

EXHIBIT B: REQUIRED TERMS AND CONDITIONS

B1 RIGHT TO TERMINATE

In the event any of the provisions of this Agreement are violated, the University may serve written notice upon Vendor of the University's intention to terminate this Agreement. Such notice is to state the reason(s) for such intention to terminate this Agreement and unless within ten (10) days after serving such notice upon Vendor such violations shall cease and satisfactory arrangements for correction are made, the University may immediately terminate this Agreement. The liability of such Vendor and its surety for any and all such violations(s) shall not be affected by any such terminations. The University may terminate this Agreement without cause by giving the Vendor thirty (30) days written or FAX notice of termination. Upon notice of such termination, the Vendor shall immediately stop all work and/or shipment of goods hereunder and cause its suppliers and/or subcontractors to cease their work. In the event of a termination either with cause or without cause as provided in this Section, the University shall not be liable for any early termination fee or for charges for the period after the effective date of such termination. In the event of advance fees, the University shall be entitled to a pro rata refund through the date of final termination.

B2 ASSIGNMENT

Neither party may assign any of its rights or delegate any of its duties under this Agreement without the written consent of the other party; such consent may be withheld in such party's sole discretion. Any such an assignment shall not relieve either party from their original obligations.

B3 SUBCONTRACTING

Vendor shall not subcontract any of its obligations under this Agreement without the prior written consent of the University, which the University may withhold in its sole discretion. Vendor shall be responsible for all subcontractor work, without limitation, and any approved subcontractor and their respective employees will be held to the same or higher work standards as required by this Agreement.

B4 STATE CONTRACTING REQUIREMENTS

Vendor agrees to comply with all state of Indiana and federal laws, rules and regulations, including, without limitation, those regarding wages, liability insurance, workers' compensation, discrimination, intimidation, and any other applicable law or regulation.

B5 RESPONDENT WARRANTY OF ABILITY TO PERFORM

Vendor warrants that there is no action, suit, proceeding, or investigation, at law or equity, before or by a court, governmental agency, public board or body, pending, nor to the best of the Vendor's knowledge is any such action threatened, which would in any way prohibit or restrain the execution or delivery of this Agreement or diminish the Vendor's obligations or financial ability to perform the terms of this Agreement.

B6 INDEPENDENT CONTRACTOR

Nothing herein is intended or shall be construed as in any way creating or establishing the relationship of co-partners between the parties or in any way making the Vendor the agent or representative of the University for any purposes in any manner whatsoever. Vendor is, and shall remain, an independent contractor with respect to all services performed under this Agreement. In no event shall the Vendor be considered or represent itself as an agent or employee of the University. Vendor is solely responsible for the maintenance of its records and for the payment to the appropriate government authorities of all applicable withholding, unemployment, and social security taxes as well as all other taxes or impositions.

B7 SEVERABILITY

If any provisions of this Agreement are contrary to, prohibited by, or deemed invalid by applicable laws, judicial decisions or regulations of any jurisdiction in which it is sought to be enforced, then said provisions shall be deemed inapplicable and omitted and shall not invalidate the remaining provisions of this Agreement. In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

B8 GOVERNING LAW AND VENUE

This Agreement shall be construed, and legal relations between the parties shall be determined, in accordance with the laws of the State of Indiana applicable to contracts solely executed and wholly to be performed within the State of Indiana without giving effect to the principles of conflicts of laws. Any disputes between the parties to this Agreement shall be brought in the state or federal courts of Indiana. The parties agree that venue shall be in the state courts of Delaware County, Indiana or in the federal district court for the Southern District of Indiana, Indianapolis Division.

B9 FORCE MAJEURE

Neither party shall be considered in breach of this Agreement for failure to perform if such failure is caused by national or local calamity, acts of terrorism, the act or regulation of any public authority, labor strike, war, epidemic, fire, storm, or other act of God, or any other cause beyond the reasonable control of the non-performing party that renders that party's performance impossible (such circumstances being defined as a "Force Majeure" event). If a party asserts Force Majeure as an excuse for failure to perform the party's obligation, then the nonperforming party must prove that the party took reasonable steps to minimize delay or damages caused by foreseeable events, that the party substantially fulfilled all non-excused obligations, and that the other party was expeditiously notified a Force Majeure was declared. With regard to hosted systems or University data which is maintained or controlled by the Vendor, a Force Majeure event will not include any calamity such as a local power outage, local equipment failure, hurricane, earthquake, fire, severe weather, or other similar circumstance such as data loss which would be reasonably anticipated and mitigated by the protections of a fully compliant TIA-942 Tier 3/4 datacenter. The parties further agree that in no event will the University be responsible for the payment of any services not delivered, including those not delivered due to a Force Majeure event, or for any other reason. The university upon its own discretion, may require the vendor to provide documentation as to its proactive plan developed to reduce the amount of loss, damage, or down time in the occurrence of a Force Majeure event.

B10 TIME OF THE ESSENCE; NO WAIVER

All time limits, time periods, and completion dates stated in this Agreement are of the essence of the Agreement. The failure of the University to insist in any one or more instances upon the performance of any one or more provisions of this Agreement or to pursue any rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights.

