

**AGENDA ITEM #X-D-6
FEBRUARY 27, 2024
HIGHLAND COMMUNITY COLLEGE BOARD**

**SOFTWARE SOLUTIONS PROPOSAL WITH TOUCHNET INFORMATION
SYSTEMS, INC. FOR ELECTRONIC TUITION PAYMENT SERVICES**

RECOMMENDATION OF THE PRESIDENT: That the Board of Trustees approves the attached software solutions proposal from TouchNet Information Systems, Inc., for a five-year agreement of Electronic Tuition Payment services, at an annual cost of \$82,152 (\$410,760 total cost over the five-year period).

BACKGROUND: TouchNet Payment services has been utilized since 2009 to process electronic student tuition transactions. It is the vehicle that provides students with online access to their tuition account, and electronically processes tuition payments, refunds, monthly statements, and scheduled payment plans. TouchNet also connects with Highland's ERP (Banner) system to record transactions on students' ROAR accounts. In addition to these services, this agreement also includes continued training, technical support, and a pre-production environment for testing purposes.

BOARD ACTION: _____

TouchNet Order Form

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

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

C. TouchNet Services

ASP Services	Price	Quantity	Total Price
TouchNet Payment Gateway Credit Card and ACH Engines, Payment Client (including the student tuition payment point), Account Center, eBill, eDeposits, eRefunds and TouchNet Payment Plans software	\$82,152	1	\$82,152
Total Annual ASP Fee			\$82,152

TouchNet Integrated Solutions ¹	Price	Quantity	Total Price
Integrated Cross-Border Payments	Included	1	Included
Integrated Tuition Protection	Included	1	Included
Total TouchNet Integrated Solutions Fee			\$0.00

- D. Term.** The Term of the TouchNet Software in the ASP Services commences on June 1, 2024 (the "Effective Date") and continues for a period of five (5) years. Thereafter, the Term for the TouchNet Software in the ASP Services will automatically renew for additional five (5) year periods unless terminated by either Party by giving ninety (90) days written notice prior to the end of any term.
- E. Payment.** Client will pay all fees identified in this TouchNet Order Form as described in the Existing Agreement. Payment is in US Dollars unless stated otherwise. Fees may change annually as described in the Existing Agreement.
- F. Billing Information.**

Billing Contact Name: _____
 Sales Tax Exempt? _____

Billing Contact Email: _____

¹ TouchNet Integrated Solutions require separate documentation with the Cross-Border Payments or Tuition Protection provider, respectively, and may be subject to additional fees.

TOUCHNET INFORMATION SYSTEMS, INC.

HIGHLAND COMMUNITY COLLEGE - IL

SIGNATURE: _____

SIGNATURE: _____

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

**Order Form must be executed by Client on or before May 1, 2024 to guarantee pricing.*

TOUCHNET MASTER SERVICES AGREEMENT

This Master Services Agreement ("Agreement") is made as of the last date shown in the signature block ("Effective Date") between TouchNet Information Systems, Inc., 9801 Renner Road, Suite 150, Lenexa, Kansas 66219, and Highland Community College, located at 2998 W. Pearl City Road, Freeport, IL 61032-9341 ("Client"). TouchNet and Client may individually be referred to herein as "Party" or collectively as "Parties." This Agreement terminates the prior agreements entered into between the Parties as follows: Application Subscription Program Agreement dated June 25, 2009, First ASP Addendum dated September 8, 2011, Extension Agreement dated May 20, 2014, Second Extension Agreement dated May 20, 2019, and TouchNet Ready Partner Order Form #1 dated April 30, 2019. For clarity, the TouchNet ACH Validation Services Addendum dated April 29, 2021 was previously terminated.

1. **Definitions.** The capitalized terms used in this Agreement, except where specifically defined to the contrary herein, shall have the meanings as set forth below.
 - 1.1 "Actual Uptime" means the total number of minutes that the TouchNet Cloud Services are Available during a Measurement Period.
 - 1.2 "Applicable Laws" means all applicable state and federal laws, and applicable data privacy laws, including FERPA, the Gramm-Leach-Bliley Act ("GLBA"), the California Consumer Privacy Act ("CCPA"), the California Privacy Rights Act ("CPRA"), the General Data Protection Act ("GDPR"), the Payment Card Industry Data Security Standards ("PCI DSS"), and the National Automated Clearing House Association Standards ("Nacha"), as amended, together with regulations promulgated thereunder, all anti-money laundering and anti-corruption laws, including the Bank Secrecy Act, the USA PATRIOT Act of 2001, the Foreign Assets Control Act, and their related regulations as well as the sanctions, rules and regulations administered by U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), the U.S. Commerce Department's Office of Anti-boycott Compliance and Bureau of Export Administration, and the U.S. State Department's Office of Defense Trade Controls.
 - 1.3 "ASP Services" means Client's purchase of an application subscription program that includes a right to access and use TouchNet Software or OneCard Software made available under a SaaS model, together with Software Updates and Support Services, for one bundled fee billed annually for a specified period of time.
 - 1.4 "Attestation of Compliance" means the form used by eligible entities to attest to the results of a PCI DSS assessment.
 - 1.5 "Available" means that the TouchNet Cloud Services can be accessed by Client.
 - 1.6 "Client Data" means all information, files, content, figures, images, text, files or other data, including End User Personal Identifiable Information ("PII"), provided to TouchNet by Client, Client Users or End Users for TouchNet's use in providing the TouchNet Services.
 - 1.7 "Client User" means Client's employees and authorized agents using the back office TouchNet Services functionality.
 - 1.8 "Custom Software" means any new or modified software that TouchNet develops, creates, or programs pursuant to a written agreement between Client and TouchNet. Any Custom Software is included in the definition of TouchNet Software.
 - 1.9 "Designated Configuration" means a configuration of hardware and software that TouchNet supports and on which the TouchNet Licensed Software and OneCard Licensed Software is operated by or for Client.
 - 1.10 "Documentation" means the operational, functional and technical specifications in any standard materials, guides, manuals or other related materials (not including marketing materials) that TouchNet provides from time-to-time for TouchNet Software, OneCard Software, TouchNet Licensed Software, and OneCard Licensed Software.
 - 1.11 "End User" means Client's students or authorized third parties who are using the Client-branded TouchNet Services to make payments and otherwise engage with Client.
 - 1.12 "Exception(s)" means that the TouchNet Cloud Services will not be deemed to have a TouchNet Cloud Services Level Failure if Client's access to the TouchNet Cloud Services does not meet the Required Availability, in whole or in part due to: (i) an act or omission by Client, use of the TouchNet Cloud Services by Client, or using Client's access credentials, that does not strictly comply with this Agreement and the Documentation; (ii) Client's Internet connectivity; (iii) a Force Majeure event; (iv) failure, interruption, outage, or other problem

with any software, hardware, system, network, facility, or other matter not supplied by TouchNet pursuant to this Agreement; (v) disruptions in the interconnections with TouchNet servers resulting from the neglect or other fault of Client and/or its agents or contractors; (vi) equipment, software, or other items (whether or not included within the TouchNet Software) not developed, manufactured, created, or produced by TouchNet, including Third Party Software; (vii) scheduled downtime, scheduled maintenance, or emergency maintenance; (viii) modifications of TouchNet Software not performed by TouchNet, including use of TouchNet Software with devices or software not provided or approved by TouchNet; (ix) Client's failure to properly install hardware or software, including manufactures' operational/system software, or new releases or enhancements specified by TouchNet; or (x) disabling, suspension, or termination of the TouchNet Cloud Services by TouchNet due to Client's breach of this Agreement.

- 1.13 "Force Majeure" means events beyond a Party's reasonable control, including acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, pandemics, and interruptions, loss or malfunctions of utilities including telecommunication services, vandalism, other actions or inactions of third parties; fires; embargoes and labor disputes; and court orders and governmental decrees.
- 1.14 "Implementation" means the process of installing and running the TouchNet Services for Client's use, as further described herein.
- 1.15 "Measurement Period" means a calendar month period.
- 1.16 "OneCard Hardware" means certain hardware components developed or sold by TouchNet that support the use of the OneCard Services.
- 1.17 "OneCard Licensed Software" means all computer programs described in a TouchNet Order Form (in object code form only) that are licensed annually or on a term basis and that may be used with OneCard Hardware.
- 1.18 "OneCard Services" means the solution that includes OneCard Hardware, OneCard Licensed Software, and OneCard Software, along with the OneCard Support Services. OneCard Services enable ID card production, administrative management, ERP integration, reporting, time and attendance transactions, event management, mobile credential, cardholder account management, financial declining balance, and account verification, and may include add-on functionality. OneCard Services are part of TouchNet Services.
- 1.19 "OneCard Software" means the computer program applications that Client wishes to use and access remotely on TouchNet's servers in the TouchNet DataCenter that enable OneCard Services to the extent that they are made available to Client on a remote-access, subscription basis via the Internet (also known as software as a service ("SaaS") model). OneCard Software includes the software Client is licensing as identified on a TouchNet Order Form.
- 1.20 "OneCard Support Services" means the support that TouchNet provides Client in connection with OneCard Hardware and/or OneCard Licensed Software for an additional annual fee. OneCard Support Services includes the OneCard Hardware and/or OneCard Licensed Software identified on a TouchNet Order Form.
- 1.21 "Percentage Availability" means the percentage of time the TouchNet Cloud Services was Available during a Measurement Period, which will be calculated as follows: $(\text{Actual Uptime} \div (\text{Total Minutes in Scheduled Uptime in Measurement Period} - \text{Total Minutes in Scheduled Uptime in Measurement Period TouchNet Cloud Services are not Available due to an Exception})) \times 100 = \text{Percentage Availability}$.
- 1.22 "Personally Identifiable Information" or "PII" means (i) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (ii) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. Included is all information as defined in Section 99.3 of the Family Educational Rights and Privacy Act ("FERPA").
- 1.23 "Professional Services" means any work, assistance or support TouchNet staff performs that is a project and knowledge-based service that may include implementation, modifications, or additions to TouchNet Services that do not also meet the definition of Custom Software.
- 1.24 "Required Availability" means the percentage of time the TouchNet Cloud Services must be Available over the course of a Measurement Period, excluding any Exceptions. Such percentage of time is hereby 99%.
- 1.25 "Scheduled Uptime" means the period of time for which the TouchNet Cloud Services is intended to be Available. Such period of time is 24 hours per day, 7 days per week, less any Exceptions.

