

**CONTRACT NAME: AGREEMENT BETWEEN NAVIANCE,  
INC. AND DAVIS JOINT UNIFIED SCHOOL DISTRICT**

**BRIEF DESCRIPTION OF CONTRACT:** Naviance, Inc. is a comprehensive college and career readiness solution for high schools that helps align student strengths and interests to post-secondary goals, and improve student outcomes.

It is a software program that assists students with college planning and career assessments.

The term of this agreement covers the 2016-2017 school year. The cost for the service is \$3,714 and is allocated in the site budget for Davis Senior High School.

**EDUCATION CODE SECTION 49073.1 AMENDMENT TO**

**NAVIANCE INC. TERMS OF SERVICE**

**THIS AMENDMENT** (“Amendment”) to the Hobson Order Form and the Naviance Inc. Terms of Service by and between the Davis Joint Unified School District, a public school district of the state of California and Naviance, Inc. a corporation licensed to do business in California (“Vendor”), dated July 1, 2016 (hereinafter, collectively referred to as the “Agreement”) (a true and correct copy of which is attached hereto as Exhibit “A” and is hereby made and entered into as of July 1, 2016 (“Effective Date”) as follows:

**WHEREAS**, Vendor provides a web and mobile-compatible K-12 college and career readiness platform that helps students explore goal setting, career interests, academic planning, and college preparation, including exploring and connecting with higher education institutions of interest and submitting enrollment applications, while operating as the system of records for schools and districts;

**WHEREAS**, as a California public school district, the District is subject to the California Education Code;

**WHEREAS**, Vendor is a “third party” under Education Code section 49073.1, which defines “third party” as a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records;

**WHEREAS**, Education Code section 49073.1 request that any contract for the provision of services entered into between District and Vendor contain certain provisions specified in sections (b)(1) through (b)(9) of Education Code section 49073.1; and

**WHEREAS**, The District and Vendor desire to amend the terms in their Agreement that will satisfy the requirements of Education Code section 49073.1.

**NOW, THEREFORE, DISTRICT AND VENDOR AGREE TO THE FOLLOWING TERMS IN COMPLIANCE WITH EDUCATION CODE SECTION 49073.1.**

1. **Ownership and Control of Pupil Records.** Pupil Records shall continue to be the property of and under the control of the District in accordance with California Education Code section 49073.1. For purposes of this contract, “Pupil Records” means both any information directly related to a pupil that is maintained by the District and information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other District employee. For purposes of this Agreement, “Deidentified Information” means information that cannot be used to identify an individual pupil. For purposes of this Agreement, “Pupil Records” does not include Deidentified Information,

including aggregated Deidentified Information, used by Vendor to improve educational products for adaptive learning purposes and for customizing pupil learning; to demonstrate the effectiveness of Vendor's products in the marketing of those products; or for the development and improvement of educational sites, services, or applications.

2. **Ownership and Control of Pupil-Generated Content.** Pupils may retain possession and control of their own Pupil-Generated Content, as defined herein, or may transfer Pupil-Generated Content to a personal file by notifying the District's Director of Information Technology in writing of such request. As part of the Service, Vendor provides a dashboard that allows the District to authorize pupils to change and delete their own Pupil-Generated Content. For purposes of this contract, "Pupil Generated Content" includes essays, research reports, portfolios, creative writing, music or other audio files, photographs, but does not include pupil responses to a standardized assessment where pupil possession and control would jeopardize the validity and reliability of that assessment.

3. **Use of Pupil Records.** Vendor shall not use any information in the Pupil Records for any purpose other than those required or specifically permitted by this Agreement.

4. **Review of Pupil Records.** A parent, legal guardian, or pupil who has reached the age of eighteen (18) may review personally identifiable information in the pupil's records and correct erroneous information by notifying the District's Director of Information Technology in writing of such request. The District will meet with parent, legal guardian, or pupil who has reached the age of eighteen (18) to review and correct any information in the Pupil's Records. As part of the Service, Vendor provides a dashboard that allows the District to change and review, amend and correct personally identifiable information in a pupil record.

