

# VitaNavis™ Subscription Agreement

Version: June 2017

This *Subscription Agreement* (“**Agreement**”), dated February 5, 2018 (“**Effective Date**”), is between CPP, Inc., a California corporation (“**CPP**”) and the customer described below (“**Customer**”):

<b>Customer Name:</b>	Santa Ana College
<b>Customer Address:</b>	1530 W. 17th Street, Santa Ana, CA 92706

The parties agree as follows:

## 1. Services.

1.1. **VitaNavis Platform.** Customer will have access to the assessments offered by CPP, including (without limitation), the sixty (60) item Strong assessment (collectively, “**Assessments**”), and to the dashboarding and administrative functionality of the VitaNavis platform (“**Platform**”). Accounts are subscription-based (as detailed in the “**Fees & Payment Terms**” section below).

1.1.1. **Limited Number of Assessment Administrations.** Subject to the terms of this Agreement, during any particular subscription period (“**Subscription Period**”), Customer may only administer Assessments in the limited quantity described below. If Customer wishes to increase the number of Assessments authorized during a Subscription Period, Customer may contact a CPP representative for more information.

<b>Authorized Number of Assessment Administrations:</b>	unlimited within Santa Ana College
---	------------------------------------

## 2. Fees & Payment Terms.

2.1. **VitaNavis Platform.** In order to access the Platform, Customer must purchase a subscription at the rates detailed below (“**Subscription Fee**”). Payment of the Subscription Fee will grant Customer access to the Platform for the Subscription Period and for the administration of the Authorized Number of Assessments described above. Subscription Fees must be paid in advance upon account creation (or renewal, if applicable). If Customer would like to continue using the Platform after Customer’s current Subscription Period has expired, then Customer will be required to pay a renewal fee at the rates detailed below (“**Renewal Fee**”). Payment of the Renewal Fee will extend Customer’s access to the Platform for an additional one (1) year period, starting on the day after the expiration of Customer’s prior Subscription Period.

<b>Subscription Fee:</b>	\$29,995 for Year 1 (February 5, 2018 – February 4, 2019); \$34,995 for Year 2 (February 5, 2019 – February 4, 2020) and annually thereafter  <i>Customer may choose not to renew for Year 2 by providing written notice to CPP at least sixty (60) days prior to the end of the Year 1 term.</i>
<b>Subscription Period:</b>	Years 1 & 2 – February 5, 2018 – February 4, 2020; Automatic annual renewal thereafter (subject to <a href="#">Section 8.2</a> )

2.2. **Taxes.** Customer is responsible for all applicable federal, state, and local taxes, duties, fees, charges, surcharges, or other similar exactions, (whether such exactions are imposed directly upon Customer or upon CPP) (“**Taxes**”) imposed on Customer’s subscription to the Platform, the transactions that take place on the Platform, and any research services that Customer may choose to have CPP perform. “**Taxes**” do not include any taxes that are imposed on or measured by the net income of CPP. If Customer is tax-exempt, Customer may provide duly-executed documentation evidencing Customer’s tax-exempt status to CPP for consideration. If the documentation is accepted, CPP shall exempt Customer from Taxes on a going-forward basis, provided that Customer keeps all tax exemption documentation accurate and current.

### 3. Data & Privacy.

- 3.1. **Data Ownership.** Customer's use of the Platform involves several types of data, including (without limitation): the personal information of Customer's account users (e.g., employees of Customer who have access to the administrative aspects of the Platform) ("**Customer Personal Information**"); the personal information of those individuals ("**Respondents**") who take Assessments on the Platform ("**Respondents' Personal Information**"); and Respondents' responses to Assessments ("**Item Responses**").

Data ownership on the Platform works as follows: Customer may choose to administer one or more Assessments (up to the maximum authorized in Section 1.1.1 above) to Customer's Respondents using the Platform. Respondents can review the Assessment(s) and provide their Item Responses. As long as Item Responses remain in personally-identifiable format, they are owned and controlled by the Respondent. A Respondent can choose to disassociate his/her personal information from his/her Item Responses at any time using his/her account settings. Item Responses that are not personally-identifiable become general research data, which is owned and controlled by CPP.

