

Banking Services Agreement

This BANKING SERVICES AGREEMENT (the "Agreement") is made and entered into by and between the FLORIDA A & M UNIVERSITY BOARD OF TRUSTEES, a public body corporate, (the "University"), and Wachovia Bank, National Association (the "Bank"), and shall constitute a binding Contract between the parties.

Witnesseth:

WHEREAS, the University issued its Invitation to Negotiate ITN No.: 7325 University Banking Services (the "ITN") for various banking services including: General Banking Services, Merchant Services Credit/Debit Cards, Procurement Card Services, and Rattler Card ID/Debit/Credit); and

WHEREAS, the Bank responded to the ITN by submitting its proposal dated June 27, 2006 (the "Proposal"), and

WHEREAS the Bank was selected by the University as submitting the most favorable proposal; and

WHEREAS, although the ITN and the Proposal address in some detail the banking services to be provided, there are a number of operational issues not addressed by either the ITN or the Proposals which the parties desire to address; and

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the University and the Bank hereby covenant and agree as follows:

Section 1. Delineation of Banking Services

The banking services to be provided to the University by the Bank shall consist of:

- (a) each of the specific requirements, terms and conditions set forth in the ITN which is hereby incorporated by reference in its entirety;
- (b) each of the services, prices, terms and conditions set forth in the Proposal which is hereby incorporated by reference in its entirety;
- (c) each of the terms, conditions and provisions of additional banking services that may be added to the Contract by request of the University with the consent and agreement of the Bank. Unless the context requires otherwise, all references to this Agreement and use of the terms "herein," "hereby," "hereof," "hereto," "hereunder" and the like shall be deemed to include this Agreement, the ITN the Proposal and any subsequent terms and conditions associated with additional banking services that may be provided upon request of the University.

Section 2. Documents Comprising Contract

The Contract shall consist of the following documents incorporated by reference herein:

- (a) this Banking Services Agreement,
- (b) the ITN,
- (c) the Proposal, and
- (d) the documents referenced in Section 3 below.

Additional disclosure agreements may be added from time to time as mutually agreed upon in writing by the parties and any service agreement may be terminated separately and severally without affecting the continued enforceability of all other provisions of the agreement as to non-terminated services.

Section 3. Controlling Provisions.

In the event of a conflict between the terms of this Agreement and any other documents forming a part of the Contract, the terms of the ITN shall control, then the terms of the Proposal and then this Agreement shall control.

Notwithstanding any of the foregoing provisions of this Section 3, the University acknowledges and agrees that the Bank conducts its affairs pursuant to standard Bank documentation and services descriptions for specific depository, cash management, and treasury services including its provisions related to ACH and wire transfer. The foregoing documentation includes, but is not limited to, the Bank's Deposit Agreement and Disclosures for Commercial Accounts and related, relevant Service Descriptions and Service Agreements, as amended from time to time by the Bank. The University agrees and acknowledges that: (1) all such standard documentation that is provided to the University in writing and in advance will apply to the services provided the ITN to the extent the terms contained in such documentation do not conflict with the terms of this Agreement, the ITN, or the Proposal, in which case this Agreement, the ITN, or the Proposal shall control over any other documentation in accordance with the order of precedence specified in Section 3, Controlling Provisions; (2) to be bound by the terms and conditions of such documentation, except as previously noted in the preceding subsection (1) and (3) except as noted in the preceding subsection (1) where required by Bank policy to execute documents necessary to effect the transactions contemplated in the ITN. Notwithstanding the foregoing, to the extent such standard documentation is not agreeable to the University, and the University and Bank are unable to agree on modifications to such documentation, either party may terminate this Contract, without penalty, on thirty (30) days written notice to Bank.

Section 4. Services Provided

The Bank will provide the University with the banking services as set out in the Proposal, the ITN, and this Agreement. The Bank will provide such services in a timely and professional manner for the prices set forth herein. The Bank will perform its obligations hereunder in accordance with applicable laws, rules, and regulations and consistent with banking services standards and norms unless otherwise provided herein. The Bank will provide, subject to compliance with the Bank's security procedures and standard commercial fraud mitigation product offerings, as well as the proper use and oversight by University staff, services that are designed to reduce the effect of fraudulent activity or, unauthorized activity that exposes the University to potential losses or liability and to detect such activity. To the extent an unauthorized action is discovered the Bank and the University shall cooperate in good faith to correct the situation. All accounts shall be fully collateralized as required by law.

All funds now or hereafter held by the Bank pursuant to this Agreement shall be receipted for, received in and held for the accounts of the University, and shall be maintained and disposed of only as provided in this Agreement and pursuant to written instructions from the University.

With respect to the University's depository demand deposit accounts University funds received by the Bank collected daily will be deposited in the accounts as described in the Proposal. The Bank will provide a 2:00 p.m. deadline for all deposits delivered by University personnel to any branch or main office. The deposits must be in disposable, tamper-proof deposit bags with a deposit slip pouch. All checks deposited by the aforementioned deadlines will be available as outlined in the Bank's Proposal.

The Bank shall safeguard all University related (including University customer) financial information (including, but not limited to, addresses, phone numbers, bank and credit card account numbers, income and credit histories, and social security numbers) in accordance with applicable Gramm Leach Bliley Act requirements and other applicable Federal and State laws and regulations. Use of such information is restricted to operations required to carry forth the terms of this Contract, or as otherwise required by law or regulation, and shall not be used for any other purpose. The University may, but is not required to, request a compliance report indicating that the information is disposed of and safeguarded properly.

Unless otherwise requested by the University, all checks returned "non-sufficient funds" will be re-deposited one additional time. Charge backs shall be charged to the account originally credited, provided proper endorsements are used, or as specifically instructed by the University. The Bank shall return to the University all cancelled checks, validated deposit slips and debit and credit advices. The Bank will supply, at cost, rubber manual endorsement stamps to the University as requested.

In addition, the Bank will provide the following services and personnel:

1. Campus Card Relationship Manager provided as a liaison with the University Campus Card Office. Marketing and promotion of the financial services offered to the University's cardholders shall be coordinated with the University Campus Card Office.

2. Marketing experience provided to the University to develop card-specific direct mail, brochures, and posters to educate University Students, faculty and staff about the new functionality and approximately \$40,000 in values for initial co-branded direct mail to promote enhanced card features to University students, faculty and staff.
3. Provide approximately \$7,000 in value in annual mailings that promote the program to incoming freshmen.
4. Provide approximately \$5,000 in value for annual "give-aways" at orientation and other carding events.
5. Provide up to \$10,000 in value for embossing equipment should the University elect to produce Rattler Cards with the Check Card feature. This does not include additional IT development costs on the Rattler Card System, security equipment and alarms as required by Visa's security standards. The Visa Check Card Student ID Program is subject to approval by Visa USA.
6. Provide approximately \$15,000 in value for initial project management support to implement the program.
7. Provide approximately \$15,000 in value for annual relationship management and continued support.
8. Provide the University an incentive program that pays \$3.00 for new student, faculty or staff member checking accounts that are opened, linked to Rattler Cards, and maintained for one year. The incentive will be paid to the University on a yearly basis.

