



## EXECUTIVE SUMMARY

**Pursuant to Broward College Policy 6Hx2-1.14 and Procedure A6Hx2-1.14, Dr. Donald Astrab exercised the authority delegated by the Board to execute the renewal of the non-standard agreement with Maxient LLC for case management software by utilizing bid waiver (information technology). Fiscal Impact: \$48,750.00 spent over 5 years (Cumulative: \$112,950.00)**

**Presenter(s):** Jamonica Rolle, College Provost and Senior Vice President

### **What is the purpose of this contract and why is it needed?**

Maxient is a case management software tool. Broward College has utilized this product since 2017. Specifically the use of Maxient is to manage student case records for student conduct, academic integrity, student support, and Title IX matters. We are seeking approval for this renewal agreement for the reasons outlined below:

#### **Proven Integration and Longstanding Relationship:**

Broward College has been successfully using Maxient's software since 2017. The system has demonstrated robust integration capabilities with other technologies on our campus. This established relationship and history of effective integration provide a level of familiarity and reliability that would be challenging to replicate with a new vendor.

#### **Unique Secure Network for Conduct Record Sharing:**

Maxient stands out as the sole software company offering a secure network for optionally sharing conduct records among member institutions in compliance with FERPA. This unique feature ensures a high level of data security while facilitating necessary information sharing, a critical component for institutions like ours.

#### **Independently Audited Secure Hosting Facility:**

Both the software and our data are housed at Maxient's independently audited secure hosting facility, operating under the Software-as-a-Service (SaaS) model. This eliminates the need for us to handle hardware or software installation, management, support, or upgrades on our site. Maxient's commitment to security and rapid application upgrades ensures a consistently updated and secure platform.

#### **Extensive Trust and Nationwide Adoption:**

With over 1,000 institutions nationwide trusting Maxient for their software needs, the company has established itself as a reliable and widely adopted solution within the higher education community. This extensive trust speaks to the software's effectiveness and adaptability across diverse institutional needs.

#### **Leadership in Student Conduct Organizations:**

Maxient's leading partnership with NABITA and ATIXA, prominent student conduct organizations, demonstrates their specialized focus on the unique needs of higher education institutions. This focused expertise sets Maxient apart from companies that may primarily cater to K-12 institutions.

#### **Consistency in Higher Education Focus:**

Maxient's specific focus on higher education institutions aligns with our needs, especially when compared to other companies that might cater to different educational levels. This targeted approach ensures that Maxient understands and addresses the nuanced challenges faced by colleges and universities.

**Maintaining Current Integrations Amid System Changes:**

Considering changes in Student Information Systems (SIS) and other information systems, the renewal allows us to sustain our existing integrations seamlessly across the institution. This continuity is vital for maintaining operational efficiency and data consistency.

**No Current Benefit in Changing Vendors:**

As of now, there is no discernible benefit to switching vendors. The current functionality, security features, and institutional fit provided by Maxient make the case for maintaining continuity with a proven and trusted partner. There has also been more than two years of training staff in the Maxient system and a change in software would require a lot of retraining in case management.

**What procurement process or bid waiver was used and why?** Bid waiver was used pursuant to; FL DOE Rule 6A-14.0734 2.g: provides exceptions to the competitive solicitation process for Information technology resources defined as all forms of technology used to create, process, store, transmit, exchange and use information in various forms of voice, video and data, and shall also include the personnel costs and contracts that provide direct information technology support consistent with each individual college's information technology plan. Bid Waiver previously approved in 2017, this is a submission for a renewal agreement.

**Is this a budgeted expenditure from the budget established at the last June Board of Trustees meeting?**  
Yes.

**What fund, cost center and line item(s) were used?** FD201, CC0593; 64500:Other Services.

**Has Broward College used this vendor before for these products or services?** Yes.

**Was the product or service acceptable in the past?** Yes it was acceptable.

**Was there a return on investment anticipated when entering this contract?** The ongoing investment in the student conduct technology software, specifically the Maxient system has proven to yield returns in terms of efficiency and collaboration with our campus safety department. The compatibility of Maxient with our campus safety software not only streamlines information but also facilitates seamless case management. By storing data virtually in the cloud, accessibility across the college is enhanced.

**Was that return on investment not met, met, or exceeded and how?** Yes met. The integration of the Maxient system with the campus safety system has resulted in continued collaboration. This synergy ensures that case management information is efficiently shared, leading to more effective decision making processes. The software's capability to provide central virtual/cloud storage for conduct, academic integrity, student and Title IX records further contributes to the return on investment.

**Does this directly or indirectly feed one of the Social Enterprise tactics and how? Provide a Best-in-Class Student Experience** - Purpose: Examine all points in the student journey and plan for even the most aspirational enhancements to our outreach, processes, services, and programs while monitoring student sentiment and continually responding to our students' needs. The safety and well-being of students is enhanced by a database to keep track of conduct issues. Completion, Retention, and Enrollment are all enhanced by a safer campus community.

**Did the vendor amend Broward College’s legal terms and conditions [to be answered by the Legal Office] if the College’s standard contract was used and was this acceptable to the Legal Office?**

The General Counsel's office has reviewed the agreement and any deviation to the College's standard terms has been deemed acceptable.

