Stephen F. Austin State University
Procurement and Property Services
Nacogdoches, Texas 75962-3030
Phone (936) 468-2206 * Fax (936) 468-4282

PO Number: B2000033

PO Date: 03/26/20

Delivery Date:

Supplier:

Touchnet Information Systems Inc
15520 College Blvd
Lenexa KS 66219-1353

ivancickn@sfasu.edu

CONFIRM RECEIPT OF PURCHASE ORDER AND ACCEPTANCE OF DELIVERY DATE BY EMAILING PURCHASE@SFASU.EDU.

Send Billing Invoice to:

Stephen F. Austin State University
P.O. Box 6085
Nacogdoches, TX 75962-6085
ATTN: Accounts Payable

Ship to:

Information Technology Srv
Boynton Bldg 214
2126 Alumni Dr
SFA Box 13012
Nacogdoches TX 75962

Terms: Net 30

FOB: Not Applicable

PURCHASE ORDER NO. MUST APPEAR ON ALL SHIPPING DOCUMENTS AND INVOICES

Item	Description	Quantity	Unit Cost	Total Cost
1	EXEMPT FROM BOARD APPROVAL POLICY 1.4 - Hosted software services and applicable license and maintenance for general business operations such as student bill payment, cashiering and student email ---- EXEMPT POLICY 17.1 - Direct Publications 000P20911C SOFTWARE - HOSTED OFF-SITE Touchnet Annual Subscription Service To cover the period 03/01/2020 - 02/28/2021 for: TouchNet Commerce Management System ----	1.00 EA	204,566.0000	204,566.00

Purchaser: Nicole Ivancic   (936) 4684472

ADDITIONAL CHARGE:

DISCOUNT/TRADE-IN:

TOTAL: CONTINUED

Stephen F. Austin State University is a tax exempt entity under Subtitle E, Chapter 151, Section 151.309 of the Tax Code, for purchases of tangible personal property herein purchased from contractor and/or shipper listed above, as this property is being secured for the exclusive use of the State of Texas.

The University reserves the right to cancel this order if delivery is not made by agreed-upon delivery date.

ADDITIONAL TERMS & CONDITIONS LISTED ON THE UNIVERSITY WEB SITE, http://www.sfasu.edu/purchasing/721.asp

This purchase order may be funded wholly or partially with federal funds subject to the American Recovery and Reinvestment Act of 2009 (ARRA). The vendor shall comply with all applicable provisions of ARRA, which may include, but are not limited to the provisions in Division A, Titles XV and XVI (e.g., audit provisions, whistleblower protection, and preferences for American products).

STEPHEN F. AUSTIN STATE UNIVERSITY

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Purchasing Officer

Stephen F. Austin State University
Procurement and Property Services
Nacogdoches, Texas 75962-3030
Phone (936) 468-2206 * Fax (936) 468-4282

PO Number:	**B2000033**
PO Date:	**03/26/20**
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Send Billing Invoice to:	**Ship to:**
Stephen F. Austin State University P.O. Box 6085 Nacogdoches, TX 75962-6085 ATTN: Accounts Payable	Information Technology Srv Boynton Bldg 214 2126 Alumni Dr SFA Box 13012 Nacogdoches TX 75962

Terms: Net 30	**PURCHASE ORDER NO. MUST APPEAR ON ALL**
FOB: Not Applicable	**SHIPPING DOCUMENTS AND INVOICES**

Item	Description	Quantity	Unit Cost	Total Cost
	In accordance with iContracts #216734			
2	000P20911C SOFTWARE - HOSTED OFF-SITE Touchnet Annual Subscription Service To cover the period 03/01/2021 - 02/28/2022 for: TouchNet Commerce Management System ---- In accordance with iContracts #216734	1.00 EA	212,748.6400	212,748.64
3	000P20911C SOFTWARE - HOSTED OFF-SITE Touchnet Annual Subscription Service	1.00 EA	221,258.5900	221,258.59

Purchaser: Nicole Ivancic (936) 4684472	**ADDITIONAL CHARGE:**	
	DISCOUNT/TRADE-IN:	
	TOTAL:	**CONTINUED**

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STEPHEN F. AUSTIN STATE UNIVERSITY

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Purchasing Officer

Stephen F. Austin State University
Procurement and Property Services
Nacogdoches, Texas 75962-3030
Phone (936) 468-2206 * Fax (936) 468-4282

PO Number: B2000033

PO Date: 03/26/20

Delivery Date:

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Send Billing Invoice to:	**Ship to:**
Stephen F. Austin State University P.O. Box 6085 Nacogdoches, TX 75962-6085 ATTN: Accounts Payable	Information Technology Srv Boynton Bldg 214 2126 Alumni Dr SFA Box 13012 Nacogdoches TX 75962

Terms: Net 30 **FOB: Not Applicable**	**PURCHASE ORDER NO. MUST APPEAR ON ALL SHIPPING DOCUMENTS AND INVOICES**

Item	Description	Quantity	Unit Cost	Total Cost
4	To cover the period 03/01/2022 - 02/28/2023 for: TouchNet Commerce Management System ---- In accordance with iContracts #216734 000P20911C SOFTWARE - HOSTED OFF-SITE	1.00 EA	230,108.9300	230,108.93
5	Touchnet Annual Subscription Service To cover the period 03/01/2023 - 02/28/2024 for: TouchNet Commerce Management System ---- In accordance with iContracts #216734 000P20911C SOFTWARE - HOSTED OFF-SITE	1.00 EA	239,313.2900	239,313.29

Purchaser: Nicole Ivancic (936) 4684472	**ADDITIONAL CHARGE:**
	DISCOUNT/TRADE-IN:
	TOTAL: **CONTINUED**

Stephen F. Austin State University is a tax exempt entity under Subtitle E, Chapter 151, Section 151.309 of the Tax Code, for purchases of tangible personal property herein purchased from contractor and/or shipper listed above, as this property is being secured for the exclusive use of the State of Texas.

The University reserves the right to cancel this order if delivery is not made by agreed-upon delivery date.

ADDITIONAL TERMS & CONDITIONS LISTED ON THE UNIVERSITY WEB SITE, http://www.sfasu.edu/purchasing/721.asp

This purchase order may be funded wholly or partially with federal funds subject to the American Recovery and Reinvestment Act of 2009 (ARRA). The vendor shall comply with all applicable provisions of ARRA, which may include, but are not limited to the provisions in Division A, Titles XV and XVI (e.g., audit provisions, whistleblower protection, and preferences for American products).

STEPHEN F. AUSTIN STATE UNIVERSITY

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Purchasing Officer

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Procurement and Property Services
Nacogdoches, Texas 75962-3030
Phone (936) 468-2206 * Fax (936) 468-4282

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Terms: Net 30 **FOB: Not Applicable**	**PURCHASE ORDER NO. MUST APPEAR ON ALL SHIPPING DOCUMENTS AND INVOICES**

Item	Description	Quantity	Unit Cost	Total Cost
	Touchnet Annual Subscription Service To cover the period 03/01/2024 - 02/28/2025 for: TouchNet Commerce Management System ---- In accordance with iContracts #216734			

Purchaser: Nicole Ivancic	(936) 4684472	
	ADDITIONAL CHARGE:	.00
	DISCOUNT/TRADE-IN:	.00
	TOTAL:	**1,107,995.45**

Stephen F. Austin State University is a tax exempt entity under Subtitle E, Chapter 151, Section 151.309 of the Tax Code, for purchases of tangible personal property herein purchased from contractor and/or shipper listed above, as this property is being secured for the exclusive use of the State of Texas.

The University reserves the right to cancel this order if delivery is not made by agreed-upon delivery date.

ADDITIONAL TERMS & CONDITIONS LISTED ON THE UNIVERSITY WEB SITE, http://www.sfasu.edu/purchasing/721.asp

This purchase order may be funded wholly or partially with federal funds subject to the American Recovery and Reinvestment Act of 2009 (ARRA). The vendor shall comply with all applicable provisions of ARRA, which may include, but are not limited to the provisions in Division A, Titles XV and XVI (e.g., audit provisions, whistleblower protection, and preferences for American products).

STEPHEN F. AUSTIN STATE UNIVERSITY

_____
Purchasing Officer

SECOND APPLICATION SUBSCRIPTION PROGRAM AGREEMENT

This Second Application Subscription Program Agreement ("Second ASP Agreement") is made as of the last date shown in the signature block hereof (the "Effective Date") between TouchNet and Client (as both are described in the table below). This Second ASP Agreement terminates the following agreements previously entered between the parties: Application Subscription Program Agreement[1] dated December 21, 2006; First ASP Addendum dated February 3, 2010; Second ASP Addendum dated December 15, 2011; Extension Agreement dated January 20, 2015; Fourth ASP Addendum dated January 13, 2016; and Fifth ASP Addendum dated July 14, 2017.

TouchNet	**Client**
TouchNet Information Systems, Inc.	Stephen F. Austin State University
a Kansas Corporation	1936 North Street
9801 Renner Blvd., Suite 150	Nacogdoches, TX 75961-3940
Lenexa, Kansas 66219	Phone: 936-468-4305
Phone: (913) 599-6699	Fax: 936-468-3875

TouchNet is the developer of certain computer program applications (described below as "TouchNet Software") that Client wishes to use and access remotely on TouchNet's servers.