B11 NO ENDORSEMENT

Unless specifically authorized in writing by the University on a case-by-case basis, Vendor shall have no right to use, and shall not use, the name of Ball State University, its officials or employees, or the seal or marks of the University in advertising, publicity, or promotion, or to express or imply any endorsement of Vendor's supplies or services.

B12 NON-PERFORMANCE

In the event that Vendor fails to perform under any of the terms and provisions of this Agreement, the Vendor shall reimburse the University for any additional expenses incurred by the University to have the work contemplated by this Agreement completed by a third party over and above what the University would have been required to pay Vendor had Vendor not failed to complete the work as required by this Agreement.

B13 FUNDING

The University represents that, as of the date of this Agreement, funds sufficient to pay financial obligations as to the initial term of this Agreement have been allocated and are available. However, the University is a publicly funded entity, and its financial obligations hereunder are subject to allocation of funds by parties not controlled by the University. In the event, through no action initiated by the University, the legislative body of the state of Indiana does not appropriate sufficient funds allowing for the continuation of this Agreement for any fiscal year, whole or part, and there are no funds from other sources to continue, this Agreement may be terminated by the University upon thirty (30) days written notice. In the event of a termination pursuant to this Section, the University shall not be liable for any early termination fee or for charges under this Agreement for the period after the effective date of such termination.

B14 LIMITATION OF LIABILITY

The University will not agree to any limitation on direct damages. Moreover, no limitation of liability whatsoever shall apply to liability arising from: (a) personal injury or death; (b) property damage; (c) defect or deficiency related to or resulting from the negligence or misconduct of Vendor; (d) breach of confidentiality; or (e) circumstances with respect to which this Agreement provides a right to indemnification.

B15 INDEMNIFICATION

The Vendor shall defend, indemnify, and hold the University, its trustees, officers, employees, agents, successors and assigns harmless from and against all liability, loss, damage or expense, including reasonable attorney's fees and court costs, which the University may incur or sustain by reason of the failure of the Vendor to fully perform and comply with the terms and conditions of this Agreement. Further, the University assumes no liability for any damage to property, or for personal injuries, illness, disabilities or deaths, of Vendor's employees or any other person subject to the Vendor's control, or any other person including members of the general public, caused in whole or in part or resulting from: a) the Vendor's breach of any term or provision of this Agreement; or b) any negligent or willful act or omission of the Vendor, its employees or subcontractors. The Vendor agrees to indemnify, save harmless and defend the University, its trustees, officers, employees, agents, successors and assigns (the "Indemnified Parties") from and against any and all liabilities, claims, penalties, forfeitures, suits and the costs and expenses incident thereto (including the cost of defense, settlement and reasonable attorney's fees) which any of the Indemnified Parties may hereafter incur, become responsible for, or pay out as a result of acts or omissions either of the first three sentences in this Section. The University shall not provide such indemnification to Vendor.

B16 ON-SITE SERVICES

In the event Vendor provides any on-site services pursuant to this Agreement, the following subsections shall apply:

B16.1 Work Standard: Vendor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. In the event of service or material deficiencies/defect the university may request correction of such to the satisfaction of the

university. Corrections will be made at the expense of the vendor.

- B16.2 Compliance With University Policies:** In performing the Services and while at any University facilities, Vendor personnel shall: (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the University regarding safety and health and professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the University; and (d) abide by all laws applicable to University facilities and/or the provision of the Services. University policies are available on University's website; any University policies not available on University's website will be communicated in writing to Vendor's personnel and in such case, Vendor shall be responsible for the promulgation and distribution of University policies to Vendor personnel to the extent necessary and appropriate.
- B16.3 Background Checks For Vendor Personnel:** Vendor shall ensure the Vendor's client-facing personnel, meaning those individuals who have direct, in-person contact with the University, and any other Vendor personnel who have access to the University's Confidential Information (as defined in Section B17.1): (a) are authorized to work in the jurisdiction in which they are assigned to perform services; (b) are not proven substance abusers and have never been convicted of a felony involving theft, fraud, embezzlement, or other crimes of dishonesty or crimes involving violence against persons; and (c) are not otherwise disqualified from performing the Services under applicable laws. If the Vendor has not already done so, and if requested by the University and not in violation of applicable law, the Vendor (itself, or through an authorized agent) shall conduct a background check on all such personnel to verify compliance with the preceding requirements. Such background check shall be performed at Vendor's expense. Except for a statement or other indication to the University that any personnel will or will not be permitted to perform services under this Agreement, the Vendor will not be required to disclose the results of any background check to the University.
- B16.4 Removal of Assigned Personnel By The University:** University shall have the right to require the Vendor to replace the personnel whom the University reasonably and in good faith deems to be unfit or otherwise unsatisfactory to perform duties, responsibilities or obligations hereunder, provided that the University specifies its reasons, in writing, to the Vendor prior to any removal of any personnel hereunder. Without limiting the foregoing, during the twenty-four (24) business hours immediately following notice to the Vendor of such request for replacement, designated representatives from each party shall meet as soon as practicable to discuss the request and any alternative solutions. Race, gender, age, religion, national origin, and other legally discriminatory characteristics and any other unlawful reason shall not be valid grounds for any such request by the University.
- B16.5 Removal Or Reassignment Of Key Personnel By Vendor:** "Key Personnel" shall mean those persons assigned to provide substantial services under this Agreement, as described in the initial project plan. Provided the individual remains in the employ of the Vendor and Vendor is otherwise reasonably able to do so (understanding that the individual may have been replaced due to health or other personal reasons) the Vendor shall not remove or temporarily reassign Key Personnel. Where Key Personnel must be reassigned for health or personal reasons, or where the individual is no longer employed by the Vendor, the Vendor will make every effort to provide at least thirty (30) days prior written notice to the University. Until such time as the parties have agreed to replacement personnel, the Vendor will apply a credit to the University, or otherwise extend the service period for the affected Key Personnel, for the same length of time in which the gap in Key Personnel occurred. The Vendor will use commercially reasonable efforts to assign the personnel

