

**Revised Purchase Order****Sales Tax Exemption**

Texas A&M University-Commerce is exempt from state and municipal sales taxes under Chapter 20 Title 122A, revised Civil Statutes of Texas, for all purchases made for the exclusive use of Texas A&M University-Commerce.

The laws of the State of Texas shall govern this Purchase Order.

Member of the Texas A&M University System.

Purchase Order			
Purchase Order Date	PO/Reference No.	Revision No.	Revision Date
<b>Feb 15, 2022</b>	<b>AB0689526</b>	<b>1</b>	<b>Feb 23, 2022</b>
<b>Contact instructions for questions regarding this Purchase Order:</b>			
If Buyer Contact information is listed below, please contact the Buyer.			
If not, please contact the Customer.			
<b>Buyer Contact:</b>			
<b>Buyer</b>	<b>Buyer Email</b>	<b>Buyer Phone Number</b>	
jng - Gossett, Jessica	JESSICA.GOSSETT@TAMUC.EDU	903.886.5220	
<b>Customer Contact:</b>			
Name:	Mallory Dennie		
Email:	MALLORY.DENNIE@TAMUC.EDU		
Phone:	+1 903-886-5421		

**Order acceptance instructions:**

**Vendor guarantees that the products delivered or the services performed as a result of this Purchase Order will meet or exceed all specifications herein. Any exceptions to the pricing or the description contained herein must be approved by Texas A&M University-Commerce's Purchasing Department prior to shipping.**

Supplier Information		Delivery Information	
Supplier Name	TOUCHNET INFORMATION SYSTEMS INC	<b>Delivery Address</b>	
Address	9801 RENNER BLVD STE 150 LENEXA, Kansas 66219 United States	TAMUS Member:	21-Texas A&M University - Commerce (21)
Phone	+1 800-869-8329	Attn:	Mallory Dennie
Fax	+1 913-599-5588	VPIO	
FOB / FREIGHT	Destination	Room	BA 132
Pre-Pay & Add	No	2600 S Neal St	
Payment Terms	0, Net 30	Commerce, TX 75428	
Contract Number - Header	C2018483	United States	
Contract Number - Line	C2018483	<b>Delivery Information</b>	
Quote number		Required Delivery Date	
		Ship Via	Best Carrier-Best Way

**Notes to Supplier****Shipping Instructions**

Attachments for supplier

Texas A&M Univ - ...

Texas A&M Univ - ...

**PO Clauses**

Header	Code	Description	Text
	001	No Collect Freight Charges Accepted	Neither COD nor "Collect" freight or handling charges will be accepted.
	508	Changes must be Approved Prior	Any changes to this Contract without the undersigned Purchasing Agent's prior written approval is not authorized and at the expense of the Supplier.
	509	Cancellation due to Funding	This contract is subject to cancellation without penalty, either in whole or in part, if funds are not appropriated by the Texas Legislature, or otherwise not made available to the using Agency.
	522	Governance	Any agreement entered into by Texas A&M University-Commerce shall be governed by the laws of

the State of Texas.

525	Best Value Clause	Agency invokes "Best Value" purchase exemption under House Bill 1545.
536	Terms & Conditions - TAMU-Commerce	This purchase shall be in accordance with the Texas A&M University-Commerce terms and conditions. To obtain, please go to the following address: <a href="http://www.tamuc.edu/facultyStaffServices/purchasing/references/forms/default.aspx">http://www.tamuc.edu/facultyStaffServices/purchasing/references/forms/default.aspx</a>

Line No.	Product Description	Catalog No.	Size / Packaging	Unit Price	Quantity	Ext. Price
1 of 4	TouchNet Hosting Service	TNTR-HOST	YR	89,218.00 USD	1 YR	89,218.00 USD
2 of 4	TouchNet Ready Partner Annual Service - Partner-Innosoft	TNTR-TNRAS	YR	1,500.00 USD	1 YR	1,500.00 USD
3 of 4	TouchNet Ready Partner Annual Service - Partner-Cardinal Tracking	TNTR-TNRAS	YR	1,500.00 USD	1 YR	1,500.00 USD
4 of 4	TouchNet Maintenance Service	TNTR-MAINT	EA	77,486.00 USD	1 EA	77,486.00 USD
<b>Total</b>						<b>169,704.00 USD</b>

Billing Information	Billing Address
<p>To assure timely payment please e-mail invoices to the email provided in the bill to address. If the invoice is sent via email, please do not send a duplicate copy through the mail. Only if email is not an option then submit invoices to the billing address indicated in the "Billing Address" section. To inquire about electronic invoicing via cXML, CSV or PO flip through the supplier portal, e-mail vendorhelp@tamuc.edu.</p> <p>Invoice must include the PO/Reference number shown above.</p>	<p>Texas A&amp;M University-Commerce</p> <p>***Do Not Mail Invoices***</p> <p>Email invoices to <a href="mailto:invoices@tamuc.edu">invoices@tamuc.edu</a></p> <p>PO Box 3011</p> <p>Commerce, TX 75429</p> <p>United States</p>

## TOUCHNET MASTER SERVICES AGREEMENT

This Master Services Agreement (“Agreement”) is made as of the last date shown in the signature block (“Effective Date”) between TouchNet Information Systems, Inc., 9801 Renner Road, Suite 150, Lenexa, Kansas 66219, and Texas A&M University - Commerce, located at PO Box 3011, Commerce, Texas 75429 (“Client”). TouchNet and Client may individually be referred to herein as “Party” or collectively as “Parties.” This Agreement terminates the prior agreements entered between the Parties, listed as follows: System Purchase & License Agreement dated May 16, 2002; First Addendum to Software License Agreement dated December 14, 2006; Second Addendum to Software License Agreement dated July 8, 2009; Addendum to Software License Agreement for Data Transport & Maintenance dated September 29, 2010; Third Addendum to System Purchase & License Agreement dated August 20, 2018; Fourth Addendum to System Purchase & License Agreement dated March 23, 2020; Hosting Services Agreement dated September 29, 2010; First Addendum to Hosting Services Agreement dated April 16, 2012; Second Addendum to Hosting Services Agreement dated July 23, 2013; Third Addendum to Hosting Services Agreement dated October 1, 2014; Fourth Addendum to Hosting Services Agreement dated October 7, 2016; Fifth Addendum to Hosting Services Agreement dated August 20, 2018; and TouchNet Partner Client Agreement dated July 29, 2013.

1. **Definitions.** The capitalized terms used in this Agreement, except where specifically defined to the contrary herein, shall have the meanings as set forth below.
  - 1.1 “Actual Uptime” means the total number of minutes that the TouchNet Cloud Services are Available during a Measurement Period.
  - 1.2 “Available” means that the TouchNet Cloud Services can be accessed by Client and will operate in material accordance with the Documentation.
  - 1.3 “Client Data” means all information, files, content, figures, images, text, files or other data, including End User personal identifiable information, provided to TouchNet by Client, Client Users or End Users for TouchNet’s use in providing the Services.
  - 1.4 “Client User” means Client’s employees and authorized agents using the back office TouchNet Services functionality.
  - 1.5 “Custom Software” means any new or modified software that TouchNet develops, creates, or programs pursuant to a written agreement between Client and TouchNet. Any Custom Software is included in the definition of TouchNet Software.
  - 1.6 “Documentation” means the operational, functional and technical specifications in any standard materials, guides, manuals or other related materials (not including marketing materials) that TouchNet provides from time-to-time for TouchNet Software.
  - 1.7 “End User” means Client’s students or authorized third parties who are using the Client-branded TouchNet Services to make payments and otherwise engage with Client.
  - 1.8 “Exception(s)” means that the TouchNet Cloud Services will not be deemed to have a TouchNet Cloud Services Level Failure if Client’s access to the TouchNet Cloud Services does not meet the Required Availability, in or whole or in part due to: (i) an act or omission by Client, use of the TouchNet Cloud Services by Client, or using Client’s access credentials, that does not strictly comply with this Agreement and the Documentation; (ii) Client’s Internet connectivity; (iii) a Force Majeure event; (iv) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by TouchNet pursuant to this Agreement; (v) disruptions in the interconnections with TouchNet servers resulting from the neglect or other fault of Client and/or its agents or contractors; (vi) equipment, software, or other items (whether or not included within the TouchNet Software) not developed, manufactured, created, or produced by TouchNet, including Third Party Software, (vii) scheduled downtime, scheduled maintenance, or emergency maintenance; (viii) modifications of TouchNet Software not performed by TouchNet, including use of TouchNet Software with devices or software not provided or approved by TouchNet; (ix) Client’s failure to properly install hardware or software, including manufactures’ operational/system software, or new releases or enhancements specified by TouchNet; or (x) disabling, suspension, or termination of the TouchNet Cloud Services by TouchNet due to Client’s breach of this Agreement.
  - 1.9 “Force Majeure” means events beyond a Party’s reasonable control, including acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, pandemics, and interruptions, loss or malfunctions of utilities including telecommunication services, vandalism, other actions or inactions of third parties; fires; embargoes and labor disputes; and court orders and governmental decrees.