- 1.26 "SIS/ERP Connect" means any software that the Client will need to install on its own Student Information System in order to access and interface with the TouchNet Services.
- 1.27 "Software Updates" means all updates, error corrections, patches, version releases, and enhancements that TouchNet makes available to all clients after the initial implementation, together with any applicable additional or different terms, for the TouchNet Licensed Software or TouchNet Software.
- 1.28 "SSAE" means Statement on Standards for Attestation Engagements No. 16, Reporting on Controls at a Service Organization, produced by the American Institute of Certified Public Accountants.
- 1.29 "Support Services" means the support that TouchNet provides Client in connection with the TouchNet Services.
- 1.30 "Support Services Annual Term" means the annual period that begins on the date of purchase of OneCard Services. For example, if OneCard Hardware is initially purchased on July 1, the Support Services Annual Term would be July 1 through June 30.
- 1.31 "Student Information System" means Client's computer system, including all computers, peripherals, and cables and connectors; hardware and software (whether in source code or object code); and the student and/or faculty-related information and data stored, managed, accessed, and manipulated therein or thereby.
- 1.32 "Test Environment" means the environment TouchNet provides that will be configured the same as, or similar to, the Client's production environment and hosted in TouchNet's DataCenter for Client to test the TouchNet Services.
- 1.33 "Third Party Software" means software that is: developed for general commercial use; available to the public; or not developed by or for TouchNet, and includes without limitation: commercial off-the-shelf software; operating system software; and application software, tools, and utilities.
- 1.34 "TouchNet Business Hours" means the hours of 7:00 a.m. until 7:00 p.m., Central Time, Monday through Friday other than standard United States financial holidays.
- 1.35 "TouchNet Client Community" means TouchNet's Client-facing portal, which contains general Client account information, product and service Documentation, mechanisms related to Support Services ticket creation, and other resources available to Client at no additional cost.
- 1.36 "TouchNet Cloud Services" means, collectively, the TouchNet ASP Services and Hosting Services described in Section 2, and includes both TouchNet's UCommerce and OneCard Software to the extent that they are delivered through a software as a service ("SaaS") model.
- 1.37 "TouchNet Cloud Services Level Failure" means that the Percentage Availability was below the Required Availability for the TouchNet Cloud Services.
- 1.38 "TouchNet Data" means all TouchNet-created information, files, content, figures, images, text, files or other data provided by TouchNet to Client in connection with Client's use of the TouchNet Services.
- 1.39 "TouchNet DataCenter" means a location where the TouchNet Software resides.
- 1.40 "TouchNet Licensed Software" means all computer programs described in a TouchNet Order Form (in object code form only) that are typically licensed on a perpetual basis, but may also be licensed on a term, or annually renewable basis from TouchNet, and which can either be hosted on Client's premises (and solely within Client's control and liability) or that can be hosted in the TouchNet DataCenter. If Client chooses to have TouchNet host the TouchNet Licensed Software, Client is required to purchase annual Hosting Services and TouchNet Software Maintenance and Support Services for an additional fee, that itself can be purchased on a term or annually renewable basis.
- 1.41 "TouchNet Order Form" means the form identifying the exact TouchNet Services and corresponding fees that Client purchases. Any additional purchases of TouchNet Services shall be made on a TouchNet Order Form, and are subject to the terms and conditions of this Agreement unless stated otherwise in the TouchNet Order Form.
- 1.42 "TouchNet Ready Integration" means the TouchNet-approved integration between certain TouchNet Services and a third party's proprietary software application, enabling additional functionality.
- 1.43 "TouchNet Services" means all software and hardware services or products that Client obtains from TouchNet or accesses through TouchNet, including TouchNet Licensed Software, TouchNet Software, OneCard Software, OneCard Licensed Software, OneCard Hardware, and OneCard Support Services.

- 1.44 “TouchNet Software” means the computer program applications that Client wishes to use and access remotely on TouchNet’s servers that enable the TouchNet Services, delivered through a SaaS model, and includes all software components, product documentation and associated media, sample files, extension files, tool and utilities and miscellaneous technical information. TouchNet Software includes software that is identified on the TouchNet Order Form, and includes both TouchNet Software and OneCard Software.
- 1.45 “TouchNet Software Maintenance and Support” means, for an additional fee identified on the TouchNet Order Form, Client will receive Software Updates and Unlimited Telephone Support for its TouchNet Licensed Software.
- 1.46 “UCommerce Services” means the software modules that TouchNet provides to enable automated and integrated campus commerce services and other financial services software, and is included in the definition of TouchNet Services.
- 1.47 “Unlimited Telephone Support” means that TouchNet shall provide Client, with respect to the TouchNet Services, unlimited telephone support over its technical support line during TouchNet Business Hours.
- 1.48 “Warranty Period” means that the OneCard Hardware purchased from TouchNet shall be free from faulty workmanship and defective materials for a period of ninety (90) days, which will be calculated from the date Client receives the OneCard Hardware.
- 2 **Scope of Agreement.** This Agreement governs all TouchNet Services, including: (a) any license rights to any TouchNet Licensed Software and any associated, hosting, support and maintenance services (b) any license rights to any OneCard Licensed Software; (c) any right to access and use any TouchNet Software and any OneCard Software purchased via application subscription program (“ASP”); (d) any Professional Services; (e) any TouchNet Cloud Services or other managed hosting services; (f) any TouchNet Ready Integrations with third parties; (g) any OneCard Hardware and/or firmware; and any (h) OneCard Support Services.
- 3 **Software License Types and General Rights and Restrictions Thereto.**
- 3.1 **ASP Services.** With respect to ASP Services, TouchNet grants Client a non-exclusive, non-transferable, non-sublicenseable license to access and use the TouchNet Software and OneCard Software on TouchNet’s servers at the TouchNet DataCenter made available by TouchNet on a remote-access, subscription basis via the Internet solely in support of Client’s operations, as shown on the TouchNet Order Form. This limited license includes standard maintenance, hosting, Software Updates and Support Services.
- 3.1.1 **Implementation.** Implementation of the TouchNet Software will follow the process described in the Equipment and Client Tasks for Set Up, Installation and Implementation of Software, found in TouchNet’s Client Community.
- 3.1.2 **Client Responsibility.** The TouchNet Software may require Client to assist TouchNet in accessing files on Client’s Student Information System to achieve an interface between the TouchNet Software and the Student Information System as well as permit testing of certain functionality. Client agrees to provide assistance reasonably necessary to enable TouchNet to provide the TouchNet Services.
- 3.1.3 **Schedules.** If Client reschedules an Implementation after a date has been determined, a surcharge of 50% of the total Professional Services Fee assessed on the TouchNet Order Form may apply, and the Implementation will be rescheduled based upon TouchNet’s availability at that time. The maximum time allowed for Implementation for all TouchNet Services is twelve (12) months. If delays beyond twelve (12) months are caused by Client, additional Professional Services Fees may apply.
- 3.1.4 **Client Testing.** TouchNet will make a Test Environment available to Client before going live. The Test Environment will receive a lower service level than the production environment. The Test Environment will not receive monitoring of critical system or services, nor will it receive twenty-four (24) hour notification or support.
- 3.1.5 **Support Services.** Support Services for the TouchNet Software are included in the bundled pricing for ASP Services. During the term of this Agreement, TouchNet will provide 24/7/365 monitoring and support of the TouchNet DataCenter. Support is provided during TouchNet’s Business Hours and such support is available by phone, email, or via TouchNet’s Client Community. As part of its Support Services, TouchNet will provide Client with Unlimited Telephone Support.
- 3.1.6 **Standard Maintenance.** Standard Maintenance is provided for TouchNet Software as part of the bundled pricing for ASP Services. Client acknowledges and agrees that during such periods of maintenance or repair, the TouchNet Software may not be Available for Client’s use. TouchNet

endeavors to perform routine maintenance outside of TouchNet Business Hours. TouchNet publishes planned maintenance windows and uses commercially reasonable efforts to provide Client fourteen (14) days' notice before the monthly four (4) hour maintenance windows. In rare events, and to the extent possible, TouchNet will give Client at least twenty-four (24) hours advance notice of down-time for emergency maintenance that could include updates to security systems.

- 3.2 TouchNet Licensed Software Provided on an Annual, Perpetual or Term Basis.** With respect to TouchNet Licensed Software, whether (a) licensed on a Term basis, or by (b) an annual and ongoing, renewable basis, or by (c) "perpetual" basis, unless and until terminated as provided herein, TouchNet grants Client a non-exclusive, non-transferable, non-sublicenseable, license to use the TouchNet Licensed Software on a Designated Configuration solely in support of Client's operations, with the option of hosting the TouchNet Licensed Software either on Client's premises or, for additional fees, to host and maintain the TouchNet Licensed Software in the TouchNet DataCenter.
- 3.2.1 Installation.** If the TouchNet Licensed Software is not hosted by TouchNet, Client is responsible for installation of the TouchNet Licensed Software at the Setup Site identified on the TouchNet Order Form. If the TouchNet Licensed Software is hosted in the TouchNet DataCenter, Client shall be responsible for timely performance of all tasks allocated to it on the Equipment and Client Tasks for Set Up, Installation and Implementation of Software, found in TouchNet's Client Community. Client's failure to perform any functionally necessary installation will relieve TouchNet of any subsequently arising obligations hereunder. All installation services TouchNet may provide in connection with this Agreement (regardless of where performed) will occur during TouchNet Business Hours.
- 3.2.2 System Tests.** Tests of the TouchNet Licensed Software will be conducted by TouchNet and may be witnessed by Client using standard TouchNet procedures that demonstrate compliance with applicable specifications detailed in this Agreement.
- 3.2.3 TouchNet Licensed Software Maintenance and Support.** Where Client chooses to host the TouchNet Licensed Software in the TouchNet DataCenter, Client must pay an additional fee, included on the TouchNet Order Form, for receipt of TouchNet Software Maintenance and Support. TouchNet will notify Client when Software Updates are available and make the Software Updates available to Client. To receive TouchNet Software Maintenance and Support, Client must (i) promptly and effectively comply with any reasonable requirements related to the Software Updates and (ii) ensure that Client's hardware, software, and operating systems are compatible with the current version of the TouchNet Licensed Software and Software Update.
- 3.2.3.1 Exclusions from TouchNet Licensed Software Maintenance and Support.** Support for issues arising from (i) a Force Majeure event; (ii) any incidents caused by an Exception is not included in TouchNet Licensed Software Maintenance and Support.
- 3.2.3.2 Cost of Support for Excluded Service.** Any error, corrections, repairs, or replacements required to make the TouchNet Licensed Software function properly because of Client modifications to the Student Information System or other IT assets, shall be provided at TouchNet's then-current hourly rate for repair and other technical service and TouchNet's then standard price for replacement products, as agreed to in a TouchNet Order Form.
- 3.2.4 Hosted Services.** If Client purchases TouchNet Licensed Software and wants TouchNet to manage Client's TouchNet Licensed Software through TouchNet's DataCenter, Client must purchase Hosting Services, for an additional fee, as well as TouchNet Software Maintenance and Support.
- 3.3 OneCard Licensed Software Provided on an Annual or Term Basis.** With respect to OneCard Licensed Software, whether (a) licensed on a Term basis, or by (b) an ongoing annually renewable basis, unless and until terminated as provided herein, TouchNet grants Client a non-exclusive, non-transferable, non-sublicenseable, license to use the OneCard Licensed Software on a Designated Configuration solely in support of Client's operations.
- 3.4 Grant of Rights.** All software is licensed, not sold. All rights, title and interest, including all copyrights and other intellectual property rights, in and to the software (including but not limited to any software components, Documentation and associated media, sample files, extension files, tool and utilizes and miscellaneous technical information) and any copies Client is permitted to use by virtue of this Agreement are owned exclusively by TouchNet or its licensors. All trademarks and service marks referenced in the Agreement or in the product documentation belong to their respective owners and this Agreement does not grant Client any rights in

connection with any trademarks or service marks. TouchNet retains all right, title and interest to any work product or other intellectual property developed and/or delivered in connection with TouchNet's provision of any services or the performance of any obligations hereunder. Any intellectual property rights not expressly granted herein are expressly reserved by TouchNet. OneCard Hardware may be required to operate the OneCard Licensed Software. In that event, Client must also purchase and enroll in the OneCard Support Services program for its OneCard Licensed Software, for each annual period, subject to the terms of this Agreement, so that Client may continue use of the OneCard Licensed Software. If Client does not elect to enroll in the OneCard Support Services program in those situations where OneCard Hardware is required to operate the OneCard Licensed Software, Client, subject to TouchNet's directive, will promptly remove and/or return the OneCard Licensed Software to TouchNet.

