

**CONTRACT NAME: AGREEMENT BETWEEN  
INSTRUCTURE, INC. AND DAVIS JOINT UNIFIED SCHOOL  
DISTRICT**

**BRIEF DESCRIPTION OF CONTRACT:** This is an agreement between Instructure, Inc. and DJUSD to provide a product known as Canvas which will be used by the Yolo-Solano Center for Teacher Credentialing to manage data, course content, grading, communication, collaboration and assessment for the intern program.

This is a three-year agreement with an initial setup cost of \$4,000 and a three-year subscription cost of \$7,755. The service will be paid by the budget for Yolo-Solano Center for Teacher Credentialing, Intern Program.

# INSTRUCTURE

6330 South 3000 East, Suite 700, Salt Lake City, UT 84121, United States

## Services Order Form

Order #: Q-32439-4

Date: 4/29/2017

### Customer Information

Customer:	Davis Joint Unified School District	Billing Contact:
Contact:	Julianna Sikes	Billing Phone:
Phone:	(530) 757-5300 ext 137	Billing Email:
Email:	jsikes@djusd.net	
Address:	526 B St.	
City:	Davis	P.O. Required?
State/Province:	California	P.O. Number:
Zip/Postal Code:	95616	
Country:	United States	State Sales Tax Exempt?

#### Recurring

Description	Metric	Category	Start Date	End Date	Qty	Price	Ext. Price
Canvas Cloud Subscription	User	Cloud SaaS Subscription	7/1/2017	6/30/2018	300	USD 5.00	USD 1,500
24x7 Tier 1 Support (Faculty Only)	30% of Subscription (Min \$3500)	Support	7/1/2017	6/30/2018	1	USD 3,255.00	USD 3,255
Year 1 Sub-Total							USD 4,755
Canvas Cloud Subscription	User	Cloud SaaS Subscription	7/1/2018	6/30/2019	300	USD 5.00	USD 1,500
Year 2 Sub-Total							USD 1,500
Canvas Cloud Subscription	User	Cloud SaaS Subscription	7/1/2019	6/30/2020	300	USD 5.00	USD 1,500
Year 3 Sub-Total							USD 1,500
Total							USD 7,755

#### Non-Recurring

Description	Metric	Category	Start Date	End Date	Qty	Price	Ext. Price
Standard Implementation	Per Implementation	Implementation			1	USD 3,500.10	USD 3,500
Tier 1 Support Setup	One Time Fee	Support			1	USD 500.00	USD 500
Year 1 Sub-Total							USD 4,000
Total							USD 4,000

Grand Total:	USD 11,756.00
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Canvas
Deliverables
<p>Access to unlimited instructor-led online training for up to 20 named users from Effective Date until the earlier of 12 months after subscription start date or the last date of the contracted subscription</p> <p>As needed, your implementation will include the following:</p> <p>Expertise and best practices on any SIS import and automation work with Canvas. This includes access to API documentation and consulting with client resources on the client initiated strategy.</p> <p>Assistance in configuring and testing authentication integration for currently supported technologies including LDAP, SAML, and CAS. Instructure will take a consultant role on the effort and guide client resources to complete the integration.</p> <p>Through the Theme Editor, branding for Canvas including application of a color scheme and logos for the top navigation and login page.</p> <p>Access to guides, public courses, and best practices documentation.</p> <p>Documented best practices for driving high Canvas adoption and usage.</p>

Canvas User
Description
Canvas K-12 subscription based on number of full-time or part-time users (students, teachers, administrators) per year.