**FISCAL IMPACT:**

Fiscal Impact: \$48,750.00. \$9,350 year 1 and \$9,850 per year(remainig years)- CC0593/BU302//FD201

<b>01/01/25</b>	<b>CC0593/BU301/FD201 · Student Affairs</b>	<b>(\$9,350.00)</b>
	Year 2024-2025	
<b>01/01/26</b>	<b>CC0593/BU301/FD201 · Student Affairs</b>	<b>(\$9,850.00)</b>
	Year 2025-2026	
<b>01/01/27</b>	<b>CC0593/BU301/FD201 · Student Affairs</b>	<b>(\$9,850.00)</b>
	Year 2026-2027	
<b>01/01/28</b>	<b>CC0593/BU301/FD201 · Student Affairs</b>	<b>(\$9,850.00)</b>
	Year 2027-2028	
<b>01/01/29</b>	<b>CC0593/BU301/FD201 · Student Affairs</b>	<b>(\$9,850.00)</b>
	Year 2028-2029	
<b>TOTAL:</b>		<b>(\$48,750.00)</b>

**Janice Stubbs**


Janice Stubbs, Vice President of Student Services

1/8/2024

APPROVAL PATH: 11724 Maxient LLC - Case Management Software - Renewal 2025-2029

**Workflow** Synchronize Routing Edit View Add Work Item

Stage	Reviewer	Description	Due Date	Status
1	David Kenton	Dean		Completed
2	Janice Stubbs	VP Review		Completed
3	Natalia Triana-Aristizabal	Contracts Coordinator		Completed
4	Zaida Riollano	Procurement Approval		Completed
5	Alina Gonzalez	Review		Completed
6	Raj Mettai	Review		Completed
7	Christine Sims	Budget Departmental Review		Completed
8	Rabia Azhar	CFO Review		Completed
9	<b>Legal Services Review Group</b>	Review and Approval for Form and		Completed
10	<b>Electronic Signature(s)</b>	Signatures obtained via DocuSig 📄		Completed
11	<b>Pending Counter-Signature(s)</b>	Review		Completed
12	Natalia Triana-Aristizabal	Contracts Coordinator		Completed
13	Board Clerk	Agenda Preparation		Pending
14	District Board of Trustees	Meeting	12/10/24 11:00 AM	Pending

 <p><b>Service Agreement Renewal</b></p>	Customer:	<b>Broward College 111 East Las Olas Boulevard Fort Lauderdale, FL 33301</b>	
	Previous Agreement Date:	<b>January 1, 2017</b>	
	Renewal Term:	<b>Sixty (60) Months</b>	
	Renewal Start Date:	<b>January 1, 2025</b>	
	Maxient Network:	<b>Customer opts IN to the Maxient Network</b>	
	Fees:	<b>\$9,850.00</b>	<b>ANNUAL SERVICE FEE*</b>
Payment Plan:	<b>\$9,350.00</b>	<b>DUE BY JANUARY 1, 2025*</b>	
	<b>\$9,850.00</b>	<b>DUE BY JANUARY 1, 2026</b>	
	<b>\$9,850.00</b>	<b>DUE BY JANUARY 1, 2027</b>	
	<b>\$9,850.00</b>	<b>DUE BY JANUARY 1, 2028</b>	
	<b>\$9,850.00</b>	<b>DUE BY JANUARY 1, 2029</b>	
<p><small>*Customer's Annual Service Fee is \$9,850.00, effective January 1, 2026. The Annual Service Fee for services from January 1, 2025 through December 31, 2025 is discounted to \$9,350.00.</small></p>			
<p><small>Maxient Internal Notes – AI</small></p>			

In this Service Agreement Renewal (the “Agreement”) dated effective upon execution by both parties, Customer refers to the organization named above and “Maxient” refers to Maxient LLC, P.O. Box 7224, Charlottesville, VA 22906. **This Agreement constitutes a renewal of the existing services provided to Customer by Maxient under the previous agreement between the parties, the date of which is listed at the beginning of this Agreement, *supra*, hereinafter referred to as the “Previous Agreement,” and fully replaces the Previous Agreement and any other such agreement germane to those services.** Maxient offers software provided under the Software-as-a-Service (SaaS) model, on a fully hosted basis to assist in the tracking and management of student conduct concerns and judicial affairs. Customer agrees to contract for use of the software, subject to the terms of this Agreement. In consideration of the mutual rights and obligations in this Agreement and intending to be legally bound, the parties agree as follows:

1) SERVICES.

Customer contracts with Maxient to perform the services described in the subparagraphs of this paragraph (“the Services”). Customer authorizes Maxient to provide the Services and agrees to pay the associated fees.

a) Service. Maxient will establish and maintain an Internet based system (commonly referred to as the “Maxient Conduct Manager”, “Conduct Manager”, or the “Maxient System”) for managing student conduct records. Customer retains sole ownership and remains the custodian of all institutional records stored in the Maxient System. Maxient will provide and maintain the systems established to provide this service, including maintenance of all computer hardware and software. The system shall provide the following functions: (i) allow Customer to create and maintain case files regarding conduct incidents; (ii) allow Customer to generate necessary documentation and correspondence related to conduct cases; (iii) allow Customer to generate statistical summaries derived from the Customer’s information in the database; (iv) allow Customer to draw pre-defined demographic data from the Customer’s student information system into the Maxient System where technically feasible when creating a new case; (v) allow Customer’s staff to access the Maxient System electronically via a tiered permissions system with local access controlled and granted by the Customer; and (vi) allow Customer to opt-in to exchange information electronically with other institutions who are part of the Maxient Network.

b) Maxient Network. With the service described above the Customer and Customer’s records may become part of the Maxient Network, subject to Customer’s consent as indicated at the beginning of this Agreement, *supra*. All institutions utilizing the Maxient System may become part of the Network and are subsequently able to “opt-in” to perform inter-institutional sharing of records on a need-to-know basis consistent with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99). Searches within the Maxient Network are audited and require that the requesting institution provide both (i) information specific to the student they are searching, and (ii) a specific reason for the search that falls within the need-to-know requirements set forth in FERPA and other applicable laws and regulations. A search by a member institution returns only the existence or absence of a potential record for that student at a particular school. The decision to release additional information rests with the record holder, thereby preserving institutional control over all records. This subparagraph and any references to the Maxient Network within this Agreement are void if Customer explicitly “opts out” of the Maxient Network, which is indicated at the beginning of this Agreement, *supra*.

