Naviance Terms and Conditions

1. Scope. The Service includes a browser interface and data encryption, transmission, access, and storage (subject to commercially-reasonable limits as may be imposed by Naviance in its sole discretion). Client's and User's registration for, or use of, the Service shall constitute an acceptance to abide by this Agreement including any materials incorporated by reference herein. Client and Users are responsible for their own Internet connection, communications and computer costs.

2. Service Fees. Certain websites or features of the Service are fee-based and may require a fee for access or use. Such fees are subject to the provisions of this Section.

2.1 Charges and Payments. Client will pay all fees or charges to its account in accordance with the billing terms in effect at the time a fee or charge is due and payable. Service fees are non-refundable whether or not Client actively uses the Service. Client may add additional, optional features by request. Naviance reserves the right to change the fees, applicable charges and usage policies and to introduce new charges at any time, upon at least sixty (60) days prior notice to Client; provided, however that such fees shall not become effective for Client for services then in effect on Client’s account until the next renewal period for Client’s account.

2.2 Billing and Renewal. Naviance charges in advance for use of the Services. Naviance will notify Client of the opportunity to renew the Service approximately thirty (30) days or more prior to the subscription expiration date. HCPS may decline the renewal for any reason or no reason.

2.3 Billing Information. Client agrees to provide Naviance with complete and accurate billing and contact information. This information includes legal name, street address, e-mail address, and name and telephone number of an authorized billing contact. Client agrees to update this information within thirty (30) days of any change to it.

2.4 Non-Payment and Suspension of Service. Client’s account will be considered delinquent if payment in full is not received within sixty (60) days of the date of an invoice. Naviance reserves the right to suspend or terminate this Agreement and Client's and Client's Users' access to the Service if Client's account becomes delinquent. Delinquent invoices subject to an interest of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. Client will continue to be charged during any period of suspension. If Client or Naviance initiates termination of this Agreement, Client will be obligated to pay the balance due on the account computed in accordance with Section 2.1 Charges and Payments. Client agrees that Naviance may charge such unpaid fees to Client’s credit card, if applicable, or otherwise bill Client for such unpaid fees. Naviance also reserves the right to impose a separate reconection fee should Client thereafter again request access to the Service.

3. License. Subject to the terms of this Agreement, Naviance grants Client a non-exclusive, non-transferable worldwide right to use the Service, including updates, releases and/or enhancements solely for Client's own business purposes and for the right to provide Users individual accounts to use the Service. Client shall not, without the prior written approval of Naviance: (i) license, sublicense, sell, resell, transfer, or assign the Service to any third party; (ii) modify or make derivative works based upon the Service; or (iii) commercially exploit the Service in any way. All rights not expressly granted to Client are reserved by Naviance and its licensors. Subject to the terms of this Agreement, Client grants to Naviance the non-exclusive, worldwide right to use, copy, store, transmit and display Client and User data hosted on the Service by Naviance ("Client Data") in accordance with the terms of the privacy policy referenced in Section 5.1 herein.


4.1 Client Responsibilities. Client is responsible for any and all activities (other than User purchases) that occur under Client's and its Users' accounts. Client shall: (i) maintain the confidentiality of Users’ names and passwords; (ii) notify Naviance immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (iii) report to Naviance and use reasonable efforts to stop immediately any use of the Service inconsistent with the terms of the License provided in Section 3 herein that is known or suspected by Client; (iv) ensure that use of the Service shall at all times comply with all applicable local, state, federal, and international laws, regulations, and conventions, including without limitation those related to data collection, use, disclosure and privacy; international communications; and the expectation of technical or personal data; (v) ensure that use of the Service shall at all times conform...
to the terms and conditions of this Agreement; and (vi) not impersonate another user of the Service or provide false identity information to gain access to or use the Service.

4.2 User Responsibilities. Users are responsible for any and all activities that occur under their accounts. Users shall: (i) maintain the confidentiality of their names and passwords; (ii) notify Client who provides User's access immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (iii) report to Client who provides User's access immediately and use reasonable efforts to stop immediately any use of the Service inconsistent with the terms of the License provided in Section 3 herein that is known or suspected by User; (iv) use the Service in compliance with all applicable local, state, federal, and international laws, regulations, and conventions, as well as with the terms and conditions of this Agreement; and (v) not impersonate another user of the Service or provide false identity information to gain access to or use the Service. User will not attempt to change any fields that are not intended for User modification. Any attempt by User to view or manipulate the records of another User will be deemed a material breach and, in addition to exercising its termination rights under this Agreement, Naviance may, in its discretion, inform any relevant authorities.

5. Account Information and Data.

5.1 Privacy. Naviance is committed to protecting the privacy of Client Data and maintains a detailed privacy policy, which may be viewed at http://succceed.naviance.com/auth/signin#privacy. Naviance reserves the right to modify its privacy policy in accordance with the procedure outlined in Section 17 herein. Without limiting the generality of Section 4.1(iv) of this Agreement, Client represents that it complies with all applicable data privacy laws, rules and regulations with respect to the personal data it stores, collects, and maintains through the Service.

Security Requirements. Naviance will maintain and enforce safety and physical security procedures with respect to its access and maintenance of Client's Confidential Information that are at least equal to industry standards for such types of locations and that provide reasonably appropriate physical security safeguards against physical access or theft, unauthorized disclosure or access of Client's Confidential Information. Without limiting the generality of the foregoing, Vendor will take all reasonable measures to secure and defend its location and equipment against "unauthorized access" and other who may seek, without authorization, to modify or access Naviance's systems or information found therein. Vendor will periodically test its systems for areas where security could potentially be breached. Naviance will promptly report to Client any breach of security or unauthorized access to Naviance's systems impacting Client's Confidential Information that Naviance detects or becomes aware of. Naviance will use diligent efforts to remedy such breach, security, or unauthorized access in a timely manner.

5.2 Security.

5.2.1 The Service has security measures in place to help protect against the loss, misuse, and alteration of the data under Naviance's control. When the Service is accessed using a supported web browser, Secure Socket Layer (SSL) technology protects information using both server authentication and data encryption to help ensure that data are safe, secure, and available only to authorized users. Naviance also implements an advanced security method based on dynamic data and encoded session identifiers, and hosts the Service in a secure server environment that uses a firewall and other advanced technology in an effort to prevent interference or access from outside intruders. The Service requires usernames, account identifiers, user names, and passwords that must be entered each time a Client or User signs on. These safeguards help to prevent unauthorized access, maintain data accuracy, and ensure the appropriate use of data. The Internet, however, is not perfectly secure and Naviance shall not be responsible for security breaches not reasonably within its control.

5.2.2 Client shall comply with all applicable data security laws, regulations and business guidance published by the Federal Trade Commission, and implement, maintain and update (as appropriate) reasonable security policies, procedures and practices appropriate to the nature of the personal information collected through the Service, in order to protect such information from unauthorized access, destruction, use, modification or disclosure.

5.3 Family Educational Rights and Privacy Act ("FERPA"). In the event Client is subject to the provisions of the Family Educational Rights and Privacy Act (FERPA), the Parties agree as follows: (A) Client appoints Naviance as a "school official" as that term is used in FERPA §§99.7(a)(3)(ii) and 99.31(a)(1) and as interpreted by the Family Policy Compliance Office, and determines that Naviance has a "legitimate educational interest," for the purpose of carrying out its responsibilities under the Agreement. (B) Naviance acknowledges that it shall be bound by all relevant provisions of FERPA and agrees that personally identifiable information obtained from Client by Naviance in the performance of this Agreement: (i) will not be disclosed to third parties, except as expressly provided for in FERPA §§99.31, without signed and dated written consent of the student, or if the student is under eighteen (18) years of age, signed and written consent of the student's parents/guardians and (ii) will be used only to fulfill Naviance's responsibilities under the Agreement. In accordance with FERPA, the Parties agree that any consents to disclose information may be made electronically.

