

## CAMPUS ATM/PIN-BASED DEBIT CARD AGREEMENT

**THIS AGREEMENT** (herein "Agreement") is made and entered into effective as of July 1, 2018 ("Effective Date") by and between the Board of Trustees for the University of Northern Colorado (herein "University") and Wells Fargo Bank, National Association (herein "Bank").

**WHEREAS**, University offers a multi-purpose identification card ("UNC Card") to all enrolled students in good standing and to all faculty and staff (collectively the "Eligible University Community Members") that is used to access a variety of University facilities and on-campus services; and

**WHEREAS**, University desires Bank to provide checking account, ATM, PIN-based debit, and deposit transfer services among other banking and financial services to Eligible University Community Members in association with and accessed through the UNC Card, all as more particularly described herein; and

**WHEREAS**, Bank seeks to establish new account relationships through its affiliation with University, including but not limited to checking accounts with linked UNC Cards (each such checking account referred to herein as "UNC Card Bank Account").

**NOW, THEREFORE**, for valuable consideration, the parties agree as follows:

**1. Term and Options to Extend.** The Term of this Agreement shall commence on July, 1, 2018 or as of the date indicated by the last to sign as of the time this Agreement is fully executed as shown on the signature page and shall terminate on June, 30, 2021 ("Termination Date"), unless otherwise terminated as provided in Section 25 (the "Term") or unless both parties elect to renew the Agreement for up to three (3) additional three-year periods. University agrees to give Bank notice by the first day of April 2021 that it desires to extend the Term and upon mutual agreement, the Term shall be extended for a three (3) year period. This extension procedure shall likewise be applicable with respect to the two additional three-year periods. Notwithstanding the foregoing, or anything to the contrary in Section 25, upon the final effectiveness of any termination of the Branch/ATM Agreement, Bank shall have the right to terminate this Agreement by providing written notice to University within 30 calendar days of such Branch/ATM Agreement termination.

**2. Grant to Use University Name and Marks.** University hereby grants 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 UNC 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. 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, University's prior explicit written consent. Bank shall deliver all UNC Card designs and all promotional and informational materials prepared by 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 Bank authority to use published UNC Card marketing materials as examples for prospective 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.

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

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 modification thereof, as authorized by University, infringe the rights of another party, University will, at its own expense, defend Bank's right to use of the University Marks as authorized under this Agreement. In the event any such claim is resolved adversely to University or Bank, or in the event University agrees to discontinue its use of the subject mark(s) in order to resolve any such claim, which it shall have the right to do in its sole discretion, then University agrees to: (i) immediately discontinue use of the marks and adopt use of alternative non-infringing marks, and (ii) reimburse Bank for any reasonable expenses Bank incurs in discontinuing use of the marks and adopting use of alternative non-infringing marks subject to the limitation of liability set forth in Section 19. Without waiving sovereign immunity, University will be responsible for the negligent acts or omissions of its employees, officers, and/or agents in the use or representation of the University

Marks under this Agreement. Subject to the foregoing, if requested by the University, Bank agrees to immediately discontinue the use of any University Marks where there has been a claim of infringement and the claim has been resolved adversely to University or Bank, or where University agrees to discontinue use of the marks in order to resolve the claim.

**3. Grant to Use Bank Name and Marks.** 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 UNC Cards linked to a UNC Card Bank Account and all promotional and informational materials prepared by University in connection with the UNC Card under this Agreement. University will make no other use of Bank Marks without Bank's prior written consent. University agrees that all products and/or services offered in connection with the UNC Card program shall be of a nature and quality commensurate with the nature and quality of the University's UNC Card program. University shall deliver all UNC Card designs and all promotional and informational materials prepared by University that contain any Bank Mark to Bank prior to publication for Bank's prior written consent.

University acknowledges and agrees that Bank is the owner of the Bank Marks, that the limited right hereunder to use the Bank Marks does not confer upon University any license or right of ownership of the Bank Marks and all use of the Bank Marks will inure to the benefit of Bank. Accordingly, University's limited right to use of the Bank Marks for any purpose is solely by reason of this Agreement, and 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 UNC Cards issued after the effective date of such expiration or termination.

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 Bank or University that the Bank Marks or any modifications thereof, as authorized by Bank, infringe the rights of another party, Bank will, at its own expense, defend University's right to use of the marks as authorized under this Agreement. In the event any such claim is resolved adversely to Bank or University, or in the event Bank agrees to discontinue its use of the marks in order to resolve any such claim, which it shall have the right to do in its sole discretion, then Bank agrees to indemnify University against any expenses University incurs in discontinuing use of the marks and adopting use of alternative noninfringing marks, subject to the limitation of liability set forth in Section 19. Bank further agrees to indemnify University against all liabilities University incurs to third parties (including, without limitation damage awards obtained by such third parties against University), together with University's reasonable costs of defending against such liabilities (including attorney fees), arising from University's use of the Bank Marks, when such usage is in accordance with the terms of this Agreement. Subject to the foregoing, if requested by Bank, University agrees to immediately discontinue the use of any Bank Marks

where there has been a claim of infringement and the claim has been resolved adversely to Bank or University, or where Bank agrees to discontinue use of the marks in order to resolve the claim.

