

# Notice of Public Meeting

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Navajo County Community College District Governing Board (Board) and to the general public that the Board will hold a Regular District Governing Board Meeting open to the public, on **August 19, 2025 beginning at 10am**. The meetings will be held at the Northland Pioneer College Painted Desert Campus, Tiponi Community Center meeting room, located at 2251 E. Navajo Blvd., Holbrook, Arizona. The meeting can also be joined remotely using [WebEx](#). A passcode is required under certain circumstances and it is AUG25DGB.

One or more Board members and/or staff members may participate in the meeting remotely if necessary.

The public is invited to check on addenda that may be posted up to 24 hours prior to the meetings. Copies of the meeting agenda may be obtained through the Office of the President, Northland Pioneer College, Painted Desert Campus, 2251 E. Navajo Blvd., Holbrook, AZ, telephone (928) 524-7418 or (800) 266-7845 Ext. 7418, at least 24 hours in advance of the meeting. If any disabled person needs any type of accommodation, please notify Farah Bughio at the above address or telephone number at least 24 hours prior to the scheduled start time.

The Board may vote to hold an executive session for discussion or consideration of a personnel matter(s) pursuant to A.R.S. §38-431.03(A)(1). The Board may vote to hold an executive session for the purpose of obtaining legal advice from the District's attorney on any matter listed on the agenda pursuant to A.R.S. §38-431.03 (A)(3). The Board may vote to hold an executive session for the purpose of considering its position and instructing its attorney regarding the public body's position regarding contracts that are the subject of negotiations pursuant to A.R.S. §38-431.03 (A)(4). Should the District's attorney not be present in person, notice is further given that the attorney may appear by speakerphone.

I, Farah Bughio, certify that this notice of public meeting, prepared pursuant to A.R.S. § 38-431.02, was posted on or before the 18<sup>th</sup> day of August, 2025, at 10:00am.

Farah Bughio  
Recording Secretary to the Board

## NOTICE DISTRIBUTION

1. WHITE MOUNTAIN INDEPENDENT NEWSPAPER
2. TRIBUNE-NEWS & SNOWFLAKE HERALD NEWSPAPERS
3. NAVAJO TIMES
4. KINO RADIO
5. KNNB RADIO
6. COUNTRY MOUNTAIN AIRWAVES [KQAZ/KTHQ/KNKI RADIO]
7. KWKM RADIO
8. WHITE MOUNTAIN RADIO
9. NPC WEB SITE
10. NPC ADMINISTRATORS AND STAFF
11. NPC FACULTY ASSOCIATION PRESIDENT
12. NPC CLASSIFIED AND ADMINISTRATIVE SUPPORT ORGANIZATION PRESIDENT
13. NPC STUDENT GOVERNMENT ASSOCIATION PRESIDENT

## M I S S I O N

**NORTHLAND PIONEER COLLEGE  
PROVIDES EDUCATIONAL  
EXCELLENCE THAT IS AFFORDABLE  
AND ACCESSIBLE FOR THE  
ENRICHMENT OF COMMUNITIES  
ACROSS NORTHEASTERN ARIZONA.**

## V I S I O N

NPC continually responds to the needs of our communities by cultivating generations of learners. By 2030, NPC will transform lives by advancing student success and socio-economic well-being through a spirit of innovation, partnership, and creative problem-solving.

## V A L U E S

INTEGRITY  
INCLUSION  
ADAPTABILITY  
CIVILITY  
ACCESS

# Governing Board Meeting Agenda

Painted Desert Campus, Tiponi Community Center  
2251 East Navajo Boulevard, Holbrook, Arizona

The meeting location will be open to the public at 9:55 a.m. at the latest.

Or you can join on [WebEx](#) (Passcode AUG25DGB).

Date August 19, 2025

Time: 10:00 a.m. (MST)

Item	Description	Resource
1.	<b>Call to Order and Pledge of Allegiance</b> .....	Chair Robinson
2.	<b>Adoption of the Agenda</b> ..... (Action)	Chair Robinson
3.	<b>Call for Public Comment</b> ..... Individuals may address the Board on any relevant issue for up to 5 minutes. At the close of the call to the public, Board members may not respond to any comments but may respond to criticism, ask staff to review a matter or ask that a matter be placed on a future agenda.	Chair Robinson
4.	<b>Discussion Items:</b> A. <b>Standing Presentations:</b> 1. <b><a href="#">Financial Position</a></b> ..... VPAS Maderia Ellison will provide a report on the financial position of the college for period July 1, 2024 to May 31, 2025 and July 1, 2024 to June 30, 2025. 2. <b><a href="#">NPC Student Government Association (SGA)</a></b> ..... No report. 3. <b><a href="#">NPC Faculty Association</a></b> ..... Faculty Association President, Andi DeBellis, will give the Board an update. 4. <b><a href="#">Classified &amp; Administrative Staff Organization (CASO)</a></b> ..... CASO President, Cynthia Blevins, will give the Board an update. 5. <b><a href="#">Compensation Committee</a></b> ..... No report. 6. <b><a href="#">Northland Pioneer College (NPC) Friends and Family</a></b> ..... Friends & Family Director, Jesse Reeck, will give the Board with an update. 7. <b><a href="#">Human Resources</a></b> ..... A report is provided packet. 8. <b><a href="#">Construction Report</a></b> ..... Director of Facilities and Transportation, Justin White, will give the Board an update. 9. <b><a href="#">Enterprise Resource Planning (ERP) Implementation Update</a></b> . Project Manager, Colleen Marsh, will give the Board an update. 10. <b><a href="#">ACCT Federal &amp; State Legislative Update</a></b> ..... Report if available.	VPAS Ellison  No report Andi DeBellis Cynthia Blevins No report Director Reeck Written Report Director White Colleen Marsh Chair Robinson
5.	<b>President's Report</b> ..... President Von Lawson will provide the Board with an update.	President Lawson
6.	<b>Consent Agenda for Action</b> ..... A. <b><a href="#">June 17, 2025 Board Meeting Minutes</a></b> (Farah Bughio) B. <b><a href="#">2025 - 31 Intergovernmental Agreement</a></b> between Navajo County Community College District and Northern Arizona Training Center for Members C. <b><a href="#">2025 - 31 Intergovernmental Agreement</a></b> between Navajo County Community College District and Northeastern Arizona Law Enforcement Training Academy for Members. D. <b><a href="#">2025 - 31 Intergovernmental Agreement</a></b> between Navajo County Community College District and Northern Arizona Training Center for Members. E. <b><a href="#">Memorandum of Understanding</a></b> between Maricopa Community Colleges and Northland Pioneer College.	Chair Robinson

**7. For Discussion and Possible Action:**

**A. Old Business**

**B. New Business:**

1. [Request to Approve Annual SMARTnet Renewal](#)..... CIO Jacob  
CIO Jacob will request the Board approve the purchase of annual SMARTnet renewal.
2. [Request to Approve 5-Year Contract with Blackboard](#)..... CIO Jacob  
CIO Jacob will request the Board approve the purchase of Blackboard.
3. [Request to Enter into a Contract with TouchNet](#)..... Director Kupfer  
Director Russell Kupfer will request the Board approve the purchase of contract with TouchNet.
4. **Request to Hold DGB Meeting at Another Location** ..... Ms. Sekayumptewa  
Board Member Rosie Sekayumptewa will request that a future District Governing Board meeting be held at another location.
5. [Request to Approve Board Member Travel](#) ..... Julia Wilson  
Julia Wilson, Recording Secretary to the Board, will present a request for Board members to travel to the annual ACCT Leadership Congress in October 2025.
6. **Request to Approve VPHR Nicole Ulibarri as the NPC Trustee for Mountain Public Employee Benefit Trust**..... President Lawson  
President Lawson will request the Board to approve VPHR Nicole Ulibarri as the NPC Trustee for MPEBT
7. [Request to Approve Lease with Kayenta](#)..... President Lawson  
President Lawson will request the Board approve the lease with Kayenta.

**8. DGB Agenda Items and Informational Needs for Future Meetings** ..... Chair Robinson

**9. Board Report/Summary of Current Events**..... Board Members

**10. Announcement of Next Regular Meeting**.....**September 16** Chair Robinson

**11. Adjournment**..... **(Action)** Chair Robinson

The District Governing Board may consider any item on this agenda in any order and at any time during the meeting. The District Governing Board may take action regarding any items in sections 7 & 8. The Board may vote to hold an executive session for the purpose of discussing Presidential employment goals listed on the agenda pursuant to A.R.S. §38-431.03 (A)(4). Should the District's attorney not be present in person, notice is further given that the attorney may appear by speakerphone.



**Northland Pioneer College**

Post Office Box 610 • Holbrook, AZ 86025 • (928) 524-7311 • Fax (928) 524-7312 • [www.npc.edu](http://www.npc.edu)

NAVAJO COUNTY COMMUNITY COLLEGE DISTRICT  
Statement of Financial Position  
July 1, 2024 to May 31, 2025

Budget Period Expired 92%

Tax Supported Funds				
Current General Fund				
	Revised Budget	Current Month Actual	Y-T-D Actual	%
REVENUES				
Primary Tax Levy	18,340,750	3,647,718	17,897,367	98%
State Aid:				
Maintenance and Operations	1,375,600	-	1,370,600	100%
Equalization	12,016,200	-	12,016,200	100%
Rural Aid	815,000	-	815,000	100%
Tuition and Fees	3,800,000	692,307	5,514,770	145%
Investment earnings	2,000,000	360,474	3,917,189	196%
Grants and Contracts	2,730,000	11,704	4,368,220	160%
Other Miscellaneous	350,000	12,751	168,740	48%
Fund Balance	15,626,726	-	-	0%
Transfers	(18,226,726)	(533,448)	(4,071,764)	22%
TOTAL REVENUES	\$ 38,827,550	\$ 4,191,506	\$ 41,996,322	108%
EXPENDITURES				
Salaries and Benefits	26,487,637	2,238,384	23,464,345	89%
Operating Expenditures	12,339,913	914,075	8,802,630	71%
TOTAL EXPENDITURES	\$ 38,827,550	\$ 3,152,459	\$ 32,266,975	83%
Unrestricted Plant				
	Revised Budget	Current Month Actual	Y-T-D Actual	%
REVENUES				
State Aid:				
Capital/STEM	273,600	-	273,600	100%
NAVIT Automotive Remodel	-	-	400,000	
Fund Balance	13,626,729	517,568	3,957,962	29%
Transfers In	4,000,000	353,638	2,784,836	29%
TOTAL REVENUES	\$ 17,900,329	\$ 871,206	\$ 7,416,398	41%
EXPENDITURES				
Capital Expenditures - Construction and ERP	10,000,000	517,568	3,957,962	40%
Capital Expenditures - Other	7,900,329	353,638	3,458,435	44%
TOTAL EXPENDITURES	\$ 17,900,329	\$ 871,206	\$ 7,416,398	41%

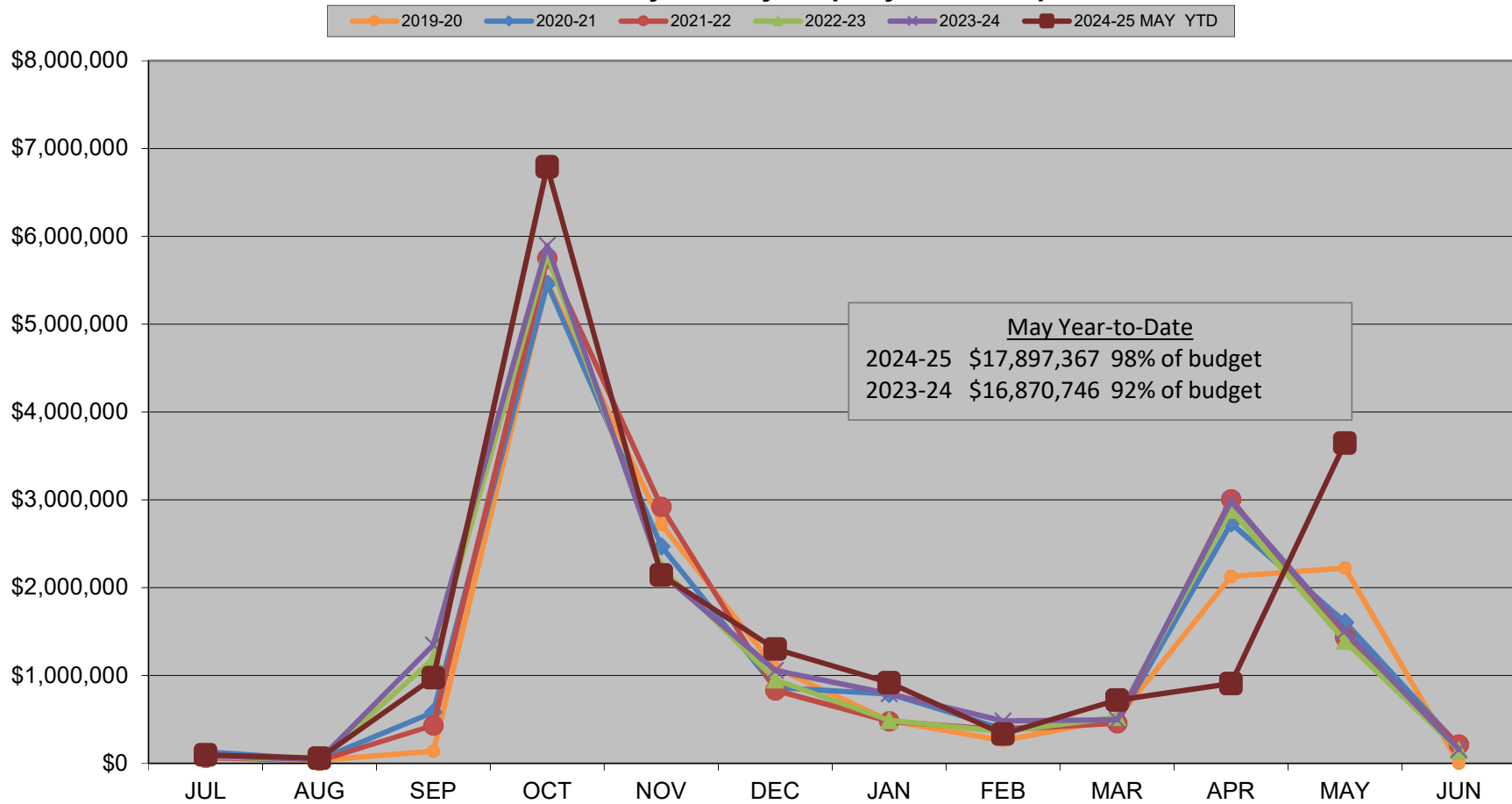
NAVAJO COUNTY COMMUNITY COLLEGE DISTRICT  
Statement of Financial Position  
July 1, 2024 to May 31, 2025

Budget Period Expired 92%

Restricted and Auxiliary Funds				
Restricted				
	Current Month			
	Budget	Actual	Y-T-D Actual	%
REVENUES				
Grants and Contracts	8,800,000	365,946	6,198,988	70%
Kayenta Grant	-	-	8,895,684	
Fund Balance	-	-	-	
Transfers In	400,000	-	-	0%
TOTAL REVENUES	\$ 9,200,000	\$ 365,946	\$ 15,094,672	164%
EXPENDITURES				
Salaries and Benefits	3,250,000	175,567	1,827,365	56%
Operating Expenditures	5,950,000	285,492	3,140,304	53%
TOTAL EXPENDITURES	\$ 9,200,000	\$ 461,059	\$ 4,967,669	54%
Auxiliary				
	Current Month			
	Budget	Actual	Y-T-D Actual	%
REVENUES				
Sales and Services	240,000	11,867	152,771	64%
Fund Balance	-	-	-	
Transfers	200,000	15,880	113,802	57%
TOTAL REVENUES	\$ 440,000	\$ 27,747	\$ 266,572	61%
EXPENDITURES				
Salaries and Benefits	349,654	13,893	143,533	41%
Operating Expenditures	90,346	13,854	123,038	136%
TOTAL EXPENDITURES	\$ 440,000	\$ 27,747	\$ 266,572	61%

Cash Flows	
Cash flows from all activities (YTD) . . . . .	\$ 64,773,964
Cash used for all activities (YTD) . . . . .	\$ 44,917,614
Net Cash for all activities (YTD) . . . . .	\$19,856,350

## Monthly Primary Property Tax Receipts



NAVAJO COUNTY COMMUNITY COLLEGE DISTRICT

Statement of Financial Position

July 1, 2024 to Juner 30, 2025

Budget Period Expired

100%

**Tax Supported Funds**

		<b>Current General Fund</b>			
		<b>Revised Budget</b>	<b>Current Month Actual</b>	<b>Y-T-D Actual</b>	<b>%</b>
<b>REVENUES</b>					
Primary Tax Levy		18,340,750	257,251	18,154,617	99%
State Aid:					
Maintenance and Operations		1,375,600	-	1,370,600	100%
Equalization		12,016,200	-	12,016,200	100%
Rural Aid		815,000	-	815,000	100%
Tuition and Fees		3,800,000	267,446	5,782,216	152%
Investment earnings		2,000,000	355,673	4,272,863	214%
Grants and Contracts		2,730,000	369,303	4,737,523	174%
Other Miscellaneous		350,000	23,287	192,028	55%
Fund Balance		15,626,726	-	-	0%
Transfers		(18,226,726)	(2,028,104)	(6,099,868)	33%
<b>TOTAL REVENUES</b>		<b>\$ 38,827,550</b>	<b>\$ (755,144)</b>	<b>\$ 41,241,179</b>	<b>106%</b>
<b>EXPENDITURES</b>					
Salaries and Benefits		26,487,637	2,561,899	26,026,244	98%
Operating Expenditures		12,339,913	812,607	9,615,238	78%
<b>TOTAL EXPENDITURES</b>		<b>\$ 38,827,550</b>	<b>\$ 3,374,506</b>	<b>\$ 35,641,482</b>	<b>92%</b>
		<b>Unrestricted Plant</b>			
		<b>Revised Budget</b>	<b>Current Month Actual</b>	<b>Y-T-D Actual</b>	<b>%</b>
<b>REVENUES</b>					
State Aid:					
Capital/STEM		273,600	-	273,600	100%
NAVIT Automotive Remodel		-	-	400,000	
Fund Balance		13,626,729	2,021,406	5,979,368	44%
Transfers In		4,000,000	1,138,940	3,923,776	44%
<b>TOTAL REVENUES</b>		<b>\$ 17,900,329</b>	<b>\$ 3,160,346</b>	<b>\$ 10,576,744</b>	<b>59%</b>
<b>EXPENDITURES</b>					
Capital Expenditures - Construction and ERP		10,000,000	2,021,406	5,979,368	60%
Capital Expenditures - Other		7,900,329	1,138,940	4,597,375	58%
<b>TOTAL EXPENDITURES</b>		<b>\$ 17,900,329</b>	<b>\$ 3,160,346</b>	<b>\$ 10,576,744</b>	<b>59%</b>

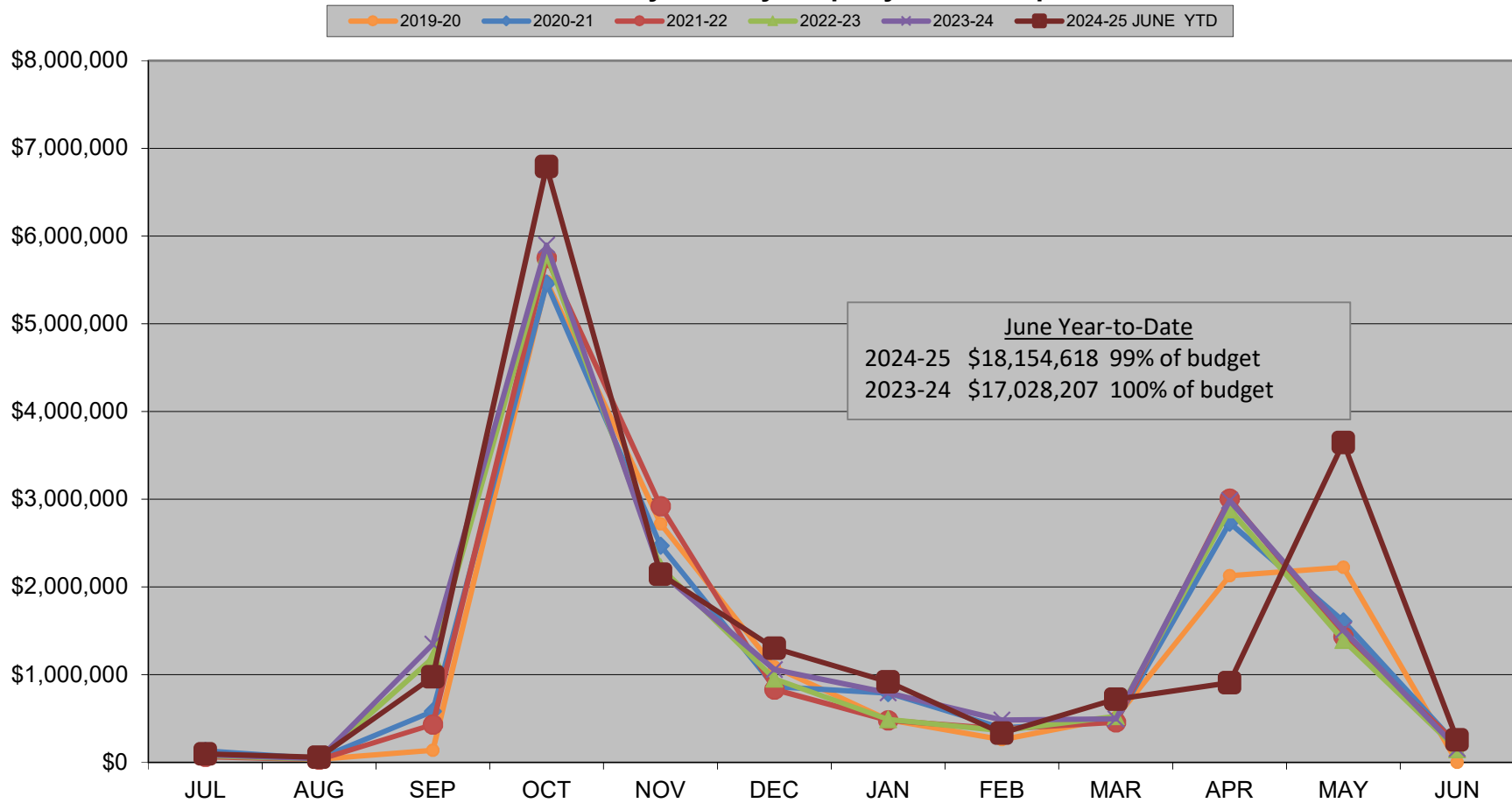
NAVAJO COUNTY COMMUNITY COLLEGE DISTRICT  
Statement of Financial Position  
July 1, 2024 to Juner 30, 2025

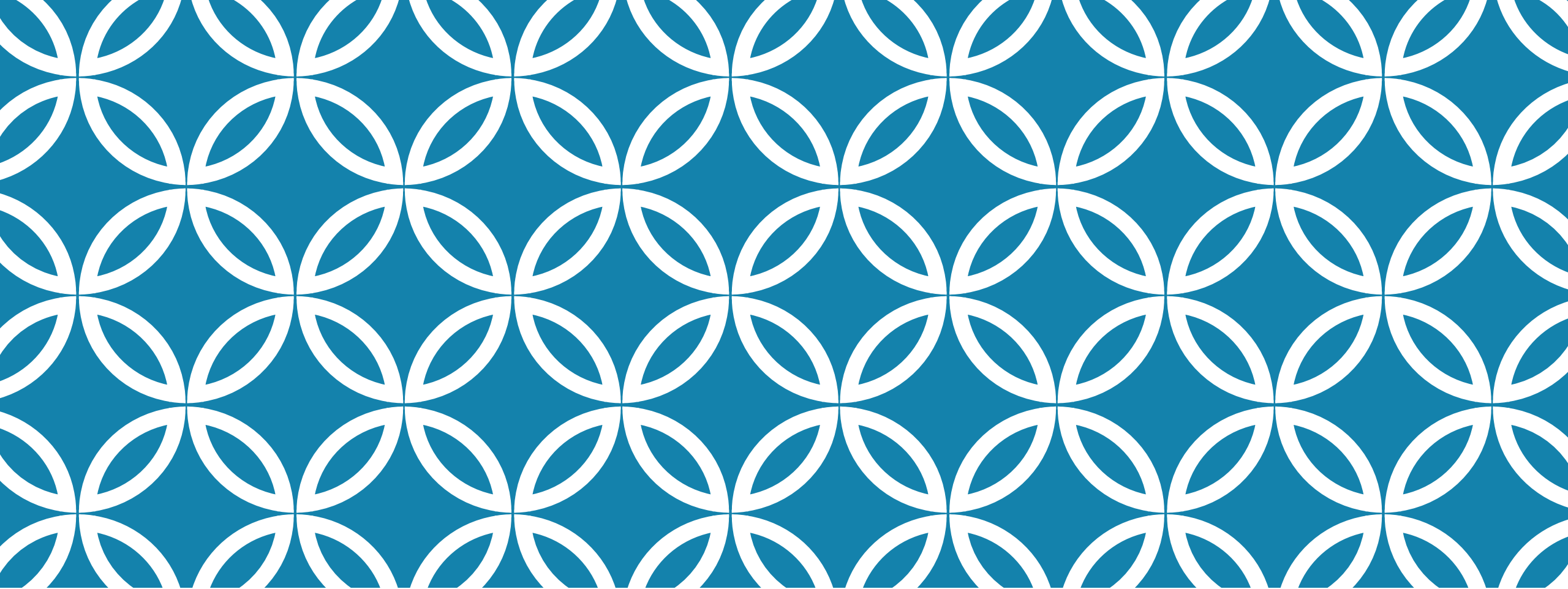
Budget Period Expired 100%

Restricted and Auxiliary Funds				
Restricted				
Current Month				
Budget	Actual	Y-T-D Actual	%	
REVENUES				
Grants and Contracts	8,800,000	1,428,733	7,627,721	87%
Kayenta Grant	-	-	8,895,684	
Fund Balance	-	-	-	
Transfers In	400,000	-	-	0%
TOTAL REVENUES	\$ 9,200,000	\$ 1,428,733	\$ 16,523,405	180%
EXPENDITURES				
Salaries and Benefits	3,250,000	124,223	1,951,588	60%
Operating Expenditures	5,950,000	298,967	3,439,271	58%
TOTAL EXPENDITURES	\$ 9,200,000	\$ 423,190	\$ 5,390,859	59%
Auxiliary				
Current Month				
Budget	Actual	Y-T-D Actual	%	
REVENUES				
Sales and Services	240,000	13,825	166,595	69%
Fund Balance	-	-	-	
Transfers	200,000	6,698	120,500	60%
TOTAL REVENUES	\$ 440,000	\$ 20,523	\$ 287,094	65%
EXPENDITURES				
Salaries and Benefits	349,654	14,183	157,716	45%
Operating Expenditures	90,346	6,340	129,377	143%
TOTAL EXPENDITURES	\$ 440,000	\$ 20,523	\$ 287,094	65%

Cash Flows	
Cash flows from all activities (YTD) . . . . .	\$ 68,628,422
Cash used for all activities (YTD) . . . . .	\$ 51,896,179
Net Cash for all activities (YTD) . . . . .	\$16,732,243

## Monthly Primary Property Tax Receipts





# EARLY COLLEGE DATA UPDATES

# NPC ATTENDANCE RATES AMONG HIGH SCHOOL STUDENTS WHO WERE IN THEIR LAST YEAR OF HIGH SCHOOL

	AY2019-2020	AY2020-2021	AY2021-2022	AY2022-2023	AY2023-2024
# High School Graduates in Apache or Navajo counties from ADE files <sup>1</sup>	1793	1667	1788	2307	2349
# EC students whose high school graduation date was within the Academic Year	714	681	723	725	737
NPC attendance rate in last year of high schools <sup>2</sup>	39.8%	40.9%	40.4%	31.4%	31.3%

# HIGH SCHOOL GRADUATE MATRICULATION RATE TO NPC

	AY2019-2020	AY2020-2021	AY2021-2022	AY2022-2023	AY2023-2024
Unique number of EC students	1484	1602	1659	1588	1872
Number of students graduated in target AY	714	681	723	725	737
Number of graduates enrolled in next AY as regular students	163	116	131	162	167
Rate	22.8%	17.0%	18.1%	22.3%	22.6%



# Northland Pioneer College

EXPANDING MINDS • TRANSFORMING LIVES<sup>SM</sup>

## HUMAN RESOURCES

### MONTHLY REPORT

August 2025

# EMPLOYEE RELATIONS AND STAFFING

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On September 10<sup>th</sup> the department will host our next new employee onboarding session. This session is open to all NPC employees who wish to register for a refresher, or if they have never attended a session before.

## WELCOME AND RECOGNITION

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We would like to welcome the following new employees to Northland Pioneer College

❖ Lorraine Hover	Dean of Nursing
❖ April Horne	Institutional Research Analyst
❖ Samuel Romine	Faculty in Automotive Technology
❖ Julia Wilson	Assistant to the President & Recording Secretary for the DGB
❖ Lisa Schultz	EMT Program Clerk
❖ Alexandria Stritmatter	Faculty in Psychology
❖ Daniel Milowski	Faculty in History
❖ Deborah Hall	Educator Preparation Programs Faculty
❖ Grant Smith	Faculty in Geology
❖ Michelle Blunt	Academic Advisor Apache County

Congratulations to the below employees as they transition to new positions

❖ Georgette Hackman	Cosmetology Office Manager
❖ Nicole Ulibarri	Interim Vice President of Human Resources
❖ Aidan Berge	Technical Support Technician I
❖ Rennie Hutton	Technical Support Technician I
❖ Jeremy Woodside	Maintenance II
❖ Keith Alsobrook	Maintenance III
❖ Diana Gaddie	Faculty in CCP - Integrated Education and Training
❖ Tyler Allen	Therapeutic Massage Faculty

- ❖ Andrew Farr                      Assoc Dean of CTE
- ❖ Jennifer Brimhall                Director of Student Engagement

The following employees have left the institution since the last report

- ❖ Ricardo Aguilar                  Center Manager
- ❖ Ricardo Baca                      Groundskeeper III
- ❖ Brian Mowers                    Maintenance Lead
- ❖ Erin Pugh                          Budget & Accounting Analyst
- ❖ Christine Schaefer               Associate Vice President of Human Resources

## RECRUITMENT

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	Location	# Qualified Applicants	Date Opened	Closing Date	Status
Faculty in Industrial Technology	White Mountain Campus	4	5/22/25	Open Until Filled	Offer in Progress
Maintenance Lead	Painted Desert Campus	3	6/25/25	7/15/25	Offer in Progress
Mechanic	Painted Desert Campus	2	6/25/25	7/15/25	Offer in Progress
Center Manager	Whiteriver Center	2	6/30/25	7/15/25	Offer in Progress
Faculty in Computer Information Systems- 9 months	White Mountain Campus	2	7/11/25	Open Until Filled	In Review
Risk Manager	White Mountain Campus	3	7/17/25	Open Until Filled	In Review
Academic Advisor - WMC	White Mountain Campus	14	7/24/25	8/15/25	In Review
Maintenance I	Painted Desert Campus	5	7/24/25	8/14/25	In Review
Support Center Operator	Painted Desert Campus	4	7/25/25	Open Until Filled	In Review
Academic Advisor - PDC	Painted Desert Campus	4	7/28/25	8/14/25	In Review

Faculty in Construction Technology 9 months	Silver Creek Campus	1	7/29/25	Open Until Filled	In Review
Faculty in Construction Technology 10 months	St. Johns Center	0	8/12/25	9/11/25	In Review
Temporary Assistant to Interim Vice President for Human Resources	Painted Desert Campus	0	8/12/25	Open Until Filled	In Review

## EMPLOYEE CENSUS DATA

Turnover Rate for FY25/26		Employee Count	Separated	Turnover Rate
Total Employees as of	7/1/2025	357	0	0.0%
Total Faculty Turnover	FY25/26 to date		0	0.0%
Total Staff Turnover	FY25/26 to date		0	0.0%
Turnover Rate for the Last 12 Months		Employee Count	Separated	Turnover Rate
Totals for August 2024 – August 2025		357	33	9.24%
Total Faculty Turnover August 2024 – August 2025			7	1.96%
Total Staff Turnover August 2024 –August 2025			26	7.28%

\*Turnover Rate Calculated by dividing the number of separated employees during the period by the number of employees at the beginning of the period. This figure reflects contract employees only and excludes temporary employees

**CUPA-HR Turnover Report for 2024:** “In considering turnover from all types of separations (i.e., voluntary and involuntary), **overall turnover of faculty and staff combined in 2024 was approximately 13.4%.** Overall turnover in 2024 was similar to overall turnover in 2023. Turnover in 2024 was higher than pre-pandemic rates (approximately 12%), but lower than the 16% high of 2022.

## TOTAL REWARDS

### BENEFITS AND COMPENSATION

Compensation: The Compensation Committee continues to work diligently on finalizing the Compensation Guidelines.

# **Navajo County Community College District Governing Board Meeting Minutes**

June 17 – 10:00a.m.

Painted Desert Campus, Tiponi Community Center Board Room  
2251 East Navajo Boulevard, Holbrook, AZ 86025

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**Governing Board Member Present:** Chair. Everett Robinson, Ms. Kristine Laughter; Mr. Frank Lucero; Ms. Rosie Sekayumtewa; Derrick Leslie

**Governing Board Member Absent:**

**Others Present:** President Von Lawson; VPLSS Michael Solomonson; CIO Michael Jacob; Betsy Wilson; VPAS Maderia Ellison; Katie Matott; Justin White; Russell Kupfer; Allison Landy; Norvita Charleston; Muriel Metcalf; Farah Bughio; Wei Ma; Talaina Fisher; Erin Pugh; Wei Ma; Paul Hempsey; Jeremy Raisor; Nicole Ulibarri; Rebecca Sweet; Ruth Zimmerman; Betsy Wilson; Lia Keenan; Michael Colwell; Josh Rogers; Donna Krieser; Ryan Jones; Colleen Marsh; Cynthia Blevins; Melissa Willis; Shandin Deputee; Terry Stove; Mark Vest

## **Agenda Item 1: Call to Order and Pledge of Allegiance**

Chair Robinson called the meeting to order at 10:00 a.m. and led the Pledge of Allegiance.

## **Agenda Item 2: Adoption of Agenda**

*Chair Robinson asked if there was a motion to adopt the agenda. Mr. Lucero made a motion to adopt the amended agenda. Mr. Leslie seconded the motion.*

*The motion carried upon a roll-call vote with Mr. Lucero, Ms. Sekayumtewa, Mr. Leslie and Chair Robinson voting in favor. There were no votes against.*

## **Agenda Item 3: Administrator Emeritus Award – Ruth Zimmerman**

Dean Jeremy Raisor presented Ruth Zimmerman with the Administrator Emeritus Award.

## **Agenda Item 4: Administrator Emeritus Award – Michael Colwell**

Director Josh Rogers presented Michael Colwell with the Administrator Emeritus Award.

## **Agenda Item 5: Administrator Emeritus Award – Frank Pinnell**

NPC awarded Frank Pinnell with the Administrator Emeritus Award

## **Agenda Item 6: Administrator Emeritus Award – Betsyann Wilson**

Ryan Jones presented Betsyann Wilson with the Administrator Emeritus Award.

## **Agenda Item 7: Call for Public Comment**

Terry Stove used this opportunity to speak about Director Betsyann Wilson.

## **Agenda Item 8: Discussion Items**

### ***8.A.1. Financial Position***

Director Russell Kupfer expanded on the report provided in the packet.

Mr. Lucero asked about external reports being delayed due to lack of staff. Director Kupfer responded that and other factors are responsible for delays.

### ***8.A.2. NPC Student Government Association (SGA)***

Shandiin Deputee gave a presentation on Eagle Club

No questions.

### ***8.A.3. NPC Faculty Association***

No report.

No questions.

### ***8.A.4. Classified and Administrative Staff Organization (CASO)***

CASO President, Melissa Willis, gave the Board an update.

Mr. Lucero asked Ms. Willis if by 'White Mountains' she was only referring to a segment of NPC's coverage area. Ms. Willis elaborated. Mr. Lucero said he found this insulting. Ms. Willis apologized.

Ms. Sekayumptewa commented that services offered by CCL were needed all over the district and that they should be advertised. Ms. Willis agreed.

### ***8.A.5. Compensation Committee***

Director Justin White gave the Board an update.

No questions.

### ***8.A.6. Northland Pioneer College (NPC) Friends and Family***

Betsy Wilson, Director of NPC Friends and Family gave an update on scholarships and NPC Friends and Family.

Chair Robinson thanked Director Wilson for her service.

### ***6.A.7. Human Resources***

VPHR Nicole Ulibarri elaborated on a report provided in the packet.

Mr. Leslie asked VPHR what her work with the committee looked like. Ms. Ulibarri elaborated.

Mr. Leslie asked about factors that go into the pay scale and that he was looking forward to seeing the Compensations Committee's recommendations. VPHR Ulibarri explained the requested factors.

Mr. Lucero asked if they would ever see a 6% increase in pay across the board. VPHR Ulibarri explained the intention of the committee.

Both Mr. Lucero and Mr. Leslie asked for the Gallagher Study.

#### **8.A.8. Construction Report**

Director Justin White gave the Board an update on construction projects.

Mr. Leslie asked if the Kayenta grant had been signed. Dr. Lawson responded that it had.

Chair Robinson commented that some of the signage at SCC needed to be updated.

Ms. Sekayumptewa asked if the groundbreaking at Kayenta had happened and if the Board could go. Director White responded it had not happened yet and that the Board was invited.

#### **8.A.9. Enterprise Resource Planning (ERP) Implementation Update**

Project Manager, Colleen Marsh gave the Board an update.

No questions.

#### **8.A.10. Arizona Association of Community College Trustees (AACCT)**

Chair Robinson gave the Board an update.

No questions.

There was a motion by Mr. Lucero to move the Executive Session on the agenda. This *Mr. Lucero made a motion to move the Executive Session on the agenda. Mr. Leslie seconded the motion. The motion carried upon a roll-call vote with Mr. Lucero, Mr. Leslie, Ms. Sekayumptewa, Ms. Laughter and Chair Robinson voting in favor. There were no votes against.*

The Board took a break beginning at 11:46 a.m.

### **Agenda Item 12.B.5: Executive Session**

The Board voted to enter Executive Session to discuss the President's performance.

*Mr. Leslie made a motion to enter Executive Session. Mr. Lucero seconded the motion. The motion carried upon a roll-call vote with Mr. Lucero, Mr. Leslie, Ms. Sekayumptewa, Ms. Laughter and Chair Robinson voting in favor. There were no votes against.*

## **Agenda Item 12.B.6: Action from Executive Session**

*Mr. Lucero made a motion to give Dr. Lawson a Cost of Living Adjustment. Ms. Sekayumptewa seconded the motion. The motion carried upon a roll-call vote with Mr. Lucero, Mr. Leslie, Ms. Sekayumptewa, Ms. Laughter and Chair Robinson voting in favor. There were no votes against.*

## **Agenda Item 9: Higher Learning Commission Financial Ratios**

Director Russell Kupfer elaborated on a report provided to the Board.

No questions.

## **Agenda Item 10: 2025 – President’s Report**

President Lawson gave the Board an update

No questions.

## **Agenda Item 11: Consent Agenda**

- A. May 20 2025 Regular Board Meeting Minutes (Farah Bughio)
- B. May 20, 2025 Special Meeting Minutes (Farah Bughio)

*Mr. Lucero made a motion to approve all items on the consent agenda. Ms. Sekayumptewa seconded the motion. The motion carried upon a roll-call vote with Mr. Lucero, Ms. Sekayumptewa, Mr. Leslie and Ms. Laughter and Chair Robinson voting in favor. There were no votes against.*

## **Agenda Item 12: For Discussion and Possible Action**

### **12.A. Old Business**

### **12.B. New Business**

#### **12.B.1. Request to Approve Annual Jenzabar Support and Maintenance for 2025 - 2026**

Karen Baker requested that the Board approve annual Jenzabar support and maintenance for 2025 – 2026.

Mr. Lucero asked if we’ve gotten rid of Jenzabar yet. Ms. Baker responded no.

*Ms. Lucero made a motion to approve the purchase of approve annual Jenzabar support and maintenance for 2025 – 2026 for \$416,168.90. Ms. Sekayumptewa seconded the motion. The motion carried upon a roll-call vote with Mr. Lucero, Ms. Sekayumptewa, Mr. Leslie Ms. Laughter and Chair Robinson voting in favor. There were no votes against.*

#### **12.B.2. Request to Accept Funds for Phase III NAGIN**

Dean Jeremy Raisor asked the Board to accept funds for the phase III of NAGIN.

*Ms. Lucero made a motion to accept funds for phase III of NAGIN in the amount of \$1,472,742. Ms. Sekayumptewa seconded the motion. **The motion carried upon a roll-call vote with Mr. Lucero, Ms. Sekayumptewa, Mr. Leslie Ms. Laughter and Chair Robinson voting in favor. There were no votes against.***

**12.B.3 Request to Accept Grant Funds for NAVIT**

Dean Jeremy Raisor asked the Board to accept grant funds for NAVIT.

*Ms. Lucero made a motion to accept funds for NAVIT in the amount of \$500,000. Ms. Sekayumptewa seconded the motion. **The motion carried upon a roll-call vote with Mr. Lucero, Ms. Sekayumptewa, Mr. Leslie Ms. Laughter and Chair Robinson voting in favor. There were no votes against.***

**Agenda Item 13: DGB Agenda Items and Informational Needs for Future Meetings.**

Ms. Sekayumptewa asked about the Board Retreat.

**Agenda Item 14: Board Report/Summary of Current and Upcoming Events**

**Agenda Item 15: Announcement of Next Regular Meeting**

June 17, 2025

**Agenda Item 16: Adjournment**

*The meeting was adjourned at 2:23 p.m. upon a motion by Mr. Lucero and a second by Ms. Sekayumptewa. **The motion carried upon a roll-call vote with Ms. Sekayumptewa, Mr. Lucero, Ms. Laughter and Chair Robinson voting in favor. There were no votes against.***

Respectfully submitted,



Farah Bughio  
Recording Secretary to the Board

**AGREEMENT FOR  
NORTHEASTERN ARIZONA LAW ENFORCEMENT TRAINING ACADEMY  
AT NORTHEAST ARIZONA TRAINING CENTER**

This Agreement ("Agreement") is made pursuant to Arizona Revised Statutes ("A.R.S.") among Navajo County Community College District dba Northland Pioneer College ("College"), Northeast Arizona Training Center, a non-profit corporation ("NATC"), and Navajo County, City of Show Low, Town of Taylor, City of Snowflake, Town of Pinetop-Lakeside, City of Holbrook, City of Winslow, Town of Eagar, Town of Springerville, Apache County, and the White Mountain Apache Tribe. Collectively, the cities, towns, tribes and municipalities signing on to this Agreement shall be known as the "Member Agencies" and individually as a "Member."

**Section 1. Purpose.**

The purpose of this Agreement is to provide Northeastern Arizona with a Police Academy hereby called Northeastern Arizona Law Enforcement Training Academy ("NALETA") that can provide certified AZPOST ("Arizona Peace Officer Standards and Training") training to students who meet AZPOST qualifications and are sponsored by a Law Enforcement agency.

**Section 2. Enrollment.**

Member Agencies and non-member agencies may enroll employees in NALETA to the extent that the employees are qualified for enrollment as set forth by AZPOST Rules and Procedures Manual as set under the State of Arizona Rules of Authority A.R.S. §§ 41-1821 through 41-1828.01 and Arizona Administrative Code, Title 13-4-101 through 13-4-118 and that NALETA has the capacity to train those employees. College shall not be required to accept any employee for enrollment unless the city, town, tribe, or county responsible for that employee has conducted any required background checks on the employee at its own expense as set forth by AZPOST regulations.

**Section 3. Duties and Responsibilities of College.** College shall operate and administer NALETA at the NATC. College's operational and administrative responsibilities shall include, but are not limited to:

**3.1 Curriculum Development:** Developing and providing the AZPOST curriculum for use at NALETA.

**3.2 Program Administration:** Scheduling courses, registering students, and administering student transcripts for NALETA courses.

**3.3 Instructor Support:** Assisting instructors at NALETA.

**3.4 Insurance and Liability:** Obtaining and maintaining adequate insurance coverage to protect against liabilities arising from damage to persons or property resulting from the operation of NALETA.

**3.5 Class Supervisor Funding:** The College shall compensate the Member employing the Class Supervisor in the amount of fifty thousand dollars (\$50,000.00) per fiscal year. Payment shall be made directly to the employing Member within thirty (30) calendar days of the submission of a proper

invoice. In no event shall the College's total payment obligation under this provision exceed fifty thousand dollars (\$50,000.00) for that fiscal year.

**3.6 Class Availability:** College shall have no obligation to conduct any class for which Members fail to provide qualified instructors who meet all necessary certification and training requirements as required by AZPOST Rules and Procedures, including Class Supervisor and Recruit Training Officer(s) (RTO) in accordance with the requirements in Section 4.

#### **Section 4. Duties and Responsibilities of Member Agencies.**

**4.1 Instructor Provision:** Member Agencies shall provide qualified instructors for all classes offered under this Agreement, including the Class Supervisor and RTO specified below, and any expert as may be required under the AZPOST Rules and Procedures. Such instructors must meet all applicable certification and training requirements as determined by AZPOST Rules and Procedures, including certification as a Arizona Peace Officer Standards and Training (AZPOST) General Instructor.

**4.2 Instructor Compensation:** Except for the College's payment obligation set forth in Section 3.5 above, compensation for instructors shall be the sole responsibility of the Member Agency employing said instructors. No party to this Agreement, other than the employing agency, shall have any liability for instructor compensation.

