

THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE

### **SOFTWARE AND SERVICES AGREEMENT**

This SOFTWARE AND SERVICES AGREEMENT ("**Agreement**") is effective as of the 1<sup>st</sup> day of July, 2015 ("**Effective Date**"), and is entered into by and between the Board of Education of the City of Chicago, a body politic and corporate, commonly known as the Chicago Public Schools (the "**Board**" or "**CPS**") and Hobsons Inc., a Delaware corporation with offices at 3033 Wilson Boulevard, Suite 500, Arlington, VA ("**Vendor**").

### **RECITALS**

- A. Vendor is a provider of software designed to assist users with college and career preparation. Vendor also provides implementation and training services for the software. The Board desires that Vendor render certain software and services as more fully described herein; and
- B. Vendor has demonstrated expertise in providing such services, has represented that it has the requisite knowledge, skill, experience and other resources necessary to perform such services and is desirous of providing such services for the Board.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties hereby agree as follows:

- 1. **Incorporation of Recitals:** The matters recited above are hereby incorporated into and made a part of this Agreement.
- 2. **Term of Agreement:** The term ("**Term**") of this Agreement will be for a period commencing with the Effective Date and ending on June 30, 2018 with two (2) options to renew the Agreement by mutual written agreement of the parties, for periods of one year each under the same terms and conditions as the original Agreement.
- 3. **Software and Services, Marketplace and Task Orders.**

3.1 **Software.** For the Term of this Agreement, and for fees as described herein, Vendor hereby grants to the Board, on behalf of the Chicago Public Schools System, a district-wide license, as described in Section 8.1, to its Naviance Core Products software to all CPS middle and high schools ("**Core Products Software**") as further described in Exhibit A, Software and Scope of Services, which is attached hereto and made a part of this Agreement.

Additional Software support products will be made available for purchase by the individual schools ("**Optional Products Software**") through the CPS Online Marketplace ("**Marketplace**"). These products are described in the Payment Terms and Pricing Schedule ("**Payment Terms and Pricing Schedule**"), attached hereto and incorporated herein as Exhibit B. Orders must be on the Board's Standard Purchase Order Form ("**Purchase Order**" or "**PO**"). The terms and conditions found on the Board's Purchase Order shall apply to the extent that such terms supplement and are not inconsistent with the terms and conditions contained in this Agreement.

The Core Products Software and Optional Products Software shall collectively be referred to as the "**Software**", or the "**Naviance Software**".

3.2 **Services.** Vendor shall provide the services, deliverables, duties, and responsibilities described in the Software and Scope of Services and any Performance Management or Task Order Form (see Exhibit C) received, and all work necessary to complete them or carry them out fully and to the standards of performance as specified in this Agreement (collectively "**Services**"). The parties may, from time to time, request changes in the Software and Scope of Services. Any such changes, including any increase or decrease in Vendor's fees, must be mutually agreed upon and shall be documented by a written amendment to this Agreement signed by both parties.

3.3 **Marketplace.** The Board utilizes an eProcurement system referred to as 'Marketplace' for electronic order placement of goods and services via a hosted eCatalog. At the Board's sole discretion, the Board may eliminate use of an eProcurement system or determine that certain services or goods may not be made available for purchase by the Board through an eProcurement system. Access to Marketplace is for internal CPS use only. CPS Schools, Networks and Departments may use Marketplace to place an order/purchase. Once the purchase is made through the Marketplace a PO will be sent to the Vendor electronically through the CPS iSupplier portal.

1. Vendor shall have the option of making their Optional Products Software available through Marketplace; however Vendor is not required to utilize Marketplace. Orders and purchases must still be placed utilizing Task Orders and POs. The Marketplace is a supplemental tool for the Board's benefit and efficiency and is not to be used in lieu of the process for placing orders or obtaining services as otherwise provided in this Agreement. Use of the Marketplace by Vendor may result in greater visibility of Vendor's Services to CPS Schools, Networks and Departments. If Vendor chooses to use Marketplace, Vendor is responsible for entering the description of the Services and Software and associated pricing into the Marketplace and must maintain their own catalog(s).
2. The information entered into the Marketplace by Vendor must be in conformity with the Software and Scope of Services, or Exhibit A. The information entered into the Marketplace must include detailed information regarding the Software offered and the pricing for the Software. Prior to making any changes to the Marketplace Vendor information, Vendor must first have the written approval of the Board's Project Manager, who is identified in Exhibit A. Any addition, deletion, change, modification or substitution of Optional Products by Vendor that is not made in compliance with this provision shall be void.
3. All information entered into the Marketplace by Vendor must be aligned and consistent with the Software description, details and pricing set forth in this Agreement and its Exhibits. Vendor may not include on the CPS Marketplace hyperlinks to any external site. Vendor recognizes that any deviation in the description of Software entered in the Marketplace by Vendor from the Software described herein that results in an order being placed will result in that order being deemed invalid by the Board and the associated cost not owed by the Board. In the event of a conflict between an order placed through the Marketplace and the corresponding Task Order, the Task Order shall prevail.

The provisions of this Section 3 shall survive the expiration or termination of this Agreement.

**3.4 TASK ORDERS. THE VENDOR WILL PROVIDE TRAINING, PROJECT MANAGEMENT AND CUSTOMIZATION SERVICES TO CPS SCHOOLS AND THE DEPARTMENT OF COLLEGE AND CAREERS PURSUANT TO INDIVIDUAL TASK ORDERS. EACH TASK ORDER MUST BE SIGNED BY THE SCHOOL PRINCIPAL, THE BOARD'S PROJECT MANAGER, AND THE VENDOR'S AUTHORIZED REPRESENTATIVE. EACH TASK ORDER MUST INCLUDE A DESCRIPTION OF THE SERVICES TO BE PROVIDED BY THE VENDOR TO A PARTICULAR SCHOOL. A TASK ORDER MAY INCLUDE ONLY THOSE SERVICES PROVIDED FOR AND DESCRIBED IN THIS AGREEMENT AS SET FORTH IN SECTION 3.2 ABOVE AND AS DESCRIBED IN THE ATTACHED SCOPE OF SERVICES. THE BOARD SHALL NOT BE OBLIGATED TO PAY FOR ANY SERVICES NOT INCLUDED IN A TASK ORDER. EACH TASK ORDER MUST BE DATED AND INCLUDE DETAILED INFORMATION REGARDING THE SERVICES TO BE PROVIDED, INCLUDING THE FREQUENCY OR DATE OF SERVICES, TYPE AND DESCRIPTION OF SERVICE, LOCATIONS, NUMBER OF HOURS TO BE PROVIDED, HOURLY RATE, TOTAL COMPENSATION FOR TASK ORDER AND OTHER DETAILS REGARDING THOSE SERVICES TO BE PROVIDED. THE PRICING FOR THE SERVICES MUST BE CONSISTENT**

WITH THE SCHEDULE OF PRICING ATTACHED TO THIS AGREEMENT AS EXHIBIT B. THE TASK ORDER FORM IS ATTACHED AS EXHIBIT C TO THIS AGREEMENT. EACH TASK ORDER MUST BE SUBMITTED TO THE BOARD'S PROJECT MANAGER FOR REVIEW AND WRITTEN APPROVAL PRIOR TO THE COMMENCEMENT OF ANY SERVICES UNDER THE TASK ORDER. THE TASK ORDER IS INTENDED TO DESCRIBE THE SERVICES AND PRICING FOR PARTICULAR PROJECTS AND NOT AS A MEANS TO AMEND THIS AGREEMENT. THE BOARD, IN ITS SOLE DISCRETION, MAY DEEM ANY ADDITIONAL TERMS AND CONDITIONS IN A TASK ORDER, TO BE NULL AND VOID. TASK ORDERS EXECUTED IN ACCORDANCE WITH THIS PROVISION SHALL BE INCORPORATED INTO THIS AGREEMENT.

**4. Compensation; Billing and Payment Procedures; Electronic Payments:**

4.1 Compensation: Compensation for Software and Services during the Term shall be payable in accordance with the Payment Terms and Pricing Schedule in Exhibit B. The total compensation for the Software and Services to be provided by Vendor during the Term of this Agreement, inclusive of any and all reimbursable expenses specifically identified herein, shall not exceed Two Million Seven Hundred Thousand and 00 Dollars (\$2,700,000.00), the "**Maximum Compensation Amount**", without the prior approval of the members of the Board and a written amendment to this Agreement.

It is understood and agreed that the Maximum Compensation Amount referenced hereinabove is a 'not-to-exceed amount' and is not a guaranteed payment. Compensation shall be based on actual Services performed during the Term of this Agreement and the Board shall not be obligated to pay for any Services or deliverables not in compliance with this Agreement..

4.2 Billing and Payment Procedures: All invoices must be submitted electronically via email in PDF format to [cpsinvoice@cps.edu](mailto:cpsinvoice@cps.edu). Each email may only contain one invoice and must include your Vendor name and the CPS Purchase Order number. All invoices must include:

- Vendor name and payment address
- Unique invoice number (determined by Vendor)
- Valid purchase order number (only one PO number may be referenced on each invoice)
- Invoice date
- Itemized description of the services rendered and/or goods delivered
- Date the services were provided and/or goods were delivered to CPS
- Detailed pricing information such as quantities, unit prices, discount, and final net amount due
- Hours billed for Services, hourly rate, and detailed description of any reimbursable expenses for travel

Invoices shall be submitted in a timely manner. The final invoice shall be submitted no later than ninety (90) days after the expiration or termination of this Agreement. If Vendor has more than one contract with the Board, separate invoices must be submitted for each contract. The Board shall process payments in accordance with the Local Government Prompt Payment Act [50 ILCS 505/1 *et seq.*]. The Board reserves the right to request additional information and supporting documentation necessary for the Board to verify the Services provided under this Agreement. Acceptable forms of payment are check, wire or ach.

4.3. Electronic Payments: INTENTIONALLY DELETED

**5. Standards of Performance:** Vendor must perform all Services required of it under this Agreement with that degree of professionalism, skill, care and diligence normally shown by a vendor performing services of a scope and purpose and magnitude comparable with the nature of the Services to be

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provided under this Agreement. Vendor must ensure that all Services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed as required by law. Vendor acknowledges that, if in the course of providing Services hereunder, it is entrusted with or has access to valuable and confidential information and records of the Board, that with respect to that information, Vendor agrees to be held to a commercially reasonable standard.

Any review, approval, acceptance of Services or deliverables or payment for any of the Services by the Board does not relieve Vendor of its responsibility for the professional skill, care, and technical accuracy of its Services and deliverables. This provision in no way limits the Board's rights against the Vendor under this Agreement, at law or inequity. Vendor shall remain responsible for the professional and technical accuracy of all Services, including any deliverables furnished, whether by Vendor or its subcontractors or others on its behalf.

**6. Personnel:**

6.1 **Adequate Staffing:** Vendor must assign and maintain during the term of this Agreement and any renewal of it, an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned to perform the Services.

7. **Non-appropriation:** Expenditures not appropriated by the Board in its current fiscal year budget are deemed to be contingent liabilities only and are subject to appropriation in subsequent fiscal year budgets. In the event no funds or insufficient funds are appropriated and budgeted in any subsequent fiscal period by the Board for performance under this Agreement, the Board shall notify Vendor and this Agreement shall terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. Payments for Services completed to the date of notification shall be made to Vendor except that no payment shall be made or due to Vendor under this Agreement beyond those amounts appropriated and budgeted by the Board to fund payments under this Agreement.

**8. License, Implementation, Hosting, and Support:**

8.1 **License:** Vendor hereby grants to the Board a non-exclusive, worldwide, nontransferable, annual, royalty-free (except for fees specified in this Agreement) license ("**License**") to use the Core Products Software described in Exhibits A and B, for the price listed in the Payment Terms and Pricing Schedule. The Board shall not sell, lease, license or otherwise transfer, reverse engineer, use or dispose of the Software except as expressly provided herein. The Software and any accompanying documentation shall at all times remain the sole and exclusive property of Vendor. The Board shall not copy or knowingly permit the copying by any third party of the Software (other than for a reasonable number of back-up copies) or distribute, market, sell, rent, lease, license, transfer, sublicense or assign to any third party any portion of the Software except as permitted under this Agreement. The Board shall not make any alterations, additions or modifications, create derivative works, decompile, disassemble or reverse engineer the Software without the prior written consent of Vendor.

8.2 **Permissible Board Actions:** Nothing in this Section shall prevent the Board, its employees and representatives from sharing reports and data generated from Vendor's Services with other vendors of the Board.

8.3 **Implementation of the Software:** Services shall specifically include any and all installation, configuration, and implementation services necessary for the Software as outlined in the Software and Scope of Services.