TouchNet, subject to the provisions of this Second ASP Agreement, desires to grant to Client access rights to the TouchNet Software.

NOW, THEREFORE, the parties, intending legally to be bound, agree as follows:

1. **Definitions**. The capitalized terms used in this Second ASP Agreement, except where specifically defined to the contrary herein, shall have the meanings as set forth below in the following Subsections to this Section 1.

    (a) **Application Subscription Program**. The term "Application Subscription Program" means a plan offered by TouchNet to Client for Client's right to use TouchNet Software, remotely hosted by TouchNet, as set forth in this Second ASP Agreement and for the designated time frame stated in Schedule A.

    (b) **Application Subscription Program Fees**. The term "Application Subscription Program Fees" means the dollar amount that Client shall pay TouchNet, in accordance with the terms on Schedule A, as consideration for the access rights granted herein.

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[1] The parties also entered into a Third ASP Addendum dated December 4, 2013, which was previously terminated.

(c) **Campus Entity**. The term "Campus Entity" means a college or university campus or facility which offers a degree program in its own name. A Campus Entity may have multiple branch locations from which classes or other services are offered; however, a branch shall not be considered a Campus Entity unless it offers a degree program in its own, separate name. A Client may have multiple Campus Entities, and the Application Subscription Program fees will vary depending upon (among other factors) the number of Campus Entities included within the Client.

(d) **Client**. The term "Client" means the entity identified in the table above, as "Client." The term shall also include any intra-college department, other college, or campus associated with the main campus specified above and all affiliates of the Client.

(e) **Client Set Up Site**. The term "Client Set Up Site" means Client's computer DataCenter where Client's Information Systems reside.

(f) **Confidential Information**. Subject to the Public Information Act, TEXAS GOVERNMENT CODE, Chapter 552, and other applicable state and federal laws, the term "Confidential Information" means: (i) the TouchNet Software; (ii) information, if disclosed in writing, that bears a stamp, label, or legend indicating the confidential, secret, proprietary, or similar status thereof; (iii) information, if disclosed orally, that is followed-up (within ten (10) days following the oral disclosure) with a written memorandum that describes the information claimed to be confidential and that describes the time, place, and circumstances of the oral disclosure; (iv) the contents of Client's Student Information System to the extent such content consists of information concerning which Client is itself under a confidential obligation, the trade secrets of Client, and personally identifying information protected under the Privacy Laws; and (v) information disclosed by TouchNet that comprises or consists of drawings, specifications, and models; computer data, whether printed, stored on disk, tapes, or in machine-readable form; product and marketing documentation; prices (including price quotes); and financial information. Confidential Information does not include information that:

(i) is already known by the Recipient prior to disclosure by the Discloser, as evidenced by written (contemporaneously dated) documents in the Recipient's files;

(ii) is or becomes publicly available through no wrongful act or omission by the Recipient;

        (iii)   is rightfully received by the Recipient from third parties without accompanying secrecy obligations;

        (iv)   is independently developed by Recipient, as demonstrated through written (contemporaneously dated) documentation in Recipient's files; or

        (v)   is approved in writing by the Discloser for release to the public.

        (g)   **Custom Software**. The term "Custom Software" means any computer program or modification to any computer program which is developed, created, or programmed by or for TouchNet on behalf of Client for the purpose of enabling the TouchNet Software to perform one or more functions or to possess one or more features not already present in the standard TouchNet Software. At the time Custom Software is made available for access by Client, such Custom Software shall thereafter be considered TouchNet Software as well.

        (h)   **Discloser**. The term "Discloser" means the party to this Second ASP Agreement who discloses or otherwise makes available to Recipient Confidential Information.

        (i)   **Documentation**. The term "Documentation" means the user manuals and guides to operations issued by TouchNet from time-to-time for the specific modules of the TouchNet Software to which Client has subscribed hereunder.

        (j)   **Effective Date**. The term "Effective Date" means the last of the dates shown in the signature block at the end of this Second ASP Agreement.

        (k)   **End User.** The term "End User" means any person who commences a transaction on or makes any use of the TouchNet Software to obtain or communicate information or access Services.

        (l)   **Interface Software**. The term "Interface Software" means all software that the Client will need to install on its own Student Information System in order to access and interface with the TouchNet Software. This software may be provided by TouchNet and/or by the vendor of the particular component of Client's Student Information System and is owned by the respective parties.

        (m) **Normal Business Hours**. The term "Normal Business Hours" means the hours of 7:00 a.m. until 7:00 p.m., Central Daylight or Central Standard Time (as the case may be), Monday through Friday other than TouchNet holidays, as designated by TouchNet.

(n)   **Notice**. The term "Notice" means a notification given in the manner prescribed in Section 19(c) hereof.

(o)   **Privacy Laws**.   The term "Privacy Laws" means the Gramm-Leach-Bliley Act ("GLBA"); the Family Educational Rights and Privacy Act ("FERPA"), the Payment Card Industry Data Security Standards ("PCI DSS"), and the National Automated Clearing House Association Standards ("NACHA") pertaining to electronic payments, as amended, together with regulations promulgated thereunder.

(p)   **Professional Services.** The term "Professional Services" means those services defined in Schedule C.

(q)   **Recipient**. The term "Recipient" means a party to this Second ASP Agreement who receives or otherwise learns of or discovers Confidential Information of the other party to this Second ASP Agreement.

(r)   **Services**. The term "Services" means all services offered by the TouchNet Software that can be accessed by End Users.

(s)   **Student Information System**.   The term "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.

(t)   **Test Environment**. The term "Test Environment" means, as an option, TouchNet will provide a test environment that will be configured the same as, or similar to, the Client's production environment hosted in TouchNet's DataCenter. The test environment will be hosted in TouchNet's DataCenter, beginning approximately 2 weeks after the Client's production system is available for use, or 2 weeks after this Second ASP Agreement has been executed, whichever occurs later. 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 24 hour notification or support.

(u)   **Third Party Licensor.** The term "Third Party Licensor" means any entity from which TouchNet obtains a license or other similar rights to integrate or otherwise make available to its clients (as a part of the TouchNet Software) computer programs not owned by TouchNet.

(v)   **TouchNet DataCenter**. The term "TouchNet DataCenter" means a location operated by TouchNet where the TouchNet Software resides.

(w) **TouchNet Software**. The term "TouchNet Software" means all computer programs described in Schedule B hereto (in object code form only) that either (i) will be made available for Client's access on TouchNet's servers at the TouchNet DataCenter or (ii) will be furnished to Client for use on Client's information system as a part of the Interface Software (pursuant to the license of Section 2(f)); together with all updates, error corrections, and enhancements generally made available to TouchNet's other clients.

(x) **Trademarks**. The term "Trademarks" means all service marks, trade names, trade dress and/or "get-up" of TouchNet, whether or not registered by TouchNet, and all goodwill of the business related thereto, including (but not limited to) **TOUCHNET®**, **TSERVE®, GLOBAL CAMPUS®**, **PAYPATH®, Set the Curve®, U.COMMERCE®, Seek-N-Secure®,** and **How Money Moves on Campus®**.

2. **Grant of Rights.**

(a) **Access.** Subject to the terms and conditions of this Second ASP Agreement, TouchNet grants to Client, and Client accepts, a non-exclusive, non-transferable right to access the TouchNet Software on TouchNet's servers at the TouchNet DataCenter. Upon payment of the first annual Application Subscription Program Fee, as prescribed in Section 4, TouchNet shall furnish to Client access information, including appropriate IP addresses, log-on procedures, and user identification and password(s), provided that Client has taken all implementation steps as prescribed by TouchNet.

(b) **Sub-License and Assignment Prohibited.** Neither the access rights nor any other rights granted to Client herein may be sub-licensed, assigned, transferred, or otherwise given or furnished by Client to any person or entity without the express written consent of TouchNet, which consent shall not be unreasonably withheld. With the exception of this Second ASP Agreement being assigned by TouchNet as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets, TouchNet will not assign this Second ASP Agreement without the express written consent of Client, which consent shall not be unreasonably withheld. Nevertheless, consent shall not be given unless the assignee agrees to assume of all assignor's responsibilities under this Second ASP Agreement. No assignment, even with the consent of the other party, shall relieve the assigning party from its obligations under this Second ASP Agreement.

(c) **Non-Exclusivity.** Client acknowledges that TouchNet may license, make access available to, or offer to license or make access available to other TouchNet clients or prospects the TouchNet Software

and products having similar functions, whether or not such clients are competitors of Client.

(d) **Reverse Engineering and Copying.** 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 assert and shall not represent to any third party that it has any ownership rights in, or the right to sell, transfer or sub-license, the TouchNet Software.

(e) **Own Operations.** Client shall use the TouchNet Software solely for processing data in the ordinary course of its operations and 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.

