

W220492 ✓

MONTCLAIR STATE UNIVERSITY
Montclair, New Jersey

BOARD OF TRUSTEES
Contract Award Authorization for
Intersect Student Recruitment Platform
February 11, 2022 through April 13, 2022

Exempt from publicly advertised bidding pursuant to NJSA 18A:64-56a (3) – Materials supplies which are not available from more than one potential bidder, including without limitation materials or supplies which are patented or copyrighted.

Explanation:

The Montclair State University Communications Department seeks to continue the use of the Intersect platform, which directly integrates with Naviance, the leading college search website used by 40% of United States high school students. Intersect was recently acquired by Powerschool Group LLC from its original developer, Hobsons. PowerSchool has selected EAB as its sole sales and support vendor. This partnership permits Intersect to directly integrate with Hobson’s Naviance suite of products, an exclusive college and career readiness platform that reaches over 43% of high school students in the United States and the school counselors who work with them.

The Intersect platform has been successfully used by Undergraduate Admissions for several years, with a record number of applications for this year’s entering freshmen class. Using Intersect as part of Naviance enables our Undergraduate Admission Recruiters to identify and engage with high school students who have demonstrated their interest in attending a postsecondary institution, and it also enables them to connect with high school guidance counselors in the only online community built specifically for them. Specific features that Undergraduate Admissions requires are:

- **Intersect Awareness** which enables the University to display an enhanced profile page within Naviance. This also enables the University to participate in an online community of guidance counselors.
- **Intersect Presence** allows interested student to RSVP directly for Admissions open houses, college fairs and other recruitment events, including visits by our recruiters to their high school. Intersect also helps our representatives to schedule appointments in ways that optimize their time on the road.
- **Intersect Connection, Advanced Awareness and Majors** are features that help students to discover and connect with colleges that best fit their individual needs and interests. The University can set up criteria that indicate which students are a good fit based on several academic and demographic variables, and to target messages to students who meet those criteria.

In accordance with the Board of Trustees procedures adopted on November 12, 2017 authorization to approve this purchase has been delegated to the Vice President for Finance and Treasurer to award a two year term contract from December 4, 2021 through December 3, 2023 to PowerSchool Group LLC in the amount of \$141,694 for the Intersect Student Recruitment Platform.

Award to: PowerSchool Group LLC

Amount authorized: \$141,694

Speak to Donna

MEMO

To: Christine Palma, Director, Procurement Services
From: Joseph Brennan, Vice President, Communications & Marketing *Joe*
Re: Justification for Purchase of "Intersect"
Date: Jan. 25, 2022

My division manages the University's contracts for various marketing and student recruitment services, including a student recruitment platform known as Intersect, which is used by the Undergraduate Admissions Office (UGADM).

The platform was originally developed by Hobson's Inc., which recently sold it to Powerschool, which in turn engaged EAB to serve as its sole sales and support vendor. Importantly, the relationship with EAB allows Intersect to integrate directly with Naviance, the leading college search website used by 40% of U.S. high school students. EAB represents that when students connect with colleges through Intersect, they are 54% more likely to apply and 91% more likely to enroll. Some 80% percent of high school students who connect with a college in Intersect apply to that institution,

Using Intersect as part of Naviance enables our recruiters to identify and engage with high school students who have demonstrated their interest in attending a postsecondary institution, and it also enables them to connect with high school guidance counselors in the only online community built specifically for them. Specific features that UGADM wants to purchase are:

- **Intersect Awareness:** enables the University to display an enhanced profile page within Naviance; also enables the University to participate in an online community of guidance counselors.
- **Intersect Presence:** allows interested students to RSVP directly for admissions open houses, college fairs and other recruitment events, including visits by our recruiters to their high school. It also helps reps to schedule appointments in ways that optimize their time on the road.
- **Intersect Connection, Advanced Awareness and Majors:** these features help students to discover and connect with colleges that best fit their individual needs and interests. The University can set up criteria that indicate which students are a good fit based on several academic and demographic variables, and to target messages to students who meet those criteria.

UGADM has used the Intersect platform for several years with good results, including a record number of applications for this year's entering freshmen class (and an even greater number in the current year!).

Because Intersect is the only recruitment platform to integrate with Naviance, and because it offers several other unique features, I believe that this purchase qualifies as a "sole source procurement." Please see the attached sole source justification from EAB, which goes into great detail.

Thank you for considering this request. I am happy to answer any questions you may have.

Attachments: board waiver form, sole source representations from EAB



150 Parkshore Dr.
Folsom, CA 956304
www.powerschool.com

Sold To: Montclair State University
Name: Joseph Brennan
Address: 150 Clove Road – Third Floor
Little Falls, NJ 07424
Email: brennanjos@montclair.edu
Phone: 973.655.3532

Order Date: 11/08/2021
Valid Until: 12/03/2021

EAB/Intersect Contact

Name: Megan Whitsell
Email: mwhitsell@eab.com
Phone: 513.453.3355

Contract Start Date: December 4, 2021
Contract End Date: December 3, 2023
Contract Term (In Months): 24
Currency: USD
Payment Term: Annual; Net 30

Total Price: **\$141,694**
Year 1 Price: \$69,800
Year 2 Price: \$71,894

Product Name	States	# Competitors
Awareness	--	--
Presence	--	--
Connection	NJ, NY, PA	--
Advanced Awareness Competitors	NJ	12
Advanced Awareness Competitors	NY	3
Advanced Awareness Competitors	PA	6
Majors	NJ, NY, PA	--