- 1.10 “Implementation” means the process of installing and running the TouchNet Services for Client’s use, as further described in Schedule A.
- 1.11 “Licensed Software” means all computer programs described in a TouchNet Order Form (in object code form only) that are licensed on a term or perpetual basis.
- 1.12 “Licensed Software Updates” means all updates, error corrections, and enhancements that TouchNet makes available to all clients for the Licensed Software.
- 1.13 “Measurement Period” means a calendar month period.
- 1.14 “OneCard Hardware” means certain hardware components developed or sold by TouchNet that support the use of the OneCard Software.
- 1.15 “OneCard Services” means the solution that includes both OneCard Hardware and OneCard Software, along with the OneCard Support Services. OneCard Services enable ID card production, administrative management, ERP integration, reporting, time and attendance transactions, event management, mobile credential, cardholder account management, financial declining balance, and account verification, and may include add-on functionality. OneCard Services are part of TouchNet Services.
- 1.16 “OneCard Software” means the computer program applications that Client wishes to use and access remotely on TouchNet’s servers that enable OneCard Services. OneCard Software is part of TouchNet Software.
- 1.17 “Percentage Availability” means the percentage of time the TouchNet Cloud Services was Available during a Measurement Period, which will be calculated as follows:  $(\text{Actual Uptime} \div (\text{Total Minutes in Scheduled Uptime in Measurement Period} - \text{Total Minutes in Scheduled Uptime in Measurement Period TouchNet Cloud Services are not Available due to an Exception})) \times 100 = \text{Percentage Availability}$ .
- 1.18 “Personally Identifiable Information” or “PII” means (i) any information that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and (ii) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. Included is all “Personally Identifiable Information” as defined in Section 99.3 of the Family Educational Rights and Privacy Act (“FERPA”).
- 1.19 “Required Availability” means the percentage of time the TouchNet Cloud Services must be Available over the course of a Measurement Period, excluding any Exceptions. Such percentage of time is hereby 99%.
- 1.20 “Scheduled Uptime” means the period of time for which the TouchNet Cloud Services is intended to be Available. Such period of time is 24 hours per day, 7 days per week, less any Exceptions.
- 1.21 “SIS/ERP Connect” means any software that the Client will need to install on its own Student Information System in order to access and interface with the TouchNet Services.
- 1.22 “Support Services” means the support that TouchNet provides Client in connection with the TouchNet Services.
- 1.23 “Student Information System” means Client’s computer system, including all computers, peripherals, and cables and connectors; hardware and software (whether in source code or object code); and the student and/or faculty-related information and data stored, managed, accessed, and manipulated therein or thereby.
- 1.24 “Test Environment” means the environment TouchNet provides that will be configured the same as, or similar to, the Client’s production environment and hosted in TouchNet’s DataCenter for Client to test the TouchNet Services.
- 1.25 “Third Party Software” means software that is: developed for general commercial use; available to the public; or not developed by or for TouchNet, and includes without limitation: commercial off-the-shelf software; operating system software; and application software, tools, and utilities.
- 1.26 “TouchNet Business Hours” means the hours of 7:00 a.m. until 7:00 p.m., Central Time, Monday through Friday other than standard United States financial holidays.
- 1.27 “TouchNet Client Community” means TouchNet’s Client-facing portal, which contains general Client account information, product and service Documentation, mechanisms related to Support Services ticket creation, and other resources available to Client at no additional cost.
- 1.28 “TouchNet Data” means all TouchNet-created information, files, content, figures, images, text, files or other data provided by TouchNet to Client in connection with Client’s use of the Services.
- 1.29 “TouchNet DataCenter” means a location where the TouchNet Software resides.

- 1.30 “TouchNet Cloud Services” means, collectively, the TouchNet ASP Services and Hosting Services described in Section 2, and includes both TouchNet’s UCommerce and OneCard products to the extent that they are delivered through a software as a service (“SaaS”) model.
- 1.31 “TouchNet Cloud Services Level Failure” means that the Percentage Availability was below the Required Availability for the TouchNet Cloud Services.
- 1.32 “TouchNet Order Form” means the form identifying the exact TouchNet Services and corresponding fees (both annual and one-time) that Client purchases.
- 1.33 “TouchNet Ready Integration” means the TouchNet-approved integration between certain TouchNet Services and a third party’s proprietary software application, enabling additional functionality.
- 1.34 “TouchNet Services” means all software and hardware services or products that Client obtains from TouchNet or accesses through TouchNet.
- 1.35 “TouchNet Software” means the computer program applications that Client wishes to use and access remotely on TouchNet’s servers that enable the TouchNet Services, and includes all software components, product documentation and associated media, sample files, extension files, tool and utilities and miscellaneous technical information. TouchNet Software includes the software that Client is licensing as identified on the TouchNet Order Form, and includes both Licensed Software and ASP Services, as defined herein. Future orders for additional TouchNet Software Services will be accepted on a TouchNet Order Form, subject to the terms and conditions in this Agreement.
- 1.36 “UCommerce Services” means the software modules that TouchNet provides to enable automated and integrated campus commerce services and other financial services software, and is included in the definition of TouchNet Services.
- 1.37 “Unlimited Telephone Support” means that TouchNet shall provide Client, with respect to the TouchNet Services, unlimited telephone support over its technical support line during TouchNet Business Hours.
- 2 **Scope of Agreement.** This Agreement governs all TouchNet Services, including: (a) Client’s right to access and use Licensed Software; (b) Client’s right to access and use software made available under a SaaS model through an application subscription billed annually for a specified period of time (“ASP Services”); (c) Client’s right to support and/or maintenance services which you purchase or are otherwise entitled to receive (“Support Services”); (d) any professional services (“Professional Services”); (e) any managed hosting services, cloud hosting services or other hosting services (“Hosting Services”); (f) any TouchNet Ready Integrations with third parties; and (g) any hardware and/or firmware (“Hardware”).
- 3 **TouchNet Software License.**
- 3.1 **TouchNet Cloud Services.** With respect to TouchNet Cloud Services, TouchNet grants Client a non-exclusive, non-transferable, non-sublicenseable license to access and use the TouchNet Cloud Services on TouchNet’s servers at the TouchNet DataCenter made available by TouchNet on a remote-access, subscription basis via the Internet solely in support of Client’s operations, as shown on the TouchNet Order Form. This limited license includes patches, version releases, and upgrades for that TouchNet may provide or make available after initial implementation, together with any applicable additional or different terms.
- 3.1.1 **Implementation.** Implementation of the TouchNet Services will follow the process described in the Equipment and Client Tasks for Set Up, Installation and Implementation of Software, found in TouchNet’s Client Community.
- 3.1.2 **Client Responsibility.** The TouchNet Software may require Client to assist TouchNet in accessing files on Client’s Student Information System to achieve an interface between the TouchNet Software and the Student Information System as well as permit testing of certain functionality. Client agrees to provide assistance reasonable necessary to enable TouchNet to provide the TouchNet Services.
- 3.1.3 **Schedules.** If Client delays the mutually agreeable “go-live” date of any of the TouchNet Software, and (i) TouchNet, having performed professional services, is otherwise willing and able to proceed with the Client’s “go-live” on schedule and (ii) Client delays, then that amount of the Professional Services Fee attributed to the particular TouchNet Software that’s “go-live” is being delayed shall be due and payable immediately by Client.
- 3.1.4 **Client Testing.** TouchNet will make a Test Environment available to Client before going live. The Test Environment will receive a lower service level than the production environment. The Test

Environment will not receive monitoring of critical system or services, nor will it receive twenty-four (24) hour notification or support.

- 3.2 **Licensed Software Provided on a Perpetual or Term Basis.** With respect to Licensed Software, either for the Term or, if the license is “perpetual,” then on an ongoing basis unless and until terminated as provided herein, TouchNet grants Client a non-exclusive, non-transferable, non-sublicensable, license to use the Licensed Software on a Designated Configuration solely in support of Client’s operations. A “Designated Configuration” means a configuration of hardware and software that TouchNet supports and on which the TouchNet Software is operated by or for Client. Client shall use the Licensed Software solely for processing data in the ordinary course of its operations and shall not use the Licensed Software in connection with a service bureau or in any other similar way to process, store, analyze, manipulate, or otherwise handle the data of other entities.
- 3.2.1 **Installation.** If the Licensed Software is not hosted by TouchNet, Client is responsible for installation of the Licensed Software at the Setup Site identified on the TouchNet Order Form. In addition, Client shall be responsible for timely performance of all tasks allocated to it on the Equipment and Client Tasks for Set Up, Installation and Implementation of Software, found in TouchNet’s Client Community. Client’s failure to perform any installation obligations will relieve TouchNet of any subsequently arising obligations hereunder. All services TouchNet may provide in connection with this Agreement (regardless of where performed) will occur during TouchNet Business Hours.
- 3.2.2 **System Tests.** Tests of the Licensed Software will be conducted by TouchNet and may be witnessed by Client using standard TouchNet procedures that demonstrate compliance with applicable specifications detailed in this Agreement and the schedules attached hereto.
- 3.2.3 **Licensed Software Maintenance and Support.** If included on the TouchNet Order Form, Client will receive Software Updates and Unlimited Telephone Support (collectively, “Software Maintenance and Support”). TouchNet will notify Client when Software Updates are available and make the Software Updates available to Client. To receive Software Maintenance and Support, Client must (i) promptly and effectively comply with any reasonable requirements related to the Software Updates and (ii) ensure that Client’s hardware, software, and operating systems are compatible with the current version of the Licensed Software and Software Update.
- 3.2.3.1 **Exclusions from Software Maintenance and Support.** Support for issues arising from (i) a Force Majeure event; (ii) any incidents caused by an Exception is not included in Software Maintenance and Support.
- 3.2.3.2 **Cost of Support for Excluded Service.** Any error, corrections, repairs, or replacements required to make the Licensed Software function properly because of Client modifications to the Student Information System or other IT assets, shall be provided at TouchNet’s then-current hourly rate for repair and other technical service and TouchNet’s then standard price for replacement products, as agreed to in a TouchNet Order Form.
- 3.2.4 **Hosted Services.** If Client purchases Licensed Software and wants TouchNet to manage Client’s Licensed Software through TouchNet’s DataCenter, Client must purchase Hosting Services as well as Software Maintenance and Support. TouchNet will then make available to Client all applicable Licensed Software patches, version releases, and upgrades for Licensed Software.
- 3.3 **TouchNet Ready Integrations.**
- 3.3.1 **Connections.** If Client purchases a license for a TouchNet Ready Integration, TouchNet grants Client a limited, non-exclusive, revocable, non-sublicensable, non-transferable license to access each T-Link, API, or other connection (“Connection”) set forth in the TouchNet Order Form or reflected in the TouchNet Client Community. TouchNet will provide information necessary to enable Client’s secure use of the Connection(s). Client may not use or install the Connection(s) for any other purpose, and may not copy, rent, adapt, disassemble, lease, assign, sublicense, reverse engineer, modify or decompile, the Connection(s) or any part thereof. TouchNet reserves the right to limit the number and/or frequency of requests for Connection(s), or take other actions necessary to protect the integrity of the TouchNet Services.
- 3.3.1.1 To the extent Client uses an API for its Connection, that API relies on a third party system to capture sensitive data that may be protected by PCI DSS (as defined herein), the Gramm-Leach Bliley Act, HIPAA, FERPA, and other applicable privacy laws and security standards. Client is responsible for ensuring the third party system and integration to the API is

