



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

Order Form

Order: Q-418744-2
Date: 2025-03-11
Order Valid Through: 2025-03-31

Order Form for San Jose Unified School District

Bill to Information

Entity Name: San Jose Unified School District
Address: 855 Lenzen Ave.
City: San Jose
State/Province: California
Zip/Postal Code: 95126
Country: United States

Billing Contact

Name: Account Payable
Email: accountspayable@sjusd.org
Phone: +1 408 535 6000

Ship to Information

Entity Name: San Jose Unified School District
Address: 855 Lenzen Ave.
City: San Jose
State/Province: California
Zip/Postal Code: 95126
Country: United States

Shipping Contact

Name: Cydney Eshleman
Email: ceshleman@sjusd.org
Phone: +1 408 535 6000

Billing Information

Billing Frequency: Annual Upfront
Billing Frequency Term: Non-Recurring items will be invoiced upon signing. Recurring items will be invoiced 30 days prior to the annual start date.
Payment Terms: Net 30

Year 1								
Ref	Description	Start Date	End Date	Invoice	Metric	Qty	Price	Amount
S3	Implementation Fee - Transcript Services	2025-05-05	2026-05-04	Non-Recurring	Per Each	1	USD 2,475.00	USD 2,475.00
S5	Implementation Fee - District Transfer	2025-05-05	2026-05-04	Non-Recurring	Per Each	1	USD 0.00	USD 0.00
S8	Implementation Fee - Transcript Services	2025-05-05	2026-05-04	Non-Recurring	Per Each	1	USD 0.00	USD 0.00
S10	Implementation Fee - Transcript Services TPO	2025-05-05	2026-05-04	Non-Recurring	Per Each	1	USD 0.00	USD 0.00
S2	Transcript Services	2025-05-05	2026-05-04	Recurring	Enrollment	1	USD 26,681.00	USD 26,681.00
S4	District Transfer	2025-05-05	2026-05-04	Recurring	Enrollment	1	USD 8,904.00	USD 8,904.00

Year 1 Transaction Pricing:				
Reference	Description	Start Date	End Date	Price
T7	Transcript Services	2025-05-05	2026-05-04	USD 5.00
T9	Transcript Services TPO	2025-05-05	2026-05-04	USD 15.00

Year 2								
Ref	Description	Start Date	End Date	Invoice	Metric	Qty	Price	Amount
S2	Transcript Services - Transcript Services	2026-05-05	2027-05-04	Recurring	Enrollment	1	USD 26,681.00	USD 26,681.00

S4	District Transfer	2026-05-05	2027-05-04	Recurring	Enrollment	1	USD 9,349.20	USD 9,349.20
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Year 2 Transaction Pricing:				
Reference	Description	Start Date	End Date	Price
T7	Transcript Services	2026-05-05	2027-05-04	USD 5.25
T9	Transcript Services TPO	2026-05-05	2027-05-04	USD 15.75

Year 3								
Ref	Description	Start Date	End Date	Invoice	Metric	Qty	Price	Amount
S2	Transcript Services - Transcript Services	2027-05-05	2028-05-04	Recurring	Enrollment	1	USD 28,015.05	USD 28,015.05
S4	District Transfer	2027-05-05	2028-05-04	Recurring	Enrollment	1	USD 9,816.66	USD 9,816.66

Year 3 Transaction Pricing:				
Reference	Description	Start Date	End Date	Price
T7	Transcript Services	2027-05-05	2028-05-04	USD 5.51
T9	Transcript Services TPO	2027-05-05	2028-05-04	USD 16.54

Billing Summary			
Segment	Recurring	Non-Recurring	Total
Year 1	USD 35,585.00	USD 2,475.00	USD 38,060.00
Year 2	USD 36,030.20	USD 0.00	USD 36,030.20
Year 3	USD 37,831.71	USD 0.00	USD 37,831.71
Total	USD 109,446.91	USD 2,475.00	USD 111,921.91