- 3.5 Prohibited Activities and Uses.** Client shall use the TouchNet Services solely for processing data in the ordinary course of its operations and shall not use the TouchNet Services 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. Client may not sub-license, assign, transfer, or otherwise give or furnish any of its rights under this Agreement to any third person, nor may Client assert or represent that it has any ownership rights in, or the right to sell, transfer or sub-license, the TouchNet Services to any third party. Client shall not, under any circumstances, directly or indirectly, down-load, copy, modify, decompile, reverse engineer, or otherwise attempt to discover the source code for the TouchNet Services. Finally, Client shall not keep and/or utilize OneCard Licensed Software required to operate OneCard Hardware without also purchasing OneCard Support Services.
- 3.6 Exclusivity.** During the Term, TouchNet will be Client's exclusive provider of the TouchNet Services purchased by Client. Client will not develop for itself, and will not enter into any agreement with a third party that develops, sells or provides, services which are substantially similar to or competitive with the TouchNet Services.
- 3.7 Product Specific Terms.** If there are product-specific terms for individual TouchNet Services, those will be reflected on the TouchNet Order Form for those specific products.
- 3.8 Change by Client.** To the extent Client makes changes to its SIS or other systems, including its general ledger, finance, or enrollment systems, and any institutional information technology infrastructure changes, TouchNet does not commit to supporting such changes. If Client intends to make such a change, it will provide no less than 180 days' notice to TouchNet, and TouchNet will make commercially reasonable efforts to support such changes. If TouchNet imposes a charge for any of TouchNet's required Professional Services resulting from a Client change, the Parties will memorialize both the Professional Services and the corresponding fees on a TouchNet Order Form, or other written document.
- 3.9 SIS/ERP Connect Software.** If TouchNet provides SIS/ERP Connect Software, it is licensed (on a non-exclusive and non-sublicensable basis) to Client solely for the purpose of enabling Client to access (and interface with) the TouchNet Services. The SIS/ERP Connect Software may not be used for any other purpose whatsoever.
- 3.10 Client Responsibilities.** Client is responsible for all activities that occur under Client's End User accounts and agrees to present any terms and conditions or privacy policy that Client deems reasonable. Client shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all data, information or material provided or submitted to TouchNet by Client or End Users; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the TouchNet Services, and notify TouchNet promptly of any such unauthorized use; and (iii) be responsible for acquiring and maintaining any systems, services, software, and hardware necessary to connect to the TouchNet Services.
- 3.11 Compliance with Applicable Laws.** The Parties agree to comply with all Applicable Laws.

4 Availability of TouchNet Cloud Services.

- 4.1 Service Level Assurance.** Subject to the terms and conditions of this Agreement, TouchNet's objective is to use commercially reasonable efforts to make the TouchNet Cloud Services Available for the Required Availability percentage of the Scheduled Uptime over the course of the Measurement Period, excluding any unavailability as a result of any of the Exceptions ("SLA"). This SLA does not apply to (i) Third Party Software or other third

party services (ii) Implementation, (iii) any purchases covered by special support arrangements such as pilot program participation or the development of Custom Software.

4.2 Remedy. In the event that Client's access to the TouchNet Cloud Services hereunder becomes unavailable, Client shall immediately notify TouchNet. Unless Client's access to the TouchNet Cloud Services are unavailable due to an Exception or for other reasons beyond TouchNet's control, if Client has notified TouchNet and a TouchNet Cloud Services Level Failure event has occurred, TouchNet shall, upon Client's written request, issue a credit to Client in an amount equal to five percent (5%) of the fees for the impacted TouchNet Cloud Service for the month in which the TouchNet Cloud Services Level Failure event occurred. For purposes of calculating credits, any period of unavailability shall be counted from the time such unavailability is reported to TouchNet until such time that access is restored. Except as stated in this Section 4, TouchNet makes no representations or warranties pertaining to the Availability of the TouchNet Cloud Services, and therefore, the remedies set forth in this Section represent TouchNet's sole obligation and liability to and Client's sole remedies for any TouchNet Cloud Services Level Failure(s).

4.3 Maintenance. Client acknowledges and agrees that TouchNet will, from time to time, need to perform routine maintenance or repair, and that during such periods of maintenance or repair, the TouchNet Cloud Services may not be available for Client's use. TouchNet generally schedules maintenance outside of business hours, usually between 2:00 am and 6:00 am central time. TouchNet's objective is to minimize the duration of any such unavailability and it endeavors to perform routine maintenance outside of TouchNet Business Hours. TouchNet publishes planned maintenance windows and will use commercially reasonable efforts to provide Client fourteen (14) days' notice before the pre-scheduled four (4) hour monthly maintenance windows that take place outside of TouchNet Business Hours. In other rare events, and to the extent possible, TouchNet will give Client at least twenty-four (24) hours advance notice of down-time for emergency maintenance that could include updates to security systems. Client shall be responsible for arranging for all telecommunications connections.

5 TouchNet Ready Integrations.

5.1 Connections. If Client purchases a license for a TouchNet Ready Integration, TouchNet grants Client a limited, non-exclusive, revocable, non-sublicensable, non-transferable license to access each T-Link, API, or other connection ("Connection") set forth in the TouchNet Order Form or reflected in the TouchNet Client Community. TouchNet will provide information necessary to enable Client's secure use of the Connection(s). Client may not use or install the Connection(s) for any other purpose, and may not copy, rent, adapt, disassemble, lease, assign, sublicense, reverse engineer, modify or decompile, the Connection(s) or any part thereof. TouchNet reserves the right to limit the number and/or frequency of requests for Connection(s), or take other actions necessary to protect the integrity of the TouchNet Services.

5.1.1 To the extent Client uses an API for its Connection, that API relies on a third party system to capture sensitive data that may be protected by PCI DSS, the Gramm-Leach Bliley Act, HIPAA, FERPA, or other applicable privacy laws and security standards. Client is responsible for ensuring the third party system and integration to the API is compliant with PCI DSS and other applicable privacy laws and security standards. TouchNet is not responsible for any third party, or any third party applications or integrations.

5.1.2 Client's use of the TouchNet Ready Integration(s) requires Client to have a valid subscription to access and use, or a license to, TouchNet Software. TouchNet reserves the right to cancel Client's access to any TouchNet Ready Integration upon thirty (30) days' notice. Client agrees and understands it is only receiving a nontransferable, nonexclusive right to access and use the Connection(s), and the specifications are for Client's internal purposes and only for use with approved developed integrations. No right is granted to distribute or otherwise use all or any portion of the Connection(s), the interfacing applications, or the specifications.

6 Third Party Software. Certain TouchNet Services may contain Third Party Software. To the extent that any Third Party Software requires notices and/or additional terms and conditions, TouchNet will post that information in the TouchNet Client Community. In the event of any conflict between this Agreement and any third party terms applicable to any portion of the TouchNet Services, such as open-source license terms or equipment terms, such other terms will control as to that portion of the TouchNet Services and to the extent of the conflict. If TouchNet provides Third Party Software and subsequently ceases to be an authorized provider of such Third Party Software, TouchNet reserves the right to terminate such Third Party Software license granted to Client as well as any associated services.

- 6.1 Unless otherwise specified in this Agreement, the Third Party Software is licensed and made available to Client only for use with or as an integrated component of the TouchNet Services. Client shall not use Third Party Software provided by TouchNet separately from the components of the TouchNet Services.
- 6.2 Client hereby authorizes TouchNet to report Client metrics associated with Client's use of the Third Party Software to permit TouchNet to comply with its agreement(s) with the Third Party Software licensor.

7 Hardware. This Agreement governs Client's use of OneCard Hardware. The terms and conditions in this Section 7 do not apply to hardware used with TouchNet Software. To the extent Client obtains hardware to use with the TouchNet Software, Client will leverage a different process, as mutually agreed between Client and TouchNet.

7.1 OneCard Hardware. Client's purchase of OneCard Hardware is optional with the exception that purchase of OneCard Hardware may be necessary to operate certain OneCard Services. Unless required to operate certain OneCard Services, Client's purchase and enrollment in the OneCard Support Services program is optional for each annual period, subject to the terms of this Agreement, except where initially declined, and in that case, OneCard Support Services will not be available for purchase later for that particular OneCard Hardware. TouchNet will provide support for point of sale terminals and included peripherals obtained through TouchNet for five (5) years from the purchase date. All OneCard Hardware is subject to reaching its end-of-life, at which time it will no longer be supported.

7.2 Ownership. Upon payment for OneCard Hardware, Client will fully own the OneCard Hardware, with all rights and responsibilities of ownership. OneCard Hardware is not provided under any lease, rent or buyback program.

7.3 Client Responsibilities. Upon delivery of OneCard Hardware, Client will be responsible for the following: (i) physical installation, physical maintenance, and physical security of OneCard Hardware; (ii) any hardware, cabling or systems that are not provided by TouchNet but that may be part of Client's IT infrastructure; (iii) providing any necessary code-compliant power outlets and network connectivity appropriately positioned at each installation site where OneCard Hardware is intended to be used or installed; (iv) ensuring that firewalls and/or web filters installed on the network do not impede the proper functioning of OneCard Services; (v) any hardware or operating system related issues, failures, viruses, or vulnerabilities following the purchase, or breakages that are not covered by warranty; and (vi) facilitating any warranty service that becomes necessary, including returning any defective hardware. Client may install its OneCard Hardware itself or Client has the option of hiring a third-party to do so, at Client's own cost. Client can also purchase additional services from TouchNet for TouchNet's on-site presence during installation of the OneCard Hardware where TouchNet could help direct either Client or its third party contractor on how installation should occur and could provide certain training on the OneCard Hardware to Client's staff. Once TouchNet is on site at Client's facility, installation delays (including those resulting from one of the above factors that Client is responsible to handle) caused by Client or a third party under Client's control will result in mutually agreeable additional charges.

7.4 OneCard Hardware Warranty. Subject to the section below, and assuming Client's enrollment in the OneCard Support Services program, TouchNet warrants the OneCard Hardware will perform as depicted in any OneCard Documentation provided to Client for the Warranty Period, and that each piece of OneCard Hardware will be free from faulty workmanship and defective materials for a period of ninety (90) days ("Warranty Period"), which shall be calculated from the date Client receives the OneCard Hardware. If Client notifies TouchNet within the Warranty Period of a defect or faulty workmanship in a piece of OneCard Hardware, TouchNet will, at its option, either repair or replace the affected OneCard Hardware. Client will pay shipping to return the affected OneCard Hardware to TouchNet, and TouchNet will pay shipping costs to return the repaired or replacement OneCard Hardware back to Client. Repair or replacement of OneCard Hardware does not extend the Warranty Period.

7.5 OneCard Hardware Disclaimers.

7.5.1 THE FOREGOING EXPRESS WARRANTY IS EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. TOUCHNET SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. IN ADDITION, THE FOREGOING EXPRESS WARRANTY IS IN LIEU OF ANY OTHER LIABILITY OR OBLIGATION FOR DAMAGE, LOSS OR INJURY, WHETHER DIRECT, INDIRECT, EXEMPLARY, SPECIAL, CONSEQUENTIAL OR INCIDENTAL, ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE, PERFORMANCE OR NON- PERFORMANCE OF THE ONECARD HARDWARE. REPAIR OR REPLACEMENT, AT TOUCHNET'S DISCRETION, SHALL BE THE SOLE REMEDY FOR ANY SUCH DAMAGE, LOSS, OR INJURY. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH ABOVE, ONECARD HARDWARE IS SOLD "AS IS".

- 7.5.2 All OneCard Hardware is subject to reaching its end-of-life, at which time TouchNet will no longer provide support.
- 7.5.3 TouchNet does not perform physical installation of any OneCard Hardware, and therefore, does not have any right or responsibility for (a) physical security, general upkeep and/or maintenance of the OneCard Hardware or for (b) any third party software present in the OneCard Hardware, or for (c) any inadequacy of the installation environment such as inadequate power or electrical failure, freezing conditions, heat or moisture conditions above or beyond normal office environments, or outside environments for weatherized equipment, or for (d) any problems attributable to an End User's network environment.
- 7.5.4 TouchNet also does not have any right or responsibility for repairs resulting from any of the following reasons or events:
 - 7.5.4.1 Client's use of the OneCard Hardware or TouchNet Software for purposes other than those for which it was intended or inconsistent with this Agreement;
 - 7.5.4.2 For damage resulting from anything other than normal wear;
 - 7.5.4.3 Prior repairs made by someone other than a TouchNet employee or authorized TouchNet OneCard repair vendor;
 - 7.5.4.4 For damage resulting from an accident or event of Force Majeure or other disaster, including but not limited to fire, lightning, flood, water, or wind; or
 - 7.5.4.5 Transportation issues.
- 7.5.5 TouchNet is not responsible for providing replacement light bulbs, batteries and other supplies; or Client licensing for operating systems and other Client owned software that are present on, or utilized by, the OneCard Hardware.
- 7.5.6 To the extent that TouchNet Software becomes incompatible with OneCard Hardware or ceases functioning on OneCard Hardware following the Warranty Period of the OneCard Hardware, TouchNet shall not be responsible or required to support such OneCard Hardware or provide backwards compatibility with such OneCard Hardware, nor to replace or refund such OneCard Hardware; notwithstanding that replacement hardware may be purchased from TouchNet.
- 7.5.7 If, for any reason, Client discontinues use of the OneCard Software, or TouchNet discontinues providing Client with the OneCard Services, TouchNet shall not have any obligation to provide any ongoing support (including OneCard Support Services or general assistance moving to another vendor's services) for any OneCard Hardware or any OneCard Licensed Software installed on or accessed by the OneCard Hardware.
- 7.5.8 Client has a limited return time window of thirty (30) days from its receipt of the OneCard Hardware to both test it and request the right to return it or be refunded for the purchase of OneCard Hardware. Returns of OneCard Hardware are subject to a restocking fee, currently thirty-five percent (35%) of the purchase price of the OneCard Hardware.