compliant with PCI DSS and other applicable privacy laws and security standards. TouchNet is not responsible for any third party, or any third party applications or integrations.

- 3.3.1.2 Client's use of the TouchNet Ready Integration(s) requires Client to have a valid subscription to access and use, or a license to, TouchNet Software. TouchNet reserves the right to cancel Client's access to any TouchNet Ready Integration upon thirty (30) days' notice. Client agrees and understands it is only receiving a nontransferable, nonexclusive right to access and use the Connection(s), and the specifications are for Client's internal purposes and only for use with approved developed integrations. No right is granted to distribute or otherwise use all or any portion of the Connection(s), the interfacing applications, or the specifications.
- 3.4 **Product Specific Terms.** If there are product-specific terms for individual TouchNet Services, those will be reflected on the TouchNet Order Form for those specific products.
- 3.5 **Software Ownership.** All TouchNet Software is licensed, not sold. All rights, title and interest, including all copyrights and other intellectual property rights, in and to the TouchNet Software and any copies Client is permitted to use by virtue of this Agreement are owned exclusively by TouchNet or its licensors. All trademarks and service marks referenced in the Agreement or in the product documentation belong to their respective owners and this Agreement does not grant Client any rights in connection with any trademarks or service marks. TouchNet retains all right, title and interest to any work product or other intellectual property developed and/or delivered in connection with TouchNet's provision of any services or the performance of any obligations hereunder. Any intellectual property rights not expressly granted herein are expressly reserved by TouchNet.
- 3.6 **Prohibited Uses.** Client may not sub-license, assign, transfer, or otherwise give or furnish any of its rights under this Agreement to any third person, nor may Client assert or represent that it has any ownership rights in, or the right to sell, transfer or sub-license, the TouchNet Software to any third party. Client shall not, under any circumstances, directly or indirectly, down-load, copy, modify, decompile, reverse engineer, or otherwise attempt to discover the source code for the TouchNet Software. Client shall not use the TouchNet Software in connection with a service bureau or in any other similar way to process, store, analyze, manipulate, or otherwise handle the data of other persons or entities.
- 3.7 **Exclusivity. Intentionally Omitted.**
- 3.8 **Change by Client.** To the extent Client makes changes to its SIS or other systems, including its general ledger, finance, or enrollment systems, and any institutional information technology infrastructure changes, TouchNet does not commit to supporting such changes. If Client intends to make such a change, it will provide no less than 180 days' notice to TouchNet, and TouchNet will make commercially reasonable efforts to support such changes. If TouchNet imposes a charge for any of TouchNet's required Professional Services resulting from a Client change, the Parties will memorialize both the Professional Services and the corresponding fees on a TouchNet Order Form, or other written document.
- 3.9 **SIS/ERP Connect Software.** If TouchNet provides SIS/ERP Connect Software, it is licensed (on a non-exclusive and non-sublicensable basis) to Client solely for the purpose of enabling Client to access (and interface with) the TouchNet Software. The SIS/ERP Connect Software may not be used for any other purpose whatsoever. Unless otherwise specifically agreed, installation and configuration of the SIS/ERP Connect Software is Client's sole responsibility.
- 3.10 **Client Responsibilities.** Client is responsible, to the extent permitted under Texas law, for all activities that occur under Client's End User accounts and agrees to present any terms and conditions or privacy policy that Client deems reasonable for its End Users. Client shall: (i) have sole responsibility, to the extent permitted under Texas law, for the accuracy, quality, integrity, legality, reliability, and appropriateness of all data, information or material provided or submitted to TouchNet by Client; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the TouchNet Services, and notify TouchNet promptly of any such unauthorized use; and (iii) be responsible for acquiring and maintaining any systems, services, software, and hardware necessary to connect to the TouchNet Services.
- 3.11 **Compliance with Applicable Laws.** The Parties agree to comply with all applicable laws, including (i) any state or federal privacy laws, as more specifically described in Section 6, and (ii) all anti-money laundering and anti-corruption laws, including the Bank Secrecy Act, the USA PATRIOT Act of 2001, the Foreign Assets Control Act, and their related regulations as well as the sanctions, rules and regulations administered by U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), the U.S. Commerce Department's Office

of Anti-boycott Compliance and Bureau of Export Administration, and the U.S. State Department's Office of Defense Trade Controls.

- 3.12 **Third Party Software.** Certain TouchNet Services may contain Third Party Software. To the extent that any Third Party Software requires notices and/or additional terms and conditions, TouchNet will either post that information in the TouchNet Client Community where there is a change in "use" terms, or notify Client in writing, when there is a change in legal terms, whichever is appropriate. If there is a conflict between this Agreement and any third party terms applicable to any portion of the TouchNet Services, Client will have the opportunity to review such terms to determine if revisions to the Agreement are desired. If changes in terms are desired, the Parties will work in good faith to revise the Agreement. If TouchNet provides Third Party Software and subsequently ceases to be an authorized provider of such Third Party Software, TouchNet reserves the right to terminate such Third Party Software license granted to Client as well as any associated services.
- 3.12.1 Unless otherwise specified in this Agreement, the Third Party Software is licensed and made available to Client only for use with or as an integrated component of the TouchNet Software. Client shall not use Third Party Software provided by TouchNet separately from the components of the TouchNet Software.
- 3.12.2 Client hereby authorizes TouchNet to report Client metrics associated with Client's use of the third party software to permit TouchNet to comply with its agreement(s) with the Third Party Software licensor, if applicable.

#### 4 Availability of TouchNet Cloud Services.

- 4.1 **Service Level Assurance.** Subject to the terms and conditions of this Agreement, TouchNet's objective is to use commercially reasonable efforts to make the TouchNet Cloud Services Available for the Required Availability percentage of the Scheduled Uptime over the course of the Measurement Period, excluding any unavailability as a result of any of the Exceptions ("SLA"). This SLA does not apply to (i) Third Party Software or other third party services (ii) Implementation, (iii) any purchases covered by special support arrangements such as pilot program participation or the development of Custom Software.
- 4.2 **Remedy.** In the event that Client's access to the TouchNet Cloud Services hereunder becomes unavailable, Client shall immediately notify TouchNet. Unless Client's access to the TouchNet Cloud Services are unavailable due to an Exception, if Client has notified TouchNet and a TouchNet Cloud Services Level Failure event has occurred, TouchNet shall, upon Client's written request, issue a credit to Client in an amount equal to five percent (5%) of the fees for the impacted TouchNet Cloud Service for the month in which the TouchNet Cloud Services Level Failure event occurred. For purposes of calculating credits, any period of unavailability shall be counted from the time such unavailability is reported to TouchNet until such time that access is restored. Except as stated in this Section 4, TouchNet makes no representations or warranties. Should any of the following occur, Client may terminate the Agreement for breach under by TouchNet under Section 8.2: (a) a TouchNet Cloud Services Level Failure occurs in three (3) or more Measurement Periods during any 12-month period; or (b) the Percentage Availability in any Measurement Period is below 97.0% as long as Client furnishes written Notice of termination as provided for in this Agreement within three (3) months of the occurrence of either of clauses (a) or (b) above. The remedies set forth in this Section represent TouchNet's sole obligation and liability to and Client's sole remedies for any TouchNet Cloud Services Level Failure(s).
- 4.3 **Maintenance.** Client acknowledges and agrees that TouchNet will, from time to time, need to perform routine maintenance or repair, and that during such periods of maintenance or repair, the TouchNet Cloud Services may not be available for Client's use. TouchNet generally schedules maintenance outside of business hours, usually between 2:00 am and 6:00 am central time. TouchNet's objective is to minimize the duration of any such unavailability and it endeavors to perform routine maintenance outside of TouchNet Business Hours. TouchNet publishes planned maintenance windows and will use commercially reasonable efforts to provide Client fourteen (14) days' notice before the pre-scheduled four (4) hour monthly maintenance windows that take place outside of TouchNet Business Hours. In other rare events, and to the extent possible, TouchNet will give Client at least twenty-four (24) hours advance notice of down-time for emergency maintenance that could include updates to security systems. Client shall be responsible for arranging for all telecommunications connections.

