

**JESSE BACON, SUPERINTENDENT**

ADRIENNE USHER, ASSISTANT SUPERINTENDENT

BRANDY HOWARD, CHIEF ACADEMIC OFFICER

TROY WOOD, CHIEF OPERATIONS OFFICER

To: Dr. Jesse Bacon, Superintendent

From: Adrienne Usher, Assistant Superintendent  
Dr. Brandy Howard, Chief Academic Officer

Date: June 6, 2023

Re: Inkwire, Inc.

The attached agreement is to utilize the Inkwire platform which is a project-based learning tool (pbl) for teachers and students in creating more learning experiences connected with our Graduate Profile. That platform allows teachers to create inquiry-based learning through the PBL instructional framework that allows students to curate work samples in multiple formats and modes. In addition, the platform allows students to interact with our graduate profile competencies through exhibitions and defenses of learning based on the changing practices of assessment accountability at the state level. The 2500 licenses will allow us to begin teacher use, training, and start student use of the platform in creating more authentic learning experiences where students can be empowered to document their learning throughout the school year. The total cost of the agreement is \$29,250 and will be funded through student learning, BEAM, and/or Title IV funds.

Approval is requested for the agreement for Inkwire, Inc.

**OUR MISSION IS TO INSPIRE AND EQUIP OUR STUDENTS TO SUCCEED IN LIFE**

**BULLITT COUNTY PUBLIC SCHOOLS IS AN EQUAL EDUCATION AND EMPLOYMENT INSTITUTION**



INKWIRE INC  
2261 Market St #4390  
San Francisco, CA 94114

### SOFTWARE SERVICES CONTRACT


<b>Client:</b> Bullitt County Public Schools	<b>Address:</b> 1040 Highway 44 East Shepherdsville, KY 40165
<b>Contact for Notice Purposes:</b> Adrienne Usher  <b>E-Mail:</b> adrienne.usher@bullitt.kyschools.us	<b>Client Administrator:</b> Adrienne Usher  <b>E-Mail:</b> adrienne.usher@bullitt.kyschools.us
<b>Services:</b> The Services are as provided on Exhibit A, Statement of Work, attached to and made a part of this Agreement (the "Service(s)"). Additional Statements of Work as may be mutually agreed by the parties during the Term will be attached to and become a part of this Agreement. All Statements of Work must be signed by both parties to be effective.	
<b>Services Fees:</b>  \$13.00 per student for 2,500 students with a 10% "BCPS Early Adopter Discount", totalling <u>\$29,250</u> per year, payable in advance on invoice from Company on August 1, 2023, subject to the additional terms of Section 4 of the attached Agreement.	<b>Initial Service Term:</b>  One (1) year commencing: July 1, 2023
<b>Service Capacity:</b> <u>2,500 students</u> Additional Service Capacity is available. Additional Services Fees at the rate provided on Schedule A are payable as specified for additional capacity.	
<b>Implementation Services:</b> Company will use commercially reasonable efforts to provide Client with the Implementation Services described in the Statement of Work ("Implementation Services"). Client will pay Company the Implementation Fee on execution of this Agreement.  <b>Implementation Fee (one-time):</b> <u>\$ 0.00</u>	

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### SAAS SERVICES AGREEMENT

This SaaS Services Agreement ("Agreement") is entered into on this (the "Effective Date") between Inkwire Inc with a place of business at 2261 Market Street #4390, San Francisco, California 94114 ("Company"), and the Client listed above ("Client"). This Agreement includes and incorporates the attached Order Form, as well as the attached Terms and Conditions, Exhibits A and B and incorporates by reference Company privacy and site terms and conditions as further provided below. This Agreement contains, among other provisions, warranty disclaimers, liability limitations and use limitations.

There will be no force or effect to any different or additional terms of any Client purchase order, contract or similar form.

