

## TouchNet Order Form

This TouchNet Order Form is between TouchNet Information Systems, Inc. (“TouchNet”) and Pima County Community College District (“Client”) incorporates the terms and conditions of Client’s Master Services Agreement with TouchNet (the “Existing Agreement”) and identifies the TouchNet Services Client is purchasing. The TouchNet Order Form and the Existing Agreement are the entire agreement between the Parties regarding the products and services identified below. While TouchNet may accept Client’s purchase order, no terms or conditions in such a purchase order will supersede the terms and conditions in this TouchNet Order Form and the Existing Agreement. Each of the individuals executing the TouchNet Order Form represent and warrant that he or she is authorized to bind Client or TouchNet respectively to the terms and conditions herein.

- A. Definitions.** All capitalized terms used in this TouchNet Order Form but not defined herein have the same meaning as in the Existing Agreement. For clarity, “**TouchNet Software**” means the computer program applications that Client wishes to use and access remotely on TouchNet’s servers that enable the Services, and includes all software components, product documentation and associated media, sample files, extension files, tool and utilities and miscellaneous technical information. “**TouchNet Services**” means all software and hardware services or products that Client obtains from TouchNet or accesses through TouchNet.
- B. Campus Entity.** A “Campus Entity” means a single community college, technical college, college or university campus or facility that offers a degree program in its own name, including any internal departments or academic colleges associated with the primary institution, that share a single tax-identification number. Fees may vary depending upon (among other factors) the number of Campus Entities accessing TouchNet Services. TouchNet Software is provided to the Campus Entity that Client identifies in this TouchNet Order Form: Pima County Community College District
- C. Setup Site.** The Licensed Software is installed at the TouchNet DataCenter (the “Setup Site”).

### D. TouchNet Products & Services

| TouchNet Cloud Software (ASP Services)  | Price    | Quantity | Total Price      |
|---|----------|----------|------------------|
| TouchNet Payment Gateway Debit Engine, Payment Client (including FlexReg and registrar transcript application fees payment points), eRefunds, TouchNet Payment Plans, Mobile Bill+Payment and Mobile Marketplace software | \$78,105 | 1        | \$78,105         |
| Student Account Advisor and Marketplace POS – limited use <sup>1</sup>  | \$12,246 | 1        | \$12,246         |
| SponsorPoint  | \$32,512 | 1        | \$32,512         |
| <b>Total Annual Software Subscription (ASP Services) Fee</b>  |          |          | <b>\$122,863</b> |

| TouchNet Licensed Software (SLP)  | Price           | Quantity | Total Price            |
|---|-----------------|----------|------------------------|
| TouchNet Payment Gateway Credit Card and ACH Engines, Account Center, eBill, TouchNet Cashiering – Student, TouchNet Cashiering – Departmental Deposits, TouchNet Marketplace uPay, and TouchNet Marketplace uStores software | Previously Paid | 1        | Previously Paid        |
| <b>Total One-Time Licensed Software Fee</b>   |                 |          | <b>Previously Paid</b> |

| TouchNet Software Maintenance/Support   | Price    | Quantity | Total Price     |
|---|----------|----------|-----------------|
| TouchNet Payment Gateway Credit Card and ACH Engines, Account Center, eBill, TouchNet Cashiering – Student, TouchNet Cashiering – Departmental Deposits, TouchNet Marketplace uPay, and TouchNet Marketplace uStores software | \$60,140 | 1        | \$60,140        |
| <b>Total Annual Software Maintenance/Support Fee</b>  |          |          | <b>\$60,140</b> |

| TouchNet Hosting Services                             | Price     | Quantity | Total Price |
|---|-----------|----------|-------------|
| TouchNet Payment Gateway Credit Card and ACH Engines, | \$100,687 | 1        | \$100,687   |

<sup>1</sup> This may be utilized for no more than three payment terminals.