#### 5 Hardware. This Agreement governs Client's use of OneCard Hardware. The terms and conditions in this Section 5 do not apply to hardware used with TouchNet Software. To the extent Client obtains hardware to use with the TouchNet Software, Client will leverage a different process, as mutually agreed between Client and TouchNet.

- 5.1 **OneCard Hardware.** OneCard Hardware is required to operate the OneCard Software, unless TouchNet grants a specific exception in writing. OneCard will provide support for point of sale terminals and included

peripherals obtained through OneCard for five (5) years from the purchase date. All OneCard Hardware is subject to reaching its end-of-life, at which time it will no longer be supported.

- 5.2 **Ownership.** Upon payment for OneCard Hardware, Client will fully own the hardware, with all rights and responsibilities of ownership. OneCard Hardware is not provided under any lease, rent or buyback program.
- 5.3 **Client Responsibilities.** Upon delivery of hardware, Client will be responsible for the following: (i) installation, physical maintenance, and security of OneCard Hardware; (ii) any hardware, cabling or systems that are not provided by TouchNet but that may be part of Client's ecosystem; (iii) providing any necessary code-compliant power outlets and network connectivity appropriately positioned at each installation site where OneCard Hardware is intended to be used or installed; (iv) ensuring that firewalls and/or web filters installed on the network do not impede the proper functioning of OneCard Services; (v) any hardware or operating system related issues, failures, viruses, or vulnerabilities following the purchase, or breakages that are not covered by warranty; and (vi) facilitating any warranty service that becomes necessary, including returning any defective hardware. Once TouchNet is on site at Client's facility, installation delays (including those resulting from one of the above factors) caused by Client or a third party under Client's control will be charged at a rate of \$5,000.00 per day.
- 5.4 **Disclaimers.**
- 5.4.1 TouchNet does not have any right or responsibility for physical security, upkeep and/or maintenance of the hardware or for any third party software. TouchNet does not perform physical installation of any OneCard Hardware. To the extent that OneCard Software becomes incompatible with OneCard Hardware or ceases functioning on OneCard Hardware following the warranty term of the OneCard Hardware, TouchNet shall not be responsible or required to support such OneCard Hardware or provide backwards compatibility with such OneCard Hardware, nor to replace or refund such OneCard Hardware; notwithstanding that replacements hardware may be purchased from TouchNet.
- 5.4.2 If Client discontinues use of the OneCard Software for any reason, or TouchNet discontinues providing Client with the OneCard Software Services, TouchNet shall not have any obligation to provide any ongoing support for any OneCard Hardware or any OneCard Software installed on or accessed by the OneCard Hardware, and Client will not have the right to return or be refunded for the purchase of hardware outside of the standard limited return time window provided in this Agreement.
- 5.5 **Substitutions.** TouchNet reserves the right to change the OneCard hardware or technical services offerings at any time, including the right to (i) discontinue offering any hardware or technical service, (ii) substitute hardware components for any order or warranty replacement, (iii) offer alternative hardware products, configurations and/or technical services, or (iv) substitute any ordered or warranted hardware component with another component providing substantially similar or better functionality and quality.

## 6 Data Privacy and Security.

- 6.1 **Data Privacy.** TouchNet holds all PII from Client Data received through the TouchNet Cloud Services in its secure network at the secure TouchNet DataCenter. TouchNet maintains compliance with industry standard information security and privacy standards, and complies with all applicable data privacy laws, including FERPA, the Gramm-Leach-Bliley Act ("GLBA"), the California Consumer Privacy Act ("CCPA"), the California Privacy Rights Act ("CPRA"), the General Data Protection Act ("GDPR"), the Payment Card Industry Data Security Standards ("PCI DSS"), and the National Automated Clearing House Association Standards ("Nacha"), as amended, together with regulations promulgated thereunder. TouchNet's security controls substantially comply with NIST Cybersecurity Framework, and are reviewed by independent third parties for compliance with SSAE standards. TouchNet has also implemented and will maintain appropriate administrative, technical, and physical security controls to safeguard and preserve the confidentiality, integrity, and availability of Client Data consistent with the terms of this Agreement, including using firewall technology, encrypting data, regularly updating antivirus software, restricting access to data based on business need, identifying and authenticating access to system components, restricting physical access to data, testing security systems and processes, and maintaining internal policies that address information security.
- 6.2 **Security Breach.** TouchNet agrees to comply with the requirements of all applicable laws, regulations and governing authorities that require the notification of individuals in the event of unauthorized release of PII or other event requiring notification. In the event of a breach of any of TouchNet's security obligations or other event requiring notification under applicable legal, regulatory or governing authorities, TouchNet will notify Client within five (5) business days of discovery of an internally confirmed breach, if legally permitted to do so, and assume responsibility for informing all such individuals in accordance with applicable law. However, such

notification will not conflict with or compromise TouchNet's efforts to (i) cooperate with law enforcement; (ii) protect PII and/or Confidential Information belonging to TouchNet, Client, or any third party, or (iii) mitigate or remediate the security incident. TouchNet's report will be made subject to and in conformity with, any applicable legal, regulatory or governmental authority, and may include: (a) identification of the nature of the unauthorized use or disclosure, (b) identification of the type of PII used or disclosed, (c) identification of the person who made the unauthorized use or received the unauthorized disclosure, (d) identification of what TouchNet has done or will do to mitigate any deleterious effect of the unauthorized use or disclosure, and (e) what corrective action TouchNet has taken or will take to prevent future similar unauthorized use or disclosure. TouchNet shall provide such other information,, as reasonably requested by Client.

- 6.3 **Security Report.** No more than once annually, Client may request TouchNet's SSAE Report, its PCI Attestation of Compliance, and any other related analyses or reports that TouchNet may have available for disclosure (collectively "Security Documents"), subject to the confidentiality requirements in this Agreement. To the extent TouchNet provides Client a copy of its SSAE Report in Client's capacity as a "User Entity", Client may only disclose the SSAE Report to its financial auditors who are bound to an obligation of confidentiality similar to those set forth herein, for the exclusive purpose of evaluating the effect of Client's controls on a User Entity's internal control system. Notwithstanding any other provisions herein, Client may not share TouchNet's SSAE Report with any other third-party, contractor, advisor, consultant, or service provider.
- 6.4 **TouchNet's Use of Client Data.** During the term of the Agreement, Client grants to TouchNet, its affiliates, and its third-party service providers, solely to perform the obligations hereunder, a non-exclusive, royalty-free license to modify, reproduce, display, combine, copy, store, transmit, distribute, and otherwise use Client Data. Client authorizes, subject to the terms of this Agreement and to the extent permitted by applicable law, Client Data to be accessed and processed by TouchNet, its affiliates, and/or TouchNet's third-party service providers in countries other than the jurisdiction from which the Client Data was originally collected or provided. Client represents and warrants that it has the authority to provide PII to TouchNet for its use in accordance with the Agreement, and that Client has obtained and provided (or will obtain and provide) all required consents and/or disclosures to End Users regarding sharing such PII with TouchNet.
- 6.5 **TouchNet's Use of PII.** To the extent necessary to provide the TouchNet Services, Client authorizes TouchNet to collect, access, use, transmit and/or otherwise process PII. Client remains at all times in control of and the owner of PII that TouchNet processes. By submitting or providing TouchNet access to PII, Client agrees that TouchNet and its affiliates may process the PII for the sole purposes of (i) providing TouchNet Services, (ii) maintaining, supporting, evaluating, improving and/or developing TouchNet Services and developing new products or services, (iii) enforcing TouchNet's rights under this Agreement, (iv) as permitted by applicable law, and (v) as permitted with the End User's consent, as communicated by Client or End User to TouchNet, solely with respect to their own PII. TouchNet does not and will not use PII for targeted advertising.
- 6.6 **Requests to Delete, Access, Correct, or Retrieve PII.** To the extent TouchNet receives a request from an End User to delete, access, correct, or retrieve PII, TouchNet will redirect the End User to Client, and such request will be accommodated only at Client's direction.
- 6.7 **Third-Party Service Providers.**
- 6.7.1 In providing the TouchNet Services, TouchNet may provide access to PII to its third-party service providers, to the extent they have a legitimate need to access such information in order to provide their services to TouchNet as part of the TouchNet Services. TouchNet requires third-party service providers with access to PII to agree to contractual terms related to data use, disclosure, retention and data security, that are materially similar to the relevant terms of the Agreement.
- 6.7.2 To the extent Client or End User shares PII with a third party through the TouchNet Services, Client agrees that TouchNet is not responsible for the data practices of those third parties, and Client is solely responsible for meeting any applicable requirements and the consequences of providing or transmitting PII to such third parties, or authorizing those third parties to access PII through the TouchNet Services.
- 6.8 **Data Location.** PII may be stored or processed in countries other than the country in which it was collected unless and except to the extent required by applicable law. TouchNet will only transfer PII outside the country in which it was collected by means of legally recognized data transfer mechanisms or safeguards.
- 6.9 **EU Data Protection.** To the extent Client is subject to the European Union Data Protection Directive 95/46/EC, the GDPR or similar statute, in relation to the PII that TouchNet processes, the Parties acknowledge and agree that Client is the controller of all Client Data and PII submitted to TouchNet, and that TouchNet is the processor

of that information. This Agreement includes the TouchNet Data Protection Addendum for Personal Data Processing of EU Resident Data (“DPA”), attached as Exhibit 1. If any term in this Agreement conflicts with any term of the DPA, the conflicting term in the DPA shall control.