**4.3 Staffing Requirements and Cooperation.** The Parties understand and agree that each class requires the following minimum staff:

- **Class Supervisor**
  - **Recruit Training Officer 1 (RTO 1)**
  - **Recruit Training Officer 2 (RTO 2), as needed to maintain the ratio described in 4.3(b), below.**
- a. **Class Supervisor Provision:** Member Agencies shall provide, on a determined rotation agreed to by and between the Member Agencies, a Class Supervisor (not necessarily holding the rank of "sergeant") who must be vetted and selected by representatives of the Member Agencies. This commitment is expected to be fulfilled for a period of 36 months.
- b. **RTO Provision:** Member Agencies shall provide a sufficient number of Recruit Training Officers (RTOs) to ensure that each class maintains the ratio of not more than one (1) RTO per ten (10) students/cadets.
- i. The **Navajo County Sheriff's Office (NCSO)** shall provide RTO 1 for each class during the term of this Agreement. NCSO shall be exempt from providing any additional staff (such as Class Supervisor) other than those scheduled as specific class instructors
  - ii. If a second RTO is needed for any class, RTO 2 shall be assigned on a one-year rotational basis.
- c. **Member Agency Cooperation.** A rotational matrix for Class Supervisors and RTOs shall be established and adhered to by all Member Agencies entering this Agreement. In the event that a Member Agency is unable to fulfill its staffing obligations under the rotational matrix, that Member Agency shall be responsible for coordinating an appropriate replacement staff member.

## **Section 5. Financial Obligations:**

**5.1 MEMBER Agencies:** Each Member Agency shall contribute an annual payment of \$10,000.00 to the Northern Arizona Training Center (NATC). This contribution provides all-inclusive access to the Northern Arizona Law Enforcement Training Academy (NALETA) facility and permits unlimited attendance of police recruits from the Member Agency at training sessions conducted at the academy.

The totality of this contribution shall be used by NATC exclusively for purposes that support and sustain NALETA operations. These purposes shall include, but are not limited to:

- Offsetting costs incurred by the Member Agency that provides the class supervisor for each academy class;
- Covering routine maintenance and repair of academy facilities to ensure safety, functionality, and operational readiness;
- Acquiring technology tools and instructional resources to enhance academy training capabilities; and
- Ensuring that the academy and its associated infrastructure are properly maintained and operationally supported in accordance with professional training standards.

NATC shall ensure transparency and fiscal accountability in the use of these funds and shall make available upon request a financial summary of expenditures related to this contribution to NPC or any Member Agency within thirty (30) calendar days of such request.

**5.2 NON-MEMBER Agencies:** Shall pay \$4000.00 per student for attendance of police recruits at NALETA and \$2500.00 annually for access to the NALETA facility at NATC. All payment shall be made to NATC.

**5.3 College fees and charges.** The College shall charge and waive each student enrolled in the AJS102 "Intensive Police Academy" class held at NALETA a nonrefundable program and media fee based on the current class fee schedule. Any fees that are charged and not waived shall belong to College. Any reimbursement received from AZPOST for the successful completion of NALETA by a candidate shall belong to the District.

**5.4. Other fees or costs.** Except as otherwise specified in this Agreement, each party shall be responsible for whatever costs that party incurs in connection with this Agreement.

**Section 6. Term and termination.** This Agreement shall be effective from July 1, 2025 and continue through June 30, 2031. Any party may terminate its participation into Agreement as of the end of any fiscal year by providing at least thirty (30) days prior written notice of its intention to do so to the other parties. Such early termination shall be effective only at the end of the fiscal year in which such notice is given and only as to the party terminating. Agreement of all parties is required for termination of the Agreement.

## **Section 7. Miscellaneous.**

**7.1 Immigration compliance.** As required by A.R.S. § 41-4401, each party certifies that it and all of its subcontractors, if any, are in compliance with federal immigration laws and regulations that relate to their employees and with A.R.S. § 23-214(A). A breach of this warranty shall be deemed a material breach of this Agreement and shall be subject to penalties up to and including termination of this Agreement. Each party shall have the right to inspect the papers of the other party and of any subcontractors to ensure that this warranty is being complied with.

**7.2 Conflicts of interest.** As required by A.R.S. § 38-511, each party gives notice as follows that it may, within three years after its execution, cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the party is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement.

**7.3 Entire Agreement; Amendments.** This Agreement represents the entire Agreement of the Parties with respect to its subject matter. This Agreement shall not be changed, modified, or rescinded, except through a writing signed by all parties.

**7.4 Governing Law, Forum.** This Agreement will be governed by the laws of the State of Arizona, both as to interpretation and performance. Any judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only the courts of Navajo County, State of Arizona, provided that nothing herein shall be deemed a waiver of either explicit nor implicit of the parties' sovereign immunity from suit.

**7.5 Insurance.** The participants will ensure that all parties will protect the other participants by providing insurance coverage in an amount no less than \$1,000,000 and naming each participant as an individual insured with the proper endorsements.

**7.6 Indemnification.** To the extent permitted by law, each party agrees (as indemnitor) to indemnify, defend and hold harmless the other party (as indemnitee) from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (collectively ("Claims")) arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims are caused by the act, omission or negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees or volunteers. If a Claim or Claims by third parties become subject to this indemnity provision, the parties to this Agreement that are the subject of such Claim or Claims shall expeditiously meet to discuss a common and mutual defense, including possible proportional liability and proportional payment of possible litigation expenses and money damages. The obligations under this Section shall survive termination of this Agreement.

**7.7 No Joint Venture.** This Agreement is not intended to constitute, create, give rise to, or otherwise recognize a joint venture agreement, partnership or other formal business association or organization of any kind, and the rights and obligations of the Parties shall be only those expressly set forth in this Agreement.

**7.8 Workman's Compensation.** For purposes of workers' compensation, an employee of a Party to this Agreement, who works under the jurisdiction or control of, or who works within the jurisdictional boundaries of another Party pursuant to this specific Agreement, is deemed to be an employee of both the Party who is his primary employer and the Party under whose jurisdiction or control or within whose jurisdictional boundaries he is then working, as provided in A.R.S. § 23-1022(D). The primary employer Party of such employee shall be solely liable for payment of workers' compensation benefits for the purposes of this section. Each Party herein shall comply with the provisions of A.R.S. § 23-1022(E) by posting the public notice required.

**Navajo County Community College  
District**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
ATTEST: \_\_\_\_\_  
Date: \_\_\_\_\_

**Navajo County, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Chairman, Board of Supervisors  
Date: \_\_\_\_\_

**City of Show Low, Arizona**  
By: \_\_\_\_\_

Name: John Leech, Jr.  
Title: Mayor  
Date: June 3, 2025

**Town of Taylor, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

**City of Snowflake, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

**Town of Pinetop-Lakeside, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

**City of Holbrook, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

**City of Winslow, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

**Town of Eagar, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

**Town of Springerville, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

**Apache County, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Chairman, Board of Supervisors  
Date: \_\_\_\_\_

**White Mountain Apache Tribe**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Chairman  
Date: \_\_\_\_\_

City of \_\_\_\_\_, Arizona  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

City of \_\_\_\_\_, Arizona  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

**CITY OF SHOW LOW RESOLUTION NO. R2025-15**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF  
SHOW LOW, ARIZONA, AUTHORIZING AN INTERGOVERNMENTAL  
AGREEMENT BETWEEN THE CITY OF SHOW LOW AND THE NAVAJO  
COUNTY COMMUNITY COLLEGE DISTRICT FOR THE  
NORTHEASTERN ARIZONA LAW ENFORCEMENT TRAINING  
ACADEMY (NALETA)**

**RECITALS:**

**WHEREAS**, law enforcement agencies in northeastern Arizona have the need for a police academy that can provide certified Arizona Peace Officer Standards training to students who meet the qualifications and are sponsored by a local law enforcement agency; and

**WHEREAS**, the Navajo County Community College District, the governing body for Northland Pioneer College, operates the Northeastern Arizona Law Enforcement Training Academy ("NALETA"), a certified AZPOST ("Arizona Peace Officer Standards and Training") police academy to serve students in northeastern Arizona; and

**WHEREAS**, the City of Show Low Police Department wishes to participate in sponsoring recruits to attend NALETA, which will certify new officers and provide a pool of qualified recruits to serve the community; and

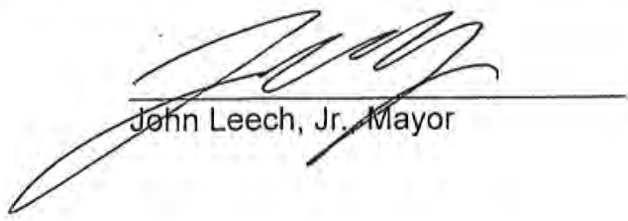
**WHEREAS**, the City of Show Low and the Navajo County Community College District are authorized pursuant to A.R.S. Section 11-952 to enter into this agreement.

**ENACTMENTS:**

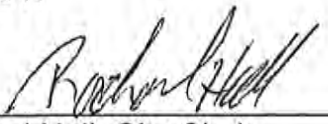
**NOW, THEREFORE, BE IT RESOLVED** that the Mayor and Council of the City of Show Low, Arizona, hereby authorize the City to enter into an Intergovernmental Agreement with the Navajo County Community College District for the Northeastern Arizona Law Enforcement Training Academy.

**BE IT FURTHER RESOLVED** authorizing the Mayor to sign said Agreement.

**PASSED AND ADOPTED** this 3rd day of June, 2025, by the Mayor and Council of the City of Show Low, Arizona.

  
John Leech, Jr., Mayor

ATTEST:

  
\_\_\_\_\_  
Rachael Hall, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Anna M. Atencio, City Attorney

## **TOWN OF PINETOP-LAKESIDE**

### **RESOLUTION NO. 25-1777**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PINETOP-LAKESIDE, ARIZONA, PERTAINING TO THE INTERGOVERNMENTAL AGREEMENT, MADE PURSUANT TO A.R.S. § 11-952 BETWEEN NAVAJO COUNTY COMMUNITY COLLEGE DISTRICT DBA NORTHLAND PIONEER COLLEGE AND THE TOWN OF PINETOP-LAKESIDE, ARIZONA, ACTING BY AND THROUGH THE PINETOP-LAKESIDE POLICE DEPARTMENT.**

#### **RECITALS:**

**WHEREAS**, the purpose of this Agreement is to provide Northeastern Arizona with a Police Academy, Northeastern Arizona Law Enforcement Training Academy (NALETA), that can provide certified Arizona Peace Officer Standards and Training (AZPOST) to students who meet AZPOST qualifications and are sponsored by a Law Enforcement agency; and

**WHEREAS**, the Town of Pinetop-Lakeside, through the Pinetop-Lakeside Police Department, shall provide qualified instructors for all classes given at NALETA and meet staffing and rotational matrix requirements for participating agency; and

**WHEREAS**, the Town of Pinetop-Lakeside, through the Pinetop-Lakeside Police Department, shall be responsible for costs that party incurs in connection with this Intergovernmental Agreement; and.

**WHEREAS**, this Intergovernmental Agreement approved by the Mayor and Town Council shall be effective on July 1, 2025, and continue through June 30, 2031.

#### **ENACTMENTS:**

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Town Council of the Town of Pinetop-Lakeside, Arizona, as follows:

1. That a new Intergovernmental Agreement made pursuant to A.R.S. § 11-952 among Navajo County Community College District dba Northland Pioneer College, the Town of Pinetop-Lakeside, acting by and through the Pinetop-Lakeside Police Department and numerous other parties with law enforcement personnel is hereby approved.
2. That the Mayor, is appointed agent for the Town of Pinetop-Lakeside, to conduct all negotiations, execute and submit all documents and any other necessary or desirable instruments in connection with the Intergovernmental Agreement.

**PASSED AND ADOPTED** by the Mayor and Town Council of the Town of Pinetop-Lakeside, Arizona, this 19th day of June 2025.

TOWN OF PINETOP-LAKESIDE



Stephanie Irwin  
Stephanie Irwin  
Mayor

ATTEST:

Kristi Salskov  
Kristi Salskov, CMC  
Town Clerk

APPROVED AS TO FORM:

William J. Sims  
William J. Sims, III  
Town Attorney

EXHIBIT A

Intergovernmental Agreement NALETA

**AGREEMENT FOR  
NORTHEASTERN ARIZONA LAW ENFORCEMENT TRAINING ACADEMY  
AT NORTHEAST ARIZONA TRAINING CENTER**

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**3.5 Class Supervisor Funding:** The College shall compensate the Member employing the Class Supervisor in the amount of fifty thousand dollars (\$50,000.00) per fiscal year. Payment shall be made directly to the employing Member within thirty (30) calendar days of the submission of a proper

invoice. In no event shall the College's total payment obligation under this provision exceed fifty thousand dollars (\$50,000.00) for that fiscal year.

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**4.1 Instructor Provision:** Member Agencies shall provide qualified instructors for all classes offered under this Agreement, including the Class Supervisor and RTO specified below, and any expert as may be required under the AZPOST Rules and Procedures. Such instructors must meet all applicable certification and training requirements as determined by AZPOST Rules and Procedures, including certification as a Arizona Peace Officer Standards and Training (AZPOST) General Instructor.

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- **Class Supervisor**
  - **Recruit Training Officer 1 (RTO 1)**
  - **Recruit Training Officer 2 (RTO 2), as needed to maintain the ratio described in 4.3(b), below.**
- a. **Class Supervisor Provision:** Member Agencies shall provide, on a determined rotation agreed to by and between the Member Agencies, a Class Supervisor (not necessarily holding the rank of "sergeant") who must be vetted and selected by representatives of the Member Agencies. This commitment is expected to be fulfilled for a period of 36 months.
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- Acquiring technology tools and instructional resources to enhance academy training capabilities; and
- Ensuring that the academy and its associated infrastructure are properly maintained and operationally supported in accordance with professional training standards.

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**Section 6. Term and termination.** This Agreement shall be effective from July 1, 2025 and continue through June 30, 2031. Any party may terminate its participation into Agreement as of the end of any fiscal year by providing at least thirty (30) days prior written notice of its intention to do so to the other parties. Such early termination shall be effective only at the end of the fiscal year in which such notice is given and only as to the party terminating. Agreement of all parties is required for termination of the Agreement.

## **Section 7. Miscellaneous.**

**7.1 Immigration compliance.** As required by A.R.S. § 41-4401, each party certifies that it and all of its subcontractors, if any, are in compliance with federal immigration laws and regulations that relate to their employees and with A.R.S. § 23-214(A). A breach of this warranty shall be deemed a material breach of this Agreement and shall be subject to penalties up to and including termination of this Agreement. Each party shall have the right to inspect the papers of the other party and of any subcontractors to ensure that this warranty is being complied with.

**7.2 Conflicts of interest.** As required by A.R.S. § 38-511, each party gives notice as follows that it may, within three years after its execution, cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the party is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement.

**7.3 Entire Agreement; Amendments.** This Agreement represents the entire Agreement of the Parties with respect to its subject matter. This Agreement shall not be changed, modified, or rescinded, except through a writing signed by all parties.

**7.4 Governing Law, Forum.** This Agreement will be governed by the laws of the State of Arizona, both as to interpretation and performance. Any judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only the courts of Navajo County, State of Arizona, provided that nothing herein shall be deemed a waiver of either explicit nor implicit of the parties' sovereign immunity from suit.

**7.5 Insurance.** The participants will ensure that all parties will protect the other participants by providing insurance coverage in an amount no less than \$1,000,000 and naming each participant as an individual insured with the proper endorsements.

**7.6 Indemnification.** To the extent permitted by law, each party agrees (as indemnitor) to indemnify, defend and hold harmless the other party (as indemnitee) from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (collectively ("Claims")) arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims are caused by the act, omission or negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees or volunteers. If a Claim or Claims by third parties become subject to this indemnity provision, the parties to this Agreement that are the subject of such Claim or Claims shall expeditiously meet to discuss a common and mutual defense, including possible proportional liability and proportional payment of possible litigation expenses and money damages. The obligations under this Section shall survive termination of this Agreement.

**7.7 No Joint Venture.** This Agreement is not intended to constitute, create, give rise to, or otherwise recognize a joint venture agreement, partnership or other formal business association or organization of any kind, and the rights and obligations of the Parties shall be only those expressly set forth in this Agreement.

**7.8 Workman's Compensation.** For purposes of workers' compensation, an employee of a Party to this Agreement, who works under the jurisdiction or control of, or who works within the jurisdictional boundaries of another Party pursuant to this specific Agreement, is deemed to be an employee of both the Party who is his primary employer and the Party under whose jurisdiction or control or within whose jurisdictional boundaries he is then working, as provided in A.R.S. § 23-1022(D). The primary employer Party of such employee shall be solely liable for payment of workers' compensation benefits for the purposes of this section. Each Party herein shall comply with the provisions of A.R.S. § 23-1022(E) by posting the public notice required.

**Navajo County Community College  
District**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
ATTEST: \_\_\_\_\_  
Date: \_\_\_\_\_

**Navajo County, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Chairman, Board of Supervisors  
Date: \_\_\_\_\_

**City of Show Low, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

**Town of Taylor, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

**City of Snowflake, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

**Town of Pinetop-Lakeside, Arizona**  
By: \_\_\_\_\_

Name: Stephanie Irwin  
Title: Mayor  
Date: 6-19-2025

**City of Holbrook, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

**City of Winslow, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

**Town of Eagar, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

**Town of Springerville, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

**Apache County, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Chairman, Board of Supervisors  
Date: \_\_\_\_\_

**White Mountain Apache Tribe**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Chairman  
Date: \_\_\_\_\_

City of \_\_\_\_\_, Arizona  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

City of \_\_\_\_\_, Arizona  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

**AGREEMENT FOR  
NORTHEASTERN ARIZONA LAW ENFORCEMENT TRAINING ACADEMY  
AT NORTHEAST ARIZONA TRAINING CENTER**

This Agreement ("Agreement") is made pursuant to Arizona Revised Statutes ("A.R.S.") among Navajo County Community College District dba Northland Pioneer College ("College"), Northeast Arizona Training Center, a non-profit corporation ("NATC"), and Navajo County, City of Show Low, Town of Taylor, City of Snowflake, Town of Pinetop-Lakeside, City of Holbrook, City of Winslow, Town of Eagar, Town of Springerville, Apache County, and the White Mountain Apache Tribe. Collectively, the cities, towns, tribes and municipalities signing on to this Agreement shall be known as the "Member Agencies."

**Section 1. Purpose.**

The purpose of this Agreement is to provide Northeastern Arizona with a Police Academy hereby called Northeastern Arizona Law Enforcement Training Academy ("NALETA") that can provide certified AZPOST (Arizona Peace Officer Standards and Training) training to students who meet AZPOST qualifications and are sponsored by a Law Enforcement agency.

**Section 2. Enrollment.**

Member Agencies and non-member agencies may enroll employees in NALETA to the extent that the employees are qualified for enrollment as set forth by AZPOST Rules and Procedures Manual as set under the State of Arizona Rules of Authority A.R.S. §§ 41-1821 through 41-1828.01 and Arizona Administrative Code, Title 13-4-101 through 13-4-118 and that NALETA has the capacity to train those employees. College shall not be required to accept any employee for enrollment unless the city, town, tribe, or county responsible for that employee has conducted any required background checks on the employee at its own expense as set forth by AZPOST regulations.

**Section 3. Duties and Responsibilities of College.** College shall operate and administer NALETA at the NATC. College's operational and administrative responsibilities shall include, but are not limited to:

**3.1 Curriculum Development:** Developing and providing the Arizona Peace Officer Standards and Training (AZPOST) curriculum for use at NALETA.

**3.2 Program Administration:** Scheduling courses, registering students, and administering student transcripts for NALETA courses.

**3.3 Instructor Support:** Assisting instructors at NALETA.

**3.4. Insurance and Liability:** Obtaining and maintaining adequate insurance coverage to protect against liabilities arising from damage to persons or property resulting from the operation of NALETA

**3.5 Class Supervisor Funding:** The College shall compensate the Member employing the Class Supervisor in the amount of fifty thousand dollars (\$50,000.00) per fiscal year. Payment shall be made directly to the employing Member upon submission of a proper invoice. In the event that more than one Member provides a Class Supervisor during any fiscal year, the College's total payment obligation under this provision shall not exceed fifty thousand dollars (\$50,000.00) for that fiscal year.

**3.6 Class Availability:** College shall have no obligation to conduct any class for which Members fail to provide qualified instructors who meet all necessary certification and training requirements as required by AZPOST Rules and Procedures, including Class Supervisor and Recruit Training Officer(s) (RTO) in accordance with the requirements in Section 4.

#### **Section 4. Duties and Responsibilities of Member Agencies.**

**4.1 Instructor Provision:** Member Agencies shall provide qualified instructors for all classes offered under this Agreement, including the Class Supervisor and RTO specified below, and any expert as may be required under the AZPOST Rules and Procedures. Such instructors must meet all applicable certification and training requirements as determined by AZPOST Rules and Procedures, including certification as a Arizona Peace Officer Standards and Training (AZPOST) General Instructor.

**4.2 Instructor Compensation:** Except for the College's payment obligation set forth in Section 2.5 above, compensation for instructors shall be the sole responsibility of the Member Agency employing said instructors. No party to this Agreement, other than the employing agency, shall have any liability for instructor compensation.

**4.3 Staffing Requirements and Cooperation.** The Parties understand and agree that each class requires the following minimum staff:

- **Class Supervisor**
  - **Recruit Training Officer 1 (RTO 1)**
  - **Recruit Training Officer 2 (RTO 2), as needed to maintain the ratio described in ~~3.3~~<sup>4.3</sup>(b) below.**
- a. **Class Supervisor Provision:** Member Agencies shall provide, on a determined rotation agreed to by and between the Member Agencies, a Class Supervisor (not necessarily holding the rank of "sergeant") who must be vetted and selected by representatives of the Member Agencies. This commitment is expected to be fulfilled for a period of 36 months.
- b. **RTO Provision:** Member Agencies shall provide a sufficient number of Recruit Training Officers (RTOs) to ensure that each class maintains the ratio of not more than one (1) RTO per ten (10) students/cadets.
- i. The **Navajo County Sheriff's Office (NCSO)** shall provide RTO 1 for each class during the term of this Agreement. NCSO shall be exempt from providing any additional staff (such as Class Supervisor) other than those scheduled as specific class instructors
  - ii. If a second RTO is needed for any class, RTO 2 shall be assigned on a one-year rotational basis.
- c. **Member Agency Cooperation.** A rotational matrix for Class Supervisors and RTOs shall be established and adhered to by all Member Agencies entering this Agreement. In the event that a Member Agency is unable to fulfill its staffing obligations under the rotational matrix, that Member Agency shall be responsible for coordinating an appropriate replacement staff member.

## **Section 5. Financial Obligations:**

**5.1 MEMBER Agencies:** Each Member Agency shall contribute an annual payment of \$10,000.00 to the Northern Arizona Training Center (NATC). This contribution provides all-inclusive access to the Northern Arizona Law Enforcement Training Academy (NALETA) facility and permits unlimited attendance of police recruits from the Member Agency at training sessions conducted at the academy.

The totality of this contribution shall be used by NATC exclusively for purposes that support and sustain NALETA operations. These purposes shall include, but are not limited to:

- Offsetting costs incurred by the Member Agency that provides the class supervisor for each academy class;
- Covering routine maintenance and repair of academy facilities to ensure safety, functionality, and operational readiness;
- Acquiring technology tools and instructional resources to enhance academy training capabilities; and
- Ensuring that the academy and its associated infrastructure are properly maintained and operationally supported in accordance with professional training standards.

NATC shall ensure transparency and fiscal accountability in the use of these funds and shall make available upon request a financial summary of expenditures related to this contribution

**5.2 NON-MEMBER Agencies:** Shall pay \$4000.00 per student for attendance of police recruits at NALETA and \$2500.00 annually for access to the NALETA facility at NATC. All payment shall be made to NATC.

**5.3 College fees and charges.** The College shall charge and waive each student enrolled in the AJS102 "Intensive Police Academy" class held at NALETA a nonrefundable program and media fee based on the current class fee schedule. Any fees that are charged and not waived shall belong to College. Any reimbursement received from AZPOST for the successful completion of NALETA by a candidate shall belong to the District.

**5.4. Other fees or costs.** Except as otherwise specified in this Agreement, each party shall be responsible for whatever costs that party incurs in connection with this Agreement.

**Section 6. Term and termination.** This Agreement shall be effective from July 1, 2025 and continue through June 30, 2031. Any party may terminate its participation into Agreement as of the end of any fiscal year by providing at least thirty (30) days prior written notice of its intention to do so to the other parties. Such early termination shall be effective only at the end of the fiscal year in which such notice is given and only as to the party terminating. Agreement of all parties is required for termination of the Agreement.

## **Section 7. Miscellaneous.**

**7.1 Immigration compliance.** As required by A.R.S. § 41-4401, each party certifies that it and all of its subcontractors, if any, are in compliance with federal immigration laws and regulations that relate to their employees and with A.R.S. § 23-214(A). A breach of this warranty shall be deemed a material breach of this Agreement and shall be subject to penalties up to and including termination of this Agreement. Each party shall have the right to inspect the papers of the other party and of any subcontractors to ensure that this warranty is being complied with.

**7.2 Conflicts of interest.** As required by A.R.S. § 38-511, each party gives notice as follows that it may, within three years after its execution, cancel this Agreement, without penalty

or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the party is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement.

**7.3 Entire Agreement; Amendments.** This Agreement represents the entire Agreement of the Parties with respect to its subject matter. This Agreement shall not be changed, modified, or rescinded, except through a writing signed by all parties.

**7.4 Governing Law, Forum.** This Agreement will be governed by the laws of the State of Arizona, both as to interpretation and performance. Any judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only the courts of Navajo County, State of Arizona, provided that nothing herein shall be deemed a waiver of either explicit nor implicit of the parties' sovereign immunity from suit.

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**7.6 Indemnification.** To the extent permitted by law, each party agrees (as indemnitor) to indemnify, defend and hold harmless the other party (as indemnitee) from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (collectively ("Claims")) arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims are caused by the act, omission or negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees or volunteers. If a Claim or Claims by third parties become subject to this indemnity provision, the parties to this Agreement that are the subject of such Claim or Claims shall expeditiously meet to discuss a common and mutual defense, including possible proportional liability and proportional payment of possible litigation expenses and money damages. The obligations under this Section shall survive termination of this Agreement.

**7.7 No Joint Venture.** This Agreement is not intended to constitute, create, give rise to, or otherwise recognize a joint venture agreement, partnership or other formal business association or organization of any kind, and the rights and obligations of the Parties shall be only those expressly set forth in this Agreement.

**7.8 Workman's Compensation.** For purposes of workers' compensation, an employee of a Party to this Agreement, who works under the jurisdiction or control of, or who works within the jurisdictional boundaries of another Party pursuant to this specific Agreement, is deemed to be an employee of both the Party who is his primary employer and the Party under whose jurisdiction or control or within whose jurisdictional boundaries he is then working, as provided in A.R.S. § 23-1022(D). The primary employer Party of such employee shall be solely liable for payment of workers' compensation benefits for the purposes of this section. Each Party herein shall comply with the provisions of A.R.S. § 23-1022(E) by posting the public notice required.

**[SIGNATURES ON NEXT PAGE]**

**Navajo County Community College  
District**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
ATTEST: \_\_\_\_\_  
Date: \_\_\_\_\_

**Navajo County, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Chairman, Board of Supervisors  
Date: \_\_\_\_\_

**City of Show Low, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

**Town of Taylor, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: May 1, 2025

**City of Snowflake, Arizona**  
By: \_\_\_\_\_

Name: Bryan Lewis  
Title: Mayor  
Date: 5-6-2025

**Town of Pinetop-Lakeside, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

**City of Holbrook, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

**City of Winslow, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

**Town of Eagar, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

**Town of Springerville, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

**Apache County, Arizona**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Chairman, Board of Supervisors  
Date: \_\_\_\_\_

**White Mountain Apache Tribe**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Chairman  
Date: \_\_\_\_\_

City of \_\_\_\_\_, Arizona  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

City of \_\_\_\_\_, Arizona  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: Mayor  
Date: \_\_\_\_\_

# **Memorandum Of Understanding Between Maricopa Community Colleges And Northland Pioneer College**

## **Parties**

This Memorandum of Understanding ("MOU") is entered into by and between the Maricopa Community Colleges ("Maricopa"), and Northland Pioneer College ("NPC"). Collectively, these entities will be referred to as the "Parties."

## **Purpose of the Agreement**

This Memorandum of Understanding (MOU) formally recognizes that both Parties are active educational partners, committed to providing greater educational opportunities and services for students transferring between institutions. This commitment strongly supports the concept of seamless transfer that embraces the principle that transfer students should not be required to repeat competencies already achieved. Under the terms and conditions of this MOU, participating students will maximize, as much as possible, the application of their community college coursework and credits to their bachelor's degree program.

Creating a successful transfer partnership between institutions requires clear commitments and obligations from both institutions. These commitments should focus on ensuring a smooth transition for transfer students by removing barriers and supporting their academic success.

## **General Commitments**

### **Maricopa Community College Commitments**

1. **Articulation Collateral, Assets, and Products:**
  - o Develop and regularly update articulation agreements that clearly outline which community college courses will transfer and how they will apply to bachelor's degree requirements. All articulated assets and materials will be maintained separately from the Memorandum of Understanding (MOU), and all transfer equivalencies will be recorded in the Transfer Equivalency System (TES) and/or other articulation systems and materials.
2. **Curriculum and Articulation Alignment**
  - o Work with college counterparts to align curriculum and ensure that courses offered at the community college meet the requirements of Maricopa bachelor's degree programs.
  - o Communicate prior learning assessment standard operating procedures and opportunities.
3. **Advising and Support Services:**
  - o Provide academic advisement and/or enrollment services support to help partner college students with the transfer process.
  - o Offer orientation programs that consider the unique needs of transfer students to help them acclimate to the Maricopa environment.
4. **Scholarship Opportunities:**
  - o Identify and promote scholarships to transfer students.

## **Memorandum Of Understanding Between Maricopa Community Colleges And Northland Pioneer College**

- Ensure that financial aid and scholarship packages are clearly communicated to prospective transfer students.
- 5. **Academic and Co-Curricular Resources:**
  - After transfer to Maricopa, provide access to tutoring, writing centers, and other academic support services.
  - After transfer to Maricopa, offer workshops on study skills, time management, and other relevant topics.
  - After transfer to Maricopa, offer co-curricular activities and opportunities that complement the academic program of study, such as work-based experiences, clubs and organizations, service learning, etc.
- 6. **Continuous Improvement:**
  - Survey students who transfer with NPC credits annually and provide non-identifiable information to support evaluation of student success and partner goals.
  - Track NPC student enrollment and achievement, using mutually agreed upon qualitative and quantitative metrics, and provide non-identifiable data to the partner college.

### **Community College Partner Commitments**

1. **Pre-Transfer Advising:**
  - Offer academic advising and/or enrollment services to help students select courses that will transfer and apply toward their intended bachelor's degree.
  - Host transfer fairs (in-person or virtual) and Maricopa representative visits to provide students with information about transfer opportunities.
2. **Curriculum and Articulation Alignment:**
  - Work with college counterparts to align curriculum and ensure that courses offered at the community college meet the requirements of Maricopa bachelor's degree programs.
  - Regularly review and update course offerings to match bachelor's degree prerequisites and requirements.
  - Route new, modified, and deleted curriculum to Maricopa to support timely evaluations.
  - Align prior learning assessment decisions with the Maricopa to ensure transferability and applicability to bachelor's programs.
3. **Student Preparation:**
  - Provide academic preparation programs to ensure students are ready for upper-division coursework.
  - Offer support services such as tutoring, counseling, and study skills workshops to ensure students are ready for upper-division coursework.
4. **Communication and Collaboration:**
  - Maintain open lines of communication with Maricopa to address any issues that arise and to continuously improve the transfer process.
  - Participate in joint committees or working groups to ensure ongoing collaboration and alignment of goals.

## **Memorandum Of Understanding Between Maricopa Community Colleges And Northland Pioneer College**

### **5. Promotion of Transfer Opportunities:**

- Actively promote the partnership and transfer opportunities to students through marketing materials, information sessions, websites, and advising appointments.
- Ensure that faculty and staff are knowledgeable about transfer pathways and can guide students accordingly.
- Provide Maricopa with the following directory lists: 1) Recent Graduates in the relevant program of study, and 2) Prospective Transfer (students with 45+ completed credits still enrolled in the relevant program of study).

### **Joint Commitments**

#### **1. Communication**

- Each partner represents and warrants to the other that it is fully accredited for all relevant programs covered by this MOU.
- Each partner agrees to promptly notify the other party of any changes to the curriculum, articulations, accreditation status, or any other factors that may affect the terms of this agreement or the ongoing partnership. This ensures both parties are kept informed of relevant developments and can take necessary actions to uphold the integrity and success of the collaboration.
- All articulation products and equivalencies shall reside outside this agreement to support the dynamic nature of curriculum development, articulation, and equivalency decisions. Both partners agree to collaboratively develop, distribute, and maintain accurate transfer articulation and marketing resources. Each institution is responsible for ensuring the accuracy of the information it distributes, whether verbally, in print, online, or through other means. Both institutions commit to not misrepresenting each other and agree to consult with one another to ensure the integrity and consistency of messaging to students.

#### **2. Delivery**

- Both parties agree to collaborate in determining the modalities of course offerings to ensure they meet the diverse needs of students. This includes, but is not limited to, in-person, hybrid, and fully online formats. The partnering institution and Maricopa will work together to assess and implement the most effective delivery methods based on student demand, accessibility, and institutional resources.

#### **3. Data Sharing and Tracking:**

- Both institutions agree to share student outcomes and data, such as retention rates and graduation rates, for the purpose of monitoring the success of the partnership and identifying areas for improvement. All data sharing will be conducted in full compliance with the Family Educational Rights and Privacy Act (FERPA) to ensure the privacy and confidentiality of student information.
- Use data to inform decision-making and continuous improvement efforts.

#### **4. Continuous Improvement:**

- Regularly review and update partnership agreements to ensure they remain effective and relevant.
- Solicit feedback from transfer students to identify strengths and areas for improvement in the transfer process.

#### **5. Professional Development:**

## **Memorandum Of Understanding Between Maricopa Community Colleges And Northland Pioneer College**

- Provide joint professional development opportunities for faculty and staff to understand best practices in supporting transfer students.
- Facilitate cross-institutional meetings and workshops to foster collaboration and knowledge sharing.

### **Reciprocity Statement**

Maricopa Community Colleges is committed to fostering collaborative partnerships that support student success and degree completion. In recognition of our shared goals, Maricopa agrees to work in good faith to establish clear and seamless transfer pathways into NPC's bachelor's degree program(s), should they be offered.

### **FERPA Compliance**

At all times during the term of this MOU, both Parties shall comply with the terms of the Family Educational Rights and Privacy Act of 1974 ("FERPA") in all respects.

1. Each Party acknowledges that certain information about its respective students is contained in records it maintains and that this information can be confidential by reason of FERPA and related Institution policies, unless valid consent is obtained from MCCC's students or their legal guardians, where applicable. Both parties agree to protect these records in accordance with FERPA and Institution policy. To the extent permitted by law, nothing contained herein shall be construed as precluding either party from releasing such information to the other so that each can perform its respective responsibilities. Each Party shall advise the other Party whenever a student has requested a privacy block, prohibiting release of FERPA protected information.
2. Each Party represents, warrants, and agrees that it will:
  - a. hold the FERPA Records in strict confidence and will not use or disclose the FERPA Records except as
    - i. permitted or required by this Agreement,
    - ii. required by law, or
    - iii. otherwise authorized by Institution in writing;
  - b. safeguard the FERPA Records according to commercially reasonable administrative, physical and technical standards that are no less rigorous than the standards by which the Party protects its own confidential information; and
  - c. continually monitor its operations and take any action necessary to assure that the FERPA Records are safeguarded in accordance with the terms of this MOU.
3. Upon request, each Party agrees to provide the other Party with a written summary of the procedures it uses to safeguard the FERPA Records.
4. For purposes of this Agreement, both Parties shall designate each other as a school official with a legitimate educational interest in the educational records of participating students to the extent that access to School's records is required to carry out the terms of this Agreement.

# **Memorandum Of Understanding Between Maricopa Community Colleges And Northland Pioneer College**

## **Parties**

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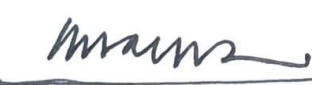


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  - Communicate prior learning assessment standard operating procedures and opportunities.
3. **Advising and Support Services:**
  - Provide academic advisement and/or enrollment services support to help partner college students with the transfer process.
  - Offer orientation programs that consider the unique needs of transfer students to help them acclimate to the Maricopa environment.
4. **Scholarship Opportunities:**
  - Identify and promote scholarships to transfer students.

**Memorandum Of Understanding Between  
Maricopa Community Colleges And Northland Pioneer College**

The effective date of this MOU is the date of the signature last affixed to this page.

<p><b>Maricopa Community Colleges</b></p> <hr/>  <p>Lisa Rae Amour, Ph.D. Executive Vice Chancellor and Provost</p> <p><i>X</i> </p> <p><b>Secondary Signer</b></p>  <p>Meredith Warner, Ph.D. Associate Vice Chancellor, Academic Affairs</p> <p><i>X</i> </p> <p><b>Maricopa Contact:</b> Rose Rojas District Director for Curriculum and Transfer 2411 W. 14th Street Tempe, AZ 85281 O: 480-731-8039</p>	<p><b>[Community College Partner]</b></p> <p>Navajo County Community College Distric</p> <hr/>  <p>[Name and Title] Von Lawson, Ph.D President</p> <p><i>X</i> </p> <p><b>Secondary Signer</b></p>  <p>[Name and Title] <b>Michael Solomonson, Ph.D.</b> VP for Learning &amp; Student Services</p> <p><i>X</i> </p> <p><b>College Contact:</b> Dr. Jeremy Raisor Dean of Career &amp; Technical Education 1611 S. Main Street, Snowflake, AZ 85937</p>
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## Request to Approve Annual SMARTnet Renewal

### **Recommendation:**

Staff recommends approval to renew SMARTnet services for an additional one-year term, through HyeTech Network & Security Solutions, LLC., in the amount of \$79,611.40

### **Procurement Process and Budget Information:**

This is an annual budgeted expense and utilizes Government Procurement Alliance Contract 22-02PV-08 to ensure competitive pricing for the college.

### **Summary:**

SMARTnet is an integral application to overall college functions and has been used for a number of years. Cisco SMARTnet Service provides the following support:

- Access 24 hours a day, 365 a year to specialized engineers in the Cisco TAC
- Anytime access to the extensive Cisco.com online knowledge base, resources, and tools
- Hardware replacement options include 2-hour, 4-hour, Next-business-day (NDB) advance replacement, as well as Return for Repair (RFR)
- Ongoing operating system software updates, including both minor and major releases within our licensed feature set
- Proactive diagnostics and real-time alerts on select devices with Smart Call
- Onsite Service by a field engineer to install replacement parts
- Ensures that our network operates at the highest levels

The quote includes all applicable taxes.



**Northland Pioneer College**

Post Office Box 610 • Holbrook, AZ 86025 • (928) 524-7311 • Fax (928) 524-7312 • [www.npc.edu](http://www.npc.edu)



HyeTech Network & Security Solutions, LLC.  
10235 S. 51st Street #120  
Phoenix, AZ 85044

Date: July 29, 2025

Quotation #: 1102-123

Customer ID: 1102

Prepared by: Orion Igleheart

Valid until: August 21, 2025

Project Detail: SNT 2025-2026

Contract: 1 GPA 22-02PV-08

Bill To:  
Northland Pioneer  
Kenneth Coggin  
1001 W Deuce of Clubs  
Show Low, Arizona 85901

Ship To:  
Northland Pioneer  
Kenneth Coggin  
1001 W Deuce of Clubs  
Show Low, Arizona 85901

## Renewable Products

Serial #	Part	Description	Support Level	Start Date	End Date	List Price	Unit Price	Qty	Ext. Price
FJC2020D07S	ISR4451-X-AX/K9	Cisco ISR 4451 AX Bundle with APP and SEC license	SNT	10/1/2025	9/27/2026	\$4,019.77	\$2,733.44	1	\$2,733.44
5120881442	R-ISE-VM-M-K9=	^Cisco Identity Services Engine Migration VM (eDelivery)	ECMU	10/1/2025	9/27/2026	\$1,271.46	\$864.59	2	\$1,729.18
FXS2103Q0L1	C1-ASR1001-X/K9	^Cisco ONE - ASR1001-X	SNT	10/1/2025	9/27/2026	\$2,855.34	\$1,941.63	1	\$1,941.63
SAL2115036B	SPA-8X1GE-V2	^Cisco 8-Port Gigabit Ethernet Shared Port Adapter	SNT	10/1/2025	9/27/2026	\$1,476.76	\$1,004.20	1	\$1,004.20
5122286596	C1F1PASR1K9	Cisco ONE Foundation Perpetual Suite AES IPSec FW AVC Prime	ECMU	10/1/2025	9/27/2026	\$5,412.15	\$3,680.26	1	\$3,680.26
5122286803	C1-ASR1-IPSEC-RTU	Cisco ONE Encryption Right-To-Use Feat Lic ASR1000 Series	ECMU	10/1/2025	9/27/2026	\$1,155.42	\$785.69	1	\$785.69
FXS2103Q0CL	C1-ASR1001-X/K9	^Cisco ONE - ASR1001-X	SNT	10/1/2025	9/27/2026	\$2,855.34	\$1,941.63	1	\$1,941.63
5122286811	C1-ASR1-IPSEC-RTU	Cisco ONE Encryption Right-To-Use Feat Lic ASR1000 Series	ECMU	10/1/2025	9/27/2026	\$1,155.42	\$785.69	1	\$785.69
SAL2115035C	SPA-8X1GE-V2	^Cisco 8-Port Gigabit Ethernet Shared Port Adapter	SNT	10/1/2025	9/27/2026	\$1,476.76	\$1,004.20	1	\$1,004.20
5122286609	C1F1PASR1K9	Cisco ONE Foundation Perpetual Suite AES IPSec FW AVC Prime	ECMU	10/1/2025	9/27/2026	\$5,412.15	\$3,680.26	1	\$3,680.26
5131199240	R-ISE-VM-M-K9=	^Cisco Identity Services Engine Migration VM (eDelivery)	ECMU	10/1/2025	9/27/2026	\$1,271.46	\$864.59	1	\$864.59
5131199242	R-ISE-VM-M-K9=	^Cisco Identity Services Engine Migration VM (eDelivery)	ECMU	10/1/2025	9/27/2026	\$1,271.46	\$864.59	1	\$864.59
FDO21501EZV	N9K-C93180YC-EX-B	^Nexus 93180YC-EX bundle PID	SNT	10/1/2025	9/27/2026	\$1,206.01	\$820.09	1	\$820.09
FDO21501EWF	N9K-C93180YC-EX-B	^Nexus 93180YC-EX bundle PID	SNT	10/1/2025	9/27/2026	\$1,206.01	\$820.09	1	\$820.09
FLM2039W1R4	ISR4331-V/K9	Cisco ISR 4331 UC Bundle, PVD4-32, UC License	SNT	10/1/2025	9/27/2026	\$800.78	\$544.53	1	\$544.53
JAD230800WF	C9200-48P-E	Catalyst 9200 48-port PoE+, Network Essentials	SW	10/1/2025	9/27/2026	\$556.39	\$378.35	1	\$378.35
FLM2343120H	ISR4331-V/K9	Cisco ISR 4331 UC Bundle, PVD4-32, UC License	SNT	10/1/2025	9/27/2026	\$800.78	\$544.53	1	\$544.53
FLM2343120F	ISR4331-V/K9	Cisco ISR 4331 UC Bundle, PVD4-32, UC License	SNT	10/1/2025	9/27/2026	\$800.78	\$544.53	1	\$544.53
FLM2343120R	ISR4331-V/K9	Cisco ISR 4331 UC Bundle, PVD4-32, UC License	SNT	10/1/2025	9/27/2026	\$800.78	\$544.53	1	\$544.53
FLM2343120N	ISR4331-V/K9	Cisco ISR 4331 UC Bundle, PVD4-32, UC License	SNT	10/1/2025	9/27/2026	\$800.78	\$544.53	1	\$544.53



