

**THIRD AMENDMENT
TO THE UNIVERSITY BANKING SERVICE AGREEMENT**

THIS THIRD AMENDMENT to the University Banking Services Agreement (the “Third Amendment”) is made and entered into effective as of the 9th day of July, 2015, (the “Third Amendment Effective Date”), by and between Mercyhurst University (“University”) and PNC Bank, National Association, a national banking association with its principal office located at 249 Fifth Avenue, Pittsburgh, PA 15222, (“PNC Bank”). This Third Amendment amends the Agreement in accordance with the terms set forth herein, and together the Amendment and the Agreement constitute a single revised Agreement. All capitalized terms used in this Third Amendment shall have the meaning given them in the Agreement unless otherwise defined herein or the context hereof clearly requires otherwise.

WHEREAS, University and PNC Bank entered into a University Banking Services Agreement dated December 21, 2009 as amended by the First Amendment dated March 12, 2012; and the Second Amendment dated July 30, 2014 (collectively the “Agreement”);

WHEREAS, University and PNC Bank have agreed to amend certain terms of the Agreement in accordance with the provisions set forth in this Third Amendment; and

WHEREAS, the parties hereto wish to formally memorialize these changes in this Third Amendment.

NOW therefore, in consideration of the covenants, promises and representations set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. New Section 4(d) shall be added to the Agreement in its entirety as follows:

(d) PNC Bank agrees to comply with all applicable laws in the performance of all actions taken in connection with this Agreement, including, but not limited to, compliance with the Credit Card Accountability Responsibility and Disclosure Act of 2009, 15 U.S.C. § 1601 et seq., including its requirements regarding the protection of young consumers; the Truth in Lending Act, 15 U.S.C. § 1650, 15 U.S.C. § 1637 as amended; the Truth in Savings Act, 12 U.S.C. § 4301 et seq., **and the CAN-SPAM Act of 2003, 15 U.S.C. § 7701, and their implementing regulations.**

2. New Section 4(e) shall be added to the Agreement in its entirety as follows:

(e) The parties agree that marketing materials related to the Program will be communicated electronically from time to time. In order for either party to become the designated “Sender” with respect to CAN SPAM, the party must meet certain defined requirements.

1. Each party to this Agreement will comply with the following provision when engaging as the Sender under CAN-SPAM:

- (i) the header information must not be materially false or misleading and it must accurately identify the sending computer (15 U.S.C. 7704(a)(1));
- (ii) the subject heading cannot mislead a reasonable recipient as to a material fact about the contents of the e-mail (15 U.S.C. 7704(a)(2));
- (iii) the e-mail must include a valid opt-out mechanism (15 U.S.C. 7704(a)(3)(A)(i)); and

(iv) the e-mail must include a clear commercial identifier, opt-out notice, and physical address (15 U.S.C. 7704(a)(5)(A)).

2. No a sexually oriented e-mails will be sent by either party under this Agreement.
3. The parties will agree, prior to the distribution of materials which entity shall be considered the Sender.
4. The Sender will be responsible for all claims or losses resulting from any email communication(s) that violate CAN-SPAM.

3. All provisions of the Agreement not specifically mentioned in this Third Amendment are hereby ratified and reconfirmed and the Agreement remains in full force and effect.

IN WITNESS WHEREOF, intending to be legally bound, each party hereto has caused its duly authorized representative to execute this Third Amendment on its behalf, as of the Third Amendment Effective Date.

PNC Bank, National Association
("PNC Bank")

By: 

Nicholas Certo

Title: Senior Vice President

Date: 7/13/15

Mercyhurst University
("University")

By: 

Title: Jane M. Kelsey

Vice President for Finance and Treasurer
Mercyhurst University

7-9-15