- 6.10 **FERPA.** Client hereby designates TouchNet as a “school official” with a legitimate educational interest in Client’s education records, as defined in the FERPA, to the extent TouchNet requires access to those records to fulfill its obligations under this Agreement. This designation is solely for the purposes of FERPA compliance and for no other purpose, and to the extent Client has policies, rules, and procedures binding on Client’s school officials generally, those policies, rules, and procedures will apply to TouchNet only to the extent as is relevant to compliance by TouchNet and Client with FERPA. TouchNet shall: (a) comply with FERPA as to any such education records, including, without limitation, abiding by FERPA’s limitations on re-disclosure of personally identifiable information in education records; (b) not use or disclose education records created or received from, by, or on behalf of Client or its students for any purpose other than the purpose for which such disclosure is made; and (c) not use or disclose such education records except as permitted under this Agreement or as authorized by FERPA or Client in writing.
- 6.11 **Cloud Computing Services.** As of the Effective Date, TouchNet certifies that it complies with the then-current requirements of the risk and authorization management program established by the Texas Department of Information Resources (“RAMP”). Pursuant to Section 2054.0593, Texas Government Code, TouchNet shall maintain RAMP compliance and certification, as may be amended from time to time, throughout the term, including any renewal term of this Agreement. TouchNet shall provide Client with evidence of its RAMP compliance and certification within thirty (30) days of Client’s request and at least thirty (30) days prior to the start of any renewal term of this Agreement, or promptly upon TouchNet’s receipt of evidence of its compliance from the State of Texas, whichever applies.
- 6.12 **Cybersecurity Training.** Pursuant to Section 2054.5192, Texas Government Code, TouchNet and its employees, officers, and subcontractors who have access to Client’s computer system and/or database must complete a cybersecurity training program certified under Section 2054.519, Texas Government Code, and selected by Client. The cybersecurity training program must be completed by TouchNet and its employees, officers, and subcontractors during the term of this Agreement and any renewal period of this Agreement. TouchNet shall verify completion of the program in writing to Client within the first 30 calendar days of the term of this Agreement and any renewal period of this Agreement. TouchNet acknowledges and agrees that its failure to comply with the requirements of this Section 6.12 is grounds for Client to terminate this Agreement for cause in accordance with the provisions of Section 8.2. As of the Effective Date, TouchNet utilizes the certified approved training provided by SANS Institute. In approximately March 2022, TouchNet will utilize the certified approved training provided by Knowbe4.
- 6.13 **PCI DSS Compliance.** TouchNet shall maintain compliance with PCI DSS requirements for the term of this Agreement and send documentation of its most recent validation of compliance to Client annually and in accordance with the terms of Section 6.3 above. TouchNet acknowledges that unauthorized access to the cardholder data environment resulting from a lapse in TouchNet’s security obligations is grounds for early termination of this Agreement, without penalty and with immediate effect, at Client’s discretion.

## 7 Confidentiality

- 7.1 **Confidential Information.** “Confidential Information” means all information provided to a Party (the “Receiving Party”) by the other Party (the “Disclosing Party”) that is designated in writing as proprietary or confidential or which a reasonable person familiar with the Disclosing Party’s business and the industry in which it operates ought to know is of a confidential or proprietary nature. Confidential Information may include, but is not limited to, any internal processes, Documentation, TouchNet Data, Client Data, End User data, and all PII.
- 7.2 **Non-Disclosure of Confidential Information.** All Confidential Information shared between the Parties during the term of this Agreement will be held in confidence, and the Parties agree to take reasonable precautions to prevent the unauthorized disclosure of the Confidential Information to any third party. During the term of this Agreement and following termination or expiration of this Agreement, and except as otherwise set forth in Sections 7.3 and 7.4, the Receiving Party shall only use the Disclosing Party’s Confidential Information for the purpose for which it was disclosed and shall not disclose such Confidential Information to any third party, except as required to perform under this Agreement. The Receiving Party shall protect the Disclosing Party’s Confidential Information in the same manner it protects its own confidential information, but in no event shall it protect the Disclosing Party’s Confidential Information with less than commercially reasonable care. The Receiving Party shall only provide Confidential Information of the Disclosing Party to those of the Disclosing Party’s employees, agents or business partners who have a need to know such Confidential Information in the

course of the performance of their job duties and who are bound by a contractual duty of confidentiality no less protective than the Receiving Party's duties of confidentiality hereunder.

7.3 **Exclusions.** Notwithstanding the foregoing, Confidential Information will not include information that (i) was previously known free of any obligation to keep it confidential as evidenced by competent proof thereof; (ii) is or becomes publicly available, by other than unauthorized disclosure; (iii) is rightfully received by the Receiving Party from a third party without restriction and without breach of this Agreement; (iv) is approved for release by prior written approval of the Disclosing Party; or (v) is otherwise required by law (including the Public Information Act, TEXAS GOVERNMENT CODE, Chapter 552), legal process or government regulation, provided that it gives the Disclosing Party reasonable prior written notice to permit the Disclosing Party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

7.4 **Return and Retention of Confidential Information.** Upon expiration or termination of this Agreement, Client shall promptly return or destroy all TouchNet Confidential Information in its possession. Upon expiration or termination of this Agreement, TouchNet will destroy all Client Confidential Information in its possession, except for any Client Confidential Information that TouchNet is required to retain for legal, regulatory, or audit obligations. Any Confidential Information that either Party retains of the other Party under this section will be maintained subject to the protections herein.

7.5 **Intentionally Omitted.**

## 8 Term.

8.1 **Term.** This Agreement will commence on January 1, 2022 and will continue in effect for a term of five (5) years therefrom, ending on December 31, 2026. Thereafter, the Agreement may be renewed by written agreement of the Parties.

8.2 **Termination for Breach.** If either Party breaches any material obligation under the Agreement, the non-breaching Party must provide notice of the breach, and the breaching Party will be entitled to a thirty (30) day cure period in which to remedy the breach. If the breaching Party does not cure the breach within the cure period, the non-breaching Party may, at its sole discretion (1) terminate the Agreement in its entirety, or, (2) terminate only the relevant Service related to the breach. Notwithstanding the foregoing, TouchNet may terminate the Agreement immediately upon written notice if Client materially breaches the license usage restrictions set forth in the Agreement. Except for termination rights in this section, the Parties have no other right of early termination. All rights and obligations of the Parties which by their nature are reasonably intended to survive such termination or expiration will survive termination or expiration of this Agreement.

8.3 **Loss of Funding.** Client believes it has sufficient funds available for the term stated above. However, performance by Client under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds then Client will issue written notice to TouchNet and Client may terminate the Agreement without further duty or obligation hereunder as long as following the termination, Client does not intend to obtain similar products or services from another vendor. The effect of termination of the Agreement hereunder will be to discharge both the Client and TouchNet from future performance of the Agreement, but not from their rights and obligations existing at the time of the termination.

8.4 **Termination for Insolvency.** Either Party may terminate this Agreement effective upon written notice to the other if: (1) the other Party commences a voluntary case under Title 11 of the United States Code or the corresponding provisions of any successor laws; (2) anyone commences an involuntary case against the other Party under Title 11 of the United States Code or the corresponding provisions of any successor laws and either (a) the case is not dismissed by midnight at the end of the 60th day after commencement or (b) the court before which the case is pending issues an order for relief or similar order approving the case; (3) a court of competent jurisdiction appoints, or the other Party makes an assignment of all or substantially all of its assets to, a custodian (as that term is defined in Title 11 of the United States Code or the corresponding provisions of any successor laws) for the other Party or all or substantially all of its assets; and (4) the other Party fails generally to pay its debts as they become due (unless those debts are subject to a good-faith dispute as to liability or amount) or acknowledges in writing that it is unable to do so.

8.5 **Effect of Termination.** Upon termination of this Agreement by either Party, Client's access to the TouchNet Services will be terminated immediately, and each Party will comply with its obligations under Section 7.4. Upon TouchNet's termination of this Agreement due to Client's uncured breach, and in addition to any and all other remedies TouchNet may have for such breach at law or in equity, Client shall pay all fees and expenses that accrued prior to the termination date and owed through the end of the Term. In the event of an early

termination by Client not due to a breach by TouchNet or under Section 8.3 or 8.4, fees that would otherwise have been payable to TouchNet during the remainder of the Term will become immediately due and payable by Client.

