the Plan to reflect changes in technology, the sensitivity of covered data and information and internal or external threats to information security.

#### **Covered Data and Information**

In this Plan, the term "covered data and information" is defined as and includes Student Financial Information (defined below) required to be protected under the Gramm Leach Bliley Act (GLB), as well as any credit card information received in the course of business by the University, whether or not such credit card information is covered by GLB. Covered data and information includes both paper and electronic records. "Student Financial Information" is that information that the University has obtained from a student in the process of offering a financial product or service, or such information provided to the University by another financial institution. Offering a financial product or service includes offering student loans to students, receiving income tax information from a student's parent when offering a financial aid package, and other miscellaneous financial services as defined in 12 C.F.R. § 225.28. Examples of student financial information include addresses, phone numbers, bank and credit card account numbers, income and credit histories and Social Security numbers, in both paper and electronic format.

## **Identification and Assessment of Risks to Customer Information**

The University recognizes that it has both internal and external risks. These risks include, but are not limited to:

1. Unauthorized access of covered data and information by someone other than the owner of the covered data and information
2. Compromised system security as a result of system access by an unauthorized person
3. Interception of data during transmission
4. Loss of data integrity
5. Physical loss of data in a disaster
6. Errors introduced into the system
7. Corruption of data or systems
8. Unauthorized access of covered data and information by employees
9. Unauthorized requests for covered data and information
10. Unauthorized access through hard copy files or reports
11. Unauthorized transfer of covered data and information through third parties

The University recognizes that this may not be a complete list of the risks associated with the protection of covered data and information. Since technology growth is not static, new risks are created regularly. Accordingly, the Department of the University of Nebraska Computing Services Network ("UNCSN") will actively participate and monitor advisory groups such as the Educause Security Institute, the Internet2 Security Working Group and SANS for identification of new risks.

## **Information Security Plan Coordinators**

The Chief Information Security Officer for the University of Nebraska System is appointed as the coordinator of this Plan. In addition, each campus shall appoint a Campus Plan Coordinator to join with the Chief Information Security Officer to provide support in carrying out this Plan throughout the University. These five individuals will determine which University areas, departments and persons have access to covered data and information and will assess whether controls are in place to verify that these University areas, departments and persons comply with the requirements of this Plan. Further, they are responsible for assessing the risks associated with unauthorized transfers of covered data and information and implementing procedures to minimize those risks to the University.

## **Design and Implementation of Safeguards Program**

### Employee Management and Training

Important information concerning the use of University information systems can be found in Presidential Executive Memorandum No. 16, Responsible Use of Computers and Information Systems, which discusses authorized access and other activities considered to be misuse of the University information system. Employees should be made aware of the existence and contents of Executive Memorandum No. 16, which is incorporated into this Plan by reference.

Executive Memorandum No. 16 may be found at [www.nebraska.edu](http://www.nebraska.edu). A serious and concerted effort shall be made to inform students and employees of the existence and contents of this Plan, using such means as are appropriate to educate the University community about this matter.

## **Design and Implementation of Safeguards Program**

### Employee Management and Training

Important information concerning the use of University information systems can be found in Presidential Executive Memorandum No. 16, Responsible Use of Computers and Information Systems, which discusses authorized access and other activities considered to be misuse of the University information system. Employees should be made aware of the existence and contents of Executive Memorandum No. 16, which is incorporated into this Plan by reference.

Executive Memorandum No. 16 may be found at [www.nebraska.edu](http://www.nebraska.edu). A serious and concerted effort shall be made to inform students and employees of the existence and contents of this Plan, using such means as are appropriate to educate the University community about this matter.

References of new employees working in areas that regularly work with covered data and information (e.g. Bursar's Office, Registrar, Financial Aid, Human Resources, Libraries, Payroll) shall be checked with particular attention paid to any information that may reflect upon the employees ability and aptitude to treat covered data and information confidential in accordance with the law and University policy. During employee orientation, each new employee in those departments identified as regularly working with covered data and information will receive proper training on the importance of confidentiality of student records, student financial information, and other types of covered data and information. Each new employee shall receive training in the proper use of computer information systems and passwords. Training shall include controls and procedures to prevent employees from providing confidential information to unauthorized individuals and how to properly dispose of documents that contain covered data and information.

Each department responsible for maintaining covered data and information shall take serious and meaningful steps to protect information from destruction, loss or damage due to environmental hazards, such as fire and water damage or technical failures. Further, each department responsible for maintaining covered data and information will regularly contact its campus Department of Human Resources to arrange for additional training on information privacy appropriate to the department. These training efforts should aim to minimize risk and safeguard covered data and information.

## Information Systems

Access to covered data and information via the University's computer information system is limited to those employees who have a business reason to know such information. Each employee is assigned a user name and password. Databases containing personal covered data and information, including, but not limited to, accounts, balances, and transactional information, are available only to University employees in appropriate departments and positions.

