Revised Purchase Order

A&M-COMMERCE
Mane Market 🛒

Sales Tax Exemption

Texas A&M University-Commerce is exempt from state and municipal sales taxes under Chapter 20 Title 122A, revised Civil Statutes of Texas, for all purchases made for the exclusive use of Texas A&M University-Commerce.

The laws of the State of Texas shall govern this Purchase Order.

Member of the Texas A&M University System.

Purchase Order			
Purchase Order Date	PO/Reference No.	Revision No.	Revision Date
Mar 7, 2022	**AB0694771**	**1**	**Apr 19, 2022**

Contact instructions for questions regarding this Purchase Order:

If Buyer Contact information is listed below, please contact the Buyer.

If not, please contact the Customer.

Buyer Contact:

Buyer	Buyer Email	Buyer Phone Number
sdb - Barnes, Sandy	sandy.barnes@tamuc.edu	903.468.3000

Customer Contact:

Name:	Stacey Preas
Email:	STACEY.PREAS@TAMUC.EDU
Phone:	+1 903-886-5171

Order acceptance instructions:

Vendor guarantees that the products delivered or the services performed as a result of this Purchase Order will meet or exceed all specifications herein. Any exceptions to the pricing or the description contained herein must be approved by Texas A&M University-Commerce's Purchasing Department prior to shipping.

Supplier Information		Delivery Information	
Supplier Name	MAXIENT LLC	**Delivery Address**	
Address	PO BOX 7224 CHARLOTTESVILLE, Virginia 229067224 United States	TAMUS Member:	21-Texas A&M University - Commerce (21)
Phone	+1 434-295-1748	Attn:	Steve Hirst
Fax	+1 434-202-0751	Dean of Students	
FOB / FREIGHT	Destination	Room	Halladay 201
Pre-Pay & Add	No	2600 S Neal St	
Payment Terms	0, Net 30	Commerce, TX 75428	
Contract Number - Header	C2021-2596	United States	
Contract Number - Line	*no value*	**Delivery Information**	
Quote number		Required Delivery Date	
		Ship Via	Best Carrier-Best Way

Notes to Supplier

Shipping Instructions

Note to Supplier	Per attached executed service agreement between TAMUC and Maxient.
Attachments for supplier	

MAXIENT, INC. - S...

PO Clauses

Header	001	No Collect Freight Charges Accepted	Neither COD nor "Collect" freight or handling charges will be accepted.
	508	Changes must be Approved Prior	Any changes to this Contract without the undersigned Purchasing Agent's prior written approval is not authorized and at the expense of the Supplier.
	509	Cancellation due to Funding	This contract is subject to cancellation without penalty, either in whole or in part, if funds are not appropriated by the Texas Legislature, or otherwise not made available to the using Agency.

522	Governance	Any agreement entered into by Texas A&M University-Commerce shall be governed by the laws of the State of Texas.
525	Best Value Clause	Agency invokes "Best Value" purchase exemption under House Bill 1545.
536	Terms & Conditions - TAMU-Commerce	This purchase shall be in accordance with the Texas A&M University-Commerce terms and conditions. To obtain, please go to the following address: http://www.tamuc.edu/facultyStaffServices/purchasing/references/forms/default.aspx

Line No.	Product Description	Catalog No.	Size / Packaging	Unit Price	Quantity	Ext. Price
1 of 6	Service Agreement for software provided to assist in the tracking and management of student conduct and judicial affairs records. Service Start date 3-1-22. $8K set up fee and prorated Annual Service Fee $4K for six months ending 8-31-22. (FY22)	N/A	EA	12,000.00 USD	1 EA	12,000.00 USD
2 of 6	Service Agreement for software provided to assist in the tracking and management of student conduct and judicial affairs records. 12 months. 9-1-22 to 8-31-23 (FY23).	N/A	YR	8,000.00 USD	1 YR	8,000.00 USD
3 of 6	Service Agreement for software provided to assist in the tracking and management of student conduct and judicial affairs records. 12 months. 9-1-23 to 8-31-24 (FY24).	N/A	YR	8,000.00 USD	1 YR	8,000.00 USD
4 of 6	Service Agreement for software provided to assist in the tracking and management of student conduct and judicial affairs records. 12 months. 9-1-24 to 8-31-25 (FY25).	N/A	YR	8,000.00 USD	1 YR	8,000.00 USD
5 of 6	Service Agreement for software provided to assist in the tracking and management of student conduct and judicial affairs records. 12 months. 9-1-25 to 8-31-26 (FY26).	N/A	YR	8,000.00 USD	1 YR	8,000.00 USD
6 of 6	Service Agreement for software provided to assist in the tracking and management of student conduct and judicial affairs records. 12 months. 9-1-26 to 8-31-27 (FY27).	N/A	YR	8,000.00 USD	1 YR	8,000.00 USD
				Total		**52,000.00 USD**