c) Technical Support. Customer will receive ongoing reviews of their Maxient System, updates to support changes to the System, and troubleshooting of errors for no additional charge. Maxient will provide direct electronic mail and online technical support for all system users, and additional telephone support for up to three (3) administrative-level users as specified within the System by Customer. Additionally, a 24-hour, 7-day a week telephone number will be available for reporting of emergency situations.

d) Backup. Data stored in Customer's Maxient System will be backed up and encrypted nightly. This encrypted backup will then be transmitted over a secure channel to a geographically separate server for storage. Backups will be retained on a rolling approximate thirty (30) day cycle. Maxient warrants that both its primary and backup servers upon which Customer's data is stored are and will continue to be located in the United States.

e) Termination of Services. Not later than thirty (30) days following termination of services, student records data from Customer's current Maxient System will be made available to the Customer in a delimited flat-file format along with all associated documents generated in the system and any other objects uploaded, to be transferred via secure file transfer protocol (FTP), or by such other means as Maxient and Customer may mutually agree. Upon (i) confirmation by Customer of receipt of the data, (ii) notice from Customer that no transfer of data is requested, or (iii) the passage of sixty (60) days following the date upon which services were terminated, whichever is first, the site of Customer's previous data on the Maxient System will be overwritten and rendered unrecoverable using the most current accepted industry standard practices for doing so, and none of Customer's records or confidential information will be retained by Maxient. Customer shall immediately return to Maxient all documentation and confidential materials provided under this Agreement and certify that no copies of said materials have been retained.

f) Fees. All fees, their amounts, and the dates upon which they are due to Maxient by Customer are listed at the beginning of this Agreement, *supra*. Maxient shall provide Customer with an invoice for all payments due under this Agreement, and Customer shall pay to Maxient the amount invoiced within thirty (30) days of receipt of the invoice, or by the date the payment is due under this Agreement, whichever is later. Maxient reserves the right to assess and collect from Customer a late fee, not greater than one and one half percent (1.5%) of the amount due, compounded monthly during the period of time in which the payment remains due, for any amount not received by Maxient within thirty (30) days of the date due under this Agreement or as listed on any subsequent invoice provided by Maxient to Customer. Unless otherwise stated at the beginning of this Agreement, *supra*, the Annual Service Fee covering service for the first twelve (12) months of the Renewal Term of this Agreement (as defined in paragraph 2, *infra*) is due by the Renewal Start Date listed at the beginning of this Agreement, *supra*. Subsequent Annual Service Fee payments will be due at the start of each subsequent 12-month period, unless otherwise stated at the beginning of this Agreement, *supra*. In the event that Customer, by institutional requirement, statute, regulation, policy, departmental procedure, or under any other similar justification causes Maxient to pay any processing fee, transaction fee, or otherwise remit or pay to Customer or any other party any portion of the fees established under this Agreement ("compulsory vendor transaction fee"), Maxient reserves the right to invoice Customer for such compulsory vendor transaction fee, which Customer agrees to pay to Maxient in full without contest or undue delay. At the conclusion of the Renewal Term of this Agreement, if Services continue in accordance with paragraph (2)(a), *infra*, Maxient reserves the right to increase an Annual Service Fee in subsequent terms by no greater than eight percent (8%) over the Annual Service Fee paid during the prior term, provided that Maxient notify Customer in writing of any change to the Annual Service Fee amount with not less than sixty (60) days' notice prior to the date on which such Annual Service Fee will be due under this Agreement.

g) Data Feeds. The parties acknowledge that properly working data feeds from Customer's student information system are essential to the portion of Services described in clause (iv) of paragraph (1)(a), *supra*, and that the absence of such would significantly hinder the practical functionality of the system, which may result in inconvenience to Customer and unfair reputational damage to Maxient. Customer acknowledges that Maxient cannot directly access or be sufficiently familiar with Customer's information system(s) or storage of the requisite data, and therefore, it is Customer's sole responsibility to undertake the programming work required to establish and maintain the data feeds in Maxient's specified format. Any failure or refusal on Customer's part to establish or maintain such data feeds may, in Maxient's sole discretion, constitute a material breach of this Agreement.

## 2) TERM OF AGREEMENT.

a) Term. This Agreement shall be binding upon execution of both parties and extend for the Renewal Term from the Renewal Start Date, both of which are defined at the beginning of this Agreement, *supra*. Continuation of the Services shall occur in successive twelve (12) month terms, each such term constituting a new and separate agreement with identical contractual terms to those in this Agreement, beginning on the date immediately following the conclusion of the Renewal Term ("the Subsequent Term Date") and on that same calendar date in each subsequent year. Continuation of the Services may be prevented through a timely termination of this Agreement, which requires a minimum thirty (30) days written notice by the cancelling party to the other party, and will effectively terminate Services on the Subsequent Term Date that most nearly follows by thirty (30) or more days the date of the written notice of timely termination. Nothing in this paragraph shall be construed to prevent the parties from replacing this Agreement's contractual terms with new contractual terms at the conclusion of the Renewal Term or any subsequent term thereafter.

b) Material Breach. Each party reserves the right to cancel this Agreement in the event that the other party materially breaches this Agreement, provided that the non-breaching party provide the other party with written notice of the non-breaching party's intent to cancel and that the other party is unable to cure the material breach within thirty (30) days of receipt of the non-breaching party's written notice. In the event of a material breach by Maxient, Customer shall be entitled to a refund of all annual service fees paid, prorated from the date of termination. In the event of a material breach by Customer, Maxient shall be entitled to full payment of all fees due under this Agreement, regardless of the extent of Maxient's performance, provided that Maxient had performed up to thirty (30) days following Customer's received notice of Customer's material breach. The parties agree that no remedies prescribed by this subparagraph are intended to be exclusive or otherwise limiting of other remedies available under law, equity, or this Agreement.