Effective 7/1/07 thru 6/30/2012

Contract Years	Item	Yearly Contribution	End of Term
2007-2012	Project Management Support ¹	\$15,000	\$15,000
	Annual Relationship Management	\$15,000	\$75,000
	Annual Incentive Program ²	\$3.00 per new customer*	Amount undetermined (numbers not available; record of new members)
	Embossing Equipment ³	\$0.00	One time contribution up to \$10,000 in value if the Visa Campus Card program is implemented (subject to approval by Visa USA)
	Direct-mail, brochures, and posters ⁴	\$40,000	\$40,000
	Annual Mailings	\$7,000	\$35,000
	Annual Give-Aways	\$5,000	\$25,000
	End of Term Total	\$82,000 ⁵	\$200,000 ⁶

¹ \$15,000 in value for initial project management support to implement the program; one time occurrence.

² Incentive program that pays \$3.00 for new student, faculty or staff member checking accounts that are opened, linked to Rattler Cards, and maintained for one year. The incentive will be paid to the University on a yearly basis. (Undetermined (estimate not available))

³ Up to \$10,000 in value for embossing equipment should the University elect to produce Rattler Cards with the Check Card feature. This does not include additional IT development costs on the Rattler Card System, security equipment and alarms as required by Visa's security standards. The Visa Check Card Student ID Program is subject to approval by Visa USA.

⁴ Marketing experience to the University to develop card-specific direct mail, brochures, and posters to educate University Students, faculty and staff about the new functionality and \$40,000 in values for initial co-branded direct mail to promote enhanced card features to University students, faculty and staff.

⁵ Excluding annual incentive program estimate.

⁶ Excluding annual incentive program estimate.

Section 5. Service Fees

The Bank will provide the University with monthly Account Analysis statements reflecting the monthly activity in the accounts and the resulting charges for services provided in accordance with the fee structure in the Bank's Proposal.

The Bank's monthly Account Analysis statement reflects the monthly account activity and respective charges for those activities, together with the average ledger and collected balances upon which the Earnings Credit is calculated. The Bank will offer the University the option of paying for monthly service charges directly in "hard dollars" or through use of the monthly Earnings Credit, and the University shall elect the option annually on each anniversary of this Agreement.

Should the University choose to utilize the monthly aggregate Earnings Credit to compensate the Bank for its services and the Earnings Credit exceeds the total of the accrued service charges for the month, the charges shall be considered paid and any excess Earnings Credit shall be credited to the University's main account. In the event the Earnings Credit is insufficient to cover the accrued charges the University shall receive a separate invoice for the deficit.

Should the University choose to compensate the Bank for its services with direct payment of fees, the Bank will agree to invoice the University monthly for the total of the accrued activity charges as reflected on the monthly Account Analysis statements, and all of the Earnings Credit shall be credited to the University's account. The Bank will provide the University with monthly invoices regardless of which payment method the University selects. The fees will be paid monthly in arrears in accordance with the fees agreed to by the University and the Bank.

Notwithstanding anything contained in any other documentation, the only fees that have been agreed to by the parties and for which the University agrees to be liable to pay are the fees which are included or referenced in the Proposal and other portions of the Contract and which shall not be changed without the agreement of the University during the term of the Contract, unless otherwise specifically required by law or regulation. Any additional services that may be requested by the University shall be subject to negotiation and charges for such services shall be mutually agreed to in writing by the parties and attached to this Agreement.

All charges made on behalf of the Bank to University accounts maintained by the Bank

or other institutions must be noticed and agreed to by the University in advance, unless such charges are provided for in any documentation forming the Contract, including documentation described in Section 3 of this Agreement.

Consistent with Section 215.422, Florida Statutes, University shall remit payment of an invoice within 40 days after receipt of the invoice and receipt, inspection, and approval of the services. The University shall not delay the inspection and approval process, and shall notify the Bank of any disputed amounts as soon as practicable. The University shall pay, in addition to the amount of the invoice, interest at the rate established by Section 55.03(1) Florida Statutes on the unpaid balance from the expiration of such 40-day period until such time as the warrant or other payment is mailed to the Bank. These provisions apply only to undisputed amounts for which payment has been authorized. Invoices or pay requests returned to the Bank due to preparation errors will result in a payment delay. Invoices shall be sufficiently detailed to allow for pre-audit and post-audit review. Payment requirements do not start until a properly completed invoice or pay request is provided to the University.

Section 6. Government Advantage Accounts

The University will utilize Wachovia's Government Advantage Account structure for all of its demand deposit accounts. The Government Advantage accounts will accrue an "Earnings Credit" based on the average monthly aggregate collected balances in the University's accounts before accounting for reserves. As stated in Section 5 above, the University may choose to use the Earnings Credit to offset the monthly service charges and receive any excess Earnings Credit as interest. Notwithstanding the University's election to utilize the monthly Earnings Credit to offset service charges, the monthly service charges will be invoiced as addressed in Section 5 above. In the event that Federal Reserve regulations change in regard to Public Funds Account Deposits the balance on which interest is paid will be adjusted to net out any additional required reserves.

Notwithstanding the foregoing, the University may, at any time, select a different account structure offered as part of the Proposal or otherwise available through the Bank. Bank may only limit the amount of otherwise available funds that may be withdrawn from the University's accounts if an amount is specified by law or regulation.

Section 7: Representations, Warranties and Covenants

- (a) The Bank hereby represents and warrants to the University that it has full power and authority to enter into this agreement and fully perform its obligations hereunder without the need for any further corporate or governmental consents or approvals and that the persons executing this agreement are authorized to execute and deliver it. Assuming the due authorization, execution, delivery, legality and enforceability hereof by or against the University when executed and delivered by the parties this Agreement will constitute a valid and binding agreement of the Bank enforceable against it in accordance with its terms, subject only to the application of general principles of equity and limitations arising from bankruptcy, insolvency, moratorium.

- (b) The Bank has not employed or retained any person employed by the University to solicit or secure this agreement and that it has not offered to pay, paid, or agreed to pay any person employed by the University any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or resulting from the award of this agreement.
- (c) The Bank is aware of the conflict of interest laws, ordinances and regulations of the University, and the State of Florida and covenants that the Bank will fully comply in all materials respects with the terms of said laws.
- (d) The Bank understands and agrees that the University's information, including addresses, authorized personnel, terms of the Contract, and like matters can only be changed by a person designated pursuant to subsection (e) below.
- (e) The University hereby represents and warrants to the Bank that once this agreement is properly executed the University will be authorized to perform all of its obligations under this agreement. The University's acceptance of the Bank's Proposal has not been rescinded, modified or amended in any way and remains in full force and effect on and as of the date hereof, subject to the University's rights to termination. Assuming the due authorization, execution, delivery, legality, and enforceability hereof by or against either party, when executed and delivered by the parties, this Agreement will constitute a valid and binding agreement of the University, enforceable against it in accordance with its terms, subject only to the application of general principles of equity and limitations arising from bankruptcy, insolvency or moratorium. The University further represents and warrants to the Bank that it has authorized its Chief Financial Officer and/or other persons designated by it in writing to execute and deliver documents to the Bank as reasonably necessary hereunder. The University acknowledges and agrees that the Bank is fully authorized and directed to accept orders, requests and authorizations from such person(s) on the University's behalf in connection with the implementation or provision of any of the banking services covered by the Contract to the extent provided for in the Contract.
- (f) At the request of the Bank the University agrees to cause its designated officials or their designees to execute such signature cards and other signature and identification verification documents as the Bank deems reasonably necessary for purposes of establishing appropriate security measures in connection with the banking services to be provided hereunder.
- (g) The Bank represents and warrants that it is authorized to do business in the State of Florida.
- (h) The Bank represents and warrants that, to the best of its knowledge, and except for such matters disclosed in its annual report and filings with the U.S. Securities and Exchange Commission (available on the Bank's website, at www.wachovia.com), it is not the subject of any pending investigation by Federal State, or other governing authorities that would adversely affect the Bank's ability to provide the services contemplated under the Contract. The Bank represents and warrants that it will remain authorized to do business

in the State of Florida throughout the term of this Agreement.

