

HARFORD COUNTY PUBLIC SCHOOLS

AMENDMENT TO NAVIANCE

TERMS OF SERVICE/LICENSING AGREEMENT

(Contract Documents)

This Amendment is an agreement between NAVIANCE, INC. ("Vendor,") and HARFORD COUNTY PUBLIC SCHOOLS ("School System").

School System is required, when entering into agreements with other parties, to follow applicable laws, regulations, policies, and standards including those related to ethics; privacy and security; accessibility; records retention; limitations on indemnification; fiscal law constraints; advertising and endorsements; freedom of information; and governing law and dispute resolution form. Vendor and School System (together the "Parties") agree to modify the Vendor's Terms of Service/Licensing Agreement, or any Contract Document which constitutes the agreement between Vendor and School System relating to Naviance Services, hereinafter, the "Contract Documents." Accordingly, the Contract Documents are hereby modified by this Amendment. All terms in this Amendment supersede and take precedence over any conflicting terms in the Contract Documents.

In this agreement, the term "Data" shall include all Personally Identifiable Information (PII) and other non-public information. Data include, but are not limited to, personally identifiable student data, and metadata.

1. Government Entity: Except for Naviance Competitors, "You," or "User" within the Contract Documents shall mean the School System itself and shall not apply to, or bind (i) the individual(s) who utilize the Vendor Site or Services on the School System's behalf, or (ii) any individual users who happen to be employed by, or otherwise associated with, the School System. Vendor will look solely to the School System to enforce any violation or breach of the Contract Documents by such individuals.
2. Public Purpose: School System shall use the Vendor Site and Services solely in furtherance of the School System's public purpose. Any requirement(s) set forth within the Contract Documents that use of the Vendor Site and Services be for private, personal and/or non-commercial purposes is hereby waived.
3. Intentionally omitted.
4. Marketing and Advertising; 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 School System. As such, Vendor agrees not to serve or display any commercial advertisements or solicitations in the publicly available portion of the Site displaying content uploaded by or under the control of School System. This exclusion shall not extend to house ads, which Vendor may place in a non-intrusive manner. Further, Vendor will not use any Data to advertise or market to students or their parents. Advertising or marketing may be directed to School System only if student information is properly de-identified.

However, the Vendor and the School System agree that Vendor may provide Matching features subject to the following:

The college-planning function contained in Vendor's Service includes certain optional features (collectively, "Matching") that allow students to view information from and interact with Hobsons' higher education Intersect subscribers ("Higher Education Institutions"). Matching is inactive by default, and therefore must be enabled by an authorized representative of the School System who has obtained consent from the student's parent or legal guardian prior to the activation of Matching. Matching may be turned on or off at any time at the sole discretion and control of the School System.

If the School System enables Matching for its students, its students will be able to:

- A. View supplemental material on college profile pages and upcoming informational and other pre-enrollment events, and
- B. RSVP to upcoming events hosted by Higher Education Institutions.

In addition, students who meet certain non-personally identifiable criteria will:

- A. Receive additional information about nonprofit Higher Education Institutions, and
- B. If a student expresses interest in a nonprofit Higher Education Institution, that student will receive an invitation through the Service to connect directly with the Higher Education Institution. The student may then choose either to disregard or to respond to the invitation.

No student or School System information is shared with any Higher Education Institution unless the School System has enabled Matching and the applicable student has explicitly opted to send his/her information directly to the Higher Education Institution.

5. Indemnification, Liability, Statute of Limitations: Except for the limitation liability provision in the Naviance Terms of Service, any other provisions in the Contract Documents related to indemnification, liability and statutes of limitation and filing deadlines are hereby waived, and shall not apply. Liability for any breach of the Contract Documents as modified by this Amendment, or any claim arising from the Contract Documents as modified by this Amendment, shall be determined under Maryland law. The applicable Maryland Statute of Limitations shall apply to any breach or claim arising under the Terms of Service as modified by this Amendment.