5.4 Children's Online Privacy Protection Act ("COPPA"). Without limiting the generality of Section 5 of this Agreement, in the event that Customer allows Users under the age of 13 to submit personal information as defined in the Children's Online Privacy Protection Act (COPPA) to Naviance in connection with its use of the Service, Customer agrees that it will be responsible for obtaining verifiable parental consent prior to making the Service available to such Users. Naviance shall fully comply with COPPA and any rules or regulations promulgated thereunder.

6. Term and Termination.
6.1 Term of Service. This Agreement commences on the date Client access to the Service is first enabled ("Effective Date") and shall continue for an initial term of one year or longer subject to mutual agreement by the Parties, which may be renewed by written mutual agreement, unless terminated sooner pursuant to this Agreement. In the event the term is longer than one year as agreed upon and stipulated on the order form and the client desires to cancel this agreement before the end of that term, Client shall remain responsible for 100% of the amount of this agreement.

6.2 Termination for Cause. Any breach of payment obligations or unauthorized use of the Service by Client or User will be deemed a material breach of this Agreement. Naviance, in its sole discretion, may terminate Client’s and Users’ passwords, account or use of the Service if Client or User breaches or otherwise fails to comply with this Agreement. Upon any material breach of this contract by Naviance or Client, either party may terminate this agreement.

6.3 Data Retention. Client agrees and acknowledges that Naviance has no obligation to retain Client Data, and may delete Client Data, more than thirty (30) days after termination. Upon termination of this Agreement, or at the discretion of Client, Client may request in writing that Client Data be deleted, and Naviance shall comply with such written request within thirty (30) days after termination. Naviance has no obligation to retain Client Data if Client or User has materially breached this Agreement and such breach has not been cured within thirty (30) days of notice of such breach. Naviance has no obligation to retain Client Data if the account is delinquent, and such Client Data may be irretrievably deleted. Prior to deletion, Naviance may charge a reasonable fee, for which payment shall be made in advance, to transfer Client Data to Client in a reasonable manner.

7. Naviance Ownership. Naviance alone (and its licensors, where applicable) owns all right, title and interest, including all related copyright, patent, trademark, and other proprietary rights ("Intellectual Property" rights), in and to the Service and will own any suggestions, ideas, enhancement requests, feedback, and recommendations provided by Client, Users, or any other party relating to the Service. This Agreement is not a sale and does not convey any rights of ownership in or related to the Service or Intellectual Property owned by Naviance to Client or Users. Naviance is a registered trademark, and the Naviance logo and product names associated with the Service are trademarks of Naviance or third parties, and no right or license is granted to use them; provided, however, that Client may link to the homepage of a Naviance website or to the Service from another website for the purposes of directing Users to the website or the Service and that such link may include the Naviance name and relevant product name(s). Client may not frame any page of a Naviance website

8. Third-Party Rights.

8.1 During use of the Service, Client may enter into correspondence with, purchase goods and/or services from, or participate in promotions of third-parties showing their goods and/or services through the Service. Any such activity, and any terms, conditions, warranties or representations associated with such activity, are solely between Client and the applicable third-party. Naviance and its licensors shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between Client and any such third-party. Naviance does not endorse any sites on the Internet that are linked through the Service. Naviance is providing these links to Client only as a matter of convenience. Naviance does not control the third-party sites and in no event shall Naviance or its licensors be responsible for any content, data practices, products, or other materials on or available from such sites.

8.2 Naviance engages the services of third-party Intermediaries to provide credit card processing services to Client and Users. Such Intermediaries are solely a link in the distribution chain, and are not permitted to store, retain, or use the information provided, except for the sole purpose of credit card processing and as required by law. Before Client and Users submit credit card information, Client and Users shall be required to agree to any applicable third-party Intermediaries’ terms of service and privacy policies, including provisions on limited warranties and liability.

8.3 In connection with the Services provided by Naviance, Client may register for, purchase, access, or obtain products, services, and/or features provided by third parties (e.g., Naviance Marketplace partners). The agreements between Naviance and such third parties may permit Naviance (i) to bill Client for such third party products or services, and/or (ii) deliver such third party products or services to Client. Such third party products or services shall not be considered “Services” for the purposes of this Agreement, and the liability of Naviance to Client or any Users for or in connection with any such third party products or services shall be limited to the amount of fees paid to Naviance by such Client or User for such third party products or services less any amounts paid by Naviance to such third party for such third party product or service.

9. Representation & Warranties. Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Naviance represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof, and that the Service will perform substantially in accordance with the on-line Naviance help documentation under normal use and circumstances. Client and Users represent and warrant that they have not falsely identified themselves nor provided any false information to gain access to the Service and that they will comply with the terms and conditions of this Agreement. Each party represents and warrants that it shall make commercially reasonable efforts, including the use of virus-scanning software on computers that upload files to the Service, to prevent the Service from becoming infected with or spreading a computer virus.

10. Indemnification.

10.1 Client shall indemnify and hold Naviance, its licensors and each such party’s parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys’ fees and costs) arising out of or in connection with: (i) a claim alleging that use of Client Data infringes the Intellectual Property of, or has caused harm to, a third party, or (ii) a claim arising from or alleging breach by Client or Users of this Agreement;
provided that Naviance: (a) promptly gives written notice of the claim to Client; (b) gives Client sole control of the defense and settlement of the claim (provided that Client may not settle or defend any claim unless it unconditionally releases Naviance of all liability and such settlement does not affect Naviance’s business or the Service); (c) provides to Client all reasonably available information and assistance; and (d) has not compromised or settled such claim without Client’s prior written consent. Nothing set forth herein shall be construed as a waiver on the part of the Client of any defense, immunity, limitation of liability, or restriction on damages provided for it under applicable law including but not limited to Section 5-518 of the Courts of Judicial Proceedings Article and Section 4/105 of the Education Article of the Maryland Annotated Code as amended.

10.2 Naviance shall indemnify and hold Client and its parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys’ fees and costs) arising out of or in connection with: (i) a claim alleging that the Service directly infringes the Intellectual Property of a third party, or (ii) a claim arising from or alleging breach of Naviance of this Agreement; provided that Client: (a) promptly gives written notice of the claim to Naviance; (b) gives Naviance sole control of the defense and settlement of the claim (provided that Naviance may not settle or defend any claim unless it unconditionally releases Client of all liability); (c) provides to Naviance all reasonably available information and assistance; and (d) has not compromised or settled such claim without Naviance’s prior written consent. Naviance shall have no indemnification obligation, and Client shall indemnify Naviance pursuant to this Agreement, for claims arising from any alleged infringement related to the combination of the Service with any of Client’s or any of Client’s licensors products, service, hardware or business process(es), so long as such use was not authorized or directed by Naviance, such authorization and/or direction having been given in writing.

11. Disclaimer of Warranties. (i) NAVIANCE AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT; (ii) NAVIANCE AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET CLIENT’S REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY CLIENT THROUGH THE SERVICE WILL MEET CLIENT’S REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS IN THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, (III) THE SERVICE AND ALL CONTENT IS PROVIDED TO YOU STRICTLY ON AN “AS IS” AND “AS AVAILABLE” BASIS; AND (IV) ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

11.1 Limited Warranty

11.1.1 Licensed Software. Naviance warrants that the Licensed Software shall perform substantially in accordance with the requirements of this Agreement and solely to the extent not inconsistent, the documentation for the greater of (i) one (1) year after the date of Acceptance or (ii) the period during which Client purchases support form Vendor. Client shall provide written notice of any warranty failure to Naviance not less than five (5) days prior to the end of the Warranty Period. Such notice shall specify with particularity the nature of such failure. Naviance shall not be responsible for any error or nonconformities in the Licensed Software resulting from Client’s failure to use the Licensed Software in conformance with this Agreement or modification of the Licensed Software by Client.