- (i) The Bank further represents and warrants to the University that: (a) All information, including financial information, whenever provided by Bank to the University, shall be true, correct and complete in all material respects. Information relating to the Bank's financial condition accurately reflects its financial condition as of the date(s) thereof in all material respects; (b) Bank is not insolvent within the meaning of 11 U.S.C. Section 101 (32); (c) Bank is in material compliance with and will comply with all federal, state and local laws and regulations applicable to its properties, operations, business and finances; (d) Bank is duly organized and in good standing under the laws of the state of organization, and bank has all powers, licenses, authorizations and approvals to operate its business as now conducted; (e) subject to any relevant disclosure restrictions or confidentiality requirements, Bank will promptly notify the University in writing of (i) any material, adverse change in its financial condition or business; (ii) any material change in its name, address or business structure, ownership, organization, or other material information Bank provided to University; and (iii) any material litigation affecting Bank that may have an effect upon the Bank's ability to provide the services contemplated herein; (f) Upon the University's request therefore, Bank will promptly deliver to the University true and correct copies of its financial statements, reports, notices, and proxy statements sent to shareholders, and such other information regarding its operations, business affairs and operations including, but not limited to, income statements, balance sheets and statements of cash flows.
- (j) Absent the prior written consent of the disclosing party, each of the University and the Bank represents and warrants to the other that it will protect the other party's Confidential Information to the same degree it would protect its own Confidential Information and will not disclose such information to third parties except with respect to : (1) information the receiving party possessed the information by lawful means prior to receipt of the same information from the disclosing party pursuant to the Contract ; (2) information that is or becomes publicly known or available through no breach of this Contract; (3) information that is acquired from a third party who, to the receiving party's reasonable knowledge, is not subject to a duty of confidentiality with respect to the information; (4) information required by law or regulation to be released or otherwise disclosed, including information that must be released pursuant to a Public Records request under Chapter 119, Florida Statutes.
- (k) The Bank will provide the University with proof of insurance in conformance with the requirements of the ITN upon request by the University.

Section 8. Limitation of Liability

- (a) The Bank shall indemnify and hold free and harmless, and defend the State of Florida, the Board of Governors, the State of Florida Board of Education, the Florida A & M University and Florida A & M University's Board of Trustees, a public body corporate, and their officers, employees and agents, from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses which in any manner directly

or indirectly may arise or be alleged to have arisen, or resulted or alleged to have resulted from the wrongful acts or omissions of Bank and or Bank's officers, employees, agents and contractors, in connection with this Contract. The Bank shall not be liable for its refusal to honor any request if the Bank, in good faith is unable to satisfy itself that such request is valid based upon the Bank's adherence to its security procedures.

- (b) The University shall assume all risk and reimburse the Bank as provided by law or regulations for personal injury, property damage, and losses, costs, and expenses caused by the negligent acts or omissions or breaches of the Contract of their respective officers, employees, and agents while acting within the scope of their employment or function. This shall not be construed or interpreted as consent to be sued or as a waiver of the University's immunity beyond the terms and limits of Section 768.28, Florida Statutes. Notwithstanding anything else contained in any other documentation, the University's liability obligations are as specified above and the University does not assume any obligation to indemnify or otherwise hold harmless the Bank. The University's reimbursement obligations are limited by Section 768.28, Florida Statutes and those losses and charges attributable to the University for the fee amounts specified in the Bank's Proposal for services rendered in accordance with the terms of this Agreement, the ITN, and the Proposals. To the extent permitted under applicable law, including, but not limited to Section 768.28 of the Florida Statutes, the University shall indemnify and hold harmless and defend the Bank and its officers, employees and agents from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses which in any manner directly or indirectly may arise or be alleged to have arisen, or resulted or alleged to have resulted from the negligent acts or omissions of the University and or the University's officers, employees, agents and contractors, in connection with this Contract.
- (c) Notwithstanding anything else contained in any other documentation, the parties do not waive their rights to assert any defenses, rights, or remedies provided by law or regulations, nor do the parties waive any rights they may have to contest whether an action constitutes the exercise of reasonable care and that such standard, as opposed to gross negligence or willful misconduct, etc., should apply. Duties of care applicable to the parties shall be as provided by law or regulations. The foregoing sentences shall be interpreted to include, but is not limited to, any attempts in other documentation to impose time limitations, apart from those set by law or regulations, on the exercise of a party's rights, or attempts to shift liability for one party's actions or inactions to the other party for any reason, including but not limited to, the failure of the other party to exercise a right within a time period not set by law or regulations.

Section 9. Term and Termination

- (a) The Contract shall have a term of five year (s), beginning on July 1, 2007, and ending on the day of June 30, 2012. Either party shall give written notice to the other not less than ninety (90) calendar days prior to the expiration of the then current term, of its election to renew this Agreement. The University and the Bank may renew this agreement for up to

five additional one year periods if all terms and conditions of such renewal are agreed to by both parties.

- (b) The fees and charges set forth for the services to be provided to the University will begin on July 1, 2007 and shall not be increased throughout the term of this Agreement and any renewal periods unless agreed to by the University
- (c) Either party may terminate this Contract, or a portion of the services provided under this Contract, by giving the other party at least thirty (30) calendar days prior written notice. This provision may be exercised only after the contract has been in effect for three (3) calendar months.
- (d) If either party does not comply with terms of the Contract, the University or the Bank, as the case may be, may give notice to the defaulting party of the specific default in writing. If a University default is not corrected within thirty (30) days, this Contract (including the ITN and Proposals), or a portion of the services provided under the Contract (at the election of the Bank) may be terminated ninety (90) days from the Bank's written notice of default. If a Bank default is not corrected within thirty (30) days, this Contract, (including the ITN and Proposals), or a portion of the services provided under the Contract (at the election of the University) may be terminated ninety (90) days from the University's written notice of default. Notwithstanding any other documentation to the contrary, the University's conduct of a transaction that the Bank determines is "inappropriate" but not in violation of law or regulation shall not constitute a failure to comply with the Agreement. In addition, the Bank's "determination" that it is insecure with the University's compliance with the Agreement or its financial condition does not constitute a failure to comply with the Agreement. Should the University fail to obtain an annual appropriation of funds that are sufficient to compensate the Bank for its services, the Bank's "determination" that it is insecure is deemed valid and the Bank may terminate the Contract pursuant to the timeline and notice procedures specified in this subparagraph.
- (f) If the Bank attempts to change this Contract or add documentation pursuant to Section 3, the University may, at its discretion, terminate this Contract or any services provided hereunder, without penalty, on thirty (30) days written notice to Bank, provided that the University has attempted in good faith but is unable to reach agreement with the Bank on such documentation or any modifications thereto. If the University does not so terminate the Contract or any services provided hereunder, the changes or additional documentation shall be deemed effective and made a part of the Contract.
- (g) As required by Florida law, the University may immediately terminate this Contract if the Bank refuses to comply with a public records request, unless the Bank has a good-faith belief that such refusal is warranted under applicable law.
- (h) The Parties' rights to terminate the Contract are limited to the rights specified herein or in the ITN. Except as Bank reasonably believes is required by law, regulation, or court order, or to the extent Bank reasonably believes any University account is being used for

an illegal purpose, Bank may not close or freeze any University accounts without University consent except as in accordance with the termination rights provided herein, or as required by law. Nothing in the Contract shall prohibit the Bank from interpleading the funds into a court of appropriate jurisdiction in the event of a dispute over the relevant University account or the funds therein.

