

## ATM AGREEMENT

This ATM Agreement (this "Agreement") is entered into by and between **U.S. Bank National Association**, a national banking association ("Bank"), and University of San Diego, a California non-profit corporation ("University").

WHEREAS, University and Bank desire that Bank will install and operate automated teller machine(s) ("ATMs") at University's premises, as provided below; and

WHEREAS, together with this Agreement, the parties are entering or will enter into a License Agreement and an ID Card and Banking Services Agreement, the terms of which are fully incorporated by reference into this Agreement. In the event of a conflict between this Agreement and either of those two agreements, the terms of this Agreement will govern for the purpose of the interpretation of this Agreement.

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

1. Premises. Subject to the provisions of this Agreement, Bank will install and operate a(n) ATM(s) at the location(s) of University listed below. The locations set forth below are referred to individually and collectively as the "Premises" herein.

Location Name	Address	City	State	Zip
University of San Diego – Branch				
University of San Diego – East Location				
University of San Diego – West Location				

2. Term.
  - A. The term of this Agreement shall commence on the date that it is signed by the second of the two parties. Unless sooner terminated as provided in this Agreement, this Agreement shall remain in effect for an initial term of **five (5) years** (the "Initial Term"). The Agreement shall thereafter automatically renew for additional consecutive one (1) year renewal terms unless either party gives the other party written notice of termination at least sixty (60) days prior to the end of the then current term (individually a "Renewal Term" and collectively, the "Renewal Terms"). The Initial Term and any Renewal Terms may hereinafter be referred to as the "Term".
  - B. If the total number of completed transactions, including, but not limited to cash withdrawals, funds transfers, and balance inquiries, but specifically not including any declined transactions (collectively, the "Transactions") at the Premises during a calendar month (the "Monthly Transaction Volume") for any ATM is less than One Thousand (1,000) for three (3) consecutive months at any time during the term

hereof, Bank may, at its option, terminate this Agreement and remove such ATM upon thirty (30) days' prior written notice to University. Notwithstanding anything to the contrary, this Agreement shall only terminate with respect to the removed ATM(s) and shall continue in full force and effect with respect to any other ATM(s) operated by Bank at the Premises.

3. Consideration. The total consideration for this Agreement is the mutual covenants of the parties contained herein.

4. Bank's Rights and Obligations.

A. Bank may impose a fee to the cardholder by Bank for a cash withdrawal or cash advance initiated at the ATM (a "Surcharge") with respect to some or all Transactions at the ATMs. All decisions with respect to the imposition of Surcharges, including without limitation the amount thereof and the types of cards and Transactions affected, shall be made by Bank in its sole discretion.

B. If the applicable laws, regulations, or other conditions prohibit or limit the Bank's right to Surcharge or collect fees from network users, Bank may, upon ninety (90) days' advance written notice to University, terminate this Agreement.

C. In addition to its other rights and obligations under this Agreement, Bank shall, at its sole expense:

1. Use the Premises for the purposes of installing, maintaining, and operating the ATM.
2. Maintain the ATM in good working order.
3. Provide the data line and modem for the ATM and pay all related on-going communication costs. Bank will be responsible for all network and communication access fees and charges.
4. Pay applicable personal property taxes levied on the ATM.
5. Comply with applicable laws pertaining to the ATM.

5. University's Rights and Obligations. In addition to its other rights and obligations under this Agreement, University shall, at its expense:

- A. Provide adequate space on the Premises for the ATM, in locations acceptable to Bank.
- B. Modify the Premises as necessary to permit installation of the ATM.
- C. Pay the installation and operation costs for a dedicated electrical power line and telephone conduit to be used by each ATM.
- D. Pay all real property taxes levied or assessed against the Premises.
- E. Maintain the area immediately around each ATM in a safe, clean, neat, and orderly condition, and maintain access to each ATM for customers and for Bank's authorized employees, agents, and contractors.
- F. Promptly notify Bank of any defects, vandalism, or malfunctions affecting the ATMs or any related equipment or ATM signage.
- G. Comply with applicable laws pertaining to the Premises.