**9 Payment & Fees.** Subject to the Texas Prompt Payment Act, TEXAS GOVERNMENT CODE, Chapter 2251:

- 9.1 **Licensed Software and Annual Fees.** TouchNet will invoice Client for the one-time Licensed Software fee and any associated annual fees for Software Maintenance and Support and Hosting Services upon the Effective Date of the TouchNet Order Form. For each subsequent annual period, the Software Maintenance and Support and Hosting Services fees shall be due thirty (30) days in advance of the next annual period. TouchNet will invoice Client for any hardware upon shipment. Client shall pay all fees within thirty (30) days of receipt of invoice.
- 9.2 **TouchNet Cloud Services.** The annual ASP Services Fee (“ASP Fee”) is due and payable upon the Effective Date of the TouchNet Order Form. For each subsequent year, the annual ASP Fee, adjusted by TouchNet as permitted herein, shall be payable thirty (30) days in advance of the next annual period of the TouchNet Order Form.
- 9.3 **OneCard Hardware Fees.**
- 9.3.1 **OneCard Hardware Fees.** All OneCard Hardware will be ordered and billed separately, usually leveraging a TouchNet-provided quote. All OneCard Hardware sales are final. OneCard Hardware purchases are invoiced upon shipment. Client shall pay all fees within thirty (30) days of receipt of invoice.
- 9.3.2 **OneCard Support Services Fees**
- 9.3.2.1 **Enrollment.** Client’s continuous enrollment in the OneCard Support Services program for the OneCard Hardware and OneCard Software is mandatory in order for Client’s license to the OneCard Software to remain in effect.
- 9.3.2.2 **Hardware Support.** After the OneCard Hardware Warranty period described herein, TouchNet shall either repair the terminal or part or replace it with a rebuilt or new terminal or part within a reasonable time and thereafter promptly shall ship the rebuilt or replacement new unit to Client. If the terminal is not repairable or is designated end-of-life by its manufacturer, Client may apply the maintenance paid for the current year to the purchase of a new terminal. Expedited shipping is available at Client’s request and expense.
- 9.4 **Annual Fee Synchronization.** In order to synchronize the billing period for all TouchNet Services, the invoice for the initial period of any newly added, annually billed service (including any software or support service) may include more than six (6) months but not more than eighteen (18) months for the billable period.
- 9.5 **Professional Services Fee.** The one-time Professional Service Fee is payable upon the Effective Date of the TouchNet Order Form. The Professional Service Fee shall be due and payable within thirty (30) days of Client’s receipt of the invoice.
- 9.6 **TouchNet Ready Integration Fees.** Per integration annual fees, and one-time per integration implementation fee are invoiced upon execution of the TouchNet Order Form. All payments are due within thirty (30) days upon Client’s receipt of invoice.
- 9.7 **Travel Expenses.** Client must request TouchNet personnel to travel on-site if Client elects to receive any on-site training, equipment installation, set up or certain professional services. Client will promptly reimburse TouchNet for all actual, reasonable out-of-pocket expenses, including reasonable travel, lodging, and food expenses incurred by TouchNet personnel in connection with on-site training, equipment installation, set-up and professional services rendered in connection with this Agreement and approved in advance and in writing by Client. In the event Client has a travel policy, Client will provide such to TouchNet before making any travel arrangements with TouchNet personnel.
- 9.8 **Purchase Order.** Any purchase order submitted by Client is a mere expression of intent to buy and is not binding in any way unless signed by an authorized officer of TouchNet. TouchNet will accept Client’s Purchase Order to the extent that the terms, conditions, and prices reflected are consistent with those detailed in this Agreement, as it may be amended
- 9.9 **Late Charges.** Late payments of fees are subject to a late charge equal to the lesser of eighteen percent (18%) per year or the highest rate permitted by the Texas Prompt Payment Act, TEXAS GOVERNMENT CODE,

Chapter 2251; plus all attorney's fees and third party expenses actually incurred by TouchNet in collecting any past due fees, payments, or reimbursements of any kind.

- 9.10 **Taxes.** Any and all excise, sales, use, value-added or other taxes or levies imposed by any governmental body on the Client or TouchNet in connection with the use, licensing, handling, or payment of license, hosting, maintenance, or subscription fees with respect to the TouchNet Services (with the exception of taxes measured against TouchNet's net income) are Client's sole responsibility. Client shall be responsible for and reimburse TouchNet for any amounts actually paid by TouchNet or withheld by the Client for any such taxes or levies within thirty (30) calendar days after TouchNet provides notice of same. If Client is tax exempt, Client will send TouchNet a copy of its valid tax exemption certification upon the Effective Date of the TouchNet Order Form or upon reasonable request. Client, as an agency of the State of Texas, is exempt from Taxes Sales & Use Tax in accordance with Section 151.309, Texas Tax Code, and Title 34 TEXAS ADMINISTRATIVE CODE ("TAC") Section 3.322.
- 9.11 **Suspension of Service.** If Client's account is thirty (30) days or more overdue, in addition to any of its other rights or remedies, TouchNet may suspend the TouchNet Services, without any liability to Client, until Client pays such amounts in full.

## 10 Warranty

- 10.1 TOUCHNET WARRANTS THAT TOUCHNET SOFTWARE SHALL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH TOUCHNET'S WRITTEN DOCUMENTATION, AND THAT ALL SERVICES WILL BE PERFORMED IN A PROFESSIONAL AND WORKMAN-LIKE MANNER. THE FOREGOING EXPRESS WARRANTY IS EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. TOUCHNET SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. IN ADDITION, THIS EXPRESS WARRANTY IS IN LIEU OF ANY OTHER LIABILITY OR OBLIGATION FOR DAMAGE, LOSS OR INJURY, WHETHER DIRECT, INDIRECT, EXEMPLARY, SPECIAL, CONSEQUENTIAL OR INCIDENTAL, ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE OR PERFORMANCE OF THE SOFTWARE, AND REPAIR OR REPLACEMENT, AT TOUCHNET'S OPTION, SHALL BE THE SOLE REMEDY FOR ANY SUCH DAMAGE, LOSS OR INJURY. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH ABOVE, THE SOFTWARE IS SOLD "AS IS." NO THIRD PARTY SOFTWARE IS WARRANTED BY TOUCHNET. TOUCHNET DOES NOT WARRANT THAT THE SOFTWARE WILL MEET CLIENT REQUIREMENTS, OPERATE WITHOUT INTERRUPTION OR BE ERROR-FREE.
- 10.2 **Remedy.** If Client believes there has been a breach of a warranty above, Client shall promptly notify TouchNet in writing, and TouchNet will attempt to reproduce and verify the non-conformity. If able to reproduce the non-conformity, TouchNet will make reasonable efforts to repair or otherwise remedy the non-conformity so that the impacted TouchNet Services materially comply with the warranty. Repairs may include code fixes, work arounds, or other modifications.
- 10.3 **Hardware Warranty.**
- 10.3.1 TouchNet will warrant OneCard Hardware as follows: TouchNet warrants that each piece of hardware will be free from faulty workmanship and defective materials for a period of ninety (90) days ("Warranty Period"), which will be calculated from the date Client receives the hardware. If Client notifies TouchNet within the Warranty Period of a defect or faulty workmanship in a piece of OneCard Hardware, TouchNet will, at its option, either repair or replace the affected hardware. Client will pay shipping to return the affected hardware to TouchNet, and TouchNet will pay shipping costs to return the repaired or replacement hardware back to Client. Repair or replacement of hardware does not extend the Warranty Period.
- 10.3.2 The warranty does not apply to defects resulting from (i) improper, inadequate, or unauthorized maintenance or improper site preparation by Client, (ii) non-TouchNet software, interfacing or supplies, (iii) unauthorized modification, (iv) improper use or operation outside of the conditions specified for such hardware, or (v) abuse, neglect, accident, liquid spillage, acts of nature, or loss or damage in transit. THIS EXPRESS WARRANTY IS EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. TOUCHNET SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. IN ADDITION, THE FOREGOING EXPRESS WARRANTY IS IN LIEU OF ANY OTHER LIABILITY OR OBLIGATION FOR DAMAGE, LOSS OR INJURY, WHETHER DIRECT,

INDIRECT, EXEMPLARY, SPECIAL, CONSEQUENTIAL OR INCIDENTAL, ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE, PERFORMANCE OR NON-PERFORMANCE OF THE PRODUCTS. REPAIR OR REPLACEMENT, AT TOUCHNET'S DISCRETION, SHALL BE THE SOLE REMEDY FOR ANY SUCH DAMAGE, LOSS, OR INJURY. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH ABOVE, HARDWARE IS SOLD "AS IS".

## 11 Limitation of Liability and Indemnification

- 11.1 **Limitation of Liability.** EXCEPT AS PROVIDED UNDER SECTION 11.2, IN NO EVENT SHALL TOUCHNET BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR OTHER DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE DELIVERY, USE, PERFORMANCE, NON-PERFORMANCE OF OR INABILITY TO USE THE PRODUCTS, SOFTWARE OR SERVICES PROVIDED BY TOUCHNET, EVEN IF TOUCHNET HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS PROVIDED UNDER SECTION 11.2, IN NO EVENT SHALL TOUCHNET'S TOTAL LIABILITY TO CLIENT EXCEED THE FEES PAID BY CLIENT DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE CLAIM TO TOUCHNET FOR THE SPECIFIC ONECARD HARDWARE, SOFTWARE OR SERVICE GIVING RISE TO THE LIABILITY FROM WHICH THE CLAIM AROSE. THE PARTIES AGREE TO THE ALLOCATION OF LIABILITY SET FORTH IN THIS SECTION ENTITLED "LIMITATION OF LIABILITY" AND CLIENT ACKNOWLEDGES THAT WITHOUT CLIENT'S AGREEMENT TO THE LIMITATIONS CONTAINED HEREIN THE FEES CHARGED FOR THE HARDWARE, SOFTWARE, AND SERVICES WOULD BE HIGHER.
- 11.2 **Intellectual Property Indemnification.** Subject to Section 11.1, TouchNet will indemnify, defend and hold Client and its officers, employees and agents ("Client Indemnitees") harmless from and against any and all claims for damages, losses, liabilities or expenses, including reasonable attorneys' fees, brought against Client Indemnitees by a third party (collectively, "Claims") incurred arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against Client alleging that the use of the TouchNet Services as permitted hereunder infringes any United States patent, copyright, or trademark, or constitutes a misappropriation of a trade secret of a third party. Excluded from the above indemnification obligations are claims to the extent arising from (i) use of the TouchNet Services in violation of this Agreement or applicable law, (ii) use of the Services after TouchNet notifies Client to discontinue use because of an infringement claim, (iii) any claim relating to any third party content or data or (iv) modifications to the TouchNet Services unauthorized by TouchNet. If any of the TouchNet Services are held to infringe, TouchNet will, at its own expense, in its sole discretion use commercially reasonable efforts either (a) to procure a license that will protect Client against such claim without cost to Client; (b) to replace the relevant TouchNet Services with non-infringing TouchNet Services; or (c) if (a) and (b) are not commercially feasible, terminate the Agreement and refund to the Client any prepaid unused fees paid to TouchNet for the infringing TouchNet Services. The rights and remedies granted Client under this Section ("IP Indemnification") state TouchNet's entire liability, and Client's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party, whether arising under statutory or common law or otherwise.
- 11.3 **TouchNet Indemnification.** In addition to the IP Indemnification above and subject to Section 11.6 below, TouchNet shall indemnify and hold harmless Client Indemnitees from and against any and all Claims arising directly from (i) TouchNet's gross negligence or intentional misconduct, and (ii) theft or misappropriation of PII contained in Client Data, unless caused by Client's owners, agents, employees or others under Client's direction or control.
- 11.4 **Client Indemnification.** Except to the extent prohibited by applicable law, including laws providing for the sovereign immunity of government entities, Client will indemnify and hold harmless TouchNet, its affiliates, or its employees, contractors, agents, or assigns (a "TouchNet Indemnitee") from Claims to the extent directly arising from (a) Client's use of the TouchNet Services in violation of the terms of this Agreement, (b) the accuracy of Client Data or any other content submitted to TouchNet by Client, (c) Client's gross negligence, or willful misconduct.
- 11.5 **Indemnification Procedure.** The indemnified Party shall (i) promptly notify the indemnifying Party in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying Party's obligation except to the extent it is prejudiced thereby, and (ii) allow the indemnifying Party to solely control the defense of any claim, suit or proceeding and all negotiations for

