

Instructure 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 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 the Service described in the Order Form. All rights in and to the Service not expressly granted to Customer in this Agreement are reserved by Instructure. “**Service**” 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. 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) 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; or (e) use the Service or any of Instructure’s data, systems, networks, or services to engage in, foster, or promote illegal, abusive, or irresponsible behavior, including, without limitation and merely for illustrative purpose, using in excess of any defined limits or parameters, accessing or using Instructure data, systems, or networks in an unauthorized manner, attempting to probe, scan, or test the vulnerability of an Instructure system or network, circumventing any Instructure security or authentication measures, monitoring Instructure data or traffic, interfering with any Instructure services, collecting or using from the Service any personal information, such as email addresses, screen names, or other identifiers, collecting or using from the Service information without the consent of the owner or licensor, using any false, misleading, or deceptive information, using 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 (defined below) and use of the Service by Users in compliance with this Agreement and the Acceptable Use Policy provided by Instructure within the Service and available at <https://www.instructure.com/policies/acceptable-use> (the “**AUP**”), and 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 and identified 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; and (e) cooperate reasonably in all respects with respect to implementation, access, support, and maintenance of the Service.

4. 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 terms described on the Order Form.

5. Fees. As consideration for the subscription to the Service, Customer shall pay all fees (“**Fees**”) set forth in the Order Form. All Fees are billed in advance on an annual basis and are due and payable 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 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.

6. 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 applicable 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 not originating from Instructure. Any service credit shall be calculated using solely the Fees paid and attributable to the Service. Customer's sole and exclusive remedy for breach of the Service Commitment 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 thirty (30) days of becoming eligible for such claim.

7. 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 sole and exclusive remedy for Instructure's breach of the warranties set forth in this Section 7: (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. 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 7 AND TO THE MAXIMUM EXTENT OF THE LAW, 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 ERROR-FREE, NOR DOES INSTRUCTURE WARRANT THE RESULTS OR OUTCOMES FROM USE OF THE SERVICE. 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 INSTRUCTURE IN THIS SECTION 7.

8. Compliance. Each party will comply with all applicable laws and regulations with respect to its activities under this Agreement. Without limiting the generality of the foregoing, Customer shall not make the Service available to any person or entity that: (i) is located in a country that is subject to a U.S. government embargo; or (ii) is listed on any U.S. government list of prohibited or restricted parties. 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.

9. 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 ("**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. As between the parties, Instructure owns the aggregated and statistical data generated or related to the provision, operation, or use of the Service, including measurement and usage statistics, configurations, survey responses, and performance results (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.

10. 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 SERVICE (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY, LOSS OR INACCURACY OF DATA, RECORDS OR INFORMATION, COST(S) OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, 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 TWELVE (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.

11. Confidentiality. Each party acknowledges that the other party may disclose its Confidential Information to the other in the performance of this Agreement. Accordingly, the Receiving Party (defined below) 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 (defined below) 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 disclosed by either party or its Affiliates (in such capacity the "**Disclosing Party**") to the other party (in such capacity, the "**Receiving Party**"), whether disclosed in writing, orally, electronically, or by other means, and whether or not identified as confidential. Confidential Information shall include all 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. 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 use of or access to 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, or court order, provided that the Receiving Party promptly notifies the Disclosing Party in writing prior to making any such disclosure so that the Disclosing Party may seek a protective order or other 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. "**Affiliate**" with respect to a party means any entity that directly, or indirectly through one or more intermediaries controls, is controlled by or is under common control with such party.

12. 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.

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 Service; and (b) in connection with certain aspects of the Service that feature an export function, for a period of three (3) months following expiration or termination, Customer may export the Customer Content by using the export feature within the Service. Subject to such three (3) month period

and Instructure's legal obligations, Instructure has no obligation to maintain or provide any Customer Content after the termination or expiration of this Agreement.

14. 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 and may suspend the offending User's access to the Service 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 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 or content from any User; (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 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 or any User 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: (z) an allegation that the Customer Content or content from any User 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. 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 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. 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 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 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. 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 performing 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. 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. 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 5, 7, 10, 11, 12, 13, 15 and 16).