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- 8.4 **Licensed Users:** Vendor shall provide a username and password for each licensed user of the Software, if applicable. "Licensed Users" means those administrators, teachers, parents, and students licensed to access the Software. Licenses to access the Core Products Software via the Internet are granted to individual school sites (the "**Site Licenses**") and the number of Licensed Users is unlimited. An individual school may add the Optional Products Software to their Site License for its Licensed Users for the pricing set forth in Exhibit B.
- 8.5 **Software Maintenance:** During the term of this Agreement, Vendor shall be solely responsible for maintenance of the Software as outlined in the Software and Scope of Services.
- 8.6 **Software Support:** Services shall specifically include the provision of maintenance and support to the Board for all Software and Optional Products as outlined in the Software and Scope of Services.
- 8.7 **Controlling Agreement:** The Board shall not be bound by the terms and conditions contained in any clickwrap agreement, clickwrap license, clickthrough agreement, clickthrough license, end user license agreement or any other agreement or license contained or referenced in the Software or any quote provided by Vendor. Even if a Licensed User agrees to any agreement or license contained or referenced in the Software or a quote from Vendor, Vendor acknowledges and agrees that those terms and conditions are null and void and are not binding on the Board. Rather, Vendor acknowledges and agrees that the terms and conditions of this Agreement represent the entire agreement of the parties for the Software and Services. No additional terms or conditions shall apply to the Board or Licensed Users unless a written amendment to this Agreement is made and signed by both parties and the Board's General Counsel.
- 8.8 **Hosting of the Software and CPS Data:** Subject to the terms and conditions of this Agreement, Vendor shall provide the Board with storage space on, and access to, a system with the capability of making the Software accessible to Licensed Users through a secure online means set forth by Vendor and related materials, facilities and services, in order to host the Software and the CPS Data (as further described herein) and to otherwise make the Software and the CPS Data accessible on demand by the Licensed Users (collectively, the "**Hosting Services**"). The Hosting Services shall be included in the term "Services" as that term is defined and used herein.
- 8.9 **Compatibility and Data Flow:** Vendor shall ensure that the Hosting Services allows data to flow properly between the Board's computer workstations and Vendor's Software and Services. At all times, Vendor must cooperate and work as requested with the other service providers of the Board to coordinate the development and the provision of Software and Services with the services and systems of such other service providers. Such coordination shall include:
- (a) Facilitating with such other relevant service providers the timely resolution of all problems that may arise and impact the Software and Services, regardless of the actual or suspected root-cause of such problems, and using all commercially reasonable efforts to obtain and maintain the active participation, cooperation, and involvement of such other service providers as is required for such problem resolution;
  - (b) Providing information concerning the Software, Services, data, computing environment, and technology direction used in implementing and the Software and Services;
  - (c) Working with the Board's other service providers in the implementation and integration of the Software and Services with the Board Resources in the Board's environment and the integration and interfacing of the services of such other service providers with the Software and Services;
  - (d) Providing reasonable access to and use of the Software and Services; and
  - (e) Performing other reasonable necessary tasks in connection with the Software and Services in order to accomplish the foregoing activities described in this section.

In the event of any dispute between the parties as to whether a particular service or function falls within the scope of services to be provided by the Board's third-party service providers (or by the Board itself), or within the scope of Software and Services provided by Vendor, such particular service or function shall be considered to be a part of the Software and Services hereunder if it is consistent with, and reasonably inferable to be within, the scope of Vendor's Services, as set forth in this Agreement, and it more reasonably would be associated with the scope of Vendor's Services than with the scope of the services to be provided by such other service providers. If any of the foregoing requires the disclosure of any proprietary information or confidential information of Vendor to any third party, such third party shall be required to enter into a reasonable confidentiality agreement with Board, with terms substantially equivalent to those of this Agreement regarding the protection of Confidential Information.

Vendor shall have no obligation under this section to ensure that the Board maintains an active internet connection. Any unavailability of the Software or Services due to the Board's lack of an internet connection, unless such lack of an internet connection is caused by Vendor or Vendor's Software or Services, shall be the sole responsibility of the Board.

**9. Termination, Suspension of Services, Events of Default, Remedies, and Turnover of Documents:**

9.1 Early Termination. The Board may terminate this Agreement in whole or in part, without cause, at any time, by a notice in writing from the Board to Vendor in accordance with the notice provisions herein. The effective date of termination shall be thirty (30) calendar days from the date the notice is received or the date stated in the notice, whichever is later.

After notice is received, Vendor must restrict its activities and those of its subcontractors, to winding down any reports, analyses, or other activities previously begun. No costs incurred after the effective date of the termination are allowed. Subject to the Payment Schedule in Section I of Exhibit B, payment for any Services actually and satisfactorily performed before the effective date of the termination is on the same basis as set forth herein in the provision regarding compensation and payment.

Vendor must include in its contracts with subcontractors an early termination provision in form and substance equivalent to this early termination provision to prevent claims against the Board arising from termination of subcontracts after the early termination of this Agreement.

Vendor shall not be entitled to make any early termination claims against the Board resulting from any subcontractor's claims against Vendor or the Board to the extent inconsistent with this provision.

In the event of early termination by the Board, the Board acknowledges and accepts that the annual License Fee for Core Products (see Exhibit B,I), which are payable on the dates set forth in the Payment Terms and Pricing Schedule, shall be non-refundable.

9.2 Suspension of Services. INTENTIONALLY DELETED

9.3 Events of Default. Events of default ("**Events of Default**") include, but are not limited to, the following:

- a) Any material misrepresentation by a party in the inducement or the performance of this Agreement.
- b) Breach of any term, condition, representation or warranty made by either party in this Agreement.
- c) Failure of a party to timely perform any of its obligations under this Agreement

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- d) Failure to perform the Services in a manner reasonably satisfactory to the Board
- e) Discontinuance of the Services for reasons within Vendor's reasonable control
- d) Failure to comply with any term of this Agreement, including but not limited to, the provisions concerning insurance and nondiscrimination, and any other acts specifically and expressly stated in this Agreement constituting an Event of Default.
- e) Default by Vendor under any other agreement Vendor may presently have or may enter into with the Board;
- f) Any action or failure to act by Vendor which affects the safety and/or welfare of students or Board staff; and
- g) Assignment by either party for the benefit of creditors or consent by either party to the appointment of a trustee or receiver or the filing by or against either party of any petition or proceeding under any bankruptcy, insolvency or similar law
- h) Failure by Board to make payments as outlined in this Agreement.

9.4 Remedies. The occurrence of any Event of Default which a party fails to cure within thirty (30) calendar days after receipt of notice given in accordance with the terms of this Agreement and specifying the Event of Default may permit either party to declare the other party in default. Written notification of an intention of the non-defaulting party to terminate this Agreement, in whole or in part, shall be provided and shall be final and effective upon the defaulting party's receipt of such notice or on the date set forth in the notice, whichever is later. When a notice of an intention to terminate is given as provided in this Section, Vendor will discontinue all Services, unless otherwise directed in the notice. Upon the giving of such notice as provided in this Agreement, the non -defaulting party may invoke any or all of the following remedies:

- a) INTENTIONALLY OMITTED.
- b) Terminate this Agreement, in whole or in part, as to any or all of the Services yet to be performed, effective at a time specified by the non-defaulting party.
- c) Suspend Services during the fifteen (15) day cure period if the default results from an action or failure to act by Vendor which affects the safety and/or welfare of students or Board staff.
- d) Seek specific performance, an injunction or any other appropriate equitable remedy.
- e) Receive from the defaulting party any and all damages incurred as a result or in consequence of an Event of Default.
- f) Money damages.
- g) Withhold all or part of Vendor's compensation under this Agreement that is due or future payments that may become due under this Agreement.
- h) In the event of Vendor default, deem Vendor non-responsible in future contracts to be awarded by the Board, and/or seek debarment of the Vendor pursuant to the Board's Debarment Policy on Non-Responsible Persons in Procurement Transactions (08-1217-PO1), as may be amended from time to time.

A party may elect not to declare the other party in default or to terminate this Agreement. The parties acknowledge that this provision is solely for the benefit of the non -defaulting party and that if the non-defaulting party permits the defaulting party to continue with this Agreement, despite one or more Events of Default, the defaulting party shall in no way be relieved of any responsibilities, duties or obligations under this Agreement nor shall the non-defaulting party waive or relinquish any of its rights under this Agreement, at law, equity or statute, nor shall the

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non-defaulting party be deemed to have waived or relinquished any of the rights it has to declare an Event of Default in the future.

The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default shall be construed as a waiver of any Event of Default or acquiescence thereto, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

If the Board's election to terminate this Agreement for default under this Section is determined by a court of competent jurisdiction to have been wrongful, then in that case the termination is to be considered an early termination pursuant to 9.1 above.

9.5. Turnover of Documents and Records. Upon demand of the Board after termination of this Agreement for any reason or the expiration of this Agreement by its terms, Vendor shall turn over to the Board or its designee within ten (10) days of demand, all materials, supplies, equipment owned or purchased by the Board, completed or partially completed work product or analyses, data, computer disks, documents and any other information relating in any way to this Agreement or the performance or furnishing of Services, except that Vendor may keep a copy of such information for its own records.

10. **Assignment:** This Agreement shall be binding on the parties and their respective successors and assigns, provided however, that neither party may assign this Agreement or any obligations imposed hereunder without the prior written consent of the other party.

11. **Handling of Confidential Information, Including Student Data:**

11.1 Definitions.

a. **Confidential Information:** In the performance of the Agreement, Vendor may have access to or receive certain information that is not generally known to others ("**Confidential Information**" or "**CPS Data**"). Such Confidential Information may include, but is not limited to: name, address, student identification number, social security number, phone number, email address, gender, date of birth, ethnicity, race, foster care status, disabilities, school, grade, grade point average, standardized test scores, Illinois Standards Achievement Test ("**ISAT**") scores, assessment data, after school activities, highest grade completed, discipline history, criminal history, free or reduced lunch qualifications, housing status, income, household income or payroll information, college enrollment records, Free Application for Federal Student Aid ("**FAFSA**") information, unpublished school information, CPS financial information, and CPS business plans. It is understood and agreed that Confidential Information also includes proprietary or confidential information of third parties provided by the Board to Vendor. Confidential Information will not include information that is: (i) or becomes part of the public domain through no fault of Vendor; (ii) made available to Vendor by an independent third party having the legal right to make such disclosure; and (iii) information that can be established and documented by Vendor to have been independently developed or obtained by Vendor without violating the confidentiality obligations of this Agreement and any other agreements with the Board.

b. **Student Data:** Student Data means any data, metadata, information, or other materials of any nature recorded in any form whatsoever, that is generated, disclosed, transmitted, created, or provided by the Board, either directly or through its students, employees, agents, and subcontractors, including all information used, created, or generated through the Board's use of any technology including but not limited to any Software (as defined in the Agreement) that is directly related to a CPS student. For purposes of this Agreement, Student Data shall



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still be considered Confidential Information; additional requirements regarding Student Data specifically are described below.

c. **De-Identified Data:** De-identified Data will have all direct and indirect personal identifiers removed. This includes, but is not limited to, name, username, password, fine geolocation information, student identification number, social security number, phone number, email address, date of birth, school name, CPS financial information, and CPS business plans. Vendor agrees not to attempt to re-identify de-identified Data. For the purposes of this Agreement, De-Identified Data will still be considered Confidential Information and treated as such.

**11.2 Use of Confidential Information:** Vendor shall:

a. Only use Confidential Information for the sole purpose of delivering the Products and Services to the Board hereunder, and shall not disclose the Confidential Information except to those of its officers, agents, employees, and subcontractors who have a need to access the Confidential Information for said purpose. Notwithstanding the foregoing, as described in the Compliance with Laws Section, it is understood and agreed that such protection of Confidential Information shall be subject to the special requirements of the Family Educational Rights and Privacy Act ("**FERPA**"), the Children's Online Privacy Protection Act ("**COPPA**"), and the Illinois School Student Records Act ("**ISSRA**").

b. Not copy or reproduce in any manner whatsoever the Confidential Information of the Board without the prior written consent of the Board, except to improve educational products, understand the share inferences about product usage, efficiency and features, and troubleshoot potential issues; to demonstrate the effectiveness of the operators products in the marketing, benchmarking and/or case studies of those products; and for the development and improvement of educational sites, best practices, services or applications strictly in accordance with this Agreement.

**11.3 Transmitting and Storing Confidential Information:** When transmitting and storing the Board's Confidential Information, Vendor shall use commercially reasonable best efforts, but at a minimum with no less protection than Vendor uses to protect its own confidential information. When transmitting and storing the Board's Confidential Information that is personally identifiable ("**Personally Identifiable Confidential Information**"), which includes but is not limited to Student Data, Vendor shall:

a. When mailing physical copies of Personally Identifiable Confidential Information, send the Personally Identifiable Confidential Information in a tamper-proof, labeled container, with a tracking number and a delivery confirmation receipt;

b. Only electronically transmit, mail, or store Personally Identifiable Confidential Information on electronic media, such as CDs, DVDs, electronic tape, flash drives, etc., if the Confidential Information is encrypted. Encryption must utilize the Advanced Encryption Standard ("**AES**") algorithm with a key of 256 bits or greater ("**Encrypt**"). Any media containing Personally Identifiable Confidential Information shall only be mailed in accordance with the provisions of Section 3(a) above;

c. Not send, via mail or electronically, any password or other information sufficient to allow decryption of Personally Identifiable Confidential Information with the Encrypted Confidential Information;

d. Keep all physical copies (paper, portable or removable electronic media, or other physical representations) of Personally Identifiable Confidential Information under lock and key, or otherwise have sufficient physical access control measures to prevent unauthorized access.

