

**EXHIBIT D**

**DATA SHARING AND CONFIDENTIALITY AGREEMENT**

INCLUDING  
PARENTS BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY  
AND  
SUPPLEMENTAL INFORMATION ABOUT THE MLSA

1. **Purpose**

- (a) This Exhibit supplements the Master License and Service Agreement (“MLSA”) to which it is attached, to ensure that the MLSA conforms to the requirements of New York State Education Law Section 2-d and any implementing Regulations of the Commissioner of Education (collectively referred to as “Section 2-d”). This Exhibit consists of the terms of this Data Sharing and Confidentiality Agreement, a copy of Erie 1 BOCES’ Parents Bill of Rights for Data Security and Privacy signed by the Vendor, and the Supplemental Information about the MLSA that is required to be posted on Erie 1 BOCES’ website.
- (b) To the extent that any terms contained within the MLSA, or any terms contained within any other Exhibits attached to and made a part of the MLSA, conflict with the terms of this Exhibit, the terms of this Exhibit will apply and be given effect. In the event that Vendor has online or written Terms of Service (“TOS”) that would otherwise be applicable to its customers or users of its Product that is the subject of the MLSA, to the extent that any term of the TOS conflicts with the terms of this Exhibit, the terms of this Exhibit will apply and be given effect.

2. **Definitions**

Any capitalized term used within this Exhibit that is also found in the MLSA will have the same definition as contained within the MLSA.

In addition, as used in this Exhibit:

- (a) "Student Data" means personally identifiable information, as defined in Section 2-d, from student records that Vendor receives from a Participating Educational Agency pursuant to the MLSA.
- (b) "Teacher or Principal Data" means personally identifiable information relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of New York Education Law Sections 3012-c or 3012-d, that Vendor receives from a Participating Educational Agency pursuant to the MLSA.
- (c) "Protected Data" means Student Data and/or Teacher or Principal Data to the extent applicable to Vendor’s Product.



- (d) "Participating Educational Agency" means a school district within New York State that purchases certain shared instructional technology services and software through a Cooperative Educational Services Agreement with a BOCES, and as a result is licensed to use Vendor's Product pursuant to the terms of the MLSA. For purposes of this Exhibit, the term also includes Erie 1 BOCES or another BOCES that is licensed to use Vendor's Product pursuant to the MLSA to support its own educational programs or operations.

3. **Confidentiality of Protected Data**

- (a) Vendor acknowledges that the Protected Data it receives pursuant to the MLSA may originate from several Participating Educational Agencies located across New York State, and that this Protected Data belongs to and is owned by the Participating Educational Agency from which it originates.
- (b) Vendor will maintain the confidentiality of the Protected Data it receives in accordance with federal and state law (including but not limited to Section 2-d) and Erie 1 BOCES's policy on data security and privacy. Vendor acknowledges that Erie 1 BOCES is obligated under Section 2-d to adopt a policy on data security and privacy, but that adoption may not occur until a date subsequent to the effective date of the MLSA. Erie 1 BOCES will provide Vendor with a copy of its policy as soon as practicable following adoption., and Vendor and Erie 1 BOCES agree to engage in good faith negotiations to modify this Data Sharing Agreement to the extent necessary to ensure Vendor's continued compliance with Section 2-d.

4. **Data Security and Privacy Plan**

Vendor agrees that it will protect the confidentiality, privacy and security of the Protected Data received from Participating Educational Agencies in accordance with Erie 1 BOCES' Parents Bill of Rights for Data Privacy and Security, a copy of which has been signed by the Vendor and is set forth below.

Additional elements of Vendor's Data Security and Privacy Plan are as follows:

- (a) In order to implement all state, federal, and local data security and privacy requirements, including those contained within this Data Sharing and Confidentiality Agreement, consistent with Erie 1 BOCES' data security and privacy policy, Vendor will: Review its data security and privacy policy and practices to ensure that they are in conformance with all applicable federal, state, and local laws and the terms of this Data Sharing and Confidentiality Agreement. In the event Vendor's policy and practices are not in conformance, the Vendor will implement commercially reasonable efforts to ensure such compliance.
- (b) In order to protect the security, confidentiality and integrity of the Protected Data that it receives under the MLSA, Vendor will have the following reasonable administrative, technical, operational and physical safeguards and practices in place throughout the term of the MLSA: access control policy designed to restrict access to any Protected Data only to authorized personnel; background screening and employee training; encryption of data



when in transit to Hosted Services and stored encrypted at rest; and the measures outlined in Vendor's Data Security Overview and Data Privacy Overview, which are attached as Attachment 1 to this Exhibit D.

- (c) Vendor will comply with all obligations set forth in Erie 1 BOCES' "Supplemental Information about the MLSA" below.
- (d) For any of its officers or employees (or officers or employees of any of its subcontractors or assignees) who have access to Protected Data, Vendor has provided or will provide training on the federal and state laws governing confidentiality of such data prior to their receiving access, as follows: Annually, Vendor will require that all of its employees (or officers or employees of any of its subcontractors or assignees) undergo data security and privacy training to ensure that these individuals are aware of and familiar with all applicable data security and privacy laws.
- (e) Vendor [*check one*] X will \_\_\_\_\_ will not utilize sub-contractors for the purpose of fulfilling one or more of its obligations under the MLSA. In the event that Vendor engages any subcontractors, assignees, or other authorized agents to perform its obligations under the MLSA, it will require such subcontractors, assignees, or other authorized agents to execute written agreements as more fully described in Erie 1 BOCES' "Supplemental Information about the MLSA," below.
- (f) Vendor will manage data security and privacy incidents that implicate Protected Data, including identifying breaches and unauthorized disclosures, and Vendor will provide prompt notification of any breaches or unauthorized disclosures of Protected Data in accordance with Section 6 of this Data Sharing and Confidentiality Agreement.
- (g) Vendor will implement procedures for the return, transition, deletion and/or destruction of Protected Data at such time that the MLSA is terminated or expires, as more fully described in Erie 1 BOCES' "Supplemental Information about the MLSA," below.

5. **Additional Statutory and Regulatory Obligations**

Vendor acknowledges that it has the following additional obligations with respect to any Protected Data received from Participating Educational Agencies, and that any failure to fulfill one or more of these statutory or regulatory obligations shall be a breach of the MLSA and the terms of this Data Sharing and Confidentiality Agreement:

- (a) Limit internal access to education records to those individuals that are determined to have legitimate educational interests within the meaning of Section 2-d and the Family Educational Rights and Privacy Act (FERPA).
- (b) Limit internal access to Protected Data to only those employees or subcontractors that need access in order to assist Vendor in fulfilling one or more of its obligations under the MLSA.
- (c) Not use education records for any purposes other than those explicitly authorized in this Data Sharing and Confidentiality Agreement.



- (d) Not disclose any personally identifiable information to any other party, except for authorized representatives of Vendor using the information to carry out Vendor's obligations under the MLSA, unless:
  - (i) the parent or eligible student has provided prior written consent; or
  - (ii) the disclosure is required by statute or court order and notice of the disclosure is provided to Participating Educational Agency no later than the time of disclosure, unless such notice is expressly prohibited by the statute or court order.
- (e) Maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of personally identifiable student information in its custody;
- (f) Use encryption technology that complies with Section 2-d, as more fully set forth in Erie 1 BOCES' "Supplemental Information about the MLSA," below.
- (g) Provide notification to Erie 1 BOCES (and Participating Educational Agencies, to the extent required by, and in accordance with, Section 6 of this Data Sharing and Confidentiality Agreement) of any breach of security resulting in an unauthorized release of Protected Data by Vendor or its assignees or subcontractors in violation of state or federal law or other obligations relating to data privacy and security contained herein.
- (h) Promptly reimburse Erie 1 BOCES, another BOCES, or a Participating School District for the full cost of notification, in the event they are required under Section 2-d to notify affected parents, students, teachers or principals of a breach or unauthorized release of Protected Data attributed to Vendor or its subcontractors or assignees.

6. **Notification of Breach and Unauthorized Release**

- (a) Vendor shall promptly notify Erie 1 BOCES of any breach or unauthorized release of Protected Data in the most expedient way possible and without unreasonable delay, but no more than seven (7) calendar days after Vendor has discovered or been informed of the breach or unauthorized release.
- (b) Vendor will provide such notification to Erie 1 BOCES by contacting Michelle Okal-Frink directly by email at mokal@e1b.org, or by calling (716) 821-7200 (office) or (716) 374-5460 (cell).
- (c) Vendor will cooperate with Erie 1 BOCES and provide as much information as possible directly to Michelle Okal-Frink or her designee about the incident, including but not limited to: a description of the incident, the date of the incident, the date Vendor discovered or was informed of the incident, a description of the types of personally identifiable information involved, an estimate of the number of records affected, the Participating Educational Agencies affected, what the Vendor has done or plans to do to investigate the incident, stop the breach and mitigate any further unauthorized access or release of Protected Data, and contact information for Vendor representatives who can assist Erie 1 BOCES in the event that its affected individuals may have additional questions.