|   |  |  |                  |
|---|--|--|------------------|
| Account Center, eBill, TouchNet Cashiering – Student, TouchNet Cashiering – Departmental Deposits, TouchNet Marketplace uPay, and TouchNet Marketplace uStores software |  |  |                  |
| <b>Total Annual Hosting Services Fee</b>  |  |  | <b>\$100,687</b> |

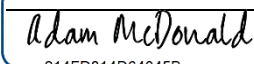
- E. Term.** The Term of the TouchNet Software in the application subscription program commences on June 1, 2022 and continues for a period of five (5) years. Thereafter, the TouchNet Software in the application subscription program and the Existing Agreement will automatically renew for additional five (5) year periods unless terminated by either Party by giving ninety (90) days written notice prior to the end of any term. The Term of the annual Hosting and Maintenance Services for the Licensed Software purchased via the perpetual license shall commence on June 1, 2022 and continue for a period of one (1) year (“Initial Services Term”). Thereafter, the Term of the annual Hosting and Maintenance Services shall automatically renew, unless terminated earlier as provided in the Existing Agreement, for additional one (1) year renewal periods thereafter (“Renewal Services Terms”) unless terminated by either Party by giving ninety (90) days written notice prior to the end of any term.
- F. Other Agreements.** The Parties hereby re-state and re-affirm that the following contracts are currently in place between TouchNet and Client: TouchNet eRefunds Processing Addendum dated March 31, 2021 and TouchNet Ready Client Integration Order Form #1 dated November 2, 2021.
- G. Payment.** Client will pay all fees identified in this and any subsequent TouchNet Order Forms as described in the Existing Agreement. Payment is in US Dollars unless stated otherwise. Fees may change annually as described in the Existing Agreement.

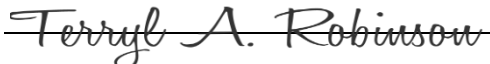
**H. Billing Information.**

Billing Contact Name: \_\_\_\_\_ Billing Contact Email: \_\_\_\_\_  
 Sales Tax Exempt? \_\_\_\_\_

**TOUCHNET INFORMATION SYSTEMS, INC.**

**PIMA COUNTY COMMUNITY COLLEGE DISTRICT**

DocuSigned by:  
  
 By: \_\_\_\_\_  
 Name: Adam McDonald  
 Title: President  
 Date: 6/28/2022

  
 By: \_\_\_\_\_  
 Name: Terry Robinson  
 Title: Director, Procurement & Payment Services  
 Date: \_\_\_\_\_

*\*Order Form must be executed by Client on or before April 30, 2022 to guarantee pricing.*

## TOUCHNET MASTER SERVICES AGREEMENT

This TouchNet 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 Pima County Community College, located at District 4905 D. East Broadway Blvd., Tucson, AZ 85709-1005 (“Client”). TouchNet and Client may individually be referred to herein as Party (“Party”) or collectively as (“Parties.”)

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 “Attestation of Compliance” means the form used by eligible entities to attest to the results of a PCI DSS assessment.
  - 1.3 “Available” means that the TouchNet Cloud Services can be accessed by Client and will operate in material accordance with the Documentation.
  - 1.4 “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.
  - 1.5 “Client User” means Client’s employees and authorized agents using the back office TouchNet Services functionality.
  - 1.6 “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.
  - 1.7 “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.
  - 1.8 “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.
  - 1.9 “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.
  - 1.10 “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.
  - 1.11 “Implementation” means the process of installing and running the TouchNet Services for Client’s use, as further described herein.
  - 1.12 “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.
  - 1.13 “Licensed Software Updates” means all updates, error corrections, and enhancements that TouchNet makes available to all clients for the Licensed Software.