6. Relocation of ATMs. Should either party, after an ATM has been installed, desire that it be relocated to a new location within the Premises, such party may send the other party a written notice proposing the new location at least thirty (30) days prior to the proposed relocation. If the parties agree in writing to the relocation, all expenses relating to such relocation shall be the responsibility of the party requesting the relocation. Only Bank's authorized employees, agents, or contractors may disconnect or move an ATM.
7. Exclusivity; Right of First Refusal. Bank shall be the exclusive provider of on-campus ATMs on the Premises, subject to the exception noted in Section 7 of the ID Card and Banking Services Agreement between the parties. University shall not establish or allow any third party to establish an ATM on the Premises. University acknowledges that Mission Federal Credit Union currently has an ATM at the Hahn University Center and that the governing agreement for that ATM will terminate in August 2008. University represents and warrants that Mission Federal Credit Union will be required to remove the ATM upon expiration of the agreement in August 2008 and that Mission Federal Credit Union will have no further right to have an ATM on campus, except the ATM adjoined to its branch location as described in Section 7 of the ID Card and Banking Services Agreement.
8. Confidentiality. For purposes of this Agreement, "Confidential Information" means any agreement, letter of intent, business terms or other similar or related business information, which pertains to University's fees, costs or pricing for any or all automated teller machines ("ATMs"). University hereby agrees that unless Bank consents in writing, it will not release Confidential Information to any third party and will not use the Confidential Information for any purpose other than the purposes contemplated by this Agreement.
9. ATM Access and Security. University acknowledges that the ATMs and the currency contained in the ATMs are the property of Bank, and University has no right, title or interest whatsoever in any ATM or its currency. Further, University acknowledges that Bank has a strong proprietary interest in the safety and security of the ATMs and currency. University agrees to allow Bank access to the ATMs and currency immediately upon Bank's request. Bank may take all reasonable steps to secure the ATMs or currency, including but not limited to removal of the ATMs or currency without penalty, if University voluntarily or involuntarily becomes subject to or is expected to become subject to a bankruptcy court, receiver, or some other form of financial overseer, or if Bank reasonably believes that a serious risk to the safety or security of the ATMs or currency is imminent. University acknowledges that any interference, interruption or prevention of Bank's access to the ATMs and currency or Bank's other rights under this section will result in irreparable harm to Bank, and agrees that Bank shall be entitled to immediate injunctive relief in order to enforce its rights under this section. At all times, the ATMs shall remain personal property of Bank regardless of the manner in which they may be affixed to the Premises. The terms of this section shall survive any termination this Agreement.
10. Signage. Bank, at its expense, may post signage at the ATMs. All decisions with respect to ATM signage mandated by law, regulation, and applicable network or credit card associations shall be made at the sole discretion of Bank. The parties shall make all other decisions with respect to

signage, including any exterior building signage, mutually. University, at its expense and subject to Bank's prior written approval, may display additional ATM signage.

11. Indemnification and Insurance.

A. Each party shall indemnify, defend, and hold harmless the other party and its employees, officers, directors, corporate parents and affiliates, against any and all direct claims, liabilities, losses, damages, costs, or expenses (including, without limitation, fees and expenses of attorneys and court costs) of any third persons or entities arising due to the gross negligence or willful misconduct of the indemnifying party in performance of this Agreement, or the indemnifying party's willful and material breach of this Agreement. This obligation shall include, without limitation, any and all claims for contractual, tortious, or statutory damages of any nature whatsoever and any and all injunctive or other equitable relief, as well as reasonable attorneys' fees and court costs.

B. Each party shall, at its expense, procure and keep in force at all times while this Agreement is in effect, a policy or policies of comprehensive general liability insurance including products and contractual liability insurance, in an amount not less than one million dollars (\$1,000,000) combined single limit with an insurance company qualified to do business in the state(s) in which the ATMs are located. Bank shall be entitled to self-insure, in whole or in part, the insurance obligations imposed by this Agreement.

C. Any damage or repair to any ATM and related equipment of Bank will be the responsibility of Bank unless caused by the negligence or willful misconduct of University, its officers, employees or agents, in which case the cost of such damage or repair shall be University's responsibility.

12. Eminent Domain. If any individual Premise is taken by eminent domain, this Agreement, at Bank's option, shall terminate with respect to the ATM(s) at such location as of the date of the taking and payments due hereunder shall be paid up to the date of taking. All damages, awards, and payments for the taking will belong to University, except that Bank shall be entitled to any amounts specifically awarded for the ATM, its currency, or the removal or relocation of such ATM.