replacement as soon as reasonably practicable and shall propose replacement personnel possessing comparable experience and training as the individual whom the Vendor proposes to replace. The Vendor shall not charge the University for costs associated with educating any individuals replacing Key Personnel (e.g., costs resulting from bringing a replacement “up to speed” with the project in order to resume the duties of the key personnel being replaced). The Vendor’s request for removal or reassignment of personnel shall not excuse the Vendor from meeting any deadlines unless such timeline changes are agreed to in writing by the University.

B16.6 Reimbursable Expenses: In the event any travel to Ball State is required for implementation, the University shall reimburse reasonable related travel expenses which conform to the University’s travel policy, as defined in the Ball State University Travel Regulations And Procedures Manual, and which are incurred in conjunction with the performance of this Agreement. The *Ball State University Travel Regulations And Procedures Manual* can be found on the BSU Accounting Office web site, which is located at: <http://www.bsu.edu/accountingoffice/>. The Vendor shall use reasonable efforts to limit travel and living expenses by only using coach air fare, booked in advance when available, staying at hotels identified in advance by the University as offering contractors a discounted rate, and sharing rental cars. Parking fines and any other tickets, fines, or penalties are not reimbursable. For long-term agreements the University may also propose alternative cost saving housing and sustenance arrangements through the use of University housing and dining services.

B16.7 Insurance: Notwithstanding anything else to the contrary, Vendor shall not commence any work in connection with this Agreement and no fees associated with this Agreement shall become due or payable until the Vendor has obtained, for itself and all subcontractors, at a minimum, all of the following types of insurance, and such insurance has been approved by the University. All insurance policies shall be with insurers qualified to do business in Indiana and having a current A.M. Best rating of no less than A:VII. The Vendor shall furnish the University proof of insurance coverage by certificates of insurance, in duplicate, no later than ten (10) days after contract award. As to insurance required by this Agreement, a certified copy of each of the policies or a certificate or certificates evidencing the existence thereof, or binders, in any case satisfactory to University in its reasonable discretion, shall be delivered to the University within fifteen (15) days after the delivery of this fully executed Agreement. In the event any binder is delivered, it shall be replaced within thirty (30) days by a certified copy of the policy or a certificate in lieu thereof, in either case satisfactory to the University in its sole discretion. Each such copy or certificate shall contain a valid provision or endorsement that the policy may not be canceled, terminated, changed or modified without giving thirty (30) days written advance notice thereof to the University’s representative and provisions evidencing that the insurance reflected thereon meets the minimum requirements as described herein. A renewal policy or certificate shall be delivered to the University at least thirty (30) days prior to the expiration date of each expiring policy. If at any time any of the policies shall be or become unsatisfactory to the University as to form or substance, or if any of the carriers issuing such policies shall be or become unsatisfactory to the University, the Vendor shall promptly obtain a new and satisfactory policy in replacement upon such written notice from the University. All required insurance policies shall name the University as an additional named insured.

B16.7.1 The Vendor shall secure and maintain throughout the term of this Agreement Workers’ Compensation Insurance to the extent required by Indiana law for all employees connected with any work described in this Agreement and, in case any work is subcontracted, the Vendor shall require similar insurance for all of the subcontractor’s employees unless such employees are covered by the protection afforded by the Vendor’s insurance. Such insurance shall comply fully with the Indiana Workers’

Compensation Law.

- B16.7.2** The Vendor must secure and maintain throughout the term of this Agreement automobile liability insurance on all vehicles against bodily injury & property damage in at least the amount of coverages listed in the schedule below.
- B16.7.3** The Vendor shall protect its officers, employees, servants, agents and the University and its trustees, officers, employees, servants and agents from claims for damages and personal injury, including accidental death, as well as claims or property damages which may arise from operations under a contract resulting from the proposal award, whether such operations be by the Vendor or by anyone directly or indirectly employed by Vendor and the amounts of such insurance shall be the minimum limits as follows:

INSURANCE REQUIREMENTS SCHEDULE

<u>Workers' Compensation</u>	Statutory Coverage (meeting the requirements of the State of Indiana)
<u>General Liability</u>	\$1,000,000 per occurrence for bodily injury and property damage AND \$3,000,000 annual aggregate
<u>Automobile Liability</u> (including owned & non-owned)	\$1,000,000 per occurrence for bodily injury and property damage AND \$1,000,000 annual aggregate
<u>University as Additional Insured</u>	The Vendor shall add " <i>Ball State University, the Trustees of Ball State University, its officers, agents and employees</i> " as an additional insured under the commercial general and automobile liability policies only. For any claims related to the Services, the vendor's insurance coverage shall be primary insurance as to Ball State, its Trustees, its officers, agents and employees. Any insurance maintained by Ball State shall be excess of the Vendor's insurance and shall not contribute to it.