Reference	Products	Description
T7	Transcript Services	Learner Type: Alumni Only Delivery Method: Parchment Print and Digital Financing Option: Transaction - Requestor Pay
S2	Transcript Services	Learner Type: Current Only Delivery Method: Digital Only Financing Option: Subscription - Recurring

Products	Description	Qty
Implementation Fee - Transcript Services	A dedicated implementation team will guide you through the setup of your purchased service/s. An implementation meeting will be held where final configuration will be reviewed and training held. The Go-Live date will be scheduled. Applicable documentation will be provided.	1.00
Implementation Fee - District Transfer	Implementation Services tied to District Transfer	1.00
Implementation Fee - Transcript Services	A dedicated implementation team will guide you through the setup of your purchased service/s. An implementation meeting will be held where final configuration will be reviewed and training held. The Go-Live date will be scheduled. Applicable documentation will be provided.	1.00
Implementation Fee - Transcript Services TPO	Implementation Services tied to Transcript Services TPO	1.00

Quote Special Terms

Recurring items on this Order Form (other than any 3rd Party Products) shall automatically renew for succeeding terms of 12-month duration at an annual price increase of 5% unless either party gives the other party 60 days' written notice of its intent not to renew prior to the expiration of the then-current term.

The services provided under this Order Form shall begin on the first year Start Date set forth above and continue through the last year End Date set forth above, provided, however, that Instructure may provide certain implementation related services prior to the first year Start Date at its sole discretion.

Non-Recurring Expiration: Unless otherwise stated in an applicable Statement of Work or this Order Form, Non-Recurring Products and 3rd Party Products must be completed within 12 months beginning on the later of the last date of signature or the Initial Start Date specified in this Order Form.

Payment Processing Fee: Subject to limitations and prior written approval of Instructure, Customer can add a surcharge to each credential request as a method of cost recovery for some or all of Customer's fees, or an auxiliary revenue source. Due to the processing fees assessed by Instructure's credit card processing vendor, there will be a 20% processing fee on all credit card (including debit) charges in excess of the credential request fee. Instructure will remit to Customer any surcharges (less any processing fees on a monthly basis, no later than 45 days following the end of each calendar month).

Overages: The annual subscription fee is non-refundable, and any credential requests included within the subscription must be used within each annual period of the Term. If the cumulative number of credential requests during an annual period exceeds the subscription's credential request limit, Customer will be charged an overage fee for each additional credential request at the rates specified in the applicable Order Form ("Overage Fee"). Instructure reserves the right to apply an

additional charge of up to 10% on any Overage Fees. Overage Fees, including any additional charges, will be invoiced by Instructure monthly in arrears for 1he remainder of the then-current subscription period.

Terms and Conditions

Governing Terms: This Order Form shall be governed by the attached Instructure Master Terms and Conditions between Instructure, Inc. and San Jose School District dated June 25, 2021. Notwithstanding anything to the contrary contained herein, this Order Form shall be governed by the laws of the State of California.

Conflict Clause: In the event of any conflict between this Master Terms and Conditions and any addendum thereto and this Order Form, the provisions of this Order Form shall control.

Product Supplement Terms: Product Specific Supplements which can be found here: <https://www.instructure.com/policies/product-supplements>, govern the use of the applicable product and/or feature offerings listed in this Order Form and/or utilized by Customer, and are incorporated into the Master Terms and Conditions.

PURCHASE ORDER INFORMATION	TAX INFORMATION
Is a Purchase Order required for the purchase or payment of the products on this order form? Please Enter (Yes or No):	Check here if your company is exempt from US state sales tax:
If Yes, please enter PO Number:	<i>Please email all US state sales tax exemption certifications to ar@instructure.com</i>

Customer purchasing documentation, such as Purchase Orders, shall only be used as proof of acceptance of the Order Form referenced therein, and the associated Master Terms and Conditions. Any terms and conditions included in any such Customer purchasing documentation are hereby expressly disclaimed by Instructure, shall be void and of no effect, and shall in all cases be superseded by the applicable Master Terms and Conditions.

By executing this Order Form, each party agrees to be legally bound by this Order Form.