<p><b>Duration:</b> Instructure will commence the provision of support, subscription training and cloud subscription services on the date that is the later of: (i) ninety days prior to the Start Date; and (ii) the date of the last signature on this Order Form ("Effective Date"). This order begins on the initial date listed above under Term, and continues until the last date listed above, unless sooner terminated under the Agreement. If Customer has purchased any third-party content under this order form, that content will be made available on the start date listed above.</p> <p><b>Miscellaneous:</b> In connection with certain services, Instructure shall provide Customer access to its application-programming interface ("API") for no additional fee. Usage and access to the API will be subject to the Instructure API Policy, as may be updated by Instructure from time to time.</p> <p>Instructure's support terms can be found at:  Canvas &amp; Catalog: <a href="http://www.canvaslms.com/policies/support-terms">http://www.canvaslms.com/policies/support-terms</a>  Bridge: <a href="https://www.getbridge.com/support-terms">https://www.getbridge.com/support-terms</a></p> <p>The price associated with the order form is only available if executed no later than <b>6/30/2017</b></p>
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Notes
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**Payment Terms:** Customer agrees to pay to Instructure the applicable fees set forth on this order form. For any Year 1 recurring costs, training and implementation fees, Customer must pay such amount to Instructure Net 30 on the date of this order. For each subsequent term, Instructure will invoice Customer 30 days prior to the beginning of such term and Customer must pay such invoice within 30 days of receipt. Trainings will expire at 12 months from the later of the contract start date or the subscription start date, specific to this order form, unless otherwise specified by other start and end dates in the order above. All other contract items subject to expiration will be billed 30 days prior to expiration and due subject to standard payment terms unless otherwise explicitly stated elsewhere in this agreement.

By executing this order form below, each party indicates that it agrees to be legally bound by this order form, including the attached terms and conditions or terms and conditions of the Customer's initial order form which govern this order form.

**Davis Joint Unified School District**

Signature:	
Name:	
Title:	
Date:	

**Instructure, Inc.**

Signature:	
Name:	
Title:	
Date:	

**DAVIS JOINT UNIFIED SCHOOL DISTRICT**  
**AMENDMENT TO CLOUD- BASED SOFTWARE AGREEMENT INVOLVING**  
**PUPIL RECORDS**  
**EDUCATION CODE SECTION 49073.1 AMENDMENT TO THE CANVAS**  
**AGREEMENT BETWEEN THE DAVIS JOINT UNIFIED SCHOOL DISTRICT AND**  
**CANVAS.**

**THIS AMENDMENT** (“Amendment”) to the **Instructure Standard Terms and Conditions** by and between the Davis Joint Unified School District (“District”), a public school district of the state of California and **Instructure, Inc.**, a Delaware corporation (“Vendor”) (“Agreement”) (a true and correct copy of which is attached hereto as Exhibit “A” and is hereby made and entered into as of May 5, 2017 as follows:

**WHEREAS**, Vendor provides a full learning management platform with tools to manage content, design lessons and assess student learning.

**WHEREAS**, as a California public school district, the District is subject to the California Education Code;

**WHEREAS**, Vendor is a “third party” under Education Code section 49073.1, which defines “third party” as a provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records;

**WHEREAS**, Education Code section 49073.1 requests that any contract for the provision of services entered into between District and Vendor contain certain provisions specified in sections (b)(1) through (b)(9) of Education Code section 49073.1; and

**WHEREAS**, The District and Vendor desire to amend the terms in their Agreement that will satisfy the requirements of Education Code section 49073.1.

**NOW, THEREFORE, DISTRICT AND VENDOR AGREE TO THE FOLLOWING TERMS IN COMPLIANCE WITH EDUCATION CODE SECTION 49073.1.**

**1. Ownership and Control of Pupil Records.** Pupil Records shall continue to be the property of and under the control of the District in accordance with California Education Code section 49073.1. For purposes of this contract, “Pupil Records” means both any information directly related to a pupil that is maintained by the District and information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other District employee. For purposes of this Agreement, “Deidentified Information” means information that cannot be used to identify an individual pupil. For purposes of this Agreement, “Pupil Records” does not include Deidentified Information, including aggregated Deidentified Information, used by Vendor to improve educational products for adaptive learning purposes and for customizing pupil learning; to demonstrate the effectiveness of Vendor's products in the marketing of those products; or for the development and improvement of educational sites, services, or applications.