- (d) Vendor acknowledges that upon initial notification from Vendor, Erie 1 BOCES, as the educational agency with which Vendor contracts, has an obligation under Section 2-d to in turn notify the Chief Privacy Officer in the New York State Education Department ("CPO"). Vendor shall not provide this notification to the CPO directly. In the event the CPO contacts Vendor directly or requests more information from Vendor regarding the incident after having been initially informed of the incident by Erie 1 BOCES, Vendor will promptly inform Michelle Okal-Frink or her designees unless legally prohibited from doing so.
  
- (e) Vendor will consult directly with Michelle Okal-Frink or her designees prior to providing any further notice of the incident (written or otherwise) directly to any other BOCES or Regional Information Center, or any affected Participating Educational Agency to the extent that doing so does not conflict with any of Vendor's legal or regulatory obligations.





Erie 1 BOCES Education Campus • 355 Harlem Road • West Seneca, NY 14224-1892

**EXHIBIT D (CONTINUED)**

**ERIE 1 BOCES**

**PARENTS BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY**

Erie 1 BOCES is committed to protecting the privacy and security of student, teacher, and principal data. In accordance with New York Education Law § 2-d, the BOCES wishes to inform the community of the following:

- (1) A student's personally identifiable information cannot be sold or released for any commercial purposes.
- (2) Parents have the right to inspect and review the complete contents of their child's education record.
- (3) State and federal laws protect the confidentiality of personally identifiable information, and safeguards associated with industry standards and best practices, including but not limited to, encryption, firewalls, and password protection, must be in place when data is stored or transferred.
- (4) A complete list of all student data elements collected by the State is available for public review at <http://www.nysed.gov/data-privacy-security/student-data-inventory>, or by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, New York 12234.
- (5) Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed in writing to the Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, New York 12234. Complaints may also be submitted using the form available at the following website <http://www.nysed.gov/data-privacy-security/report-improper-disclosure>.

**BY THE VENDOR:**

DocuSigned by:

*paul mcconville*

**Signature**

paul mcconville

**Printed Name**

SVP - Sales & AM

**Title**

8/5/2020

**Date**



## EXHIBIT D (CONTINUED)

### SUPPLEMENTAL INFORMATION

#### ABOUT THE MASTER LICENSE AND SERVICE AGREEMENT BETWEEN ERIE 1 BOCES AND NAVIANCE, INC.

Erie 1 BOCES has entered into a Master License and Service Agreement (“MLSA”) with Naviance, Inc. which governs the availability to Participating Educational Agencies of the following Product(s):

#### Naviance

Pursuant to the MLSA, Participating Educational Agencies may provide to Vendor, and Vendor will receive, personally identifiable information about students, or teachers and principals, that is protected by Section 2-d of the New York State Education Law (“Protected Data”).

**Exclusive Purpose for which Protected Data will be Used:** The exclusive purpose for which Vendor is being provided access to Protected Data is to provide Participating Educational Agencies with the functionality of the Product(s) listed above. Vendor agrees that it will not use the Protected Data for any other purposes not explicitly authorized in the MLSA. Protected Data received by Vendor, or any of Vendor’s subcontractors, assignees, or other authorized agents, will not be sold, or released or used for any commercial or marketing purposes.

**Oversight of Subcontractors:** In the event that Vendor engages subcontractors, assignees, or other authorized agents to perform one or more of its obligations under the MLSA (including any hosting service provider), it will require those to whom it discloses Protected Data to execute legally binding agreements acknowledging the obligation under Section 2-d of the New York State Education Law to comply with the same data security and privacy standards required of Vendor under the MLSA and applicable state and federal law. Vendor will ensure that such subcontractors, assignees, or other authorized agents abide by the provisions of these agreements by conducting prior privacy and security diligence and contractually binding subcontractors to compliance with all applicable privacy laws and to terms comparable to those in Naviance’s agreements.

#### **Duration of MLSA and Protected Data Upon Expiration:**

- The MLSA commences on July 1, 2020 and expires on June 30, 2023.
- Within 90 days of expiration of the MLSA, or upon termination of the MLSA prior to expiration, or otherwise within 30 days of receipt of a written request from Erie 1 BOCES, Vendor will securely delete or otherwise destroy any and all Protected Data remaining in the possession of Vendor or its assignees or subcontractors or other authorized persons or entities to whom it has disclosed Protected Data. If requested by Erie 1 BOCES and/or any Participating Educational Agency, Vendor will assist a Participating Educational Agency in exporting all Protected Data previously received back to the Participating Educational Agency for its own use, prior to deletion, in a mutually agreeable format.



- In the event the Master Agreement is assigned to a successor Vendor (to the extent authorized by the Master Agreement), the Vendor will cooperate with Erie 1 BOCES as necessary to transition Protected Data to the successor Vendor prior to deletion. Neither Vendor nor any of its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data will retain on any storage medium whatsoever any Protected Data, copies, summaries or extracts of the Protected Data or any de-identified Protected Data unless de-identified data will have all direct and indirect personal identifiers removed or transformed or irrevocably hashed such that it would not identify any particular BOCES student including but not limited to persistent unique identifiers, name, ID numbers, date of birth, demographic information, location information, and school ID (“De-Identified Data”). Vendor agrees not to attempt to re-identify De-identified Data. Upon receipt of written request, Vendor and/or its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data, as applicable, will provide Erie 1 BOCES with a certification from an appropriate officer that these requirements have been satisfied in full. De-identified Data” will have all direct and indirect personal identifiers removed or transformed or irrevocably hashed such that it would not identify any particular BOCES student including but not limited to persistent unique identifiers, name, ID numbers, date of birth, demographic information, location information, and school ID (“De-Identified Data”). Vendor agrees not to attempt to re-identify De-identified Data.

**Challenging Accuracy of Protected Data:** Parents or eligible students can challenge the accuracy of any Protected Data provided by a Participating Educational Agency to Vendor, by contacting the student's district of residence regarding procedures for requesting amendment of education records under the Family Educational Rights and Privacy Act (FERPA). Teachers or principals may be able to challenge the accuracy of APPR data provided to Vendor by following the appeal process in their employing school district's applicable APPR Plan.

**Data Storage and Security Protections:** Any Protected Data Vendor receives will be stored on systems maintained by Vendor, or by a subcontractor under the direct control of Vendor, in a secure data center facility located within the United States. The measures that Vendor will take to protect Protected Data include adoption of technologies, safeguards and practices that align with the NIST Cybersecurity Framework and standard industry practices including, but not necessarily limited to, disk encryption, file encryption, firewalls, and password protection.

**Encryption of Protected Data:** Vendor (or, if applicable, its subcontractors) will protect Protected Data in its custody from unauthorized disclosure while in motion or at rest, using a technology or methodology specified by the secretary of the U.S. Department of HHS in guidance issued under Section 13402(H)(2) of P.L. 111-5.



# EXHIBIT D

## Attachment 1

### Hobsons Data Security Overview

#### Security Organization & Program

Hobsons maintains a risk-based assessment security program that includes administrative, technical, and physical safeguards reasonably designed to protect the confidentiality, integrity, and availability of Customer data.

Hobsons has a separate dedicated team that manages Hobsons' security program. This team facilitates and supports maintenance of the security program as well as regularly scheduled, independent third-party audits and assessments. Hobsons' security framework is based on the NIST Cybersecurity Framework and includes programs covering: Policies and Procedures, Asset Management, Access Management, Cryptography, Physical Security, Operations Security, Communications Security, Business Continuity Security, People Security, Product Security, Cloud and Network Infrastructure Security, Security Compliance, Third-Party Security, Vulnerability Management, as well as Security Monitoring and Incident Response.

Security is represented at the highest levels of the company, with Hobsons' Vice-President of Information Security meeting with executive management regularly to discuss the security landscape and coordinate company-wide security initiatives. Information security policies and standards are reviewed and approved by management at least annually and are made available to all Hobsons employees for their reference.

#### Confidentiality

Hobsons has controls in place to maintain the confidentiality of data that customers make available to our services. All Hobsons employees and contract personnel are required to review and maintain compliance with Hobsons' internal policies regarding confidentiality of customer data."

#### Employee Background Checks

Hobsons carries out background checks on individuals joining Hobsons in accordance with applicable local laws.

#### Employee Training

All Hobsons employees must complete annual security and privacy training which covers Hobsons' security policies, security best practices, and privacy regulations, including but not limited to the EU's General Data Protection Regulation, the Family Educational Rights and Privacy Act training and applicable state student data privacy laws... Hobsons' dedicated security team also performs phishing awareness campaigns and communicates emerging threats to employees.