13. Default. An "Event of Default" occurs if either party fails to make a payment due under this Agreement to the other party within ten (10) days after written notice of such failure to pay, or if either party fails to perform any other material obligation under this Agreement within thirty (30) days after written notice of such failure to perform. Upon an Event of Default, the non-defaulting party shall have all rights and remedies available at law, including the right to specific performance. Further, upon an Event of Default by University, Bank shall be entitled to terminate this Agreement and remove the ATM upon thirty (30) days prior written notice to University.

14. Early Termination. In the event of a termination of the Agreement by University that occurs during the first five (5) years of the initial term of the Agreement, University shall pay Bank the lesser of (i) the percentage set forth below of the costs incurred by Bank for the installation of the ATM at the Premises, or (ii) the maximum payment set forth below, in accordance with the following schedule:

<u>License Year</u>	<u>Percentage</u>	<u>Maximum Payment</u>
1	100.00%	\$5,000.00
2	80.00%	\$4,000.00
3	60.00%	\$3,000.00
4	40.00%	\$2,000.00
5	20.00%	\$1,000.00

15. Notice. Whenever in this Agreement provision is made for notice of any kind, it shall be sent by prepaid certified or registered mail, return receipt requested, addressed as indicated below or to such other address of which a party has given notice to the other party:

	<u>To Bank</u>	<u>To University</u>
Original:	ATM Administration 555 SW Oak Street, Suite 520 PD OR P5 Portland, OR 97204	Vice President for Finance and Administration University of San Diego 5998 Alcalá Park San Diego, CA 92110
Copy To:	U.S. Bank Corporate Counsel 800 Nicollet Mall, 21 <sup>st</sup> Floor BC-MN-H21N Minneapolis, MN 55402	General Counsel University of San Diego 5998 Alcalá Park San Diego, CA 92110

16. Not a Partnership. This Agreement is not intended to create, nor shall it in any way be interpreted to create a joint venture, a partnership, or any other similar relationship between the parties. Neither party shall have the right to obligate or bind the other in any manner whatsoever with respect to any third party, and nothing herein contained shall give or is intended to give any right to a third party. In no event will either party be liable for the debts or obligations of the other party, except as specifically provided herein. In no event shall Bank's employees or agents be considered employees or agents of University.

17. Governing Law. This Agreement will be construed under and governed by the laws of the State of California (without regard to California law respecting conflicts of law) and any applicable federal law. The parties mutually consent and submit to the jurisdiction of the state and federal courts in San Diego, California for all actions pertaining to or in connection with this Agreement. The parties agree that all actions pertaining to or in connection with this Agreement shall be brought only in the federal or state courts in San Diego, California. The prevailing party in any action relating to this Agreement shall be entitled to recover its reasonable associated costs and expenses, including attorneys' fees.

18. Due Diligence Review.

- (a) Onsite and Financial Examinations. To assist the government in the fight against the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each business requesting services from such financial institution. To achieve that objective and in addition to the examinations that occurred prior to the execution of this Agreement, subsequent to the commencement of the Initial Term of this Agreement Bank, or its agent, may conduct onsite and financial examinations of University pursuant to this provision.
- (i) The onsite examinations may include, without limitation, verification that business is conducted as represented by University at all sites where it conducts business; University's facilities are adequate to support claims of staffing, services performed and inventory housed; and the facilities provide adequate security for staff, functions performed and services rendered.
  - (ii) The financial examination may include, without limitation, a review of University's current balance sheet; its most recent annual report; up to three (3) years of third party audits; tax returns for the previous three (3) years; and all documentation supporting employee bonds and insurance policies of University.
- (b) Consent to Examinations.
- (i) By execution of this Agreement, University consents to the examinations described in Section 4.03 (a) (i) and (ii) and consents to such examinations being conducted by Bank or its agent.
  - (ii) Bank may conduct such examinations from time to time during the Term of this Agreement and the consent to the examinations provided by University shall be a continuing consent to conduct the examinations periodically in Bank's discretion during the Term of this Agreement.