- B16.7.4** The University shall be exempt from, and in no way be liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Vendor and/or subcontractor that obtained the insurance.

B17 CARE AND SAFEGUARDING OF INFORMATION

In the event Vendor access, stores, processes, transmits, or otherwise is exposed to any data or information on behalf of the University, through on or off-site consulting, hosting, or for any other reason pursuant to this Agreement, the following subsections shall apply:

- B17.1 Confidential Information:** Except for individual data elements specifically enumerated and agreed to by the Vendor and University as subject to disclosure, Vendor shall hold all information received under this Agreement in strict confidence. All parties acknowledge the types and scope of information may change over time, however by way of example some types of information the Vendor may be exposed to include names, addresses, telephone or cellular phone numbers, bank and credit card account numbers, Social Security numbers, parts of a student's academic record,

parts of an employment record, parts of a financial record, or health care information. All of the foregoing information, together with all other information or data provided by the University, or by a University student, alumni, employee, or affiliate, in any physical or electronic form, shall be the "Confidential Information" unless otherwise excluded as provided herein. The contractor and all subcontractors, if in the course of completing the contracted work, may encounter data protected by the Health Insurance Portability and Accountability Act ("HIPPA"), in such an event, they will treat all such data as confidential and follow all laws and regulations pertaining to the handling of such information.

- B17.2 Family Educational Rights and Privacy Act ("FERPA") Compliance:** Vendor agrees to become familiar with and abide by the limitations on disclosure of personally identifiable information from education records as set forth in *The Family Educational Rights and Privacy Act* (20 U.S.C. § 1232g; 34 CFR Part 99). In accordance with 34 CFR 99.33(a)(2) Vendor agrees all information received from the University will be used only for the purpose of providing the specific services the University has contracted for in this Agreement, and that no information obtained from the University, or from students or employees of the University collected or received in their respective roles as students or employees, will be used for any other purpose unless specifically approved in writing by the University.
- B17.3 Standards of Care:** The Vendor shall employ appropriate administrative, technical, and physical measures conforming to the highest industry standards to preserve the accessibility, integrity, and confidentiality of all Confidential Information. At no time will Vendor host, store, transmit, process, or deliver Confidential Information to facilities or jurisdictions outside of the United States.
- B17.4 Security Policies:** Vendor shall at all times ensure personnel who may come in to contact with Confidential Information, including all Vendor employees, subcontractors, service providers, independent contractors, or agents employed or otherwise engaged by Vendor in connection with this Agreement will be subject to and shall comply with all security and confidentiality provisions contained in this Agreement and all established security and privacy policies and practices of Vendor, which will be shared in their entirety with the University within fifteen (15) days of the execution of this Agreement. In the event such policies are modified subsequent to the execution of this Agreement, then Vendor shall promptly notify the University in writing of such changes. In the event that the University finds Vendor's information security policies and standards deficient, the University may require that the Vendor establish additional safeguards within a commercially reasonable time (but not more than forty-five (45) days). In the event Vendor chooses not to implement additional safeguards suggested by the University, the University will have the right to terminate this Agreement without penalty and with a pro rata refund to the University through the date of termination.
- B17.5 Backup and Loss Of Data Protection:** In the event the Vendor stores any data on behalf of the University or as any part of the Services associated with this Agreement, Vendor shall employ appropriate backup and retention safeguards to prevent loss or inadvertent destruction and will be strictly liable for the protection of University data. Vendor will supply to the University at least quarterly a certification of data safeguarding indicating validation of backups, a summary of the data retention schedule, and validation of off-site storage media rotation or data transmission. The failure of the University to insist upon the delivery of such quarterly certification shall in no event diminish the responsibilities of the Vendor under this Section.
- B17.6 Security Audit:** In the event the Vendor processes or stores data on behalf of the University as any part of this Agreement, and where Vendor has completed or in the future completes audits of security or operational practices, including SSAE 18 Type I/II (or SSAE 16) audits, or other security

audits or reviews conducted internally or by an external agency, Vendor shall provide the University with the full details concerning that portion of the resulting report pertaining to systems or general infrastructure used for Services under this Agreement. In the event a security audit reveals deficiencies in the expected standard of care, the Vendor shall immediately inform the University about the severity and nature of such deficiency. Should major deficiencies which hold the potential for significant data loss or disclosure be identified, the University shall have the right to terminate this Agreement without penalty.