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Vendor shall not leave Personally Identifiable Confidential Information unsecured and unattended at any time;

e. Password protect any desktop, laptop or other similar device that contains Personally Identifiable Confidential Information. Additionally, any desktop or laptop that contains Personally Identifiable Confidential Information shall have its full hard drive Encrypted. Vendor shall not leave any desktop or laptop unattended without enabling a screen-lock or otherwise blocking access to the desktop or laptop. Vendor shall ensure that no password or other information sufficient to access a desktop or laptop containing Personally Identifiable Confidential Information is attached to or located near the desktop or laptop at any time.

f. Store Personally Identifiable Confidential Information on a proprietary file server that is not shared by other entities including, but not limited to, other departments of Vendor. Vendor shall ensure the security of the Personally Identifiable Confidential Information stored on the server by employing adequate security measures to prevent unauthorized access to that information. These measures include policies, procedures, and technical elements relating to data access controls. In addition, Vendor shall use standard security protocols and mechanisms to protect the exchange and transmission of Personally Identifiable Confidential Information.

g. U.S.-Based Servers: Student Data shall be stored, backed up and served only on servers based in the continental United States that are hosted by data centers that have been approved by the Board's ITS Program Manager or his/her designee in advance.

11.4 Dissemination of Information: Vendor shall not disseminate any Confidential Information to a third party without the prior written consent of the Board. If Vendor is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any Confidential Information which may be in Vendor's possession as a result of Products, Services and/or materials supplied under the Agreement, Vendor shall immediately give notice to the Board and its General Counsel with the understanding that the Board shall have the opportunity to contest such process by any means available to it prior to submission of any documents to a court or other third party. Vendor shall not be obligated to withhold delivery of documents beyond the time ordered by a court of law or administrative agency, unless the request for production or subpoena is quashed or withdrawn, or the time to produce is otherwise extended.

11.5 Press Release; Publicity: Vendor shall not issue publicity news releases, grant press interviews, or use any Confidential Information or Board intellectual property (as defined below), including but not limited to the CPS logo or the logos of any schools, during or after the performance or delivery of Products and Services without the prior express written consent of authorized representatives of the Board. Furthermore, Vendor may not photograph or film or cause others to photograph or film within any CPS school or facility without the prior express written consent of the Board's Chief Communications Officer or his/her designee.

11.6 Return or Destruction of Confidential Information: Vendor shall, at the Board's option, destroy or return all Confidential Information to the Board within five (5) business days of demand, or if no demand is made, it shall destroy or return all Confidential Information to the Board within ten (10) days of the expiration or termination of this Agreement unless Vendor receives permission in writing from the Board's Chief Accountability Officer or his/her designee that Vendor may retain certain Confidential Information for a specific period of time. In the event the Board elects to have Vendor destroy the Confidential Information, Vendor shall provide an affidavit attesting to such destruction. Vendor shall delete a specific student's Student Data upon the written request of the Board. Notwithstanding the above, it is understood that certain deidentified, aggregated data will be aggregated with similarly de-identified, aggregated data from other clients and is not subject to the return or destruction clause, provided however, that the preclusion against Vendor reidentifying the data extends beyond the life of this contract.

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**11.7 Unauthorized Access, Use or Disclosure:** If Vendor has knowledge of any unauthorized access, use and/or disclosure of Confidential Information, it shall: (i) notify the Board immediately, which in no event shall be longer than twenty-four (24) hours from Vendor receiving notice of the unauthorized access, use, or disclosure; (ii) take prompt and appropriate action to prevent further unauthorized access, use, or disclosure; (iii) cooperate with the Board and any government authorities with respect to the investigation and mitigation of any such unauthorized access, use, or disclosure, including the discharge of the Board's duties under the law; and (iv) take such other actions as the Board may reasonably direct to remedy such unauthorized access, use, or disclosure, including, if required under any federal or state law, providing notification to the affected persons. Vendor shall bear the losses and expenses (including attorneys' fees) associated with a breach of Confidential Information, including without limitation any costs: (1) of providing notices of a data breach to affected persons and to regulatory bodies; and (2) of remedying and otherwise mitigating any potential damage or harm of the data breach, including without limitation, establishing call centers and providing credit monitoring or credit restoration services, as requested by the Board. Vendor shall include this provision in any and all agreements they execute with subcontractors performing Services under this Agreement.

**11.8 Employees, Agents, and Subcontractors:** Vendor agrees to provide its employees, agents, and subcontractors only such Confidential Information that is necessary for the delivery of Products and the performance of Services pursuant to this Agreement and to cause its employees, agents, and subcontractors to undertake the same obligations as agreed to herein by Vendor.

**11.9 Injunctive Relief:** In the event of a breach or threatened breach of this Section, Vendor acknowledges and agrees that the Board would suffer irreparable injury not compensable by money damages and would not have an adequate remedy at law. Accordingly, Vendor agrees that the Board shall be entitled to immediate injunctive relief to prevent or curtail any such breach, threatened or actual. The foregoing shall be in addition and without prejudice to such rights that the Board may have in equity, by law or statute.

**11.10 Additional Obligations Regarding Treatment of Student Data:** In addition to the above stated obligations for the treatment and handling of Confidential Information, Vendor shall abide by the following obligations:

a. **Student Data Use.** Vendor shall not use Student Data, including persistent unique identifiers, data created or gathered by Vendor's site, Products, Services, and technology, to amass a profile about a CPS student or otherwise identify a CPS student except in furtherance of specific school purposes as may be agreed upon in writing between the Board and Vendor. Vendor will use Student Data only for the purpose of fulfilling its duties and delivering Products and Services under this Agreement, and for improving Products and Services under this Agreement in a way that does not otherwise violate the terms of this Agreement regarding the treatment of Confidential Information.

b. **Student Data Collection.** Vendor will collect only Student Data necessary to fulfill its duties as outlined in this Agreement.

c. **Marketing and Advertising.** Vendor shall not advertise or market to students or their parents/legal guardians when the advertising is based upon any Student Data that Vendor has acquired because of the use of that Vendor's site, Products, Services, or technology. Advertising or marketing may be directed to a school or Board only if the student information underlying the marketing and/or advertising is properly de-identified.

d. **Student Data Mining.** Vendor is prohibited from mining Student Data for any purposes other than those agreed to by the parties. Student Data mining or scanning of user content for the purpose of advertising or marketing to students or their parents is prohibited.

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e. **Student Data Transfer or Destruction.** Vendor will ensure that all Student Data in its possession and in the possession of any subcontractors, or agents to whom Vendor may have transferred Student Data, are destroyed or transferred to the Board under the direction of the Board when Student Data is no longer needed for its specified purpose.

f. **Rights and License in and to Student Data.** Parties agree that all rights, including all intellectual property rights, associated with such Student Data shall remain the exclusive property of the Board. Nothing in this Agreement is meant and nothing shall be interpreted to mean that the Board releases any ownership or control of Student Data during the performance of the Services and delivery of Products under this Agreement. Student Data shall remain under the control of the Board throughout the Term of this Agreement, including any Renewal Terms. Vendor has a limited, nonexclusive license to the use of Student Data solely for the purpose of performing its obligations as outlined under the Agreement. This Agreement does not give Vendor any rights, implied or otherwise, to Student Data, content, or intellectual property, except as expressly stated in the Agreement. Vendor does not have the right to sell or trade Student Data.

g. **Sale of Student Data.** Vendors are prohibited from selling, trading, or otherwise transferring Student Data to any third parties, except with the express written prior consent of the authorized Board representative and approval of the Board's General Counsel. This prohibition does not apply to the purchase, merger, or other type of acquisition of Vendor by another entity approved by the Board in accordance with the Assignment Section of this Agreement, provided that Vendor or successor entity continues to be subject to the provisions of this Agreement with respect to previously acquired Student Data.

h. **Use of De-Identified Data.** Vendor may use De-Identified Data within Vendor's site, Products, other sites, services, or applications owned by Vendor for product development, research, or other purposes to develop and improve educational sites, services, or applications. Vendor may use De-Identified Data to demonstrate the effectiveness of Vendor's products or services, including in its marketing, provided that Vendor's marketing shall not identify or suggest that the Board or any of its students, employees, agents, or subcontractors approve of, recommend, vouch for, or otherwise positively advance the use of Vendor's sites, services, or applications without the prior written consent of the individual identified and the Board's Chief Communications Officer.

i. **Access.** Any Student Data held by Vendor will be made available to the Board upon written request of the Board. The identity of all persons having access to Student Data through Vendor will be documented and access will be logged.

j. **Security Controls.** Vendor will store and process Student Data in accordance with the industry best practices, which at a minimum shall be in accordance with the standards set forth in this Agreement, as may be amended in writing by the authorized representatives of the parties and with the approval of the Board's General Counsel. This includes appropriate administrative, physical, and technical safeguards to secure Student Data from unauthorized access, disclosure, and use. All data must be secured in transit using https/TLS 1.0+, or secure FTP services. In addition, Vendors must maintain industry recognized security practices to establish secure application(s), network, and infrastructure architectures. Industry certifications, such as International Organization for Standardization (ISO), SysTrust, Cloud Security Alliance (CSA) STAR Certification, or WebTrust security for SaaS environments are recommended.

Such safeguards shall be no less rigorous than accepted industry practices, including specifically the NIST 800-53r4 moderate level, International Organization for Standardization's standards ISO/IEC 27001:2005 (Information Security Management Systems – Requirements), and ISO-IEC 27002:2005 (Code of Practice for International

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Security Management). Vendor shall ensure that the manner in which Student Data is collected, accessed, used, stored, processed, disposed of and disclosed complies with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement. Vendor will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. Vendor will also have a written incident response plan, to include prompt notification of the Board in the event of a security or privacy incident, as well as best practices for responding to a breach of Student Data security practices. Vendor agrees to share its incident response plan upon request.

Vendor shall assure that all data that is transmitted between the Board's access points and the ultimate server, by Vendor or its recipients, will use Board-approved encryption of no less rigor than NIST-validated DES standards.

- k. Security Safeguards: Vendor agrees to provide the following additional safeguards:
- i. Include component and system level fault tolerance and redundancy in system design.
  - ii. Encrypt user passwords in any data storage location and obfuscate password entry fields in any entry interface controlled by the discloser.
  - iii. Encrypt Student Data in-transit.
  - iv. Authentication of users at login with a 128-bit or higher encryption algorithm.
  - v. Secure transmission of login credentials.
  - vi. Automatic password change routine.
  - vii. Trace user system access via a combination of system logs and Google Analytics.
  - viii. Secure (encrypt) the audit trails and system generated logs and ensure that they are stored in locations that are inaccessible to automated content discovery software.
  - ix. Conduct or undergo system level testing whenever new functionalities are added to the system to reconfirm system security measures are retained and functional, and that interaction with the Board systems is not degraded or compromised.
  - x. Employ an in-line Intrusion Protection System that inspects incoming data transmissions.
  - xi. Ensure that Student Data is stored in privately addressed network devices that have no direct interaction with public networks.
  - xii. Use a disaster recovery plan approved by the Board's Chief Information Officer.
  - xiii. Prevention of hostile or unauthorized intrusion.
  - xiv. Screening of employees with access to Student Data to assure that any employees who are in violation of the statutes referenced in the Criminal Background Check in the Agreement do not have access to Student Data. Vendor shall provide the security measures taken to ensure that said employees do not have access to Student Data.
  - xv. Backup of all Student Data at least once every twenty-four (24) hours.
  - xvi. Perform content snapshots at least daily and retain for at least ninety (90) days.

l. Data Security Manager: Vendor shall provide the Board with the name and contact information for a primary and alternate employee of Vendor who shall serve as the Board's primary security contact and who shall be available to assist the Board twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Student Data-related security breach. The designated contact shall respond to any Board inquiries within two (2) hours.

11.11 Freedom of Information Act. Vendor acknowledges that this Agreement and all documents submitted to the Board related to this contract award are a matter of public record and are subject to the Illinois Freedom of Information Act (5 ILCS 140/1) and any other comparable state and federal laws and that this Agreement is subject to reporting requirements under 105 ILCS 5/10-20.44. Vendor further acknowledges that this Agreement shall be posted on the Board's Internet website.

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11.12 Survival: The provisions of this Section shall survive the termination or expiration of this Agreement.

12. **Information Security Policy**: If at any time, Vendor has access to the Board's computer network, Vendor warrants that it is and shall remain in compliance with the Board's Information Security Policy, adopted September 25, 2013 (13-0925-PO3), as amended from time to time and the Board's Acceptable Use of the CPS Network and Computer Resources Policy, adopted July 22, 2009 (09-0722-PO3), as amended from time to time..

13. **Representations and Warranties of Vendor**: Vendor represents and warrants that the following shall be true and correct as of the Effective Date of this Agreement and shall continue to be true and correct during the Term of this Agreement.

13.1 Licensed Professionals. Vendor is appropriately licensed under Illinois law to perform Services required under this Agreement and shall perform no Services for which a professional license is required by law and for which Vendor, its employees, agents, or subcontractors, as applicable, are not appropriately licensed.