- 7.6 **Substitutions.** TouchNet reserves the right to change the OneCard Hardware or technical services offerings at any time, including the right to (i) discontinue offering any hardware or technical service, (ii) substitute hardware components for any order or warranty replacement, (iii) offer alternative hardware products, configurations and/or technical services, or (iv) substitute any ordered or warranted hardware component with another component providing substantially similar or better functionality and quality.

8 OneCard Support Services

- 8.1 **Enrollment.** Client's continuous enrollment in the OneCard Support Services program is optional but may be mandatory in order for Client to receive and keep certain rights provided under this Agreement for the OneCard Hardware (e.g. Warranty Period) and/or OneCard Licensed Software (e.g. annual license use right). The OneCard Support Services are provided on an annual basis, subject to the terms of this Agreement.
- 8.2 **OneCard Licensed Software Support.** Clients with OneCard Licensed Software that are current paid subscribers of the OneCard Support Services will receive (a) software updates that are made generally available to all current paid subscribers of OneCard Support Services, (b) fixes that address any OneCard Licensed

Software issues that have been reported, diagnosed and resolved by TouchNet technicians, (c) help desk support between the hours of 7am and 7pm Central Time with afterhours support available via an emergency support contact number; and (d) remote diagnosis and troubleshooting only through the use of Bomgar or similar sessions. Client may request additional support services from TouchNet for an additional fee.

- 8.3 **OneCard Hardware Support.** After the Warranty Period, TouchNet shall either repair the terminal or part, or replace it, with a either a rebuilt or new terminal or either a rebuilt or new part, within a reasonable time and thereafter promptly shall ship the repaired, rebuilt or new replacement terminal or part to Client. If the terminal is not repairable or is designated end-of-life by its manufacturer, Client may apply the maintenance paid for the current year for that terminal to the purchase of a new terminal. Expedited shipping is available at Client's request and expense. Despite the foregoing, all OneCard Hardware is subject to reaching its end-of-life, at which time TouchNet will no longer provide support.

- 8.4 **Disclaimer.** Section 7.5 (OneCard Hardware Disclaimers) also applies to the TouchNet OneCard Support Services.

9 **Warranty for TouchNet Software, OneCard Software, TouchNet Licensed Software, OneCard Licensed Software and Services.**

- 9.1 **Software and Services Warranty.** TOUCHNET WARRANTS THAT TOUCHNET SOFTWARE, ONECARD SOFTWARE, TOUCHNET LICENSED SOFTWARE, AND ONECARD LICENSED SOFTWARE SHALL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH TOUCHNET'S WRITTEN DOCUMENTATION, AND THAT ALL SERVICES WILL BE PERFORMED IN A PROFESSIONAL AND WORKMAN-LIKE MANNER. THE FOREGOING EXPRESS WARRANTY IS EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. TOUCHNET SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. THE FOREGOING EXPRESS WARRANTY IS IN LIEU OF ANY OTHER LIABILITY OR OBLIGATION FOR DAMAGE, LOSS OR INJURY, WHETHER DIRECT, INDIRECT, EXEMPLARY, SPECIAL, CONSEQUENTIAL OR INCIDENTAL, ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE OR PERFORMANCE OF THE SOFTWARE, AND REPAIR OR REPLACEMENT, AT TOUCHNET'S OPTION, SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR ANY SUCH DAMAGE, LOSS OR INJURY. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH ABOVE, THE SOFTWARE IS SOLD "AS IS." NO THIRD PARTY SOFTWARE IS WARRANTED BY TOUCHNET. TOUCHNET DOES NOT WARRANT THAT THE SOFTWARE WILL MEET CLIENT REQUIREMENTS, OPERATE WITHOUT INTERRUPTION OR BE ERROR-FREE.

- 9.2 **Remedy.** If Client believes there has been a breach of a warranty above, Client shall promptly notify TouchNet in writing, and TouchNet will attempt to reproduce and verify the non-conformity. If able to reproduce the non-conformity, TouchNet will make reasonable efforts to repair or otherwise remedy the non-conformity so that the impacted TouchNet Services materially comply with the warranty. Repairs may include code fixes, work arounds, or other modifications.

10 **Limitation of Liability and Indemnification**

- 10.1 **Limitation of Liability.** IN NO EVENT SHALL TOUCHNET BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR OTHER DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE DELIVERY, USE, PERFORMANCE, NON-PERFORMANCE OF OR INABILITY TO USE THE TOUCHNET SERVICES, EVEN IF TOUCHNET HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL TOUCHNET'S TOTAL LIABILITY TO CLIENT EXCEED THE FEES PAID BY CLIENT DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE CLAIM TO TOUCHNET FOR THE SPECIFIC TOUCHNET SERVICES GIVING RISE TO THE LIABILITY FROM WHICH THE CLAIM AROSE. THE PARTIES AGREE TO THE ALLOCATION OF LIABILITY SET FORTH IN THIS SECTION ENTITLED "LIMITATION OF LIABILITY" AND CLIENT ACKNOWLEDGES THAT WITHOUT CLIENT'S AGREEMENT TO THE LIMITATIONS CONTAINED HEREIN THE FEES CHARGED FOR THE TOUCHNET SERVICES WOULD BE HIGHER.
- 10.2 **Intellectual Property Indemnification.** Subject to Section 10.1, TouchNet will indemnify, defend and hold Client and its officers, employees and agents ("Client Indemnitees") harmless from and against any and all claims for damages, losses, liabilities or expenses, including reasonable attorneys' fees, brought against Client

Indemnitees by a third party (collectively, "Claims") incurred arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against Client alleging that the use of the TouchNet Services as permitted hereunder infringes any United States copyright or trademark, or constitutes a misappropriation of a trade secret of a third party. Excluded from the above indemnification obligations are claims to the extent arising from (i) use of the TouchNet Services in violation of this Agreement or applicable law, (ii) use of the Services after TouchNet notifies Client to discontinue use because of an infringement claim, (iii) any claim relating to any third party content or data or (iv) modifications to the TouchNet Services unauthorized by TouchNet. If any of the TouchNet Services are held to infringe, TouchNet will, at its own expense, in its sole discretion use commercially reasonable efforts either (a) to procure a license that will protect Client against such claim without cost to Client; (b) to replace the relevant TouchNet Services with non-infringing TouchNet Services; or (c) if TouchNet determines in its sole discretion that (a) and (b) are not commercially feasible, terminate the Agreement and refund to the Client any prepaid unused fees paid to TouchNet for the infringing TouchNet Services. The rights and remedies granted Client under this Section ("IP Indemnification") state TouchNet's entire liability, and Client's sole and exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party, whether arising under statutory or common law or otherwise.

- 10.3 **TouchNet Indemnification.** In addition to the IP Indemnification, TouchNet shall indemnify and hold harmless Client Indemnitees from and against any and all Claims arising directly from TouchNet's gross negligence or intentional misconduct.
- 10.4 **Client Indemnification.** Except to the extent prohibited by Applicable Law, including laws providing for the sovereign immunity of government entities, Client will indemnify and hold harmless TouchNet, its affiliates, or its employees, contractors, agents, or assigns (a "TouchNet Indemnitee") resulting from Claims directly arising from (a) Client's use of the TouchNet Services inconsistent with the terms of this Agreement (b) the accuracy of Client Data or any other content submitted to TouchNet, (c) TouchNet's access to, processing or storage of any Client Data as authorized hereunder; or (d) Client's gross negligence, or willful misconduct.
- 10.5 **Indemnification Procedure.** The indemnified Party shall (i) promptly notify the indemnifying Party in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying Party's obligation except to the extent it is prejudiced thereby, and (ii) allow the indemnifying Party to solely control the defense of any claim, suit or proceeding and all negotiations for settlement. The indemnified Party shall also provide the indemnifying Party with reasonable cooperation and assistance in defending such claim (at the indemnifying Party's cost).

11 Data Privacy and Security.

- 11.1 **Data Privacy.** TouchNet holds all PII from Client Data received through the TouchNet Cloud Services in its secure network at the secure TouchNet DataCenter. TouchNet maintains compliance with industry standard information security and privacy standards, and complies with all Applicable Laws. TouchNet's security controls substantially comply with NIST Cybersecurity Framework, and are reviewed by independent third parties for compliance with SSAE standards. TouchNet has also implemented security controls, including using firewall technology, encrypting data, regularly updating antivirus software, restricting access to data based on business need, identifying and authenticating access to system components, restricting physical access to data, testing security systems and processes, and maintaining internal policies that address information security.
- 11.2 **FERPA.** If Client's Confidential Information is subject to FERPA, Client, pursuant to 34 C.F.R. § 99.31(a)(1), hereby designates TouchNet as an "official" with a legitimate educational interest in the Confidential Information. TouchNet's designation as an "official" of Client is solely for the purposes of FERPA compliance and for no other purpose whatsoever, and to the extent Client has policies, rules, and procedures binding on Client "officials" generally, such policies, rules, and procedures will apply to TouchNet only insofar as such compliance is directly relevant to compliance by TouchNet and Client with FERPA. TouchNet agrees to: (i) abide by FERPA's limitations on re-disclosure of Personally Identifying Information in education records; (ii) not use or disclose education records created or received from, by, or on behalf of Client or its students for any purpose other than the purpose for which such disclosure is made; and, (iii) not use or disclose education records except as permitted by this Agreement, as required by law, or as authorized by Client in writing.
- 11.3 **Security Breach.** TouchNet agrees to comply with the requirements of all Applicable Laws that require the notification of individuals in the event of unauthorized release of PII or other event requiring notification. In the event of a breach of any of TouchNet's security obligations or other event requiring notification under Applicable Law, TouchNet will notify Client promptly, if legally permitted to do so, and assume responsibility for informing all such individuals in accordance with Applicable Law.