**2. Ownership and Control of Pupil-Generated Content.** Pupils may retain possession and control of their own Pupil-Generated Content, as defined herein, or may transfer Pupil-Generated

Content to a personal account by notifying the District's Director of Technology in writing of such request. The District will provide a written request to Vendor and Vendor shall make available the Pupil-Generated Content via Vendor Application-Programming Interface ("API"). For purposes of this contract, "Pupil Generated Content" includes essays, research reports, portfolios, creative writing, music or other audio files, photographs, but does not include pupil responses to a standardized assessment where pupil possession and control would jeopardize the validity and reliability of that assessment.

3. **Use of Pupil Records.** Vendor shall not use any information in the Pupil Records for any purpose other than to provide or improve the services it is providing under the Agreement, including those required or specifically permitted by this Agreement.

4. **Review of Pupil Records.** A parent, legal guardian, or pupil who has reached the age of eighteen (18) may review personally identifiable information in the pupil's records and correct erroneous information by notifying the District's Director of Technology in writing of such request. The District will meet with parent, legal guardian, or pupil who has reached the age of eighteen (18) to review and correct any information in the Pupil's Records. Vendor shall provide the District with the ability to correct such errors.

5. **Security and Confidentiality of Pupil Records.** Vendor agrees to hold Pupil Records in accordance with the confidentiality provisions of the Agreement. Vendor shall not use or disclose Pupil Records received from or on behalf of District except as permitted or required by this Agreement, as required by law, or as otherwise authorized in writing by District. Vendor agrees that it will protect the Pupil Records it receives from or on behalf of District according to commercially acceptable standards and no less rigorously than it protects its own confidential information. Vendor will designate and train responsible individuals, to ensure the security and confidentiality of Pupil Records. Vendor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted Pupil Records received from or on behalf of District, as set forth in this contract. These measures shall be extended by contract to all subcontractors used by Vendor.

6. **Breach Notification Process.** Vendor, within two (2) business days of discovery of a confirmed breach, shall report to District any use or disclosure of Pupil Records not authorized by the Agreement or otherwise authorized in writing by the District. To the extent practicable, Vendor's report shall identify: (i) the nature of the unauthorized use or disclosure; (ii) the Pupil Records used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Vendor has done or shall do to mitigate any effect of the unauthorized use or disclosure, and (v) what corrective action Vendor has taken or shall take to prevent future similar unauthorized use or disclosure. Vendor shall provide such other information, including a written report, as reasonably requested by District. In the event of an unauthorized disclosure of a Pupil's Records, affected parents, legal guardians, or pupils who have reached the age of eighteen (18) will be notified in writing and provided with details and next steps to address the specific breach. Compliance with these requirements shall not, in itself, absolve Vendor of liability in the event of an unauthorized disclosure of Pupil Records.

7. **Retention and Destruction of Pupil Records.** Except as described in the Agreement, Vendor certifies that a pupil's records shall not be retained or available to Vendor upon completion of the term of the contract. Following termination of the contract, Pupil Records in the possession of Vendor shall be returned and/or Securely Deleted. Vendor shall reasonably comply with any litigation hold or order to preserve Pupil Records. "Securely Delete" means industry standard methods are taken

to ensure no unauthorized person is able to reasonably locate or extract Pupil Records after the deletion date.