(f) **Interface Software.** The Interface Software provided by TouchNet is furnished and licensed (on a nonexclusive basis and without right of sublicense) to Client solely for the purpose of enabling Client to access (and interface with) the TouchNet Software residing at the TouchNet DataCenter. Such Interface Software may not be used for any other purpose whatsoever. Unless otherwise specifically agreed, installation and configuration of the Interface Software shall be the sole responsibility of Client.

(g) **Custom Software Programming.** If Custom Software is to be created, then the parties shall agree, in an addendum to this Second ASP Agreement, upon the specifications, functions, and features; the development period; and the remuneration to be paid to TouchNet for the Custom Software, such remuneration to be different from and in addition to the fees provided for herein. In case of a conflict between the provisions of this Second ASP Agreement and any such addendum, the provisions hereof shall control. All Custom Software shall, upon creation, be the exclusive property of TouchNet and be deemed a part of the TouchNet Software, and all provisions hereof relating to rights made available to Client, restrictions upon Client, and reservations by TouchNet for the TouchNet Software shall be equally applicable to such Custom Software.

3. **Purchase Order.** All purchase orders are acknowledged by the parties to be mere expressions of intent to buy and are not binding in any way. TouchNet will accept Client's Purchase Order if, the terms, prices, and conditions reflected are consistent with those detailed in this Second ASP Agreement and/or subsequent addenda; and a duly authorized officer of TouchNet signs such purchase order. Client acknowledges that it has reviewed such terms and conditions and agrees to be bound thereby.

4. **Payment of Fees.** Subject to the Texas Prompt Payment Act, TEXAS GOVERNMENT CODE, Chapter 2251, and other applicable laws, payment of Fees will be made in accordance with the terms, at the times, and in the amounts as detailed in Schedule A. If any payment is in dispute, the parties will act promptly and in good faith to resolve the dispute surrounding payment of Fees in accordance with applicable laws (including the Texas Prompt Payment Act) and the terms of this Second ASP Agreement (including Section 19(r)). Section 51.012, TEXAS EDUCATION CODE, authorizes Client to make any payment through electronic funds transfer methods. TouchNet agrees to receive payments from Client through electronic funds transfer methods, including the automated clearing house system (also known as ACH). Prior to the first payment under this Second ASP Agreement, Client will confirm TouchNet's banking information. Any changes to TouchNet's banking information must be communicated to Client in writing at least thirty (30) days in advance of the effective date of the change in accordance with Section 19(c).

5. **Late Charges.** Late payments of Fees are subject to interest payments equal to the lesser of (i) eighteen percent (18%) per year, or (ii) the highest rate permitted by the Texas Prompt Payment Act, TEXAS GOVERNMENT CODE, Chapter 2251. In addition, the parties agree and understand that if a Client fails to make payments as required under this Second ASP Agreement, TouchNet may exercise all remedies available to it under this Second ASP Agreement, and applicable law.

6. **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 or Application Subscription Program fees with respect to the TouchNet Software (with the exception of taxes measured against TouchNet's net income) shall be the sole responsibility of Client. Client shall be responsible for and fully 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 the date on which TouchNet gives notice thereof to Client. 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.

7. **Availability Guarantee and Credit Allowance.**

(a) **Availability Guarantee.** TouchNet's objective is to make the TouchNet Software available pursuant to this Second ASP Agreement twenty-four hours a day, seven days a week, except for scheduled maintenance. In addition, TouchNet guarantees that Client will be able to access the TouchNet Software ninety-nine percent (99%) of the time (excluding scheduled maintenance) in any given month ("Availability Guarantee").

(b) **Remedy.** In the event that Client's access to the TouchNet Software hereunder becomes unavailable, Client shall immediately furnish notice of such unavailability to TouchNet.   Unless Client's access to the TouchNet Software hereunder is rendered unavailable for reasons beyond TouchNet's control, such as events described in Subsection (d) to this Section 7 or Section 19(b) hereof, if Client has furnished TouchNet with the prescribed notice and Client's access to the TouchNet Software hereunder, during any month, falls below the Availability Guarantee, then TouchNet will, upon Client's request, grant to Client a credit in an amount equal to twenty percent (20%) of the Application Subscription Program Fees for the month in which Client's access fell below the Availability Guarantee.   Scheduled maintenance shall not be counted in the calculation of any Credit. All Credits (based upon the Availability Guarantee) shall be calculated based on the total hours in a particular month, and all months shall be deemed to be comprised of thirty (30) days. 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. The parties agree and understand that TouchNet's failure to meet the Availability Guarantee could result in disruption of Client's business operations and that the harm resulting from that disruption is incapable of being estimated or is difficult to estimate. Therefore, as a reasonable estimate of just compensation for the harm caused by TouchNet's failure to meet the Availability Guarantee, the parties agree that the remedy provided in this Section will apply and, notwithstanding anything to the contrary elsewhere in this Second ASP Agreement, that such remedy will be the Client's sole remedy (and TouchNet's sole obligation) for breach of the Availability Guarantee, as provided for in Section 7(a) of this Second ASP Agreement. The parties agree that this remedy is not a penalty, but is a reasonable estimate of just compensation to the Client. The parties also agree and understand that TouchNet will use reasonable business efforts to restore Client's access to the TouchNet Software.

(c) **Scheduled 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 Software may not be available for Client's use. TouchNet's objective is to minimize the duration of any such unavailability and will endeavor to perform routine maintenance outside of Normal Business Hours. TouchNet, to the extent possible, will give Client at least twenty-four (24) hours advance notice of down-time for scheduled maintenance.

(d) **Catastrophic Events.** Disruptions in the interconnection with TouchNet servers resulting from the neglect or other fault of Client and/or its agents or contractors and "Catastrophic Events" such as power

outages, wide-ranging failures in the Internet (or its successor global communications network), or in telecommunications services, and similar calamities, are outside TouchNet's control and are not TouchNet's responsibility. Except as stated in this Section 7 and the Availability Guarantee, TouchNet makes no representations or warranties with respect to up-time, availability, or the like.

8. **Backup and Retrieval.** TouchNet will perform incremental back-ups daily and full backups weekly. TouchNet utilizes a secondary site for purposes of disaster recovery. Client systems are replicated to the secondary site. In the event the primary production site becomes inaccessible, TouchNet will commence a recovery utilizing the secondary site within four (4) hours. Full data tapes, magnetic discs and/or other optical media will be stored off-site in a secured vault. Off site storage of back up media shall take place at least weekly.

9. **Product Warranty and Limitations**.

(a) **Warranty.** TouchNet warrants that the TouchNet Software will perform substantially in accordance with the Documentation (not, however, that the TouchNet Software is error-free, since all software contains some programming errors) provided that this warranty does not apply to performance problems caused by (i) events beyond TouchNet's reasonable control, including vandalism, civil disturbance, fire, flood, storm, or other exposures to the elements or to temperature extremes; (ii) unavailability or malfunctioning of telecommunication services; (iii) tampering, failure of electric power, abuse, or misuse; (iv) Client operator mistakes; (v) equipment, software, or other items (whether or not included within the TouchNet Software) not developed, manufactured, created, or produced by TouchNet; (vi) a failure to comply with the Documentation or this Second ASP Agreement or to use TouchNet Software in accordance with its intended purpose; (vii) modifications of TouchNet Software not performed by TouchNet or its authorized representatives; (viii) combinations or integrations of TouchNet Software with devices or software not provided by TouchNet or its authorized representatives; or (ix) Client's use of TouchNet Software as part of an invention by Client or as part of a new configuration, which, in either case, includes materials or methods not supplied or approved by TouchNet.

(b) **DISCLAIMER OF WARRANTIES.** EXCEPT AS STATED IN SUBSECTION (a) ABOVE, TOUCHNET DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, GUARANTEES, AND REPRESENTATIONS OF ANY KIND WHATSOEVER, WITH RESPECT TO THE TOUCHNET SOFTWARE AND ANY RIGHT OF ACCESS THERETO, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY,

FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTY OF NONINFRINGEMENT.

10.   **Limitations of Liability for Breach of Product Warranty, Infringement of Intellectual Property Rights, and General Limitations on Damages.**

(a)   **Breach of Product Warranty**. In the event of a breach of the warranty set forth in Section 9(a), TouchNet will use reasonable business efforts to make necessary corrections and repairs to the TouchNet Software so that it operates in compliance with the applicable Documentation.

(b)   **Infringement of Intellectual Property Rights**. In the event of (i) a claim by a third party that Client's use, as contemplated by the parties hereto, of the TouchNet Software, infringes, constitutes a misappropriation of, or otherwise violates the United States patent, copyright, trademark, or trade secret rights (herein, "Intellectual Property Rights") of a third party (an "Infringement Claim") and (ii) such Infringement Claim results in a material restriction or limitation or cessation of Client's use of the TouchNet Software or, in TouchNet's opinion, is likely to result in such restriction, limitation, or cessation, TouchNet will, at its sole option and election, do one of the following: (1) procure for Client (at no additional cost to Client) the right to continue using the allegedly infringing TouchNet Software; or (2) replace or modify the allegedly infringing TouchNet Software so as to cure the infringement without materially adversely affecting Client's use of the TouchNet Software or the features and functionality of the TouchNet Software; or (3) if TouchNet determines that the foregoing steps (those identified in clauses (1) and (2) above) are impractical, TouchNet may terminate the Second ASP Agreement and refund a pro-rata portion of the unused ASP Fees paid by Client.