## Renewable Products

Serial #	Part	Description	Support Level	Start Date	End Date	List Price	Unit Price	Qty	Ext. Price
FLM2343120K	ISR4331-V/K9	Cisco ISR 4331 UC Bundle, PVD4-32, UC License	SNT	10/1/2025	9/27/2026	\$800.78	\$544.53	1	\$544.53
FLM2343120L	ISR4331-V/K9	Cisco ISR 4331 UC Bundle, PVD4-32, UC License	SNT	10/1/2025	9/27/2026	\$800.78	\$544.53	1	\$544.53
FLM234412EH	ISR4351-V/K9	Cisco ISR 4351 UC Bundle, PVD4-64, UC License	SNT	10/1/2025	9/27/2026	\$2,154.28	\$1,464.91	1	\$1,464.91
FLM234412EJ	ISR4351-V/K9	Cisco ISR 4351 UC Bundle, PVD4-64, UC License	SNT	10/1/2025	9/27/2026	\$2,154.28	\$1,464.91	1	\$1,464.91
FLM234412EK	ISR4351-V/K9	Cisco ISR 4351 UC Bundle, PVD4-64, UC License	SNT	10/1/2025	9/27/2026	\$2,154.28	\$1,464.91	1	\$1,464.91
FLM234412EL	ISR4351-V/K9	Cisco ISR 4351 UC Bundle, PVD4-64, UC License	SNT	10/1/2025	9/27/2026	\$2,154.28	\$1,464.91	1	\$1,464.91
FLM24480ALB	UCSB-B200-M5-U	UCS B200 M5 Blade w/o CPU, mem, HDD, mezz (UPG)	SNTP	10/1/2025	9/27/2026	\$689.29	\$468.72	1	\$468.72
FLM24480AKT	UCSB-B200-M5-U	UCS B200 M5 Blade w/o CPU, mem, HDD, mezz (UPG)	SNTP	10/1/2025	9/27/2026	\$689.29	\$468.72	1	\$468.72
FLM2409014T	UCSB-B200-M5-U	UCS B200 M5 Blade w/o CPU, mem, HDD, mezz (UPG)	SNTP	10/1/2025	9/27/2026	\$689.29	\$468.72	1	\$468.72
FLM244905EK	UCSB-B200-M5-U	UCS B200 M5 Blade w/o CPU, mem, HDD, mezz (UPG)	SNTP	10/1/2025	9/27/2026	\$689.29	\$468.72	1	\$468.72
FLM2406077P	UCSB-B200-M5-U	UCS B200 M5 Blade w/o CPU, mem, HDD, mezz (UPG)	SNTP	10/1/2025	9/27/2026	\$689.29	\$468.72	1	\$468.72
FLM24060428	UCSB-B200-M5-U	UCS B200 M5 Blade w/o CPU, mem, HDD, mezz (UPG)	SNTP	10/1/2025	9/27/2026	\$689.29	\$468.72	1	\$468.72
FLM240601MP	UCSB-B200-M5-U	UCS B200 M5 Blade w/o CPU, mem, HDD, mezz (UPG)	SNTP	10/1/2025	9/27/2026	\$689.29	\$468.72	1	\$468.72
FLM2409012F	UCSB-B200-M5-U	UCS B200 M5 Blade w/o CPU, mem, HDD, mezz (UPG)	SNTP	10/1/2025	9/27/2026	\$689.29	\$468.72	1	\$468.72
WMP244600LW	BE7H-M5-K9	^Cisco Business Edition 7000H (M5) Appliance, Export Restr SW	SNT	10/1/2025	9/27/2026	\$2,623.20	\$1,783.78	1	\$1,783.78
WMP244600M8	BE7H-M5-K9	^Cisco Business Edition 7000H (M5) Appliance, Export Restr SW	SNT	10/1/2025	9/27/2026	\$2,623.20	\$1,783.78	1	\$1,783.78
FDO244705X1	UCS-SP-FI6454	^(Not sold standalone) UCS 6454 FI	SNTP	10/1/2025	9/27/2026	\$2,999.15	\$2,039.42	1	\$2,039.42
FDO244705P3	UCS-SP-FI6454	^(Not sold standalone) UCS 6454 FI	SNTP	10/1/2025	9/27/2026	\$2,999.15	\$2,039.42	1	\$2,039.42
FDO244705TZ	UCS-SP-FI6454	^(Not sold standalone) UCS 6454 FI	SNTP	10/1/2025	9/27/2026	\$2,999.15	\$2,039.42	1	\$2,039.42
FDO244705WH	UCS-SP-FI6454	^(Not sold standalone) UCS 6454 FI	SNTP	10/1/2025	9/27/2026	\$2,999.15	\$2,039.42	1	\$2,039.42
FOX2450PD3J	UCS-SP-5108-AC4	^UCS SP Select 5108 AC2 Chassis w/2408 IO, 4x SFP cable 3m	SNTP	10/1/2025	9/27/2026	\$385.80	\$262.34	1	\$262.34
FOX2451PFRN	UCS-SP-5108-AC4	^UCS SP Select 5108 AC2 Chassis w/2408 IO, 4x SFP cable 3m	SNTP	10/1/2025	9/27/2026	\$385.80	\$262.34	1	\$262.34
FXS2502Q2K0	ASR1001-X	^Cisco ASR1001-X Chassis, 6 built-in GE, Dual P/S, 8GB DRAM	SNT	10/1/2025	9/27/2026	\$1,860.58	\$1,265.19	1	\$1,265.19
JAE25090DK7	SPA-8X1GE-V2	^Cisco 8-Port Gigabit	SNT	10/1/2025	9/27/2026	\$1,476.76	\$1,004.20	1	\$1,004.20



## Renewable Products

Serial #	Part	Description	Support Level	Start Date	End Date	List Price	Unit Price	Qty	Ext. Price
		Ethernet Shared Port Adapter							
5578324082	SL-ASR1-APP	Application Data Solution License for ASR1000 Series	SNT	10/1/2025	9/27/2026	\$809.29	\$550.32	1	\$550.32
5578323969	SLASR1-AIS	Cisco ASR 1000 Advanced IP Services License	SNT	10/1/2025	9/27/2026	\$1,212.95	\$824.81	1	\$824.81
FXS2502Q2G3	ASR1001-X	^Cisco ASR1001-X Chassis, 6 built-in GE, Dual P/S, 8GB DRAM	SNT	10/1/2025	9/27/2026	\$1,860.58	\$1,265.19	1	\$1,265.19
5578324091	SL-ASR1-APP	Application Data Solution License for ASR1000 Series	SNT	10/1/2025	9/27/2026	\$809.29	\$550.32	1	\$550.32
JAE25090DJG	SPA-8X1GE-V2	^Cisco 8-Port Gigabit Ethernet Shared Port Adapter	SNT	10/1/2025	9/27/2026	\$1,476.76	\$1,004.20	1	\$1,004.20
5578323973	SLASR1-AIS	Cisco ASR 1000 Advanced IP Services License	SNT	10/1/2025	9/27/2026	\$1,212.95	\$824.81	1	\$824.81
FXS2449Q2LL	ASR1001-X	^Cisco ASR1001-X Chassis, 6 built-in GE, Dual P/S, 8GB DRAM	SNT	10/1/2025	9/27/2026	\$1,860.58	\$1,265.19	1	\$1,265.19
5578324095	SL-ASR1-APP	Application Data Solution License for ASR1000 Series	SNT	10/1/2025	9/27/2026	\$809.29	\$550.32	1	\$550.32
5578323979	SLASR1-AIS	Cisco ASR 1000 Advanced IP Services License	SNT	10/1/2025	9/27/2026	\$1,212.95	\$824.81	1	\$824.81
JAE25090DMC	SPA-8X1GE-V2	^Cisco 8-Port Gigabit Ethernet Shared Port Adapter	SNT	10/1/2025	9/27/2026	\$1,476.76	\$1,004.20	1	\$1,004.20
FXS2501Q07C	ASR1001-X	^Cisco ASR1001-X Chassis, 6 built-in GE, Dual P/S, 8GB DRAM	SNT	10/1/2025	9/27/2026	\$1,860.58	\$1,265.19	1	\$1,265.19
5578324099	SL-ASR1-APP	Application Data Solution License for ASR1000 Series	SNT	10/1/2025	9/27/2026	\$809.29	\$550.32	1	\$550.32
5578323985	SLASR1-AIS	Cisco ASR 1000 Advanced IP Services License	SNT	10/1/2025	9/27/2026	\$1,212.95	\$824.81	1	\$824.81
JAE25090DKH	SPA-8X1GE-V2	^Cisco 8-Port Gigabit Ethernet Shared Port Adapter	SNT	10/1/2025	9/27/2026	\$1,476.76	\$1,004.20	1	\$1,004.20
FXS2502Q2EL	ASR1001-X	^Cisco ASR1001-X Chassis, 6 built-in GE, Dual P/S, 8GB DRAM	SNT	10/1/2025	9/27/2026	\$1,860.58	\$1,265.19	1	\$1,265.19
JAE25090DPF	SPA-8X1GE-V2	^Cisco 8-Port Gigabit Ethernet Shared Port Adapter	SNT	10/1/2025	9/27/2026	\$1,476.76	\$1,004.20	1	\$1,004.20
5578324103	SL-ASR1-APP	Application Data Solution License for ASR1000 Series	SNT	10/1/2025	9/27/2026	\$809.29	\$550.32	1	\$550.32
5578323989	SLASR1-AIS	Cisco ASR 1000 Advanced IP Services License	SNT	10/1/2025	9/27/2026	\$1,212.95	\$824.81	1	\$824.81
WMP270800DY	FMC1600-K9	^Cisco Firepower Management Center 1600 Chassis	SNT	10/1/2025	9/27/2026	\$4,379.70	\$2,978.20	1	\$2,978.20
JMX2723X1FJ	FPR1010-NGFW-K9	Cisco Firepower 1010 NGFW Appliance, Desktop	SNT	6/17/2026	9/27/2026	\$31.89	\$21.69	1	\$21.69
JMX2723X1F7	FPR1010-NGFW-K9	Cisco Firepower 1010 NGFW Appliance, Desktop	SNT	6/17/2026	9/27/2026	\$31.89	\$21.69	1	\$21.69
FJC27301A8C	CS-KITPRO-K9	Cisco Room Kit Pro - Codec, Quad Cam, Navigator	SNT	10/1/2025	9/27/2026	\$3,547.03	\$2,411.98	1	\$2,411.98
GET272300EB	CTS-MIC-CLNG-G2	Cisco TelePresence Ceiling Microphone Generation 2	SNT	10/1/2025	9/27/2026	\$173.56	\$118.02	1	\$118.02
3218731	CS-CAM-PTZ4K	Pan-Tilt-Zoom 4K 20x	SNT	10/1/2025	9/27/2026	\$1,039.39	\$706.79	1	\$706.79



Renewable Products

Serial #	Part	Description	Support Level	Start Date	End Date	List Price	Unit Price	Qty	Ext. Price
GET272300FH	CTS-MIC-CLNG-G2	Camera Cisco TelePresence Ceiling Microphone Generation 2	SNT	10/1/2025	9/27/2026	\$173.56	\$118.02	1	\$118.02
GET27230226	CTS-MIC-CLNG-G2	Cisco TelePresence Ceiling Microphone Generation 2	SNT	10/1/2025	9/27/2026	\$173.56	\$118.02	1	\$118.02
Subtotal:									\$73,421.93

Quote Summary	Amount
Renewable Products	\$73,421.93
Subtotal:	\$73,421.93
Estimated Tax:	\$6,189.47
Total:	\$79,611.40



Invoicing & Payment Unless otherwise stated in an SOW, exhibit, or definitive agreement, HyeTech shall invoice Customer on a project basis. Customer shall pay HyeTech within thirty (30) calendar days from the date of invoice for any of the Services and expenses provided or incurred hereunder. HyeTech may charge Customer interest and late fees on any overdue and unpaid portion of the Fees in an amount equal to one and one half percent (1.5%) per month. All payments shall be made in U.S. dollars. In the event Customer disputes any Fees, Customer shall pay any undisputed portion of the invoice containing the disputed Fees. Suspension In the event of non-payment of any Fees or other fees payable within forty-five (45) days from the date of invoice, HT may, in addition to any other rights and remedies it may have, suspend Customer's access to the Products and Services.

## Request to Approve 5-Year Contract for Blackboard

### **Recommendation:**

Staff recommend entering a 5-year contract with Anthology for the implementation and 4 years' worth of renewal software fees, with the year 1 software fees being waived, for their Blackboard Learning Management System (LMS) for a total cost of \$274,639.01.

### **Procurement Process and Budget Information:**

We are requesting approval to purchase Blackboard Ultra through our existing contract with Anthology. This procurement path ensures vendor-supported integration and long-term sustainability, avoiding the risks associated with custom-built solutions.

The cost of a Learning Management System is a recurring, budgeted expense. Blackboard's pricing is comparable to what we currently pay for Moodle, with an anticipated net savings due to the elimination of several third-party tools currently required to supplement Moodle. These tools are not needed with Blackboard, as the platform includes comparable functionality as part of its core offering.

This procurement decision also reflects alignment with peer institutions across the state. Central Arizona College uses Blackboard Ultra as their LMS while other universities use a different version of Blackboard. Their experiences helped inform our evaluation and reinforce the platform's viability and strategic fit.

By aligning this purchase with our Anthology contract and broader ERP transition, we are ensuring fiscal responsibility, strategic alignment, and a smoother implementation timeline.

### **Summary:**

With the future transition to the Anthology ERP on the horizon, faculty have concluded a multi-year effort in assessing our current LMS, Moodle, along with other options, and recommend that the college switch to Blackboard to meet our current and future needs. We are currently using Moodle version 3.9, which cannot be upgraded due to an integration with our legacy Jenzabar CX system that is no longer supported. While we originally planned to upgrade Moodle to version 5.0 alongside the launch of Anthology Student, doing so would require a custom integration with uncertain long-term support. This puts us at risk of repeating the same situation we are in now, locked into an outdated LMS version with no clear upgrade path.

Blackboard, as an Anthology product, offers vendor-supported integration with the full suite of Anthology systems we are implementing. This ensures long-term

compatibility and sustainability. Additionally, Blackboard's richer feature set allows us to eliminate several third-party tools currently used to supplement Moodle, resulting in a net savings. The transition effort required to move to Blackboard is comparable to upgrading Moodle, but the long-term benefits are significantly greater. Faculty and instructional leadership have expressed support for this direction, and Anthology has confirmed they can support a migration to Blackboard by January 2026, positioning us well for a smooth transition to Anthology Student in the spring.

The breakdown of the requested \$274,639.01 is as follows:

Year 1: **\$16,090.01** for implementation expenses.  
Year 2: **\$61,800.00** for software renewals and fees.  
Year 3: **\$63,654.00** for software renewals and fees.  
Year 4: **\$65,564.00** for software renewals and fees.  
Year 5: **\$67,531.00** for software renewals and fees.



**Northland Pioneer College**

Post Office Box 610 • Holbrook, AZ 86025 • (928) 524-7311 • Fax (928) 524-7312 • [www.npc.edu](http://www.npc.edu)



This Anthology Order Form ('Order Form') by and between **Blackboard LLC** ('Anthology') and **Navajo County Community College District**, ('Customer') details the terms of Customer's use of the products and services set forth below ('Product and Pricing Summary'). This Order Form shall become effective on the Effective Date. This Order Form, together with the **Anthology Master Agreement effectively dated July 20, 2023, as attached hereto as Exhibit A** and incorporated by this reference, form the entire agreement between the parties in respect to the products and services set forth in the Product and Pricing Summary. Notwithstanding anything to the contrary in any purchase order or other document provided by the Customer, any product or service provided by Anthology to the Customer in connection with a purchase order related to this Order Form is conditioned upon Customer's acceptance of this Order Form and the Anthology Master Agreement. Any additional, conflicting or different terms proffered by Customer in a purchase order or otherwise shall be deemed null and void. Each of the individuals executing this Order Form represent and warrant that he or she is authorized to execute the Agreement on behalf of Customer or Anthology, as applicable.

In consideration of the promises set forth herein, and other good and valuable consideration, the receipt of which are hereby acknowledged, the parties hereby agree as follows:

**A. Software & Services Product and Pricing Summary**

Period Number	Total (USD)
Period 1	USD 16,090.01
Period 2	USD 61,800.00
Period 3	USD 63,654.00
Period 4	USD 65,564.00
Period 5	USD 67,531.00
Contract Total	USD 274,639.01

Period 1				
Qty	Product Code	Product Name	Dates	Net Total (USD)
1	ALY.SW.LEARN.S	ANTH ALLY FOR LEARN Entitlements for Period 1 Band: 1 - 2,000 FTE	01-Sep-2025 to 30-Jun-2026	Included
1	LSS.SW.SAASU2.S	BLACKBOARD LEARN SAAS PLUSUSER Entitlements for Period 1 Band: 500 - 2,000 Users Purchased Storage: 1024 GB	01-Sep-2025 to 30-Jun-2026	Included
1	PKG.SST.PREMIUM	PKG-LEARN PREMIUM IMPL	01-Sep-2025 to 30-Jun-2026	Included
1	LSS.TR.ADMTCSEAT.N	ACADEMY ADMN AND TEACH ESSEN	01-Sep-2025 to 30-Jun-2026	Included
1	LSS.SV.INTQUICKST.N	SIS INTGR FRMWRK QUICK START	01-Sep-2025 to 30-Jun-2026	Included
1	LSS.SV.LTPESSN.N	LEARNING TECH PLANNING ESS ONE	01-Sep-2025 to 30-Jun-2026	Included
1	LSS.SV.LRNADM.N	LEARN ADMINISTRATION SERVICES	01-Sep-2025 to 30-Jun-2026	Included
1	ALY.SV.LEARNIMPL.N	ANTH ALLY IMPL FOR LEARN	01-Sep-2025 to 30-Jun-2026	Included
Period 1 Total				USD 16,090.01

Period 2				
Qty	Product Code	Product Name	Dates	Net Total (USD)
1	ALY.SW.LEARN.S	ANTH ALLY FOR LEARN Entitlements for Period 2 Band: 1 - 2,000 FTE	01-Jul-2026 to 30-Jun-2027	Included
1	LSS.SW.SAASU2.S	BLACKBOARD LEARN SAAS PLUSUSER Entitlements for Period 2	01-Jul-2026 to 30-Jun-2027	Included

Period 2				
Qty	Product Code	Product Name	Dates	Net Total (USD)
		Band: 500 - 2,000 Users Purchased Storage: 1024 GB		
Period 2 Total				USD 61,800.00

Period 3				
Qty	Product Code	Product Name	Dates	Net Total (USD)
1	ALY.SW.LEARN.S	ANTH ALLY FOR LEARN Entitlements for Period 3 Band: 1 - 2,000 FTE	01-Jul-2027 to 30-Jun-2028	Included
1	LSS.SW.SAASU2.S	BLACKBOARD LEARN SAAS PLUSUSER Entitlements for Period 3 Band: 500 - 2,000 Users Purchased Storage: 1024 GB	01-Jul-2027 to 30-Jun-2028	Included
Period 3 Total				USD 63,654.00

Period 4				
Qty	Product Code	Product Name	Dates	Net Total (USD)
1	ALY.SW.LEARN.S	ANTH ALLY FOR LEARN Entitlements for Period 4 Band: 1 - 2,000 FTE	01-Jul-2028 to 30-Jun-2029	Included
1	LSS.SW.SAASU2.S	BLACKBOARD LEARN SAAS PLUSUSER Entitlements for Period 4 Band: 500 - 2,000 Users Purchased Storage: 1024 GB	01-Jul-2028 to 30-Jun-2029	Included
Period 4 Total				USD 65,564.00

Period 5				
Qty	Product Code	Product Name	Dates	Net Total (USD)
1	ALY.SW.LEARN.S	ANTH ALLY FOR LEARN Entitlements for Period 5 Band: 1 - 2,000 FTE	01-Jul-2029 to 30-Jun-2030	Included
1	LSS.SW.SAASU2.S	BLACKBOARD LEARN SAAS PLUSUSER Entitlements for Period 5 Band: 500 - 2,000 Users Purchased Storage: 1024 GB	01-Jul-2029 to 30-Jun-2030	Included
Period 5 Total				USD 67,531.00

### B. Terms

1. The Initial Term of this Order Form shall include all Periods included in the Software & Services Product and Pricing Summary above.
2. Following the Initial Term, this Order Form shall renew automatically for successive periods of one (1) year each (each a "Renewal Term"), unless and until Customer provides Anthology, or Anthology provides Customer, with a written notice to the contrary thirty (30) days prior to the end of the Initial Term or Renewal Term, as applicable.

**3. Effective Date: September 01, 2025**

### C. Payment Terms

1. All initial and subsequent payments shall be due NET30. Unless otherwise stated, all prices are in United States currency.
2. Sales Tax: If applicable, a copy of your Sales Tax Direct Pay Certificate or your Sales Tax Exemption Certificate must be returned with this Order Form.


### D. Special Provisions

The Statement of Work attached hereto as Schedule I is incorporated herein by this reference.

Sales Approved:  Initial:	
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Sales Approved:  Initial:
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Customer: <b>NAVAJO COUNTY COMMUNITY COLLEGE DISTRICT</b> Signature:       Name: Title: Date:
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<b>BLACKBOARD LLC</b> Signature:    Name: Michael Pohorylo Title: Chief Legal Officer Date: August 12, 2025
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Anthology does not require a PO for the purchase or payment of the products on this Order Form. If your organization requires a PO in addition to this signed contract, please provide all known information here. If a PO will be issued after signature, indicate 'Pending' in the PO Number field. PO Number: _____ PO Amount: _____ Attach PO or send PO to Operations@anthology.com (Optional): _____ Attach Tax Exemption (Optional): _____							
<b>Invoicing</b> Send Invoices via email to: <table> <tr> <td>1. Name:</td> <td>Email:</td> </tr> <tr> <td>2. Name:</td> <td>Email:</td> </tr> <tr> <td>3. Name:</td> <td>Email:</td> </tr> </table>		1. Name:	Email:	2. Name:	Email:	3. Name:	Email:
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## SCHEDULE I

### STATEMENT OF WORK NO. Q-209463

This STATEMENT OF WORK (“SOW”) identifies the scope of services, deliverables, and payment arrangements to be performed hereunder and is an exhibit to the Order Form between the Anthology entity stated therein and Customer, subject to the terms and conditions of the Agreement referenced therein and hereby incorporated into this SOW. The terms and conditions in this SOW are in addition to all terms contained in the Agreement, which shall continue in full force and effect. This SOW shall control over any conflicting terms, conditions, or pricing in the Agreement. Capitalized terms not defined herein shall have the meaning assigned in the Agreement. Anthology and Customer may hereinafter be referred to individually as “Party” or collectively as “Parties”.

#### 1. Anthology Solutions

Anthology Evaluate  
Blackboard Learn

The products identified in this section are collectively defined herein as the “Anthology Solutions”. Customer acknowledges and agrees that the scope of the Anthology Services (as defined below) is limited to these Anthology Solutions, regardless of whether Customer has purchased or obtains any additional licenses for other Anthology products or services pursuant to the Agreement or otherwise.

#### 2. Period of Performance and Project Schedule

Unless otherwise stated in an Appendix attached hereto, the period of performance for this engagement will commence as of the Effective Date and will continue until all Anthology Services are rendered or this SOW terminates in accordance with the terms of this SOW or the Agreement, as applicable.

Customer and Anthology will work together in good faith to establish a mutually agreeable project timeline (“Project Schedule”). Establishing the Project Schedule and meeting stated delivery dates will be dependent upon the availability of Anthology and Customer resources.

#### 3. Project Management

Anthology will assign a resource to manage the engagement (“**Anthology PM**”) who will be responsible for the overall engagement and delivery of the Anthology Services. The Anthology PM will provide Customer with documentation, status reporting, and resource management input with respect to the Anthology Services.

Customer will appoint a project manager (“**Customer PM**”). The Customer PM shall act as the primary point of contact for the Anthology PM and will : (i) have full authority to make all required decisions regarding project scope, timeline, and cost; (ii) be authorized to assign appropriate Customer personnel and resources and be responsible for such resources performance; (iii) be responsible for coordinating all meetings with Anthology, contractors or other third parties (as required); (iv) provide Customer Deliverables, products, and information as required by Anthology; and (v)

assigning and making available subject matter experts (“SME”) required to identify business rules, resolve process discrepancies, and answer ad hoc questions.

## 4. The Anthology Services

### Service Descriptions and Scope Appendices

The services to be provided pursuant to this SOW include the following (“Anthology Services”), which are more fully described in the Appendix attached hereto:

Appendix	Product Code	Service Name
A	EVA.SV.EVALIMPL.N	ANTHOLOGY EVALUATE IMPLEMENT
B	LSS.TR.ADMTCSEAT.N	ACADEMY ADMN AND TEACH ESSEN
C	LSS.SV.INTQUICKST.N	SIS INTGR FRMWRK QUICK START
D	LSS.SV.LTPESSN.N	LEARNING TECHNOLOGY PLANNING ESSENTIAL ONE
E	LSS.SV.LRNADM.N	LEARN ADMINISTRATION SERVICES

In Process

For a detailed description of scope, see Appendices.

The engagement scope in this section is an all-inclusive list of the Anthology Services that will be provided pursuant to this SOW. For the avoidance of doubt, no additional services will be provided pursuant to this SOW. In the event additional services are required, the Parties will execute a separate Statement of Work or Change Order, in accordance with the terms of the “Change Order Process” section set forth below.

### Testing and Validation

For engagements that require testing and validation, these will be performed in accordance with the relevant appendix attached hereto. Customer must confirm to Anthology that the results of such testing demonstrate that the Anthology Solutions perform the actions specified in the mutually agreed upon documentation, in all material respects. In the event Customer does not complete testing as agreed upon, the deliverable dates and associated fees may vary, thereby requiring the Parties to execute a separate Statement of Work or Change Order, as applicable in accordance with the “Change Order Process” section below.

## 5. Change Order Process

Either Party may initiate a change request to this SOW by submitting the details of such change in writing to the other Party. The Party receiving the change order request shall respond to such proposal within five (5) business days. If the Parties are mutually agreeable to the proposed changes or any other changes to this SOW, they shall execute a change (“**Change Order**”). Customer acknowledges and agrees that any changes to the Deliverables, Anthology Solutions, Anthology Services, work to be performed, schedules, resources and / or assumptions in this SOW may affect the Project Timeline and the associated fees.

## 6. Assumptions

### General

- Payment of fees for the Anthology Solutions is not contingent on or related to payment for the Anthology Services delivered pursuant to this SOW.
- Customer will facilitate all hardware and software configuration and environment(s), either managed or self-hosted, required to support the Services to be rendered pursuant to this SOW.
- Except as expressly specified in writing, Customer will procure and provide all third-party products and services in a timely manner as required to complete the Anthology Services under this SOW. Anthology is not responsible for making changes to the configuration or data contained or used in third-party systems.
- Customer will provide Anthology with remote and/or on-site access, as required, to its systems, sites, networks, legacy systems, third party solutions, and applications and will ensure adequate internet is maintained for delivery of the Anthology Services.
- Customer will designate empowered decision-makers who can make determinations regarding project scope, priorities, execution, and resourcing.
- Customer will manage all internal communications and information dissemination to its personnel and campuses, as applicable.
- Customer will facilitate and assume all responsibility for any interactions with Customer or third-party projects or programs in order to manage external project dependencies, including Customer personnel, Customer sub-contractors, third party vendor relationships and any third-party licenses. Anthology will reasonably cooperate with Customer and such third-party integration providers as necessary to perform the Professional Services and provide the Deliverables set forth herein.

### Customer Acknowledgement

Customer acknowledges and agrees that Anthology's ability to deliver the Anthology Services and render the Deliverables specified in this SOW is dependent upon Customer's full and timely cooperation, including but not limited to the availability of Customer skilled resources in accordance with a project staffing plan, as well as the accuracy and completeness of any information Customer provides to Anthology (which may include but is not limited to relevant information regarding the organization, infrastructure, roles, processes, systems, data, and other elements of the Customer's operations). Customer shall facilitate and assume all responsibility for any interactions relating to projects or programs in order to manage external project dependencies, including but not limited to Customer personnel, Customer sub-contractors, third party vendor relationships and any third-party licenses. In the event Customer fails to perform any of the foregoing obligations, or if any assumptions specified in this SOW change as a result of inaccurate information provided by Customer or Customer's lack of cooperation, then the scope of services, Project Timeline and associated fees may change. In the event of the foregoing, Anthology shall notify Customer in writing and shall allow Customer up to five (5) business days to review such notice, subject to any additional delays or costs, and the Parties will enter into a Change Order in accordance with Section 6 hereinabove, and Anthology shall not be obligated to perform until such Change Order is mutually executed and shall not be in breach of its obligations contained in this SOW or in the Agreement for its inability to perform.

## 7. Fees, Invoicing & Payment

Services	Product Code	Service Type	Service Renewal	Estimated T&M Hours
ANTHOLOGY EVALUATE IMPLEMENT	EVA.SV.EVALIMPL.N	FP	One-Time	N/A
ACADEMY ADMN AND TEACH ESSEN	LSS.TR.ADMTCSEAT.N	FP	One-Time	N/A
SIS INTGR FRMWRK QUICK START	LSS.SV.INTQUICKST.N	FP	One-Time	N/A
LEARNING TECHNOLOGY PLANNING ESSENTIAL ONE	LSS.SV.LTPESSN.N	FP	One-Time	N/A
LEARN ADMINISTRATION SERVICES	LSS.SV.LRNADM.N	FP	One-Time	N/A

The fees payable by Customer for the Anthology Services detailed in this SOW are found in the accompanying Order Form.

Travel and Expenses are not included in the fees set forth in the relevant Order Form and will be invoiced as incurred in accordance with Anthology’s Travel and Expense Policy referenced in the Agreement.

Estimated T&M Fees. Any Estimated T&M Fees will be billed on a time and materials basis (T&M). If additional T&M hours are required by Anthology to perform the services specified in this SOW, Anthology shall promptly notify Customer of the additional T&M hours requirement prior to proceeding with such services and such additional services will not be performed by Anthology without a Change Order. Customer acknowledges that its failure to approve a change request to allow for additional T&M hours may impact certain Deliverables and result in the delay of the completion of this SOW. In the event Customer refuses to approve a commercially reasonable change request to allow for additional T&M hours, Anthology shall not be in breach of this SOW or the Agreement due to any delay or inability to produce a certain Deliverable.

Recurring Services. Services indicated as One-Time will terminate upon completion of the service. Services indicated as Auto-Renewal will repeat and be invoiced in future Order Forms until such time as the customer indicates a desire to not renew the Services according to the terms and conditions defined in the Master Services Agreement

The terms and pricing included herein shall expire if this SOW is not fully executed within thirty (30) days of Customer’s receipt of the SOW from Anthology.

## 8. Cancellation

Customer acknowledges that Anthology allocates its resources to provide the Anthology Services pursuant to this SOW. In the event Customer needs to cancel any scheduled Anthology Services with less than fifteen (15) business days prior written notice, and Anthology cannot, after making good faith efforts, reallocate its resources, then Customer shall promptly pay Anthology the applicable fees (based on the difference between the projected scheduled Anthology Services for Customer and the fees actually received) and any out-of-pocket expenses incurred by Anthology. Notwithstanding anything to the contrary, in the event of Customer terminates a Fixed Fee SOW for any reason, other than as a result of Anthology’s uncured material breach, Customer must pay Anthology all Fixed Fees specified in such terminated SOW. Any termination or cancellation of a SOW shall have no effect on Customer’s obligation to pay the applicable fees and out-of-pocket expenses actually incurred by Anthology through the effective date of termination or cancellation.

# Appendix A

## I. Period of Performance; Project Schedule

The period of performance for this engagement will commence following the Effective Date of the Order Form and will continue for a period of 12 months unless otherwise stated in section II of this Appendix.

## II. Scope of Service and Assumptions

### ANTHOLOGY EVALUATE IMPLEMENT - EVA.SV.EVALIMPL.N

This statement of work includes product implementation services specific to the purchased tool(s). Anthology will provide consultation services in a virtual setting; train-the-trainer consultation sessions are paired with content from on-demand video modules. These video modules should be used for campus project team members to gain familiarity with tool functionality and to understand configuration decisions and implications. Further, video module preparatory work allows the subsequent consultative conversations to be informed by knowledge of the feature(s) and to allow for easier configuration decision-making

	Anthology Deliverables/Actions	Customer Deliverables
Successful Start Configuration Workbook Handoff from Sales	<b>Action</b> – Review of Customer's Completion of Successful Start Configuration Workbook <b>Deliverable</b> – Questions/Clarifications for Successful Start Configuration Workbook Template; Authentication Verification Worksheet to IT Team	<b>Action</b> – Customer Completes the Workbook <b>Deliverable</b> – Completed Workbook; Clarification from Customer on Questions on Workbook
Kickoff Call	<b>Action</b> – After review of Workbook, will schedule a kickoff call <b>Deliverable</b> – share agenda for meeting; PowerPoint from Kickoff Call	<b>Action</b> – Roles defined in Workbook should attend Kickoff call; Confirm with PM final members of customer team, IT's readiness, and target dates for Product implementation <b>Deliverable</b> – IT Team Submit Authentication Worksheet
SSO Setup	<b>Action</b> – Technical Team working with Customer for Single Sign-on (SSO)	<b>Action</b> – Customer provides IT resources to set up SSO <b>Deliverable</b> – Setup SSO
Site Spin Up	<b>Action</b> – Technical Team setting up site with Customer's IT team; Enablement Team validates the Site Access <b>Deliverable</b> – Access to Site	
Data Strategy Requirements	<b>Action</b> – Data Strategy Team schedules call to review Data Requirements Guide with customer <b>Deliverable</b> – Send Data Requirements Guide	<b>Action</b> – Review Data Requirements Guide for consultation session with Data Strategist
Build Data Exchange	<b>Action</b> – schedule calls with Data Strategist to support customer completion of data file templates, testing, and validation process of files <b>Deliverables</b> – File Templates provided to customer for Solutions	<b>Action</b> – Customer works with data strategist to retrieve data to build data files <b>Deliverable</b> – customer builds, tests, and validates data exchange files
Functional Consulting Series	<b>Action</b> – schedule calls with customer; review site architecture and overview of steps and best practices to complete site development <b>Deliverable</b> – Consultant provides list and access to training materials	<b>Action</b> – upon review with the consultant of the successful configuration workbook, customer completes training materials and activities to configure the site <b>Deliverable</b> - customer competes activities and come prepared with questions to the consultant sessions
Site Readiness and Launch	<b>Action</b> - consultant reviews site for launch (and, as needed, post-launch) readiness	<b>Action</b> - Customer executes internal communication plan and schedules end user training

	Anthology Deliverables/Actions	Customer Deliverables
Adoption Services Transition	<b>Action</b> – consultant indicates customer readiness for Adoption Services support	<b>Action</b> – Customer attends transition call with Adoption Services

## Appendix B

### I. Period of Performance; Project Schedule

The period of performance for this engagement will commence following the Effective Date of the Order Form and will continue for a period of 12 months unless otherwise stated in section II of this Appendix.

### II. Scope of Service and Assumptions

ACADEMY ADMN AND TEACH ESSEN - LSS.TR.ADMTCSEAT.N

#### *Deliverables*

- The service is to provide 3 seats on the  
**Blackboard Administration Essentials**  
course.
- This service also includes provide 3 seats on the  
**Blackboard Teaching Essentials**  
course.
- Access to an online asynchronous course within the Academy Blackboard LMS.
- Certificate of completion and badge are awarded upon successful completion of the course requirements.

#### *Customer Assumptions and Responsibilities*

- It is the Customer's responsibility to ensure their availability of the staff to complete the course.
- Participants in this course will need System Administrator access to their institution's Blackboard environment.
- Participants should expect to spend approximately 50 hours completing the course activities.
- Course materials are in digital format only.
- Course is 100% asynchronous.
- A participant must meet the requirements in the course to be awarded a certification and badge.
- The course will be delivered in English.

- Any seat(s) or assessment(s) not consumed within 1 year of contract signature will expire and no longer be available for enrollment.

## Appendix C

### I. Period of Performance; Project Schedule

The period of performance for this engagement will commence following the Effective Date of the Order Form and will continue for a period of 12 months unless otherwise stated in section II of this Appendix.

### II. Scope of Service and Assumptions

SIS INTGR FRMWRK QUICK START - LSS.SV.INTQUICKST.N

The objective is to assist customers with the initial implementation of Blackboard Learn SIS Integration Framework using delimited flat file or REST API.

#### Program Components

The program consists of the following components:

- Up to 4 customer working sessions, typically 2 hours each, covering the topics below. This is in addition to key checkpoints around planning, testing, and go-live support:
  - Business process discussion for SIS to Learn integration
  - Integration setup
  - Integration testing
- Identification of basic data elements, behaviours and business rules in order to automate processes for user account and course creation, user enrolment and faculty/staff assignment to courses.
- Document decisions regarding key data elements in a data planning workbook for later customer use.
- Provide guidance with regard to the configuration of the SIS Integration Framework to meet documented data requirements.
- Review troubleshooting techniques for data and integration issues.

#### Service Deliverables

- Completed Data Planning Workbook.
- Reference Documentation

#### Working Products

Working Products are artifacts, used by Anthology, that demonstrate progress toward a deliverable; however, they are not themselves deliverables.

Where agreed Working Products may be made available to the customer after delivery.

- Business process requirements documentation using the Data Planning Workbook.
- Reference documents for custom scripting and data troubleshooting.

## Service Specific Assumptions

- Integration will use Flat-file delimited text files for SIS Framework, or the Blackboard Learn REST API
- The customer is responsible for any development necessary to extract data from the Student Information System or other enterprise system and post that extracted data to the Blackboard Learn integration endpoints.
- For Blackboard Learn REST API customer will need to have their own developer.blackboard.com account and create their own REST Application with Blackboard Learn provided guidance.
- Active and timely participation from customer IT, Admissions and Registry staff is required.
- Staff assigned to the project should collectively have comprehensive knowledge of the SIS, and other enterprise data repositories, and overall business policies relating to registration, admissions, and student life cycles.
- The service does NOT include: LDAP or other authentication integration or configuration integration with any data source other than the primary, standard, SIS; integration with more than one production Blackboard Learn system.
- The service does not include: major identity management changes or merging of multiple user accounts data exchange back to the SIS.
- The customer is responsible for procuring and configuring appropriate SIS modules to support the integration framework prior to start of engagement.

## Appendix D

### I. Period of Performance; Project Schedule

The period of performance for this engagement will commence following the Effective Date of the Order Form and will continue for a period of 12 months unless otherwise stated in section II of this Appendix.

### II. Scope of Service and Assumptions

#### LEARNING TECHNOLOGY PLANNING ESSENTIAL ONE - LSS.SV.LTPESN.N

This service enables a successful implementation across the customer systems by providing the following benefits:

- Goals and objectives for measuring the success of your LMS:
  - Definition of the LMS purpose and establish realistic goals and objectives consistent with the Institution's eLearning mission statement.
  - Create a technology plan and timeline that provides stakeholders with a roadmap to align the institution's immediate priorities to achieve set goals.
- Increased confidence for the Institution's LMS project implementation team through:
  - Clarity on roles and responsibilities.
  - Clearly defined workstream activity.
  - Ongoing professional support and mentoring.
  - A detailed timeline with identified resources and specified success measurements.
- Proactive LMS implementation and rollout project in which the planning service:

- Helps Institutions to anticipate challenging scenarios and risks before they happen and take appropriate steps to mitigate them.
- Encourages Institutions to be proactive rather than reactive to situations as they occur.
- Provides an end-to-end process that covers the entire user and course lifecycle.
- Provides implementation support items for faculty/end-user training.
- Reviews the overall support infrastructure.
- Re-evaluates communications planning and change management processes.
- A clear direction for ongoing LMS operational success:
  - Providing a baseline from which progress can be measured and boundaries established for effective LMS governance.
  - Provision of a framework of clearly defined direction for decision-makers.
  - Identifying key metrics and goals for customer success.

This service is based on four distinct stages:

- **Discovery:** Focus on building the project team, reviewing the project deliverables, verifying customer expectations and review of LMS Ecosystem.
- **Analysis:** Focus is on discovery and design, best practice review, and the design/determination of the who, what, why, when, and how of the entire process.
- **Implementation:** Focus is on delivery of the tailored summary and recommendations report mapped back to customers targets and objectives.
- **Ongoing Services:** Provide multiple touch points throughout the service contract period to re-evaluate and adjust plans and maintain an ongoing planning cycle.

This service is:

- Delivered remotely
- Up to four (2-hour) discovery and planning meetings
- Designed for customers new to Blackboard Learn, customers moving from Original to Ultra, customers wanting to review their educational technology ecosystem.

## **Service Deliverables**

- Executive Overview Report

## **Artifacts**

- Meeting agendas and recordings if applicable.
- Notes and documents shared during the planning service.

# **Appendix E**

## **I. Period of Performance; Project Schedule**

The period of performance for this engagement will commence following the Effective Date of the Order Form and will continue for a period of 12 months unless otherwise stated in section II of this Appendix.

## **II. Scope of Service and Assumptions**

### **LEARN ADMINISTRATION SERVICES - LSS.SV.LRNADM.N**

A series of remote sessions designed to provide customers with maximum flexibility in selecting topics and delivery times for assistance in configuring their Blackboard Learn system. The service comprises five synchronous two-hour sessions delivered remotely. The goal of the service is to help the customer customize their Blackboard Learn environment so that it best serves their particular instructional goals and institutional structure. With assistance as needed from the consultant, the customer may choose the topics most relevant and useful to their institution and decide the level of depth in which they wish to cover them.

#### **Artifacts**

- Documentation as appropriate to covered topics.

#### **Service Specific Assumptions**

- These sessions are designed to address configuration sessions via the GUI (Graphic User Interface). They will not cover technical topics, including but not limited to server maintenance and installation.
- All sessions are remote.

## EXHIBIT A

### Anthology Master Agreement for All Products and Services

The terms contained herein (the "**Master Agreement**") and any accompanying Anthology ordering document (an "**Order Form**"), or the acceptance by Anthology of an acknowledgement form or purchase order form referencing an Order Form incorporating these terms form the entire agreement ("**Agreement**") between **Navajo County Community College District** (hereafter, "**Customer**" or "**you**") and the Anthology entity listed in any Order Form (hereafter, "**we**", "**us**" or "**Anthology**"), with respect to the products and/or services listed in any Order Form ("**Products and Services**").<sup>1</sup>

#### 1. APPLICABILITY OF THIS MASTER AGREEMENT

This Agreement governs: (a) your rights to access and use software licensed on a term or perpetual basis ("**Software**"); (b) your rights to access and use software made available under a software-as-a-service delivery model for a term ("**SaaS Services**"); (c) your rights to support and/or maintenance services which you purchase or are otherwise entitled to receive other than Student Support Services ("**Support**"); (d) any professional services ("**Professional Services**"); (e) any managed hosting services, cloud hosting services or other hosting services ("**Hosting Services**"); (f) any hardware and/or firmware ("**Equipment**"); and (g) any student support services ("**Student Support Services**").

#### 2. RIGHTS OF ACCESS AND USE.

**2.1 License to Use SaaS Services or Hosting Services.** With respect to SaaS Services or Hosting Services, for the Term (as defined in Section 9.1), we grant you a non-exclusive, non-transferable, non-sublicensable license to access and use the SaaS Services (or, as applicable, Hosting Services) made available by Anthology to you on a remote-access, subscription basis via the Internet solely in support of your operations.

**2.2 License to Use Software Provided on a Perpetual or Term Basis.** With respect to Software, for the Term, or where a license is specified as "perpetual", on an ongoing basis unless and until terminated as provided herein, we grant you a non-exclusive, non-transferable, non-sublicensable, license to use the Software on a Designated Configuration solely in support of your operations. A "**Designated Configuration**" shall mean a configuration of hardware and software which is supported by us and on which the Software is operated by or for you, which may include a configuration on your premises or a configuration managed by us for you.

**2.3 Evaluation License.** If Customer is provided an Evaluation License, Anthology grants you a limited, non-exclusive, non-transferable non-sublicensable license to install and use one (1) Evaluation copy of the Software, SaaS Services or Hosting Services, as applicable, ("Evaluation License") subject to the obligations herein and solely in connection with your internal evaluation of the Software, SaaS Services or Hosting Services and not for any production or commercial purpose.

**2.4 API License.** If you are purchasing an application programming interface ("**API**") license, other than a Learn API as defined below, we grant you a limited, non-exclusive, revocable, non-sublicensable, non-transferable license to access each API set forth in the Order Form. The API(s) are provided in the form of a web service that enables a "connection" into our servers. We will provide you with the information necessary to enable your secure use of the API(s). You may not use or install the API(s) for any other purpose without our written consent, and may not copy, rent, adapt, disassemble, lease, assign, sublicense, reverse engineer, modify or decompile, the API(s) or any part thereof. We reserve the right to limit the number and/or frequency of API requests or take other actions necessary to protect the integrity of our services.

**2.5 Authorized Users.** You agree to only grant access to the SaaS Services, Hosting Services, and/or Software to those individuals defined in the Terms Applicable to Specific Products and Services, below ("**Authorized Users**").

**2.6 License Restrictions.** You may not use the Software, Hosting Services, or SaaS Services beyond the usage, storage or other applicable limitations set forth in the Agreement. In addition, unless otherwise expressly permitted in the Agreement, without our prior written consent, you will not: (i) permit any third-party to install, configure, access, use or copy all or any portion of the Software, Hosting Services, or SaaS Services; (ii) modify, reverse engineer, decompile, disassemble, distribute, create derivative works based on, copy or otherwise exploit all or any portion of the SaaS Services, Hosting Services, or Software except as expressly permitted by applicable law, rule or regulation ("**Law**"); (iii) sell, sublicense, rent, lease, or otherwise transfer rights to all or any portion of the SaaS Services, Hosting Services, or Software; (iv) use the SaaS Services, Hosting Services, or Software to operate in or as a time-sharing, outsourcing or service bureau environment or in any manner which supports the business of a third party; (v) obscure, remove or alter any intellectual property rights notices or markings on the SaaS Services, Hosting Services, or Software; or (vi) use the SaaS Services, Hosting Services, or Software in any manner which could (a) pose a security risk or (b) disable, overburden, damage, or impair the performance or operation of the computing environment on which the SaaS Services, Hosting Services, or Software are hosted (including where such use interferes with any other customer's use thereof).

**2.7 Delivery.** Delivery shall be deemed complete when Anthology notifies you that you have the ability to access the Software, Hosting Services, or SaaS Services.

#### 3. SUPPORT, SERVICE LEVEL AGREEMENTS, AND OVERAGES

If you license or are otherwise eligible to receive Support, or are eligible for service level agreements, or you exceed contract limits, such Support (or service level or overage rate, as applicable) will be provided as described in the Anthology Customer Support Services Guide ("**Services Guide**"), service level agreement, overages and/or specifications document located at <https://blackboard.secure.force.com/publicbarticleview?id=kA57000000PB00> and <https://www.anthology.com/agreements/anthology-client-support-services-guides> for the relevant Products and Services. As stated in these service level agreements or other Customer Support documents, overages may be charged for additional Customer usage beyond the applicable limitations, and for additional storage and/or bandwidth needed to support excess Customer usage. Our failure to satisfy a service level shall not be a breach of this Agreement and, your sole and exclusive remedy (if any) in such event shall be as expressly set forth in the applicable service level agreement. With respect to SaaS Services, you will receive, or we will make available for you to receive, all applicable updates, application packs, and releases that we make generally available during the Term. We reserve the right to discontinue, change, or deprecate the Products and Services or change or remove features or functionality of the Products and Services from time to time for any reason, but in such even we will notify you and, as Customer's sole and exclusive remedy, Anthology shall provide a pro rata refund for any unused portion of the Products and Services, as applicable. Subject to our commitments in the DPA referenced in Section 5 below, we may, in our sole discretion (i) reengineer our

<sup>1</sup> If you have previously purchased products and/or services with Anthology, unless expressly stated in the Order Form of this Agreement, your prior agreement(s) governing such products and/or services shall continue in effect with regard to such products and/or services, and this Agreement shall govern the Products and Services reflected in the Order Form of this Agreement.

network components or infrastructure and/or change locations where Products and Services are performed; (ii) perform our obligations through our subsidiaries or affiliates, or through the use of selected independent subcontractors or providers; and (iii) modify and/or replace technology or service architectures relating to the Products and Services.

#### 4. PROPRIETARY RIGHTS

**4.1. Customer Property.** Customer Property is and shall remain your sole and exclusive property. "Customer Property" means all graphic user interface, text, content, images, video, music, designs, products, computer programs, drawings, documentation and other materials of any kind posted, submitted, provided or otherwise made available to us by you or an Authorized User in connection with the Products and Services. Customer Property may also contain Personal Information which is defined in Section 5.

**4.2. Anthology Property.** Subject to the limited rights expressly granted hereunder, we and our licensors or suppliers own all right, title and interest in and to each of the Products and Services, along with all related documentation, materials, content, and specifications, and all modifications, enhancements, improvements, and all derivative works thereto. We also retain all right, title and interest to any work product or other intellectual property developed and/or delivered in connection with our provision of any services or the performance of any obligations hereunder. Any intellectual property rights that we do not expressly grant to you are expressly reserved by us.