13.2 Compliance with Laws. Vendor is and shall remain in compliance with all applicable federal, state, county, and municipal, statutes, laws, ordinances, and regulations relating to this Agreement and the performance of Services in effect now or later and as amended from time to time, including but not limited to the Drug-Free Workplace Act, the Illinois School Student Records Act, the Family Educational Rights and Privacy Act, the Protection of Pupil Rights Act and any others relating to non-discrimination. Further, Vendor is and shall remain in compliance with all applicable Board policies and rules. Board policies and rules are available at <http://www.cps.edu/>. The Board will notify the Vendor of any change to a Board policy or rule that applies to Vendor.

13.3 Good Standing. Vendor is not in default and has not been deemed by the Board to be in default under any other Agreement with the Board during the five (5) year period immediately preceding the effective date of this Agreement.

13.4 Authorization. In the event Vendor is an entity other than a sole proprietorship, Vendor represents that it has taken all action necessary for the approval and execution of this Agreement, and execution by the person signing on behalf of Vendor is duly authorized by Vendor and has been made with complete and full authority to commit Vendor to all terms and conditions of this Agreement which shall constitute valid, binding obligations of Vendor.

13.5 Financially Solvent. Vendor warrants that it is financially solvent, is able to pay all debts as they mature and is possessed of sufficient working capital to complete all Services and perform all obligations under this Agreement.

13.6 Gratuities. No payment, gratuity or offer of employment was made by or to Vendor in relation to this Agreement or as an inducement for award of this Agreement.

13.7 Contractor's Disclosure Form. The disclosures in the Contractor Disclosure Form, previously submitted by Vendor, are true and correct. Vendor shall promptly notify Board in writing of any material change in information set forth therein, including but not limited to change in ownership or control, and any such change shall be subject to Board approval which shall not be unreasonably withheld.

13.8 Criminal History Records Search. It is not intended that Vendor shall have any contact with CPS students in performance of this Agreement. Vendor represents and warrants that, at its

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own cost and expense, it shall have a complete fingerprint-based criminal history records check ("**Records Check**") conducted on any and all employees, agents and subcontractors ("**Staff**") who may have direct, regular contact with CPS students under this Agreement in accordance with the Illinois School Code (§105 ILCS 5/34-18.5); the *Sex Offender and Child Murderer Community Notification Law*, created under Illinois Public Act 94-219, eff. August 2005; and the *Child Murderer Violent Offender Against Youth Notification Law*, created under Public Act 94-945. Such complete Records Check consists of the following:

- fingerprint-based checks through the Illinois State Police (ISP) and the FBI,
- check of the Illinois Sex Offender Registry (IL-SOR), and
- check of the Violent Offender Against Youth Registry (see below).

The purpose of the Records Check is to confirm that none of these persons have been convicted of any of the criminal or drug offenses enumerated in subsection (c) of §105 ILCS 5/34-18.5 or any offenses enumerated under the *Sex Offender and Child Murderer Community Notification Law*, or the *Child Murderer Violent Offender Against Youth Notification Law*, or have been convicted within the past seven (7) years of any other felony under the laws of Illinois or of any offense committed or attempted in any other state or against the laws of the United States that, if committed or attempted in the State of Illinois, would have been punishable as a felony under the laws of Illinois.

Vendor understands and agrees that it shall not allow any of its employees or subcontractors to have direct regular contact with a CPS student until a Records Check has been conducted for such person and the results of the Records Check satisfies the requirements of §105 ILCS 34-18.5 and the requirements of the Acts and Laws referenced in the preceding paragraph, as amended from time to time.

If Vendor is an individual, Vendor represents and warrants that Vendor is in compliance with Section 5/34-18.5 of the Illinois School Code as from time to time amended, and has never been convicted of the offenses enumerated therein. Further, Vendor agrees to submit to the above procedure regarding background investigations and to fully cooperate and provide the Board with all necessary information in order for the Board to perform all such above checks on Vendor, all at Vendor's expense.

It is understood and agreed that Vendor's non-compliance with this Section 13.8 will constitute a material breach of this Agreement, and the Board also will have the right to withhold payments due hereunder until Vendor remedies such non-compliance to the Board's reasonable satisfaction, or take any other action or remedy available under this Agreement or by law.

**13.9 Research Activities and Data Requests.** Vendor acknowledges and agrees that in the event Vendor seeks to conduct research activities in the Chicago Public Schools or use CPS student data for research purposes in connection with this Agreement, Vendor shall comply with the Board's Research Study and Data Policy adopted on July 28, 2010, as may be amended from time to time. Vendor acknowledges and agrees that it may not begin any research activities other than the activities described in Section 11.2(b) or obtain data for research purposes without the prior written consent of the Chief Officer of the Office of Research, Evaluation and Accountability or his/her designee.

**13.10 Prohibited Acts.** Within the three (3) years prior to and as of the effective date of this Agreement, Vendor or any of its members if a joint venture or a limited liability company, or any of its or their respective officers, directors, shareholders, members, managers, other officials, agents or employees (i) have not been convicted of bribery or attempting to bribe a public officer or employee of any public entity and (ii) have not been convicted of agreeing or colluding among contractors or prospective contractors in restraint of trade, including bid-rigging or bid-rotating, as those terms are defined under the Illinois Criminal Code.

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13.11 Debarment and Suspension. Vendor certifies that it, each of its joint venture members if a joint venture, and each of its subcontractors, if any, is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency or any unit of State or local government. Vendor acknowledges that in performing the Services for the Board, Vendor shall not utilize any firms that have been debarred from doing business with the Board under the Board's Debarment Policy (08-1217-PO1), as amended.

13.12 Intellectual Property. That in performing and delivering the Software and Services, Vendor will not violate or infringe upon any patent, copyright, trademark, trade secret or other proprietary or intellectual property right of any third party, and will not improperly use any third party's confidential information; and shall have, without encumbrance, all ownership, licensing, marketing and other rights required to furnish all materials and products that it furnishes to the Board under the Agreement and can grant or assign all rights granted or assigned to the Board pursuant to the Agreement.

13.13 Assignment of Warranties. Vendor has the right, title, and ability to assign and shall assign to the Board any third-party warranties concerning the Software and Services provided under this Agreement from the software manufacturer to the Board.

13.14 Documentation Warranty. All Documentation provided to the Board from Vendor concerning the Software and Services shall be kept current with the upgrades of the Software and Services.

13.15 Ownership. Vendor is the owner of the Services and Software or otherwise has the right to grant to the Board the License without violating any rights of any third party, and there is currently no actual or threatened suit by any such third party based on an alleged violation of such right by Vendor.

13.16 Business Requirements. Vendor is fully aware of the Board's requirements and intended uses for the Software, including any set forth in the exhibits, and the Software shall satisfy such requirements in all material respects, is fit for such intended uses and will operate on the Board's computer workstations.

13.17 Software Performance. During the Term of the Agreement; the Software shall (i) be free from defects in material and workmanship under normal use and remain in good working order, and (ii) function properly and in conformity with the warranties herein and in accordance with this Agreement and with the description, specifications and Documentation, and system software including updates or new releases to such hardware, system software and other software, and interface with other programs as required, and the Documentation shall completely and accurately reflect the operation of the Software. Vendor shall promptly correct any failure of the Software to perform in accordance with the current published specifications and Documentation as described in the Software and Scope of Services.

13.18 Free of Computer Viruses. Vendor shall use commercially reasonable best efforts to ensure that the Software is free of Computer Viruses. Vendor shall also maintain a master copy of the appropriate versions of the Software, free of computer viruses.

13.19 Not Alter Program. Except at termination or expiration of this Agreement, Vendor shall not, directly or through a third party, knowingly remove, alter, change or interface with the Software or any other program for the purpose of preventing the Board from utilizing the Software or any other program.



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**13.20 No Disabling Code.** Vendor shall not knowingly cause any disabling code to be incorporated into Software.

**13.21 Warranty of Title:** The Software is free and clear from all liens, contracts, chattel mortgages or other encumbrances; that Vendor has the lawful right to dispose of and sell the Software and that Vendor shall warrant and defend its title against all claims.

All warranties will survive inspection, acceptance payment and expiration or termination of this Agreement. Nothing in the foregoing warranties will be construed to limit any other rights or remedies available to the Board under the law and the Agreement.

**13.22 License Warranty.** Vendor warrants with respect to the Core Products and Optional Products Software that (i) Vendor has the right to license the Software pursuant to the terms of this Agreement; and (ii) that Vendor hereby agrees to indemnify the Board against any claim that Software provided hereunder infringes any U.S. Patent, Copyright or trade secret right of any third party (an "**Infringement Claim**"), and shall pay any final, non-appealable judgment awarded in, or any settlement of such Infringement Claim; provided that Vendor shall have no obligation hereunder with respect to any Infringement Claim, unless the Board promptly (a) notifies Vendor thereof in writing, and (b) provides reasonable cooperation and assistance in connection with such defense as Vendor shall request. However, Vendor shall have no obligation under this section with respect to any claim of infringement based on any modification of its materials initiated by the Board, its members, employees, agents, officers and officials, or any third party of the unauthorized use of the materials.

- 14. Independent Contractor:** It is understood and agreed that the relationship of Vendor to the Board is and shall continue to be that of an independent contractor and neither Vendor nor any of Vendor's employees shall be entitled to receive Board employee benefits. Vendor is the common law employer of the individuals who perform services for the Board. As an independent contractor, Vendor agrees to be responsible for the payment of all taxes and withholdings specified by law which may be due in regard to compensation paid by the Board. To the extent that the Vendor is subject to taxes under Section 4980H of the Internal Revenue Code, the Vendor shall be solely responsible for paying such taxes. Vendor agrees that neither Vendor nor its employees, staff or subcontractors shall represent themselves as employees or agents of the Board. Vendor shall provide the Board with a valid taxpayer identification number as defined by the United States Internal Revenue Code, including but not limited to, a social security number or federal employer identification number.
- 15. Indemnification:** Vendor agrees to defend, indemnify and hold harmless the Board, its members, employees, agents, officers and officials from and against liabilities, losses, penalties, damages and expenses, including reasonable costs and attorney fees, arising out of all claims, liens, damages, obligations, actions, suits, judgments or settlements, or causes of action, of every kind, nature and character arising or alleged to arise out of the acts or omissions of the Vendor, its officers, agents, employees and subcontractors in the performance of this Agreement. This includes, but is not limited to, the unauthorized use of any trade secrets, patent infringement, or trademark or copyright violation. In the event that the Board is determined to be liable for taxes under Section 4980H of the Internal Revenue Code as a result of its use of the Vendor's employees under this Agreement, the Vendor shall indemnify the Board for any such liability.

Vendor shall, at its own cost and expense, appear, defend and pay all attorney fees and, other costs and expenses arising hereunder. In addition, if any judgment shall be rendered against the Board in any such action, the Vendor shall, at its own expense, satisfy and discharge such obligation of the Board. The Board shall have the right, at its own expense, to participate in the defense of any suit, without relieving the Vendor of any of its obligations hereunder. The Board

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retains final approval of any and all settlements or legal strategies which involve the interest of the Board.

However, if Vendor, after receiving notice of any such proceeding, fails to immediately begin the defense of such claim or action, the Board may (without further notice to Vendor) retain counsel and undertake the defense, compromise, or settlement of such claim or action at the expense of Vendor, subject to the right of Vendor to assume the defense of such claim or action at any time prior to settlement, compromise or final determination thereof. The cost and expense of counsel retained by the Board in these circumstances shall be borne by Vendor and Vendor shall be bound by, and shall pay the amount of, any settlement, compromise, final determination or judgment reached while the Board was represented by counsel retained by the Board pursuant to this paragraph, or while Vendor was conducting the defense.

To the extent permissible by law, Vendor waives any limits to the amount of its obligations to defend, indemnify, hold harmless, or contribute to any sums due under any losses, including any claim by any employee of Vendor that may be subject to the Workers Compensation Act, 820 ILCS 305/1 *et seq.* or any other related law or judicial decision (such as *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2<sup>nd</sup> 155 (1991)). The Board, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code, any other statute or judicial decision.

The indemnities set forth herein shall survive the expiration or termination of this Agreement.

16. **Non-Liability of Board Officials:** Vendor agrees that no Board member, employee, agent, officer or official shall be personally charged by Vendor, its members if a joint venture, or any subcontractors with any liability or expense under this Agreement or be held personally liable under this Agreement to Vendor, its members if a joint venture, or any subcontractors.
17. **Board Not Subject to Taxes:** The federal excise tax does not apply to the Board by virtue of Exemption Certificate No. 36-600584, and the State of Illinois sales tax does not apply to the Board by virtue of Exemption No. E9997-7109-06. The compensation set forth herein is inclusive of all other taxes that may be levied or based on this Agreement, including without limitation sales, use, nonresident, value-added, excise, and similar taxes levied or imposed on the Services to be provided under this Agreement, but excluding taxes levied or imposed on the income or business privileges of the Vendor. The Vendor shall be responsible for any taxes levied or imposed upon the income or business privileges of the Vendor.
18. **Insurance:** Vendor, at its own expense, shall procure and maintain insurance for all operations under this Agreement, whether performed by Vendor or by subcontractors. All insurers shall be licensed by the State of Illinois and rated A-VII or better by A.M. Best or a comparable rating service. Vendor shall submit to the Board satisfactory evidence of insurance coverage prior to commencement of Services. Minimum insurance requirements are:
  - 18.1. **Workers' Compensation and Employers' Liability Insurance:** Workers' Compensation Insurance affording workers' compensation benefits for all employees as required by law and Employers' Liability Insurance covering all employees who are to provide Services under this Contract with limits of not less than \$500,000 per occurrence. The workers' compensation policy must contain a waiver of subrogation clause via an endorsement.
  - 18.2. **Commercial General Liability Insurance:** Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for bodily injury, personal injury, and property damage liability. Coverage shall include, but not be limited to: all operations, contractual liability, independent contractors, products/completed operations, and defense. General liability insurance may not exclude coverage for sexual abuse and/or molestation.