San Jose Unified School District

Signature: _____

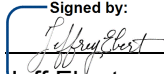
Name: Tracy Morrison _____

Title: Director, Procurement _____

Date: _____

Instructure, Inc. (USA/CAN)

Signed by: _____

Signature:  _____

Name: Jeff Ebert _____

Title: Director, Deal Desk & Pricing _____

Date: 3/20/2025 _____

Initial


Instructure Terms and Conditions

These terms and conditions apply to the provision of the 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, form the “**Agreement**.” Instructure and Customer are referred to in this Agreement each as a “**party**” and together as the “**parties**.”

1. Service. Subject to the terms of this Agreement, Instructure will provide to Customer proprietary software as a service offering(s) made available through a URL in a hosted environment (together with any other products and services identified in the Order Form, the “**Service**”). All rights in and to the Service not expressly granted to Customer in this Agreement are reserved by Instructure. 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 terms described on the Order Form. For purposes of this Agreement, “**User**” means an individual who is authorized by the Customer to use the Service and for whom Customer has purchased a subscription.

2. Customer Restrictions. Customer shall not (and shall not permit Users to): (a) sell, resell, rent, lease, lend, sublicense, distribute, assign, timeshare, or otherwise transfer or provide access to the Service to any third party except as expressly authorized under this Agreement; (b) use or access the Service for competitive purposes; (c) copy, modify, adapt, or create derivative works from any feature, function, interface, or graphic in the Service; (d) remove or modify Instructure’s policies or proprietary markings displayed within the Service; (e) use, interfere with, disrupt or circumvent the integrity, security or performance of the Service, including by probing, scanning, or testing any Instructure system or network or its security or authentication measures; (f) store or transmit any malicious code; (g) permit direct or indirect access to or use of any Service or Customer Content (as defined below) in a way that circumvents a contractual usage limit; (h) attempt to gain unauthorized access to the Service, its related systems or networks or Third-Party Services (as defined below); (i) use the Service or any Third-Party Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; or (j) use the Service to distribute software or tools that gather information, distribute advertisements, or engage in conduct that may result in retaliation against Instructure or its data, systems, or networks. Use and access to the Application Program Interface (“**API**”) will be subject to the Instructure API Policy available at <https://www.instructure.com/policies/api-policy>.

3. Customer Responsibilities. Customer shall have sole responsibility for Customer Content and use of the Service by Users in compliance with this Agreement and the Acceptable Use Policy provided within the Service and available at <https://www.instructure.com/policies/acceptable-use> (the “**AUP**”). Customer agrees to reasonably assist Instructure in connection with a User’s adherence to the AUP. Customer further agrees to: (a) maintain the confidentiality and security of passwords and abide by any access protocols or credential requirements set by Instructure; (b) obtain from Users any consents necessary under this Agreement or to allow Instructure to provide the Service; (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Service; (d) notify Instructure promptly of any such unauthorized access or use of which it learns; (e) cooperate reasonably in all respects with respect to implementation, access, support, and maintenance of the Service; and (f) ensure that a current email address is associated with each User’s account.

4. Representations. Each party represents that (a) it has the power and authority to validly enter into this Agreement, (b) this Agreement has been duly and validly authorized, executed and delivered by such party, (c) the execution and delivery of this Agreement does not violate or conflict with any other agreement, license, or obligation of such party, (d) it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from or on behalf of any employees or agents of the other party in connection with this Agreement, and (e) it is financially solvent and has the ability to perform its obligations hereunder.

5. Instructure Warranties. Instructure warrants that: (a) it shall 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; (b) the functionality or features of the Service and Support may change but will not materially degrade during the Term; and (c) the Service will materially conform to its then-current documentation. As Customer's sole and exclusive remedy for Instructure’s breach of the warranties set forth in this Section 5: (i) Instructure shall correct the non-conforming Service at no additional charge to Customer; or (ii) 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. Customer must report deficiencies in writing to Instructure within thirty (30) days of their identification in order to receive any warranty remedies herein. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 5 AND TO THE MAXIMUM EXTENT OF THE LAW, INSTRUMENT 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, INSTRUMENT DOES NOT WARRANT THE RESULTS OR OUTCOMES FROM USE OF THE SERVICE OR THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE. TO THE EXTENT THE FOREGOING DISCLAIMER IS EXPRESSLY PROHIBITED BY LAW, ANY AVAILABLE WARRANTY SHALL BE LIMITED TO THIRTY (30) DAYS AND TO THE SERVICE REMEDIES PROVIDED BY INSTRUMENT IN THIS SECTION 5.

