

## STANDARD CONTRACT

### AGREEMENT FOR PROFESSIONAL SERVICES

AGREEMENT #058.18.B1

THIS AGREEMENT is entered into this 1 day of July 2018, by and between the Board of Education of Howard County (hereinafter referred to as the "Board") and Naviance, Inc., (hereinafter referred to as the "Contractor").

#### RECITALS

WHEREAS, the Contractor submitted a proposal to RFP 058.18.B5 issued by the Board and has been selected to perform College and Career Planning Services;

WHEREAS, the Board desires the Contractor to perform certain work and services, on the terms and conditions herein set forth and the Contractor is ready, willing, and able to perform such work and services; and

WHEREAS, this Agreement shall be administered by the Project Manager or such other persons designated by The Board of Education; and

NOW, THEREFORE, in consideration of the premises contained herein and the promises each to the other made, the parties hereby agree as follows:

#### ARTICLE I - CATEGORY OF WORK AND SERVICES

The work and services to be performed by the Contractor shall be in accordance with the following documents:

##### RFP #058.18.B5, COLLEGE AND CAREER PLANNING SERVICES

- Proposal Response per dated April 20, 2018.
- Exhibit A: HCPSS Data Sharing Agreement Amendment as amended

#### ARTICLE II - TERMS AND CONDITIONS

Consultant agrees to perform the work and services in the order of precedence required under this Agreement in accordance with the following:

- HCPSS Data Sharing Agreement Amendment, as amended
- Terms and Conditions of the RFP as amended
- General Provisions as amended
- Naviance Order Form, as attached and Terms of Service, as amended

#### ARTICLE III - TERM OF AGREEMENT

The term of agreement shall begin on the date indicated above and continue for a period of two years commencing on July 1, 2018 and terminating June 30, 2020.

The agreement may be extended three additional one-year periods subject to available funding.

#### ARTICLE IV - PAYMENTS AND SCHEDULE OF PAYMENTS

(1) The Contractor shall receive full compensation for all work and services performed according to conditions outlined in the solicitation.


#### ARTICLE V - INSURANCE

The Contractor agrees to and has complied with the insurance requirements set forth in the RFP as amended.


IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above-written.

WITNESS:


BOARD OF EDUCATION OF HOWARD  
COUNTY

By:  (SEAL)  
Cynthia L. Vaillancourt, Chairman  
Board of Education of Howard County

APPROVED:

By:  (SEAL)  
Michael J. Martirano, Superintendent  
Howard County Public School System

WITNESS:

By:   
Signature  
PAUL MCCONVILLE SVP-Sales  
Typed Title  
Hybraz Naurance  
Company Name  
50 E Business Way  
Address  
Cincinnati OH 45241  
City, State Zip  
513-891-5444 513-891-7357  
Telephone Fax

## HCPSS Data Sharing Agreement

HCPSS, as a Government entity, is required when entering into agreements with other parties to follow all applicable laws and regulations, including those related to data privacy and security; accessibility; and records retention. Accordingly, the HOBSONS NAVIANCE Terms of Service (TOS) are hereby modified by this Amendment as they pertain to HCPSS's use of the Company's Site and/or Services.