- 1.14** “Measurement Period” means a calendar month period.
- 1.15** “[REDACTED] Hardware” means certain hardware components developed or sold by TouchNet that support the use of the [REDACTED] Software.
- 1.16** “[REDACTED] Services” means the solution that includes both [REDACTED] Hardware and [REDACTED] Software, along with the [REDACTED] Support Services. [REDACTED]  
[REDACTED] Services are part of TouchNet Services.
- 1.17** “[REDACTED] Software” means the computer program applications that Client wishes to use and access remotely on TouchNet’s servers that enable [REDACTED] Services. [REDACTED] Software is part of TouchNet Software.
- 1.18** “Percentage Availability” means the percentage of time the TouchNet Cloud Services was Available during a Measurement Period, which will be calculated as follows:  $(\text{Actual Uptime} \div (\text{Total Minutes in Scheduled Uptime in Measurement Period} - \text{Total Minutes in Scheduled Uptime in Measurement Period TouchNet Cloud Services are not Available due to an Exception})) \times 100 = \text{Percentage Availability}$ .
- 1.19** “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 information as defined in Section 99.3 of the Family Educational Rights and Privacy Act (“FERPA”).
- 1.20** “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%.
- 1.21** “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.
- 1.22** “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.
- 1.23** “SSAE” means “SSAE” means Statement on Standards for Attestation Engagements No. 16, Reporting on Controls at a Service Organization, produced by the American Institute of Certified Public Accountants.
- 1.24** “Support Services” means the support that TouchNet provides Client in connection with the TouchNet Services.
- 1.25** “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.
- 1.26** “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.
- 1.27** “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.
- 1.28** “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.
- 1.29** “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.
- 1.30** “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.
- 1.31** “TouchNet DataCenter” means a location where the TouchNet Software resides.
- 1.32** “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.

- 1.33** “TouchNet Cloud Services Level Failure” means that the Percentage Availability was below the Required Availability for the TouchNet Cloud Services.
- 1.34** “TouchNet Order Form” means the form identifying the exact TouchNet Services and corresponding fees (both annual and one-time) that Client purchases.
- 1.35** “TouchNet Ready Integration” means the TouchNet-approved integration between certain TouchNet Services and a third party’s proprietary software application, enabling additional functionality.
- 1.36** “TouchNet Services” means all software and hardware services or products that Client obtains from TouchNet or accesses through TouchNet, including TouchNet Software, OneCard Software, and OneCard Hardware.
- 1.37** “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.
- 1.38** “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.
- 1.39** “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 purchased or that Client is 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 OneCard hardware and/or firmware (“OneCard 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 standard maintenance, hosting and Support Services, 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 reasonably necessary to enable TouchNet to provide the TouchNet Services.
- 3.1.3** **Schedules.** If Client reschedules an Implementation after a date has been determined, a surcharge of 50% of the total Professional Services Fee assessed on the TouchNet Order Form may apply, and the Implementation will be rescheduled based upon TouchNet’s availability at that time. The maximum time allowed for Implementation for all TouchNet Services is twelve (12) months. If delays beyond twelve (12) months are caused by Client, additional Professional Services Fees may apply.
- 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.

- 3.1.5 Support Services.** Support Services for the TouchNet Cloud Services are included at no additional charge. During the term of this Agreement, TouchNet will provide 24/7/365 monitoring and support of the TouchNet DataCenter. Support is provided during TouchNet's Business Hours and such support is available by phone, email, or via TouchNet's Client Community. As part of its support services, TouchNet will provide Client with unlimited telephone support.
- 3.1.6 Standard Maintenance.** Standard Maintenance is provided for TouchNet Cloud Services at no additional charge. Client acknowledges and agrees that during such periods of maintenance or repair, the TouchNet Software may not be Available for Client's use. TouchNet endeavors to perform routine maintenance outside of TouchNet Business Hours. TouchNet publishes planned maintenance windows and uses commercially reasonable efforts to provide Client fourteen (14) days' notice before the monthly four (4) hour maintenance windows. In 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.
- 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-sublicenseable, 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, the Gramm-Leach Bliley Act, HIPAA, FERPA, or 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.** During the Term, TouchNet will be Client's exclusive provider of the TouchNet Services purchased by Client. Client will not develop for itself, and will not enter into any agreement with a third party that develops, sells or provides, services which are substantially similar to or competitive with the TouchNet Services.
- 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.
- 3.10 Client Responsibilities.** Client is responsible 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. Client shall: (i) have

sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all data, information or material provided or submitted to TouchNet by Client or End Users; (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 post that information in the TouchNet Client Community. In the event of any conflict between this Agreement and any third party terms applicable to any portion of the TouchNet Services, such as open-source license terms or equipment terms, such other terms will control as to that portion of the TouchNet Services and to the extent of the conflict. 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.