**8. Compliance with Applicable Laws.** The District and Vendor will both comply with the federal Family Educational Rights and Privacy Act ("FERPA") (20 U.S.C. Sec. 1232g) through following the confidentiality provisions as set forth in this contract. The parties acknowledge and agree that the District is subject to federal and local laws relating to the protection of personally identifiable information ("PII") of students, including FERPA, and that Vendor is obtaining such PII as a "school official" under section 99.31 of FERPA for the purpose of providing the services hereunder. In addition to FERPA, Vendor shall comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to Vendor; the services being provided by Vendor; Vendor's business, equipment and personnel engaged in operations covered by this contract; and the protection of Pupil Records and PII, including but not limited to Education Code section 49060 *et seq.*, the Children's Online Privacy Protection Act (COPPA) and the Student Online Personal Information Protection Act (SOPIPA). Vendor certifies that it is familiar with these laws, as well as any other applicable requirements for the storage and transmission of Pupil Records and Vendor will comply with all such requirements.

**9. Prohibition on Targeted Advertising.** Vendor shall not use PII in Pupil Records to engage in targeted advertising.

**10. Governing Law and Venue.** The Agreement and this Amendment shall be governed by and construed in accordance with the laws of the State of California. Any dispute, claims, demands or actions arising out of or in relation to the Agreement and this Amendment shall be brought in and resolved by the Superior Court of the County of Yolo.

**11. Effect of Amendment.** If any provisions of this Amendment to the Agreement conflict or are otherwise contrary to the original terms of the Agreement, the terms of this Amendment prevail.

Except as specifically modified herein, all other terms and conditions contained in the Agreement between the District and Vendor shall remain unchanged and in full force and effect.

Dated this 5 Day of May, 2017.

**Davis Joint Unified School District**

**Instructure, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

## Exhibit A



## Instructure Standard Terms and Conditions

This document outlines the standard contractual terms and conditions that apply to the provision of any products or services by Instructure, Inc. ("**Instructure**") to the entity identified in the Order Form ("**Customer**"). An "**Order Form**" means any order for the provision of products or services signed by Customer. These terms are incorporated into the Order Form and together, the Order Form and these Terms are the "**Agreement**." Instructure and Customer may be referred to herein each as a "**party**" and together as the "**parties**."

**1. Services.** Subject to the terms of this Agreement, Instructure will provide the Service specified in the Order Form. "**Service(s)**" means the proprietary software as a service offering(s) provided by Instructure and made available through a URL in a hosted environment, together with any other related products and services to be provided by Instructure as described in the Order Form. "**User**" means an individual who is authorized by the Customer to use the Service and Customer has paid for such use.

**2. Customer Restrictions and Responsibilities.** Customer is solely responsible for Customer Content and use of the Service by Users. Prior to allowing any User access to the Service, Customer will ensure that such User agrees to be bound by the terms and conditions of Customer's standard network usage agreement, and Customer agrees to reasonably enforce such terms and conditions against such User. Customer further agrees to: (a) maintain the confidentiality and security of passwords, (b) obtain from Users any consents necessary under this Agreement or to allow Instructure to provide the Services, and (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Service, and (d) notify Instructure promptly of any such unauthorized access or use of which it learns. Customer shall not (and shall not permit Users to): (i) sell, rent, lease, lend, sublicense, distribute, or otherwise transfer or provide access to the Service or the Application Program Interface ("**API**") to any person, firm, or entity except as expressly authorized herein, access the Service to build a competitive service or product, or copy any feature, function or graphic for competitive purposes; (ii) modify, adapt, alter or create derivative works from the Service or the API or to merge the Service or any subpart thereof (including proprietary markings) with other services or software, or (iii) remove or modify any proprietary markings or restrictive legends in the Service.

**3. Instructure Responsibilities.** Instructure shall: (a) deploy all updates and upgrades to the Service to Customer that Instructure provides to its customers generally for no additional charge; and (b) provide Support ("**Support**") pursuant to the then-current standard terms of Instructure's customer support as specified in the Order Form.

**4. Fees.** As consideration for the subscription to the Service, Customer shall pay all fees ("**Fees**") set forth in the Order Form. All Fees will be due from Customer within thirty (30) days after receipt of invoice, unless otherwise agreed to in the Order Form. All Fees owed by Customer are exclusive of, and Customer shall pay, all sales, use, VAT, excise, withholding, and other taxes that may be levied in connection with this Agreement. Except as expressly set forth in this Agreement, all Fees are non-refundable.