6. Changes to Contract Documents: Language in the Contract Documents reserving to Vendor the right to change the Contract Documents or service(s) provided thereunder without notice at any time is hereby amended to grant School System at least 30 days' advance notice of any material change to the Contract Documents or provision of service(s) thereunder. No changes made to the original Contract Documents shall override or negate any of the provisions of this Amendment. In no case shall the Vendor change how Data are collected, used or shared or service(s) provided under the terms of the Contract Documents without advance notice to and consent from the School System. This provision does not apply to improvements Vendor makes in the services or the addition by Vendor of additional features within the services that it makes available to School System as part of the services provided under the current Contract; provided, however, that material changes to data collection, use and sharing practices will still require advance notice to and consent from the School System.

7. Access and Use: Language in the Contract Documents allowing Vendor to terminate service or close the School System's account at any time, for any reason, is modified to reflect the Parties' agreement that Vendor may unilaterally terminate service and/or terminate School System's account only for breach of School System's obligations under the Contract Documents or School System's material failure to

comply with the instructions and guidelines posted on the Site. Vendor will provide School System with a reasonable opportunity to cure any breach or failure on School System's part.

8. **Provision on Crawlers:** Any provision in the Contract Documents prohibiting "crawl," "spider" or similar processes is amended to allow the School System to apply such tools solely to its pages and content, and solely to fulfill the School System's obligations under applicable Records laws and regulations or other applicable laws or regulations.

9. **Ownership of Names:** Any provision in the Contract Documents related to Vendor's ownership of and right to change the selected School System name(s), School System ID(s), domain name(s), channel name(s), and group names(s), is waived.

10. **Rights and License In and To School System Data:** Parties agree that all rights to School System's Data, or content, or intellectual property, including all intellectual property rights, shall remain the exclusive property of School System or its students, and Vendor has a limited, nonexclusive license solely for the purpose of performing its obligations as outlined in the Agreement. This Agreement does not give Vendor any rights, implied or otherwise, to Data, content or intellectual property, except as expressly stated in the Agreement. This includes the right to sell or trade Data.

11. **Limitation of Liability:** Intentionally omitted.

12. **Uploading, Deleting:** The Parties understand and agree that School System is not obligated to place any content on the Vendor Site, and School System reserves the right to remove any and all content at School System's sole discretion.

13. **No Endorsement:** Vendor agrees that School System seals, trademarks, logos, service marks, trade names, and the fact that School System has a presence on the Vendor Site and use its Services, shall not be used by Vendor in such a manner as to state or imply that the Vendor's products or services are endorsed, sponsored or recommended by School System, or are considered by School System to be superior to any other products or services. Except for pages whose design and content is under the control of the School System, or for links to or promotion of such page, Vendor agrees not to display any School System or government seals, trademarks, logos, service marks, and trade names on the Vendors homepage or elsewhere on the Vendor Site unless permission to do so has been granted by the School System. Vendor may list the School System's name in a publicly available customer list on its homepage or elsewhere so long as the name is not displayed in a more prominent fashion than that of any other third party name.

14. **No Business Relationship Created:** The Parties are independent entities and nothing in the Contract Documents as modified by this Amendment creates a partnership, joint venture, agency, or employer/employee relationship.

15. **Data Collection, Use, Mining, Sharing, Transfer, and Destruction:** If Vendor will have access to "educational records" as defined under FERPA, the Vendor acknowledges that for the purpose of this Amendment it will be designated as a "school official" with "legitimate educational interests" and will use the education records only for the purpose of fulfilling its duties and providing services under this Agreement, and for improving services under this Agreement. Vendor is prohibited from mining Data for any purposes other than those agreed to by the parties. Data mining or scanning for the purpose of

advertising or marketing to students or their parents is prohibited. Data cannot be shared with any additional parties except in furtherance of delivering the services in accordance with this Agreement without prior written consent of the School System except as required by law.

Vendor may use de-identified Data for product development, research, or other purposes. De-identified Data will have all direct and indirect personal identifiers removed, transformed or obfuscated. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID. Furthermore, Vendor agrees not to attempt to re-identify de-identified Data and not to transfer de-identified Data to any party unless that party agrees not to attempt re-identification.

Data will be provided in a commonly used file or database format as Vendor deems appropriate.