5. **Security and Confidentiality of Pupil Records.** Vendor agrees to hold Pupil Records in strict confidence. Vendor shall not use or disclose Pupil Records received from or on behalf of District except as permitted or required by this Agreement, as required by law, or as otherwise authorized in writing by District. Vendor agrees that it will protect the Pupil Records it receives from or on behalf of District according to commercially acceptable standards and no less rigorously than it protects its own confidential information. Vendor will designate and train responsible individuals, to ensure the security and confidentiality of Pupil Records. Vendor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted Pupil Records received from or on behalf of District. Similar measures that meet or exceed the Vendor's administrative, technical and physical security standards shall be extended by contract to all subcontractors used by Vendor. If District reasonably determines in good faith that Vendor has materially breached any of its obligations under this Section, District may, in its sole discretion, terminate the Agreement immediately if cure is not possible. District shall provide written notice to Vendor describing the violation, the action it intends to take and the timeframe for such action.

6. **Breach Notification Process.** Vendor, within two (2) business days of discovery, shall report to District any use or disclosure of Pupil Records not authorized by the contract or in writing by the District. Vendor's report shall identify: (i) the nature of the unauthorized use or disclosure; (ii) the Pupil Records used or disclosed, (iii) who made the unauthorized use or

received the unauthorized disclosure, (iv) what Vendor has done or shall do to mitigate any effect of the unauthorized use or disclosure, and (v) what corrective action Vendor has taken or shall take to prevent future similar unauthorized use or disclosure. Vendor shall provide such other information, including a written report, requested by District. In the event of an unauthorized disclosure of a Pupil's Records, when required by applicable law, Vendor shall work with the District to ensure that affected parents, legal guardians, or pupils who have reached the age of eighteen (18) are notified in writing and provided with details and next steps to address the specific breach. Compliance with these requirements shall not, in itself, absolve Vendor of liability in the event of an unauthorized disclosure of Pupil Records.

7. **Retention and Destruction of Client Data and Pupil Records.** Vendor certifies that Pupil Records shall not be retained or available to Vendor upon completion of the term of the Agreement. Prior to termination of the Agreement, District shall export all Client Data, including Pupil Records, in the possession or control of Vendor. Upon export of Client Data and Pupil Records by District, District shall provide written notice to Vendor, to destroy all Client Data and Pupil Records in Vendor's possession as of the termination date of the contract. Vendor shall provide written certification to the District of such destruction within fourteen (14) days of the termination date of the Agreement. Notwithstanding the foregoing, Vendor shall comply with any litigation hold or order to preserve Client Data and Pupil Records.

8. **Compliance with Applicable Laws.** The District and Vendor will jointly ensure compliance with the federal Family Educational Rights and Privacy Act ("FERPA") (20 U.S.C. Sec. 1232g) through following the confidentiality provisions as set forth in this contract, as well as applicable District Board policies. The parties acknowledge and agree that the District is subject to federal and local laws relating to the protection of personally identifiable information ("PII") of students, including FERPA, and that Vendor is obtaining such PII as a "school official" under section 99.31 of FERPA for the purpose of providing the services hereunder. In addition to FERPA, Vendor shall comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to Vendor; the services being provided by Vendor; Vendor's business, equipment and personnel engaged in operations covered by this contract; and the protection of Pupil Records and PII, including but not limited to Education Code section 49060 *et seq.*, the Children's Online Privacy Protection Act (COPPA) and the Student Online Personal Information Protection Act (SOPIPA). Vendor certifies that it is familiar with these laws, as well as any other applicable requirements for the storage and transmission of Pupil Records and Vendor will comply with all such requirements.

9. **Prohibition on Targeted Advertising.** Vendor shall not use PII in Pupil Records to engage in targeted advertising.

10. **Termination.** If District reasonably determines in good faith that Vendor has materially breached any of its obligations under this Amendment or the Agreement, District, in its sole discretion, shall have the right to provide Vendor with written notice of a fifteen (15) day period to cure the breach. If Vendor fails to cure a breach within that period of time, District may terminate the Agreement immediately. If, in its sole discretion, District determines that a cure is not possible, District may provide written notice of immediate termination of the Agreement.

