

BAND for Schools Agreement

This BAND for Schools Agreement (the "**Agreement**") is entered into by and between NAVER BAND Inc. with its office at 5750 Wilshire Blvd., Suite 640, Los Angeles, CA., for and on behalf of its parent company and the service provider of BAND application, NAVER Corp. ("**NAVER**") and the non-profit entity agreeing to these terms ("**Educational Institution**"). This Agreement is effective as of the date the Agreement is countersigned (the "**Effective Date**"). If you are accepting on behalf of Educational Institution, you represent and warrant that: (i) you have full legal authority to bind your employer, or the applicable entity, to these terms and conditions; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of the party that you represent, to this Agreement. This Agreement governs Educational Institution's access to and use of the Services and will be effective as of the Effective Date.

1. Definitions.

- 1.1. "**Acceptable Activities Policy**" means the acceptable use policy for the Services available at <https://band.us/policy/operating> or such other URL as may be provided by NAVER.
- 1.2. "**Administrator(s)**" mean the Educational Institution's-designated personnel who administers the School Band to School Band Members on Educational Institution's behalf.
- 1.3. "**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with a party.
- 1.4. "**BAND Users**" means the individuals users of the Services.
- 1.5. "**Bands**" means groups that are formed among BAND Users based on specific interests or affiliations.
- 1.6. "**FERPA**" means the Family Educational Rights and Privacy Act (20 U.S.C. 1232g) and the Family Educational Rights and Privacy Act Regulations (34 CFR Part 99), as amended or otherwise modified from time to time.
- 1.7. "**School Bands**" are Bands formed by the Educational Institution for educational purposes.
- 1.8. "**School Band Data**" means data, including email, provided, generated, transmitted or displayed via the School Band by Educational Institutions or School Band Members.
- 1.9. "**School Band Member**" is a BAND User who is invited by the School Band Administrator to join and participate in a School Band and actually joins such School Band.
- 1.10. "**Services**" means the online services that make our BAND offerings, including the BAND website, the BAND app, our BAND-related offerings like BAND for Kids, BAND PIX and MOOT.

2. Scope.

2.1. Application.

- 2.1.1. This Agreement applies only to School Bands created by the Educational Institution which are used for educational purposes. This Agreement does not apply to Bands that are used by School Administrators for non-educational purposes, nor does it apply to use of the Services by BAND Users, including students, which are outside

of a School Band setting. For the avoidance of doubt, Educational Institutions will not have the right or ability to control information collected by NAVER pertaining to BAND Users outside of the specific and limited context of a School Band.

2.1.2. Individual BAND Users are required to agree to BAND's Terms of Service prior to the use of our Services. This Agreement does not apply to use of the Services by any individual BAND User.

2.2. **Permitted Users.** School Bands are permitted only for use by non-profit Educational Institutions or other non-profit entities. This Addendum shall not apply to Educational Institutions which are for-profit or which do not provide educational services.

2.3. **Advertisements.** NAVER will not use School Band Data or the personal information of any School Band User for advertising purposes, nor will it serve advertisements in any School Band.

2.4. **Privacy Notice.** The BAND Privacy Policy, specifically the BAND for Schools Addendum, governs how NAVER collects and uses information from the Educational Institution or BAND Users.

3. **Modifications.**

3.1. To this Agreement. On occasion we may amend this Agreement, our Services Terms of Service, and other policies to reflect updates to our operations, laws, regulations, or other significant developments. If we amend such documents, we will provide you timely notice of such change in a clear statement which reflects the effective date of the revised terms. Continued use of the Services by the Educational Institution following notice of such amendments shall be deemed acceptance of such amendments by the Educational Institution.

3.2. To the Services. NAVER may make commercially reasonable changes to the Services from time to time. If NAVER makes a material change to the Services, will inform Educational Institution in an appropriate manner.

4. **Educational Institution's Rights and Obligations.**

4.1. Compliance. The Educational Institution will use the Services in accordance with the Terms and all applicable policies, including the Acceptable Activities Policy.

4.2. Administrator Use. The Educational Institution must appoint an Administrator for each School Band it creates. The Administrator may create School Bands and invite others to join the BAND Services in order to participate in a School Band. Educational Institutions are responsible for: (i) authorizing individuals to act as Administrators; (ii) maintaining the confidentiality of the access credentials to the Administrator account; (iii) ensuring that use of the BAND services by the Administrator are in accordance with the agreement between Us and the Educational Institution and with applicable law; (iv) ensuring that the Administrator uses the Services in a manner that is consistent with the Educational Institutions obligations as Educational Institution.