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18.3. Automobile Liability Insurance: Automobile Liability Insurance when any motor vehicle (whether owned, non-owned or hired) is used in connection with Services to be performed, with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage.

18.4. Umbrella/Excess Liability Insurance: Umbrella or Excess Liability Insurance with limits of not less than \$2,000,000 per occurrence, which will provide additional limits for employers', general and automobile liability insurance and shall cover the Board and its employees subject to that of the primary coverage.

18.5. Professional Liability Insurance: If professional services are rendered in performance of this Agreement, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$3,000,000 per claim for errors and omissions in conjunction with professional services inclusive of assumption of contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of Services under this Agreement. A claims-made policy, which is not replaced or renewed, must have an extended reporting period of two (2) years.

18.6. Cyber Liability Insurance: Cyber Liability and Privacy & Security Coverage for damages arising from a failure of computer security, or wrongful release of private information, including expenses for notification as required by local, state or federal guidelines, with limits of liability not less than Two Million and 00/100 Dollars (\$2,000,000.00) per claim and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate. Coverage shall include failure to prevent transmission of malicious code. The Policy will be a claims-made program with any prior acts exclusion predating both the date of this Agreement and any earlier commencement of Services.

18.7. Additional Insured: Vendor shall have its General and Umbrella Liability Insurance policies endorsed to provide: "The Board of Education of the City of Chicago, a body politic and corporate, and its members, employees, and agents, and any other entity as may be designated by the Board are named as additional insured on a primary basis without recourse or right of contribution from the Board." The General Liability additional insured shall be via a blanket endorsement.

The insurance company, or its representative, shall submit an insurance certificate evidencing all coverage as required hereunder and indicating the Additional Insured status as required above. The Board will not pay Vendor for any Services if satisfactory proof of insurance is not provided by Vendor prior to the performance of any Services. The Certificate must provide 30 days prior written notice of material change, cancellation, or non-renewal be given to:

Risk Management  
Board of Education of City of Chicago  
42 West Madison  
Chicago, Illinois 60602

Any failure of the Board to demand or receive proof of insurance coverage shall not constitute a waiver of Vendor's obligation to obtain the required insurance. The receipt of any certificate does not constitute agreement by the Board that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with the Agreement requirements. Vendor's failure to carry or document required insurance shall constitute an Event of Default. In the event Vendor fails to fulfill the insurance requirements of this Agreement, the Board reserves the right to stop the Services until proper evidence of insurance is provided, or this Agreement may be terminated.

Any deductibles or self-insured retentions on referenced insurance coverage must be borne by Vendor. Any insurance or self-insurance programs maintained by the Board do not contribute with insurance provided by Vendor under this Agreement.

All subcontractors are subject to the same insurance requirements of Vendor. Vendor shall require any subcontractors under this Agreement to maintain comparable insurance naming Vendor and the Board inclusive of its members, employees, and agents, and any other entity

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designated by the Board as Additional Insureds. Vendor must maintain a file of subcontractor's insurance certificates evidencing compliance with these requirements.

The coverages and limits furnished by Vendor in no way limit Vendor's liabilities and responsibilities specified within this Agreement or by law. The required insurance is not limited by any limitations expressed in the indemnification language in this Agreement, if any, or any limitation that might be placed on the indemnity in this Agreement given as a matter of law. Vendor agrees that insurers waive their rights of subrogation against the Board.

Vendor must register with the insurance certificate monitoring company designated by the Board stated below, and must maintain a current insurance certificate on file during the entire time of providing services to the Board. Vendor must register and pay the initial annual monitoring fee to the insurance certificate monitoring company prior to performing services for the Board. The initial annual monitoring fee is currently Twelve 00/100 Dollars (\$12.00) per year, but is subject to change.

Each year, Vendor will be notified 30 to 45 days prior to the expiration date of their required insurance coverage (highlighted on their latest submitted insurance certificate on file) that they must submit an updated insurance certificate with the insurance certificate monitoring company. Insurance certificate submissions and related annual fees are required to be made online at the dedicated website established by the certificate monitoring company identified below. Questions on submissions and payment options should be directed to the certificate monitoring company.

**Certificate Monitoring Company:**

Topiary Communications, Inc.  
676 N. LaSalle – Suite 230  
Chicago, Illinois 60654  
Phone – (312) 494-5709  
Email – [dans@topiarycomm.net](mailto:dans@topiarycomm.net)

**Website for online registration, insurance certificate submissions and annual fee payments:** URL – <http://www.cpsvendorcert.com>

- 19. Audit and Records Retention:** Vendor shall permit and cooperate in good faith in any audits by the Board, including its Department of Procurement and Contracts, or its agents for compliance by the Vendor with this Agreement. Vendor shall furnish the Board with such information, supporting documentation and reports as may be requested relative to the progress, execution and costs of the Services and compliance with applicable MBE/WBE requirements. Failure of the Vendor to comply in full and cooperate with the requests of the Board or its agents shall give the Board, in addition to all other rights and remedies hereunder, the right to charge the Vendor for the cost of such audit.

Vendor shall retain all records relating to Vendor's Services under this Agreement for five (5) years after the termination or expiration of this Agreement and such records shall be subject to inspection and audit by the Board. If any audit, litigation or other action involving the records is being conducted or has not been resolved, all applicable records must be retained until the proceeding is closed. As used in this clause "records" includes correspondence (including emails), receipts, vouchers, memoranda and other data, regardless of type and regardless of whether such items are in written form, electronic, digital, or in any other form. Vendor shall require all of its subcontractors to maintain the above-described records and allow the Board the same right to inspect and audit said records as set forth herein.

The audits in this Section 19 specifically exclude the ability to physically audit any areas of Vendor's premises that are restricted to employees of the Vendor, such as Vendor's hosting facilities. The Board retains the ability to conduct an onsite audit Vendor's information security program.

20. **Intentionally omitted.**

21. **Right of Entry:** Vendor and any of its officers, employees, subcontractors or agents, performing Services hereunder shall be permitted to enter upon Board property in connection with the performance of the Services hereunder, subject to the terms and conditions contained herein and those rules established by the Board and the subject school principal. Vendor shall provide advance notice to the Board whenever applicable, of any such intended entry. Consent to enter upon a site given by the Board shall not create, nor be deemed to imply, the creation of any additional responsibilities on the part of the Board. Vendor shall use, and shall cause each of its officers, employees and agents to use, the highest degree of care when entering upon any property owned by the Board in connection with the Services. Any and all claims, suits or judgments, costs, or expenses, including reasonable attorney fees, arising from, by reason of, or in connection with any such entries shall be treated in accordance with the applicable terms and conditions of this Agreement, including without limitation, the indemnification provisions contained in this Agreement.

22. **Non-Discrimination:** It shall be an unlawful employment practice for Vendor or any of its subcontractors to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to compensation, or other terms, conditions, or privileges of employment, because of such individual's race, color, national origin, religion, sex, gender identity/expression, sexual orientation, age or disability; or to limit, segregate, or classify employees or applicants for employment in any way that would deprive or tend to deprive any individual from equal employment opportunities or otherwise adversely affect an individual's status as an employee because of such individual's race, color, national origin, religion, sex, gender identity/expression, sexual orientation, age or disability. Vendor shall particularly remain in compliance at all times with: the Civil Rights Act of 1964, 42 U.S.C.A. §2000a, *et seq.*, as amended; the Age Discrimination in Employment Act, 29 U.S.C.A. §621, *et seq.*; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. §701, *et seq.*, as amended; the Americans with Disabilities Act, 42 U.S.C.A. §12101, *et seq.*; the Illinois Human Rights Act, 775 ILCS 5/1-101, *et seq.*, as amended; the Illinois School Code, 105 ILCS 5/1-1 *et seq.*; the Illinois Public Works Employment Discrimination Act, 775 ILCS 10/0.01 *et seq.*; the Individuals with Disabilities Education Act (IDEA) 20 U.S.C.A. §1400 *et seq.*; and, the Chicago Human Rights Ordinance, ch. 2-160 of the Municipal Code of Chicago, and all other applicable federal statutes, regulations and other laws. Nothing in this paragraph is intended nor shall be construed to create a private right of action against the Board or any of its employees. Furthermore, no part of this paragraph shall be construed to create contractual or other rights or expectations for the Vendor's employees or the Vendor's subcontractors' employees.

23. **Entire Agreement and Amendment:** This Agreement, including all exhibits attached to it and incorporated into it, constitutes the entire agreement of the parties with respect to the matters contained herein. All attached exhibits are incorporated into and made a part of this Agreement. No modification of or amendment to this Agreement shall be effective unless such modification or amendment is in writing and signed by both parties hereto. Any prior agreements or representations, either written or oral, relating to the subject matter of this Agreement are of no force or effect.

24. **Governing Law:** This Agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois.

Vendor irrevocably submits itself to the original jurisdiction of those courts located in the County of Cook, State of Illinois, with regard to any controversy arising out, or relating to, or in any way concerning the execution or performance of this Agreement. Vendor agrees that service of process on the Vendor may be made, at the option of the Board, by either registered or certified

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mail addressed to the office identified in the notice provision herein, by registered or certified mail addressed to the office actually maintained by the Vendor, or by personal delivery on any officer, director, or managing or general agent of the Vendor. If any action is brought by the Vendor against the Board concerning this Agreement, the action shall only be brought in those courts located within the County of Cook, State of Illinois.

- 25. Notices:** All notices required under this Agreement shall be in writing and sent to the addresses and persons set forth below, or to such other addresses as may be designated by a Party in writing. Any notice involving non-performance or termination shall be sent by hand delivery or recognized overnight courier. All other notices may also be sent by facsimile or email, confirmed by mail. All notices shall be deemed to have been given when received, if hand delivered; when transmitted, if transmitted by facsimile or email; upon confirmation of delivery, if sent by recognized overnight courier; and upon receipt if mailed. Refusal to accept delivery has the same effect as receipt.

If to the Board: Chief of College & Career Success  
42 West Madison Street, 3<sup>rd</sup> Floor  
Chicago, IL 60602

*with a copy to:* Board of Education of the City of Chicago  
General Counsel  
One North Dearborn Street, Suite 900  
Chicago, IL 60602  
Fax: (773) 553-1701

If to Vendor: Naviance, Inc.  
Attn: Jack Dilanian  
3033 Wilson Blvd, Suite 500  
Arlington, VA 22201  
jack.dilanian@hobsons.com

- 26. Minimum Wage:** Vendor must comply with the Board's Minimum Wage Resolution (14-1217-RS2) and any applicable regulations issued by the Board's CPO. The Board's resolution adopts Chicago Mayoral Executive Order 2014-1. As of December 17, 2014 the minimum wage to be paid pursuant to the Resolution is \$13.00 per hour (the "Minimum Wage"). A copy of the Mayoral Order may be downloaded from the Chicago City Clerk's website at: <http://chicityclerk.com/wp-content/uploads/2014/09/Executive-Order-No.-2014-1.pdf>; the Board's Resolution may be downloaded from the Chicago Public School's website at: [http://www.cpsboe.org/content/actions/2014\\_12/14-1217-RS2.pdf](http://www.cpsboe.org/content/actions/2014_12/14-1217-RS2.pdf). In the event of any discrepancy between the summary below and the Resolution and Order, the Resolution and Order shall control.

Vendor must: (i) pay its employees no less than the Minimum Wage for work performed under the Agreement; and (ii) require any subcontractors, sublicensees, or subtenants, to pay their employees no less than the Minimum Wage for work performed under the Agreement.

The Minimum Wage must be paid to: 1) All employees regularly performing work on property owned or controlled by the Board or at a Board jobsite and 2) All employees whose regular work entails performing a service for the Board under a Board contract.

Beginning on July 1, 2015, and every July 1 thereafter, the Minimum Wage shall increase in proportion to the increase, if any, in the Consumer Price Index for All Urban Consumers most recently published by the Bureau of Labor Statistics of the United States Department of Labor, and shall remain in effect until any subsequent adjustment is made. On or before June 1, 2015,

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and on or before every June 1 thereafter, the City of Chicago may issue bulletins announcing adjustments to the Minimum Wage for the upcoming year.

The Minimum Wage is not required to be paid to employees whose work is performed in general support of Vendor's operations, does not directly relate to the services provided to the Board under the Agreement, and is included in the contract price as overhead, unless that employee's regularly assigned work location is on property owned or controlled by the Board. It is also not required to be paid by employers that are 501(c)(3) not-for-profits.