#### Third-Party Vendor Assessment

Hobsons may use third party vendors to provide services on its behalf. Hobsons carries out a security risk-based assessment of prospective vendors before working with those vendors to validate that prospective vendors meet Hobsons' security requirements. Hobsons periodically reviews each vendor in light of Hobsons' security and business continuity standards, including the type of access and classification of data being accessed (if any), controls necessary to protect data, and legal/regulatory requirements. Hobsons ensures that customer data is returned and/or deleted at the end of a vendor relationship.



## Third-Party Vendor Agreements

Hobsons enters into written agreements with all of its vendors which include confidentiality, privacy and security obligations that provide an appropriate level of protection for the personal data contained within the customer data that these vendors may process

## Security Certificates

Hobsons has obtained System and Organization Control ("SOC") 2 - Type II certifications for the Naviance, Intersect, and Starfish services. The SOC 2 report for each of the services addresses trust services principles and criteria (security and privacy). SOC 2 audits for these services are conducted once a year by an independent third-party auditor. In addition, the SOC 2 also validates Hobsons' physical and environmental safeguards for production data centers, backup and recovery procedures, software development processes, and logical security controls.

Hobsons' services use and leverage secure cloud-based storage via AWS data centers. Hobsons uses and leverages AWS data centers, with a reputation of being highly scalable, secure, and reliable. Information about AWS audit certifications are available at AWS Security website <https://aws.amazon.com/security> and AWS Compliance website <https://aws.amazon.com/compliance>.

## Architecture and Data Segregation

The cloud platform for Hobsons' products is hosted by Amazon Web Services ("AWS"). The current location of the AWS data center infrastructure used in providing Hobsons services is located in the United States. Further information about security provided by AWS is available from the AWS security webpage available at <https://aws.amazon.com/security/>. In addition, the overview of AWS's security process is available at <https://aws.amazon.com/whitepapers/overview-of-security-processes/>. Hobsons' production environment within AWS, where customer data and customer-facing applications sit, is a logically isolated Virtual Private Cloud (VPC).

Hobsons separates customer data using logical identifiers tagging all data with the associated customer ID to clearly identify ownership. Hobsons' products are designed and built to identify and allow access only to and from these tags and enforce access controls to ensure the confidentiality and integrity requirements for each customer are appropriately addressed.

## Physical Security

AWS data centers that host Hobsons' products are strictly controlled both at the perimeter and at building ingress points by professional security staff utilizing video surveillance, intrusion detection systems, and other electronic means. Authorized staff must pass two-factor authentication a minimum of two times to access data center floors. All visitors and contractors are required to present identification and are signed in and continually escorted by authorized staff. These facilities are designed to withstand adverse weather and other reasonably predictable natural conditions. Each data center has redundant electrical power systems that are available twenty-four (24) hours a day, seven (7) days a week. Uninterruptible power supplies and on-site generators are available to provide back-up power in the event of an electrical failure. More details about the physical security of AWS data centers used by Hobsons, are available at <https://aws.amazon.com/whitepapers/overview-of-security-processes/>.

In addition, Hobsons headquarters and office spaces have a physical security program that manages visitors, building entrances, CCTVs (closed circuit television), and overall office security. All employees, contractors and visitors are required to wear identification badges.

## Security by Design

The Hobsons Security Software Development Lifecycle (SSDL) standard defines the security and privacy by design process by which Hobsons develops products and the activities that the product teams must perform at different stages of development (requirements, design, implementation, and deployment). Hobsons security engineers perform numerous security activities for the services including:

- internal security reviews before products are launched;
- periodic penetration tests performed by independent third-party contractors; and
- threat models and development of mitigation requirements for the Hobsons services

## Provisioning Access

Hobsons follows the principles of least privilege through a team-based-access-control model when provisioning system access. Hobsons personnel are authorized to access customer data only as necessary to support the customer needs, and based on their job function, role and responsibilities. Such access requires approval of the employee's manager. Access rights to production environments are reviewed regularly. An employee's access to Customer data is promptly removed upon termination of their employment.

In order to access the production environment, an authorized user must have a unique username and password and multi-factor authentication. Before an engineer is granted access to the production environment, access must be approved by management and the engineer is required to complete internal trainings for such access including trainings on the relevant team's systems. Hobsons logs high risk actions and changes in the production environment.

## Password Controls

Hobsons' current policy for employee password management follows the latest NIST guidance, and as such, our policy is to use longer passwords, with multi-factor authentication. When a user logs into their Hobsons account, Hobsons hashes the credentials of the user before it is stored.

## Change Management

Hobsons has a formal change management process to manage changes to software, applications and system software that will be deployed within the production environment. Change requests are documented using a formal, auditable, system of record. Prior to a high-risk change being made, an assessment is carried out to consider the impact and risk of a requested change, evidence acknowledging applicable testing for the change, approval of deployment into production by appropriate approvers(s) and roll back procedures. A change is reviewed and tested before being deployed to production.

## Encryption

Hobsons' cloud platform supports TLS 1.2 to encrypt network traffic transmitted between users and Hobsons' cloud infrastructure. Data at rest is protected using drive or database level encryption using NIST-approved algorithms.

## Vulnerability Management

Hobsons maintains controls and policies to mitigate the risk from security vulnerabilities. Critical software patches are evaluated, tested and applied proactively.



## Penetration Testing

Hobsons performs penetration tests and engages independent third-party entities to conduct application-level penetration tests. Results of penetration tests are prioritized and triaged promptly by Hobsons' security team so they can be addressed by the engineering team.

## Security Incident Management

Hobsons maintains security incident management policies and procedures in accordance with NIST SP 800-61. Hobsons Security Incident Response Team (SIRT), assesses the threat of all relevant vulnerabilities or security incidents and establishes remediation and mitigation actions for all events. Notification to Customers of security incidents impacting their data is conducted in accordance with all applicable laws.

## Resilience and Service Continuity

Hobsons infrastructure uses a variety of tools and mechanism to achieve high availability and resiliency. Hobsons' infrastructure spans multiple fault-independent AWS availability zones in geographic regions physically separated from one another. There are manual or automatic capabilities to re-route and regenerate hosts within Hobsons' infrastructure. Hobsons leverages specialized tools that monitor server performance, data, and traffic load capacity. If suboptimal server performance or overloaded capacity is detected on a server, then these specialized tools will increase the capacity or shift traffic to relieve any suboptimal server performance or capacity overload. Hobsons will also be notified immediately and have the ability to take prompt action to correct the cause(s) behind these issues if the specialized tools are unable to do so.

## Backups and Recovery

Hobsons performs regular backups of Hobsons account information and other critical data. Backup data are retained redundantly across availability zones and are encrypted in transit and at rest using 256-bit Advanced Encryption Standard (AES-256) server-side encryption.

## Naviance Data Privacy Overview

### Introduction

This document is intended to provide an overview of the data governance policies that apply to help Naviance ensure the privacy of student data in our care. They serve as a portion of the fundamental practices that guide development and maintenance of Naviance.

Protecting the privacy of student data is at the core of the work we do to make Naviance by Hobsons a trusted solution for K12 institutions and programs, and the students that we collectively serve. We understand and take seriously our obligations and responsibilities to act as good stewards of the information that our customers entrust to us.

Naviance employees must be committed to the Hobsons mission and take responsibility for the privacy of our customers and their students.

### Data Collection and Use:

Personally identifiable student information is not owned by Hobsons. Hobsons is a steward of the data entrusted to us by our customers, their employees, and students.

Consistent with our obligations under the Family Educational Rights and Privacy Act (FERPA), Hobsons operates under the direct control of our customers with respect to our use of personally identifiable student information.

Personally identifiable student information may only be used to provide the Naviance services to our customers in support of the educational purpose as authorized by each contract.

Hobsons does not sell personally identifiable information. Data collection, use and handling practices remain in compliance with the Naviance product privacy policy (Appendix A) at all times.

### Data Access, Correction, and Deletion:

At any time, the customer may access, amend, correct, or download a copy of its personally identifiable student information using tools available within Naviance. Customers may also request – on their own behalf or on behalf of their parents or students - to access, amend, correct or delete personally identifiable information in our care, and we will facilitate such requests promptly and as needed by our customers.



Hobsons shall refer any requests from parents or students to access, amend, correct or delete student personally identifiable information to the customer.

Within 6 months of termination or expiration of the contract, or within 30 days of receipt of written request by the customer, Hobsons will delete the customer's personally identifiable student information.

### **Third Parties:**

Naviance engages with a limited number of third parties to provide services to our customers on our behalf. Prior to contracting with any third party that would be incorporated within or operate in partnership with Naviance, privacy and security assessments are conducted to determine the fitness of the third party to work with Naviance, and the ability of the third party to meet the requirements of the Naviance privacy and security policies as well as all applicable regulations.

Third parties may receive only the minimal information required to provide the services on our behalf in performance of our contract.

All third parties operating in partnership with or in support of Naviance are contractually obligated to adhere to privacy and security standards at least as stringent as those of Naviance and to operate in compliance with applicable state and federal law and regulations.