CPP combines, aggregates, and otherwise manipulates Item Responses provided by Respondents with CPP's other research data to create a 'pool' of data relating to Customer's Respondents ("Platform Data"). During Customer's Subscription Period, and subject to the terms of this Agreement, Customer will have access to the Platform Data via the dashboard interface, but CPP will be the sole and exclusive owner and controller of Platform Data at all times, both during and after Customer's Subscription Period.

Customer will own and control Customer's Personal Information.

Notwithstanding anything to the contrary, this Section shall not operate to grant any proprietary or ownership interest to Customer in any of CPP's intellectual property, which shall remain the sole and exclusive property of CPP.

- 3.2. **Data Retention.** CPP will store data associated with Customer's account during the Subscription Period and any applicable renewal periods. Should Customer choose to terminate Customer's account, then CPP may, but is not required to, continue to store Customer's account information for a period of twelve (12) months. If Customer's account is terminated or suspended, Customer will not have access to Customer's data until Customer renews Customer's account, and CPP reserves the right to delete Customer's data at any time if Customer's account is suspended or no longer active.
- 3.3. **Privacy.** All personal information (for both Practitioner Users and Respondents) will be used in accordance with CPP's Privacy Policy, which is made available on the Platform and which CPP may update or amend from time to time.
- 3.4. **CPP Research & Product Development.** At all times, both during the term of Customer's subscription and thereafter, CPP reserves the right to retain all data generated via the Platform in non-personally identifiable format for CPP's research and product development purposes. Customer acknowledges that CPP may make use of any suggestions that Customer makes for improvements or changes to the Platform or related Assessments or services without compensation to Customer.

### 4. Support, Downtime & Availability.

- 4.1. **Support.** If Customer needs assistance with creating or using Customer's account, CPP will provide Customer with limited, basic support (as determined by CPP's sole discretion). Please contact [help@vitanaavis.com](mailto:help@vitanaavis.com) or your CPP representative for assistance.
- 4.2. **Downtime.** CPP shall use commercially reasonable efforts to make the Platform available at all times except for planned downtime and unavailability caused by circumstances beyond CPP's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, equipment malfunctions, power failures or Internet service provider failures. Notwithstanding any of the foregoing, Customer has no expectation regarding the availability of the Platform. Customer agrees that Customer's subscription is not contingent upon the delivery of any additional functionality or any additional support from CPP.
- 4.3. **Availability.** CPP reserves the right to make any modifications to the Platform at any time without notice to Customer. Customer acknowledges that Customer's access to the Platform is not contingent upon any specific features or services and Customer has no expectation regarding the intended functionality of the Platform.