(c)   **General Limitations on Damages**. Except as set forth in Section 11 hereof, TouchNet's monetary obligations to Client for any claimed breach or violation of or default under this Second ASP Agreement will be no greater than the fees Client has paid TouchNet under this Second ASP Agreement during the twelve (12) month period preceding the date of such claim.   Neither party will be liable to the other party for any indirect, incidental, exemplary, punitive, special or consequential damages arising out of this Second ASP Agreement or the use of the TouchNet Software. The limitations in this Section 11 will apply to any and all claims for damages, whether based in contract, tort, strict liability, or otherwise.

11.   **Indemnification.**

(a) **Indemnity Obligation.** TouchNet shall indemnify and hold harmless Client from and against any and all losses, expenses, damages, liabilities and obligations, including, without limitation, fines and penalties and any notification costs incurred for notifications required pursuant to PCI DSS following the theft or misappropriation of personal confidential data resulting from breach of TouchNet's confidentiality obligations under this Second ASP Agreement and further including reasonable court costs and attorneys' fees (collectively, "Losses") suffered or incurred by Client to third parties if and only to the extent that (i) such Losses are directly caused by TouchNet's gross negligence or intentional misconduct, or by TouchNet's material breach of its representations, warranties or covenants in this Second ASP Agreement, and (ii) such Losses arise out of injury or death to persons, or infringement upon or violation of any patent, copyright, trade secret, or similar proprietary right of any third party, or any theft or misappropriation of personal confidential data with respect to Client's customers (other than by Client's owners, agents, employees or others under Client's direction or control) (collectively, an "Indemnified Claim").

(b) **Notice of Indemnified Claim.** If at any time a third party makes an Indemnified Claim against Client, Client will promptly notify TouchNet thereof, stating the basis for the Indemnified Claim and the amount thereof (to the extent known), and permit TouchNet to assume the defense of the Indemnified Claim. If TouchNet fails to notify Client of its election to defend the Indemnified Claim within thirty (30) days after receiving notice of the Indemnified Claim from Client, TouchNet will be deemed to have waived its right to defend such Indemnified Claim. Client's tardiness in furnishing notice of an Indemnified Claim to TouchNet will not discharge TouchNet's indemnification obligation under this Second ASP Agreement except to the extent such tardiness results in prejudice to TouchNet's ability to defend against such Indemnified Claim (including, without limitation, TouchNet's ability fully to assert defenses and counterclaims that would otherwise have been assertable). To the extent Client's tardiness in notifying TouchNet of an Indemnified Claim prejudices TouchNet's ability to defend against the Indemnified Claim, TouchNet's indemnification obligation under this Second ASP Agreement, with respect to the subject Indemnified Claim, will be discharged. To the extent Client's tardiness in furnishing notice to TouchNet of an Indemnified Claim results in an increase in the cost of defending such Indemnified Claim, such increased costs will be the responsibility of Client.

(c) **Authorization to Defend**. TouchNet acknowledges that Client is a state agency, and that TouchNet will have sole authority to defend an Indemnified Claim under this Section 11 only to the extent that the Office of the Attorney General of the State of Texas provides

such authorization. If authorization to defend the Indemnified Claim is not given to TouchNet by the Office of the Attorney General of the State of Texas, TouchNet is released from all indemnification and defense obligations with respect to that particular Indemnified Claim under this Second ASP Agreement.

      (d)   **Defense of Indemnified Claim**. If authorization to defend the Indemnified Claim is given to TouchNet by the Office of the Attorney General of the State of Texas and TouchNet assumes the defense of a particular Indemnified Claim, Client, at its expense, may participate in the defense, but TouchNet shall have the right to direct and control the defense of the Indemnified Claim, and Client shall reasonably cooperate with TouchNet and make available to TouchNet all of Client's books and records reasonably necessary and useful in connection with the defense. Without Client's prior written consent, TouchNet shall not consent to the entry of a judgment or award, or enter into a settlement, which does not include a release of Client of all liability with respect to the Indemnified Claim. If TouchNet elects to defend the Indemnified Claim, Client shall not admit any liability with respect to, or settle, compromise or discharge the Indemnified Claim, without TouchNet's prior written consent (which shall not be unreasonably withheld, conditioned or delayed). If authorization to defend the Indemnified Claim is not given to TouchNet by the Office of the Attorney General of the State of Texas, and/or TouchNet elects not to defend the Indemnified Claim, Client may defend against the Indemnified Claim in such manner as it reasonably deems appropriate.

      (e)   **Client Inventions.** If (i) Client uses the TouchNet Software as part of an invention of Client (where such invention includes materials and/or methods not supplied or approved by TouchNet) or (ii) Client uses the TouchNet Software as a part of a new configuration (where such configuration includes material and/or methods not supplied or approved by TouchNet) and either of such Client uses of the TouchNet Software (in either case, a "Client Invention") results in a claim of patent, copyright, trade secret, or other proprietary right claim for infringement by a third party (an "IP Claim"), then Client shall be exclusively responsible for the defense of such IP Claim. Notwithstanding the preceding sentence, Client will be relieved from its defense obligation with respect to the IP Claim if the Client Invention would not have infringed the intellectual property rights of the third party in the absence of the above-described combination or configuration.

      (f)   **Exclusive Remedy.** To the extent authorized by the laws and Constitution of the State of Texas, this Section 11 will constitute Client's sole and exclusive remedy with respect to any Claims.

12. **Third Party Products.** In the event of any failure of equipment software, or other items (whether or not included within the TouchNet Software) developed, manufactured, created, or produced by third parties, TouchNet will use reasonable business efforts to assign to Client any and all of TouchNet's warranty rights against such third parties; however, this is the extent of TouchNet's obligations with respect to such third party equipment, software, or other items.

13. **Set Up; Installation; and Data Access.**

(a) **Set Up.** Client is responsible for set up and installation of Interface Software and any and all equipment necessary at the Client Set Up Site to communicate with the TouchNet DataCenter. The foregoing shall be accomplished at Client's sole expense and in accordance with the timeline and tasks described on Schedule C. Remote installation and set up at the TouchNet DataCenter shall be performed during Normal Business Hours.

(b) **Data Access.** If, for any reason, TouchNet requires access to Confidential Information within Client's Student Information System, then Client (i) will make such information available to TouchNet or its subcontractors (as Client's contractor) through such means as TouchNet may reasonably specify and (ii) represents to TouchNet (and its subcontractors) that Client is authorized to disclose and make such information available to TouchNet and to permit TouchNet (or its subcontractors) to use, adapt, augment, supplement, and/or modify such information in the manner contemplated by the respective parties hereto.

(c) **Obligation of Nondisclosure.** Without limiting the generality of Section 14, TouchNet agrees to hold in confidence (and to require its subcontractors to hold in confidence) any Confidential Information to which TouchNet (or its subcontractors) may be exposed during access to Client's Student Information System (including all personally identifying information covered by Privacy Laws).

14. **Confidential Information.**

(a) **Limitation on Use and Disclosure.** Except as otherwise permitted under this Second ASP Agreement, the Recipient will not knowingly disclose to any third party, or make any use of Discloser's Confidential Information. The Recipient will use at least the same standard of care and security to maintain the confidentiality of the Discloser's Confidential Information that it uses to maintain the confidentiality of its own Confidential Information of equal importance, but in no event may the standard of care and security be below that customary and reasonable under the circumstances. At a minimum, the Recipient shall maintain the Confidential Information (i) in a secure location or (ii) if stored on Client's Student Information System, under

circumstances requiring secure password access. Only employees of Recipient who have a reasonable need to know of the Confidential Information in order to perform their responsibilities may be given access to the Discloser's Confidential Information.

(b) **Court Order.** Notwithstanding the provisions of Subsection (a) of this Section 14, Recipient may be permitted to disclose the Confidential Information of Discloser when ordered to do so by an administrative, arbitral, legislative, or judicial body having jurisdiction over the Recipient, provided (i) that Recipient first gives Discloser reasonable Notice of the administrative, arbitral, legislative, or judicial proceeding in order to permit Discloser to prevent or limit the ordered disclosure and (ii) that Recipient cooperates (at Discloser's expense) fully in preventing or limiting the ordered disclosure.

(c) **Burden of Proof.** The burden of proving an exception to the definition of Confidential Information, as described in Section 1(f) and/or the applicability of the exception to nondisclosure set forth in Subsection (b) above shall be upon the Recipient.

15. **TouchNet's Trademarks.** The TouchNet Trademark or Trademarks will be displayed by the TouchNet Software, on the Documentation, and in the copyright and/or patent notices, or otherwise. Client shall not remove, conceal, alter, or deface the TouchNet Trademark from or on the TouchNet Software or any computer screen print-outs. TouchNet grants Client a limited non-exclusive and non-transferable license without right of sub-license to use and display the Trademarks during the term of this Second ASP Agreement solely in the manner in which TouchNet has displayed them on the TouchNet Software.