4.3. Administrator Control over School Bands. The Administrator of the School Band has the ability to control the School Band in the following ways:

- 4.3.1. The Administrator will be able to create and manage the School Bands including defining the School Band's name, cover images, and description. Educational Institution will use commercially reasonable efforts to prevent unauthorized use of the Services and to report to NAVER any unauthorized use of which it becomes aware.
 - 4.3.2. The Administrator will be able to invite other BAND Users as members of the School Band. Administrators will be able to authorize or terminate a BAND User's membership in the School Band. The Educational Institution is solely responsible for determining membership in the School Bands.
 - 4.3.3. The Administrator will be able to control the activity taken by members of the School Band including, but not limited to, authorizing members to upload content, post comments, perform live broadcasting, upload photos or schedules, chat with other members (both private and public chatting), and invite other BAND Users to become a member of the School Band.
 - 4.3.4. The Administrator will be able to delete content uploaded or posted, hide messages, or enable/disable public chatting within the School Band.
 - 4.3.5. The Administrator will be able to designate and manage co-leaders in a School Band and provide some administrator functions to those co-leaders.
 - 4.3.6. Educational Institution will not, and will use commercially reasonable efforts to make sure a third party does not: (a) sell, resell, lease, or the functional equivalent, the Services to a third party (unless expressly authorized in this Agreement); (b) attempt to reverse engineer the Services or any component; (c) attempt to create a substitute or similar service through use of, or access to, the Services; (d) use the Services in violation of NAVER's Acceptable Activities Policy; or (e) use the Services to store or transfer any School Band Data that is controlled for export under export control laws. Educational Institution is solely responsible for any applicable compliance with HIPAA.
 - 4.4. Rights and Licenses to School Band Data. The Parties agree that all rights, including all intellectual property rights, in content posted by the Educational Institution shall remain the exclusive property of the Educational Institution, and NAVER has a limited, nonexclusive license solely for the purpose of performing its obligations as outlined in the Agreement. This Agreement does not give NAVER any rights, implied or otherwise, to data, content, or intellectual property, except as expressly stated in this Agreement.
 - 4.5. Children Under 13. The Educational Institution understands that children under the age of 13 are not be permitted to use School Bands which may affect the efficacy of using School Bands by the Educational Institution. Furthermore, Educational Institution understands and acknowledges that BAND Users may use the BAND Services outside of the educational context and that the School's ability to control the use of student personal information is limited to only that information related to the use of a School Band.
- 5. NAVER's Rights and Obligations.**
- 5.1. Role as Data Processor. NAVER's responsibilities to the Educational Institution do not extend beyond the internal management and administration of the BAND Services; NAVER is a data processor on behalf of the Educational Institution.

- 5.2. Right to Terminate BAND Users from Services. If NAVER learns of a BAND User's violation of their agreement with NAVER, NAVER reserves the right to suspend or terminate that BAND User's account and participation in all Services, including School Bands. The Educational Institution is aware that NAVER may enforce all terms and policies applicable to BAND Users regardless of the BAND User's status as a student, administrator, or otherwise.
- 5.3. FERPA. The parties acknowledge that School Band Data may include personally identifiable information from education records that are subject to FERPA ("FERPA Records"). To the extent that School Band Data includes FERPA Records, NAVER will be considered a "School Official" (as that term is used in FERPA and its implementing regulations) and will comply with FERPA.
- 5.4. Use of School Band Data. NAVER will not disclose School Band Data, except to its affiliates, employees, professional advisors, agents, subcontractors, or sub-processors who have a legal obligation to maintain its confidentiality. NAVER will use the School Band Data only to exercise rights and fulfill its obligations under this Agreement, while using reasonable care to protect it. Notwithstanding the foregoing, NAVER may disclose School Band Data pursuant to request made under law, governmental regulation, court order, subpoena, warrant, governmental regulatory or agency request, or other valid legal authority, legal procedure, or similar process, or as otherwise permitted under FERPA.
- 5.5. Aggregated Statistics. Notwithstanding anything to the contrary in this Agreement, NAVER may monitor Educational Institution's use of the Services and collect and compile Aggregated Statistics. As between NAVER and Educational Institution, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by NAVER. Educational Institution acknowledges that NAVER may compile Aggregated Statistics based on School Band Data input into the Services. Educational Institution agrees that NAVER may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not identify Educational Institution or School Band Member.
- 5.6. Security. NAVER will store and process School Band Data in accordance with industry best practices and consistent with the security terms identified in BAND Terms of Service. This includes appropriate administrative, physical, and technical safeguards to secure Data from unauthorized access, disclosure, and use. NAVER will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. NAVER will also have a written incident response plan, to include prompt notification of the Educational Institution in the event of a security or privacy incident, as well as best practices for responding to a breach of School Band Data.
- 5.7. Intellectual Property Rights. Except as expressly set forth herein, this Agreement does not grant either party any rights, implied or otherwise, to the other's content or any of the other's intellectual property. As between the parties, the Educational Institution owns all Intellectual Property Rights in School Band Data, and NAVER owns all Intellectual Property Rights in the Services.
6. **Disclaimer.** The Services, and all content and software associated therewith, or any other features or functionalities associated with the service, are provided "AS IS" and "AS