Vendor will not share Data with or disclose it to any third party except as necessary to provide the services in accordance with this Agreement without prior written consent of School System, except as required by law. District Data will not be stored outside of the United States without prior written consent from School System. Vendor ensures that all Data in its possession and in the possession of any subcontractors, or agents to which the Vendor may have transferred Data, are destroyed within 6 months of termination of the Agreement or within 30 days of receipt of written request by School System. School System may export its personally identifiable student data using tools available within the services.

Vendor agrees that it is an "operator" within the meaning of Education Article 4-131 and shall comply with Maryland Education Code ANN. §4-131.

Vendor will comply with all applicable provisions of applicable federal laws including, but not limited to: the Family Educational Rights and Privacy Act, the Protecting Pupil Rights Amendment, and the Children's Online Privacy Protection Act.

16. **Separate Future Action for Fee Based Services:** If Vendor provides services at no cost, School System acknowledges that while Vendor will provide School System with some Services and features for free, Vendor reserves the right to begin charging for the Services and features at some point in the future. Vendor will provide School System with at least 30 days' advance notice of a change involving the charging of fees for currently free services. School System also understands that Vendor may currently offer other premium and enterprise services for a fee. The Parties understand that fee-based products and services are different than free products and services, and are subject to School System procurement rules and processes. Before School System decides to enter into a premium or enterprise subscription, or any other fee-based service that Vendor may offer now or in the future, School System shall decide whether the service(s) in question should be purchased and, if so, notify Vendor that School System shall utilize a procurement process relative to procuring the service(s) from Vendor or other Vendor(s).

17. **Assignment:** Neither party may assign its obligations under the Contract Documents as modified by this Amendment to any third party without prior written consent of the other; provided, however Vendor or its subsidiaries may assign the Contract Documents as modified by this Amendment to a subsidiary or parent without written consent from the School System provided that the successor assumes Vendor's obligations under the Contract Documents as modified by this Amendment.

18. **Termination Rights:** School System may immediately terminate the Agreement if Vendor materially breaches this Agreement. However the Vendor's obligations with respect to privacy and security of Data shall survive termination of this Agreement until ALL District Data has been returned and/or securely removed or destroyed.

19. **Posting and Availability of This Amendment:** Any provision of the Contract Documents requiring modifications of its terms to be posted on Vendor's Site shall not apply to this Amendment. The Parties agree this Amendment contains no confidential or proprietary information, and either party may release it to the public upon request and to other agencies interested in using the Services.

20. **Security:** Vendor will, in good faith, exercise due diligence using generally accepted commercial business practices for IT security to ensure that systems are operated and maintained in a secure manner, and that management, operational and technical controls are employed to ensure security of systems and data. This includes appropriate administrative, physical and technical safeguards to secure Data from unauthorized access, disclosure, and use. These safeguards shall prevent any intentional or unintentional unauthorized access, alterations, use, or disclosure of School System Data.

Vendor will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Vendor will also have a written incident response plan, to include prompt notification of School System in the event of a security or privacy incident, as well as best practices for responding to a breach of PII. Vendor agrees to share its incident response plan upon request.

An SOC2 Type II audit certification will be conducted annually, and Vendor agrees to provide School System with the current SOC2 Type II audit certification upon the School System's request. Recognizing the changing nature of the Web, Vendor will continuously work with School System to ensure that its Site and Services meet School Systems' requirements for the security of systems and data.

Vendor shall ensure that its employees and all subcontractors who have potential access to District 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. Vendor agrees to comply with the HCPS Student Data Privacy Requirement which is incorporated herein by attachment.

21. **School System Records and Access:** School System acknowledges that use of Vendor's Site and Services may require management of School System records. School System and School System generated content may meet the definition of educational records as determined by the School System. If the Vendor holds School System records, School System and the Vendor must manage the records in accordance with all applicable record management laws and regulations.

22. **Intellectual Property Ownership:** All student produced work is the property of that student. The Vendor has a limited, nonexclusive license with regard to Data solely for the purpose of performing its obligations as outlined in the Amendment. This Amendment does not give Vendor any rights, implied or otherwise, to Data, content, or intellectual property, except as expressly stated in the Amendment. This includes the right to sell or trade Data.

