

**CONTRACT FOR ATM MACHINE SERVICES
THE TEXAS A&M UNIVERSITY SYSTEM**

- 1.00 **Agreement:** This agreement is made and entered into this 1st day of September, 2000, by and between NBC Bank, referred to herein as "Bank," and Texas A&M International University, a Member of The Texas A&M University System, referred to herein as "University." In consideration of the benefits to be received by both parties, Bank and University agree to the following provisions and endorsements, if any.
- 2.00 **Installation:** Bank shall install and maintain subject to the terms of University equipment placement agreement, ATM machine(s) to be located in such buildings and at such locations as designated by University in writing. Such designation, including number and location of machine(s) on University's property, may be amended from time to time as University deems it necessary.
- 2.01 No machine may be installed until its location has been approved by University in writing. All machine(s) shall be adequate in size, new or reasonably recent models so as to compare favorably in appearance and performance with the best machine(s) available.
- 2.02 Bank shall be permitted to erect suitable signs advertising its presence and position on said premises, but such signs shall be erected or constructed until approved by the University.
- 2.03 Subject to the provisions of section 6.02, all machine(s) shall remain the property of Bank, and Bank shall not be required to maintain a machine at any place other than a location in which it is economically feasible. In order for Bank to demonstrate to University that a location is economically unfeasible, it must document in writing those facts which support such conclusion to the reasonable satisfaction of University prior to removal of such machine.
- 2.04 All machine(s) shall be installed by Bank in conformity with all federal, state, and local law, ordinances, rules, regulations, and orders of all authorities having jurisdiction over the contract.

- 2.05 University shall furnish electricity at the University's expense. University shall not be required to provide or pay for the installation of additional electrical lines, plumbing, drains, fans, duct work, etc. the provisions of which shall be the sole responsibility of the Bank.
- 3.00 **Maintenance:** Bank shall have the right to enter upon the premises of University, at all reasonable times for the purpose of servicing and inspecting the machine(s) and for removal upon termination of this agreement.
- 3.01 If Bank fails to keep the machine(s) serviced and in good working order and if University receives continued complaints from customers regarding a lack of sufficient cash to complete transactions (as governed by regulations and policies of the Contractor), then University shall notify Bank in writing as such complaints identifying date, time, customer name, and card number of each complaint, and shall require Bank to provide written resolution of such complaints within thirty (30) days upon receipt of complaints by Bank. If Bank fails to provide resolution of the complaints in writing to the University's satisfaction, the University shall have the right to terminate this agreement on thirty (30) days written notice. Bank, in cooperation with University will review the service availability as the University expands the facilities.
- 4.00 **Insurance and Hold Harmless:** University, its officers and employees, shall not be liable or responsible for and shall be saved and held harmless by Bank from and against any and all claims and damages of every kind, for injury to or death of any person or persons, and for damage or loss of property, arising out of or attributed directly or indirectly, to the operations or performance of Bank under this agreement.
- 4.01 Bank shall maintain throughout the life of this agreement Workers Compensation or state-qualified self-insurance program commercial general liability insurance, and commercial automobile liability insurance. Bank shall provide certificates indicating that such insurance is in force and effect, and such certificates shall state that University shall be notified in the event of cancellation of coverage. Insurance shall be carried in the following amounts:

Type of Insurance

Minimum Liability

Workers Compensation
or State-qualified self
Insurance Program

State Statutory Limits

Commercial General
Bodily Injury Liability
Property Damage Liability

\$250,000 each person
\$500,000 each occurrence
\$500,000 each occurrence

Comprehensive Automobile
Bodily Injury Liability
Property Damage Liability

\$250,000 each person
\$500,000 each occurrence
\$250,000 each occurrence

5.00 **Payments and Performance:** All payments by Bank to University shall be made to Texas A&M International University not later than the 20th day of the following month. University may designate an additional office to receive such report as it deems necessary.