- A. **Definition of "CLIENT Data":** CLIENT Data include all Personally Identifiable Information (PII) and other non-public information. CLIENT Data include, but are not limited to: personnel data, personally identifiable student data, personally identifiable metadata, and user content.
- B. **Data Collection and Use:** ENTITY will collect and use CLIENT Data only for the purpose of fulfilling its duties and providing services under this Agreement, and for improving services under this Agreement.
- C. **Education Records:** If ENTITY will have access to "education records" as defined under the Family Educational Rights and Privacy Act (FERPA) (34 CFR Part 99), the ENTITY acknowledges that for the purpose of this Agreement it will be designated as a 'school official' with 'legitimate educational interests' and will use the data only for the purpose of fulfilling its duties under this Agreement. ENTITY agrees to indemnify and hold harmless the Board of Education of Howard County for any damages or costs, including reasonable attorney's fees, which arise out of any gross negligence or willful misconduct by ENTITY, its agents and employees concerning its FERPA obligations under this section.
- D. **Obligation of Confidentiality:** In performing services under this Agreement, ENTITY and CLIENT may be exposed to and will be required to use certain "Confidential Information", as defined below. ENTITY and CLIENT along with their employees, agents or representatives will not, use, directly or indirectly, such Confidential Information for purposes other than the purposes outlined in this Agreement.
- E. **Definition of Confidential Information:** "Confidential Information" means information, not generally known, and proprietary to the ENTITY or CLIENT or to a third party for whom the ENTITY or CLIENT is performing work, including, without limitation, information concerning any patents or trade secrets, confidential or secret designs, processes, formulae, source codes, plans, devices or material, research and development, proprietary software, analysis, techniques, materials or designs (whether or not patented or patentable), directly or indirectly useful in any aspect of the business of the ENTITY or CLIENT. Confidential Information includes all information which ENTITY or CLIENT acquires or becomes acquainted with during the period of this Agreement, whether developed by ENTITY, CLIENT or others, which ENTITY or CLIENT has a reasonable basis to believe to be Confidential, such as data that is personally identifiable to an individual student and information within the definition of "Education Record." The parties agree that the following will be treated as "Confidential Information": (i) all information from Client's database ("Data") provided by or on behalf of CLIENT to ENTITY; (ii) all information provided by ENTITY to CLIENT pertaining to the Services; (iii) all information which is labeled as such in writing and prominently marked as "Confidential," "Proprietary" or words of similar meaning by either party; or (iv) business information of a party which a reasonable person would understand under the circumstances to be confidential.
- F. **Maintenance of Confidentiality:** Any Confidential Information acquired or received by either party (the "Recipient") in the course of this Agreement will not be disclosed or transferred to any person or entity other than to employees of a party and, as to ENTITY and its third parties, for the purpose of performing its obligations under this Agreement. Confidential Information received under this Agreement will be treated with the same degree of care and security as each party uses with respect to its own Confidential Information, but not less than a reasonable degree of care. The parties agree to use Confidential Information only for the purpose of performance of this Agreement and to make no copies except as necessary for performance of this Agreement. Any such confidential information and copies thereof made by a party, or any representative of a party, shall be completely and promptly destroyed at the conclusion of contract performance subject to paragraph F.1 below.
  1. Upon termination or completion of the Services hereunder, upon 30 days' receipt of written request of CLIENT, ENTITY will delete the CLIENT's Confidential Information as housed in the ENTITY production database(s), provided that ENTITY may maintain archival copies for audit purposes and dispute resolution purposes and ENTITY may retain copies of Confidential Information on back-up media in which such Data is co-resident with other

employment and income data. ENTITY shall remain under its contractual obligation of confidentiality and security to CLIENT and such obligations shall survive termination of the Agreement. This Section shall survive the termination of this Agreement.

