

### **THIRD AMENDMENT TO BANKING SERVICES AGREEMENT**

THIS THIRD AMENDMENT TO BANKING SERVICES AGREEMENT ("Amendment") is made and entered into by and between The Board of Governors of the Colorado State University System, acting by and through Colorado State University, an institution of higher education of the State of Colorado ("CSU" or "UNIVERSITY") and First National Bank, a division of First National Bank of Omaha, a national banking association chartered under the laws of the United States of America ("FNB").

#### **RECITALS**

**WHEREAS**, CSU and FNB are parties to a Banking Services Agreement, effective as of October 12, 2007 (together with any addenda, amendments, attachments, exhibits and schedules collectively referred to herein as the "Agreement");

**WHEREAS**, CSU and FNB desire to phase out the current *RamCard Plus* product and introduce a new CSU branded product, the *CSU Show Your Support Debit Card*, and to restructure the related royalty and sponsorship arrangements as more fully described in Exhibit C attached hereto;

**WHEREAS**, the Department of Education amended the cash management regulations and other sections of the Student Assistance General Provisions regulations issued under the Higher Education Act of 1965, as amended, effective July 1, 2016, and the parties desire to address compliance with the amended regulations; and

**WHEREAS**, CSU and FNB desire to amend the Agreement to incorporate the required changes.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration, the parties hereby agree as follows:

#### **EFFECTIVE DATE AND ENFORCEABILITY**

This Amendment shall commence on the date it is signed by the Colorado State University Controller or the Controller's authorized delegate ("Effective Date"). This Amendment shall not be effective or enforceable until it is approved and signed by the Colorado State University Controller or designee. University shall not be liable to pay or reimburse Contractor for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof, prior to the date on which it is signed by or for the Controller.

#### **CONSIDERATION**

Consideration for this Amendment consists of the obligations, promises, and agreements set forth herein.

## EFFECT

It is expressly agreed by the parties that this Amendment is supplemental to the Agreement, which is, by this reference, incorporated herein; and that all terms, conditions and provisions of the Agreement, except as specifically modified herein, shall remain in full force and effect.

## MODIFICATIONS

The Agreement is modified as follows:

1. The following paragraph 26 is hereby added to the Agreement:

### **26. Additional Special Provisions (including termination provision) Required by Law.**

The Department of Education, pursuant to 34 CFR Part 668 – Student Assistance General Provisions, requires the University’s compliance with various cash management rules which pertain to the University’s arrangements with FNB with respect financial accounts it offers and markets directly to students. Parties acknowledge that, compliance actions shall include, but not be limited to, the following:

- a. On or before September 1, 2016, CSU will disclose this Banking Services Agreement on its Web Site, except for any portions that, if disclosed, would compromise personal privacy, proprietary information technology, or the security of information technology or of physical facilities. *See*, 34 CFR § 668.164(f)(4)(iii).
- b. On or before September 1, 2016, CSU will provide to the Secretary of the Department of Education, an up-to-date URL for the Agreement for publication in a centralized database accessible to the public. *See*, 34 CFR § 668.164(f)(4)(iii).
- c. On or before July 1, 2017, CSU will list and identify the major features and commonly assessed fees associated with FNB CSU student accounts as well as a URL for the terms and conditions of the account FNB offers to CSU students. *See*, 34 CFR § 668.164(d)(4)(i)(B)(2).
- d. Upon CSU’s request, FNB will timely provide CSU with evidence that FNB’s account fees assessed against accounts of CSU students are consistent with or are lower than prevailing market rates.
- e. CSU shall conduct reasonable due diligence reviews at least every two years, beginning in 2017, to ascertain whether the fees imposed by FNB are considered, as a whole, consistent with or below prevailing market rates.
- f. FNB will notify CSU at least annually, in writing, of all complaints received from CSU students participating in the RamCard Plus or CSU

Show Your Support Program, as defined in Exhibit C, including any complaints regarding the fees assessed by FNB for its services.

g. The University may, in its sole discretion and upon thirty (30) days' written notice to FNB, terminate this Agreement if University determines that:

- i. a reasonably high number of complaints by Enrolled Students have been received by University; or
- ii. fees assessed by FNB are higher than prevailing market rates.

h. On or before September 1, 2017, CSU will disclose conspicuously on its Web site and in a format established by the Secretary the following:

- i. the total consideration for the most recently completed award year (CSU fiscal year), monetary and non-monetary, paid or received by the parties to this Agreement under the terms of this Agreement; and
- ii. the number of students who had FNB student accounts during the most recent award year (CSU fiscal year) and the mean and median of the actual costs incurred by those account holders.

*See, 34 CFR § 668.164(f)(4)(iv).*

i. FNB shall, upon reasonable written request from CSU, assist with and provide any information or data necessary to allow CSU to comply with any federal law or regulation, existing now or implemented in the future.

2. Effective July 1, 2016, **Exhibit C** "Student Ram Card Services" is hereby replaced with the Exhibit C "Amended RamCard and Personal Banking Services Terms" attached hereto and incorporated herein by reference.
3. Within 30 days of the Effective Date, FNB shall provide a full accounting of all funds paid and still owed, if any, to CSU pursuant to Section D.9. *Scholarships and Sponsorships*, in **Exhibit C** "Student Ram Card Services" as established by the second amendment to the Agreement, and previously by Section D.8. *Scholarships and Sponsorships* in **Exhibit C** "Student ID Card Services" established in the original Agreement.