6. Fees. As consideration for the subscription to the Service, Customer shall pay all fees set forth in an Order Form (“**Fees**”) annually in advance, thirty (30) days after receipt of an invoice or as otherwise agreed to in the Order Form. All Fees owed by Customer are exclusive of, and Customer shall pay all applicable sales, use, VAT, excise, withholding, and other taxes that may be levied in connection with this Agreement. Instructure reserves the right (in addition to any other rights or remedies Instructure may have) to discontinue the Service and to suspend all Users’ and Customer’s access to the Service if any Fees are overdue until such amounts are paid in full. Except as expressly set forth in this Agreement, all Fees are non-refundable.

7. Service Standard. Instructure will use commercially reasonable efforts to make each 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 Fees paid and attributable to the Service that is unavailable for a twelve (12) month period. The service credit is calculated by taking the number of hours the applicable Service was unavailable below the Service Commitment, and multiplying it by 3% of 1/12 of the applicable annual subscription Fees. Any days prior to Customer’s initial use of the Service will be deemed to have had 100% availability. Any unavailability used to calculate a prior service 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 not originating from Instructure. Customer’s sole and exclusive remedy for breach of the Service Commitment in this Section 7 will be for Instructure to provide a credit as provided in this Section 7; on the condition that Customer notifies Instructure in writing of such claim within thirty (30) days of becoming eligible for such claim.

8. Compliance. Each party will comply with all applicable laws and regulations with respect to its activities under this Agreement, including with respect to personally identifiable information from records that are subject to applicable privacy laws, including, but not limited to, the Family Educational Rights and Privacy Act, as amended (“**Personal Information**”). Without limiting the generality of the foregoing, Customer shall not make the Service available to any person or entity that: (a) is located in a country that is subject to a U.S. government embargo; or (b) is listed on any U.S. government list of prohibited or restricted parties.

9. Customer Content. 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 (“**Customer Content**”) remain the sole property of Customer. Instructure may use the Customer Content solely to provide and improve the Service in accordance with this Agreement or Customer’s instructions.

10. Data Use. Customer agrees that data derived from Instructure’s provision of the Service or Customer’s use of the Service (“**Usage Data**”) may be used by Instructure for the purposes of analysis, including statistical analysis, trend analysis, creation of data models, and creation of statistical rules. Such Usage Data will only be used in its aggregated or anonymized form and such results may be used by Instructure for any lawful purpose not otherwise excluded by this Agreement. As between the parties, Instructure owns the Usage Data. Notwithstanding anything contained in this Agreement to the contrary, Usage Data does not include Customer Content or any information that identifies or can be reasonably used to identify an individual person or Customer.

11. Third-Party Services. Customer may access third-party services, content or links through the use of the Service (collectively “**Third-Party Services**”). Instructure does not control Third-Party Services or make any representations or warranties with respect to Third-Party Services. In addition, Instructure is not responsible for Third-Party Services.

12. Student Data. The parties acknowledge that Instructure is bound by the terms of a California Student Data Privacy Agreement (“**CSDPA**”) with the Santa Clara County Office of Education in relation to Customer’s student data uploaded to Canvas LMS, and the provisions of such CSDPA shall apply to any further student data that may be shared by Customer during the provision of the Services.

13. Insurance. Technology Professional Liability Errors and Omissions Insurance appropriate to Instructure’s profession and work hereunder, with a limit of \$2,000,000 per claim. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Instructure in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information theft, release of private information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses.

a. Coverage shall also include damage to, alteration of, loss of, or destruction of electronic data and/or information “property” of the Customer in the care, custody, or control of Instructure.

b. No representation is made that the Insurance requirements of this Agreement are sufficient to cover the indemnity or other obligations of Instructure under this Agreement.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The Customer, its officers, officials and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Instructure, including materials, parts, or equipment furnished in connection with such work or operations.