## 5. Intellectual Property.

- 5.1. **CPP's Proprietary Rights.** Customer acknowledges and agrees that CPP is the sole and exclusive owner of all works and other products, including (without limitation) all Assessments and Reports, made available on the Platform, and the Platform itself. CPP reserves all rights, title, and interest in and to the Platform and the work and other products made available on the Platform, including all intellectual property rights. No rights are granted to Customer under this Agreement other than the limited license (subject to the terms of this Agreement) to make use of the Assessments and Reports as fully detailed in Section 5.2 below.
- 5.2. **CPP's Grant of Limited License to Customer.** Subject to the terms of this Agreement, and provided Customer has duly-purchased any applicable subscriptions, CPP grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable, royalty-free license to: (i) access the Platform; and (ii) administer Assessments in the limited quantity described in Section 1.1.1 to Customer's Respondents. This limited license shall only be in effect during Customer's fully-paid Subscription Period and any applicable renewal periods. This limited license is only for Customer's internal business purposes. Customer may not alter, modify, publicly perform or publicly display any works made available on the Platform, and Customer may not prepare any derivative works based on any works made available on the Platform. Customer may not administer Assessments or generate Reports in quantities above that described in Section 1.1.1. Customer may not sell, rent, lease, distribute for profit, or otherwise commercially exploit the works made available on the Platform.
- 5.3. **Restrictions.** Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of Customer's account and shall notify CPP immediately upon discovery of any unauthorized access or use. Customer shall not sell, resell, rent, or lease its access to the Platform or offer scoring services on a "service bureau" basis. Customer shall not use the Platform to store or transmit any infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy or intellectual property rights. Customer shall not use the Platform to store or transmit malicious code or software that will impair the functionality of the Platform or otherwise access the Platform in a manner not specifically authorized by this Agreement. Customer shall not interfere with or disrupt the performance of the Platform or attempt to gain unauthorized access to the Platform. Customer shall not contract with parties other than CPP for the scoring of any Assessments made available on the Platform. Customer promises not to use any personal information made available on the Platform in an unlawful or unethical manner. Customer shall not copy, frame, or mirror any portion of the Platform. Customer shall not reverse-engineer the Platform or any of the Assessments or Reports on the Platform or the scoring thereto. Customer shall not access the Platform in order to build a competitive product or service or to copy any features, functions, scoring, or content of the Platform. Customer shall not remove any copyright, patent, trademark, design right, trade secret, or any other proprietary rights notices from the Platform or the works or products made available on the Platform. Customer shall not make use of any CPP trademarks in any domain names.

## 6. Indemnification.

- 6.1. **By CPP.** If a third-party makes a claim that the Platform infringes any U.S. patent, copyright, trade secret, or other form of intellectual property ("**IP Claim**") against Customer, CPP will defend, indemnify, and hold Customer harmless against the IP Claim and pay all costs, damages, and expenses (including reasonable legal fees) finally awarded against Customer by a court of competent jurisdiction or agreed to in a written settlement agreement signed by CPP arising out of such IP Claim, provided that (i) Customer promptly notifies CPP in writing after Customer's receipt of notification of a potential claim; (ii) CPP may assume sole control of the defense of such claim and all related settlement negotiations; and (iii) Customer provides CPP, at CPP's request and expense, with the assistance, information, and authority necessary to perform CPP's obligations under this section. If Customer has services provided by other service providers that are subject to the IP Claim, then CPP's obligation will be to pay a *pro rata* portion of such damages, costs, liabilities, or expenses, based on the percentage of Customer's total end users for whom CPP has provided the claimed infringing services. CPP shall not be bound or materially prejudiced without its prior written consent. If, due to an IP Claim or the threat of an IP Claim, (i) the Platform is held by a court of competent jurisdiction, or in CPP's reasonable judgment may be held, to infringe by such a court, or (ii) Customer receives a valid court order enjoining Customer from using the Platform, or in CPP's reasonable judgment Customer may receive such an order, CPP shall in its reasonable judgment and at its expense, (a) replace or modify the Platform to be non-infringing without materially reducing the functionality of the Platform; (b) obtain for Customer a license to continue using the Platform; or (c) if a non-infringing version of the Platform or a license to use cannot be obtained on a commercially reasonable basis, then either party may terminate the use of the Platform without any liability.

6.2. **By Customer.** Customer agrees to defend and indemnify CPP, its officers, directors, employees, and assigns against any claims, damages, losses, costs, or liabilities of any kind (including reasonable attorneys' fees) arising out of or in connection with any actual or alleged breach of this Agreement, or in connection with any third-party suits or claims alleging matters which, if true, would constitute a breach of this Agreement.