Terms and Conditions

INTERSECT SERVICE AGREEMENT

This Intersect Service Agreement attached exhibits and the Order Form to which it is incorporated (collectively, the “**Agreement**”) constitute an agreement between the entity to which the Order Form is addressed (“**Organization**”) and PowerSchool Group LLC or, if the Organization is a Canadian resident entity, PowerSchool Canada ULC (either referred to as “**PowerSchool**”). PowerSchool and Organization each hereinafter, individually, a “**Party**” and, collectively, the “**Parties**”. Capitalized terms not otherwise defined herein will have the meanings given to them in the Order Form. The “**Effective Date**” is defined within the Order Form. For purposes of the Agreement, the Effective Date shall be the Order Date detailed in the Order Form.

1. Order Forms



This Agreement between Organization and PowerSchool outlines the general terms pursuant to which Organization may license or purchase Services (as defined below) directly from PowerSchool or its Authorized Reseller in accordance with the Order Forms executed by both PowerSchool and Organization (each, an **"Order Form"**). As used herein, **"Authorized Reseller"** means a person or entity authorized in writing by PowerSchool to resell or distribute any of the Services (as defined below). As of the Effective Date, EAB Global, Inc. (**"EAB"**) is an Authorized Reseller of PowerSchool. Each Order Form together with this Agreement, including the Schedules for Services Organization has purchased or licensed, shall be deemed to be a separate agreement between Organization and PowerSchool. Each Order Form must be signed by both Organization and PowerSchool to be valid, effective and legally binding and will commence on the date set forth on such Order Form and shall continue in full force for the term as defined on the Order Form (the **"Order Form Term"**).

2. Fees

Organization agrees to pay PowerSchool the applicable fees for the Services as set forth on the Order Form by such dates and in such amounts as set forth on the Order Form. Fees shall be paid in U.S. Dollars only. Billing terms are set forth on the applicable Order Form. Payment for the Services will be due not more than thirty (30) days following the date of the invoice. In the event any invoice is not paid when due, Organization shall have fifteen (15) days after PowerSchool provides notice to Organization of such late payment to make such payment in full. If such payment in full is not received by PowerSchool on or before that date, then PowerSchool reserves the absolute right either to delay initiation of or suspend a Service until payment is received in full. Delinquent invoices are subject to an interest of one and one-half percent (1.5%) per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses for collections incurred by PowerSchool. Organization will continue to be charged the applicable fees during any period of suspension. Fees are exclusive of all taxes, levies or duties imposed by taxing authorities, and Organization shall be responsible for payment of all such taxes, levies or duties.

3. Order of Precedence

In the event of any conflict or inconsistency between the terms of this Agreement and any Order Form, the terms of this Agreement shall control unless the relevant Order Form expressly provides otherwise. No term or provision set forth or cross-referenced in any purchase order or other payment documentation will be construed to amend, add to or supersede any provision of this Agreement or any Order Form.

4. Services

The services and products that Organization license or purchases directly from PowerSchool or PowerSchool's Authorized Reseller pursuant to this Agreement (collectively, the **"Services"**) shall be set forth on a fully executed Order Form. Services may also include, without limitation: (i) any of the following that may be delivered directly by PowerSchool or PowerSchool's Authorized Reseller to Organization in connection with the Services: training manuals, training materials, best



practice documents, implementation and process documents, product manuals, product presentations, product websites, demo sites, product videos, screen shots and microsites/landing pages, and (ii) any upgrades, modifications, improvements, enhancements, extensions and other changes to the Services developed by PowerSchool (collectively “**Enhancements**”) which are generally made available to other organizations licensing the product, provided that such Enhancements shall not include new modules, components or major extensions of functionality for which PowerSchool charges a separate fee to existing Organizations for the Services for such modules, components or extensions. With respect to any package or bundle of PowerSchool’s services or products sold or subscribed to by Organization, Organization shall not be entitled to any refund, clawback, substitute, credit, rebate or replacement for any component or portion of such package or bundle which Organization chooses not to use, implement or exploit. Organization acknowledges that Services may be delayed if Organization fails to submit materials as outlined on the Order Form. In such case, PowerSchool is not obligated to extend the end date of this Agreement or applicable Order Form. Lack of Organization response or an untimely response will be deemed Organization approval. Unless expressly set forth in a writing signed in advance by PowerSchool, PowerSchool does not endorse, sponsor, advocate or have an association with any third party.

5. Permitted Use

(a) Organization’s Use of Services: Organization is authorized to use the Services solely for the internal purposes of Organization and only within the school or department of Organization specified in each applicable Order Form. Only Organization’s authorized users may use and access the Services by and on behalf of Organization. Organization shall not otherwise use, share, copy, access or allow access to the Services. Organization’s subscription is non-exclusive, terminating, revocable, non-transferable and non-assignable for the applicable Order Form, subject to full payment by Organization. Organization shall neither directly nor indirectly (i) sell, assign, lease, license, disclose, grant access to or otherwise transfer the Services or any copy to any other party; (ii) copy the Services, modify the Services or create derivative works; or (iii) attempt to adapt, decipher, reverse translate, decompile, disassemble or otherwise reverse engineer, reconstruct or discover any source code or underlying ideas, algorithms, processes know-how or other related technology of the Services, unless permitted by law, in which case Organization shall give written notice to PowerSchool as far in advance as practicable and to meet Organization’s legally recognized needs. All rights not expressly granted to Organization in this Agreement are reserved by PowerSchool and its licensors.

