

**CONTRACT #2**

**RFS # N/A**

**UT # 105628**

**University of Tennessee**

**VENDOR:**

**TouchNet Information Systems,  
Inc.**



THE UNIVERSITY of TENNESSEE

KNOXVILLE, CHATTANOOGA, MARTIN, TULLAHOMA, MEMPHIS

OFFICE OF THE VICE PRESIDENT & TREASURER

August 28, 2009

Mr. Jim White  
Executive Director  
Fiscal Review Committee  
320 Sixth Avenue, North – 8<sup>th</sup> Floor  
Nashville, TN 37243-0057

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FISCAL REVIEW

Dear Mr. White:

The University of Tennessee is submitting for the committee's review three non-competitively bid contract amendments with TouchNet Information Systems, Inc. The TouchNet solution, which is being implemented on all UT campuses, provides a credit card payment gateway, online fee statements, and offsite hosting functionality for use with the Banner Student Information System.

These three non-competitively bid contract amendments presented for review provide additional functionality. The first amendment purchases TouchNet Marketplace Suite, which provides secure web-based storefronts and online payment pages, for use by the UT Martin campus. The second amendment covers cost for data migration and annual hosting costs for the UT Martin campus that did not originally utilize the TouchNet solution offsite hosting option. The third amendment purchases the functionality to allow for collection of online payments for admissions and transcripts.

By utilizing one vendor for these services, we are able to reduce costs and increase standardization of functionality by reducing the need to build and support custom programming.

If you have questions or need additional information, please let me know.

Respectfully,

Mary Carr McDonald  
Director of Contracts

c: Dr Jan Simek  
Joel Reeves  
Anthony Haynes  
Charles M. Peccolo

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Mary McDonald	*Contact Phone:	865-974-2302		
*Contract Number:		*RFS Number:			
*Original Contract Begin Date:	March 1, 2005	*Current End Date:	Open		
Current Request Amendment Number: <i>(if applicable)</i>	4				
Proposed Amendment Effective Date: <i>(if applicable)</i>	December 1, 2009				
*Department Submitting:	The University of Tennessee				
*Division:	University-wide Administration				
*Date Submitted:	August 28, 2009				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>	N/A				
*Contract Vendor Name:	TouchNet Information Systems, Inc.				
*Current Maximum Liability:	\$2,412,106				
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY: 2005	FY: 2008	FY: 2009	FY: 2010	FY	FY
\$150,000.00	\$ 90,000	\$2,172,106	\$131,640	\$	\$
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>					
FY: 2005	FY: 2006	FY: 2007	FY: 2008	FY2009	FY
\$112,499.78	\$19,153.50	\$20,647.69	\$20,647.69	\$705,091.00	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			Contract is still in force and full expenditure for funds is anticipated by the end of the contract term.		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			N/A		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			N/A		
*Contract Funding Source/Amount:	State:	\$2,412,106	Federal:	\$131,640	
Interdepartmental:			Other:		

## Supplemental Documentation Required for Fiscal Review Committee

If "other" please define:	
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>	Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>
September 1, 2006	Added functionality for UT Martin
July 1, 2007	Continued software maintenance support
September 2008	Expanded services to all UT campuses
Method of Original Award: <i>(if applicable)</i>	Non-competitive Contract
Include a detailed breakdown of the actual expenditures anticipated in each year of the contract. Include specific line items, source of funding, and disposition of any excess fund. <i>(if applicable)</i>	2010 \$62,540 software & \$19,500 implementation/training services 2010 \$12,400 Maintenance 2011 \$12,400 Maintenance 2012 \$12,400 Maintenance 2013 \$12,400 Maintenance
Include a detailed breakdown, in dollars, of any savings that the department anticipates will result from this contract. Include, at a minimum, reduction in positions, reduction in equipment costs, reduction in travel. <i>(if applicable)</i>	N/A This amendment provides for the acquisition and implementation of TouchNet Marketplace Suite which will allow UT Martin the ability to operate secure web-based storefronts and online payment pages. Because we are purchasing software, there is not a reduction in positions, equipment or travel costs.
Include a detailed analysis, in dollars, of the cost of obtaining this service through the proposed contract as compared to other options. <i>(if applicable)</i>	This amendment is adding software to existing proprietary software currently purchased from TouchNet. We could not compare the costs of other options due to the TouchNet software being proprietary.

# CONTRACT SUMMARY SHEET

021406

<b>RFS #</b>		<b>Contract #</b>	
<b>UT Contract Number TBD</b>		<b>N/A</b>	
<b>State Agency</b>		<b>State Agency Division</b>	
University of Tennessee		UT University Wide Administration	
<b>Contractor Name</b>		<b>Contractor ID # (FEIN or SSN)</b>	
Touchnet Information System, Inc.		<input type="checkbox"/> C- or <input type="checkbox"/> V- 48-1072951	
<b>Service Description</b>			
Purchase software, implementation services, training, & hosting for products to add to Banner Student Info System.			
<b>Contract BEGIN Date</b>	<b>Contract END Date</b>	<b>Subrecipient or Vendor?</b>	<b>CFDA #</b>
1-Mar-05	30-Nov-13		N/A
<b>Mark Each TRUE Statement</b>			
<input type="checkbox"/> N/A Contractor is on STARS		<input type="checkbox"/> Contractor's Form W-9 is on file in Accounts	
<b>Allotment Code</b>	<b>Cost Center</b>	<b>Object Code</b>	<b>Fund</b>
332.1	N/A	N/A	N/A
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>
2005	\$ 150,000.00		
2008-13	\$ 90,000.00		
2009-13	\$ 2,172,106.00		
2010-13	\$ 131,640.00		
<b>TOTAL:</b>	<b>\$ 2,543,746.00</b>	<b>\$ -</b>	<b>\$ -</b>
<b>— COMPLETE FOR AMENDMENTS ONLY —</b>		<b>State Agency Fiscal Contact &amp; Telephone #</b>	
<b>FY</b>	<b>Base Contract &amp; Prior Amendments</b>	<b>THIS Amendment ONLY</b>	
2009	\$ 2,412,106.00		<b>State Agency Budget Officer Approval</b>
2010		\$ 94,440.00	
2011		\$ 12,400.00	
2012		\$ 12,400.00	
2013		\$ 12,400.00	
			<b>Funding Certification</b> (certification, required by T.C.A., § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)
<b>TOTAL:</b>	<b>\$ 2,412,106.00</b>	<b>\$ 131,640.00</b>	
<b>End Date</b>		11/30/2013	
<b>Contractor Ownership</b> (complete only for base contracts with contract # prefix: FA or GR)			
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input checked="" type="checkbox"/> Small Business <input checked="" type="checkbox"/> NOT disadvantaged
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> OTHER minority/disadvantaged—
<b>Contractor Selection Method</b> (complete for ALL base contracts— N/A to amendments or delegated authorities)			
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation	<input type="checkbox"/> Alternative Competitive Method	
<input type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Negotiation w/ Government(eg, ID, GG, GU)	<input type="checkbox"/> Other	
<b>Procurement Process Summary</b> (complete for Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)			
<p>The TouchnNet solution, being implemented on all UT campuses, provides a credit card payment gateway and online fee statements functionality to the Banner Student Information System. The TouchNet solution is also currently being used by the TN Board of Regents Institutions. Expansion of this solution reduces the need to build and support custom programming thereby reducing the cost compared to customized programming and increasing standardization of functionality. This amendment provides for the acquisition and implementation of Touchnet Marketplace Suite which will allow UT Martin the ability to operate secure web-based storefronts and online payment pages.</p>			

**THE UNIVERSITY OF TENNESSEE  
REQUEST: NON-COMPETITIVE AMENDMENT**

**Contract  or Requisition**

1.	NCJ Number:	9000001783	REQ #	Fund # E059806
2.	Campus/Institute Name:	UT Martin	ARRA 2	

**EXISTING CONTRACT INFORMATION**

3.	Short Description:	Amendment to Contract # 105628 to add TouchNet Market Place Suite for UT Martin		
4.	Proposed Vendor:	Name:	TOUCHNET INFORMATION SYSTEMS INC	
		Vendor Number:	1038022	
		Vendor ID:		
5.	Original CTS Number or Original PO Number:	105628		
6.	Contract Start Date:	03/01/2005		
7.	<u>Current</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised:	11/30/2013		
8.	<u>Current</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised:	\$2,412,106.00		

**PROPOSED AMENDMENT INFORMATION**

9.	<u>Proposed</u> Amendment #	4
10.	<u>Proposed</u> Amendment Effective Date:	12/1/2009
11.	<u>Proposed</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised:	11/30/2013
12.	<u>Proposed</u> Amendment Amount:	\$131,640.00
13.	<u>Proposed</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised:	\$2,543,746.00
14.	Approval Criteria: (check one)	<input type="checkbox"/> Use of Non-Competitive Negotiation is in the best interest of the university. <input checked="" type="checkbox"/> Only one uniquely qualified service provider able to provide the service.
15.	Description of the Proposed Amendment Effects & Any Additional Service:	Amendment to contract #105628 to provide for the acquisition and implementation of TouchNet Marketplace Suite of software to be integrated with existing TouchNet software and the Banner Student Information System.
16.	Explanation of Need for the Proposed Amendment:	UTM requires the ability to operate secure web-based storefronts and online payment pages. Procurement of Marketplace will allow students, parents, alumni to conduct business with the campus 24 hours a day seven days a week with a product that is within PCI eCommerce payment card industry guideline and standards. The software will be integrated into the TouchNet and Banner systems.

17.	<p>Name &amp; Address of Vendor/Contractor's Current Principal Owner(s): (<u>not</u> required if proposed contractor is a state education institution)</p> <p>TOUCHNET INFORMATION SYSTEMS INC 15520 COLLEGE BLVD</p> <p>LENEXA KS 66219</p>
18.	<p>Documentation of Office for Information Resources Endorsement: N/A (required <u>only</u> if the subject service involves information technology)</p>
19.	<p>Documentation of Department of Personnel Endorsement: N/A (required <u>only</u> if the subject service involves training for state employees)</p>
20.	<p>Documentation of State Architect Endorsement: N/A (required only if the subject service involves construction or real property related services)</p>
21.	<p>Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives: N/A - Existing contract previously processed on a non-competitive basis.</p>
22.	<p>Justification for the Proposed Non-Competitive Amendment: The University has an existing contract with the TouchNet for software and services in place with a value of approximately \$3 million. The Marketplace module being purchased works seamlessly with the existing TouchNet products and the Banner Student Accounts Receivable system. As this is a match for existing capability and we have an existing contract with the TouchNet - noncompetitive procurement is in UT's best interest.</p>

**ADDENDUM TO  
SOFTWARE LICENSE AGREEMENT**

**TOUCHNET INFORMATION SYSTEMS, INC.**

15520 College Boulevard  
Lenexa, Kansas 66219  
United States  
(**"TouchNet"**)

and

**UNIVERSITY OF TENNESSEE**

544 University Street  
Martin, Tennessee 38238-0001  
United States  
(**"Client"**)

**THIS ADDENDUM** to the Software License Agreement dated March 3, 2005 (the "Agreement"), is made between TouchNet and Client as of the "Effective Date," which is the last of the dates shown in the signature block at the end of this Addendum. The parties, intending to be legally bound, hereby agree as follows:

**1. DEFINITIONS.** Unless otherwise defined herein, all terms defined in the Agreement shall have the meaning ascribed to such terms in the Agreement when used in this Addendum.

**2. MODIFICATION OF THE AGREEMENT.**

a. The following provision replaces Section 1.18 of the Agreement:

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

b. The attached Addenda to Schedules A, C, D, E and F are added to the Agreement.

c. The following is added to Schedule E to the Agreement:

**TouchNet Marketplace Suite (including uStores & uPay) Software Maintenance and Support**

*Unlimited Telephone Support.* TouchNet shall provide Client with unlimited telephone support over its technical support line during Normal Business Hours (Monday – Friday, 7-7 CST or CDT).

**Software Updates.** TouchNet shall provide to Client all updates, error corrections, and enhancements (as and when generally made available to TouchNet's clients) for Licensed Software. TouchNet shall notify Client when such Licensed Software is available and, upon Client's request, ship the same to Client for setup (together with setup instructions) or make available via file transfer.

3. **INTEGRATION PROVISION.** Except as expressly modified by written addenda, the Agreement shall remain in full force and effect. As of the Effective Date of this Addendum, the Agreement, as amended by this Addendum constitutes the entire understanding of the parties as regards the subject matter hereof and cannot be further modified except by written agreement of the parties.

**THE PARTIES** have executed this Addendum through the signatures of their respective authorized representatives.

TOUCHNET INFORMATION SYSTEMS, INC.

UNIVERSITY OF TENNESSEE

By:

By: \_\_\_\_\_

Name: Daniel J. Toughey

Name: \_\_\_\_\_

Title: President

Title: \_\_\_\_\_

Date: August 7, 2009

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

## ADDENDUM TO SCHEDULE A LICENSED SOFTWARE

Licensed Software includes:

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

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

**TouchNet Marketplace** software consists of the following modules:

### **Universal Pay**

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

### **Universal Stores**

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

### Operations Center

The Operations Center is the application's administrative interface for administrators, store managers, and store staff to access and manage stores, products, payments, fulfillments, and reports.

**ADDENDUM TO SCHEDULE C  
PROFESSIONAL SERVICES**

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

**TouchNet Software Implementation Services**

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

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

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

*Training:* TouchNet's Professional Services team is committed to helping Client get acquainted with its newly licensed software. To that end, TouchNet's standard product training employs a "train the trainer" approach, which leverages a mix of both onsite and remote training technologies, such as Microsoft LiveMeeting. The implementation manager will determine Client's training needs during the initial project meeting with key stakeholders. More significant training, such as on-site support for Client's "go live," or training scheduled once the applications are in production, can be purchased at an additional cost.

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

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

**Client Duties During the Implementation**

**General**

*Human Resource Needs:* Client will need to identify appropriate project related resources including, but not limited to, project lead, technical lead and key stakeholders

to be leveraged for functional requirements and/or functional testing. Business office or functional users of the new TouchNet Software are critical for requirements as well as testing purposes.

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

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

- Verification of credit card processor
- Merchant ID information
- Bank account and routing information and initial discussions with them regarding the transmission of any ACH related data

#### **DataCenter Implementations**

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

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

#### **On Campus Implementations**

*Technical Requirements:* The Client's technical staff will need to play a much more significant role in the implementation to ensure adequate knowledge is transferred and that there is a good understanding not only of the functional aspects of the TouchNet Software but the technical aspects as well.

##### **Infrastructure Hardware/Software**

- Procure appropriate servers (web, application and database layers) as recommended by TouchNet
- Installation and configuration of operating system on servers
- Installation and configuration of applicable database platform (MySQL, SQL Server or Oracle)
- Installation and configuration of web server (i.e. Tomcat)
- Ensure IP connectivity with Credit Card Processor
- Any load balancing or clustering that the Client would like to institute
- Ensuring all data and application information is encapsulated into any ongoing regular back ups

##### **Support and Training**

- Representatives from the technical areas of expertise should participate in all functional training courses
- Technical resources should ensure the Client project lead allocates time for technical training/education for support

## Installation and Configuration

- Technical resources should be engaged during the installation process either by providing oversight of the TouchNet Software implementation specialist or by actually performing the installation
- Database resources should be readily available to execute table space needs, execute and write scripts and troubleshoot any issues associated with the database layer
- System Administrators should be readily available for any configuration and/or troubleshooting needs that would pertain to the Web or Application layer on the associated server cluster/farm

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

*If Client must re-schedule an installation after a date has been determined, a surcharge of 50% of the total Professional Services Fee will apply, and the project implementation will be rescheduled based upon TouchNet's availability at that time. The parties will act in good faith when re-scheduling in order to reach a mutually agreeable date. The maximum time allowed for installation under this Addendum for all products is six (6) months. If delays beyond six (6) months are caused by Client, additional Professional Services Fees may apply.*

*Client is responsible for reasonable travel, lodging, and food expenses incurred by TouchNet during the on-site training, in accordance with Client's travel policies.*

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

The Client is subject to the Family Education Rights and Privacy Act of 1974 (20 U.S.C. 1232g) and related regulations of the U.S. Department of Education (34 C.F.R. Part 99) regarding access to and privacy of certain student records. TouchNet and its subcontractors shall be responsible for complying with these requirements to the same extent as the Client.

**ADDENDUM TO SCHEDULE D  
COSTS & PAYMENT**

TouchNet will invoice and Client is obligated to make payments according to the following:

**Equipment & Licensed Software/**

TouchNet will invoice Client for any equipment and the Licensed Software immediately upon shipment of any equipment and the Licensed Software. Client shall pay the invoice within thirty (30) days of receipt of the invoice.

**Professional Services**

*Implementation Services*

TouchNet will invoice Client for all Professional Services upon completion of the Professional Services. Client shall pay the invoice within thirty (30) days of receipt of the invoice.

**Annual Maintenance and Support**

TouchNet will invoice Client for the first year's Annual Maintenance and Support following installation of the Licensed Software, the granting of access to Client by TouchNet on TouchNet servers (where a hosting service option has been elected by Client), or sixty (60) days from ship date, whichever is sooner. Client shall pay the invoice within thirty (30) days of receipt of the invoice.

**Total One-Time System Fee (Equipment and Licensed Software):**

Product	Quantity	Unit Cost	Total
TouchNet Marketplace Suite (including uStores & uPay)	1	\$77,900.00	\$77,900.00
<i>Suite Discount</i>			<i>(\$15,600.00)</i>
<b>TouchNet One-Time System Fee</b>			<b>\$62,300.00</b>

**Total One-Time Professional Services Fee (Implementation and Training):**

Product	Quantity	Unit Cost	Total
TouchNet Marketplace Suite (including uStores & uPay)	1	\$19,500.00	\$19,500.00
<b>TouchNet One-Time Professional Services Fee</b>			<b>\$19,500.00</b>

**Total Annual Maintenance and Support Services Fee:**

Product	Quantity	Unit Cost	Total
TouchNet Marketplace Suite (including uStores & uPay)	1	\$12,460.00	\$12,460.00
<b>TouchNet Annual Maintenance and Support Services Fee</b>			<b>\$12,460.00</b>

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All pricing will expire if contract is not executed on or before December 31, 2009.

**Summary:**

<b>Product</b>	<b>Total</b>
TouchNet System Fee	\$62,300.00
TouchNet Professional Services Fee	\$19,500.00
TouchNet Maintenance & Support Fee	\$12,460.00
<b>Grand Total of the System*</b>	<b>\$94,260.00</b>

\*Client is responsible for actual freight and travel charges, if applicable, in accordance with Client's travel policies.

Client's maximum liability under this Addendum is 131,640.00.

**ADDENDUM TO SCHEDULE E  
MAINTENANCE AND SUPPORT FEES**

TouchNet will provide Client with the Services detailed in Section 1 of the Software Maintenance and Support Agreement. The fee for Standard Service is based on the total Licensed Software list price at the rate set forth in the Addendum to Schedule D, attached hereto. TouchNet reserves the right to increase the annual fee for maintenance by not more than ten (10%) of the fees due under the Software Maintenance and Support Agreement on the immediately preceding year. Payment terms for Year 1 maintenance are listed in the Addendum to Schedule D, attached hereto. Payment of maintenance and support fees for Years 2 and after shall be made annually in advance.

**ADDENDUM TO SCHEDULE F**  
**Client's Standard Terms & Conditions**

Item 13 is hereby added:

13. In compliance with the requirements of Chapter 878, Public Acts of 2006, TouchNet hereby attests that TouchNet shall not knowingly utilize the services of an illegal immigrant in the performance of this Agreement and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Agreement.

Item 14 is hereby added:

**14. Federal Economic Stimulus Funding** The following provision as included (as the agreement is funded in whole or part by the American Recovery and Reinvestment Act of 2009).

E.#. **Federal Economic Stimulus Funding.** This CONTRACT/GRANT CONTRACT requires the CONTRACTOR/GRANTEE to provide products and/or services that are funded in whole or in part under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, (Recovery Act). The CONTRACTOR/GRANTEE is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of the Recovery Act are met and that the CONTRACTOR/GRANTEE provides information to the State as required.

The CONTRACTOR/GRANTEE (and any subcontractor) shall comply with the following:

- a. Federal Grant Award Documents, as applicable.
- b. Executive Office of the President, Office of Management and Budget (OMB) Guidelines as posted at [www.whitehouse.gov/omb/recovery\\_default/](http://www.whitehouse.gov/omb/recovery_default/), as well as OMB Circulars, including but not limited to A-102 and A-133 as posted at [www.whitehouse.gov/omb/financial\\_offm\\_circulars/](http://www.whitehouse.gov/omb/financial_offm_circulars/).
- c. Office of Tennessee Recovery Act Management Directives (posted on the Internet at [www.tnrecovery.gov](http://www.tnrecovery.gov)).
- d. The Recovery Act, including but not limited to the following sections of that Act:
  - (1) Section 1604 – Disallowable Use. No funds pursuant to this CONTRACT/GRANT CONTRACT may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.
  - (2) Section 1512 – Reporting and Registration Requirements. The CONTRACTOR/GRANTEE must report on use of Recovery Act funds provided through this CONTRACT/GRANT CONTRACT. Information from these reports will be made available to the public.
  - (3) Section 1553 – Recovery Act Whistleblower Protections. An employee of any non-Federal employer receiving covered funds under the Recovery Act may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee believes is

evidence of one or more of the following related to the implementation or use of covered funds:

- i. gross mismanagement,
- ii. gross waste,
- iii. substantial and specific danger to public health or safety,
- iv. abuse of authority, or
- v. violation of law, rule, or regulation (including those pertaining to the competition for or negotiation of a CONTRACT/GRANT CONTRACT).

**Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration:** Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

**Requirement to Post Notice of Rights and Remedies:** The CONTRACTOR/GRANTEE and any subcontractor shall post notice of the rights and remedies as required under Section 1553. (Refer to Section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 located at [www.recovery.gov](http://www.recovery.gov), for specific requirements of this section and prescribed language for the notices.)

- (4) **Section 902 – Access Of Government Accountability Office.** The CONTRACTOR/GRANTEE shall provide that the Comptroller General and his representatives are authorized:
  - i. to examine any records of the CONTRACTOR/GRANTEE or any of its subcontractors, that directly pertain to, and involve transactions relating to, this CONTRACT/GRANT CONTRACT or a subcontract; and
  - ii. to interview any officer or employee of the CONTRACTOR/GRANTEE or any of its subcontractors regarding such transactions.
- (5) **Section 1514 – Inspector General Reviews.** Any inspector general of a federal department or executive agency has the authority to review, as appropriate, any concerns raised by the public about specific investments using such funds made available in the Recovery Act. In addition, the findings of such reviews, along with any audits conducted by any inspector general of funds made available in the Recovery Act, shall be posted on the inspector general's website and linked to the website established by Recovery Act Section 1526, except that portions of reports may be redacted to the extent the portions would disclose information that is protected from public disclosure under sections 552 and 552a of title 5, United States Code.
- (6) **Section 1515 – Access of Offices of Inspector General to Certain Records and Employers.** With respect to this CONTRACT/GRANT CONTRACT, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:
  - i. to examine any records, of the CONTRACTOR/GRANTEE or any of its subcontractors, that pertain to and involve transactions relating or pursuant to this CONTRACT/GRANT CONTRACT; and
  - ii. to interview any officer or employee of the CONTRACTOR/GRANTEE or any subcontractors regarding such transactions.
- (7) **Section 1606 – Wage Rate Requirements.** All laborers and mechanics employed by pursuant to this CONTRACT/GRANT CONTRACT shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. All rulings and interpretations of

the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference.

For purposes of this CONTRACT/GRANT CONTRACT, laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards.

- (8) Section 1605 – Buy American Requirements for Construction Material – Buy American, Use of American Iron, Steel, and Manufactured Goods. None of the funds provided by this CONTRACT/GRANT CONTRACT may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.
- e. The CONTRACTOR/GRANTEE agrees to comply with any modifications or additional requirements that may be imposed by law and future guidance and clarifications of Recovery Act requirements.
- f. If the CONTRACTOR/GRANTEE enters into one or more subcontracts for any of the services performed under this CONTRACT/GRANT CONTRACT, each subcontract shall contain provisions specifically imposing on the subcontractor all requirements set forth in this Contract Section E.#., "Federal Economic Stimulus Funding."

**If the CONTRACT/GRANT CONTRACT establishes a "SUBRECIPIENT" relationship as defined by OMB Circular A-133, comply with both of the following instructions.**

Add the following as subsection E.#.d. (and re-letter all subsequent subsections accordingly) to the Federal Economic Stimulus Funding provision above;

- d. The subrecipient CONTRACTOR/GRANTEE, if covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, agrees to specifically identify Recovery Act expenditures separately for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133.

**AND** replace the newly designated section E.#.e.(2) with the following.

- (2) Section 1512 – Reporting and Registration Requirements.
- i. The CONTRACTOR/GRANTEE must report on use of Recovery Act funds provided through this CONTRACT/GRANT CONTRACT. Information from these reports will be made available to the public.
- ii. The subrecipient CONTRACTOR/GRANTEE must maintain current registrations in the Central Contractor Registration ([www.ccr.gov](http://www.ccr.gov)) at all times during which they have an active CONTRACT/GRANT CONTRACT funded with Recovery Act funds.

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Mary McDonald	*Contact Phone:	865-974-2302		
*Contract Number:		*RFS Number:			
*Original Contract Begin Date:	March 1, 2005	*Current End Date:	Open		
Current Request Amendment Number: <i>(if applicable)</i>	5				
Proposed Amendment Effective Date: <i>(if applicable)</i>	December 1, 2009				
*Department Submitting:	The University of Tennessee				
*Division:	University-wide Administration				
*Date Submitted:	August 28, 2009				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>	N/A				
*Contract Vendor Name:	TouchNet Information Systems, Inc.				
*Current Maximum Liability:	\$2,543,746				
<b>*Current Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)</b>					
FY: 2005	FY: 2008	FY: 2009	FY: 2010	FY 2010	FY
\$150,000.00	\$ 90,000	\$2,172,106	\$131,640	\$168,669	\$
<b>*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from STARS or FDAS report)</b>					
FY: 2005	FY: 2006	FY: 2007	FY: 2008	FY2009	FY
\$112,499.78	\$19,153.50	\$20,647.69	\$20,647.69	\$705,091.00	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			Contract is still in force and full expenditure for funds is anticipated by the end of the contract term.		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			N/A		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			N/A		
*Contract Funding Source/Amount:	State:	\$2,580,775	Federal:	\$131,640	
Interdepartmental:			Other:		

Supplemental Documentation Required for  
Fiscal Review Committee

If "other" please define:	
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>	Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>
September 1, 2006	Added functionality for UT Martin
July 1, 2007	Continued software maintenance support
September 2008	Expanded services to all UT campuses
September 2009	Additional functionality for UT Martin
Method of Original Award: <i>(if applicable)</i>	Non-competitive Contract
Include a detailed breakdown of the actual expenditures anticipated in each year of the contract. Include specific line items, source of funding, and disposition of any excess fund. <i>(if applicable)</i>	2010 \$56,727 Hosting Services 2011 \$37,314 Hosting Services 2012 \$37,314 Hosting Services 2013 \$37,314 Hosting Services
Include a detailed breakdown, in dollars, of any savings that the department anticipates will result from this contract. Include, at a minimum, reduction in positions, reduction in equipment costs, reduction in travel. <i>(if applicable)</i>	This amendment provides for the acquisition of hosting services for UT Martin, which reduces the security risk for credit card and other sensitive data and reduces personnel time in maintaining software. This purchase reduces direct equipment expenditures by approximately \$10,000 by eliminating the need to replace the outdated server currently used for the software.
Include a detailed analysis, in dollars, of the cost of obtaining this service through the proposed contract as compared to other options. <i>(if applicable)</i>	This amendment is adding hosting services for existing proprietary software currently purchased from TouchNet. We could not compare the costs of other options due to the TouchNet software being proprietary.

# CONTRACT SUMMARY SHEET

021406

<b>RFS #</b>		<b>Contract #</b>			
<b>UT Contract Number TBD</b>		<b>N/A</b>			
<b>State Agency</b>		<b>State Agency Division</b>			
University of Tennessee		UT University Wide Administration			
<b>Contractor Name</b>		<b>Contractor ID # (FEIN or SSN)</b>			
Touchnet Information System, Inc.		<input type="checkbox"/> C- or <input type="checkbox"/> V- 48-1072951			
<b>Service Description</b>					
Purchase software, implementation services, training, & hosting for products to add to Banner Student Info System.					
<b>Contract BEGIN Date</b>		<b>Contract END Date</b>		<b>Subrecipient or Vendor?</b>	
1-Mar-05		30-Nov-13		N/A	
<b>Mark Each TRUE Statement</b>					
<input type="checkbox"/> N/A Contractor is on STARS			<input type="checkbox"/> Contractor's Form W-9 is on file in Accounts		
<b>Allotment Code</b>	<b>Cost Center</b>	<b>Object Code</b>	<b>Fund</b>	<b>Funding Grant Code</b>	<b>Funding Subgrant Code</b>
332.1	N/A	N/A	N/A	N/A	N/A
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>
2005	\$ 150,000.00				\$ 150,000.00
2008-13	\$ 90,000.00				\$ 90,000.00
2009-13	\$ 2,172,106.00				\$ 2,172,106.00
2010-13	\$ 131,640.00				\$ 131,640.00
2010-13	\$ 168,669.00				\$ 168,669.00
					\$ -
<b>TOTAL:</b>	\$ 2,712,415.00	\$ -	\$ -	\$ -	\$ 2,712,415.00
<b>— COMPLETE FOR AMENDMENTS ONLY —</b>			<b>State Agency Fiscal Contact &amp; Telephone #</b>		
<b>FY</b>	<b>Base Contract &amp; Prior Amendments</b>	<b>THIS Amendment ONLY</b>			
2009	\$ 2,412,106.00		<b>State Agency Budget Officer Approval</b>		
2010	\$ 131,640.00	\$ 56,727.00			
2011		\$ 37,314.00			
2012		\$ 37,314.00			
2013		\$ 37,314.00	<b>Funding Certification</b> (certification required by T.C.A., § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)		
<b>TOTAL:</b>	\$ 2,543,746.00	\$ 168,669.00			
<b>End Date</b>		11/30/2013			
<b>Contractor Ownership</b> (complete only for base contracts with contract # prefix: FA or GR)					
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input checked="" type="checkbox"/> NOT disadvantaged	
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> OTHER minority/disadvantaged—		
<b>Contractor Selection Method</b> (complete for ALL base contracts— N/A to amendments or delegated authorities)					
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation		<input type="checkbox"/> Alternative Competitive Method		
<input type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Negotiation w/ Government(eg.ID,GG,GU)		<input type="checkbox"/> Other		
<b>Procurement Process Summary</b> (complete for Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)					
<p>The TouchNet solution, being implemented on all UT campuses, provides a credit card payment gateway and online fee statements functionality to the Banner Student Information System. The TouchNet solution is also currently being using by the TN Board of Regents Institutions. Expansion of this solution reduces the need to build and support custom programming thereby reducing costs compared to customized programming and increasing standardization of functionality. UT Martin did not originally opt in to have TouchNet host their software application but now desires to do so. This amendment covers the data migration and the annual hosting cost for UT Martin.</p>					

**THE UNIVERSITY OF TENNESSEE  
REQUEST: NON-COMPETITIVE AMENDMENT**

**Contract  or Requisition**

1.	NCJ Number:	9000001523	REQ #	Fund # E170163
2.	Campus/Institute Name:	University Wide Administration	IT-Chief Information Office	

**EXISTING CONTRACT INFORMATION**

3.	Short Description:	Amendment to Contract#: 105628 to add TouchNet Hosting Service for UT Martin		
4.	Proposed Vendor:	Name:	TOUCHNET INFORMATION SYSTEMS INC	
		Vendor Number:	1038022	
		Vendor ID:		
5.	Original CTS Number or Original PO Number:	105628		
6.	Contract Start Date:	03/01/2005		
7.	<u>Current</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised:	11/30/2013		
8.	<u>Current</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised:	\$2,543,746.00		

**PROPOSED AMENDMENT INFORMATION**

9.	<u>Proposed</u> Amendment #	5
10.	<u>Proposed</u> Amendment Effective Date:	12/1/2009
11.	<u>Proposed</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised:	11/30/2013
12.	<u>Proposed</u> Amendment Amount:	\$168,669.00
13.	<u>Proposed</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised:	\$2,712,415.00
14.	Approval Criteria: (check one)	<input type="checkbox"/> Use of Non-Competitive Negotiation is in the best interest of the university. <input checked="" type="checkbox"/> Only one uniquely qualified service provider able to provide the service.
15.	Description of the Proposed Amendment Effects & Any Additional Service:	Amendment to Contract#: 105628 for the implementation and conversion of TouchNet Hosting Service for UT Martin. One-Time Re-Implementation Fee of \$19,413 plus an annual hosting fee of \$37,314. Other earlier amendments: 90675,96691, and 101156.
16.	Explanation of Need for the Proposed Amendment:	UT Martin did not opt-in to have TouchNet host their software application per previous contract. UT Martin now desired to have TouchNet host all Touch Net applications. The amendment will cover the cost of TouchNet to host the software and the migration of TouchNet software from a UT Martin Server to a TouchNet server.

17.	<p>Name &amp; Address of Vendor/Contractor's Current Principal Owner(s): (<u>not</u> required if proposed contractor is a state education institution)</p> <p>TOUCHNET INFORMATION SYSTEMS INC 15520 COLLEGE BLVD</p> <p>LENEXA      KS      66219</p>
18.	<p>Documentation of Office for Information Resources Endorsement:    N/A (required <u>only</u> if the subject service involves information technology)</p>
19.	<p>Documentation of Department of Personnel Endorsement:    N/A (required <u>only</u> if the subject service involves training for state employees)</p>
20.	<p>Documentation of State Architect Endorsement:    N/A (required only if the subject service involves construction or real property related services)</p>
21.	<p>Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives: Product and services are already in place for UT Knoxville, UT Chattanooga, and UT Health Science campuses.</p>
22.	<p>Justification for the Proposed Non-Competitive Amendment: TouchNet Products and services are in place across the UT System. The implementation and migration of TouchNet Hosting Service for UT Martin is part of the overall Banner Student Information System project. Hosting and migration of TouchNet Hosting Service for UT Martin will match and bring this campus in line with all other campus locations across the UT system.</p>

## Hosting Services Agreement

This Hosting Services Agreement (the "Hosting Agreement"), effective as of the last of the dates shown in the signature block hereto (the "Effective Date") is made between TouchNet Information Systems, Inc. ("TouchNet") and the **University of Tennessee System Office, for and on behalf of, the University of Tennessee at Martin** ("Client").

Pursuant to the terms of the Software License Agreement entered between the University of Tennessee at Martin ("the Agreement") and the Supplemental Agreement entered into between TouchNet and Client on December 29, 2008 ("Supplemental Agreement"), Client has agreed to license from TouchNet the Licensed Software described therein. Rather than have the Licensed Software reside upon equipment owned or controlled by Client, the parties have elected to have the Licensed Software hosted on TouchNet equipment.

Client and TouchNet desire to set out the terms and conditions governing the said hosting of the Licensed Software by TouchNet on behalf of Client.

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

1. **Definitions.** Capitalized terms used herein shall have the meanings assigned them in the Agreement and/or Supplemental Agreement (as applicable), except where specifically defined above or elsewhere in this Hosting Agreement.
2. **Access.** Subject to the terms and conditions of this Hosting Agreement, TouchNet grants to Client, and Client accepts, a non-exclusive, non-transferable right to access the Licensed Software on TouchNet's servers at the TouchNet DataCenter. Upon payment of the first annual Hosting Services Fee, as prescribed in Section 10, TouchNet shall furnish to Client access information, including appropriate IP addresses, log-on procedures, and user identification and password(s), provided that Client has taken all implementation steps as prescribed by TouchNet.
3. **Hosting Service.** TouchNet will manage the Client's Licensed Software through TouchNet's DataCenter. TouchNet, in connection with the hosting of the Licensed Software for Client, shall make available to Client all Licensed Software patches, version releases, and upgrades for Licensed Software both from TouchNet and from Third Party Licensors, provided that Client has a current Software Maintenance and Support Agreement in effect with TouchNet. Access to all such patches, version releases, and upgrades is expressly conditioned upon the presence of such a valid Software Maintenance and Support Agreement between the parties.
4. **Availability Guarantee and Credit Allowance.** TouchNet's objective is to make the Licensed Software available pursuant to this Hosting Service twenty-four hours a day, seven days a week, except for scheduled maintenance. In addition, TouchNet guarantees that Client will be able to access the Licensed Software via

the Hosting Service ninety-nine percent (99%) of the time (excluding scheduled maintenance) in any given month ("Availability Guarantee"). In the event that Client's access to the Licensed Software via the Hosting Services becomes unavailable, Client shall immediately furnish notice of such unavailability to TouchNet. Unless Client's access to the Licensed Software via the Hosting Service is rendered unavailable for reasons beyond TouchNet's control, such as Catastrophic Events, if Client has furnished TouchNet with the prescribed notice and Client's access to the Licensed Software via the Hosting Services, during any month, falls below the Availability Guarantee, then TouchNet will, upon Client's request, grant to Client a credit in an amount equal to twenty percent (20%) of the Hosting Fees for the month in which Client's access fell below the Availability Guarantee. Scheduled maintenance shall not be counted in the calculation of any Credit. All Credits (based upon the Availability Guarantee) shall be calculated based on the total hours in a particular month, and all months shall be deemed to be comprised of thirty (30) days. For purposes of calculating Credits, any period of unavailability shall be counted from the time such unavailability is reported to TouchNet until such time that access is restored. TouchNet, to the extent possible, will give Client at least twenty-four (24) hours advance notice of down-time for scheduled maintenance. Except as stated in this Section 4 and Section 11, Catastrophic Events, TouchNet makes no representations or warranties with respect to up-time, availability, or the like.

5. **Scheduled Maintenance.** Client acknowledges and agrees that TouchNet will, from time to time, need to perform routine maintenance or repair, and that during such periods of maintenance or repair, the Licensed Software may not be available for Client's use. TouchNet's objective is to minimize the duration of any such unavailability and will endeavor to perform routine maintenance outside of Normal Business Hours. TouchNet, to the extent possible, will give Client at least twenty-four (24) hours advance notice of down-time for scheduled maintenance.
6. **Backup and Retrieval.** TouchNet will perform incremental backups daily and full backups weekly. TouchNet utilizes a secondary site for purposes of disaster recovery. Client systems are replicated to the secondary site. In the event the primary production site becomes inaccessible, TouchNet will commence a recovery utilizing the secondary site within four (4) hours. Full data tapes, magnetic discs and/or other optical media will be stored off-site in a secured vault. Off site storage of back up media shall take place at least weekly.
7. **Term.** The Licensed Software will be hosted by TouchNet, unless sooner terminated as permitted in Section 8 hereof, for a period of one (1) year from and after the Effective Date (the "Initial Hosting Term"). This Hosting Agreement shall automatically renew, unless sooner terminated as permitted in Section 8 hereof, for additional one (1) year renewal periods thereafter ("Renewal Hosting Terms") unless either TouchNet or Client furnishes written notice of non-renewal at least sixty (60) days prior to the end of the Initial Hosting Term or the then Renewal Hosting Term, as the case may be.
8. **Post Termination.** At the end of the Initial Hosting Term or any Renewal Hosting Term, if there is no renewal, Client, may have TouchNet send the

Licensed Software and transaction data electronically to the Client to be loaded in the Client's facility.

9. **Termination of Hosting Service.** This Hosting Agreement may be terminated:
  - 9.1. By TouchNet if Client fails to pay any amount due and payable to TouchNet hereunder and the failure continues for a period of ten (10) days following notice by TouchNet to Client of the failure. In case of termination under this Subsection 9.1 (and assuming the Agreement or Supplemental Agreement are not also terminated), Client shall have available to it only the option set forth in Section 8 above.
  - 9.2. By TouchNet or Client if the other party materially breaches a provision in this Hosting Agreement and such breach is not cured to the satisfaction of the nonbreaching party within a period of thirty (30) days following the giving of written notice of the breach by the other party. Client shall have available to it the option in Section 8 above, assuming the Agreement or Supplemental Agreement are not terminated.
  - 9.3. By TouchNet immediately, with or without notice, if the Agreement or Supplemental Agreement are terminated. If the Agreement or Supplemental Agreement is terminated, the option in Section 8 shall be available to Client.
  - 9.4. By Client, after providing sixty (60) days advance written notice to TouchNet, if Client is not completely satisfied with the Hosting Service for any reason. In case of a termination under this Subsection 9.4, Client shall have available to it the option in Section 8.
10. **Hosting Service Fees.** The applicable fees for hosting services furnished hereunder are set forth on Annex A (attached hereto). The fee for the Initial Hosting Term is due and payable upon execution hereof and is based on the total amount of resource utilization and the list price for the Licensed Software. For Renewal Hosting Terms, the applicable fee for hosting service, less any Credits due Client from the immediately preceding term, shall be due thirty (30) days in advance of the commencement of the Renewal Hosting Term.
11. **Catastrophic Events.** Disruptions in the interconnection with TouchNet servers resulting from "Catastrophic Events" such as power outages, wide-ranging failures in the Internet (or its successor global communications network), or in telecommunications services, and similar calamities, are outside TouchNet's control and are not TouchNet's responsibility.
12. **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 Licensed Software or services obtained pursuant to this Hosting Agreement, with the exception of income taxes payable by TouchNet, shall be the responsibility of the Client and shall be payable in addition to other fees and charges under this Hosting Agreement. Client shall fully reimburse and indemnify TouchNet for any amounts actually paid by TouchNet or withheld by the Client for any such taxes

or levies within thirty (30) calendar days after the date on which TouchNet gives notice thereof to Client.

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

13.1. If at any time a third party makes a claim against Client ("Claim") which could result in liability to TouchNet under this Hosting Agreement, Client promptly (but in no event later than thirty (30) days from the date of such Claim) shall notify TouchNet thereof, stating the basis for the Claim and the amount thereof, if known, and permit TouchNet to assume the defense of the Claim. If TouchNet fails to notify Client of its election to defend the Claim within thirty (30) days after receiving notice of the Claim from Client, TouchNet shall be deemed to have waived its right to defend such Claim.