Inkwire Inc	Bullitt County Public Schools
By:	By: 
Name:	Name: Adrienne Usher
Title:	Title: Assistant Superintendent
Date:	Date: 6.6.23

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## **TERMS AND CONDITIONS**

### **1. SAAS SERVICES AND SUPPORT**

1.1 Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Client with the Services as further provided in Exhibit A, Statement of Work. As part of the registration process, Client will identify a Client Administrator name and password for Client's Company account. Company reserves the right to refuse registration of or cancel passwords it deems inappropriate, provided that Company is under no obligation to monitor any passwords or other Client Data or materials with respect to the Services.

1.2 Subject to the terms of this Agreement, and in accordance with Company standard practices, Company will provide Client with reasonable technical support services without additional charge in accordance with the terms in Exhibit B.

### **2. RESTRICTIONS AND RESPONSIBILITIES**

2.1 Company grants to Client during the Term of this Agreement, and Client accepts, the non-exclusive right and license to permit the Client Administrator(s) and Authorized Users to access, view and use Company proprietary interfaces, methodologies and Services for the intended purposes of the Services. Client will not have the right to re-license, sub-license sell rights to, or offer access or use of, the Services, or to transfer or assign rights to access or use the Services, except for permitted uses by Administrators and Authorized Users as expressly provided in this Agreement. Accordingly, Client will not generate access codes, request user ID's or passwords from the Company, or permit access to the Service by anyone other than the designated Client Administrator(s) and Authorized Users. Client will promptly inform Company of any known violation of this Agreement. Company may, in its sole discretion and without prior notice, suspend access to the Service by any Client Administrator(s), Authorized Users or unauthorized users of the Service that it determines are violating any terms of the Agreement, and terminate this Agreement as otherwise provided in this Agreement. For purposes of this Agreement, an "Authorized User" is a Client-designated and permitted user of the Services within Client's school or district, including administrators, counselors, teachers, other school or district personnel, students, and parents.

2.2 In no event will Client obtain any ownership interest in any Company intellectual property or proprietary information or methodologies by use or otherwise, and Client agrees it will not assert such an ownership interest now or in future. All rights not expressly granted to Client in this Agreement are expressly retained and reserved by and to Company. Client will not, directly or indirectly: publish or make copies of Company's proprietary text, graphics, charts and screens, create derivative works based on same (except to the extent expressly permitted by Company or authorized within the Services); use the Services other than as contemplated by this Agreement; or remove any copyright, patent, trademark, proprietary notices from any print materials generated through the Services. For purposes of this Agreement, "Services" includes attendant Company software, text, graphics, methodologies incorporated in the Services, documentation and associated materials, all of which are the sole and exclusive property of Company.

2.3 Client may not remove or export from the United States or allow the export or re-export of the Services or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are "commercial items" and according to DFAR section 252.227-7014 (a) (1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

2.4 Client represents, covenants, and warrants that Client will use the Services only in compliance with Company's standard published policies then in effect as posted on Company's site, as provided in this Agreement or as otherwise provided to Client (the "Policy"). Client agrees to indemnify and hold harmless Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) arising out of Client breach of the Policy. Company will provide Client with prompt notice of any third party claim and cooperate reasonably in the resolution of the claim. Although Company has no obligation to monitor Client's use of the Services, Company may do so and may prohibit any use of the Services it believes may be (or is alleged to be) in violation of the foregoing.

2.5 Client will be responsible for obtaining and maintaining all equipment and ancillary services needed to connect to, access or otherwise use the Services, including without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). Client will also be responsible for maintaining the security of the Equipment, Client accounts, and passwords (including but not limited to Client Administrator and Authorized User passwords) and files. Client is responsible for all uses of the Client account or the Equipment with or without Client's knowledge or consent.

2.5 Only the designated Client Administrator has the ability to permit access to Client data and contact the Company to initiate Authorized User ID's. Company is permitted to assign Service system passwords and ID's on request of the Client Administrator with respect to Client Authorized Users as further provided in this Agreement. The Client Administrator is responsible for approving all Authorized User access to the Services.