settlement. The indemnified Party shall also provide the indemnifying Party with reasonable cooperation and assistance in defending such claim (at the indemnifying Party's cost).

- 11.6 **Authorization to Defend.** TouchNet acknowledges that Client is a state agency, and that TouchNet will have sole authority to defend a Claim under this Section only to the extent that the Texas Attorney General provides such authorization. If authorization to defend the Claim is not given to TouchNet by the Texas Attorney General, TouchNet is released from all indemnification and defense obligations with respect to that particular Claim under this Agreement.

## 12 Product Specific Terms

- 12.1 **PCI EZ Program.** The PCI EZ Program assists clients who have TouchNet processing services for either or both credit card processing or the TouchNet Service Fee with maintaining their compliance with applicable card brands. The PCI EZ Program consists of three services in total, and clients may elect to participate in all three services, or they may elect to participate in only a portion, or none, of the services available. The PCI EZ Program consists of (1) client's access to TouchNet's unique environment for compliance reporting where, among other things, clients can obtain access to "smart SAQs" or receive assistance in setting up scans of their environments; (2) participation in the four card brand exemption program for merchant processing, which consists of the Visa Technology Innovation Program (TIP), MasterCard Site Data Protection Program (SDP), Discover Information Security & Compliance (DISC) Program, and American Express Security Technology Enhancement Program (STEP); and (3) participation in the Validated Point to Point Encryption Service Program, described below. For clients electing to participate in the PCI EZ Program, they must utilize TouchNet processing services for either or both credit card processing or the TouchNet Service Fee, and clients must complete a separate order form identifying which services they desire to participate in by "opting in" to the service program, with the exception of the Validated Point to Point Encryption Service Program, which services are purchased via issuance of a purchase order, as more specifically stated below.
- 12.2 **Validated Point to Point Encryption Service Program.** TouchNet uses a validated third-party service, best utilized by TouchNet Marketplace POS, TouchNet POS Client, Student Cashiering and Retail Cashiering. Additional hardware and technical services charges may also apply. In certain circumstances, loaner devices may be provided by TouchNet to Campus Entity. In such circumstances, if Campus Entity fails to timely return those devices by the required deadline, a late fee will apply equal to \$375.00 per device. P2PE hardware and validated point to point encryption services must be purchased via issuance of a purchase order made in accordance with the terms of the Agreement. TouchNet will ship hardware upon receipt of the purchase order. If Client elects to purchase the validated point to point encryption services, the services shall co-terminate with the term of the Agreement or Order Form, whichever applies. The validated point to point encryption services only are terminable by either Party upon giving thirty (30) days prior written notice to the other Party.

## 13 General

- 13.1 **Notice.** Notices required under the Agreement must be submitted in writing to any physical or email address provided by the other Party, including, for notices to Client, to the physical or email address TouchNet uses for billing or as set forth in an Order Form. In the case of a dispute, notices also must be sent to the following addresses.

<p><b>If to Client:</b> Texas A&amp;M University-Commerce 2600 S. Neal Street Commerce, TX 75428 Attn: Travis A. Ball, Chief Procurement Officer</p>	<p><b>If to TouchNet:</b> Global Payments Inc. 3550 Lenox Road, NE #3000 Atlanta, GA 30326 Attn: General Counsel</p>
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- 13.2 **Feedback.** Client may notify TouchNet of all ideas for changes, improvements, modifications, enhancements, or bug-fixes (collectively, "Feedback") that come to Client's attention while using the TouchNet Services. Client grants TouchNet a non-exclusive, perpetual, irrevocable, royalty-free, worldwide right and license to use, reproduce, disclose, sublicense, distribute, modify, and otherwise exploit such Feedback, if any, without restriction. TouchNet acknowledges that such license is to the extent that Client has the right to do so and any Feedback is provided as-is, without warranties of ownership, merchantability, fitness for a particular purpose, or any other warranties, express or implied.
- 13.3 **Piggyback Provision.** Client may permit other state institutions to contract with TouchNet under the same terms and conditions as in this Agreement, provided that each such institution seeking to exercise this right shall

- separately agree in writing to the terms and conditions of this Agreement and execute a separate TouchNet Order Form.
- 13.4 **Entire Agreement.** This Agreement, together with any exhibits, constitutes the entire agreement between Client and TouchNet and supersedes any other prior agreements or understandings, whether oral or written, including but not limited to those listed earlier. If a provision of this agreement is deemed null and void, invalid or without effect, the remainder of this agreement shall remain in effect. No amendment to or modification of this Agreement will be binding unless in writing and signed by both Parties.
- 13.5 **Force Majeure.** With the exception of Client's obligations to pay TouchNet monies due under this Agreement, neither Party shall be liable to the other for delay or failure to perform any obligation hereunder resulting from a Force Majeure event. The Parties will use reasonable efforts to resume obligations under this Agreement as quickly as possible following such an event. However, where the Party claiming an event of Force Majeure continues to be delayed or continues to fail to perform any obligation hereunder for a period of greater than sixty (60) days, the Parties may either mutually agree to extend the period of Force Majeure, or either party may terminate the Agreement without penalty, following written Notice to the other Party, as long as such Notice to terminate occurs no later than ninety (90) days following the event of Force Majeure.
- 13.6 **Governing Law, Venue and Jurisdiction.** This Agreement shall be construed and governed by the laws of the state in which Client is resident without regard to legal principles related to conflict of laws. Any action arising out of or relating to this Agreement shall be brought only in the state or federal courts of Client's resident state. The Parties, to the extent allowed by state law, waive any claim that such action is brought in an improper or inconvenient forum. To the extent allowed by state law, the Parties waive trial by jury.
- 13.7 **Severability.** If any one or more of the provisions of this Agreement shall be invalid, illegal, or unenforceable in any respect under any applicable statute, rule of law, or public policy, such provision shall be considered inoperative to the extent of such invalidity, illegality, or unenforceability and the remainder of this Agreement shall continue in full force and effect. The Parties agree to replace any such invalid, illegal, or unenforceable provision with a new provision that has the most nearly similar permissible legal and economic effect.
- 13.8 **Headings.** Headings are included in this Agreement as a matter of convenience only and shall not be controlling with regard to the interpretation of this Agreement.
- 13.9 **Amendments.** This Agreement shall not be modified except by written amendment signed by each of the Parties.
- 13.10 **Assignment.** This Agreement shall be binding upon and for the benefit of TouchNet, Client and their permitted successors and assigns. Either Party may assign this Agreement as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets. Except for TouchNet's use of subcontractors, neither Party may otherwise assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of the other Party, and any attempted assignment or delegation in violation of this section will be void.
- 13.11 **Relationship of the Parties.** TouchNet and Client are independent contractors, and nothing in this Agreement shall be construed as making them partners or creating the relationships of employer and employee, master and servant, or principal and agent between them, for any purpose whatsoever. Neither Party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other Party's name or on its behalf.
- 13.12 **Eligibility to Receive Payment.** In accordance with Section 231.006 of the TEXAS FAMILY CODE and Sections 2155.004 and 2155.006 of the TEXAS GOVERNMENT CODE, TouchNet certifies that it is not ineligible to receive this Agreement or any payments under this Agreement and acknowledges that Client may terminate this Agreement and/or withhold payment and/or reimbursement if this certification is inaccurate.
- 13.13 **Payment of Debt or Delinquency to the State.** Pursuant to Section 2107.008 and Section 2252.903, TEXAS GOVERNMENT CODE, TouchNet agrees that any payments owing to TouchNet under this Agreement may be applied directly toward certain debts or delinquencies that TouchNet owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.
- 13.14 **Franchise Tax Certification.** If TouchNet is a taxable entity subject to the Texas Franchise Tax (Chapter 171, TEXAS TAX CODE), then TouchNet states that it is not currently delinquent (or is actively working to correct any delinquency) in the payment of any franchise (margin) taxes, or that TouchNet believes it is exempt from the payment of franchise (margin) taxes.

13.15 **State Auditor's Office.** TouchNet understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), TEXAS EDUCATION CODE. TouchNet agrees to cooperate with the Auditor in the conduct of the audit or investigation, including providing all relevant records reasonably requested. TouchNet will include this provision, or something substantially similar hereto, in all contracts with permitted subcontractors.