- G. **Data De-Identification:** ENTITY may use de-identified Data for product development, research, or other internal purposes. De-identified Data will have all direct and indirect personal identifiers removed. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID. Furthermore, ENTITY agrees not to attempt to re-identify de-identified Data.
- H. **Data Mining, Marketing and Advertising:** Except as indicated in Section G above, ENTITY is prohibited from mining CLIENT Data for any purposes other than those agreed to by the parties. Data mining or scanning of user content for the purpose of advertising or marketing to students or their parents is prohibited. Any and all forms of advertisement, directed towards children, parents, guardians, or District Employees will be strictly prohibited unless allowed with express written consent of the District.
- I. **Modification of Terms of Service:** ENTITY will not change how CLIENT Data are disclosed, and/or shared under the terms of this Agreement in any way without advance notice to the CLIENT. With respect to CLIENT Data, this Agreement is the entire agreement between the CLIENT (including all District end users) and the ENTITY. All other agreements or understandings, whether electronic, click-through, verbal or in writing, with District Employees or other End Users shall be null and void.
- J. **Data Sharing:** ENTITY will not share CLIENT data, with or disclose it to any third party, except to affiliated subcontractors, agents, or third-party service providers of the ENTITY, without prior specific and informed written consent of the CLIENT, except as required by law.
- K. **Data Storage:** CLIENT Data will not be stored outside of the United States without prior, specific and informed written consent from the CLIENT.
- L. **Terms, Data Transfer, Survival and Destruction:** The CLIENT may immediately terminate the Agreement if the CLIENT determines the ENTITY has breached this Agreement. The Agreement will automatically terminate at the expiration date. However, the ENTITY's obligations shall survive termination of this Agreement until ALL CLIENT Data has been returned and/or securely removed or destroyed. ENTITY will ensure that all Data in its possession and in the possession of any subcontractors, or agents to which the ENTITY may have transferred Data, are destroyed.
- M. **Rights and License in and to Data:** All personally identifiable student-produced work remains the property of the school system or that eligible student. The ENTITY has a limited, nonexclusive license to the CLIENT data described herein solely for the purpose of performing its obligations as outlined in the Agreement.
- N. **Access:** Except as otherwise expressly prohibited by law, the ENTITY will immediately notify the CLIENT of any subpoenas, warrants, or other legal orders, demands or requests, including Audits, and governmental requests and demands, received by the ENTITY seeking CLIENT Data. If the CLIENT receives a similar request, the ENTITY will promptly supply the CLIENT with copies of records or information required by the CLIENT to respond.
- O. **Security Controls and Risk Management:** ENTITY will store and process CLIENT Data in accordance with industry standard practices. This includes appropriate administrative, physical, and technical safeguards to: 1) ensure the security and confidentiality of PII and Confidential Information; 2) protect against any anticipated threats or hazards to the security or integrity of Confidential Information; 3) protect against unauthorized access to or use of Confidential Information that could result in substantial harm or inconvenience to any customer or to any client employee and/or student; and 4) dispose of PII and Confidential Information in a secure manner.
  - 1. To comply with the safeguard obligations generally described above, ENTITY has (a) designated an employee to coordinate its information security program, (b) identified reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of CLIENT Information that could result in the unauthorized disclosure, misuse,

alteration, destruction, or other compromise of such information, and assessed the sufficiency of any safeguards in place to control these risks, and (c) designed and implemented information safeguards to control the risks identified through the risk assessment, and regularly tests or otherwise monitors the effectiveness of safeguards' key controls, systems and procedures.