### 3) GENERAL PROVISIONS.

a) Confidential Information. "Confidential Information" means any proprietary or confidential information as such terms are most broadly defined under applicable law; including Customer's non-public institutional information, student, and personnel data; Maxient's screens, documentation, forms, technical specifications, system security information, software, methods, and customer lists; and, to the extent allowed by law, the terms of this Agreement. Each party agrees that it (i) will not copy or use any of the other party's Confidential Information in any way, except as permitted by this Agreement or as required to achieve the purposes of this Agreement, (ii) will not disclose any of the other party's Confidential Information to any third party, except as required by law or to its attorneys and accountants as reasonably necessary, and (iii) will protect the other party's Confidential Information reasonably and with due care. Information is not Confidential Information if a party can clearly show that it (i) became known to the receiving party prior to receipt from the disclosing party, (ii) has become publicly known, except through breach of this Agreement, or (iii) is independently developed without reference to Confidential Information. Customer further acknowledges that knowingly or negligently sharing Confidential Information or access to the Maxient System with any person or entity that Customer knows or reasonably should know to be a business competitor of Maxient constitutes an act of bad faith and wanton breach of this Agreement. Except as otherwise expressly prohibited by law, either party ("the receiving party") will (i) immediately notify the other party of any subpoenas, warrants, or other legal orders, demands or requests received by the receiving party seeking the other party's Confidential Information; (ii) consult with the other party regarding its response; (iii) cooperate with the other party's requests in connection with efforts by the other party to intervene and quash or modify the legal order, demand or request; and (iv) upon the other party's request, provide the other party with a copy of its response.

b) FERPA Compliance and Data Breach Protocol. Maxient agrees to abide by the limitations on re-disclosure of personally identifiable information from education records set forth in The Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99). Maxient shall not use or disclose confidential information received from or on behalf of Customer (or its students) except as permitted or required by this Agreement, as required by law, or as otherwise authorized in writing by Customer. Maxient agrees not to use Confidential Information for any purpose other than the purpose for which the disclosure was made. Upon termination, cancellation, expiration or other conclusion of the Agreement, Maxient shall return or destroy any and all of Customer's Confidential Information in Maxient's possession in accordance with paragraph (1)(c), *supra*. Maxient shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted Confidential Information received from, or on behalf of Customer or its students. These measures will be extended by contract to all subcontractors used by Maxient. Maxient shall, within one day of discovery, report to Customer any use or disclosure of Customer's Confidential Information not authorized by this Agreement or in writing by Customer. Following this report, Maxient will conduct a timely and thorough investigation in an attempt to identify: (i) the nature of the unauthorized use or disclosure, (ii) the data used or disclosed, and (iii) who made the unauthorized use or received the unauthorized disclosure. At the conclusion of this investigation, Maxient will furnish a confidential written report to Customer indicating the results of the investigation, what Maxient has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and what corrective action Maxient has taken or shall take to prevent future similar unauthorized use or disclosure.

c) Intellectual Property. Except as otherwise provided herein, Maxient has all right, title, and interest to all types of intellectual property, including but not limited to new forms and form modifications, software, trademarks, and other inventions or technical knowledge protected under patent, copyright, or trade secret law ("Intellectual Property"), conceived, discovered, or developed, in whole or in part, by Maxient in the performance of this Agreement. Maxient warrants that Maxient is the sole owner and author of said Intellectual Property and Customer agrees that any attempt to reproduce, redistribute, or claim authorship of Maxient's Intellectual Property is in violation of this Agreement. Customer further assumes liability for any costs or legal fees arising out of a meritorious claim by Maxient against Customer, its agents or assigns, to assert Maxient's authorship under applicable law.

d) Limited License. Subject to the terms of this Agreement, Maxient grants Customer a limited, non-exclusive, nontransferable license to use Maxient's relevant Intellectual Property during the term of this Agreement solely for Customer's own internal purposes. Customer shall not sell, market, rent, or re-license any aspect of the Intellectual Property. Customer obtains no ownership rights or any other rights in the Intellectual Property, other than those specified herein. Customer grants Maxient a license to use Customer's non-confidential, non-personally identifiable information (e.g., statistical information) on a consolidated basis as part of Maxient's



overall statistics for marketing and/or analytical purposes. Additionally, Customer's records may be used to the extent necessary for inclusion in the Maxient Network (described in subparagraph (1)(b), *supra*).

e) Transferability. Neither party may transfer, assign, or otherwise dispose of this Agreement, or any of its rights or obligations hereunder, without the prior written consent of the other party.

f) Independent Contractor. The relationship of Maxient and Customer established by this Agreement is that of independent contractor, and nothing contained in this Agreement shall be construed to (i) give either party the power to direct or control the day-to-day activities of the other, (ii) establish the parties as partners, franchisee-franchisor, co-owners or otherwise as participants in a joint or common undertaking, or (iii) otherwise give rise to fiduciary obligations between the parties.

g) Force Majeure. Except for payment of fees, non-performance by either party will be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.

h) Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements or representations, oral or written. In the event that, for any reason, any clause or provision of this Agreement is held or declared to be invalid, illegal, or unenforceable, such holding or declaration shall not in any way affect the reliability or enforceability of any other clause or provision of this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not constitute a waiver of that party's right to subsequently enforce the same. Except as otherwise provided herein, this Agreement may not be modified except in writing signed by an authorized representative of each party. Any terms and conditions that are typed, printed or otherwise included in any invoice, purchase order, or other document rendered pursuant to this Agreement shall be deemed to be solely for the convenience of the parties. No such term or condition shall be binding upon either party, and no action by a party (including, without limitation, the payment or acceptance of any such invoice in whole or in part) shall be construed as binding with respect to any such term or condition, unless the specific term or condition has been previously expressly agreed to by Maxient and Customer in writing. No "shrink-wrap," or "click-through" terms and conditions, or reference to terms and conditions set out at a URL not set out in full and attached to this Agreement will be effective, regardless of when opened or clicked, or when or where referenced. Both parties acknowledge having read the terms and conditions set forth in this Agreement and all attachments hereto, understand all terms and conditions, and agree to be bound thereby. The titles of paragraphs and subparagraphs are for convenience only and are not to be used in construing any term herein. The parties agree that should any action be brought under law arising out of the terms of this Agreement, they shall bring such action in a court that lawfully exercises jurisdiction over Maxient's principal place of business at the time such action is commenced.

i) Security Documentation. Upon Customer's reasonable request, Maxient shall provide access to documentation of Maxient's data security plans and practices relevant to the Services under this Agreement, including but not limited to a Service Organization Control (SOC) Report covering its hosted infrastructure. Customer agrees that all such documentation is Confidential Information, as defined in paragraph (3)(a), *supra*, and Customer further agrees not to disclose such documentation or any of its content without the express written permission of Maxient.

j) Use of Customer Name and Trademarks. Maxient agrees not to use Customer's name or other trademarks (e.g., logos, insignias, or the like) in such manner as to constitute an endorsement by Customer without Customer's prior consent. This includes, but is not limited to, refraining from such use in press releases, advertising, marketing materials, other promotional materials, presentations, case studies, reports, websites, application or software interfaces, or other electronic media. Notwithstanding, Customer agrees that Maxient may at all times acknowledge Maxient and Customer's working relationship, which includes the ability to, in Maxient's sole discretion, refer to Customer or relevant employees of Customer, orally or in writing, when offering professional references of Maxient's services; and that nothing in this subparagraph or elsewhere in this Agreement shall be construed as to prohibit Maxient from doing so.

#### 4) WARRANTIES, RESPONSIBILITIES, AND LIMITATIONS.

a) Limited Warranty. Maxient warrants that (i) Maxient solely possesses all rights and title to the Intellectual Property utilized in the provision of the Services, excluding any open source computer code or other technology in the public domain; (ii) Maxient will not share any records processed and stored by the Customer within Maxient's system with any other person or entity (with the exception of the methods set forth, *supra*, regarding the Maxient Network); and (iii) Maxient will use commercially reasonable efforts or better, and adhere to or exceed the standards of the industry of higher education student conduct record management in fulfilling its obligations under this Agreement. Maxient does not warrant that the Services are or will be error free. Maxient further does not warrant that its electronic files containing information pertaining to Customer and/or Customer's students are not susceptible to intrusion, attack, or computer virus infection, but given the confidential nature of much of this data, Maxient will use commercially reasonable efforts to safeguard the security of this data. EXCEPT FOR THE LIMITED WARRANTY DESCRIBED IN THIS SECTION AND TO THE EXTENT ALLOWED BY APPLICABLE LAW, MAXIENT MAKES NO OTHER WARRANTIES,



EXPRESS, IMPLIED OR STATUTORY, AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.


b) Immediate Remedies. For any breach of the warranties set forth above, Customer’s immediate remedy shall be correction of the errors that cause the breach. Nothing in this subparagraph shall be construed to limit the remedies available to either party under law, equity, or this Agreement.

c) Customer’s Responsibility. Customer is solely responsible for determining the scope and extent of its utilization of the Services provided by Maxient, and Customer is entirely responsible for reviewing the Services provided by Maxient on Customer’s behalf to ensure compliance with Customer’s procedures. Maxient carries out procedures specified solely by Customer, and Maxient expressly denies all liability arising from Customer’s procedures including, but not limited to, Customer’s adjudication methods. Maxient makes no attempt to determine or advise as to whether the Customer’s procedures comply with any statutory or regulatory requirements. To the extent, however, that Customer’s procedures or criteria clearly violate any of these laws, Maxient reserves the right to refuse to implement such procedures or criteria. To the extent permitted by applicable law, Customer will be responsible for its employees’ negligence, Maxient’s implementation of Customer’s procedures in accordance with this Agreement, the violation by Customer’s procedures of any applicable statutory or regulatory requirements, or a claim by any third party, including but not limited to Customer’s students or employees, arising from Customer’s procedures or the acts or omissions of Customer’s employees or agents.

d) Maxient’s Limited Liability. Customer agrees that regardless of the form of any claim Customer may have under this Agreement or otherwise, Maxient’s liability for damages to Customer will not exceed the coverage provided by Maxient’s General Liability, Errors and Omissions, and Umbrella insurance policies at the time of the claim. Maxient warrants that it will maintain said insurance for the purpose of providing coverage for damages attributable to its failure to abide by the provisions of this Agreement, in an amount not less than that which Maxient maintained under the Previous Agreement. Maxient shall provide proof of such coverage upon Customer’s reasonable request. Maxient further agrees to name Customer as an additional insured on its General Liability insurance policy. Maxient will not be liable for damages arising from any breach, unauthorized access, misuse of, or intrusion into Customer’s data residing on Maxient’s equipment, unless Maxient is solely responsible for said breach, unauthorized access, misuse, or intrusion. MAXIENT WILL NOT BE LIABLE OR RESPONSIBLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, SUCH AS, BUT NOT LIMITED TO, LOSS OF PROFITS RESULTING FROM THE USE OF THE SERVICES, OR ARISING OUT OF ANY BREACH OF THIS AGREEMENT OR THE LIMITED WARRANTY, EVEN IF MAXIENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

The individuals signing below hereby represent in doing so that they possess the authority to contractually bind the respective parties on whose behalf they affix their signature to this Agreement.