### **ORDER OF PRECEDENCE**

In the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Agreement, the provisions of this Amendment shall in all respects supersede, govern, and control.

### **AVAILABLE FUNDS**

Financial obligations of the University payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, or otherwise made available.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

\*Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that Colorado State University is relying on their representations to that effect and accept personal responsibility for any and all damages the University may incur for any errors in such representation.

**BANK:**  
**FIRST NATIONAL BANK, a division of**  
**FIRST NATIONAL BANK OF OMAHA**

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

\*Signature

Name: Mark P. Driscoll

Title: Market President

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

*Oct. 19, 2016*

**UNIVERSITY:**  
**STATE OF COLORADO**

**John W. Hickenlooper, GOVERNOR**  
Board of Governors of the Colorado State University  
System, acting by and through Colorado State University  
Dr. Anthony A. Frank, President

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

*[Signature]*  
Lynn Johnson

Vice President for University Operations

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

*10/25/16*

**REQUIRED APPROVALS:**

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

*[Signature]*  
David Ryan

Executive Director, Business & Financial Services  
University Controller

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

*10/28/16*

**LEGAL REVIEW**  
Cynthia H. Coffman, Attorney General

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

*[Signature]*  
Grant N. Calhoun, JD

Asst. Legal Counsel, Director of Contracting Services  
Office of the General Counsel

*10/21/16*

**ALL EXPENDITURE CONTRACTS REQUIRE APPROVAL BY THE UNIVERSITY CONTROLLER**

C.R.S. § 24-30-202 and University policy require the University Controller to approve all expenditure contracts. This Amendment is not valid until signed and dated below by the University Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the University is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

**COLORADO STATE UNIVERSITY CONTROLLER**

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

*[Signature]*

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

*10/28/16*

**EXHIBIT C**  
**AMENDED RAMCARD AND PERSONAL BANKING SERVICES TERMS**

**A. STUDENT AND FACULTY IDENTIFICATION CARDS, ACCOUNTS AND DEBIT CARD FUNCTIONALITY**

**1. Definitions**

- a. “RamCard”<sup>TM</sup> means the University’s multipurpose campus ID card for faculty, staff and students produced and issued by the University as part of the RamCard Program. The RamCard provides the functions and capabilities described in this Agreement, utilizing card stock with a contactless smart chip, but without banking functionality. The RamCard is used to authenticate and determine eligibility for various university accesses and services. A 2-track magnetic stripe on the back of the card is used by cardholders to access a proprietary declining balance account (the “RamCash” account), used to buy meals and other services in residence halls, the Lory Student Center food court, and other campus locations. A second magnetic stripe may be encoded for use by students, faculty and employees who open CSU First National Bank Accounts (as defined below) to access ATMs, PIN-based point-of-sale transactions, and Visa debit card transactions. There is a barcode on the card used by multiple campus departments. The campus ID card is referred to as the “RamCard” and the campus ID card program as the “RamCard Program”. RamCards issued after September 21, 2016, will not have a second magnetic stripe related to banking services.
- b. “RamCard Plus” means an enhanced RamCard produced on campus as part of the RamCard Program which provides the functions and capabilities described in this Agreement, including ATM and Visa debit capabilities and non-Visa functions added by the University, including a contactless chip. Beginning September 16, 2016, no new RamCard Plus cards will be issued. The banking services functionality of any RamCard Plus cards issued on or before September 21, 2016, will continue through approximately February 28, 2017.
- c. “CSU First National Bank Account” means a “RamCard Plus Checking Account” (or after September 21, 2016 a “First National Checking Account”) for students, and a First National Bank First at Work Checking Account for faculty and staff opened where the qualifying account holders are issued a RamCard Plus (or after September 21, 2016 a CSU Show Your Support Debit Card).
- d. “CSU First National Bank Account Program” means the Bank’s program that delivers a number of optional services to CSU First National Bank Account holders that elect to open a CSU First National Bank Account at the Bank. The services include savings and/or checking account, RamCard Plus (or after September 21, 2016 a CSU Show Your Support Debit Card), and other Bank services.