2. ENTITY will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. ENTITY will also have a written incident response plan, to include prompt notification of HCPSS in the event of a security or privacy incident, as well as best practices for responding to a breach of PII.
- P. **Data Breaches:** ENTITY shall notify CLIENT in writing as soon as commercially practicable, however no later than forty-eight (48) hours, after ENTITY has either actual or constructive knowledge of a breach which affects CLIENT's Data (an "Incident") unless it is determined by law enforcement that such notification would impede or delay their investigation. ENTITY shall have actual or constructive knowledge of an Incident if ENTITY actually knows there has been an Incident or if ENTITY has reasonable basis in facts or circumstances, whether acts or omissions, for its belief that an Incident has occurred. The notification required by this section shall be made as soon as commercially practicable after the law enforcement agency determines that notification will not impede or compromise the investigation. ENTITY shall cooperate with law enforcement in accordance with applicable law provided however, that such cooperation shall not result in or cause an undue delay to remediation of the Incident. ENTITY shall promptly take appropriate action to mitigate such risk or potential problem at ENTITY's expense. In the event of an Incident, ENTITY shall, at its sole cost and expense, restore the Confidential Information, to as close its original state as practical, including, without limitation any and all Data, and institute appropriate measures to prevent any recurrence of the problem as soon as is commercially practicable.
- Q. **Employee and Subcontractor Qualifications:** ENTITY shall ensure that its employees and all subcontractors who have potential access to CLIENT Data have undergone appropriate background screening and possess all needed qualifications to comply with the terms of this Agreement. Further, all employees and subcontractors are subject to the same FERPA compliance in relation to the 'school official' designation, and should receive training that the re-disclosure of PII and/or Confidential Information will violate federal and state laws and may result in criminal and/or civil penalties.
- R. **Governing Law:** This agreement shall be governed by and construed in accordance with the laws of Maryland, excluding its choice of law rules. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the appropriate Maryland Court. ENTITY will comply with Maryland Education Code ANN. § 4-131, "Operators of School Internet Web sites, Online Services, Online Applications, and Mobile Applications." ENTITY agrees to be bound as an "operator" under the law regardless of the ENTITY's exemptions that may exist in Maryland Education Code ANN. § 4-131(a)(3).
- S. **Compliance:** In addition to complying with FERPA and the Maryland Education Code cited above, the ENTITY shall ensure that its products and services comply with the Federal Protection of Pupil Rights Act (34 CFR Part 98), the Federal Children's Internet Protection Act (47 CFR 54.520), and the Federal Children's Online Privacy and Protection Act (16 CFR Part 312).
- T. **Monitoring:** The ENTITY agrees to allow the HCPSS the ability to review the ENTITY's use of HCPSS data to ensure compliance with the terms of this agreement, upon reasonable notice, during normal business hours, designed not to interfere with ENTITY'S normal business operations, and at HCPSS' sole cost.

## **Amendments to RFP #058.18.B1 not withstanding prior modifications**

### **3.7 Insurance**

3.7.1. The Service Provider shall not commence services until the Service Provider has obtained at the Service Provider's own expense all of the insurance as required hereunder and such insurance has been approved by the Board. Approval of insurance required of the Service Provider will be granted only after submission to the Board of original certificates of insurance signed by authorized representatives of the insurers.

- A. Insurance as required hereunder shall be in force throughout the term of the Contract. Certificates signed by authorized representatives of the insurers evidencing that the required insurance is in effect, shall be maintained with the Board throughout the term of the Contract and for one year after final payment by Board for services rendered under this Contract.
- B. The Service Provider shall require all Subcontractors to maintain during the term of the Contract all insurance or its equivalent to the same extent required of the Service Provider herein unless any such requirement is expressly waived or amended by the Board in writing. The Service Provider shall not allow any Subcontractor to commence services on any subcontract until all insurance required of the Subcontractor has been so obtained and approved by the Service Provider.
- C. Intentionally deleted.
- D. No acceptance and/or approval of any insurance by the Board shall be construed as relieving or excusing the Service Provider from any liability or obligation imposed upon the Service Provider by the provisions of this Contract.
- E. If the Service Provider does not meet the insurance requirements of this Contract, the Service Provider shall forward a written request to the Board for a waiver in writing of the insurance requirement(s) not met or approval in writing of alternate insurance coverage, self-insurance, or group self-insurance arrangements. If the Board denies the request, the Service Provider must comply with the insurance requirements as specified in this Contract.
- F. All required insurance coverages must be underwritten by insurers allowed to do business in the State of Maryland. The insurers must also have a policyholders' rating of "A-" or better, and a financial size of "Class VII" or better in the latest evaluation by A. M. Best Company, unless Board grants specific approval for an exception. The Board hereby grants specific approval for the acquisition of workers compensation and employers liability insurance from the Injured Workers Insurance Fund of Maryland.
- G. Any deductible or retention amounts elected by the Service Provider or imposed by the Service Provider's insurer(s) shall be the sole responsibility of the Service Provider.

#### **3.7.2. Service Provider's Liability Insurance**

The Service Provider shall purchase and maintain the following insurance coverages which shall be written for not less than the limits specified below or required by law, whichever is greater.