11.1.2 Services. Vendor warrants that all services provided by Naviance to Client under this Agreement shall be performed in a workmanlike manner.

11.1.3 Viruses and Disabling Mechanisms. Naviance shall use commercially reasonable measures to screen the Licensed Software to avoid introducing any virus or other destructive programming that are designed (i) to permit unauthorized access or use by third parties to the software installed on Client's systems, or (ii) to disable or damage Client's systems. Naviance shall not insert into the Licensed Software any code or other device that would have the effect of disabling or otherwise shutting down all or any portion of the Licensed Software. Naviance shall not invoke such code or other device at any time, including upon expiration or termination of this Agreement for any reason.

11.1.4 Infringement. To the best of Naviance’s knowledge, Client’s permitted use of the Licensed Software will not infringe the Intellectual property rights of any third party.

11.1.5 No Litigation. Naviance further warrants there is no pending or threatened litigation that would have a material adverse impact on its performance under this Agreement.

11.1.6 Authority. Naviance has the full power, capacity, and authority to enter into and perform this Agreement and to make the grant of rights contained herein.

11.1.7 Compliance with Applicable Law. Vendor warrants that the services provided under this Agreement and Client’s permitted use of the Licensed Software will comply with applicable federal, state, and local laws and regulations.
11.1.8 Third Party Features. Customer may choose to activate and/or purchase features and services within the Service that are provided by third party service providers. All such third-party features and services are inactive by default and must therefore be enabled by an authorized representative of Customer. Such features and services may be turned on or off at any time at the sole discretion and control of Customer.

Once activated, some of these third-party service providers require that a limited amount of personally identifiable information be shared in order to for the third-party feature or service to function properly. All third party service providers are contractually required (a) to comply with all applicable laws, (b) to use the personally identifiable information only as necessary to provide the Service to Customer, (c) to delete the personally identifiable information when no longer needed or when Naviance requests that it be deleted on behalf of Customer, and (d) to comply with the Privacy Policy and security policies. If information is not required by the third-party service provider in order to operate the third-party service, it is not provided to such third-party service provider.

Certain third-party services are included with the purchase of the Service while others must be purchased separately and may be subject to additional terms and conditions from Naviance and the applicable third-party service provider.

The liability of Naviance to Customer or any User for or in connection with any such third-party services shall be limited to the amount of fees paid to Naviance by such Customer or User for such third-party services less any amounts paid by Naviance to such third-party service provider for such third party service.

11.2 DISCLAIMER OF WARRANTIES EXCEPT AS PROVIDED IN SECTION 11.1, NAVIANCE EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NAVIANCE DOES NOT WARRANT THAT THE PRODUCTS WILL MEET CLIENT'S REQUIREMENTS, THAT THE LICENSED SOFTWARE IS COMPATIBLE WITH ANY PARTICULAR HARDWARE OR SOFTWARE PLATFORM, OR THAT THE OPERATION OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE LICENSED SOFTWARE WILL BE CORRECTED. THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE LICENSED SOFTWARE IS ASSUMED BY CLIENT. FURTHERMORE, EXCEPT AS PROVIDED IN SECTION 11.1, NAVIANCE DOES NOT WARRANT OR MAKE ANY REPRESENTATION REGARDING THE USE OR THE RESULTS OF THE USE OF THE LICENSED SOFTWARE OR RELATED DOCUMENTATION IN TERMS OF ITS CORRECTNESS, ACCURACY, QUALITY, RELIABILITY, APPROPRIATENESS FOR A PARTICULAR TASK OR APPLICATION, CURRENTNESS, OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY NAVIANCE OR NAVIANCE'S AUTHORIZED REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF WARRANTIES PROVIDED IN THIS AGREEMENT.

12. Internet Delays. The Service may be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications. Naviance is not responsible for any delays, delivery failures, or other damage resulting from such problems.

13. Limitation of Liability. Except for Client's obligation to pay and the parties' respective express indemnity obligations, in no event shall either party be liable to the other party or any third party for any incidental or consequential damages (including, without limitation, indirect, special, punitive, or exemplary damages for loss of business, loss of profits, business interruption, loss of data, or loss of business information) arising out of this Agreement or connected in any way with use or inability to use the licensed software, or for any claim by any other party, even if the party has been advised of the possibility of such damages. Except for the parties' respective express indemnity obligations, the total liability of either party to the other party for all damages, losses, and causes of action (whether in contract, tort (including negligence) or otherwise shall not exceed the greater of (i) two times the aggregate fees paid hereunder or (ii) $250,000. The limitations provided in this section shall apply even if any other remedies fail their essential purpose.

14. Additional Rights. Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages, so the exclusions set forth above may not apply to Client or Users.

15. Local Laws and Export Control. The Service provides services and uses 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. Client acknowledges and agrees that the site shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to Afghanistan, Burma, Cuba, Iraq, Iran, Libya, Sudan, or any other country 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 this site, Client 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. Client 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. The Service 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. Naviance and its licensors make no representation that the Service is appropriate or available for use in other locations. If Client uses the Service from outside the United States, Client is solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any divestiture of the content contrary to United States law is prohibited.
16. Notice. Naviance may give notice by means of a general notice on the Service or by written communication or e-mail to the address of the primary contact for Client or Users on record with Naviance. Such notice shall be deemed to have been given to Client or Users upon the expiration of 48 hours after mailing or posting (if sent by first class mail or prepaid post) or 12 hours after sending (if sent by e-mail). Client or Users may give notice to Naviance at any time by letter delivered by a nationally recognized overnight delivery service or first class postage-prepaid mail, by e-mail, or by fax to Naviance Inc., 3033 Wilson Boulevard, Suite 500, Arlington, VA 22201, 703-859-7319 (fax), legal@naviance.com, or such other address as may be designated from time-to-time. Such notice shall be deemed given when received by Naviance.

17. Modification. Naviance reserves the right to change the terms and conditions of this Agreement at any time. Naviance shall notify Client and Users not fewer than sixty (60) days prior to any material change in the terms and conditions of this Agreement. Such change shall be effective upon renewal of this Agreement. Renewal of this Agreement after any such changes shall constitute Client's consent to such changes. Continued use by Users after notice - and, if Users have access to the Service through an account provided by Client, Client's renewal - shall constitute User's acceptance of the changes.

18. Assignment. This Agreement, including all rights and obligations hereunder, may not be assigned by Client or Users without the prior written approval of Naviance, however, this Agreement may be assigned by either party without prior written approval to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this Section shall be void.

19. General. This Agreement shall be governed by Maryland law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claim or cause of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the state and federal courts located in Maryland. In the event of any inconsistency between this Agreement and any purchase order or similar terms on any client form, this Agreement shall control. All parties will at all times comply with all applicable laws, rules and regulations. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between Naviance and Client or Naviance and Users as a result of this Agreement or use of the Service. The failure of either party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless such waiver is in writing and signed by the party that is purported to be waiving. Any purported assignment in violation of this Section shall be void.

20. Additional Terms.

20.1 Professional Services. In the event Client elects to receive professional services, including professional development and/or consulting services from Naviance, the following terms shall apply. Client agrees to contact Naviance prior to the session if Client has any questions regarding these responsibilities.