The term 'employee' as used herein does not include persons subject to subsection 4(a)(2), subsection 4(a)(3), subsection 4(d), subsection 4(e), or Section 6 of the Illinois Minimum Wage Law, 820 ILCS 105/1 et seq., in force as of the date of this Agreement or as amended. Nevertheless, the Minimum Wage is required to be paid to those workers described in subsections 4(a)(2)(A) and 4(a)(2)(B) of the Illinois Minimum Wage Law.

The Minimum Wage is not required to be paid to employees subject to a collective bargaining agreement that provides for different wages than those required by the Board's Resolution, if that collective bargaining agreement was in force prior to December 17, 2014 or if that collective bargaining agreement clearly and specifically waives the requirements of the Resolution.

If the payment of a prevailing wage is required and the prevailing wage is higher than the Minimum Wage, then the Vendor must pay the prevailing wage.

27. **Continuing Obligation to Perform:** In the event of any dispute between Vendor and Board, Vendor shall expeditiously and diligently proceed with the performance of all its obligations under this Agreement with a reservation of all rights and remedies it may have under or pursuant to this Agreement at law or in equity.
28. **Conflict of Interest:** This Agreement is not legally binding on the Board if entered into in violation of the provisions of 105 ILCS 5/34-21.3, which restricts the employment of, or the letting of contracts to, former Board members within a one year period following expiration or other termination of their office.
29. **Indebtedness:** The Vendor agrees to comply with the Board's Indebtedness Policy adopted June 26, 1996 (96-0626-PO3), as amended from time to time, which policy is hereby incorporated by reference into and made a part of this Agreement as fully set forth herein.
30. **Ethics:** No officer, agent or employee of the Board is or shall be employed by the Vendor or has or shall have a financial interest, directly, or indirectly, in this Agreement or the compensation to be paid hereunder except as may be permitted in writing by the Board's Code of Ethics Policy adopted May 25, 2011 (11-0525-PO2), as amended from time to time, which policy is hereby incorporated by reference into and made a part of this Agreement as fully set forth herein.
31. **Inspector General:** Each party to this Agreement hereby acknowledges that in accordance with 105 ILCS 5/34-13.1, the Inspector General of the Board of Education of the City of Chicago has the authority to conduct certain investigations and that the Inspector General shall have access to all information and personnel necessary to conduct those investigations.
32. **Waiver:** No delay or omission by the Board to exercise any right hereunder shall be construed as a waiver of any such right and the Board reserves the right to exercise any such right from time to time as often and as may be deemed expedient.

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33. **Certification of Eligibility.** Vendor certifies that it is not barred from contracting with any unit of State or local government as a result of violation of either Section 33E-3 (bid-rigging) or 33E-4 (bid rotating) [720 ILCS 5/33E]. Vendor further certifies that it, and each of its joint venture members if a joint venture, is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency and that in performing the Services for the Board it shall not utilize any firms that have been debarred from doing business with the Board under the Board's Debarment Policy (08-1217-PO1), as may be amended from time to time.
34. **Survival/Severability.** All express representations or indemnifications made or given in this Agreement shall survive the completion of Services or the termination of this Agreement for any reason. If any provision or part of this Agreement is held to be unenforceable, the Agreement shall be considered divisible and such provision shall be deemed inoperative to the extent it is deemed unenforceable, and in all other respects the Agreement shall remain in full force and effect; provided, however, that if any such provision may be made enforceable by limitation thereof, then such provision shall be deemed to be so limited and shall be enforceable to the maximum extent permitted by applicable law.
35. **Joint and Several Liability.** In the event that Vendor, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination thereof, then, and in that event, each and every obligation or undertaking herein stated to be fulfilled or performed by Vendor shall be the joint and several obligation or undertaking of each such individual or other legal entity.
36. **Counterparts and Facsimiles.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one instrument. A signature delivered by facsimile or electronic means shall be considered binding for both parties.
37. **Board Approval.** The execution of this Agreement is subject to approval by the members of the Chicago Board of Education.
38. **Additional Terms:**
- 38.1 **Compliance with Laws.** CPS shall use the Service in compliance with all applicable local, state, federal, and international laws, regulations, and conventions, including without limitation those related to data collection, use, disclosure and privacy; international communications; and the exportation of technical or personal data.
- 38.2 **Family Educational Rights and Privacy Act ("FERPA").** In the event CPS is subject to the provisions of the Family Educational Rights and Privacy Act (FERPA), then such parties agree as follows: (A) Vendor is receiving the Confidential Information as permitted by FERPA §99.31(a)(1)(i)(B) as interpreted by the Family Policy Compliance Office, and that Vendor has a "legitimate educational interest," for the purpose of carrying out its responsibilities under this Agreement. (B) Vendor acknowledges that it shall be bound by all relevant provisions of FERPA and agrees that personally identifiable information obtained from Licensed Users by Vendor in the performance of this Agreement: (i) will not be disclosed to third parties, except as expressly provided for in FERPA §99.31, without signed and dated written consent of the student, or if the student is under eighteen (18) years of age, signed and written consent of the student's parents/guardians and (ii) will be used only to fulfill Vendor responsibilities under the Agreement. In accordance with FERPA, the Parties agree that any consents to disclose information may be made electronically.
- 38.3 **Children's Online Privacy Protection Act ("COPPA").** Without limiting the generality of Section 38.1, in the event that CPS's use of the Service subjects CPS to the provisions of



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COPPA. CPS acknowledges that CPS shall fully comply with COPPA and any rules or regulations promulgated thereunder.

38.4 Vendor Ownership. Vendor (and its subsidiaries and /or licensors, where applicable) owns all right, title and interest, including all related copyright, patent, trademark and other proprietary rights ("Intellectual Property" rights), in and to the Service and will own any suggestions, ideas, enhancement requests, feedback, and recommendations provided by CPS, any Licensed User, or any other party relating to the Service. This Agreement is not a sale and does not convey any rights of ownership in or related to the Service or Intellectual Property owned by Vendor (or its subsidiaries and /or licensors, where applicable) to CPS or any Licensed User.

38.5 Representation & Warranties of CPS. CPS represents and warrants that (i) it has the legal power and authority to enter into this Agreement, and (ii) it has taken all action necessary for the approval and execution of this Agreement, and execution by the person signing on behalf of CPS is duly authorized by CPS and has been made with complete and full authority to commit CPS to all terms and conditions of this Agreement which shall constitute valid, binding obligations of CPS.

38.6. Disclaimer of Warranties. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 13, VENDOR MAKES NO REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED IN CONNECTION WITH THE AGREEMENT OR THE SERVICES. VENDOR SPECIFICALLY DISCLAIMS THE MAKING OF ANY SUCH REPRESENTATIONS OR WARRANTIES, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE.

38.7. Limitation of Liability. EXCEPT FOR THOSE INDEMNITY OBLIGATIONS SET FORTH IN SECTION 15 AND EXCEPT FOR THE OBLIGATIONS SET FORTH IN SECTION 11, IN NO EVENT SHALL VENDOR'S AGGREGATE LIABILITY UNDER ANY THEORY OR FOR ANY REASON WHATSOEVER EXCEED THE MAXIMUM COMPENSATION AMOUNT. IN NO EVENT SHALL VENDOR BE LIABLE TO THE BOARD FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICE OR THIS AGREEMENT.

38.8. 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 CPS.

38.9 Vendor shall have the right to terminate any access to the Services to any Licensed User who:

- (i) fails to maintain the confidentiality of usernames and passwords;
- (ii) uses the Software in violation of applicable local, state, federal, and international laws, regulations, and conventions, including without limitation those related to data collection, use, disclosure and privacy; international communications; and the exportation of technical or personal data;
- (iii) impersonates another user of the Software;
- (iv) provides false identity information to gain access to or use the Software;
- (v) attempts change any fields that are not intended for user modification;

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- (vi) attempts to view or manipulate the records of another user;
- (vii) attempts to upload any virus, malware or harmful code into the Software or any systems used by Hobsons to provide the Software;
- (viii) uses, transfers, exports or re-exports the Services or any of the underlying information, software, or technology in breach of 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 Hobsons is incorporated, operates, conducts business or to which it is subject from time to time;
- (ix) is a 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; or
- (x) uses any discussion forums in which Licensed Users or third-parties may post reviews of, make recommendations for or give ratings of content, events, products, services or third-party providers, or post other content, messages, materials or other items, to post any content that violates, misappropriates or infringes any third party's intellectual property rights or that is defamatory, slanderous, libelous, obscene, harassing, pornographic or profane.

**[SIGNATURE PAGE TO FOLLOW]**

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

BOARD OF EDUCATION OF THE  
CITY OF CHICAGO

By:

Frank M. Clark  
Frank M. Clark, President

Attest:

Estela G. Beltran 10/1/15  
Estela G. Beltran, Secretary

Approved as to legal form

Chryl  
Acting General Counsel

HOBSONS, INC.

By:

Name:

LEE WALL

Title:

CFO

Attest:

Title:

Dave Stoner

Global Controller

Board Report Nos: 15-0422-PR1, 15-0722-AR1.20

15-0929-AR2-15

**ATTACHMENTS:**

- Exhibit A – Software and Scope of Services
- Exhibit B – Payment Terms and Pricing Schedule
- Exhibit C – CPS Project Management Services Order Form/Task Order Form

**Exhibit A**

**Software and Scope of Services**

**Name of Project:** College and Career Planning Enterprise System

**CPS Project Manager:** Michael Perkins    **Phone:** 773/553-2329    **E-Mail:** maperkins3@cps.edu

**Vendor's Project Manager:** Jack Dilanian    **Phone:** 703/225-7083    **E-Mail:** jack.dilanian@hobsons.com

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This Software and Scope of Services will be conducted pursuant to the terms and conditions of that Software and Services Agreement ("**Agreement**") dated July 1, 2015 by and between Hobsons Inc. ("**Vendor**") and the Board of Education of the City of Chicago (the "**Board**"), commonly known as the Chicago Public Schools ("**CPS**"). Defined terms used in this Software and Scope of Services will have the same meanings as those ascribed to such terms in the Agreement.

**I. Description of Software ("Software")**

The following Core Products Software products ("**Core Products**") will be purchased centrally by the Board for an annual License Fee and made available to all district-managed middle and high schools via web access:

- Naviance for High School (*high schools only*)
- Naviance for Middle School (*middle schools only*)
- Naviance College and Career Readiness Curriculum
- Naviance Course Planner
- Naviance eDocs (*high schools only*)

The following additional Optional Products Software products ("**Optional Products**") are not included in the Site Licenses but will be available for schools to purchase individually through the CPS Online Marketplace at the prices listed in Exhibit B:

- Naviance Alumni Tracker
- Naviance Test Prep
- AchieveWorks
- Career Key

In addition to the Software listed above (collectively, the "**Software**" or the "**Naviance Software**"), the Vendor will provide the Board with training for Licensed Users of the Software as well as on-going implementation, utilization, and customization support services, as detailed in the Services section of this Exhibit.

**II. Software Functionalities.** The Software will meet each of the system specifications listed below:

**A. College Exploration and Planning**

1. Allow Licensed Users to search for, research, and compare colleges by multiple characteristics, including, but not limited to:
  - a) Geographic location
  - b) Institution type (public, private, liberal arts, research, etc)
  - c) Student body size
  - d) Graduation rate, overall and by racial/ethnic group
  - e) Loan default rate, overall and by racial/ethnic group (*will require a customized report provided by Vendor's Consulting Services*)

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- f) Demographic breakdown of student body
  - g) Average financial aid awarded
  - h) Available undergraduate majors
  - i) Special programs and services
  - j) Admissions selectivity
  - k) GPA and test score data for accepted applicants
  - l) Admissions outcomes for previous students from the same High School
  - m) Qualitative/cultural characteristics of schools
- 2. Allow for the creation of individual student accounts containing academic, demographic, and personal information.
  - 3. Can determine the likelihood of a student's admission to a given college (e.g., in terms of undermatch, match, and reach), based on the institution's selectivity and the student's academic profile.
  - 4. Can match students to colleges based on the student's academic profiles and college preferences they enter into the system.
  - 5. Provide college planning templates that can be filled out electronically.
  - 6. Provide information and guidance on financial aid, including, but not limited to:
    - 1. Information on the Free Application for Federal Student Aid (FAFSA)
    - 2. Information on federal and state financial aid options
    - 3. Estimated Family Contribution (EFC) calculator
    - 4. Information on basic financial literacy required to understand college financing
    - 5. Links to colleges' net price calculators
    - 6. Link to Chicago Public Schools' scholarship search tool (currently at [cps.academicworks.com](http://cps.academicworks.com))
  - 7. Enable student transcripts to be uploaded en mass and sent en mass to institutions that students have identified as having sent an application.
  - 8. Enable other documents, such as essays, personal statements, and letters of recommendation to be uploaded to student account.
  - 9. Allow students to complete and submit college applications electronically through the system (common application as well as individual school applications).

**B. Career Exploration and Planning**

- 1. Contain career interest assessments, the results of which can be recorded in students' profiles.
- 2. Provide recommended colleges to research based on career interest assessment results.
- 3. Allow students to research information on specific careers and career sectors.
- 4. Provide career planning templates.
- 5. Provide resume and cover letter templates.