Billing Information	Billing Address
To assure timely payment please e-mail invoices to the email provided in the bill to address. If the invoice is sent via email, please do not send a duplicate copy through the mail. Only if email is not an option then submit invoices to the billing address indicated in the "Billing Address" section. To inquire about electronic invoicing via cXML, CSV or PO flip through the supplier portal, e-mail vendorhelp@tamu.edu. Invoice must include the PO/Reference number shown above.	Texas A&M University-Commerce ***Do Not Mail Invoices*** Email invoices to invoices@tamuc.edu PO Box 3011 Commerce, TX 75429 United States

	Customer:	**Texas A&M University – Commerce,** **an agency of the State of Texas** **2200 Campbell Street** **Commerce, TX 75428**
MAXIENT **Service Agreement Amendment**		

In this Service Agreement Amendment (the "Amendment") dated effective upon execution by both parties, "Customer" refers to the organization named above; "Maxient" refers to Maxient LLC, P.O. Box 7224, Charlottesville, VA 22906; and the "Agreement" refers to the signed Service Agreement between Customer and Maxient, attached to this Amendment and labeled accordingly. As per paragraph (3)(h) of the Agreement, incorporating and reaffirming all provisions of the Agreement not otherwise amended, *infra,* Customer and Maxient agree to amend the Agreement as follows:

Striking from the box at the beginning of the Agreement the line beginning "Initial Term:" and **replacing** with the following:

"Initial Term: **Sixty-Six (66) Months**"

Striking from the box at the beginning of the Agreement the line beginning "Payment Plan:" and **replacing** with the following:

"Payment Plan: $12,000.00   DUE BY MARCH 1, 2022*
$8,000.00   DUE BY SEPTEMBER 1, 2022
$8,000.00   DUE BY SEPTEMBER 1, 2023
$8,000.00   DUE BY SEPTEMBER 1, 2024
$8,000.00   DUE BY SEPTEMBER 1, 2025
$8,000.00   DUE BY SEPTEMBER 1, 2026

     *This amount is comprised of the sum of Customer's Setup Fee ($8,000.00) and a prorated Annual Service Fee covering services from March 1, 2022 through August 31, 2022 ($4,000.00)."

Customer and Maxient fully integrate this Amendment into the Agreement, agree that this Amendment supersedes any conflicting language in the Agreement, and further agree that all references to the Agreement made on or after the effective date of this Amendment shall be read to include this Amendment.

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 Amendment.

(signature)	2/22/2022		
Authorized Customer Signature	Date	Maxient Signature	Date
Leilani A. Alquiza, Contract Administrator			
Printed Name and Title		Printed Name and Title	

	Customer:	**Texas A&M University – Commerce, an agency of the State of Texas 2200 Campbell Street Commerce, TX 75428**
Service Agreement	Initial Term: Service Start Date:	**Sixty (60) Months March 1, 2022**
	Legacy Data Migration?:	**YES (from Symplicity's Advocate and StarRez)**
	Maxient Network:	**Customer opts IN to the Maxient Network**
	Fees:	**$8,000.00 ANNUAL SERVICE FEE $8,000.00 SETUP FEE**
	Payment Plan:	**$16,000.00 DUE BY MARCH 1, 2022 $8,000.00 DUE BY MARCH 1, 2023 $8,000.00 DUE BY MARCH 1, 2024 $8,000.00 DUE BY MARCH 1, 2025 $8,000.00 DUE BY MARCH 1, 2026**