**4.3. Anthology Use of Customer Property.** During the term of the Agreement, you grant to us, our affiliates, and our third-party service providers, solely to perform our obligations hereunder, a non-exclusive, royalty-free license to modify, reproduce, display, combine, copy, store, transmit, distribute, and otherwise use the Customer Property. You authorize, subject to the terms of the Agreement and to the extent permitted by Law, Customer Property to be accessed and processed by us, our affiliates, and/or our third-party service providers in countries other than the jurisdiction from which the Customer Property was originally collected.

**4.4. Content Restrictions.** You agree not to use any Product or Service to store, display, or transmit content that is deceptive, libelous, defamatory, obscene, racist, hateful, infringing or illegal, and to the extent Authorized Users exercise the rights granted to you under this Agreement, you represent and agree that you will ensure that such Authorized Users will also comply with the obligations applicable to such exercise set forth in this Agreement. We take no responsibility and assume no liability for any Customer Property that you, an Authorized User, or third party out of our control posts, submits, displays, or otherwise makes available via the Products or Services, and you agree that we are acting only as a passive conduit for the online distribution and publications of such Customer Property.

**4.5. Removal of Content.** If we determine in good faith that any Customer Property could (a) pose a material security risk, (b) be deceptive or perceived as inciting violence, libelous, defamatory, obscene, racist, hateful, or otherwise objectionable, or (c) give rise to (i) Anthology liability or reputational harm to Anthology, or (ii) a violation of Law or the terms or restrictions of the Agreement, then we may remove the offending Customer Property and shall notify you of such removal, suspend your and/or your Authorized Users' use of the Products and Services, and/or pursue other remedies and corrective actions.

**4.6. Other Rights.** You hereby grant to us the limited right to use your name, logo and/or other marks for the sole purpose of listing Customer as a user of the applicable Products and Services in our promotional materials and social media unless and until you provide us a written request to discontinue such use.

**4.7. DMCA Notice and Takedown Policy.** It is our policy to respond to alleged infringement notices that comply with the Digital Millennium Copyright Act of 1998 (the "DMCA"), or similar regulations. If you believe that your copyrighted work has been copied in a way that constitutes copyright infringement and is accessible via the Products and Services, please notify our copyright agent as set forth in the DMCA, or applicable regulation. For your complaint to be valid under the DMCA, it must contain all the elements provided in 17 USC §512(c)(3) and be submitted to the following DMCA Agent: DMCA Notice, General Counsel, Anthology Inc., 11720 Plaza America Dr., 11<sup>th</sup> Floor, Reston, Virginia 20190, Email: [GeneralCounsel@anthology.com](mailto:GeneralCounsel@anthology.com), +1-202-303-9575.

#### 5. PROTECTION OF PERSONAL INFORMATION

Both parties agree to uphold their responsibilities under Applicable Data Privacy Laws, including in the U.S., FERPA, the Protection of Pupil Rights Amendment (PPRA), and COPPA, as applicable. We agree to treat Personal Information as confidential, as described in the Data Processing Addendum ("DPA") available at <https://www.anthology.com/agreements/dpa>. The DPA applies whenever Personal Information is Processed (as defined in the DPA) under the Agreement.

#### 6. DATA SECURITY

We will implement commercially reasonable technical and organizational measures to ensure an appropriate level of security to protect Customer Property, including Personal Information. The security measures applied to Customer Property are described in Annex B of the DPA.

#### 7. PROFESSIONAL SERVICES

**7.1.** If you purchase Professional Services, they shall be provided as described in any applicable attachment (such as a statement of work) or URL referenced in your Order Form and must be used within one (1) year of the annual Term in which they were purchased, unless otherwise stated in a statement of work or other agreement between the parties. We will assign employees and subcontractors with qualifications suitable for the Professional Services. We may replace employees and subcontractors in our sole discretion with other suitably qualified employees or subcontractors.

**7.2. Policies.** While on Customer's premises, our employees and subcontractors will comply with all reasonable security, conduct, and safety practices prescribed by Customer and applicable to Customer's own personnel to the extent that we have been notified in advance of such practices in writing. To the extent any employee or subcontractor is required to sign any waivers, releases or other documents as part of these security practices the terms thereof shall be invalid and have no effect against Anthology, its employees or subcontractors.

**7.3.** Professional Services related to the EAE Software shall be governed by Section 16 below.

#### 8. FEES AND TAXES

**8.1. Fees.** In consideration for our performance under the Agreement, you agree to pay all fees required by the Order Form. We expressly reserve the right to change the fees payable under any Order Form with respect to any renewal of Products or Services by providing you with 30 days' advance notice of such change prior to the expiration of the then-current term or your right to decline to renew, whichever is earlier.

**8.2. Excess Use Fees.** Your use of the Products and Services is restricted to the use limitations set forth in the applicable Order Form or in the applicable support terms of the Agreement, and as further defined under each of the respective product terms below. Use in excess of these limitations is subject to additional fees and may be invoiced monthly by Anthology. Any failure by Anthology to timely invoice for any overages due under this paragraph shall not constitute a waiver of your obligation to pay such fees. You agree to timely pay any invoice issued for overages pursuant to this Agreement.

**8.3. Late Fees.** Interest may be charged on any overdue amounts at the lower of: (a) the highest permissible rate, or (b) 18% per annum, charged at 1.5% per month from the date on which such amount fell due until the date of payment, whether before or after judgment. You acknowledge that any delay in payment may result in termination or interruption of the provision of the Products and Services at our sole discretion.

**8.4. Taxes.** Unless expressly provided in an Order Form, the fees hereunder do not include any sales, use, excise, import or export, value-added ("VAT"), goods and services ("GST"), or similar tax or interest, or any costs associated with the collection or withholding thereof, or any government permit fees, license fees or customs or similar fees ("Taxes") levied on the delivery of any Products and Services by us to you. You shall be responsible for payment of all Taxes associated with your purchases hereunder. If we have the legal obligation to pay or collect Taxes, you will be invoiced an additional amount in respect of the Taxes and you will pay within thirty (30) days after the date of the invoice unless you have provided a valid tax exemption certificate authorized by the appropriate taxing authority. If you are required by Law to withhold any amounts, then you shall timely pay the amount to the relevant tax authority and provide acceptable documentation evidencing your payment. We will be responsible for taxes based on our net income or taxes (such as payroll taxes) due from us on behalf of our employees.

**8.5. Purchase Orders.** You agree that if your internal procedures require that a purchase order be issued as a prerequisite to payment of any amounts due, you will timely issue such purchase order (the terms of which shall not control) and inform us of the number and amount thereof. You agree that the absence of a purchase order, other ordering document or administrative procedure may not be raised as a defense to avoid or impair the performance of any of your obligations under the Agreement, including payment of amounts owed under the applicable Order Form. Anthology reserves the right to invoice for the value of the annual fees for any subsequent renewal period, even in the absence of an issued purchase order, where use of the Products and Services continue beyond the then-contracted term.

**8.6. Out-of-Pocket Costs.** Prices quoted for Products and Services do not include travel and out-of-pocket expenses. To the extent applicable, you shall reimburse us for our reasonable expenses, including, without limitation, costs of travel (air and cab fare, lodging, auto rental or local mileage, standard per diem, etc., based on M&I standard U.S. Government per diem rates, and subject to any other guidelines mutually agreed upon by both parties) and reasonable out-of-pocket costs for photocopying, overnight courier, long-distance telephone and the like (collectively, "Travel and Expenses"). We will maintain records of Travel and Expenses, and upon Customer's reasonable request, we will provide copies of hotel and airfare records.

## 9. TERM AND TERMINATION.

**9.1. Term.** The term ("Term") is defined in the applicable Order Form referencing the Agreement.

**9.2. Termination for Breach.** If either party materially breaches any obligation under the Agreement or a statement of work, the non-breaching party may terminate the Agreement or statement of work, whichever is applicable, in its entirety, or, at the non-breaching party's option, it may terminate solely the relevant Product or Service pursuant to which such breach relates, provided in either case that such breach has not been corrected within thirty (30) days after receipt of a written notice of such breach. Notwithstanding the foregoing, except for termination rights in this section and Section 9.3, the parties have no other right of early termination.

**9.3. Anthology Termination.** Anthology may terminate this Agreement immediately upon notice to Customer: (A) if Anthology's relationship with a third party who provides software or other technology Anthology uses to provide the Products and Services expires, terminates or requires Anthology to change the way it provides the software or other technology as part of the Products and Services; (B) if it is Anthology's good faith belief that providing the Products and Services could create a substantial economic or technical burden or material security risk for Anthology; (C) in order to comply with the law or requests from governmental entities; (D) if Anthology determines that the use of the Products and Services has become impractical or unfeasible for any legal or regulatory reason; or (E) if you materially breach the provisions of the license usage restrictions in the Agreement.

**9.4. Effect of Termination.** Upon termination of the Agreement or termination or expiration of any individual license, you and your Authorized Users will immediately cease access to the applicable Products and Services, and, unless such termination is due to Anthology's uncured material breach, you will immediately pay us all amounts due and payable for such Products and Services. Upon termination or expiration, unless expressly stated otherwise herein, each party shall promptly cease any use of and permanently delete, or upon the other parties' request, return the other party's Confidential Information and any copies to the extent commercially reasonable.

**9.5. Reserved Rights.** Without limiting the foregoing, we reserve the right to allocate, limit or delay delivery of, or suspend access to our Products and Services, in whole or in part, where necessary or commercially appropriate, upon the occurrence of any situation or event (including without limitation, a Force Majeure Event (as defined in Section 14.7 below) whereby the performance or operation of our Products or Services (a) becomes overburdened, impaired, impracticable, or their economic viability is otherwise affected; (b) poses a security risk; (c) may subject Anthology or any third party to liability; or (d) is in violation of applicable law, court order, or administrative order. Anthology may also suspend Customer's right to access or use any portion of, or all of the Products and Services immediately upon notice to Customer if Customer is in breach of this Agreement, including if Customer is delinquent on its payment obligations for more than 30 days. In the event that Anthology suspends Customer's access to the Products and Services pursuant to this section 9.5 for reasons that do not arise out of the acts or omissions of Customer, Customer shall be entitled to a pro rata refund of fees paid for the Products and Services during the period of suspension.

**9.6. Survival.** The termination or expiration of the Agreement shall not relieve either party of any obligation or liability, nor impair the exercise of rights, accrued hereunder prior to such termination or expiration. Without limiting the foregoing, the provisions of Sections 4, 5, 8, 9.3, 9.4, 9.5, 10.4, 11, 12, 13, 16.4, 20.3, 21.7, 23.2, and 24.5 shall survive the termination of the Agreement for any reason.

## 10. GENERAL WARRANTIES.

**10.1. By Anthology.** We warrant that (a) the Software or SaaS Services licensed to you will not contain any Software Errors (as defined below) for one year from delivery of the Software or for the term of the SaaS Services, respectively; (b) we will perform Professional Services and Hosting Services in a professional manner in accordance with industry standards; and (c) we will comply with all Laws which govern the performance of our obligations hereunder. For any breach of a warranty above which you promptly

notify us of in writing, we will exert commercially reasonable efforts to repair or otherwise remedy the non-conformity so that the warranty is materially complied with. With regard to breaches of subsections (a) or (b) above, our remedy may include a code fix, a work around, or other modification. If we are unable to remedy the non-conformity after a reasonable period of time, then YOUR SOLE AND EXCLUSIVE REMEDY shall be: (i) for Professional Services or Hosting Services, to seek a refund of the fees paid for the un-remedied services; and (ii) for licensed Software or SaaS Services, to seek recovery of direct damages caused by the breach, subject to the limitation of liability below. These warranties by us shall not apply if you materially breach the Agreement. **"Software Error"** means a failure of any Software or SaaS Services to materially conform to its applicable standard end user documentation provided by us, if any (**"Documentation"**), provided that such failure can be reproduced and verified by us using the most recent version (including all available updates, application packs, and releases) of such Software or SaaS Service made available to you, and further provided that Software Errors do not include any nonconformity to applicable Documentation caused by your material breach of the Agreement, or your unauthorized modification or misuse of the Software or SaaS Services.

**10.2. Australian Consumer Law.** To the extent you are located in Australia: The supply of the Products or Services under this Agreement may be subject to the Australian Consumer Law, Schedule 2 of the Australian Competition and Consumer Act 2010 (Cth) ("Australian Consumer Law"). Where this is the case, the following statement applies in respect of any failure to comply with the consumer guarantees under the Australian Consumer Law: Our Products and Services come with guarantees that cannot be excluded under the Australian Consumer Law. Where the Australian Consumer Laws apply, you are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage, subject to the limitation of liability below. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

**10.3. By Customer.** You warrant that: (a) you own or have sufficient rights in and to the Customer Property in order for you and your Authorized Users to use, and permit use of, the Products and Services, including the representations and warranties made above in connection with Proprietary Rights and Personal Information, (b) you will comply with all Laws related to your use of our Products and Services; and (c) the person executing the Agreement or any Order Form has authority to accept such Order Form and the Agreement on behalf of the Customer. The person signing specifically has the authority to commit to the payment of fees for excess usage and excess storage, calculated in accordance with this agreement and any relevant order form. Customer further warrants that neither it, nor any of its officers, directors, employees, or shareholders have been designated as an Entity That is Subject to Economic Sanctions, and that no Product or Services supplied by Anthology will be supplied to or otherwise benefit an Entity That is Subject to Economic Sanctions. The term **"Entity That is Subject to Economic Sanctions"** includes, but is not limited to, an entity that has been designated as a Specially Designated National by the United States Department of the Treasury, Office of Foreign Assets Control, a party designated for sanctions by any other Department or Agency of the Government of the United States, and a party designated by the United States National Security Council. The provision of any Products or Services to an Entity That is Subject to Economic Sanctions or the designation of Customer, or any of its officers, directors, employees, or shareholders as an Entity That is Subject to Economic Sanctions, or the U.S. designation of the region in which Customer is located as an embargoed country or region (including as a **"Covered Region"** pursuant to Executive Order 14065), shall be grounds for immediate termination of this Agreement, and will relieve Anthology from any and all obligations with respect to this Agreement.

**10.4. Disclaimer of Other Warranties.** EXCEPT FOR WARRANTIES EXPRESSLY MADE HEREIN, THE PRODUCTS AND SERVICES ARE PROVIDED "AS IS" AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE AND OUR LICENSORS MAKE NO WARRANTIES OR REPRESENTATIONS EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

## **11. MUTUAL LIMITATIONS OF LIABILITY.**

**11.1. Consequential Damages Limitation.** EXCEPT AS EXPRESSLY PROHIBITED BY LAW AND OTHER THAN WITH RESPECT TO A BREACH OF YOUR LICENSE OR CONTENT RESTRICTIONS, A BREACH OF SECTION 14.9, AND YOUR INDEMNITY OBLIGATIONS IN SECTION 12.3, AND OUR INDEMNITY OBLIGATIONS IN SECTION 12.1, IN NO EVENT WILL EITHER PARTY OR SUCH PARTY'S LICENSORS' BE LIABLE, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY, FOR: (A) ANY LOSS OF BUSINESS, CONTRACTS, PROFITS, ANTICIPATED SAVINGS, GOODWILL OR REVENUE; (B) ANY LOSS OR CORRUPTION OF DATA, OR (C) ANY INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES).

**11.2. Mutual Limitations of Liability.** EXCEPT AS EXPRESSLY PROHIBITED BY LAW AND OTHER THAN WITH RESPECT TO A BREACH OF YOUR LICENSE OR CONTENT RESTRICTIONS, A BREACH OF SECTION 14.9, YOUR INDEMNITY OBLIGATIONS IN SECTION 12.3, AND YOUR PAYMENT OBLIGATIONS, AND OUR INDEMNITY OBLIGATIONS IN SECTION 12.1, IN NO EVENT SHALL EITHER PARTY'S OR SUCH PARTY'S LICENSORS' CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATING TO THE AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM, EXCEED THE AMOUNTS PAID BY CUSTOMER FOR THE AFFECTED PRODUCTS AND SERVICES DURING THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRIOR TO THE FIRST CLAIM ASSERTED HEREUNDER. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THE AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE OR HAVE FAILED OF THEIR ESSENTIAL PURPOSE. For avoidance of doubt, the limitations set forth in Section 11.1 above and this Section 11.2 apply to sections 5 and 12.3.1 of the Standard Addendum attached hereto.

**11.3. Essential Basis.** The parties agree that the warranty disclaimers, liability exclusions, indemnities, fees and limitations of the Agreement form an essential basis of the Agreement.

**11.4. Australia Consumer Law.** To the extent you are located in Australia: THE LIMITATIONS AND EXCLUSIONS IN SECTION 12 APPLY ONLY TO THE FULLEST EXTENT PERMITTED BY LAW AND NOTHING IN THIS AGREEMENT EXCLUDES, RESTRICTS OR MODIFIES ANY CONSUMER GUARANTEE, RIGHT OR REMEDY CONFERRED ON A PARTY BY THE AUSTRALIAN CONSUMER LAW OR ANY OTHER APPLICABLE LAW THAT CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED BY AGREEMENT. TO THE FULLEST EXTENT PERMITTED BY LAW, OUR LIABILITY FOR ANY BREACH OF A NON-EXCLUDABLE GUARANTEE REFERRED TO ABOVE IS LIMITED, AT THE OUR OPTION, TO: (I) IN THE CASE OF GOODS, ANY ONE OR MORE OF THE FOLLOWING: (1) THE REPLACEMENT OF THE GOODS OR THE SUPPLY OF EQUIVALENT GOODS; (2) THE REPAIR OF THE GOODS; (3) THE PAYMENT OF THE COST OF REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS; OR (4) THE PAYMENT OF THE COST OF HAVING THE GOODS REPAIRED; OR (II) IN THE CASE OF SERVICES: (1) THE SUPPLYING OF THE APPLICABLE SERVICES AGAIN; OR (2) THE PAYMENT OF THE COST OF HAVING THE APPLICABLE SERVICES PERFORMED AGAIN.

## 12. INDEMNITIES.

**12.1. Our Indemnity Obligations.** If a third party brings a claim, suit, or proceeding against you, your affiliates, or your respective employees, contractors, agents, or assigns (a "Customer Indemnitee") resulting from our gross negligence or willful misconduct, or alleging that any Products and Services infringe a U.S. or European patent or a copyright under Law of any jurisdiction in which you are using the applicable Products and Services, you must promptly notify us in writing and make no admission in relation to such claims. Provided that you have fulfilled all of the foregoing obligations, we shall at our own expense indemnify, defend, and hold harmless such Customer Indemnitee, and in the above case of alleged infringement, at our own expense and option (a) procure for you the right to use the Products and Services, (b) modify or replace the Products and Services to avoid infringement without materially decreasing the overall functionality of the Products and Services; or (c) refund the applicable fee paid for the applicable Products and Services for the current term and you shall cease using such Products and Services. We shall have the sole and exclusive authority to defend and/or settle any such claim or action and you will provide assistance as we may reasonably request, at our expense, provided that we will keep you informed of, and will consult with any independent legal advisors appointed by you at your own expense regarding the progress of such defense.

**12.2. Exceptions.** Where infringement of a patent is caused by the combination of the Products and Services with other hardware, software, communications equipment, or other materials not provided by us (or, in the case of a method claim, additional steps in addition to those performed by the Products and Services), we shall only be obligated to indemnify you if the Products and Services constitute a "material part of the invention" of the asserted patent claim and "not a staple article or commodity of commerce suitable for substantial non-infringing use" as those phrases are used in 35 U.S.C. § 271(c).

**12.3. Your Indemnity Obligations.** Except to the extent prohibited by Law, including Laws providing for the sovereign immunity of government entities, if a third party brings a claim, suit, or proceeding against us, our affiliates, or our respective employees, contractors, agents, or assigns (a "Anthology Indemnitee") resulting from (a) any use of the Products and Services beyond the scope of the license restrictions set forth in the Agreement, (b) the Customer Property or any other content submitted via your account, (c) your violation of any Law, gross negligence, or willful misconduct; or (d) any modifications or customization of the Products and Services by any person other than us or a third party authorized by us, you shall at your own expense indemnify, defend, and hold harmless such Anthology Indemnitee. Anthology shall have no liability (including indemnification obligations) to you for any claim to the extent arising out of (a) – (d) above.

**12.4. Exclusive Remedy.** EXCEPT FOR ANY OTHER INDEMNIFICATION OBLIGATIONS PROVIDED IN THE AGREEMENT, THE FOREGOING PROVISIONS OF THIS SECTION STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF EACH PARTY, AND THE EXCLUSIVE REMEDY OF EACH PARTY, WITH RESPECT TO CLAIMS BY ANY THIRD PARTY.

## 13. CONFIDENTIALITY.

**13.1. Confidential Information.** "Confidential Information" means any non-public information disclosed by either party to the other that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential, including without limitation, the terms of the Agreement, account and login credentials, information about a party's business, operations, vendors or customers, and all Anthology Property and all Customer Property.

**13.2. Nondisclosure and Nonuse.** Each party shall treat Confidential Information as strictly confidential and use the same care a reasonable person would under similar circumstances. The parties agree not to use such Confidential Information except for the purposes set forth in the Agreement and shall disclose such Confidential Information only to those directors, officers, employees and agents of such party (a) whose duties justify their need to know such information, and (b) who have been informed of their obligation to maintain the confidential status of such Confidential Information. The receiving party will promptly notify the disclosing party if the receiving party learns of any unauthorized possession, use or disclosure of the Confidential Information and will provide such cooperation as the disclosing party may reasonably request, at the disclosing party's expense, in any litigation against any third parties to protect the disclosing party's rights with respect to the Confidential Information.

**13.3. Exceptions to Confidential Treatment.** Confidential Information shall not include information that: (a) is publicly available at the time disclosed, (b) is or becomes publicly available through no fault of the receiving party, or its employees, contractors or agents, (c) is rightfully communicated to the receiving party by persons not bound by confidentiality obligations, (d) is already in the receiving party's possession free of any confidentiality obligations at the time of disclosure, or (e) is independently developed by the receiving party. The receiving party may disclose Confidential Information to the limited extent necessary: (a) to comply with Law or the order of a court of competent jurisdiction or other governmental body having authority over such party, provided that the party making the disclosure will first have given notice to the other party, unless the party is prohibited by Law or such court or body from providing such notification, or (b) to make such court filings as may be required to establish a party's rights under the Agreement.

## 14. MISCELLANEOUS MATTERS.

**14.1. Severability.** If a court holds any provision of the Agreement to be illegal, invalid or unenforceable, the rest of the Agreement will remain in effect and the Agreement will be amended to give effect to the eliminated provision to the maximum extent possible.

**14.2. Conflict Resolution.** If there is any claim arising out of or relating to the Agreement, or a breach thereof, the parties will consult with each other to reach a satisfactory solution. If they do not reach settlement within a period of thirty (30) days, then, upon notice by either party to the other, such claim will be referred to arbitration for full and final settlement by a panel of three arbitrators appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce ("ICC Rules") unless otherwise required by A.R.S. § 12-1501 et. seq. All arbitration proceedings will be conducted pursuant to the ICC rules, unless otherwise required by A.R.S. § 12-1501 et. Seq., and in the English language. The cost of the arbitration will be borne equally by the parties. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.

The applicable governing Law shall be the State of Arizona and place of the arbitration shall be a location in the State of Arizona mutually agreed to by the Parties.

**14.3. Modification and Waiver.** No modification or supplement to the Agreement will be effective unless set forth in writing and signed by duly authorized representatives of Anthology and Customer. A waiver of any breach of the Agreement is not a waiver of any other breach. Any waiver must be in writing to be effective.

**14.4. Assignment.** Neither party shall be entitled to assign the Agreement or its rights or obligations under the Agreement, whether voluntarily or by operation of law, except with the written consent of the other party; provided, however, that either party may assign the Agreement without the consent of the other party to any affiliate, or any entity that is the successor corporation in any merger or consolidation of either party, or any entity that purchases a majority of the voting securities of either party, or all or

substantially all of the assets of either party, or of a specific division or group of such party. The Agreement shall bind each party and its successors and permitted assigns.

**14.5. Notices.** Any notice or communication permitted or required hereunder shall be in writing and shall be delivered in person or by courier, or mailed by certified or registered mail, postage prepaid, return receipt requested, and, in the case of notices to us, sent to Anthology Inc., Attn: General Counsel, 11720 Plaza America Dr., 11<sup>th</sup> Floor, Reston, Virginia 20190 or to such other address as shall be given in accordance with this section with a copy to [GeneralCounsel@anthology.com](mailto:GeneralCounsel@anthology.com), and, in the case of you, to the address listed on your invoice, and shall in each case be effective upon receipt. **Due to ongoing disruptions of the COVID-19 Pandemic, Anthology reserves the right to provide email Notice, with electronic delivery confirmation, to the current principal Customer contact. Actual receipt constitutes effective Notice as of the time of receipt.**

**14.6. Export Control.** You shall not export or allow the export or re-export the Products and Services, any components thereof or any Confidential Information of ours without our express, prior, written consent and except in compliance with all export Laws and regulations of the U.S. Department of Commerce and all other U.S. agencies and authorities, and, if applicable, relevant foreign Laws and regulations.

**14.7. Force Majeure.** Notwithstanding anything to the contrary in the Agreement, neither party will be responsible for any failure to fulfill its obligations, in whole or in part, due to causes beyond its reasonable control ("Force Majeure Event"), including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, Internet or other telecommunication delays, fires, floods, labor disturbances or work stoppages, riots, wars, or hostilities, terrorist acts, epidemics, pandemics, a substantial change in market conditions, or other global or local health emergencies, Center for Disease Control advisories or inability to obtain any export or import license or other authorization of any government authority. We reserve the right to reasonably charge for any and all excessive usage and or usage beyond reasonable historical norms (yours or similarly situated clients not experiencing a Force Majeure Event or similar) and to the extent this is in excess of our actual costs we will give you notice.

**14.8. Relationship.** Anthology and Customer are independent contracting parties. The Agreement shall not constitute the parties as principal and agent, partners, joint venturers, or employer and employee.

**14.9. Non-Disparagement.** You agree not to make any public statements about Anthology in a manner that could reasonably be perceived as negative, derogatory or detrimental to the brands, name, reputation or trademarks of Anthology or any Products and Services.

**14.10. Promotional Materials.** Anthology may use Customer's name on social media platforms and in marketing materials, press releases, and presentations to reference Customer's selection of Anthology and the Products and Services, the existence of an agreement with Anthology (without referencing detailed terms or pricing) and, when it occurs, Customer's Go-Live on the Products and Services.

**14.11. Audit.** Upon reasonable notice, we shall have the right to audit, at our expense, your use of the Products and Services not more than once per calendar year solely to ensure past and ongoing compliance with the Agreement.

**14.12. Non-Solicitation.** For any services rendered under this Agreement and for a period of one (1) year thereafter, you shall not directly or indirectly, hire or solicit, nor permit any of your affiliates to hire or solicit, the services of anyone who is an employee or contractor of Anthology or its affiliates or was an employee or contractor of Anthology or its affiliates in the six (6) months prior to any solicitation or hiring, without our prior written consent. In the event of a violation of this provision, we may seek preliminary and permanent injunctive relief, without posting bond. In our sole discretion, we may choose to require you to pay liquidated damages equal to 100% of the hired or solicited person's annual compensation. Upon the non-breaching Party's receipt of such payment, any related injunction shall be dissolved and the parties shall have no further obligations under this Section 14.12 for such breach. Customer shall notify its contractors regarding the prohibitions set forth in this section 14.12. The foregoing shall not prohibit solicitation and hiring through general advertising provided such advertising is not targeted to the our personnel.

**14.13. State of Arizona Required Clauses.**

**14.13.1.** Anthology certifies that it does not currently use and agrees for the duration of this Agreement to not use, any forced labor, or goods and services produced by the forced labor, of ethnic Uyghurs in the People's Republic of China, or any contractors, subcontractors, or suppliers that use such forced labor, or goods or services produced by such forced labor.

**14.13.2.** Anthology warrants compliance with A.R.S. § 35-393.01 and is not currently engaged in, and agrees for the duration of this Agreement to not engage in, a boycott of goods and services from Israel as that term is defined within A.R.S. § 35-393.01.

**14.13.3.** Customer may cancel this Agreement without further penalty or obligation as permitted by A.R.S. § 38-511.

**14.14. Entire Agreement.** The Agreement, including any Order Forms, constitutes the entire, full and complete agreement between the parties concerning the subject matter of the Agreement and supersedes all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties, and the Agreement prevails over any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the parties relating to its subject matter. If a conflict arises between the terms of this Master Agreement and the provisions of the Order Form, or Services Guide, the terms of this Master Agreement will govern unless an Order Form expressly provides otherwise. If a conflict arises between the terms of this Master Agreement and the provisions of a statement of work or Change Order, the Change Order and statement of work, as applicable, shall govern. No term or provision set forth or cross-referenced in any purchase order or payment documentation will be construed to amend, add to, or supersede any provision of the Agreement.

**Terms Applicable to Specific Products and Services**

**In addition to the terms and conditions above, the following terms and conditions apply only to the extent that you purchase the below-referenced Products and Services as specified in an Order Form.**

**15. BLACKBOARD LEARN™**

**15.1. Grant of License and Test Copies for Self-Hosted Software.** Subject to your obligations under the Agreement, Anthology grants you a non-exclusive, non-transferable, non-sublicensable license to install and use one (1) production copy and one (1) Test Copy (as defined below) of the Software for one installation at Customer's Designated Server Site (as defined below) solely in the form of machine-readable, executable, object code or bytecode, as applicable, and solely in connection with providing access to Customer Property, including content, to your Authorized Users and to use the Documentation in support of your authorized use of the Software. You agree not to install or use any Software on any computer, network, system or equipment other than on a Designated Configuration at the physical location where the Software will be installed, as identified in the Order Form (the "Designated Server Site"), except with our prior written consent. The Software may access, use or integrate Java Software. Such Java Software is licensed to you under the terms of Oracle's Standard Binary Code License Agreement currently found at: <http://www.oracle.com/technetwork/java/javase/terms/license/index.html>.

**15.2. Test Copies of Software or SaaS Services.** Self-hosted Software and SaaS Services licensees are provided one (1) Test Copy of the Software or SaaS Services. A "Test Copy" is a copy of the Software or a sandbox environment for the SaaS Services used solely for non-production testing purposes and is not supported or warranted.

**15.3. Grant of Learn API License.** We grant you a limited, non-exclusive, revocable, non-sublicensable, non-transferable license to access our public Learn-related API's ("Learn API"). The Learn API(s) are provided in the form of one of the following: a Building Block API, a REST API or a web service, that enables a "connection" into our servers. We will provide you with the information necessary to enable your use of the Learn API(s). You may not use or install the Learn API(s) for any other purpose without our written consent, and may not copy, rent, adapt, disassemble, lease, assign, sublicense, reverse engineer, modify or decompile, the Learn API(s) or any part thereof. We reserve the right to limit the number and/or frequency of API requests or take other actions necessary to protect the integrity of our Services.

**15.4. Use Limitations.** Your usage is limited by the number of Unique Users, FTE, Bandwidth and Storage set forth in the Order Form or the support terms of the Agreement. A "Unique User" (which shall also include Authorized User and User and Active User) means any individual user of the platform, including but not limited to, students, teachers, parents of students, or employees of yours (including invited non-commercial third-parties thereof) authorized to use the platform per the terms of this Agreement. Unique Users shall also include non-traditional users, including without limitation, faculty, staff, alumni, continuing education students or participants in community outreach or non-degree bearing courses (collectively, "Non Traditional Users"), provided, however, that Unique Users shall not include any third party commercial providers without our prior written approval. Your usage in terms of Unique Users is determined by counting each initial log-in by an individual user of the platform during each Measurement Period. An individual user of the platform will only be counted once during each Measurement Period, unless the individual user has multiple accounts, in which case the individual user will count as one Unique User per account logged into during the applicable Measurement Period. There shall be four (4) Measurement Periods during each annual contract period set forth in the Order Form. The first three Measurement Periods shall each equal 90 days. The fourth Measurement Period shall equal 95 days or 96 days if there are 366 days in an annual contract period. The number of Unique Users will be averaged over the four Measurement Periods to determine your Unique Users for the annual contract period. In the event your Unique Users for the annual contract period exceeds the amount set forth in your Order Form, we may invoice you for each additional Unique User over the amount set forth in your Order Form. "FTE" means the number of full-time students plus half of the part-time students enrolled at your institution. "Full time students" shall also include Non Traditional Users provided, however, that Full time students shall not include any third party commercial providers without our prior written approval. In no event shall the number of Non-Traditional Users exceed ten percent (10%) of the number of total FTEs specified in the Order Form. "Storage" means the average of the highest amount of storage utilization during each month of the respective annual contract period of a client's uploaded and hosted files, including but not limited to content files, media files and recordings, typically measured in gigabytes (GB) or terabytes (TB). Storage is only sold in whole TB allotments. Additional Unique Users, FTE, or Storage used in excess of the limitations set forth in the Order Form or support terms of the Agreement is subject to additional fees and purchase. Unique Users, FTE, or Storage below the limitations set forth in the Order Form or support terms of the Agreement, if any, are not eligible for rollover or carryover to subsequent Terms, or refund. Anthology reserves the right to charge for overages as they occur throughout the term, provided however, any failure by Anthology to timely invoice for any overages shall not constitute a waiver of your obligation to pay such fee. You agree to pay any invoice issued pursuant to this section for overages.

**15.5. Government and Corporate Customers.** Notwithstanding anything to the contrary in section 15.4, if you are a corporate or governmental entity, a Unique User (or Authorized User or User or Active User) shall include any individual who is your employee or an individual enrolled in a course provided by you or your corporate affiliate, as applicable. Your usage in terms of Unique Users is determined by counting the number of Unique Users accessing the Products and Services during an annual period of your Order Form.

**15.6. Your Operations.** For clarity, if your primary operations involve in-classroom instruction in a physical location, the SaaS Services or Hosting Services you purchase pursuant to your Order Form will be designed to augment in-classroom instruction in a physical location. If, on the other hand, your primary operations involve virtual instruction via the Internet, the SaaS Services or Hosting Services you purchase will be designed to support those fully virtual operations rather than in-classroom instruction in a physical place. If, during the Term, your primary mode of operations changes from in-classroom instruction in a physical location to fully virtual instruction via the Internet, or vice-versa, you must notify Anthology immediately as your license will not support such a transition in operations, and you will need to purchase the SaaS Services or Hosting Services applicable to your new operations.

**16. ANTHOLOGY ENTERPRISE, ADMISSIONS, AND ENGAGEMENT**

**16.1 EAE Software.** This section shall apply to the following Products and Services known as the Anthology Enterprise, Admissions, and Engagement Software ("EAE Software"): Anthology Student, Anthology Student International, Anthology Occupation Insight, Anthology Finance & HCM, Anthology Payroll, Anthology Student Verification, Anthology Reach, Anthology Succeed, Anthology Apply, and Anthology Raise.

**16.2 Scope of Services.** The Anthology SaaS Tiers located at <https://www.anthology.com/agreements/anthology-client-support-services-guides> specify the applicable services that are available as part of the Products and Services, subject to specific Products and Services and the SaaS Tier subscribed to by Customer.

**16.3 Ancillary Programs.** You are hereby granted rights to use the applicable third party software delivered with the Products and Services and any related documentation ("**Ancillary Programs**"), subject to all other limitations and conditions herein. To the extent available, we will pass through all warranties and remedies provided by such third party software provider. We reserve the right to replace Ancillary Programs with substantially similar products, at our expense. All license restrictions, Customer restrictions on uses, termination rights, Customer security, data privacy and applicable law compliance obligations, Intellectual property protections, disclaimers and limitations herein shall apply to the Ancillary Programs. This Agreement does not grant any rights to copy, modify, or distribute the Ancillary Programs. Pursuant to the terms of our agreements with certain third party providers, the terms set forth at [www.anthology.com/policy-docs/ancillary-programs](http://www.anthology.com/policy-docs/ancillary-programs) are incorporated into and made a part of this Agreement, as applicable.

**16.4 Third Party Products.** The Products and Services require components of Third Party Products which may include Microsoft products. You represent and warrant that all of your computers and other devices accessing the Products and Services have and will maintain current licenses of all Third Party Products in compliance with their applicable licensing requirements. We are not responsible for the operation or suitability of any Third Party Product. You agree that any technical support related to any Third Party Product, but not directly related to the Products and Services, are not our responsibility. We may periodically revise the list of Third Party Products and recommend newer versions of a Third Party Product. You must have the current version of the Third Party Products as listed on the list of Third Party Products. You agree to hold harmless, indemnify, and defend, Anthology, its officers, directors, employees, contractors, affiliates, and sub-contractors from any license enforcement action(s), infringement suit(s), tort(s), demand(s), or judgment(s), including, without limitation, attorneys' fees, expenses and all damages, resulting from your failure to maintain required software licenses for the Third Party Products or use of unlicensed software with the Products and Services. "**Third Party Products**" as used herein means any software application used by you that is not licensed by us to you as part of the Products and Services that you must have and must license in order to use the Products and Services. A list of Third Party Products can be found at [www.anthology.com/policy-docs/third-party-products](http://www.anthology.com/policy-docs/third-party-products) and also includes Azure Active Directory, which may be updated by us from time to time. Additional Third Party Products may be applicable to Anthology Student Verification.

**16.5 Dynamics.** Each of Anthology Finance & HCM; Anthology Payroll; Anthology Raise; and Anthology Reach are combined solutions developed in conjunction with Microsoft Corporation ("**Microsoft**") and includes the resale by Anthology of Microsoft Dynamics 365 ("**Dynamics**"). Your subscription for Anthology Raise includes Dynamics and we are reselling Dynamics to you. You agree that your use of Dynamics is subject to the terms provided by Microsoft in the link which may be found at <https://www.microsoft.com/licensing/docs/customeragreement> ("**Microsoft Agreement**"). If you have purchased Anthology Finance & HCM; Anthology Payroll; Anthology Raise, and/or Anthology Reach, you hereby ratify the Microsoft Agreement and agree and acknowledge that the Microsoft Agreement contains binding terms that creates a legally enforceable contract between Microsoft and you that may be enforced by Microsoft. You must remain in compliance with the Microsoft Agreement during the term of this Agreement. For the avoidance of doubt, the Microsoft Agreement governs the relationship between you and Microsoft. You acknowledge that we will be the primary administrator for Anthology Finance & HCM; Anthology Payroll; and/or Anthology Reach, as applicable. Notwithstanding anything to the contrary contained in the General Terms, to the extent Microsoft increases its pricing for Dynamics, Anthology may pass on such increase to Customer. You acknowledge and agree that your use of Dynamics is subject to certain entitlements and limitations, as set by Microsoft. These limitations and entitlements include, but are not limited to, a certain allocation of storage and users. If you exceed your respective limitations and/or entitlements and Microsoft charges us for your overages, you shall reimburse us for such charges. You agree to pay any invoice issued pursuant to the preceding sentence. You further agree to monitor your use of Dynamics regarding your entitlements and limitations through Microsoft. In the event you need additional entitlements, you agree to notify Anthology so that additional entitlements may be purchased. If you do not purchase additional entitlements once you have approached or exceeded your then-current limitations and/or entitlements, you acknowledge that you may not be able to access all features and functionality of the Products and Services and Anthology shall not be in breach of this Agreement.

**16.6 Administration of Dynamics.** The parties agree and acknowledge that your subscription of Anthology Finance & HCM; Anthology Payroll; Anthology Reach; and/or Anthology Raise, will require Customer to deploy Dynamics in the Customer Tenant. In order for us to effect such deployment and provide access to you to Anthology Finance & HCM; Anthology Payroll; Anthology Reach; and/or Anthology Raise, the following must occur: (i) we shall email your representative at the email address provided by you, a link that establishes us as a reseller of Dynamics into the Customer Tenant and, you must accept such link within five (5) business days of the date it is received; (ii) within five (5) business days of the date we are established as a reseller for you as described above, you must create an account in the Customer Tenant for us to administer Dynamics that grants our user a Dynamics 365 Administrator role ("Administrative User") and you must maintain us as an Administrative User in an active status at all times during the Term; (iii) you must allow and continue our access as an Administrative User for the Term; provided, that in the event we do not have such access at any time during the Term, notwithstanding anything to the contrary contained in the Agreement, we shall not be responsible for your inability to access Anthology Finance & HCM; Anthology Payroll; Anthology Reach; and/or Anthology Raise, and we shall have no liability to you (including without limitation for any Service Credits) and you agree to hold us harmless for any interruption of Anthology Finance & HCM; Anthology Payroll; Anthology Reach; and/or Anthology Raise arising from our inability to access the Customer Tenant; (iv) you acknowledge that we will continuously maintain the latest version of the Products and Services in the Customer Tenant and agree to permit us to deploy such updates, Upgrades and patches in the Customer Tenant at any time, including with minimal or no advance notice to you. We will make reasonable efforts to inform you ahead of time of any planned updates, Upgrades or patches; (v) you must maintain the Customer Tenant during the Term; and (vi) you must also designate a Global Administrator of the Customer Tenant to work with us and provide such contact information in writing to us promptly following such designation, or any change in such designation. You agree and acknowledge that notwithstanding the deployment of Dynamics in the Customer Tenant, you may only increase users specified in this Agreement in accordance with the Agreement and pursuant to an Addendum signed by the parties, and you may not increase users specified in the Agreement by procuring Dynamics licenses from any entity other than us. As used herein, "**Customer Tenant**" shall mean your Microsoft Azure Active Directory tenant.

**16.7 Minimum Scope.** At all times during the Term, you shall be obligated to pay for not less than the Record Count, Authorized Users and scope listed in the Order Form. We will bill you, and you shall promptly pay, for any additional Record Count, Authorized Users and scope. No adjustment in fees shall be made for any decrease in number of Record Count, Authorized Users, or scope. For purposes of this Agreement, your Record Count shall be calculated in accordance with the following: "Full Time Equivalent" or "FTE" defined as the total count of full time equivalent students enrolled with you as defined in your catalogue, which shall be calculated by adding (a) each student who has met or exceeded registration for the number of credits defined as full-time in your catalogue plus (b) the result of dividing (i) the total aggregate credits registered with you for any students with less than the defined number of credits for a full-time student by (ii) the number of credits constituting a full-time student, as defined in your catalogue. As used in this Section 26, "**Authorized User**" or "**User**" means the individuals concurrently logged in or the named users, as applicable, with

User IDs who are employed or contracted by you and authorized to access and use the Products and Services, subject to and in accordance with this Agreement.

**16.8 Services Outside Scope.** Any custom services provided outside the scope set forth in this Agreement, or specified in the Order Form will require an Addendum or statement of work ("SOW"), as applicable, subject to our requirements, including, without limitation, any billing, and technical requirements. Any changes in federal, state or local requirements, or any Customer specific requirements, including, without limitation, with respect to security or privacy, that result in us providing additional services or incurring costs, shall be billed to and promptly paid by you. We reserve the right to refuse to provide certain services in the event your requirements are not practicable or changes in law affect our performance of obligations hereunder.

**16.9 Delay.** Our ability to deliver the Products and Services depends upon your full and timely cooperation, dedication of skilled resources, as well as the accuracy and completeness of any information you provide. Notwithstanding anything herein to the contrary, in the event that failure of any of the foregoing or your delay or non-performance of any obligation under this Agreement causes a delay in our performance of our obligation hereunder which reasonably relies on your timely cooperation and performance, the period of time for our performance shall be extended proportionately, and additional costs may be incurred by you.

**16.10 Single Sign-On Requirements.** You agree that if required by your SaaS Tier, you will meet the requirements specified in <https://www.anthology.com/agreements/ssso> for single sign-on in order to be able to access the Products and Services.

**16.11 Anthology Academy.** You will receive a subscription to Anthology Academy, Essential Level, for the applicable Term. If You desire to subscribe to the Anthology Academy for the Enhanced or Enhanced Plus subscription level, you shall enter into a separate subscription agreement with us that will specify the descriptions of such levels and related fees.

**16.12 Customer Relationship Manager.** You will appoint a relationship manager to manage the relationship established by this Agreement ("Customer Relationship Manager") who will:

- (a) Coordinate and monitor your obligations under this Agreement, and serve as the primary liaison with the Anthology Relationship Manager;
- (b) Provide communication on events such as requesting an increase in scope and reporting problems with the Products and Services;
- (c) Manage your contact records in our ServiceDesk who shall receive outage and maintenance notifications.

**16.13 Professional Services.** The parties shall enter into a SOW, which terms shall apply along with the applicable terms of this Agreement, for Professional Services, which, for purposes of this Section, shall include implementation, integration and/or other services mutually agreed upon, as applicable.

i. **Summary of Service.** Unless otherwise stated, all work schedules of a relevant SOW shall be considered reasonably accurate estimates, subject to revision. We shall maintain daily time records of hours, a summary of which shall accompany invoices which are submitted to you. Our standard work days are Monday through Friday. All Professional Services provided by us during non-standard hours shall be governed by our Policy for Non-Standard Hours, which is posted at [www.anthology.com/policy-docs/non-standard-business-hours](http://www.anthology.com/policy-docs/non-standard-business-hours). We shall not perform any Professional Services during non-standard hours, without your prior consent.

ii. **Change Orders; Assumptions.** Either Party may initiate a change to the SOW by proposing in writing details of such change. The other Party shall promptly respond to any proposed changes. Both parties shall work together to identify any schedule or price increase resulting from the change. If the parties are mutually agreeable to any changes to the SOW, then they shall enter into a mutual written change order executed by officers of both parties ("Change Order"). You acknowledge that any additional changes to the assumptions in the SOW may affect time and/or costs.

iii. **Fees.** The SOW shall specify whether you shall pay (i) hourly rates, as set forth in the non-binding estimate of labor costs for Professional Services performed on a time and materials basis, or (ii) fixed fees. The standard hourly rates for Professional Services are set forth in the SOW. However, any rate increases during the period of performance of a SOW shall not increase the rates applicable to the Professional Services set forth in such SOW. If travel is required to perform the Professional Services, you shall pay our hourly rates for 50% of the total time spent on travel by our employees.

iv. **Invoice.** We shall invoice you for Professional Services as set forth in the SOW. Unless otherwise stated in writing, Professional Services and Travel and Expenses shall be invoiced and you shall pay us within thirty (30) days of the date of invoice.

v. **Cancellations; Termination.**

(a) You acknowledge that we allocate our resources to provide services to you. In the event you cancel any scheduled Professional Services with less than fifteen (15) business days prior written notice to us, and we cannot after using good faith efforts reallocate our resources, then you shall promptly pay us the amount of lost fees (based on the difference between the projected scheduled services for Customer and the fees actually received) and any out-of-pocket expenses actually incurred by us.