Section 10. Right to Audit

The University, from time to time, and during Bank business hours and with at least two business days-prior notice to the Bank, shall have the right to audit the Bank's books and records at University's expense with regard to the accounts services provided to the University hereunder to ensure that all aspects of the Contract are being met.

Section 11. Changes

- (a) Unless required by changes in applicable law or regulation or the interpretation thereof or general operational changes of the Bank that affect all customers receiving the same services as the University (collectively, "Legal and Operational Changes"), no modifications or changes to the Agreement shall be binding unless consented to in writing by the parties. Any Legal and Operational Changes shall be subject to Section 9(f) above.
- (b) The University may, from time to time, request changes in the scope of services of the Bank to be performed hereunder. Such changes, which are mutually agreed upon in writing by and between the University and the Bank, shall be incorporated in written amendments to this Agreement.

Section 12. Equal Employment Opportunity: Non-discrimination

The Bank will not discriminate against any employee or an applicant for employment because of race, color, religion, sex, national origin or handicap. The Bank shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment without regard to race, color, religion, sex, national origin or handicap. Such action shall include, but not be limited, to the following: Employment, upgrading, demotions or transfers, recruitment or recruitment advertising; layoff or terminations; rates of pay or other forms of compensation; selection for training including apprenticeship; and participation in recreational and educational activities.

The Bank shall keep such records and submit such reports concerning racial and ethnic origin of applicants for employment and employees as the Secretary of Labor of the United States requires. The Bank agrees to comply with such rules, regulations and guidelines as the Secretary may issue to implement these requirements. Both Parties shall comply with all applicable laws, ordinances and codes pertaining to the Contract, of Federal, State and local governments applicable to that Party.

Nothing herein limits the obligations imposed in the ITN regarding compliance with Anti-Discrimination laws and regulations.

Section 13. Waiver

No waiver by either party of a breach of any provision of the Contract shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

Section 14. Severability

Should any provisions, paragraphs, sentences, words or phrases contained in the Contract be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida or the United States, such provisions, paragraphs, sentences, words or phrases shall be deemed modified to the extent necessary in order to conform with such laws, and to the extent they cannot be so modified, then same shall be deemed severable, and in either event, the remaining terms and provisions in the Contract shall remain unmodified and in full force and effect.

Section 15. Governing Law

This contract shall be construed and enforced according to the Laws of the State of Florida. Notwithstanding anything contained in any other documentation, venue for any dispute shall lie in a court of competent jurisdiction in Leon County (Tallahassee), Florida and the parties do not waive their right to a jury trial. The parties agree that no punitive, special or consequential damages shall be awarded in any such dispute even if the party ultimately determined to be liable in such dispute was aware of the possibility of such damages.

Notwithstanding anything contained in any other documentation, the University does not waive a right to proper service of process or agree to allow process to be served on its persons or assets in any jurisdiction other than Tallahassee, Florida or as otherwise required by Florida law.

Section 16. Notice

All written notices, demands and other communications required or provided for hereunder or under any of the documents comprising this contract shall be sent by U.S. mail or by electronic transmission producing a written record, or hand delivered to the following address and person bearing the following title for each party hereto or such other addresses or person as shall be designated by a party in a written notice given in the manner required hereby:

University: Florida A & M University
300 Lee Hall

Tallahassee, Florida 32307
Office of the General Counsel

Bank: Wachovia Bank, National Association
225 Water Street, FL0074
Jacksonville, Florida 32202
Attn: Leslie E. Skipper, Senior Vice President

Notwithstanding anything contained in any other documentation, all notices to either party shall be deemed delivered when received or as otherwise provided by law.

Section 17. Force Majeure

Both parties agree that neither party shall have responsibility or liability for delay in its performance under the Contract or any losses arising out of delays and/or interruptions of business due to acts of God, acts of government authority, acts of public enemy or war, riots, civil disturbances, complete power failure, telecommunications or other electronics or networks failure, natural disasters or other causes beyond the party's reasonable control. This time, if any, required for such performance under this Agreement shall be automatically extended during the period of such delay or interruption.

Section 18. Assignment

Neither party shall assign the Contract or any interest therein, or delegate any of its duties hereunder, without the other party's prior written consent, except: (i) that it is agreed by the University that the Bank may delegate certain services to be provided through independent contractors in Bank's reasonable discretion; and (ii) the Bank may assign the Contract to any party with which the Bank merges or to which the Bank transfers substantially all of its assets. If the University does not approve of any subcontractor used by the Bank, in the University's reasonable discretion, the University may terminate the Contract or any portion of the services provided under the Contract, upon thirty (30) days written notice to the Bank.

Section 19 Independent Contractor

It is hereby mutually agreed that the Bank is and shall remain an independent contractor without authority to bind the University in any respect.

Section 20. Legal Fees

In the event of a dispute between the parties regarding the interpretation or enforcement of the Contract, each party shall be responsible for its respective legal fees associated with the dispute and any appeal thereof.

Section 21. Days

All references herein to "days" shall be construed as calendar days unless otherwise expressly provided.

Section, 22. Recitals

The recital paragraphs are incorporated herein as if fully set forth in the body of the Agreement.

Section 23. Availability of Funds

The University's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature upon the University being notified of, or receiving knowledge of such deficiency in the annual appropriation, the University shall have thirty (30) days to notify the Bank of the deficiency and, to the extent permitted by law, the University shall be responsible for payment of all amounts due and owing the Bank for services provided up to and including the termination date of the Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement and initialed, each of the Exhibits hereto as of the day and year last written below.

FLORIDA A & M UNIVERSITY BOARD OF TRUSTEES WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association

BY: Larry Robinson BY: [Signature] SVP
~~CASTELL V. BRYANT, Interim President~~
LARRY ROBINSON, Chief Executive Officer

Approved as to Legal Sufficiency

BY: [Signature]
Office of the General Counsel

~~April~~ ^{May} 29, 2007

**AMENDMENT I
FOR BANKING SERVICE AGREEMENT
BETWEEN
WELL FARGO BANK
(Hereinafter referred to as, "Wachovia Bank")**

AND

**FLORIDA AGRICULTURAL AND MECHANICAL UNIVERSITY
Acting for and on behalf of the Board of Trustees,
A public body corporate of the State of Florida
(Hereinafter referred to as, "UNIVERSITY")**

WHEREAS, UNIVERSITY issued Invitation to Negotiate (ITN) No.:7325, University Banking Services for various banking services including: General Banking Services, Merchant Services Credit/Debit Card and Rattler Card ID/Debit/Credit); and

WHEREAS, UNIVERSITY and **CONTRACTOR** entered into the Original Agreement executed by purchase order with a five (5) year term beginning July 1, 2007 and ending on June 30, 2012. The University and the bank may renew this agreement for up to five (5) additional one year periods if all terms and conditions of such renewal are agreed to by both parties (the "Agreement").