Except as set forth in this section, any change by Bank in the specifications for any of Bank's Marks will apply only to UNC Cards issued or reissued after notice of the change is given to University. University shall be permitted to issue UNC Cards using stock which is already on order with the supplier as of the time Bank notifies University of desired changes without regard to the lapse of time between ordering and receipt of the card stock, provided that University determines that such use is needed to permit its UNC 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 University, Bank shall pay all of University's costs related to such changes. University shall have no obligation to reissue UNC Cards with new Bank Marks solely because 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.

**4. Royalties to University.** In consideration of the license and grant of rights from the University given to the Bank and more particularly described in the balance of this Agreement, Bank will make royalty payments to the University as follows:

**a. Initial Royalty Payment.**

Bank will pay \$100,000.00 within sixty (60) days of the commencement of this Agreement.

**b. Account Royalty Payment.**

Bank will pay University a fixed sum of \$63,300.00 each year for the first three years of the Term as the annual account royalty payment.

**c. Retention Bonus.**

If the parties elect to exercise their option to renew the Agreement for a three-year term, commencing on July 1, 2021 and terminating on June 30, 2024, following the expiration of the initial Term, Bank will pay University a one-time retention bonus in the amount of \$250,000.00. The one-time retention bonus shall be payable in the fourth year of the Term, August 2022.

**d. Account Royalty Payments Following Initial Term.**

For years five and six of the Term, and for each of the subsequent years following any extension of the Term pursuant to Section 1 of this Agreement, Bank will pay University an annual royalty payment in the amount of \$130,000.00, beginning in August 2023.

Payments described in this Section 4 shall be deemed paid upon receipt by the University at the address indicated herein for receipt of notices pursuant to Section 28.

**e. Royalty Payment Timeframes.**

**i. Initial Royalty Payment.**

The initial payment to University of \$100,000.00 will be made within sixty (60) days of the date the Agreement commences (i.e., payment will be made in September 2018).

**ii. Account Royalty Payment.**

The annual account royalty payments of \$63,300.00 for the first three years of the Term, and the applicable annual account royalty payment for each year of any subsequent extension, will be made to the University in August of each applicable year.

In the event University terminates the Agreement prior to the three-year Termination Date for any reason other than those set forth in Section 25, University shall repay to Bank a percentage of the Initial Royalty Payment. The percentage to be repaid by University shall be calculated as follows:

Agreement Terminated:	Percentage of Initial Royalty Payment to be Repaid
During the first year of the Term	100%
During the second year of the Term	80%
During the third year of the Term	70%

Accordingly,

- the initial royalty payment will be paid in September 2018;
- the account royalty payment of \$63,300.00 would be made by August 2019 for year 1 of the Term, August 2020 for year 2 of the Term, and August 2021 for year 3 of the Term; and
- the account royalty payment of \$250,000 will be paid in year 4 of the contract in August 2022, in the event the agreement is renewed for a new 3-year term
- the account royalty payment in the amount of \$130,000 will be made in August 2023 and in August of each subsequent year of the Term.

Sep-18	\$100,000	Signing bonus
Aug-19	\$63,300	Annual royalty
Aug-20	\$63,300	Annual royalty
Aug-21	\$63,300	Annual royalty
Aug-22	\$250,000	Annual royalty/Retention bonus
Aug-23	\$130,000	Annual royalty
Aug-24	\$130,000	Annual royalty

Aug-25	\$130,000	Annual royalty
Aug-26	\$130,000	Annual royalty
Aug-27	\$130,000	Annual royalty
Aug-28	\$130,000	Annual royalty
Aug-29	\$130,000	Annual royalty
Aug-30	\$130,000	Annual royalty

**5. UNC Card Payments.** Bank will pay up to \$1.00 of the actual cost of the plastic card stock, up to \$8,300.00 annually for each year of the Term, for the UNC Card issued to Eligible University Community Members during the Term of the Agreement.

Bank will not pay for replacement UNC Cards issued to Eligible University Community Members if they are lost or stolen or requested for other purposes. It is at the University's discretion whether to charge Eligible University Community Members for replacement UNC Cards.

**a. Payment Date**

Bank will pay University within sixty (60) days of receipt of a detailed invoice, indicating the number of cards issued by University. Such invoice will be provided annually in August.