Hobsons does not disclose student personal information to any other third parties unless required by statute or court order, in which case Hobsons will refer such requests to the customer or otherwise provide the affected customer in advance of such disclosure unless legally prohibited from doing so.

### **Internal Data Access Limitations:**

Access to personally identifiable student information by Naviance employees is limited to only those employees who require such access in order to provide the services to our customers.

All employees with access to student data have passed criminal background checks conducted in accordance with applicable local regulations and have signed non-disclosure agreements as a condition of their employment.

Access to all Naviance systems is revoked when an employee leaves the organization.

### Employee Training:

All Naviance employees undergo annual data privacy training inclusive of the Family Educational Rights and Privacy Act (FERPA), the General Data Protection Regulation (GDPR), state student data privacy laws, and other applicable data privacy regulations and Hobsons cybersecurity policies.

### Data Privacy by Design:

Consideration for data privacy is an ongoing part of the development process, from concept to final production release. The Hobsons Security Software Development Lifecycle (SSDL) standard defines the security and privacy by design process by which Hobsons develops products and the activities that the product teams must perform at different stages of development (requirements, design, implementation, and deployment).

Hobsons process must be followed for all new feature development that may have an impact on collection, handling, or sharing of personally identifiable data. The process is designed to help ensure that any changes to the product, including development of new features that may have an impact on personally identifiable data are conducted with appropriate regard to required privacy protections.



## Appendix A: Naviance Product Privacy Policy

### Naviance Privacy Policy

(Last updated 1/1/20)

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

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

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

#### **Information Provided by Schools and Districts ("Clients"):**

When Clients decide to use Naviance, they submit information necessary to create their school account, including first and last names, ID numbers, email addresses, user names and passwords for the school and district staff users.

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

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

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

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

**Information Provided by Students:**

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

- Grades K-2: Students select their grade and teacher name from an on-screen menu and enter a password for the class provided by the teacher. Students may also enter responses to lesson plans, submit questions to a teacher or respond to other classroom instructions.
- Grades 3-5: Students select their grade and teacher name from an on-screen menu and enter a password for the class provided by the teacher. Students may also be asked to enter a user name provided by the teacher. Students may also enter responses to lesson plans, submit questions to a teacher or respond to other classroom instructions.
- Grades 6-12: Students create a user name and password. Also, subject to the configuration options selected by Clients, students may choose to add information such as their email address, phone number or home address.

**A Special Note About Students Under the Age of 13:**

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

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

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

**Naviance Usage Information and Cookies:**

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

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



We use Google Analytics to assist us in collecting and understanding Log Data. For more information about Google Analytics, see the [Google Analytics Terms of Use](#) and the [Google Privacy Policy](#). You can prevent Google Analytics from collecting information about you and recognizing you on return visits to our Platform by disabling cookies on your browser or by installing the [Google Analytics opt out plug in](#). Note that we are not responsible for the Google Analytics opt-out tools.

**How We Use and Disclose Information:**

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

- When directed by Clients on behalf of their employees or students
- To our third party service partners to permit them to provide features and services on our behalf and as requested by Clients (see Third Party Services section)
- To postsecondary institutions when a Client has specifically requested the availability of features that allow their users in grades 9-12 to connect with such institutions
- To resolve a problem or support issue on behalf of a Client
- To investigate a suspected violation of the [Terms of Service](#).
- As may be required by law or as ordered by a court, in which event we shall notify Clients and shall work with Clients to seek to limit the scope of the required disclosure
- In the event of a reorganization, merger, sale, assignment, bankruptcy or other disposition of our business, in which case the transferred information will remain subject to the terms of this Privacy Policy.

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

- to improve our educational products for adaptive learning purposes and for customizing the student experience
- to demonstrate the effectiveness of Naviance, including in our marketing materials
- to develop and improve our products

**Third Party Services:**

Naviance provides Clients with access to a variety of features which Clients may choose to make available to their students. These features, some of which are operated by third party providers, are available only to students in grades 6-12, and may be turned on or off at the sole discretion and control of Clients.

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

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

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

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

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

#### **How Clients Can Modify Information:**

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

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

#### **Security:**

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

We host Client data in secure server and cloud-based environments that use a firewall and other industry-standard technology in an effort to prevent interference or access from outside intruders. We also require unique account identifiers, user names, and passwords that must be entered each time Clients, students or parents sign on to Naviance. We also implement invisible reCAPTCHA on student and parent log in pages. This feature is subject to the [Google Privacy Policy](#) and [Terms of Use](#), and the data use is further restricted by the [Google Service Terms](#).



The Internet, however, is not perfectly secure and Naviance is not responsible for security breaches not reasonably within its control.

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

**Data Retention:**

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

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

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

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

Notwithstanding the above, we do retain aggregated, de-identified data for the purposes described in the section titled, "How We Use and Disclose Information."

**Opt-Out Policy:**

We send emails to Clients with information about our products that we believe may be of interest. Clients may opt out of receiving email messages from Naviance by contacting us at [privacypolicy@hobsons.com](mailto:privacypolicy@hobsons.com) or by clicking on the "unsubscribe" link found at the bottom of every email that we send.

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

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

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

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

### **Notice for California Residents**

California residents have certain rights with respect to their personal information, as described below. Before we may fulfill your requests, we are required by law to verify your identity in order to prevent unauthorized access to your data. Since we will facilitate your requests through your education institution, we will rely on their verification of your identity and our existing customer contact information in order to process requests.

### **We Don't Sell Your Personal Information.**

**Right to Know and Access Information:** You may access information we maintain about you [using the methods provided below](#). If we grant your request, we will provide you with a copy of the personal information we maintain about you in the ordinary course of business. This may include what personal information we collect, use, or disclose about you. We may not fulfill some or all of your request to access as permitted by applicable law.

**Deletion of Information:** You may request that we delete your personal information. Depending on the scope of your request, we may refrain from granting your request, as permitted by applicable law. For example, we may be legally required to retain your information in our business records. You may submit a deletion request [using the methods provided below](#).

**Authorized Agent:** California residents may use an authorized agent on their behalf to exercise a privacy right discussed above. If you are an authorized agent acting on behalf of a California resident to communicate with us or to exercise a privacy right discussed above, you must be able to demonstrate that you have the requisite authorization to act on behalf of the resident and have sufficient access to their laptop, desktop, or mobile device to exercise these rights digitally. If you are an authorized agent trying to exercise rights on behalf of a Naviance user, please contact the user's school or district with supporting verification information, which includes a valid Power of Attorney in the State of California, proof that you have access to the consumer's interface, and proof of your own identify.

### **To Exercise Your Rights**

Since Naviance is used at the direction of the Client, and since FERPA requires that we remain under the direct control of the education institution with respect to our use and maintenance of student data that is part of the education record, please contact your education institution to exercise your rights, and we will work with them to facilitate your request.

Please note that your exercise of the above rights is subject to certain exemptions to safeguard the public interest (e.g., the prevention or detection of crime) and our interests (e.g., the maintenance of legal privilege). We will try to comply with your request as soon as reasonably practicable. Requests to exercise these rights may be granted in whole, in part, or not at all,



depending on the scope and nature of the request and applicable law. Where required by applicable law, we will notify you if we reject your request and notify you of any reasons we are unable to honor your request.

**Non-discrimination:** We shall not discriminate or otherwise penalize anyone for exercising their rights under this Privacy Policy.

Categories of Personal information we collect	<ul style="list-style-type: none"> <li>Identifiers such as a real name, unique personal identifier, online identifier, Internet Protocol address, email address, account name</li> <li>Personal Information (name, education) described in subdivision (e) of California Business and Professions Code Section 1798.80</li> <li>Internet or other electronic network activity information regarding your interaction with Naviance</li> <li>Geolocation information in the form of your school location</li> <li>Education information, defined as information that is not publicly available personally identifiable information as defined in the Family Educational Rights and Privacy Act (20 U.S.C. section 1232g, 34 C.F.R. Part 99).</li> </ul>
Categories of sources from which the Personal Information is collected	<ul style="list-style-type: none"> <li>We collect the Personal Information directly from you or from your educational institution.</li> </ul>
Business or commercial purpose for collecting or selling Personal Information	<p>We collect your Personal Information to provide the services and for the following business purposes:</p> <ul style="list-style-type: none"> <li>Performing services in accordance with our contract with the Customer and the terms of use including maintaining or servicing accounts, providing customer service, processing or fulfilling orders and transactions, verifying customer information, and processing payments.</li> <li>Detecting security incidents, protecting against malicious, deceptive, fraudulent, or illegal activity, and prosecuting those responsible for that activity.</li> <li>Debugging to identify and repair errors that impair existing intended functionality.</li> <li>Sending you product communications.</li> </ul>
Categories of third parties with whom we share Personal Information	<p>We do not share your Personal Information with "third parties" as the term is defined in CCPA. That is, we do not share your Personal</p>