- e. "ATM" means "Automated Teller Machine" and is an electronic device owned and operated by the Bank which requires the use of an access card and Personal Identification Number (PIN) to disburse currency, transfer funds or accept deposits.
- f. "Campus ATM" means an ATM located on the campus of Colorado State University-Fort Collins.
- g. "Confidential Information" is defined as all information owned or provided by the parties or any of their respective affiliates which is delivered to, or communicated by the parties associated with execution of this Agreement and performance hereunder, including but not limited to Bank non-public personal information. The parties mutually agree that all information relating to each Party's business which may include technology architecture, software programs, data files, routines, business pursuits, proprietary rights or trade secrets that are provided by that Party is considered Confidential Information. Confidential Information may be disclosed as required by law. As used in this subsection, "required by law" shall include, but not be limited to, disclosures compelled by lawful subpoena, court order, or demand pursuant to the Colorado Open Records Act (Colo. Rev. Stat. §24-72-204, as amended), or any other lawful process; provided, however, that to the extent reasonably practicable under the circumstances, immediately upon receipt of any such subpoena, order or demand, University shall notify the Bank of the impending disclosure of records to afford the Bank an opportunity to avail itself of legal process to prevent disclosure. This section shall not be construed to require University, its governing board, or the State of Colorado, to pursue any claim, defense, cause of action or legal process or proceeding on behalf of the Bank.
- h. "Contract Year" means the period beginning July 1, 2013 and ending June 30, 2014, and each one-year period thereafter until this Agreement is terminated.
- i. "Marketing" means all marketing programs and/or materials developed by the Bank for the RamCard Program or CSU Show Your Support Program, the ATMs, and the Branch Location, including without limitation all signs, advertising, publicity releases, invitations, announcements, targeted mailings, promotions, exclusive presentations at faculty, staff and student orientations, brochures, posters, T-shirts, giveaways, social media posts, and electronic and/or digital communications.
- j. "Participants" means the University's faculty, staff and students who have a demand deposit account at the Bank and have voluntarily elected to participate in the RamCard Program or CSU Show Your Support Program from time to time during the Term.
- k. "POS" means Point-of-Sale.
- l. "RamCard Program" means the program of services provided by the University that are accessed by students, faculty and staff.

- m. "CSU Show Your Support Program" means the program of services beginning July 1, 2016 provided by the Bank to allow Bank customers to obtain a "CSU Show Your Support Debit Card", as produced and supplied by the Bank, to access ATMs, and to conduct PIN-based point-of-sale transactions and Visa debit card transactions, as well as CSU logo checks.
- n. "Transaction System" means the transaction processing/cardholder verification system(s) that the University uses to, among other things, administer the RamCard Program, together with all updates, patches, fixes, enhancements and/or replacement transaction processing/cardholder verification systems that the University may implement and/or use. Transaction System includes all scanners, readers and other hardware supporting the University's use of the Transaction System.
- o. "University Marks" means the name "Colorado State University" and all permutations, graphic images and logo(s) relating to that name, including without limitation all of the University's trademarks and/or service marks registered with the State of Colorado and/or the United States.

## **2. Provision of Services.**

- a. Scope of Services. The Bank shall provide campus banking and identification card services in accordance with the Bank's proposal as awarded by CSU, including any subsequent changes to card specifications, card functionality and card issuance procedures as mutually agreed upon by CSU and the Bank, and except as modified in subsections "i" through "ix" below. The RamCard office will work cooperatively with the Bank to develop enhanced RamCard products that incorporate all existing and proposed features of the RamCard Plus.
  - i. A Project Plan for adding the EMV chip to the RamCard Plus that will comply with all regulatory requirements and University technology infrastructure. This subsection will not be applicable after September 21, 2016.
  - ii. Exclusive Campus Marketing of Checking Accounts and Photo Identification to all Incoming students during New Student Orientation, returning students, and faculty/staff. Notwithstanding any other provision in this Agreement, the Scope of Services will not include assistance with Photo Identification subsequent to September 21, 2016.
  - iii. Debit Card Functionality
  - iv. Branch Banking Location on Campus located in the Lory Student Center (through a separate lease)
    - v. Campus ATM access (through a separate lease)
    - vi. Debit Card Functionality Post-Graduation
    - vii. Debit Card Functionality for Employees
  - viii. Dedicated "Facebook" Page
  - ix. Branch banking hours shall remain consistent with University RamCard Office hours.



- b. RamCard Products. Through September 21, 2016, two distinct University identification card products will be offered through the University RamCard office: a *RamCard*, and a *RamCard Plus*.
- c. CSU Branded Cards. The RamCard Plus and the CSU Show Your Support Programs shall include the following:
- i. Satisfaction of all security and other requirements, and maintenance of all licenses and/or authorizations necessary for the Bank to produce instant issue, Visa branded RamCards or CSU Show Your Support Debit Cards;
  - ii. A reallocation of funds previously pledged by the Bank for card production, up to \$15,000 for the 2016-2017 Contract Year of the Agreement to pay for reasonable costs associated with both the issuance of RamCard Plus cards through September 21, 2016 and the replacement of RamCard Plus cards with regular RamCards, upon invoice by the RamCard Office. If such expenditures for the 2016-2017 Contract Year do not meet this amount, the Bank reserves the right to spend any excess dollars on promotions, mailings, or other efforts to grow the CSU Show Your Support Program.
- d. The parties may, by mutual agreement, modify the design requirements for the RamCard Plus or CSU Show Your Support Debit Card at any time and the Bank shall implement all such changes. All design changes shall satisfy any new or revised Visa requirements for the Visa-branded debit cards.
- e. RamCard Plus Functions. Through approximately February 28, 2017 any active RamCard Plus shall be capable of performing the following functions:
- i. All functions currently available through the RamCard and RamCash Account programs, with the ability to conduct financial transactions by linking the Visa RamCard Plus to an account held at the Bank; and,
  - ii. National and international ATM and Visa point-of-sale debit card transactions subject to ATM Network availability.
- f. The Bank, in cooperation with the RamCard Office or other CSU representatives appointed by CSU, will support marketing efforts to promote and support the growth of the student and staff account base each year. Annual marketing support of \$102,000 each year can include, but is not limited to, the following:
- website development
  - direct mail campaigns
  - posters, brochures and other direct marketing materials
  - give-away promotions (at events such as orientation)
  - special promotions
  - miscellaneous marketing expenses