2.6 In no event will Company interact with a child/student directly other than to provide children/students with passwords, user ID's and standard Service instructions related to establishment of that child's/student's Service account via e-mail. Each such account must be specifically authorized, and the child's/student's e-mail address be provided to Company, by the Client Administrator in each instance. Each designated

child/student will, after establishing an account, be a Client Authorized User. Company will never use any child/student e-mail address other than for assignment/provision/retrieval of child/student Service passwords or resetting child/student Service passwords. Child/student access may be deleted from the Service by the Client Administrator at any time by following Service feature instructions.

2.7 The features provided by the Services to which administrators, teachers and other school personnel, parents and students are permitted access is at all times under the direction of and the responsibility of the Client Administrator. The Client Administrator is also in control of customized formatting and distribution (within the Service structure and features) of messages, reports, notifications and other Service features that may be viewed, modified and transmitted within the Service.

2.8 In the event Client becomes aware of a breach of its security in which child or other personal identifiable information has become available to unauthorized parties, Client will immediately notify Company. Company will cooperate reasonably with Client to contain any breach, *provided that* Client is solely responsible for its internal security systems and for compliance with all relevant laws and regulations governing its activities in respect of the Services. Without limitation of any other Client obligation under this Agreement, Client represents it is familiar with COPPA, FERPA, HIPPA and all other state and local laws and regulations governing collection and use by Client of Client Data, collection and use of personally identifiable information of children and otherwise, and restrictions on transmission of medical information about Authorized Users and others. Client is solely responsible for compliance with all such laws and regulations, and will indemnify and hold harmless Company from and against any loss or damage to which Company may become subject as a result of any Client breach of such laws and regulations. Company will provide Client with prompt notice of any such claim and cooperate reasonably in the resolution of the claim.

### 3. CONFIDENTIALITY; PROPRIETARY RIGHTS

3.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features, functionality and performance of the Service, including proprietary screens and reporting design. Proprietary Information of Client includes non-public data provided by Client to Company to enable the provision of the Services ("Client Data"). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing will not apply to any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary

Information of the Disclosing Party or (e) is required to be disclosed by law.

3.2 Client will own all rights, title and interest in and to the Client Data. Company will own and retain all right, title and interest in and to (a) the Services and attendant methodologies, text, graphics, software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Services and support, and (c) all intellectual property rights related to any of the foregoing.

3.3 Notwithstanding anything to the contrary in the Agreement, Company will have the right collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Client Data and data derived therefrom), and Company will be free (during and after the Term) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business, *provided that* no personally identifiable information is used for any purpose other than fulfillment of Company obligations to Client under this Agreement. In no event will Company sell or otherwise disseminate personally identifiable information for Company marketing purposes, or permit third party advertising on the Service. No rights or licenses are granted except as expressly set forth in this Agreement.

### 4. PAYMENT OF FEES

4.1 Client will pay Company the Fees provided in the Order Form and any Statement of Work (the "Fees"). If Client's use of the Services exceeds the Service Capacity on the Order Form or otherwise requires the payment of additional Fees (per the terms of this Agreement), Client will be invoiced for such usage and Client agrees to pay the additional Fees in the manner provided in this Agreement. Invoices for additional Services will be submitted monthly and are due net 30 unless otherwise specified. If Client believes that Company has billed Client incorrectly, Client must contact Company no later than 60 days after the closing date on the first invoice in which the error or problem appeared in order to receive an adjustment or credit. Inquiries should be directed to Company's customer support department.

4.2 Company will invoice Client for Services as provided on the Order Form via e-mail for payment in advance of provision of the Services.

4.3 Service Fees are final and non-refundable.

4.4 Unpaid amounts due are subject to a late fee of 1.5% per month on any outstanding balance from the date due until paid in full. Client is responsible for all costs of collection, including reasonable attorneys' fees, collection fees and costs. Notwithstanding any other provision of this Agreement, in the event payment is not received within thirty (30) days of invoice therefore, Company may suspend or terminate the Service without prior notice and without liability therefor. Client will be

responsible for all taxes associated with Services other than U.S. taxes based on Company's net income.