(b) Use of Organization’s Name: During the Term, Organization agrees to allow PowerSchool to use Organization’s name and logo solely for the purpose of indicating Organization is a customer of PowerSchool without indicating any endorsement of the Services provided. Organization may not use PowerSchool’s name and/or logo in any manner or for any purpose without PowerSchool’s prior written approval.

6. Term



The term of this Agreement (the “Term”) shall commence on the Effective Date and shall continue up to and until the expiration or termination of the last of all Order Forms, unless earlier terminated by a Party in accordance with the terms of this Agreement.

7. Termination

Except as expressly provided in this Section 7 (Termination), in no event shall either Party be permitted to terminate unilaterally this Agreement or any Order Form prior to its expiration.

(a) Termination for Breach: In the event that either Party materially breaches any obligation, representation or warranty under this Agreement, the non-breaching Party may terminate this Agreement in its entirety or, at the non-breaching Party’s option, the non-breaching Party may unilaterally terminate the relevant Order Form in connection with which such breach has occurred, provided that in either case such breach has not been cured within thirty (30) days after the breaching Party’s receipt of a written notice of such breach from the non-breaching Party.

(b) Termination for Insolvency: In the event that either Party (i) ceases to function as a going concern or to conduct operations in the normal course of business or (ii) has a petition filed by or against it under any state or federal bankruptcy or insolvency laws which petition has not been dismissed or set aside within sixty (60) days of filing, the other Party may terminate this Agreement and any Order Forms upon written notice to the insolvent Party of intent to terminate

(c) Duties Upon Termination: Upon termination or expiration of this Agreement, all Order Forms shall automatically and immediately terminate, and Organization shall cease all use of the Services set forth in the Order Forms and shall: (i) cease accessing such Services and logging into such Services; (ii) remove any URLs for the Services or links to the Services from Organization’s websites or other materials produced by or for Organization; and (iii) return or, at PowerSchool’s option, destroy any documents or other products provided by PowerSchool or PowerSchool’s Authorized Reseller (and all copies, including electronic copies) relating to such Services including, without limitation, all training materials, data sheets, working papers and screen shots of the Services. PowerSchool shall have the right at any time following termination or expiration of this Agreement or any Order Form to utilize any chosen feature—automated or otherwise—for preventing further use of the Services. Organization acknowledges that PowerSchool utilizes features which automatically cease the operability of certain Services at the termination or expiration of an Agreement or Order Form. Termination of this Agreement or any Order Form shall be without prejudice to the obligations of PowerSchool and Organization existing at the time of termination, including, but not limited to, Organization’s obligation for payment in full of fees and other monies then due to PowerSchool, nor shall it prejudice those obligations and limitations which by their nature and meaning survive termination. If any Order Form is terminated by Organization due to a breach by PowerSchool pursuant to Section 7(a) above (Termination for Breach), PowerSchool shall provide Organization with a pro-rata credit of any fees pre-paid for unused remainder of the applicable Order Form Term. This pro-rata credit shall be less any applicable costs of implementation and support incurred by PowerSchool in connection with providing such Services. In the case of termination for any other reason (other than as set forth in Section 10 (Indemnification by PowerSchool)), there shall be no credits or



refunds for Services provided and all future payments for Services shall remain due and payable as agreed by PowerSchool and Organization.

8. Warranties

Organization represents and warrants that any data, information, applications or other materials that Organization provides to PowerSchool are owned by the Organization and/or licensed for use by Organization and by PowerSchool for all uses contemplated by this Agreement. PowerSchool represents and warrants that it will perform the Services in a timely and professional manner, in conformance with generally accepted industry standards. For any claimed breach of a warranty above, Organization and PowerSchool agree to first negotiate a resolution in good faith; and, if necessary, refer the matter to senior representatives of each Party for timely resolution. THE ABOVE ARE THE ONLY REPRESENTATIONS AND WARRANTIES CONCERNING THE SERVICES, AND POWERSCHOOL AND ITS AFFILIATES, AUTHORIZED RESELLERS, THIRD-PARTY LICENSORS, SUPPLIERS AND VENDORS (COLLECTIVELY, "**POWERSCHOOL MEMBERS**") EXPRESSLY DISCLAIM ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF ACCURACY, TIMELINESS, COMPLETENESS, RESULTS AND IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, EVEN IF POWERSCHOOL OR ITS POWERSCHOOL MEMBERS HAVE BEEN INFORMED OF SUCH PURPOSE, OR ANY REPRESENTATIONS AND WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. THE SERVICES MAY INVOLVE DATA TRANSMISSION OVER THE INTERNET AND, AS SUCH, POWERSCHOOL DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. SIMILARLY, AS THE DATA BEING MANAGED BY POWERSCHOOL ORIGINATES FROM ORGANIZATION'S USERS, NEITHER POWERSCHOOL NOR ANY OF ITS POWERSCHOOL MEMBERS MAKES ANY WARRANTY AS TO THE ACCURACY, COMPLETENESS OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICES. NO INDIVIDUAL, AGENT, OR AUTHORIZED RESELLER OF POWERSCHOOL IS AUTHORIZED TO ALTER OR EXCEED THE REPRESENTATION AND WARRANTY OBLIGATIONS OF POWERSCHOOL AS SET FORTH HEREIN.

9. LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES SHALL EITHER POWERSCHOOL OR ANY OF ITS POWERSCHOOL MEMBERS BE LIABLE TO ORGANIZATION OR ORGANIZATION BE LIABLE TO POWERSCHOOL, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND (EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST FUNDING, LOST SAVINGS, LOST GOODWILL, LOST DATA, COST OF SUBSTITUTE SOFTWARE, AND THE CLAIMS OF ANY THIRD PARTY, OR FOR ANY OTHER REASON WHATSOEVER. EXCEPT FOR ANY CLAIMS GIVING RISE TO ITS INDEMNIFICATION OBLIGATIONS HEREIN, THE MAXIMUM AGGREGATE LIABILITY OF POWERSCHOOL AND POWERSCHOOL MEMBERS, AND ORGANIZATION'S SOLE AND EXCLUSIVE REMEDY FOR DAMAGES FOR ANY CLAIM, REGARDLESS OF THE LEGAL THEORY, OR THE DELIVERY OR NON-DELIVERY OF THE SERVICES, SHALL NOT BE GREATER THAN THE FEES ACTUALLY PAID BY ORGANIZATION TO POWERSCHOOL UNDER THIS AGREEMENT IN CONNECTION WITH THE SERVICES AT ISSUE DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE UPON WHICH SUCH CLAIM ACCRUED. THE MAXIMUM AGGREGATE LIABILITY OF POWERSCHOOL ARISING OUT OF ITS



INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT SHALL NOT EXCEED TWO (2) TIMES THE AMOUNT OF FEES PAID BY ORGANIZATION TO POWERSCHOOL UNDER THIS AGREEMENT IN THE IMMEDIATELY PRECEDING TWELVE-(12)-MONTH PERIOD.

10. Indemnification by PowerSchool

PowerSchool hereby agrees to defend, indemnify, and hold harmless Organization from and against any and all losses, liabilities, costs, expenses and damages arising out of or relating to any claim brought by a third party alleging infringement of such third party's intellectual property rights as to the Intersect product, provided that PowerSchool will have received from Organization (a) prompt written notice of such claim; (b) the exclusive right to control and direct the investigation, defense, and settlement of such claim; and (c) all reasonable and necessary cooperation of Organization. If Organization's use of the Product(s) is enjoined or, in PowerSchool's reasonable opinion, is likely to be enjoined, PowerSchool may (i) substitute for the Service(s), a substantially and functionally similar product(s) and documentation; (ii) procure for Organization the right to continue using the Service(s); or if (i) or (ii) are not possible after reasonable commercial efforts from PowerSchool, then PowerSchool may terminate this Agreement and credit an amount equal to the pro-rata amount of prepaid by Organization under this Agreement for the applicable annual subscription term.. The foregoing obligation of PowerSchool does not apply to the extent the claim arises from (I) modifications to the Service(s) by anyone other than PowerSchool; (II) combinations of the Service(s) with products or processes not provided or authorized by PowerSchool; or (III) any unauthorized use, access, or distribution of the Service(s).

11. Indemnification by Organization

Intentionally Omitted

12. Intellectual Property

Organization acknowledges that, as between Organization and PowerSchool, all right, title and interest in the Services including any and all copyrights, patent rights, trade secrets, trademarks, service marks, trade names and any other statutory or common law intellectual property or other proprietary rights ("**Intellectual Property Rights**") related to the Services are owned by PowerSchool or its licensors. Organization shall obtain no intellectual property ownership regarding the Services and hereby assigns to PowerSchool any enhancement of the Services generated in the course of this Agreement. Organization will not, at any time, do or omit to do anything which is likely to prejudice PowerSchool's or any of PowerSchool's subsidiaries', third-party licensors', suppliers' or vendors' ownership of any intellectual property rights in the Services or any component. Organization will not remove, suppress or modify in any way any proprietary marking, including any trademark or copyright notice, on or in the Services or any component.

13. Confidentiality

Confidential Information shall include information that is confidential, nonpublic, competitively sensitive, private or proprietary in nature, labeled "Confidential" or "Proprietary" (or similar wording), or identified orally as such, or that the Party receiving the Confidential Information (the



“Receiving Party”) should otherwise reasonably construe as confidential under the circumstances. Without limitation, the Services, information about business operations, vendors, Organization or student personal information shall be deemed Confidential Information. Organization agrees to keep PowerSchool Services confidential and to prevent unauthorized disclosure or use of PowerSchool Services in Organization’s possession. Organization will notify PowerSchool immediately in writing of any unauthorized use or distribution of PowerSchool Services of which Organization becomes aware and will take all steps necessary to ensure that such unauthorized use or distribution is terminated.

(a) Nondisclosure and Nonuse: Each Receiving Party agrees (i) not to use or disclose to any third party the Confidential Information disclosed to it by the other Party (“Disclosing Party”) for any purpose other than as contemplated by this Agreement and (ii) to protect the Disclosing Party’s Confidential Information with at least the same degree of care it uses to protect its own Confidential Information, but at a minimum to use commercially reasonable efforts. Except as otherwise provided by law and subject to Section 13(d) (Public Records Act), neither Party shall disclose the terms of the Order Form to any third-party; provided, however, that either Party may disclose the terms of the Order Form to its professional advisers or to any potential investor or acquirer of a substantial part of such Party’s business, provided that such third party is bound by a written agreement or legal duty on terms at least as strict as those set forth in this Section 13 to keep such terms confidential.