- 11.4 **Security Report.** No more than once annually, Client may request TouchNet's SSAE Report, its PCI Attestation of Compliance, and any other related analyses or reports that TouchNet may have available for disclosure (collectively "Security Documents"), subject to the confidentiality requirements in this Agreement. To the extent TouchNet provides Client a copy of its SSAE Report in Client's capacity as a "User Entity", Client may only disclose the SSAE Report to its financial auditors who are bound to an obligation of confidentiality similar to those set forth herein, for the exclusive purpose of evaluating the effect of Client's controls on a User Entity's internal control system. Notwithstanding any other provisions herein, Client may not share TouchNet's SSAE Report with any other third-party, contractor, advisor, consultant, or service provider.
- 11.5 **TouchNet's Use of Client Data.** During the term of the Agreement, and subject to Section 11.6 below, Client grants to TouchNet, its affiliates, and its third-party service providers, solely to perform the obligations hereunder, a non-exclusive, royalty-free license to modify, reproduce, display, combine, copy, store, transmit, distribute, and otherwise use Client Data. Client authorizes, subject to the terms of this Agreement, Section 11.8, and to the extent permitted by Applicable Law, Client Data to be accessed and processed by TouchNet, its affiliates, and/or TouchNet's third-party service providers in countries other than the jurisdiction from which the Client Data was originally collected or provided. Client represents and warrants that it has the authority to provide data of its End Users to TouchNet for its use in accordance with the Agreement, and that Client has obtained and provided all required consents and/or disclosures to End Users regarding sharing that data with TouchNet.
- 11.6 **TouchNet's Use of PII.** During the term of this Agreement, Client authorizes TouchNet to collect, access, use, transmit and/or otherwise process PII despite that Client remains at all times in control of and the owner of PII that TouchNet processes. Both Parties agree to uphold their responsibilities under all Applicable Laws. By submitting or providing TouchNet access to PII, Client agrees that TouchNet and its affiliates may process the PII for purposes of (i) providing TouchNet Services, (ii) maintaining, supporting, evaluating, improving and/or developing TouchNet Services and developing new products or services, (iii) enforcing TouchNet's rights under this Agreement, (iv) as permitted by Applicable Law, and (v) as permitted with the End User's consent, as communicated by Client or End User to TouchNet, solely with respect to their own PII. TouchNet does not and will not use PII for targeted advertising. Client represents and warrants that it has the authority to provide PII to TouchNet for its use in accordance with this Agreement, and that Client has obtained and provided (or will obtain and provide) all required consents and/or disclosures from End Users regarding Client sharing such PII with TouchNet.
- 11.7 **Requests to Delete, Access, Correct, or Retrieve PII.** To the extent TouchNet receives a request from an End User to delete, access, correct, or retrieve PII, TouchNet will redirect the End User to Client, and such request will be accommodated only at Client's direction.
- 11.8 **Third-Party Service Providers.**
- 11.8.1 In providing the TouchNet Services, TouchNet may provide access to PII to its third-party service providers, to the extent they have a legitimate need to access such information in order to provide their services to TouchNet as part of the TouchNet Services. TouchNet requires third-party service providers with access to PII to agree to contractual terms related to data use, disclosure, retention and data security, that are materially similar to the relevant terms of the Agreement.
- 11.8.2 To the extent Client or End User shares PII with a third party through the TouchNet Services, Client agrees that TouchNet is not responsible for the data practices of those third parties, and Client is solely responsible for meeting any applicable requirements and the consequences of providing or transmitting PII to such third parties, or authorizing those third parties to access PII through the TouchNet Services via separate agreement with the third party.
- 11.9 **Data Location.** PII may be stored or processed in countries other than the country in which it was collected unless and except to the extent required by Applicable Law. TouchNet will only transfer PII outside the country in which it was collected by means of legally recognized data transfer mechanisms or safeguards.
- 11.10 **EU Data Protection.** To the extent Client is subject to the European Union Data Protection Directive 95/46/EC, the GDPR or similar statute, in relation to the PII that TouchNet processes, Client agrees that Client is the controller of all Client Data and PII submitted to TouchNet, and that TouchNet is the processor of that information. This Agreement will also include the TouchNet Data Protection Addendum for Personal Data Processing of EU Resident Data ("DPA"). If any term in this Agreement conflicts with any term in the DPA, the conflicting term in the DPA shall control.

12 Confidentiality

- 12.1 **Confidential Information.** “Confidential Information” means all information provided to a Party (the “Receiving Party”) by the other Party (the “Disclosing Party”) that is designated in writing as proprietary or confidential or which a reasonable person familiar with the Disclosing Party’s business and the industry in which it operates ought to know is of a confidential or proprietary nature. Confidential Information may include, but is not limited to, the terms and pricing, but not the existence of, this Agreement, any internal processes, Documentation, TouchNet Data, Client Data, End User data, and all PII.
- 12.2 **Non-Disclosure of Confidential Information.** All Confidential Information shared between the Parties during the term of this Agreement will be held in confidence, and the Parties agree to take reasonable precautions to prevent the unauthorized disclosure of the Confidential Information to any third party. During the term of this Agreement and following termination or expiration of this Agreement, and except as otherwise set forth in Sections 12.3 and 12.4, the Receiving Party shall only use the Disclosing Party’s Confidential Information for the purpose for which it was disclosed and shall not disclose such Confidential Information to any third party, except as required to perform under this Agreement. The Receiving Party shall protect the Disclosing Party’s Confidential Information in the same manner it protects its own confidential information, but in no event shall it protect the Disclosing Party’s Confidential Information with less than commercially reasonable care. The Receiving Party shall only provide Confidential Information of the Disclosing Party to those of the Disclosing Party’s employees, agents or business partners who have a need to know such Confidential Information in the course of the performance of their job duties and who are bound by a contractual duty of confidentiality no less protective than the Receiving Party’s duties of confidentiality hereunder.
- 12.3 **Exclusions.** Notwithstanding the foregoing, Confidential Information will not include information that (i) was previously known free of any obligation to keep it confidential as evidenced by competent proof thereof; (ii) is or becomes publicly available, by other than unauthorized disclosure; (iii) is rightfully received by the Receiving Party from a third party without restriction and without breach of this Agreement; (iv) is approved for release by prior written approval of the Disclosing Party; or (v) is otherwise required by law, legal process or government regulation, provided that, to the extent legally permitted, it gives the Disclosing Party reasonable prior written notice to permit the Disclosing Party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.
- 12.4 **Return and Retention of Confidential Information.** Upon termination of this Agreement, Client shall promptly return or destroy all TouchNet Confidential Information in its possession, except for any TouchNet Confidential Information that Client is required to retain for legal, regulatory or audit obligations. Upon termination of this Agreement, TouchNet will destroy all Client Confidential Information in its possession, except for any Client Confidential Information that TouchNet is required to retain for legal, regulatory, or audit obligations. Any Confidential Information that a Party retains under this section will be maintained subject to the protections herein.
- 12.5 **No Adequate Remedy at Law.** The Parties acknowledge and agree that due to the unique nature of the Confidential Information, there may be no adequate remedy at law for any breach of the obligations of confidentiality in this Section 12. The Parties further acknowledge that any such breach may result in irreparable harm, and therefore, that upon any such breach or any threat thereof, a Party shall be entitled to seek appropriate equitable relief, including but not limited to injunction, in addition to whatever remedies it may have at law. In the event a Party should seek an injunction or other equitable relief, the other Party hereby waives any requirement for the submission of proof of the economic value of any Confidential Information or the posting of a bond or any other security.

13 Term.

- 13.1 **Term.** This Agreement will commence on June 1, 2024 and will continue in effect for a term of five (5) years therefrom. Thereafter, the Agreement will automatically renew for additional five (5) year periods unless terminated by any party by giving ninety (90) days written notice prior to the end of any term. Specific components of the TouchNet Services may be subject to the term identified in the applicable TouchNet Order Form, which will control in the event of a conflict. All terms and conditions, whether set forth herein or in an attachment will remain in effect for as long as TouchNet provides the applicable TouchNet Services, provided that the pricing and discounts set forth in a TouchNet Order Form may be subject to change.
- 13.2 **Termination for Breach.** If either Party breaches any material obligation under the Agreement, the non-breaching Party must provide notice of the breach, and the breaching party will be entitled to a thirty (30) day cure period in which to remedy the breach. If the breaching Party does not cure the breach within the cure period, the non-breaching Party may, at its sole discretion (1) terminate the Agreement in its entirety, or, (2)

terminate only the relevant service related to the breach. Notwithstanding the foregoing, TouchNet may terminate the Agreement immediately upon written notice if Client materially breaches the license usage restrictions set forth in the Agreement. Except for termination rights in this section, the Parties have no other right of early termination. All rights and obligations of the Parties which by their nature are reasonably intended to survive such termination or expiration will survive termination or expiration of this Agreement.

- 13.3 **Effect of Termination.** Upon termination of this Agreement by either Party, Client's access to the TouchNet Services will be terminated immediately, and Client will destroy any Documentation. Upon TouchNet's termination of this Agreement due to Client's uncured breach, and in addition to any and all other remedies TouchNet may have for such breach at law or in equity, Client shall pay all fees and expenses that accrued prior to the termination date and owed through the end of the Term. In the event of an early termination by Client not due to a breach by TouchNet, all fees that would otherwise have been payable to TouchNet during the remainder of the Term will become immediately due and payable by Client.

14 Payment & Fees

- 14.1 **TouchNet Licensed Software and Annual TouchNet Software Maintenance and Hosting Fees.** TouchNet will invoice Client for the one-time TouchNet Licensed Software fee and any associated annual fees for Software Maintenance and Support and Hosting Services upon the Effective Date of the TouchNet Order Form. Upon at least thirty (30) days' notice, TouchNet reserves the right to increase the annual Software Maintenance and Support and Hosting Services fees by no more than ten percent (10%) per year over the applicable amount for the immediately preceding year. For each subsequent annual period, the Software Maintenance and Support and Hosting Services fees shall be due thirty (30) days in advance of the next annual period. TouchNet will invoice Client for any hardware upon shipment. Client shall pay all fees within thirty (30) days of receipt of invoice.
- 14.2 **Application Subscription Program Fee (ASP Fee).** The annual ASP Fee is due and payable upon the Effective Date of the TouchNet Order Form. Upon at least thirty (30) days' notice, TouchNet reserves the right to increase the ASP Fee by not more than ten percent (10%) per year over the applicable amount for the immediately preceding year. For each subsequent year, the annual ASP Fee, adjusted by TouchNet as permitted herein, shall be payable thirty (30) days in advance of the next annual period of the TouchNet Order Form.
- 14.3 **Annually Renewable TouchNet Software Subscription Fee.** The annual TouchNet Software Subscription Fee ("Renewable ASP Fee") is a flat fee that is due and payable upon the Effective Date of the TouchNet Order Form, and annually thereafter following receipt of invoice through the Term of the applicable TouchNet Order Form. For each subsequent year, the Renewable ASP Fee shall be payable thirty (30) days in advance of the next annual period of the TouchNet Order Form.
- 14.4 **OneCard Licensed Software Fee.** OneCard Licensed Software is due and payable upon the Effective Date of the TouchNet Order Form, and annually thereafter following receipt of invoice through the Term of the applicable TouchNet Order Form. For each subsequent year, the OneCard Licensed Software Fee shall be payable thirty (30) days in advance of the next annual period of the TouchNet Order Form.
- 14.5 **OneCard Hardware Fees.** Client's OneCard Hardware orders will be reflected either on a TouchNet Order Form or on a TouchNet quote that will be signed by Client. All OneCard Hardware sales are final and purchases are invoiced with shipment.
- 14.6 **Professional Services Fee.** The one-time Professional Service Fee is payable upon the Effective Date of the TouchNet Order Form. The Professional Service Fee shall be due and payable within thirty (30) days of Client's receipt of the invoice.
- 14.7 **Annually Renewable OneCard Support Services Fees.** The Support Services Fees are billed annually at then-current pricing as flat rates described below and shall be invoiced in accordance with the terms herein, and on the Effective Date, of the TouchNet Order Form. Payments are due thirty (30) days in advance of each subsequent annual period.
- 14.7.1 **OneCard Licensed Software Support Services Fee.** OneCard Support Services for OneCard Licensed Software is required for each annual period the Parties desire to continue accessing and using Client's Licensed Software and each annual period is billed at then-current pricing, as a percentage of the total original price of the OneCard Licensed Software at purchase.
- 14.7.2 **OneCard Hardware Support Services Fee.** OneCard Support Services for OneCard Hardware are available for purchase, but only on an all or nothing basis at the time of purchase of the OneCard

Hardware and each annual period is billed at then-current pricing as a percentage of the total original price of the OneCard Hardware purchase, except for the initial annual period, because the Warranty Period applies for the first ninety (90) days, so the charge is a prorated portion of the total fee for a nine (9) month period. If Client elects not to purchase OneCard Support Services for OneCard Hardware at the date of purchase, and later requests OneCard Hardware maintenance, Client will be billed at \$450/hour plus costs (including all shipping costs) for the OneCard Hardware maintenance, as later enrollment in the OneCard Support Services program post original purchase will not be permitted.