- g. Until September 21, 2016, the Bank will fund the full cost of producing replacement RamCard Plus cards that expire, are lost, or are stolen. After September 21, 2016, lost or stolen RamCard Plus cards will be re-issued as two separate cards, a RamCard and a CSU Show Your Support Debit Card.
- h. Through June 30, 2017, the Bank will fund the full cost, subject to Section A.2(c)(ii), of producing replacement RamCards when a customer requests a regular RamCard after having opted for a RamCard Plus.
- i. CSU “owns” the RamCard Program and has final approval on any proposed card design changes, program, and marketing material developed by the Bank. Through September 21, 2016, the CSU First National Bank Account will be marketed in conjunction with the RamCard Plus as the “bank account of choice” for CSU students and employees. Beginning September 16, 2016, the First National Checking Account will be marketed in conjunction with the CSU Show Your Support Debit Card as the “bank account of choice” for CSU students and employees.

Beginning September 16, 2016, no new RamCard Plus cards will issue. The functionality of any RamCard Plus cards issued on or before September 21, 2016, will continue through approximately February 28, 2017. Beginning July 1, 2016, the Bank will offer and issue its CSU Show Your Support Debit Card, through its CSU Show Your Support Program, to students, faculty and staff who elect to utilize its banking services. The University will continue to issue the RamCard.

### **3. CSU First National Bank Account Program**

The Bank shall provide the following services to the University as part of the CSU First National Bank Account Program:

- a. For faculty and staff – First National Bank First at Work Checking Accounts with suite of products with enhanced benefits and services including:
  - i. Free Checking with No Hidden Fees
  - ii. One Overdraft or Return Item Forgiveness every 12 months
  - iii. Free **QATM** and non - **QATM** Withdrawals (Other bank and ATM Operators’ surcharges may apply)
  - iv. Free Bank Logo Checks (including re-orders)
  - v. Free Debit Card Fraud Monitoring
  - vi. Free Online Banking, BillPay, and Account Alerts
  - vii. Free Statements (paper and online)
  - viii. \$25 Per Year Safe Deposit Box Discount
  - ix. Free Cashier's Checks and Traveler’s Cheques
  - x. Free Incoming Wires
  - xi. Free Stop Payments

- xii. Discounted Rates on Auto, Home Equity and Personal Loans
  - xiii. \$400 Mortgage Closing Cost Credit – See a Mortgage Loan Officer for complete details
  - xiv. Special Fee Savings on Unsecured Line of Credit and Home Equity Line of Credit
  - xv. Free Visa Check card
  - xvi. Line of credit annual fee waived (subject to credit approval)
- b. RamCard Plus Checking Accounts through approximately February 28, 2017, and First National Checking Accounts beginning September 16, 2016, for students and visiting faculty to include:
- i. Free Checking with No Hidden Fees
  - ii. One Overdraft or Return Item Forgiveness every 12 months
  - iii. Free ~~Q~~ATM and non - ~~Q~~ATM Withdrawals (Other bank and ATM Operators' surcharges may apply)
  - iv. Free Bank Logo Checks (including re-orders)
  - v. Free Debit Card Fraud Monitoring
  - vi. Free Online Banking, BillPay, and Account Alerts
  - vii. Free Statements (paper and online)
  - viii. \$25 Per Year Safe Deposit Box Discount
  - ix. Free Cashier's Checks and Traveler's Cheques
  - x. Free Incoming Wires
  - xi. Free Stop Payments
  - xii. Discounted Rates on Auto, Home Equity and Personal Loans
  - xiii. \$200 Mortgage Closing Cost Credit – See a Mortgage Loan Officer for complete details
  - xiv. Special Fee Savings on Unsecured Line of Credit and Home Equity Line of Credit
  - xv. Free Visa Check card
  - xvi. Line of credit annual fee waived (subject to credit approval)
  - xvii. On campus financial advisors.
- c. RamCard and RamCard Plus Fees. The University shall retain all fees that it charges to Participants for producing and issuing initial and replacement RamCards and RamCard Plus cards.
- d. Replacing a RamCard Plus. The Bank shall replace RamCard Plus cards at the Branch Location during regular business hours. Any Bank fees charged to Participants for replacing RamCard Plus cards shall be determined by and retained by the Bank. Standard University fees for replacement of RamCards may be charged by the University in addition to any Bank fees. All University fees shall be retained by the University. Beginning September 16, 2016, RamCard Plus cards will be re-issued as two separate cards, a RamCard (issued by the University) and a CSU Show Your Support Debit Card (issued by the Bank).
- e. Continued Use of the RamCard Plus. The Bank shall not issue any new or replacement cards to individuals who cease to be University faculty, staff or students.