- A. Commercial general liability insurance or its equivalent for bodily injury, personal injury and property damage including loss of use, with minimum limits of:

- \$ 1,000,000 each occurrence;
- \$ 1,000,000 personal and advertising injury;
- \$ 2,000,000 general aggregate; and
- \$ 1,000,000 products/completed operations aggregate.

This insurance shall include coverage for all of the following:

- i. Liability arising from premises and operations;
- ii. Liability arising from products and completed operations;
- iii. Contractual liability including protection for the Service Provider from bodily injury and property damage claims arising out of liability assumed under this Contract; and
- iv. Liability arising from injury to patients when caused by other than medical malpractice.

**B. Business auto liability insurance or its equivalent with a minimum limit of \$1,000,000 per accident and including coverage for all of the following:**

- i. Liability arising out of the ownership, maintenance or use of any auto (if no owned autos, hired and non-owned autos only); and
- ii. Automobile contractual liability.

**C. Workers compensation insurance or its equivalent with statutory benefits as required by any state or Federal law, including standard "other states" coverage; employers liability insurance or its equivalent with minimum limits of:**

- \$ 100,000 each accident for bodily injury by accident;
- \$ 100,000 each employee for bodily injury by disease; and
- \$ 500,000 policy limit for bodily injury by disease.

If the Service Provider is an individual or sole proprietor operating without workers compensation coverage, personal health insurance or its equivalent.

**D. Service Provider's medical professional liability (or errors or omissions liability) insurance or its equivalent with limits totaling at a minimum:**

- \$ 3,000,000 each person or claim; and
- \$ 3,000,000 annual aggregate.

**E. Individual medical professional liability insurance or its equivalent for the individual professionals arranged by the Service Provider to provide medical services under this Contract with minimum limits of:**

- \$ 1,000,000 each person or claim; and
- \$ 3,000,000 annual aggregate.

**F. Umbrella excess liability or excess liability insurance or its equivalent with minimum limits of:**

- (\$ 2,000,000)per occurrence;
- (\$ 2,000,000)aggregate for other than products/completed operations and auto liability; and
- (\$ 2,000,000)products/completed operations aggregate

and including all of the following coverages on the applicable schedule of underlying insurance:

- i. Commercial general liability;
- ii. Business auto liability; and
- iii. Employer's liability.

3.7.3. The Board of Education of Howard County and the Board's elected and appointed officials, officers, consultants, agents and employees shall be named as additional insured on the Service Provider's commercial general liability insurance and the umbrella excess liability or excess liability policies, if required herein, with respect to liability arising out of the services provided under this Contract by Service Provider.

**Special Note:** ISO forms CG 2009 and CG 2058 entitled "Additional Insured - Owners, Lessees or Contractors – Scheduled Person or Organization" (previously Forms A and B respectively) are **NOT ACCEPTABLE**. ISO form CG 2026 entitled "Additional Insured - Designated Person or Organization" **or** a manuscript endorsement with the above wording is required.

- A. Insurance or self-insurance provided to the Board and Board's elected and appointed officials, officers, consultants, agents and employees under any Service Provider's liability insurance or self-insurance required herein, including, but not limited to, umbrella and excess liability or excess liability policies, shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of insurance or self-insurance. (Any cross suits or cross liability exclusion shall be deleted from Service Provider's liability insurance policies required herein.)
- B. Insurance or self-insurance provided to the Board and Board's elected and appointed officials, officers, consultants, agents and employees as specified herein shall be primary, and any other insurance, self-insurance, coverage or indemnity available to the Board and Board's elected and appointed officials, officers, consultants, agents and employees shall be excess of and non-contributory with insurance or self-insurance provided to the Board and Board's elected and appointed officials, officers, consultants, agents and employees as specified herein.
- C. If any liability insurance purchased by the Service Provider has been issued on a "claims made" basis, the Service Provider must agree to comply with the following additional conditions:
  - i. The Service Provider shall maintain each such "claims made" coverage and shall provide certificate(s) of insurance evidencing each such "claims made" coverage for a period of one year after final payment for services rendered under the Contract. Such certificate(s) shall evidence a retroactive date no later than the beginning of the services provided under this Contract; **or**
  - ii. The Service Provider shall purchase an extended (minimum one year) reporting period endorsement for each such "claims made" policy in force as of the date of final acceptance and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself. Such certificate or copy of the endorsement shall evidence a retroactive date no later than the beginning of the services provided under this Contract.