#### **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 or for other reasons beyond TouchNet's control, 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. 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** [REDACTED] is required to operate the [REDACTED] Software, unless TouchNet grants a specific exception in writing. [REDACTED] will provide support for point of sale terminals and included peripherals obtained [REDACTED] for five (5) years from the purchase date. All [REDACTED] Hardware is subject to reaching its end-of-life, at which time it will no longer be supported.
- 5.2 Ownership.** Upon payment for [REDACTED] Hardware, Client will fully own the hardware, with all rights and responsibilities of ownership. [REDACTED] 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 [REDACTED] 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 [REDACTED] 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 [REDACTED] 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 [REDACTED] Hardware. To the extent that [REDACTED] Software becomes incompatible with [REDACTED] Hardware or ceases functioning on [REDACTED] Hardware following the warranty term of the [REDACTED] Hardware, TouchNet shall not be responsible or required to support such [REDACTED] Hardware or provide backwards compatibility with such [REDACTED] Hardware, nor to replace or refund such [REDACTED] Hardware; notwithstanding that replacements hardware may be purchased from TouchNet.
- 5.4.2** If Client discontinues use of the [REDACTED] Software for any reason, or TouchNet discontinues providing Client with the [REDACTED] Software Services, TouchNet shall not have any obligation to provide any ongoing support for any [REDACTED] Hardware or any [REDACTED] Software installed on or accessed by the [REDACTED] 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 [REDACTED] 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 security controls, 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 FERPA.** If Client's Confidential Information is subject to FERPA, Client, pursuant to 34 C.F.R. § 99.31(a)(1), hereby designates TouchNet as an "official" with a legitimate educational interest in the Confidential Information. TouchNet's designation as an "official" of Client is solely for the purposes of FERPA compliance

and for no other purpose whatsoever, and to the extent Client has policies, rules, and procedures binding on Client “officials” generally, such policies, rules, and procedures will apply to TouchNet only insofar as such compliance is directly relevant to compliance by TouchNet and Client with FERPA. TouchNet agrees to: (i) abide by FERPA’s limitations on re-disclosure of Personally Identifying Information in education records; (ii) 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, (iii) not use or disclose education records except as permitted by this Agreement, as required by law, or as authorized by Client in writing.

- 6.3 Security Breach.** TouchNet agrees to comply with the requirements of all applicable laws 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 law, TouchNet will notify Client promptly, if legally permitted to do so, and assume responsibility for informing all such individuals in accordance with applicable law.
- 6.4 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.
- 6.5 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 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 all required consents and/or disclosures to End Users regarding sharing such PII with TouchNet. Both parties agree to uphold their responsibilities under all applicable Privacy Laws.
- 6.6 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.
- 6.7 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.
- 6.8 Third-Party Service Providers.**
- 6.8.1** 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.
- 6.8.2** 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.

- 6.9 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.
- 6.10 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, Client agrees 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 will also include the TouchNet Data Protection Addendum for Personal Data Processing of EU Resident Data (“DPA”). If any term in this Agreement conflicts with any term in the DPA, the conflicting term in the DPA shall control.