23. **Precedence, Further Amendments:** If there is any conflict between this Amendment and the Contract Documents, or between this Amendment and other terms, rules or policies on the Vendor Site

or related to its Services this Amendment shall prevail. This amendment constitutes an amendment to the Contract Documents; any language in the Contract Documents indicating it may not be modified or that it alone is the entire agreement between the Parties is waived. Any further amendment must be agreed to by both Parties.

24. Governing Law: Any arbitration, mediation similar dispute resolution provision in the Contract Documents is hereby deleted. The Contract Documents and this Amendment shall be governed by and interpreted and enforced in accordance with the laws of the State of Maryland without reference to conflict of laws or federal law as applicable. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Circuit Court of Harford County or the United States District Court of Maryland, Northern Division.

NAVIANCE, INC.

HARFORD COUNTY PUBLIC SCHOOLS

Bobbie Tolston on behalf of Dr. Sean Bulson,
Superintendent of Schools

DocuSigned by:

Laura Fischer

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NAME: Bobbie Tolston
TITLE: Supervisor of Purchasing
Email: bobbie.tolston@hcps.org
DATE: June 30, 2020

Name: Laura Fischer

Title: VicePresidentofSales

Email: laura.fischer@hobsons.com

Date: 6/26/2020

HARFORD COUNTY PUBLIC SCHOOLS

STUDENT DATA PRIVACY REQUIREMENTS

Purpose

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

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

These Privacy Requirements modify and amend the Vendor’s Terms of Service, Privacy Policy or Requirements, Licensing Agreement or any other contract document which constitutes the agreement between the Vendor and the School System relating to Naviance’s Services hereinafter, the “Contract Documents.” The Contract Documents are hereby modified by these Privacy Requirements. All terms of these Privacy Requirements supersede and take precedence over any conflicting terms in the Contract Documents.

Vendor’s Certification

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

1. DEFINITIONS

“ANONYMIZED DATA” means a method of information sanitization whose intent is privacy protection. It is the process of either irreversibly encrypting or removing personally identifiable information (PII) from data sets, so that the persons named, described or otherwise identified in such data sets remain anonymous and cannot be re-identified.

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

“CLEAR” means a method of sanitization that applies logical techniques to sanitize data in all user-addressable storage locations for protection against simple non-invasive data recovery techniques; typically applied through the standard read and write commands to the storage device, such as by rewriting with a new value or using a menu option to reset the device to the factory state (where rewriting is not supported).

“DE-IDENTIFIED SCHOOL SYSTEM DATA” means data files that have all direct and indirect personal identifiers removed, obfuscated, or transformed, including any data that could be analyzed and linked to other data to identify the student or the student’s family members, including without limitation parents/guardians. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location data, and federal, state and/or local school identification numbers.

“END USER” means the individuals authorized by the School System to access and use the services provided by the Vendor under the Privacy Requirements.

“LICENSEE” OR “SCHOOL SYSTEM” means Harford County Public Schools.

“LICENSEE DATA” OR “SCHOOL SYSTEM DATA” means all confidential student records or confidential student record information that contains personally identifiable student records and any other non-public student information, including but not limited to student data, metadata and user content.

“MINING SCHOOL SYSTEM DATA” means to search through, access or extract School System data, metadata or information, which is not necessary to accomplish the purpose(s) of the Privacy Requirements.

“MOBILE DEVICE” means laptop computers, tablets, smart phones and any other mobile computing devices.