Primary Coverage

For any CGL claims related to this contract, the **Consultant’s insurance coverage shall be primary** insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects the Customer, its officers, officials, and employees. Any insurance or self-insurance maintained by the Customer, its officers, officials, or employees shall be excess of Instructure’s insurance and shall not contribute with it.

Notice of Cancellation

Instructure to make best effort to notify Customer thirty (30) days in advance of any cancellation of coverage required herein.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the Customer.

14. Exclusion of Damages and Limitation of Liability. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 12, INSTRUMENT DISCLAIMS 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. INSTRUMENT DOES NOT WARRANT THAT THE CUSTOMER’S USE OF THE SERVICES OR DELIVERABLES WILL BE UNINTERRUPTED OR BE ERROR-FREE. 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 OR DELIVERABLES (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. 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 TWO (2) TIMES THE AMOUNT PAID BY CUSTOMER WITHIN THE PRECEDING 12 MONTHS UNDER THIS AGREEMENT. EXCEPT THAT IN RELATION TO THE LIABILITY OF INSTRUMENT FOR ANY DAMAGES ARISING OUT OF OR RELATED TO INSTRUMENT’S FAILURE TO

COMPLY WITH APPLICABLE STUDENT DATA PROTECTION LAWS IN THE PROVISION OF ITS SERVICES UNDER THIS AGREEMENT, , INSTRUCUTURE'S TOTAL AGGREGATE LIABILITY SHALL BE INCREASED TO FOUR (4) TIMES THE AMOUNT PAID BY CUSTOMER UNDER THIS AGREEMENT WITHIN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO LIABILITY. CUSTOMER ACKNOWLEDGES THAT INSTRUCUTURE IS NOT RESPONSIBLE FOR THIRD-PARTY SERVICES MADE AVAILABLE THROUGH THE SERVICES OR DELIVERABLES.

15. Confidentiality. Each party acknowledges that it or any entity that directly, or indirectly through one or more intermediaries' controls, is controlled by or is under common control with such party (an "**Affiliate**") may disclose (in such capacity the "**Disclosing Party**") Confidential Information to the other party or its Affiliates (in such capacity, the "**Receiving Party**") in the performance of this Agreement. Accordingly, the Receiving 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 or Affiliates who have a need to know and only for the purposes of fulfilling this Agreement or to the extent required by law. As used herein, "**Confidential Information**" means any and all non-public, confidential and proprietary information, data, or know-how, including all Personal Information and information about the Disclosing Party's businesses, operations, finances, properties, employees, relationships with third parties, plans, trade secrets, and other intellectual property and all analyses, compilations, forecasts, studies, summaries, notes, reports, memoranda, interpretations, data, and other materials which contain or are generated from the Confidential Information, whether disclosed in writing, orally, electronically, or by other means, and whether or not identified as confidential. . For the avoidance of doubt, any non-public aspect of the Service will be considered the Confidential Information of Instructure. Confidential Information shall not include information that: (i) is or becomes a matter of public knowledge through no fault of the Receiving Party; (ii) is rightfully received by the Receiving Party by a third party without a duty of confidentiality; (iii) is independently developed by the Receiving Party without the use of any Confidential Information of the Disclosing Party; or (iv) is identified by the Disclosing Party in writing as no longer confidential and proprietary. Notwithstanding the restrictions above, the Receiving Party may disclose the Confidential Information pursuant to law, regulation, subpoena or court orders, provided that the Receiving Party promptly notifies the Disclosing Party in writing prior to making any such disclosure to permit the Disclosing Party an opportunity to prevent disclosure or seek an appropriate remedy from the proper authority. The Receiving Party agrees to cooperate with the Disclosing Party in seeking such order or other remedy. The Receiving Party further agrees that if the Disclosing Party is not successful in precluding the requesting legal body from requiring the disclosure of the Confidential Information, it will furnish only that portion of the Confidential Information which is legally required (based on the advice of counsel) and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be afforded the Confidential Information. Further, any information obtained by monitoring, reviewing, or recording is subject to review by law enforcement organizations in connection with investigation or prosecution of possible criminal or unlawful activity on the Service as well as to disclosures required by or under applicable law or related government agency actions. Instructure will also comply with all court orders or subpoenas involving requests for such information.