The attached Supplemental Addendum is hereby incorporated by reference.

Signed by:  
  
11/5/2024  
Authorized Customer Signature Date  
Donald Astrab Interim President  
Printed Name and Title

  
11/13/2024  
Maxient Signature Date  
Aaron Hark, Co-Owner  
Printed Name and Title

## BROWARD COLLEGE

**1. Incorporation by Reference.** Broward College (“**BROWARD**”) and the undersigned (“**Vendor**”) hereby incorporate this Supplemental Addendum - Software (“**Addendum**”) into the agreement between BROWARD and Vendor (the “**Agreement**”). If this Addendum conflicts with the Agreement terms, this Addendum shall control.

**2. Payment.** Vendor shall submit bills for compensation for goods, services and/or expenses in detail sufficient for a pre-and post-audit. If BROWARD does not issue payment within forty (40) days of receipt of a proper invoice, BROWARD may pay Vendor an interest penalty at the rate established pursuant to § 55.03(1), F.S., if the interest exceeds one dollar. Vendors experiencing payment problems may contact Accounts Payable at (305) 348-3889. BROWARD’s performance and obligation to pay is contingent upon the legislature’s annual appropriation; BROWARD will give notice to Vendor of the non-availability of funds when BROWARD has knowledge thereof. BROWARD is a tax immune sovereign and exempt from the payment of sales, use or excise taxes. Vendor is responsible for and shall pay any taxes due under the Agreement. BROWARD may require Vendor to accept payments via BROWARD’s EFT/ACH payment process. If Vendor is making any payment to BROWARD, Vendor shall pay timely and not offset any amounts.

**3. Relationship of the Parties.** Each of the parties is an independent contractor and nothing in the Agreement shall designate any of the employees or agents of one party as employees or agents of the other. Vendor represents and warrants that it is not on the Convicted Vendor List (see § 287.133, F.S.). Vendor hereby assumes all risks attributable to the willful or negligent acts or omissions of Vendor and its officers, employees, agents and subcontractors or persons otherwise acting at the instance of Vendor, in furtherance of fulfilling Vendor’s obligations.

**4. BROWARD’s Information.** Vendor acknowledges and agrees that: (a) all documents, data, studies, materials, information, or other intellectual property furnished to Vendor by BROWARD or BROWARD’s affiliates in connection with the Agreement, and (b) all reports, studies, plans, deliverables, strategies, materials and other documents and information developed or prepared for BROWARD in connection with the Agreement, or which reflect any of the documents, studies, materials information, or other intellectual property furnished to Vendor by BROWARD (collectively, (a) and (b) are referred to as the “**Information**”) are and shall remain at all times confidential, proprietary, and the sole property of BROWARD. BROWARD shall retain all rights, title and interest in the Information. Vendor agrees that it shall not use the Information and will not share it with its employees, except as necessary to Vendor’s performance under the Agreement. Vendor shall not disclose the Information to third parties unless it obtains BROWARD’s written consent to such disclosure. In the event Vendor is required by subpoena, law or other judicial or administrative process to disclose the Information, Vendor shall (i) provide BROWARD with prompt notice thereof; (ii) consult with BROWARD on taking steps to resist or narrow such disclosure; (iii) furnish only that portion of the Information that is responsive to the request; (iv) comply with the requirements of all Privacy Laws (defined below); and (v) reasonably cooperate with BROWARD in any attempt that BROWARD may make to obtain an order or other reliable assurance that confidential treatment will be accorded. Upon termination of the Agreement or upon request by BROWARD, Vendor shall promptly return the Information.

**5. Public Records.** BROWARD is subject to Chapter 119 of the Florida Statutes, commonly known as the Florida Public Records Law. The Agreement, this Addendum, and any related correspondence shall also become a public record subject to the Public Records Law. BROWARD may respond to public records requests without providing Vendor any notice, provided such response does not include providing documents which are the exclusive property of Vendor. BROWARD may unilaterally cancel the Agreement for Vendor’s refusal to allow public access to all public records that were made or received in conjunction with the Agreement. This provision shall survive termination or expiration of the Agreement. Additionally, Vendor shall comply with all applicable requirements of the Public Records Laws, particularly if Vendor is a “Contractor” as defined under § 119.0701, F.S.: (a) Keep and maintain public records required by BROWARD to perform the service; (b) Upon request by BROWARD, provide the public with access to public records on the same terms and conditions that BROWARD would provide the records and at a cost that does not exceed the cost provided in the public records laws, or as otherwise provided by law; (c) Ensure that public records that are exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) Meet all requirements for retaining public records and transfer, at no cost, to BROWARD all public records in possession of Vendor upon termination of the Agreement (or upon request by BROWARD) and destroy any duplicate public records that are exempt from public records disclosure requirements. All records stored electronically must be provided to BROWARD in a format that is compatible with BROWARD’s information technology systems. **IF VENDOR HAS QUESTIONS REGARDING THE APPLICABILITY OF CHAPTER 119 TO VENDOR’S DUTY TO PROVIDE PUBLIC RECORDS, VENDOR MAY CONTACT BROWARD AT (954) 201-7639, LEGAL SERVICES@BROWARD.EDU, OR 111 EAST OLAS BOULEVARD, #523, FORT LAUDERDALE, FL 33301.**