16. **Term and Termination.**

(a) **Term.** The access rights granted in Section 2(a) hereof commences on the Effective Date and continues for the time period specified in Schedule A, unless sooner terminated as permitted in Subsections (b) through (d) of this Section.

(b) **Right of Termination.** A party has the right to terminate this Second ASP Agreement if the other party breaches a material provision of this Second ASP Agreement (other than a breach of the Availability Guarantee set forth in Section 7 of this Second ASP Agreement) and, if a cure period is applicable, fails to cure the breach within the applicable cure period following Notice of the breach. If the event or condition that gives rise to the right of termination is not cured within the applicable cure period, this Second ASP Agreement will automatically terminate at the end of the said cure period without need for further notice or action. If the Noticed breach is cured to the reasonable satisfaction of the non-breaching party within the applicable

cure period (if any), then this Second ASP Agreement shall continue as though no breach had occurred.

(c) **Loss of Funding**. Performance by Client under this Second ASP 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, Client will issue written notice to TouchNet and Client may terminate this Second ASP Agreement without further duty or obligation hereunder; provided that following such termination, Client does not obtain similar products or services from another vendor during the stated term of this Second ASP Agreement. The effect of termination of the Second ASP Agreement will be to discharge both the Client and TouchNet from future performance of this Second ASP Agreement, but not from their rights and obligations existing at the time of the termination. TouchNet acknowledges that appropriation of funds is beyond the control of Client.

(d) **Cure Periods.** The applicable cure periods for breaches of Section 2(d), 2(e), and/or 4, shall be ten (10) days. There shall be no cure period for a breach of Section 14 or Section 15. The applicable cure period for breaches of all other provisions of this Second ASP Agreement shall be thirty (30) days.

(e) **Effect of Termination; Return of Client Data.** Upon termination of this Second ASP Agreement by either party, Client's access to the TouchNet Software will be terminated immediately and Client shall return immediately to TouchNet or, at TouchNet's request, will destroy all copies of Interface Software, Documentation, user manuals, and computer screen print-outs of the TouchNet Software, and Client will certify to TouchNet in writing, over the signature of a duly authorized representative of Client, that it has done so. Subject to applicable Privacy Laws, upon termination of this Second ASP Agreement, and upon Client's request, TouchNet will promptly return all of Client's data to Client in a mutually agreeable electronic format.

(f) **Survival of Obligations.** All obligations relating to non-use and non-disclosure of Confidential Information will survive termination of this Second ASP Agreement. Without limiting the generality of the foregoing, the specific obligations, as set forth in Sections 2(d), 5, 6, 10, 14, and 19(i) shall survive any termination or expiration of this Second ASP Agreement.

(g) **No Prejudice to Other Rights or Remedies.** Termination of this Second ASP Agreement will be without prejudice to the terminating party's other rights or remedies under this Second ASP Agreement or at law or in equity.

17.   **Support.**   During the term of this Second ASP Agreement, TouchNet will provide Client with unlimited telephone support over its technical support line. Such support will be provided to Client at no charge in addition to the fees payable as prescribed in Section 4 hereof.

18.   **Insurance**.   During the term of this Second ASP Agreement, TouchNet will keep in force the following insurance at its expense:

(a)   Commercial General Liability coverage in amounts of at least One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) aggregate, naming Client as an additional insured;

(b)   Workers' Compensation and Disability Coverage in accordance with the laws of any applicable state covering TouchNet's employees;

(c)   Professional liability, Errors and Omissions, and Cyber liability insurance in the amount of at least Five Million Dollars ($5,000,000);

(d)   Crime insurance in the amount of at least Five Million Dollars ($5,000,000) with third party coverage; and

(e)   Comprehensive Automobile Liability insurance covering any auto (including owned, hired and non-owned autos) with a combined single limit of liability for bodily injury and property damage of One Million Dollars ($1,000,000) per occurrence.

(f)   Prior to commencement of services, TouchNet will provide to Client a Certificate of Insurance demonstrating its conformance with this Section, and where applicable, the policies will provide for thirty (30) days advance written notice to Client prior to any cancellation of coverage.

19.   **General.**

(a)   **Independent Contractors.** Nothing contained herein shall constitute TouchNet and Client as partners, agents, joint venturers or in any capacity other than licensor and licensee of computer software, respectively. TouchNet and Client are independent contractors. Neither shall have the right to bind or obligate the other in any manner whatsoever.

(b)   **Force Majeure.** With the exception of Client's obligations to pay TouchNet monies due under this Second ASP Agreement, neither party shall be liable to the other for delay or failure to perform any obligation hereunder resulting from an event of force majeure, including (without limitation) acts of God or of the public enemy, fire, storm,

flood, explosion, earthquake, hurricane, riots, wars, hostilities, civil commotion, strikes or labor disputes, interruption of supply, law or regulation, governmental action, or any other cause beyond the control of that party.

(c) **Notices.** Any notice or communication required or permitted to be given hereunder may be hand-delivered or sent by registered or certified mail, return receipt requested, by facsimile transmission, or by email. Notices must be sent to a party at its address shown on the first page of this Second ASP Agreement, or to such other place as the party may subsequently designate in writing for its receipt of Notices. A Notice given in the manner prescribed in this Section shall be deemed received (i) when delivered, in the case of personal delivery; (ii) on the third business day following deposit of an item in the U.S. mail, properly addressed and postage prepaid; and (iii) on the date of transmission if sent by facsimile or email. However, where Notice is given to either notify the other party of a breach of this Second ASP Agreement or of a party's exercise of its termination rights, if such Notice is given by facsimile or email to the other party, a confirmation copy must be either personally delivered or sent by U.S. mail in the manner otherwise permitted for a Notice hereunder.

(d) **Counterparts.** This Second ASP Agreement may be executed in counterparts, each of which shall be an original, and all of which, taken together, shall constitute one and the same instrument. The Second ASP Agreement must be executed by Client on or before the expiration date or TouchNet may, in its sole discretion, choose to reject the Second ASP Agreement, inclusive of pricing.

(e) **Entire Agreement; Amendments.** This Second ASP Agreement, with attached Schedules, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any prior expression of intent or understanding, oral or written, relating to the subject matter of this Second ASP Agreement. This Second ASP Agreement will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by TouchNet and Client. Schedules referenced herein by letter or number are incorporated into this Second ASP Agreement as though fully set out herein. Such Schedules include the following:

SCHEDULE	DESCRIPTION
Schedule A	Fees and Term of Second ASP Agreement
Schedule B	TouchNet Software
Schedule C	Equipment and Client Tasks for Set Up, Installation, and Implementation of Software

(f)   **Subcontracting**. As of the Effective Date of this Second ASP Agreement, TouchNet does not intend to subcontract any of the services (either Professional Services or Services) to be provided herein.

(g)   **Waiver.** Any waiver of a failure or delay in performance shall be effective only if in writing and only in accordance with its terms. The waiver of one breach or default shall not constitute the waiver of any subsequent breach or default and shall not act to amend or negate the rights of the parties under this Second ASP Agreement.

(h)   **Right to Use Client's Name.** Client authorizes TouchNet to use Client's name, likeness, voice, and expressions or statements in marketing literature as a "Client" of TouchNet.

(i)   **Governing Law.** This Second ASP Agreement shall be governed by and construed in accordance with the substantive laws of the state of Texas.

(j)   **Severability.** If any one or more of the provisions of this Second ASP 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 Second ASP 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.

(k)   **Headings.** Headings are included in this Second ASP Agreement as a matter of convenience only and shall not be controlling with regard to the interpretation of this Second ASP Agreement.

(l)   **Security Standards Compliance**. TouchNet agrees to maintain compliance with all applicable Privacy Laws.

(m)   **Utilization of Second ASP Agreement**. The terms and conditions contained within this Second ASP Agreement, excluding pricing, may be extended at TouchNet's option to any other public entities interested in utilizing this Second ASP Agreement.

(n)   **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 Second ASP Agreement or any payments under this Second ASP Agreement and acknowledges that Client may terminate this Second ASP Agreement and/or withhold payment and/or reimbursement if this certification is inaccurate.

(o) **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 Second ASP 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.

(p) **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 in the payment of any franchise (margin) taxes or that TouchNet believes it is exempt from the payment of franchise (margin) taxes.

(q) **State Auditor's Office**. TouchNet understands that acceptance of funds under this Second ASP 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 in all contracts with permitted subcontractors.

(r) **Dispute Resolution**.

(i) *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 Second ASP 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 Second ASP Agreement for notice and cure of defaults are not waived.

(1) Any TouchNet Claim that the parties cannot resolve pursuant to other provisions of this Second ASP 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 19(c) of this Second ASP 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 19(c) of this Second ASP Agreement, will examine TouchNet's Claim and any counterclaim and negotiate with TouchNet in an effort to resolve the claims.

(2) If the parties are unable to resolve their disputes under Section 19(r)(i)(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.

(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 hereto specifically agree that (i) neither the execution of this Second ASP Agreement by Client, nor any other conduct, action or inaction of any representative of Client relating to this Second 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.

(ii)   *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 19(r)(ii).