(b) Exceptions to Confidentiality: The confidentiality obligations described above shall not apply to Confidential Information to the extent that the Receiving Party receiving such Confidential Information can prove through written evidence that the Confidential Information (i) was lawfully received by the Receiving Party from a third party free of any obligation to keep it confidential; (ii) is or becomes publicly available, other than by breach of Receiving Party of its obligations to the Disclosing Party; (iii) is independently developed without any reference to the Confidential Information, as evidenced by contemporaneous written records of the Receiving Party; or (iv) is required to be disclosed by law, regulation or court order provided that with respect to any of the foregoing exceptions, to the extent permitted by applicable law or court process, the Receiving Party will give the Disclosing Party notice as soon as practicable prior to disclosure of Confidential Information that is claimed to be subject to an exception.

(c) Notice: The Receiving Party will notify the Disclosing Party as soon as practicable in the event the Receiving Party learns of any unauthorized possession, use or disclosure of the Confidential Information and will provide such cooperation as the Disclosing Party may reasonably request, at the Disclosing Party’s expense, in any litigation against any third party to protect the Disclosing Party’s rights with respect to the Confidential Information.

(d) Public Record Act. Notwithstanding anything herein to the contrary in this Section 13 (Confidentiality), PowerSchool acknowledges that, to the extent Organization is subject to public record acts or freedom of information acts, (i) PowerSchool will reasonably work with Organization to provide appropriate information in response to such requests, to the extent such requested information is not PowerSchool’s proprietary information or otherwise exempted from disclosure; and (ii) Organization shall provide PowerSchool a reasonable opportunity to object to any such request as permitted under applicable law.



14. Compliance with Law

Each Party shall adhere to all applicable laws and regulations relating to the use of data including, without limitation, all restrictions relating to the privacy of any personally identifiable information or other information. Organization agrees that it is solely responsible for any permissions needed to share personally identifiable information with PowerSchool.

(a) Local Laws and Export Control: The Services provide service and use software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the U.S. Department of Treasury Office of Foreign Assets Control, and other U.S. agencies. Organization acknowledges and agrees that the Services shall not be used, and none of the underlying information, software or technology may be transferred or otherwise exported or re-exported to Afghanistan, Cuba, Iraq, Iran, Libya, Myanmar, Sudan or any other countries to which the United States maintains an embargo (collectively, "**Embargoed Countries**"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "**Designated Nationals**"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Services, Organization represents and warrants that it is not located in, under the control of, or a national or resident of an Embargoed Country or a Designated National. Organization agrees to comply strictly with all U.S. export laws and assumes sole responsibility for obtaining licenses to export or re-export as may be required. Services may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000. PowerSchool makes no representation that the Services are appropriate or available for use in other locations. If Organization uses Services from outside the United States, Organization is solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of the content contrary to United States law is prohibited.

(b) Family Educational Rights and Privacy Act: In the event Organization is subject to the provisions of the Family Educational Rights and Privacy Act ("**FERPA**") and provides Student Data to PowerSchool, the Parties agree as follows:

"**Student Data**" is, without limitation, any student personally identifiable information as defined by the FERPA and other applicable regulations that has been collected for or provided in connection with the Services. Organization appoints PowerSchool as a "school official" as that term is used in FERPA, 34 CFR §99.31(a)(1)(i)(B) and as interpreted by the Family Policy Compliance Office and determines that they have a "legitimate educational interest," for the purpose of carrying out its responsibilities under this Agreement. PowerSchool acknowledges that it shall be bound by all relevant provisions of FERPA, including to operate under the direct control of Organization with respect to Organization's Student Data and agrees that Student Data obtained from Organization by PowerSchool in the performance of this Agreement will not be disclosed to third parties except to fulfill PowerSchool's responsibilities under this Agreement.



15. Amendment. This Agreement may only be modified by a written amendment signed by authorized representatives of both PowerSchool and Organization.

16. Entire Agreement. This Agreement, all Order Forms and any amendments thereto, contain the entire agreement between PowerSchool and Organization and Organization's users with respect to the Services and supersede any prior oral or written understandings of the Parties.

17. Notices. All notices, requests and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered personally, or three days after being mailed by registered or certified mail, postage prepaid, addressed to the attention of the individual(s) at the address(es) set forth on the signature page of this Agreement. Such addresses may be changed by a written notice in accordance with this Section 17.

18. Force Majeure. Except for Organization's payment of outstanding fees due under this Agreement, neither PowerSchool nor the Organization will be deemed in breach of this Agreement for failure in performance resulting from acts beyond its reasonable control, including but not limited to, breach by subcontractors or suppliers, failure of Organization to provide PowerSchool promptly and accurate information and materials, as applicable, acts of God or of a public enemy, acts of terrorism, United States or foreign governmental acts or restrictions in either a sovereign or contractual capacity, labor strikes, fire, power outages, road icing or inclement conditions, flood, epidemic or pandemic as designated by the World Health Organization, earthquakes, tsunamis, drought, disease, quarantine, or other extraordinary circumstances beyond either Party's control.