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

13.3. In the event of an infringement claim, TouchNet will procure for Client the right to continue using the infringing Licensed Software; or to replace or modify the Licensed Software so as to cure the infringement without materially adversely affecting Client's use of the Licensed Software; or, if TouchNet determines that the foregoing steps are impractical, to terminate this Hosting Agreement and refund a pro-rata portion of the fees paid by Client.

13.4. If (i) Client uses the Licensed Software as part of an invention of Client (where such invention includes materials and/or methods not supplied or approved by TouchNet) or (ii) Client uses the Licensed Software as a part of a new configuration (where such configuration includes material and/or methods not supplied or approved by TouchNet) and either of such Client uses of the Licensed Software results in a claim of patent, copyright, trade secret, or other proprietary right claim by a third party, then Client shall be exclusively responsible therefor.

13.5 This Section 13 shall constitute Client's sole and exclusive remedy with respect to any Claims.

14. **Software License Agreement and Supplemental Agreement.** All relevant provisions of the Software License Agreement and Supplemental Agreement (as applicable) are incorporated into this Hosting Agreement as though fully set forth herein. In the event of any conflict between the terms of the Software License Agreement or Supplemental Agreement (as applicable), and the provisions hereof, the Software License Agreement or Supplemental Agreement (as applicable) shall control, unless specific reference is made to the section in the Software License Agreement or Supplemental Agreement (as applicable) to be overruled and the parties expressly state that the provision cited is to be overruled.

15. **Security Standards Compliance.** TouchNet agrees to maintain compliance with all applicable Privacy Laws, the Payment Card Industry Data Security Standard ("PCI") and the National Automated Clearing House Association standards ("NACHA"), pertaining to electronic payments.

IN WITNESS WHEREOF, the parties have executed this Hosting Agreement as of the respective dates shown below.

TOUCHNET INFORMATION SYSTEMS, INC.

UNIVERSITY OF TENNESSEE SYSTEM  
OFFICE, FOR AND ON BEHALF OF, THE  
UNIVERSITY OF TENNESSEE - MARTIN

Signature \_\_\_\_\_

By: Daniel J. Toughey

Title: President

Date: August 7, 2009

Signature: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

## **ANNEX A**

The Hosting Agreement to which this Annex is attached commences on the Effective Date (as defined in the Hosting Agreement) and continues for a period of one (1) year. Thereafter, the Hosting Agreement shall continue indefinitely, but shall be terminable upon each anniversary by either party upon the giving of sixty (60) days notice.

### **FEES<sup>1</sup>**

The annual Hosting Services Fee, payable in advance, is as shown and prescribed below. TouchNet reserves the right to increase the fees shown below by not more than ten (10%) per year over the applicable amount for the immediately preceding year. A Hosting Services Fee of \$37,314.00<sup>2</sup> shall be due and payable upon execution of the Hosting Agreement to which this Annex A is attached. For each subsequent year, the annual Hosting Services Fee, adjusted by TouchNet as permitted herein, shall be payable thirty (30) days in advance of each anniversary of the Effective Date of the Hosting Agreement. TouchNet may increase the annual Hosting Services Fees by giving Client notice thereof at least sixty (60) days in advance of the annual anniversary of the Effective Date of this Hosting Agreement.

### **PROFESSIONAL SERVICES**

The one-time Professional Service Fee is payable upon the TouchNet Software being loaded at the TouchNet DataCenter. The Professional Service Fee of \$19,413.00 shall be due and payable within thirty (30) days of receipt of the invoice.

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<sup>1</sup> All pricing will expire if contract is not executed on or before December 31, 2009.

<sup>2</sup> This fee is in addition to maintenance for the respective applications. This figure reflects a system discount of \$3,504.00.

## ANNEX B

### Licensed Software

TouchNet will host the following Licensed Software, including a Test Environment<sup>3</sup>, and without data migration, in TouchNet's DataCenter:

- TouchNet Payment Gateway Credit Card Software
- TouchNet Payment Gateway ACH Software
- TouchNet Payment Gateway PIN/Less Debit Software
- TouchNet Account Center Software
- Payment Client Software
- TouchNet Bill+Payment - eBill Software
- TouchNet Bill+Payment – eRefunds Software
- TouchNet Bill+Payment – eDeposits Software
- TouchNet Payment Plans Software
- TouchNet Marketplace – uStores Software
- TouchNet Marketplace – uPay Software

---

<sup>3</sup> The \$3,500.00 fee associated with the Test Environment has been waived.

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Mary McDonald	*Contact Phone:	865-974-2302		
*Contract Number:		*RFS Number:			
*Original Contract Begin Date:	March 1, 2005	*Current End Date:	Open		
Current Request Amendment Number: <i>(if applicable)</i>	6				
Proposed Amendment Effective Date: <i>(if applicable)</i>	December 1, 2009				
*Department Submitting:	The University of Tennessee				
*Division:	University-wide Administration				
*Date Submitted:	August 28, 2009				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>	N/A				
*Contract Vendor Name:	TouchNet Information Systems, Inc.				
*Current Maximum Liability:	\$2,718,915				
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY: 2005	FY: 2008	FY: 2009	FY: 2010	FY 2010	FY 2010
\$150,000.00	\$ 90,000	\$2,172,106	\$131,640	\$168,669	\$ 6,500
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>					
FY: 2005	FY: 2006	FY: 2007	FY: 2008	FY2009	FY
\$112,499.78	\$19,153.50	\$20,647.69	\$20,647.69	\$705,091.00	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:		Contract is still in force and full expenditure for funds is anticipated by the end of the contract term.			
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:		N/A			
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:		N/A			
*Contract Funding Source/Amount:	State:	\$2,587,275	Federal:	\$131,640	
Interdepartmental:			Other:		

Supplemental Documentation Required for  
Fiscal Review Committee

If "other" please define:	
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>	Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>
September 1, 2006	Added functionality for UT Martin
July 1, 2007	Continued software maintenance support
September 2008	Expanded services to all UT campuses
September 2009	Added functionality for UT Martin
September 2009	Added hosting services for UT Martin
Method of Original Award: <i>(if applicable)</i>	Non-competitive Contract
Include a detailed breakdown of the actual expenditures anticipated in each year of the contract. Include specific line items, source of funding, and disposition of any excess fund. <i>(if applicable)</i>	2010 \$6,500 Software
Include a detailed breakdown, in dollars, of any savings that the department anticipates will result from this contract. Include, at a minimum, reduction in positions, reduction in equipment costs, reduction in travel. <i>(if applicable)</i>	This amendment purchases the functionality to allow for collection of online payments for admissions and transcripts. Because we are purchasing software, there is not a reduction in positions, equipment or travel costs.
Include a detailed analysis, in dollars, of the cost of obtaining this service through the proposed contract as compared to other options. <i>(if applicable)</i>	This amendment is adding software to existing proprietary software currently purchased from TouchNet. We could not compare the costs of other options due to the TouchNet software being proprietary.

# CONTRACT SUMMARY SHEET

021406

<b>RFS #</b>		<b>Contract #</b>	
<b>UT Contract Number TBD</b>		<b>N/A</b>	
<b>State Agency</b>		<b>State Agency Division</b>	
University of Tennessee		UT University Wide Administration	
<b>Contractor Name</b>		<b>Contractor ID # (FEIN or SSN)</b>	
Touchnet Information System, Inc.		<input type="checkbox"/> C- or <input type="checkbox"/> V- 48-1072951	
<b>Service Description</b>			
Purchase software, implementation services, training, & hosting for products to add to Banner Student Info System.			
<b>Contract BEGIN Date</b>	<b>Contract END Date</b>	<b>Subrecipient or Vendor?</b>	<b>CFDA #</b>
1-Mar-05	30-Nov-13		N/A
<b>Mark Each TRUE Statement</b>			
<input type="checkbox"/> N/A Contractor is on STARS		<input type="checkbox"/> Contractor's Form W-9 is on file in Accounts	
<b>Allotment Code</b>	<b>Cost Center</b>	<b>Object Code</b>	<b>Fund</b>
332.1	N/A	N/A	N/A
<b>Funding Grant Code</b>	<b>Funding Subgrant Code</b>		
N/A	N/A		
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>
			<b>Other</b>
			<b>TOTAL Contract Amount</b>
2005	\$ 150,000.00		\$ 150,000.00
2008-13	\$ 90,000.00		\$ 90,000.00
2009-13	\$ 2,172,106.00		\$ 2,172,106.00
2010-13	\$ 131,640.00		\$ 131,640.00
2010-13	\$ 168,669.00		\$ 168,669.00
2010	\$ 6,500.00		\$ 6,500.00
<b>TOTAL</b>	<b>\$ 2,718,915.00</b>	<b>\$ -</b>	<b>\$ -</b>
			<b>\$ 2,718,915.00</b>
<b>— COMPLETE FOR AMENDMENTS ONLY —</b>		<b>State Agency Fiscal Contact &amp; Telephone #</b>	
<b>FY</b>	<b>Base Contract &amp; Prior Amendments</b>	<b>THIS Amendment ONLY</b>	
2009	\$ 2,412,106.00		<b>State Agency Budget Officer Approval</b>
2010	\$ 300,309.00	\$ 6,500.00	
2011			
2012			
2013			
<b>TOTAL</b>	<b>\$ 2,712,415.00</b>	<b>\$ 6,500.00</b>	
<b>End Date</b>		11/30/2013	
<b>Contractor Ownership</b> (complete only for base contracts with contract # prefix: FA or GR)			
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input checked="" type="checkbox"/> Small Business <input type="checkbox"/> NOT disadvantaged
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> OTHER minority/disadvantaged—
<b>Contractor Selection Method</b> (complete for ALL base contracts— N/A to amendments or delegated authorities)			
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation	<input type="checkbox"/> Alternative Competitive Method	
<input type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Negotiation w/ Government(eg, ID, GG, GU)	<input type="checkbox"/> Other	
<b>Procurement Process Summary</b> (complete for Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)			

The TouchNet solution, being implemented on all UT campuses, provides a credit card payment gateway and online fee statements functionality to the Banner Student Information System. The TouchNet solution is also currently being using by the TN Board of Regents Institutions. Expansion of this solution reduces the need to build and support custom programming thereby reducing costs compared to custom programming and increasing standardization of functionality. This amendment purchases the functionality to allow for collection of online payments for admissions and transcripts.

**THE UNIVERSITY OF TENNESSEE  
REQUEST: NON-COMPETITIVE AMENDMENT**

**Contract  or Requisition**

1.	NCJ Number:	9000001784	REQ #	Fund # E170163
2.	Campus/Institute Name:	University Wide Administration	IT-Chief Information Office	

**EXISTING CONTRACT INFORMATION**

3.	Short Description:	Purchase of additional features for the TouchNet Bill Payment Functionality		
4.	Proposed Vendor:	Name:	TOUCHNET INFORMATION SYSTEMS INC	
		Vendor Number:	1038022	
		Vendor ID:		
5.	Original CTS Number or Original PO Number:	105628		
6.	Contract Start Date:	03/01/2005		
7.	<u>Current</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised:	11/30/2013		
8.	<u>Current</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised:	\$2,712,415.00		

**PROPOSED AMENDMENT INFORMATION**

9.	<u>Proposed</u> Amendment #	6
10.	<u>Proposed</u> Amendment Effective Date:	12/1/2009
11.	<u>Proposed</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised:	11/30/2013
12.	<u>Proposed</u> Amendment Amount:	\$6,500.00
13.	<u>Proposed</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised:	\$2,718,915.00
14.	Approval Criteria: (check one)	<input type="checkbox"/> Use of Non-Competitive Negotiation is in the best interest of the university. <input checked="" type="checkbox"/> Only one uniquely qualified service provider able to provide the service.
15.	Description of the Proposed Amendment Effects & Any Additional Service:	Amendment to contract #105628 to provide for additional features to existing TouchNet Bill payment functionality currently in-place. This is a one-time expenditure.
16.	Explanation of Need for the Proposed Amendment:	Purchase of this functionality will allow for the collection of on-line payments for admissions and transcripts. This functionality will enhance the existing on-line bill payment currently in use and will be integrated into the existing TouchNet and Banner systems.

17.	<p>Name &amp; Address of Vendor/Contractor's Current Principal Owner(s): (<u>not</u> required if proposed contractor is a state education institution)</p> <p>TOUCHNET INFORMATION SYSTEMS INC 15520 COLLEGE BLVD</p> <p>LENEXA KS 66219</p>
18.	<p>Documentation of Office for Information Resources Endorsement: N/A (required <u>only</u> if the subject service involves information technology)</p>
19.	<p>Documentation of Department of Personnel Endorsement: N/A (required <u>only</u> if the subject service involves training for state employees)</p>
20.	<p>Documentation of State Architect Endorsement: N/A (required only if the subject service involves construction or real property related services)</p>
21.	<p>Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives: N/A - Existing contract previously processed on a non-competitive basis.</p>
22.	<p>Justification for the Proposed Non-Competitive Amendment: The University has an existing contract with the TouchNet for software and services in place with a value of approximately \$3 million. The payment enhancement function being purchased is an added feature of the TouchNet products that is in-place and the Banner Student Accounts Receivable system. As this is an enhancement of the existing software, procurement using Non-Competitive negotiation rather than a competitive process is in the best interest of the University.</p>

**THE UNIVERSITY OF TENNESSEE  
CONTRACT AMENDMENT**

This amendment is to the contract between the University of Tennessee (hereinafter University and Touchnet Information System (hereinafter Contractor), which Contract was signed by the University on December 29, 2008.

This Contract amendment consists of this cover page, the and1 additional page.

By mutual agreement, the University and the Contractor agree to the following amendment:

A one-time purchase of additional features to existing TouchNet Bill payment functionality. This additional functionality will allow for the payment of on-line payments for admissions and transcripts. Price will be in accordance with attached vendor quote document.

Maximum Liability is \$6,500.00

Terms and conditions of the purchase to be in accordance with University of Tennessee Contract 105620.

In witness of their acceptance of the terms of this agreement, the parties have had this Contract executed by their duly authorized representatives.

**FOR CONTRACTOR:**

**FOR UNIVERSITY:**

## University of Tennessee System

**Bill+Payment – Payment Points** (Admissions, Advancement or Transcripts)

- Additional Payment Point for Banner

Implementation and Training	One-Time Fee
Payment Point for Banner: Admissions	\$5,000
Each Additional payment point: Transcripts	\$1,500
<b>Totals:</b>	<b>\$6,500</b>

<sup>1</sup> Prices quoted on this proposal expire on December 31, 2009.



THE UNIVERSITY of TENNESSEE

KNOXVILLE • CHATTANOOGA • MARTIN • MEMPHIS • TULLAHOMA

Office of Information Technology

**MEMORANDUM**

TO: Sylvia Davis

FROM: Joel Reeves 

SUBJECT: Touchnet Agreement, December, 2008

DATE : December 30, 2008

On October 7, 2008, I took to the Fiscal Review committee a proposed agreement with Touchnet Information Systems for software to support the student information system project. The original amount (software, implementation services, maintenance and hosting for 5 years) was calculated to be \$2,617,745. Since getting approval from Fiscal Review to proceed, the respective campus representatives have decided not to go forward with the purchase of the Cashiering module. Given this change in scope, the total agreement amount is now equal to \$2,172,106.

I understand you have apprised the appropriate representatives of this change. Please let me know if you have further questions.



GENERAL ASSEMBLY OF THE STATE OF TENNESSEE  
FISCAL REVIEW COMMITTEE

320 Sixth Avenue, North - 8<sup>th</sup> Floor  
NASHVILLE, TENNESSEE 37243-0057  
615-741-2564

Rep. Charles Curtiss, Chairman  
Representatives  
Curt Cobb Donna Rowland  
Curtis Johnson David Shepard  
Gerald McCormick Curry Todd  
Mary Pruitt Eddie Yokley  
Craig Fitzhugh, *ex officio*  
Speaker Jimmy Naifeh, *ex officio*

Sen. Douglas Henry, Vice-Chairman  
Senators  
Bill Ketron Reginald Tate  
Doug Jackson Jamie Woodson  
Paul Stanley  
Randy McNally, *ex officio*  
Lt. Governor Ron Ramsey, *ex officio*

MEMORANDUM

TO: Dr. John Petersen, President  
University of Tennessee

FROM: Charles Curtiss, Chairman, Fiscal Review Committee  
Bill Ketron, Chairman, Contract Services Subcommittee

DATE: October 9, 2008

SUBJECT: Contract Comments  
(Contract Services Subcommittee Meeting 10/7)

cc  
BK

RFS# N/A

Department: University of Tennessee

Contractor: TouchNet Information System, Inc.

Summary: The original contract was for the provision of software designed to interface with the Banner System utilized at the UT Martin Campus. These components allowed students to pay tuition over the internet and enabled the University to disburse refunds to students electronically. The proposed amendment will allow the University to expand the use of the program software to other universities within the UT system.

Maximum liability: \$240,000

Maximum liability w/amendment: \$2,860,535

After review, the Fiscal Review Committee voted to recommend approval of the contract amendment.

cc: Ms. Sylvia S. Davis, Vice President for Administration & Finance

## Supplemental Documentation Required for Fiscal Review Committee

<b>*Contact Name:</b>	Sylvia Davis	<b>*Contact Phone:</b>	865-974-2244		
<b>*Contract Number:</b>		<b>*RFS Number:</b>	N/A		
<b>*Original Contract Begin Date:</b>	March 1, 2005	<b>*Current End Date:</b>	Open		
<b>Current Request Amendment Number:</b> <i>(if applicable)</i>	3				
<b>Proposed Amendment Effective Date:</b> <i>(if applicable)</i>	December 1, 2008				
<b>*Department Submitting:</b>	The University of Tennessee				
<b>*Division:</b>	University-wide Administration				
<b>*Date Submitted:</b>	September 29, 2008				
<b>*Submitted Within Sixty (60) days:</b> <i>If not, explain:</i>	Yes N/A				
<b>*Contract Vendor Name:</b>	TouchNet Information Systems, Inc.				
<b>*Current Maximum Liability:</b>	\$240,000				
<b>*Current Contract Allocation by Fiscal Year:</b> <i>(as Shown on Most Current Contract Summary Sheet)</i>					
<b>FY: 2005</b>	<b>FY: 2008-13</b>	<b>FY:</b>	<b>FY:</b>	<b>FY</b>	<b>FY</b>
\$150,000	\$ 90,000	\$	\$	\$	\$
<b>*Current Total Expenditures by Fiscal Year of Contract:</b> <i>(attach backup documentation from STARS or FDAS report)</i>					
<b>FY: 2005</b>	<b>FY: 2006</b>	<b>FY: 2008</b>	<b>FY: 2009</b>	<b>FY</b>	<b>FY</b>
\$112,499.78	\$19,153.50	\$20,647.69	\$20,647.64	\$	\$
<b>IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:</b>			Contract is still in force and full expenditure of funds is anticipated by the end of the contract term		
<b>IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:</b>			N/A		
<b>IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:</b>			N/A		
<b>*Contract Funding Source/Amount:</b>	<b>State:</b>	\$240,000	<b>Federal:</b>		
<b>Interdepartmental:</b>			<b>Other:</b>		
<b>If "other" please define:</b>					

Supplemental Documentation Required for  
Fiscal Review Committee

Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>	Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>
September 1, 2006	Added functionality
July 1, 2007	Continues software maintenance support
Method of Original Award: <i>(if applicable)</i>	Non-competitive Contract

  
**THE UNIVERSITY of TENNESSEE**  
KNOXVILLE, CHATTANOOGA, MARTIN, TULLAHOMA, MEMPHIS

VICE PRESIDENT FOR STRATEGIC PLANNING AND OPERATIONS

September 29, 2008

**RECEIVED**

SEP 29 2008

**FISCAL REVIEW**

Mr. Jim White  
Executive Director  
Fiscal Review Committee  
320 Sixth Avenue, North – 8<sup>th</sup> Floor  
Nashville, TN 37243-0057

Dear Mr. White:

The University of Tennessee is submitting for the committee's review a non-competitively bid contract amendment with TouchNet Information Systems, Inc. to purchase software, implementation services, training, and off-site hosting for functionality supporting the university's student information system. The TouchNet solution, which will be implemented on all UT campuses, provides a credit card payment gateway, online fee statements, and cashiering functionality.

The non-competitively bid contract amendment presented for review expands the services currently provided on our UT Martin campus to include all UT campuses as part of our student system implementation project. By utilizing one vendor for these services we are able to receive volume discount pricing and implement solutions that reduce the overall cost of ownership.

If you have questions or need additional information, please let me know.

Respectfully,

*Sylvia Shannon Davis*

Sylvia Shannon Davis  
Vice President for Strategic Planning & Operations

Attachment

c: John D. Petersen  
David Millhorn  
Chris Cimino  
Anthony Haynes  
Jesse Poore  
Joel Reeves  
Gary Rogers

# CONTRACT SUMMARY SHEET

021406

<b>RFS #</b>	<b>Contract #</b>
<b>Need to put UT's Tracking # Here</b>	<b>N/A</b>
<b>State Agency</b>	<b>State Agency Division</b>
University of Tennessee	UT University-wide Administration
<b>Contractor Name</b>	<b>Contractor ID # (FEIN or SSN)</b>
TouchNet Information System, Inc.	<input type="checkbox"/> C- or <input type="checkbox"/> V- 48-1072951

**Service Description**

Purchase software, implementation services, training, and off-site hosting for products that add functionality to the Banner Student Information System. The TouchNet solution, which will be implemented on all UT campuses, provides a credit card payment gateway, online fee statements, and cashing functionality.