### C. Academic Planning

1. Contain electronic Individual Learning Plans (ILP) in which all forms and templates within the ILP are electronic and are able to be completed within the system interface (i.e., not uploaded after completion in another program). The ILP will have, at a minimum, the following characteristics:
  - a) Planning template delineating and aligning academic, postsecondary, and personal/social goals
  - b) Integration of career interest assessment results
  - c) Space for entry and recording of student reflection
  - d) Academic strengths and needs assessment
  - e) Resume builder
  - f) Ability to be shared among student, guardians, and school staff
  - g) Personality and learning style assessments
  - h) Ability to plan, track progress, and monitor deadlines for action steps laid out in the ILP
  - i) Ability to autofill elements of the ILP with relevant information from other completed activities or information entered elsewhere in the enterprise system (*will require Vendor's Consulting Services to import completion data into Success Planner*)
  - j) Ability to set and track ILP completion benchmarks, with associated deadline dates
2. Allow the Board's High School Course Catalog(s) to be uploaded and housed in system.
3. Provide links to high school selection materials on the Board's "Choose Your Future" website at [www.chooseyourfuture.org/choosing-a-high-school](http://www.chooseyourfuture.org/choosing-a-high-school) and to the Board's online application portal at [apply.cps.edu](http://apply.cps.edu).
4. Allow students to identify course requirements for colleges that students have identified as planning to apply to and alert students of course requirements unmet.

### D. Test Prep & Study Skills

1. Provide ACT prep coursework, including practice tests (*this function is only achieved through individual school purchase of the optional product, Naviance Test Prep*).
2. Provide SAT prep coursework, including practice test (*this function is only achieved through individual school purchase of the optional product, Naviance Test Prep*).
3. Provide PSAT prep coursework, including practice tests (*this function is only achieved through individual school purchase of the optional product, Naviance Test Prep*).
4. Provide SAT subject area test prep coursework, including practice tests (*this function is only achieved through individual school purchase of the optional product, Naviance Test Prep*).
5. Provide information, guides, and/or learning modules focused on the development of study skills and learning strategies.

### E. Data Tracking & Reporting

1. Allow Board staff Licensed Users to create custom data reports, using any data fields that exist in the system, at the student, school, network, and district level (*the inclusion of some data fields may require a request for Vendor's Consulting Services to create a custom report*).
2. Provide default data reports that can be generated at the student, school, network, and district level.

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3. Allow for, at a minimum, the recording of the following data at the student, school, network, and district level:
  - a) All colleges students plan on applying to
  - b) All colleges students applied to
  - c) Characteristics of colleges students applied to from list in I., A., 1. above (*the inclusion of some characteristics may require a request for Vendor's Consulting Services to create a custom report*)
  - d) All college acceptances
  - e) Relationship between institutional selectivity and students' academic profiles for both colleges applied to and colleges accepted to (*initially, this will require a request for Vendor's Consulting Services to create a custom report*)
  - f) College enrollment in first and second semester of freshmen year and first semester of sophomore year
  - g) College enrollment in each subsequent semester following first semester sophomore year
  - h) College graduation, including degree awarded
  - i) All academic, demographic, and recorded enterprise activity data contained in students' profiles
  - j) Progress in college and career planning/exploration activities
  - k) Outcomes of activities completed within enterprise system
  - l) Completion of FAFSA application
  - m) Completion of Estimated Family Contribution (EFC) calculator
  - n) Scholarships applied to
  - o) Scholarships received
  - p) Scholarship dollars awarded
  - q) Responses to surveys sent to account holders via system
  - r) Progress on completion of electronic Individual Learning Plan (ILP)
  - s) Communication history between Board staff and account holders
4. Provide default reports or allow Board staff Licensed Users to create custom reports that allow for the reporting of, at a minimum, the following data at the school, network, and district level:
  - a) Percent of seniors that complete 3 or more college applications
  - b) Percent of seniors that apply to 1 or more postsecondary institutions where the institution's admissions selectivity matches their academic profile
  - c) Percent of seniors that have been accepted to college
  - d) Percent of seniors accepted to a 4-year college
  - e) Percent of seniors that have completed a FAFSA application
  - f) Percent of students, by grade level(s), that complete an Estimated Family Contribution (EFC) calculation
  - g) Percent of students, by grade level(s), completing 1 or more scholarship applications
  - h) Percent of students, by grade level(s), receiving scholarships for college
  - i) Percent of student, by grade level(s), completing Individualized Learning Plans (ILP)
  - j) Percent of students, by grade level(s), with early college (AP, IB, Dual Enrollment, Dual Credit) credentials
  - k) Percent of students enrolled in college, enlisted in the military, or employed 6 months after high school graduation
  - l) Percent of students enrolled in a 2 or 4-year college 6 months after high school graduation
  - m) Percent of students who remain enrolled in a 2 or 4-year college one year after their initial enrollment
5. Allow for student accounts to be flagged for participation in specific programs (e.g., senior seminar, OneGoal, etc.).

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6. Exchange data with the Board's Student Information Management (SIM) Data Warehouse
7. Allow data reports to be exported in CSV, Excel, and PDF formats.
8. Allow customized data reports created by Board staff account holders to be saved to Board staff accounts.
9. Allow surveys to be created within the system and sent to student and parent/guardian account holders and survey responses can be recorded, associated to respondents' accounts, and reported through report creation function.
10. Allow historical data from previous years to be stored in system and reports to be generated comparing data between school years.
11. Allow reports to be generated comparing an individual school to other schools and to district-level data.

**F. Account Management**

1. Each Chicago Public Schools student in grades 6-12 will have an account, which will remain active for at least six (6) years past high school graduation, assuming an active contract between the Board and the Vendor is in place. Should a contract between the two parties not be in place, accounts will be inactivated and the data associated with them will be stored until the Board submits a written request for this data to be purged or transferred to a database owned by the Board.
2. Student and Board staff account holders will be able to log on to Naviance with the same user credentials used for all other internal Board online applications. When these credentials are updated within the Board's databases, they will be automatically updated in Naviance databases, allowing users to log on with their new, updated credentials.
3. Parents/guardians of Chicago Public Schools students will have the ability to create accounts that are linked to any and all accounts that their dependents have in the system, with all dependents' accounts viewable from one parent/guardian account, allowing parents/guardians to view all information contained in their dependents' accounts.
4. School counselors, teachers, administrators, and district administrators will have accounts with special administrative and data reporting capabilities, including the ability to create and modify student accounts.
5. Account holders will have secured login usernames and passwords.
6. Account holders can list their email addresses in their account information and receive messages sent through the system via email.
7. Communication can be sent, through the system, to groups determined by account characteristics (school attended, demographic group, etc.) and received at individuals' email addresses.
8. Content entered by each school in Family Connection (e.g. Welcome Messages, Announcements, Custom HTML Pages, etc.) can be entered in Spanish and 4 other languages.

**G. Technical Support**

1. The Vendor will provide a process by which the Board can request customizations to the system.



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2. Support materials for end users will be available in on-demand formats such as FAQs and online tutorials at no charge to the Board, individual schools, or individual users.
3. Technical support services will be available via telephone, email, and web form and will be available for the life of the contract. Staff members at the district or school level will have access to technical support services. Telephone support services will be available from 8:00am to 7:00pm Eastern Standard Time, Monday through Friday. Inquiries submitted to the Vendor's support services during these hours will be responded to within 2 hours. Inquiries submitted outside of these hours will be responded to the next business day during the Vendor's support services operational hours.

**III. Description of Services ("Services")**

**A. Project Management Services**

Project Management Services include, but are not limited to, advisory consultation, project management, system configuration, and maintenance of configuration. Project Management Service hours necessary to implement the Software have been estimated for each year of the agreement and shall be billed to the Board at the hourly rate set forth in Exhibit B. All requests for Project Manager Services will be made by the individual school directly to the CPS Project Manager for approval. Vendor will provide the Board's Project Manager with an estimate of the hours required to fulfill the individual school's request, prior to providing any services at a school, a Task Order Form (attached hereto as Exhibit C)) must be submitted to the CPS Project Manager for review and approval of the use of the estimated and allotted Project Management Hours. Typical functions for which Project Management hours will be billed include, but are not limited to the following:

1. Recurring project meetings
2. Assessment phase consultation
  - a) Discovery
  - b) Goals and KPIs
  - c) Scope & Sequence
  - d) Implementation Plan
  - e) Rollout & Communication Plan
  - f) Professional Development Plan
3. Data Import Support
  - a) Requirements definitions based on assessment phase
  - b) Review of initial import mapping
4. Configuration
  - a) User Admin (staff accounts)
  - b) Assisting/performing setup at each school site
  - c) Student and Parent/guardian Access
  - d) Customizing features based on scope and sequence
5. Deployment
  - a) Professional Development coordination
  - b) Strategic awareness sessions for administrators
  - c) Custom workshops for school staff and district administrators
  - d) Communication plan execution
  - e) Regional or Local User Group facilitation

## **6. Ongoing Support**

- a) Measurement and custom reporting
- b) Optimization
- c) Ad-hoc needs
- d) Project management and advising
- e) Maintenance of configuration

## **B. Training Services**

The Vendor will provide a combination of on-site, in-person training sessions and live webinar training sessions to train Board personnel on the use of any and all Naviance Software products.

When in-person training sessions are requested by CPS, when possible Vendor will utilize local trainers to provide these sessions. When possible, live webinar training sessions will be conducted in place of in-person training sessions.

Vendor will provide the following training sessions for the Board's school-based personnel (Any additional training sessions must be requested and approved by the Board's Project Manager):

### Introduction to Naviance and Career Planning

This course provides participants with an overview on how to navigate Naviance. This course specifically focuses on the student folder and searching for students. This course also provides participants with an overview of the Career Planning tools in Naviance. These tools allow students to gain a clear understanding of the academic preparation required to pursue careers that are likely to be fulfilling to them. The session is available to middle school and high school personnel and is 3 hours in length.

### Custom Session: Utilizing Naviance to fulfill CPS ILP requirements (My Planner)

Participants will learn how to use various tools in Naviance with their students to complete the activities that are tied to the CPS ILP requirements. Participants will learn how to monitor and track student task completion. The session is available to middle school and high school personnel and is 2 hours in length.

### College Planning: Research Tools

This course provides participants with an overview of the college research tools available in Naviance and Family Connection. The college research tools are meant to help students find colleges that are the right fit. This course is available to high school personnel and is 1-2 hours in length.

### College Planning: Application Tools and eDocs

This course provides participants with an overview of the college application process as it's managed in Naviance. This session will allow a chance for participants to learn how to manage and track college applications & transcripts in Naviance. Participants will also learn how to prepare and send college application documentation electronically to more than 2,000 electronic destinations. This will not include the Common App integration. The session is available to high school personnel and is 3 hours in length.

Training sessions will be scheduled and managed by the CPS Project Manager and the Vendor working in collaboration. The topics and timing of these trainings will be chosen by the CPS Project Manager, subject to availability of Vendor's training personnel. For both in-person and webinar trainings, each session will accommodate up to 25 Board personnel trainees.

It is the responsibility of the Board to advertise any Naviance trainings to Board personnel and to register said personnel to attend the trainings.

### C. Implementation Responsibilities of the Parties

The table below contains the responsibilities of each party for the Software implementation process to be successfully completed.