19. Governing Law. **THIS AGREEMENT WILL BE GOVERNED BY THE LAWS DEPENDING UPON THE ACCOUNT'S COUNTRY LOCATION AS LISTED IN THE TABLE BELOW. THE VENUE LISTED IN THE TABLE WILL BE THE EXCLUSIVE COURTS OF JURISDICTION AND VENUE FOR ANY LITIGATION, SPECIAL PROCEEDING OR OTHER PROCEEDING AS BETWEEN THE PARTIES THAT MAY BE BROUGHT, OR ARISE OUT OF, IN CONNECTION WITH, OR BY REASON OF THIS AGREEMENT. EACH PARTY HEREBY CONSENTS TO THE JURISDICTION OF SUCH COURTS.** The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. This Agreement will not be subject to the Uniform Computer Information Transactions Act.

Account Country	Venue	Governing Law
United States	New Jersey	New Jersey

20. No Implied Waiver. No failure by either Party to insist upon strict performance of any term or obligation set forth in this Agreement or to exercise any right or remedy under this Agreement shall constitute a waiver of such term, obligation, right or remedy.

21. Attorneys' Fees. Intentionally Omitted.

22. Independent Contractors. PowerSchool and Organization are independent contractors, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative or employment relationship between the Parties. Neither Party is an agent or



representative of the other or is authorized to make any warranties or representations or assume or create any other obligations on behalf of the other.

23. Severability. Should any provision of this Agreement be held invalid or unenforceable, then each such provision shall be automatically reformed so as to be enforceable, or if such reformation is not possible, each such provision shall be automatically terminated.

24. Assignment. Neither PowerSchool nor Organization shall make any assignment of this Agreement or any interest herein, by operation of law or otherwise, without the prior written consent of the other; provided, however, that PowerSchool may assign its rights and obligations under this Agreement without the consent of the Organization to PowerSchool in the event that PowerSchool hereafter effects a corporate reorganization, consolidates with, or merges into, any person or transfers all or substantially all of its properties or assets to any entity. This Agreement will inure to the benefit of and be binding upon the Parties, their respective successors, executors, administrators, heirs and permitted assignees.

25. No Reliance. Each Party acknowledges that it has not made any promise or representation that is not expressed in this Agreement; and that it has not been induced into entering this Agreement by any representation about the nature and extent of its existing or potential claims or damages made by the other Party or by the other Party's attorney, representative, or agent. The Parties are not relying upon – and disclaim reliance upon – any statement or representation that is not in this Agreement, but are instead relying solely upon their own judgment in consultation with their respective attorneys.

26. Time to Bring Action. Intentionally Omitted



By affixing their signatures below and intending to be bound, the duly authorized representatives of PowerSchool and Organization indicate their agreement to the terms and conditions of this Agreement as of the Effective Date forth above.

POWERSCHOOL

DocuSigned by:
By: Philip Radmilovic
Signature 170B9E005E66422...

Philip Radmilovic
Name

VP Treasurer
Title

1/26/2022
Date

Address: 150 Parkshore Dr.
Folsom, CA 95630 USA

ORGANIZATION

By: Donna McMonagle
Signature

Donna McMonagle
Name

U.P. P&E Finance & Treasurer
Title

2/15/22
Date

Address: 1 Drexel Ave
Montclair, NJ 07043

**MONTCLAIR STATE UNIVERSITY
STANDARD CONTRACT TERMS AND CONDITIONS**

I. The contractor certifies that it understands and agrees that the following terms and conditions (collectively the "University's Standard Terms and Conditions") are incorporated into Intersect Service Agreement dated November 8, 2021 by and between the University and the contractor.

II. In the event the terms and conditions within the contractor's proposal conflict with the University's Standard Terms and Conditions, the University's Standard Terms and Conditions will govern.

1. LAWS REQUIRING MANDATORY COMPLIANCE BY ALL UNIVERSITY CONTRACTORS

1.1 BUSINESS REGISTRATION (Contracts in excess of \$5,160)

- a. With the exception of not-for-profit and public entities, all New Jersey and out of State business entities must obtain a Business Registration Certificate (BRC) from the Department of the Treasury, Division of Revenue before conducting business in the State of New Jersey and prior to the University's execution of a contract with the contractor pursuant to N.J.S.A. 52:32-44(c). The contractor must provide proof of a valid and current business registration with the Division of Revenue to the University's Procurement Services Department before starting work under the contract. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG. can be filed online at www.state.nj.us/njbgs/services/html. Contractor's failure to comply may result in the imposition of penalties by the University in accordance with all applicable laws.
- b. All sub-contractors of the contractor must provide the contractor with a copy of a current and valid Business Registration Certificate. The contractor must forward the Business Registration Certificates of all subcontractors to the University's Procurement Services Department prior to any subcontractor starting work under the contract.