**Other Operational Support**

Wells Fargo will provide added annual support to hire two UNC student interns to support the UNC Card Office carding efforts throughout the summer orientation sessions for incoming Fall Semester students, in the amount of **\$3,000 annually** for each year of the program for the duration of the Agreement.

This payment will be made to University in May of each year of the Term.

**6. UNC Card Bank Account.** During the Term, Bank will provide in accordance with this Section 6 a checking account linked to the UNC Card for UNC Card holders who have requested such an account and who meet Bank's usual checking account opening underwriting and other requirements, including without limitation a minimum opening deposit of \$25.00 by the UNC Card holder. Nothing herein prohibits Bank from closing any UNC Card Bank Account in accordance with standard deposit account procedures. A "linked" checking account is defined as a UNC Card Bank Account which has a UNC Card linked to it within the Bank's system, for the purpose of ATM and PIN-based debit purchase functionality.

- a. Some UNC Card holders may not be eligible for the UNC Card Bank Account due to prior negative banking history, or other account opening requirements as Bank may establish from time to time in accordance with applicable law or Bank policy.
- b. Only one checking account per UNC Card holder shall be considered to be a UNC Card Bank Account.
- c. Enrolled students may choose the *Wells Fargo Everyday Checking* account, or other product offered by Bank, to which a UNC Card may be linked. Faculty and staff may select any checking account or package for which they may be eligible to which a UNC Card may be linked.
- d. The UNC Card Bank Accounts will be subject to the same terms and conditions (including funds availability) as the terms and conditions generally applicable to accounts of Bank's other customers of the same class, as amended from time to time, except as otherwise expressly provided in this Section 6 of this Agreement.
- e. The UNC Card can be linked as an access device (e.g., for ATM transactions at ATMs that accept PLUS, Star, and Pulse transactions or PIN-based purchases at merchants where Interlink or Maestro cards are accepted) to a UNC Card Bank Account.
- f. During the Term, should University decide to process student financial aid refund payments by electronic means, Bank agrees to accept such electronic refund transactions through the ACH System and make these funds available to University students by direct deposit to student's UNC Card Bank Account or other depository account maintained by the Bank for the student, all without additional deposit-related processing charges or fees to the student.
- g. Should the University request, Bank shall provide at its own expense an informational web page, maintained by Bank on its website, with a customized URL residing on the University website, dedicated to the UNC Card and the UNC Card holders, using a design and functionality subject to the approval of the University, which approval shall not be unreasonably withheld or unduly delayed. Bank shall be excused from its failure to perform any obligation under this subsection and shall not be responsible for any delay in such performance, to the extent that such failure or delay is due to the failure of University to provide any required approval. The website shall provide information as mutually agreed by University and Bank, which may include the following features:
  - i Information about various account offerings for UNC Card holders,
  - ii Information regarding how to report lost/stolen cards including the 24/7 toll-free customer service phone number,

- iii Link to log-in for secure online banking session, and
  - iv Information about and links to other Bank related products and services.
- h. University acknowledges that Bank reviews and revises the terms, conditions, and pricing generally applicable to its deposit accounts from time to time, and agrees that nothing in this Agreement prohibits Bank from making the same changes to the UNC Card Bank Accounts that it makes generally to its non-UNC Card Bank Accounts.

**7. UNC Card Bank Account Opening.** The UNC Card Bank Accounts may be opened by Bank using Bank personnel anywhere permitted by applicable law and regulations; provided however, that University shall have the right to determine where, on the University's premises, such accounts may be opened. Bank will make its personnel available when agreed to by the parties, at dates, times and places to be agreed upon by the parties, for the purpose of accepting UNC Card Bank Account applications from UNC Card holders. Bank may accept deposits to UNC Card Bank Accounts anywhere and by any means permitted by law, including without limitation Bank's offices, mobile branches and messengers, and automated teller machines ("ATMs") or other electronic means of accepting deposits.

Bank shall be responsible for obtaining information from the UNC Card holder in connection with the UNC Card Bank Account opening. University will not have authority or responsibility to open any accounts or accept any deposits on behalf of Bank.

Bank has the right to refuse to open a UNC Card Bank Account. Bank personnel shall provide support for the implementation of the financial services associated with the UNC Card program, including the opening of checking accounts for Eligible University Community Members. Additional Bank personnel will be available and assigned as reasonably needed and as mutually agreed upon to support UNC Card Bank Account services during peak activity times, such as the initial re-carding process and first year student orientations.

**8. New UNC Card Design and Specifications.** The UNC Card that can be linked to a UNC Card Bank Account shall continue to conform to the following specifications. The front side of the UNC Card will include the University Mark and design mutually selected by the parties. The front side shall have these minimum requirements:

- i an electronically stored photo of the UNC Card holder,
- ii the UNC Card holder's relationship to University (faculty, staff, student),
- iii 15 digit ISO number printed on the card;
- iv the UNC Card holder's first and last name.