20.1.1. Client Responsibilities for Professional Development. With respect to professional development sessions, participants should meet the prerequisites stated for each course to ensure that each session is productive and effective. All professional development sessions are hands-on sessions and require a computer for each participant. The Client must ensure that participants' computers are in good working order, that the appropriate hardware and software necessary to connect to the network provided in the training facility is installed, and that participants know how to connect the computer to a network. The Client must also plan to have no more than 15 individuals attend a private session at a time to ensure proper student to instructor ratio for effective learning. Client agrees to work with Naviance to ensure that any private professional development session purchased is conducted no later than twelve months from the date of purchase and acknowledges that a failure to have Naviance deliver a session within six months from the date of purchase shall constitute a cancellation by Client as described in Section 20.1.6. For seats purchased in public webinars, Client agrees to register and attend public webinars hosted by Naviance no later than three months from the date of purchase. Failure to attend a public webinar in the designated timeframe shall constitute a cancellation by Client as described in Section 20.1.6.

20.1.2. Client Responsibilities for Consulting Services. With respect to consulting services, Client agrees to the required preparation as outlined by Naviance to effectively start the engagement and utilize the services of the Naviance Consultant. Client agrees to work with Naviance to ensure that all consulting hours purchased are utilized within 12 months from the date of purchase and acknowledge that a failure to have Naviance deliver consulting services within 12 months from the date of purchase shall result in a forfeiture of the consulting hours purchased. With regards to Delegated Authentication, implementation of this service is the responsibility of the client. The Naviance consultant cannot provide a SOAP-based web service or the technical support to create this service. With regards to automated data import, implementation of cURL is the responsibility of the client. The Naviance consultant cannot install cURL, create a cURL directory or configure cURL for the Client.

20.1.3. Warranties. Naviance warrants that each of its instructors and consultants performing such professional services shall have the proper skill, training, and background to perform in a competent and professional manner. Such professional services may include unknown and unforeseen problems and Naviance shall attempt to resolve such problems, should they occur. Client acknowledges that Naviance does not warrant that a satisfactory solution to all problems will be possible.

20.1.4. Payments and Refunds. Client or a contact designated by Client will be invoiced for professional development session(s) and consulting services at the time of purchase. If applicable, Naviance will invoice Client for travel expenses incurred by the instructor(s) for
any on-site professional development services and consultant(s) for any on-site consulting services. Payments are due in accordance with Section 2 and within the time frame stated on each invoice and all consulting services and professional development sessions are non-refundable except as a result of a request by Naviance to cancel or reschedule a professional development session as described in Section 20.1.5.

20.1.5. Cancellation or Rescheduling by Naviance. Naviance reserves the right to cancel or reschedule sessions. In the event Naviance cancels or asks to reschedule a session, Client may choose to reschedule, attend another comparable session, or receive a full refund.

20.1.6. Cancellation or Rescheduling by Client. Client may reschedule a private on-site or webinar session that has been previously confirmed by Naviance, provided that Client agrees to: (a) notify Naviance in writing at least 3 business days in advance prior to the start of the session; (b) pay costs incurred on Client's behalf for the session as originally scheduled (including but not limited to any cancellation fees paid to our instructor(s) and, if applicable, travel expenses), and (c) pay travel expenses associated with the session once rescheduled, if applicable. If Client is unable to attend a previously confirmed public webinar session, Client may register and attend an alternate public webinar session provided that session has availability and that the Client notifies Naviance in writing at least 24 hours in advance prior to the scheduled start of the original public webinar session. A session shall be considered canceled by Client, with no further obligations by Naviance, in the event of any of the following: (a) failure to schedule a private session to be conducted within six months from the date of purchase, (b) failure to attend a public webinar session within 3 months from date of purchase, (c) failure by Client to attend a session for which Client is registered without providing the specified advance notice to Naviance, or (d) failure by Client to reschedule a session in accordance with the provisions of this Section. Client agrees to pay any fees for services and to pay any expenses incurred by Naviance on Client's behalf without providing notification in advance of such fees and expenses.

20.2 Use of Interactive Areas.

20.2.1. The Service may contain discussion forums in which Clients, Users, or third-parties may post reviews of or give ratings of content, events, products, services or third-party providers, or post other content, messages, materials or other items ("Interactive Areas"). If Naviance provides such Interactive Areas, you are solely responsible for your use of such Interactive Areas and use them at your own risk. You acknowledge and agree that Naviance may not be responsible for any such forum to be accessible by all Clients and Users or by certain Clients and Users selected at the sole discretion of Naviance or any designee chosen by Naviance. Eligibility for access or membership in any given forum (or any continued access and membership) shall be determined by Naviance or its designee in its sole discretion, and you may not be given access to certain forums.

20.2.2. No review, recommendation or rating within the Service or in any Interactive Area shall be deemed to be an endorsement by Naviance of any the particular matter subject of the review, recommendation or, if such matter is a third-party provider, a guarantee of such provider's quality, competency, qualifications, experience, resources, character, honesty, integrity, responsiveness or other personal and professional characteristics.

20.2.3. Naviance takes no responsibility and assumes no liability for any content posted, stored or uploaded by you or any third party, or for any loss or damage thereof, nor is Naviance liable for any mistakes, defamation, slander, libel, omission, falsehoods, obscurity, pornography or profanity you may encounter. As a provider of interactive services, Naviance is not liable for any statements, representations or content provided by its Clients and Users on any public forum, personal home page or other Interactive Area. Although Naviance has no obligation to screen, edit, or monitor any of the content posted to or distributed through any Interactive Area, Naviance reserves the right, and has absolute discretion, to remove, screen, or edit without notice any content posted or stored within the Service at any time and for any reason, and you are solely responsible for creating backup copies of and replacing any material you post or store in these areas at your sole cost and expense.

20.2.4. Any use of the Interactive Areas or other portions of the Service in violation of the foregoing violates these Terms of Service and may result in, among other things, termination or suspension of your rights to use the Interactive Areas and/or the Service. In order to cooperate with legitimate governmental requests, subpoenas or court orders, to protect Naviance's systems and customers, or to ensure the integrity and operation of Naviance's business and systems, Naviance may access and disclose any information it considers necessary or appropriate, including, without limitation, user profile information (i.e. name, e-mail address, etc.), IP addressing and traffic information, usage history, and posted content

20.2.5. Naviance does not and cannot review all content submitted by Clients and Users to the Service, and Naviance therefore does not make any representation or warranty with respect to it and Naviance does not endorse any specific products or services which may be included in any such content. However, Naviance reserves the right to block or remove content or communications that Naviance determines, in its discretion, to be in violation of these Terms of Service. As explained above, under Disclaimer of Warranties, the Service is offered "as is," and you use it at your own risk. Without limitation, this means that, despite the requirements of these Terms of Service, Clients and Users may post content that violates them. Naviance assumes no responsibility or liability for such content. If you have submitted objectionable content, Naviance may, in its sole discretion, terminate your account, take legal action against you and/or, if applicable, notify the appropriate authorities or parties, without prior notice or liability to you.

20.2.3. Digital Millennium Copyright Act. The Digital Millennium Copyright Act of 1998 (the "DMCA") provides recourse for copyright owners who believe that material appearing on the Internet infringes their rights under U.S. copyright law. Naviance reserves the right to remove any material on the Service which allegedly infringes another person's copyright. If you believe in good faith that materials hosted
Naviance Privacy Policy
(Last updated 6/23/2016)

Naviance by Hobsons ("Naviance") is a web and mobile-based K-12 college and career readiness platform owned and operated by Naviance, Inc. Naviance helps students in grades K-5 explore the connection between their interests, goal setting and achievement, and helps students in grades 6-12 explore goal setting, career ideas, academic planning, and college preparation, while operating as the system of records for schools and districts.