The University will take reasonable and appropriate steps consistent with current technological developments to provide for the security, safety and integrity of all covered data and information of records in storage and transmission. UNCSN requires that all servers must be registered before being allowed through the University's firewall, thereby allowing UNCSN to verify that the system meets necessary security requirements as deemed appropriate by UNCSN practices and policies. These requirements include maintaining the operating system and applications, along with the application of appropriate patches and updates, in a timely fashion. Each campus and UNCSN will implement a written Password Policy for user and system passwords, designed to provide meaningful security within the system parameters and needs of each campus and Central Administration. In addition, an intrusion detection system shall be implemented to detect and stop certain external threats. An Incident Response Policy for occasions where intrusions do occur shall be implemented on each campus and at UNCSN.

When commercially reasonable, encryption technology will be utilized for both storage and transmission. All covered data and information will be maintained on servers that are behind the University's firewall.

All firewall software and hardware maintained by UNCSN will be kept current. UNCSN will continue to develop and implement policies and procedures to provide security to the University's information systems. Further, UNCSN will provide campuses with coordination and support to develop and implement similar policies. These policies shall be distributed to the University community and other information providers through posting on University websites and other means deemed appropriate.

The University will not use Social Security Numbers to identify students, employees, or other information providers, outside of those identification uses allowed by law for University authorized institutional research purposes, or specifically required by law, such as in financial aid, payroll and benefit functions.

## Management of System Failures

UNCSN and each campus shall without undue delay develop written plans and procedures to detect any actual or attempted attacks on University systems, along with an Incident Response Policy which outlines procedures for responding to an actual or attempted unauthorized access to covered data and information. This policy shall be distributed to the University community and other information providers through posting on University websites and other means deemed appropriate.

## **Selection of Appropriate Service Providers**

Due to the specialized expertise needed to design, implement, and service new technologies, vendors may be needed to provide resources that the University determines not to provide on its own. In the process of choosing a service provider that will maintain or regularly access covered data and information, the evaluation process shall include the ability of the service provider to safeguard confidential financial information. Contracts with service providers may include the following provisions:

1. An explicit acknowledgment that the contract allows the service provider access to confidential information;
2. A specific definition or description of the confidential information being provided;
3. A stipulation that the confidential information will be held in strict confidence and accessed only for the explicit business purpose of the contract;
4. An assurance from the service provider that it will protect the confidential information it receives from the University according to commercially acceptable standards and no less rigorously than it protects its own confidential information;
5. A provision providing for the return or destruction of all confidential information received by the service provider upon completion or termination of the contract;
6. An agreement that any violation of the contract's confidentiality conditions may constitute a material breach of the contract and entitles the University to terminate the contract without penalty; and
7. A provision ensuring that the contract's confidentiality requirements shall survive any termination agreement.

Attached to this Plan is a model contract provision for Service Providers. Contracts entered into prior to June 24, 2002, are grandfathered for purposes of compliance with GLB until May 24, 2004. All existing contracts entered into on or after June 24, 2002, and all future contracts should contain provisions substantially similar to the attachment.

## **Continuing Evaluation and Adjustment**

This Information Security Plan will be subject to periodic review and adjustment. The most frequent of these reviews will occur within UNCSN, where constantly changing technology and evolving risks mandate increased vigilance. Similar reviews shall be directed by the Campus Plan Coordinators on their respective campuses. Continued administration of the development, implementation and maintenance of the program will be the responsibility of the five Plan Coordinators who will assign specific responsibility for implementation and administration as appropriate. The Plan Coordinators will review the standards set forth in this policy and recommend updates and revisions as necessary. It may be necessary to adjust the Plan to reflect changes in technology, the sensitivity of covered data and information, and internal or external threats to information security.

Reference: September 9, 2014

A handwritten signature in blue ink, appearing to read "J. Linder", written over a horizontal line.

James Linder, M.D.  
Interim President  
University of Nebraska

**UNIVERSITY OF NEBRASKA  
CONFIDENTIAL INFORMATION  
GLB ACT ADDENDUM**

This Addendum ("Addendum") amends and is hereby incorporated into the existing agreement known as \_\_\_\_\_ ("Agreement"), entered into by and between \_\_\_\_\_ (hereinafter "Service Provider") and the Board of Regents of the University of Nebraska on behalf of \_\_\_\_\_ (the "University").

The University and Service Provider mutually agree to modify the Agreement to incorporate the terms of this Addendum to comply with the requirements of the Gramm Leach Bliley Act ("GLB") dealing with the confidentiality of customer information and the Safeguards Rule. If any conflict exists between the terms of the original Agreement and this Addendum, the terms of this Addendum shall govern.