The reverse side of the new UNC Card shall have these minimum requirements:



- i One dedicated magnetic two-track strip encoded to conform with ISO 7812 and 7813 Standards, with the new 16-15-digit ISO number encoded in track two for banking use;
- ii Wells Fargo logo;
- iii the appropriate ATM network “bugs” as follows:  
Plus: 15mm wide X 8.25mm high
- iv Visa required language:  
“ATM and purchase capability requires a linked deposit account.” This copy must appear:
  - Near the Plus Mark
  - In at least 4-point Helvetica type font; and
- v instructions for reporting lost or stolen cards.

The UNC Card will include such design and functionality as is necessary to provide reasonably such University benefits as University may request, such as access pass to University facilities and University provided financial services.

University shall be responsible for any costs associated with the re-design of the UNC Card. While University shall cooperate with Bank to create a UNC Card design with the intention of maximizing market potential and having an otherwise attractive appearance, University shall retain the right to disapprove Bank’s design when it finds the design to adversely impact the professional image or reputation of University or to be otherwise disadvantageous to University. Notwithstanding anything in this Agreement to the contrary, any provision contained in this Agreement regarding the design and/or specifications of the UNC Card shall be subject to approval by Bank, any applicable card association rules and regulations (such as, without limitation, Visa, MasterCard and/or ATM networks) and subject to any other applicable law, rules or orders. No additional marks or logos shall be placed on the Card without prior Bank approval.

**9. Issuance of New Cards.** Eligible University Community Members will receive the University UNC Card with the capability to access Bank financial services.

Eligible University Community Members who receive the UNC Card can open a Bank checking account through a Bank representative on campus during the enrollment period or visit the local Bank store. The Eligible University Community Member will need to present the UNC Card at account opening so that it can be linked in Bank’s system to be eligible for ATM/PIN-based debit functionality.

For UNC Card holders who already have a Bank checking account available for linking to their UNC Card, once the UNC Card is encoded with the appropriate 16-digit card number and upon UNC Card holder’s request, Bank will enter the number into Bank’s system and link such number to corresponding checking account.

University will have the right to issue replacement UNC Cards in accordance with the terms of this Agreement to UNC Card holders, whether or not they have a UNC Card Bank Account, provided University informs the UNC Card holder to report the UNC Card as lost or stolen to Bank.

**10. Changes to the UNC Card.** University reserves the right to make alterations within a mutually agreed upon time to the UNC Card program which may require re-issuance of cards, in which case University would be responsible for out-of-pocket and other expenses directly associated with the re-issuance, provided that Bank will dedicate the number of staff necessary to implement and maintain Bank's financial services throughout any re-issuance effort. University agrees that said changes will not diminish the financial services provided by Bank through the UNC Card program and will notify Bank of proposed alterations within a reasonable time prior to making the alterations.

**11. Matters Relating to Lost or Stolen Cards; Fraudulent Use.** Should a UNC Card be lost or stolen, the Bank shall provide for a system to immediately disable, upon notification of the loss or theft, the UNC Card's capability for processing transactions through the UNC Card Bank Account. Bank shall provide UNC Card holders, without cost to the University, a toll-free phone number for the purposes of notifying the Bank of lost and stolen UNC Cards. Such system of notification and account disablement shall be available twenty-four hours a day, seven days a week. Bank shall also respond to lost/stolen card reports made in-person to Bank representatives during regular Bank business hours.

Bank shall assume financial liability for transactions conducted with lost or stolen linked UNC Cards in the same manner, pursuant to the same policies and to the same extent as such liability is assumed for Bank's general population of checking account customers located in the state of Colorado.

**12. Persons No Longer Eligible University Community Members.** Should an individual due to an interruption in an educational program, a separation from employment, or for any other reason cease to qualify for University provided identification benefits of the UNC Card, University shall in accordance with such policies and procedures as it may establish, terminate the functionality of the UNC Card and its University identification benefits. However, University shall not be required to collect the UNC Card; nor shall the UNC Card holder be required to forfeit the UNC Card. Bank may or may not discontinue the services of the UNC Card Bank Account of any individual no longer qualifying as an Eligible University Community Member.

**13. Disposition of Cards Upon Termination.** Upon the termination or expiration of this Agreement for any reason, outstanding UNC Cards actively serving as University's multi-function identification card and displaying the Bank Marks may or may not be replaced by University, at the University's sole discretion. Such outstanding UNC Cards may continue to

serve as a University identification card with such University benefits as University may choose, for so long as University desires. Further, upon termination or expiration of this Agreement, Bank shall within a reasonable time thereafter cease identifying the accounts generated under this Agreement as UNC Card Bank Accounts and shall use reasonable efforts to transfer access to the accounts from the UNC Cards to alternative access devices at the termination or expiration of this Agreement. The parties shall cooperate with each other in the transition of operations to any successor to the UNC Card program described in this Agreement, including but not limited providing such information in such format as is reasonably requested and needed by the parties to accomplish the transition.