	<p>Information with individuals or organizations to use for their own commercial purposes.</p> <p>We disclose your personal information only to service providers who support us in delivering the services as described above.</p>
<p>Specific pieces of Personal Information we have collected</p>	<p>Client information, including first and last name, ID numbers, email addresses, user names and passwords for the school and district staff users.</p> <p>Clients also submit minimally required information about the students, used for school purposes to allow Clients to view student activity within Naviance:</p> <ul style="list-style-type: none"> <li>• Grades K-2: Grade and teacher name</li> <li>• Grades 3-5: Last name, unique ID number, grade and teacher name</li> <li>• Grades 6-12: Last name, unique ID number, gender, class year and district campus</li> </ul> <p>Additional information Clients would like to host about their students within Naviance is done at the Clients' discretion for their internal review, analysis and reporting. This may include student personal information and academic records, including student first names, contact information, date of birth and other demographic information, grades, test results and performance data. Clients may also host information about a student's parent or legal guardian, including, but not limited to names, street addresses and other contact information.</p> <p>Clients may create accounts in Naviance for students' parent or legal guardians by importing their existing records and submitting user names.</p>

**Updates to This Policy:**

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

**Contact:**

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



**Naviance, Inc.**

400 E-Business Way, Suite 400

Cincinnati, OH 45241

Attn: Privacy Office

- or -

**Email:** [privacypolicy@hobsons.com](mailto:privacypolicy@hobsons.com)

## Exhibit E

### TERMS OF SERVICE

YOUR USE OF THE NAVIANCE PLATFORM (THE "SERVICE") CONSTITUTES YOUR AGREEMENT TO BE BOUND BY THESE TERMS OF SERVICE (THE "TERMS").

These Terms govern your use of the Service. The Service is owned and operated by Naviance Inc. ("Naviance"), a subsidiary of Hobsons, Inc. ("Hobsons").

By viewing, accessing, or using the Service (or any part thereof), you agree that these Terms are a binding legal agreement between you and Naviance, and you agree to be contractually bound both by the Terms, as Naviance may modify them from time to time, and by any Order Form (together with the Terms, the "Agreement"). For purposes of clarity, any Order Form that attaches or references these Terms is deemed to incorporate these Terms. The latest version of the Terms is available on the Service, including when you log in to the Service.

If you have entered into the Agreement on behalf of an educational institution (an "Institution") or other entity, you represent that you have the necessary authority to bind that Institution or entity to the Agreement. If you do not have the necessary authority, you are prohibited from viewing, accessing, or using the Service and must immediately discontinue viewing, access, and/or use. If you do not agree to these Terms, you are prohibited from viewing, accessing, or using the Service and must immediately discontinue viewing, access, and/or use. Any viewing, access, and/or use of the Service in violation of these Terms, or in a manner not authorized by these Terms, is unauthorized, is expressly prohibited, and is a violation of these Terms.

Naviance is committed to protecting your privacy, and therefore maintains a Privacy Policy that is incorporated as part of these Terms and the Agreement and which may be viewed [here](#).

As used in these Terms and the Agreement, (i) "Customer" refers to the Institution and its officers, directors, employees, and agents (and excludes Naviance Competitors); (ii) "User" refers to a student, a student's parent(s) or legal guardian(s), and/or a person (excluding Naviance Competitors) who registers for the Service through an account provided by Customer; and (iii) "Naviance Competitor" means any entity that, in the sole opinion of Naviance, is an actual or potential competitor of Naviance or Hobsons, including without limitation any competing college and career readiness platform, product, or service, and includes any officer, director, employee, independent contractor, agent, or affiliate of such entity. For the avoidance of doubt, no Naviance Competitor: is permitted to be a Customer or User; can meet the definition of a Customer or User; or is permitted to view, access, or use the Service without express written permission from the General Manager of Naviance or Chief Executive Officer of Hobsons.

By viewing, accessing, or using the Service, you represent and warrant that you (i) are not a Naviance Competitor or acting on behalf of one in registering for, or viewing, accessing, or using the Service; and (ii) are authorized to view, access, or use the Service under these Terms.



**1. Scope.** The Service is a web- and mobile-application-based college and career readiness platform that helps students explore goal setting, academic planning, career exploration, and college and related post-secondary education preparation and planning. The Service also helps to identify and facilitate student connection with higher-education institutions and scholarship providers that are of interest, while simultaneously operating as the system of records for Customers. Many core features of the Service may be activated solely at the discretion of Customer.

The Service also includes a browser interface and data transmission, access, storage (subject to commercially reasonable limits as may be imposed by Naviance in its sole discretion), and single sign-on capabilities. Customers and Users are responsible for their own Internet connection, communications, and computer costs.

## 2. Optional Features.

**2.1. Matching Features.** The college-planning function contained in the 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 Customer 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 Customer.

If Customer enables Matching for its students, its students will be able to:

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

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

1. Receive additional information about nonprofit Higher Education Institutions, and
2. 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 Customer information is shared with any Higher Education Institution unless Customer has enabled Matching and the applicable student has explicitly opted to send his/her information directly to the Higher Education Institution.

**2.2. Third-Party Features.** Customer may choose to activate and/or purchase features and services within the Service that are provided by third-party service providers. All such third-party features and services are inactive by default, and must therefore be enabled by an authorized representative of Customer. Such features and services may be turned on or off at any time at the sole discretion and control of Customer.



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

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

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

**2.3. Credit-Card Processing.** Where applicable and necessary for additional purchases by an authorized representative of Customer, Naviance shall engage the services of third-party intermediaries to provide credit-card-processing services to Customer. Such intermediaries are solely links in the distribution chain and are prohibited from storing, retaining, or using the information provided, except for the sole purpose of credit card processing and/or as otherwise required by law. Before Customer submits credit card information, Customer must agree to any applicable third-party intermediary's terms of service and privacy policies including, without limitation, provisions on limited warranties and liability.

**2.4. Interactive Areas.** The Service may contain discussion forums in which Customers may post reviews of, make recommendations for, or give ratings for content, events, products, services, or third-party providers, or post other content, messages, materials, or other items ("Interactive Areas"). Interactive Areas are not accessible to Users.

Interactive Areas include Intersect by Hobsons, which allows Customers to edit their school profiles, interact with college admissions counselors, and manage college visit scheduling. Access to Intersect shall be subject to separate terms and conditions [available here](#).

Customer is solely responsible for Customer's use of such Interactive Areas, and acknowledges and agrees that Naviance may set up any such Interactive Area to be accessible by all Customers or by certain Customers selected in Naviance's sole discretion.

**2.4.1.** No review, recommendation, or rating of any matter or service provider within the Service or in any Interactive Area shall be deemed to be an association with, sponsorship of, or an endorsement by Naviance of any the particular matter, or a guarantee of any service provider's quality, competency, qualifications, experience, resources, character, honesty, integrity, responsiveness, or other personal and professional characteristics.



**2.4.2.** Naviance takes no responsibility and assumes no liability for any content posted, stored, or uploaded by any Customer or any third party in any Interactive Area, or for any loss or damage related to or resulting from Customer's or any other person's use of any Interactive Area, nor shall Naviance be held liable for any mistakes, defamation, slander, libel, omissions, falsehoods, or obscenity Customer may encounter in any 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 sole and absolute discretion, to remove, screen, or edit without notice any content posted to any Interactive Area at any time and for any reason, and Customer is solely responsible for creating backup copies of and replacing any material that Customer posts or stores in any Interactive Area at Customer's sole cost and expense.

**3. Service Fees and Payments.** Customer's access to and use of the Service shall be subject to certain fees set forth in the Order Form. Customer will pay all fees in accordance with the billing terms in effect at the time a fee is due and payable to Naviance, as noted in the Order Form. Service fees are non-refundable, even where the Customer does not use the Service.

**3.1. Service Fees and Payments.** Customer's access to and use of the Service shall be subject to certain fees set forth in the Order Form. Customer will pay all fees in accordance with the billing terms in effect at the time a fee or charge is due and payable to Naviance, as noted in the Order Form. All service fees are due and any amounts paid are non-refundable whether or not Customer uses the Service.

**3.2. Billing Information.** In all cases, Customer shall provide Naviance with complete and accurate billing and contact information. This information shall include, without limitation, legal name, street address, e-mail address, name, and telephone number of an authorized billing contact. Customer agrees to update this information promptly following any change thereto.

Customer may opt to purchase additional, optional features by request, and subject to additional terms.

**3.3. Fee Changes.** Naviance reserves the right, in its sole and absolute discretion, to change the fees or any other charges and to introduce any new fees or charges at any time, upon at least thirty (30) days prior notice to Customer; provided, however that such fees and charges shall not become effective for Customer for services then in effect on Customer's account until the next renewal period for Customer's account.