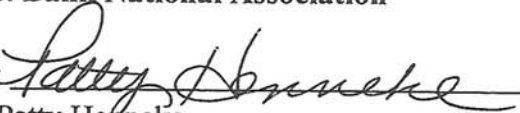
19. Assignment. Neither party may assign this Agreement to any third person without the prior written consent of the other party, except that Bank may, without the consent of University, assign or delegate this Agreement or any portion hereof to any entity or person controlling, controlled by, or under common control with Bank, or to any entity arising out of the merger, consolidation, sale or acquisition of Bank.

20. Force Majeure. The parties shall be excused from the performance of any obligation imposed by this Agreement for any period and to the extent that a party is prevented from performing such obligation, in whole or in part, as a result of delays caused by the other party or third parties, an act of God, war, civil disturbance, terrorism, court order, or other cause beyond its reasonable control including, without limitation, failure or fluctuations in electrical power, heat, light, air-conditioning, computer equipment, telecommunications equipment, or ATM components, and such nonperformance will not be a default hereunder or a ground for termination hereof.

21. Contractors. Bank may use contractors and subcontractors to perform some or all of the services Bank is obligated to provide under this Agreement.
22. Waiver. No waiver of any provision of this Agreement will be deemed a waiver of any other provision, and waiver of a right or remedy in one instance will not preclude enforcement of that same right or remedy in the future.
23. Provisions Severable. If any provision of this Agreement is illegal or unenforceable, it will be severable and all other provisions will remain in force as though the severable provision had never been included.
24. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.
25. Entire Agreement. This Agreement sets forth the parties' entire agreement with respect to the matters governed hereby and supersedes any prior agreements, oral or written, between the parties regarding the subject matter hereof. This Agreement may be amended only by a writing signed by both parties. The captions of each paragraph are added as a matter of convenience only and shall be considered of no effect in the construction of any provision of this Agreement.
26. Quiet Enjoyment. Subject to the performance of all of the covenants, conditions, and provisions on Bank's part to be observed and performed under this Agreement, University shall not disturb Bank's quiet possession and quiet enjoyment of the Premises during the Term.

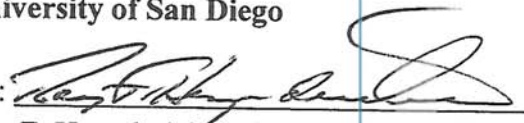
In witness whereof, the parties hereto have executed and delivered this Agreement through their respective duly authorized representatives.

**U.S. Bank National Association**

By:   
Patty Henneke  
Senior Vice President

Date: 5-21-08

**University of San Diego**

By:   
Roy F. Heynderickx, Ph.D.  
Vice President for Finance and Administration

Date: 05/20/08

## FIRST AMENDMENT TO ATM AGREEMENT

THIS FIRST AMENDMENT TO ATM AGREEMENT (the "Amendment") is made as of ~~February~~ <sup>April 30</sup>, 2014, between the University of San Diego ("University") and U.S. Bank National Association, a national banking association ("Bank").

- A. Pursuant to the ATM AGREEMENT dated as of May 21, 2008 (the "Agreement"), Bank agreed to the placement of certain automated teller machines ("ATM") on the University's campus, as further described in the Agreement.
- B. University and Bank desire to amend the Agreement to alter certain provisions thereof on the terms and conditions hereinafter set forth.


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

1. **Term.** The Term of the Agreement shall be extended so as to terminate on June 30, 2019. The Agreement may continue after that date with one-year automatic renewals as set forth in Section 2(A) of the Agreement.
2. **Authority.** University and Bank each represents and warrants that it has all the necessary approvals and authority to enter into this Amendment, and shall indemnify and hold each other harmless for any breach of this representation and warranty.
3. **No Existing Defaults.** University and Bank represent and warrant that there are currently no defaults by either party under the Agreement.
4. **Counterparts.** This Amendment may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute one and the same instrument. Faxed signatures shall be considered originals.
5. **Ratification.** All of the terms of the Agreement, as amended hereby, are hereby ratified and confirmed.
6. **Defined Terms.** Unless otherwise stated, all capitalized words in this Amendment that are not normally capitalized shall have the meaning ascribed in the Agreement.


*[remainder of page intentionally left blank]*

WHEREFORE, University and Bank have executed this Amendment as of the date first above written.

**University of San Diego:**

By:   
Print Name: Russell Thackston  
Title: Vice President, Business Services

**U.S. Bank National Association:**

By:   
Print Name: NEIL DAVIS  
Title: VICE PRESIDENT