**14. ISO Number Ownership.** At all times, University shall be deemed to own the ISO numbers associated with the UNC Cards issued pursuant to this Agreement.

**15. Vendor Support.** Bank plans to continue its membership in various ATM network associations, POS network associations, and card associations, or any such successor organizations. University has no responsibility for, and no relationship with, third party vendors accepting the UNC Card for ATM, PIN-based debit UNC Card transactions as a result of this Agreement.

**16. Compliance with Applicable Law and Regulations.** The parties hereto agree to comply with all federal, state and local law to the extent that it is applicable to the performance of this Agreement including all laws and regulations related to the providers of the financial services offered by the Bank and all laws and regulations related to the protection and security of any personal information gathered by the Bank, such as the Gramm Leach Bliley Act. For purposes of this Agreement, University will be considered the "issuer" of the UNC Card used as the University ID card, except to the extent the UNC Card is used to perform electronic funds transfers to or from any UNC Card Bank Account, in which case Bank will be considered the "issuer." Bank will not be responsible to University or any UNC Card holder for any liability arising from University's "issuer" responsibilities. Bank will be considered the "issuer" of the UNC Card as it pertains to electronic funds transfers to or from any UNC Card Bank Account and to the performance of any other financial transactions involving a UNC Card Bank Account. Bank will be responsible to the UNC Card holder for any unauthorized or erroneous transaction involving the UNC Card Bank Account to the extent provided for under federal Regulation E (12 C.F.R. 1005.1, et seq.), to the extent applicable. University will not be responsible to Bank or to any UNC Card holder for any liability arising from Bank's issuer responsibilities or for losses to any UNC Card Bank Account; provided however, that nothing herein will exonerate University from any unauthorized or erroneous transactions or losses involving a UNC Card Bank Account caused by University. In connection with the direct deposit of guaranteed student loan disbursements and other student financial aid or other University disbursements into the UNC Card Bank Accounts, if any, University will comply with all applicable laws and regulations.

**17. Marketing.** Bank and University shall fully cooperate and shall work in conjunction to promote the UNC Card program through various marketing efforts. Both Bank and University shall approve the content, timing, and use of all promotional initiatives and marketing/advertising materials related to the services contemplated under this Agreement. In cooperation with Bank, University will promote services provided under this Agreement to Eligible University Community Members through various communication channels available to University. University will provide Bank with the opportunity to provide information about the Bank financial services associated with the UNC Card program to University Cardholders and new incoming University students through various methods, which may include without limitation emails, acceptance and orientation packets, letters, flyers and inserts. University and Bank will mutually agree upon direct mail and email communication strategies, and University will send these communications on Bank's behalf. University agrees that such marketing materials will include both the Bank Marks and University Marks. University will provide Bank with the opportunity to include inserts funded by Bank in University mailings to University Cardholders and new incoming University students. All mailings shall be mutually agreed on and where appropriate approved by the applicable University department and Bank. In addition, University will communicate during orientation the University UNC Card program and associated Bank financial services to all parents/guardians and students. The University UNC Card program and associated Bank financial services will be communicated as the students are issued their identification card. As mutually agreed, Bank will actively participate in student orientations at no additional cost to Bank, including but not limited to the presence of Bank representatives at and presentations during the orientations. University agrees to cooperate with Bank exclusively in the expansion of financial services available to current and future UNC Card holders, including but not limited to the above marketing efforts and "tabling" on campus.

**Marketing Budget.** Bank will provide the marketing services function for marketing and promotion of the UNC Card program. Bank estimates that its annual marketing budget for the promotion of the UNC Card will be approximately \$10,000.00 the first year to launch the program and approximately \$10,000.00 annually thereafter during the Term of this Agreement. This budget includes funding for initial and annual marketing materials, including customized materials that will highlight the banking features of the new UNC Card and the benefits of linking it to a UNC Card Bank Account.

**18. Insurance.** Bank represents and warrants that at all times during the Term, Bank shall maintain commercial general liability insurance, including coverage for bodily and personal injury, property damage, and products liability, in accordance with Bank operating guidelines. Bank shall also obtain and keep in force workers' compensation insurance to the extent required by law and furnish proof of such to University upon request. Bank represents that the financial strength, integrity and contractual obligations of Bank provide protection for its customers with respect to risk associated with the products and services to be provided by Bank. Bank further represents that it maintains a Professional Liability policy (also known as an Errors and Omissions policy), a Financial Institutions Bond (also known as a Fidelity Bond), and other

policies with coverages and provisions considered within industry standards for similarly situated financial services companies. Bank has the right at any given time to self-insure any of the insurance coverage as long as it is a normal accepted practice for a financial services company of its financial strength.