“PERSONALLY IDENTIFIABLE INFORMATION” OR “PII” includes but is not limited to: personal identifiers such as name, address, phone number, dates of birth, Social Security number, and student or personnel identification number; “personal information student records” as defined in the Code of Maryland Regulations (“COMAR”) 13A.08.02 and/or any successor laws or regulations of the state of Maryland; personally identifiable information contained in student education records as that term is defined in the Family Educational Rights and Privacy Act (“FERPA”), 20 USC §1232g; “medical information” or “medical records” as defined in Md. Health General Code Ann., §4-301; “protected health information” as the term is defined in the Health Insurance Portability and Accountability Act, 45 CFR Part 160.103; “nonpublic personal information” as the term is defined in the Gramm-Leach-Bailey Financial Modernization Act of 1999, 15 USC §6809; credit and debit card numbers and/or access codes and other cardholder data and sensitive authentication data as those terms are defined in the Payment Card Industry Data Security Standards; other financial account numbers, access codes, driver’s license numbers; and state-or federal-identification numbers such as passport, visa or state identity card numbers; and “covered information” as defined by the Maryland Student Data Privacy Act of 2015, Md. Ed. Code Ann., §4-131.

“PORTABLE STORAGE MEDIUM” means portable memory devices, including jump or thumb drives, portable hard drives, tape backup media and cloud storage.

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

“SECURITY BREACH” means an event in which School System Data is exposed to unauthorized disclosure, access, alteration or use.

“SYSTEMS” means any of Vendor’s computer system, network or software that accesses, maintains, stores or transmits School System Data, including computer systems or networks operated by Vendor, Vendor Personnel, Vendor contractors or subcontractors.

“STUDENT DATA” means any data about or related to a student, including information about a student’s parent or legal guardian.

“VENDOR PERSONNEL” means any employee, officer, director, agent, affiliate, contractor or subcontractor of Vendor.

2. ACCESS, CONTROL AND AUTHORIZATION

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

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

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

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

3. PRIVACY COMPLIANCE

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

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

3.3. Vendor shall not permit School System Data or PII to be maintained or stored on any Mobile Device or Portable Storage Medium unless such is being used in connection with Vendor's backup and recovery procedures and/or encrypted. Vendor will ensure that School System Data is encrypted and that all device/medium will be scanned at the completion of any contract or service agreement and/or research study or project to ensure that no School System Data, PII, personal information and/or student record information is stored on such electronic devices/medium.

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

- (a) Maintain or store School System Data or PII outside of the United States,
- (b) Transmit Licensee's Data or PII to any contractors or subcontractors located outside of the United States,

- (c) Distribute, repurpose or share School System Data or PII with any Vendor Systems not used for providing services to the School System,
- (d) Use PII or any portion thereof to inform, influence or guide marketing or advertising efforts, or to develop a profile of a student or group of students for any commercial purpose [or for any other purposes],
- (e) Use PII or any portion thereof to develop commercial products or services,
- (f) Use any PII for any other purpose other than in connection with the services provided to the School System,
- (g) Engage in targeted advertising, as defined by Md. Ed. Code Ann., §4-131 based on the data collected from the School System.
- (h) Attempt to re-identify de-identified School System Data, or
- (i) Transfer de-identified School System Data to any party unless that party agrees in writing not to attempt re-identification.

3.5. VENDOR MAY USE ANONYMIZED DATA FOR PRODUCT DEVELOPMENT OR RESEARCH,

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

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

4. BREACH PLANNING, NOTIFICATION, AND REMEDIATION

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

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

4.3. Security Breach

- (a) In the event of a circumstance that resulted in unauthorized access to or disclosure or use of School System Data, Vendor will notify the School System within three calendar days, Vendor will fully investigate the incident and cooperate fully with the School System's investigation of and response to the incident as soon as practicable, and/or is permitted by law enforcement agencies. Except as otherwise required by law, Vendor will not provide notice of the incident directly to individuals whose Personally Identifiable Information was involved, regulatory agencies, or other entities, without prior written permission from the School System.
- (b) Liability. In addition to any other remedies available to the School System, at law or in equity, Vendor will reimburse the School System in full for all documented cost incurred by the School System in investigating and remediating any Security Breach caused in whole or in part by Vendor or Vendor's subcontractors, including but not limited to providing notification to individuals whose Personally Identifiable Information was compromised and to regulatory agencies or other entities as required by law or contract; providing one year's credit monitoring to the affected individuals if the Personally Identifiable Information exposed during the breach could be used to commit financial identity theft; and the payment of legal fees, audit costs, fines, and other fees imposed against the School System as a result of the Security Breach. Vendor will not have any liability to the extent the Security Breach is not caused by Vendor or Vendor's subcontractors.