- 14.7.3 **Additional Purchases of OneCard Hardware and OneCard Hardware Support Services Fee.** If Client purchases any additional OneCard Hardware items during an existing OneCard Support Services annual period, the additional OneCard Hardware will be added to Client's OneCard Support Services program and Client shall pay the fees associated with the additional OneCard Hardware Support Services. For subsequent annual periods thereafter, Client will be billed for an annual period at then-current pricing as a percentage of the OneCard Hardware purchase price. TouchNet will attach an updated listing of all OneCard Services covered by OneCard Support Services that are billed to Client with the annual renewal invoice for payment of the OneCard Support Services Fee.
- 14.8 **Annual Fee Synchronization.** All fees other than any OneCard Support Services Fees associated with additional OneCard Hardware purchases mentioned above will have their billing periods synchronized the year following the initial annual period of any newly added, annually billed service, so the invoice may include more than six (6) months but not more than eighteen (18) months for the billable period in order to align with the applicable existing annual period.
- 14.9 **TouchNet Ready Integration Fees.** Per integration annual fees, and one-time per integration implementation fee are invoiced upon execution of the TouchNet Order Form. TouchNet reserves the right to increase the annual TouchNet Ready Integration fees by no more than ten percent (10%) per year over the applicable amount for the immediately preceding year. All payments are due within thirty (30) days upon Client's receipt of invoice.
- 14.10 **Travel Expenses.** Client must request TouchNet personnel to travel on-site if Client elects to receive any on-site training, equipment installation, set up or certain professional services. Client will promptly reimburse TouchNet for all actual, reasonable out-of-pocket expenses, including reasonable travel, lodging, and food expenses incurred by TouchNet personnel in connection with on-site training, equipment installation, set-up and professional services rendered in connection with this Agreement. In the event Client has a travel policy, Client will provide such to TouchNet before making any travel arrangements with TouchNet personnel.
- 14.11 **Purchase Order.** Any purchase order submitted by Client is a mere expression of intent to buy and is not binding in any way unless signed by an authorized officer of TouchNet. TouchNet will accept Client's Purchase Order to the extent that the terms, conditions, and prices reflected are consistent with those detailed in this Agreement, as it may be amended.
- 14.12 **Late Charges.** Late payments of fees are subject to a late charge equal to the lesser of eighteen percent (18%) per year or the highest rate permitted by applicable law; plus all attorney's fees and third party expenses actually incurred by TouchNet in collecting any past due fees, payments, or reimbursements of any kind.
- 14.13 **Taxes.** Any and all excise, sales, use, value-added or other taxes or levies imposed by any governmental body on the Client or TouchNet in connection with the use, licensing, handling, or payment of license, hosting, maintenance, or subscription fees with respect to the TouchNet Services (with the exception of taxes measured against TouchNet's net income) are Client's sole responsibility. Client shall be responsible for and reimburse TouchNet for any amounts actually paid by TouchNet or withheld by the Client for any such taxes or levies within thirty (30) calendar days after TouchNet provides notice of same. If Client is tax exempt, Client will send TouchNet a copy of its valid tax exemption certification upon the Effective Date of the TouchNet Order Form or upon reasonable request.
- 14.14 **Suspension of Service.** If Client's account is thirty (30) days or more overdue, in addition to any of its other rights or remedies, TouchNet may suspend the TouchNet Services, without any liability to Client, until Client pays such amounts in full.
- 14.15 **eRefunds Process Services Payments and Fees.**

14.15.1 One-Time Implementation Fee. Client shall pay a one-time Implementation Fee to TouchNet and TouchNet will invoice Client for the Implementation Fee once the eRefunds Processing Services are made available to Client. Client shall pay the invoice within thirty (30) days of receipt of the invoice.

14.15.2 Per Transaction Fee. Client shall pay the flat Per Transaction Fee outlined in the TouchNet Order Form that differ based on the type of transaction that applies. TouchNet will invoice Client at the end of each calendar month for the total Per Transaction Fees incurred by transaction type, and payment is due within thirty (30) days of receipt of invoice. TouchNet reserves the right to increase the Per Transaction Fee at any time following Notice to Client.

14.16 Payment Plans Plus Services Payments and Fees

14.16.1 Per Payment Plan Set-Up Fee. Client shall pay a non-refundable, minimum Per Payment Plan Set-Up Fee to TouchNet that shall apply to each semester, trimester, annual and/or quarterly payment plan. TouchNet will invoice Client at the end of each calendar month for total Payment Plan Set-Up Fees for all End Users that entered a payment plan with Client in that month. Client shall pay the invoice within thirty (30) days of receipt of the invoice. TouchNet reserves the right to increase the non-refundable, minimum Per Payment Plan Set-Up Fee at any time following Notice to Client.

14.16.2 Customer Late Fees. End Users may incur non-refundable late fees, including but not limited to, Late Enrollment Fees and Late Payment Fees, which shall be invoiced to Client as set forth in Section 14.16.1. Unless otherwise required by Applicable Law, each such fee will be \$25.00. The invoice will identify the fee type that such End User incurred. Client shall pay the invoice within thirty (30) days of receipt of the invoice. TouchNet reserves the right to increase the non-refundable late fees at any time following Notice to Client.

14.16.3 One-Time Professional Services Fee. Client shall pay a one-time Professional Services Fee to TouchNet and TouchNet will invoice Client for the Professional Services Fee once the TouchNet Payment Plans Plus Services are made available to Client. Client shall pay the invoice within thirty (30) days of receipt of the invoice.

14.16.4 Minimum Enrollment Commitment Fee. Client may, at its option, offer its customers a variety of payment plan types, including semester, trimester, annual, and/or quarterly payment plans. Client commits that it will have a minimum enrollment commitment by its End Users in an annual period as described on the TouchNet Order Form. If at the end of each annual period, End User enrollments did not meet or exceed the minimum enrollment commitment amount, then Client shall pay TouchNet an amount that represents eighty percent (80%) of the total number of End User enrollments in each type of payment plan annually committed to in the TouchNet Order Form. TouchNet will invoice Client at the end of each annual period for the Minimum Enrollment Commitment Fee (if applicable), and Client shall pay the invoice within thirty (30) days of receipt of the invoice. TouchNet will annually review Client's account to determine whether the Minimum Enrollment Commitment Fee figure is appropriate, and may, in its sole discretion, alter the level of the commitment required herein and may vary the amount of the Minimum Enrollment Commitment Fee.

14.16.5 Other Fees. If Client selected Heartland Merchant Services ("Merchant Services"), Client is responsible for all fees associated with Merchant Services. Client shall be the merchant of record for all payment activity, and all funds will settle directly to the Client.

15 Product Specific Terms

15.1 PCI Services. The PCI Services assist clients who have Heartland Merchant Services for either or both credit card processing or the TouchNet Service Fee with maintaining their compliance with applicable card brands. The PCI Services consist of three services in total, and clients may elect to participate in all three services, or they may elect to participate in only a portion, or none, of the services available. The PCI Services consist of (1) client's access to TouchNet's unique environment for compliance reporting where, among other things, clients can obtain access to "smart SAQs" or receive assistance in setting up scans of their environments; (2) participation in the four card brand exemption program for merchant processing, which consists of the Visa Technology Innovation Program (TIP), MasterCard Site Data Protection Program (SDP), Discover Information Security & Compliance (DISC) Program, and American Express Security Technology Enhancement Program

(STEP); and (3) participation in the Validated Point to Point Encryption Service Program, described below. For clients electing to participate in the PCI Services, they must utilize Heartland Merchant Services for either or both credit card processing or the TouchNet Service Fee, and clients must complete a separate order form identifying which services they desire to participate in by "opting in" to the services, with the exception of the Validated Point to Point Encryption Service Program, which services are purchased via issuance of a purchase order, as more specifically stated below.

- 15.2 Validated Point to Point Encryption Service Program.** TouchNet uses a validated third party service, best utilized by TouchNet Marketplace POS, TouchNet POS Client, Student Cashiering and Retail Cashiering. Additional hardware and technical services charges may also apply. In certain circumstances, loaner devices may be provided by TouchNet to Campus Entity. In such circumstances, if Client fails to timely return those devices by the required deadline, a late fee will apply equal to \$375.00 per device. P2PE hardware and validated point to point encryption services must be purchased via issuance of a purchase order made in accordance with the terms of the Agreement. TouchNet will ship hardware upon receipt of the purchase order. If Client elects to purchase the validated point to point encryption services, the services shall co-terminate with the term of the Agreement or Order Form, whichever applies. The validated point to point encryption services only are terminable by either party upon giving thirty (30) days prior written notice to the other party.

16 General

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

If to Client:	If to TouchNet: TouchNet Information Systems, Inc. 9801 Renner Road, Suite 150 Lenexa, KS 66219 Attn: President Global Payments Inc. 3550 Lenox Road, NE #3000 Atlanta, GA 30326 Attn: General Counsel
----------------------	---

- 16.2 Feedback.** Client will notify TouchNet of all ideas for changes, improvements, modifications, enhancements or bug-fixes (collectively, "Feedback") that come to Client's attention while using the TouchNet Services. Client grants TouchNet a non-exclusive, perpetual, irrevocable, royalty-free, worldwide right and license to use, reproduce, disclose, sublicense, distribute, modify and otherwise exploit such Feedback and information without restriction.
- 16.3 Use of Client Name.** TouchNet may identify Client by name, without use of any mark or logo, and solely as a matter of fact, as a customer of TouchNet Services in the customer section of TouchNet's website and in its customer lists. TouchNet may also use Client's name and logo to provide the TouchNet Services to Client. TouchNet will not express or imply any endorsement by Client of TouchNet or the Services without Client's written consent.
- 16.4 Piggyback Provision.** Client may permit other state institutions to contract with TouchNet under the same terms and conditions as in this Agreement, provided that each such institution seeking to exercise this right shall separately agree in writing to the terms and conditions of this Agreement and execute a separate TouchNet Order Form.
- 16.5 Entire Agreement.** This Agreement, together with any exhibits and TouchNet Order Form(s), constitutes the entire agreement between Client and TouchNet and supersedes any other prior Agreements or understandings, whether oral or written, regarding the TouchNet Services. If a provision of this Agreement is deemed null and void, invalid or without effect, the remainder of this Agreement shall remain in effect.
- 16.6 Force Majeure.** With the exception of Client's obligations to pay TouchNet monies due under this Agreement, neither party shall be liable to the other for delay or failure to perform any obligation hereunder resulting from a Force Majeure event.
- 16.7 Governing Law, Venue and Jurisdiction.** This Agreement shall be construed and governed by the laws of the state in which Client is resident without regard to legal principles related to conflict of laws. Any action arising

out of or relating to this Agreement shall be brought only in the state or federal courts of Client's resident state. The Parties hereto agree and consent to the personal and exclusive jurisdiction of said courts over them as to all actions, and further waive any claim that such Action is brought in an improper or inconvenient forum. To the extent allowed by state law, the Parties waive trial by jury.

- 16.8 Severability.** If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect under any applicable statute, rule of law, or public policy, such provision shall be considered inoperative to the extent of such invalidity, illegality, or unenforceability and the remainder of this Agreement shall continue in full force and effect. The parties agree to replace any such invalid, illegal, or unenforceable provision with a new provision that has the most nearly similar permissible legal and economic effect.
- 16.9 Headings.** Headings are included in this Agreement as a matter of convenience only and shall not be controlling with regard to the interpretation of this Agreement.
- 16.10 Amendments.** This Agreement shall not be modified except by written amendment signed by each of the Parties.
- 16.11 Assignment.** This Agreement shall be binding upon and for the benefit of TouchNet, Client and their permitted successors and assigns. Either Party may assign this Agreement as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets. Except for TouchNet's use of subcontractors, neither Party may otherwise assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of the other Party, and any attempted assignment or delegation in violation of this section will be void.
- 16.12 Relationship of the Parties.** TouchNet and Client are independent contractors, and nothing in this Agreement shall be construed as making them partners or creating the relationships of employer and employee, master and servant, or principal and agent between them, for any purpose whatsoever. Neither Party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other Party's name or on its behalf.