University represents and warrants that at all times during the Term, University shall maintain comprehensive general liability insurance, including coverage for bodily and personal injury, property damage, and products liability, in accordance with its operating guidelines. .

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

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 University for any error, act, or omission with respect to ATMs or POS terminals not owned and operated by Bank.

Bank does not undertake to ensure that UNC Card holders will at all times be able to successfully accomplish transactions with Bank by any electronic means, including but not limited to ATMs, POS terminals, the Internet, or other existing or future technology associated with UNC Cards, UNC 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 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. 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.

**20. Representations and Warranties; Board Approval.** Each party hereby represents and warrants to the other that the party has full right, power and authority to fully perform its obligations under this Agreement, and that it has full right, power and authority to execute and deliver this Agreement, and that the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by all necessary corporate action required to be taken on the part of the party

including, when necessary, approval thereof by the party's Board of Directors or Board of Regents, as applicable. Each party hereby further represents and warrants to the other that this Agreement constitutes a valid and binding obligation of the party enforceable in accordance with its terms except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting the enforcement of creditors' rights and except as courts of equity may limit certain remedies such as specific performance. Each party further represents and warrants to the other that the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not conflict with, or result in the violation of, any laws or regulations applicable to the party, or of the charter, articles of association or bylaws of a party, or any agreement or other instrument to which the party is subject or by which the party or any of its properties or assets are bound.

**21. Examinations and Audit.** Except to the extent applicable law prohibits such, all records maintained by University pertaining to Bank and its UNC Card Bank Account customers and relevant to the performance of this Agreement will be available for examination and audit by Bank and/or its regulators. In addition, University will provide Bank or its duly authorized representatives with reasonable access to University's records for the purpose of enabling Bank to confirm University's compliance with the terms of this Agreement. All such records may be audited by Bank or its designated representative(s) at any time during University's regular working hours upon reasonable notice. Except to the extent applicable law prohibits such, Bank will provide University or its duly authorized representatives with reasonable access to Bank's records for the purpose of enabling University to confirm Bank's compliance with the terms of this Agreement. All such records may be audited by the University or its designated representative(s) at any time during Bank's regular working hours upon reasonable notice. Each party may require persons obtaining access to its records under this Section 21, as a condition to obtaining access, to execute written confidentiality agreements setting forth the matters as addressed in Section 23.

**22. Exclusivity.** During the term of this Agreement, University will not cause or authorize any University identification card to be used as a device to perform electronic funds transfers to or from an account with a financial institution (including, without limitation, banks, savings banks, savings associations, and credit unions) or as a device for accessing a person's account with a financial institution other than Bank, except as otherwise agreed in writing by Bank. Nothing herein shall prevent UNC Card holders from using UNC Cards as stored value cards, declining balance cards or smart cards. In addition, during the Term of this Agreement, University will give Bank exclusive access to market financial services to Eligible University Community Members including the marketing efforts indicated in Section 17.

**23. Confidentiality.** University may be provided certain information concerning Bank and/or its affiliates or customers, or other information 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, Bank may be provided certain information that 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 UNC Card Bank Account application data and UNC 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, public records laws, 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 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, 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.
- g. Bank understands that UNC is a Colorado state entity, and as such is subject to the Colorado Open Records Act (C.R.S. §24-72-200.1, *et seq.*). Thus, UNC may receive a request for inspection under the Colorado Open Records Act that would require disclosure of information for which Bank has requested confidentiality or nondisclosure under the provisions of this Agreement. University agrees to confer with Bank prior to releasing any such requested information to determine if the requested information constitutes “public information,” as defined in the Colorado Open Records Act, and if any exceptions or exemptions apply.

In addition, Bank’s customer lists, including names of Eligible University Community Members who are UNC Card holders and who have UNC Card Bank Accounts, are Bank’s Confidential Information, for which 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 UNC Card holders who have obtained UNC Card Bank Accounts from Bank if such use was for a purpose prohibited by this Section 23; 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, public records laws, 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, 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.

**24. Equipment.** University is responsible for providing at its cost any equipment and systems programming necessary to implement the new UNC Card program. Bank is responsible for providing any additional needed data lines and installation at its cost.