1.2 ANTI-DISCRIMINATION – With the exception of contractors who are public entities, the contractor agrees not to discriminate in employment and agrees to abide by all anti-discrimination laws including those contained within Executive Order 61, N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A.10:5-1 et seq. and N.J.S.A.10:5-31 through 10:5-38, and all rules and regulations issued there under. Contractor agrees to the mandatory EEO/AA language for goods and services and professional services contracts as applicable, as more fully set forth in N.J.A.C. 17:27-3.5 and 3.7 which are incorporated by reference as if fully restated herein. These terms can be found on the University's website at: <https://www.montclair.edu/procurement/wp-content/uploads/sites/159/2020/09/Form-AA302-Affirmative-Action-Language-8-31-20-webedit-kc.pdf>

1.3 AMERICANS WITH DISABILITIES ACT - The contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101 et seq. 1.4. The contractor acknowledges that all websites must follow Federal 508 accessibility

requirements and WCAG 2.0 AA standards and be tested for accessibility. The contractor goes to significant lengths to create products that are accessible to users with special needs. The Intersect product is WCAG 2.0 AA conformant to the extent detailed in a Voluntary Product Accessibility Template (VPAT). The University acknowledges certain criteria elements in the accessibility standard may not be required, meaning not applicable to the operation of the Naviance product itself.

1.4 OWNERSHIP DISCLOSURE – In the event contractor is a corporation , partnership, or limited liability company, as a condition precedent to the contract, contractor shall comply with the provisions of N.J.S.A. 52:25-24.2. Contractor shall provide the University statement setting forth the names and addresses of all stockholders in the corporation who own 10 percent or more of its stock, of any class, or of all individual partners in the partnership who own a 10 percent or greater interest therein, or of all members in the limited liability company who own a 10 percent or greater interest therein, as the case may be. If one or more such stockholder or partner or member is itself a corporation or partnership or limited liability company, the stockholders holding 10 percent or more of that corporation's stock, or the individual partners owning 10 percent or greater interest in that partnership, or the members owning 10 percent or greater interest in that limited liability company, as the case may be, shall also be listed. The disclosure shall be continued until names and addresses of every noncorporate stockholder, and individual partner, and member, exceeding the 10 percent ownership criteria established in this act, has been listed. Contractor shall use the University’s Ownership Disclosure Form.

If the owners of contractor are a direct or indirect parent entity which is publicly traded, contractor may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. In the event contractor’s disclosure reveals that the ownership interest prevent the University from entering into a contract with the contractor, the contract shall be null and void, the University shall have no payment obligation, and the contractor shall return any funds received from the University.

1.5 COMPLIANCE - LAWS - The contractor must comply with all local, state and federal laws, rules and regulations applicable to the contract and to the goods delivered and/or services performed under the contract.

1.6 COMPLIANCE WITH N.J.S.A. 19:44A-20.13 et seq. (“Pay to Play” Act). If the total amount of the contract is or will be in excess of \$17,500 but excluding not-for-profit and public entities, as a condition precedent to the contract, contractor shall complete and return a Political Contribution Disclosure Form to Procurement Services. Failure to comply with this political contribution disclosure requirement may result in the cancellation of the contract award and/or imposition of

financial penalties by the New Jersey Election Law Enforcement Commission (“ELEC”). The Procurement Services Department will forward the completed Form to the State Treasurer or his designee for review pursuant to the Act. In the event the State Treasurer determines that the Act precludes a contract award to the contractor, the contract shall be null and void ab initio.

If the total amount of the contract is or will exceed \$50,000, the contractor is under a continuing duty to disclose all contributions that may be made during the term of the contract. In such event, the contractor must immediately complete the Continuing Disclosure of Political Contributions Form and submit the completed Form to the University’s Procurement Services Department. All forms and instructions are available from the University’s Procurement Services Department. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at <http://www.elec.state.nj.us/>.

1.7. SET-OFF FOR STATE TAXES AND CHILD SUPPORT- Pursuant to N.J.S.A. 54:49-19, if the contractor is entitled to payment under the contract at the same time as it is indebted for any State tax (or is otherwise indebted to the State) or child support, the University, in coordination with the State Treasurer, may set off that payment by the amount of the indebtedness.

1.8. FEDERALLY FUNDED CONTRACTS – If the contractor will be paid by the University using federal funds, contractor and its subcontractor shall abide by the requirements of the Civil Rights Act of 1964, 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status. To the extent applicable, Contractor shall also comply with the Rider for Purchases Funded, in Whole or Part, by Federal Funds which is incorporated by reference as if fully restated herein and can be found on the University’s Procurement webpage at: <https://www.montclair.edu/procurement/forms/>. To the extent applicable to the contract, contractor shall also comply with the University’s Policy and Procedures on Financial Conflict of Interest which can be found at: https://www.montclair.edu/sponsored-programs/wp-content/uploads/sites/194/2019/02/2017-Revised-FCOI_FINAL_5_15_2017_web.pdf

1.9. IRAN INVESTMENT DISCLOSURE - As a condition precedent to the contract, the contractor (including those that are public entities), shall complete and submit to Procurement Services a Disclosure of Investment Activities in Iran Certification. Contractors that submit a false certification, or fail to cease investment activities in Iran, may require termination of the contract and subject the contractor to civil and criminal penalties by the State of New Jersey pursuant to N.J.S.A. 52:32-59.

1.10. SOURCE DISCLOSURE – Pursuant to N.J.S.A. 52:34-13.2 and when applicable to the total value of the contract, contractor represents and warrants that the goods and/or services shall be created or performed entirely within the United States. Exceptions may be granted by the Vice President for Finance and Treasurer if the service cannot be provided or the goods manufactured by the contractor or its subcontractor within the United States.