<b>Contract BEGIN Date</b>	<b>Contract END Date</b>	<b>Subrecipient or Vendor?</b>	<b>CFDA #</b>
March 1, 2005	November 30, 2013		N/A

**Mark Each TRUE Statement**

N/A Contractor is on STARS  Contractor's Form W-9 is on file in Accounts

<b>Allotment Code</b>	<b>Cost Center</b>	<b>Object Code</b>	<b>Fund</b>	<b>Funding Grant Code</b>	<b>Funding Subgrant Code</b>
332.10	N/A	N/A	N/A	N/A	N/A

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2005	\$ 150,000.00				\$ 150,000.00
2008-13	\$ 90,000.00				\$ 240,000.00
2009-13	\$ 2,620,535.00				\$ 2,860,535.00
					\$ -
					\$ -
					\$ -
<b>TOTAL:</b>	\$ 2,860,535.00	\$ -	\$ -	\$ -	\$ 2,860,535.00

<b>— COMPLETE FOR AMENDMENTS ONLY —</b>			<b>State Agency Fiscal Contact &amp; Telephone #</b>
<b>FY</b>	<b>Base Contract &amp; Prior Amendments</b>	<b>THIS Amendment ONLY</b>	Sylvia Shannon Davis, 865-974-2244
2005-2008	\$ 240,000.00		<b>State Agency Budget Officer Approval</b>  VP for Strategic Planning & Operations
2009		\$ 1,206,900.00	
2010		\$ 304,597.00	
2011		\$ 335,057.00	
2012		\$ 368,562.00	
FY 2013		\$ 405,419.00	
<b>TOTAL:</b>	\$ 240,000.00	\$ 2,620,535.00	<b>Funding Certification</b> (certification, required by T.C.A., § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)
<b>End Date</b>	Open	30-Nov-13	

**Contractor Ownership** (complete only for base contracts with contract # prefix: FA or GR) N/A

<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input checked="" type="checkbox"/> NOT disadvantaged
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> OTHER minority/disadvantaged—	

**Contractor Selection Method** (complete for ALL base contracts— N/A to amendments or delegated authorities)

<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation	<input type="checkbox"/> Alternative Competitive Method
<input type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Negotiation w/ Government(eg,ID,GG,GU)	<input type="checkbox"/> Other

**Procurement Process Summary** (complete for Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)

The TouchNet solution is currently used by the UT Martin campus and the Tennessee Board of Regents institutions. Other potential solutions were reviewed but it was determined that the TouchNet product provides functionality not available in the other products including the ability to update Banner tables instantly instead of through a batch process or use of temporary tables and the ability for students to confirm or commit to classes, functionally in demand on our campuses. An expansion of this solution to our other campuses all reduces the need to build and support custom programming thereby reducing costs and increase standardization of functionality.

**THE UNIVERSITY OF TENNESSEE  
REQUEST: NON-COMPETITIVE AMENDMENT**

<b>APPROVED:</b>	
_____	
UT System Office Approval	Date

**EACH REQUEST ITEM BELOW MUST BE DETAILED OR ADDRESSED AS REQUIRED.**

1) UT Tracking Number:		
2) Campus/Institute Name:	The University of Tennessee System	
<b>EXISTING CONTRACT INFORMATION</b>		
3) Short Description:	Purchase software, implementation services, training, and off-site hosting to supplement the Banner Student Information System. Specifically, the TouchNet solution provides the university with a credit card payment gateway, online statements, and cashiering functionality.	
4) Proposed Vendor:	Name:	TouchNet Information Systems, Inc.
	Vendor Number:	1038022
	Vendor ID:	48-1072951
5) Contract #		
6) Contract Start Date:	March 1, 2005	
7) Current Contract End Date IF all Options to Extend the Contract are Exercised:	N/A	
8) Current Total Maximum Cost IF all Options to Extend the Contract are Exercised:	\$240,000	
<b>PROPOSED AMENDMENT INFORMATION</b>		
9) Proposed Amendment #	3	
10) Proposed Amendment Effective Date:	December 1, 2008	
11) Proposed Contract End Date IF all Options to Extend the Contract are Exercised:	November 30, 2013	
12) Proposed Total Maximum Cost IF all Options to Extend the Contract are Exercised:	\$2,860,535	
13) Approval Criteria: (select one)	<input checked="" type="checkbox"/>	use of Non-Competitive Negotiation is in the best interest of the university
	<input type="checkbox"/>	only one uniquely qualified service provider able to provide the service

**14) Description of the Proposed Amendment Effects & Any Additional Service**

This amendment provides a system-wide contract for all UT campuses to use the TouchNet System, a product that provides functionality supporting the university's student information system. This amendment provides for the purchase of software, implementation services, training, and off-site hosting that includes a credit card payment gateway, online billing statements, and cashiering functions.

**15) Explanation of Need for the Proposed Amendment:**

The UT campuses, in conjunction with the student system implementation initiative, are working to employ solutions that standardize the use of software products and functionality to aid in reducing system cost, increase sharing of information, and provide consistent reporting data across campuses. This contract amendment provides a system-wide solution that supports the campus' needs at a reduced overall cost.

**16) Name & Address of Vendor/Contractor's Current Principal Owner(s):** (not required if proposed contractor is a state education institution)

TouchNet Information Systems, Inc.  
15520 College Boulevard  
Kenexa, KS 66219

**17) Documentation of Office for Information Resources Endorsement:** N/A  
(required only if the subject service involves information technology)

**18) Documentation of Department of Personnel Endorsement:** N/A  
(required only if the subject service involves training for state employees)

**19) Documentation of State Architect Endorsement:** N/A  
(required only if the subject service involves construction or real property related services)

**20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives**

In May and June 2007, the UT campuses participated in product demonstrations from four vendors to learn more about their product's functionality. The campuses agreed that TouchNet provided the functionality that best met UT's needs along with the recognition of the benefits associated with maintaining a system that was already in use on the UT Martin campus. TBR institutions also used the TouchNet solution and it was this factor was viewed as statewide benefit.

**21) Justification for the Proposed Non-Competitive Amendment**

The benefits of standardization and bulk pricing suggest using software already in place at the UT Martin campus is advantageous to the university and the state. Given the university's student system implementation is a two-year project with parts of the system going live in 12 -14 months, the ability to reduce the customizations required is a distinct advantage. TouchNet's synchronous and seamless interface with the Banner Student Accounts Receivable module makes this product the preferred solution.



Confidential Pricing Worksheet Option 1 for: University of Tennessee System

Worksheet: Software License Program (SLP)

<b>Software (Enterprise) License</b>	<b>One-Time Fee <sup>1</sup></b>	<b>Annual Fee <sup>1,2</sup></b>
<b>Software License Fees</b>		
<b>TouchNet Payment Gateway: Credit Card, ACH and Debit</b>		
UT Knoxville	\$ 81,600	
UT Chattanooga	\$60,800	
UT Health Science	\$35,400	
UT Martin	\$32,600	
License Amount:	\$210,400	
UT Discount ▶	-\$52,600	
	<b>\$157,800</b>	
<b>TouchNet Bill+Payment Suite: Student and Payment Plan</b>		
UT Knoxville	\$156,200	
UT Chattanooga	111,000	
UT Health Science	65,700	
UT Martin	46,700	
License Amount:	\$379,600	
UT Discount ▶	-\$94,900	
	<b>\$284,700</b>	
<b>TouchNet Cashiering: Business Office</b>		
UT Knoxville	\$118,400	
UT Chattanooga	84,800	
UT Health Science	48,700	
UT Martin	73,200	
License Amount:	\$325,100	
UT Discount:	\$81,275	
	<b>\$243,825</b>	
<b>Cashiering Station and Equipment Fees</b>		
<b>Business Office Edition:</b>		
Cashiering Station Fees	1 @ \$2,550	
Cashiering Station Readers/Printers	1 @ \$2,090	
<b>Software Maintenance and Support</b>		
UT Knoxville		\$71,750
UT Chattanooga		\$51,830
UT Health Science		\$30,470
UT Martin		\$31,020
<b>Implementation and Training</b>		
UT Knoxville	\$89,688	
UT Chattanooga	\$65,088	
UT Health Science	\$47,813	
UT Martin	\$38,300	
*Additional Training: TouchNet Conference Comtec (4)	\$2,780	
<b>Hosting Fees</b>		
UT Knoxville		\$35,416
UT Chattanooga		\$29,456
UT Health Science		\$26,964
<b>Year 1: License, Implementation, Hosting and Maintenance</b>	<b>\$927,206</b>	<b>\$276,906</b>
<b>Year 2 Annual Cost: Hosting and Maintenance</b>		<b>\$304,597</b>

Pricing Valid Through December 19, 2008

TouchNet reserves the right to increase annual fees by 10%



Confidential Pricing Worksheet Option 1 for: University of Tennessee System

Worksheet: Software License Program (SLP)

<b>Software (Enterprise) License</b>	<b>One-Time Fee<sup>1</sup></b>	<b>Annual Fee<sup>1,2</sup></b>
<b>Software License Fees</b>		
<b>TouchNet Payment Gateway: Credit Card, ACH and Debit</b>		
UT Knoxville	\$ 81,600	
UT Chattanooga	\$60,800	
UT Health Science	\$35,400	
UT Martin	\$32,600	
License Amount:	\$210,400	
UT Discount ▶	-\$52,600	
	<b>\$157,800</b>	
<b>TouchNet Bill+Payment Suite: Student and Payment Plan</b>		
UT Knoxville	\$156,200	
UT Chattanooga	111,000	
UT Health Science	65,700	
UT Martin	46,700	
License Amount:	\$379,600	
UT Discount ▶	-\$94,900	
	<b>\$284,700</b>	
<b>TouchNet Cashiering: Business Office</b>		
UT Knoxville	\$118,400	
UT Chattanooga	84,800	
UT Health Science	48,700	
UT Martin	73,200	
License Amount:	\$325,100	
UT Discount:	\$81,275	
	<b>\$243,825</b>	
<b>Cashiering Station and Equipment Fees</b>		
<b>Business Office Edition:</b>		
Cashiering Station Fees	1 @ \$2,550	
Cashiering Station Readers/Printers	1 @ \$2,090	
<b>Software Maintenance and Support</b>		
UT Knoxville		\$71,750
UT Chattanooga		\$51,830
UT Health Science		\$30,470
UT Martin		\$31,020
<b>Implementation and Training</b>		
UT Knoxville	\$89,688	
UT Chattanooga	\$65,088	
UT Health Science	\$47,813	
UT Martin	\$38,300	
*Additional Training: TouchNet Conference Comtec (4)	\$2,780	
<b>Hosting Fees</b>		
UT Knoxville		\$35,416
UT Chattanooga		\$29,456
UT Health Science		\$26,964
<b>Year 1: License, Implementation, Hosting and Maintenance</b>	<b>\$927,206</b>	<b>\$276,906</b>
<b>Year 2 Annual Cost: Hosting and Maintenance</b>		<b>\$304,597</b>

Pricing Valid Through December 19, 2008

TouchNet reserves the right to increase annual fees by 10%



1.2 **Implementation Services.** The term "Implementation Services" means the services and responsibilities of the respective parties as set forth on Schedule C hereto.

1.3 **Maintenance Agreement.** The term "Maintenance Agreement" means the separate Software Maintenance and Support Agreement attached hereto as Schedule E. The terms, conditions, and limitations of this Supplemental Agreement shall be applicable to any Maintenance Agreement, and in case of a conflict between the provisions of this Supplemental Agreement and any such Maintenance Agreement, the provisions hereof shall control, unless such Maintenance Agreement specifically provides that the parties intend to modify or otherwise supersede an expressly referenced provision of this Supplemental Agreement.

2. **Relationship to Master License.** The Master License is hereby ratified and reaffirmed. All its terms, conditions, and provisions are incorporated herein by reference as fully as though set forth herein in its entirety, except that none of the Schedules or Annexes to the said Master License shall be deemed incorporated herein. Rather, the respective Schedules and Annexes to this Supplemental Agreement shall be applicable to this Supplemental Agreement, and wherever a term set forth in the Master License depends, for its proper understanding, upon a Schedule, or Annex, the reference, for purposes of this Supplemental Agreement, shall be deemed to be the respective Schedules and Annexes to this Supplemental Agreement. To the extent of any inconsistency or conflict between the provisions of this Supplemental Agreement and the Master License, the provisions of this Supplemental Agreement shall control.

3. **Grant of Rights.** Subject to the terms and conditions of this Supplemental Agreement and the incorporated terms and conditions of the Master License, TouchNet grants to Client, and Client accepts, a non-exclusive, non-transferable license to use the Licensed Software (as described in Schedule A, attached hereto) for the term specified in Schedule A hereto at the Setup Site for the purpose of processing Client's own data. The herein grant of use rights with respect to the Licensed Software is expressly limited to equipment and operating systems meeting the Minimum System Requirements. The said license commences on the Effective Date and continues for the time period specified in Schedule A (attached hereto), unless sooner terminated as permitted in Sections 5.1 hereof.

4. **Payment.** Client shall be obligated to pay the total remuneration specified in Schedule D (attached hereto) at the time, in the amounts, and in the manner as specified in Schedule D. The obligation to pay shall be fixed as of the "Acceptance Date." For purposes hereof, the "Acceptance Date," shall have the meaning assigned it in Section 3.3 of the Master License.

5. **Term and Termination.** This Supplemental Agreement commences on the Effective Date and continues until terminated as provided below.

5.1 **Mutual Right of Termination.** A party has the right to terminate this Supplemental Agreement if the other party breaches a material provision of this Supplemental Agreement, the Master License, or any other agreement between the parties and, if a cure period is applicable, fails to cure the breach within the applicable cure period following Notice of the breach. If the event or condition giving rise to the right of termination is not cured within the applicable cure period, this Supplemental Agreement will automatically terminate at the end of the said cure period without need for further notice. If the Noticed breach is cured to the reasonable satisfaction of the non-breaching party within the applicable cure period (if any), then this Supplemental Agreement shall continue as though no breach had occurred.

5.2 **Cure Periods.** The applicable cure periods for breaches of the incorporated provisions of the Master License shall be as set forth in the Master License. The applicable cure period for failure to make any payment due under this Supplemental Agreement shall be ten (10) days. The applicable cure period for all other breaches of this Supplemental Agreement shall be thirty (30) days.

5.3 **Bankruptcy.** The termination right specified in Section 8.4 of the Master License shall also be applicable to this Supplemental Agreement.

## 6. General.

6.1 **Assignment.** Neither this Supplemental Agreement, nor any part hereof, may be assigned by either party without the express, written consent of the other party. Consent shall not be given unless the assignee agrees to assume all of assignor's responsibilities under this Supplemental Agreement. No assignment, even with the consent of the other party, shall relieve the assigning party from its obligations under this Supplemental Agreement.

6.2 **Entire Agreement.** This Supplemental Agreement, with the Master License and the attached Schedules and Annexes, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any prior expression of intent or understanding, oral or written (other than the Master License), relating to the subject matter of this Supplemental Agreement. Schedules and Annexes referenced herein by letter or number are incorporated into this Supplemental Agreement as though fully set out herein and are considered substitutes for the Schedules and Annexes attached to the Master License. The attached Schedules and Annexes include:

SCHEDULE	DESCRIPTION
Schedule A	Licensed Software, Term, and Setup Site
Schedule C	Equipment and Client Tasks for Set Up and Installation of Interface Software
Schedule D	License Fees
Schedule E	Software Maintenance and Support Agreement

	Annex A: Annual Maintenance Fees
Schedule F	Hosting Services Agreement
	Annex A: Annual Hosting Fees
	Annex B: TouchNet Software

6.3 **Counterparts.** This Supplemental Agreement may be executed in multiple counterparts, each of which being deemed to be an original agreement, but all of which, taken together, constituting but one, single agreement.

6.4 **Illegal Immigrants.** In compliance with the requirements of Chapter 878, Public Acts of 2006 (now T.C.A. Sec. 12-4-124), TouchNet Information Systems agrees that it shall not knowingly utilize the services of an illegal immigrant in the United States in the performance of the Services to be provided pursuant to this Supplemental Agreement, and shall not knowingly utilize the services of any subcontractor who will knowingly utilize the services of an illegal immigrant in the performance of the Services to be provided pursuant to this Supplemental Agreement.

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

**IN WITNESS WHEREOF**, the parties hereto have executed this Supplemental Agreement as of the respective dates shown in the signature block below:

**TOUCHNET INFORMATION SYSTEMS, INC.**

By: \_\_\_\_\_

Name: Daniel J. Toughey

Title: President

Date: 12/19/2008

**UNIVERSITY OF TENNESSEE SYSTEM  
OFFICE, FOR AND ON BEHALF OF THE  
UNIVERSITY OF TENNESSEE AT KNOXVILLE,  
CHATTANOOGA, HEALTH SCIENCE AND  
MARTIN**

By: \_\_\_\_\_

Name: Charles M. Pewolo

Title: Vice President & Treasurer

Date: 12/29/08

## SCHEDULE A

### LICENSED SOFTWARE, TERM, AND SETUP SITE

#### License Term:

The license granted in the Software License Agreement to which this Schedule is attached commences on the Effective Date and continues in perpetuity.

#### Setup Site

The Setup Site for the Licensed Software shall be as follows:

**TouchNet DataCenter**

#### Licensed Software

The Licensed Software shall be as described below:

**TouchNet Payment Gateway Suite** is the main hub of the TouchNet Payment Gateway and Commerce Management System. It consists of the TouchNet Operations Center (the hub) and the TouchNet Credit Card and webCheck Licensed Software.

**TouchNet Payment Gateway Credit Card Software.** Payment Gateway Credit Card Software provides functionality with Client's Student Information System, including the ability to interface to other campus web applications and self-service systems for credit card processing purposes. Payment Gateway Software includes the following:

- 1 Campus Entity per Client School  
For purposes of this Supplemental Agreement, the Client Schools will include the University of Tennessee at Knoxville, the University of Tennessee at Chattanooga, the University of Tennessee at Health Science and the University of Tennessee at Martin.
- 1 Production CPU / 1 Test CPU Environments
- 3 Merchant ID's
- License for use with other campus-wide self-service web applications
- Credit Card Payment Functionality for Student Information System
- Enhanced reporting by Merchant ID
- Interface to 1 Designated Credit Card Processor

*Payment Gateway Licensed Software runs on Windows 2000 Server, and Sun standard hardware with Solaris 2.4 or higher operating platforms*

*Credit Card Processors supported include FDC Nashville/Envoy FDC Telemoney, First Horizon, GPS Central, GPS East, NCR Canada, Elavon, Paymentech, and VisaNet/Vital. Credit card processor interfaces not listed may be available as a custom project and a development cost may apply.*

*Additional Campus Entity Licenses and Merchant ID Licenses are available for an additional License fee and Professional Services cost*

**TouchNet Payment Gateway ACH/webCheck Software.** TouchNet Payment Gateway webCheck is for use with the Client's Student Information System web application and provides the following functionality:

- 1 Campus Entity per Client School
- 1 Production CPU / 1 Test CPU Environments
- Standard Reporting
- Automated Check Handling

*With the web*

- User interface that enables a user to enter bank routing information, account number, and check number; then express intention to create a webCheck.
- Local database that validates bank routing numbers entered by the user.

*With TouchNet Payment Gateway*

- The TouchNet Payment Gateway creates an Automated Clearing House (ACH) Debit Transfer file, which the Client is responsible for transmitting the ACH file and to their bank.

*Additional fees will apply if the Client engages TouchNet to develop a custom file exchange program that transmits ACH files to their bank.*

*WebCheck Licensed Software runs on Windows 2000 Server, and Sun standard hardware with Solaris 2.4 or higher operating platforms.*

*Additional Campus Entity licenses and Merchant ID licenses are available for an additional License fee and Professional Services cost*

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

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

*Student Application.* The Student application contains the following functionality:

**Bill Inbox** performs the following functions.

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

**Bill Detail** performs the following actions.

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

**Bill Payment** functionality includes:

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

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

**Authorized Users.** This profile allows the End-User to establish an access profile for a third-party user (i.e. parent, guardian, or an employer)

and within each profile; the name, e-mail address, username, and password for the third-party user are contained.

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

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

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

- 1 Campus Entity per Client School
- 1 Production Environment
- 1 Test Environment

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

- 1 Campus Entity per Client School
- 1 Production Environment
- 1 Test Environment

## SCHEDULE C

### EQUIPMENT AND CLIENT TASKS FOR SET UP AND INSTALLATION OF INTERFACE SOFTWARE

#### **TouchNet Software Implementation Services**

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

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

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

*Training:* TouchNet's Professional Services team is committed to helping the Client get acquainted with its newly licensed software. To that end, TouchNet's standard product training employs a "train the trainer" approach, which leverages a mix of both on-site and remote training technologies, such as Microsoft LiveMeeting. The implementation manager will determine the Client's training needs during the initial project meeting with key stakeholders. More significant training, such as on-site support for the Client's "go-live," or training scheduled once the applications are in production, can be purchased at an additional cost.