## 25. Termination.

- a. This Agreement may be terminated by either party (the "Non-Defaulting Party") upon notice to the other party (the "Defaulting Party") upon the Defaulting Party's material breach of any provision of this Agreement and failure to cure the breach within 60 days after written notice describing the breach and the action necessary to cure the breach is given by the Non-Defaulting Party to the Defaulting Party. In the event the Defaulting Party is in good faith unable to cure such material breach within 60 days, it shall commence the cure in a commercially reasonable manner and notify the Non-Defaulting Party of the anticipated cure date which in no event shall be later than 120 days from the material breach.
- b. This Agreement may be terminated by either party without notice to the other party in the event a petition in bankruptcy (or similar law providing for the adjustment of debts, debt reorganization or liquidation of the party) is filed by the other party, a petition in bankruptcy (or similar law providing for the adjustment of debts, debt reorganization or liquidation of the party) is filed against the other party and is not dismissed within sixty (60) days, or a conservator or receiver is appointed for the other party or for all or a substantial portion of its assets.
- c. This Agreement may be terminated by either party at any time if: (i) the operation of the UNC Card program has or threatens to have a material adverse financial impact on Bank or University due to a change in applicable law, regulation, rule or policy applicable to Bank or University or the use of one or more of the UNC Cards in a fraudulent manner or in a way which does not permit Bank or University to recover funds from the user(s) of the UNC Card(s); or (ii) Bank is notified by a regulatory agency, or otherwise becomes aware, that any aspect of the UNC Card program does not comply with any applicable law, regulation, rule or policy applicable to Bank or University.
- d. This Agreement may be terminated by University upon sixty (60) days' prior written notice to Bank in the event: (i) University receives excessive complaints from students regarding their UNC Card Bank Accounts and Bank and University are not able to reach an agreement as to how to resolve such complaints; or (ii) University determines, based on its reasonable due diligence, that the fees imposed by Bank on UNC Card Bank Accounts are, considered as a whole, clearly not consistent with or are above prevailing market rates for similarly-situated financial accounts, and such determination by University is supported by data based on the relevant market, which shall be provided to Bank for review prior to termination.

In the event University terminates the Agreement prior to the Termination Date for any reason other than those stated in subsections a, b, c, or d, or if Bank terminates pursuant to subsection a,

b or c, of this Section 25, University shall repay to Bank a percentage of the Initial Royalty Payment described in Section 4.e. of this Agreement.

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

**27. Subcontractors.** Each party is responsible for the actions of its respective subcontractors used to perform pursuant to this Agreement. The party seeking to engage a third party to perform any material obligation under this Agreement must obtain the advance written consent of the other party. The party intending to use a subcontractor as described herein shall include in the agreement with such subcontractor an acknowledgment that such subcontractor is subject to the applicable terms and conditions of this Agreement. No contractual relationship shall exist between any Bank subcontractor and University unless such is evidenced in a separate contract independent of this Agreement. Notwithstanding the foregoing, University acknowledges that certain UNC Card products and services to be provided by Bank may be supplied by or through Bank's parent corporation, entities directly or indirectly owned or controlled by Bank or its subsidiaries, entities affiliated with Bank or owned or controlled by entities affiliated with Bank, or vendors who provide certain card services and in such cases, no written consent or separate written contract shall be required for arrangements made with such entities.

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

If to Bank:

Christopher Heman  
Region Bank President  
Wells Fargo Bank  
1242 Pearl St 2<sup>nd</sup> Floor  
Boulder, CO 80302

If to University:

Cindy Vetter  
Director, Student Business Services  
University of Northern Colorado  
501 20<sup>th</sup> Street  
Campus Box 2

With copy to:

Cristal Swain  
Asst. Legal Counsel & CPO  
University of Northern Colorado  
501 20<sup>th</sup> Street  
Campus Box 61

**29. Amendments and Waiver.** This Agreement may be amended only in writing signed by both parties. In the event of a default by either party under this Agreement, any delay, waiver or omission by the other party in exercising its rights under this Agreement or applicable law will not result in a waiver of the party's rights with respect to the same or any subsequent breach by the breaching party.

**30. Governing Law.** The laws of the State of Colorado shall govern this Agreement. Nothing in this section shall be deemed to apply to any aspect of the agreement that is in place between Bank and an Eligible University Community Member regarding a UNC Card Bank Account.

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

**32. Relationship of Parties.** No agency, partnership or joint venture is created by this Agreement. The parties disclaim any intent to form such relationships.

**33. Entire Agreement.** Except as expressly provided herein, this Agreement constitutes the entire agreement with respect to the transactions contemplated herein and supersedes and is in full substitution for any and all prior agreements and understandings between the parties hereto relating to such transactions. Each party disclaims reliance on any prior oral or written representations or undertakings by the other party in entering into this Agreement unless such representations or undertakings are expressly set forth in this Agreement. Wherever the parties agree to discuss a matter, there will be no implied agreement to agree, nor will any other standard be applied in determining a party's performance that is not expressly set forth in the Agreement. However, University and Bank agree that the provisions of account agreements will govern the products and services to be provided by Bank pursuant to this Agreement.