Your privacy is important to us and we are committed to protecting your information. This Privacy Policy explains how we collect, use and protect information in Naviance. This Privacy Policy must be read together with the Terms of Service.

If you are located outside of the United States, please be aware that the information you provide to us is transmitted to and processed in the United States. Data will be protected subject to this Privacy Policy and applicable law, which may be different from the laws in your country. By using Naviance, you agree to this.

Information Provided by Schools and Districts ("Clients"): When Clients decide to use Naviance, they submit information necessary to create their school account, including first and last names, ID numbers, email addresses, user names and passwords for the school and district staff users.

Clients also submit minimally required information about the students, used for school purposes to allow Clients to view student activity within Naviance:

- Grades K-2: Grade and teacher name
- Grades 3-5: Last name, unique ID number, grade and teacher name
- Grades 6-12: Last name, unique ID number, gender, class year and district campus

Additional information Clients would like to host about their students within Naviance is done at the Clients' discretion for their internal review, analysis and reporting. This may include student personal information and academic records, including student first names, contact information, date of birth and other demographic information, grades, test results and performance data. Clients may also host information about a student's parent or legal guardian, including, but not limited to names, street addresses and other contact information.

Clients may create accounts in Naviance for students' parent or legal guardians by importing their existing records and submitting user names. At the Client's discretion, parents may be provided with access privileges to view and/or edit certain information.

Information Provided by Students:
Depending on their grade, students log into Naviance using information provided by the Client or they create their own user name and password:

Grades K-2: Students select their grade and teacher name from an on-screen menu and enter a password for the class provided by the teacher. Students may also enter responses to lesson plans, submit questions to a teacher or respond to other classroom instructions.
Grades 3-5: Students select their grade and teacher name from an on-screen menu and enter a password for the class provided by the teacher. Students may also be asked to enter a user name provided by the teacher. Students may also enter responses to lesson plans, submit questions to a teacher or respond to other classroom instructions.

Grades 6-12: Students create a user name and password. Also, subject to the configuration options selected by Clients, students may choose to add information such as their email address, phone number or home address.

A Special Note About Students Under the Age of 13:

Naviance, Inc. operates in compliance with the Children's Online Privacy Protection Act (COPPA). Subject to the configuration options selected by Clients, students under the age of 13 may be asked to submit personal information. Any such information is used only for their school purposes.

Naviance, Inc. relies on Clients to provide consent for collection of that data on behalf of the parents or legal guardians, as agreed to in advance by Clients.

Clients may also make any information provided by students under the age of 13 available to parents or legal guardians to review through each Client's product dashboard.

Naviance Usage Information and Cookies:

When using Naviance, our servers automatically collect the Internet Protocol ("IP") address associated with the user's computer. We may also collect additional information such as login timestamp, the browser type and version, and the operating system of the computer. This information is logged to help us to diagnose technical problems and to administer Naviance.

To collect information about the use of Naviance, we use cookies. Cookies are small data files sent by a website or application and stored on the computer or device at the request of that site or app. Cookies store information related to the browser to enable us to recognize the browser on return visits to Naviance and to remember your preferences. We use third-party service providers to assist us in collecting and understanding the usage information. Most browsers can be set to detect browser cookies and to let you reject them, but refusing cookies may make it difficult to use Naviance. To learn more about browser cookies, including how to manage or delete them, look in the Tools, Help or similar section of your Web browser.

How We Use and Disclose Information:

WE DO NOT SELL DATA, and we do not use personally identifiable information for commercial purposes. In addition, we do not disclose, distribute, access or reference any personal information except as noted at the time that we request the information or in the following circumstances:

When directed by Clients on behalf of their employees or students

To our third party service partners to permit them to provide features and services on our behalf and as requested by Clients (see Third Party Services section)

To postsecondary institutions when a Client has specifically requested the availability of features that allow their users in grades 9-12 to connect with such institutions

To resolve a problem or support issue on behalf of a Client

To investigate a suspected violation of the Terms of Service.

As may be required by law or as ordered by a court, in which event we shall notify Clients and shall work with Clients to seek to limit the scope of the required disclosure

In the event of a reorganization, merger, sale, assignment, bankruptcy or other disposition of our business, in which case the transferred information will remain subject to the terms of this Privacy Policy.

We may use non-personal information, including aggregated, de-identified data for a variety of purposes subject to applicable law, including:

- to improve our educational products for adaptive learning purposes and for customizing the student experience
- to demonstrate the effectiveness of Naviance, including in our marketing materials
Third Party Services:
Naviance provides Clients with access to a variety of features which Clients may choose to make available to their students. These features, some of which are operated by third party providers, are available only to students in grades 6-12, and may be turned on or off at the sole discretion and control of Clients.

Naviance also provides Clients of students in grades 6-12 with the opportunity to purchase additional third party features. These include, but are not limited to, features that allow students to explore learning styles, explore college and career pathways, and connect with postsecondary institutions around the globe that may be of interest.

If Clients choose to make these features available to their students, a limited amount of information, including personal information, may need to be sent to the third party in order to deliver the service to the Client and their students. Naviance does not disclose more information to third parties than is necessary for them to provide features on behalf of Naviance.

All third parties have agreed to handle the information in compliance with this Privacy Policy and the Naviance security policy. They may use the information for the sole purpose of providing the service to Clients and their students.

We are not responsible for data once it has been submitted to a postsecondary institution. In addition, Clients and students should be aware that if they choose to connect with a postsecondary institution in another country, their data will be subject to the laws of that country.

Naviance also provides Clients with links to third party websites and allows Clients to add links to websites that they may then share with their students in all grades. We do not control, and therefore are not responsible for, the content or privacy practices of those websites. Those websites are governed by their own privacy policies, and we encourage Clients and students to read them.

How Clients Can Modify Information:
Clients may update or change their institution's information by contacting us, or in some cases, may update their records through the relevant areas of Naviance. We also provide Clients with a dashboard that allows them to access, modify and delete student and parent information, as may be required by law or otherwise deemed necessary from time to time. At their discretion, Clients may also provide students and parents with the ability to access select information.

Since Naviance is used at the direction of the Client, parents and eligible students must work directly with their school to access or modify their information or manage permissions.

Security:
We are committed to protecting the security, integrity and confidentiality of the data through the use of physical and technical safeguards. Naviance uses Transport Layer Security (TLS) encryption and server authentication technology to protect data when Naviance is accessed using a supported web browser.

We host Client data in secure server and cloud-based environments that use a firewall and other industry-standard technology in an effort to prevent interference or access from outside intruders. We also require unique account identifiers, user names, and passwords that must be entered each time Clients, students or parents sign on to Naviance. The Internet, however, is not perfectly secure and Naviance is not responsible for security breaches not reasonably within its control.

We require that Clients maintain the confidentiality of their user names and passwords. If Clients become aware of any unauthorized use of an account, loss of their or their students’ or parents’ account credentials or suspect a security breach, notify us immediately.

Data Retention:
As a system of record for its Clients, Naviance retains the data at the sole discretion of Clients, and for as long as they have active agreements for Naviance. After termination of an agreement, Naviance will retain Client data for a limited time period in accordance with the Naviance Data Retention Policy for the convenience of Clients, so that they may retain continuity of their experience should they choose to reengage with Naviance. At the end of the data retention period, we securely delete and destroy personal information from Clients.

However, at any time upon termination of an agreement or otherwise at their discretion, Clients may submit a written request to have their personal information provided to Naviance deleted. We will comply with such written requests within (30) days.