(b) Notwithstanding the foregoing, in the event of the termination by you of a fixed fee SOW for any reason, other than because of our uncured breach, you must pay us for the full amount of the fixed fee specified in the SOW.

(c) Notwithstanding the foregoing, any termination or cancellation shall have no effect on your obligation to pay the applicable fees and out-of-pocket expenses actually incurred by us for Professional Services that are rendered through the effective date of termination or cancellation.

vi. **Progress Reports and Meetings.** Each Party shall appoint a representative to act as its designated representative and liaison for the Professional Services being performed by us for you. Status review meetings or teleconferences may be held on a periodic basis as reasonably agreed upon by you and us, in order to review the status of Professional Services and to resolve any related issues. Each SOW and Change Order may provide for specific progress reporting.

We will dedicate personnel necessary to perform our responsibilities hereunder. We reserve the right to determine the personnel assigned to the Professional Services and to replace, rotate or reassign such personnel during the applicable Term.

**16.14 Replacement of Anthology Personnel.** Any personnel assigned by us to a Customer project may be temporarily replaced by us if such individual does not report to work due to illness, accident or other events outside of our control. You acknowledge and agree that there may be a reasonable amount of attrition outside of our control. Upon good cause and written notice to us, you may request that we replace any personnel who is assigned by us to a Customer project to perform Professional Services and we will consider the request and take commercially reasonable effort to promptly remedy the matter or replace such person (except in the case where the person has violated a material provision of your promulgated security or workplace policies then we shall promptly replace such person). If one of our personnel performing Professional Services is removed from a project then we will use commercially reasonable efforts to provide substitute personnel of appropriate qualifications subject to availability of such personnel.

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**16.15 Retention of Customer Data.** Notwithstanding anything to the contrary in this Agreement, Anthology will retain Customer Data in an SFTP server for a 30 day period following the expiration or termination of this Agreement as it relates to the EAE Software so that Customer may, after Anthology's receipt of payment in full, extract Customer Data. Upon conclusion of such 30-day period, Anthology will disable Customer's access to the SFTP server and permanently erase the Customer Data. For purposes herein, "permanently erased" means the Customer Data has been completely overwritten and is unrecoverable. Customer shall pay Anthology its reasonable fees and expenses on a time and materials basis if Anthology assists Customer with the transition of the Customer Data to Customer.

**16.16 Anthology Student Document Storage.** Your document storage entitlement for Anthology Student is set forth in the SaaS Tiers referenced in section 16.2. Storage in excess of the applicable document storage limitation set forth in the SaaS Tiers is subject to additional fees and may be invoiced monthly by Anthology. You agree to pay any invoice issued pursuant to this section.

**16.17 Anthology Student and Anthology Student International Reporting.** Unless otherwise stated in an applicable SOW, you agree and acknowledge that Anthology Student International is not designed to generate reports or other deliverables to satisfy your obligations to any governmental body or regulatory agency. Unless otherwise allowed pursuant to a SOW entered into by the parties, if you use Anthology Student International or any data contained therein to satisfy any of your obligations to any governmental body or regulatory agency, you hereby release us of any liability and for any losses, damages, fines, or penalties you may incur as a result of your use of Anthology Student International or the data contained therein. For reports generated by Anthology Student, you are responsible for configuring your account and maintaining the applicable records so that the reports generated by Anthology Student are accurate. You agree and acknowledge that Anthology Student may not generate reports that comply with your specific obligations to any governmental body or regulatory agency, and you are responsible for ensuring that your reports comply with all your applicable reporting obligations. You hereby release us of any liability and for any losses, damages, fines, or penalties you may incur as a result of your use of Anthology Student to generate reports you use to comply with your obligations to any governmental body or regulatory agency.

**16.18 Definitions.** As it pertains to Anthology Student Verification only, "Authorized User" means Customer's employees, agents and other representatives and/or "Active" students. ("Active" means each Customer's student who (a) establishes a student user account (or on whose behalf a student user account is established) in the Anthology Student Verification solution and (b) completes through the Anthology Student Verification solution any enrollment agreement required by Customer). As it is used with respect to the EAE Software, "Go-Live" means Customer's first use of the EAE Software in a Production Environment. "Non-production Environment" means any testing, training, and other non-production, non-live environments. Non-production Environments are: (i) only available during Normal Working Hours; (ii) accessible to a limited number of Users; and (iii) not entitled all services that Customer's Production Environments receive. "Production Environment" means the specific environments including hardware, software, and database instance, which are exclusively used as the single authoritative and live system Customer uses for transactional processing. Production Environment excludes any and all testing, training, and other non-production, non-live application or environments. "Campus" means a unique identification code used for each Record Count group contained in a database.

## **17. CAMPUS EFFECTIVENESS**

**17.1 CES Software.** This Section shall apply to the following Products and Services known as the Anthology Campus Effectiveness Software ("CES Software"): Anthology Engage, Anthology Milestone, Anthology Academic Economics, Anthology Beacon, Anthology Accreditation, Anthology Planning, Anthology Program Review, Anthology Portfolio, Anthology Course Evaluations, Anthology Insight, Anthology Baseline, and Anthology Outcomes.

**17.2 Your Use.** The Products and Services may only be used for lawful purposes, and any posting or transmission of data or other use of the Products and Services in violation of any applicable state, federal or other law is strictly prohibited. Your Authorized Users may use the Products and Services only to access your own data and to fulfill your internal information processing needs. You may not use the Products and Services to process the data of a third party. You are responsible for all activities that occur under your accounts and the Authorized User accounts. You shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of any Customer Property; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Products and Services, and notify us promptly of any such unauthorized use; (iii) be responsible for acquiring and maintaining the software, equipment and communications programs necessary to connect to the Products and Services and to download, print and otherwise process data delivered by the Products and Services, and (iv) comply with all applicable local, state, federal, and foreign laws in using the Products and Services. You hereby acknowledge and understand that the Products and Services are not configured to directly or indirectly receive and store Customer Property, or any other information, relating to: (a) government issued identifications, including, but not limited to, Social Security Numbers (in whole or in part) and Individual Taxpayer Identification Numbers; (b) unauthorized third party content; or (c) personal health information ("PHI"), and that we are neither a "Covered Entity" nor a "Business Associate," as those terms are defined in Health Insurance Portability and Accountability Act ("HIPAA"). You agree that we may terminate this Order Form immediately, if you are found to be in violation of any part of this provision. You shall not use the Products and Services to: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violate third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents, or programs; or (iv) interfere with or disrupt the integrity or performance of the Products and Services or the data contained therein. WE SHALL NOT BE LIABLE TO YOU OR ANY OF YOUR AUTHORIZED USERS FOR ANY DAMAGES OR CLAIMS ARISING OUT OF, RELATED TO OR IN CONNECTION WITH SUCH CUSTOMER PROPERTY, AND OTHER INFORMATION PROVIDED.

**17.3 Additional Programs.** During the Term, you will have access to technical support and support programs ("Standard Programs"). Included in Standard Programs are telephone and online support and consulting, professional development webinars, and available Program updates. Support Programs that are beyond the scope of Standard Programs may call for significant consultations, research, development, analysis, and/or on-site training ("Additional Programs"), unless otherwise specified in the Order Form, will be charged to you as fees for such Additional Programs. In cases where requests made by you are not Standard Programs, but rather Additional Programs, such requests will be clearly identified as Additional Programs to you for approval before any fees are incurred.

**17.4 External Third Party Technology.** During the Term, you may choose to leverage technical platforms, tools and support from independent third parties to enhance the Program(s), such as offerings from Apple, Palm, Meta, and others (the "Third Parties"). In these cases, certain information provided by you to these Third Parties may be transmitted, posted, and/or used by these Third Parties in accordance with the respective Terms of Programs of such Third Parties and may be governed under these

separate agreements. We are independent of any such Third Parties and makes no representation or warranty concerning them or their actions or technology; all of which shall remain your sole risk and responsibility and we disclaim any and all responsibility or liability in connection therewith.

**17.5** You acknowledge that we have the right to use non-personally identifiable Customer Property and Authorized User Information for purposes of monitoring and supplementing the use of the Products and Services in an aggregate de-identified manner ("De-Identified Data"). We reserve the right to use De-Identified Data to: (i) compile statistical and performance information related to the provision and operation of the Products and Services, and (ii) make such information available to use and to supplement the Products and Services. We retain all intellectual property rights in the De-Identified Data and such data shall be deemed as our Confidential and Proprietary Information.

**17.6 Retention of Customer Data.** Notwithstanding anything to the contrary in this Agreement, upon termination or expiration of the Agreement, Anthology shall destroy all Customer Data and Confidential Information within thirty (30) days of the following quarter, after termination or expiration from Anthology's main server. Data deletion shall not apply to the extent: (i) Anthology is required by applicable law to retain some or all of the Customer Data; or (ii) Customer Data archival and back-up files except in line with Anthology's data deletion schedule, as permitted under Applicable Data Privacy Laws.

**17.7 Technical Support.** During the Term, live phone support is available via (716) 270-0000, 8 a.m. - 8 p.m. (ET) M-F. Email support is available via [support@campuslabs.com](mailto:support@campuslabs.com), 8 a.m. - 8 p.m. (ET) M-F. Live chat support is available via [support@campuslabs.com](mailto:support@campuslabs.com) 9 a.m. - 5 p.m. (ET) M-F. Live support will not be available on federal holidays in the United States.

**17.8 Definitions.** As used in this Section, "Authorized User" shall mean your employees, representatives, consultants, contractors, volunteers, student, or agents who are authorized to use the Products and Services through user identification and passwords supplied by you (or by us at your direction).

## **18. BLACKBOARD SOCIABILITY & SOCIAL MEDIA MANAGEMENT PRODUCTS**

**Third-Party Services.** You acknowledge that the Products and Services may assist you to access or themselves automatically access, interact with, and/or purchase services from third parties via third-party social media and similar websites or applications (collectively, the "Third-Party Services"). You authorize any such access. Any use of Third-Party Services is governed solely by the terms and conditions of such Third-Party Services (and you shall comply with all such terms and conditions), and any contract entered into, services provided, or any transaction completed via any Third-Party Services, is between you and the relevant third party, and not Blackboard/Anthology. Blackboard/Anthology makes no representation and shall have no liability or obligation whatsoever in relation to the content provided to or available at, use of, or correspondence with, any such Third-Party Services or any transactions completed and any contract entered into by you with any such third party.

## **19. BLACKBOARD MOBILE APPLICATIONS**

Anthology provides software ("Mobile Software") to access many of the Products and Services via a mobile device. The use of Mobile Software is governed by the terms and conditions referenced in the application store (e.g., Apple, Inc. or Google, Inc. app stores) relevant to the Mobile Software except with regard to the collection, use, and deletion of Personal Information on your behalf, which is governed by the Agreement. Anthology makes no representation regarding the availability of third-party application stores or the Mobile Software's compatibility with mobile devices.

## **20. BLACKBOARD SMARTVIEW™**

**20.1. Authorized Users.** Your Authorized Users are your employees. You will only use the Product and Service to provide help-desk guidance (including but not limited to guidance on financial aid, student accounts, registration and records) to current faculty and staff. In addition, if specified on the applicable Order Form, your current and prospective students may access the Self-Help portal of the Product and Service.

**20.2. Representations and Obligations.** You represent and warrant that: (a) you will comply with all applicable Laws, including those regarding Personal Information, in connection with your use of SmartView; (b) you will not store any Personal Information within SmartView; (c) you are responsible for communicating any necessary modifications to the Product and Service that arise due to changes in your internal policies or the Law; (d) in order to facilitate a reasonable method for us to obtain timely and automated access to institutional data, upon the Effective Date, your student information system (SIS) shall be integrated with SmartView, and depending on the scope of services, your learning management system (LMS) system and customer relationship management (CRM) system, may be integrated with SmartView; and (e) following the initial configuration of the Product and Service, you are responsible for any modifications or errors within the workflow routines in the Product and Service. The costs and timelines to complete any requested modifications to the Product and Service must be addressed in a mutually agreed Statement of Work.

**20.3. Remedies and Disclaimers.** You acknowledge that: (a) you are solely responsible for the accuracy of Personal Information or content in the Product and Service; (b) the KnowledgeBase in SmartView is for informational purposes only and it is your responsibility to update the content in the KnowledgeBase every twelve (12) months. Anthology will not be held to any penalties associated with missed One Stop or Help Desk Service Level Agreements during any period where the KnowledgeBase has not been updated in the past twelve (12) months; (c) your Authorized Users will not provide any financial guidance or advice solely based on the Product and Service; (d) you agree that you are responsible for the actions or inactions of your Authorized Users; and (e) Anthology shall have no liability associated with the guidance or advice provided to Students by such Authorized Users. Except to the extent prohibited by Law, including Laws providing for the sovereign immunity of government entities, you agree to defend, indemnify and hold us harmless against any damages, losses, liabilities, settlements, and expenses (including without limitation, costs and reasonable attorneys' fees) in connection with any claim or action that arises from the guidance or advice provided to Students using the Product and Service.

**20.4. Additional Fees.** In the event you do not integrate your system with SmartView as outlined in Section 22.2(d) above, Anthology shall invoice you at the following specifications: for One Stop Services and Help Desk, you will be billed at the Premium Solution rate for the period of time that SmartView is not integrated with your systems; for Help Desk Services: (1) for per minute-based pricing models, we may charge you an additional 25% per minute; and (2) for per incident-based pricing models, we may charge you an additional 25% per incident. Anthology reserves the right to charge for overages as they occur throughout the term, provided however, any failure by Anthology to timely invoice for any overages shall not constitute a waiver of your obligation to pay such fees.

## **21. BLACKBOARD STUDENT SUPPORT SERVICES**

**21.1. Types and Estimates of Student Support Services.** The Order Form will specify whether you have purchased inbound, live outbound, and/or automated outbound Student Support Services. The estimated number of annual Inbound Interactions, monthly Inbound Interactions, Average Handle Time, and quarterly Outbound Interactions, all as applicable and defined below, are also set forth on the Order Form. If these estimates exceed the actual parameters experienced in the relevant period, we shall be excused from any failure to meet any service levels for such period as outlined in the Statement of Work. The parties shall review the estimates at the end of any term and agree on updated estimates for any renewal term (including the payment of additional fees based on such updates) and update the Order Form accordingly.

**21.1.1. Inbound Interactions.** You represent that the estimated monthly Inbound Interactions is a reasonable estimate, and at the end of a term we shall be entitled to invoice you in accordance with the terms set forth herein. You acknowledge and agree that, if during any annual term, the actual number of Inbound Interactions exceeds your total Estimated Inbound Interactions ("Excess Inbound Interactions"), then at the end of the then-current annual term, we shall be entitled to charge you for all such Excess Inbound Interactions at a Per Incident Rate, plus a premium, as outlined in the Statement of Work. You may upwardly adjust estimated monthly Inbound Interactions for any future month upon delivery of 60 days' prior written notice to us.

**21.1.2. Live Outbound Interactions.** If the actual live Outbound Interactions exceeds the quarterly estimate by 15% or more, we will meet to determine whether the estimate for future quarters needs to be upwardly adjusted (and, if so, shall update the Order Form accordingly, including the payment of additional fees).

**21.2. Provision of Service Desk Infrastructure.** We shall provide the enabling technology, software system, or other designated support procedures/processes and related third party technologies that will provide back-end ticketing, a customer-facing knowledge base and related support modules, including access to self-help resources and live support via phone, chat, and web-based submissions, where applicable ("Service Desk Infrastructure") to Authorized Users designated by you who will become familiar with the Service Desk Infrastructure and work with the Anthology Service Desk on your behalf to provide the Student Support Services ("Authorized Customer Support Users") to students, faculty or staff members of yours located at or receiving or providing services through your institution ("Authorized Users").

**21.3. Implementation.** We shall provide an implementation project manager, implementation resources, and requisite tools to develop and implement your Student Support Services. Implementation services, development, and associated go-live dates are assumed to be standard unless otherwise specified in a custom scope. If, during implementation, it is discovered that your business processes necessitate a custom scope after contract signing, go-live dates could be impacted. We will also provide you with a customer service manager. During the implementation phase, the parties shall co-author the call script to be used by our representatives.

**21.4. Availability.** We shall use commercially reasonable efforts to make the Service Desk Infrastructure available. From time to time, it may be necessary for us to perform scheduled maintenance on and/or deliver upgrades to various components of the Service Desk Infrastructure, as set forth in more detail in the Order Form.

**21.5. Your Responsibilities.** These responsibilities are essential to our achievement of service levels for you.

**21.5.1. Access.** You agree to provide us with any reasonable information and training required by us to establish the Service Desk Infrastructure. You will provide reasonable access to your personnel and arrange for us to have suitable access to your facilities (including suitable office space and resources for our personnel working on-site) and systems within your control necessary to perform the Student Support Services.

**21.5.2. Cooperation.** You agree to assign an executive sponsor and day-to-day project manager with final sign-off authority to review and approve processes, workflow, knowledge base and escalation procedures regarding the Student Support Services. Your personnel will actively participate in review and planning meetings, trainings, and the communication of processes and documentation reasonably required to provide the Student Support Services.

**21.5.3. Usage Limitations.** You shall use best efforts to ensure that only Authorized Customer Support Users are provided access to the Service Desk Infrastructure and Student Support Services, including not causing or permitting third parties to access such infrastructure or services.

**21.6. Authorized Users.** You acknowledge that we will rely on information provided by you. You agree to provide such information that is reasonably requested by us from time to time, including (i) a comprehensive list of all current and (to the extent then known) potential Authorized Users, (ii) the email addresses and/or phone numbers of Authorized Users, (iii) student demographic information, and (iv) headcount data.

**21.7. Representations and Indemnity.** If you request that we contact any Authorized User or other person on your behalf ("Recipient"), you represent and warrant that: (a) you will comply with all Laws and contracts in connection with use of contact information for Recipients, the Student Support Services, and with respect to the content and transmission of calls, texts, and other messages ("Messages") sent using the Student Support Services, including, without limitation, all federal and state telemarketing-related laws, rules and regulations, the Telephone Consumer Protection Act (47 U.S.C. § 227) and the FCC's implementing regulations (47 C.F.R. § 64.1200) (such laws, rules and regulations, as amended from time-to-time, collectively, the "Telemarketing Laws"); (b) as to each Recipient to be contacted by us on your behalf, you have obtained all consents that may be required by the Telemarketing Laws and your privacy policies; (c) you will retain documentary proof of such consents for at least five (5) years from the date the Recipient's contact information is provided by you to us; (d) you will suppress and will not provide to us contact information for any Recipient who has registered his or her telephone number on the national Do-Not-Call Registry, any similar state registries or has otherwise indicated that he or she does not wish to be contacted by you or us; and (e) you will provide a reasonable means for Recipients to rescind consent to receive Messages and will not request us to send Messages to Recipients who have opted out of receiving Messages from you. We shall have the right to audit your compliance with subsections (a) - (e) above. Failure to comply with any provision of this section is a material breach of the Agreement. Except to the extent prohibited by Law, including Laws providing for the sovereign immunity of government entities, you agree to indemnify, defend and hold us harmless from and against all claims, lawsuits, proceedings, causes of action, damages, liabilities, losses, judgments, fines, penalties, costs, and expenses (including attorneys' fees) relating to or arising out of your breach of the foregoing representations and warranties, or in connection with any claim or action from a third party that arises from the sending (or inability to send or receive), content, or effects of any Messages you distribute using, or your failure to use, the Product and Service. In connection with such indemnity and defense obligations related to a third-party claim, lawsuit, etc., (i) we may participate therein (but not control) through counsel of our own choosing, which participation shall be at our sole expense, and (ii) you shall not settle or permit the settlement of any such third party claim, lawsuit, etc. without our prior written consent, which consent shall not be unreasonably withheld. This Section shall survive any termination of the Agreement.

**21.8. Changes and Oral Instructions.** You shall, to the extent reasonably possible, provide us with no less than 60 days' prior notice of events that you anticipate will increase volume of the Student Support Services. We may proceed with and be compensated for performing changed work for a period of up to thirty (30) calendar days if we receive an oral instruction to proceed from your project manager or another authorized representative and we send a written confirmation of the oral instruction to you.

**21.9. Added Definitions.**

**21.9.1. "Average Handle Time"** means, with respect to any period, the average time (including talk time, time on hold, and wrap-up time) taken to handle an Inbound Interaction.

**21.9.2. "Inbound Interaction"** means a single Inbound Support Request from an Authorized User to the Service Desk or the Service Desk Infrastructure. An Inbound Interaction does not include (i) live or automated outbound Support Services or (ii) self-help by an Authorized User where there is no interaction between the Service Desk and an Authorized User.

**21.9.3. "Outbound Interaction"** means an outbound interaction between the Service Desk and an Authorized User (for example, during a live outbound campaign in support of enrollment or financial aid objectives). An Outbound Interaction may be either a live interaction between an Anthology Service Desk member and an Authorized User or automated (e.g., outbound text messages). An Outbound Interaction does not include (i) inbound Student Support Services or (ii) self-help by an Authorized User where there is no interaction between the Service Desk and an Authorized User.

**21.9.4. "Service Desk"** means our personnel that provide Student Support Services to Authorized Users under this Section 24.

**21.9.5. "Support Request"** means a request for assistance received by Anthology's Service Desk and/or Service Desk Infrastructure from an Authorized User, such as any answered phone call, answered email, or answered chat.

**21.9.6. "Self-Service Incident"** means students getting the information that they need using self-service technologies.

**21.10. Travel.** You will reimburse us for all reasonable travel expenses incurred by our employees in connection with the delivery of our services, unless stated otherwise. In the event that you choose to cancel a scheduled on-site visit within two (2) weeks of the scheduled event, Anthology may invoice you for associated travel change fees.

**21.11.** Anthology reserves the right to charge for overages as they occur throughout the term, provided however, any failure by Anthology to timely invoice for any overages shall not constitute a waiver of your obligation to pay such fees.

**22. ANTHOLOGY ALLY**

**22.1. Grant of License.** With respect to the Anthology Ally service, for the term specified in the applicable Order Form, we grant you a non-exclusive, non-transferable, non-sublicensable, license to access and use the Anthology Ally service made available by Anthology.

**22.2. No advice.** We do not guarantee that the use of the Anthology Ally service will ensure the accessibility of your web content or that your web content will comply with any specific web accessibility standard or law. Any information or guidance accessed through the Anthology Ally service, including without limitation the results of any website tests conducted or other guidance with respect to compliance with various accessibility standards, including without limitation the web content accessibility guidelines 2.0 (WCAG 2.1), or laws, rules or regulations, including without limitation those commonly known as the Americans with Disabilities Act of 1990 as amended by the ADA Amendments Act of 2008, applicable sections of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, 251(a), the Rehabilitation Act, the Individuals with Disabilities Education Act, or their international counterparts, any or all as amended from time to time, or related rules or regulations is provided solely as a courtesy and is not legal advice or counsel. Other laws may apply to you or your customers depending on the nature of their goods and services. We expressly disclaim any implied or express warranties and any liability with respect to any information or guidance provided.

**23. BLACKBOARD MARKETING, ENROLLMENT, AND RECRUITMENT SERVICES**

**23.1. Marketing Services: Ownership of Marketing Deliverables.** Marketing creative deliverables that are created or developed by Anthology specifically for you pursuant to a Anthology marketing services Statement of Work ("Marketing SOW"), including all marketing and media plans, and creative content such as slogans, artwork, media content, image files, videos, drawing, photographs, graphic material, film, music and web sites ("Customer Marketing Deliverables") shall be owned by you. You hereby license the Customer Marketing Deliverables to Anthology during the Term of the Agreement solely to permit Anthology to carry out its obligations under this Agreement and any associated Marketing SOW's. To the extent that any deliverable created under a Marketing SOW includes Anthology Intellectual property, Blackboard/Anthology hereby licenses such Anthology intellectual property to Customer for use solely as part of such deliverable. Such license shall survive expiration of the relevant Marketing SOW. Customer agrees that Anthology shall have no obligation to host any of the deliverables under a Marketing SOW following the termination of such Marketing SOW.

**23.2. Enrollment Services: Representations and Indemnity.** If you request that we contact any prospective student, Authorized User, or other person on your behalf ("Recipient"), you represent and warrant that: (a) you will comply with all Laws and contracts in connection with use of contact information for Recipients, the Enrollment Services, and with respect to the content and transmission of calls, texts, and other messages ("Messages") sent, including, without limitation, all federal and state telemarketing-related laws, rules and regulations, the Telephone Consumer Protection Act (47 U.S.C. § 227) and the FCC's implementing regulations (47 C.F.R. § 64.1200) (such laws, rules and regulations, as amended from time-to-time, collectively, the "Telemarketing Laws"); (b) as to each Recipient to be contacted by us on your behalf, you have obtained all consents that may be required by the Telemarketing Laws and your privacy policies; (c) you will retain documentary proof of such consents for at least five (5) years from the date the Recipient's contact information is provided by you to us; (d) you will suppress and will not provide to us contact information for any Recipient who has registered his or her telephone number on the national Do-Not-Call Registry, any similar state registries or has otherwise indicated that he or she does not wish to be contacted by you or us; and (e) you will provide a reasonable means for Recipients to rescind consent to receive Messages and will not request us to send Messages to Recipients who have opted out of receiving Messages from you. We shall have the right to audit your compliance with subsections (a) - (e) above. Failure to comply with any provision of this section is a material breach of the Agreement. Except to the extent prohibited by Law, including Laws providing for the sovereign immunity of government entities, you agree to indemnify, defend and hold us harmless from and against all claims, lawsuits, proceedings, causes of action, damages, liabilities, losses, judgments, fines, penalties, costs, and expenses (including attorneys' fees) relating to or arising out of your breach of the foregoing representations and warranties, or in connection with any claim or action from a third party that arises from the sending (or inability to send or receive), content, or effects of any Messages you distribute using, or your failure to use, the Product and Service. In connection with such indemnity and defense obligations related to a third-party claim, lawsuit, etc., (i) we may participate therein (but not control) through counsel of our own choosing, which participation shall be at our sole expense, and (ii) you shall not settle or permit the settlement of any such

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third party claim, lawsuit, etc. without our prior written consent, which consent shall not be unreasonably withheld. This Section shall survive any termination of the Agreement.

#### **24. ENCOMPASS**

**24.1** You shall provide us with all text, data, graphics, artwork, designs, audio-visual components, recordings, films, photographs, and other information and materials (the "**Encompass Content**") that you consider necessary for the design, development, and support of the products and Services. Subject to your approval, we may adapt, modify, add to, translate, manipulate, restructure, and reformat the Encompass Content as necessary to create, modify, and maintain the Products and Services. You shall have sole responsibility for securing any necessary rights or permissions from any third party for any Encompass Content and for the use of any third-party facility, link, software and feature capabilities of the software structure. The Encompass Content, provided such items and/or materials are not available in the public domain, shall be your exclusive property. Your Encompass Content rights do not include any rights to our servers, facilities, or property. In addition to Encompass Content as provided above, all transactional data and other member or user information received by or collected from the Products and Services shall be your property. We may monitor use of the Products and Services and use Customer Property in an aggregate and anonymous manner, compile statistical and performance information related to the provision and operation of the Products and Services, and may make such information available to use and to supplement the Products and Services, provided that such information does not incorporate Customer Property or identify your Confidential Information. We retain all intellectual property rights in such information. YOU ARE SOLELY RESPONSIBLE FOR ALL CONTENT AND OTHER DATA AND INFORMATION PROVIDED TO US OR RECEIVED BY OR COLLECTED FROM THE PRODUCTS AND SERVICES. IN ADDITION, YOU ARE SOLELY RESPONSIBLE FOR YOUR USE OF OUR WEB SERVICES OPTION TO OBTAIN, MANIPULATE AND/OR STORE SUCH CONTENT, DATA, AND INFORMATION. WE SHALL NOT BE LIABLE TO YOU FOR ANY DAMAGES OR CLAIMS ARISING OUT OF, RELATED TO OR IN CONNECTION WITH SUCH CONTENT, DATA AND INFORMATION, OR YOUR USE OF OUR WEB SERVICES OPTION.

**24.2** You acknowledge that, in providing the Products and Services, we utilize (i) our name, logo, domain name, and the product and service names associated with the Products and Services, and (ii) other technology, software, equipment, products, processes, algorithms, methods of doing business, user interfaces, know-how and other trade secrets, techniques, designs, inventions and other tangible or intangible technical material or information, including any pre-existing or independently developed materials (collectively, "**Encompass Property**"). We are the exclusive owner of all Encompass Property. We shall also retain title to any work product developed or created for you by us pursuant to Professional Services performed in connection with the Products and Services. We grant to you a non-exclusive, royalty free license to use such work product solely in connection with your use of the Products and Services during the Term. We shall not be restricted in the manner we use the work product or any ideas, concepts, knowhow, techniques or procedures acquired or used by us in the performance of the Professional services, provided, however, that we shall only use your content and Confidential Information to provide the Products and Services under the Agreement.


**24.3** You expressly agree that (i) you will not, under any circumstances, upload or transmit to the Product and Services any Sensitive Customer Data or other information as defined below; and (B) the Products and Services are not configured to receive, store, or transmit, directly or indirectly, any Sensitive Customer Data or other information as defined below. As used herein, Sensitive Customer Data or other information consists of (i) any information subject to FERPA, (including any information pertaining to student enrollment, detailed education and academic records); (ii) any government issued identifications, including, but not limited to, Social Security Numbers and Individual Taxpayer Identification Numbers; (iii) any information that constitutes protected health information ("**PHI**") as defined under the HIPAA, or (iv) any unauthorized third party content. You further acknowledge and agree that that we are neither a "Covered Entity" nor a "Business Associate" under HIPAA. You agrees that we may terminate this Agreement immediately, if you are found to be in violation of any part of this provision.


**24.4** You are restricted from engaging with third parties/contractors to develop any interfaces, training materials, or derivative works related to the Products or Services or Blackboard/Anthology Property without our expressed written permission. If granted permission, you shall ensure that any such third-party/contractors contracted by us be expressly bound by section 13 of this Agreement. Furthermore, such contracted third parties/contractors are restricted from creating commercially-available products and from profiting in any way from any work related to the Products and Services that may have been performed for you, without our expressed prior written permission.

**24.5** You shall indemnify, defend and hold harmless us and our affiliates and licensors, and each of its respective officers, directors, employees, agents, independent contractors, successors and assigns from and against liability for any third party claims based on your use of our Web Services option to obtain, manipulate and/or store content or any other data.

**24.6 Technical Support.** During the Term, email support is available via [customersupport@imodules.com](mailto:customersupport@imodules.com).

Agreed to and accepted by:

Customer: Navajo County Community College District Signature:  Name: President Title: Date: 7/20/23
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Anthology Inc. Signature:  Name: Michael Pohorylo Title: Deputy General Counsel Date: 06/21/2023
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In Process

## Request to Enter into a Contract with TouchNet

### **Recommendation:**

Staff recommends approval to enter into a five year contract with TouchNet to provide financial services related to credit card processing, student fund disbursements, Student Tuition Payment Plans and Cashier Services. Entering into this contract would replace the three vendors that are currently being used for these services.

Total contract cost for the five years is estimated to be approximately \$269,000. (\$250,000 of software and transactional fees and \$19,000 one-time implementation charge).

Annual cost is estimated to be approximately \$45,500. This includes \$39,500 of software fee and approximately \$6,000 of transactional fees.

### **Procurement Process and Budget Information:**

Funds for these services will be offset by eliminating the services currently provided by NelNet, Bankmobile, and Elavon, who provide payment plans, student refunds and credit card processing services, respectively.

### **Summary:**

With the implementation of Anthology and Modern Campus it has been discovered that Elavon, as a payment gateway, is incompatible with these two programs.

Current Procedure: NPC uses the following vendors to perform the indicated payment related tasks:

- Elavon – Processes all credit and debit payments that the public makes to NPC.
- Nelnet – Sets up and maintains student tuition payment plans
- BankMobile - Used to disburse financial aid funds to students.

Initially NPC was searching to replace only it's payment gateway so that it would be compatible/integrated with Anthology and Modern Campus.

To resolve this issue the Director of Financial Services contacted three vendors to obtain quotes to replace Elavon as a payment gateway. The following vendors were contacted:

- Nelnet
- USAePay
- Touchnet

NPC received quotes or cost information from all of these vendors. Capabilities and expected cost are as follows.

### **Nelnet**

**Capabilities** - Is a product that has the capabilities for credit/debit card transactions, financial aid and other student disbursements, and payment plans. Nelnet is not 100% integrated with Modern Campus or Anthology but can post payments to the general ledger and pull up student transactional data once it hits the students account in Anthology. NPC would still need to provide an upload file for disbursements. Nelnet does not offer any services regarding student statements, 1098T statements, or any way to communicate with students on a large scale. Nelnet does not provide single sign on for students.

**Expected Costs** – Total estimated annual costs of approximately \$55,600 (\$38,400 in software fees and \$17,200 transactional fees). Implementation fees total \$9,000. Total estimated first year cost is \$64,600 (\$55,600 + \$9,000 implementation fees).

### **USAePay**

**Capabilities** – Is a replacement payment gateway. NPC would need to continue using Nelnet, BankMobile, and Elavon. USAePay could not or would not provide a demo of how their system works and only directed NPC to a website that had instructions on how to use their gateway.

**Expected Costs** – USAePay itself is relatively cheap, however, as this is an addon to what is currently being used the total annual cost is estimated to be approximately \$40,200 (\$11,985 software/PCI fees and \$28,191 in transaction fees).

### **Touchnet**

**Capabilities** – Is an all in one solution. It can Process all credit card, debit card, ACH, apple pay, google pay and international wires. Touchnet can also provide disbursement services

for financial aid and other disbursements to students as well as student tuition payment plans. Touchnet, with a single sign, can do all and more that Elavon, Nelnet and BankMobile can do. Touchnet also has what they call Student Account Advisor Dashboard that pulls real time data from Anthology, Modern Campus and Touchnet and allows employees and students to easily view the student's charges, purchases, and payments in an easy to read format. Read only or full access can be given to whomever NPC chooses. In addition to the Dashboard, Touchnet has the Student Account Advisor Cashiering. Student Account Advisor Cashiering would be used instead of the Anthology cashiering functionality and helps facilitate easier payment and is expected to reduce manual errors and training for front office and business office staff.

**Expected Costs** – Total estimated annual costs of approximately \$45,500 (\$39,500 in software fees and \$6,013 of transactional fees). Implementation fees total \$19,000. Total estimated first year cost is \$64,500 (\$45,500 + \$19,000 implementation fees).

### **Conclusion:**

NPC's Business Office staff believes that capabilities of Touchnet is best suited for NPC and will streamline the credit card payment, student refund, and payment plan processes. This conclusion was reached as a result of the following:

- Touchnet can replace three vendors (Nelnet, BankMobile, and Elavon) that NPC is currently using to fill the needs to the College and its Students.
- Touchnet can provide one location where students can make payments, receive refunds, set up payment plans, and view their charge and payment history.
- Touchnet can provide the ability to pay tuition at the time of registration with a seamless transition.
- Touchnet can provide the ability for Business Office, Front Office, advisors and any other NPC staff to be able to view the students charge and payment history to assist students with questions.
- Touchnet is fully integrated with Anthology and Modern Campus and does not require human interaction to transfer information between systems, reducing errors and supporting faster service to students.

Payment Processor/Gateway Evaluation

	Nelnet, Bankmobile, Elavon and USAePay			TouchNet			Nelnet		
	Tran Amounts	Rates	Costs	Tran Amounts	Rates	Costs	Tran Amounts	Rates	Costs
Software fee			9,751.20			39,500.00			38,400.00
FY2425 Transaction Amount in \$	517,522.07			517,522.07			517,522.07		
FY2425 Transaction Count	3,790.00			3,790.00			3,790.00		
Card Brand Fees			1,265.03			1,265.03			1,265.03
Discount fees								2.50%	12,938.05
CC Transaction rate		4.04%	21,617.17		0.40%	2,070.09		0.35	1,681.75
Authorization fees		0.80%	4,125.36						
ACH Disbursement Transaction rate		0.42	727.44	1,732.00	0.75	1,299.00			
ACH Collection Transaction rate		0.35	36.05	103.00	0.75	77.25	103	0.35	36.05
Paper Check		0.42	222.60	530.00	2.45	1,298.50	530	2.5	1325
ACH Return fee		\$1 or \$5	89.00	4.00	0.75	3.00	4	1	4
Replacement card		10.00	40.00		N/A	-		N/A	-
New Card fee		5.25	68.25		N/A	-		N/A	-
PCI fee			2,233.95						
Total Fees			40,176.05			45,512.87			55,649.88



# Proposal for Northland Pioneer College

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July 14, 2025

**Presented By:**

Jon Rickard  
Business Development Consultant  
[jon.rickard@nelnet.net](mailto:jon.rickard@nelnet.net)



### Annualized Cost

Fee Type	Amount
Implementation Fees Total <sup>1</sup>	\$9,000.00
Annual Subscription Fees Total <sup>2</sup>	\$38,400.00
Total Annual Fees <sup>3, 4</sup>	\$47,400.00

1 – One Time Setup Fee, Billed In the First Year

2 – Billed Monthly Over 12 Months

3 – Total First Year Costs – Implementation and Annual Subscription Fees

4 – This annual snapshot does not include transaction fees

### Cashiering

Solution	Implementation/One Time Fee	Subscription Fee	Transaction Fee
Integrated (NBS Connector)			
Implementation Fee	\$6,000.00		
Monthly Fee		\$2,000.00	
Transaction Fee			\$0.35
Transaction Fee - ACH Return			\$1.00
Discount Fee Program			2.50%
Mobile Register			
Implementation Fee			
Monthly Fee		1-15 Devices: \$0/Device/Month  16-30 Devices: \$20/Device/Month	

		31+ Devices: \$15/Device/Month	
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### Refunds

Solution	Implementation/One Time Fee	Subscription Fee	Transaction Fee
Implementation Fee	\$2,500.00		
Monthly Fee		\$500.00	
Transaction Fee - ACH			\$0.35
Transaction Fee - ACH to existing Debit Card			\$0.35
Transaction Fee - Paper Check			\$2.50
Transaction Fee - ACH Return			\$1.00
Transaction Fee - Stop Payment			\$25.00
Transaction Fee - Void Check			\$10.00
Transaction Fee - Copy of Cashed Check			\$15.00
Transaction Fee - Wire Transfer			\$25.00

### Changes to Integration

Solution	Implementation/One Time	Subscription Fee	Transaction Fee
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Fee			
Payment Plans, Changes to Integration			
Monthly Fee		\$200.00	

### Student Payments - Enterprise

Solution	Implementation/One Time Fee	Subscription Fee	Transaction Fee
Integrated (NBS Connector)			
Implementation Fee			
Monthly Fee		\$400.00	
Transaction Fee			\$0.35
Transaction Fee - ACH Return			\$1.00
Discount Fee Program			2.50%
International Payments, Western Union GlobalPay			
Batch Credit Card Refunds			\$0.35

### Payment Plans - Enterprise

Solution	Implementation/One Time Fee	Subscription Fee	Transaction Fee
Integrated with Student Payments (NBS Connector)			

Payment Plans, Traditional - Enterprise			
Payment Plans, Past Due - Enterprise			
Payment Plans, Pending Aid - Enterprise			
Payment Plans, International - Enterprise			
Implementation Fee			
Annual Fee		\$0	
Enrollment Fee (2-6 payments)			\$30.00
Enrollment Fee (7-12 payments)			\$50.00
Return Payment Fee			\$30.00
One-Time Credit Card Reversals			\$0.35
Discount Fee Program			2.50%
Batch Credit Card Refunds			\$0.35
International Payments, Western Union GlobalPay			

### Payment Plans, Long Term - Enterprise (13-23 payments)

Solution	Implementation/One Time Fee	Subscription Fee	Transaction Fee
Payment Plans, Long Term -			\$80.00

Enterprise (13-23 payments)			
Discount Fee Program			2.50%

### Payment Plans, Long Term - Enterprise (24-36 payments)

Solution	Implementation/One Time Fee	Subscription Fee	Transaction Fee
Payment Plans, Long Term - Enterprise (24-36 payments)			\$100.00
Discount Fee Program			2.50%

### Checkout

Solution	Implementation/One Time Fee	Subscription Fee	Transaction Fee
Single Partner Product Subscription Annual Fee		\$1,200.00	
Implementation Fee	\$500.00		
Discount Fee			2.50%
Transaction Fee			\$0.35
Transaction Fee - ACH Return			\$1.00

## Quote Terms

Each service is configured to Institution specifications without source code customization. Any post-deployment change requests will be billed at the then-current Professional Services rate.

Pricing is good for 60 days for Quotes and 180 days for RFPs from the date listed above.

Pricing based on 1 Instance per Product. Price quote is based on current understanding of client requirements. Actual costs may vary based on final selected products/services and features. Client will be notified of any pricing changes prior to costs being incurred. Any post-initial deployment configuration change requests will be billed at the Professional Services rate.

Additional considerations and requirements will be outlined in a formal Order Form for execution and accompanying terms and conditions, if applicable.

## Kupfer, Russell

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**From:** Danielle Vega (USAePay Reseller Support) <resellers@usaepay.com>  
**Sent:** Tuesday, June 17, 2025 9:20 AM  
**To:** Kupfer, Russell  
**Subject:** [USAePay Ticket 1065223] Re: New House Application and Other Info

**EXTERNAL SENDER:** This email originated from a non-NPC server and/or email domain. Only click links or open attachments if you trust the sender and know the content is safe.

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##- Please type your reply above this line -##

Your request (1065223) has been updated. To add additional comments, reply to this email.



**Danielle Vega (USAePay)**

Jun 17, 2025, 11:20 CDT

Hello Russell,

Thank you for your interest in our payment gateway. This is the information regarding a new account.

One time set up fee: \$199.95

Monthly Gateway package fees of either : Silver \$23.00/ Gold \$28.00/ Platinum \$33.00

Annual PCI Compliance fee : \$79.95 (Billed every February)

Per Credit Card Transaction fee : \$0.09

Additional feature: ACH processing \$8.50 per month / \$0.02 per ACH transaction

Transaction constitutes a Sale, Credit, Voids, Declines, and Errors caused by the processor and Errors that have an additional cost. This would be ideal for events or conventions.

If you wish to proceed, please confirm which package application should be sent. We will also need the following documents:

- a copy of a state issued ID
- a voided check or bank letter (**must be US based**)
- the coding sheet (VAR)
- signed application.

Should there be any additional questions, please let me know. Thank you!

	Silver Package
Batch Manager	✓
Sale Form	✓
Pre-Made Report	✓
Setting Controls	✓
Mobile App Access	✓
ePayment Form	✓
Invoicing	✓
Level 3 Processing	✓
Customizable Receipts	✓
CDB/Recurring Billing	
Customizable Reports	
Batch Upload	

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Additionally, the customer database includes the first 1,000 customers then is an additional \$6.00 per month for ev

Danielle Vega  
UeP | Support Manager



**Kupfer, Russell**

Jun 17, 2025, 11:06 CDT

Good morning.

My name is Russell Kupfer and I am the Director of Financial Services. Northland Pioneer College is looking to change their payment gateway due to a system change. It would be greatly appreciated if I could receive a New House Application, rates and any other info that would be relevant to making a decision to use USAePay as a provider.

Thank you,



**Russell Kupfer** | Director of Financial Services  
Business Office | Painted Desert Campus  
2251 E. Navajo Blvd., Holbrook AZ 86025  
(928) 524-7381 | [Northland Pioneer College](https://www.northlandpioneercollege.edu)  
[Russell.kupfer@npc.edu](mailto:Russell.kupfer@npc.edu)

## TouchNet Order Form

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

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

**C. TouchNet Services**

ASP Services	Price	Quantity	Total Price
TouchNet Payment Center	\$16,500.00	1	\$16,500.00
eBill, eDeposits, eRefunds, TouchNet Payment Plans, Mobile Bill+Payment	\$11,500.00	1	\$10,500.00
Student Account Advisor Dashboard & Student Account Advisor Payments	\$11,500.00	1	\$11,500.00
TouchNet Marketplace uPay – Limited Use (1 site)	\$1,000.00	1	\$1,000.00
Marketplace Platform Reporting	\$0.00	1	\$0.00
<b>Total Annual ASP Services Fee</b>			<b>\$39,500.00</b>

TouchNet Professional Services	Price	Quantity	Total Price
TouchNet Payment Center	\$9,500.00	1	\$9,500.00
eBill, eDeposits, eRefunds, TouchNet Payment Plans, Mobile Bill+Payment	\$9,500.00	1	\$9,500.00
Student Account Advisor Dashboard & Student Account Advisor Payments	\$0.00	1	\$0.00
TouchNet Marketplace uPay – Limited Use (1 site)	\$0.00	1	\$0.00
Marketplace Platform Reporting	\$0.00	1	\$0.00
<b>Total One-Time Professional Services Fee</b>			<b>\$19,000.00</b>

TouchNet Ready Integrations	T-Link	Gateway API	uPay POS (T-Link)	OneCard API	Annual Fee	One Time Professional Services Fee
Modern Campus	X				waived	waived
<b>Total TouchNet Ready</b>					<b>\$0.00</b>	<b>\$0.00</b>

<b>Integration Fees</b>						
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<b>Payment Plans Plus Services Fees</b>	<b>Price</b>	<b>Quantity</b>
Per Payment Plan Set Up Fee	\$30	Varies
Customer Late Fees	\$25 <sup>1</sup>	Varies
One-Time Professional Services Fee	WAIVED	1

<b>eRefunds Processing Services Fees</b>	<b>Price</b>	<b>Quantity</b>
One-Time Implementation Fee	Waived	1
Direct to Debit	\$0.95	Per item
Digital Check	\$0.95	Per item
Paper Check	\$2.50	Per item
<b>Total eRefunds Processing Services Fees</b>		

<b>TouchNet Integrated Solutions<sup>2</sup></b>	<b>Price</b>	<b>Quantity</b>	<b>Total Price</b>
Integrated Cross-Border Payments	Included	1	Included
Integrated Tuition Protection	Included	1	Included
<b>Total TouchNet Integrated Solutions Fee</b>			<b>\$0.00</b>

- D. Term.** The Term of the TouchNet Software in the ASP Services and the TouchNet Ready Integration commence as of the date of the last signature below (“Effective Date”) and shall continue for a period of five (5) years. Thereafter, the Parties may agree in writing to extend the Term of this TouchNet Order Form for an additional period. The term of the eRefunds Plus Processing Services and the Payment Plans Plus Services commence on the Effective Date and shall last for a period of time consistent with the Existing Agreement, as the Existing Agreement may be extended or amended.
- E. Incorporation of Exhibits.** The attached Exhibits 1 (Payment Plans Plus Services Terms and Conditions) and 2 (eRefunds Processing Services Terms and Conditions) are hereby incorporated herein as if fully set forth herein.
- F. Payment.** For the initial invoice under this TouchNet Order Form, TouchNet will invoice Client for the annual ASP Fees and the One-Time Professional Services fee following execution of this TouchNet Order Form. Client will have sixty (60) days to issue payment. Thereafter, TouchNet will invoice and Client will pay all fees identified in this and any subsequent TouchNet Order Forms as described in the Existing Agreement. Payment is in US Dollars unless stated otherwise. Fees may change annually as described in the Existing Agreement.
- G. Billing Information.**  
Billing Contact Name: Tanya Hayes\_\_\_\_\_ Billing Contact Email: \_Accountspayable@npc.edu\_\_\_\_\_  
Sales Tax Exempt? \_\_\_\_No\_\_\_\_\_
- H. COMTEC Incentives.** TouchNet will provide Client with two (2) general admission COMTEC User Group Conference & PCI Registrations at no cost, which has a value of \$875.00. Client is responsible for lodging & travel costs.