**6. Intellectual Property.** Vendor represents and warrants that its hardware, software and any related systems, documentation and/or services related thereto (collectively, the “**IP**”) furnished by Vendor to BROWARD will not infringe upon or violate any patent, copyright, trademark, trade secret, or any other proprietary right of any third party. Vendor will, at its expense, defend any suit brought against BROWARD and will indemnify BROWARD against an award of damages and costs (including reasonable attorney fees, court costs and appeals), made against BROWARD by settlement or final judgment of a court that is based on a claim that Vendor’s IP infringes an intellectual property right of a third party. BROWARD will provide

reasonable cooperation in the defense of the suit at Vendor’s expense. Such defense and indemnity shall survive termination or expiration of the Agreement. In the event an injunction or order shall be obtained against BROWARD for the use of Vendor’s IP or if in Vendor’s opinion the IP is likely to become the subject of a claim of infringement or violation of a copyright, trademark, trade secret, or other proprietary right of a third party, Vendor shall, at its expense: (a) Procure for BROWARD the right to continue using the IP; or (b) at no additional cost to BROWARD, replace or modify the IP so that it becomes non-infringing, but only if the modification or replacement does not adversely affect the specifications of the IP or its use by BROWARD. If neither (a) nor (b) above is practical, Vendor shall remove the IP from BROWARD and shall issue a refund for the IP to BROWARD, less reasonable depreciation. Thereafter, any license involved shall be canceled. BROWARD may distribute any information or service based upon, generated by, or involving the use of the IP as long as the IP is not distributed to individuals outside of BROWARD. BROWARD may create and retain a copy of the IP and related documentation for back-up and disaster recovery purposes, and for archival purposes for use after the termination and/or expiration of the Agreement.

**7. Indemnity.** Vendor will indemnify, defend and hold harmless BROWARD, the BROWARD Board of Trustees, the State of Florida, the Florida Board of Governors, and their officers, employees, and agents from and against any and all actions, claims, liabilities, assertions of liability, losses, costs and expenses, which may arise in any manner or are alleged to have arisen, from) the acts, omissions, negligence or misconduct of Vendor or its officers, employees, agents, representatives or subcontractors in connection with or related to (a) Vendor’s operations, activities, business and/or services or (b) Vendor’s occupancy or use of the BROWARD premises. BROWARD will provide reasonable cooperation in the defense of the suit at Vendor’s expense. Such defense and indemnity shall survive termination or expiration of the Agreement. **Nothing in the Agreement shall be construed as a waiver of sovereign immunity nor as an indemnification of Vendor by BROWARD, and then such indemnification is limited to the express terms of §768.28, F.S.**

**8. Compliance.** In the performance of the Agreement, Vendor shall at its own expense, at all times during the term:

- Permits:** have all applicable permits, licenses, consents, and approvals necessary to perform its obligations under the Agreement;
- General:** comply with all applicable federal, state, local laws, rules, regulations, and ordinances and all other governmental requirements.
- Section 889 Compliance Certification:** comply with § 889 of the McCain National Defense Authorization Act (prohibition against use of covered telecommunications equipment);
- Privacy:** comply with any and all applicable state and federal laws and BROWARD policies and procedures governing the use and/or safe-keeping of confidential, highly sensitive, and/or personally identifiable or protected health information (as may be defined by state or federal law), including, but not limited to, the Family Educational Rights and Privacy Act (FERPA), (collectively, “**Privacy Laws**”). Vendor shall obtain in advance all necessary permissions and consents required in regards to its collection and/or receipt of any such information. Vendor agrees to include all such terms and conditions contained in any subcontractor or agency contracts providing services on behalf of Vendor;
- Federal funds. If BROWARD has entered into an agreement with the United States of America, or any Department thereof, and the Agreement is in furtherance of the commitments and/or requirements of such federal agreement or funds, Vendor agrees to comply with the terms contained in BROWARD’s Federally Funded Projects Addendum herein incorporated by this reference; and**
- [INTENTIONALLY OMITTED]; and
- E-Verify:** All terms defined in §448.095, Fla. Stat., are adopted and incorporated into this provision. Pursuant to §448.095, Fla. Stat., Vendor certifies that it is registered with and uses the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the Vendor during the term of this Agreement. If Vendor enters into a contract with a subcontractor to perform work or provide services pursuant to this Agreement, Vendor shall likewise require the subcontractor to comply with the requirements of §448.095, Fla. Stat., and the subcontractor shall provide to Vendor an affidavit stating that the subcontractor does not employ, contract with or subcontract with an unauthorized alien. Vendor shall maintain a copy of such affidavit for the duration of the contract. BROWARD may terminate this Agreement immediately upon notice to Vendor for any violation of this provision.

**9. General Provisions.**

- Warranties.** Vendor, at a minimum, warrants that the IP, the goods, and/or the services to be provided by Vendor will be free of any material defects and will operate and conform to the specifications provided in all material aspects throughout the term of the Agreement. This warranty shall be in addition to any warranties provided in the Agreement.
- [INTENTIONALLY OMITTED]
- Insurance.** BROWARD, as a public body corporate entity, warrants and represents that it is self-funded for liability insurance, with said protection being applicable to officers, employees, servants, and agents while acting within the scope of their employment by BROWARD. Any provision requiring BROWARD to provide or acquire insurance coverage other than such self-insurance shall not be effective. Vendor shall have and maintain the types and amounts of insurance that, at minimum, will cover Vendor’s (or subcontractor’s) exposure in performing the Agreement...
- Third Parties.** BROWARD is not liable for the acts of third parties or the consequences of the acts of third parties. There shall be no third party beneficiary to the Agreement.
- Governing Law.** The Agreement is governed by the laws of the State of Florida without regards to any conflicts of law principles. Exclusive venue of any actions arising out of the Agreement shall be in Miami-Dade County, Florida. BROWARD is entitled to the benefits of sovereign immunity, including from taxation.
- Travel Expenses.** If BROWARD is responsible for reimbursing Vendor for travel expenses pursuant to the Agreement, bills shall be subject to, and shall be submitted by Vendor in

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accordance with BROWARD’s Travel and Traveling Expenses Policy. BROWARD reserves the right not to pay travel expenses unless BROWARD approves such expenses in advance, in writing. BROWARD has the right to make travel arrangements for Vendor.