**3.4. Non-Payment and Suspension of Service.** Customer's account will be considered delinquent if payment in full of the amount set forth on an invoice is not received within thirty (30) days following the date of the applicable invoice. Naviance reserves the right to suspend or terminate the Agreement and Customer's access to the Service if Customer's account becomes delinquent. Payments not received by Naviance within thirty (30) days following the date of the invoice shall bear interest at a rate equal to one and one-half percent (1.5%) per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses paid by Naviance for the purpose of collection. Customer will continue to be charged during any period of suspension. Customer agrees that Naviance may charge unpaid fees to Customer's credit card, if applicable, or otherwise bill Customer for unpaid fees. Naviance also reserves the



right to impose a separate reconnection fee should Customer request access to the Service once outstanding fees have been paid.

#### 4. Naviance Information.

**4.1. Naviance Ownership.** As between Naviance and you, Naviance retains all rights, including Intellectual Property Rights, title, and interest in and to the Service. Intellectual Property Rights means all intellectual property rights (throughout the universe, in all media, now existing or created in the future, for all versions and elements, in all languages, and for the entire duration of such rights) arising under statutory or common law, contract, or otherwise, and whether or not perfected, including without limitation, (i) all rights associated with works of authorship including without limitation copyrights, moral rights, copyright applications, copyright registrations, synchronization rights; (ii) rights associated with trademarks, service marks, trade names, logos, trade dress, and the applications for registration and registrations of trademarks and service marks; (iii) rights relating to the protection of trade secrets and confidential information; (iv) rights analogous to those set forth in this definition and any and all other proprietary rights relating to intangible property; and (v) divisions, continuations, renewals, reissues, and extensions of the foregoing (as and to the extent applicable) now existing, later filed, issued, or acquired. Further, Naviance shall have any and all proprietary rights in, without limitation, any suggestions, ideas, enhancement requests, feedback, and recommendations provided by any Customer, User, or other party relating to the Service.

For purposes of clarity, the Agreement is not a sale and does not convey any rights of ownership in or related to the Service or Intellectual Property Rights owned by Naviance to Customer or Users other than as expressly set forth herein. 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 other than as expressly set forth in the Agreement; provided, however, that Customer may link to the homepage of the Naviance website located at [www.naviance.com](http://www.naviance.com) 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). Customer may not frame any page of a Naviance website.

**4.2. Confidential Information.** Except for information provided by a Customer or User, all information available in or through the Service is confidential information of Naviance and/or Hobsons ("Confidential Information"). Customers and Users acknowledge that the only reason they have access to and can view that Confidential Information is by virtue of a Customer's purchase of the license contemplated by Section 5 below. Customers and Users agree that the Confidential Information will be maintained as confidential and shall be protected as a trade secret of Naviance and/or Hobsons. Customers and Users acknowledge that the Service and its components have been created, compiled, prepared, selected, and arranged by Naviance through the expenditure of substantial time, effort, and money, and that it constitutes the valuable property of Naviance. Customers and Users agree to take all necessary precautions to comply with all copyright, trademark, trade secret, patent, contract, and other laws necessary to protect all rights in the Confidential Information. For the avoidance of doubt, anyone or any entity that does not meet the definition of a Customer or User may not view, access, or use the Confidential Information without express written permission from the General Manager of Naviance or the Chief Executive Officer of Hobsons.



**5. License to Customer.** Subject to the Agreement, Naviance grants Customer a non-exclusive, non-transferable, non-sublicensable, non-assignable, worldwide, limited right and license to use the Service solely for Customer's own business purposes and for the ability to provide Users each with an individual account to use the Service. Customer shall not, without the prior express written permission 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 Customer in the Agreement are reserved by Naviance and its licensors. Subject to the Agreement, Customer grants to Naviance the non-exclusive, worldwide right to use, copy, store, transmit, and display Customer and/or User data hosted on the Service by Naviance ("Customer Data") only in accordance with applicable laws and the terms of the [Privacy Policy](#). For the avoidance of doubt, Customer has no right to grant any license to view, access, or use the Service to anyone or any entity that does not meet the definition of a Customer or User without express written permission from the General Manager of Naviance or the Chief Executive Officer of Hobsons.

**6. Customer and User Responsibilities.** Customer is responsible for any and all activities that occur under or in connection with Customer's and its Users' accounts, and by accessing the Service, Customer agrees to the [Terms of Use](#), incorporated herein by reference. Customer and Users shall: (i) maintain the confidentiality of account 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 stop immediately any use of the Service that is inconsistent with these Terms that is known or suspected; (iv) assure that use of the Service shall at all times conform to these Terms and the Agreement; (v) not impersonate or attempt to impersonate another Customer or User or provide false information in an attempt to gain access to or use the Service; (vi) not create accounts for or share accounts with any individual or entity not permitted to be a Customer or User under these Terms; (vii) not allow anyone not authorized to be a Customer or User under these Terms to view, access, or use the Service; and (viii) not otherwise facilitate the viewing, access, or use of the Service by anyone not authorized to be a Customer or User under these Terms.

In the event that a Customer or User makes any attempt to gain unauthorized access to another Customer's or User's account, or to view or manipulate the records of another Customer or User, Naviance reserves the right, in its sole discretion, to terminate the Agreement, and inform any relevant authorities of such violation.

**7. Account Information and Data.** Naviance, on behalf of itself, its employees, consultants, subcontractors, and third parties assisting Naviance in providing the Service, and Customer each represents, warrants, and covenants that it complies with, and will comply with, all applicable federal, state, and international data-protection and privacy laws and regulations with respect to the personally identifiable information collected, stored, and maintained through the Service, as well as with all applicable business regulations.

Naviance may disclose Customer or User information if necessary in order to comply with subpoenas, court orders, or regulatory requests; to protect Naviance's systems and customers; or to ensure the integrity and operation of Naviance's business and systems. When legally



permissible, Naviance will notify Customer in advance of such disclosures and reasonably cooperate with Customer to limit the scope of such disclosures.

**7.1. Privacy.** Naviance is committed to protecting the privacy of Customer and User personally identifiable information, and maintains a detailed Privacy Policy, which may be viewed [here](#). Naviance reserves the right to modify its Privacy Policy in accordance with the procedure outlined in that policy.

**7.2. Family Educational Rights and Privacy Act ("FERPA").** In the event Customer is subject to the provisions of the Family Educational Rights and Privacy Act (FERPA), the parties agree as follows: (A) Customer appoints Naviance as a "school official" as that term is used in FERPA §§ 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 student information as defined in FERPA, obtained from Customer and its Users by Naviance in the performance of this Agreement: (i) will remain under the "direct control" of the Customer; (ii) will be used only to fulfill Naviance's responsibilities under the Agreement; (iii) will only be disclosed to third parties operating in partnership with Naviance as necessary to provide Services to Customer, provided that all such third parties are contractually bound to manage the information in compliance with the Naviance Privacy Policy and security policies in accordance with the requirements set forth in Section 7 above and applicable laws, and to use the information for the sole and limited purpose of providing the Service to the Customer; and (iv) will not be disclosed to other third parties except as expressly provided for in FERPA §§99.31, without signed and dated written consent of the student's parent/legal guardian, or if the student is eighteen (18) years of age or older, signed and written consent of the student.

**7.3. Children's Online Privacy Protection Act ("COPPA").** Without limiting the generality of Section 7 of the Agreement, in the event that Customer allows Users under the age of 13 to submit personal information as defined in the Children's Online Privacy Protection Act (COPPA) to Naviance in connection with its use of the Service, Customer agrees that it will be responsible for obtaining verifiable parental consent prior to making the Service available to such Users. Naviance shall fully comply with COPPA and any rules or regulations promulgated thereunder.

**7.4. Security.** Naviance implements, maintains, and updates, as appropriate, reasonable security policies, procedures, and practices as dictated by the nature of the personally identifiable information collected and maintained through the Service, in order to protect such information from unauthorized access, destruction, use, modification, or disclosure.

The Service has security measures in place to help protect against the loss, misuse, and alteration of Customer and User personally identifiable information. When the Service is accessed using a supported web browser, Transport Layer Security (TLS) 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 hosts the Service in a secure server environment that uses a firewall and other technologies in an effort to prevent interference or access from outside intruders. Data is secured at rest using storage level encryption. The Service also require unique account identifiers, user names, and passwords



that must be entered each time a Customer or User signs on. The Internet, however, is not perfectly secure and Naviance shall not be responsible for security incidents not reasonably within its control.

## **8. Term of Service and Termination.**

**8.1 Term of Service.** The Agreement commences on the earlier of the date the Order Form is executed or the "contract start date" set forth on the Order Form (the "Effective Date") and shall continue for the initial term set forth on the Order Form (the "Initial Term"), unless terminated by Naviance pursuant to the Agreement, including these Terms. In the event the Order Form includes an autorenewal provision, the Agreement shall automatically renew after the Initial Term for consecutive one (1) year terms (each, a "Renewal Term") unless Customer provides Naviance with written notice of its intent not to autorenew not fewer than thirty (30) days prior to the conclusion of the Initial Term or the then-current Renewal Term.