- f. Technical Support. As long as any RamCard Plus card remains active, the Bank shall provide on-going technical support to the University for the RamCard Program at a level necessary to ensure that the RamCard Program functions as provided in this Agreement without any unreasonable delays or other inconveniences to the University or any Participants.
- g. Relationship Manager.
  - i. The Bank shall designate one of its employees as the “Bank Relationship Manager” who shall oversee and approve all aspects of the RamCard Plus and CSU Show Your Support Program activities on a day-to-day basis, including without limitation service, quality, technical support, Marketing and enhancements.
  - ii. The University shall designate one of its employees as the “University Relationship Manager” who shall oversee and approve all aspects of the RamCard Plus and CSU Show Your Support Program activities on a day-to-day basis, including without limitation service, quality, technical support, Marketing and enhancements.
- h. RamCard and RamCash Account. The University shall, except as otherwise provided in this Agreement, control the RamCard and RamCash Account programs, the deposits into RamCash Accounts and the fees for producing and issuing RamCards and administering RamCash Accounts.
- i. Debit Card Services. Qualified students, faculty, and employees who open any CSU First National Bank Account may request access to those funds through their RamCard Plus or through their CSU Show Your Support Debit Card, as applicable.
- j. ATM Access. CSU First National Bank Account holders will be permitted to use their RamCard Plus (through approximately February 28, 2017) or their CSU Show Your Support Debit Card (beginning July 1, 2016) to:
  - i. Make withdrawals from and transfers between “linked” Bank savings and/or checking accounts at First National Bank Circle One ATMs, and ATMs of participating networks, and;
  - ii. When available and where permitted, make deposits to their Bank accounts at designated ATMs.
- k. Exclusivity. It is expressly understood that, subject to the University’s best efforts and existing agreements with other banks, the Bank shall have the exclusive right to provide CSU First National Bank Account Program services to students, faculty and employees in connection with the University’s RamCard Program, and exclusivity to physical locations to include ATMs as provided in section 2 above and branch location as

defined in the Lory Student Center Lease Agreement dated July 1, 2007 and subsequent amendments thereto. Subject to the University's best efforts, *and not including existing CSU Athletics sponsorship, promotion and marketing agreements with other banks and financial services companies*, this Agreement grants to the Bank an exclusive privilege for: (1) the use of the tag lines "Official Bank of Colorado State University" or "Official Bank of CSU"; and (2) opportunities to market, offer, or provide debit card and ID Card-related financial services or products to students, faculty or employees; such products and services to include, but not necessarily limited to, checking accounts, savings accounts, and VISA debit card services. This exclusivity is limited by and subject to the University's procurement rules, and provisions of existing contracts for the issuance of Athletic Department sponsorships and for the CSU Alumni Association affinity credit card program, which are not within the scope of this Agreement.

- l. Additional Bank Programs and Services. The Bank shall provide the following additional programs or services to the University's faculty, staff and students, including Participants and non-Participants, as part of the RamCard Program.
  - i. Financial Services Seminars. The Bank shall conduct financial wellness services seminars on University Property at times and locations selected mutually by the parties. Seminar topics may include without limitation budgeting, investing, effectively managing credit card use, financial planning and protecting personal finances.
  - m. ACH Transaction Processing. The Bank shall provide the University, if requested by the University, ACH origination services and the software, training and support required for the University to use these services to electronically distribute payroll, refunds and other payments.
  - n. Non-Disclosure of Student Records. In the course of providing its services to students, the Bank may receive data or information relating to the University's current or former students (collectively "Student Records"). The Bank shall not share, sell or otherwise disclose Student Records to any third party. The Bank shall not use the Student Records for any commercial purpose and shall not keep copies of the Student Records other than to fulfill the Bank's obligations under this Agreement. The use of the University's e-mail directories for commercial purposes is prohibited by University policy. The Bank shall also comply in all respects with the federal Family Educational Rights and Privacy Act, 20 U.S.C. §1232g, the Gramm-Leach-Bliley Act, 15 U.S.C. §6801, et seq., and their respective implementing regulations, as such may be amended from time to time.
  - o. Storage and Maintenance of Student Records and Protection of Non-Public Personal Information. The Bank agrees to maintain all Student Records, and non-public personal information, both in storage and transmission, in a secure manner meeting or exceeding industry standards applicable to financial and/or educational institutions, whichever is higher. Industry standards shall include, without limitation, the



requirement that (i) all computers used in the storage, transmission and display of data shall have operating systems that are current in release, and with all security patches updated in a timely fashion upon release of the patch; and, (ii) all systems shall be protected by acceptable industry practice for antivirus, firewalls and network and system intrusion detection systems. Current system backups shall be maintained, with a cyclical backup stored at a secure off-site location acceptable to the University.