## 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 that if disclosed orally, is identified as confidential at the time of disclosure, and is summarized as in a writing sent by the Disclosing Party to the Receiving Party within ten (10) days of any such disclosure. 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, legal process or government regulation, provided that, to the extent legally permitted, 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 termination of this Agreement, Client shall promptly return or destroy all Confidential Information in its possession. Upon termination of this Agreement, TouchNet will destroy all Confidential Information in its possession, except for any Confidential Information that TouchNet is required to retain for legal, regulatory, or audit obligations. Any Confidential Information that TouchNet retains under this section will be maintained subject to the protections herein.
- 7.5 No Adequate Remedy at Law.** The Parties acknowledge and agree that due to the unique nature of the Confidential Information, there may be no adequate remedy at law for any breach of the obligations of confidentiality in this Section 7. The Parties further acknowledge that any such breach may result in irreparable harm, and therefore, that upon any such breach or any threat thereof, a Party shall be entitled to seek appropriate equitable relief, including but not limited to injunction, in addition to whatever remedies it may have at law. In the event a Party should seek an injunction or other equitable relief, the other Party hereby waives any requirement for the submission of proof of the economic value of any Confidential Information or the posting of a bond or any other security.

## 8 Term; Termination.

- 8.1 Term.** This Agreement will commence on June 1, 2022 and will continue in effect for a term of five (5) years therefrom. Thereafter, the Agreement may be renewed at the agreement of the Parties for up to an additional five (5) years. Specific components of the TouchNet Software may be subject to the term identified in the applicable TouchNet Order Form, which will control in the event of a conflict. All terms and conditions, whether set forth

herein or in an attachment will remain in effect for as long as TouchNet provides the applicable TouchNet Services under this Agreement, provided that the pricing and discounts set forth in a TouchNet Order Form may be subject to change.

**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 Effect of Termination.** Upon termination of this Agreement by either party, Client's access to the TouchNet Services will be terminated immediately, and Client will destroy any Documentation. 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, all 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

**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. Upon at least thirty (30) days' notice, TouchNet reserves the right to increase the annual Software Maintenance and Support and Hosting Services fees by no more than four percent (4%) per year over the applicable amount for the immediately preceding year. 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. Upon at least thirty (30) days' notice, TouchNet reserves the right to increase the ASP Fee by not more than four percent (4%) per year over the applicable amount for the immediately preceding year. 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 [REDACTED] Hardware Fees.

**9.3.1 [REDACTED] Hardware Fees.** All [REDACTED] Hardware will be ordered and billed separately, usually leveraging a TouchNet-provided quote. All [REDACTED] Hardware sales are final. [REDACTED] Hardware purchases are invoiced upon shipment. Client shall pay all fees within thirty (30) days of receipt of invoice.

#### 9.3.1 [REDACTED] Support Services Fees

**9.3.1.1 Enrollment.** Client's continuous enrollment in the [REDACTED] Support Services program for the [REDACTED] Hardware and [REDACTED] Software is mandatory in order for Client's license to the [REDACTED] Software to remain in effect. [REDACTED] Support Services are fifteen percent (15%) of the original purchase price annually.

**9.3.1.2 Hardware Support.** After the [REDACTED] 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. In the event that TouchNet sends a replacement part prior to receiving the defective part, Client agrees to send the defective part within five (5) days of receipt of the replacement part. 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. TouchNet reserves the right to increase the annual TouchNet Ready Integration fees by no more than four percent (4%) per year over the applicable amount for the immediately preceding year. 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 preapproved 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. 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 applicable law; 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.
- 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 Software and Services.** 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. 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 OR PERFORMANCE OF THE SOFTWARE, AND REPAIR OR REPLACEMENT, AT TOUCHNET'S OPTION, SHALL BE THE SOLE AND EXCLUSIVE 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 [REDACTED] Hardware Warranty.**

**10.3.1** TouchNet will warrant [REDACTED] Hardware as follows: TouchNet warrants that each piece of [REDACTED] 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 [REDACTED] 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. 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, 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, ALL PRODUCTS ARE SOLD “AS IS”.

**11 Limitation of Liability and Indemnification**

**11.1 Limitation of Liability.** IN NO EVENT, BUT SUBJECT TO INDEMNIFICATION FOR THIRD PARTY CLAIMS, 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. IN NO EVENT, BUT SUBJECT TO INDEMNIFICATION FOR THIRD PARTY CLAIMS, 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.** TouchNet shall 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 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 TouchNet determines in its sole discretion that (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 sole and 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, TouchNet shall indemnify and hold harmless Client Indemnitees from and against any and all Claims arising directly from TouchNet’s gross negligence or willful misconduct.