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

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

## **Client Duties During the Implementation**

### **General**

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

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

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

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

### **DataCenter Implementations**

*Technical Requirements:* There are 3 items necessary to be completed by the Client's technical staff.

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

### **On Campus Implementations**

*Technical Requirements:* The Client's technical staff will need to play a much more significant role in the implementation to ensure adequate knowledge is transferred and a good understanding not only of the functional aspects of the TouchNet Software but the technical aspects as well.

#### **Infrastructure Hardware/Software**

- Procure appropriate servers (web, application and database layers) as recommended by TouchNet
- Installation and configuration of operating system on servers
- Installation and configuration of applicable database platform (MySQL, SQL Server or Oracle)
- Installation and configuration of web server (i.e. Tomcat)
- Ensure IP connectivity with Credit Card Processor

- Any load balancing or clustering that the Client would like to institute
- Ensuring all data and application information is encapsulated into any ongoing regular back ups

#### Support and Training

- Representatives from the technical areas of expertise should participate in all functional training courses
- Technical resources should ensure the Client project lead allocates time for technical training/education for support

#### Installation and Configuration

- Technical resources should be engaged during the installation process either by providing oversight of the TouchNet Software implementation specialist or by actually performing the installation
- Database resources should be readily available to execute table space needs, execute and write scripts and troubleshoot any issues associated with the database layer
- System Administrators should be readily available for any configuration and/or troubleshooting needs that would pertain to the Web or Application layer on the associated server cluster/farm

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

*If client must re-schedule an installation after a date has been determined, a surcharge of 50% of the total Implementation Services Fee will apply, and the project implementation will be rescheduled based upon TouchNet's availability at that time. The maximum time allowed per project is six (6) months: If delays beyond six (6) months are caused by Client additional Implementation fees may apply*

*Client is responsible for reasonable travel, lodging, and food expenses incurred by TouchNet during the on-site training. Expense reimbursement will conform to Client's travel policy (the "Travel Policy") in effect at the time the expenses are incurred. Client's Travel Policy may be found at [www.tennessee.edu/policy](http://www.tennessee.edu/policy)*

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

## SCHEDULE D

### LICENSE FEES\*

TouchNet will invoice and Client is obligated to make payments according to the following:

#### ***Equipment and Licensed Software***

TouchNet will invoice Client for all Equipment and for twenty-five percent (25%) of the Licensed Software Fees upon execution of this Supplemental Agreement. Thirty-five percent (35%) of the Licensed Software Fees will be due March 1, 2009. The remaining forty percent (40%) of the Licensed Software Fees will be due July 1, 2009. Client shall pay all invoices within thirty (30) days of receipt.

#### ***Professional Services***

TouchNet will invoice Client for all Professional Services, including Implementation Services, upon performance of services. Client shall pay invoice within thirty (30) days of receipt.

#### ***Hosting Services***

TouchNet shall invoice Client for all Hosting Services at least thirty (30) days in advance of the payment due date, which due date shall be July 1, 2009. Hosting Services will commence in July 2009 as reflected in Schedule F.

#### ***Annual Maintenance and Support***

TouchNet will invoice Client for the first year's Annual Maintenance and Support at least thirty (30) days in advance of the payment due date, which due date shall be July 1, 2009. Client shall pay the invoice within thirty (30) days of receipt.

\*All pricing will expire if contract is not executed on or before December 19, 2008.

**Total One-Time Software License Fees:**

Product	Quantity	Unit Cost	Total
<b>TouchNet Payment Gateway: Credit Card, ACH and Debit</b>			
UT Knoxville	1	\$91,600	\$91,600
UT Chattanooga	1	\$68,800	\$68,800
UT Health Science	1	\$35,400	\$35,400
UT Martin (Debit only)	1	\$38,600	\$38,600
UT Discount			(\$55,560)
<b>TouchNet Bill+Payment Suite: Student and Installments</b>			
UT Knoxville	1	\$162,200	\$162,200
UT Chattanooga	1	\$117,500	\$117,500
UT Health Science	1	\$69,700	\$69,700
UT Martin	1	\$56,700	\$56,700
UT Discount			(\$83,440)
<b>Total TouchNet Software License Fees</b>			<b>\$501,500</b>

100%  
35% 3/14/09  
25% Pd 1/23/09  
125,875  
175,525  
260,600 - 46% Pd 6/26/09

**Total One-Time Professional Services Fees (Implementation and Training):**

Product	Quantity	Unit Cost	Total
UT Knoxville	1	\$59,450	\$59,450
UT Chattanooga	1	\$42,950	\$42,950
UT Health Science	1	\$25,275	\$25,275
UT Martin	1	\$19,825	\$19,825
Additional training: TouchNet Conference Comtec**	4	\$695	\$2,780
<b>Total TouchNet Professional Services Fees</b>			<b>\$150,280</b>

**Total Annual Maintenance and Support Fees:**

Product	Quantity	Unit Cost	Total
UT Knoxville	1	\$43,146	\$43,146
UT Chattanooga	1	\$31,671	\$31,671
UT Health Science	1	\$17,867	\$17,867
UT Martin	1	\$16,201	\$16,201
<b>Total TouchNet Annual Maintenance and Support Fees</b>			<b>\$108,885</b>

Pd 6/24/09 - 7/1/09 - 6/20/10

\*\*Four additional tickets for Comtec will be provided at no charge.

4 free - 4 Pd  
total Pd 1/23/09

**Total Annual Hosting Services Fees:**

Product	Quantity	Unit Cost	Total
UT Knoxville	1	\$42,804	\$42,804
UT Chattanooga	1	\$30,924	\$30,924
UT Health Science	1	\$18,198	\$18,198
TouchNet Annual Hosting Services Fees			<b>\$91,926</b>

PA  
PA  
PA 4/26/09  
for 7/1/09 -  
6/30/10

**Summary:**

Product	Total
TouchNet System Fees	\$501,500
TouchNet Professional Services Fees	\$150,280
TouchNet Annual Maintenance and Support Fees	\$108,885
TouchNet Annual Hosting Services Fees	\$91,926
<b>Grand Total of the System</b>	<b>\$852,591</b>

\*Client is responsible for actual freight and travel charges, if applicable. In connection therewith, freight charges are subject to Client's pre-approval and reimbursement of travel costs shall be in accordance with the Client's published travel policies.

## SCHEDULE E

### SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT

This Software Maintenance and Support Agreement (the "Software Maintenance Agreement"), effective as of the last of the dates shown in the signature block hereto (the "Effective Date") is made between TouchNet and Client, as those terms are defined in the Software License Agreement effective as of March 3, 2005 (the "Master License").

TouchNet desires to render Maintenance and Support services to Client for the Licensed Software, subject to the terms of this Software Maintenance Agreement, and Client desires to receive such services and to pay TouchNet therefor, in accordance with the terms of this Software Maintenance Agreement.

**NOW, THEREFORE**, Client and TouchNet, intending legally to be bound, agree as follows with respect to software maintenance and support issues:

1. **Definitions.** Capitalized terms used in this Software Maintenance Agreement shall have the meanings as set forth in the Master License, except where such terms are otherwise defined in the Supplemental Agreement, above, or in the following subsections to this Section 1.

- 1.1. **Software Updates.** The term "Software Updates" means that TouchNet shall provide to Client all updates, error corrections, and enhancements generally made available to TouchNet's clients for the Licensed Software. TouchNet shall notify Client when such updates, error corrections, and enhancements are available and, upon Client's request, either (i) ship the same to Client for setup (together with setup instructions) or (ii) make the said updates, error corrections, and enhancements available via file transfer.

- 1.2. **Unlimited Telephone Support.** The term "Unlimited Telephone Support" means that TouchNet shall provide Client, with respect to the Licensed Software, unlimited telephone support over its technical support line during normal business hours (Monday – Friday, 7-5 Central Time).

- 1.3. **Date of Service.** The term "Date of Service" means that the initial term of Maintenance and Support Services will commence on July 1, 2009 and continue through June 30, 2010. Thereafter, the Maintenance and Support Services will continue as reflected in Section 7 below.

2. **Standard Software Service.** In consideration for the maintenance fees as described in Annex A hereto, TouchNet shall provide, with respect to the Licensed Software, Unlimited Telephone Support and Software Updates. In all cases in which the specified support, maintenance, or other service by TouchNet requires participation or performance by Client, if Client fails (i) promptly and effectively to perform its obligations or (ii) fails to bring its hardware, software, and operating system up to a level that meets the Minimum System

Requirements (as amended from time-to-time by TouchNet) applicable to the subject version of the Licensed Software, then TouchNet shall be relieved of its responsibility for rendering the indicated maintenance, support, or other service.

3. **Intentionally Omitted.**
4. **Exclusions.** The maintenance and other services to be provided by TouchNet under this Software Maintenance Agreement shall exclude the following:
  - 4.1. **External Causes.** Maintenance and Support under this Software Maintenance Agreement shall not include malfunctions or performance problems resulting: (i) from external causes such as vandalism, civil disturbance, fire, flood, storm, or other exposure to the elements or temperature extremes; (ii) from tampering, abuse, power fluctuations, phone line problems, or misuse; (iii) from unauthorized installation, reinstallation, or repair; or (iv) from problems or errors resulting from unauthorized modification of the Licensed Software or Equipment or from malfunctions of or incompatibility of software not approved by TouchNet for use with the Licensed Software furnished by TouchNet.
  - 4.2. **Cost of Excluded Service.** Any error, corrections, repairs, or replacements required to make the Licensed Software function properly because of Client modifications to the System or other events or occurrences excluded from or otherwise not covered by this Software Maintenance Agreement, 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. TouchNet currently charges a labor rate of One Hundred Forty-Eight dollars (\$148.00) per hour for repair and technical services. TouchNet reserves the right to increase the said rate at any time upon the giving of sixty (60) days advance notice to Client. Such notice may be furnished by posting the same on TouchNet's Website.
5. **Payment.** For the service provided by TouchNet under this Software Maintenance Agreement, Client will pay TouchNet a fee as described in Annex A for covered Support services and fees as set forth in Section 4.2 above for other Support services.
6. **Taxes.** Client is a tax-exempt entity. Notwithstanding the foregoing, however, if it is determined that Client is legally liable for taxes in connection with the Services obtained by Client pursuant to this Software Maintenance Agreement, taxes, other than taxes based on TouchNet's net income or capital stock, imposed by any taxing authority and based upon or in any way relating to this Software Maintenance Agreement, the Services provided or payments made under this Software Maintenance Agreement, will be the responsibility of Client and will be payable in addition to other fees and charges under this Software Maintenance Agreement. Client may provide TouchNet, in lieu of paying any such tax required to be paid by Client, with a certificate of exemption issued as

provided by Tennessee law; and Client may, if permitted by law, contest any such tax required to be paid by it under this Software Maintenance Agreement, provided that Client has made prior arrangements reasonably satisfactory to TouchNet so that TouchNet will suffer no damage or injury as a result of such contest. Client, upon request by TouchNet, will provide TouchNet with proof of payment, or exemption from payment, of any tax that Client would otherwise be required to pay under or in connection with this Software Maintenance Agreement.

7. **Term and Termination.** The initial term of this Software Maintenance Agreement shall commence on July 1, 2009 and it will conclude on June 30, 2010. The Software Maintenance Agreement may be renewed for up to five (5) additional one (1) year terms on the same terms and conditions set forth herein by a written renewal notice sent to TouchNet by Client. Client may terminate this Software Maintenance Agreement at any time (with or without cause) by giving TouchNet sixty (60) days advance written notice. TouchNet agrees to reimburse Client for all unused services on a prorated basis effective as of the termination date.

7.1. **No Payment.** By TouchNet, upon the giving of ten (10) days advance written notice, if Client has failed to make any payment on the due date therefor, as specified herein;

7.2. **Breach Of Agreement.** By either party, if the other party has substantially breached a material provision of this Software Maintenance Agreement (other than a promise to pay money, breach of which being covered by Section 6.1 of Schedule E of the Master License) and has failed to cure the breach to the satisfaction of the other party, as specified in the notice of breach, within thirty (30) days of the giving of the said notice; and

7.3. **Termination of License Agreement.** By TouchNet, immediately (with or without notice), if the Master License is terminated for any reason.

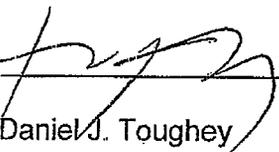
8. **License Agreement.** All relevant provisions of the Master License and Supplemental Agreement are incorporated into this Software Maintenance Agreement as though fully set forth herein. In the event of any conflict between the terms of the Master License, Supplemental Agreement and the provisions hereof, the Master License shall control, (except to the extent it has been amended by the Supplemental Agreement), unless specific reference is made to the section in the Master License and Supplemental Agreement to be overruled and the parties expressly state that the provision cited is to be overruled.

9. **Attachments.** All Annexes or Schedules referenced herein are incorporated into this Software Maintenance Agreement as though fully set forth herein.

**IN WITNESS WHEREOF**, the parties have executed this Software Maintenance Agreement as of the respective dates set forth in the signature block below.

TOUCHNET INFORMATION SYSTEMS, INC.

UNIVERSITY OF TENNESSEE SYSTEM OFFICE,  
FOR AND ON BEHALF OF UNIVERSITY OF  
TENNESSEE AT KNOXVILLE, CHATTANOOGA,  
HEALTH SCIENCE, AND MARTIN

Signature:  \_\_\_\_\_

By: Daniel J. Toughey

Title: President

Date: 12/19/2008

By:  \_\_\_\_\_

Name Charles M. Perolo

Title: Vice President & Treasurer

Date: 12/29/08

## ANNEX A

### ANNUAL MAINTENANCE FEES

The annual fees, payable in advance, for Maintenance and Support services, as described in the Software Maintenance and Support Agreement to which this Annex is attached, are as shown below. TouchNet reserves the right to increase the fees shown below for maintenance and support by not more than ten (10%) per year over the applicable amount for the immediately preceding year.

TouchNet will invoice Client for the first year's Annual Maintenance and Support at least thirty (30) days in advance of the payment due date, which due date shall be July 1, 2009. Client shall pay the invoice within thirty (30) days of receipt. For each subsequent year, the annual fee, adjusted by TouchNet as permitted herein, shall be payable at least thirty (30) days in advance of July 1st.

<b>Software Maintenance and Support</b>	<b>Annual Fee</b>
UT Knoxville	\$43,146
UT Chattanooga	\$31,671
UT Health Science	\$17,867
UT Martin	\$16,201

## SCHEDULE F

### HOSTING SERVICES AGREEMENT

This Hosting Services Agreement (the "Hosting Agreement"), effective as of the last of the dates shown in the signature block hereto (the "Effective Date") is made between TouchNet Information Systems, Inc. ("TouchNet") and University of Tennessee System Office, for and on behalf of the University of Tennessee at Knoxville, Chattanooga, Health Science and Martin ("Client"), as those terms are defined in the Supplemental Agreement ("Supplemental Agreement"), effective as of \_\_\_\_\_, and the Software License Agreement effective as of March 3, 2005 (the "Master License").

Pursuant to the terms of the Master License and Supplemental Agreement, Client has agreed to license from TouchNet the Licensed Software described therein. Rather than have the Licensed Software reside upon equipment owned or controlled by Client, the parties have elected to have the Licensed Software hosted on TouchNet equipment.

Client and TouchNet desire to set out the terms and conditions governing the said hosting of the Licensed Software by TouchNet on behalf of Client. The parties understand and agree that the Hosting Agreement is the controlling document which governs the relationship between the parties regarding the Hosting Services and the rights and obligations of the parties arising by virtue of the Hosting Agreement.

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

1. **Definitions.** Capitalized terms used herein shall have the meanings assigned them in the Master License, as amended by the Supplemental Agreement, except where specifically defined above or elsewhere in this Hosting Agreement.
  - 1.1. **Date of Service.** The term "Date of Service" means that the initial term of Hosting Services will commence on July 1, 2009 and continue through June 30, 2010. Thereafter, the Hosting Services will continue as reflected in Section 8 below.
2. **Access.** Subject to the terms and conditions of this Hosting Agreement, TouchNet grants to Client, and Client accepts, a non-exclusive, non-transferable right to access the TouchNet Software on TouchNet's servers at the TouchNet DataCenter. Upon payment of the first annual Hosting Services Fee, as prescribed in Section 11, TouchNet shall furnish to Client access information, including appropriate IP addresses, log-on procedures, and user identification and password(s), provided that Client has taken all implementation steps as prescribed by TouchNet.
3. **Hosting Service.** TouchNet will manage the Client's Licensed Software through TouchNet's DataCenter. TouchNet, in connection with the hosting of the Licensed Software for Client, shall make available to Client all Licensed Software patches, version releases, and upgrades for Licensed Software both from

TouchNet and from Third Party Licensors, provided that Client has a current Software Maintenance and Support Agreement in effect with TouchNet. Access to all such patches, version releases, and upgrades is expressly conditioned upon the presence of such a valid Software Maintenance and Support Agreement between the parties.

4. **TouchNet Hosted Test Environment.** TouchNet will provide a test environment that will be configured the same as, or similar to, the Client's production environment hosted in TouchNet's DataCenter. The test environment will also be hosted in TouchNet's DataCenter, beginning approximately 2 weeks after the Client's production system is available for use, or 2 weeks after this Hosting Agreement has been executed, whichever occurs later. The test environment will receive a lower service level than the production environment. The test environment will not receive monitoring or critical system or services, nor will it receive 24 hour notification or support.
5. **Availability Guarantee and Credit Allowance.** TouchNet's objective is to make the Licensed Software available pursuant to this Hosting Service twenty-four hours a day, seven days a week, except for scheduled maintenance. In addition, TouchNet guarantees that Client will be able to access the Licensed Software via the Hosting Service ninety-nine percent (99%) of the time (excluding scheduled maintenance) in any given month ("Availability Guarantee"). In the event that Client's access to the Licensed Software via the Hosting Services becomes unavailable, Client shall immediately furnish notice of such unavailability to TouchNet. Unless Client's access to the Licensed Software via the Hosting Service is rendered unavailable for reasons beyond TouchNet's control, such as Catastrophic Events, if Client has furnished TouchNet with the prescribed notice and Client's access to the Licensed Software via the Hosting Services, during any month, falls below the Availability Guarantee, then TouchNet will, upon Client's request, grant to Client a credit in an amount equal to twenty percent (20%) of the Hosting Fees for the month in which Client's access fell below the Availability Guarantee. Scheduled maintenance shall not be counted in the calculation of any Credit. All Credits (based upon the Availability Guarantee) shall be calculated based on the total hours in a particular month, and all months shall be deemed to be comprised of thirty (30) days. For purposes of calculating Credits, any period of unavailability shall be counted from the time such unavailability is reported to TouchNet until such time that access is restored. TouchNet, to the extent possible, will give Client at least twenty-four (24) hours advance notice of down-time for scheduled maintenance. Except as stated in this Section 5 and Section 122, Catastrophic Events, TouchNet makes no representations or warranties with respect to up-time, availability, or the like.
6. **Scheduled Maintenance.** Client acknowledges and agrees that TouchNet will, from time to time, need to perform routine maintenance or repair, and that during such periods of maintenance or repair, the TouchNet Software may not be available for Client's use. TouchNet's objective is to minimize the duration of any such unavailability and will endeavor to perform routine maintenance outside of

Normal Business Hours TouchNet, to the extent possible, will give Client at least twenty-four (24) hours advance notice of down-time for scheduled maintenance.

7. **Backup and Retrieval.** TouchNet will perform incremental backups daily and full backups weekly. If a recovery is necessary to restore access, TouchNet will commence the recovery process within four (4) hours of request and will furnish such recovery services at no charge. In all other cases, TouchNet will commence the recovery process within forty-eight (48) hours of request and will invoice Client for all recovery services at TouchNet's then standard hourly rate for technical support. Full data tapes, magnetic discs and/or other optical media will be stored off-site in a secured vault. Off site storage of back up media shall take place at least weekly.
8. **Term.** The Licensed Software will be hosted by TouchNet, unless sooner terminated as permitted in Section 10 hereof, for a period of one (1) year commencing July 1, 2009 (the "Initial Hosting Term"). This Hosting Agreement shall automatically renew, unless sooner terminated as permitted in Section 10 hereof, for additional one (1) year renewal periods thereafter ("Renewal Hosting Terms") unless either TouchNet or Client furnishes written notice of non-renewal at least sixty (60) days prior to the end of the Initial Hosting Term or the then Renewal Hosting Term, as the case may be.
9. **Post Termination.** At the end of the Initial Hosting Term or any Renewal Hosting Term, if there is no renewal, Client, may (a) have TouchNet send the Licensed Software and transaction data electronically to the Client to be loaded in the Client's facility, (b) purchase Equipment from TouchNet to load the Licensed Software on and then have the Equipment delivered to Client to be hosted by Client Administrator, or (c) repurchase the TouchNet Hosting Services.
10. **Termination of Hosting Service.** This Hosting Agreement may be terminated:
  - 10.1. By TouchNet if Client fails to pay any amount due and payable to TouchNet hereunder and the failure continues for a period of ten (10) days following notice by TouchNet to Client of the failure. In case of termination under this Subsection 10.1 (and assuming the Master License and Supplemental Agreement are not also terminated), Client shall have available to it only the option set forth in Section 9 above.
  - 10.2. By TouchNet or Client if the other party materially breaches a provision in this Hosting Agreement and such breach is not cured to the satisfaction of the nonbreaching party within a period of thirty (30) days following the giving of written notice of the breach by the other party. Client shall have available to it the option in Section 9 above, assuming the Master License and Supplemental Agreement are not terminated.
  - 10.3. By TouchNet immediately, with or without notice, if the Master License or Supplemental Agreement is terminated. If the Master License or Supplemental Agreement is terminated, the option in Section 9 shall be available to Client.