In this Service Agreement (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. 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. Pending implementation, as described in subparagraph (1)(g), *infra*, 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) Training. Maxient shall provide a one-time, initial, comprehensive, live training in the use and maintenance of the Maxient System for Customer's staff that will utilize the Maxient System. The training will be conducted in two portions: (i) an on-site portion at Customer's location for one half day (approximately four (4) hours) on a date and time mutually agreed upon by Maxient and Customer and confirmed in writing, for which electronic correspondence shall qualify as sufficient writing; and (ii) an additional session, conducted remotely and for approximately two (2) hours, to follow the on-site portion of the training by no more than five (5) business days (unless otherwise mutually agreed upon by Maxient and Customer), with a more narrow focus on the management and administration of the Maxient System, and accordingly intended for a more limited audience of Customer's choosing. Customer represents that any of its staff attending the additional session (clause (ii) of the previous sentence) will have also attended the on-site portion (clause (i) of the previous sentence), unless otherwise waived in advance by Maxient. Customer acknowledges that a training may not be scheduled during the month of December, unless otherwise waived by Maxient. Customer shall provide Maxient with a list of attendees ("the Attendee List") not later than ten (10) days prior to the start of the scheduled training. Maxient shall be responsible for determining the agenda and order of specific topics to be covered during the training. Customer agrees to secure and provide a physical space at its location sufficient for and conducive to conducting the on-site portion of the training, which shall include no less than (i) enough space for all individuals named on the Attendee List and five (5) additional individuals without violating any applicable fire codes; and (ii) both an Internet-connected computer with a screen that is reasonably visible to all individuals in the space, and Internet-connected computers, laptops, tablets, or other devices in sufficient enough number to ensure that each attendee will have hands-on access throughout the session (or the reasonable opportunity, connectivity and direction to bring their own devices). Customer represents that its staff will comply with the reasonable requests of Maxient's staff conducting all portions of the training in order to facilitate a productive session, including but not limited to requests to silence or refrain from the use of cellular phones or other potentially distracting devices; and Customer further represents that its staff shall behave in a manner which at a minimum is consistent with Customer's expectations for its own students during classroom attendance. Customer shall make reasonable efforts to inform Maxient's staff in advance of the training of any local or institutional directives or other requirements related to public health (e.g., mandatory mask wearing, social distancing protocols, etc.) expected to be in effect at the time of the on-site portion of the training; and provided it is so informed, Maxient agrees to comply. Customer acknowledges that Maxient's ability to schedule, as well as conduct the on-site training is contingent upon Customer furnishing Maxient with Customer's completed Startup Materials, as defined and further described in subparagraph (1)(g), *infra*. Except as otherwise provided in paragraph (1)(k), *infra*, once the date and time of the training are confirmed, any changes to that appointment caused by Customer, including but not limited to a request to reschedule, non-compliance with the provisions of subparagraph (1)(g) of this Agreement, or failure to provide Maxient with the Attendee List by the date required by this subparagraph, may, in Maxient's sole discretion, result in the rescheduling of the training and necessitate Customer reimbursing Maxient for all non-refundable travel expenses already incurred; in which event Maxient shall promptly provide to Customer an invoice detailing said expenses and which Customer agrees to pay without undue delay. Other than any additional fees that may be assessed per the terms of this subparagraph, all costs of the training, including travel, meals, and printed materials, are included in the Setup Fee specified at the beginning of this Agreement, *supra*. Customer acknowledges that the Setup Fee, including any portion thereof related to training, is non-refundable.

e) 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.