**[SIGNATURE BLOCKS ON NEXT PAGE]**

<sup>1</sup> Amount of Late Fee applies unless otherwise required by applicable law.

<sup>2</sup> TouchNet Integrated Solutions require separate documentation with the Cross-Border Payments or Tuition Protection provider, respectively, and may be subject to additional fees.

## TOUCHNET MASTER SERVICES AGREEMENT

This Master Services Agreement (“Agreement”) is made as of the last date shown in the signature block (“Effective Date”) between TouchNet Information Systems, Inc., 9801 Renner Road, Suite 150, Lenexa, Kansas 66219 (“TouchNet”), and Navajo County Community College District dba Northland Pioneer College, located at 2251 E Navajo Blvd., Holbrook, Arizona 86025 (“Client”). TouchNet and Client may individually be referred to herein as “Party” or collectively as “Parties.”

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

including Third Party Software, (vii) scheduled downtime, scheduled maintenance, or emergency maintenance; (viii) modifications of TouchNet Software not performed by TouchNet, including use of TouchNet Software with devices or software not provided or approved by TouchNet; (ix) Client's failure to properly install hardware or software, including manufactures' operational/system software, or new releases or enhancements specified by TouchNet; or (x) disabling, suspension, or termination of the TouchNet Cloud Services by TouchNet due to Client's breach of this Agreement.

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

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

utilities and miscellaneous technical information. TouchNet Software includes software that is identified on the TouchNet Order Form, and includes both TouchNet Software and OneCard Software.

- 1.45** “TouchNet Software Maintenance and Support” means, for an additional fee identified on the TouchNet Order Form, Client will receive Software Updates and Unlimited Telephone Support for its TouchNet Licensed Software.
- 1.46** “UCommerce Services” means the software modules that TouchNet provides to enable automated and integrated campus commerce services and other financial services software, and is included in the definition of TouchNet Services.
- 1.47** “Unlimited Telephone Support” means that TouchNet shall provide Client, with respect to the TouchNet Services, unlimited telephone support over its technical support line during TouchNet Business Hours.
- 1.48** “Warranty Period” means that the OneCard Hardware purchased from TouchNet shall be free from faulty workmanship and defective materials for a period of ninety (90) days, which will be calculated from the date Client receives the OneCard Hardware.

**2 Scope of Agreement.** This Agreement governs all TouchNet Services, including: (a) any license rights to any TouchNet Licensed Software and any associated, hosting, support and maintenance services (b) any license rights to any OneCard Licensed Software; (c) any right to access and use any TouchNet Software and any OneCard Software purchased via application subscription program (“ASP”); (d) any Professional Services; (e) any TouchNet Cloud Services or other managed hosting services; (f) any TouchNet Ready Integrations with third parties; (g) any OneCard Hardware and/or firmware; and any (h) OneCard Support Services.

**3 Software License Types and General Rights and Restrictions Thereto.**

- 3.1 ASP Services.** With respect to ASP Services, TouchNet grants Client a non-exclusive, non-transferable, non-sublicenseable license to access and use the TouchNet Software and OneCard Software on TouchNet’s servers at the TouchNet DataCenter made available by TouchNet on a remote-access, subscription basis via the Internet solely in support of Client’s operations, as shown on the TouchNet Order Form. This limited license includes standard maintenance, hosting, Software Updates and Support Services.
  - 3.1.1 Implementation.** Implementation of the TouchNet Software will follow the process described in the Equipment and Client Tasks for Set Up, Installation and Implementation of Software, found in TouchNet’s Client Community.
  - 3.1.2 Client Responsibility.** The TouchNet Software may require Client to assist TouchNet in accessing files on Client’s Student Information System to achieve an interface between the TouchNet Software and the Student Information System as well as permit testing of certain functionality. Client agrees to provide assistance reasonably necessary to enable TouchNet to provide the TouchNet Services.
  - 3.1.3 Schedules.** If Client reschedules an Implementation after a date has been determined, a surcharge of 50% of the total Professional Services Fee assessed on the TouchNet Order Form may apply, and the Implementation will be rescheduled based upon TouchNet’s availability at that time. The maximum time allowed for Implementation for all TouchNet Services is twelve (12) months. If delays beyond twelve (12) months are caused by Client, additional Professional Services Fees may apply.
  - 3.1.4 Client Testing.** TouchNet will make a Test Environment available to Client before going live. The Test Environment will receive a lower service level than the production environment. The Test Environment will not receive monitoring of critical system or services, nor will it receive twenty-four (24) hour notification or support.
  - 3.1.5 Support Services.** Support Services for the TouchNet Software are included in the bundled pricing for ASP Services. During the term of this Agreement, TouchNet will provide 24/7/365 monitoring and support of the TouchNet DataCenter. Support is provided during TouchNet’s Business Hours and such support is available by phone, email, or via TouchNet’s Client Community. As part of its Support Services, TouchNet will provide Client with Unlimited Telephone Support.
  - 3.1.6 Standard Maintenance.** Standard Maintenance is provided for TouchNet Software as part of the bundled pricing for ASP Services. Client acknowledges and agrees that during such periods of maintenance or repair, the TouchNet Software may not be Available for Client’s use. TouchNet endeavors to perform routine maintenance outside of TouchNet Business Hours. TouchNet publishes planned maintenance windows and uses commercially reasonable efforts to provide Client fourteen (14) days’ notice before the monthly four (4) hour maintenance windows. In rare events, and to the

extent possible, TouchNet will give Client at least twenty-four (24) hours advance notice of down-time for emergency maintenance that could include updates to security systems.

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

granted herein are expressly reserved by TouchNet. OneCard Hardware may be required to operate the OneCard Licensed Software. In that event, Client must also purchase and enroll in the OneCard Support Services program for its OneCard Licensed Software, for each annual period, subject to the terms of this Agreement, so that Client may continue use of the OneCard Licensed Software. If Client does not elect to enroll in the OneCard Support Services program in those situations where OneCard Hardware is required to operate the OneCard Licensed Software, Client, subject to TouchNet's directive, will promptly remove and/or return the OneCard Licensed Software to TouchNet.

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

#### **4 Availability of TouchNet Cloud Services.**

- 4.1 Service Level Assurance.** Subject to the terms and conditions of this Agreement, TouchNet's objective is to use commercially reasonable efforts to make the TouchNet Cloud Services Available for the Required Availability percentage of the Scheduled Uptime over the course of the Measurement Period, excluding any unavailability as a result of any of the Exceptions ("SLA"). This SLA does not apply to (i) Third Party Software or other third party services (ii) Implementation, (iii) any purchases covered by special support arrangements such as pilot program participation or the development of Custom Software.
- 4.2 Remedy.** In the event that Client's access to the TouchNet Cloud Services hereunder becomes unavailable,

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

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

## **5 TouchNet Ready Integrations.**

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

- 5.1.1** To the extent Client uses an API for its Connection, that API relies on a third party system to capture sensitive data that may be protected by PCI DSS, the Gramm-Leach Bliley Act, HIPAA, FERPA, or other applicable privacy laws and security standards. Client is responsible for ensuring the third party system and integration to the API is compliant with PCI DSS and other applicable privacy laws and security standards. TouchNet is not responsible for any third party, or any third party applications or integrations.
- 5.1.2** Client's use of the TouchNet Ready Integration(s) requires Client to have a valid subscription to access and use, or a license to, TouchNet Software. TouchNet reserves the right to cancel Client's access to any TouchNet Ready Integration upon thirty (30) days' notice. Client agrees and understands it is only receiving a nontransferable, nonexclusive right to access and use the Connection(s), and the specifications are for Client's internal purposes and only for use with approved developed integrations. No right is granted to distribute or otherwise use all or any portion of the Connection(s), the interfacing applications, or the specifications.

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

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

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

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

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

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

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

**7.5 OneCard Hardware Disclaimers.**

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

**7.5.2** All OneCard Hardware is subject to reaching its end-of-life, at which time TouchNet will no longer provide support.

**7.5.3** TouchNet does not perform physical installation of any OneCard Hardware, and therefore, does not have any right or responsibility for (a) physical security, general upkeep and/or maintenance of the OneCard

Hardware or for (b) any third party software present in the OneCard Hardware, or for (c) any inadequacy of the installation environment such as inadequate power or electrical failure, freezing conditions, heat or moisture conditions above or beyond normal office environments, or outside environments for weatherized equipment, or for (d) any problems attributable to an End User's network environment.

**7.5.4** TouchNet also does not have any right or responsibility for repairs resulting from any of the following reasons or events:

7.5.4.1 Client's use of the OneCard Hardware or TouchNet Software for purposes other than those for which it was intended or inconsistent with this Agreement;

7.5.4.2 For damage resulting from anything other than normal wear;

7.5.4.3 Prior repairs made by someone other than a TouchNet employee or authorized TouchNet OneCard repair vendor;

7.5.4.4 For damage resulting from an accident or event of Force Majeure or other disaster, including but not limited to fire, lightning, flood, water, or wind; or

7.5.4.5 Transportation issues.

**7.5.5** TouchNet is not responsible for providing replacement light bulbs, batteries and other supplies; or Client licensing for operating systems and other Client owned software that are present on, or utilized by, the OneCard Hardware.

**7.5.6** To the extent that TouchNet Software becomes incompatible with OneCard Hardware or ceases functioning on OneCard Hardware following the Warranty Period of the OneCard Hardware, TouchNet shall not be responsible or required to support such OneCard Hardware or provide backwards compatibility with such OneCard Hardware, nor to replace or refund such OneCard Hardware; notwithstanding that replacement hardware may be purchased from TouchNet.

**7.5.7** If, for any reason, Client discontinues use of the OneCard Software, or TouchNet discontinues providing Client with the OneCard Services, TouchNet shall not have any obligation to provide any ongoing support (including OneCard Support Services or general assistance moving to another vendor's services) for any OneCard Hardware or any OneCard Licensed Software installed on or accessed by the OneCard Hardware.

**7.5.8** Client has a limited return time window of thirty (30) days from its receipt of the OneCard Hardware to both test it and request the right to return it or be refunded for the purchase of OneCard Hardware. Returns of OneCard Hardware are subject to a restocking fee, currently thirty-five percent (35%) of the purchase price of the OneCard Hardware.

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

## **8 OneCard Support Services**

**8.1 Enrollment.** Client's continuous enrollment in the OneCard Support Services program is optional but may be mandatory in order for Client to receive and keep certain rights provided under this Agreement for the OneCard Hardware (e.g. Warranty Period) and/or OneCard Licensed Software (e.g. annual license use right). The OneCard Support Services are provided on an annual basis, subject to the terms of this Agreement.

**8.2 OneCard Licensed Software Support.** Clients with OneCard Licensed Software that are current paid subscribers of the OneCard Support Services will receive (a) software updates that are made generally available to all current paid subscribers of OneCard Support Services, (b) fixes that address any OneCard Licensed Software issues that have been reported, diagnosed and resolved by TouchNet technicians, (c) help desk support between the hours of 7am and 7pm Central Time with afterhours support available via an emergency support contact number; and (d) remote diagnosis and troubleshooting only through the use of Bomgar or similar sessions. Client may request additional support services from TouchNet for an additional fee.

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

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

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

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

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

## **10 Limitation of Liability and Indemnification**

10.1 **Limitation of Liability.** IN NO EVENT SHALL TOUCHNET BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR OTHER DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE DELIVERY, USE, PERFORMANCE, NON-PERFORMANCE OF OR INABILITY TO USE THE TOUCHNET SERVICES, EVEN IF TOUCHNET HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR TOUCHNET'S INDEMNIFICATION OBLIGATIONS FOR THIRD PARTY CLAIMS, TOUCHNET'S TOTAL LIABILITY TO CLIENT SHALL NOT EXCEED THE FEES PAID BY CLIENT DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE CLAIM TO TOUCHNET FOR THE SPECIFIC TOUCHNET SERVICES GIVING RISE TO THE LIABILITY FROM WHICH THE CLAIM AROSE. THE PARTIES AGREE TO THE ALLOCATION OF LIABILITY SET FORTH IN THIS SECTION ENTITLED "LIMITATION OF LIABILITY" AND CLIENT ACKNOWLEDGES THAT WITHOUT CLIENT'S AGREEMENT TO THE LIMITATIONS CONTAINED HEREIN THE FEES CHARGED FOR THE TOUCHNET SERVICES WOULD BE HIGHER.

10.2 **Intellectual Property Indemnification.** Subject to Section 10.1, TouchNet will indemnify, defend and hold Client and its officers, employees and agents ("Client Indemnitees") harmless from and against any and all claims for damages, losses, liabilities or expenses, including reasonable attorneys' fees, brought against Client Indemnitees by a third party (collectively, "Claims") incurred arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against Client alleging that the use of the TouchNet Services as permitted hereunder infringes any United States copyright or trademark, or constitutes a misappropriation of a trade secret of a third party. Excluded from the above indemnification obligations are claims to the extent

arising from (i) use of the TouchNet Services in violation of this Agreement or applicable law, (ii) use of the Services after TouchNet notifies Client to discontinue use because of an infringement claim, (iii) any claim relating to any third party content or data or (iv) modifications to the TouchNet Services unauthorized by TouchNet. If any of the TouchNet Services are held to infringe, TouchNet will, at its own expense, in its sole discretion use commercially reasonable efforts either (a) to procure a license that will protect Client against such claim without cost to Client; (b) to replace the relevant TouchNet Services with non-infringing TouchNet Services; or (c) if TouchNet determines in its sole discretion that (a) and (b) are not commercially feasible, terminate the Agreement and refund to the Client any prepaid unused fees paid to TouchNet for the infringing TouchNet Services. The rights and remedies granted Client under this Section ("IP Indemnification") state TouchNet's entire liability, and Client's sole and exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party, whether arising under statutory or common law or otherwise.

**10.3 TouchNet Indemnification.** In addition to the IP Indemnification, TouchNet shall indemnify and hold harmless Client Indemnitees from and against any and all Claims arising directly from TouchNet's gross negligence or willful misconduct.

**10.4 Client Indemnification.** Except to the extent prohibited by Applicable Law, including laws providing for the sovereign immunity of government entities, Client will indemnify and hold harmless TouchNet, its affiliates, or its employees, contractors, agents, or assigns (a "TouchNet Indemnitee") resulting from Claims directly arising from (a) Client's use of the TouchNet Services inconsistent with the terms of this Agreement (b) the accuracy of Client Data or any other content submitted by Client to TouchNet, (c) TouchNet's access to, processing or storage of any Client Data as authorized hereunder; or (d) Client's gross negligence, or willful misconduct.

**10.5 Indemnification Procedure.** The indemnified Party shall (i) promptly notify the indemnifying Party in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying Party's obligation except to the extent it is prejudiced thereby, and (ii) allow the indemnifying Party to solely control the defense of any claim, suit or proceeding and all negotiations for settlement, except the indemnified Party must consent to any settlement that is not the sole responsibility of the indemnifying Party. The indemnified Party shall also provide the indemnifying Party with reasonable cooperation and assistance in defending such claim (at the indemnifying Party's cost).

## **11 Data Privacy and Security.**

**11.1 Data Privacy.** TouchNet holds all PII from Client Data received through the TouchNet Cloud Services in its secure network at the secure TouchNet DataCenter. TouchNet maintains compliance with industry standard information security and privacy standards, and complies with all Applicable Laws. TouchNet's security controls substantially comply with NIST Cybersecurity Framework, and are reviewed by independent third parties for compliance with SSAE standards. TouchNet has also implemented security controls, including using firewall technology, encrypting data, regularly updating antivirus software, restricting access to data based on business need, identifying and authenticating access to system components, restricting physical access to data, testing security systems and processes, and maintaining internal policies that address information security.

**11.2 FERPA.** If Client's Confidential Information is subject to FERPA, Client, pursuant to 34 C.F.R. § 99.31(a)(1), hereby designates TouchNet as an "official" with a legitimate educational interest in the Confidential Information. TouchNet's designation as an "official" of Client is solely for the purposes of FERPA compliance and for no other purpose whatsoever, and to the extent Client has policies, rules, and procedures binding on Client "officials" generally, such policies, rules, and procedures will apply to TouchNet only insofar as such compliance is directly relevant to compliance by TouchNet and Client with FERPA. TouchNet agrees to: (i) abide by FERPA's limitations on re-disclosure of Personally Identifying Information in education records; (ii) not use or disclose education records created or received from, by, or on behalf of Client or its students for any purpose other than the purpose for which such disclosure is made; and, (iii) not use or disclose education records except as permitted by this Agreement, as required by law, or as authorized by Client in writing.

**11.3 Security Breach.** TouchNet agrees to comply with the requirements of all Applicable Laws that require the notification of individuals in the event of unauthorized release of PII or other event requiring notification. In the event of a breach of any of TouchNet's security obligations or other event requiring notification under Applicable Law, TouchNet will notify Client promptly, if legally permitted to do so, and assume responsibility for informing all such individuals in accordance with Applicable Law.

**11.4 Security Report.** No more than once annually, Client may request TouchNet's SSAE Report, its PCI Attestation of Compliance, and any other related analyses or reports that TouchNet may have available for disclosure (collectively "Security Documents"), subject to the confidentiality requirements in this Agreement. To the extent TouchNet provides Client a copy of its SSAE Report in Client's capacity as a "User Entity",

Client may only disclose the SSAE Report to its financial auditors who are bound to an obligation of confidentiality similar to those set forth herein, for the exclusive purpose of evaluating the effect of Client's controls on a User Entity's internal control system. Notwithstanding any other provisions herein, Client may not share TouchNet's SSAE Report with any other third-party, contractor, advisor, consultant, or service provider, unless specifically agreed to in writing between the Parties and signed by authorized personnel of the Parties.

- 11.5 **TouchNet's Use of Client Data.** During the term of the Agreement, and subject to Section 11.6 below, Client grants to TouchNet, its affiliates, and its third-party service providers, solely to perform the obligations hereunder, a non-exclusive, royalty-free license to modify, reproduce, display, combine, copy, store, transmit, distribute, and otherwise use Client Data. Client authorizes, subject to the terms of this Agreement, Section 11.8, and to the extent permitted by Applicable Law, Client Data to be accessed and processed by TouchNet, its affiliates, and/or TouchNet's third-party service providers in countries other than the jurisdiction from which the Client Data was originally collected or provided. Client represents and warrants that it has the authority to provide data of its End Users to TouchNet for its use in accordance with the Agreement, and that Client has obtained and provided all required consents and/or disclosures to End Users regarding sharing that data with TouchNet.
- 11.6 **TouchNet's Use of PII.** During the term of this Agreement, Client authorizes TouchNet to collect, access, use, transmit and/or otherwise process PII despite that Client remains at all times in control of and the owner of PII that TouchNet processes. Both Parties agree to uphold their responsibilities under all Applicable Laws. By submitting or providing TouchNet access to PII, Client agrees that TouchNet and its affiliates may process the PII for purposes of (i) providing TouchNet Services, (ii) maintaining, supporting, evaluating, improving and/or developing TouchNet Services and developing new products or services, (iii) enforcing TouchNet's rights under this Agreement, (iv) as permitted by Applicable Law, and (v) as permitted with the End User's consent, as communicated by Client or End User to TouchNet, solely with respect to their own PII. TouchNet does not and will not use PII for targeted advertising. Client represents and warrants that it has the authority to provide PII to TouchNet for its use in accordance with this Agreement, and that Client has obtained and provided (or will obtain and provide) all required consents and/or disclosures from End Users regarding Client sharing such PII with TouchNet.
- 11.7 **Requests to Delete, Access, Correct, or Retrieve PII.** To the extent TouchNet receives a request from an End User to delete, access, correct, or retrieve PII, TouchNet will redirect the End User to Client, and such request will be accommodated only at Client's direction.
- 11.8 **Third-Party Service Providers.**
- 11.8.1 In providing the TouchNet Services, TouchNet may provide access to PII to its third-party service providers, to the extent they have a legitimate need to access such information in order to provide their services to TouchNet as part of the TouchNet Services. TouchNet requires third-party service providers with access to PII to agree to contractual terms related to data use, disclosure, retention and data security, that are materially similar to the relevant terms of the Agreement.
- 11.8.2 To the extent Client or End User shares PII with a third party through the TouchNet Services, Client agrees that TouchNet is not responsible for the data practices of those third parties, and Client is solely responsible for meeting any applicable requirements and the consequences of providing or transmitting PII to such third parties, or authorizing those third parties to access PII through the TouchNet Services via separate agreement with the third party.
- 11.9 **Data Location.** PII may be stored or processed in countries other than the country in which it was collected unless and except to the extent required by Applicable Law. TouchNet will only transfer PII outside the country in which it was collected by means of legally recognized data transfer mechanisms or safeguards.
- 11.10 **EU Data Protection.** To the extent Client is subject to the European Union Data Protection Directive 95/46/EC, the GDPR or similar statute, in relation to the PII that TouchNet processes, Client agrees that Client is the controller of all Client Data and PII submitted to TouchNet, and that TouchNet is the processor of that information. This Agreement will also include the TouchNet Data Protection Addendum for Personal Data Processing of EU Resident Data ("DPA"). If any term in this Agreement conflicts with any term in the DPA, the conflicting term in the DPA shall control.

## 12 Confidentiality

- 12.1 **Confidential Information.** "Confidential Information" means all information provided to a Party (the "Receiving Party") by the other Party (the "Disclosing Party") that is designated in writing as proprietary or

confidential or which a reasonable person familiar with the Disclosing Party's business and the industry in which it operates ought to know is of a confidential or proprietary nature. Confidential Information may include, but is not limited to any internal processes, Documentation, TouchNet Data, Client Data, End User data, and all PII.

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

### 13 Term.

- 13.1 **Term.** This Agreement will commence on the Effective Date and will continue in effect for a term of five (5) years therefrom. Thereafter, the Parties may agree in writing to extend the Term of the Agreement for an additional period. Specific components of the TouchNet Services may be subject to the term identified in the applicable TouchNet Order Form, which will control in the event of a conflict. All terms and conditions, whether set forth herein or in an attachment will remain in effect for as long as TouchNet provides the applicable TouchNet Services, provided that the pricing and discounts set forth in a TouchNet Order Form may be subject to change.
- 13.2 **Termination for Breach.** If either Party breaches any material obligation under the Agreement, the non-breaching Party must provide notice of the breach, and the breaching party will be entitled to a thirty (30) day cure period in which to remedy the breach. If the breaching Party does not cure the breach within the cure period, the non-breaching Party may, at its sole discretion (1) terminate the Agreement in its entirety, or, (2) terminate only the relevant service related to the breach. Notwithstanding the foregoing, TouchNet may terminate the Agreement immediately upon written notice if Client materially breaches the license usage restrictions set forth in the Agreement. Except for termination rights in this section, the Parties have no other

right of early termination. All rights and obligations of the Parties which by their nature are reasonably intended to survive such termination or expiration will survive termination or expiration of this Agreement.

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

## 14 Payment & Fees

- 14.1 **TouchNet Licensed Software and Annual TouchNet Software Maintenance and Hosting Fees.** TouchNet will invoice Client for the one-time TouchNet Licensed Software fee and any associated annual fees for Software Maintenance and Support and Hosting Services upon the Effective Date of the TouchNet Order Form. Upon at least thirty (30) days' notice, TouchNet reserves the right to increase the annual Software Maintenance and Support and Hosting Services fees by no more than five percent (5%) per year over the applicable amount for the immediately preceding year. For each subsequent annual period, the Software Maintenance and Support and Hosting Services fees shall be due thirty (30) days in advance of the next annual period. TouchNet will invoice Client for any hardware upon shipment. Client shall pay all fees within thirty (30) days of receipt of invoice.
- 14.2 **Application Subscription Program Fee (ASP Fee).** The annual ASP Fee is due and payable upon the Effective Date of the TouchNet Order Form. Upon at least thirty (30) days' notice, TouchNet reserves the right to increase the ASP Fee by not more than five percent (5%) per year over the applicable amount for the immediately preceding year. For each subsequent year, the annual ASP Fee, adjusted by TouchNet as permitted herein, shall be payable thirty (30) days in advance of the next annual period of the TouchNet Order Form.
- 14.3 **Annually Renewable TouchNet Software Subscription Fee.** The annual TouchNet Software Subscription Fee ("Renewable ASP Fee") is a flat fee that is due and payable upon the Effective Date of the TouchNet Order Form, and annually thereafter following receipt of invoice through the Term of the applicable TouchNet Order Form. For each subsequent year, the Renewable ASP Fee shall be payable thirty (30) days in advance of the next annual period of the TouchNet Order Form.
- 14.4 **OneCard Licensed Software Fee.** OneCard Licensed Software is due and payable upon the Effective Date of the TouchNet Order Form, and annually thereafter following receipt of invoice through the Term of the applicable TouchNet Order Form. For each subsequent year, the OneCard Licensed Software Fee shall be payable thirty (30) days in advance of the next annual period of the TouchNet Order Form.
- 14.5 **OneCard Hardware Fees.** Client's OneCard Hardware orders will be reflected either on a TouchNet Order Form or on a TouchNet quote that will be signed by Client. All OneCard Hardware sales are final and purchases are invoiced with shipment.
- 14.6 **Professional Services Fee.** The one-time Professional Service Fee is payable upon the Effective Date of the TouchNet Order Form. The Professional Service Fee shall be due and payable within thirty (30) days of Client's receipt of the invoice.
- 14.7 **Annually Renewable OneCard Support Services Fees.** The Support Services Fees are billed annually at then-current pricing as flat rates described below and shall be invoiced in accordance with the terms herein, and on the Effective Date, of the TouchNet Order Form. Payments are due thirty (30) days in advance of each subsequent annual period.
- 14.7.1 **OneCard Licensed Software Support Services Fee.** OneCard Support Services for OneCard Licensed Software is required for each annual period the Parties desire to continue accessing and using Client's Licensed Software and each annual period is billed at then-current pricing, as a percentage of the total original price of the OneCard Licensed Software at purchase.
- 14.7.2 **OneCard Hardware Support Services Fee.** OneCard Support Services for OneCard Hardware are available for purchase, but only on an all or nothing basis at the time of purchase of the OneCard Hardware and each annual period is billed at then-current pricing as a percentage of the total original price of the OneCard Hardware purchase, except for the initial annual period, because the Warranty Period applies for the first ninety (90) days, so the charge is a prorated portion of the total fee for a

nine (9) month period. If Client elects not to purchase OneCard Support Services for OneCard Hardware at the date of purchase, and later requests OneCard Hardware maintenance, Client will be billed at \$450/hour plus costs (including all shipping costs) for the OneCard Hardware maintenance, as later enrollment in the OneCard Support Services program post original purchase will not be permitted.

- 14.7.3 **Additional Purchases of OneCard Hardware and OneCard Hardware Support Services Fee.** If Client purchases any additional OneCard Hardware items during an existing OneCard Support Services annual period, the additional OneCard Hardware will be added to Client's OneCard Support Services program and Client shall pay the fees associated with the additional OneCard Hardware Support Services. For subsequent annual periods thereafter, Client will be billed for an annual period at then-current pricing as a percentage of the OneCard Hardware purchase price. TouchNet will attach an updated listing of all OneCard Services covered by OneCard Support Services that are billed to Client with the annual renewal invoice for payment of the OneCard Support Services Fee.

- 14.8 **Annual Fee Synchronization.** All fees other than any OneCard Support Services Fees associated with additional OneCard Hardware purchases mentioned above will have their billing periods synchronized the year following the initial annual period of any newly added, annually billed service, so the invoice may include more than six (6) months but not more than eighteen (18) months for the billable period in order to align with the applicable existing annual period.
- 14.9 **TouchNet Ready Integration Fees.** Per integration annual fees, and one-time per integration implementation fee are invoiced upon execution of the TouchNet Order Form. TouchNet reserves the right to increase the annual TouchNet Ready Integration fees by no more than five percent (5%) per year over the applicable amount for the immediately preceding year. All payments are due within thirty (30) days upon Client's receipt of invoice.
- 14.10 **Travel Expenses.** Client must request TouchNet personnel to travel on-site if Client elects to receive any on-site training, equipment installation, set up or certain professional services. Client will promptly reimburse TouchNet for all Client pre-approved actual, reasonable out-of-pocket expenses, including reasonable travel, lodging, and food expenses incurred by TouchNet personnel in connection with on-site training, equipment installation, set-up and professional services rendered in connection with this Agreement. In the event Client has a travel policy, Client will provide such to TouchNet before making any travel arrangements with TouchNet personnel.
- 14.11 **Purchase Order.** Any purchase order submitted by Client is a mere expression of intent to buy and is not binding in any way unless signed by an authorized officer of TouchNet. TouchNet will accept Client's Purchase Order to the extent that the terms, conditions, and prices reflected are consistent with those detailed in this Agreement, as it may be amended.
- 14.12 **Late Charges.** Late payments of fees are subject to a late charge equal to the lesser of eighteen percent (18%) per year or the highest rate permitted by applicable law; plus all attorney's fees and third party expenses actually incurred by TouchNet in collecting any past due fees, payments, or reimbursements of any kind.
- 14.13 **Taxes.** Any and all excise, sales, use, value-added or other taxes or levies imposed by any governmental body on the Client or TouchNet in connection with the use, licensing, handling, or payment of license, hosting, maintenance, or subscription fees with respect to the TouchNet Services (with the exception of taxes measured against TouchNet's net income) are Client's sole responsibility. Client shall be responsible for and reimburse TouchNet for any amounts actually paid by TouchNet or withheld by the Client for any such taxes or levies within thirty (30) calendar days after TouchNet provides notice of same. If Client is tax exempt, Client will send TouchNet a copy of its valid tax exemption certification upon the Effective Date of the TouchNet Order Form or upon reasonable request.
- 14.14 **Suspension of Service.** If Client's account is thirty (30) days or more overdue, in addition to any of its other rights or remedies, TouchNet may suspend the TouchNet Services, without any liability to Client, until Client pays such amounts in full.

## 15 Product Specific Terms

- 15.1 **PCI Services.** The PCI Services assist clients who have Heartland Merchant Services for either or both credit card processing or the TouchNet Service Fee with maintaining their compliance with applicable card brands. The PCI Services consist of three services in total, and clients may elect to participate in all three services, or they may elect to participate in only a portion, or none, of the services available. The PCI Services consist of

(1) client's access to TouchNet's unique environment for compliance reporting where, among other things, clients can obtain access to "smart SAQs" or receive assistance in setting up scans of their environments; (2) participation in the four card brand exemption program for merchant processing, which consists of the Visa Technology Innovation Program (TIP), MasterCard Site Data Protection Program (SDP), Discover Information Security & Compliance (DISC) Program, and American Express Security Technology Enhancement Program (STEP); and (3) participation in the Validated Point to Point Encryption Service Program, described below. For clients electing to participate in the PCI Services, they must utilize Heartland Merchant Services for either or both credit card processing or the TouchNet Service Fee, and clients must complete a separate order form identifying which services they desire to participate in by "opting in" to the services, with the exception of the Validated Point to Point Encryption Service Program, which services are purchased via issuance of a purchase order, as more specifically stated below.

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

## 16 General

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

<b>If to Client:</b>	<p><b>If to TouchNet:</b>  TouchNet Information Systems, Inc.  9801 Renner Road, Suite 150  Lenexa, KS 66219  Attn: President</p> <p>Global Payments Inc.  3550 Lenox Road, NE #3000  Atlanta, GA 30326  Attn: General Counsel</p>
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- 16.2 Feedback.** Client will notify TouchNet of all ideas for changes, improvements, modifications, enhancements or bug-fixes (collectively, "Feedback") that come to Client's attention while using the TouchNet Services. Client grants TouchNet a non-exclusive, perpetual, irrevocable, royalty-free, worldwide right and license to use, reproduce, disclose, sublicense, distribute, modify and otherwise exploit such Feedback and information without restriction.
- 16.3 Use of Client Name.** TouchNet may identify Client by name, without use of any mark or logo, and solely as a matter of fact, as a customer of TouchNet Services in the customer section of TouchNet's website and in its customer lists with Client's prior written consent. TouchNet may also use Client's name and logo to provide the TouchNet Services to Client. TouchNet will not express or imply any endorsement by Client of TouchNet or the Services without Client's written consent.
- 16.4 Piggyback Provision.** Client may permit other state institutions to contract with TouchNet under the same terms and conditions as in this Agreement, provided that each such institution seeking to exercise this right shall separately agree in writing to the terms and conditions of this Agreement and execute a separate TouchNet Order Form.
- 16.5 Entire Agreement.** This Agreement, together with any exhibits and TouchNet Order Form(s), constitutes the entire agreement between Client and TouchNet and supersedes any other prior Agreements or understandings, whether oral or written, regarding the TouchNet Services. If a provision of this Agreement is deemed null and void, invalid or without effect, the remainder of this Agreement shall remain in effect.

- 16.6 Force Majeure.** With the exception of Client's obligations to pay TouchNet monies due under this Agreement, neither party shall be liable to the other for delay or failure to perform any obligation hereunder resulting from a Force Majeure event.
- 16.7 Governing Law, Venue and Jurisdiction.** This Agreement shall be construed and governed by the laws of the state in which Client is resident without regard to legal principles related to conflict of laws. Any action arising out of or relating to this Agreement shall be brought only in the state or federal courts of Client's resident state. The Parties hereto agree and consent to the personal and exclusive jurisdiction of said courts over them as to all actions, and further waive any claim that such Action is brought in an improper or inconvenient forum. To the extent allowed by state law, the Parties waive trial by jury.
- 16.8 Severability.** If any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect under any applicable statute, rule of law, or public policy, such provision shall be considered inoperative to the extent of such invalidity, illegality, or unenforceability and the remainder of this Agreement shall continue in full force and effect. The parties agree to replace any such invalid, illegal, or unenforceable provision with a new provision that has the most nearly similar permissible legal and economic effect.
- 16.9 Headings.** Headings are included in this Agreement as a matter of convenience only and shall not be controlling with regard to the interpretation of this Agreement.
- 16.10 Amendments.** This Agreement shall not be modified except by written amendment signed by each of the Parties.
- 16.11 Assignment.** This Agreement shall be binding upon and for the benefit of TouchNet, Client and their permitted successors and assigns. Either Party may assign this Agreement as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets. Except for TouchNet's use of subcontractors, neither Party may otherwise assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of the other Party, and any attempted assignment or delegation in violation of this section will be void.
- 16.12 Relationship of the Parties.** TouchNet and Client are independent contractors, and nothing in this Agreement shall be construed as making them partners or creating the relationships of employer and employee, master and servant, or principal and agent between them, for any purpose whatsoever. Neither Party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other Party's name or on its behalf.
- 16.13 Insurance.** TouchNet shall secure and maintain, at its own cost and expense, throughout the duration of this Agreement, general liability insurance with limits of not less than one million dollars per occurrence and two million dollars in the aggregate and shall name Client as an additional insured. TouchNet shall also secure and maintain, at its own cost and expense, throughout the duration of this Agreement, cyber liability insurance with limits of not less than five million dollars with third party coverage. At the reasonable request of Client, TouchNet shall provide Client with a Certificate of Insurance demonstrating its conformance with this section.
- 16.4 E-Verify.** As required by A.R.S. §41-4401, each Party warrants that it complies with all Federal immigration laws and regulations, that it shall verify, through the U.S. Department of Homeland Security's E-Verify program, the employment eligibility of each employee who provides services or labor in Arizona for wages or other remuneration, and that it shall require its subcontractors and sub-subcontractors within its control to provide the same warranties to the other Party. Each Party acknowledges that a breach of this warranty by the Party or by any subcontractor or sub-subcontractor who are within the control of a Party under this Agreement shall be deemed a material breach of this Agreement, and is grounds for penalties, including termination of this Agreement, by the non-breaching Party. Each Party retains the legal right to inspect the papers of any Party, including any subcontractor and sub-subcontractor employee within the control of a Party and who performs work under this Agreement, and each Party retains the legal right to conduct random verification of the employment records of the other Party and each subcontractor and sub-subcontractor within the other Party's control who works on this Agreement, to ensure that the each Party and each subcontractor and sub-subcontractor within each Party's control is complying with the warranties set forth above. Each Party shall defend, indemnify and hold harmless the other Party, its Governing Board members, officers, employees and agents from and against any and all claims and demands of any nature, including fines, penalties and expenses of litigation, for which the Party is found, or is alleged to be, liable arising out of the breach of any warranties of the breaching Party or any subcontractor or sub-contractor within a Party's control as specified in this paragraph only.

- 16.15** Pursuant to A.R.S. § 38-511, Client may, within three (3) years after the execution of this Agreement, cancel it without further penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement is at any time while the Agreement is in effect, an employee or agent of any other Party to the Agreement in any capacity or a consultant to any other Party, of the contract with respect to the subject matter of the Agreement. A cancellation made pursuant to this provision shall be effective when the other Party receives written notice from the Client of the cancellation unless the notice specifies a later time.
- 16.16** Pursuant to A.R.S. § 35-394, to the degree legally applicable, TouchNet certifies that it does not use, and agrees not to use during the term of the Agreement, any of the following: (1) Forced labor of ethnic Uyghurs in the People's Republic of China; (2) Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (3) Any Contractors, Subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If TouchNet becomes aware during the Agreement term that it is not in compliance with this certification, TouchNet shall notify Client within five business days after becoming aware of the noncompliance. TouchNet's failure to provide written certification to Client that it has remedied the noncompliance within one hundred eighty days of its notice to Client shall automatically terminate the contract if the contract has not already terminated.
- 16.17** Pursuant to A.R.S. § 35-393 *et. seq.*, to the degree legally applicable, each Party hereby warrants that said Party is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of goods or services from Israel.
- 16.18** If applicable, the Parties shall comply with State of Arizona Governor's Executive Order 2009-09, as may be amended, and all other applicable State and Federal employment laws, rules, and regulations, mandating that all persons shall have equal access to employment opportunities, and that no person shall be discriminated against due to race, age, creed, color, religion, sex, national origin or disability.

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

TouchNet Information Systems, Inc.

Navajo County Community College District dba  
Northland Pioneer College

Signature: \_\_\_\_\_  
By: Jeremy Loch  
Title: President  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
By: Von Lawson  
Title: College President  
Date: \_\_\_\_\_

## TouchNet Order Form

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

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

**C. TouchNet Services**

ASP Services	Price	Quantity	Total Price
TouchNet Payment Center	\$16,500.00	1	\$16,500.00
eBill, eDeposits, eRefunds, TouchNet Payment Plans, Mobile Bill+Payment	\$11,500.00	1	\$10,500.00
Student Account Advisor Dashboard & Student Account Advisor Payments	\$11,500.00	1	\$11,500.00
TouchNet Marketplace uPay – Limited Use (1 site)	\$1,000.00	1	\$1,000.00
Marketplace Platform Reporting	\$0.00	1	\$0.00
<b>Total Annual ASP Services Fee</b>			<b>\$39,500.00</b>

TouchNet Professional Services	Price	Quantity	Total Price
TouchNet Payment Center	\$9,500.00	1	\$9,500.00
eBill, eDeposits, eRefunds, TouchNet Payment Plans, Mobile Bill+Payment	\$9,500.00	1	\$9,500.00
Student Account Advisor Dashboard & Student Account Advisor Payments	\$0.00	1	\$0.00
TouchNet Marketplace uPay – Limited Use (1 site)	\$0.00	1	\$0.00
Marketplace Platform Reporting	\$0.00	1	\$0.00
<b>Total One-Time Professional Services Fee</b>			<b>\$19,000.00</b>

TouchNet Ready Integrations	T-Link	Gateway API	uPay POS (T-Link)	OneCard API	Annual Fee	One Time Professional Services Fee
Modern Campus	X				waived	waived
<b>Total TouchNet Ready</b>					<b>\$0.00</b>	<b>\$0.00</b>

<b>Integration Fees</b>						
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<b>Payment Plans Plus Services Fees</b>	<b>Price</b>	<b>Quantity</b>
Per Payment Plan Set Up Fee	\$30	Varies
Customer Late Fees	\$25 <sup>1</sup>	Varies
One-Time Professional Services Fee	WAIVED	1

<b>eRefunds Processing Services Fees</b>	<b>Price</b>	<b>Quantity</b>
One-Time Implementation Fee	Waived	1
Direct to Debit	\$0.95	Per item
Digital Check	\$0.95	Per item
Paper Check	\$2.50	Per item
<b>Total eRefunds Processing Services Fees</b>		

<b>TouchNet Integrated Solutions<sup>2</sup></b>	<b>Price</b>	<b>Quantity</b>	<b>Total Price</b>
Integrated Cross-Border Payments	Included	1	Included
Integrated Tuition Protection	Included	1	Included
<b>Total TouchNet Integrated Solutions Fee</b>			<b>\$0.00</b>

- D. Term.** The Term of the TouchNet Software in the ASP Services and the TouchNet Ready Integration commence as of the date of the last signature below (“Effective Date”) and shall continue for a period of five (5) years. Thereafter, the Parties may agree in writing to extend the Term of this TouchNet Order Form for an additional period. The term of the eRefunds Plus Processing Services and the Payment Plans Plus Services commence on the Effective Date and shall last for a period of time consistent with the Existing Agreement, as the Existing Agreement may be extended or amended.
- E. Incorporation of Exhibits.** The attached Exhibits 1 (Payment Plans Plus Services Terms and Conditions) and 2 (eRefunds Processing Services Terms and Conditions) are hereby incorporated herein as if fully set forth herein.
- F. Payment.** For the initial invoice under this TouchNet Order Form, TouchNet will invoice Client for the annual ASP Fees and the One-Time Professional Services fee following execution of this TouchNet Order Form. Client will have sixty (60) days to issue payment. Thereafter, TouchNet will invoice and Client will pay all fees identified in this and any subsequent TouchNet Order Forms as described in the Existing Agreement. Payment is in US Dollars unless stated otherwise. Fees may change annually as described in the Existing Agreement.
- G. Billing Information.**
- Billing Contact Name: Tanya Hayes\_\_\_\_\_ Billing Contact Email: \_Accountspayable@npc.edu\_\_\_\_\_
- Sales Tax Exempt? \_\_\_\_No\_\_\_\_\_
- H. COMTEC Incentives.** TouchNet will provide Client with two (2) general admission COMTEC User Group Conference & PCI Registrations at no cost, which has a value of \$875.00. Client is responsible for lodging & travel costs.

**[SIGNATURE BLOCKS ON NEXT PAGE]**

<sup>1</sup> Amount of Late Fee applies unless otherwise required by applicable law.

<sup>2</sup> TouchNet Integrated Solutions require separate documentation with the Cross-Border Payments or Tuition Protection provider, respectively, and may be subject to additional fees.

TOUCHNET INFORMATION SYSTEMS, INC.	NAVAJO COMMUNITY COLLEGE DISTRICT DBA NORTHLAND PIONEER COLLEGE
SIGNATURE: _____	SIGNATURE: _____
BY: <u>Jeremy Loch</u>	BY: <u>Von Lawson</u>
TITLE: <u>President</u>	TITLE: <u>College President</u>
DATE: _____	DATE: _____
	<i>*Order Form must be executed by Client on or before August 30<sup>th</sup>, 2025 to guarantee pricing.</i>

## **Exhibit 1**

**THESE TOUCHNET PAYMENT PLANS PLUS SERVICES TERMS AND CONDITIONS** (“Payment Plans Plus Ts&Cs”) are adopted between TouchNet Information Systems, Inc., with an address of 9801 Renner Blvd., Ste. 150, Lenexa, KS 66219 (together with its Affiliates, “TouchNet”), and National Pioneer College, for its sole use and benefit (“Client”), as of the Effective Date of the attached TouchNet Order Form. The Parties, intending to be legally bound, hereby agree as follows:

**I. DEFINITIONS.** In addition to the terms defined in the Existing Agreement and in the TouchNet Order Form entered contemporaneously herewith, the following terms apply to these Payment Plans Plus Ts&Cs:

- A. “Affiliate” means a business entity that controls or is controlled by another business entity or is associated with other business entities under common ownership or control of a business entity, such as a subsidiary or parent company.
- B. “End User” means a student or authorized third party who enters into a payment plan with Client for the payment of the student’s tuition.
- C. “Payment Plans Plus Services” means the ongoing support and services to End Users enrolled in a payment plan for the payment of their student tuition. Payment Plans Plus Services is included in the definition of TouchNet Services.

**II. APPOINTMENT, AUTHORIZATION AND ACCEPTANCE OF PAYMENT PLANS PLUS SERVICES.**

- A. Client authorizes TouchNet to access its Student Information System to provide the Payment Plans Plus Services.
- B. Client designates TouchNet as Client’s agent for purposes of providing support services to End Users, including accessing Client’s student tuition and payment plan data to answer End Users’ questions regarding the payment plans and payments on the account, in exchange for Client’s payment of the applicable Payment Plan Set-Up Fee. TouchNet will provide the Payment Plans Plus Services as TouchNet determines from time to time in its sole, reasonable discretion, and as regulatory and/or market conditions vary.
- C. TouchNet will be the exclusive provider of Payment Plans Plus Services to Client and End Users during the term of these Payment Plans Plus Ts&Cs. Client acknowledges that TouchNet may provide Payment Plans Plus Services to other customers.