**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”) resulting from Claims directly arising from (a) Client’s use of the TouchNet Services (b) the accuracy of Client Data or any other content submitted to TouchNet, (c) TouchNet’s access to, processing or storage of any Client Data as authorized hereunder; or (d) 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).

**12 Product Specific Terms**

**12.1 [REDACTED] Program.** The [REDACTED] 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 [REDACTED] 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 [REDACTED] 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 [REDACTED],

[REDACTED]. For clients electing to participate in the [REDACTED] 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.

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| <b>If to Client:</b><br>Pima County Community College District | <b>If to TouchNet:</b><br>TouchNet Information Systems, Inc. |
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| Attn: Contract Services<br>4905 E. Broadway Blvd. Ste. D-232<br>Tucson, AZ 85709<br>With copy to:<br>Pima County Community College District<br>Attn: General Counsel's Office<br>4905 E. Broadway Blvd. Ste. C-232<br>Tucson, AZ 85709 | 9801 Renner Road, Suite 150<br>Lenexa, KS 66219<br>Attn: President<br><br>Global Payments Inc.<br>3550 Lenox Road, NE #3000<br>Atlanta, GA 30326<br>Attn: General Counsel |
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- 13.2 Feedback.** Client will 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 and information without restriction.
- 13.3 Use of Client Name.** TouchNet may identify Client by name, without use of any mark or logo, and solely as a matter of fact, as a customer of TouchNet Services in the customer section of TouchNet's website and in its customer lists with Client's prior written consent. TouchNet may also use Client's name and logo to provide the TouchNet Services to Client. TouchNet will not express or imply any endorsement by Client of TouchNet or the Services without Client's written consent.
- 13.4 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.
- 13.5 Entire Agreement.** This Agreement, together with any exhibits and TouchNet Order Form(s), constitutes the entire agreement between Client and TouchNet and supersedes any other prior agreements or understandings, whether oral or written, regarding the TouchNet Services. 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.
- 13.6 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.
- 13.7 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 located in Pima County, Arizona. The Parties hereto agree and consent to the personal and exclusive jurisdiction of said courts over them as to all actions, and further 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.
- 13.8 Severability.** If any one or more of the provisions of this Agreement shall held by a court of competent jurisdiction to 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.
- 13.9 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.
- 13.10 Amendments.** This Agreement shall not be modified except by written amendment signed by each of the Parties.
- 13.11 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.



- 13.12 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.
- 13.13 Arizona Revised Statutes.** As required by Arizona law, the Parties agrees that Arizona Revised Statutes ("A.R.S.") § 38-511 is incorporated into the Agreement.
- 13.14 Insurance.** TouchNet shall secure and maintain, at its own cost and expense, throughout the duration of this Agreement, general liability insurance with limits of not less than one million dollars per occurrence and two million dollars in the aggregate and shall name Client as an additional insured. TouchNet shall also secure and maintain, at its own cost and expense, throughout the duration of this Agreement, cyber liability insurance with limits of not less than five million dollars with third party coverage. At the reasonable request of Client, TouchNet shall provide Client with a Certificate of Insurance demonstrating its conformance with this section.

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.**

**Pima County Community College District**

DocuSigned by:  
  
 Signature: \_\_\_\_\_  
214FD814D64045B...

  
 Signature: \_\_\_\_\_  
 Signed: 6/28/2022

By: Adam McDonald

By: Terry Robinson

Title: President

Title: Director Procurement & Payment Services

Date: 6/28/2022

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

Record of Signing

*Terryl A. Robinson*

**Signed on 2022-06-28 00:38:23 GMT**

Secured by Concord™  
DocumentID: OTNkZDk0YjAtZW  
SigningID: OGUyY2EzZmYtYz  
Signing date: 6/28/2022  
IP Address: 144.90.8.124  
Email: trobinson17@pima.edu