**5. Service Standard.** Instructure will use commercially reasonable efforts to make the Service available with an Annual Uptime Percentage of at least 99.9% ("**Service Commitment**"). In the event Instructure does not meet the Service Commitment, Customer will be eligible to receive a service credit as described below. The maximum amount of the credit is 1/12 of the annual subscription fee for a twelve (12) month period. The service credit is calculated by taking the number of hours the Service was unavailable below the Service Commitment, and multiplying it by 3% of 1/12 the annual subscription fee. If the Customer has been using the Service for less than 365 days, the preceding 365 days will be used, but any days prior to Customer's use of the Service will be deemed to have had 100% availability. Any unavailability occurring prior to a credit cannot be used for any future claims. The Service Commitment does not apply to any scheduled outages, standard maintenance windows, force majeure, and outages that result from any technology issue originating from Customer or a User. Customer's sole and exclusive remedy for breach of the warranty in this Section 6 will be for Instructure to provide a credit as provided in this Section 6; provided that Customer notifies Instructure in writing of such claim within the applicable month Customer becomes eligible or 30 days after.

**6. Representations and Warranties.** Instructure warrants that: (a) the functionality or features of the Service and Support may change but will not materially degrade during the Term, and (b) the Service will materially conform to its then current documentation. As Customer's exclusive remedy and Instructure's sole liability for breach of the warranties set forth in this Section 6, (a) Instructure shall correct the non-conforming Service at no additional charge to Customer, or (b) in the event Instructure is unable to correct such deficiencies after good-faith efforts, Instructure shall refund Customer amounts paid that are attributable to the defective Service from the date Instructure received such notice. To receive warranty remedies, Customer must promptly report deficiencies in writing to Instructure, but no later than thirty (30) days after the deficiency is identified by Customer. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6, INSTRUCTURE AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, INSTRUCTURE DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR BE ERROR-FREE.

**7. Compliance.** Each party will comply with all applicable laws and regulations (including all applicable export control laws and restrictions) with respect to its activities under this Agreement. Instructure will implement reasonable administrative, technical, and physical safeguards in an effort to secure its facilities and systems from unauthorized access and to secure the Customer Content.

**8. Data.** As between Instructure and Customer, any and all information, data, results, plans, sketches, text, files, links, images, photos, videos, audio files, notes or other materials uploaded by a User through the Service remain the sole property of Customer ("**Customer Content**"). Instructure may use the Customer Content solely to provide and improve the Services in accordance with this Agreement or Customer's instructions. As between the parties, Instructure owns the aggregated and statistical data derived from the operation of the Service, including, without limitation, the number of records in the Service, the number and types of transactions, configurations, survey responses, and reports processed in the Service, and the performance results for the Service (the "**Aggregated Data**"). Nothing herein shall be construed as prohibiting Instructure from utilizing the Aggregated Data, provided that Instructure's use of Aggregated Data will not reveal the identity, whether directly or indirectly, of any User or Customer.

**9. Limitation of Liability.** EACH PARTY AND ITS SUPPLIERS SHALL NOT BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE USE OR INABILITY TO USE THE SERVICES (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY, LOSS OF DATA, RECORDS OR INFORMATION, AND ANY FAILURE OF DELIVERY OF THE SERVICE), EVEN IF THE OTHER PARTY HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES. EXCEPT FOR A PARTY'S INDEMNITY OBLIGATIONS IN SECTION 15, EACH PARTY'S CUMULATIVE MAXIMUM LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) SHALL NOT EXCEED THE AMOUNT PAID BY CUSTOMER UNDER THIS AGREEMENT WITHIN THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO LIABILITY. CUSTOMER ACKNOWLEDGES THAT INSTRUCTURE IS NOT RESPONSIBLE FOR THIRD-PARTY SERVICES OR CONTENT MADE AVAILABLE THROUGH THE SERVICE.