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

- (A) Assume responsibility for providing the notification required under the applicable federal and/or Maryland law(s) to School System only;
- (B) Hold harmless and indemnify School System and any of School System's school board members and employees, against all losses, damages, costs or expenses ("Losses") that school system may incur to the extent that such Losses arise directly from any willful or negligent acts or omissions of the Vendor in the handling of School System Data and/or PII which results in an event requiring notification of a Security Breach under applicable federal or Maryland law. Vendor will not have any liability to the extent the Loss is caused by agents, contractors or representatives of School System or any of the School System's employees or students or is not caused by Vendor or Vendor's subcontractors. The foregoing indemnification obligations are subject to the School System promptly notifying the Vendor in writing of such claim, provided that the Vendor shall be relieved of its obligations under this only to the extent it is prejudiced by any delay in notification. The Vendor shall have sole control over the defense and settlement of such claim, provided that any settlement containing any binding obligations, admissions, or liability of the School System shall require School System's prior written consent.

School System shall have the right at its own expense, to participate in such litigation and settlement discussions without unreasonably interfering with Vendor's ability to perform its obligations under this Section. School System shall provide all information and assistance reasonably requested by the Vendor at Vendor's expense;

- (C) Use commercially reasonable efforts to mitigate any negative consequences caused to School System or to a student as the result of such Security Breach; and
- (D) Use commercially reasonable efforts to implement procedures to prevent the recurrence of an event similar to such Security Breach.

5. INFORMATION STORAGE, RETENTION, AND DISPOSITION

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

5.2. Vendor shall perform regular backups of School System Data and shall retain backup copies of such School System Data for such period of time consistent with Vendor's data retention policies.

5.3. Vendor shall maintain and store backup copies of School System Data at multiple secure storage facilities located within the United States and provide status reports upon request to the School System.

5.4. Except as specifically set forth in these Privacy Requirements, or as required by federal or Maryland law, Vendor shall only retain the School System Data that is necessary to provide the contracted services set forth under any Agreement with the School System, School System may use tools within Vendor services to download its student personal information throughout the duration of the Agreement. Within 6 months of termination of the agreement, or otherwise within 30 days of written request from School System, Vendor shall delete School System's personally identifiable student data..

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

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

6.1. Except as specifically set forth in these Privacy Requirements, or as required by federal or Maryland state law or regulation, within 6 months of termination or expiration of the Agreement to provide services or products to the School System, or within 30 days of receipt of written request from School System, Vendor shall:

- (a) Erase, Clear, or render unreadable all School System Data in a manner that prevents its physical reconstruction using commonly available file restoration utilities;
- (b) Upon School System's written request, Certify in writing that the actions set forth in this section have been completed on or before the agreed-upon deadlines set forth in any agreement entered into between the Vendor and the School System;
- (b) Ensure that any transfer/migration of School System Data uses facilities and
- (d) To the extent technologically possible, ensure that the School System will have access to School System Data during any transfer of operations.

6.2. Upon cessation of its operations or dissolution of its business operations, Vendor shall within 6 months, or otherwise within 30 days of receipt of written request from School System, , Clear all School System Data be it digital, archival or physical form, including without limitation any copies of the School System Data or any files that may reside in system backups, temporary files or other storage, media and School System data that are otherwise still in Vendor's possession and/or in the possession of any of the Vendor's subcontractors, or agents to which the Vendor may have transferred School System Data or any portion thereof, in a manner consistent with technology industry practices and industry standards for secure data disposal methods. Upon receipt of HCPS's written request, Vendor shall provide HCPS with written certification of clearance of all school system data within 30 days.

7. SURVIVAL

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

8. DATA AUTHENTICITY AND INTEGRITY

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

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

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

- (a) as soon as practicable, notify the School System of any subpoenas, warrants, or other legal orders, demands or requests received by Vendor seeking School System Data;
- (b) Consult with the School System regarding its response; cooperate with the School System's reasonable requests in connection with efforts by the School System to intervene and quash or modify the legal order, demand or request; and
- (c) as soon as practicable, upon the School System's request, provide the School System with a copy of its response.