### **3.7.5. Waiver of Subrogation**

To the fullest extent permitted by law, the Service Provider and its invitees, employees, officials, volunteers, agents and representatives waive any right of recovery against the Board of Education of Howard County for any and all claims, liability, loss, damage, costs or expense (including attorneys' fees) arising out of the services provided by Service Provider under this Contract. Service Provider specifically waives any right of recovery against the Board and its elected and appointed officials, officers, volunteers, agents and employees for personal injury (and any resulting loss of income) suffered while working on behalf of the Board as an independent contractor. Such waiver shall apply regardless of the cause of origin of the injury, loss or damage, including the negligence of the Board and its elected and appointed officials, officers, volunteers, agents and employees. The Service Provider shall advise its insurers of the foregoing.

### **3.7.6 Acknowledgment of Service Provider's Independent Contractor Status and No Coverage for Service Provider under Board's Workers Compensation Coverage**

Service Provider hereby acknowledges its status as an independent contractor while performing services on behalf on the Board and that the Board's workers compensation coverage or self-insurance is not intended to and will not respond to cover any medical or indemnity loss arising out of injury to the Service Provider or its employees during the Service Provider's performance of services for the Board. To the fullest extent permitted by law, the Service Provider specifically waives any right of recovery against the board and its elected and appointed officials, officers, volunteers, agents and employees for personal injury (and any resulting loss of income) suffered during the performance of services as an independent contractor for the Board. Such waiver shall apply regardless of the cause of origin of the injury, loss or damage, including the negligence of the Board and its elected and appointed officials, officers, volunteers, agents and employees. The Service Provider shall advise its insurers of the foregoing.

### **3.7.7. Damage to Property of the Service Provider and its Invitees**

To the fullest extent permitted by law, the Service Provider shall be solely responsible for any loss or damage to property of the Service Provider or its invitees, employees, officials, volunteers, agents and representatives while such property is on, at or adjacent to the premises of the Board.

### **3.8 Americans with Disabilities Act Requirements:**

- 1. The Howard County Public School is fully committed to the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities and services.**
- 2. Service Provider is compliant with Section 508 and WCAG 2.0 Level AA standards**

**APPENDIX A**  
**GENERAL PROVISIONS**

**IV. PUBLIC INFORMATION ACT NOTICE**

Offerors should give specific attention to the identification of those portions of their submittals that they deem to be confidential, proprietary information or trade secrets and provide any justification of why such materials, upon request, should not be disclosed by HCPSS. Blanket requests for the entire submittal to be held confidential will not be accepted.

HCPSS shall determine, in their sole discretion, which (if any) portions of the Offeror's submittals shall be confidential.

**VII. CHANGES ALTERATIONS, OR MODIFICATIONS IN THE SERVICES**

Upon written agreement, the parties may change, alter, or modify the services provided for in this agreement and such changes, alterations, or modifications may be made even though it will result in an increase or decrease in the services of the Contractor or in the contract cost thereof. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of any service under this agreement, whether or not changed by an order, an equitable adjustment shall be made and the contract shall be modified in writing accordingly.

**VIII. REMEDIES AND TERMINATION**

- A. ***Termination for Default*** - If the Contractor fails to fulfill its obligations under this contract properly and on time, otherwise violates any provision of the contract, HCPSS may terminate the contract by written notice to the Contractor. The notice shall specify the acts of omissions relied on as cause for termination. All finished or unfinished supplies and services provided by the Contractor, shall at HCPSS's option, become HCPSS property. HCPSS shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach.