- B17.7 Security Breach Notification and Remediation:** Vendor shall immediately report to the University any access, use, or disclosure of Confidential Information not authorized by this Agreement or otherwise authorized in writing by the University. In accordance with Indiana law, and in particular IC 4-1-11 *Notice of Security Breach*, Vendor shall make the initial report to the University without unreasonable delay, and in no event later than one (1) business day after Vendor learns of such unauthorized access or disclosure. Vendor shall provide such initial notification prior to the notification of any third parties including other vendors, news media, or any other entity apart from a law enforcement agency having jurisdiction over such breach or Vendor's legal counsel. Vendor's initial report shall identify, to the extent then believed or known: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Information disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Vendor had done or shall do to mitigate any deleterious effect of unauthorized use or disclosure, and (v) what corrective action Vendor has taken or shall take to prevent future similar unauthorized use or disclosure. Subsequent to final resolution of the breach and within a commercially reasonable time, Vendor shall make a final report to Ball State detailing the final resolution of these issues.
- B17.8 Payment Card Industry Compliance:** This subsection shall apply in the event Vendor's services involve bank or credit card information processing, in which case Vendor shall at all times comply with the provisions of this subsection. Vendor shall at all times maintain compliance with applicable Payment Card Industry ("PCI") requirements and shall at minimum continuously satisfy all requirements of the then-current Payment Card Industry Data Security Standard ("PCI DSS"). Vendor shall be responsible for the security of all cardholder data that it receives and possesses under this Agreement, including the functions relating to transmitting, storing, and processing of cardholder data. Within fifteen (15) days after the delivery of this executed Agreement, Vendor shall provide documentation certifying the vendor's PCI DSS compliance, and shall also provide certifications of Payment Application Data Security Standard (PA-DSS) compliance where applicable. Upon execution and then annually, Vendor shall provide The University with a full copy of the Annual Report on Compliance as delivered by a Qualified Security Assessor and shall also provide upon execution and then quarterly, a full copy of the quarterly network scan completed by a PCI Approved Scan Vendor. In the event Vendor learns it is no longer compliant with any PCI requirement, Vendor will immediately notify the University of such noncompliance as well as of steps being taken to remediate the non-compliance status. In no event may Vendor's notification to the University be later than five (5) calendar days after Vendor learns it is no longer compliant with any applicable PCI standard or requirement. Should Vendor lose PCI DSS certification of compliance or become non-compliant for any reason, the University may terminate this Agreement immediately and seek any other available remedies. The indemnification provided for under this Agreement applies fully to the failure of Vendor to at all times remain PCI DSS compliant.
- B17.9 Return Or Destruction Of University Information:** Upon termination, cancellation, expiration or other conclusion of this Agreement, Vendor shall return any information held for or on behalf of the University. In the event the University and the Vendor agree return of data is not possible or necessary, Vendor shall securely destroy all information, and, in such a case, the Vendor shall

retain no copies in any form including data compilations which would allow identification or recovery of any Confidential Information. Vendor shall complete such return or destruction as promptly as possible, but not more than thirty (30) days after the effective date of the termination of this Agreement and shall within this timeframe certify in writing to the University such return or destruction has been completed.

B18 SOFTWARE LICENSE

In the event Vendor provides software licenses as any part of this Agreement, the following subsections shall apply:

- B18.1 Malicious Code:** Vendor warrants the Services, content, products, hardware, and software it provides to the University and/or end users shall be free of viruses, Trojan horses, worms, or any other harmful or malicious code including any files, script, or programs such as locks, time-outs or similar devices which restrict access, or which could allow access to the University's systems or data beyond that specifically authorized by the University. If any illicit code is found, Vendor will be considered automatically in default and shall be responsible for remedying any infection(s) and any liability resulting from any such malicious code.
- B18.2 License Term:** Software licenses conveyed under this Agreement shall be perpetual, and the University shall have the right to decline maintenance renewal at the end of any maintenance period with no interruption in the usage or licensing; up to the most current version or update at the time of renewal expiration. Vendor will send the University an invoice for the next term's annual maintenance fee or other renewal fees, at least sixty (60) days prior to the expiration of the original or subsequent maintenance term, and only the University's actual payment of the invoice shall constitute renewal of this Agreement for the subsequent maintenance period. The University will also have the right to reinstate a lapsed maintenance agreement under the terms of this Agreement, with no penalty and at a rate reflecting no more than the regular increase of the last invoiced maintenance period as provided herein. During the periods of covered maintenance, Vendor shall offer at no additional charge any enhancements, upgrades or new releases of the licensed software as well as support services as provided herein. In the event vendor re-bundles, renames, or replaces the licensed software with a new or comparable package at any time, Vendor shall supply to the University licensing for the new or re-bundled package with at least the same functionality as was previously available without additional fees.
- B18.3 General Use:** The University may make a reasonable number of copies of the licensed software for production, development, testing, quality assurance, staging, high availability, disaster recovery, backup, archival purposes, and other environments for University's internal use. The University may also move licensed software to new hardware, operating system, site, or location including the University's outsourced or hosted data center environments within the continental United States.
- B18.4 Warranty of Title:** Vendor hereby represents, and warrants Vendor is the owner of the software or otherwise has the right to grant to the University the rights set forth in this Agreement, and that all licenses provided under this Agreement shall be delivered free of any claim of any third person by way of infringement or the like. In the event of any breach or threatened breach of the foregoing representation and warranty, Vendor may do any of the following: (1) procure, at Vendor's expense, the rights necessary to convey the license described herein, (2) replace and implement, at Vendor's expense, any part of the software with equivalent functionality which does not cause any breach and with the same warranty of title conveyed in this section, or (3) refund to University all license, maintenance, and implementation fees.
- B18.5 Intellectual Property:** Vendor agrees all licenses are deemed to be "intellectual property" as