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

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

10. GOVERNING LAW

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

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

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

12. SECTION HEADINGS

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

13. INTELLECTUAL PROPERTY RIGHTS/DISCLOSURE/OWNERSHIP

13.1. Unless expressly agreed to the contrary in writing, all School System Data or PII prepared by Vendor (or its subcontractors) for the School System will not be disclosed to any other person or entity.

13.2. Notwithstanding the foregoing, Vendor retains all right, title and interest in and to its software, documentation, training and implementation materials and other materials provided in connection with Vendor's services (collectively, "vendor ip"). Vendor grants to the school system a personal, nonexclusive license to use the vendor ip for its own non-commercial, incidental use as set forth in the end user license agreement accompanying such software and as contemplated herein. All data of the School System remains the property of the School System.

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

14. DATA PRIVACY

14.1. Vendor will use School System Data only for the purpose of fulfilling its duties under the Privacy Requirements and except as authorized by the Privacy Requirements will not share such data with or disclose it to any third party without the prior written consent of the School System, which consent shall not be unreasonably withheld. The Vendor further agrees not to disclose any such data to third party service providers used in connection with providing services to the School System, unless such third party service providers are under a written obligation of confidentiality with respect to School System Data and use School System Data solely to provide services to the School System and to Vendor.

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

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

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

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

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

15. DATA SECURITY

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

16. AUDITS

16.1. The School System reserves the right in its sole discretion to perform audits of Vendor no more than once per twelve (12) month period at the School System's expense to ensure compliance with the terms of the Privacy Requirements. The Vendor shall reasonably cooperate in the performance of such audits and has the sole discretion to determine the means and methods of such audits to ensure protection of the privacy and security of other customer data as well as its business operations. This provision applies to all agreements under which the Vendor must create, obtain, transmit, use, maintain, process or dispose of School System Data.

16.2. If the Vendor must under the Privacy Requirements create, obtain, transmit, use, maintain, process or dispose of the subset of School System Data known as Personally Identifiable Information or financial or business data which has been identified to the Vendor as having the potential to affect the accuracy of the School System's financial statements, Vendor will at its expense conduct or have conducted at least annually:

- (a) American Institute of CPAs Service Organization Controls (SOC) Type II audit, or other security audit with audit objectives deemed sufficient by the School System, which attests the Vendor's security policies, procedures and controls;
- (b) vulnerability scan, performed by a commercially supported scanner, of Vendor's electronic systems and facilities that are used in any way to deliver electronic services under the Privacy Requirements; and
- (c) formal penetration test, performed by a process and qualified personnel approved by the School System, of Vendor's electronic systems and facilities that are used in any way to deliver electronic services under the Privacy Requirements.

16.3. The Vendor will provide the School System upon request an executive summary of the results of the above audits, scans and tests, and will promptly modify its security measures as needed based on those results in order to meet its obligations under the Privacy Requirements.

17. COMPLIANCE

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

17.2. Vendor warrants that any subcontractors used by Vendor to fulfill its obligations under the Privacy Requirements will be subject to and will be directed to comply with terms consistent with these Privacy Requirements.

17.3. Vendor warrants that the service it will provide to the School System is fully compliant with and will enable the School System to be compliant with relevant requirements of all laws

applicable to Vendor, including but not limited to: the Children’s Online Privacy Protection Act (COPPA); Family Educational Rights and Privacy Act (FERPA), Protection of Pupil Rights Amendment (PPRA);, and Federal Export Administration Regulations.

18. CONFLICT

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

19. SURVIVAL

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

FOR: Naviance, Inc.

BY: DocuSigned by:
Laura Fischer 6/26/2020
064DC2182E2B40Z... Date

Laura Fischer

Printed Name

vice president of sales

Title

FOR: Harford County Public Schools

BY: Bobbie Tolston on behalf of Dr. Sean Bulson, Superintendent of School

DATE: June 30, 2020

Bobbie Tolston

Printed Name

Supervisor of Purchasing

Title