Subject to prior agreement, Clients may choose to retain their data from users in lower grades for Naviance services for higher grades. The data will always remain under the direct control of the Client and subject to the terms of this Privacy Policy.

Note that in the event that a user chooses to submit data to a postsecondary institution, we are unable to delete or otherwise retract that information from the receiving institution.

Notwithstanding the above, we do retain aggregated, de-identified data for the purposes described in the section titled, "How We Use and Disclose Information."
Opt-Out Policy:
We send emails to Clients with information about our products that we believe may be of interest. Clients may opt out of receiving email messages from Naviance by contacting us at privacypolicy@hobsons.com or by clicking on the "unsubscribe" link found at the bottom of every email that we send.

If Clients have opted out of receiving communications from us, we may still send essential communications regarding Naviance to Clients' or students' accounts, such as password change messages.

We do not send email messages on behalf of third parties.

We do allow Clients to send messages to parents and students through Naviance. Parents and students should contact their school or district if they would like to discuss opting out of those messages.

In addition, if a student has opted in to receive emails from a postsecondary institution through features available in Naviance, students must opt out of such emails by contacting the institution directly or by clicking on the "unsubscribe" link at the bottom of the email.

Updates to This Policy:
As our product evolves, we may make changes to this Privacy Policy. The "last updated" note at the top of this page indicates when it was last revised. Material changes to the Privacy Policy will be provided to the business contacts for our Clients, and such changes will be effective when accepted by Clients on behalf of their employees, students and parents and when the Privacy Policy is posted within Naviance. Non-material changes will become effective when we post the revised Privacy Policy within Naviance.

Contact:
If you have any questions regarding this Privacy Policy, please contact us at:

Naviance, Inc.
50 E-Business Way, Suite 300
Cincinnati, OH 45241
Attn: Privacy Office

- or -

Email: privacypolicy@hobsons.com

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HARFORD COUNTY PUBLIC SCHOOLS
DATA SHARING/STUDENT PRIVACY REQUIREMENTS

Purpose

As school systems increasingly seek to improve curricular and classroom experiences for learners, Vendor access to certain student data has become necessary. It has become equally important to ensure that vendors employ commercially reasonable methods to safeguard student data privacy. Accordingly, these DATA SHARING/STUDENT PRIVACY REQUIREMENTS apply to all vendors of software, applications, or services that require access to the Personally Identifiable Information ("PII" as further defined herein) of Harford County Public Schools' (HCPS) students. HCPS hereinafter is referred to as "School System" or "Licensee."

These requirements will be published on the HCPS Web site.

These DATA SHARING/STUDENT PRIVACY REQUIREMENTS (hereinafter referred to as "Privacy Requirements"), represent standard terms and conditions for all vendors who require access to student data to provide services to the School System. In the event of a conflict between these Privacy Requirements and any license agreement with the Vendor, these Privacy Requirements control.

Vendor's Certification

By agreeing to these Privacy Requirements, the Vendor certifies, under the penalties of perjury, that Vendor complies with all federal and state laws, regulations and rules as such laws may apply to the receipt, storing, maintenance or access to personal information, including without limitation, all standards for the protection of personal information of residents of the state of Maryland and maintaining safeguards for personal information. Vendor hereby further certifies under penalties of perjury that it has a written comprehensive information security program and that Vendor shall fully comply with the provisions of the Federal Family Educational Rights and Privacy Act, 20 U.S.C. §1232g and regulations promulgated thereunder and its Maryland counterparts. Vendor further agrees to comply with all of the mandates, protocols and practices established by these Privacy Requirements.
I. DEFINITIONS

"Cloud Storage" means any remote server on which data or applications are housed or maintained. For the purposes of these Privacy Requirements, cloud storage includes private, public, community, hybrid, and partner clouds.

"End User" means the individuals authorized by the School System to access and use the Services provided by the Vendor under the Privacy Requirements.

"Licensee" or "School System" means Harford County Public Schools.

"Licensee Data" or "School System Data" means all confidential student records or confidential student record information that contains personally identifiable student records and any other non-public information, including but not limited to student data, metadata, and user content.

"Mining School System data" means to search through, access, or extract School System data, metadata or information which is not necessary to accomplish the purpose(s) of the Privacy Requirements.

"Mobile Device" shall mean laptop computers, tablets, smart phones, and any other mobile computing devices.

"Personally Identifiable Information" or "PII" includes but is not limited to: personal identifiers such as name, address, phone number, date and place of birth, Social Security number, and student or personnel identification number; "personal information student records" as defined in the Code of Maryland Regulations ("COMAR") 13A.08.02 and/or any successor laws or regulations of the state of Maryland; personally identifiable information contained in student education records as that term is defined in the Family Educational Rights and Privacy Act ("FERPA"); "nonpublic personal information" as the term is defined in the Gramm-Leach-Bliley Financial Modernization Act of 1999, 15 USC§6809; credit and debit card numbers and/or access codes and other cardholder data and sensitive authentication data as those terms are defined in the Payment Card Industry Data Security Standards; other financial account numbers, access codes, driver's license numbers; and state-or federal-identification numbers such as passport, visa or state identity card numbers; and "covered information " as defined by the Maryland Student Data Privacy Act of 2015, Md. Ed. Code Ann., §4-131.
"Portable Storage Medium" shall mean portable memory devices, including jump or thumb drives, portable hard drives, tape backup media, and cloud storage.

"Securely Destroy" means taking action that render data written on physical (e.g., hardcopy, microfiche, etc.) or electronic media unrecoverable by both ordinary and extraordinary means. These actions must meet or exceed those sections of the National Institute of Standards and Technology (NIST) SP 800-88 guidelines relevant to data categorized as high security, confidential student records or confidential student record information that contains personally identifiable information, personally identifiable student records, and any other non-public information, including but not limited to student data, metadata, and user content.

"Security Breach" means an event in which School System Data is exposed to unauthorized disclosure, access, alteration, or use.

"Systems" shall mean any of Vendor’s computer system, network, or software that accesses, maintains, stores, or transmits School System Data, including computer systems or networks operated by Vendor, Vendor Personnel, Vendor contractors or subcontractors.

"Vendor Personnel" shall mean any employee, officer, director, agent, affiliate, contractor, or subcontractor of Vendor.

2. ACCESS, CONTROL AND AUTHORIZATION

2.1. Vendor agrees to protect and maintain the security of Licensee Data and PII with commercially reasonable security measures commensurate with the sensitivity of such PII.

2.2. Vendor shall not authorize access to Licensee Data and/or PII to any of its agents, affiliates, contractors, and subcontractors, or to any auditor; unless such agent, affiliate, contractor, subcontractor, or auditor has entered into a written confidentiality agreement with Vendor and Licensee agreeing to protect the confidentiality and security of such student PII.

2.3. Vendor shall not permit unauthorized access to Licensee’s student PII to any individual or entity at any time.

2.4. Vendor shall not provide any School System Data or PII or any portion thereof to any person, party or organization ineligible to receive student records and/or student record data and information protected by FERPA, federal regulation, Maryland law, Maryland regulation or so prohibited from receiving the School System Data or PII or any portion thereof.

3. PRIVACY COMPLIANCE

3.1. Vendor agrees to protect and maintain the privacy of Licensee Data and PII with commercially reasonable measures commensurate with the sensitivity of such Licensee Data. 

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3.2. Vendor certifies that it has implemented policies and procedures to protect against reasonably foreseeable unauthorized access to, or disclosure of, Licensee Data or PII, and to prevent other reasonably foreseeable events that may result in substantial harm to Licensee or any individual student identified in such PII.