- p. Disclosure of Student Records to Unauthorized Persons. Either Party shall immediately notify the other of any disclosure of Student Records or customer data to unauthorized persons, use its best efforts to control or limit any such disclosure, and CSU shall notify its students, and the Bank shall notify its customers, whose records have been disclosed, in accordance with applicable laws and industry best practices.
- q. Status Meetings. The parties' representatives shall participate in regularly-scheduled status meetings initiated by the Bank but at times selected mutually by the parties, and no less than once each semester, to address all issues relating in any way to the RamCard Plus activities or the CSU Show Your Support Program activities.
- r. Non-public Personal Information. Each party agrees that it shall not disclose or use a Participant's "nonpublic personal information" provided or made available by the other party, except to the extent necessary to perform, effect, administer or enforce any transactions or services contemplated by this Agreement and in a manner that is consistent with applicable federal and state law, including but not limited to the federal Gramm-Leach-Bliley Act and its implementing regulations and the federal Fair Credit Reporting Act. Nothing herein shall prevent any party from using Participant nonpublic personal information, in a manner consistent with the law, that it collects or that it obtains directly from a Participant or any other source. Each party further agrees that it shall use commercially reasonable efforts to maintain security standards designed to ensure that Participant nonpublic personal information is not accessed without proper authorization. Furthermore, each party shall establish internal controls designed to ensure the ongoing safeguard of Participant nonpublic personal information in compliance with state and federal laws, including but not limited to Section 501(b) of the Gramm-Leach-Bliley Act. Notwithstanding anything contained in this Agreement to the contrary, the parties acknowledge that either party may be required to disclose a Participant's nonpublic personal information pursuant to a properly issued judicial order or a request consistent with applicable law.
- s. Confidentiality. The parties acknowledge that the Bank is a private entity and that the means and methods by which the Bank operates and all commercial, financial and other information belonging to the Bank or relating to the Bank's affairs, are confidential, proprietary and trade secrets of the Bank, including without limitation all agreements, contracts, accounting and financial information, its financial and corporate records and files, and business practices, processes and methods, whether or not in tangible form or contained or stored in writing, electronically, or in some other format. The University shall keep the Bank's confidential, proprietary and trade secret information confidential, and shall only disclose such information to those

University trustees, officers, employees and agents who need access to such information in the performance of their official University duties, or pursuant to a properly issued judicial order or other request consistent with applicable law.

## **B. AUTOMATED TELLER MACHINES**

### **1. Deployment**

The Bank will deploy at least four ATMs on the CSU campus. The lease for the ATM spaces will be handled under a separate contract. During the term of this Agreement, the Bank will routinely monitor ATMs located on the CSU campus for volumes and usage. If necessary, the Bank will meet with the University to discuss whether the addition, relocation, or removal of ATMs located on the CSU campus is warranted.

### **2. ATM Networks**

The Bank currently participates in the following local, regional, national and worldwide ATM networks:

- a. First National Bank Circle One ATM network- 261 ATM locations.
- b. Pulse regional network – 250,000 ATM locations.
- c. Star national network –over 1 million locations (including merchant locations).
- d. VISA/Plus worldwide network- over 1 million ATM locations.

The Bank will promptly notify the Lory Student Center Administration office of changes in its participation in ATM networks.

## **C. MARKETING AND PROMOTION**

- 1. Marketing Plan.** During the term of this Agreement, the parties shall work cooperatively to establish marketing and promotional plans for each Contract Year. Such plans may incorporate inserts in CSU orientation mailings, co-branded direct mail, email, brochures, posters and more.

### **2. License.**

- a. License. In addition to the separate License Agreement as set forth in Section C.2.c. below, the University grants the bank a personal, non-divisible, non-exclusive, non-transferrable and revocable license to use the University Marks, subject to the University's approval, pursuant to this Agreement. In addition, the University grants the Bank the use of the tag lines "Official Bank of Colorado State University" and "Official Bank of CSU" subject to Section A.3.k above.
- b. Licensed Uses. In addition to the separate License Agreement as set forth in Section C.2.c. below, the Bank shall only use the University Marks for Marketing, production of Visa RamCards through September 21, 2016, display upon ATM screens, and placement upon blank checks issued to faculty, staff and Students who have opened a

checking account at the Branch Location (“Licensed Uses”). The Licensed Uses shall be prepared in such a way so as to preserve the integrity, character, and dignity of the University shall be of high quality in design, material and workmanship, shall be consistent with University Policies and are subject to the University’s approval. In no event shall any University Mark be affixed or linked to any Licensed Use that promotes the illegal or inappropriate use of alcohol, tobacco, marijuana, or controlled substances, is sexually oriented, or endorses a particular religious creed, sect or denomination. The Bank shall not transfer, sub-license, or assign any part of the Bank’s rights to use any University Marks to any successor, third-party or any other person or entity.

- c. Separate License Agreement. The University and the Bank are parties to that certain Colorado State University License Agreement dated effective July 1, 2016 (the “License Agreement”). Licensed uses of University Marks, including for Marketing or production of CSU Show Your Support Debit Cards and checks, shall be in accordance with the License Agreement.

### **3. University Approval of Marketing Materials and Activities**

The Bank shall develop and implement all Marketing and promotional activities subject to the University’s approval, which shall not be unreasonably delayed or withheld. Marketing shall (i) be consistent with University Policies; and (ii) prominently display one or more University Marks.

- a. Visa Compliance. The Bank shall ensure that all Marketing complies with Visa’s requirements and is pre-approved by Visa when necessary.
- b. University Activities. The University may reference the RamCard Plus or CSU Show Your Support Debit Card, and their connection with Visa, as follows:
  - i. Allowing the Bank to display and/or distribute Marketing materials developed by the Bank, including without limitation banners, brochures, posters, pre-orientation account packets, new employee packets, campus program sponsorships and advertisements, campus information tables, campus newspaper ads, table tents and flyers, flat panel displays;
  - ii. Sending letters, e-mails or other communications to the University’s faculty, staff and students generally describing the RamCard Plus or CSU Show Your Support Debit Card and/or enclosing, or directing recipients to Marketing materials developed by the Bank;
  - iii. Describing the RamCard Plus or CSU Show Your Support Debit Card at faculty, staff, student and parent orientations, and at the University’s identification card office;

- iv. Referencing the RamCard Plus or CSU Show Your Support Debit Card in University publications including without limitation newsletters and handbooks;
- v. Notifying faculty and staff of their ability to receive payroll and other University distributions through transfers to accounts linked to the RamCard Plus or CSU Show Your Support Debit Card, as applicable;
- vi. Joint press releases on the University's website and social media pages that are prepared by the Bank;
- vii. Allowing the Bank to place RamCard Plus or CSU Show Your Support Debit Card information, display images of the Visa RamCard Plus or CSU Show Your Support Debit Card, and maintain links to the Bank's website(s), on the Bank's social media sites, on the University's website.