(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.

(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.

(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.

(iii) *No Waiver*. Neither the execution of this Second ASP Agreement by Client, nor any other conduct, action or inaction of any representative of Client relating to this Second 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.

(iv) *Injunctive Relief and Termination*. To the extent of the laws and Constitution of the State of Texas, the procedures provided for in this Section 19(r) 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 Second ASP Agreement, as provided for in accordance with its terms.

(s) **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 Second ASP Agreement; and that the individual executing this Second ASP Agreement on behalf of TouchNet has been duly authorized to act for and bind TouchNet.

(t) **Ethics Matters; No Financial Interest**. During the term of this Second ASP 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 Second ASP Agreement, Client determines, acting reasonably, that TouchNet's conduct does not satisfy any applicable state ethics laws or rules, Client may terminate this Second ASP 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 Second ASP Agreement.

(u) **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 Second ASP 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 Second ASP 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).

(v) **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 Second ASP Agreement, engage in a boycott of Israel.

(w) **U.S. Department of Homeland Security's E-Verify System.** TouchNet utilizes, and will continue to utilize, for the term of

this Second ASP Agreement, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of all persons to be employed by TouchNet or to perform duties within Texas.

20. **Service and Software Accessibility Standards.** TouchNet is committed to operating in accordance with the accessibility standards set forth in WCAG 2.0 AA (also known as ISO standard, ISO/IEC 40500:2012), EPub3 ("Access Laws"). To the extent that TouchNet becomes aware that the software or services provided fail to comply or become non-compliant with the Access Laws, TouchNet will have a reasonable period of time to make adjustment as reasonably necessary so that Client is compliant with applicable Access Laws. If, following a reasonable period, Client determines that TouchNet's efforts to remedy its software and services have failed and therefore are non-compliant with applicable Access Laws, Client may immediately terminate this Second ASP Agreement, providing written Notice of the termination to TouchNet. In such an event, TouchNet will return any remaining unused portion of Client's annual ASP Fees. For clarity, any Client concerns pertaining to accessibility standards shall be submitted to TouchNet's customer support team via the processes identified in Section 17 of this Second ASP Agreement. Upon Client's reasonable request, and subject to the confidentiality provisions within this Second ASP 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 Second ASP Agreement.

21. **Accessibility Complaints.** TouchNet agrees to promptly respond to and use reasonable efforts to resolve accessibility complaints. TouchNet agrees to defend, indemnify, and hold Client harmless in the event that a claim is made by an individual with a disability that the TouchNet Software and Services provided in this Second ASP Agreement are not readily accessible and usable to said individual where that claim is brought against Client for any alleged violation of applicable state and/or federal disability-related laws and/or regulations in connection with Client's use of the TouchNet Software and Services.
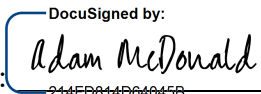
22. **Title IX.** Client strictly adheres to Title IX of the Education Amendments of 1972, the federal Campus Sexual Violence Elimination Act; United States Department of Education regulations and directives; and the University's sexual harassment policy and procedures ("Regulations"). Specifically, the Regulations apply to all students, employees, visitors, and other third parties on Client-controlled property, including institutions and entities with whom Client places its students. Further, such Regulations prohibit unequal treatment on the basis of sex as well as sexual harassment and sexual misconduct. As a condition of employment, enrollment, doing business, or being permitted on the campus, the above-mentioned individuals, organizations, and entities must agree to: (a) report immediately to the Title IX coordinator any and all claims of sex discrimination or sexual misconduct; (b) cooperate with Client's Title IX investigation; and (c) reasonably cooperate with all reasonable sanctions that

Client may impose against such individual, organization, or entity, who is found to have violated the Regulations. If the individual, organization, or entity intentionally or unreasonably fails to adhere to any of the aforementioned requirements, University reserves the right to take appropriate action, including but not necessarily limited to, immediate removal from campus; discipline of employees and students (including termination of employment and/or expulsion from school); and immediate termination of business or contractual relationships.

IN WITNESS WHEREOF, the parties have executed this Second ASP Agreement through the signatures of their respective authorized representatives as of the respective dates shown below.

TOUCHNET INFORMATION SYSTEMS, INC.

STEPHEN F. AUSTIN STATE UNIVERSITY

SIGNATURE: *Adam McDonald*
DocuSigned by:
214FD814D04045B...

BY: Adam McDonald

TITLE: President

DATE: 3/5/2020

SIGNATURE: *Scott Gordon*
DocuSigned by:
A6869949302B442...

BY: Scott Gordon

TITLE: President

DATE: 3/5/2020

Contract must be executed by Client on or before March 15, 2020, or TouchNet may elect to reject the contract, inclusive of pricing in accordance with Section 19(d).

Schedule A
APPLICATION SUBSCRIPTION PROGRAM

TERM OF APPLICATION SUBSCRIPTION PROGRAM AGREEMENT

Subject to the terms and conditions of this Second ASP Agreement, TouchNet grants to Client under all of TouchNet's intellectual property rights (including patent and copyrights owned or controlled by TouchNet) and Client accepts, a non-exclusive, non-transferable Subscription to use the TouchNet Software for the purpose of offering Services to End Users of the System for a period commencing on March 1, 2020 and continuing for a period of five (5) years.

COSTS & PAYMENTS
Application Subscription Program Fees

The annual Application Subscription Program Fee ("ASP Fee") is payable in advance and as prescribed below. TouchNet will increase the fees shown below by four percent (4%) per year over the applicable amount for the immediately preceding year. An ASP Fee of $204,566.00[2] shall be due and payable upon execution of the Second ASP Agreement. Subject to the Texas Prompt Payment Act, TEXAS GOVERNMENT CODE, Chapter 2251 and other applicable laws, 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 Second ASP Agreement and in accordance with Sections 4 and 5 of the Second ASP Agreement to which this Schedule is attached. TouchNet may increase the annual ASP Fees by giving Client notice thereof at least sixty (60) days in advance of the next annual period of this Second ASP Agreement.

TouchNet Ready Partner Program Fees

Client shall continue to have the right to access for its sole use only the CBORD Housing, T2 Parking, and PagePath Technologies Inc./MyOrderDesk TouchNet Ready Partners with no annual per partner Hosting/Access Fees.

Client is responsible for reasonable travel, lodging, and food expenses incurred by TouchNet in connection with on-site training, equipment installation, set-up and professional services rendered in connection with this Second ASP Agreement, if applicable.

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[2] The total ASP Fee of $204,566.00 includes an annual ASP Fee of $12,049.54 for Mobile Bill+Payment. Client is paid through January 31, 2021 for Mobile Bill+Payment, and the initial invoice for the total annual ASP Fee will reflect a pro-rata credit for any remaining unused portion of that fee.

Schedule B

TOUCHNET SOFTWARE

The Client's right to access and use the TouchNet Software shall consist of the following-described computer programs residing on the TouchNet DataCenter:

TouchNet Payment Gateway Suite is the foundation and central payment hub for the TouchNet U.Commerce System. It consists of a core of transaction management routines, integration software, administration support routines (the TouchNet Payment Gateway Operations Center), and Credit Card, ACH, Debit Card Engines, and Campus Card payment method. Each payment method is an individually licensed product. TouchNet Payment Gateway is licensed with:

- One (1) Campus Entity
- Operations Center – administrative interface for administrators, managers, staff, and others to access and manage reports and system parameters
- One (1) payment method each (from the following payment modules . . .)

Additional Campus Entity licenses are available for additional License and Professional Services Fees.

Credit Card Engine. Payment Gateway Credit Card provides the ability to interface payment transactions to a selected credit card processor in order to accept credit card and signature debit card payments. Payment Gateway Credit Card software includes:

- Local database for transaction reporting
- Credit and signature debit card transaction reports
- Interface to one (1) designated Credit Card Processor

Credit Card Processors supported include FDC Nashville/Envoy, First Data North, First Data South, First Horizon, GPS East, Moneris, Moneris eSelect Plus, Elavon, Paymentech, Tsys (formerly VisaNet/Vital), and RBS Lynk. Credit card processor interfaces not listed may be available as a custom project and a development cost may apply.

ACH Engine. Payment Gateway ACH is used to generate a NACHA compliant file to submit Automatic Clearing House transactions to a participating bank. Payment Gateway ACH software includes:

- Local database for transaction reporting
- ACH transaction reports
- User interface that enables a user to enter bank routing information, account number, and check number; then express intention to create a webCheck.
- Local database that validates bank routing numbers entered by the user.
- Functionality to create an Automated Clearing House Debit Transfer file

Debit Engine. Payment Gateway Debit provides functionality to accept and process ATM Network PIN debit payment transactions when used with applications such as TouchNet Bill+Payment and TouchNet Cashiering. Payment Gateway Debit enables both PIN and PINless debit transactions, dependent on the application and hardware available for the transaction.