16. 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. 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; and (d) all other intellectual property owned by Instructure including, but not limited to, all copyrights, patents, trademarks and trade names, trade secrets, specifications, methodologies, documentation, algorithms, criteria, designs, report formats, and know-how, as well as any underlying source code and object code related thereto.

17. 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 15. In addition to any other rights and remedies that may be available, either party may terminate this Agreement for a 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. 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 Service; and (b) in connection with certain aspects of the Service that feature an export function Customer may export the Customer Content by using the export feature within the Service for a period of three (3) months from termination,

after which Instructure shall have no obligation to maintain or provide any Customer Content.

17.1 **Termination for Non-Appropriation of Funds.** The continuation of this Contract is contingent upon the appropriation of funds to fulfill the requirements of the Contract by the District. If the District fails to appropriate sufficient monies to provide for the continuation of the Contract, or if appropriations to the District are reduced and the effect of such reduction is to provide insufficient monies for the continuation of the Contract, the Contract shall terminate on the date of the beginning of the first fiscal year for which funds have not been appropriated. Contractor will only be entitled to payment for deliverables that have been satisfactorily completed as of the termination date.

18. Suspension of Service. Instructure may suspend a User's access to the Service for a violation of Section 3 of this Agreement, any applicable law, or third-party rights to the extent and for the duration necessary to address any such violation. Instructure will use commercially reasonable efforts to provide notice to Customer in advance of any suspension unless such violation may cause direct harm to the Service or may result in liability to Instructure. Customer agrees that Instructure will not be liable to Customer or a User if Instructure exercises its suspension rights as permitted by this Section 16.

19. Indemnification.

19.1 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 or User's misuse of the Service; or (c) Customer's or User's use of the Service in combination with any products, services, or technology not provided by Instructure. If a claim of infringement or misappropriation is made, Instructure may, in its sole discretion: (i) modify the Service so that it becomes non-infringing; (ii) obtain a license permitting continued use of the Service; or (iii) terminate the Agreement with no liability to Customer, other than Instructure's obligation to indemnify hereunder, and return 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 alleging: (z) the Customer Content infringes or misappropriates the intellectual property rights of that third party; or (y) use of the Service by Customer or any User in violation of this Agreement or the AUP.

19.2 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 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 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.

20. General. Each party acknowledges that any breach, threatened or actual, of this Agreement, including, without limitation, with respect to unauthorized use of proprietary assets, will cause irreparable injury to the other party, such injury would not be quantifiable in monetary damages, and the other party would not have an adequate remedy at law. Each party therefore agrees that the other party shall be entitled, in addition to other available remedies, to seek and be awarded an injunction or other appropriate equitable relief from a court of competent jurisdiction restraining any breach, threatened or actual, of this Agreement. Each party waives any requirement that the other party post any bond or other security in the event any injunctive or equitable relief is sought by or awarded to enforce any provision of this Agreement. Any legal notice by a party under this Agreement shall be in writing and either personally delivered, delivered by 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 18. 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 and, if by email,

to legal@instructure.com. For purposes of service messages and notices about the Service, Instructure may place a banner notice or send an email to the current email address associated with an account and all notices shall be in English and 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 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. The Parties agree that: (a) this Agreement constitutes the entire agreement between the parties with respect to the subject matter thereof, and any prior representations, statements, and agreements relating thereto are superseded by the terms of this Agreement; and (b) Customer may use purchase orders or similar documents only as proof of acceptance of each Order Form and for convenience only, and all terms and conditions (preprinted or otherwise and regardless of how referenced) shall be void and of no effect. Any attempt by Customer to assign this Agreement, in whole or part, to any entity, without Instructure's prior written consent 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 4, 5, 6, 13, 14, 15, 16, and 18).