WHEREAS, CONTRACTOR and **UNIVERSITY** hereby mutually agreed to renew the Original Amendment for one (1) Year, starting July 1, 2012 and ending on June 30, 2013.

NOW, THEREFORE, in consideration of the promises herein contained and for other good and valuable consideration, the parties hereto agree as follow:

A. GENERAL

1. The forgoing recitals are true and correct and are incorporated by reference.
2. This Amendment is effective upon execution by both parties. All terms and conditions contained in the original agreement, and any Amendments thereto, shall remain unchanged and in full force and effect except for those terms and conditions affected by this Amendment.
3. The University hereby excises its option to renew the Original Agreement for services for one (1) additional Year beginning on July 1, 2012 and ending June 30, 2013.

B. ENTIRE AGREEMENT

All provisions in the original Agreement and executed Amendments and any attachments thereto in conflict with this Amendment shall be and are hereby changed to conform to this Amendment. This Amendment is hereby made part of the Original Agreement. All other terms and conditions as set forth in the Original Agreement and any Amendments thereto, and not conflict with this Amendment, shall remain in full.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute this AMENDMENT, in duplicate, on the date appearing with their respective signatures.

Florida A&M University Board of Trustees

Wells Fargo Bank

By _____
Teresa Hardee, VP and CFO

By _____
Leslie E. Skipper, Senior Vice President

May ____, 2012

May 22, 2012

By: [Signature]
Stephany Fall, Director Procurement Services

May 24, 2012

Approved as to form.

[Signature] 05/24/12
FAMU Attorney Date

**AMENDMENT II
FOR BANKING SERVICE AGREEMENT
BETWEEN
WELL FARGO BANK
(Hereinafter referred to as, "Contractor")**

AND

**FLORIDA AGRICULTURAL AND MECHANICAL UNIVERSITY
Acting for and on behalf of the Board of Trustees,
A public body corporate of the State of Florida
(Hereinafter referred to as, "UNIVERSITY")**

WHEREAS, UNIVERSITY issued Invitation to Negotiate (ITN) No.:7325, University Banking Services for various banking services including: General Banking Services, Merchant Services Credit/Debit Cards and Rattler Card ID/Debit/Credit; and

WHEREAS, UNIVERSITY and Wachovia Bank, predecessor by merger to the CONTRACTOR, entered into that certain Banking Services Agreement dated as of May 29, 2007 to provide general banking services to the University through June 30, 2012 (the "Original Agreement"); and

WHEREAS, The UNIVERSITY and the CONTRACTOR, by instrument dated as of may 24, 2012 extended the term of the Original agreement to June 30, 2013 ("Amendment I"). The Original Agreement and Amendment I constitute the Original Agreement; and

WHEREAS, CONTRACTOR and UNIVERSITY hereby agree to extend the term of the Original Agreement for one year, starting July 1, 2012 and ending on June 30, 2013. And desire to renew the Original Agreement for one year beginning on July 1, 2013 and ending on June 30, 2014.

NOW, THEREFORE, in consideration of the promises herein contained and for other good and valuable consideration, the parties hereto agree as follows:

A. GENERAL

- 1. The forgoing recitals are true and correct and are incorporated by reference.**
- 2. This Amendment is effective upon execution by both parties. All terms and conditions contained in the Original Agreement shall remain unchanged and**

in full force and effect except for those terms and conditions affected by this Amendment.

3. The University hereby excises its option to amend the Original Agreement for services for twelve (12) additional months beginning on July 1, 2013 and ending June 30, 2014 in order of completing the solicitation process.

B. ENTIRE AGREEMENT

All provisions in the original Agreement and executed Amendments and any attachments thereto in conflict with this Amendment shall be and are hereby changed to conform to this Amendment. This Amendment is hereby made part of the Original Agreement. All other terms and conditions as set forth in the Original Agreement and any Amendments thereto, and not conflict with this Amendment, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute this AMENDMENT, in duplicate, on the date appearing with their respective signatures.

INSTITUTION:

Florida A&M University Board of Trustees

By: Joseph Bakker
Joseph Bakker, Interim VP and CFO

Date: 04/05/13

By: Stephany Fall
Stephany Fall, Director
Procurement Services

Date: 4/4/13

CONTRACTOR:

Wells Fargo Bank

By: Leslie E. Skjoper
Leslie E. Skjoper, Senior Vice
President

Date: April 4, 2013

APPROVED AS TO FORM, BUT LEGALITY SUBJECT TO EXECUTION BY ALL PARTIES.
OFFICE OF THE GENERAL COUNSEL

By: Reed Hall 03/15/13
Signature

**AMENDMENT III
FOR BANKING SERVICE AGREEMENT
BETWEEN
WELL FARGO BANK
(Hereinafter referred to as, "Wachovia Bank")**

AND

**FLORIDA AGRICULTURAL AND MECHANICAL UNIVERSITY
Acting for and on behalf of the Board of Trustees,
A public body corporate of the State of Florida
(Hereinafter referred to as, "UNIVERSITY")**

WHEREAS, UNIVERSITY issued Invitation to Negotiate (ITN) No.:7325, University Banking Services for various banking services including: General Banking Services, Merchant Services Credit/Debit Cards and Rattler Card ID/Debit/Credit; and

WHEREAS, UNIVERSITY and **CONTRACTOR** entered into the Original Agreement executed by purchase order with a five (5) year term beginning July 1, 2007 and ending on June 30, 2012. The University and the bank may renew this agreement for up to five (5) additional one year periods if all terms and conditions of such renewal are agreed to by both parties (the "Agreement").

WHEREAS, CONTRACTOR and **UNIVERSITY** hereby mutually agreed to amend the Original Agreement for for twelve (12) additional months beginning on July 1, 2014 and ending on June 30, 2015.

NOW, THEREFORE, in consideration of the promises herein contained and for other good and valuable consideration, the parties hereto agree as follow:

A. GENERAL

1. The forgoing recitals are true and correct and are incorporated by reference.
2. This Amendment is effective upon execution by both parties. All terms and conditions contained in the original agreement, and any Amendments thereto, shall remain unchanged and in full force and effect except for those terms and conditions affected by this Amendment.
3. The University hereby excises its option to amend the Original Agreement for services for twelve (12) additional months beginning on July 1, 2014 and ending June 30, 2015 in order of completing the solicitation process.

B. ENTIRE AGREEMENT

All provisions in the original Agreement and executed Amendments and any attachments thereto in conflict with this Amendment shall be and are hereby changed to conform to this Amendment. This Amendment is hereby made part of the Original Agreement. All other terms and conditions as set forth in the Original Agreement and any Amendments thereto, and not conflict with this Amendment, shall remain in full.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute this AMENDMENT, in duplicate, on the date appearing with their respective signatures.