defined under Section 101(35A) of the Bankruptcy Code, and that the University shall retain and may fully exercise its rights under Section 365(n) in the event of the bankruptcy of Vendor.

B19 ACCESSIBILITY

Contractor agrees to comply with all applicable requirements of Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (“ADA”), as amended, 42 USC 12101 et seq., which requires the provision of accessible facilities and services. Goods and services provided by Contractor shall be accessible to individuals with disabilities to the greatest extent practical, but in no event less than the standards set forth by Indiana and federal accessibility laws. For web-based environments, services and content must conform to the Web Content Accessibility Guidelines (“WCAG”) 2.0 AA (available at <http://www.w3.org/WAI/intro/wcag.php>).

B20 WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

The Services provided by Vendor shall be of first quality and shall conform to the specifications attached hereto. Where Vendor has reason to know or knows any particular purpose for which the Services are required, there is a warranty that the Services shall be fit for such purpose.

B21 MOST FAVORABLE PRICING

Vendor represents and warrants that the initial proposed license fees, hosting fees, support fees, consulting fees, and any other fees shall each when considered severally and as an aggregate total are equivalent or better pricing terms than those granted by Vendor to any other customer located within the continental United States over the last 24 months. In the event licenses or services are priced based on the size of the institution or on a per-unit basis (e.g. number of students, per server, per GB of storage, etc.) then the equivalent or better pricing guarantee shall be calculated by the per-unit basis or by dividing the number of users counted for licensing purposes by the same licensing fees and arriving a per-headcount license cost.

B22 RECURRING FEES

“Recurring Fees” includes maintenance fees, support fees, hosting fees, and any other fees charged or calculated on an annual, monthly or otherwise recurring basis. Rates for Recurring Fees shall not increase for thirty-six (36) months from the effective date of this Agreement, and in any subsequent term shall increase at most once annually. Each such annual rate increase shall not exceed the rates of the immediately preceding annual period by an amount great than the lesser of: (a) 3% (three percent), (b) the rate of annual inflation as reflected by the Consumer Price Index - Urban for all US Cities, unadjusted (“CPI-U”), or (c) the rate increase Vendor charges to its general customer base.

B23 OWNERSHIP

All work product, including any research, reports, studies, data, photographs, negatives or other documents or materials prepared by Vendor in the performance of its obligations under this Agreement shall be works for hire and are the exclusive property of the University. All such materials shall be delivered to the University by the Vendor upon completion, termination, or cancellation of this Agreement. Vendor shall not use, willingly allow, nor cause to have such materials used for any purpose other than the performance of Vendor's obligations under this Agreement without the prior written consent of the University. The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works. The Vendor shall provide Ball State full, immediate, and unrestricted access to materials and work product during the term of this Agreement.

B24 PROCEDURES FOR INVOICING AND PAYMENTS

All invoices shall include the purchase order number supplied by the University, and shall list line-item detail for all charges. In accordance with Indiana contracting guidelines, all fees for professional services will be billed in arrears on a monthly basis and shall be detailed, categorized, and clearly stated on an invoice with the format of the invoice to be agreed by the parties. Payments shall be due not earlier than thirty (30) days from the date the invoice is received by the University. The University will in good faith perform its required payment obligations under this Agreement, and will not pay any late fees, penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law. Notwithstanding the payment of any amounts by the University, both the Vendor and the University will be entitled to pursue all their respective rights and remedies, both at law and in equity.

B25 PUBLIC RECORDS

This Agreement is a public record in its entirety. Any document, record, or information transmitted to the University in any form during the term of this Agreement or in connection with this Agreement is a public record and may be disclosed in its entirety by the University, unless a specific exception to such disclosure applies as provided under the Indiana Access to Public Records Act, codified at Indiana Code 5-14-3-1 et seq. In the event Vendor desires any material to be held as confidential and withheld from disclosure under the Indiana Access to Public Records Act, the Vendor must in each case clearly mark such information as "Confidential" and must indicate on each page of the document or material that confidential materials are included, **and in each case the Vendor must specify which statutory exception under the Indiana Access to Public Records Act applies.** In the event that the University receives a request under the Indiana Access to Public Records Act for any materials for which the Vendor has claimed an exemption, the Vendor must indemnify the University against any liability, loss, damage, or expense, including reasonable attorney's fees and court costs, which the University may incur or sustain by reason of the University's initial refusal to disclose such materials or documentation. In the event that there is a final, unappealable opinion that such document or record must be disclosed under the Indiana Access to Public Records Act, or if the Vendor failed to mark such document or record as required by this paragraph, the University may disclose such document or record as requested without any liability to the Vendor.