f) Data Migration. If data migration is requested at the beginning of this Agreement, *supra*, Customer will be responsible for providing Maxient the existing data as an electronic export that conforms to Maxient's migration template specifications. Customer acknowledges that Maxient cannot directly access or be sufficiently familiar with Customer's existing records management system(s), and therefore, it is Customer's sole responsibility to undertake the work required to extract the data in conformance with Maxient's migration template. Pending Customer's successful completion of its obligations under this subparagraph, Maxient shall provide Customer with said migration template at the same time as Customer's Startup Materials, as described in paragraph (1)(g), *infra*. Upon Maxient's determination that the extracted data is in conformance with Maxient's migration template, Maxient will ask Customer to confirm that the extracted data reflects the complete and final body of legacy data to be migrated into Customer's Maxient system. Customer acknowledges that the portion of the Services under this subparagraph is one-time only, that Maxient has no obligation to perform any additional services related to the migration of legacy data beyond that which Customer has confirmed as complete and final; and Customer further acknowledges that making such confirmation is a material obligation under this subparagraph. Pending Customer's successful completion of its obligations under this subparagraph, Maxient will create customized data import routines for Customer's legacy data, thereby allowing those records to be accessible and manageable from within the Maxient System no later than eight (8) weeks following said completion. Unless otherwise waived in writing by Maxient, Customer's failure to successfully complete its obligations under this subparagraph within one (1) calendar year following the date of conclusion of the implementation process, as described in paragraph (1)(g), *infra*, shall absolve Maxient of any further obligation under this subparagraph. All fees associated with the migration of legacy data, if applicable, are included in the Setup Fee specified at the beginning of this Agreement, *supra*, and are non-refundable.

g) Implementation. The implementation process will consist of Maxient's customization of its software to fit the specific needs of Customer, beginning with the mutual execution of this Agreement and concluding upon the performance of Customer's training (described in paragraph (1)(d), *supra*). Customer is obligated to provide Maxient with all information necessary for the integration of its specifications into the software, which Maxient will solicit from Customer through an informational package and questionnaire ("the Startup Materials", also sometimes referred to informally as "the Startup Packet") provided to Customer during or immediately following an initial telephone conference to discuss and plan the details of the process ("the Kickoff Call"). Maxient will contact Customer to schedule the Kickoff Call promptly upon execution of this Agreement, and Customer acknowledges that any delay in responding to this contact and scheduling the Kickoff Call will result in a delayed implementation. Customer agrees to provide accurate and complete responses to the Startup Materials, including any follow up questions posed by Maxient in order to fully understand Customer's initial responses; and that Customer's Startup Materials are incomplete, *per se*, until such conditions are fulfilled. Regarding the ability to facilitate the flow of data between Customer's student information system and Customer's Maxient system in furtherance of the functionality described in clause (iv) of paragraph (1)(a), *supra*, the Startup Materials provided by Maxient to Customer shall include the data feed format and specifications to be used. Per paragraph (1)(j), *infra*, it is Customer's sole responsibility to undertake the programming work required to provide the data feeds in Maxient's specified format. Within seven (7) days following Maxient's receipt of Customer's completed Startup Materials, Maxient shall provide Customer with (i) available dates upon which Customer's training may be scheduled, which if chosen would ensure completion of the implementation process by no later than eight (8) weeks following Maxient's receipt of Customer's completed Startup Materials; and (ii) a reasonable timeframe within which Customer must select among the dates offered under clause (i) before Maxient can no longer guarantee those dates as available to Customer. Notwithstanding the foregoing, Customer acknowledges that a training may not be scheduled to occur during the month of December (unless otherwise waived by Maxient) and that any resulting delay shall not constitute a breach of the aforementioned implementation completion deadline. Customer further acknowledges that failure to confirm one of the available dates offered within the timeframe specified by Maxient may result in a delay to scheduling Customer's training beyond eight (8) weeks following Customer's completion of its Startup Materials. Customer understands that the Services, particularly those outlined in paragraphs (1)(a) and (1)(d), *supra*, can only be provided in full upon successful completion of the implementation. All costs associated with implementation are included in the Setup Fee specified at the beginning of this Agreement, *supra*, and are non-refundable.

h) 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.

i) 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 that allowed under the Texas Prompt Payment Act, 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 Initial Term of this Agreement (as defined in paragraph 2, *infra*) is due by the Service 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 Initial 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.

j) 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.