10.4. By Client, after providing sixty (60) days advance written notice to TouchNet, if Client is not completely satisfied with the Hosting Service for any reason. In case of a termination under this Subsection 10.4, Client shall have available to it the option in Section 9.

11. **Hosting Service Fees.** The applicable fee for hosting services furnished hereunder are set forth on Annex A (attached hereto). The fee for the Initial Hosting Term is due and payable on July 1, 2009 and is based on the total amount of resource utilization and the list price for the Licensed Software. For Renewal Hosting Terms, the applicable fee for hosting service, less any Credits due Client from the immediately preceding term, shall be due annually at least thirty (30) days in advance of July 1<sup>st</sup> (the commencement of the Renewal Hosting Term).
12. **Catastrophic Events.** Disruptions in the interconnection with TouchNet servers resulting from "Catastrophic Events" such as power outages, wide-ranging failures in the Internet (or its successor global communications network), or in telecommunications services, and similar calamities, are outside TouchNet's control and are not TouchNet's responsibility.
13. **Taxes.** Client is a tax-exempt entity. Notwithstanding the foregoing, however, if it is determined that Client is legally liable for taxes in connection with the Services obtained by Client pursuant to this Hosting Agreement, taxes, other than taxes based on TouchNet's net income or capital stock, imposed by any taxing authority and based upon or in any way relating to this Hosting Agreement, the Services provided or payments made under this Hosting Agreement, will be the responsibility of Client and will be payable in addition to other fees and charges under this Hosting Agreement. Client may provide TouchNet, in lieu of paying any such tax required to be paid by Client, with a certificate of exemption issued as provided by Tennessee law; and Client may, if permitted by law, contest any such tax required to be paid by it under this Hosting Agreement, provided that Client has made prior arrangements reasonably satisfactory to TouchNet so that TouchNet will suffer no damage or injury as a result of such contest. Client, upon request by TouchNet, will provide TouchNet with proof of payment, or exemption from payment, of any tax that Client would otherwise be required to pay under or in connection with this Hosting Agreement.
14. **Indemnification Obligation.** TouchNet shall indemnify and hold harmless Client from and against any and all losses, expenses, damages, liabilities and obligations, including, without limitation, reasonable court costs and attorneys' fees (collectively, "Losses") suffered or incurred by Client to third parties if and only to the extent that (i) such Losses are directly caused by TouchNet's negligence or intentional misconduct, or by TouchNet's material breach of its representations, warranties or covenants in this Hosting Agreement, and (ii) such Losses arise out of injury or death to persons, or infringement upon or violation of any patent, copyright, trade secret, or similar proprietary right of any third party, or any theft or misappropriation of personal confidential data with respect to

Client's customers (other than by Client's owners, agents, employees or others under Client's direction or control).

- 14.1. If at any time a third party makes a claim against Client ("Claim") which could result in liability to TouchNet under this Hosting Agreement, Client promptly (but in no event later than thirty (30) days from the date of such Claim) shall notify TouchNet thereof, stating the basis for the Claim and the amount thereof, if known, and permit TouchNet to assume the defense of the Claim. If TouchNet fails to notify Client of its election to defend the Claim within thirty (30) days after receiving notice of the Claim from Client, TouchNet shall be deemed to have waived its right to defend such Claim.
- 14.2. If TouchNet assumes the defense of a Claim, Client, at its expense, may participate in the defense, but TouchNet shall have the right to direct and control the defense of the Claim, and Client shall cooperate with TouchNet and make available to TouchNet all of Client's books and records reasonably necessary and useful in connection with the defense. Without Client's prior written consent, TouchNet shall not consent to the entry of a judgment or award, or enter into a settlement, which does not include a release of Client of all liability with respect to the Claim. If TouchNet chooses to defend the Claim, Client shall not admit any liability with respect to, or settle, compromise or discharge the Claim, without TouchNet's prior written consent (which shall not be unreasonably withheld, conditioned or delayed). If TouchNet elects not to defend the Claim, Client may defend against the Claim in such manner as it reasonably deems appropriate.
- 14.3. In the event of an infringement claim, TouchNet will procure for Client the right to continue using the infringing TouchNet Software; or to replace or modify the TouchNet Software so as to cure the infringement without materially adversely affecting Client's use of the TouchNet Software; or, if TouchNet determines that the foregoing steps are impractical, to terminate this Hosting Agreement and refund a pro-rata portion of the fees paid by Client.
- 14.4. If (i) Client uses the TouchNet Software as part of an invention of Client (where such invention includes materials and/or methods not supplied or approved by TouchNet) or (ii) Client uses the TouchNet Software as a part of a new configuration (where such configuration includes material and/or methods not supplied or approved by TouchNet) and either of such Client uses of the TouchNet Software results in a claim of patent, copyright, trade secret, or other proprietary right claim by a third party, then Client shall be exclusively responsible therefor.
- 14.5. This Section 14 shall constitute Client's sole and exclusive remedy with respect to any Claims.

**15. Assignment.** Neither this Hosting Agreement, nor any part hereof, may be assigned by either party without the express, written consent of the other party.

Consent shall not be given unless the assignee agrees to assume all of assignor's responsibilities under this Hosting Agreement. No assignment, even with the consent of the other party, shall relieve the assigning party from its obligations under this Hosting Agreement.

16. **Security Standards Compliance.** TouchNet agrees to maintain compliance with the Payment Card Industry Data Security Standard (PCI).

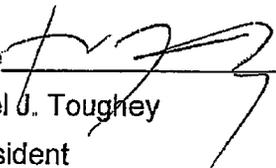
17. **Privacy Laws.** The term "Privacy Laws" means the Gramm-Leach-Bliley Act ("GLBA"); the Children's Online Privacy Protection Act ("COPPA"); the Health Insurance Portability and Accountability Act ("HIPAA"); and the Family Educational Rights and Privacy Act ("FERPA") of 1974 (20 U.S.C. 1232g), as amended, together with regulations promulgated thereunder. The parties understand that Client is subject to FERPA and related regulations of the U.S. Department of Education (34 C.F.R. Part 99) regarding access to and privacy of certain student records. Subject to TouchNet's duties pursuant to PCI or other applicable Privacy Laws, TouchNet will maintain the confidentiality of student records protected by FERPA to the same extent as Client.

18. **Illegal Immigrants.** In compliance with the requirements of Chapter 878, Public Acts of 2006 (now T.C.A. Sec. 12-4-124), TouchNet Information Systems agrees that it shall not knowingly utilize the services of an illegal immigrant in the United States in the performance of the Services to be provided pursuant to this Hosting Agreement, and shall not knowingly utilize the services of any subcontractor who will knowingly utilize the services of an illegal immigrant in the performance of the Services to be provided pursuant to this Hosting Agreement.

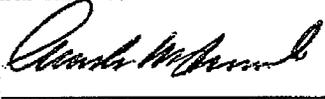
19. **Notices.** Any notice or communication required or permitted to be given hereunder may be hand-delivered or sent by registered or certified mail, return receipt requested, by facsimile transmission, or by email. Notices must be sent to a party at its address shown on the first page of the Supplemental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

IN WITNESS WHEREOF, the parties have executed this Hosting Agreement as of the respective dates shown below.

**TOUCHNET INFORMATION SYSTEMS, INC.**

Signature   
By: Daniel J. Toughy  
Title: President  
Date: December 19, 2008

**UNIVERSITY OF TENNESSEE SYSTEM  
OFFICE, FOR AND ON BEHALF OF THE  
UNIVERSITY OF TENNESSEE AT  
KNOXVILLE, CHATTANOOGA, HEALTH  
SCIENCE AND MARTIN**

Signature:   
By: Charles M. Peccolo  
Title: Vice President & Treasurer  
Date: 12/29/08

## ANNEX A

### Annual Hosting Fees

The Hosting Agreement is effective as of the Effective Date, which is defined in the Hosting Agreement, attached hereto. The Hosting Services commence on July 1, 2009 and continue for a period of one (1) year. Thereafter, the Hosting Agreement shall continue indefinitely, but shall be terminable upon each annual anniversary by either party upon the giving of sixty (60) days notice.

### FEES

The annual Hosting Services Fee\*, payable in advance, is as shown and prescribed below. TouchNet reserves the right to increase the fees shown below by not more than ten (10%) per year over the applicable amount for the immediately preceding year. TouchNet shall invoice Client for all Hosting Services at least thirty (30) days in advance of the payment due date, which due date shall be July 1, 2009. Client shall pay the invoice within thirty (30) days of receipt. Hosting Services shall begin in July 2009. For each subsequent year, the annual Hosting Services Fee, adjusted by TouchNet as permitted herein, shall be payable at least thirty (30) days in advance of July 1<sup>st</sup>. TouchNet may increase the annual Hosting Services Fees by giving Client notice thereof at least sixty (60) days in advance of July 1<sup>st</sup> annually.

Hosting Fees	Annual Fee
UT Knoxville	\$42,804
UT Chattanooga	\$30,924
UT Health Science	\$18,198

\*Hosting Services Fees are in addition to maintenance fees for the respective applications.

## ANNEX B

### TouchNet Software

TouchNet will host the following Client licensed TouchNet Software, including a Test Environment, and without data migration, in TouchNet's DataCenter:

#### University of Tennessee – Knoxville

- TouchNet Payment Gateway Credit Card Module
- TouchNet Payment Gateway ACH Module
- TouchNet Payment Gateway PIN Debit Module
- TouchNet Payment Gateway Bill+Payment Student Module
- TouchNet Payment Gateway Bill+Payment Installments Module

#### University of Tennessee - Chattanooga

- TouchNet Payment Gateway Credit Card Module
- TouchNet Payment Gateway ACH Module
- TouchNet Payment Gateway PIN Debit Module
- TouchNet Payment Gateway Bill+Payment Student Module
- TouchNet Payment Gateway Bill+Payment Installments Module

#### University of Tennessee – Health Science

- TouchNet Payment Gateway Credit Card Module
- TouchNet Payment Gateway ACH Module
- TouchNet Payment Gateway PIN Debit Module
- TouchNet Payment Gateway Bill+Payment Student Module
- TouchNet Payment Gateway Bill+Payment Installments Module

**THE UNIVERSITY OF TENNESSEE  
REQUEST: NON-COMPETITIVE AMENDMENT**

<b>APPROVED:</b>	
_____	_____
UT System Office Approval	Date

EACH REQUEST ITEM BELOW <u>MUST</u> BE DETAILED OR ADDRESSED <u>AS REQUIRED</u> .	
1) UT Tracking Number:	101156
2) Campus/Institute Name:	UTMartin Information Technology Services
<b>EXISTING CONTRACT INFORMATION</b>	
3) Short Description:	Amendment to increase liability on WebCheck, eBill, Student Disbursements, Gateway maintenance
4) Proposed Vendor:	Name: Touchnet Information Systems
	Vendor Number: 1038022
	Vendor ID: 48-1072951
5) Contract #	90675
6) Contract Start Date:	2-24-05
7) <u>Current</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised:	open
8) <u>Current</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised:	\$150,000.00
<b>PROPOSED AMENDMENT INFORMATION</b>	
9) <u>Proposed</u> Amendment #	90675
10) <u>Proposed</u> Amendment Effective Date:	7-1-07
11) <u>Proposed</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised:	open
12) <u>Proposed</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised:	\$240,000.00
13) Approval Criteria: (select one)	<input type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the university
	<input checked="" type="checkbox"/> only one uniquely qualified service provider able to provide the service
14) Description of the Proposed Amendment Effects & Any Additional Service	

Continued maintenance on existing software.

**15) Explanation of Need for the Proposed Amendment:**

Increase liability to pay maintenance on software

**16) Name & Address of Vendor/Contractor's Current Principal Owner(s):** (not required if proposed contractor is a state education institution)

Touchnet, 15520 College Blvd., Lenexa, KS 66219

**17) Documentation of Office for Information Resources Endorsement:** N/A  
(required only if the subject service involves information technology)

**18) Documentation of Department of Personnel Endorsement:** N/A  
(required only if the subject service involves training for state employees)

**19) Documentation of State Architect Endorsement:** N/A  
(required only if the subject service involves construction or real property related services)

**20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :**

This is maintenance on software that has been running several years.

**21) Justification for the Proposed Non-Competitive Amendment :**

Maintenance on existing software.

## CONTRACT AMENDMENT

This amendment #2 is to the contract between the University of Tennessee (hereinafter University) and Touchnet Information Systems (hereinafter Contractor), which Contract was signed by the University on February 24, 2005.

This Contract amendment consists of this cover page.

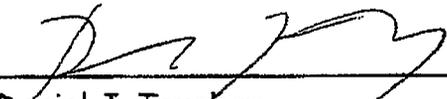
By mutual agreement, the University and the Contractor agree to the following amendment:

1. Increase maximum liability to \$240,000.00.
2. To add the following: In compliance with the requirements of Chapter 878, Public Acts of 2006, the Contractor hereby attests that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

All other terms remain unchanged.

In witness of their acceptance of the terms of this agreement, the parties have had this Contract executed by their duly authorized representatives.

FOR CONTRACTOR:

  
\_\_\_\_\_  
Daniel J. Toughey  
President  
Title

TouchNet Information Systems, Inc.  
15520 College Blvd.  
Lenexa, KS 66219

(913) 599-6699  
\_\_\_\_\_  
Telephone Number

48-1072951  
\_\_\_\_\_  
SSN or Fed. Id. No.

FOR UNIVERSITY:

INFORMATION TECHNOLOGY SERVICES  
Department Name  
E05 2210  
Responsible Account  
(If applicable)

\_\_\_\_\_  
Administrative Signature  
(Optional)

  
\_\_\_\_\_  
Authorized Official

DEC 13 2007

\_\_\_\_\_  
Date

### TOUCHNET API CLIENT AGREEMENT

This TouchNet API Client Agreement ("Agreement") is effective as of the last of the dates shown in the signature block hereto (the "Effective Date") and is between TouchNet and Client, as identified in the signature block below, and is an Addendum to License Agreement (the "License Agreement"), granting to Client the right to use the TouchNet Payment Gateway (the "TPG"). TouchNet, however, has also developed various applications programming interfaces ("API's") permitting other software applications to connect to and interface with the TPG and has developed certain Specifications to permit TouchNet clients (and certain others) to create interfacing applications.

Client now desires to use the said API's and the Specifications, and TouchNet desires to grant a use right to Client therefor, subject to the limitations and provisions hereof.

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

**1 DEFINITIONS.** Capitalized terms used in this Agreement shall have the meanings assigned them in the Principal Agreement, as supplemented by the introductory paragraphs of this Agreement and following Subsections of this Section 1.

1.1 "Specifications" are basic instructions furnished by TouchNet to Client to permit Client's skilled programmers to build TPG interfacing applications.

1.2 "TPG Channel" means a programming right of access to TPG. A single TPG Channel entitles a single software application to attach to and connect and interface with TPG, whether that software application is developed by Client, by TouchNet, or by a third party. With the Principal Agreement, Client is automatically furnished three (3) TPG Channels (formerly referred to as "Merchant ID's"), which Client may elect to use with other TouchNet applications, Client's own applications, or third party applications. Additional TPG Channels are available from TouchNet for a fee. In no event may Client connect, attach, or interface an application to TPG without an open and available TPG Channel.

**2 TERM AND TERMINATION.** This Agreement commences as of the last of the dates shown in the signature block below and continues in effect for so long as Client has the right to use TPG.

2.1 "Automatic Termination". This Agreement automatically terminates if the Principal Agreement terminates.

2.2 "Default". Either party may terminate this Agreement upon the furnishing of thirty (30) days' written notice if the other party has breached a material term of this Agreement and has failed to cure the breach to the satisfaction of the non-breaching party within the said thirty (30) day period.

2.3 "Effect of Termination". Upon termination or expiration of this Agreement, regardless of the cause therefor, Client will no longer have the right to develop TPG interfacing applications, and if the Principal Agreement is terminated, Client must cease use of the API's and the TPG interfacing applications.

**3 TOUCHNET LICENSE GRANT.** TouchNet hereby grants to Client, and Client hereby accepts from TouchNet, a nontransferable, nonexclusive right and license to use the API's and the Specifications, but only for Client's own internal purposes and only for building TPG interfacing applications. No right is granted to distribute or otherwise use all or any portion of the API's, the TPG interfacing applications, or the Specifications.

**4 CAUTION.** The TouchNet API's furnished hereunder are intended for use only by skilled and experienced Web programmers. It is critical that Client acknowledges and is aware that:

4.1 Use of the API's is intended solely for programmers skilled in using SOAP (Simple Object Access Protocol) and other Web protocols.

4.2 Although TouchNet furnishes the API's to Client for use with TPG, training, technical support and assistance for the use and implementation of the API's is not available to Client under this Agreement, the Principal Agreement, or the maintenance agreement associated therewith. Client will be entitled to training, technical assistance, and support with respect to the API's and Specifications, if and only if, Client separately signs (and pays the specified remuneration under) the TouchNet Development License.

4.3 If Client does not have skilled SOAP programming resources available and does not wish to participate in the TouchNet Certified Developer training program under the TouchNet Development License (described in Section 4.2), Client should license TouchNet Marketplace uPAY (universal payment module) to integrate campus applications with TPG. uPay is an easy to use, high-level payment interface that does not require sophisticated programming skills.

By checking the box below and filling in the initials of Client's authorized representative, Client specifically acknowledges that it has read and fully understands the cautions, warnings, limitations, and disclaimers set forth in this Section 4.

I have read and understand the above cautions, warnings, limitations, and disclaimers.	<input type="checkbox"/>	_____ (INITIALS)
--	--------------------------	---------------------

**5 PRINCIPAL AGREEMENT.** The Principal Agreement is expressly made applicable to this Agreement as fully as though each of the provisions of the Principal Agreement were contained herein and the API's and Specifications were licensed thereunder.

**6 THIRD PARTY DEVELOPERS.** If Client wishes a third party (someone other than a Client employee) to develop or participate in the development of a TPG interfacing application, then Client must execute this Agreement and arrange for the third party to execute and deliver all TouchNet-required agreements.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the respective dates shown below.

TouchNet Information Systems, Inc.

University of Tennessee

By: 

By: 

Printed Name: Daniel J. Toughey

Printed Name: Charles M. Peccole  
Vice Pres. & Treasurer

Title: President

Title: \_\_\_\_\_

Date: May 12, 2006

Date: AUG 22 2006

**ORIGINAL  
CONTRACT**

**THE UNIVERSITY OF TENNESSEE**  
**JUSTIFICATION FOR NON-COMPETITIVE PURCHASES AND CONTRACTS**  
**Values of \$50,000 or More**

Contract Tracking Number

90675

Requisition Number for Items Processed through Purchasing:

This form must be completed for all non-competitive purchases for goods or services that are secured either through a purchasing requisition or a contract for expenditures of \$50,000 or more. This form and any other documents that support the justification of a non-competitive purchase **must be approved in advance** of securing the goods or services. Approvals include the Department Head, Director of Purchasing, and the Chief Business Officer or their designees. The Chancellor or Vice President or designee must approve expenditures of \$100,000 or more. The Vice President for Administration and Finance, or designee, must approve expenditures of \$250,000 or more.

Non-competitive service contracts, including amendments that cumulatively exceed \$250,000 must be routed to the Tennessee Legislative Fiscal Review Committee for comment. The Fiscal Review Committee has 15 days from the receipt of the contract information for comments. A minimum of 30 days will be required to process service contracts exceeding \$250,000.

**Information Related to the Purchase of the Goods or Services**

**1. Type of Request:**

Non-Competitive Contract (Sole-Source) Contract thru Purchasing Requisition thru Purchasing 

**2. Prepared By:**

Name: Carroll Lewis  
 Email address: clewis@utm.edu  
 Phone No: 731-881-7810

**3. Cost Center or WBS Element:**

Name: Information Technology Service  
 Number: E052210

**4. Proposed Contractor or Vendor:**

Name: Touchnet Information Systems, Inc.  
 Address (Street): 15520 College Boulevard  
 Address (City, State, and Zip Code): Lenexa, Kansas 66219



13. Is there only one product or service that can meet the specific needs or must the product or service be provided by this particular source.

Yes     No     N/A

If yes, please explain:

Yes. Interfaces between the Banner Student Information System and the Touchnet payment gateway and other products already exist on campus. UTM already uses the payment gateway to take credit cards over the web, so this is compatible with our current system. It is not feasible to use other software.

14. Does proposed contractor or vendor have experience providing same or similar goods or services?

Yes     No

15. Has the department ever purchased these same goods or services from this vendor?

Yes     No

If yes, what procurement method was used? (Ex. Competitive, Non-Competitive, etc.)

We purchased similar goods/services from an existing state contract with this vendor.

16. If for services, was an effort made to use existing University employees to perform services?

Yes     No

If no, why not?

Purchase is for software not services.

