



Cloud Software Appendix

In addition to the terms in the ISPA, the following terms will apply if the Services provided under this Agreement are provided to University as Cloud Software.

1. **Vendor Obligations.** In addition to any other obligations of Vendor, Vendor must:
 - a) Provide the Services on a continuous basis and warrants that the Services will be fully available 99.9% of each month, except for scheduled maintenance for which written notice has been provided to University at least thirty (30) calendar days in advance.
 - b) Provide unlimited telephone support twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year (“24/7/365”);
 - c) Provide online access to technical support bulletins and other user support information and forums 24/7/365;
 - d) Conduct quarterly support updates and reviews involving technical teams from both Parties to discuss Cloud Software support issues;
 - e) Provide semi-annual support usage, incident reports and Vendor’s compliance with any service levels identified in a service level agreement
 - f) Respond with support to Priority One Issues (as defined below) within one hour of University’s call for assistance to Vendor and initiate work on such issues within one (1) hour thereafter, regardless of time of day or day of week. Priority One Issues include issues involving substantial failure of the Cloud Software, which, in University’s sole judgment, are critical to its operations. Vendor will initiate work on all other support issues, within four (4) hours from receipt of an electronic or telephonic service request.
 - g) In the event two or more Priority One Issues occur in any thirty (30) day period during the term of the Agreement, Vendor will promptly investigate the root causes of such support issues and will provide to University an analysis of such root causes and a proposed corrective action plan for University’s review, comment and approval (the “Corrective Action Plan”). The Corrective Action Plan must include, at a minimum: (i) a commitment by Vendor to University to devote the appropriate time, skilled personnel, systems support and equipment, and/or resources to remedy, and prevent any further occurrences of Priority One Issues; (ii) a strategy for developing any programming/software updates, fixes, patches, etc. necessary to remedy, and prevent any further occurrences of such issues; and (iii) time frames for implementation of the Corrective Action Plan. There will be no additional charge (other than those fees set forth in this Agreement) for Vendor’s implementation of such Corrective Action Plan in the time frames and manner set forth in the Corrective Action Plan.

2. **Scheduled Maintenance of Cloud Software.** Scheduled maintenance, updates, enhancements or modifications relative to the Services and/or other elements or components of the Services will be in accordance with Vendor’s maintenance schedule and will not in any way diminish the benefits, comprehensiveness, features or functionality of the Services, as defined under the Agreement. Vendor may, however, push updates and fixes at any time to University that Vendor determines will not affect a University ability to access the Services. Unless otherwise agreed in writing, non-peak hours are from Friday night at 11:00 p.m. PST through Saturday morning at 8:00 a.m. PST, and Saturday night at 11:00 p.m. PST through Sunday morning at 8:00 a.m. PST.

3. **Unscheduled Maintenance of Cloud Software.** If the Services provided under this Agreement are provided to University as Cloud Software, Vendor will provide University with at least seventy-two (72) hours prior notice of Vendor’s implementation of all unscheduled maintenance, updates, enhancements, modifications and/or other circumstances which will result in an outage or an inability of Vendor to access the Services. In



the event emergency maintenance of the Services is required, Vendor will provide University with as much advance notice as possible of the impending emergency maintenance and will disclose to University, in writing, the cause or issue necessitating the emergency maintenance as soon as possible and no later than seventy-two (72) hours after the initiation of the emergency maintenance.

4. **Critical Services Not to be Abandoned.** Vendor acknowledges that the Cloud Software provided under this Agreement are critical services for University. Accordingly, notwithstanding any other provisions under the Agreement to the contrary, the Parties agree that Vendor may not “**Abandon**” such critical Services. For purposes of an Agreement, “Abandon” means Vendor’s actual, willful non-performance of any material aspect of the Services in breach of the Agreement which results in a material adverse effect on (i) critical aspects of University’s internal operations, regulatory or other reporting requirements; or (ii) a Service that is provided to or in support of University’s students and faculty. Abandonment will not be deemed to have occurred if non-performance is caused by circumstances outside of Vendor’s control or if a Service is properly terminated in accordance with Vendor’s rights under the Agreement. In addition, support provided under this Agreement will not be withheld due to any unrelated dispute arising under this Agreement, another agreement between the Parties, or any other unrelated dispute between the Parties.
5. **Public Cloud.** Vendor will not create a public cloud account on behalf of University without prior written approval by University’s IT Security team.
6. **Cloud Management.** Vendor is responsible for continuous vulnerability management of hardware and software, including, without limitation, scanning and issue remediation. Vendor is responsible for all disruptions and damage caused to any University Data while it is hosted in Cloud Software.
7. **Hosting Facilities.** University may select or restrict where University Data will be stored and where University Data can be Processed, and the Vendor will store and/or Process it there in accordance with the service terms. If a data location selection is not covered by the service terms (or a data location selection is not made by University with respect to any University Data), the Vendor will default to a United States-based data location in the selection of University storage or processing facilities. Unless stated otherwise in this Agreement, this requirement does not apply to indirect or “overhead” services, redundant back-up services or services that are incidental to the performance of this Agreement. This provision applies to work performed by subcontractors at all tiers and to all University Data.