k) Special Considerations for Training and Implementation During a Disruption Event. In the event of a force majeure event, including but not limited to a public health crisis (e.g., epidemic, pandemic), or other external force that renders the performance of the on-site portion of Customer's training, as described in paragraph (1)(d), *supra*, impossible or impractical (e.g., closure of campus, limitation on in-person gatherings to a number lower than the total of anticipated attendees, significant hindrance to the use of transportation systems, etc.; hereinafter "Disruption Event"), Customer may initiate the cancellation or delay, but not both, of the on-site portion of the training and (i) if cancelled, replace the on-site portion of the training entirely with a live training provided remotely by Maxient staff through the Internet, which shall be conducted over the course of two separate, approximately two (2) hour sessions that must be scheduled to occur on consecutive business days (unless otherwise waived by Maxient); or (ii) if delayed, wait to reschedule the on-site portion of the training, and thus delay the completion of the Implementation process (i.e., access to a live, working system), as laid out in paragraph (1)(g), *supra*, until such time as the Disruption Event has concluded or otherwise ceased to effectively prevent the on-site portion of Customer's training from taking place, in which case Customer waives any claim of breach with regard to the implementation completion deadline established in paragraph (1)(g), *supra*. Moreover, if Maxient perceives significant risk to the health and wellbeing of its staff or others by sending its staff to Customer's location and/or conducting the on-site portion of the training, Maxient may in its sole discretion elect to initiate the cancellation or delay of the on-site portion of Customer's training, without being in breach of any provision of this Agreement, in which case Customer shall still choose between the aforementioned options laid out in this paragraph as though Customer had initiated the cancellation or delay. No exercise of any provision of this subparagraph shall alter the fees, term, or payment plan established in the top box of this Agreement, *supra*.

2) TERM OF AGREEMENT.

a) Term. This Agreement shall be binding upon execution of both parties and extend for the Initial Term from the Service Start Date, both of which are defined at the beginning of this Agreement, *supra*. Customer may continue the Services beyond the Initial Term 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 Initial Term ("the Subsequent Term Date") and on that same calendar date in each subsequent year, provided that Customer deliver to Maxient sufficient written notice of Customer's intent to continue by no later than thirty (30) days prior to the Subsequent Term Date, unless otherwise waived by Maxient. Sufficient written notice of Customer's intent to continue includes, but is not limited to, a letter stating Customer's intent to continue, or a purchase order or other formal payment for continued services, which may be delivered to Maxient electronically, by facsimile, or via mail. Maxient reserves the right to prevent subsequent continuation of the Services provided that it notify Customer of its intention to do so by no later than thirty (30) days prior to the Subsequent Term Date. 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 Initial 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; as well as Maxient's screens, documentation, forms, technical specifications, system security information, software, methods, and customer lists. 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.

Customer acknowledges that the following items belonging to Maxient and constituting confidential information within the meaning of this paragraph also contain trade secret information, as defined under Texas law: Maxient's *Data Feed Technical Specifications* document; Maxient's *Common Security & Compliance Questions and Answers* document; Maxient's *Data Security Policies and Practices* document; Maxient's SAS70 or SOC1, or other similar certification; user manuals or other documentation detailing the inner workings of the Maxient system; any and all necessary startup materials and related documents provided to Customer by Maxient, including the Startup Packet described in paragraph (1)(g) of this Agreement, *supra*; access to and the contents of any Maxient system, including but not limited to Customer's Maxient system established by the terms of this Agreement; and any materials created by Customer or other third parties substantially derived in whole or in part from any of the aforementioned items. Maxient affirms and Customer acknowledges that those items and the information contained within derive their value from not being generally known or readily ascertainable and that Maxient makes reasonable efforts to maintain the secrecy thereof. Maxient further agrees to identify any additional items containing trade secret information that Maxient may provide to Customer subsequent to entry into this Agreement.

Maxient recognizes that Customer is a state entity and subject to Chapter 552 of the Texas Government Code, and any and all such applicable laws pertaining to public records. Customer will not voluntarily disclose any information that it obtains or learns about Maxient as the result of this Agreement, except as may be required by the aforementioned laws. Should Customer become subject to a request for such disclosure, it agrees, as legally permissible, to give Maxient immediate notice of such process so as to provide the Maxient a reasonable opportunity to pursue appropriate process to prevent or limit the disclosure. Maxient will have not less than ten (10) business days from the date of such notice to pursue such process and assert its proprietary rights before the information being sought may be released by Customer. Maxient hereby releases Customer from all liability associated with the release of such information after this ten business day period. It is understood and agreed that the provisions of this undertaking will survive the termination of this Agreement.