11. **Governing Law and Venue.** The Agreement and this Amendment shall be governed by and construed in accordance with the laws of the State of California. Any dispute, claims, demands or actions arising out of or in relation to the Agreement and this Amendment shall be brought in and resolved by the Superior Court of the County of Yolo.

12. **Effect of Amendment.** If any provisions of this Amendment conflict or are otherwise contrary to the original terms of the Agreement, the terms of this Amendment prevail. Any Naviance online terms of use, policies or agreements shall not apply to the District.

Except as specifically modified herein, all other terms and conditions contained in the Agreement between the District and Vendor shall remain unchanged and in full force and effect.

Dated this \_\_\_ day of \_\_\_\_\_, 2016.

**Davis Joint Unified School District**

**Naviance, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Exhibit "A"

Hobson Order Form and Naviance Inc. Terms of Service

(attached)

# Order Form



**To:**  
 Davis Senior High  
 315 West 14th St.  
 Davis, CA 95616-1914

**Date:** June 28, 2016

**Hobsons Contact:**  
 Jon Coley  
 jon.coley@hobsons.com  
 (703) 859-7326

Product or Service	Quantity	Unit	Start Date	End Date	Price
Naviance for High School	1,688.00	Enrollment	7/1/2016	6/30/2017	\$3,713.60
<b>Total Price:</b>					<b>\$3,713.60</b>

<b>Notes: (if applicable)</b>	
<b>Comments:</b>	All figures quoted are exclusive of sales tax.

Please complete or update the following information:

Account Contacts	Name	Email Address
Primary	Courtenay Tessler	
Billing	Katie Prien	kprien@djud.net
Data/Technology		
Training		
<b>Payment Method:</b>	<input type="checkbox"/> Purchase Order # _____ <input type="checkbox"/> Credit Card # _____ <input type="checkbox"/> Check <input type="checkbox"/> Wire Transfer # _____	
	<i>If paying by credit or debit card</i> Expiration Date (MM/YY): _____ / _____ Billing Zip Code: _____ Security Code : _____	
<b>CEEB Code:</b>	50730	

Prices are valid for 30 days from the date specified above. All costs are denominated in U.S. dollars. Payment is due within 30 days of your invoice date. Unless separate invoice and payment terms are specified, Hobsons will issue invoices once per year, with the first taking place upon execution of the order form and then annually thereafter throughout the term of the contract. Payment terms in all instances are Net 30.

The services are delivered in accordance with applicable terms that can be found at <https://success.naviance.com/auth/signin?tos=1#/tos>. By signing below, you agree to be bound by such terms and that such terms are made a part of this contract.

Please complete the contact and payment information as indicated, then sign below to indicate your acceptance. By signing this contract, you are stating that you are authorized by your institution to make this purchase. If a Purchase Order is required for payment to be issued, please indicate below. If you have selected professional services, travel expenses for on-site professional services will be billed separately following your session(s).

\_\_\_\_\_ Yes, a Purchase Order is required. It will be sent to Naviance by \_\_\_\_\_.

Upon execution by Authorized Signatory, Client hereby agrees to the Terms of Service which will become effective together with this Order Form as of the Signature Date below.

Signature

Printed Name and Position

Signature Date

**Purchase Order & Order Forms:**

Naviance, Inc.  
50 E. Business Way, Suite 300  
Cincinnati, OH 45241

**Remit To:**

Naviance, Inc.  
P.O. Box 504571  
St. Louis, MO 63150-4571

**IF YOU CHOOSE TO FAX, THEN PLEASE CLICK ON THE 'SIGN ON PAPER' BUTTON FOLLOWED BY 'PRINT AND FAX' BUTTON AND FAX YOUR SIGNED ORDER FORM TO THE NUMBER PROVIDED ON THE COVERPAGE OF THE DOWNLOADED DOCUMENT**

## 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.

**Naviance, Inc.**

**Client**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_