Bank hereby agrees to service and maintain an Automatic Teller Machine in accordance with the specifications, terms and conditions herein and will pay to University as rent for the use of the premises:

- a. The sum of two hundred fifty dollars (\$250.00) per month.
 - b. The sum of twenty-five cents (\$0.25) for each financial transaction* over
 - c. Five hundred (500) transactions per month.
- *financial transaction is defined as a successful cash withdraw.

6.00 **Audit and Recording of Transaction:** Bank shall record and keep records of all financial transactions processed through this machine. University shall have the right to examine and audit the bank's records pertaining to this machine once each year in the office of Bank after giving the Bank a ten (10) days advance written notice of its intention to do so. The information acquired by the University pursuant to any such inspection shall be held confidential by University and shall not be disclosed to any third party other than pursuant to a valid subpoena.

7.00 **Force Majeure:** If due to riots, war, public emergency or calamity, fire, earthquake, Acts of God, government restriction, labor disturbance, strike, or boycott, business operations of University or Bank, are interrupted or cease, performance of this contract, with the exception of money already due and owing shall be suspended and excused to the extent such force majeure shall interfere with operations thereunder, and the expiration date of this contract shall be extended for a period time equal to the time that such default in performance is excused.

8.00 **Damage or Destruction of Machines by Third Parties:** University agrees that it will take such reasonable measures as may be required to protect Bank's machine(s) against loss by pilferage or damage, and will reasonably assist in every way possible to apprehend individuals who commit acts of destruction, theft, or fraud involving such machine(s) located on property under the control of University. Bank is responsible for damage or loss to its equipment located on such property.

9.00 **Dispute Resolution:**

(1) The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by the University and contractor, Inc. to attempt to resolve any claim for breach of contract made by the contractor.

(a) A contractor's claim for breach of this contract the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the government Code. To initiate the process, the contractor shall submit written notice, as required by subchapter B, to the Vice President for Finance and Administration of the University. Said notice shall specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy for the notice shall also be given to all other representative of the University and the contractor otherwise Texas A&M International University is entitled to notice under the parties' contract. Compliance by the contractor with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter-C, of the Government Code.

- (b) The contested case process provided in Chapter 2260, subchapter C, of the Government Code is the contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by the University if the parties are unable to resolve their disputes under subparagraph (A) of this paragraph.
- (c) Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this contract by the University nor any other conduct of any representative of the University relating to the contract shall be considered a waiver of sovereign immunity to suit.
- (d) The submission, processing and resolution of the contractor's claim is governed by the published rules adopted by the Attorney General pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended.
- (e) Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the contractor, in whole or in part.
- (f) The designated individual responsible on behalf of the University for examining any claim and conducting any negotiations related thereto as required under 2260.052 of H.B. of the 76th Legislature shall be the Chief Financial Officer, Jose Garcia.

10.00 **Term of Agreement:** The term of this agreement shall be from September 1, 2000 through August 31, 2003.

The lease contract resulting from this agreement shall be for a three (3) year period beginning on the date the contract is signed with the Bank. University reserves the option to extend the agreement in one (1) year increments for a total potential period of five (5) years including the original contract of three (3) year terms.

11.00 University shall notify Bank in writing of any failure on Bank's part to fulfill the terms and conditions of this agreement. Such notice shall specifically indicate the failure on Bank's part. Upon receipt of such notice, Bank shall have thirty (30) days in which to rectify such failure. In the event that Bank does not do so to the reasonable satisfaction of University, this agreement shall

terminate.

- 12.00 **Paragraph Headings:** The paragraph headings used herein are descriptive only and shall have no legal force effect.
- 13.00 **Severability:** If any of the provisions of this agreement shall, for any reason be held in violation of law, and any portion of the agreement is held to be unenforceable, then the invalidity of such specific provision shall not be held to invalidate any other provision which shall remain in full force and effect.
- 14.00 **Entire Agreement:** This agreement shall represent the entire agreement of the parties and may not be changed except by written amendment duly executed by the parties.

NBC Bank N.A.
BANK

D. Kolly
BY Dwayne Kolly

E.V.P.
TITLE

Texas A&M International University
UNIVERSITY

Jose Garcia
BY JOSE GARCIA

VP FOR FIN. & ADM.
TITLE