**10. Confidentiality.** Each party acknowledges that the other party may disclose its Confidential Information to the other in the performance of this Agreement. Accordingly, each party shall: (a) keep the Confidential Information disclosed by the other party confidential, (b) use Confidential Information only for purposes of fulfilling its obligations and exercising its rights hereunder, and (c) disclose such Confidential Information only to the receiving party's employees who have a need to know and only for the purposes of fulfilling this Agreement, or (e) to the extent required by law. As used herein, "**Confidential Information**" means information in the possession or under the control of a party of a proprietary nature relating to the technical, marketing, product and/or business affairs or proprietary and trade secret information of that party in oral, graphic, written, electronic or machine readable form. Confidential Information shall not include information that: (a) the receiving party possesses prior to acquiring it from the other, (b) becomes available to the public or trade through no violation by the receiving party of this paragraph, (c) is given to the receiving party by a third party not under a confidentiality obligation to the disclosing party, (d) is developed by the receiving party independently of and without reliance on confidential or proprietary information provided by the disclosing party.

**11. Proprietary Rights.** As between Customer and Instructure, the Instructure Intellectual Property is, and shall at all times remain, the sole and exclusive property of Instructure. Customer shall have no right to use, copy, distribute or create derivative works of the Instructure Intellectual Property except as expressly provided herein. Instructure shall have the right, in its sole discretion, to modify the Instructure Intellectual Property. **"Instructure Intellectual Property"** means (a) the Service, (b) all improvements, changes, enhancements and components thereof, (c) all other proprietary materials of Instructure and/or its licensors that are delivered, provided or used by Instructure in the course of providing the Service, and (d) all other intellectual property owned by Instructure and all copyrights, patents, trademarks and trade names, trade secrets, specifications, methodologies, documentation, algorithms, criteria, designs, report formats and know-how, as well as and any underlying source code and object code related thereto.

**12. Feedback.** Instructure may send surveys to Users (no more than once each year) to solicit feedback regarding performance of the Service and suggestions for improvements. Such feedback will be stored in anonymous and aggregate form, and may be freely used by Instructure for any business purpose both during and after the Term.

**13. Term and Termination.** The term of this Agreement is specified in the Order Form ("**Term**") and shall continue for its full duration unless earlier terminated by a party in accordance with this Section 13. Either party may terminate this Agreement for the material breach of any provision of this Agreement by the other party if such material breach remains uncured for thirty (30) days after receipt of written notice of such breach from the non-breaching party. Such termination right shall be in addition to any other rights and remedies that may be available to the non-breaching party. In the event the Agreement is terminated, all Order Forms are simultaneously terminated. Upon expiration or termination of this Agreement: (a) Customer shall immediately cease using the Services; and (b) in connection with certain aspects of the Service that feature an export function, for a period of 3 months following expiration or termination, Customer may export the Customer Content through the API or by using the export feature within the Service.

**14. Suspension of Service.** Instructure may monitor the Service for a violation of this Agreement, Instructure's Acceptable Use Policy, and any applicable law or third party rights and may suspend access to the Service and remove applicable Customer Content to the extent and for the duration of any such violation. Instructure will use commercially reasonable efforts to provide notice to Customer in advance of any suspension to the extent practical under the circumstances. Customer agrees that Instructure will not be liable to Customer or a User if Instructure exercises its suspension rights as permitted by this Section 14.