**III. CLIENT’S DUTIES.** Client will create and offer during each term of its educational year, a variety of payment plans to all of End Users for the payment of their student tuition to Client. Client shall update its website to ensure that timely and accurate data is available to its students and End Users that payment plans are available, and this must be complete prior to Client’s go-live with the service. TouchNet and Client will work together to define the parameters of the plans, and TouchNet will provide Client with payment plans marketing materials. Client is responsible to ensure that End User data and student tuition charges are correct, and to verify the accuracy and completeness of all payment plans. Client will ensure that all End Users entering into a payment plan have approved and verified authorized third party payors, if applicable, that are reflected in the relevant student account data. All such data must be contained in the Client’s Student Information System and made accessible to TouchNet. Client will also provide access, identification and other information as TouchNet may reasonably request to provide the Payment Plans Plus Services. Client is responsible for managing all late payments and debt collection activities for End Users with respect to all payment plans.

**IV. CUSTOMER SUPPORT.** TouchNet will provide customer support via telephone to End Users regarding the selected payment plan, any payments have been applied, and any other payment-related matters. Client agrees that because Client is responsible for the content and accuracy of the student account data, the creation of the payment plan(s), and all delinquency matters related thereto, Client will respond to End User inquiries with respect to those matters.

**V. DISCLAIMER OF LIABILITY AND ACKNOWLEDGEMENT OF LIMITATIONS.**

- A. Client agrees and understands that to receive the Payment Plans Plus Services, Client must have the right to access and use one of the following: (a) Ellucian Payment Center, (b) TouchNet Payment Center, or (c) Merchant Services with Heartland Payment Systems, LLC (“Merchant Services”).
- B. TOUCHNET IS NOT RESPONSIBLE FOR ANY OF THE FOLLOWING: (A) PROBLEMS OR DISPUTES REGARDING PAYMENT PLANS PERTAINING TO THE ACCURACY OF THE STUDENT ACCOUNT CHARGES OR BALANCE REFLECTED IN THE PAYMENT PLANS, (B) THE ACCURACY OF THE DATA IN

THE STUDENT INFORMATION SYSTEM, (C) THE DESIGNATION OF AUTHORIZED PAYORS OR OTHER THIRD PARTIES, AND (D) ANY AND ALL PAYMENT DISPUTES AND LATE CHARGES, INCLUDING COLLECTIONS MATTERS, ARISING THEREFROM.

- VI. **TERMINATION OF THE PAYMENT PLANS PLUS SERVICES.** In addition to the termination rights provided in the Existing Agreement, either Party may terminate the Payment Plans Plus Services immediately, if, by performing its duties under this Section, the Party would be in violation of applicable laws.
- VII. **MISCELLANEOUS.** Sections 4.1 (“Service Level Assurance”) and 4.2 (“Remedy”) of the Existing Agreement do not apply to these Payment Plans Plus Ts&Cs.
- VIII. **PAYMENTS AND FEES.** All payments are due within thirty (30) days upon receipt of invoice.
- A. **Per Payment Plan Set-Up Fee.** When End Users enroll in a Payment Plan, the End User will pay a non-refundable, minimum Per Payment Plan Set-Up Fee to TouchNet (including its Affiliates) that shall apply to each semester, trimester, annual, and/or quarterly payment plan.
  - B. **Customer Late Fees.** End Users may incur non-refundable late fees, including but not limited to, Late Payment Fees, which shall be invoiced to Client at the end of each calendar month. Unless otherwise agreed by the Parties, each such fee will be \$25.00.
  - C. **One-Time Professional Services Fee.** The one-time Professional Services Fee is waived.
  - D. **Other Fees.** If Client selected Merchant Services with Heartland Payment Systems, LLC (“Merchant Services”), Client is responsible for all fees associated with Merchant Services. Client will be the merchant of record for Payment Plans Plus payments by End Users, and all such funds will settle directly to the Client.

## Exhibit 2

**THESE TOUCHNET EREFUNDS PROCESSING SERVICES TERMS AND CONDITIONS** (“eRefunds Processing Ts&Cs”) are adopted between TouchNet Information Systems, Inc., with an address of 9801 Renner Blvd., Ste. 150, Lenexa, KS 66219 (together with its Affiliates, “TouchNet”), and National Pioneer College, for its sole use and benefit (“Client”), as of the Effective Date of the attached TouchNet Order Form. The Parties, intending to be legally bound, hereby agree as follows:

**1. DEFINITIONS.** In addition to the terms defined in the Existing Agreement and the TouchNet Order Form entered contemporaneously herewith, the following terms apply to these eRefunds Processing Ts&Cs:

**1.1. Direct to Debit Option** means funds that are delivered via a third party solutions, such as Visa Direct.

**1.2. End User** means a student or authorized third party who enters into a payment plan with Client for the payment of the student’s tuition.

**1.3. eRefunds Processing Services** means the service that TouchNet provides to enable Client to transfer designated monies to a student or other third party. eRefunds Processing Services is included in the definition of TouchNet Software in the Existing Agreement.

## **2. TOUCHNET EREFUNDS PROCESSING SERVICES**

### **2.1. Appointment, Authorization and Acceptance.**

- a) Client authorizes TouchNet to access its Student Information System as described in the Existing Agreement to provide the eRefunds Processing Services.
- b) TouchNet will be the exclusive provider of eRefunds Processing Services to Client and End Users during the term of these eRefunds Processing Ts&Cs. Client acknowledges that TouchNet may provide eRefunds Processing Services to other customers.

### **2.2. eRefunds Processing Services**

- a) eRefunds Processing Services may include, but are not limited to, the disbursement of financial aid, college refunds, college work-study payments, and other types of payments.
- b) Client will determine how to offer refunds by digital or paper check or a direct to debit pay option.
- c) Client will include a statement in its disclosure(s) to students that it may share End User data with third parties for the purpose of facilitating disbursements.
- d) Client is responsible to ensure that End User data and student account charges are correct and to verify the accuracy and completeness of all payments. Client will ensure that all End Users have approved and verified authorized third-party payors, if applicable, which are reflected in the relevant student account data.
- e) All End Users will be required to accept specific eRefunds Processing terms and conditions located at <https://checkbook.io/resource/terms-individual>.

**2.3 Higher Education Act.** TouchNet and Client agree to comply with the applicable statutory provisions of or applicable to Title IV of the Higher Education Act as set forth in 34 CFR 668.25, including those set forth expressly in Attachment 1 (Title IV Higher Education Act) hereto.

### **2.4 TouchNet Obligations**

- a) **Data Privacy.** TouchNet holds all Client data in its secure network. TouchNet maintains compliance with industry standard information security and privacy standards, and complies with all applicable data privacy laws. TouchNet’s security controls are substantially in compliance with NIST Cybersecurity Framework, and are reviewed by independent third parties for compliance with the Title IV Perkins Loan Servicing Programs and SSAE 18. TouchNet has also implemented security controls, including using firewall technology, encrypting data, regularly updating antivirus software, restricting access to data based on business need, identifying and authenticating access to system components, restricting physical access to data, testing security systems and processes, and maintaining internal policies that address information security.
- b) **Security Report.** No more than once annually, Client may request TouchNet’s SSAE 18 Report, as well as TouchNet’s Examination Report on Compliance with Title IV Programs also referred to as “Perkins Attestation” (collectively “Security Documents”), subject to the confidentiality requirements in the Agreement. To the extent

TouchNet provides Client a copy of its SSAE 18 Report in Client's capacity as a "User Entity", Client may only disclose the SSAE 18 Report to its financial auditors who are bound to an obligation of confidentiality similar to those set forth herein, for the exclusive purpose of evaluating the effect of Client's controls on a User Entity's internal control system. Notwithstanding any other provisions herein, Client may not share TouchNet's SSAE 18 Report with any other third-party, contractor, advisor, consultant, or service provider.

**2.5 Termination of eRefunds Processing Ts&Cs.** In addition to the termination rights provided in the Existing Agreement, either Party may terminate these eRefunds Processing Ts&Cs immediately, if, by performing its duties under the eRefunds Processing Ts&Cs, the Party would be in violation of applicable laws.

**2.6 Disclaimer of Liability and Acknowledgement of Limitations.**

- a) Client agrees and understands that to receive the eRefunds Processing Services, Client must have the right to access one of the following: (1) Ellucian Payment Center, (2) TouchNet Payment Center or (3) Heartland Merchant Services.
- b) TOUCHNET IS NOT RESPONSIBLE FOR ANY OF THE FOLLOWING: (1) PROBLEMS OR DISPUTES PERTAINING TO THE ACCURACY OF THE END USER ACCOUNT CHARGES OR BALANCE REFLECTED IN THE DISBURSEMENT, (2) THE ACCURACY OF THE DATA IN THE STUDENT INFORMATION SYSTEM, (3) THE DESIGNATION OF AUTHORIZED PAYORS OR OTHER THIRD PARTIES, AND (4) ANY AND ALL PAYMENT DISPUTES AND LATE CHARGES, INCLUDING COLLECTIONS MATTERS, ARISING RELATING TO DISBURSEMENTS.

**3 PAYMENTS AND FEES.**

**3.1 One-Time Implementation Fee.** The one-time Implementation Fee of \$3,500.00USD is waived.

**3.2 Per Transaction Fee.** Client shall pay a flat Per Transaction Fee that differs based on the type of transaction that applies. TouchNet will invoice Client at the end of each calendar month for the total Per Transaction Fees incurred by transaction type, and payments are due within thirty (30) days of receipt of invoice. TouchNet reserves the right to increase the Per Transaction Fee at any time following Notice to Client.

**4 Required Client Information**

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

**4.2 Information.** Clients must provide documents listed below.

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

**5 MISCELLANEOUS PROVISIONS.** Sections 4.1 ("Service Level Assurance") and 4.2 ("Remedy") of the Existing Agreement do not apply to these eRefunds Processing Ts&Cs.

**Attachment 1**  
**(Title IV Higher Education Act)**

**34 C.F.R. § 668.25 Compliance**

**Pursuant to Federal Regulation 34 C.F.R. § 668.25, TouchNet agrees, in connection with any services performed by TouchNet that are reasonably deemed to be “Third Party Servicer” activities:**

- (A) Comply with all statutory provisions of, or applicable to, Title IV of the Higher Education Act, all regulatory provisions prescribed under that statutory authority, all special arrangements, agreements, limitations, suspensions, and terminations entered into under the authority of statutes applicable to Title IV of the Higher Education Act;
- (B) Refer to the Office of Inspector General of the Department of Education for investigation of any information indicating there is a reasonable cause to believe that the Client might have engaged in fraud or other criminal misconduct in connection with its administration of any Title IV, Higher Education Act program or an applicant for Title IV, Higher Education Act program assistance might have engaged in fraud or other criminal misconduct in connection with the applicant’s application. Examples of other types of information that must be referred are: (a) false claims by the University for Title IV, Higher Education Act program assistance; (b) false claims of independent student status; (c) false claims of citizenship; (d) use of false identity; (e) forgery of signatures or certification; (f) false statements of income; and (g) payment of any commission, bonus, or other incentive compensation based upon success in securing enrollments or the award of financial aid to any person or entity engaged in student recruitment or admission activity or the award of Title IV, Higher Education Act program funds;
- (C) Be jointly and severally liable with Client to the Secretary of the Department of Education for any violation by TouchNet of any statutory provision of, or applicable to, Title IV of the Higher Education Act, any regulatory provision prescribed under that statutory authority, and any applicable special arrangements, agreement or limitation entered into under the authority of statutes applicable to Title IV of the Higher Education Act;
- (D) If TouchNet disburses funds (including funds received under Title IV, Higher Education Act programs) or delivers Federal Direct Loan program proceeds to a student, TouchNet will confirm with the Client the eligibility of the student before making that disbursement or delivering those proceeds, and will return Title IV, Higher Education Act funds if required when a student withdraws; and
- (E) If TouchNet or the Client terminates the contract, or if TouchNet stops providing services for the administration of a Title IV, Higher Education Act program, goes out of business, or files a petition under the bankruptcy code, return to the Client (i) all records in TouchNet’s possession pertaining to the Client’s participation in the program or programs for which services are no longer provided; and (ii) funds, including Title IV, Higher Education Act program funds, received from or on behalf of the Client or the Client’s students, for the purpose of the program or programs for which services are no longer provided.

**Pursuant to Federal Regulation 34 C.F.R. § 668.25, if the Client participates in a Title IV, Higher Education Act program, the Client agrees to notify the Secretary of the Department of Education within ten (10) days of the date that:**

- (A) Client enters into a new contract or significantly modifies an existing contract with TouchNet to administer any aspect of that program;
- (B) Client or TouchNet terminates all or any portion of the agreement to administer any portion of that program; or
- (C) If TouchNet stops providing services for the administration of that program, goes out of business, or files a petition under the Bankruptcy Code. Client’s notification must include the name and address of TouchNet.

**If Client contracts with TouchNet to administer any aspect of Client’s participation in a Title IV, Higher Education Act program, it shall provide to the Secretary of the Department of Education, upon request, a copy of the agreement for the administration of that program, including any modifications, and provide information pertaining to the contract or to TouchNet’s administration of Client’s participation in any Title IV, Higher Education Act program. TouchNet’s primary physical address is 9801 Renner Road, Suite 150, Lenexa KS 66219. Jeremy Loch is the President of TouchNet, [Jeremy.Loch@e-hps.com](mailto:Jeremy.Loch@e-hps.com), 913-599-6699.**

## Request to Approve Board Member Travel

### **Recommendation:**

Staff recommends approval for Board Members Leslie and Sekayumtewa to travel for the Association of Community College Trustees (ACCT) annual Leadership Congress in New Orleans.

### **Summary:**

Per Procedure 2036 – District Governing Board Travel “All travel for DGB members exceeding \$1000 must be approved by the DGB prior to travel.” The ACCT Leadership Congress is the largest professional development opportunity for community college trustees, chief executives, and other thought and policy leaders. It is a time for community college leaders to share experiences and expertise, network with people from around the country and beyond, and expand knowledge of the community college sector. The event will feature nationally renowned keynote speakers, peer-to-peer and expert presentations designed to advance governance and student success. The approximate cost to send a participant will be around \$3500 and money is available in the proposed 2025-26 budget.

## Request to Approve Lease with Kayenta

**Recommendation:** Staff recommends approving the lease with Kayenta beginning June 30, 2025 and continuing for 25 years beginning on the date the lease was executed by the Navajo Nation President or designee.

**Summary:**

Seeking approval from the District Governing Board to approve the lease for Kayenta property at which a new NPC facility will be built.

**PART I**  
**KAYENTA TOWNSHIP**  
**ECONOMIC DEVELOPMENT LEASE**  
**(Navajo Nation Trust Land)**  
  
**Standard Business Site Lease**

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THIS LEASE is made and entered into this 30th day of June, 2025, by and between KAYENTA TOWNSHIP on behalf of THE NAVAJO NATION, hereinafter called the "Lessor," and Navajo County Community College District *dba* Northland Pioneer College, PO Box 610, Holbrook, AZ 86025, hereinafter called the "Lessee," hereinafter collectively called the "Parties," in accordance with the provisions of 25 U.S.C. §§ 415(e) as amended, and as implemented by the regulations contained in the Navajo Nation Business Leasing Regulations of 2005, Economic Development Committee Uniform Business Leasing Regulations of 2008, and Kayenta Township Business Site Leasing Regulations, and any amendments thereto, hereinafter called the "Tribal Regulations," relative to business leases on restricted lands, which by this reference is made a part hereto.

**A. LAND DESCRIPTION.**

1. For and in consideration of the rents, covenants, agreements, terms and conditions contained herein, Lessor, hereby leases to the Lessee the following described premises, hereinafter referred to as the "Leased Premises," consisting of 2.3±acres :

A TRACT OF LAND LOCATED IN THE NW1/4 SECTION 18, TOWNSHIP 38 NORTH, RANGE 20 EAST, GILA AND SALT RIVER MERIDIAN, IN KAYENTA TOWNSHIP, NAVAJO COUNTY, ARIZONA MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF THE ACCESS ROAD SHOWN ON RESOLUTION NUMBER KTCJA-12 ON FILE IN THE KAYENTA TOWNSHIP OFFICE SAID POINT BEING N89°57'24"W ALONG THE NORTH LINE OF SAID SECTION 18 A DISTANCE OF 1806.98 FEET AND SOUTH 475.97 FEET FROM THE NORTH QUARTER CORNER OF SAID SECTION 18; '

THENCE ALONG A 50.74 FOOT RADIUS NONTANGENT CURVE TO THE RIGHT A DISTANCE OF 72.92 FEET, SAID CURVE HAVING A CHORD BEARING OF N35°51'10"E AND DISTANCE OF 66.81 FEET;

THENCE N79°16'11"E ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF INDUSTRIAL PARK ROAD A DISTANCE OF 33.13 FEET;

THENCE ALONG A 5130.11 FOOT RADIUS CURVE TO THE RIGHT A DISTANCE OF 99.42 FEET, SAID CURVE HAVING A CHORD BEARING OF N79°49'30"E AND A DISTANCE OF 99.42 FEET;

THENCE N80°22'49"E ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID INDUSTRIAL PARK ROAD A DISTANCE OF 130.72 FEET;

THENCE ALONG A 55.50 FOOT RADIUS CURVE TO THE RIGHT A DISTANCE OF 87.18 FEET, SAID CURVE HAVING A CHORD BEARING OF S54°37'11"E AND A DISTANCE OF 78.49 FEET;

THENCE S09°37'11"E 149.49 FEET;

THENCE ALONG A 50.00 FOOT RADIUS CURVE TO THE RIGHT A DISTANCE OF 42.05 FEET, SAID CURVE HAVING A CHORD BEARING OF S14°28'30"W AND DISTANCE OF 40.82 FEET;

THENCE ALONG A 70.00 FOOT RADIUS REVERSE CURVE TO THE LEFT AND A DISTANCE OF 58.87 FEET; SAID CURVE HAVING A CHORD BEARING OF S14°28'30"W AND DISTANCE OF 57.15 FEET;

THENCE S80°22'49"W 321.55 FEET, MORE OR LESS TO THE EASTERLY RIGHT-OF-WAY LINE SAID ACCESS ROAD;

THENCE N10°44'45"W ALONG THE EASTERLY RIGHT-OF-WAY LINE SAID ACCESS ROAD A DISTANCE OF 246.02 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

CONTAINING 2.38 ACRES MORE OR LESS.

Said property is shown on the attached survey plat marked as Exhibit "A" which by reference is made a part hereof.

2. All of the above land is located within the Kayenta Township of the Navajo Nation, County of Navajo, State of Arizona, subject to any prior, valid, existing rights-of-way and easements. There is hereby reserved and excepted from the Leased Premises rights-of-way for utilities constructed by or on authority of the Lessor, provided that such rights-of-way do not unreasonably interfere with Lessee's use of the Leased Premises.

**B. PURPOSE, UNLAWFUL USES.**

1. Lessee shall develop, use and operate the Leased Premises for the following purposes only:

To construct and operate higher educational facilities to house the Kayenta Branch of Northland Pioneer College, a community college operated by the Navajo County Community College District, founded by the State of Arizona in 1973, and for ancillary purposes such as support services for the core educational function of the facility. The facilities may include a main classroom building, library and community space, parking site and improvements, science/health science labs with equipment, and related technology.

2. The Leased Premises shall not be used by Lessee, Sublessee(s) or Assignee(s), for any purpose or purposes other than those set out above, except with the prior written consent of Lessor. Consent may be withheld, granted, or granted upon conditions, in the sole discretion of Lessor.
3. Lessee agrees that it will not use or cause to be used any part of the Leased Premises for any unlawful conduct or purpose.

**C. TERM.**

1. The term of this Lease shall be 25 (twenty-five) years, beginning on the date this Lease is executed by the Navajo Nation President or designee.

2. Lessee may exercise up to two (2) options to extend the lease term, each for an additional term of 25 (twenty-five) years, provided the Lessee is not in default of the Lease. Lessee shall give written notice of its intent to exercise each Option to Lessor or successor at least one year prior to the expiration date of the then-current Term in the form provided in Section 6.1 of the Plan. Such extension of this Lease is subject to the written approval of Lessor and to applicable provisions of Navajo Nation and Kayenta Township laws and the Tribal Regulations, including all amendments and successors thereto.

#### D. RENTAL.

1. Pursuant to Section 4.3(6)(d) of the Kayenta Township Business Site Leasing Administrative Plan, the rent for the initial term under this Lease shall be one dollar (\$1) per year, payable in advance for the full 25-year term, based on the Lessee's status as a political subdivision of the State of Arizona and its construction of new improvements described in Section B(1) for the educational benefit of the students in and around the Leased Premises.
5. In the event of a sublease, assignment, amendment or transfer of this Lease, or any right to or interest in this Lease, or any improvements are made to the Leased Premises, the rent and other terms of this Lease shall be subject to renegotiation.

#### E. IMPROVEMENTS.

1. Lessee, in consideration for the granting of this Lease and the de minimis Rental, covenants and agrees that Lessee will construct improvements of the current site at a cost of and having a reasonable value of approximately \$8,000,000.
2. Except as otherwise provided in this Lease, all buildings and improvements, excluding removable personal property and trade fixtures, on the Leased Premises shall remain on said premises after termination of this Lease and shall thereupon become the property of Lessor.
3. The term "removable personal property" as used in this Section shall not include property which normally would be attached or affixed to the buildings, improvements or land in such a way that it would become a part of the realty, regardless of whether such property is in fact so placed in or on or affixed to the buildings, improvements or land in such a way as to legally retain the characteristics of personal property. Lessee shall remove all removable personal property, which includes equipment, and technology, and trade fixtures prior to termination of this Lease. Should Lessee fail to remove said personal property and trade fixtures prior to termination of this Lease, at Lessor's sole discretion, said property shall thereupon become property of Lessor and may be disposed of in any manner by Lessor.

#### F. COMPLETION OF DEVELOPMENT.

1. The Lessee shall complete the main classroom building and related parking facilities of the Leased Premises in accordance with a general plan and architect's design obtained by Lessee. The date for substantial completion of development shall be June 1, 2027. If the Lessee fails to substantially complete the main classroom building within such period, such failure shall constitute a default and may be cause for termination, subject to Section F(4), unless otherwise agreed.
2. Prior to the commencement of construction of any new improvements on the Leased Premises, or prior to the beginning of any repair or alteration thereto, or work or labor thereon, Lessee shall post non-responsibility notices at the site on the behalf of Lessor.
3. Upon completion of construction, the Lessee is required to submit any layout or general plans of the building or facility to Lessor.

4. Whenever under this Lease a time is stated within which or by which original construction, repairs, or reconstruction of improvements shall be made and during such period a general or sympathetic strike or lockout occurs, war or rebellion ensues, or some event unquestionably beyond Lessee's power to control, the period of delay so caused shall be added to the period limited herein for the completion of such work.

#### G. CONSTRUCTION, MAINTENANCE, REPAIR, ALTERATION.

1. All improvements placed on the Leased Premises shall be constructed in a good and workmanlike manner and in compliance with applicable laws and building codes. Once Improvements are completed, all parts of building visible to the public or from adjacent properties shall present a pleasant appearance as determined by the Lessor, and all service areas shall be reasonably screened from public view to the satisfaction of Lessor. Lessee shall, at all times during the term of this Lease and at Lessee's sole cost and expense, maintain the Leased Premises and all improvements thereon and any alterations, additions, or appurtenances thereto, in good order and repair and in a safe, sanitary, neat and attractive condition, and shall otherwise comply with all laws, ordinances and regulations applicable to said premises.
2. Lessee shall have the right during the term of this Lease to make alterations, additions or repairs to improvements on the Leased Premises described in this Lease or as otherwise agreed by Lessor. Alterations, additions or repairs or any removal or demolition of an improvement constructed can be made only with the written approval of Lessor.
3. To the extent allowed by law, Lessee shall indemnify and hold harmless Lessor, Navajo Nation and the United States against liability for all claims arising from Lessee's failure to maintain said premises and the improvements thereon, or from Lessee's non-observance of any law, ordinance or regulation applicable thereto, except to the extent such claim is caused by the negligence or willful misconduct of Lessor, and its agents, representatives, and employees. The parties agree that this indemnity is not intended to relieve a negligent party from liability for its conduct nor to defeat the contractual benefits to Lessor and/or Lessee of any insurance contract. The provisions of this paragraph shall survive the termination of the Lease with respect to any claim occurring prior to such termination.

#### H. RENTAL AND PERFORMANCE SECURITY.

1. Lessee agrees to post a performance bond, certificate of deposit (CD), letter of credit or security deposit, to be agreed to by the parties and posted within 34 months of execution of this Lease, in the amount of \$0, which shall remain in force for the full term of the remainder of this Lease. From time to time, the amount of the security may be increased or decreased by Lessor, which shall be placed in writing and become an attachment to this Lease. The purpose of such security is to guarantee performance on the Lease.

#### I. CONSTRUCTION BOND.

1. Prior to the commencement of construction of any improvement on the leasehold premises, the Lessee will cause its construction contractor to post a construction bond in favor of Lessor and Lessee. If the construction contractor cannot post such a bond, the Lessee shall post the construction bond. The purpose of the construction bond is to guarantee the completion of the improvements and payment in full of valid claims of all persons for work performed in or materials furnished for construction of the improvements. The construction contractor or the Lessee may provide security by either:

- a. Posting a corporate surety bond in an amount equal to the cost of each improvement. Said bond to be deposited with Lessor, shall remain in effect until the improvement is satisfactorily completed. Said bond shall be conditioned upon faithful performance by Lessee or its construction contractor and shall give all claimants a right of action to recover upon said bond in any suit brought to foreclose on any mechanic's or materialmen's liens against the property. If United States Treasury Bonds are provided, Lessee, or his construction contractor, agrees to make up any deficiency in the value deposited that might occur due to a decrease in the value of the bonds. Interest on said bonds, if any, shall be paid to Lessee.
- b. Providing Lessor with a non-revocable letter of credit or CD at an institution acceptable to Lessor, in an amount sufficient to pay the entire cost of construction of each building or other improvement then to be erected on the Leased Premises. Interest on said security, if any, shall be paid to Lessee or his construction contractor. The funds so deposited may then be used, at the option of Lessor, to discharge any valid mechanic's or materialmen's liens; if no such liens exist, the withheld funds shall be disbursed to Lessee or its construction contractor, whichever is applicable.

#### J. INSURANCE.

1. Lessee shall obtain Commercial General Liability Insurance within One (01) day from the date of execution of the Lease, provided however it is explicitly understood and agreed the Lessee must submit a copy of the certificate of insurance before commencing operations on the Leased Premises. The Commercial General Liability Insurance shall be with an unimpaired minimum combined single limit not less than in the amount of \$1,000,000.00, with each occurrence a General Aggregate Limit of \$500,000.00.

#### L. NOTICES AND DEMANDS.

1. All notices, demands, requests or other communications to or upon any Party provided for in this Lease, or given or made in connection with this Lease, shall be in writing and shall be addressed as follows:

To or upon the Navajo Nation:

President  
The Navajo Nation  
Post Office Box 9000  
Window Rock, Navajo Nation (Arizona) 86515  
Telefax: 1-928-871-7381

To or upon Lessor:

Kayenta Township  
P. O. Box 1490  
Kayenta, Navajo Nation (Arizona) 86033  
Telefax: 1-928-697-8461

To or upon Lessee:

Northland Pioneer College  
Attn: President  
PO Box 610  
Holbrook, AZ 86025

2. All notices shall be given by personal delivery, by registered or certified mail, postage prepaid, or by facsimile transmission, followed by surface mail. Notices shall be effective and shall be deemed

delivered when dispatched and may be delivered by personal delivery, registered or certified mail, or by facsimile transmission, followed by surface mail.

3. Any Party may at any time change its address for purposes of this Section by written notice.

**M. APPLICABLE TERMS AND CONDITIONS.**

The Standard Terms and Conditions for Economic Development Leases (Navajo Nation Trust Land) in Part II of this Lease apply to this Lease and are incorporated herein in their entirety.

The Standard Terms and Conditions for All Business Site Leases in Section 1 of Part II apply to all Leases. Notwithstanding the foregoing, Sections 1.33, 1.34 and 1.35 of Part II are replaced by the contract provisions approved by Arizona Attorney General Terry Goddard and Navajo Nation Attorney General Louis Denetsosie in 2010, as reaffirmed to be used by the parties by letter of Arizona Attorney General Kris Mayes to Navajo Nation Attorney General Ethel Branch in 2023, attached hereto as composite Exhibit "B.". The Special Terms and Conditions for Business Site Leases with Storage Tanks in Section 2 of Part II apply where appropriate. If underground or aboveground storage tanks are present on the premises when the Lessee signs the lease, or are installed after the Lessee signs the lease, these Special Terms and Conditions will apply to the Lease as a matter of law

In the event of conflict between this Lease and the Standard Terms and Conditions identified in this Section, the terms of this Lease shall take precedence.

IN WITNESS WHEREOF, the Parties have set their hands.

**LESSEE**



(Lessee)

4/8/25

Date

(Lessee)

Date

**KAYENTA TOWNSHIP**

By: 

Authorized Representative

Date: 4-7-25

**APPROVED BY:  
THE NAVAJO NATION**

By: 

President or Designee

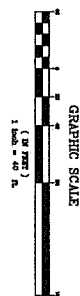
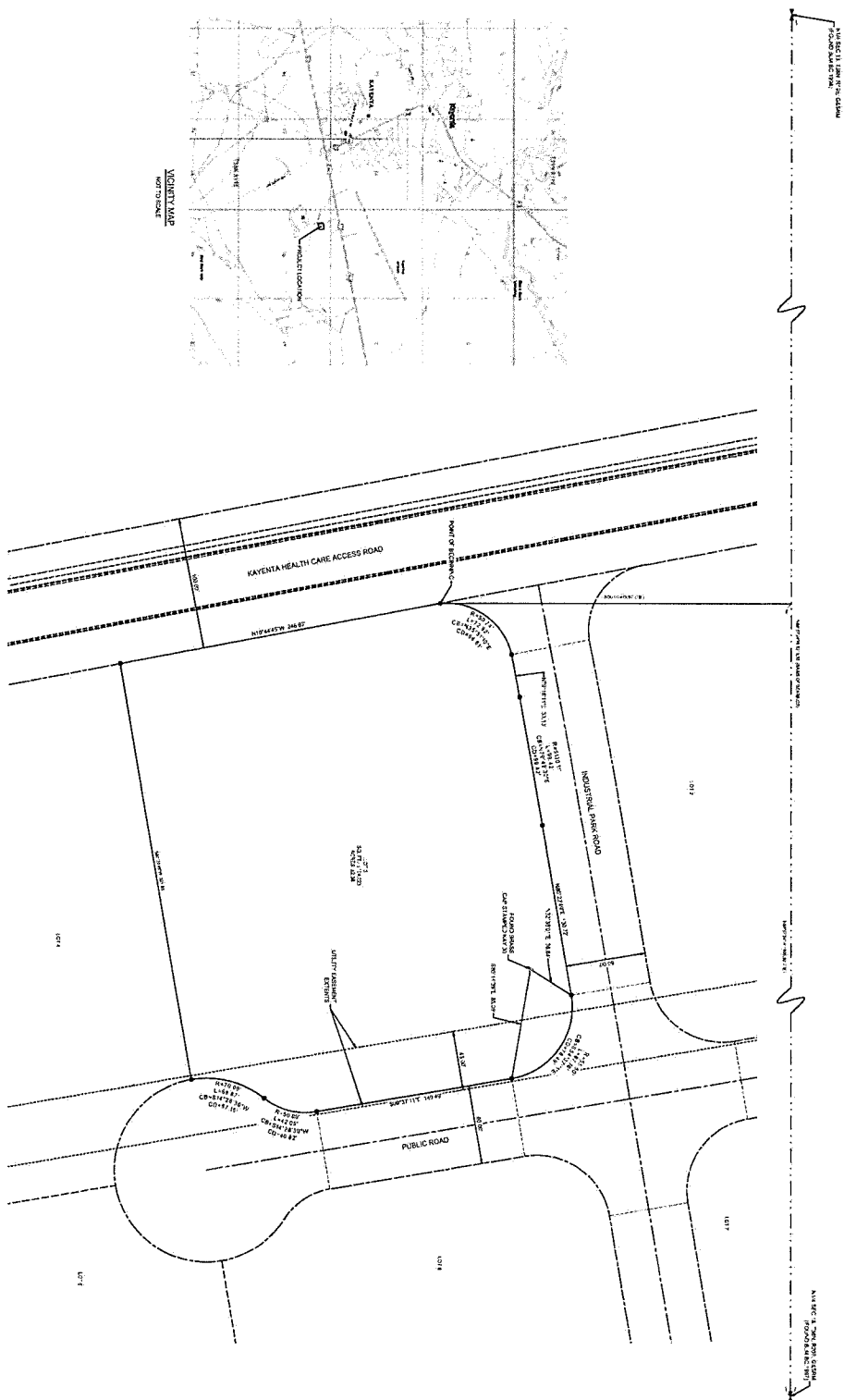
Date

Date: JUN 30 2025

## Northland Pioneer College Record of Survey

Kayenta Township, Navajo County, Arizona

2024

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## REFERENCES

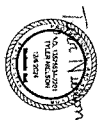
### PROPERTY DESCRIPTION

A "fact of life" for the vast majority of Americans is that they are not prepared to pay the taxes that would be required to fund the kind of universal health care that is being advocated by the Clinton administration. The Clinton administration has been very clear about this. It has said that it is not going to force people to pay for a system that they do not want. The Clinton administration has been very clear about this. It has said that it is not going to force people to pay for a system that they do not want. The Clinton administration has been very clear about this. It has said that it is not going to force people to pay for a system that they do not want.

### SURVEYOR'S CERTIFICATE

STATE OF UTAH HOLDING CERTIFICATE #135584-2001 CERTIFY THAT THE SURVEY SHOWN HEREON WAS MADE UNDER MY DIRECTION.

I CERTIFY CLARITY THAT THIS PLAT CORRECTLY SHOWS THE DIMENSIONS OF THE PROPERTY SHOWN TO THE REST OF MY RECORDS.



TITEL NACHRICHT: V.L. 8. 11.2023 4-220

PREPARED BY:

**Jones & DeMille Engineering, Inc.**  
CIVIL ENGINEERING • SURVEYING • TESTING • GIS • ENVIRONMENTAL

1.800.748.5275 [www.jonesandmiller.com](http://www.jonesandmiller.com)Record of Survey for  
Northland Pioneer College

Navajo County, Arizona  
Scale: 1" = 45'



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

August 5, 2010

Attorney General Louis Denetsosie  
Post Office Drawer 2010  
Window Rock, Navajo Nation 86515

Dear Attorney General Denetsosie:

As you know, for a considerable time, my Office has been working with yours to attempt to streamline the process of negotiating future contracts between the Navajo Nation and the State of Arizona. In particular, considerable effort has been invested by both sets of lawyers to seek agreement on standard language that could be used in future contracts, subject to approval of the pertinent Navajo Nation and State "client agencies" in each particular instance. I am pleased to report that those lawyers reached agreement on such standard terms a few days ago, and a copy of that document is enclosed. I sincerely hope this will minimize the time and effort that will need to be invested by both parties in negotiating future contracts.

I want to recognize the hard work and perseverance of the lawyers who have brought us to this point. In the Navajo Nation Department of Justice, I want to thank Paul Spruhan, Anthony Aguirre and Luralene Tapahe, and in my Office I want to thank Mary O'Grady, Barbara Behun, Susan Davis, Ronald Johnson and Rex Nowlan. I hope I have not overlooked anybody, but if I have, I apologize. Please pass my thanks along to your people.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Goddard", is written over a horizontal line. Below the signature, the name "Terry Goddard" and title "Arizona Attorney General" are printed.

Terry Goddard  
Arizona Attorney General

Copies with enclosures to:

Speaker Lawrence T. Morgan  
Post Office Box 3390  
Window Rock, Navajo Nation 86515

President Joe Shirley, Jr.  
Post Office Box 7440  
Window Rock, Navajo Nation 86515

PROTECTING ARIZONA

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## Navajo Nation and State of Arizona Contract Provisions

**Overview:** The Navajo Nation Department of Justice and Arizona Attorney General's Office have been working together to address recurring issues that arise when negotiating agreements with one another. As a result of these efforts, the Department of Justice and the Arizona Attorney General agreed that the provisions in this document are acceptable in contracts that are not governed by Arizona's procurement code. The provisions are divided into two components. First, there are several provisions that address sovereign immunity, applicable law and dispute resolution. The use of these provisions in any particular agreement, is subject to the approval of the client agencies entering into the agreement. The second component is the addendum of provisions that modify the standard terms in State contracts for contracts with the Navajo Nation.

This document does not include proposed language regarding indemnification. The Arizona Attorney General's Office did not recommend including standard indemnification language because this language may vary depending on the nature of the agreement and is subject to approval by the State's risk management. The Navajo Nation's position is that its Sovereign Immunity Act prevents it from indemnifying outside entities and, therefore, the Nation's lawyers generally replace indemnification language with language stating that the Nation is responsible for the acts and omissions of its employees and agents.

This document also does not include language concerning E-Verify because A.R.S. § 41-4401 applies to contracts "for the procurement of services," A.R.S. § 41-4401(D)(1), and this language is not intended for contracts subject to Arizona's procurement code.

### **Sovereign Immunity and Dispute Resolution Provisions**

1. Limited Waiver of Sovereign Immunity. For purposes of this Agreement, and subject to the terms of this section, the Nation consents and agrees to a limited waiver of its sovereign immunity from suit and consents to be sued on an arbitration award. The Nation represents that this limited waiver of sovereign immunity has been duly approved by the Nation's Tribal Council, as authorized by the Arbitration and Sovereign Immunity Acts of the Navajo Nation. The Nation is not waiving its right to assert the defense of sovereign immunity except as expressly set forth, referred to, and provided for, in this Agreement. This limited waiver is enforceable solely by the State as limited hereunder and does not create any additional third party beneficiary rights to suits or private causes of action in favor of third Parties. The Parties agree that this section provides a limited waiver of sovereign immunity solely for the purpose of enforcing the provisions of this Agreement and enforcing any arbitration award hereunder and for no other purpose.

2. Dispute Resolution. In the event of a dispute, claim or controversy ("Dispute") arising out of or related to this Agreement, the Parties agree that it is in their mutual best interest to meet as promptly as possible for the purpose of informally resolving said Dispute. In the event the Parties cannot resolve their Dispute informally after attempting to work in good faith, the Parties hereto agree to abide by arbitration as set forth below and that an order compelling arbitration or a judgment enforcing the arbitration award shall be the only relief of any kind provided by the State or Tribal court.

3. Arbitration. If a party in good faith concludes that a Dispute arising out of or related to this Agreement is not likely to be resolved by informal dispute resolution then, upon notice by that Party to the other, said Dispute shall be finally and exclusively settled by submission of such Dispute to the American Arbitration Association ("AAA") under its then prevailing procedural rules contained in the AAA's Commercial Arbitration Rules to the extent that such rules shall not be interpreted to diminish, limit, or void the limited waiver of sovereign immunity set forth in Section 1 above or to increase the enforcement rights of the Parties. Within ten (10) days after the notice of intent to arbitrate, each party shall select one person to act as arbitrator and the two selected shall select a third arbitrator within ten (10) days of their appointment. The third arbitrator shall be a practicing attorney, actively engaged in the practice of law for at least ten (10) years and a member in good standing of the bar of the State of Arizona. Alternatively, the third arbitrator may be a retired judge of the federal court or the trial court of the State of Arizona. At least one of the arbitrators shall be knowledgeable with federal Indian law and one arbitrator shall have AAA-acknowledged expertise in the appropriate subject matter. By agreement of the parties, when the amount in controversy renders the cost of three arbitrators unreasonable, the parties may agree to select a single arbitrator to resolve a dispute. All arbitration proceedings shall be held in Maricopa County, or at such other place as shall be agreed by the Parties.

4. Award. The award shall be made within sixty (60) days of the filing of the notice of intent to arbitrate, and the arbitrators shall agree to comply with the schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the majority of the Parties or by the majority of the arbitrators, if necessary. Any award rendered in any such arbitration proceeding shall be final and binding upon all Parties to the proceeding. Any action to enforce the arbitration award must be filed within one hundred and eighty (180) days from the issuance of the award.

5. Governing Law. This Agreement, including any claim or dispute arising hereunder submitted to binding arbitration shall be governed by the laws of the State of Arizona.

6. Enforcement. Judgment upon any award rendered by the arbitrators against the Nation may be entered in the Nation's tribal court system ("Tribal Court") or against the State of Arizona in

the Arizona State Court System ("Court System") and interpreted and/or enforced pursuant to the terms of this Agreement, and/or pursuant to the terms of the AAA's Commercial Arbitration Rules, and/or pursuant to the terms and provisions of the statutes, rules and regulations governing or providing for interpretation or enforcement of judgments applicable in any State of Arizona or Navajo Nation court.

## **ADDENDUM OF PROVISIONS FOR ARIZONA STATE AGENCIES AND CONTRACTS WITH NAVAJO NATION**

Notwithstanding any provision of the [name of the primary agreement] ("the Agreement") to the contrary, the Navajo Nation agrees to abide the following terms and provisions that are required for contracts with [STATE AGENCY] ("the Department"), a constituent department of the State of Arizona:

1. The Navajo Nation shall retain and shall contractually require each subcontractor to retain all data and other records relating to the acquisition and performance of the Contract for a period of five years after the completion of the contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request the Navajo Nation shall produce a legible copy of any or all such records.
2. The parties agree to comply with all applicable state and federal statutes and regulations concerning non-discrimination practices. This contract is governed by Arizona Executive Order 2009-09.
3. Both the Navajo Nation and the State acknowledge that A.R.S. § 38-511 allows the State to cancel the contract within three years after execution for conflict of interest reasons.
4. To the extent not prohibited by applicable law, the parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518.
5. Pursuant to A.R.S. § 35-391.06 and 35-393.06, the Contractor certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in A.R.S. § 35-391 and 35-393, as applicable. If the State of Arizona or the Department determines that the Contractor submitted a false certification, the Department may impose remedies as provided by law including cancellation or termination of this Agreement.

7/28/10

7/28/10

**PART II**  
**STANDARD TERMS AND CONDITIONS FOR**  
**ECONOMIC DEVELOPMENT LEASES (Navajo Nation Trust Land)**

<b>1.0</b>	<b>STANDARD TERMS AND CONDITIONS FOR KAYENTA TOWNSHIP BUSINESS SITE LEASES</b>	<b>1.34</b>	<b>CONSENT TO JURISDICTION.....</b>	<b>10</b>
1.1	DEFINITIONS.....	1.35	COVENANT NOT TO CONTEST JURISDICTION.....	10
1.2	CONDITION OF LEASED PREMISES.....	1.36	NO WAIVER OF SOVEREIGN IMMUNITY.....	10
1.3	ACCOUNTING.....	1.37	SAVINGS CLAUSE.....	10
1.4	UTILITY SERVICE LINE AGREEMENTS.....	1.38	QUALIFICATIONS OF BUSINESS.....	11
1.5	SUBLEASE, ASSIGNMENT, AMENDMENT, TRANSFER.....	1.39	COMPLIANCE WITH THE BUSINESS SITE LEASING REGULATIONS.....	11
1.6	ENCUMBRANCE.....	1.40	RESCISSION OF DELEGATION OF AUTHORITY.....	11
1.7	LIENS, TAXES, ASSESSMENTS, UTILITY CHARGES.....	1.41	NO ORAL AGREEMENTS.....	11
1.8	LESSOR'S AGENT PAYING CLAIMS.....	1.42	VALIDITY.....	11
1.9	SANITATION.....	<b>2.0</b>	<b>SPECIAL TERMS AND CONDITIONS FOR KAYENTA TOWNSHIP BUSINESS SITE LEASES WITH STORAGE TANKS</b>	
1.10	REGULATED SUBSTANCES.....	2.1	DEFINITIONS.....	12
1.11	LIABILITY INSURANCE.....	2.2	REGULATED SUBSTANCES.....	12
1.12	FIRE AND CASUALTY INSURANCE.....	2.3	FINANCIAL RESPONSIBILITY FOR STORAGE TANKS.....	12
1.13	INDEMNIFY, DEFEND AND HOLD HARMLESS.....	2.4	ENVIRONMENTAL AUDITS AND COMPLIANCE DOCUMENTS.....	13
1.14	EMINENT DOMAIN.....	2.5	OWNERSHIP AND REMOVAL OF STORAGE TANKS.....	13
1.15	DEFAULT.....			
1.16	REMEDIES.....			
1.17	MUTUAL TERMINATION.....			
1.18	ATTORNEY'S FEES.....			
1.19	NO PARTNERSHIP.....			
1.20	TERMINATION OF FEDERAL TRUST.....			
1.21	OBLIGATIONS OF LESSEE.....			
1.22	STATUS OF SUBLEASES.....			
1.23	INSPECTION.....			
1.24	HOLDING OVER.....			
1.25	LEASE REQUIREMENTS NOT EXCLUSIVE.....			
1.26	DELIVERY OF PREMISES.....			
1.27	NAVAJO PREFERENCE.....			
1.28	MINERALS.....			
1.29	SUCCESSORS AND ASSIGNS.....			
1.30	INTEREST OF MEMBER OF CONGRESS.....			
1.31	USE OF NAVAJO PRODUCED GOODS AND SERVICES.....			
1.32	AGREEMENT TO ABIDE BY NAVAJO AND FEDERAL LAWS.....			
1.33	GOVERNING LAW AND CHOICE OF FORUM.....			