7. **LIMITATION OF LIABILITY.** EXCEPT FOR CUSTOMER'S VIOLATION OF ANY OF CPP'S INTELLECTUAL PROPERTY RIGHTS OR MISUSE OF CPP'S CONFIDENTIAL INFORMATION, IN NO EVENT SHALL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO CUSTOMER'S USE OF THE PLATFORM, WHETHER IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED IN THE AGGREGATE THE TOTAL AMOUNT PAID BY CUSTOMER UNDER THIS AGREEMENT OR, WITH RESPECT TO ANY SINGLE INCIDENT, THE AMOUNT PAID BY CUSTOMER IN THE 12 MONTHS PRECEDING THE INCIDENT. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT. EXCEPT FOR CUSTOMER'S VIOLATION OF ANY OF CPP'S INTELLECTUAL PROPERTY RIGHTS OR MISUSE OF CPP'S CONFIDENTIAL INFORMATION, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT, OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW. PRODUCTS AND SERVICES ON THE PLATFORM ARE PROVIDED "AS-IS." CPP MAKES NO REPRESENTATION OR WARRANTY REGARDING THE PRODUCTS OR SERVICES, INCLUDING ANY REPRESENTATION THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, CPP DISCLAIMS ANY IMPLIED OR STATUTORY WARRANTY, INCLUDING ANY IMPLIED WARRANTY OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

8. **Term & Termination.**

8.1. **Term.** This Agreement shall go into effect on the Effective Date and shall remain in effect through the duration of Customer's Subscription Period (as may be renewed from time to time).

8.2. **Termination.**

8.2.1. **By Customer.** Customer may cancel its subscription at any time by providing thirty (30) days' written notice to CPP. Should Customer choose to cancel its subscription prior to the end of Customer's then-current Subscription Period, Customer will not receive a refund for any unused portion of the Subscription Period.

8.2.2. **By CPP.** If CPP determines, in its sole discretion, that Customer has materially breached this Agreement, then CPP may terminate Customer's subscription by providing written notice to Customer. Such termination by CPP shall be effective as of the date CPP provides such notice.

8.2.3. **Effects of Termination.** If Customer's subscription terminates or expires for any reason, then: (i) Customer shall lose all access to the Platform; (ii) Customer shall immediately stop making use of CPP's intellectual property (unless Customer has a separate, written agreement that authorizes Customer to do so); and (iii) Customer will not receive any refunds for any pre-purchased assessment administrations that Customer has not used prior to such termination or expiration.

9. **General Provisions.**

9.1. **Entire Agreement.** This Agreement, including all exhibits and addenda hereto, if applicable, constitute the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter.

9.2. **Relationship of the Parties.** This Agreement does not create a partnership, franchise, joint venture, fiduciary, or employment relationship between the parties; the parties are independent contractors.

9.3. **Notices.** All notices, permissions, and approvals under this Agreement shall be in writing. Notices to CPP shall be addressed to the attention of its General Counsel. All notices to Customer shall be addressed to the most recent contact information associated with your account.

- 9.4. **No Waiver.** No failure or delay by either party in exercising any right under these this Agreement shall constitute a waiver of that right. Other than as expressly state herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- 9.5. **Severability.** If any provision of these this Agreement is held by a court of competent jurisdiction to be contrary to law, that provision shall be severed from this Agreement, and the remaining provisions of this Agreement shall remain in effect.
- 9.6. **Assignment.** Customer may not assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of CPP. Notwithstanding the foregoing, CPP may assign its rights and obligations under this Agreement in their entirety without Customer's consent to CPP's affiliate(s) or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of CPP's assets not involving a direct competitor of Customer's.
- 9.7. **Governing Law.** This Agreement, and any disputes arising out of or related to this Agreement, shall be governed exclusively by the internal laws of the State of California, without regard to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods.
- 9.8. **Venue.** Any dispute arising under or in connection with this Agreement or related to any matter which is the subject of this Agreement shall be subject to the exclusive jurisdiction of the state and/or federal courts located in Santa Clara County, California.
- 9.9. **Survival.** Any provisions of this Agreement that by their nature would survive shall survive any termination or expiration of this Agreement or termination or expiration of your account.