**15. Indemnification.** Instructure will indemnify and defend Customer from and against any and all losses, liabilities, and claims (including reasonable attorneys' fees) arising out of any claim by a third party alleging that the Service infringes or misappropriates the intellectual property rights of that third party. Notwithstanding the foregoing, Instructure shall not be obligated to indemnify Customer if such infringement or misappropriation claim arises from: (a) the Customer Content; (b) Customer's misuse of the Service; or (c) Customer's use of the Service in combination with any products, services, or technology provided by a third-party. If such a claim of infringement or misappropriation is made or threatened, Instructure may, in its sole discretion: (i) modify the Service so that it becomes non-infringing; (ii) obtain a license for Customer to continue its use of the Service; or (iii) notwithstanding Instructure's obligation to indemnify hereunder, terminate the Agreement with no liability to Customer along with the return of the unused portion of any prepaid fees. Customer will indemnify and defend Instructure from and against any and all losses, liabilities, and claims (including reasonable attorneys' fees) arising out of any claim by a third party regarding: (a) an allegation that the Customer Content infringes or misappropriates the intellectual property rights of that third party; or (b) use of the Service by Customer (or any User) in violation of this Agreement, Customer's standard network usage agreement, or the Instructure Acceptable Use Policy. The party seeking indemnification (the "**Indemnified Party**") shall provide the other party (the "**Indemnifying Party**") with prompt written notice upon becoming aware of any claim subject to indemnification hereunder and shall provide reasonable cooperation to the Indemnifying Party in the defense of or investigation of any claim, suit or proceeding. The Indemnifying Party, at its option, will have sole control of such defense, provided that the Indemnified Party is entitled to participate in its own defense at its sole expense. The Indemnifying Party shall not enter into any settlement or compromise of any such claim, suit or proceeding or without

the Indemnified Party's prior written consent, except that the Indemnifying Party may without such consent enter into any settlement of a claim that resolves the claim without liability to the Indemnified Party and without impairment to any of the Indemnified Party's rights or requiring the Indemnified Party to make any admission of liability.

**16. General.** Any notice by a party under this Agreement shall be in writing and either personally delivered, delivered by facsimile, or sent via email or reputable overnight courier (such as Federal Express) or certified mail, postage prepaid and return receipt requested, addressed to the other party at the address specified in the Order Form or such other address of which either party may from time to time notify the other in accordance with this Section 16. A copy of all notices to Instructure shall be sent to: Instructure, Inc., 6330 South 3000 East, Suite 700, Salt Lake City, UT 84121, Attention: General Counsel. For purposes of service messages and notices about the Service, Instructure may place a banner notice or send an email to an email address associated with an account. It is the User's responsibility to ensure that a current email address is associated with their account. All notices shall be in English and shall be deemed effective upon receipt. If Instructure is unable to perform its obligations under this Agreement due to circumstances beyond its reasonable control, including, but not limited to, acts of God, earthquakes, hacker attacks, actions or decrees of governmental bodies, changes in applicable laws, or communication or power failures, such obligations will be suspended so long as those circumstances persist. This Agreement shall be interpreted, governed and construed by the laws of the State of Delaware without regard to principles of conflict of laws. Instructure is acting in performance of this Agreement as an independent contractor to Customer. If any term of this agreement is invalid or unenforceable, the other terms remain in effect and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Amendments to this Agreement must be made in writing and signed by both parties unless otherwise specified in the Agreement. This Agreement constitute the entire agreement between the parties with respect to the subject matter of this Agreement, and any prior representations, statements, and agreements relating thereto are superseded by the terms of this Agreement. Instructure rejects additional or conflicting terms of any Customer form-purchasing document. Customer shall not assign this Agreement, in whole or in part, to any entity without Instructure's prior written consent. Any attempt to assign this Agreement, in whole or part, in contravention of this Section 16, shall be void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns. Any failure by either party to enforce the other party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement. Customer agrees to allow Instructure to use its name, logo and non-competitive use details in both text and pictures in its various marketing communications and materials, in accordance with Customer's trademark guidelines and policies. Any terms that by their nature survive termination or expiration of this agreement, will survive (including, but not limited to, Sections 9, 10, 11, 15 and 16).