STANDARD TERMS AND CONDITIONS FOR ECONOMIC DEVELOPMENT LEASES (Navajo Nation Trust Land)  
**1.0 STANDARD TERMS AND CONDITIONS FOR KAYENTA TOWNSHIP  
BUSINESS SITE LEASES**

**1.1 DEFINITIONS.**

- A. "Approved Encumbrance" means an encumbrance approved in writing by the Navajo Nation, Lessor, and sureties, if any, in accordance with the terms and conditions of this Lease.
- B. "Condemnation" means the taking of any real property right thereof, in condemnation proceeding, by right of eminent domain, or by conveyance in lieu of or in settlement of a condemnation or eminent domain proceeding brought by any governmental authority having jurisdiction and power over the property.
- C. "Encumbrancer" means the owner and holder of an Approved Encumbrance, including all successors and assigns.
- D. "Federal Laws" means all applicable federal laws, including:
  - (1) Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et. seq.*, and
  - (2) Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901, *et. seq.*
- E. "Gross Receipts" means all income, including money and other things of value, received by or paid to Lessee or its affiliates, whether individuals, corporations, partnerships, or other legal entity, or received by or paid to others for Lessee's or its affiliates' use and benefit, derived from business done, sales made, or services rendered directly or indirectly on the leased premises or any portion thereof. All income accruing from credit transactions will be treated as "gross receipts" as of the date credit is extended. Gross Receipts will not include amounts collected and paid out for a sales and excise tax imposed by any duly constituted governmental authority where such tax is billed to the purchaser as a separate item. Any taxes paid by the Lessee as a part of the cost of merchandise purchased by the Lessee are not to be excluded or deducted. It shall not include credits for the exchange of goods or merchandise between stores, if any, of Lessee or its affiliates where such exchange is made solely for the convenient operation of business and not for the purpose of consummating a sale previously made directly from or on the leased premises. It shall not include the amount of any refund where the merchandise sold, or some part thereof is returned by the purchaser and accepted by Lessee or its affiliates. It shall not include income from the sale of fixtures, or good will, or the sale of improvements, including, but not limited to, corrals, buildings, livestock scales, and holding pens.
- F. "Lessor" means the Kayenta Township on behalf of the Navajo Nation who conveys property under a lease agreement.
- G. "Navajo Nation" means the Navajo Nation government.

- H. "Tribal Regulations" mean the Navajo Nation Business Leasing Regulations of 2005, Economic Development Committee Uniform Business Leasing Regulations of 2008, and Kayenta Township Business Site Leasing Regulations, and any amendments thereto, relative to business leases on restricted lands within the exterior boundaries of the Kayenta Township which by this reference is made a part hereto.

**1.2 CONDITION OF LEASED PREMISES.**

- A. Lessee has examined and knows the leased premises and improvements thereon and accepts the same as-is, where is. No representations as to the condition of the leased premises have been made by Lessor, the Navajo Nation or United States prior to or at the time of execution of this Lease. Lessee warrants that it has not relied on any warranty or representation made by or on behalf of the Lessor, the Navajo Nation or United States, but solely upon Lessee's independent investigation.
- B. The independent investigation, which shall be conducted prior to entering into the Lease, shall include an environmental review which provides the Lessee with knowledge of the environmental status of the leased premises, including the status of any storage tanks and/or other regulated substances.

**1.3 ACCOUNTING.**

- A. Lessee shall maintain full and adequate books of account and such other records as are necessary to reliably reflect the financial position and results of the operation in accordance with Generally Accepted Accounting Principles ("GAAP") or other comprehensive basis of accounting deemed acceptable by the Navajo Nation Office of Auditor General.
- B. The Navajo Nation Office of Auditor General and Lessor or any of their duly authorized representatives, shall, at any time up until the expiration or five (5) years after the expiration of this Lease, have access to and the right to examine any of Lessee's books of account, documents, papers, and records, including Federal and State income tax returns, and such documents of any affiliated companies of Lessee, in connection with any transaction related to this Lease. Lessee shall insert a similar provision in all subleases and shall make available to said representative, agent, or agents, all books and records of Lessee's tenants which may be requested or may be necessary for completion of a full audit of all business conducted on the leased premises.

**1.4 UTILITY SERVICE LINE AGREEMENTS.**

- A. Lessee will identify the rights-of-way necessary or appropriate for construction, operation and maintenance of any improvements. Lessee shall obtain approval from any third parties, the Navajo Nation, Lessor and the Secretary as may be

necessary or appropriate and as required by 25 C.F.R. §169 for such rights-of-way.

- B. Lessee is authorized to enter into appropriate service line agreements with utility companies for the provision of necessary or appropriate utility services to the leased premises, including gas, water, sewer, electricity, telephone, television, internet, and other utilities, without further consent by the Navajo Nation or Lessor on the condition that:

- (1) such agreements are for the sole purpose of supplying utility services to the leased premises; and
- (2) such agreements authorize utility service lines only within the leased premises; and
- (3) such agreements do not extend beyond the term of this Lease, including any extensions thereof; and
- (4) executed copies of such agreements, together with plats or diagrams showing with particularity the location, size and extent of such service lines are filed by the utility companies with Lessor within thirty (30) days of their execution; and
- (5) such agreements are in accordance with the provisions of 25 C.F.R. § 169.22, including any amendments or successors thereto.

- C. The Lessor reserves the right for their benefit or for the benefit of other land users, whether or not adjacent to the leased premises, to enter into service line agreements with utility companies for service lines across the leased premises, provided that, after consultation, the Lessor and Lessee determine such service lines do not unreasonably interfere with Lessee's use of the leased premises nor otherwise affect any property rights reserved to the Lessor.

#### 1.5 SUBLEASE, ASSIGNMENT, MODIFICATION, TRANSFER.

- A. Lessee shall not sublease, assign, modify, or in any manner whatsoever transfer this Lease or any right to or interest in this Lease or any of the improvements on the leased premises, or sell, assign or transfer more than forty-nine percent (49%) of the corporate stock of any corporation named as Lessee without the written consent of Lessor as well as the sureties. Unless otherwise provided for in Part I, no such sublease, assignment, sale, modification or transfer shall be valid or binding without such approval and then only upon the condition that the Sublessee, Assignee or other successor in interest, excepting an approved encumbrancer(s), shall agree in writing to be bound by each and all of the covenants and conditions of this Lease. Should Lessee attempt to make any such sublease, assignment, sale, modification, or transfer, except as set forth herein, such action shall be deemed a breach of this Lease, excepting that an encumbrancer may enforce his rights in the manner hereinafter provided. Unless otherwise provided for in Part I, approval of one sublease, assignment, sale, modification or transfer shall not validate a subsequent sublease, assignment, sale, modification or transfer, and the restrictions of this Section shall

be severally binding upon each and every Sublessee, Assignee, Transferee and other successor in interest of the Lessee, excepting an encumbrancer.

- B. For purposes of this Section, the creation of a partnership, corporation, joint venture, management agreement or other arrangement under which any person or entity other than Lessee is entitled to share in profits derived directly or indirectly from the leased premises or activities carried out thereon, shall require the written consent of Lessor and Lessee, unless Lessee is the majority owner (i.e. majority shareholder, majority partner, etc) of the business that is reorganized, then only written notice will be required.

- C. Approval or disapproval of any sublease, assignment, modification or transfer for any purpose whatsoever by the Lessee shall be within the sole discretion of Lessor. Lessor reserves the right to adjust the rental provisions of this Lease upon any sublease, assignment, modification, or transfer.

#### 1.6 ENCUMBRANCE.

- A. This Lease, or any right to or interest in this Lease or any of the improvements on the leased premises, may be encumbered for the purposes of securing a line of credit to develop and improve the leased premises.

- B. Any encumbrance will:

- (1) be limited to the leasehold interest of the Lessee or subleasehold interest of the Sublessee, as the case may be; and
- (2) not jeopardize in any way the Lessor's interest in the land; and
- (3) be subject to the written approval of the Lessor as well as the sureties, if any. The Lessor shall not unreasonably withhold its approval to an encumbrance.

- C. Lessee agrees to furnish as requested any financial statements or analysis pertinent to the encumbrance that the Lessor may deem necessary to justify the amount, purpose and terms of said encumbrance.

- D. Lessor shall give each encumbrancer notice of, and the right to cure within a reasonable time, a default by Lessee or Sublessee under this Lease or Sublease, whichever is applicable. The Lessor shall accept performance by the encumbrancer for covenants or other obligations under the Lease or Sublease, with the same force and effect as though performed by the Lessee or Sublessee.

- E. In the event of default by Sublessee, an encumbrancer of any Sublease may exercise any rights provided in such approved encumbrance, provided that before any sale of subleasehold, whether under power of sale or foreclosure, the encumbrancer shall give to the Lessor and Lessee notice of the same character and duration as is required to be given to the Sublessee by the encumbrancer. If notice of such sale is given and the Lessee fails to act, the Lessor shall have the

following rights which may be exercised at any time prior to the completion of sale proceedings.

- (1) To pay the encumbrancer the full unpaid principal amount of the approved encumbrance, plus unpaid interest accrued to the date of such payment, plus foreclosure or sale costs incurred to the date of such payment; and
  - (2) To execute in favor of the encumbrancer a promissory note and a new encumbrance, which new encumbrance must be approved by the Lessor, for the full unpaid principal amount of the approved encumbrance, plus unpaid interest accrued to the date of such execution plus sale expenses incurred to the date of such execution, upon the same terms and conditions as originally provided by the approved encumbrance, and delivering to the encumbrancer a policy of title insurance in the face amount of such promissory note issued by a reputable title insurance company, and insuring that the new encumbrance is a first lien upon the subleasehold described in said sublease subject only to current taxes and to conditions, restrictions, and reservations of record at the time of recording the approved encumbrance.
- F. Each encumbrancer must provide, if Lessee or Lessor exercises the foregoing rights, all of the right, title, and interest of the Sublessee in the Sublease shall automatically terminate on the same date the right is exercised, and the Lessee or Lessor, shall, on the same date, acquire the subleasehold interest; provided, however, the acquisition of the subleasehold by Lessee or Lessor under these circumstances shall not serve to extinguish the sublease by merger with the Lease or otherwise. As between the Lessor and Lessee, Lessee shall have the first right to exercise the right to pay the amounts due as described above and to obtain the subleasehold interest. The Sublease shall require that the Sublessee will have the duty to execute any documents and take any action needed to effectuate the termination and transfer of Sublessee's subleasehold interest.
- G. In the event the Lessee or Lessor does not avail itself of the above rights and a sale occurs, whether by power of sale or foreclosure, the purchaser at such sale shall succeed to all of the rights, title, and interest of the Sublessee in the subleasehold covered by said encumbrance. It is further agreed that if the purchaser at such a sale is the encumbrancer, the encumbrancer may assign the subleasehold without any further approval, provided that the assignee shall agree in writing to be bound by all the terms and conditions of the Sublease. If the encumbrancer is the purchaser, it shall be required to perform the Sublease only so long as it retains title thereto. If a sale, of the subleasehold interest, under the approved encumbrance occurs and the purchaser is a party other than the encumbrancer, approval by the Lessor will be required and said purchaser, as successor in interest to the Sublessee, shall be bound by all the terms and conditions of the sublease and will assume in writing all the obligations thereunder.
- H. In the event of default by the Lessee, the encumbrancer may exercise any rights provided for in such approved encumbrance, provided that before any sale of the leasehold, whether under power of sale or foreclosure, the encumbrancer shall give to the Lessor notice of the same character and duration as is required to be given Lessee by such encumbrance and/or by applicable law. If notice of such sale be given, and the default of any of them upon which notice of sale is based shall then continue, the Lessor shall have the following rights which may be exercised at any time prior to the completion of sale proceedings:
- (1) To pay to the encumbrancer the full unpaid principal amount of the approved encumbrance plus unpaid interest accrued to the date of such payment, plus sale costs incurred to the date of such payment.
  - (2) To execute in favor of the encumbrancer a promissory note and a new encumbrance, which new encumbrance must be approved by the Lessor, for the full unpaid principal amount of the approved encumbrance, plus unpaid interest accrued to the date of such execution, plus sale expenses incurred to the date of such execution, upon the same terms and conditions as originally provided by the approved encumbrance, and delivering to the encumbrancer a policy of title insurance in the face amount of such promissory note, issued by a reputable title insurance company, and insuring that the new encumbrance is a first lien upon the property described in this Lease subject only to current taxes and to conditions, restrictions and reservations of record at the time of recording the new encumbrance.
- I. Each encumbrancer must provide, if the Lessor exercises the foregoing rights, all right, title and interest of Lessee in the Lease shall terminate and the Lessor shall acquire the Lease; provided, however, that such termination shall not relieve the Lessee from any obligation or liability which had accrued prior to the date of termination. Acquisition of the Lease by the Lessor under these circumstances shall not serve to extinguish the Lease by merger or otherwise. The Lessee shall have the duty to execute any documents and take any action necessary to effectuate the termination and transfer of the Lessee's leasehold interest.
- J. In the event the Lessor does not avail itself of the rights set forth in this Section and any sale under the approved encumbrance occurs, whether by power of sale or foreclosure, the purchaser at such sale shall succeed to all of the rights, title, and interest of the Lessee in the leasehold estate covered by said approved encumbrance. It is further agreed that if the purchaser at such sale is the encumbrancer, the encumbrancer may assign the leasehold interest without any further approval, provided that the assignee shall agree in writing to be bound by all the terms and conditions of this Lease. If the encumbrancer is the purchaser, it shall be required to perform this Lease only so long as it retains title thereto. If a sale, of the subleasehold interest, under the approved encumbrance occurs and the purchaser is a party other than the encumbrancer, approval by the Lessor of any assignment will be required and said purchaser, as successor in interest to the Lessee, shall be bound by all the terms and conditions of this Lease and will assume in writing all the obligations thereunder.

1.7 LIENS, TAXES, ASSESSMENTS, UTILITY CHARGES.

Lessee shall not permit to be enforced against the leased premises or any part thereof, any liens arising from any work performed, materials furnished, or obligations incurred by Lessee.

Lessee shall discharge all such liens before any action is brought to enforce same; further, Lessee shall pay before becoming delinquent, all taxes, assessments, licenses, fees, and other like charges levied during the term of this Lease upon or against the leased land and all interests therein and property thereon, for which either Lessee, the Lessor may become liable.

Upon request, Lessee shall furnish Lessor written evidence duly certified that any and all taxes required to be paid by Lessee have been paid, satisfied, or otherwise discharged. Lessee shall have the right to contest any claim, asserted tax, or assessment against the property, by posting bond to prevent enforcement of any lien resulting therefrom, and Lessee agrees to protect and hold harmless Lessor, the Navajo Nation, the United States and the leased premises and all interest therein and improvements thereon from any and all claims, taxes, assessments, and like charges and from any lien therefor, or sale or other proceedings to enforce payment thereof, and all costs in connection therewith. Lessor shall execute and file any appropriate documents with reference to real estate tax exemption of the land when requested by Lessee.

In addition to the rents, taxes and other charges herein described, Lessee shall pay charges for water, sewage, gas, electricity, telephone, trash, and other utility services as required for construction and/or operation and maintenance of any improvements or as necessary for said leased premises.

1.8 LESSOR'S AGENT PAYING CLAIMS.

Lessor shall have the option to pay any lien or charge payable by Lessee under this Lease, or settle any action therefor, if the Lessee after written notice from Lessor fails to pay or to post bond against enforcement. All costs and other expenses incurred by Lessor in so doing shall be paid to Lessor by Lessee on demand, with interest at the rate of eighteen percent (18%) per annum from the date payment by Lessor until repayment is made by Lessee. Failure to make such repayment on demand shall constitute a breach of this Lease.

1.9 SANITATION.

A. Lessee hereby agrees to comply with all applicable sanitation codes, requirements, or laws which may be related to the purpose(s) of this document as set forth in Part I. Such compliance shall specifically include, but not be limited to, the sanitary regulations of the U.S. Public Health Service. Lessee further agrees to at all times maintain the entire leased premises in a safe, sanitary condition, presenting a good appearance both inside and outside of all buildings operated on the leased premises. Non-compliance with this Section shall constitute a breach of this Lease.

B. Lessee further agrees to comply with applicable State, Navajo Nation and local laws, statutes, ordinances, regulations, court and administrative

orders and decrees pertaining to all sanitation matters including but not limited to the storage and disposal of refuse, rubbish, non-hazardous trash and any regulated substances. Lessee further agrees that all solid waste, including but not limited to refuse, rubbish, non-hazardous trash and any regulated substance generated by the Lessee or by any Sublessee shall be disposed of only at a state or tribally certified public or private landfill, and Lessee or Sublessee, as applicable, shall maintain records to demonstrate compliance with this requirement.

C. Lessee agrees to maintain all records required by applicable law and regulations and to make such records available to appropriate officials of the Navajo Nation, Lessor and federal government.

1.10 REGULATED SUBSTANCES.

Lessee shall not cause or permit any regulated substance (as defined in by Part II, Section 2.1(A)) to be used, stored, generated or disposed of, on, or in the leased premises without first obtaining written consent from the Navajo Nation Environmental Protection Agency. If the Navajo Nation Environmental Protection Agency does not respond to a request for consent within thirty (30) days, such consent shall be deemed given.

If regulated substances are used, stored, generated or disposed of, on or in the leased premises, or if the leased premises become contaminated in any manner for which Lessee or a Sublessee is legally liable, Lessee shall indemnify and hold harmless Lessor, the Navajo Nation and United States from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the leased premises, damages due to loss or restriction of rentable or usable space, or any damages due to adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising during or after the Lease term and arising as a result of such contamination by Lessee.

This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal, restoration or other costs of regulatory compliance mandated by the federal government or Navajo Nation. Without limitation of the foregoing, if Lessee causes or permits the presence of any regulated substance on the leased premises that results in any contamination of the leased premises or other property including, but not limited to the improvements, soil, surface water or groundwater, Lessee shall promptly, at its sole expense, take any and all necessary actions to return the leased premises to the condition existing prior to the contamination by any such regulated substance on the leased premises. Lessees will first obtain the Navajo Nation's approval for any such remedial action.

1.11 LIABILITY INSURANCE.

Unless otherwise provided, without limiting any liabilities or any other obligations of Lessee, Lessee will provide and maintain, from the date the lease is approved and continuing until the Lease is terminated or expired, the minimum insurance coverages listed below. Coverage will be provided with forms and insurers acceptable to Lessor until all obligations under this Lease are satisfied. All insurers must be a Nationally Accredited Insurance Company with a financial strength rating of "A" or the

equivalent, and authorized to do business in the State where the leased premises are located. These coverages are as follows:

- A. Workers' compensation insurance to cover obligations imposed by federal and state statutes of the entity having jurisdiction over the Lessee's employees working on the leasehold, and Employers' Liability insurance with a minimum amount as is required and regulated by the State in which the leased premises are located. In case of any contracted work on the leasehold, the Lessee will require the contractor, and all subcontractors, to provide the same as above.
- B. Commercial General Liability Insurance to cover:
  - (1) The minimum single amount, including a General Aggregate Limit, sufficient for each occurrence, as provided for in Part I of this Lease.
  - (2) This policy shall cover property business interruption, bodily injury, broad form property damage, personal injury, death, blanket contract, independent contractor, product, completed operations coverage. The policy shall contain a severability of interests provision.
  - (3) If the leased premises are undeveloped, the Lessee must obtain the appropriate insurance.
- C. Commercial automobile liability insurance with a combined single limit for bodily injury and property damage for each occurrence with respect to Lessee's owned, hired and non-owned vehicles assigned to or used in Lessee's business, which shall be based upon the minimum amount required and regulated under the State in which the leased premises are located.
- D. If the Lessee is engaged in a profession, the Lessee shall carry professional liability insurance in an amount as is required and regulated under the State or Association for which the professional is licensed.
- E. Lessee, at its cost, shall maintain insurance coverage for full replacement cost on all of Lessee's personal property, Lessee's alterations, Lessee's utility installations, and Lessee's trade fixtures in, or about the leased premises. The proceeds from any such insurance shall be used by Lessee for the replacement of Lessee's personal property, alterations, utility installations, or trade fixtures only if Lessor repairs or rebuilds the leased premises.
- F. The policies required by Sections B and C shall be endorsed to include Lessor, the Navajo Nation and United States, and their agents, representatives, officers, directors, officials and employees, as additional insureds, and shall require that the insurance provided by Lessee shall be primary insurance and that any insurance carried by Lessor or the Navajo Nation or their agents, officials or employees shall be excess and not contributory insurance to that provided by Lessee.
- G. An acceptable certificate of insurance shall be issued to Lessor by the Lessee, on the date the Lease is approved or unless granted a postponement, by

Lessor or successors, as evidence that the required coverages are in full force and effect. The certificate shall indemnify this Lease and indicate the policies will not be canceled, terminated or materially altered unless at least thirty (30) days prior written notice is given to the Lessor.

Certificates of insurance shall be sent to:

Kayenta Township  
P.O. Box 1490  
Kayenta, Navajo Nation (Arizona) 86033

- H. Failure on the part of the Lessee to procure or maintain required insurance shall constitute a material breach of contract upon which Lessor may immediately terminate this Lease.
- I. Lessor reserves the right to request and receive certified copies of any or all of the above policies and/or endorsements.
- J. Lessee and its insurers providing the required coverages shall waive all rights of recovery against Lessor, the Navajo Nation and United States, and their agents, officials and employees.
- K. The insurance limits required under this Lease shall not limit the liability of the Lessee, nor relieve the Lessee of any obligation under this lease.
- L. The Lessee shall not do or commit to be done anything in or upon any portions of the leased premises or bring or keep anything there which would in any way conflict with the conditions of any insurance policy upon the leased premises or in any way increase the rate of insurance upon the leased premises or on property kept there.
- M. The Lessor will not be responsible for any omissions or inadequacies of insurance coverage and amounts in the event the insurance purchased by Lessee proves to be inadequate or otherwise insufficient for any reason whatsoever.

#### 1.12 FIRE AND CASUALTY INSURANCE.

- A. Lessee shall carry from the date the Lease is approved, adequate and sufficient insurance coverages, unless granted a postponement, for either: (a) the receipt of all approvals to commence with construction of the improvements and/or (b) the first drawdown for financing is received. Lessee shall carry fire and casualty insurance with extended coverage endorsement, covering not less than full replacement value of all improvements on the leased premises. Said policy shall be obtained from a Nationally Accredited Insurance Company, with a financial rating of "A" or equivalent, licensed to do business in the State in which the leased premises are located and shall be written jointly to protect Lessee, Lessor, the Navajo Nation and United States and shall provide for notification to Lessor prior to any change in said policy or any cancellation or non-renewal of said policy for any reason, including nonpayment of premiums.

A copy of said policy shall be sent to:

Kayenta Township

P. O. Box 1490  
Kayenta, Navajo Nation (Arizona) 86033

- B. In the event of damage to any improvement on the leased premises, Lessee shall rebuild, repair or otherwise reinstate the damaged improvement or building in a good and substantial manner according to the plan and elevation of the improvement or building so destroyed or damaged or in accordance with any modified plan approved in writing by Lessor prior to commencement of repair or reconstruction. Repair or reconstruction shall commence as soon as possible and, in any event, within one (1) year after the damage occurs and shall be pursued diligently. The insurance proceeds shall be deposited in an escrow account with an institution approved by Lessor. Lessee shall also deposit in said escrow account all additional funds required to reconstruct the damaged improvement. Escrow instructions shall include provisions that all funds so deposited shall be used to reconstruct the damaged improvements and that funds shall be disbursed during the progress of reconstruction on proper architect's, engineer's, or contractor's certificates. All money remaining in escrow after reconstruction has been completed shall be paid to Lessee.
- C. In the event of damage to the extent of seventy-five percent (75%) or more of the total value of all improvements on the leased premises during the last five (5) years of the term of this Lease, Lessee shall have the option to reconstruct said improvements. Lessee shall provide Lessor with a written notice of the exercise of Lessee's reconstruction option within thirty (30) days of the event of damage giving rise to Lessee's reconstruction option. Should Lessee exercise its option to reconstruct, Lessee shall commence reconstruction of the damaged improvements within ninety (90) days of Lessee's exercise of its reconstruction option and shall diligently pursue the reconstruction to completion. Should Lessee not exercise its option to reconstruct, this Lease shall terminate one hundred and twenty (120) days after the event of damage giving rise to Lessee's reconstruction option. The leased premises shall be cleared of debris at Lessee's expense prior to termination of the Lease. Lessee shall not be charged rent during the period of debris removal, unless Lessee occupies the leased premises beyond the Lease termination date, after which the Lessee will be charged hold over rental as provided herein. In the event Lessee does not reconstruct the improvements, all insurance proceeds shall be paid to Lessor.
- D. Any encumbrancer shall be named as a beneficiary under all insurance policies required by this Section, and in the event of loss or damage to the buildings on the leased property while an approved encumbrance remains unpaid, the amount of such loss or damage (but not exceeding the remaining balance of the approved encumbrance) shall be paid to the encumbrancer on the condition that the encumbrancer agrees to comply with the reconstruction obligations set forth herein. If such amount paid to the encumbrancer is sufficient to repair the loss or damage or if Lessor or Lessee shall within three (3) months after such payment by the insurer to the encumbrancer deposit with the encumbrancer enough money to completely repair the loss or damage, when added to the amount paid

by the insurer to the encumbrancer, the encumbrancer shall, upon written order of Lessor or Lessee, pay such monies for such repair, and it shall not be deemed a payment or credit on the encumbrance; but otherwise, at the expiration of such three (3) months said sum so paid by the insurer to the encumbrancer shall be applied and credited upon the approved encumbrance. It is understood and agreed that nothing herein shall relieve Lessee of its obligation to repair and/or replace the damaged improvement to a condition as good as or better than before the damage occurred.

#### 1.13 INDEMNIFY, DEFEND AND HOLD HARMLESS.

Except for Lessor's gross negligence, Lessee shall indemnify, protect, defend and hold harmless the Lessor, the Navajo Nation and United States from and against any and all claims, loss of rents damages, costs, liens, judgments, penalties, permits, attorney's or consultant's fees, expenses and/or liabilities arising out of, involving, or dealing with, the occupancy of the leased premises by Lessee, the conduct of the Lessee's business, any act, omission, neglect or misconduct of Lessee, its agents, contractors, employees or invitees, and out of any Default or Breach by Lessee in the performance in a timely manner of any obligation on the Lessee's part to be performed under this Lease. The foregoing shall include, but not be limited to, the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not litigated and/or reduced to judgment, and whether well-founded or not. In case any action or proceeding be brought against the Lessor, the Navajo Nation or United States by reason of any of the foregoing matters, Lessee, upon any notice from any the Lessor, the Navajo Nation or United States, shall defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor, the Navajo Nation or United States, and Lessor, the Navajo Nation or United States shall cooperate with Lessee in such defense. Lessee shall have the right to control such defense and to settle or compromise the claim in cooperation with Lessor, the Navajo Nation and/or United States as long as such defense, settlement or compromise does not unduly prejudice the Lessor, the Navajo Nation and/or United States.

#### 1.14 EMINENT DOMAIN.

If, at any time during the term of this Lease, the leased premises or any part thereof is taken or condemned under the laws of eminent domain, then and in every such case, the leasehold estate and interest of the Lessee in said leased premises or part thereof taken shall forthwith cease and terminate. All compensation awarded by reason of any takings of the leased land and any taking of or injury to the buildings or improvements located thereon shall be awarded to the Lessee and Lessor as their interests appear at the time of such taking, provided that Lessee's right to such awards shall be subject to the rights of an encumbrancer to receive such awards as set out in an approved encumbrance. If the condemnation is for less than the entire leased premises and/or improvements, the lease shall continue as for the remainder of the term of the lease, however the rental shall be reduced proportionately. If a temporary condemnation of all or a portion of the leased premises and/or improvements, Lessee will be entitled to the entire amount of an award, whether paid by way of damages, rent or otherwise; however, if such condemnation extends beyond the term of the lease, such amounts will be apportioned among Lessor and Lessee based upon the

duration of the term remaining following the condemnation and the duration of the condemnation following the end of the term of the lease.

#### 1.15 DEFAULT.

- A. Time is declared to be of the essence of this Lease.
- B. Lessor may determine that Lessee is in default for the following:
  - (1) Lessee fails to pay rents, monies or any other amounts such as posting a security deposit or acquiring insurance when due and such failure continues for ten (10) days after notice of default is sent to Lessee.
  - (2) Lessee fails to perform any of its material non-monetary obligations or duties under the Lease when required, and such failure continues for a period of ten (10) days after notice of default is sent to Lessee that such obligation or duty has not been performed; provided that if such failure is not reasonably susceptible to cure within ten (10) days and there would be no default for such longer period of time as is reasonably required to cure such failure, and provided further, that Lessee commences a cure within ten (10) days after the notice of default is mailed and Lessee diligently pursues the cure.
  - (3) Lessee abandons or surrenders the leased premises and if the operations required hereunder are not operated for a period of sixty (60) consecutive days for any reason other than a closure for major repairs or renovation, acts of god, casualty, war or insurrection, strikes or labor disputes or other matters beyond the reasonable control of Lessee after written notice thereof has been received by Lessee from Lessor
- C. Lessee shall, within ten (10) days, from the mailing of the notice of default either:
  - (1) Notify in writing Lessor that the default has been cured and submit documentation necessary to indicate the default has indeed been cured; or
  - (2) Submit in writing to Lessor a statement and explanation disputing Lessor's determination that the Lessee is in default and why the Lease should not be terminated; or
  - (3) Request in writing to be given an additional ten (10) days to cure unless found not reasonably susceptible to cure within ten (10) days and there would be no default for such longer period of time as is reasonably required to cure. Any additional time granted to cure shall be in the discretion of Lessor.
- D. No waiver of any of the covenants of this Lease shall be construed to be a waiver of any succeeding breach of the same or any other provision or covenant of this Lease.
- E. If any approved encumbrancer shall give Lessor before any default shall have occurred in this Lease, a written notice containing the name and address and the interest in the leased premises of such

encumbrancer, Lessor shall thereafter give to such encumbrancer a copy of each notice of default by Lessee at the same time as such notice of default shall be given by Lessor to Lessee. Lessor shall accept such encumbrancer's performance of any of Lessee's covenants or other obligations under this Lease, with the same force and effect as though performed by Lessee. Upon providing such written notice, the encumbrancer shall have standing to pursue any appeals permitted by applicable statutes and regulations that Lessee would be entitled to pursue. Further, Lessor shall not terminate the Lease if an encumbrancer has commenced and is diligently pursuing a foreclosure action to terminate Lessee's interest in said Lease and has cured or is taking action to cure the breach that is the cause of the termination.

#### 1.16 REMEDIES.

- A. Lessor may take any of the following actions in accordance with the Tribal Regulations:
  - (1) Collect, by suit or otherwise, all monies as they become due hereunder, or enforce, by suit or otherwise, Lessee's compliance with all terms of this Lease; or
  - (2) Re-enter the leased premises if the Lessee has abandoned the leased premises or has failed to conduct business for a period of time without notice and remove all persons and property therefrom, excluding the property belonging to authorized Sublessees, and re-let the leased premises without terminating this Lease as the agent and for the account of Lessee, but without prejudice to the right to terminate the Lease thereafter, and without invalidating any right of Lessor or any obligations of Lessee hereunder. The terms and conditions of such re-letting shall be in the sole discretion of Lessor, who shall have the right to alter and repair the leased premises as it deems advisable and to re-let with or without any equipment or fixtures situated thereon. Rents from any such re-letting shall be applied first to the expense of re-letting, collection, altering, and repairing, including attorney's fees and any real estate commissions actually paid, insurance, taxes and assessments and thereafter toward payment to liquidate the total liability of Lessee. Lessee shall pay to Lessor monthly when due, any deficiency and Lessor may sue thereafter as each monthly deficiency shall arise; or
  - (3) Terminate this Lease, as a matter of law; or
  - (4) Grant an extension of time to cure the default; or
  - (5) Pursue the execution on security deposit or collection of insurance proceeds; or
  - (6) Pursue any other remedy set forth in the business site leasing management plan(s); or
  - (7) Take any other action deemed necessary to protect any interest of Lessor or the Navajo Nation.

- B. If Lessor terminates the Lease, Lessor shall send a termination letter to Lessee within a reasonable time period from the date of determination by Lessor to terminate, by certified mail, return receipt requested. Lessee shall vacate the premises within thirty (30) days after receipt of the termination letter, unless an appeal has been filed.
- C. The termination shall become effective 31 days after mailing the letter. Any filing of an appeal shall not change the effective date of a cancellation. Pending the outcome of an appeal, the Lessee shall make all requisite payments, as well as comply with the terms of the Lease.
- D. If a grant of extension for time to cure is given, the Lessee shall diligently perform and complete the corrective actions within a time frame agreed, in writing, between Lessor and Lessee.
- E. The exercise of any of the remedies outlined in this Section shall not exclude recourse as to any other remedies, by suit or otherwise, which may be exercised by Lessor or any other rights or remedies now held or which may be held by Lessor in the future.

#### 1.17 MUTUAL TERMINATION.

The Lessee may terminate this Lease, without penalty, subject to approval from Lessor only during the development period, if any, or with or without penalty after the Development Period in the discretion of Lessor, as set forth in Part I of this Lease and conditioned upon compliance with the Navajo Business and Procurement Code, 12 §§ N.N.C. 1501 *et seq.* Lessee must notify Lessor in writing of its intention to terminate no later than thirty (30) days prior to the expiration of such development period.

#### 1.18 ATTORNEY'S FEES.

Lessee agrees to pay and discharge all reasonable costs, attorney's fees and expenses that may be incurred by Lessor in enforcing the provisions of this Lease.

#### 1.19 NO PARTNERSHIP.

No term of this agreement shall be so construed as to provide that a partnership exists between Lessor and Lessee; the only relationship between the parties being that of Lessor and Lessee.

#### 1.20 TERMINATION OF FEDERAL TRUST.

Nothing contained in this Lease shall operate to delay or prevent a termination of Federal Trust responsibility with respect to the land by the issuance of a fee patent or otherwise during the term of this Lease; however, such termination shall not serve to abrogate the Lease. The owners of the land and Lessee and their approved encumbrancers, surety or sureties, if any, shall be notified of any such change in the status of the land.

#### 1.21 OBLIGATIONS OF LESSEE.

While the leased premises are in trust or restricted status, all of Lessee's obligations under this Lease, and the

obligations of their approved encumbrancers and sureties, are to the Navajo Nation and United States as well as to the Lessor.

#### 1.22 STATUS OF SUBLEASES.

Termination of this Lease, by cancellation or otherwise, shall automatically terminate any approved subleases.

#### 1.23 INSPECTION.

A. Lessor and its authorized representatives, shall have the right, at any reasonable time during the term of this Lease, to enter upon the leased premises, or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon for purposes, including, but not limited to, conditions affecting the health, safety and welfare of those entering the leased premises, the protection of the leased premises, any improvements thereto or any adjoining property or uses, or compliance with applicable environmental health or safety laws and regulations. No showing of probable cause shall be required for such entry and inspection. If testing for environmental contamination reveals environmental contamination in violation of applicable law, Lessee shall pay the costs of such testing. Nothing in this Section shall limit Lessee's obligation under applicable law or this Lease to perform testing or remediation or otherwise limit Lessee's liability.

B. Lessor and its authorized representatives, shall have the right, during normal business hours, during the term of this Lease or if the Lease is terminated or expired, at any time, to enter upon the leased premises, or any part thereof, to inspect the same and all buildings and other improvements as is required under the Kayenta Township Annual Lease Compliance Form, and Lessor and its authorized representatives shall notify the Lessee not less than three (3) days before conducting the inspection. Such inspection shall not unreasonably interfere with the Lessee's business operations, unless the Lease has expired or is terminated.

#### 1.24 HOLDING OVER.

Holding over by the Lessee after the termination of this Lease shall not constitute a renewal or extension thereof or give the Lessee any rights in or to the leased premises. In the event of a holding over by Lessee, the Lessee shall be subject to immediate removal and shall agree to pay as hold over rental an annual rental computed at double the rental amount charged during the twelve months immediately preceding the commencement of the holding over period. Accepting holdover rent from Lessee does not extend the Lease or constitute an election of remedies or adversely affect any of the Lessor's other remedies.

#### 1.25 LEASE REQUIREMENTS NOT EXCLUSIVE.

Nothing in this Lease shall be construed to relieve Lessee of any obligations pursuant to any Federal or Navajo Nation law for the protection of the environment or the public health and safety, or general welfare, which is currently enacted or which may be enacted at a later date.

#### 1.26 DELIVERY OF LEASED PREMISES.

A. At the termination or expiration of this Lease, Lessee will peaceably and without legal process deliver up

the possession of the leased premises, in good condition, usual wear and tear excepted.

- B. Lessee agrees to allow the Navajo Nation Environmental Protection Agency to conduct an environmental audit 360 days prior to the expiration or termination of such Lease. Such assessment shall be delivered to Lessor sixty (60) days prior to the expiration or termination of the Lease or the delivery of the leased premises, whichever occurs first. In turn, Lessor shall submit to the Lessee a copy of such audit within ten (10) days of receipt.

#### 1.27 NAVAJO PREFERENCE.

In connection with all employment and contracting opportunities arising out of Lessee's activities under this Lease, Lessee shall give preference in employment and contracting to qualified Navajo individuals and certified contractors in compliance with the Navajo Preference in Employment Act, 15 N.N.C. § 601 *et seq.* ("NPEA"), and the Navajo Nation Business Opportunity Act, 5 N.N.C. § 201 *et seq.* ("NBOA"). The terms and provisions of the NPEA and NBOA are specifically incorporated in, and become a part of this Lease. Violation of such laws by the Lessee shall constitute a breach of this Lease and provide grounds for termination of the Lease or any other remedy prescribed by the NPEA and NBOA, provided such compliance does not violate applicable federal laws.

#### 1.28 MINERALS.

All minerals, including sand and gravel, contained in or on the leased premises are reserved for the use of Navajo Nation, unless placed on the leased premises by the Lessee. The Navajo Nation reserves the right to enter upon the leased premises and search for and remove minerals located thereon, paying just compensation for any damage or injury caused to Lessee's personal property or improvements constructed by Lessee.

#### 1.29 SUCCESSORS AND ASSIGNS.

The terms and conditions contained herein shall extend to and be binding upon the successors, heirs, assigns, executors, employees and agents, including all contractors and subcontractors, of Lessee. Except as the context otherwise requires, the term "Lessee," as used in this Lease, shall be deemed to include all such successors, heirs, assigns, executors, administrators, employees and agents.

#### 1.30 INTEREST OF MEMBER OF CONGRESS.

No member of, or delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this Lease or to any benefit that may arise herefrom, but this provision shall not be construed to extend to this Lease if made with a corporation or company.

#### 1.31 USE OF NAVAJO PRODUCED GOODS AND SERVICES.

Lessee agrees to make all purchases of materials, equipment, goods, services and transportation from Navajo-owned businesses, whenever such purchase is economically feasible, as required by Navajo law.

#### 1.32 AGREEMENT TO ABIDE BY LOCAL, NAVAJO AND FEDERAL LAWS.

Lessee and its employees, agents, and sublessees and their employees and agents agree to abide by all laws, regulations, and ordinances of the Kayenta Township and Navajo Nation, and all applicable laws, regulations and ordinances of the United States, now in force and effect or as may be hereafter in force and effect.

#### 1.33 GOVERNING LAW AND CHOICE OF FORUM.

Subject to Section 1.36 and except as may be prohibited by federal applicable law; the laws of the Navajo Nation shall govern the construction, performance and enforcement of this Lease. All actions or proceedings brought by Lessee against the Lessor in connection with or arising out of the terms and conditions of this Lease shall be brought only in the Courts of the Navajo Nation, and no action or proceeding shall be brought by Lessee against the Lessor in any court or administrative body of any state.

#### 1.34 CONSENT TO JURISDICTION.

Subject to Section 1.36, Lessee hereby consents to the legislative, executive and judicial jurisdiction of the Navajo Nation in connection with all activities conducted by the Lessee within the Navajo Nation.

#### 1.35 COVENANT NOT TO CONTEST JURISDICTION.

Lessee hereby covenants and agrees never to contest or challenge the legislative, executive or judicial jurisdiction of the Navajo Nation on the basis that such jurisdiction is inconsistent with the status of the Navajo Nation as an Indian nation, or that the Navajo Nation government is not a government of general jurisdiction, or that the Navajo Nation government does not possess full police power (i.e., the power to legislate and regulate for the general health and welfare) over all lands, persons and activities within its territorial boundaries, or on any other basis not generally applicable to similar challenges to the jurisdiction of a state government. Nothing in this Section shall be construed to negate or impair federal responsibilities with respect to the leased premises or to the Lessor.

#### 1.36 NO WAIVER OF SOVEREIGN IMMUNITY.

Nothing in this Lease shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation, Kayenta Township or Kayenta Township Commission.

#### 1.37 SAVINGS CLAUSE.

It is agreed that if any provision of this Lease shall be determined to be void then such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect; and it is the intention of the parties hereto that if any provision of this Lease is capable of two interpretations, one of which would render the provision void and the other of which would render the provisions valid, then the provision shall have the meaning which renders it valid.

#### 1.38 QUALIFICATIONS OF BUSINESS.

In the event Lessee hereunder is a business entity, the person(s) executing this Lease on behalf of Lessee hereby covenants and warrants that Lessee is a duly

qualified business entity and all steps have been taken prior to the date hereof to qualify the Lessee to do business in the Navajo Nation; all franchise and corporate taxes have been paid to date; and all future forms, reports, fees, and other documents necessary to comply with applicable laws will be filed when due.

1.39 COMPLIANCE WITH THE BUSINESS SITE LEASING REGULATIONS.

Lessee, its sublessees and assignees and other successors in interest shall comply with the provisions of the Kayenta Township Business Site Leasing Regulations, which prescribe rules for the regulation of businesses within the Kayenta Township, and the Kayenta Township Business Site Leasing Management Plan, and Kayenta Township Business Site Leasing Administrative Plan, applicable provisions of the Navajo Nation Business Leasing Regulations of 2005 and Economic Development Committee Uniform Business Lease Regulations of 2008, which prescribe rules for the regulation of businesses on the Navajo Nation, as required by and consistent with 25 U.S.C. §415(e).

1.40 RESCISSION OF DELEGATION OF AUTHORITY.

Upon determination by the Economic Development Committee that Kayenta Township has its approval authority rescinded, the Lease shall immediately revert to the authority of the Navajo Nation Division of Economic Development. The Lessees shall be immediately notified by the Economic Development Committee upon its decision.

1.41 NO ORAL AGREEMENTS.

It is understood that there are no oral agreements between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Lessor to Lessee with respect to the subject matter hereof, and none thereof shall be used to interpret or construe this Lease.

1.42 VALIDITY.

This Lease, and any modification of or amendment to this Lease, shall not be valid or binding upon either party hereto until approved by Lessor and the President of the Navajo Nation, pursuant to Navajo Law.

## 2.0 SPECIAL TERMS AND CONDITIONS FOR KAYENTA TOWNSHIP BUSINESS SITE LEASES WITH STORAGE TANKS

### 2.1 DEFINITIONS.

- A. "Regulated Substance" is as defined in Section 9001(7) of the Resources Conservation and Recovery Act ("RCRA"), codified at 42 U.S.C. § 6991(7), which includes any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), codified at 42 U.S.C. § 9601(14), but does not include any substances regulated as a hazardous waste under subtitle C of RCRA, codified at 42 U.S.C. § 6921 *et seq.*, and petroleum.
- B. "Storage Tank" is any tank defined by either of the following:
- (1) An underground storage tank as defined in RCRA, 42 U.S.C. 6991(1), or any storage tank, regardless of whether such tank is located above or below ground, and which is not excluded under 42 U.S.C 6991(1) and used for the storage of regulated substances, or;
  - (2) Any above ground storage tank as defined in the proposed Navajo Nation Above Ground Storage Tank Act or any underground storage tank as defined in the Navajo Nation Underground Storage Tank Act, upon passage of each respective proposed Act.

### 2.2 REGULATED SUBSTANCES.

- A. Lessee shall not cause or permit any regulated substance (as defined by RCRA, 42 U.S.C. § 6901 *et seq.*, CERCLA, 42 U.S.C. § 9601 *et seq.* or any other federal law) to be used, stored, generated or disposed of on or in the leased premises without first obtaining written consent of the Navajo Nation Environmental Protection Agency. If such agency does not respond to a request for consent within thirty (30) days, consent shall be deemed granted.

If regulated substances are used, stored, generated or disposed of on or in the leased premises, or if the leased premises become contaminated in any manner for which Lessee or a Sublessee is legally liable, Lessee shall indemnify and hold harmless the Lessor, the Navajo Nation and United States from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the leased premises, damages due to loss or restriction of rentable or usable space, or any damages due to adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising during or after the Lease term and arising as a result of such contamination by Lessee.

This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal or restoration mandated by Lessor, the Navajo Nation or federal government. Without limitation of the foregoing, if Lessee causes or permits the presence of any hazardous or regulated substance on the leased premises that

results in any contamination of the leased premises or other property including, but not limited to the improvements, soil, surface water or groundwater, Lessee shall promptly, at its sole expense, take any and all necessary actions to return the leased premises to the condition existing prior to the contamination by any such regulated substance on the leased premises. Lessee shall first obtain the Navajo Nation's approval for any such remedial action.

- B. Lessee shall provide the Navajo Nation Environmental Protection Agency and Lessor with a clear and legible copy of all notices or reports concerning storage tank installation, testing, leakage, or remediation at the premises subject to this Lease which Lessee is required by applicable law or regulation to provide to the United States Environmental Protection Agency or which Lessee otherwise provides to the United States Environmental Protection Agency. Service of documents as required by this Lease upon the Navajo Nation Environmental Protection Agency shall be by first class mail to:

UST-AST Program  
Navajo Nation Environmental Protection Agency  
Post Office Box 339  
Window Rock, Navajo Nation (Arizona) 86515

and

Kayenta Township  
P. o. Box 1490  
Kayenta, Navajo Nation (Arizona) 86033

or their respective institutional successors.

### 2.3 FINANCIAL RESPONSIBILITY FOR STORAGE TANKS.

If Lessee or Sublessee installs or operates storage tanks on the leased premises, the Lessee or Sublessee shall post a bond, obtain insurance or provide such other evidence of financial responsibility that meets all the requirements of 40 C.F.R. Part 280, Subpart H, regardless of whether the storage tank in question is an aboveground or underground storage tank. Lessee shall provide proof of this bond, insurance, or other qualifying financial responsibility mechanism to Lessor. This bond, insurance or other qualifying financial responsibility mechanism shall remain in effect for the term of the base lease or sublease, and any renewals thereof, and shall not be released or terminated until such time as Lessor certifies that the facility is in compliance with all applicable law and regulations, or that the tanks have been removed and the site has been remediated, or that the base lease or sublease has been transferred and the new operator has provided proof of an adequate bond, insurance or otherwise satisfied the financial responsibility requirements of 40 C.F.R. Part 280, Subpart H. It shall be the responsibility of the Lessee and the Sublessee to provide Lessor with all proof required for release of bond or termination of insurance coverage.