B26 SERVICE LEVEL AGREEMENT

In the event Vendor's Services involve a hosted component where any part of the delivered solution will be operated or stored outside of the direct and exclusive control of the University, this section will apply to the provision of these Services.

- B26.1 Hosting Generally:** Hosting services will be provided conforming to the highest industry standards such as ISO 27001/27002 for security, ITIL for operational control, and TIA-942 Tier 3/4 for data center services. In the event Vendor is not in complete conformity with these or similar standards, then Vendor shall provide assurances for a reasonably equivalent degree of care. At no time will Vendor host, store, transmit, process, or deliver Confidential Information to facilities or jurisdictions outside of the United States.
- B26.2 Scheduled Uptime:** Hosted Services are scheduled to be available 24 hours a day, 7 days a week, 365 days a year, with the exception of Scheduled Downtime (as defined in B26.3). The Vendor and the University shall agree upon the starting date and final termination date of Scheduled Uptime, which may be distinct from other dates related to payment or Services.
- B26.3 Scheduled Downtime:** Vendor will use diligent efforts to announce scheduled maintenance, and in any event must arrange scheduled maintenance with the University at a minimum of seventy-two (72) hours in advance unless otherwise agreed prior to a particular individual maintenance incident. "Scheduled Downtime" is defined as downtime which meets these criteria.

- B26.4** **Unscheduled Downtime:** Any unavailability of Services which does not meet the criteria of Scheduled Downtime is “Unscheduled Downtime.” Unscheduled Downtime will also include downtime due to emergency maintenance, Services which are significantly degraded or extremely sluggish, and Services which are only partially available. Unscheduled Downtime will not include deficiency of Services resulting from any of the following:
- B26.4.1** Scheduled Downtime, to the extent provided herein.
 - B26.4.2** Extremely minor disruptions, such as a missing individual graphic element, which do not impact the functionality of Services or cause user confusion.
 - B26.4.3** Outages, delays, or latency elsewhere on the Internet, to the extent such problems are outside the control of Vendor, Vendor’s subcontractors, or service providers.
 - B26.4.4** Domain Name Server (DNS) issues outside the control of Vendor, Vendor’s subcontractors, or service providers.
 - B26.4.5** False SLA breaches reported due to problems with the Vendor’s measurement system, but which result in no actual disruption of any Services provided under this Agreement.
 - B26.4.6** The University’s acts or omissions including the University’s custom scripting or coding, gross negligence, or willful misconduct.
 - B26.4.7** Browser or DNS caching which may make Services appear inaccessible, when in fact, Services are fully operational and accessible by the University.
 - B26.4.8** A prompt declaration of a Force Majeure event, which will relieve the Vendor of the credit schedule as defined in this section. As the University cannot agree to pay for Services not delivered regardless of the excuse or circumstance; however, the University shall receive a direct minute-by-minute reduction in monthly fees for non-delivery of services including non-delivery attributable to Force Majeure events.
- B26.5** **Actual Uptime:** Includes the time when the Services are fully functional and available. Actual Uptime is equal to the Scheduled Uptime minus the sum of Scheduled Downtime and Unscheduled Downtime.
- B26.6** **Outage Notification And Communications:** Prior to the start of any scheduled maintenance, Vendor must notify the University that work is about to begin, and when complete also so notify the University. Vendor will be responsible for testing basic functionality to ensure Services are operating normally subsequent to any maintenance or change which the Vendor has implemented. All unscheduled outages require immediate alerts to the University with periodic (at least hourly) updates regarding status. Notices and alerts under this section will be sent via e-mail and follow a common format and originate from a common e-mail address. For any unscheduled outages the Vendor will also be responsible for promptly delivering a root-cause analysis that will provide complete, candid, and accurate technical and procedural details regarding the cause of the unscheduled outage; the degree of formality for the report shall be commensurate with the amount of downtime or disruption associated with the unscheduled downtime.
- B26.7** **Hosting Services Technical Account Manager:** Vendor will assign a named Technical Account Manager ("TAM") who shall have primary responsibility for interfacing with the University regarding the delivery of hosted Services. The TAM will have direct access to senior level executives within the Vendor’s organization and will be responsible for escalating unresolved incidents and seeing them through to resolution. The TAM will host regular periodic meetings with University designees to discuss issues and status.

B26.8 Hosted Service Monitoring: Vendor will utilize an alerting system which will at minimum perform periodic verification checks to ensure the Services are operating and fully available to the University. Vendor will work with the University to ensure Services monitoring is optimally configured and is providing full and accurate availability information. Vendor acknowledges the importance to the University in maintaining situational awareness of the Services, and will include the University in automated e-mail or other alert messages generated by the Vendor’s monitoring systems. In the event the monitoring systems used by the Vendor cannot be configured to accommodate the University’s needs, or should the Vendor determine such configuration is undesirable, Vendor will not impede the University from implementing a separate monitoring and alerting system and will work collaboratively with the University to facilitate operation, such as by arranging an account for Services checks without page access charges, provided the University’s own monitoring is configured and performed in a commercially reasonable manner.