Create and Configure Board Staff and Student Accounts		
Responsibilities	Board	<ul style="list-style-type: none"> <li>Determine user roles and rights</li> <li>Provide a list of staff that need accounts at district level (First Name, Last Name, Email Address, Role)</li> <li>Provide CSV of school level staff that need accounts with role (Vendor will provide a template)</li> </ul>
	Vendor	<ul style="list-style-type: none"> <li>Consult with the Board to determine user roles and rights</li> <li>Customize user roles and rights based on the Board's needs and requests</li> <li>Manually create district level staff accounts</li> <li>Setup school staff accounts based on CSV provided</li> <li>Configure and activate Family Connection (student/parent portal) based on settings and content requested by the Board and/or individual schools</li> </ul>
Import School Information		
Responsibilities	Board	<ul style="list-style-type: none"> <li>Provide a list of School IDs for each school</li> <li>Provide Primary contact for each school</li> </ul>
	Vendor	<ul style="list-style-type: none"> <li>Manually add school IDs into Naviance district account</li> <li>Manually assign primary contact for each school</li> </ul>
Import Student Information		
Responsibilities	Board	<ul style="list-style-type: none"> <li>Determine data requirements for student data import</li> <li>Export CSV or tab-delimited text file from SIS</li> <li>Upload the file into Naviance and follow the on-screen prompts for mapping data fields and translating data values</li> <li>Review data import log for errors</li> </ul>
	Vendor	<ul style="list-style-type: none"> <li>Provide documentation, guidance, best practices, and troubleshooting as necessary</li> <li>Review file prior to import (if needed)</li> <li>Review data log for errors</li> </ul>

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Import Parent Information		
Responsibilities	Board	<ul style="list-style-type: none"> <li>Determine data requirements for parent data import</li> <li>Export CSV or tab delimited text file from SIS</li> <li>Upload the file in Naviance and follow the on-screen prompts for mapping</li> <li>Review data log for errors</li> </ul>
	Vendor	<ul style="list-style-type: none"> <li>Provide documentation, guidance, best practices, and troubleshooting as necessary</li> <li>Review file prior to import (if needed)</li> <li>Review data log for errors</li> <li>Activate registration codes for parents at each school (if registration codes are not imported)</li> <li>Create parent roll out/communication plan for schools</li> </ul>

Configure SchoolSync		
Responsibilities	Board	<ul style="list-style-type: none"> <li>Run one import for each data type that can be automated using the data import tool. The automated imports and updates will use the field and code mappings that were most recently used by the manual import tool.</li> <li>Install cURL</li> <li>Configure cURL statement for each data type that is being automated</li> <li>Automate the process of preparing the extract of data files from the SIS</li> <li>Schedule cURL to run at regular intervals</li> </ul>
	Vendor	<ul style="list-style-type: none"> <li>Review cURL statement</li> <li>Assist with troubleshooting any issues related to cURL statement/automation</li> <li>Review data log for errors</li> </ul>

#### Establish Active Directory Authentication Solution to Enable Single Sign-on for Board Staff and Student Users

Responsibilities	Board	<ul style="list-style-type: none"> <li>Provide an existing directory</li> <li>Configure Naviance accounts for staff members. Staff members' usernames must match the usernames in the existing directory.</li> <li>Configure Family Connection accounts for students. Students' usernames must match the usernames in the existing directory.</li> </ul>
	Vendor	<ul style="list-style-type: none"> <li>Setup school staff accounts based on CSV provided</li> </ul>

#### Setup Reporting Zones for the Board's School Networks

Responsibilities	Board	<ul style="list-style-type: none"> <li>Provide a list of requested zones</li> </ul>
	Vendor	<ul style="list-style-type: none"> <li>Create zones based on list provided by the Board</li> </ul>

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Train Board Staff		
Responsibilities	Board	<ul style="list-style-type: none"><li>• Request training dates in advance</li><li>• Provide computer access for participants and resources (e.g. print workbooks)</li><li>• Provide technology to facilitate a presentation for training groups</li></ul>
	Vendor	<ul style="list-style-type: none"><li>• Confirm training dates (subject to availability)</li><li>• Provide PD plan based on goals/scope &amp; sequence</li><li>• Conduct training based on PD plan</li></ul>

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**Exhibit B**  
**Payment Terms and Pricing Schedule**

**I. Payment Schedule for Core Products Software Site Licenses**

<b>License Fee Description</b>	<b>Amount</b>	<b>Due Date</b>
Non-Refundable License Fee for Core Products Software Listed in Pricing Schedule for Year 1	<b>\$505,610.80</b>	At execution of this Agreement.
Non-Refundable License Fee for Core Products Software Listed in Pricing Schedule for Year 2	<b>\$505,610.80</b>	August 15, 2016
Non-Refundable License Fee for Core Products Software Listed in Pricing Schedule for Year 3	<b>\$505,610.80</b>	August 15, 2017
<b>Total License Fee for Term of Agreement</b>	<b>\$1,516,832.40</b>	

**II. Payment for Optional Products Software**

The Optional Products Software will be available for individual schools to purchase via the CPS Marketplace, at each school's discretion, with their own school budget funds. The pricing for the Optional Products is detailed in the Pricing Schedule included in this Exhibit B.

**III. Payment for Services**

For all Project Management and Training Services requested by the CPS Project Manager, the Board will be invoiced quarterly for the Services provided and accepted by the Board during that quarter. Services will be charged at the rates set forth in the Pricing Schedule included in this Exhibit B. The number of Project Management and Training Services hours which are required for the successful implementation of the Software have been estimated in the Pricing Schedule.

If more Project Management hours than estimated in the Pricing Schedule are required, in any year under the Agreement Term, to produce the functionalities outlined in the Scope of Services in this Agreement, the Board will not be charged for the additional Project Management hours.

The Board acknowledges there may be travel costs associated with in-person training sessions requested by the CPS Project Manager. Vendor agrees that reimbursable expenses for travel will not exceed the yearly estimated amounts in the "Other Costs" row of the Pricing Schedule.

All travel costs must be submitted to the CPS Project Manager for written approval prior to being spent and must be consistent with the Board Policy for Reimbursement for Work-Related Expenses adopted December 16, 2009 (09-1216-PO4), as amended from time to time, which policy is hereby incorporated by reference into and made a part of this Agreement as fully set forth herein. Vendor acknowledges and agrees that travel costs do not include reimbursement for travel time, but are limited to cost of transportation and hotel expenses.

## IV. Pricing Schedule

Application Software							
	Price Unit	2015 price	2016 price	2017 price	2018 price (Renewal)	2019 price (Renewal)	
Core Products - Purchased by Central Office							
Naviance for High School - District Edition	District	\$144,620.44	\$144,620.44	\$144,620.44	\$144,620.44	\$144,620.44	
Naviance for Middle School - District Edition	District	\$84,000.84	\$84,000.84	\$84,000.84	\$84,000.84	\$84,000.84	
Naviance Course Planner - District Edition	District	\$85,911.65	\$85,911.65	\$85,911.65	\$85,911.65	\$85,911.65	
Naviance eDocs (high schools only)	District	\$10,663.40	\$10,663.40	\$10,663.40	\$10,663.40	\$10,663.40	
Naviance College and Career Readiness Curriculum	District	\$180,414.47	\$180,414.47	\$180,414.47	\$180,414.47	\$180,414.47	
Optional Products - Available for purchase by schools individually							
	Price Unit	2015 price	2016 price	2017 price	2018 price (Renewal)	2019 price (Renewal)	
Naviance Alumni Tracker	School	\$233.75	\$233.75	\$233.75	\$233.75	\$233.75	
Achieve360	Student	\$0.55	\$0.55	\$0.55	\$0.55	\$0.55	
Career Key	School	\$107.25	\$107.25	\$107.25	\$107.25	\$107.25	
Test Prep for the ACT/SAT	Student	\$0.86	\$0.86	\$0.86	\$0.86	\$0.86	
Implementation Services - Paid for by Central Office							
	Price Unit	2015 price	2016 price	2017 price	2018 price (Renewal)	2019 price (Renewal)	
Project Management	Hour	\$168,000.00	\$134,400.00	\$100,800.00	\$100,800.00	\$100,800.00	
Training	Hour	\$85,050.00	\$42,750.00	\$33,750.00	\$33,750.00	\$33,750.00	
Other	n/a	\$30,000.00	\$14,000.00	\$7,000.00	\$7,000.00	\$7,000.00	
Implementation Services Detail							
Project Management	Position / Role	Rate per Hour	Projected Hours in 2015	Projected Hours in 2016	Projected Hours in 2017	Projected Hours in 2018 (Renewal)	Projected Hours in 2019 (Renewal)
	Senior Consultant	\$ 140.00	1200.00	960.00	720.00	720.00	720.00
Training	Position / Role	Rate per Hour	Projected Hours in 2015	Projected Hours in 2016	Projected Hours in 2017	Projected Hours in 2018 (Renewal)	Projected Hours in 2019 (Renewal)
	Training Specialist	\$ 225.00	378.00	190.00	150.00	150.00	150.00
Other Costs	Cost Category	Rate	Estimated Costs in 2015	Estimated Costs in 2016	Estimated Costs in 2017	Estimated Costs in 2018 (Renewal)	Estimated Costs in 2019 (Renewal)
	Estimated Travel Costs	n/a	\$ 30,000.00	\$ 14,000.00	\$ 7,000.00	\$ 7,000.00	\$ 7,000.00

**V. Delivery Time**

All functionalities listed in Exhibit A, Section II, with the exception of item F.2 regarding user credentials, and Exhibit A, III (C). will be available district-wide by no later than **October 31, 2015**. If any one of these functionalities is not available by that date, the Vendor will pay a fee to the Board for each day past this date that the functionality is not available. This daily fee will be equal to the total licensing fee for the software component that the unavailable functionality is to be a part of, divided by the number of school days in the school year. For purposes of this Agreement, the parties agree the number of school days during each school year shall be deemed to be 178 days. The responsibilities that must be met for both the Vendor and the Board are outlined in Exhibit A, III (C). If the functionality is unavailable to the Board on the date promised due to a failure on the part of the Board to take the specified actions for which it is responsible for as specified in Exhibit A, III (C), no fee will be charged to the Vendor.

**VI. Future Customizations**

For future customizations to the system, applying uniquely to the Board's use of the system, that are requested by the Board and agreed to be undertaken by the Vendor, a Task Order will be completed jointly by the Board and the Vendor that specifies the date by which the new functionalities will be available and the responsibilities for both parties that must be met within agreed upon timeframes. If the Board has met its outlined responsibilities within the specified timeframes and the new functionalities are not available by the agreed upon date, the Board will not be charged for additional Project Management hours required to complete the work. If a requested customization constitutes new functionalities that will be available to all Naviance users, not just the Board or individual Chicago Public Schools, the Board will not be charged for the work required to establish the new functionalities.

**VII. Software Unavailability or Outages**

If, after implementation, the system's Core Software components (Naviance for High School, Naviance for Middle School, Naviance College and Career Readiness Curriculum, Naviance Course Planner, and Naviance eDocs) are unavailable or impaired, in total or in part, for any or all of the Board's users, and the cause of the outage or impairment did not originate with the Board or its end users, it is expected that the Vendor will remedy this outage or impairment within 4 hours. If the outage or impairment is not remedied within 4 hours, the Vendor will pay a fee to the Board for each day that the outage or impairment continues, for any portion of the day. This daily fee will be equal to the sum of licensing fees for the software components affected, in total or in part, divided by 178 school days .

If, after implementation, any component purchased individually by a school is unavailable or impaired, in total or in part, for any or all of that school's end users, and the cause of the outage or impairment did not originate with the Board, the school, or the school's end users, it is expected that the Vendor will remedy this outage or impairment within 4 hours. If the outage or impairment is not remedied within 4 hours, the Vendor will pay a fee to the individual school for each day that the outage or impairment continues, for any portion of the day. This daily fee will be equal to the sum of licensing fees for the software components affected, in total or in part, divided by 178 school days.



**VIII. Reimbursement Terms**

The Vendor will issue prorated reimbursements to schools in the following circumstances:

1. If a school has previously purchased Naviance for High School, Naviance for Middle School, Naviance College and Career Readiness Curriculum, Naviance Course Planner, and/or Naviance eDocs, where the term of the school's use of the product(s) overlaps with this Agreement for any portion of time, the Vendor will issue that school a prorated reimbursement of the school's purchase price for the product(s).
2. If a school has previously purchased any of the products identified in this Agreement as Optional Products, where the term of the school's use of the product(s) overlaps with this Agreement for any portion of time, the Vendor will issue that school a prorated reimbursement that covers the difference between the school's purchase price for the product(s) and the price for the same product(s) established by this Agreement.

EXHIBIT C

CPS Project Management Services Order Form/Task Order Form

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

School Contact: \_\_\_\_\_ Phone: 773/553- \_\_\_\_\_ E-Mail: \_\_\_\_\_

Cost of Project Management Services on this Order Form: \$ \_\_\_\_\_

This Project Management Services Order Form is subject to the terms and conditions of the Software and Services Agreement (the "Agreement") between Hobsons Inc. (the "Vendor") and the Board of Education of the City of Chicago (the "Board"), commonly known as the Chicago Public Schools ("CPS"). Defined terms in this Project Management Services Order Form have the same meanings as those ascribed to those terms in the Agreement or the Software and Scope of Services attached as Exhibit A to the Agreement (the "Scope").

1. **Description of Specific Project Management Services or Task being requested by School:**  
[The School must complete this section.]

2. **Project Management or Customization Task with Specific Deadlines and Cost:**

Project Management or Customization Task	Delivery/ Performance Dates	Hours and Cost

3. **Total Maximum Compensation.** Compensation hereunder is subject to the provisions of the Agreement. The cost for Services under this Project Management Services Order Form must not exceed the amounts set forth herein. Any Services that would cause the compensation to Vendor to exceed the Total Maximum Compensation Amount set forth in the Agreement require a written amendment to the Agreement before those Services are furnished by the Vendor. *It is Vendor's responsibility to monitor its Services to ensure that the cost of the Services provided do not exceed the amount specified in the Agreement, the estimated hours set forth in the Pricing Schedule for Project Management, and this Project Management Services Order Form.*

4. **Approved Services Only; Signature.** This Services Order may include only Project Management Services as described in the Software and Scope of Services. This Project Management Services Order Form shall not take effect until it has been signed by the School Principal and by the CPS Project Manager or designee.

[Signature Page to Follow]

**THIS AGREEMENT WILL BE POSTED ON THE CPS WEBSITE.**

**Authorized signatures\*:**

Board's Project Manager:

Signature: \_\_\_\_\_

Printed name: \_\_\_\_\_

School:

Signature: \_\_\_\_\_

Printed name: \_\_\_\_\_

Vendor:

Signature: \_\_\_\_\_

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

**\*Any additions, deletions or revisions to the language in this form will render the entire form void.**