INSTITUTION:

Florida A&M University Board of Trustees

By: Joseph Bakker
Joseph Bakker, Interim VP and CFO

Date: March 14, 2014

CONTRACTOR:

Wells Fargo Bank

By: Leslie E. Skipper
Leslie E. Skipper, Senior Vice
President

Date: March 13, 2014

By: Stephany Fall
Stephany Fall, Director
Procurement Services

Date: 3/6/14

APPROVED AS TO FORM, BUT LEGALITY SUBJECT TO EXECUTION BY ALL PARTIES.
OFFICE OF THE GENERAL COUNSEL.

By: David [Signature]
/Signature

Date: 03/06/14

**Amendment/Renewal IV
TO THE CONTRACT C-7418
FOR
BANKING SERVICES
BETWEEN
Wells Fargo Bank
(Hereinafter referred to as, "Wachovia Bank")**

AND

**FLORIDA AGRICULTURAL AND MECHANICAL UNIVERSITY
Acting for and on behalf of the Board of Trustees,
A public body corporate of the State of Florida
(Hereinafter referred to as, "UNIVERSITY")**

WHEREAS, UNIVERSITY issued Invitation to Negotiate (ITN) No.:7325, University Banking Services for various banking services including: General Banking Services, Merchant Services Credit/Debit Cards and Rattler Card ID/Debit/Credit);

WHEREAS, UNIVERSITY and **Wachovia Bank** entered into the Original Agreement by purchase order with a five (5) year term beginning July 1, 2007 and ending on June 30, 2012. The University and the bank may renew this agreement for up to five (5) one-year periods if all terms and conditions of such renewal are agreed to by both parties (the "Agreement").

WHEREAS, UNIVERSITY and **Wachovia Bank** renewed the Agreement with a term beginning July 1, 2012 and ending on June 30, 2013 under Amendment I.

WHEREAS, UNIVERSITY and **Wachovia Bank** renewed the Agreement with a term beginning July 1, 2013 and ending on June 30, 2014 under Amendment II.

WHEREAS, UNIVERSITY and **Wachovia Bank** renewed the Agreement with a term beginning July 1, 2014 and ending on June 30, 2015 under Amendment III.

WHEREAS, UNIVERSITY and **Wachovia Bank** hereby mutually desire to renew the Agreement with a term beginning July 1, 2015 and ending on June 30, 2016 under Amendment/Renewal IV.

NOW, THEREFORE, in consideration of the promises herein contained and for other good and valuable consideration, the parties hereto agree as follows:

A. GENERAL

Wachovia agrees to perform such professional services, with the standard of professional care and skill customarily provided in the performance of such

services as set forth in this Agreement.

B. In accordance with Section 6.005(14)(A)7 of the University Regulation, the parties agree to renew Agreement with a term beginning July 1, 2015 and ending on June 30, 2016.

C. CONDITIONS

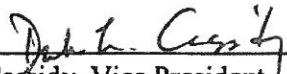
All terms and conditions set forth in the Original Agreement shall remain in full force and effect unless otherwise modified via executed amendment, renewal, or extension.

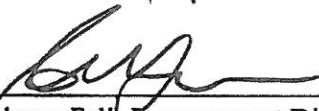
WHEREAS, the parties wish to set forth their understanding in writing.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this agreement.

INSTITUTION


Florida A&M University Board of Trustees

By: 
Dale Cassidy, Vice President
Date: 4/7/15

By: 
Stephany Falk, Procurement Director
Date: 4/7/15

CONTRACTOR

Wells Fargo Bank

By: 
Leslie E. Skipper, SVP
Date: April 4, 2015

APPROVED AS TO FORM, BUT LEGALITY SUBJECT TO EXECUTION BY ALL PARTIES.
OFFICE OF THE GENERAL COUNSEL.

By: 
Signature

Date: 04/01/15

**Amendment/Renewal V
TO THE CONTRACT C-7325
FOR
BANKING SERVICES
BETWEEN
Wells Fargo Bank**

AND

**FLORIDA AGRICULTURAL AND MECHANICAL UNIVERSITY
BOARD OF TRUSTEES**

**A public body corporate of the State of Florida
(Hereinafter referred to as, "UNIVERSITY")**

WHEREAS, UNIVERSITY issued Invitation to Negotiate (ITN) No.:7325, University Banking Services for various banking services including: General Banking Services, Merchant Services Credit/Debit Cards and Rattler Card ID/Debit/Credit);

WHEREAS, UNIVERSITY and Wachovia Bank entered into the Original Agreement by purchase order with a five (5) year term beginning July 1, 2007 and ending on June 30, 2012. The University and the bank may renew this agreement for up to five (5) one-year periods if all terms and conditions of such renewal are agreed to by both parties (the "Agreement").

WHEREAS, Wells Fargo Bank is the successor by merger to Wachovia Bank ("Wells Fargo").

WHEREAS, UNIVERSITY and Wells Fargo Bank renewed the Agreement with a term beginning July 1, 2012 and ending on June 30, 2013 under Amendment I.

WHEREAS, UNIVERSITY and Wells Fargo Bank renewed the Agreement with a term beginning July 1, 2013 and ending on June 30, 2014 under Amendment II.

WHEREAS, UNIVERSITY and Wells Fargo Bank renewed the Agreement with a term beginning July 1, 2014 and ending on June 30, 2015 under Amendment III.

WHEREAS, UNIVERSITY and Wells Fargo Bank hereby renewed the Agreement with a term beginning July 1, 2015 and ending on June 30, 2016 under Amendment/Renewal IV.

WHEREAS, UNIVERSITY and Wells Fargo Bank desire to renew the Agreement with a term beginning July 1, 2016 and ending on June 30, 2017 under Amendment/Renewal V.

NOW, THEREFORE, in consideration of the promises herein contained and for other good and valuable consideration, the parties hereto agree as follows:

A. The Recitals set forth above are incorporated into and made a part of this Agreement.

B. Wells Fargo Bank agrees to perform such professional services, with the standard of professional care and skill customarily provided in the performance of such services as set forth in this agreement.

C. In accordance with Section 6.005(14)(A)7 of the University Regulation, the parties agree to renew Agreement with a term beginning July 1, 2016 and ending on June 30, 2017.

D. All terms and conditions set forth in the Original Agreement shall remain in full force and effect unless otherwise modified via executed amendment, renewal, or extension.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this agreement.

FLORIDA A&M UNIVERSITY
BOARD OF TRUSTEES

By: Angela M. Poole
Angela Poole, Acting Vice President
Date: 4/21/16

WELLS FARGO BANK,

By: Samie Foell
SAMIE FOELL, SENIOR VICE PRESIDENT
Date: 4/25/16

By: _____
Stephany Fall, Procurement Director
Date: _____

APPROVED AS TO FORM, BUT LEGALITY SUBJECT TO EXECUTION BY ALL PARTIES.
OFFICE OF THE GENERAL COUNSEL.

By: David C. [Signature]
Signature
Date: 04/15/16

AMENDMENT VI TO
BANKING SERVICES AGREEMENT 2016 SEP 27 AM 8:42
BETWEEN
WELLS FARGO BANK, N.A. OFFICE OF THE PRESIDENT
AND
FLORIDA AGRICULTURAL AND MECHANICAL UNIVERSITY
BOARD OF TRUSTEES
A public body corporate of the State of Florida

This Amendment to Banking Services Agreement (herein the "Amendment") is dated as of this 31st day of August, 2016 by and between Florida Agricultural & Mechanical University Board of Trustees (the "University") and Wells Fargo Bank, National Association, successor by merger to Wachovia Bank, N.A. (the "Bank").