17. Is the contract for services from another governmental unit, such as a State or federal agency, or from another college or university?

Yes     No

### Justification

A complete justification must be provided to explain why the University should acquire the goods or services through non-competitive procurement request rather than through a competitive process. (Note: Being the "only known" or "best" is not deemed adequate justification.)

UT Martin has been running the Touchnet Payment Gateway for several years to process credit card payments. We have hardware, software, training, and support experience with this product. The eBills, eChecks, and eDisbursements are tightly integrated with the Touchnet Payment Gateway and with the Banner Student Information System. We have been running the Banner Student Information System since 1997. To change to another vendor at this time would cost a lot of money to change hardware, software, retrain, and

integrate with existing hardware and software and is not feasible.

SOFTWARE LICENSE AGREEMENT

This License Agreement ("Agreement") is made as of the last date shown in the signature block hereof (the "Effective Date") between TouchNet and Client (as both are described below).

TouchNet

TouchNet Information Systems, Inc.  
A Kansas Corporation  
15520 College Boulevard  
Lenexa, Kansas 66219  
Phone: 913-599-6699  
Fax: 913-599-5588

Client

University of Tennessee  
ITS Office, Crisp Hall  
Martin, Tennessee 38238  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

TouchNet is the developer of certain computer programs described below which Client wishes to license for use in connection with the carrying on of its operations. TouchNet, subject to the provisions of this License, desires to grant to Client a non-exclusive license to use the said computer programs.

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

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 in the Subsections to this Section 1.

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

1.2. **Confidential Information.** The term "Confidential Information" means: (i) the Licensed Software; (ii) this Agreement; (iii) information, if disclosed in writing, that bears a stamp, label, or legend indicating the confidential, secret, proprietary, or similar status thereof (iv) information, if disclosed orally, that is followed-up (within ten (10) days following the oral disclosure) with a written memorandum that describes the information claimed to be confidential and that describes the time, place, and circumstances of the oral disclosure; and (v) information disclosed by TouchNet that comprises or consists of drawings, specifications, and models; computer data, whether printed, stored on disk, tapes, or in machine-readable form; product and marketing documentation; prices (including price quotes); and financial information. Confidential information does not include information that:

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

1.2.2 is or becomes publicly available through no wrongful act or omission by the Recipient;

1.2.3 is rightfully received by the Recipient from third parties without accompanying secrecy obligations;

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

1.2.5 is approved in writing by the Discloser for release to the public.

**1.3. Client.** The term "Client" means the entity identified in the table above and all of its intra-college departments, all Campus Entities included within the Client, and all branch locations for each of the said Campus Entities.

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

**1.5. Documentation.** The term "Documentation" shall mean the user manuals and guides to operations issued by TouchNet from time-to-time for the specific modules of the Licensed Software licensed by Client.

**1.6. Discloser.** The term "Discloser" shall mean the party to this Agreement who discloses or otherwise makes available to Recipient Confidential Information.

**1.7. Effective Date.** The term "Effective Date" means the last of the dates shown in the signature block at the end of this Agreement.

**1.8. FastStart Implementation Services.** The term "FastStart Implementation Services" means a set of Implementation Services enabling the Client to have relatively faster access to the Licensed Software, albeit residing at TouchNet's Datacenter. The FastStart Implementation Services are specified on Schedule C (attached hereto). FastStart Implementation Services are available to Client only (i) if elected on Schedule C and (ii) only if Client has also executed and has in force TouchNet's standard Maintenance Agreement.

1.9. **Implementation Services.** The term "Implementation Services" means the services and responsibilities of the respective parties as set forth on Schedule C hereto.

1.10. **Interface Software.** The term "Interface Software" means all software that Client will need in order to interface the Licensed Software with the Client's information system. This software may be provided by TouchNet and/or by the vendor of the Client information system and is owned in whole by the providing party.

1.11. **Licensed Software.** The term "Licensed Software" means all computer programs described in Schedule A hereto (in object code form only) and all Documentation therefor.

1.12. **Maintenance Agreement.** The term "Maintenance Agreement" means the separate Maintenance and Support Agreement attached hereto as Schedule E. The terms, conditions, and limitations of this License Agreement shall be applicable to any Maintenance Agreement, and in case of a conflict between the provisions of this Agreement and any such Maintenance Agreement, the provisions hereof shall control, unless such Maintenance Agreement specifically provides that the parties intend to modify or otherwise supersede an expressly referenced provision of this License Agreement.

1.13. **Minimum System Requirements.** The term "Minimum System Requirements" shall mean equipment meeting the specifications and requirements as set forth on Schedule B; operating system, driver, and other third party software specifications, also set forth on Schedule B; and (where applicable) operating system and software specifications set out in the specific module descriptions in Schedule A. The Minimum System Requirements apply to the current release of the Licensed Software. TouchNet reserves the right to amend the Minimum System Requirements for future releases of the Licensed Software.

1.14. **Notice.** The term "Notice" means a notification given in the manner prescribed in Section 14.4 hereof.

1.15. **Recipient.** The term "Recipient" shall mean a party to this Agreement who receives or otherwise learns of or discovers Confidential Information of the other party to this Agreement.

1.16. **Setup Site.** The term "Setup Site" means the specific address identified on Schedule A.

1.17. **System.** The term "System" means the Licensed Software once properly installed and running under an environment and on equipment meeting the Minimum System Requirements and operating or interfacing with equipment and hardware either purchased from or approved by TouchNet.

1.18. **Trademarks.** The term "Trademarks" means all service marks, trade names, trade dress and/or "get-up" of TouchNet, whether or not registered by TouchNet, and all goodwill of the business related thereto, including (but not limited to) TOUCHNET®, LOGIXSTREAM®, TSERVE®, GLOBAL CAMPUS®, and RevenueStream®.

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

## 2. Software License.

2.1. **Grant of Rights.** Subject to the terms and conditions of this Agreement, TouchNet grants to Client, and Client accepts, a non-exclusive, non-transferable license to use the Licensed Software for the term specified in Schedule A hereto at the Setup Site for the purpose of processing Client's own data. The herein grant of use rights with respect to the Licensed Software is expressly limited to equipment and operating systems meeting the Minimum System Requirements.

2.2. **Title.** The Licensed Software, all trade secrets and other intellectual property rights therein and thereto, including (without limitation) all copyrights and patents, are proprietary to and shall be and remain the sole property of TouchNet, subject only to the rights of Third Party Licensors and the explicit rights granted to Client herein. Client shall acquire no right, title, interest or claim whatsoever (other than the use rights granted explicitly herein) in any of the Licensed Software or any of the Trademarks, and may not sub-license or otherwise grant any rights in or to the Licensed Software or any of the Trademarks without the written consent of TouchNet.

2.3. **Non-Exclusivity.** Client acknowledges that TouchNet may license or offer to license to other TouchNet Clients or prospects the Licensed Software and products having similar functions, whether or not such Clients are competitors of Client.

2.4. **Reverse Engineering.** Client shall not, under any circumstances, directly or indirectly, copy (other than for archival purposes), modify, decompile, reverse engineer, or otherwise attempt to discover the source code for the Licensed Software. The Licensed Software is furnished in object code form only. Client shall not remove any copyright or patent notice or trade secret legend from any copy of the Licensed Software or documentation, and the Client shall faithfully reproduce any such notices or legends on any archival copies thereof. Client shall not assert and shall not represent to any third party that it has any ownership rights in, or the right to sell, transfer or sub-license, the Licensed Software.

**2.5. Own Operations.** Client shall use the Licensed Software solely for processing data in the ordinary course of its operations and shall not use the Licensed Software in connection with a service bureau or in any other similar way to process, store, analyze, manipulate, or otherwise handle the data of other entities.

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

**2.7. Purchase Orders.** If, subsequent to the Effective Date, Client wishes to purchase from TouchNet additional products or professional services (other than maintenance and support services) related to the Licensed Software, then such purchases must be made by issuance of a purchase order by Client to TouchNet (usually in response to a TouchNet quotation), and each such purchase order must reference this Agreement. All such purchase orders issued by Client are acknowledged by the parties to be mere expressions of intent to buy and are not binding in any way. TouchNet will accept Client's Purchase Order if (i) the terms, prices, and conditions reflected are consistent with those detailed in this Agreement and (ii) a duly authorized officer of TouchNet signs such purchase order. Except as specifically provided in the preceding sentence, all such purchase orders are hereby specifically rejected by the parties and rendered null and void, and all products Purchased or services employed by Client from TouchNet shall be subject to the provisions of this Agreement.

### **3. Installation; test; acceptance; and payment.**

**3.1. Installation.** Client, except to the extent otherwise specifically agreed, shall be responsible for installation of the Licensed Software on equipment meeting the Minimum System Requirements at the Setup Site. In addition, Client shall be responsible for timely performance of all tasks allocated to it on Schedule C (attached). Client's failure to timely perform obligations assigned to it under this Agreement or any Schedule attached hereto shall relieve TouchNet from performance of any subsequently arising obligations hereunder or under any Schedule. Any services TouchNet agrees to perform for or on behalf of Client or otherwise in connection with this Agreement (whether performed at the Setup Site or performed remotely) shall be performed during TouchNet's Normal Business Hours.

3.2. **System Tests.** Tests of the Licensed Software will be conducted by TouchNet and may be witnessed by Client using standard TouchNet procedures that demonstrate compliance with applicable specifications detailed in this Agreement and the schedules attached hereto.

3.3. **Payment.** Client shall be obligated to pay the total remuneration specified in Schedule D at the time, in the amounts, and in the manner as specified in Schedule D. The obligation to pay shall be fixed as of the "Acceptance Date." For purposes hereof, the "Acceptance Date" is the earlier of: (i) successful completion of standard TouchNet tests; (ii) operational use of the Licensed Software by Client; or (iii) 30 (30) days after delivery to Client's designated delivery site.

3.4. **Late Charges.** Late payments are subject to a late charge equal to the lesser of eighteen percent (18%) per year or the highest rate permitted by applicable law.

3.5. **Taxes.** Client is a tax exempt entity.

4. **Warranty and Limitations.**

4.1. **Warranty.** TouchNet warrants that the Licensed Software will perform substantially in accordance with the Documentation in all material respects for a period of three hundred and sixty five (365) calendar days after delivery to Client. TouchNet does not warrant that the Licensed Software is error-free, programming errors being inherent with all software.

4.2. **Exclusions.** Neither the warranty in Section 4.1 hereof nor any other warranty of TouchNet shall include: performance problems resulting: (i) from external causes such as vandalism, civil disturbance, fire, flood, storm, other exposure to the elements or temperature extremes; (ii) from tampering, failure of electric power, abuse, or misuse; (iii) from problems or errors resulting from customization made by Client after acceptance of the Licensed Software; or (iv) errors caused by operator mistake or by Client's erroneous configuration.

4.3. **Remedy.** If the Licensed Software does not perform substantially in accordance with the Documentation in all material respects (a "Defect") such Defect is brought to the attention of TouchNet through the Notice provisions hereof within the warranty period specified in Section 4.1; and TouchNet verifies that the alleged Defect is, in fact, a Defect and is not excluded under Section 4.2 hereof, then TouchNet shall use reasonable business efforts to correct the Defect in a manner intended to reduce Client inconvenience to the greatest extent practicable under the circumstances. Repair or replacement of a Defect will not extend the warranty period beyond the original warranty expiration date.

4.4. **Sole Warranty.** Except as stated in Sections 4.1 and 4.3, there are no warranties, guarantees, or representations with respect to the licensed software.

TouchNet disclaims the implied warranties of merchantability, fitness for a particular purpose, and noninfringement.

**4.5. Limitations.** To the extent permitted by Tennessee law, TouchNet shall not be liable for any indirect, special or consequential damages arising out of this Agreement or the use of the Licensed Software by Client, whether in contract, tort, or otherwise. TouchNet's liability and Client's exclusive remedy for any cause of action arising out of this Agreement and its performance shall be expressly limited to repair and/or replacement or if, in TouchNet's judgment, repair or replacement will not provide an adequate remedy to Client, refund of the module of the Licensed Software, at its depreciated value, using the straight line method and assuming a five (5) year useful life. In no event and under no circumstances will TouchNet's obligation to Client be greater than the license fees paid to TouchNet by Client for the Licensed Software under this Agreement. The limitations of this Section 4.5 are applicable regardless of whether the claim of liability or responsibility is based on negligence, strict tort, products liability, warranty, or other predicate.

5. **Intellectual Property Infringement.** TouchNet warrants that the Licensed Software, when used in accordance with the Documentation and in accordance with its intended purpose, will not infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any claim of a third party against Client asserting or involving a patent, copyright, trade secret or proprietary right violation which concerns any Licensed Software acquired by Client from TouchNet hereunder (an "IP Claim"), provided Client is not in default under this Agreement, TouchNet will defend, at its sole authority and expense, and indemnify Client against any loss, cost, expense and liability arising out of such IP Claim. **Limitations.** TouchNet's obligations under this Section 5 are expressly conditioned upon receipt by TouchNet of prompt written Notice of any such IP Claim and Client's full cooperation with TouchNet in the defense of any such IP Claim. In the event that Client's use of any Licensed Software is enjoined or restrained by court order based on an IP Claim or if, in TouchNet's opinion, the Licensed Software is likely to become the subject of an IP Claim, TouchNet will, at its expense and at its option:

5.1.1 procure for Client the right to continue using the infringing Licensed Software;

5.1.2 replace or modify the infringing Licensed Software so that it becomes non-infringing, but only if the modifications or replacement does not materially adversely affect the use of the Licensed Software; or

5.1.3 if neither 5.1.1 nor 5.1.2 above is practical, repurchase the infringing Licensed Software at its depreciated value, using straight-line depreciation assuming a useful life of five (5) years. The foregoing is TouchNet's exclusive obligation with respect to infringement of intellectual property rights.

5.2. **Limitation of Indemnity.** The indemnification provisions contained in this Section 5 shall not apply to any infringement occasioned by modification by any party other than TouchNet, or its authorized agents, of any Licensed Software or any combination of or integration of the Licensed Software with any device or software added by any party other than TouchNet or its authorized agents. This Section 5 contains Client's sole and exclusive remedy for patent, copyright, trade secret, or other proprietary right infringement.

5.3. **Client Inventions.** If (i) Client uses the Licensed Software as part of an invention of Client (where such invention includes materials and/or methods not supplied or approved by TouchNet) or (ii) Client uses the Licensed Software as a part of a new configuration (where such configuration includes material and/or methods not supplied or approved by TouchNet) and either of such Client uses of the Licensed Software results in a claim of patent, copyright, trade secret, or other proprietary right claim by a third party (a "Claim"), then TouchNet shall not be obligated to indemnify Client with respect to such claim, the same being the responsibility of Client.

6. **Third Party Products.** Notwithstanding the provisions of Sections 4 and 5 hereof, TouchNet makes no representations or warranties with respect to any equipment, software, or other item (whether or not included within the Licensed Software) if the software, equipment, or other item was not developed, manufactured, created, or produced by TouchNet. TouchNet will use reasonable business efforts to assign to Client any and all rights it may have against such third parties; however, this is the extent of TouchNet's obligations with respect to such third party equipment, software, or other items.

7. **Confidential Information.**

7.1. **Limitation on Use and Disclosure.** Except as otherwise permitted under this Agreement, the Recipient will not knowingly disclose to any third party, or make any use of Discloser's Confidential Information. The Recipient will use at least the same standard of care and security to maintain the confidentiality of the Discloser's Confidential Information that it uses to maintain the confidentiality of its own Confidential Information of equal importance, but in no event may the standard of care and security be below that customary and reasonable under the circumstances. At a minimum, the Recipient shall maintain the Confidential Information (i) in a secure location or (ii) if stored on Client's computer system or network, under circumstances requiring secure password access. Only employees of Recipient who have a reasonable need to know of the Confidential Information in order to perform their responsibilities may be given access to the Discloser's Confidential Information.

7.2. **Court Order.** Notwithstanding the provisions of Section 7.1, Recipient may be permitted to disclose the Confidential Information of Discloser when ordered to do so by an administrative, arbitral, legislative, or judicial body having jurisdiction over the Recipient, provided (i) that Recipient first gives Discloser

reasonable Notice of the administrative, arbitral, legislative, or judicial proceeding in order to permit Discloser to prevent or limit the ordered disclosure and (ii) that Recipient cooperates (at Discloser's expense) fully in preventing or limiting the ordered disclosure.

**7.3. Burden of Proof.** The burden of proving an exception to the definition of Confidential Information, as described in Section 1.2 and/or the applicability of the exception to nondisclosure set forth in Subsections 1.2.1 through 1.2.5 hereof shall be upon the Recipient.

**7.4. Tennessee Public Records Law.** Notwithstanding anything herein to the contrary, Client shall comply with the Tennessee Public Records Law, TCA 10-7-503.

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

**9. Term and Termination.**

**9.1. Term.** The license granted in Section 2.1 hereof commences on the Effective Date and continues for the time period specified in Schedule A, unless sooner terminated as permitted in Sections 9.2 through 9.4 hereof.

**9.2. Right of Termination.** A party has the right to terminate this Agreement if the other party breaches a material provision of this Agreement and, if a cure period is applicable, fails to cure the breach within the applicable cure period following Notice of the breach. If the event or condition giving rise to the right of termination is not cured within the applicable cure period, this Agreement will automatically terminate at the end of the said cure period without need for further notice. If the Noticed breach is cured to the reasonable satisfaction of the non-breaching party within the applicable cure period (if any), then this Agreement shall continue as though no breach had occurred.

**9.3. Cure Periods.** The applicable cure periods for breaches of Section 2.4, 2.5, and/or 2.7, shall be ten (10) days. There shall be no cure period for a breach of Section 7. The applicable cure period for breaches of all other provisions of this Agreement shall be thirty (30) days.

**9.4. Bankruptcy.** This Agreement shall automatically terminate if Client files in or has an action filed against it in bankruptcy, in state insolvency proceedings, or in another proceeding for relief from creditors.

9.5. **Effect of Termination.** Upon termination of this Agreement by either party, Client will promptly return to TouchNet or, at TouchNet's request, will destroy all copies of the Licensed Software, and will certify to TouchNet in writing, over the signature of a duly authorized representative of Client, that it has done so.

9.6. **Survival of Obligations.** All obligations relating to non-use and non-disclosure of Confidential Information will survive termination of this Agreement. Without limiting the generality of the foregoing, the specific obligations, as set forth in Sections 2.4, 4.5, 7, and 14.9 shall survive any termination or expiration of this Agreement.

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

9.8. **Termination for Loss of Funding.** Since this agreement is for a term extending beyond a single fiscal year of the Client, in the event the Client does not receive appropriate funds for the payment required under this agreement of any fiscal period, this agreement shall be deemed terminated at such time at no penalty to Client.

10. **Maintenance.** Client shall be entitled to telephonic Client support, technical assistance, and bug fixes and updates, provided that the Client is not in default under this or any other agreement with TouchNet and Client has in force a valid Maintenance Agreement.
11. **Equipment.** This is a license agreement only, and no title to any item is furnished to Client hereunder. If Client desires to purchase equipment of any kind from TouchNet, the terms of that purchase shall be as set forth in a Equipment Purchase Agreement in the form of Schedule F, attached hereto (if any). The terms, conditions, and limitations of this License Agreement shall be applicable to any Equipment Purchase Agreement, and in case of a conflict between the provisions of this License Agreement and any such Equipment Purchase Agreement, the provisions hereof shall control, unless such Equipment Purchase Agreement specifically provides that the parties intend to modify or otherwise supersede an expressly referenced provision of this License Agreement.
12. **Equitable Relief.** Client acknowledges TouchNet's claim that any breach or threatened breach of this Agreement, by Client, including (without limitation) breach of Sections 2.4, 2.5, 2.6, 5.3, 7, 8, and 14.2 would likely result in irreparable injury to TouchNet for which monetary damages would likely be an inadequate remedy and that TouchNet shall have the right, when authorized by applicable law, to seek immediate injunctive relief in the event of such actual or threatened breach to prevent, curtail, or restrain any such breach or threatened

breach, all without the necessity of any filing or furnishing, by TouchNet, of any bond or similar surety.

13. **Implementation Services.** Each party shall perform its respective Implementation Services, as specified on Schedule C.

14. **General.**

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

14.2. **Assignment.** This Agreement may not be assigned by Client without the express, written consent of TouchNet, which consent shall not be unreasonably withheld. Nevertheless, consent shall not be given unless the assignee agrees to assume all of assignor's responsibilities under this Agreement. No assignment, even with the consent of TouchNet, shall relieve the assigning party from its obligations under this Agreement.

14.3. **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 an event of force majeure, including (without limitation) acts of God or of the public enemy, fire, storm, flood, explosion, earthquake, hurricane, riots, wars, hostilities, civil commotion, strikes or labor disputes, interruption of supply, law or regulation, governmental action, or any other cause beyond the control of that party.

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

14.5. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original and both of which, taken together, shall constitute one and the same instrument.

14.6. **Entire Agreement.** This Agreement, with attached Schedules, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any prior expression of intent or understanding, oral or written,

relating to the subject matter of this Agreement. Schedules referenced herein by letter or number are incorporated into this Agreement as though fully set out herein.

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

14.8. **Right to Use Client's Name.** Client authorizes TouchNet to use Client's name in marketing literature as a "Client" of TouchNet.

14.9. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of Tennessee.