17 eRefunds Processing Services

- 17.1 Definitions.** The following additional definitions apply for purposes of the eRefunds Processing Services:
 - 17.1.1 Direct to Debit Option** means funds that are delivered via a third party solution, such as Visa Direct.
 - 17.1.2 End User** means a student or authorized third party who enters into a payment plan with Client for the payment of the student's tuition.
 - 17.1.3 eRefunds Processing Services** means the service that TouchNet provides to enable Client to transfer designated monies to a student or other third party. eRefunds Processing Services is included in the definition of TouchNet Services in the Agreement.
- 17.2 Appointment, Authorization and Acceptance.**
 - 17.2.1** Client authorizes TouchNet to access its Student Information System as described in the Agreement to provide the eRefunds Processing Services.
 - 17.2.2** TouchNet will be the exclusive provider of eRefunds Processing Services to Client and End Users during the term of this eRefunds Processing Services. Client acknowledges that TouchNet may provide eRefunds Processing Services to other customers.
- 17.3 Client Responsibilities**
 - 17.3.1** eRefunds Processing Services may include, but are not limited to, the disbursement of financial aid, college refunds, college work-study payments, and other types of payments.
 - 17.3.2** Client will determine how to offer refunds by digital or paper check or via a Direct to Debit Option.
 - 17.3.3** Client will include a statement in its disclosure(s) to students that it may share End User data with third parties for the purpose of facilitating disbursements.
 - 17.3.4** Client is responsible to ensure that End User data and student account charges are correct and to verify the accuracy and completeness of all payments. Client will ensure that all End Users have approved

and verified authorized third party payors, if applicable, which are reflected in the relevant student account data.

- 17.3.5 All End Users will be required to accept specific eRefunds Processing terms and conditions located at <https://checkbook.io/resource/terms-individual>.

17.4 Termination of eRefunds Processing Services. In addition to the termination rights provided in Section 132 of the Agreement, either Party may terminate the eRefunds Processing Services immediately, if, by performing its duties under this Section, the Party would be in violation of Applicable Laws.

17.5 Disclaimer of Liability and Acknowledgement of Limitations.

- 17.5.1 Client agrees and understands that to receive the eRefunds Processing Services, Client must have the right to access one of the following: (1) Ellucian Payment Center, (2) TouchNet Payment Center or (3) Heartland Merchant Services.
- 17.5.2 TouchNet is not responsible for any of the following: (1) problems or disputes pertaining to the accuracy of the End User account charges or balance reflected in the disbursement, (2) the accuracy of the data in the Student Information System, (3) the designation of authorized payors or other third parties, and (4) any and all payment disputes and late charges, including collections matters, arising relating to disbursements.

17.6 Required Client Information

17.6.1 Requirements. United States anti-money laundering statutes and regulations govern the provision of checks under this eRefunds Processing Service. TouchNet must obtain specific information to be in compliance with federal law.

17.6.2 Information. Clients must provide documents as listed below.

Required Client Information
IRS Form W-9 (dated within the last six months)
Bank Letter for Client DDA Account
Client website
Principal officer name
Principal officer home address
Principal officer occupation
Principal officer citizenship status

17.6.3 Miscellaneous. Sections 4.1 and 4.2 of this Agreement do not apply to the eRefunds Processing Services.

18 Payment Plans Plus Services

18.1 Definitions. The following additional definitions apply for purposes of the Payment Plans Plus Services:

18.1.1 Affiliate means a business entity that controls or is controlled by another business entity or is associated with other business entities under common ownership or control of a business entity, such as a subsidiary or parent company.

- 18.1.2 End User** means a student or authorized third party who enters into a payment plan with Client for the payment of the student's tuition.
- 18.1.3 Payment Plans Plus Services** mean the ongoing support and services to End Users enrolled in a payment plan for the payment of their student tuition. Payment Plans Plus Services is included in the definition of TouchNet Services.
- 18.2 Appointment, Authorization and Acceptance.**
- 18.2.1** Client authorizes TouchNet to access its Student Information System to provide the Payment Plans Plus Services.
- 18.2.2** Client designates TouchNet as Client's agent for purposes of providing support services to End Users, including accessing Client's student tuition and payment plan data to answer End Users' questions regarding the payment plans and payments on the account, in exchange for Client's payment of the applicable Payment Plan Set-Up Fee. TouchNet will provide the Payment Plans Plus Services as TouchNet determines from time to time in its sole, reasonable discretion, and as regulatory and/or market conditions vary.
- 18.2.3** TouchNet will be the exclusive provider of Payment Plans Plus Services to Client and End Users during the term of this Agreement. Client acknowledges that TouchNet may provide Payment Plans Plus Services to other customers.
- 18.3 Client's Duties.** Client will create and offer during each term of its educational year, a variety of payment plans to all End Users for the payment of their student tuition to Client. Client shall update its website to ensure that timely and accurate data is available to its students and End Users that payment plans are available, and this must be complete prior to Client's go-live with the service. TouchNet and Client will work together to define the parameters of the plans, and TouchNet will provide Client with payment plans marketing materials. Client is responsible to ensure that End User data and student account charges are correct and to verify the accuracy and completeness of all payment plans. Client will ensure that all End Users entering into a payment plan have approved and verified authorized third party payors, if applicable, that are reflected in the relevant student account data. Client will also provide access, identification and other information as TouchNet may reasonably request to provide the Payment Plans Plus Services. Client is responsible for managing all late payments and debt collection activities for End Users with respect to all payment plans.
- 18.4 Customer Support.** TouchNet will provide support via telephone to End User regarding the selected payment plan, any payments that have been applied, and other payment-related matters. Client agrees that because Client is responsible for the content and accuracy of the student account data, the creation of the payment plan(s), and all delinquency matters related thereto, Client will respond to End User inquiries with respect to those matters.
- 18.5 Termination of the Payment Plans Plus Services.** In addition to the termination rights provided in Section 13.2 of the Agreement, either Party may terminate the Payment Plans Plus Services immediately, if, by performing its duties under this Section, the Party would be in violation of applicable laws.
- 18.6 Disclaimer of Liability and Acknowledgement of Limitations.**
- 18.6.1** Client agrees and understands that to receive the Payment Plans Plus Services, Client must have the right to access one of the following: (1) Ellucian Payment Center, (2) TouchNet Payment Center or (3) Heartland Merchant Services.
- 18.6.2** TouchNet is not responsible for any of the following: (1) problems or disputes regarding payment plans pertaining to the accuracy of the student account charges or balance reflected in the payment plans, (2) the accuracy of the data in the Student Information System, (3) the designation of authorized payors or other third parties, and (4) any and all payment disputes and late charges, including collections matters, arising therefrom.
- 18.7 Miscellaneous.** Sections 4.1 and 4.2 of this Agreement do not apply to the Payment Plans Plus Services.

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

TouchNet Information Systems, Inc.

Highland Community College - IL

Signature: _____

Signature: _____

By: Adam McDonald

By: _____

Title: President

Title: _____

Date: _____

Date: _____

CONFIDENTIAL

**AGENDA ITEM #X-D-7
FEBRUARY 27, 2024
HIGHLAND COMMUNITY COLLEGE BOARD**

**PAYMENT OF BILLS AND AGENCY FUND REPORT
JANUARY 2024**

RECOMMENDATION OF THE PRESIDENT: It is recommended that the Highland Community College Board approves the following Resolution for the payment of the January 2024 bills, including Board travel.

RESOLUTION: Resolved that Jill Janssen, Treasurer, be and she is hereby authorized and directed to make payments or transfers of funds as reflected by warrants 361561 through 361876 amounting to \$1,454,553.60, Automated Clearing House (ACH) debits W0000651 amounting to \$20,224.20, and Electronic Refunds of \$46.00, with 9 adjustments of \$1,249.92, such warrants amounting to \$1,473,573.88. Transfers of funds for payroll amounted to \$598,024.06.

Automated Clearing House (ACH) debits are Fifth Third Bank in the amount of \$20,224.20. Electronic Refunds are issued to students.

BOARD ACTION: _____

**HIGHLAND COMMUNITY COLLEGE
AGENCY FUND
Balance Sheet, January 31, 2024**

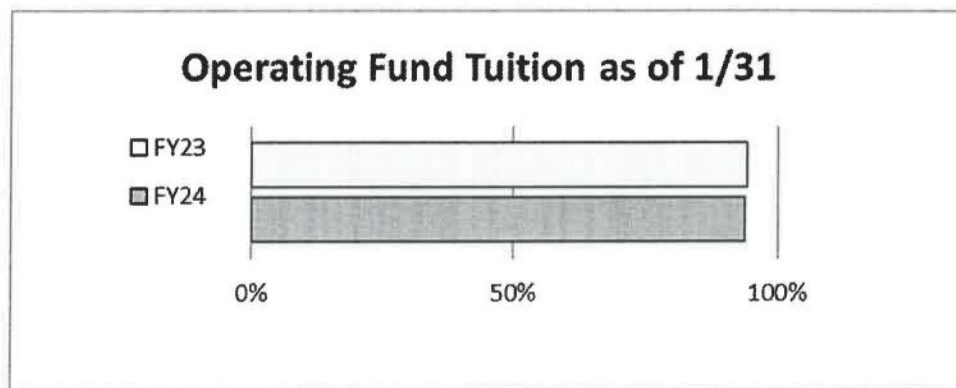
	PREVIOUS BALANCE	RECEIPTS	DISBURSEMENTS	BALANCE
US BANK	\$335,266.24	\$6,250.00	\$111,228.30	\$230,287.94
FIFTH THIRD	8,508.40	0.00	0.00	8,508.40
UNION SAVINGS BANK	177,302.21	0.00	0.00	177,302.21
TOTAL ASSETS	\$521,076.85	\$6,250.00	\$111,228.30	\$416,098.55
1010 HCC ORCHESTRA				
1011 TRANSFER FUNDS				
1012 FORENSICS SCHOLAR				
1013 INTEREST ON INVEST.				
1014 TRUSTS AND AGENCIES				
1015 CARD FUND				
1016 DIST #145 ROAD AND LOT	65,074.89			65,074.89
1017 HCC ROAD AND LOT	112,651.85	5,000.00		117,651.85
1018 YMCA ROAD AND LOT	100,568.02	416.66		100,984.68
1019 YMCA BLDG/MAINT	63,324.92	833.34	55,614.15	8,544.11
1020 HCC BLDG/MAINT	69,413.78		55,614.15	13,799.63
1021 YMCA/HCC INTEREST	101,534.99			101,534.99
1022 HCC SECTION 125 PLAN	8,508.40			8,508.40
1023 Ic3SP CAREER SERVICES	0.00			0.00
TOTAL	\$521,076.85	\$6,250.00	\$111,228.30	\$416,098.55

**AGENDA ITEM #XI-A
FEBRUARY 27, 2024
HIGHLAND COMMUNITY COLLEGE BOARD
FY24**

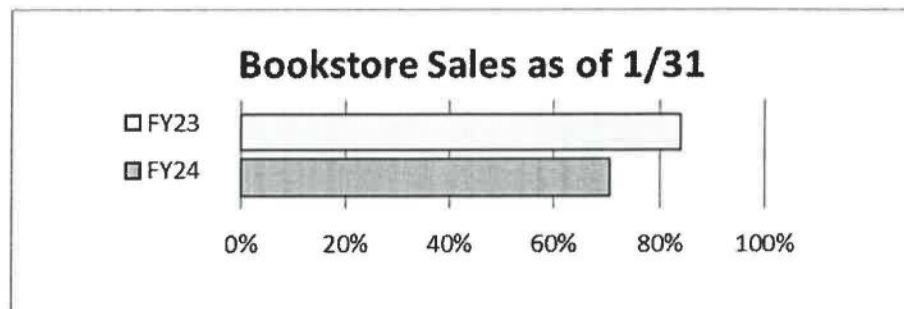
**TREASURER'S REPORT
STATEMENTS OF REVENUE, EXPENDITURES, AND
CHANGES IN FUND BALANCE**

Results as of January 31, 2024

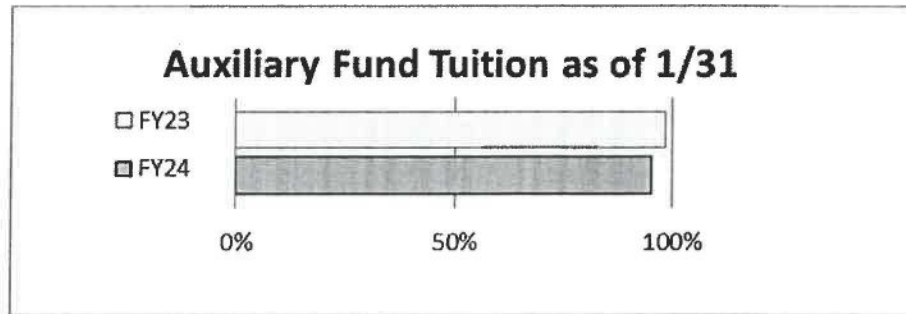
The following charts show the comparison of the FY24 financial results for various items, as labeled, to FY23 results as of January 31. The FY23 bar is the year-to-date results as of January 31, 2023, divided by the actual year-end results for FY23. The FY24 bar is the year-to-date results for January 31, 2024, divided by the annual budgeted amount for FY24.