2. INSURANCE

The contractor shall secure and maintain in force for the term of the contract liability insurance as provided herein. All insurance coverage shall be issued by an insurance company authorized to do business in the State of New Jersey and which maintains an A.M. Best rating of A- (VII) or better.

The contractor shall provide the University's Procurement Services Department current certificates of insurance for all coverage and renewals thereof.

The insurance to be provided by the contractor for the term of the contract and any agreed upon extension thereof shall be as follows.

Commercial General Liability The minimum limits of liability shall not be less than a combined single limit of one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate, two million dollars (\$2,000,000) product/completed operations aggregate.

Worker's Compensation Insurance applicable to the laws of the State of New Jersey or other State or Federal jurisdiction applicable to contractor to protect the employees of the contractor and any subcontractor who will be engaged in the performance of this contract.

3. MAINTENANCE OF RECORDS

The contractor shall maintain all documentation related to products, transactions and/or services under this contract for a period of five (5) years from the date of final payment. Such records shall be made available to the University and/or the NJ State Comptroller upon request.

4. TAX CHARGES

The University is exempt from State sales or use taxes and Federal excise taxes. Prices charged must not include such taxes.

5. STANDARDS PROHIBITING CONFLICTS OF INTEREST

The following prohibitions on contractor activities shall apply to all contracts or purchase agreements made with the University, pursuant to Executive Order No. 189 (1988):

- a. The contractor shall not pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any University officer or employee or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such University officer or employee, or partnership, firm or

corporation with which they are employed or associated, or in which such University officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any University officer or employee from the contractor shall be reported in writing forthwith by the contractor to the Attorney General and the Executive Commission on Ethical Standards.

c. The contractor may not, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such contractor to, any University officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to the University, or with any person, firm or entity with which he or she is employed or associated or in which he or she has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the University officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

d. The contractor shall not influence, or attempt to influence or cause to be influenced, any University officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.

e. The contractor shall not cause or influence, or attempt to cause or influence, any University officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the vendor or any other person.

f. The provisions cited above in paragraph 12a. through 12e. shall not be construed to prohibit a University officer or employee from receiving gifts from or entering into contracts with the contractor under the same terms and conditions that are offered or made available by contractor to members of the general public.

6. NOTICES: All notices required under this contract shall be in writing and shall be validly and sufficiently served by the University upon the contractor if addressed and mailed by certified mail to the address set forth in the contractor's proposal. Notices from the contractor to the University shall be addressed and mailed by certified mail to the attention of the Vice President for Finance and Treasurer, Montclair State University, 1 Normal Avenue, Montclair, NJ 07043, with a copy to attention of University Counsel at the same address.

7. CLAIMS: Claims asserted shall be subject to the New Jersey Tort Claims Act, N.J.S.A 59:1-1, et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

8. COMMISSIONS: Pursuant to N.J.S.A. 18A:64N-26, Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees

or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. In the event of any breach or violation of this warranty, the University shall have the right to terminate the contract without liability for payment to the contractor, or in its discretion, the University may deduct from the contract price \the full amount of such commission, percentage, brokerage or contingent fee.

9. Intentionally Omitted

10. REPORTS REQUIRED FOR SERVICE CONTRACTS: Pursuant to N.J.S.A. 34:11-56.14 and to the extent applicable, a Contractor who enters into a contract with the University for the purchase of services, shall provide a report to the Commissioner of Labor and Workforce Development, regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. To the extent applicable, the Contractor shall provide reports for every establishment of the Contractor having employees. To the extent applicable, the Contractor shall report such information using a form adopted by the Commissioner which can currently be found on the NJ Department of Labor website here:

[https://www.nj.gov/labor/forms_pdfs/equalpayact/mw563\(6-18\)annualequalpay.pdf](https://www.nj.gov/labor/forms_pdfs/equalpayact/mw563(6-18)annualequalpay.pdf). Instructions for filling out the form can also be found here: https://www.nj.gov/labor/forms_pdfs/equalpayact/mw-564_instructions.pdf. Reports when required may be made via a printable PDF available on the Department of Labor web site, or uploaded in a spreadsheet. Completed reports should be emailed to: equalpayact@dol.nj.gov or such other address identified by the Commissioner. Reporting is not required by Contractors who have entered into a contract with the University to purchase only goods or products.

11. SOFTWARE-AS-A SERVICE TERMS: In addition to the foregoing, this section shall apply to a contractor who provides the University web-based services and any functionality included therein (“Services”) and/or holds transactional data and other content generated by the University’s use of the services (“MSU Data”).

11.1 SECURITY -

The contractor will make available to University, upon reasonable request following the date hereof and at least once every calendar year thereafter, the contractor’s ISO/IEC 27001 Statement of Applicability (the “SOA”), ISO 27001 certificate issued by the relevant certification body, or equivalent documents relative to an accepted alternative security program and relative to the applicable product or services.

The contractor shall adopt and maintain commercially reasonable administrative, technical and physical safeguards, measures and controls to manage privacy and security risks and protect PII in a manner that materially complies with applicable federal, state and local laws and regulations. The contractor will, upon University’s reasonable request make the relevant security documentation available to University via the Whistic portal (<https://powerschool.whistic.com>).

DocuSigned by:

Philip Radmilovic

~~AUTHORIZED~~ SIGNATURE

Philip Radmilovic

NAME

VP Treasurer

TITLE

PowerSchool Group LLC

COMPANY NAME

1/26/2022

DATE