- g. **Lobbying.** Vendor is prohibited from using funds provided under the Agreement to lobby the Legislature or any official, officer, commission, board, authority, council, committee, or department of the executive branch or the judicial branch of state government.
- h. **Conflicts.** Vendor represents that it is aware of the requirements of Chapter 112, Florida Statutes and in compliance with the requirements thereof, and other laws and regulations concerning conflicts of interests in dealing with entities of the State of Florida. Vendor certifies that its directors and/or principal officers are not employed and/or affiliated with BROWARD unless a current Conflict of Interest Disclosure Form has been completed, executed by such director or officer and approved in accordance with applicable University policies or rules. Violation of this section shall be grounds for termination of the Agreement.
- i. [INTENTIONALLY OMITTED]
- j. **Records.** Vendor agrees to keep and maintain, separate and independent records, in accordance with generally accepted accounting principles, devoted exclusively to its obligations and activities under the Agreement. Such records (including books, ledgers, journals, and accounts) shall contain all entries reflecting the business operations under the Agreement. BROWARD or its authorized agent shall have the right to audit and inspect such records from time to time during the term of the Agreement, upon reasonable notice to Vendor.
- k. **Deletion.** Any term and/or condition in the Agreement on the following subject matters are hereby deleted in their entirety and declared null and void: (a) Grants of exclusivity by BROWARD to Vendor; (b) Restrictions on the hiring of Vendor’s employees; (c) BROWARD’s responsibility to pay intangible taxes, property taxes, or sales taxes; (d) BROWARD’s tort liability; (e) [INTENTIONALLY OMITTED]; (f) Limitation of time to bring suit; (h) that BROWARD performs reporting functions and/or maintains certain types of operations (i) Granting Vendor any right to audit BROWARD; (j) Attorneys’ or collection fees provisions; (k) Arbitration and mediation clauses; and (l) Indemnification of Vendor by BROWARD.
- l. **Modification/Assignment/Binding Effect/Waiver.** The Agreement may be modified, altered, or amended only by written agreement signed by both BROWARD and Vendor. Except for any subcontracting or delegation expressly agreed to in writing by both parties, Vendor shall not assign, transfer, delegate, subcontract, or otherwise dispose of, whether voluntarily or involuntarily, or by operation of law, any right or obligation under the Agreement, without the prior written consent of BROWARD, which shall not be unreasonably withheld. Any such unapproved assignment, subcontracting or transfer is void. No subcontracting or other delegation shall in any event relieve Vendor of any obligation or liability under the Agreement. The Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective permitted successors and assigns. No waiver by a party of any provision or breach of the Agreement shall be deemed to have been made unless the same is in writing, and no waiver of any provision or breach of the Agreement shall be deemed a waiver of any other provisions or breach. A party’s consent to or approval of any act shall not be deemed to render unnecessary the obtaining of such party’s consent to or approval of any subsequent act.

**10. Secure Protection and Handling of Data Network Security:** To the extent applicable to Vendor’s performance under the Agreement, Vendor agrees at all times to maintain network security that, at a minimum, includes: network firewall provisioning, intrusion detection, and regular third party penetration testing. Vendor further agrees:

- a. [INTENTIONALLY OMITTED];
- b. [INTENTIONALLY OMITTED];
- c. [INTENTIONALLY OMITTED];
- d. [INTENTIONALLY OMITTED];
- e. [INTENTIONALLY OMITTED];
- f. **Data Encryption:** to store any BROWARD backup data as part of its designated backup and recovery process in encrypted form, using no less than 256 bit key;
- g. **Password Protection:** that any portable or laptop computer that resides at any BROWARD facility, has access to a BROWARD network, or stores any non-public BROWARD data is equipped with strong and secure password protection;
- h. **Data Re-Use:** that all data exchanged shall be used expressly and solely for the purpose enumerated in the Agreement. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Vendor. Vendor further agrees that no BROWARD data of any kind shall be transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by BROWARD;
- i. **Data Destruction:** that, upon termination of the Agreement, it shall erase, destroy, and render unreadable all BROWARD data from all computer systems and backups in accordance with the terms of the Agreement; and
- j. **Notification and Data Breaches:** to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally identifiable information or other event requiring notification in accordance therewith. In the event of a data breach of any Vendor’s security obligations or other event requiring notification under applicable law (a “**Notification Event**”), Vendor agrees to assume responsibility for informing all such individuals in accordance with applicable laws and to indemnify, hold harmless and defend BROWARD against any claims, damages, or other harm related to such Notification Event.

**11. No counterparts; Signatures.** The Agreement may not be executed in counterparts. This Agreement may be signed electronically and such electronic signatures shall constitute an original for all purposes. The parties represent and warrant that any person signing the Agreement electronically has the authority to do so and that such electronic signature shall be sufficient to

bind Vendor. This Agreement shall be considered signed if/when a party’s signature is delivered by facsimile or e-mail transmission of a “.pdf” format date file, including via DocuSign. Such signature via DocuSign shall be treated in all respects as having the same force and effect as an original signature.

**By signing below, Vendor’s duly authorized representative agrees to incorporate this Addendum into the Agreement, and hereby executes this Addendum as of the date set forth below.**

VENDOR: Maxient LLC

By: 

Name: Aaron Hark

Title: Co-Owner, Maxient LLC

Date: November 13, 2024