AVAILABLE" with all faults and without warranty of any kind. NAVER, its Affiliates, related companies, officers, directors, employees, agents, representatives, partners, and licensors (hereinafter the "NAVER Entities") do not guarantee, represent, or warrant that the Educational Institution's use of the Services will be uninterrupted or error-free. To the extent permitted by law, NAVER also DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

7. **Limitation on Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NAVER SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY LOSS OF PROFITS OR REVENUES, WHETHER INCURRED DIRECTLY OR INDIRECTLY, OR ANY LOSS OF DATA, USE, GOODWILL, OR OTHER INTANGIBLE LOSSES, RESULTING FROM (i) EDUCATIONAL INSTITUTION'S ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE THE SERVICE; (ii) ANY CONTENT OBTAINED FROM THE SERVICE; (iii) ANY CONDUCT OR CONTENT OF ANY THIRD PARTY ON THE SERVICE, INCLUDING WITHOUT LIMITATION, ANY DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF OTHER BAND USERS OR THIRD PARTIES; OR (iv) UNAUTHORIZED ACCESS, USE OR ALTERATION OF YOUR TRANSMISSIONS OR CONTENT. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF NAVER ENTITIES EXCEED THE GREATER OF ONE HUNDRED U.S. DOLLARS (U.S. \$100.00) OR THE AMOUNT PAID BY THE EDUCATIONAL INSTITUTION TO NAVER, IF ANY, IN THE PAST SIX MONTHS FOR THE SERVICES GIVING RISE TO THE CLAIM. THE LIMITATIONS OF THIS SUBSECTION SHALL APPLY TO ANY THEORY OF LIABILITY, WHETHER BASED ON WARRANTY, CONTRACT, STATUTE, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WHETHER OR NOT NAVER COMPANIES HAVE BEEN INFORMED OF THE POSSIBILITY OF ANY SUCH DAMAGE, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.
8. **Disputes.** The laws of the State of California, excluding its choice of law provisions, will govern this Agreement and any dispute that arise out of or relate to this Agreement. The parties agree that all disputes that arise out of or relate to this Agreement will be resolved in a competent court in the U.S. District Court for the Central District of California. The parties consent to personal jurisdiction and waive any objection as to inconvenient forum.
9. **Termination.** Either party may terminate this Agreement for any reason (or no reason) with thirty days prior written notice to the other party. If this Agreement terminates, then: (i) the rights granted by one party to the other will cease immediately; (ii) Educational Institution will not have access to, or the ability to export, School Band Data after the effective date of termination or expiry of the Agreement; (iii) Educational Institution will be responsible for determining whether (and the extent to which) to use the functionality of the Services to delete School Band prior to such date; (iv) NAVER will delete School Band Data in accordance with the terms of the Agreement.
10. **Other Terms.**
 - 10.1. Assignment. Neither party may assign or transfer any part of this Agreement without the written consent of the other party, except to an Affiliate, but only if: (a) the

assignee agrees in writing to be bound by the terms of this Agreement; and (b) the assigning party remains liable for obligations incurred under the Agreement prior to the assignment. Any other attempt to transfer or assign is void.

- 10.2. Change of Control. Upon a change of control (for example, through a stock purchase or sale, merger, or other form of corporate transaction): (a) the party experiencing the change of control will provide written notice to the other party within thirty days after the change of control; and (b) the other party may immediately terminate this Agreement any time between the change of control and thirty days after it receives the written notice in subsection (a).
- 10.3. Waiver. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof, and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- 10.4. Force Majeure. In no event shall NAVER be liable to Educational Institution, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by any circumstances beyond NAVER's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.
- 10.5. Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- 10.6. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.
- 10.7. No Agency. The parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture.
- 10.8. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.
- 10.9. Equitable Relief. Nothing in this Agreement will limit either party's ability to seek equitable relief.
- 10.10. Governing Law.

10.10.1. For City, County and State Government Entities. If Customer is a city, county, or state government entity, then the parties agree to remain silent regarding governing law and venue.

10.10.2. For All other Entities. If Customer is any entity not set forth in Section Subsection 10.10.1 then the following applies: This Agreement is governed by California law, excluding that state's choice of law rules. FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE U.S. DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA OR THE STATE COURTS IN LOS ANGELES COUNTY, CALIFORNIA.

10.11. The Sections of this Agreement which by their nature ought to survive expiration or termination of this Agreement shall survive it.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

NAVER BAND Inc.,
for and on behalf of NAVER CORP.

By: *Yoonji Chae*

Print Name: **Yoonji Chae**

Title: Chief Executive Officer

Date: 9-28-2022

[EDUCATIONAL INSTITUTION NAME]

:

By: *Jacque Fewin*

Print Name: Jacque Fewin

Title: Executive Director of Technology

Date: 9-26-2022