WHEREAS, on or about May 29, 2007 University and Wachovia Bank entered into a Banking Services Agreement for various banking services including, but not limited to, general banking services merchant services credit/debit cards, Rattler ID/debit/credit; and establishing and maintaining disbursement accounts for payroll, general operations, student aid disbursements and sponsored research (the "Original Agreement"). The disbursement accounts referenced in the preceding sentence refer to commercial accounts opened by the University with the Bank, which the University may access, in the normal course of the Bank's providing general banking services, to disburse student aid. The Bank does not receive, disburse, or deliver Title IV, HEA program funds except as normal bank electronic fund transfers and the Bank is not acting as a third party servicer for University. The Original Agreement had a five (5) year term beginning July 1, 2007 and ending on June 30, 2012. University and Bank may renew this agreement for up to five (5) one-year periods if all terms and conditions of such renewal are agreed to by both parties (the "Agreement").

WHEREAS, University and Bank have renewed the Original Agreement on several occasions, most recently with a term beginning July, 1 2016 and ending on June 30, 2017 under Amendment/Renewal V.

WHEREAS, University and Bank have agreed to amend the Original Agreement to:

- (1) add a confidentiality clause to prohibit the Bank from sharing student personal identifying information;
- (2) ensure compliance with new Department of Education Cash Management Rules and add an audit clause and a termination clause for excessive complaints and fees; and
- (3) add Intellectual Property Rights.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the University and the Bank hereby agree as follows:

The Original Agreement is hereby amended to provide the following:

1. Termination. Section 9 (Term and Termination) of the Agreement is revised to add a subsection "j" as follows:

- i. This Agreement may be terminated by University upon sixty (60) days' prior written notice to the Bank in the event: (i) the University receives excessive complaints from University Students regarding the FAMU Rattler Card Bank Account linked to their FAMU Rattler Cards and the Bank and the 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 the fees imposed by the Bank on FAMU Rattler Card bank accounts linked to FAMU Rattler Cards of University students are, considered as a whole, clearly not consistent with or are above prevailing market rates for similarly-situated financial accounts, and such determination by the University is supported by data based on the relevant market, which shall be provided to the Bank for review prior to termination.
2. A New (Intellectual Property Rights) is hereby added to the Original Agreement as follows:

24. INTELLECTUAL PROPERTY RIGHTS.

- a. **Grant to Use University Name and Marks.** The University hereby grants the Bank during the Term an exclusive, non-assignable, and irrevocable world-wide license to use, display, reproduce, and otherwise exploit the various logos and other identifying property and marks set forth on Exhibit "A" of this Agreement (collectively, the "University Marks") for the sole purpose of offering and promoting the financial products and services to Eligible University Community Members through the FAMU Rattler Card program. All applications of the University Marks by the Bank must conform to Exhibit "A," along with any specifications established by the University which specifications may be amended from time to time. The Bank will make no other use of the University Marks or any other trademark or tradename owned by or associated with the University without, in each case, the University's prior explicit written consent. The Bank shall deliver all FAMU Rattler Card designs and all promotional and informational materials prepared by the Bank that contain any University Mark to University prior to publication for University's prior written consent which consent shall not be unreasonably withheld or unduly delayed. University also grants the Bank authority to use published FAMU Rattler Card marketing materials as examples for prospective the Bank clients or within Bank Campus Card marketing materials. Such examples will only be used if material has been previously used with the public such as printed brochures, flyers, banners and the like.

The 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 the Bank any license or right of ownership of the University Marks, and all use of the University Marks by the Bank will inure to the benefit of University. Accordingly, the Bank's limited right to the use of the University Marks for any purpose is solely by reason of this Agreement, and the 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. Upon expiration or termination of this Agreement for any reason, the Bank will immediately cease any and all use of the University Marks or any variation of the University Marks on promotional and informational materials prepared by the Bank in connection with this Agreement.

The University does not make, and hereby disclaims, any representations or warranties with respect to the University Marks, or with respect to whether the University Marks infringe the rights of any other party, or with respect to the existence of any state or federal registration of the University Marks or design as a tradename, trademark or mark. 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, the University will, at its own expense, defend the Bank's right to use of the University Marks as authorized under this Agreement. In the event any such claim is resolved adversely to the University or the Bank, or in the event the 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 University agrees to indemnify the Bank against any expenses the Bank incurs in discontinuing use of the marks and adopting use of alternative non-infringing marks, subject to the limitation of liability set forth in Section 27. The University further agrees to indemnify the Bank against all liabilities the 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 the 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, the 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.

- b. **Grant to Use Bank Name and Marks.** The Bank hereby grants University during the Term a non-exclusive right and license to use the marks set forth on Exhibit "B" of this Agreement (collectively, the "Bank Marks") on all FAMU Rattler Cards linked to a FAMU Rattler Card Bank Account and all promotional and informational materials prepared by University in connection with the FAMU Rattler Card under this Agreement. University will make no other use of Bank Marks without the Bank's prior written consent. University agrees that all products and/or services offered in connection with the FAMU Rattler Card program shall be of a nature and quality commensurate with the nature and quality of the University's FAMU Rattler Card program. University shall deliver all FAMU Rattler Card designs and all promotional and informational materials prepared by University that contain any Bank Mark to the Bank prior to publication for the Bank's prior written consent.

University acknowledges and agrees that the 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 the Bank. Accordingly, University's limited right to use of the Bank Marks for any purpose is solely by reason of this Agreement, and upon expiration or termination of this Agreement for any reason, University will immediately cease any and all use of the Bank Marks or any variation of the Bank Marks on FAMU Rattler Cards issued after the effective date of such expiration or termination.

The Bank does not make, and hereby disclaims, any representations or warranties with respect to the Bank Marks, or with respect to whether such Bank Marks infringe upon the rights of any other party, or with respect to the existence of any state or federal registration of the Bank Marks or design as a tradename, trademark or service mark. If there is any claim against the Bank or the University that the Bank Marks or any modifications thereof, as authorized by Bank, infringe the rights of another party, the 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 the Bank or the University, or in the event the Bank agrees to discontinue its use of the marks in order to resolve any such claim, which it shall have the right to do in its sole discretion, then the 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 Section 27. The Bank further agrees to indemnify the 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 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 the Bank, the 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 the Bank or the University, or where the Bank agrees to discontinue use of the marks in order to resolve the claim.

Except as set forth in this section, any change by the Bank in the specifications for any of the Bank's Marks will apply only to FAMU Rattler Cards issued or reissued after notice of the change is given to University. University shall be permitted to issue FAMU Rattler Cards using stock which is already on order with the supplier as of the time the Bank notifies University of desired changes without regard to the lapse of time between ordering and receipt of the card stock, provided that the University determines that such use is needed to permit its FAMU Rattler Card program to continue without interruption. Notwithstanding any provision of the Agreement to the contrary, if Bank desires to make changes to the Bank Marks or to eliminate the Bank Marks on cards already issued, on order, or in stock with the University, the Bank shall pay all of the University's costs related to such changes. University shall have no obligation to reissue FAMU Rattler Cards with new Bank Marks solely because the Bank assigns this Agreement, merges with another institution, changes its name, or is purchased by another entity, or upon expiration or termination of this Agreement.