PINless debit may be used over the web under specific situations where authentication is available through known information about the user. PIN debit may be used for point-of-sale transactions where the user is present and PIN pad hardware is integrated for the transaction. Payment Gateway Debit software includes:

- Local database for transaction reporting
- Debit transaction reports
- One (1) interface to designated ATM Debit Processor

TouchNet Payment Gateway Debit Software is not available for all types of transactions and must be used in conjunction with the proper applications and hardware. Supported Payment Card Processors for <u>PIN Debit</u> include: Atlanta BuyPass via Secure Transport, FDC-North, FDC-South, GPS-East, Moneris, Moneris eSelect Plus, Elavon, Paymentech-Tampa; Tsys (formerly Vital), and RBS Lynk. Supported Payment Card Processors for <u>PINless Debit</u> include: Atlanta BuyPass via Secure Transport, FDC-North, GPS-East, Moneris, Moneris eSelect Plus, and Elavon.

Payment Client. Payment Client is the payment application of the Bill+Payment Suite that enables a secure link from Ellucian Self-Service Banner in order to collect and process payment card data. Payment Client is restricted for use with the six (6) payment points from Ellucian Self Service Banner (as noted below) and is not for use in integration of additional payments. This functionality includes the following:

- Real-time posting of payment transactions to Banner
- Selection of credit/debit card, ACH, and PIN (and PIN-less) debit payment methods provided each of the payment methods is properly licensed within TouchNet Payment Gateway
- Maintains institutions logo, header and footer for branding purposes
- Payment points from Ellucian Self-Service Banner
    - o Student tuition
    - o Admissions application fees
    - o Alumni donations
    - o Registrar transcript request fees
    - o Graduation application fees
    - o Enrollment verification fees
- 1 Campus Entity
- 1 Production Environment
- 1 Test Environment

Professional services for implementation of each payment point from Ellucian Self-Service Banner will apply.

Bill+Payment Account Center. Bill+Payment Account Center is the repository of the core services required by the TouchNet Bill+Payment Suite. Bill+Payment Account Center enables students to view their real-time account balance, make payments using credit cards or electronic checks, and register their parents or guardians as authorized users. Payments made through the Bill+Payment Account Center are linked to an institution's credit card processor and bank for authorization and settlement via the TouchNet Payment Gateway. Bill+Payment Account Center posts successful payments to the appropriate student accounts in real-time and automatically sends email notifications to students via their school-assigned email addresses.

TouchNet e-Bill Solution Software. The TouchNet e-Bill Solution Software is restricted to one (1) Campus Entity, one (1) Production Environment and one (1) Test Environment. It includes the following TouchNet Software applications:

Student Application. The Student application contains the following functionality:

Bill Inbox performs the following functions.

- *Consolidated Statements.* The Bill Inbox lists the most recent statement(s) delivered to the student. For each bill listed, the Bill Inbox provides account summary information that includes the statement date, the statement due date, and the amount due.
- *Action Buttons.* For each bill listed in the Bill Inbox, End-Users may click the 'Pay' button for making a payment or the magnifying glass button to view the bill detail.

Bill Detail performs the following actions.

- *Bill Presentment.* The Bill Detail screen presents the most recent billing statement posted to the student account. The student bill includes all line item detail for the billing statement provided by the student information system. The bill is presented in HTML format.
- *Current Activity* – Current Activity shows all activity posted to the student account after the billing date that can include charges and credits.
- *Bill History.* End-Users may access previous billing statements by clicking on the Bill History drop-down menu and selecting a bill. The End-User will be presented with the billing statement from that date.
- *Print.* End-Users may print the current or historical billing statement stored on the eBill database.

Bill Payment functionality includes:

- *Pay* – the ability to pay towards the account using a credit card or electronic checks.
- *Payment History* – the ability to lookup all payments posted to the student account through eBill.
- *Preferred Payment Methods* – Preferred Payment Methods are payment identities frequently used by the End-User. Within the credit card identity, account nicknames, name on the card, account number, and expiration date are identified. In a similar way, the checking account identity contains account nickname, the account number, and the routing number. Preferred Payment Methods are stored on the eBill database.

E-mail. Billing Profile shows the primary billing e-mail address for the student, as well as an optional secondary e-mail account. The secondary e-mail address is saved on the eBill database and will only be used for billing-related notifications.

Authorized Users. This profile allows the End-User to establish an access profile for a third-party user (i.e. parent, guardian, or an employer) and within each profile; the name, e-mail address, username, and password for the third-party user are contained.

Operations Center. The Operations Center is the administrative function of the TouchNet eBill Software Solution. It allows the following functionality:

- Ability to view student account information by entering the student ID number, including login history, payment history, and current bills.
- Set general eBill settings, including timing for batch processes, e-mail server settings, and returned e-mail accounts.
- Schools can add a general message to the student body.
- View usage and payment activity through eBill.

TouchNet eRefunds. TouchNet eRefunds provides the functionality to distribute student refunds electronically directly into the student's bank account. TouchNet eRefunds includes the following:

- 1 Campus Entity
- 1 Production Environment
- 1 Test Environment

TouchNet eDeposits. TouchNet Bill+Payment Student enables students and parents to make deposit payments for items such as tuition, laptops, or housing through the web using credit card, electronic check, or PIN debit. Deposit payments update the school's deposit accounts in real-time.
- 1 Campus Entity
- 1 Production Environment
- 1 Test Environment

TouchNet Payment Plans. TouchNet Payment Plans is a web-based solution for creating and managing tuition installment plans for use with the Campus Entity's Student Information System. The TouchNet Software is limited to the following:

- 1 Campus Entity
- 1 Production Environment
- 1 Test Environment

Functionality includes:
- **Real-time Integration** with Campus Entity Student Information System when student accounts are initiated, updated, and payments.

- **E-mail Notifications** to alert students to changes on their accounts or if there are any problems with payments.
- **Student Account Access** allows the students to view the status of a payment plan through the web. The student may change to a different plan, change their payment method, or payoff their remaining balance.
- **Plan Administration** gives the ability to plan administrators to create and manage student installment plans that include payment dates, payment amounts, fees and interest rates, determine the number of payments, amounts of each payment, and bring plans online and offline.
- **Web Enrollment** allows students to enroll and update payment plan information and select a preferred method of payment over the web.
- **Scheduled Payments** allows students to meet those payment deadlines by setting up automatic payment processing.
- **Operations Center** allows administrators of the payment plans the ability to access individual student plan information, including number of payments and stored payment method. Administrators may also change the student's preferences. The operations center also gives administrators access to payment plan reports.
- **TouchNet Integration** with TouchNet eBill, TouchNet Student Disbursements, and TouchNet Payment Gateway to provide students and administrators with a centralized location for managing accounts online.

Additional Campus Entity licenses are available for an additional License fee and Professional Services cost.

Mobile Bill+Payment. Pay tuition and fees and view statements from any smart phone.
Get account balances and real-time activity
Review financial aid details
Make payments with stored payment profiles
View scheduled payments and payment plan installments
Receive text alerts: new online statements, payment due dates, and refunds available

Mobile Bill+Payment requires TouchNet Bill+Payment and TouchNet Payment Gateway to operate.

TouchNet Marketplace enables campuses to build and operate secure web-based storefronts and online payment pages. It connects buyers and sellers electronically, making it easy for students, parents, alumni, and the community to conduct eCommerce with the campus 24 hours a day seven days a week. TouchNet Marketplace allows institutions to control security by placing financial transactions in the hands of appropriate campus authorities, while the responsibility for storefront contents is given to authorized departments on campus.

The TouchNet Marketplace Licensed Software is restricted to one (1) Campus Entity, one (1) Production Environment and one (1) Test Environment.

TouchNet Marketplace software consists of the following modules:

uPay

uPay offers you secure payment processing for your existing web pages and in-house web applications. uPay allows you to link campus-developed web sites directly to external payment pages secured by the TouchNet Marketplace Suite and the TouchNet Payment Gateway. You can offer secure processing for both one-time and recurring payments with confirmation data returned after payments have been processed. uPay may also be used with approved TouchNet Ready Partners.

Additional fees will apply to integrate with approved partners via uPay and uPay POS.

uStores

The uStores feature of TouchNet Marketplace Suite allows individual managers and departments to establish online retail stores quickly, efficiently, and easily through a non-technical, web-based interface. You can customize the look and feel of stores, edit images and buttons, accept multiple payment types, and view reports - all with little to no programming support.

Operations Center
The Operations Center is the application's administrative interface for uPay and uStores. Store managers and store staff may access and manage stores, payment pages, products, payments, fulfillments, and reports.

TouchNet Cashiering is composed of three Modules: Student Cashiering, Departmental Deposits and Retail Cashiering licenses. Modules can be licensed individually or as a suite. The TouchNet Cashiering Licensed Software is restricted to one (1) Campus Entity, one (1) Production Environment and one (1) Test Environment. Its functionality is described below.

Student Cashiering:
Student Cashiering is a robust business office cashiering system for receipting payments made on student accounts. It works directly with the campus ERP's Student Information System to provide immediate and real-time information retrieval and posting of charges for both student and non-student accounts. It is a sophisticated system designed to process payments of many tender types, received in person and by mail/drop box, in a single as well as multi-campus/multi-office environment.