To evidence the parties' agreement to this Agreement, they have executed and delivered it on the dates indicated below:

**Customer: Santa Ana College**

**CPP, Inc.**

  
 \_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Signature

Peter J. Hardash  
 \_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Print Name

Vice Chancellor, Business Operations/Fiscal Services  
 \_\_\_\_\_  
 Title

\_\_\_\_\_  
 Title

2/27/18  
 \_\_\_\_\_  
 Date

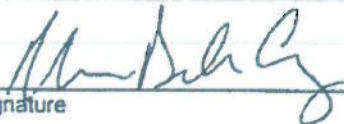
\_\_\_\_\_  
 Date

- 9.3. **Notices.** All notices, permissions, and approvals under this Agreement shall be in writing. Notices to CPP shall be addressed to the attention of its General Counsel. All notices to Customer shall be addressed to the most recent contact information associated with your account.
- 9.4. **No Waiver.** No failure or delay by either party in exercising any right under these this Agreement shall constitute a waiver of that right. Other than as expressly state herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- 9.5. **Severability.** If any provision of these this Agreement is held by a court of competent jurisdiction to be contrary to law, that provision shall be severed from this Agreement, and the remaining provisions of this Agreement shall remain in effect.
- 9.6. **Assignment.** Customer may not assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of CPP. Notwithstanding the foregoing, CPP may assign its rights and obligations under this Agreement in their entirety without Customer's consent to CPP's affiliate(s) or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of CPP's assets not involving a direct competitor of Customer's.
- 9.7. **Governing Law.** This Agreement, and any disputes arising out of or related to this Agreement, shall be governed exclusively by the internal laws of the State of California, without regard to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods.
- 9.8. **Venue.** Any dispute arising under or in connection with this Agreement or related to any matter which is the subject of this Agreement shall be subject to the exclusive jurisdiction of the state and/or federal courts located in Santa Clara County, California.
- 9.9. **Survival.** Any provisions of this Agreement that by their nature would survive shall survive any termination or expiration of this Agreement or termination or expiration of your account.

To evidence the parties' agreement to this Agreement, they have executed and delivered it on the dates indicated below.

**Customer: Santa Ana College**

**CPP, Inc.**

  
 \_\_\_\_\_  
 Signature

  
 \_\_\_\_\_  
 Signature

Maria De la Cruz  
 \_\_\_\_\_  
 Print Name

Thaddeus Stephan  
 \_\_\_\_\_  
 Print Name

Interim, Dean Counselor  
 \_\_\_\_\_  
 Title

VP  
 \_\_\_\_\_  
 Title

2/5/18  
 \_\_\_\_\_  
 Date

6 February 2018  
 \_\_\_\_\_  
 Date



February 6, 2018

Maria Aguilar-Beltran  
Santa Ana College  
[beltran\\_maria@sac.edu](mailto:beltran_maria@sac.edu)

To whom it may concern,

This letter is written to confirm that CPP, Inc. ("CPP") is, by contract with the copyright owners, the sole and exclusive publisher of the following assessments in the United States:

- Myers-Briggs Type Indicator®;
- Thomas-Kilmann Conflict Mode Instrument™;
- Strong Interest Inventory®;
- iStartStrong®;
- SuperStrong®;
- FIRO® and FIRO-B®;
- CPI™; and
- Parker Team Player Survey™.

Authorized electronic versions of the instruments listed above can only be obtained through SkillsOne®, Elevate®, or VitaNavis® CPP's online assessment delivery platforms.

Furthermore, CPP is the sole and exclusive source for paper versions of the following assessments:

- Strong Interest Inventory®, and
- FIRO® and FIRO-B®

CPP is also the sole and exclusive publisher of the following works in the United States:

- the *Introduction to Type*® series;
- the *Where Do I Go Next* booklet;
- the *Strong Interest Inventory*® Manual and User's Guide set;
- the *MBTI*® Manual;

Finally, CPP is the sole and exclusive source for the following certification programs:

- MBTI® In-House Certification Program;
- FIRO-B® Certification Program; and
- CPI 260® Certification Program

Should you have any questions or concerns, please contact me at (800) 624-1765. CPP thanks you for your interest in our products and services.

Sincerely,

**Jack Powers**  
CPP, Inc.