B26.9 Services Availability and Schedule of Credits and Remedies: Services Availability is the ratio of Scheduled Uptime to Actual Uptime. If the Availability of any portion of the Services is less than 100%, Vendor will issue a credit to the University according to the following table:

Services Availability	Total Unscheduled Downtime in a Calendar Month	Credit Percentage
99.99%	Five (5) minutes or less.	0%
99.86%	Less than or equal to one (1) hour.	10%
99.73%	Less than or equal to two (2) hours.	20%
99.59%	Less than or equal to three (3) hours.	40%
99.45%	Less than or equal to four (4) hours.	60%

For each additional one (1) hour the Services are not available, the credit shall be an additional 20%. After 100% credit for the given month is reached, credits shall continue to accumulate and shall be applied as described below. In the event the University experiences unscheduled downtime which exceeds four (4) hours in any given month, or in the event the University experiences more than four (4) separate incidents of unscheduled downtime exceeding one (1) hour in any six (6) month period, or any single incident in excess of four (4) hours, this will be considered a substantial breach for which the University may terminate this agreement as provided herein.

B26.10 Credit and Payment Procedures: Credits will be applied to the billing cycle immediately following the billing period in which the outage occurred. If a credit is due in the final month Services are provided, then the credit will be applied against the fees due in the last month of this Agreement and excess refunded to the University. Vendor will be responsible for the timely application of credits to invoices for Hosting Services, and in no event will the University forfeit credits under this section due to a failure to formally request them or to pay any invoice where credits have not been properly applied. In the event the total solution is provided on an annual or semi-annual fixed-fee basis, or any other arrangement where the fees are calculated other than by month, the total contracted fee shall be divided evenly by the number of months of service covered by the contracted fee, and the credit shall be calculated and applied as if the per-month cost were in fact this fraction of the contracted amount.

B27 SUPPORT SERVICES

In the event any portion of the Services are hosted by the Vendor or where the University has purchased support services for locally hosted software, Vendor will provide standard and emergency response services. Unless otherwise arranged and agreed by the University, non-emergency support will be provided from 8:00 AM Eastern time to 5:00 PM Eastern Time, excluding federal holidays and shall include a one-

hour response time of a consultant or consultants who will stay with the problem until resolution. Unless otherwise arranged and agreed by the University, Vendor will provide emergency support services 24 x 7 x 365. Vendor's emergency organizational response and triage measures shall include, at minimum, immediately convening (with one hour) an Incident Response Team which includes appropriate senior-level engineers and technical experts and continuing, on a 24 x 7 basis, to restore the University's Services promptly and in a manner resulting in the least possible disruption.

B28 INTEGRATION SUPPORT AND MAINTENANCE

In the event any portion of the Services are hosted by the Vendor, the parties agree that from time-to-time certain operational updates may be required, such as, but not limited to, changes to Domain Name Systems (DNS), Single Sign-On Systems (SSO), file transfers, API integrations, or other infrastructure changes. These required updates may arise from Vendor or University infrastructure changes or operational requirements. Unless additional hardware, software, or extensive services are needed (more than three [3] hours of documented work), the parties agree to arrange a mutually convenient time for such changes so as to minimize operational disruption. Provided such changes are pre-arranged, performed at agreed-upon mutually acceptable times, and otherwise conform to the requirements of this section, the University will not treat planned downtime associated with these changes as an "outage" under the SLA and the Vendor shall not levy any charges against the University for such changes.

B29 DISPUTES

There shall be no limitation on the University's options in event of dispute including, without limitation, a demand for jury trial, binding arbitration, or any other legal or equitable remedy.

B30 NON-INTERRUPTION OF SERVICES

Should any disputes arise with respect to this Agreement, Vendor and the University agree to act immediately to resolve such disputes. The Vendor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Agreement not affected by the dispute. For example, a bona fide dispute concerning payments or resolution of invoices will not result in a work stoppage. Should Vendor fail to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the University or the Vendor as a result of such failure to proceed shall be borne by the Vendor and Vendor shall make no claim against the University for such costs, provided that University notifies Vendor in writing of such failure and provides thirty (30) days from receipt of such notice to cure such failure.

B31 MERGER AND MODIFICATION

This Agreement constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Agreement will be valid provisions of this Agreement. This Agreement may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary parties.

B32 AUTHORITY TO BIND VENDOR

The signatory for the Vendor represents that he/she has been duly authorized to execute this Agreement on behalf of the Vendor and has obtained all necessary or applicable approvals to make this Agreement fully binding upon the Vendor when his/her signature is affixed, and certifies that this Agreement is not subject to further acceptance by the Vendor.

B33 SURVIVAL

Any provisions of this Agreement creating payment obligations shall survive the expiration or termination of this Agreement, regardless of the reason for such termination.

B34 COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same agreement. Any facsimile or photocopy of a signature to this Agreement shall be deemed an original signature to this Agreement.