If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and HCPSS can affirmatively collect damages.

- B. ***Termination for Convenience of HCPSS*** - HCPSS may terminate all or any part of the work required under this contract for the convenience of HCPSS. In the event of such termination, the contract manager shall determine the costs the Contractor has incurred to the date of termination and such reasonable costs associated with the termination. HCPSS shall pay such costs as determined by the contract manager to the Contractor together with reasonable profit reasonably earned by the Contractor to the time of termination but not to include any profit not earned as of the date of termination.

- F. ***Remedies Not Exclusive*** - The rights and remedies contained in this general condition are in addition to any other right or remedy provided by law, and the exercise of any of them is not a waiver of any other right or remedy provided by law.

**IX. RESPONSIBILITY OF CONTRACTOR**

- A. Notwithstanding any review, approval, acceptance, or payment for the services by HCPSS, the Contractor shall be responsible for professional and technical accuracy of its work furnished by the Contractor under this agreement.
- B. HCPSS's review, approval, or acceptance of, nor payment for, any of the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Contractor shall be and remain liable to HCPSS in accordance with applicable law for all damages to HCPSS caused by the Contractor's negligent performance of any or the services furnished under this contract.
- C. The rights and remedies of HCPSS provided for under this contract are in addition to any rights and remedies provided by law.

**X. DISPUTES; GOVERNING LAW**

The contract shall be governed by the law of the State of Maryland and nothing in this contract shall be interpreted to preclude the parties from seeking, after completion or termination of the agreement, any and all remedies provided by law.

**XI. EXAMINATION OF RECORDS**

The Contractor agrees that the auditor of HCPSS any of their duly authorized representatives shall, until expiration of three years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

**XII. DISSEMINATION OF INFORMATION**

Except as otherwise permitted in the Naviance Master Service Agreement or when required by law, during the term of this agreement, the Contractor shall not release any information related to the services or performance of the services under this agreement nor publish any final reports or documents without the prior written approval of the HCPSS contract manager.

**XV. COMPLIANCE WITH LAW**

The Contractor hereby represents and warrants:

- A. That it is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified.
- B. That it is not in arrears with respect to the payment of any monies due and owing the county or state, of any department or agency thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this agreement.
- C. That it shall comply with all federal, state, and local law, ordinances and legally enforceable rules and regulations applicable to its activities and obligations under this agreement.
- D. That it shall procure, at its expense, all licenses, permits, insurance, and governmental approval, if any, necessary to the performance of its obligations under this agreement.

- E. That the facts and matters set forth hereafter in the "Contract Affidavit" which is attached to this agreement and made a part hereof are true and correct.

**XVI. ADHERENCE TO SCHOOL SYSTEM POLICIES**

The Contractor understands that HCPSS shall not be required to act contrary to the School System policies or unreasonably interfere with the School System operations. The Contractor and any Sub-Contractor personnel assigned to this project must be cognizant of School System policies and operating procedures at all times. Health and safety policies and procedures will not be compromised. Proposed programs must not violate or conflict with the School System policies and procedures. Moreover, the Contractor shall be cognizant of federal and state regulations and policies and all proposals and subsequent work shall adhere to known regulations and policies.

3 pages UNDER REVIEW FOR MPIA RELEASEABILITY

## Terms of Service

Naviance Inc. maintains the Naviance platform inclusive of Naviance for High Schools, Naviance for Middle Schools, Naviance for Districts, Naviance eDocs, Naviance Course Planner, Naviance Alumni Tracker, Naviance Student, and Naviance Marketplace as well as the PrepMe customized learning and test preparation products and services (collectively, the "Service") subject to the terms and conditions described herein. Your use of the Service constitutes an agreement by you to abide by these terms and conditions (the "Agreement"). If you have entered into this Agreement on behalf of an organization, you represent that you have the authority to bind that organization to these terms and conditions. The term "Client" herein refers to (i) the organization and its officers, directors, agents, and employees or (ii) an individual, in the case of a non-legal entity who are registered to use the Service as a counselor, teacher, admissions officer, or other professional capacity. The term "User" herein refers to a student, a student's parent(s) or guardian(s), and/or a person who registers for the Service through an account provided by a Client or who registers for the Service as an individual. If you do not have the necessary authority, or if you do not agree with these terms and conditions, then you may not use the Service.

