MAXIENT **Service Agreement Renewal**	Customer:	**The College of the Florida Keys** **5901 College Road** **Key West, FL 33040**
	Previous Agreement Date:	**November 1, 2014**
	Renewal Term:	**Thirty-Six (36) Months**
	Renewal Start Date:	**November 1, 2023**
	Maxient Network:	**Customer opts IN to the Maxient Network**
	Fees:	**$6,400.00 ANNUAL SERVICE FEE***
	Payment Plan:	**$6,000.00 DUE BY NOVEMBER 1, 2023*** **$6,400.00 DUE BY NOVEMBER 1, 2024** **$6,400.00 DUE BY NOVEMBER 1, 2025**
		***Customer's Annual Service Fee is $6,400.00, effective November 1, 2024. The Annual Service Fee for services from November 1, 2023 through October 31, 2024 is discounted to $6,000.00.**

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)(e), *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.

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 that which Maxient maintained under the Previous Agreement. 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, 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.

_____   _____
Authorized Customer Signature   Date   Maxient Signature   Date

Dr. Brittany Snyder, Executive Vice President and CFO   _____
Printed Name and Title   Printed Name and Title