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)(h), *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. Subject to the limitations of paragraph (4)(d), *infra*, Maxient shall indemnify and defend Customer from all claims, liabilities, damages, and judgments involving a third party, including Customer's costs and attorneys' fees, which arise as a result of Maxient's failure to meet or breach any of its obligations under this paragraph (3)(b). This subparagraph will survive the termination of this Agreement.

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. To the extent permitted by the Constitution and laws of the State of Texas, 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. 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. 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. 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. This Agreement shall be governed by the laws of the State of Texas and 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 of competent jurisdiction located in the State of Texas.

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.

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 and Errors and Omissions 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 ten (10) times the Annual Service Fee paid by Customer under this Agreement for the twelve (12) months immediately preceding the date on which the claim arose. Maxient shall provide proof of such coverage upon Customer's reasonable request. 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, except to the extent that Maxient is 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. Customer agrees to this section to the extent permitted by the Constitution and law of the State of Texas.

5) STATE CONTRACTING REQUIREMENTS.

a) Electronic and Information Resources. Maxient represents and warrants that the electronic and information resources and all associated information, documentation, and support that it provides to Customer under this Agreement (collectively, the "EIRs") comply with the applicable requirements set forth in Title 1, Chapter 213 of the Texas Administrative Code and Title 1, Chapter 206, §206.70 of the Texas Administrative Code (as authorized by Chapter 2054, Subchapter M of the Texas Government Code). To the extent Maxient becomes aware that the EIRs, or any portion thereof, do not comply, then Maxient t shall, at no cost to Customer, either (1) perform all necessary remediation or (2) replace the EIRs with new EIRs.

b) Delinquent Child Support Obligations. Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

c) Payment of Debt or Delinquency to the State. Pursuant to Section 2252.903, Texas Government Code, Maxient agrees that any payments owing to Maxient under this Agreement may be applied directly toward certain debts or delinquencies that Maxient owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

d) Franchise Tax Certification. If Maxient is a taxable entity subject to the Texas Franchise Tax (Chapter 171, Texas Tax Code), then Maxient certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that Maxient is exempt from the payment of franchise (margin) taxes.

e) Prohibited Bids and Agreements. Under Section 2155.004, Texas Government Code, Maxient certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

f) Loss of Funding. Maxient recognizes that Customer is a public institution of the State of Texas and, as such, is subject to the appropriation of funds necessary for the fulfillment of Customer's payment obligations under this Agreement. In the event that Customer's necessary funds are not appropriated, Maxient agrees to permit the early termination of this Agreement provided that Customer notify Maxient of the impending loss of funding as immediately as is practicable, but under no circumstance later than thirty (30) days prior to the start of the fiscal period in which the funds are no longer appropriated. Nothing in this paragraph shall be construed to entitle Customer to the repayment of any portion of fees already paid to Maxient, nor excuse the payment of any amounts that were due to Maxient under this Agreement during a fiscal period in which funding had been appropriated to Customer.

g) State Auditor's Office. Maxient understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection

with those funds pursuant to Section 51.9335(c), Texas Education Code. Maxient agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested.

h) Dispute Resolution. Maxient must use the dispute resolution process provided in Chapter 2260 of the Texas Government Code to attempt to resolve a dispute arising under this Agreement and is a required prerequisite to suit in accordance with Chapter 107, Texas Civil Practices and Remedies Code. Maxient must submit written notice of a claim of breach of contract to the University Contracts Officer, TAMU.

i) Non-Waiver. Maxient expressly acknowledges that Customer is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by Customer of its right to claim such exemptions, privileges, and immunities as may be provided by law.

j) Vendor Access. Pursuant to Title 1, Chapter 202, §202.77 of the Texas Administrative Code, Maxient hereby acknowledges responsibility to comply with all applicable Customer policies, rules, standards, practices, and agreements, including but not limited to: safety policies, privacy policies, security policies, auditing policies, software licensing policies, acceptable use policies, and nondisclosure as required by TAMU.