**34. Information System General Security.**

- a. University and its employees shall comply with all Bank security policies, procedures, and standards, as it may promulgate from time to time, including, without limitation, those governing access to data, computer systems, and facilities and governing the removal of property from Bank's premises.
- b. With regard to any computer system owned, controlled, or used by University or any agent

or subcontractor of University, which computer system is now or hereafter physically or logically connected to or able to access any computer system owned, controlled, or used by Bank or which is used to store any Bank's software or data, University shall comply with all Bank's security policies, procedures, and standards governing or related to the connection or access to Bank's computer systems as it may promulgate from time to time so long as University receives notice of such policies, procedures, and standards, and any relevant changes.

- c. In addition, University agrees: (i) not to alter any hardware or software security residing on any Bank's computer system and/or network; and (ii) not to allow unauthorized traffic to pass into Bank's networks. In addition to any other rights Bank may have under this Agreement, Bank may terminate an unauthorized access.

**35. Taxpayer Identification Number.** University shall provide Bank with a duly dated and executed certification of taxpayer identification number in the form attached as Exhibit C.

**36. License to Establish Link to Bank Web Site.** University may choose to use the Bank "red box" logo on the University Internet web site as a link to Bank's Internet web site at [wellsfargo.com](http://wellsfargo.com) and has requested Bank's consent.

Bank hereby grants to University a worldwide, non-exclusive right and license to establish a normal (href) text based link on [www.unco.edu](http://www.unco.edu) to the [www.wellsfargo.com](http://www.wellsfargo.com) home page for the purpose described in the immediately preceding paragraph; provided, however, that University shall not "frame" the Bank web pages inside the University web site. Bank also hereby grants to University a non-exclusive right and license to use the WELLS FARGO "red box" logo ("the Logo") on the University Internet web site located at [www.unco.edu](http://www.unco.edu) for the exclusive purpose of linking from [www.unco.edu](http://www.unco.edu) to [www.wellsfargo.com](http://www.wellsfargo.com). University agrees that nothing herein shall give to it any right, title or interest in the Logo (except the right to use the Logo in accordance with the terms of this Agreement), that the Logo is the sole property of Bank and that any and all uses by University of the Logo shall inure to the benefit of Bank.

University acknowledges that Bank may terminate the above right to link and the right to use the Logo if the content or structure of the University web pages and/or web site changes unless within ten (10) calendar days after receiving written notice of termination from Bank, University removes the materials to which Bank objects or revises the University web pages and/or site to return to the original format or a format that is acceptable to Bank. If the above right to link and use the Logo is terminated, University agrees to remove the link from the University web page to the Bank web page and cease all use of the Logo within ten (10) calendar days of receiving notice.

University agrees that it will not use any Logo design except the camera-ready or downloadable Logo design provided to University by Bank. University agrees that all products and/or services offered by University on its web site in the future shall be of a nature and quality commensurate

with the nature and quality of its current products and/or services. Bank may monitor the University use of the Logo on the University web site. University agrees that any University web page featuring banking information must be accompanied by required banking disclosures, including, but not limited to "Wells Fargo Bank, N.A., Member FDIC." University shall deliver all web pages that reference Bank and/or contain the Logo to Bank prior to publication for Bank's consent.

This license to use Logo shall be royalty-free. This license to use Logo and any and all rights granted hereunder are personal in nature to University, are non-transferable by University, do not convey any sublicensing rights to University, and shall not inure to the benefit of any successor in interest of University. This license to use Logo shall be binding upon and inure to the benefit of Bank's successors and assigns. All rights not specifically granted or licensed to University are reserved to Bank.

**37. Student Loan Representation and Warranty.** University and Bank represent and warrant to one another that the pricing and other terms and conditions for the services provided under the Agreement are unrelated to whether the University refers student loans to Bank and to the amount of any such referrals. The parties further represent and warrant that royalty or other payments made by Bank to the University in accordance with the terms described herein are wholly unrelated to student loan activities, volumes, referrals or amount of referrals.

**38. Title IV Representation and Warranty.** University and Bank represent and warrant that UNC Card Bank Accounts are not being opened by University on behalf of any Eligible University Community Members, University is not establishing a process Eligible University Community Members follow to open UNC Card Bank Accounts, and University is not in any way assisting Eligible University Community Members in opening UNC Card Bank Accounts. Further, the UNC Card program is not being established for the purpose of University's disbursement of Title IV funds and UNC Card Cards are not issued by Bank for the specific purpose of receiving Title IV funds.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates designated below.

Wells Fargo Bank, National Association

Signature: \_\_\_\_\_

Name:

Title:

Date:

University of Northern Colorado

Signature:  \_\_\_\_\_

Name: Michelle F. Quinn

Title: Senior Vice President

Date: 11/8/18

**EXHIBIT A**  
**UNIVERSITY MARKS**

**EXHIBIT B**  
**BANK MARKS**



(Black box with white letters)



(Red box with gold letters)



(Red box with shading)



(White box with black letters)



**EXHIBIT C**

**UNIVERSITY TAXPAYER IDENTIFICATION NUMBER**