3. New Exhibits (Exhibit A and B) are hereby added to the Original Agreement and attached hereto.
4. Confidentiality. A Section 24 (Confidentiality) is hereby added to the Original Agreement as follows:

24. CONFIDENTIALITY. The University may be provided certain information concerning the Bank and/or its affiliates or customers, or other information the Bank deems proprietary (including, without limitation, customer account information, customer lists, business plans, data processing programs, and operating manuals), in connection with the transactions contemplated herein. Likewise, the Bank may be provided certain information that the University deems proprietary or confidential pursuant to the law or University policy. As a condition to being furnished such information by a party (herein the "Confidential Information"), the other party agrees as follows:

- a. Except for FAMU Rattler Card Bank Account application data and FAMU Rattler Card Bank Account transaction information, which shall automatically be deemed to be Confidential Information of Bank, all information deemed confidential or proprietary by a party shall be clearly labeled "Confidential Information" or otherwise identified as "Confidential Information" in writing contemporaneous with furnishing such Confidential Information to the other party.
- b. 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.
- c. 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 or other persons under its control.
- d. 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.

- e. The parties agree that, to the extent applicable under the provisions of the Bank Service Company Act, they may be subject to examination by the OCC for the services provided in connection with this Agreement. The parties shall comply with the applicable requirements of 12 C.F.R. Part 30, and any other applicable law or regulation, by implementing and/or maintaining appropriate measures designed to: (1) ensure the security and confidentiality of the Bank'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.
- f. Throughout the Term, the Bank 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 the Bank pursuant to this Agreement. The Bank shall promptly notify the University, 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.

In addition, the Bank's customer lists, including names of Eligible University Community Members who are FAMU Rattler Card holders and who have FAMU Rattler Card Bank Accounts, are Bank's Confidential Information, for which the Bank retains exclusive ownership and right during the Term. Therefore, although University is not precluded from using or disclosing the names of its students, faculty members, staff members or other Eligible University Community Members for any purpose it deems appropriate, University would be precluded from using a list comprised of FAMU Rattler Card holders who have obtained FAMU Rattler Card bank accounts from the Bank if such use was for a purpose prohibited by this Section 24; provided, however, that University will not be deemed to be in breach of this Agreement in the event it is legally required (by subpoena, warrant, legal process or other civil or criminal law, rule or procedure) to produce, disclose, or provide such a list, provided it has made reasonable efforts to give Bank the notice required under subsection d., if applicable.

Within fifteen (15) 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, the Bank shall be permitted and shall retain such University Confidential Information for so long as: (i) is required by law; or (ii) as may be consistent with its normal business practices not to exceed five years, unless otherwise required by law.

- 5. Section 10 (Right to Audit) is hereby deleted in its entirety and replaced with the following:

10. Right to Audit.

The University, from time to time, and during the Bank business hours and with at least two business days-prior notice to the Bank, shall have the right to audit the Bank's books and records at the University's expense with regard to the accounts services provided to the University hereunder to ensure that all aspects of the Agreement are being met. In addition, the University shall conduct reasonable due diligence reviews at least every two years to ascertain whether the fees imposed under the T2 arrangements are, considered as a whole, consistent with or below prevailing market rates. All records maintained by University pertaining to the Bank and its FAMU Rattler Card bank account customers and relevant to the

performance of this Agreement will be available for examination and audit by the Bank and/or its regulators. In addition, the University will provide the Bank or its duly authorized representatives with reasonable access to the University's records for the purpose of enabling the Bank to confirm the University's compliance with the terms of this Agreement. All such records may be audited by the Bank or its designated representative(s) at any time during the University's regular working hours upon reasonable notice. Each party may require person obtaining access to its records under this section, as a condition to obtaining access, to execute written confidentiality agreements setting for the matters as addressed in Section 24.

6. Student Loan Representation and Warranty. A Section 25 (Student Loan Representation and Warranty) is hereby added to the Agreement as follows:

25. **STUDENT LOAN REPRESENTATION AND WARRANTY.** The University and the Bank represent and warrant to the other that the pricing and other terms and conditions for the services provided under the Agreement are not related to whether the University refers student loans to the Bank nor to the amount of any such referrals. The parties further represent and warrant that any royalty or other payments made by the Bank to the University under the terms described herein are wholly unrelated to student loan activities, volumes, referrals or amount of referrals.

7. Title IV Representation and Warranty. New Section 26 is hereby added to the Agreement as follows:

26. **TITLE IV REPRESENTATION AND WARRANTY.** The University and the Bank represent and warrant that FAMU Rattler Card bank accounts are not being opened by the University on behalf of any University Students, the University is not establishing a process that University students follow to open FAMU Rattler Card bank accounts, and the University is not in any way assisting University students in opening FAMU Rattler Card bank accounts. Further, the FAMU Rattler Card program is not being established for the purpose of the University's disbursement of Title IV funds and FAMU Rattler Cards are not issued by the Bank for the specific purpose of receiving Title IV funds.

8. Liability. New Section 27 is hereby added to the Agreement as follows:

27. **LIABILITY.** The Bank will exercise reasonable care in providing electronic funds transfer services and other services to FAMU Rattler Card holders as contemplated under this Agreement, subject to breakdowns, operational failures, unavoidable delays, or similar causes beyond the party's reasonable control.

The Bank does not control, and, except as provided in Federal Reserve Board Regulation E and state law to the extent applicable, is not responsible to the University for any error, act, or omission with respect to ATMs or POS terminals not owned and operated by the Bank.

The Bank does not undertake to ensure that FAMU Rattler Card holders will at all times be able to successfully accomplish transactions with the Bank by any electronic means, including but not limited to ATMs, POS terminals, the Internet, or other existing or future technology associated with FAMU Rattler Cards, FAMU Rattler Card holders' account numbers or personal identification, or otherwise (herein "Electronic Means"). Transactions cannot be processed during off-line periods. When the computer maintaining the on-line files is off-line or rendered inoperable at any time for maintenance or servicing, or due to mechanical failure, strike, lockout, riots, epidemics, war, acts of terror, governmental regulations or other cause beyond the Bank's reasonable control, such that no on-line processing of transactions may be possible, no customer

transactions will be processed by Electronic Means and Bank will have no liability as a result. The Bank will, however, exercise reasonable care to promptly reinstate service.

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.

9. Continued Effect. Except to the extent amended hereby, all provisions and conditions of the Original Agreement and all prior amendments thereto shall continue in full force and effect.

10. Successors and Assigns. This Amendment shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, The parties have caused this Amendment to be executed by their respective authorized officers as of the date first written above.

**FLORIDA AGRICULTURAL &
MECHANICAL UNIVERSITY
BOARD OF TRUSTEES**

WELLS FARGO BANK, N.A.

By: Larry Robinson 9/29/16
Larry Robinson, Interim President

By: Kelly A Smith
Name: Kelly A. Smith
Title: NFL Community
Bank Region
President

Approved as to form.
Danielle Smith 09/22/16
FAMU Attorney Date

EXHIBIT A

UNIVERSITY MARKS

EXHIBIT B

BANK MARKS



(Black box with white letters)



(Red box with gold letters)