**8.2. Termination for Cause; Suspension.** Naviance may terminate any portion of the Agreement, or the entire Agreement, in the event of any breach by a Customer of any term of the Agreement, including these Terms, that is not remedied within fifteen (15) days after written notice to that Customer. If Naviance terminates the Agreement under this Section 8.2, in addition to any other rights or remedies available to Naviance, all fees due by Customer through the end of the Initial Term or the then-current Renewal Term are accelerated and immediately due and payable. Naviance may suspend or interrupt the provision of any portion of the Service to a Customer upon Naviance's good-faith determination of any violation by that Customer of Sections 4, 5, or 6 herein. Naviance will restore provision of the Service only if, in Naviance's sole opinion, Naviance has received satisfactory assurances as to the cessation of the violation. The Customer is responsible for all fees and charges during any suspension period.

**8.3. Data Retention.** As soon as practicable upon expiration or termination of the Agreement, but in any event no later than six (6) months after expiration or termination, Naviance will delete personally identifiable student information. Notwithstanding the above, Customer may, at any time and in its sole discretion, request in writing that its personally identifiable student information be deleted, and Naviance shall comply with any such written request within thirty (30) days.

Naviance has no obligation to retain Customer Data if Customer or User has materially breached this Agreement and such breach has not been cured within fifteen (15) days following receipt of written notice of such breach from Naviance. Naviance has no obligation to retain Customer Data if the account is delinquent, and such Customer Data may be irretrievably deleted.

Under all circumstances, within a reasonable timeframe prior to deletion of student personally identifiable information, Naviance will notify Customer so that Customer may utilize functionality within the Service to export its data.

Notwithstanding the above, if Naviance provides accounts for student users, Naviance may transfer a copy of records created by or otherwise available to a student into their individual account.



**9. Representation, Warranties, and Covenants.** Each party represents, warrants, and covenants that it has the full legal power and authority to enter into the Agreement. Naviance represents, warrants, and covenants 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. Customer and Users represent, warrant, and covenant 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 of the Agreement, including these Terms.

## **10. Indemnification.**

**10.1. Indemnification by Customer.** Customer shall indemnify, defend, 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 attorney's fees and costs) arising out of or in connection with: (i) a claim alleging that use of Customer Data infringes the rights of, or has caused harm to, a third party; or (ii) a claim arising from or alleging a breach by a Customer or User(s) of any provision of the Agreement, provided that Naviance: (a) gives written notice of the claim to Customer as soon as practicable; (b) gives Customer sole control of the defense and settlement of the claim (provided that Customer may not settle or defend any claim unless it unconditionally releases Naviance and its parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys, and agents of all liability and such settlement does not affect Naviance's business or the Service); (c) provides to Customer all reasonably available information and assistance; and (d) has not compromised or settled such claim without Customer's prior written consent.

**10.2. Indemnification by Naviance.** Naviance shall indemnify, defend, and hold Customer 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 attorney's fees and costs) arising out of or in connection with a claim alleging that the Service directly infringes the copyright, patent, trademark, and other intellectual and proprietary rights of a third party. Naviance shall have no indemnification obligation, and Customer shall indemnify Naviance pursuant to the Agreement, for claims arising from any alleged infringement related to the combination of the Service with any of Customer's or any of Customer'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 expressly 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 PROVIDED TO NAVIANCE BY CUSTOMER OR USERS; (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 CUSTOMER'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 CUSTOMER THROUGH THE SERVICE WILL MEET CUSTOMER'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 CUSTOMER 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.** In no event shall Naviance be liable to you for any indirect, special, exemplary, or consequential damages including, without limitation, loss of data or lost profits, in any manner related to the Service or your use thereof based in contract, negligence, strict liability, or otherwise, whether or not they had any knowledge, actual or constructive, that such damages might be incurred. The maximum liability for Naviance arising out of any kind of legal claim (whether in contract, tort, or otherwise) in any way connected to the Service shall not exceed the amount paid to Naviance by you for use of the Service.

**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 you.

**15. Local Laws and Export Control.** In this Section 15 (Local Laws and Export Control) only, "Export Controls" means any export control and economic sanctions laws and regulations of the United States of America, the United Kingdom, the European Union (or any Member State thereof), the United Nations and each other jurisdiction in which Naviance is incorporated, operates, conducts business or to which it is subject from time to time, including, but not limited to: (i) the US Export Administration Regulations, the US International Traffic in Arms Regulations, the US Department of Treasury Office of Foreign Asset Control's economic sanctions regulations; (ii) sanctions programmes maintained by the British Government, EU regulation on the control of exports of dual-use items and technology and any applicable European Union restrictive measure that has been or is to be implemented pursuant to any European Council or Commission Regulation or Decision adopted pursuant to a Common Position in furtherance of the European Union's Common Foreign and Security Policy; and (iii) the Indian Foreign Trade (Development and Regulation) Act, 1992, the Indian Weapons of Mass Destruction and Their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005, and notifications and Foreign Trade Policy issued from time to time by the Director General of Foreign Trade, Department of Commerce and Industry, Government of India.



15.1. The Service provides services and uses software and technology that may be subject to Export Controls depending on who uses them, for what purposes they are used and where they may be used. Accordingly, Customer undertakes and agrees that the Service shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported in breach of Export Controls. This shall include, but not limited to, Customer ensuring that the Service is not used, directly or indirectly, by a specially designated person or entity listed 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 or the European External Action Service Consolidated List of financial sanctions targets (collectively "Designated Nationals").

15.2. Customer represents and warrants that it is not owned or under the control of a Designated National and the funds used to pay for the Service are not derived from a Designated National or an activity which would otherwise be in breach of Export Controls. If Customer uses the Service in breach of Export Controls, including using the Service as, for or on behalf of a Designated National, or reasonably suspects that such a breach has or will arise, then Customer shall immediately notify Naviance in writing upon which the Service may be terminated by the Naviance at its sole discretion in writing to Customer.

15.3. 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. Customer remains solely responsible for applying for and obtaining an appropriate licence for use of the Service if so required under Export Controls, including those controls applicable to Customer. Any diversion of the content contrary to US laws and regulations 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 Customer or Users on record with Naviance. Such notice shall be deemed to have been given to Customer or Users upon the expiration of forty-eight (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). Customer 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.** The Agreement may only be modified by the express written agreement of both parties.

**18. Assignment.** The Agreement, including all rights and obligations hereunder, may not be assigned by Customer or Users without the prior written approval of Naviance.

**19. Governing Law; Forum; Naviance Remedies; Miscellaneous Provisions.**



**19.1. Governing Law; Forum.** The Agreement, including these binding Terms, and the rights and obligations of the parties thereunder shall be governed by and construed in accordance with the law of the Commonwealth of Virginia and controlling United States federal law, without regard to the choice- or conflicts-of-law rules of any jurisdiction. You hereby consent to the exclusive jurisdiction and venue of the state and federal courts located in Alexandria City in the Commonwealth of Virginia, and Arlington County in the Commonwealth of Virginia, for the adjudication of any disputes, actions, claims or causes of action arising out of, relating to, or in connection with this Agreement, the Terms, or the Service. You expressly waive any objection to personal jurisdiction or venue in the state and federal courts identified in the preceding sentence, including any *forum non conveniens* argument.

**19.2. Naviance Remedies.** You acknowledge that any breach of the Agreement, including these binding Terms, and including without limitation the restrictions on any unauthorized viewing, access, or use of the Service, will cause irreparable harm and injury to Naviance, for which there is no adequate remedy at law. Thus, in addition to all other remedies available at law or in equity, you agree that Naviance shall be entitled to injunctive relief. Material breach of the Agreement, including these binding Terms, harms the integrity, functionality, and reputation of the Service and Naviance and its affiliates; detracts from Users' and Customers' trust in and use of the Service; and unfairly harms, thereby causing damage to, the business of Naviance, the Service, and the computers and servers through which Naviance offers the Service. Indeed, you agree that in the event you materially breach these binding Terms, Naviance will have to incur significant time, expense, and fees in investigating and remediating the breach (including, for example, the cost of attorney and Naviance employee time).

You agree that if you do not meet the definition of a Customer or User and you (i) view, access, or use the Service; (ii) violate Section 4.2; or (iii) otherwise act in a way not authorized by these Terms, you will pay Naviance's reasonable attorney's fees and costs, to be determined by a court, but not less than \$100,000, an amount the parties agree would be the minimum reasonable fee for any legal action required to investigate the violation of and enforce these binding Terms. The payment of attorney's fees and costs contemplated in the previous sentence is in addition to any damages or other relief awarded by the Court.

**19.3. Severability.** If any provision of the Agreement, including these binding Terms, is found to be invalid or unenforceable by a court of competent jurisdiction, such provision 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. If the provision cannot be construed to be rendered valid, it shall be severed from the remainder of the Agreement and these binding Terms, which shall remain in full force and effect.