#### **4. Cooperation**

The University and the Bank shall act diligently and use their best efforts to promptly perform their respective obligations under this Agreement, and shall reasonably cooperate with each other, execute and deliver such further documents and instruments, and do such further acts as are reasonably necessary to give effect to the intent of the University and the Bank as expressed in this Agreement.

### **D. COMPENSATION TO UNIVERSITY**

#### **1. Guaranteed Annual Payments**

Payments shall be made annually by the Bank on or before June 1 of each Contract Year in the amounts as set forth in the following chart:

2016-2017	2017-2018	2018-2019
\$130,006	\$133,900	\$137,925

#### **2. Capital Contributions**

The Bank will fund equipment and office modifications up to \$300,000 over the term of the Agreement.

#### **3. Marketing and Production Support**

In accordance with Article A, Section 2, Provisions of Services, subparagraph "f" the Bank will provide \$102,000 each year for marketing and card production.

Participation levels anticipated for the RamCard Plus, through September 21, 2016, and the CSU Show Your Support Program, beginning July 1, 2016, assume that the Bank and the University will work closely together to market the partnership and successfully

“drive” program participation within the University community. The Bank will use its reasonable best efforts to meet these marketing investments, and will report its actual expenditures (separate from the obligations described below in section D.4.) to the University annually. The parties will meet and confer during the first quarter of each Contract Year regarding marketing strategies and the Bank shall take into consideration the University’s marketing ideas and strategies when expending these funds.

Should there be a surplus of marketing dollars at the conclusion of a Contract Year the Bank will provide the University with that surplus no later than 45 days after the conclusion of the Contract Year.

#### **4. Scholarships and Sponsorships**

The Bank shall pay \$180,000.00 each Contract Year (“Sponsorship Funds”) for the purpose of funding internships, scholarships and sponsorships. It is anticipated that the Bank will continue its sponsorship agreement with Rams Sports Properties, LLC (“FNB-RSP Agreement”), throughout the term of this Agreement. The sponsorship level of the FNB-RSP Agreement is included in the \$180,000 amount set forth above. The Bank and the University will meet annually during the first quarter of each Contract Year, to determine the criteria, amount and distribution of the remaining dollars in excess of the FNB-RSP Agreement sponsorship that will be allocated to scholarships and other sponsorships. All payments of Sponsorship Funds, except those pursuant to the FNB-RSP Agreement, shall be received by and subsequently redistributed to campus entities through the Office of the Vice President for University Operations. On or before June 30 of each Contract Year, the Bank will distribute the balance of the Sponsorship Funds for that Contract Year to the Office of the Vice President for University Operations, together with an accounting of the distribution of the Sponsorship Funds during that Contract Year.

The Bank shall also offer CSU College of Business internship opportunities valued at \$20,160 per year, the value of which is not included in the \$180,000 amount set forth above. After discussions with the Bank, the University shall be responsible for identifying the criteria required for being awarded the internship opportunities.

#### **E. REPORTING REQUIREMENTS**

The Bank will provide CSU reports with information regarding Sections 26.c., d., f., h.i. and h.ii. of the Agreement in Microsoft Excel format, or in another comparable format that meets the needs of the University. By providing reports in Excel, custom reports and statistics can be easily generated and imported into standard Microsoft office documents. Reports shall be provided to the CSU RamCard Office with a copy to Contracting Services. The parties may, upon mutual agreement, modify reporting content and frequency as deemed prudent under the circumstances. In addition, not more than twice a year, CSU may request a report from the Bank describing the number of customers issued a CSU Show Your Support Debit Card monthly in the broad categories of CSU students, CSU employees, and non-CSU customers.



## **FOURTH AMENDMENT TO BANKING SERVICES AGREEMENT**

THIS FOURTH AMENDMENT TO BANKING SERVICES AGREEMENT ("Amendment") is made and entered into by and between The Board of Governors of the Colorado State University System, acting by and through Colorado State University, an institution of higher education of the State of Colorado ("CSU" or "University") and First National Bank, a division of First National Bank of Omaha, a national banking association chartered under the laws of the United States of America ("FNB").