Operating Fund tuition revenue appears to be about in line with the anticipated level at this point in time.



Bookstore sales appear to be about 13% lower than anticipated at this point in time. If sales are 13% less than budgeted for the fiscal year, that amounts to about \$62,000.



Auxiliary Fund tuition revenue appears to be about 3% lower than anticipated at this point in time. If Auxiliary Fund tuition revenue is 3% less than budgeted for the fiscal year, that amounts to about \$14,000.

AGENDA ITEM #XI-A
FEBRUARY 27, 2024
HIGHLAND COMMUNITY COLLEGE
FY24

OPERATING FUNDS (EDUCATIONAL AND OPER. & MAINT. FUNDS COMBINED)
Statement of Revenue, Expenditures, & Changes in Fund Balance
For the Period Ended January 31, 2024

<u>REVENUE:</u>	<u>Budget</u>	<u>Year- to-Date</u>	<u>Percent</u>
Local Taxes	\$7,829,778	3,787,689	48.4%
Credit Hour Grants	1,441,684	911,660	63.2%
Equalization	50,000	29,167	58.3%
ICCB Career/Tech Education	136,719	144,849	105.9%
ICCB Performance	30,000	-	0.0%
CPP Replacement Tax	965,000	388,132	40.2%
Federal Sources	123,000	83,458	67.9%
Tuition & Fees	5,000,000	4,685,648	93.7%
Sales & Services	29,950	20,524	68.5%
Facilities Revenue	111,850	49,715	44.4%
Interest on Investments	235,000	302,067	128.5%
Non-Govt. Gifts, Grants	361,983	362,000	100.0%
Miscellaneous	39,226	34,571	88.1%
Total Revenue	\$16,354,190	\$10,799,480	66.0%
<u>EXPENDITURES:</u>			
Salaries	\$10,339,130	\$5,830,099	56.4%
Employee Benefits	2,408,870	1,512,994	62.8%
Contractual Services	1,578,893	826,671	52.4%
Materials & Supplies	1,033,210	611,630	59.2%
Conference & Meeting	290,000	122,208	42.1%
Fixed Charges	78,030	48,086	61.6%
Utilities	764,991	711,591	93.0%
Capital Outlay	48,038	14,789	30.8%
Other Expenditures	270,028	283,404	105.0%
Transfers (In) Out	(457,000)	-	0.0%
Total Expenditures	\$16,354,190	\$9,961,472	60.9%
Excess of Revenues Over Expenditures	\$0	\$838,008	
Fund Balance 7/1/23	7,232,750	7,232,750	
Fund Balance 1/31/24	\$7,232,750	\$8,070,758	

AGENDA ITEM #XI-A
 FEBRUARY 27, 2024
 HIGHLAND COMMUNITY COLLEGE BOARD
 FY24

OPERATIONS AND MAINTENANCE FUND (RESTRICTED)
 Statement of Revenue, Expenditures, & Changes in Fund Balance
 For the Period Ended January 31, 2024

REVENUE:	Budget	Year to-Date	Percent
-----	-----	-----	-----
Local Taxes	\$1,100,000	\$498,756	45.3%
Interest	-	189,805	-
	-----	-----	-----
Total Revenue	\$1,100,000	\$688,561	62.6%
EXPENDITURES:			

Contractual Services	61,800	102,046	165.1%
Capital Outlay	10,313,196	2,088,629	20.3%
	-----	-----	-----
Total Expenditures	10,374,996	2,190,675	21.1%
Excess of Revenues Over Expenditures	(\$9,274,996)	(\$1,502,114)	
Fund Balance 7/1/23	\$10,551,632	\$10,551,632	
	-----	-----	
Fund Balance 1/31/24	\$1,276,636	\$9,049,518	

AGENDA ITEM #XI-A
FEBRUARY 27, 2024
HIGHLAND COMMUNITY COLLEGE BOARD
FY24

AUXILIARY ENTERPRISE FUND

Statement of Revenue, Expenditures, & Changes in Fund Balance
For the Period Ended January 31, 2024

REVENUE:	Budget	Year to-Date	Percent
-----	-----	-----	-----
Tuition and Fees	\$475,000	\$452,715	95.3%
Bookstore Sales	480,100	338,737	70.6%
Athletics	48,410	15,865	32.8%
Other	108,605	169,101	155.7%
-----	-----	-----	-----
Total Revenue	\$1,112,115	\$976,418	87.8%
EXPENDITURES:			

Salaries	\$332,881	\$203,476	61.1%
Employee Benefits	22,001	19,143	87.0%
Contractual Services	115,030	46,916	40.8%
Materials & Supplies	618,830	503,339	81.3%
Conference & Meeting	364,475	152,670	41.9%
Fixed Charges	24,644	2,681	10.9%
Utilities	840	650	77.4%
Capital Outlay	20,007	36,537	182.6%
Other Expenditures	24,170	43,455	179.8%
Transfers	(60,000)	-	-
-----	-----	-----	-----
Total Expenditures	\$1,462,878	\$1,008,867	69.0%
Excess of Revenues			
Over Expenditures	(\$350,763)	(\$32,449)	
Fund Balance 7/1/23	\$1,237,676	\$1,237,676	
-----	-----	-----	
Fund Balance 1/31/24	\$886,913	\$1,205,227	

AGENDA ITEM #XI-A
FEBRUARY 27, 2024
HIGHLAND COMMUNITY COLLEGE BOARD
FY24

RESTRICTED PURPOSE FUND
Statement of Revenue, Expenditures, & Changes in Fund Balance
For the Period Ended January 31, 2024

<u>REVENUE:</u>	<u>Budget</u>	<u>Year-to-Date</u>	<u>Percent</u>
Vocational Education	\$158,765	80,024	50.4%
Adult Education	247,455	150,570	60.8%
Other Illinois Sources	596,064	482,461	80.9%
Department of Education	3,835,339	2,157,241	56.2%
Other Federal Sources	711,303	166,907	23.5%
Tuition & Fees	645,000	620,905	96.3%
Sales & Service Fees	34,300	-	0.0%
Interest	20,000	37,214	186.1%
Non-govt. Gifts, Grants	879,500	30,055	3.4%
Other	328,417	196,170	59.7%
	-----	-----	-----
Total Revenue	\$7,456,143	3,921,547	52.6%
 <u>EXPENDITURES:</u>			
Salaries	\$1,603,030	\$1,056,846	65.9%
Employee Benefits	426,880	272,765	63.9%
Contractual Services	1,325,588	507,752	38.3%
Materials & Supplies	390,522	167,805	43.0%
Conference & Meeting	182,395	72,358	39.7%
Fixed Charges	26,608	-	0.0%
Utilities	4,872	-	0.0%
Capital Outlay	1,412,085	626,892	44.4%
Other Expenditures	520,375	274,327	52.7%
Financial Aid	2,438,010	1,383,968	56.8%
Transfers out (in)	402,000	-	0.0%
	-----	-----	-----
Total Expenditures	\$8,732,365	\$4,362,713	50.0%
 Excess of Expenditures Over Revenue	 (\$1,276,222)	 (\$441,166)	
 Fund Balance 7/1/23	 2,085,366	 2,085,366	
	-----	-----	
Fund Balance 1/31/24	\$809,144	\$1,644,200	

AGENDA ITEM #XI-A
 FEBRUARY 27, 2024
 HIGHLAND COMMUNITY COLLEGE BOARD
 FY24

AUDIT FUND
 Statement of Revenue, Expenditures, & Changes in Fund Balance
 For the Period Ended January 31, 2024

REVENUE:	Tentative Budget	Year to-Date	Percent
-----	-----	-----	-----
Local Taxes	\$71,000	\$34,005	47.9%
	-----	-----	-----
Total Revenue	\$71,000	\$34,005	47.9%
 EXPENDITURES:			

Contractual Services	\$70,375	\$72,275	102.7%
	-----	-----	-----
Total Expenditures	\$70,375	\$72,275	102.7%
 Excess of Revenues Over Expenditures	\$625	(\$38,270)	
 Fund Balance 7/1/23	\$2,166	\$2,166	
	-----	-----	
Fund Balance 1/31/24	\$2,791	(\$36,104)	

AGENDA ITEM #XI-A
 FEBRUARY 27, 2024
 HIGHLAND COMMUNITY COLLEGE BOARD
 FY24

BOND AND INTEREST FUND
 Statement of Revenue, Expenditures, & Changes in Fund Balance
 For the Period Ended January 31, 2024

REVENUE:	Budget	Year to-Date	Percent
-----	-----	-----	-----
Local Taxes	\$1,419,750	918,354	64.7%
	-----	-----	-----
Total Revenue	\$1,419,750	918,354	64.7%
 EXPENDITURES:			

Fixed Charges	\$1,982,050	2,086,347	105.3%
	-----	-----	-----
Total Expenditures	\$1,982,050	\$2,086,347	105.3%
 Excess of Revenues Over Expenditures	(\$562,300)	(\$1,167,993)	
 Fund Balance 7/1/23	\$949,496	\$949,496	
	-----	-----	
Fund Balance 1/31/24	\$387,196	(\$218,497)	

AGENDA ITEM #XI-A
 FEBRUARY 27, 2024
 HIGHLAND COMMUNITY COLLEGE BOARD
 FY24

LIABILITY, PROTECTION, AND SETTLEMENT FUND
 Statement of Revenue, Expenditures, & Changes in Fund Balance
 For the Period Ended January 31, 2024

REVENUE:	Budget	Year to-Date	Percent
-----	-----	-----	-----
Local Taxes	\$1,395,000	\$695,760	49.9%
-----	-----	-----	-----
Total Revenue	\$1,395,000	\$695,760	49.9%
EXPENDITURES:			

Salaries	\$348,778	\$204,503	58.6%
Employee Benefits	313,459	206,675	65.9%
Contractual Services	392,925	431,704	109.9%
Materials & Supplies	16,300	5,044	30.9%
Conference & Meetings	31,825	8,603	27.0%
Fixed Charges	278,952	284,921	102.1%
Utilities	25,000	23,721	94.9%
-----	-----	-----	-----
Total Expenditures	\$1,407,239	\$1,165,171	82.8%
Excess of Revenues			
Over Expenditures	(\$12,239)	(\$469,411)	
Fund Balance 7/1/23	\$489,153	\$489,153	
-----	-----	-----	
Fund Balance 1/31/24	\$476,914	\$19,742	