**19.4. Miscellaneous Provisions.** In the event of any inconsistency between the Agreement, including these binding Terms, and any purchase order or similar terms on any Customer form, the Agreement shall control. No joint venture, partnership, employment, or agency relationship exists between Naviance and Customer 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. The Agreement, including these binding Terms and the incorporated [Terms of Use](#), comprises the entire agreement between Naviance and Customer 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 4, 6, 7, 9, 10, 11, 13, and 19, and Customer's obligation to pay any fees due under the Agreement, shall survive termination of the Agreement.

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

**20.1. Customer Responsibilities for Professional Development.** All professional development sessions are hands-on sessions and require a computer for each participant. Customer 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. Customer must also plan to have no more than 15 individuals attend a training session at a time to ensure proper student to instructor ratio for effective learning. Customer agrees to work with Naviance to ensure that any professional development session purchased is conducted within 12 months from the date of purchase and acknowledge that a failure to have Naviance deliver a session within 12 months from the date of purchase shall constitute a cancellation by Customer as described in Section 20.6.

**20.2. Customer Responsibilities for Consulting Services.** With respect to consulting services, Customer agrees to the required preparation as outlined by Naviance to effectively start the engagement and utilize the services of the Naviance Consultant. Customer 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 Customer. 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 Customer. The Naviance consultant cannot install cURL, create a cURL directory, or configure cURL for Customer.

Customer understands that as part of providing certain consulting services as specified by Customer Naviance may have access to Customer's student data in order to provide those services. Such access will be for the sole and limited purpose of providing Customer with information and analytics about Customer's and its User's configuration and use of the Services and progress within the Services, and to provide insights, recommendations and reports for the sole and exclusive use by Customer for its purposes.

**20.3. 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. Customer acknowledges that Naviance does not warrant that a satisfactory solution to all problems will be possible.



**20.4. Payments and Refunds.** Customer or a contact designated by Customer will be invoiced for professional development session(s) and consulting services at the time of purchase. If applicable, Naviance will invoice Customer 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 3 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 20.5.

**20.5. 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, Customer may choose to reschedule, attend another comparable session, or receive a full refund.

**20.6. Cancellation or Rescheduling by Customer.** Customer may reschedule an on-site or webinar session that has been previously confirmed by Naviance, provided that Customer agrees to: (i) notify Naviance in writing at least 3 business days in advance prior to the start of the session; (ii) pay costs incurred on Customer'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 (iii) pay travel expenses associated with the session once rescheduled, if applicable. A session shall be considered canceled by Customer, with no further obligations by Naviance, in the event of any of the following: (i) failure to schedule a session to be conducted within 12 months from the date of purchase; (ii) failure by Customer to attend a session for which Customer is registered without providing the specified advance notice to Naviance; or (iii) failure by Customer to reschedule a session in accordance with the provisions of this Section 20. Customer agrees to pay any fees for services and to pay any expenses incurred by Naviance on Customer's behalf in connection with sessions confirmed by Naviance and canceled by Customer. If cancellation of a session is a result of inclement weather resulting in a school or delay, Customer is still responsible for paying any expenses incurred by Naviance on the Customer's behalf, however the session will not be considered cancelled by Customer.

**21. 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, including, where possible, 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





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counter-notices for the Service should be sent to: Matthew S. Kelman, Esq., 53 West 23<sup>rd</sup> Street, 12<sup>th</sup> Floor, New York, NY 10010. 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.



**StudentTracker for High Schools/Districts Terms of Service  
for Naviance Participating High Schools**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the National Student Clearinghouse ("Clearinghouse"), a not-for-profit corporation organized under the laws of the Commonwealth of Virginia, and the undersigned high school or high school district ("School") agree as follows:

1. The Clearinghouse provides a nationwide, central repository of information on student enrollment, degrees, diplomas, certificates and other educational achievements.
2. The School wants to obtain information on the attendance of its former students in postsecondary institutions. The School wishes to use the services of the Clearinghouse to assist in the functions as described below and designates the Clearinghouse as its authorized representative for this purpose.
3. The School will transmit to Naviance lists of its graduates ("Graduates"). Initially, it will transmit a list of Graduates dating back up to eight (8) years and, thereafter, will submit lists of new graduates each year after conferral of diplomas. The School agrees that it will submit its Graduates files electronically and that they will contain the data elements and configuration reasonably required by the Clearinghouse. Naviance, acting on behalf of School as a school official, will conform the data to Clearinghouse standards and submit the data to the Clearinghouse.
4. Upon request, the Clearinghouse will compare the School's Graduates with its database and provide the School with data on the subsequent enrollment and educational achievements of its students at postsecondary institutions. In addition to the Graduates file, the School may also submit through Naviance lists of graduates and other former students in a format reasonably required by the Clearinghouse ("StudentTracker Request Files"), and the Clearinghouse will provide data to the School via Naviance on the subsequent enrollment and educational achievements of these students at postsecondary institutions. The Clearinghouse reserves the right to reasonably limit the number of Request Files submitted by the School per calendar year.
5. The services provided by the Clearinghouse under this Agreement will be paid for by the School through Naviance, which will be responsible for forwarding payment to the Clearinghouse.
6. The Clearinghouse uses its best efforts to review, interpret, and follow publicly disseminated guidance on FERPA in the development and operation of its services and provides for the release of only unblocked directory information unless FERPA authorizes release without consent. The School is solely responsible for its compliance with FERPA, and the Clearinghouse is not liable for any errors or omissions by the School that may give rise to FERPA violations. Both the Clearinghouse and the School agree to comply with all applicable Federal, State, and local statutes, regulations, and other requirements pertaining to the security, confidentiality, and privacy of information exchanged with and maintained by the Clearinghouse.



7. The School agrees that it may only disclose the data provided by the Clearinghouse to other educators, school boards, and school officials whom it has determined to have legitimate educational interests. The School agrees that it will not release data provided by the Clearinghouse to any other individuals, institutions, or organizations, other than those identified above, either in student or postsecondary institution identifiable form, without the Clearinghouse's express written permission and payment of any additional fees that may be required.
8. In the event the School is required to disclose any data provided hereunder (specifically including, but not limited to, information which could potentially identify individuals or specific postsecondary institutions) pursuant to any applicable statute, law, rule or regulation of any governmental authority or pursuant to any order of any court of competent jurisdiction, the School must provide the Clearinghouse prompt notice of such request for disclosure and reasonably cooperate with the Clearinghouse's efforts to obtain a protective order. The parties further agree that any exclusion effected pursuant to this provision is authorized only to the minimum extent necessary to allow the School to comply with a legal rule or order compelling the disclosure of information and shall not constitute a general waiver of the obligations of confidentiality under this Agreement.
9. The School will institute and maintain reasonable controls to ensure that the information it provides to the Clearinghouse under this Agreement is complete and accurate. The School agrees that the Clearinghouse will not be responsible for actions, errors or omissions of the School.
10. The Clearinghouse will institute and maintain reasonable controls to ensure the integrity and security of its database and data transmission systems so that it releases information solely to authorized Requestors in accordance with the terms of this Agreement and applicable law.
11. The Clearinghouse acts as agent for the School in the verification and release of information from education records under this Agreement. The Clearinghouse will not retain or release personally identifiable information provided by the School except as specifically authorized under this Agreement. The Clearinghouse may retain or release information received from the School under this Agreement that is in aggregate or statistical form and does not contain Social Security numbers or other personally identifiable information. The School retains full ownership rights to the information in the education records it provides to the Clearinghouse. Upon termination of this agreement, the Clearinghouse will immediately discontinue use of any information that has been provided to it by the School. The Clearinghouse will destroy all information provided under this Agreement after all retention requirements for federal, state and local audits have expired but in no event later than six months after termination of the Agreement.
12. The School agrees to acknowledge in all internal and external reports, presentations, publications, press releases, and/or research announcements that utilize StudentTracker data that the source of the data is the StudentTracker service from the National Student Clearinghouse.



13. The School agrees to provide all notices to the Clearinghouse under this Agreement to:

National Student Clearinghouse  
2300 Dulles Station Blvd., Suite 300  
Herndon, VA 20171  
Attn: Vickie Graham, Contract Admin.  
Electronically: [graham@studentclearinghouse.org](mailto:graham@studentclearinghouse.org)  
Fax: 703-742-4234

14. The Clearinghouse agrees to provide all notices under this Agreement to the School to the signatory and address on Page 1 of this Agreement unless otherwise instructed in writing by the School. The Clearinghouse considers the signatory to this Agreement as its primary contact for all operational and systems issues unless otherwise instructed in writing by the School.
15. This Agreement commences on the date that School access to the StudentTracker service is first enabled ("Effective Date") and shall continue until the earlier of: (a) termination by either party by providing sixty (60) days notice to the other party, or (b) termination of the School's relationship with Naviance. In the event of termination under (b) above, the School may enter into a direct contract with the Clearinghouse. The parties agree that any subsequent modifications to this Agreement will be made only in writing.
16. All representations, warranties, disclaimers of liabilities, indemnifications, and covenants between the parties will survive the termination of this Agreement for any reason and in any manner and will remain in full force and effect between the parties.