13.16 **Dispute Resolution.**

13.16.1 **Breach of Contract Claims Asserted by TouchNet.** To the extent that Chapter 2260, TEXAS GOVERNMENT CODE, as amended from time to time ("Chapter 2260") is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, will be used, as further described herein, by Client and TouchNet to attempt to resolve any claim by TouchNet based on breach of contract by Client (a "TouchNet Claim"). The submission, processing and resolution of the TouchNet Claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, thereafter enacted or subsequently amended. Client and TouchNet agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.

13.16.1.1 Any TouchNet Claim that the Parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business will be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, TouchNet will submit written notice, as required by subchapter B of Chapter 2260, to Client in accordance with Section 13.1 of this Agreement. TouchNet's notice will specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision or provisions that Client allegedly breached, the amount of damages TouchNet seeks, and the method used to calculate such damages. Compliance by TouchNet with subchapter B of Chapter 2260 is a required prerequisite to TouchNet's filing of a contested case proceeding under subchapter C of Chapter 2260. The chief business officer of Client, or another officer of Client as may be designated from time to time by Client by written notice to TouchNet in accordance with Section 13.1 of this Agreement, will examine TouchNet's Claim and any counterclaim and negotiate with TouchNet in an effort to resolve the claims.

13.16.1.2 If the Parties are unable to resolve their disputes under Section 13.16.1.1, the contested case process provided in subchapter C of Chapter 2260 is TouchNet's sole and exclusive process for seeking a remedy for any TouchNet Claim.

13.16.1.3 Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107, TEXAS CIVIL PRACTICES AND REMEDIES CODE. The Parties specifically agree that (i) neither the execution of this ASP Agreement by Client, nor any other conduct, action or inaction of any representative of Client relating to this ASP Agreement constitutes or is intended to constitute a waiver of Client's or the state's sovereign immunity to suit and (ii) the Parties have not waived their right to seek redress in the courts, if any.

13.16.2 **Separate Claims.** With respect to (a) any claim by TouchNet against Client which is not covered by Chapter 2260 or (b) any claim by Client against TouchNet, that cannot be resolved in the ordinary course of business, (collectively, "Separate Claim"), the Parties specifically agree that the Separate Claim will be submitted to mediation pursuant to the provisions of this Section 13.16.2.

13.16.2.1 To commence mediation hereunder, Client, or TouchNet, as the case may be, will submit a written notice ("Mediation Notice") that will state, at a minimum, (A) the nature of the claim; (B) the amount sought as damages; and (C) the legal theory of recovery.

13.16.2.2 The Parties will select an independent mediator agreeable to both Parties who will attempt to mediate the Separate Claim. The mediator will be a person qualified under Subchapter C, Chapter 154, TEXAS CIVIL PRACTICE and Remedies Code, and will be

appointed by the American Arbitration Association if the Parties are unable to agree upon a qualified person within thirty (30) days after the date of the Mediation Notice. Mediation will be non-binding. Each Party will be represented in the mediation by a person with authority to settle the dispute.

13.16.2.3 The mediator will communicate with the Parties to arrange and convene the mediation process that will be most efficient, convenient, and effective for both Parties. The costs of the mediation (other than each Party's individual costs) and fees of the mediator will be borne equally by the Parties. The Parties will reasonably cooperate with the mediator in coming to an agreement on the mediation arrangements which will include the time and place for conducting the mediation, who will attend or participate in the mediation, and what information and written material will be exchanged before the mediation.

13.16.3 **No Waiver.** Neither the execution of this Agreement by Client, nor any other conduct, action, or inaction of any representative of Client relating to this Agreement constitutes or is intended to constitute a waiver of Client's, or the state's sovereign immunity to suit; and (ii) the Parties have not waived their right to seek redress in the courts, if any.

13.16.4 **Injunctive Relief and Termination.** To the extent of the laws and Constitution of the State of Texas, the procedures provided for in this Section 13.16 will not be a precondition (1) to the commencement of any action, by either Party, for injunctive or other equitable relief or (2) to termination of this Agreement, as provided for in accordance with its terms.

13.17 **Representations.** TouchNet represents that it is a duly organized, validly existing corporation in good standing under the laws of the State of Kansas; that to the best of its knowledge, it is duly authorized and in good standing to conduct business in the State of Texas; that it has all necessary power and has received all necessary approvals to execute and deliver this Agreement; and that the individual executing this Agreement on behalf of TouchNet has been duly authorized to act for and bind TouchNet.

13.18 **Ethics Matters; No Financial Interest.** During the term of this Agreement, TouchNet shall conduct itself at all times in accordance with its employee code of conduct and ethics. If, at any time during the term of this Agreement, Client determines, acting reasonably, that TouchNet's conduct does not satisfy any applicable state ethics laws or rules, Client may terminate this Agreement within thirty (30) days of the conduct at issue upon written notice to TouchNet. In addition, TouchNet states that to its knowledge, no member of the Board has a direct or indirect financial interest in this Agreement.

13.19 **Limitations.** The Parties are aware that there are constitutional and statutory limitations on the authority of Client (a state agency) to enter into certain terms and conditions that may be part of this Agreement, including those terms and conditions relating to prepayments, liens on Client's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"). Consequently, terms and conditions related to the Limitations will not be binding on Client except to the extent authorized by the laws and Constitution of the State of Texas. Nevertheless, if one or more of the provisions of this Agreement is later challenged as lacking authorization or as being in violation of the Constitution and laws of the State of Texas, then Client represents that it is the Client's express desire that, within the confines of the laws and the Constitution of the State of Texas, the specific provisions under such challenge be enforced to the fullest extent of the laws and Constitution of the State of Texas, including those provisions which fall within the definition of Limitations (as defined in this subsection).

13.20 **Boycotts of Israel.** In accordance with Section 2270.002 of the Texas Government Code, TouchNet does not, and will not during the term of this Agreement, engage in a boycott of Israel.

13.21 **Access by Individuals with Disabilities.** TouchNet makes good faith, commercially reasonable efforts (EIR Accessibility Statement) to ensure that the electronic and information resources and all associated information, documentation, and support TouchNet provides to Client under this Agreement (EIRs) complies with applicable requirements set forth in 1 TAC Chapter 213 and 1 TAC Sec. 206.70 (ref. Subchapter M, Chapter 2054, *Government Code*). Client understands and acknowledges that certain aspects of the software are not able to be fully compliant due to the cost of remediation and fiscal impact for bringing the EIR into compliance, as described in 1 TAC Sec. 213.37. To the extent TouchNet becomes aware that additional portions of the EIR do

not comply with the EIR Accessibility Statement, then TouchNet agrees it will, at no cost to Client, either (a) perform all necessary remediation to make EIRs satisfy the EIR Accessibility Statement (b) replace EIRs with new EIRs that satisfy the EIR accessibility Statement or (c) seek an exception from compliance under 1 TAC Sec. 213.37. If TouchNet fails or is unable to do so, or Client refuses to grant an exception, Client may terminate this Agreement. Upon Client’s reasonable request, and subject to the confidentiality provisions within this Agreement, TouchNet will make commercially reasonable efforts to complete and provide Client with applicable Voluntary Product Accessibility Templates (“VPATs”) appropriate to the TouchNet Software and services provided pursuant to this Agreement.

- 13.22 **Certification as to Boycotting Energy Companies.** Pursuant to Texas Government Code Chapter 2274.002 and if applicable, TouchNet certifies that TouchNet does not boycott energy companies and will not boycott energy companies during the term of this Agreement. For purposes of this provision, “boycott energy companies” has the meaning provided in Texas Government Code Section 809.001
- 13.23 **Certification as to Business with Certain Countries and Organizations.** Pursuant to Chapter 2252, Texas Government Code, TouchNet certifies that TouchNet is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Client may terminate this Agreement if this certification is inaccurate.
- 13.24 **Certification as to Contracts Related to Persons Involved in Human Trafficking.** Pursuant to Section 2155.0061, Texas Government Code, TouchNet certifies that TouchNet is not ineligible to enter into this Agreement due to financial participation by a person who, during the five-year period preceding the date of this Agreement, has been convicted of any offense related to the direct support or promotion of human trafficking, and acknowledges that Client may terminate this Agreement and withhold payment if this certification is inaccurate.
- 13.25 **Certification as to Discrimination Against Firearm Entities.** Pursuant to Texas Government Code Chapter 2274.002 and if applicable, TouchNet certifies that TouchNet (a) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (b) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.
- 13.26 **Not Eligible for Rehire.** TouchNet will make commercially reasonable efforts to ensure that employees providing services for Client have not been designated by The Texas A&M University System (the “A&M System”) as Not Eligible for Rehire as defined in System policy 32.02, Section 4. Notwithstanding the foregoing, Client shall promptly provide all necessary and reasonable information required by TouchNet’s reasonable request in its attempt at complying with this provision.
- 13.27 **Conflict of Interest.** TouchNet and each person signing on behalf of TouchNet certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of the A&M System or the A&M System Board of Regents, nor any employee or person whose salary is payable in whole or in part by the A&M System, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

IN WITNESS WHEREOF the Parties hereto have entered into this Master Services Agreement as of the Effective Date by their duly authorized representatives.

TouchNet Information Systems, Inc.

DocuSigned by:



Signature: \_\_\_\_\_  
214ED814D64045B

By: Adam McDonald

Title: President

2/15/2022

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

Texas A&M University – Commerce

Signature: 

By: Leilani A. Alquiza

Title Contract Administrator

Date: February 15, 2022