3.3. Vendor shall not permit School System Data or PII to be maintained or stored on any Mobile Device or Portable Storage Medium unless such is being used in connection with Vendor’s backup and recovery procedures. Vendor will ensure that School System Data is encrypted and that all device/medium will be scanned at the completion of any contract or service agreement and/or research study or project to ensure that no School System Data, PII, personal information and/or student record information is stored on such electronic devices/medium. Furthermore, Vendor will have in place a service that will allow vendor to wipe the hard drive on any stolen laptop or mobile electronic device remotely and have a protocol in place to ensure compliant use by employees.

3.4. Vendor shall not, without the express prior written consent of School System:

(a) Maintain or store School System Data or PII outside of the United States,

(b) Transmit Licensee’s Data or PII to any contractors or subcontractors located outside of the United States,

(c) Distribute, repurpose or share School System Data or PII with any Vendor Systems not used for providing services to the School System,

(d) Use School System data or PII to inform, influence or guide marketing or advertising efforts, or to develop a profile of a student or group of students for any commercial purpose or for any other purposes,

(e) Use School System Data or any PII or any portion thereof to develop commercial products or services,

(f) Use the School System Data for any other purpose other than in connection with the services provided to the School System,

(g) Engage in targeted advertising, as defined by Md. Ed. Code Ann., §4-131 based on the data collected from the School System,

(h) Attempt to re-identify de-identified School System Data, or
j) Transfer de-identified School System Data to any party unless that party agrees in writing not to attempt re-identification.

3.5. Except as specifically set forth in these Privacy Requirements, or as required by federal or state law, Vendor shall not allow unauthorized access to, or permit the release of, School System Data or PI to any individual or entity except as follows:

(a) To the Vendor’s contractors or subcontractors that provide services related to the support, maintenance, and security of Vendor's software products or online services, provided, however, that such contractors or subcontractors agree to be subject to terms and conditions substantially similar to these privacy requirements.

4. BREACH PLANNING, NOTIFICATION, AND REMEDIATION

4.1. Vendor certifies that it has implemented policies and procedures addressing a potential Security Breach and that it possesses an up to date Security Breach response plan. Such plan shall be made available, upon request, to the School System.

4.2. Vendor shall comply with all applicable federal and state laws that require notification to individuals, entities, state agencies, or federal agencies in the event of a Security Breach.

4.3. Security Breach

(a) Response. Within 48 hours of becoming aware of a Security Breach, or of circumstances that resulted in unauthorized access to or disclosure or use of School System Data, Vendor will notify the School System, fully investigate the incident, and cooperate fully with the School System's investigation of and response to the incident. Except as otherwise required by law, Vendor will not provide notice of the incident directly to individuals whose Personally Identifiable Information was involved, regulatory agencies, or other entities, without prior written permission from the School System.

(b) Liability. In addition to any other remedies available to the School System, at law or in equity, Vendor will reimburse the School System in full for all costs incurred by the School System in investigating and remediating any Security Breach caused by Vendor or Vendor's subcontractors, including but not limited to providing notification to individuals whose Personally Identifiable Information was compromised and to regulatory agencies or other entities as required by law or contract; providing one year's credit monitoring to the affected individuals if the Personally Identifiable Information exposed during the breach could be used to commit financial identity theft; and the payment of legal fees, audit costs, fines, and other fees imposed against the School System as a result of the Security Breach.

4.4. In the event of a Security Breach, Vendor shall:

(a) Within three (3) calendar days, notify School System;

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(b) Assume responsibility for providing the notification required under the applicable federal and/or Maryland law(s);

(c) Hold harmless and indemnify School System and any of School System's school board members and employees, against all losses, damages, costs or expenses ("Losses") that school system may incur to the extent that such Losses arise directly from any willful or negligent acts or omissions of the Vendor in the handling of School System Data and/or PII which results in an event requiring notification of a Security Breach under applicable federal or Maryland law. Vendor will not have any liability to the extent the Loss is caused by agents, contractors or representatives of School System or any of the School System's employees. The foregoing indemnification obligations are subject to the School System promptly notifying the Vendor in writing of such claim, provided that the Vendor shall be relieved of its obligations under this only to the extent it is prejudiced by any delay in notification. The Vendor shall have sole control over the defense and settlement of such claim, provided that any settlement containing any binding obligations, admissions, or liability of the School System shall require School System's prior written consent. School System shall have the right at its own expense, to participate in such litigation and settlement discussions without unreasonably interfering with Vendor's ability to perform its obligations under this Section. School System shall provide all information and assistance reasonably requested by the Vendor at Vendor's expense;

(d) Use commercially reasonable efforts to mitigate any negative consequences caused to School System or to a student as the result of such Security Breach; and

(e) Use commercially reasonable efforts to implement procedures to prevent the recurrence an event similar to such Security Breach.

5. INFORMATION STORAGE, RETENTION, AND DISPOSITION

5.1. Vendor certifies that it has implemented policies and procedures to address the storage, retention, and disposition of all School System Data prior to contract signing.

5.2. Vendor shall perform regular backups of School System Data and shall retain backup copies of such School System Data for such period of time as may be required by federal or state law, or by the School System.

5.3. Vendor shall maintain and store backup copies of School System Data at multiple secure storage facilities located within the United States.

5.4. Except as specifically set forth in these Privacy Requirements, or as required by federal or Maryland law, Vendor shall only retain the School System Data that is necessary to provide the contracted services set forth under any Agreement with the School System.

5.5. Vendor shall maintain and store the audit logs of its systems on a secured server location.
Vendor shall restrict access to such audit logs to prevent tampering with or altering of the audit data. Vendor shall retain and provide audit logs for a minimum of 90 days in order to allow the School System or the Vendor to review the audit data for indications of a Security Breach.

6. DISPOSAL OF INFORMATION UPON TERMINATION OF AGREEMENT OR VENDOR'S CESSION OF OPERATIONS

6.1. Except as specifically set forth in these Privacy Requirements, or as required by federal or Maryland state law or regulation, upon termination or expiration of the Agreement to provide services or products to the School System, Vendor shall:

(a) Erase, destroy, or render unreadable all School System Data within thirty (30) days of School System written request, in a manner that prevents its physical reconstruction through the use of commonly available file restoration utilities;

(b) Certify in writing that the actions set forth in this section have been completed on or before the agreed-upon deadlines set forth in any agreement entered into between the Vendor and the School System;

(c) To the extent technologically possible, ensure that the School System will have access to School System Data during any transfer of operations.

6.2. Upon cessation of its operations or dissolution of its business operations, Vendor shall promptly return all School System Data to the School System in a manageable manner, and destroy, erase or render unreadable all School System Data, be it digital, archival or physical form, including without limitation any copies of the School System Data or any files that may reside in system backups, temporary files or other storage, media and School System data that are otherwise still in Vendor's possession and/or in the possession of any the Vendor's subcontractors, or agents to the Vendor may have transferred School System Data or any portion thereof, in a manner consistent with technology best practices and industry standards for secure data disposal methods. Vendor shall provide HCPS with written certification, including an
inventory of its destruction of School System Data, and with written certification, including an inventory of all School System data returned, within fifteen (15) days of Vendor's cessation of operations.

7. **SURVIVAL**

The confidentiality obligations set forth in these Privacy Requirements shall survive the termination of any agreement between the Vendor and the School System for as long as the PI and School System Data remain confidential.

8. **DATA AUTHENTICITY AND INTEGRITY**

Vendor will take reasonable measures, including maintaining audit trails, to protect School System Data against deterioration or degradation of data quality and authenticity.