For purposes of this section concerning Vendor Access, Confidential Information is defined as information that must be protected from unauthorized disclosure or public release based on state or federal law or other legally binding agreement and may include but is not limited to the following: personally identifiable information (social security number and/or financial account numbers, student education records); intellectual property (as set forth in Section 51.914 of the Texas Education Code); and medical records. Mission Critical Information is information that is defined by Customer to be essential to the continued performance of the mission of Customer, the unavailability of which would result in consequences to Customer.

In the event Maxient should obtain or be granted access to Confidential and/or Mission Critical Information of Customer ("Customer Information"), Maxient will keep and protect Customer Information confidential to no less than the same degree of care as required by Customer policies, rules and procedures. At the expiration or early termination of this Agreement, Maxient agrees to return all Customer Information or agrees to provide adequate certification that the Customer Information has been destroyed. Maxient, its employees, agents, contractors, and subcontractors shall use the Customer Information solely in connection with performance by Maxient of the services provided to Customer pursuant to this Agreement, and for no other purpose. Should Maxient, its employees, agents, contractors, or subcontractors acquire other Customer Information during the course of this Agreement, it shall not be used for Maxient's own purposes or divulged to third parties. Maxient shall comply with all terms and conditions of any Customer non-disclosure agreement applicable to this Agreement.

Both parties shall each provide contact information for specific individuals. The contact for Customer for legal notices shall be the Contract Administration, 2200 Campbell Street, Commerce, TX 75428, Telephone: (903) 468-3000, contracts@tamuc.edu. The designated contact for Maxient shall be Aaron Hark, Chief Software Architect, P.O. Box 7224, Charlottesville, VA 22906, Telephone: (434) 295-1748, ahark@maxient.com. Should the assigned contact for either party need to be changed, the new contact information shall be updated and provided to the respective parties within 24 hours of any staff changes. Maxient is responsible for reporting all security breaches directly to Texas A&M University – Commerce. The Customer designated contact for breaches shall be Customer's Chief Information Officer (jeremy.gamez@tamuc.edu). Security breach investigation reports shall be provided to the designated Customer contact and Customer's Chief Information Officer (jeremy.gamez@tamuc.edu).

k) Certification as to Contracts with Companies Boycotting Israel. If this Agreement has a value of $100,000 or more and if Maxient is a company, other than a sole proprietorship, with ten or more fulltime employees, then pursuant to Texas Government Code § 2271.002, Maxient certifies that Maxient does not boycott Israel and will not boycott Israel during the term of this Agreement. For purposes of this provision, "company" and "boycott Israel" have the meanings provided in Texas Government Code § 808.001.

l) Certification as to Business with Certain Countries and Organizations. Pursuant to Chapter 2252, Texas Government Code, Maxient certifies that Maxient is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Customer may terminate this Agreement if this certification is inaccurate.

m) Certification as to Contracts Related to Persons Involved in Human Trafficking. Pursuant to Section 2155.0061, Texas Government Code, Maxient certifies that Maxient is not ineligible to enter into this Agreement due to financial participation by a person who, during the five-year period preceding the date of this Agreement, has been convicted of any offense related to the direct support or promotion of human trafficking, and acknowledges that Customer may terminate this Agreement and withhold payment if this certification is inaccurate.

n) Conflict of Interest. Maxient and each person signing on behalf of Maxient certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no

member of The Texas A&M University System or the A&M System Board of Regents, nor any employee or person whose salary is payable in whole or in part by the A&M System, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

o) Not Eligible for Rehire. Maxient shall ensure that its employees performing services under this Agreement have not been designated by the A&M System as Not Eligible for Rehire as defined in A&M System Policy 32.02, Section 4.

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.

Leilani A. Alquiza	11/8/2021	_Aaron Hark_	11/08/2021
Authorized Customer Signature	Date	Maxient Signature	Date

___Leilani A. Alquiza, Contract Administrator___
Printed Name and Title

Aaron Hark, Co-Owner
Printed Name and Title