### **RECITALS**

**WHEREAS**, CSU and FNB are parties to a Banking Services Agreement, effective as of October 12, 2007 (together with any addenda, amendments, attachments, exhibits and schedules collectively referred to herein as the "Agreement"); and

**WHEREAS**, CSU and FNB are conducting negotiations in good faith to complete a full renewal of the Agreement through June 30, 2024, and

**WHEREAS**, concurrently with such negotiations, CSU and FNB confirm by this Amendment the willingness to extend the term of the Agreement through June 30, 2020, if such negotiations are not completed by December 31, 2018; and

**WHEREAS**, CSU and FNB desire to phase out the TSYS relationship effective on its expiration date of 6/30/19 and to terminate the lease of Lory Student Center space; and

**WHEREAS**, CSU and FNB desire to amend the Agreement to incorporate the required changes.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration, the parties hereby agree as follows:

### **EFFECTIVE DATE AND ENFORCEABILITY**

This Amendment shall commence on the date it is signed by the Colorado State University Controller or the Controller's authorized delegate ("Effective Date"). This Amendment shall not be effective or enforceable until it is approved and signed by the Colorado State University Controller or designee. University shall not be liable to pay or reimburse Contractor for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof, prior to the date on which it is signed by or for the Controller.

### **CONSIDERATION**

Consideration for this Amendment consists of the obligations, promises, and agreements set forth herein.

## **EFFECT**

It is expressly agreed by the parties that this Amendment is supplemental to the Agreement, which is, by this reference, incorporated herein; and that all terms, conditions and provisions of the Agreement, except as specifically modified herein, shall remain in full force and effect.

## **MODIFICATIONS**

The Agreement is modified as follows:

1. The term of the *Banking Services Agreement*, as amended by *Amendment to Banking Services Agreement* dated January 6, 2012, *Second Amendment to Banking Services Agreement* dated October 17, 2013, and *Third Amendment to Banking Services Agreement* dated October 28, 2016, shall be extended through June 30, 2020.
2. Notwithstanding paragraph 1 above, the *Amendment to the Major Merchant Agreement* dated November 1, 2013 (Exhibit B to the *Second Amendment to Banking Services Agreement* dated October 17, 2013) authorizing TSYS Merchant Solutions, LLC to provide processing and other services regarding credit card sales transactions, shall not be extended and shall expire, as scheduled, on June 30, 2019.
3. Notwithstanding paragraph 1 above, the term of the *Lory Student Center Lease Agreement*, dated July 1, 2007, as amended, which has been coterminous with the term of the Banking Services Agreement, shall not be extended and shall expire, as scheduled, on June 30, 2019.
4. Notwithstanding paragraph 1 above, the exclusivity as to financial institutions for ATMs and the marketing of debit card and ID Card-related financial services or products on campus, shall be limited to the banking category as of June 30, 2019.

## **ORDER OF PRECEDENCE**

In the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Agreement, the provisions of this Amendment shall in all respects supersede, govern, and control.

## **AVAILABLE FUNDS**

Financial obligations of the University payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, or otherwise made available.


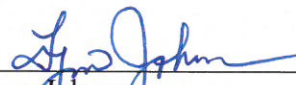
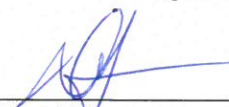
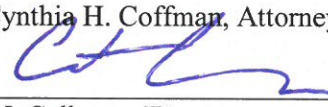
## **CONTINGENCY**

The purpose of this Amendment is to bind both parties to an additional year of all aspects of the Agreement (excepting modification of the exclusivity provisions herein, as well as the lease of Lory Student Center space and the TSYS relationship, each of which shall terminate on June 30, 2019) in the event that on or before December 31, 2018, the parties cannot come to a resolution on the terms under which the Agreement shall be extended for five additional years, as contemplated in the non-binding Letter of Intent issued on October 30, 2018. If on or before

December 31, 2018, the parties have agreed on terms for a five-year extension of the Agreement, this *Fourth Amendment to Banking Services Agreement* shall be null and void.

**IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT**

\*Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that Colorado State University is relying on their representations to that effect and accept personal responsibility for any and all damages the University may incur for any errors in such representation.

<p><b>BANK:</b> <b>FIRST NATIONAL BANK, a division of</b> <b>FIRST NATIONAL BANK OF OMAHA</b></p> <p></p> <p>By: _____ Mark P. Driscoll Market President</p> <p>Date: October 30, 2018</p>	<p><b>UNIVERSITY:</b> <b>STATE OF COLORADO</b> <b>John W. Hickenlooper, GOVERNOR</b> Board of Governors of the Colorado State University System, acting by and through Colorado State University Dr. Anthony A. Frank, President</p> <p>By:  _____ Lynn Johnson Vice President for University Operations</p> <p>Date: <u>11/2/18</u></p> <p><b>REQUIRED APPROVALS:</b></p> <p>By:  _____ David Ryan Executive Director, Business &amp; Financial Services University Controller</p> <p>Date: <u>11/9/18</u></p> <p><b>LEGAL REVIEW</b> Cynthia H. Coffman, Attorney General</p> <p>By:  _____ Grant N. Calhoun, JD Associate Legal Counsel Office of the General Counsel</p>
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**ALL EXPENDITURE CONTRACTS REQUIRE APPROVAL BY THE UNIVERSITY CONTROLLER**

C.R.S. § 24-30-202 and University policy require the University Controller to approve all expenditure contracts. This Amendment is not valid until signed and dated below by the University Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the University is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

**COLORADO STATE UNIVERSITY CONTROLLER**

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

Date: 11/9/18 \_\_\_\_\_

CSU will use its reasonable best efforts to provide the Bank with data requested by Visa throughout the contract term.