**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. Service fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Client shall be responsible for payment of all such taxes, levies, or duties as may be applicable to the Service fees (exclusive of any taxes or similar fees that may be imposed on the net income of Naviance).

**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 are 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 reconnection 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-transferrable worldwide right to use the Service, 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. User acknowledges that User has no rights except as expressly identified in the Privacy Statement with respect to Client Data.

#### **4. Client and User Responsibilities.**

**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 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 Client; (iv) assure 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 exportation of technical or personal data; (v) assure 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 Users; (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://succeed.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.

#### **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 identifications, 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. Finally, the Service requires unique 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** Without limiting the generality of Section 4.1(iv) of this Agreement, 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)(iii) 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 4.1(iv) of this Agreement, in the event that Client's use of the Service subjects Client to the provisions of COPPA, Client acknowledges that: (i) if it chooses to make Family Connection available to Users that Client shall be considered the "operator" of that website for the purposes of COPPA, and (ii) Client 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 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.

**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, is 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 to be 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.

**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 by 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 licensor's 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 WILL BE CORRECTED, OR (F) 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.

**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 INDEMNITY OBLIGATIONS OR AMOUNTS ACTUALLY DUE FOR PROVISION OF THE SERVICE, IN NO EVENT SHALL ANY PARTY'S AGGREGATE LIABILITY UNDER ANY THEORY OR FOR ANY REASON WHATSOEVER EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM CLIENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL ANY PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**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 countries to which the United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using 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 diversion 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 District of Columbia law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes 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 the District of Columbia. 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 Naviance to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Naviance in writing. This Agreement comprises the entire agreement between Naviance and Client and Naviance and Users with respect to the Service and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein. Sections 2 (for any Service provided prior to termination), 6, 7, 10.1, 11, 13, and 19 shall survive termination of this Agreement.

## **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 six months from the date of purchase and acknowledge 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 forfeit 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 in connection with sessions confirmed by Naviance and canceled by Client. If cancellation of a private or public session is a result of inclement weather resulting in a school closing or delay, Client is still responsible for paying any expenses incurred by Naviance on the Client's behalf, however the session will not be considered cancelled by the client.

## **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, make recommendations for 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 set up 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 thereto, nor is Naviance liable for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, 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 in 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, all without prior notice or liability to you.

**20.3. 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 by Naviance infringe your copyright, you (or your agent) may send us a notice requesting that the materials be removed, or access to them blocked. Such notice must meet statutory requirements imposed by the DMCA and must be in writing and include the following information in writing: (i) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; (ii) a description of the copyrighted work that you claim has been infringed. Please describe the work and, where possible, include a copy or the location (e.g., URL) of an authorized version of your work; (iii) a

description of the material that you claim to be infringing, as well as its location within the Service; (iv) your name, address, telephone number, and e-mail address; (v) a statement by you that you have a good faith belief that the disputed use of the materials is not authorized by the copyright owner, its agent, or the law; and (vi) a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf. If you believe in good faith that a notice of copyright infringement has been wrongly filed against you, the DMCA permits you to send us a counter-notice. Notices and counter-notices for the Service should be sent to: Paul M. Vogt, Esq., 46 Southfield Avenue, Suite 400, Stamford, CT 06902. We suggest that you consult your legal advisor before filing a notice or counter-notice. Also, be aware that there can be substantial penalties for false claims.

By affixing their signatures below and intending to be bound, the duly authorized representatives of Naviance and Client indicate their agreement to the terms and conditions of this Agreement as of the date last signed below.