- *Cardholder Data Protection*: Combines PA-DSS compliant software, EMV fraud protection, and point-to-point data encryption to offer secure payment processing.
- *Real Time Credit/Debit Card Authorization*: Encumber funds on cards while posting payments in one step.
- *Support for PIN Debit Processing*: Reduce Merchant Fees by utilizing PIN Debit cards. (Note: Requires a license for Debit in the TouchNet Payment Gateway)
- *Support for ACH Check Conversion*: Submit check payments electronically by converting them to ACH. (Note: Requires a license for ACH in the TouchNet Payment Gateway)
- *Close and Balance Procedures*: Require cashiers to complete close and balance procedures.

- *Reporting Functionality*: Access audit trails of all system access and report on all payments received through the Student Cashiering software module.
- *Access and View Accounts*: For accessing and viewing Student Account information.
- *Holds and Restrictions*: Online access to student account holds and other restrictions.
- *Station Management*: Manage session access and permissions for individual cashiers.
- *Line Item Payments*: Can record charges paid by line item.
- *Receipts*: Offers email or paper receipts for each transaction.

Student Cashiering can include P2PE encryption with Client's additional purchase of P2PE hardware and validated point to point encryption services.

Departmental Deposits:

Departmental Deposits is a funds management tool that automates the process of recording and closing tendered transactions readied and batched for bank deposit. Using Web Departmental Deposit's features, campus finance administrators can reduce the effort and time required to balance daily deposits and better anticipate the end-of-day deposits from the various departments processing payments across campus.

- *Post Departmental Deposits*: Post miscellaneous revenue payments (Departmental Deposits) in person or via the web
- *Track Departmental Deposits*: Track Web Departmental deposits made throughout entire institution
- *Real-time Updates*: Real-time update to ERP system (Banner only)
- *Customized Templates*: Create Web Departmental Deposit templates for ERP System (Banner only)
- *Administrative Oversight*: Administrative oversight to audit departmental activity

Retail Cashiering:

Retail Cashiering is a Point-of-Sale (POS) check-out system supporting multiple merchants throughout the campus. It offers automated G/L posting, inventory management, and multi-tender payment processing in a configurable custom framework for each merchant.

- *Cardholder Data Protection*: Combines PA-DSS compliant software, EMV fraud protection, and point-to-point data encryption to offer secure payment processing.
- *Real Time Credit/Debit Card Authorization*: Encumber funds on cards while posting payments in one step.
- *Support for PIN Debit Processing*: Reduce Merchant Fees by utilizing PIN Debit cards. (Note: Requires a license for Debit in the TouchNet Payment Gateway)
- *Support for ACH Check Conversion*: Submit check payments electronically by converting them to ACH. (Note: Requires a license for ACH in the TouchNet Payment Gateway)
- *Close and Balance Procedures*: Require cashiers to complete close and balance procedures.
- *Reporting Functionality*: Access audit trails of all system access and report on all payments received through the software across campus.
- *Automate Miscellaneous Revenue Deposits*: Create deposits to the General Ledger automatically during the close and balance process.
- *Station Management*: Manage session access and permissions for individual cashiers.

- *Centralized Cash Receipt Management*: Monitor prices, audit procedures, and manage the flow of money from separate credit card merchants across the campus, all from one central location.
- *Receipts*: Offers email or paper receipts for each transaction.

Retail Cashiering can include P2PE encryption with Client's additional purchase of P2PE hardware and validated point to point encryption services.

U.Commerce Central. U.Commerce Central is a centralized place to manage system operations, view commerce activity across campus, and access training and educational resources. U.Commerce Central provides the following functionality:

- **User Management** – Provides a single login for all TouchNet administrative applications with a history of the user's activity, customizable password policy to enforce strong passwords and user role management.
- **U.Commerce Dashboard** – A single summary view of campus-wide activity displaying payment transactions from all TouchNet applications including all merchants and payment methods. The Dashboard view also provides alerts to notify administrators of actions required throughout the applications.
- **Client Community** – Resource center for product and industry information.

TouchNet Ready Partner Program – TouchNet DataCenter:
TouchNet actively seeks certain third party companies and organizations to participate in our pre-integrated partner program. The purpose is to help our clients centralize and unify campus commerce electronic payments into the TouchNet Software. The TouchNet Software needed to best utilize the program is both TouchNet Payment Gateway and TouchNet Marketplace. TouchNet Ready Partners are primarily integrated through TouchNet Marketplace, however, in some cases they may be validated only through Payment Gateway. For clients that have licensed access to both these TouchNet Software modules, the following charges apply to support the program costs including data center operations and customer/technical services.

TouchNet Ready Program Charges – TouchNet DataCenter	Client Licensed for Payment Gateway & Marketplace Full Use uPay	Client Licensed for only Payment Gateway
Per Partner Annual Hosting/Access Fee	3 Free – none remain	$ 2,500@
Each Additional Annual Partners Fee	$ 1,500@	$ 2,500@
Per Partner One-Time Implementation Fee	$ 1,250@	$ 1,750@

Schedule C

EQUIPMENT AND CLIENT TASKS FOR SET UP, INSTALLATION AND IMPLEMENTATION OF SOFTWARE

TouchNet Software Implementation Services

Defined Engagement and Project Management: A TouchNet Implementation Lead will work closely with the Client's project leaders to review and tailor standard Project Plans to illustrate key tasks, milestones and deliverables for the TouchNet Implementation. The Implementation Lead will coordinate all TouchNet Software installation, configuration, training and go-live activities with the Client.

Timeline: Implementation timelines vary greatly based upon products purchased, key business drivers for when those products are implemented as well as resource availability both with the Client as well as TouchNet. TouchNet will work with the Client's key stakeholders and resources to adjust standard Project Plans to best accommodate resource availability and constraints.

System Testing: TouchNet will perform System Integration Testing after software is installed and configured to ensure integration with the Host ERP. TouchNet's testing efforts are not considered to be exhaustive as subsequent testing should be conducted by the Client to ensure adherence with applicable Client business rules as well as gain familiarity with the new TouchNet Software.

Training: TouchNet provides hands on, remote, Client training for Payment Gateway, Bill Payment and Marketplace leveraging the Client's Test Environment via LiveMeeting. These sessions are a mix of hands on and PowerPoint materials. On-site training is available for these modules for a nominal fee unless otherwise negotiated. Cashiering implementations include a maximum 2 day on site training of cashiering fundamentals to a maximum of 5 key individuals. Additional training services can be purchased should the Client deem it necessary.

User Acceptance Testing: It is the responsibility of the Client to ensure adequate resources and time is allocated to perform User Acceptance Testing of the new TouchNet Software. Many new business processes and functions are introduced as a part of the implementation of TouchNet Software and it is recommended highly that Client's take the time during User Acceptance Testing to validate and refine some of those new processes.

Go-live Support: The TouchNet Implementation Lead will be assisting throughout the implementation of the TouchNet Software. During the go-live and for a period of 2 weeks beyond, the TouchNet Implementation Lead will continue to support the Client remotely.

Client Duties During the Implementation

General

Human Resource Needs: Client will need to identify appropriate project related resources including, but not limited to, Project Lead, Technical Lead and key stakeholders to be leveraged for functional requirements and/or functional testing. Business Office or Functional Users of the new TouchNet Software are critical for requirements as well as testing purposes.

Physical Resource Needs: Client will need to reserve applicable training facilities for any on-site related activities (i.e. training) once the specified timelines are agreed to. The facilities will need an overhead projector, workstations for attendees (if the desired environment) and preferably a whiteboard or similar drawing surface.

Payment Processing Needs: In preparation for the TouchNet implementation, the following items should be gathered as they will be critical to expediting the implementation:

- Verification of Credit Card Processor
- Merchant ID information
- Bank account and routing information and initial discussions with them regarding the transmission of any ACH related data

DataCenter Implementations

Technical Requirements: There are 2 items necessary to be completed by the Client's Technical staff.

- Provide necessary IP information for TouchNet Software to access the applicable Student Information System and make necessary changes to firewall(s)
- Client will need to install a small connector piece of software which enables TouchNet Software to communicate with the Student Information System

This is a basic list of duties to be performed by Client. A complete list may be obtained from the TouchNet implementation specialist assigned to the Client during installation.

If client must re-schedule an installation after a date has been determined, a surcharge of 50% of the total Professional Services Fee will apply, and the project implementation will be rescheduled based upon TouchNet's availability at that time. The maximum time allowed for installation under this Second ASP Agreement for all products is six (6) months. If delays beyond six (6) months are caused by Client, additional Professional Services Fees may apply.

Client is responsible for reasonable travel, lodging, and food expenses incurred by TouchNet during the on-site training.

The TouchNet Software, in some cases, will require the Client to assist TouchNet in accessing files on the Client's Student Information System to accomplish the interface between TouchNet Software and other software on Client's Student Information System and to permit certain functionality to be tested. Also, it is the Client's responsibility to assist TouchNet and/or its subcontractors in setting up links between the TouchNet Software and Client's Student Information System. Such responsibility includes, but is not limited to, granting remote or other access thereto, granting of administrative (or similar) rights and privileges, and assisting TouchNet (or its subcontractors) in understanding the configuration and environment of Client's Student Information System.