## **5. TERM AND TERMINATION**

5.1 Subject to earlier termination as provided below, this Agreement is for the Service Term as specified in the Order Form (the "Term"). Provided Client is not then in breach of this Agreement, Client will be given the opportunity to renew this Agreement at Company's then-current Fees.

5.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement and such breach remains uncured during the thirty day period. Client will pay in full for the Services up to and including the last day on which the Services are provided. In the event of termination by Company for breach, Client is liable for Service Fees to the end of the Term and for any accrued but unpaid additional Fees.

5.3 Upon any termination other than for Client breach (including non-payment), Company will make all Client Data available to Client for electronic retrieval for a period of thirty (30) days following termination. Thereafter, Company may, but is not obligated to, delete stored Client Data and retain same only for archival purposes and general internal Company purposes as otherwise permitted in this Agreement, provided that in no event will Company use any personal identifiable information in Client Data for any purpose other than fulfillment of Company obligations under this Agreement.

5.4 All sections of this Agreement which by their nature should survive termination will survive termination, including without limitation, accrued rights to payment, Company's intellectual property rights, confidentiality obligations, warranty disclaimers, and limitations of liability.

## **6. WARRANTY AND DISCLAIMER**

Company will use reasonable efforts consistent with prevailing industry standards to maintain the Services (as available) in a manner which minimizes errors and interruptions in the Services and will perform the Services in a workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company will use reasonable efforts to provide advance notice in writing or by e-mail of any Company scheduled Service disruption.

**COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, ALL SERVICES ARE PROVIDED "AS IS," "WHERE-IS" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON INFRINGEMENT. CLIENT AGREES THAT COMPANY**

**WOULD NOT HAVE ENTERED INTO THIS AGREEMENT BUT FOR THESE WARRANTY EXCLUSIONS AND THE LIMITATIONS OF LIABILITY AS FURTHER PROVIDED IN THIS AGREEMENT IN SECTION 8, AND CLIENT EXPRESSLY ACCEPTS THESE EXCLUSIONS AND LIMITATIONS AND AGREES THEY ARE FAIR AND REASONABLE.**

## **7. INDEMNITY**

Company will hold Client harmless from liability to third parties resulting from infringement by the Service of any United States patent or any copyright or misappropriation of any trade secret, provided Company is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement. Company will not be responsible for any settlement it does not approve in writing prior to settlement. The foregoing obligations do not apply with respect to portions or components of the Service (i) not supplied by Company, (ii) made in whole or in part in accordance with Client specifications, (iii) that are modified after delivery by Company, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Client continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Client's use of the Service is not strictly in accordance with this Agreement. If, due to a claim of infringement the Services are held by a court of competent jurisdiction to be, or are believed by Company, to be infringing, Company may, at its option and expense (a) replace or modify the Service to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Client a license to continue using the Service, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Client's rights hereunder and provide Client a refund of any prepaid, unused fees for the Service.

## **8. LIMITATION OF LIABILITY**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EXCEPT FOR BODILY INJURY OF A PERSON, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), WILL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR THE TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLIENT CLAIMS, EXCEED THE FEES PAID BY CLIENT TO COMPANY FOR THE SERVICES**

**UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. "COMPANY" INCLUDES ITS OFFICERS, DIRECTORS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES.**

#### **9. MISCELLANEOUS.**

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Client except with Company's prior written consent in each instance, which consent is in Company's discretion. This Agreement is binding on Company, its successors and assigns and Client and its permitted successors and assigns.

This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement. All waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein.

No agency, partnership, joint venture, or employment is created as a result of this Agreement and neither party does not have any authority of any kind to bind the other party in any respect whatsoever.