1. **Definitions:**

- a. Covered Data and Information includes Student Financial Information (defined below) required to be protected under the Gramm Leach Bliley Act (GLB), as well as any credit card information received in the course of business by the University, whether or not such credit card information is covered by GLB. Covered data and information includes both paper and electronic records.
- b. Student Financial Information is that information that the university has obtained from a student in the process of offering a financial product or service, or such information provided to the University by another financial institution. Offering a financial product or service includes offering student loans to students, receiving income tax information from a student's parent when offering a financial aid package, and other miscellaneous financial services as defined in 12 C.F.R. § 225.28. Examples of student financial information include addresses, phone numbers, bank and credit card account numbers, income and credit histories and Social Security numbers, in both paper and electronic format.

2. **Acknowledgment of Access to Covered Data and Information:** Service Provider acknowledges that the Agreement allows the Service Provider access to Covered Data and Information. Specifically, access to the following categories of Covered Data and Information is anticipated under the Agreement:

\_\_\_\_\_  
\_\_\_\_\_

- 3. **Prohibition on Unauthorized Use or Disclosure of Covered Data and Information:** Service Provider agrees to hold the Covered Data and Information in strict confidence. Service Provider shall not use or disclose Covered Data and Information received from or on behalf of the University except as permitted or required by the Agreement or this Addendum, as required by law, or as otherwise authorized in writing by the University.
- 4. **Safeguard Standard:** Service Provider agrees that it will protect the Covered Data and Information it receives from or on behalf of the University according to commercially acceptable standards and no less rigorously than it protects its own confidential information.
- 5. **Return or Destruction of Covered Data and Information:** Upon termination, cancellation, expiration or other conclusion of the Agreement, Service Provider shall:

- a. Return to the University or, if return is not feasible, destroy all Covered Data and Information in whatever form or medium that Service Provider received from or created on behalf of the University. This provision shall also apply to all Covered Data and Information that is in the possession of subcontractors or agents of Service Provider. In such case, Service Provider shall retain no copies of such information, including any compilations derived from and allowing identification of Covered Data and Information. Service Provider shall complete such return or destruction as promptly as possible, but not more than thirty (30) days after the effective date of the conclusion of the Agreement. Within such thirty (30) day period, Service Provider shall certify in writing to the University that such return or destruction has been completed.
  - b. If Service Provider believes that the return or destruction of Covered Data and Information is not feasible, Service Provider shall provide the protections of this Addendum to Covered Data and Information received from or created on behalf of the University, and limit further uses and disclosures of such Covered Data and Information, for so long as Service Provider maintains the Covered Data and Information.
6. Term and Termination:
  - a. This Addendum shall take effect upon the earlier of execution or May 23, 2003.
  - b. In addition to the rights of the parties established by the underlying Agreement, if the University reasonably determines in good faith that Service Provider has materially breached any of its obligations under this Addendum, the University, in its sole discretion, shall have the right to:
    - (i) exercise any of its rights to reports, access and inspection under this Addendum; and/or
    - (ii) require Service Provider to submit to a plan of monitoring and reporting, as the University may determine necessary to maintain compliance with this Addendum; and/or
    - (iii) provide Service Provider with a fifteen (15) day period to cure the breach; and/or
    - (iv) terminate the Agreement immediately if Service Provider has breached a material term of this Addendum and cure is not possible.
  - c. Before exercising any of these options, the University shall provide written notice to Service Provider describing the violation and the action it intends to take.
7. Subcontractors and Agents: If Service Provider provides any Covered Data and Information which was received from, or created for, the University to a subcontractor or agent, then Service Provider shall require such subcontractor or agent to agree to the same restrictions and conditions as are imposed on Service Provider by this Addendum.
8. Maintenance of the Security of Electronic Information: Service Provider shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted Covered Data and Information received from, or on behalf of, the University.

9. Reporting of Unauthorized Disclosures or Misuse of Covered Data and Information: Service Provider shall report to the University any use or disclosure of Covered Data and Information not authorized by this Addendum or otherwise authorized in writing by the University. Service Provider shall make the report to the University not less than one (1) business day after Service Provider learns of such use or disclosure. Service Provider's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the Covered Data and Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Service Provider had done or shall do to mitigate any deleterious effect of unauthorized use or disclosure, and (v) what corrective action Service Provider has taken or shall take to prevent future similar unauthorized use or disclosure. Service Provider shall provide such other information, including a written report, as reasonably requested by the University.
10. Indemnity. Service Provider shall defend and hold the University harmless from all claims, liabilities, damages, or judgments involving a third party, including the University's costs and attorney fees, which arise as a result of Service Provider's failure to meet any of its obligations under this Addendum.
11. Survival. The respective rights and obligations of Service Provider under Section 5 shall survive the termination of this Agreement.

IN WITNESS WHEREOF, each of the undersigned has caused this Addendum to be duly executed in its name and on its behalf.

The Board of Regents of the  
University of Nebraska

SERVICE PROVIDER: \_\_\_\_\_  
Print name

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

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

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

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

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

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