9. **RESPONSE TO LEGAL ORDERS, DEMAND OR REQUESTS FOR DATA**

9.1. Except as otherwise expressly prohibited by law, Vendor will:

(a) Promptly notify the School System of any subpoenas, warrants, or other legal orders, demands or requests received by Vendor seeking School System Data;

(b) Consult with the School System regarding its response; cooperate with the School System's reasonable requests in connection with efforts by the School System to intervene and quash or modify the legal order, demand or request; and

(c) Promptly, upon the School System's request, provide the School System with a copy of its response.

9.2. If the School System receives a subpoena, warrant, or other legal order, demand (including an application for public information filed pursuant to the Maryland Public Information Act, Md. General Provisions Art., §4-101 et seq.), or request seeking School System Data maintained by Vendor, the School System will promptly provide a copy of the application to Vendor. Vendor will promptly supply the School System with copies of records or information required in order for the School System to respond, and will cooperate with the School System's reasonable requests in connection with its response.

9.3. Upon receipt of a litigation hold request, Vendor will immediately act to preserve all documents and School System Data as identified in such request, and suspend any operations that involve overwriting, or potential destruction of documentation arising from such litigation hold.
10. GOVERNING LAW

These Privacy Requirements and all related requirements shall be governed by and construed in accordance with the laws of the State of Maryland. Any action to enforce the School System's rights and remedies shall be initiated in the Circuit Court of Harford County.

11. SCHOOL SYSTEM’S RIGHT TO PROTECT PII OR SCHOOL SYSTEM DATA

In the event of a claim, suit, action, or proceeding against Vendor in which Vendor cannot, or will not, defend itself, and there is a reasonable likelihood that School System Data or PII may be disclosed to an unauthorized party in connection with such claim, suit, action, or proceeding; and Vendor provides notice to Licensee that it cannot, or will not, defend itself in such claim, suit, action, or proceeding, Vendor grants Licensee the right, but not the obligation, to join in such claim, suit, action, or proceeding to defend against the disclosure of School System Data or PII.

12. SECTION HEADINGS

The headings of sections in the Privacy Requirements are for reference only and shall not affect the meaning of the Privacy Requirements.

13. INTELLECTUAL PROPERTY RIGHTS/DISCLOSURE/OWNERSHIP

13.1. Unless expressly agreed to the contrary in writing, all goods, products, materials, documents, reports, writings, video images, photographs or papers of any nature including software or computer images prepared by Vendor (or its subcontractors) for the School System will not be disclosed to any other person or entity.

13.2. Vendor warrants to the School System that the School System will own all rights, title and interest in any and all intellectual property created in the performance of the Privacy Requirements and will have full ownership and beneficial use thereof, free and clear of claims of any nature by any third party including, without limitation, copyright or patent infringement claims. Vendor agrees to assign and hereby assigns all rights, title, and interest in any and all School System-created intellectual property created in the performance of the Privacy Requirements to the School System, and will execute any future assignments or other documents needed for the School System to document, register, or otherwise perfect such rights.

13.3. It is understood and agreed that HCPS is the exclusive Owner of School System Data and that at no point in time does or will the Vendor become the Owner of any School System Data, PII or School System files, and that should the Vendor be subject to dissolution or insolvency, School System files will not be considered, an asset or property of the Vendor. The School System reserves

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the right to demand in writing the deletion of any School System Data and PII at any time and for any reason whatsoever.

14. **DATA PRIVACY**

14.1. Vendor will use School System Data only for the purpose of fulfilling its duties under the Privacy Requirements and will not share such data, including anonymized data, with or disclose it to any third party without the prior written consent of the School System, except as required by law.

14.2. School System Data will not be stored outside the United States without prior written consent from the School System.

14.3. Vendor will provide access to School System Data, including anonymized only to its employees and subcontractors who need to access the data to fulfill Vendor obligations under the Privacy Requirements. Vendor will ensure that employees and subcontractors who perform work under the Privacy Requirements have read, understood, and received appropriate instruction as to how to comply with the data protection provisions of the Privacy Requirements. If Vendor will have access to "education records" or "student records" of the School System’s students as defined under the Family Educational Rights and Privacy Act (FERPA), the Vendor acknowledges that for the purposes of the Privacy Requirements it will be designated as a "school official" with "legitimate educational interests" in the School System education records, as those terms have been defined under FERPA and its implementing regulations, and the Vendor agrees to abide by the FERPA limitations as well as those limitations established by state law and regulation, including COMAR 13A.08.02, and requirements imposed on school officials. Vendor will use the education records only for the purpose of fulfilling its duties under the Privacy Requirements for School System’s benefit, and will not share such data with or disclose it to any third party except as provided for in the Privacy Requirements, required by law, or authorized in writing by the School System.

14.4. Vendor will not use School System Data (including metadata) for advertising or marketing purposes unless such use is specifically authorized by the Privacy Requirements or otherwise authorized in writing by the School System.

14.5. Vendor agrees to assist School System in maintaining the privacy of School System’s Data as may be required by State and Federal law, including but not limited to the Protection of Pupil Rights Amendment (PPRA), the Children’s Online Privacy Protection Act (COPPA), and their Maryland counterparts, including, but not limited to the Maryland Student Data Privacy Act of 2015, Md. Ed. Code Ann., §4-131, the Code of Maryland Regulations, 13A.08.02, et seq.

14.6. Vendor is prohibited from mining School System Data for any purposes other than those agreed to by the Parties.
15. DATA SECURITY

Vendor will store and process School System Data in accordance with commercial best practices, including appropriate administrative, physical, and technical safeguards, to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure Vendor’s own data of a similar type, and in no event less than reasonable in view of the type and nature of the data involved. Without limiting the foregoing, Vendor warrants that all electronic School System Data will be encrypted in transmission (consistent with industry best practices).

16. SOC II REPORT

Vendor agrees to provide School System with access to its SOC II report, for as long as School System is a Naviance client, upon written request from School System provided School System has first executed and returned any non-disclosure agreements as required by Vendor.
17. COMPLIANCE

17.1 Vendor will comply with all applicable laws and industry standards in performing services under the Privacy Requirements. Any Vendor personnel visiting the School System's facilities will comply with all applicable School System policies regarding access to, use of, and conduct within such facilities. The School System will provide copies of such policies to Vendor upon request.

17.2 Vendor warrants that any subcontractors used by Vendor to fulfill its obligations under the Privacy Requirements will be subject to terms substantially similar to those of the Privacy Requirements.

17.3 Vendor warrants that the service it will provide to the School System is fully compliant with and will enable the School System to be compliant with relevant requirements of all laws, regulation, and guidance applicable to the School System and/or Vendor, including but not limited to: the Children's Online Privacy Protection Act (COPPA); Family Educational Rights and Privacy Act (FERPA), Protection of Pupil Rights Amendment (PPRA); Americans with Disabilities Act (ADA), and Federal Export Administration Regulations.

18 CONFLICT

If there is any conflict or potential conflict between these Privacy Requirements and the terms of any other agreements between the parties, the other agreements between the parties shall control.

19 SURVIVAL

The Vendor's obligations under Section Six (6) shall survive termination of these Privacy Requirements until all School System Data has been returned or Securely Destroyed.

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IN WITNESS WHEREOF, the parties hereto have executed the Privacy Requirements as of July 12th, 2018 for the software and/or services listed below:

[List software and/or services applicable to the Vendor]

Naviance

Naviance, Inc.

Paul McConville
Print Name of Authorized Vendor Contact

SVP, Sales
Title

Signature

Date 7/12/18

Harford County Public Schools

Sean Bulser
Print Name of Authorized Contact

Superintendent
Title

Signature

Date 7/16/18