14.10. **Severability.** If any one or more of the provisions of this Agreement shall be invalid, illegal, or unenforceable in any respect under any applicable statute, rule of law, or public policy, such provision shall be considered inoperative to the extent of such invalidity, illegality, or unenforceability and the remainder of this Agreement shall continue in full force and effect. The parties agree to replace any such invalid, illegal, or unenforceable provision with a new provision that has the most nearly similar permissible legal and economic effect.

14.11. **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.

14.12. **Client's Terms and Conditions.** Client's standard terms and conditions are included as Schedule F which is hereby incorporated into this Agreement.

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

**TouchNet Information Systems, Inc.**

Signature: 

By: Daniel J. Toughey

Title: President

Date: February 24, 2005

**CLIENT**

Signature: 

By: Charles M. Peccolo  
Vice Pres. & Treasurer

Title:

Date: MAR - 3 2005

## SCHEDULE A

### LICENSED SOFTWARE, TERM, AND SETUP SITE

#### License Term:

The license granted in the Software License Agreement to which this Schedule is attached commences on the Effective Date and continues in perpetuity.

#### Setup Site

The Setup Site for the Licensed Software shall be as follows:  
University of Tennessee - Martin

#### Licensed Software

The Licensed Software shall be as described below:

**TouchNet Payment Gateway Suite** is the main hub of the TouchNet Payment Gateway and Commerce Management System. It consists of the TouchNet Operations Center (the hub) and the TouchNet Credit Card and webCheck Licensed Software.

**TouchNet Payment Gateway Credit Card Software.** Payment Gateway Credit Card Software provides functionality with SCT Banner and the ability to interface to other campus web applications and self-service systems for credit card processing purposes. Payment Gateway Software includes the following:

- 1 Campus Entity
- 1 Production CPU / 1 Test CPU Environments
- 2 Additional Merchant ID's
- License for use with other campus-wide self-service web applications
- Credit Card Payment Functionality for SCT Banner
- Enhanced reporting by Merchant ID
- Interface to 1 Designated Credit Card Processor

*Payment Gateway Licensed Software runs on Windows 2000 Server, RS/6000 with AIX 4.1.3 or higher, and Sun standard hardware with Solaris 2.4 or higher operating platforms.*

*Credit Card Processors supported include FDC Nashville/Envoy, FDC Telemoney, First Horizon, GPS Central, GPS East, NCR Canada, Nova, Paymentech, and VisaNet/Vital. Credit card processor interfaces not listed may be available as a custom project and a development cost may apply.*

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

**TouchNet Payment Gateway webCheck Software.** TouchNet Payment Gateway webCheck is for use with the Client's student information system web application and provides the following functionality:

- 1 Campus Entity
- 1 Production CPU / 1 Test CPU Environments
- Standard Reporting
- Automated Check Handling

*With the web*

- User interface that enables a user to enter bank routing information, account number, and check number; then express intention to create a webCheck.
- Local database that validates bank routing numbers entered by the user.

*With TouchNet Payment Gateway*

- The TouchNet Payment Gateway creates an Automated Clearing House (ACH) Debit Transfer file, which the Client is responsible for transmitting the ACH file and to their bank.

*Additional fees will apply if the Client engages TouchNet to develop a custom file exchange program that transmits ACH files to their bank.*

*WebCheck Licensed Software runs on Windows 2000 Server, RS/6000 with AIX 4.1.3 or higher, and Sun standard hardware with Solaris 2.4 or higher operating platforms.*

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

**TouchNet e-Bill Solution Software.** The TouchNet e-Bill Solution Software is restricted to one (1) campus entity, one (1) Production CPU, and one (1) Test CPU Environment. It includes the following Licensed Software applications:

**Student Application.** The Student application contains the following functionality:

**Bill Inbox** performs the following functions.

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

**Bill Detail** performs the following actions.

- **Bill Presentment.** The Bill Detail screen presents the most recent billing statement posted to the student account. The student bill includes all line item detail for the billing statement provided by the student information system. The bill is presented in PDF or HTML formats.
- **Current Activity** – Current Activity shows all activity posted to the student account after the billing date that can include charges and

credits.

- *Bill History.* End-Users may access previous billing statements by clicking on the Bill History drop-down menu and selecting a bill. The End-User will be presented with the billing statement from that date.
- *Print.* End-Users may print the current or historical billing statement stored on the eBill database.

**Bill Payment** functionality includes:

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

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

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

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

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

*The TouchNet eBill Solution Software will require the Client to assist TouchNet in accessing files on the Client host system to allow certain functionality to be tested. Also, it is the Client's responsibility to help setup links to the student information system on the Client's campus from the licensed software.*

**TouchNet eDisbursements.** TouchNet eDisbursements provides the functionality to distribute student refunds electronically directly into the students bank account. TouchNet eDisbursements includes the following:

- 1 campus.entity
- 1 Production CPU
- 1 Test CPU

## SCHEDULE B

### MINIMUM SYSTEM REQUIREMENTS

Minimum System Requirements are as follows:

- P4 2.4Ghz Processor
- P4 Xeon Motherboard
- 1GB ECC DDR
- (2) 36GB SCA Hard Drives
- Raid Controller (Raid 1 Configuration)
- 10/100 Network Card
- AGP Video card
- Floppy Drive
- CDROM Drive
- Windows 2000 Server
- (2) 56K US Robotics compatible hardware modems\*\*

**\*\*Payment Gateway Server Only**

NOTE: Additional operating system and other requirements are set forth in connection with the respective descriptions of the Licensed Software. The Minimum System Requirements set forth above apply to the current release of the Licensed Software. The Minimum System Requirements may change with subsequent versions of the Licensed Software.

## SCHEDULE C

### IMPLEMENTATION SERVICES

***Standard Implementation Services include the following for the indicated TouchNet products:***

#### **TouchNet Payment Gateway Suite Implementation Services**

***Defined Engagement and Project Management.*** A TouchNet Implementation Specialist will work with the Client's project leaders to establish a System implementation plan. The Implementation Specialist will coordinate all Licensed Software customization, training, and setup timelines with the Client. Software Installation Support and Testing are generally completed 60 days from the receipt of Contract.

***Software Loading and System Testing.*** TouchNet will ship the Payment Gateway Licensed Software to the Client. The TouchNet Implementation Specialist will then set up a conference call between TouchNet and the Client for assistance with the installation of the Payment Gateway Licensed Software on the Client-provided Equipment, and will then provide support for testing.

***Customer Support Transition.*** After installation, the TouchNet Implementation Specialist will perform a post-installation review within 2-4 weeks and resolve any outstanding issues. The Client will then be transitioned to Customer Support.

#### **TouchNet e-Bill and eDisbursements Module for Payment Gateway Implementation Services**

***Defined Engagement and Project Management.*** A TouchNet Implementation Specialist will work with the Client's project leaders to establish a System implementation plan. The Implementation Specialist will coordinate all Licensed Software customization, training, and setup timelines with the Client. Software Installation Support and Testing are generally completed 60 days from the receipt of Contract.

***Software Loading and System Testing.*** TouchNet will ship the Licensed Software to the Client. The TouchNet Implementation Specialist will then set up a conference call between TouchNet and the Client for assistance with the installation of the Licensed Software on the Client-provided Equipment, and will then provide support for testing.

***Customer Support Transition.*** After installation, the TouchNet Implementation Specialist will perform a post-installation review within 2-4 weeks and resolve any outstanding issues. The Client will then be transitioned to Customer Support.

#### **1. Client Responsibilities.**

- Supply a list of administrator, project lead, and level one contacts.

- Having the appropriate LAN connections or analog phone lines (if applicable).
- Client Domain information.
- If the Equipment is being supplied by Client, installing the Equipment on campus or confirm the required operating system and any additional software is installed on the Equipment to be used by the Licensed Software.
- Confirm the database being used for the Licensed Software. This also includes decisions on table space and JDBC drivers (performed throughout the project).
- Updating the Client host system to accept the Licensed Software.
- Reserve training facilities for on-site installation and training (if purchased). The facilities will need overhead projector for laptop, workstations for attendees, and whiteboard or similar drawing surface.
- Testing host connectivity or any payment options (performed throughout the project).
- Assisting with final testing after installation and training (either remote or on-site).
- Verifying the credit card processor, Merchant ID information, and modem or IP connectivity to the credit card processor.
- Verifying with Client's bank the capabilities of accepting web ACH transactions. This also requires loading any software the bank requires to make this capability happen.
- Obtaining an SSL certificate that allows ACH transactions.
- Assigning the person who will be responsible for updating routing numbers.
- Giving TouchNet images needed for the webCheck Licensed Software.

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

*If client must re-schedule an installation after a date has been determined, a surcharge of 50% of the total Implementation Services Fee will apply, and the project implementation will be rescheduled based upon TouchNet's availability at that time. The maximum time allowed per project is six (6) months; if delays beyond six (6) months are caused by Client, additional Implementation fees may apply.*

*Client is responsible for reasonable travel, lodging, and food expenses incurred by TouchNet during the on-site training, in accordance with Client's travel policies.*

## SCHEDULE D

### LICENSE FEES

TouchNet will invoice and Client is obligated to make payments according to the following:

#### ***Equipment and Licensed Software***

TouchNet will invoice Client for all Equipment and Licensed Software upon shipment or when loaded at the TouchNet DataCenter, whichever is applicable. Client shall pay the invoice within 30 days of receipt.

#### ***Professional Services***

TouchNet will invoice Client for all Professional Services, including Implementation Services, upon performance of services. Client shall pay invoice within 30 days of receipt.

#### ***Annual Maintenance and Support***

TouchNet will invoice Client for the first year's Annual Maintenance and Support following installation of the Licensed Software, the granting of access to Client by TouchNet on TouchNet servers (where a hosting service option has been elected by Client), or 60 days from ship date, whichever is sooner. Client shall pay the invoice within 30 days of receipt.

#### **Total System Price (Equipment and Licensed Software):**

Product	Quantity	Unit Cost	Total
TouchNet Payment Gateway Suite License	1	\$39,300	\$39,300
Less TouchNet Limited Use Payment Gateway License			(\$15,800)
TouchNet eBill License	1	\$41,500	\$41,500
Less Discount			(\$2,700)
TouchNet eDisbursements License	1	\$21,800	\$21,800
TouchNet System Price			<b>\$84,100</b>

PR  
4/19/05

**Total Professional Services Price:**

Product	Quantity	Unit Cost	Total
TouchNet webCheck Professional Services	1	\$3,750	\$3,750
TouchNet eBill Professional Services	1	\$4,747	\$4,747
TouchNet eDisbursements Professional Services	1	\$4,748	\$4,748
TouchNet Professional Services Price			<b>\$13,245</b>

*pd 6/15/05*

**Total Annual Maintenance & Support Price:**

Product	Quantity	Unit Cost	Total
TouchNet Payment Gateway Upgrade Maintenance & Support	1	\$1,462	\$1,462
TouchNet webCheck Maintenance & Support	1	\$2,533	\$2,533
TouchNet eBill Maintenance & Support	1	\$7,055	\$7,055
TouchNet eDisbursements Maintenance & Support	1	\$3,706	\$3,706
TouchNet Maintenance and Support Price			<b>\$14,756</b>

*pd 6/15/05*

**Summary:**

Product	Total
TouchNet System Price (Exhibits A and B)	\$84,100
TouchNet Professional Services (Exhibit C)	\$13,245
TouchNet System Maintenance and Support (Exhibit F)	\$14,756
<b>Grand Total of the System</b>	<b>\$112,101</b>

*pd 6/15/05  
pd 6/15/05  
pd 6/15/05*

\*Client is responsible for actual freight and travel charges, if applicable, in accordance with Client travel policies.

Client's maximum purchase price under this Agreement will not exceed \$150,000 without execution of a signed addendum.

## SCHEDULE E

### SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT

This Software Maintenance and Support Agreement (the "Software Maintenance Agreement"), effective as of the last of the dates shown in the signature block hereto (the "Effective Date") is made between TouchNet and Client, as those terms are defined in the License Agreement effective as of \_\_\_\_\_ (the "License Agreement").

TouchNet desires to render Maintenance and Support services to Client for the Licensed Software, subject to the terms of this Software Maintenance Agreement, and Client desires to receive such services and to pay TouchNet therefor, in accordance with the terms of this Software Maintenance Agreement.

**NOW, THEREFORE**, Client and TouchNet, intending legally to be bound, agree as follows with respect to software maintenance and support issues:

1. **Definitions.** Capitalized terms used in this Software Maintenance Agreement shall have the meanings as set forth in the License Agreement, except where such terms are otherwise defined above or in the following subsections to this Section 1.

- 1.1. **Software Updates.** The term "Software Updates" means that TouchNet shall provide to Client all updates, error corrections, and enhancements generally made available to TouchNet's Clients for the Licensed Software. TouchNet shall notify Client when such updates, error corrections, and enhancements are available and, upon Client's request, either (i) ship the same to Client for setup (together with setup instructions) or (ii) make the said updates, error corrections, and enhancements available via file transfer.

- 1.2. **Unlimited Telephone Support.** The term "Unlimited Telephone Support" means that TouchNet shall provide Client, with respect to the Licensed Software, unlimited telephone support over its technical support line during normal business hours (Monday – Friday, 7-5 Central Time).

2. **Standard Software Service.** In consideration for the maintenance fees as described in Annex A hereto, TouchNet shall provide, with respect to the Licensed Software, Unlimited Telephone Support and Software Updates. In all cases in which the specified support, maintenance, or other service by TouchNet requires participation or performance by Client, if Client fails (i) promptly and effectively to perform its obligations or (ii) fails to bring its hardware, software, and operating system up to a level that meets the Minimum System Requirements (as amended from time-to-time by TouchNet) applicable to the subject version of the Licensed Software, then TouchNet shall be relieved of its responsibility for rendering the indicated maintenance, support, or other service.

3. **Exclusions.** The maintenance and other services to be provided by TouchNet under this Software Maintenance Agreement shall exclude the following:

3.1. **External Causes.** Maintenance and Support under this Software Maintenance Agreement shall not include malfunctions or performance problems resulting: (i) from external causes such as vandalism, civil disturbance, fire, flood, storm, or other exposure to the elements or temperature extremes; (ii) from tampering, abuse, power fluctuations, phone line problems, or misuse; (iii) from unauthorized installation, reinstallation, or repair; or (iv) from problems or errors resulting from unauthorized modification of the Licensed Software or Equipment or from malfunctions of or incompatibility of software not approved by TouchNet for use with the Licensed Software furnished by TouchNet.

3.2. **Cost of Excluded Service.** Any error, corrections, repairs, or replacements required to make the Licensed Software function properly because of Client modifications to the System or other events or occurrences excluded from or otherwise not covered by this Software Maintenance Agreement, 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. TouchNet currently charges a labor rate of One Hundred Forty-Eight dollars (\$148.00) per hour for repair and technical services. TouchNet reserves the right to increase the said rate at any time upon the giving of sixty (60) days advance notice to Client. Such notice may be furnished by posting the same on TouchNet's Website.

4. **Payment.** For the service provided by TouchNet under this Software Maintenance Agreement, Client will pay TouchNet a fee as described in Annex A for covered Support services and fees as set forth in Section 3.2 for other Support services.

5. **Taxes.** Client is a tax exempt entity.

6. **Term and Termination.** Unless sooner terminated as provided in this Section 6 or Termination of the License Agreement, this Software Maintenance Agreement shall continue in effect from the Effective Date hereof until the third (3rd) anniversary of the Effective Date of this Software Maintenance Agreement. Thereafter, this Software Maintenance Agreement shall continue indefinitely, but shall be terminable (with or without cause) by either party upon the giving of sixty (60) days advance written notice. This Software Maintenance Agreement may be terminated at any time:

6.1. **No Payment.** By TouchNet, upon the giving of ten (10) days advance written notice, if Client has failed to make any payment on the due date therefor, as specified herein;

6.2. **Breach Of Agreement.** By either party, if the other party has substantially breached a material provision of this Software Maintenance

Agreement (other than a promise to pay money, breach of which being covered by Section 6.1 hereof) and has failed to cure the breach to the satisfaction of the other party, as specified in the notice of breach, within thirty (30) days of the giving of the said notice; and

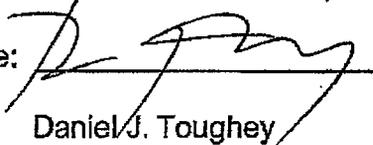
6.3. **Termination of License Agreement.** By TouchNet, immediately (with or without notice), if the License Agreement is terminated for any reason.

7. **License Agreement.** All relevant provisions of the License Agreement are incorporated into this Software Maintenance Agreement as though fully set forth herein. In the event of any conflict between the terms of the License Agreement and the provisions hereof, the License Agreement shall control, unless specific reference is made to the section in the License Agreement to be overruled and the parties expressly state that the provision cited is to be overruled.

8. **Attachments.** All Annexes or exhibits referenced herein are incorporated into this Software Maintenance Agreement as though fully set forth herein.

**IN WITNESS WHEREOF**, the parties have executed this Software Maintenance Agreement as of the respective dates set forth in the signature block below.

**TOUCHNET INFORMATION SYSTEMS, INC.**

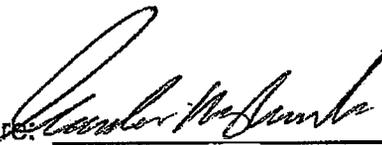
Signature: 

By: Daniel J. Toughey

Title: President

Date: February 24, 2005

**Client**

Signature: 

By: Charles M. Paccolo  
Vice Pres. & Treasurer

Title: \_\_\_\_\_

Date: MAR - 3 2005

## ANNEX A

### ANNUAL MAINTENANCE FEES

The annual fee, payable in advance, for Maintenance and Support services, as described in the Software Maintenance and Support Agreement to which this Annex is attached, are as shown below. TouchNet reserves the right to increase the fees shown below for maintenance and support by not more than ten (10%) per year over the applicable amount for the immediately preceding year.

A Maintenance Fee of \$ 14,756.00 shall be due and payable upon thirty days of receipt by the Client of an original invoice. For each subsequent year, the annual fee, adjusted by TouchNet as permitted herein, shall be payable thirty (30) days in advance of each anniversary of the Effective Date.

SCHEDULE F  
CLIENT'S STANDARD TERMS AND CONDITIONS

1. The Client is not bound by this Contract until it is approved by the appropriate Client official(s) indicated on the signature page of this Contract.
2. This Contract may be modified only by a written amendment which has been executed and approved by the appropriate parties as indicated on the signature page of this Contract.
3. TouchNet shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the Client.
4. If this Contract provides for reimbursement for travel, meals or lodging, such reimbursement must be made in accordance with Client travel policies.
5. TouchNet warrants that no part of the total Contract amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to Contractor in connection with any work contemplated or performed relative to this Contract, and that no employee or official of the State of Tennessee holds a controlling interest in TouchNet.
6. TouchNet shall maintain documentation for all charges against the Client under this Contract. The books, records and documents of TouchNet, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment, and shall be subject to audit, at any reasonable time and upon reasonable notice, by the Client or the Comptroller of the Treasury, or their duly appointed representatives. Any such audit would be restricted completely to information regarding charges or money received under this contract. These records shall be maintained in accordance with generally accepted accounting principles.
7. No person on the grounds of disability, age, race, color, religion, sex, national origin, veteran status or any other classification protected by Federal and/or Tennessee State constitutional and/or statutory law shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract. TouchNet shall, upon request, show proof of such non-discrimination, and shall post in conspicuous places, available to all employees and applicants, notice of non-discrimination.
8. TouchNet, being an independent contractor, agrees to carry adequate public liability and other appropriate forms of insurance, and to pay all taxes incident to this Contract. The Client shall have no liability except as specifically provided in this Contract.
9. TouchNet shall comply with all applicable Federal and State laws and regulations in the performance of this Contract.
10. This Contract shall be governed by the laws of the State of Tennessee, which provide that the Client has liability coverage solely under the terms and limits of the Tennessee Claims Commission Act.
11. TouchNet shall avoid at all times any conflict of interests between his/her duties and responsibilities as a Contractor and his/her interests outside the scope of any current or future Contracts. The following principles define the general parameters of a conflict of interests prohibited by the Client:
  - A. A Contractor's outside interests shall not interfere with or compromise his/her judgment and objectivity with respect to his/her duties and responsibilities to the Client.
  - B. A Contractor shall not make or influence Client decisions or use Client resources in a manner that results in:
    - Financial gain outside any current or future Contracts for either TouchNet or his/her relatives or
    - Unfair advantage to or favored treatment for a third party outside the Client.
  - C. A Contractor's outside financial interests shall not affect the design, conduct, or reporting of research.TouchNet certifies that he/she has no conflicts of interests and has disclosed in writing the following:
  - A. Any partners or employees of TouchNet who are also employees of the Client.
  - B. Any relatives of TouchNet's partners or employees who work for the Client.
  - C. Any outside interest that may interfere with or compromise his/her judgment and objectivity with respect to his/her responsibilities to the Client.
12. If TouchNet fails to perform properly its obligations under this Contract or violates any term of this Contract, the Client shall have the right to terminate this Contract immediately and withhold payments in excess of fair compensation for completed services. TouchNet shall not be relieved of liability to the Client for damages sustained by breach of this Contract by TouchNet, subject to the terms and conditions of the agreement.