All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally

delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

This Agreement will be governed by, and construed and enforced in accordance with, the substantive laws of the State of California, without regard to its principles of conflicts of laws.

Client agrees that Company may include Client's name and logo as a Company customer in Company promotional materials.

Each party represents to the other that it is authorized to enter into this Agreement and that the obligations of this Agreement are enforceable in accordance with their terms. The privacy policy and terms and conditions of the Company site are incorporated in this Agreement by reference. In the event of any conflict between the privacy policy in this Agreement and site terms and conditions, this Agreement will control.

Client agrees that Company intellectual property and confidentiality rights are special and unique, and that breach by Client of such rights will result in Company damages inadequately compensated by monetary damages alone. Therefore, in addition to any other remedies available at law or equity, Company will have the right to injunctive relief to prevent a breach or threatened breach of such rights without posting a bond or further proof of irreparable harm. In the event the Company is required to enforce such rights, it will be entitled to an award of attorneys' fees and costs.

All terms in any Client purchase order or other document not signed by Company are expressly rejected.

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**EXHIBIT A**  
**Statement of Work**

*Services:*

Implementation Services: The Implementation Fee includes the following initial services:

- Rostering of Inkwire instances for Bullitt County Public Schools
- Student/Teacher/Parent Access:
  - If and when permitted by the Client Administrator, the Client Administrator will provide Inkwire with a student's or parent's e-mail address solely for the purpose of creating accounts or resetting accounts within the Services.
  - Once registered, teachers, school personnel, parents and students will have access to such messages, chat rooms, private teacher to student/parent communications, reports and notifications as then currently available as features of the Services.
- Each then-available Service feature may be configured by the school under the direction of the Client Administrator to suit the preferences of the Client.

Services:

- Access to and maintenance of Client's Inkwire instance
- Unlimited phone/webinar training for administrators
- Ongoing support via e-mail

Schedule A:

Additional Fees for additional Service Capacity as agreed between the parties in a subsequent signed Statement of Work as may be requested by Client from time to time during the Term will be:

# of Total Student Licenses	Cost
0 - 5,000	\$13/student/year
5,001 - 10,000	\$10/student/year
10,001+	\$7/student/year

(1 staff license included with every 4 student licenses)



## **EXHIBIT B**

### **Service Support**

For purposes of this Agreement, "downtime" means the inability of Client to access the Services.

Company will use reasonable commercial efforts to provide the Services 24/7, with the exception of scheduled downtime for maintenance. Any downtime resulting from third party emergencies, outages or otherwise due to third party connections or utilities, and Client's actions, changes to Company software, add-ons, internet connections, browsers or devices or any other reason beyond Company's control are excluded from any downtime calculation. Client's sole and exclusive remedy, and Company's entire liability, in connection with Service availability will be that for each period of downtime lasting longer than one hour M-F, 8am-6pm PST, Company will make resolution of Client's downtime a Priority 1 service issue, meaning resolution of Client's downtime issues will receive the full attention of Company service personnel without additional charge during and after normal business hours until downtime is resolved, including provision of interim work-arounds.

Client is obligated to inform Company of any periods of downtime, and any maintenance or other issues with the Services, request support via e-mail.

Issues with errors and bugs that do not result in downtime will be remedied by the Company without additional charge in a timely manner given the nature of the issues after notice of same to Company. Errors, bugs and other maintenance issues are not downtime. If a repair is part of a scheduled update, it will be included in the next software update.

Company will provide Technical Support to Client via both telephone and electronic mail on weekdays during the hours of 9:00 am through 5:00 pm Pacific time, with the exclusion of Federal Holidays ("Support Hours") (provided only that downtime lasting more than one hour M-F 8am-6pm PST will be addressed as above).

Client may initiate a support request during Support Hours by calling Company's support phone number, available on Company's web site, or any time by e-mailing: [support@inkwire.co](mailto:support@inkwire.co)

Company will respond to all support requests in accordance with standard, commercially reasonable Company practices.