

PROJECT NUMBER 39877
SOFTWARE LICENSE AND APPLICATION SERVICE PROVIDER AGREEMENT
BETWEEN
INSTRUCTURE INC.
AND
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES
AS CONTRACTING AGENT FOR THE
MISSISSIPPI COMMUNITY COLLEGE BOARD

This Software License and Application Service Provider Agreement (hereinafter referred to as "Agreement") is entered into by and between, Instructure Inc., a Delaware corporation having its principal place of business at 9020 South Sandy Parkway, Suite 300, Sandy, Utah 84070 (hereinafter referred to as "Licensor"), and Mississippi Department of Information Technology Services having its principal place of business at 3771 Eastwood Drive, Jackson, Mississippi 39211 (hereinafter referred to as "ITS"), as contracting agent for the Mississippi Community College Board, located at 3825 Ridgewood Road, Jackson, Mississippi 39211 (hereinafter referred to as "Licensee" and/or "MCCB"). ITS and MCCB are sometimes collectively referred to herein as "State."

WHEREAS, MCCB, pursuant to Request for Proposals ("RFP") No. 3692 requested proposals for the services of a contractor to host and maintain an Application Service Provider ("ASP") solution for a Learning Management System (LMS); and

WHEREAS, Licensor was the successful proposer in an open, fair and competitive procurement process to provide the software and services described herein;

NOW THEREFORE, in consideration of the mutual understandings, promises and agreements set forth, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

1.1 **"Active User"** means MCCB employees, and community college faculty and students actively participating on the system in any given month of operation, who shall be bound to the terms and conditions of this Agreement. Licensor does not impose a limit on the number of Active Users accessing or registering to use the system.

1.2 **"Available Date"** means the date upon which Licensor notifies MCCB that the Software may be accessed on the Licensor's ASP server and MCCB may begin acceptance testing.

1.3 **"Content"** means any content provided by or through Active Users for use with the Software.

1.4 **"Documentation"** means the published user and technical manuals and documentation that Licensor makes generally available for the Software; the help files included within the Software, and any files containing presentation materials or manuals or other related materials to train and educate Licensee and the Active Users on the use of the Software.

1.5 "Enhancements" means the corrections, updates, upgrades or new versions of the Software or Documentation that Licensor may provide to Licensee under this Agreement.

1.6 "Licensee" means the Mississippi Community College Board, its employees, community college faculty and students and any third party consultants or outsourcers engaged by MCCB who have a need to know and who shall be bound by the terms and conditions of this Agreement.

1.7 "Licensor" means Instructure Inc., and its successors and assigns.

1.8 "Products" means the Software, Documentation, Corrections, Enhancements and any copy of the Software, Documentation, Corrections, or Enhancements provided by the Licensor.

1.9 "Services" means any on-line user access, customizations, interface development, consulting, education, ASP installation, system administration, training, maintenance, support, and Help Desk services provided by Licensor to Licensee.

1.10 "Software" means the machine-readable object code version of the computer programs whether embedded on disc, tape or other media used for the management of the web-based Learning Management System (LMS) and Supported Interfaces (and any Documentation and help files within the Software), including any Enhancements provided pursuant to the maintenance and support terms identified herein.

1.11 "Software Error" means a reproducible defect or combination thereof in the Software that results in a failure of the Software when used in accordance with the Documentation. Software Errors do not include those errors caused by (a) Licensee's negligence, (b) any unauthorized modification or alteration Licensee makes to the Software, (c) data that does not conform to Licensor's specified data format, (d) operator error, or (e) use not conforming to the Licensor's supported technical environment specified in the Documentation.

1.12 "Supported Interfaces" means application-based interfaces (API), network protocols, data formats, database schemas, and file formats used in the Software as described in the Documentation.

ARTICLE 2 PERIOD OF PERFORMANCE

2.1 Unless this Agreement is extended by mutual agreement or terminated as prescribed elsewhere herein, this Agreement shall begin on the date it is signed by all parties and shall continue in effect until the Licensor completes all tasks required herein pursuant to the project work plan, including services during the five (5) year hosting term. The web-based Learning Management System (LMS), as customized for the State of Mississippi, must be implemented; fully functional; accepted by MCCB, and all tasks (excluding hosting) required herein, including but not limited to development of required interfaces and training, completed on or before August 1, 2013, unless a change in this date is mutually agreed to in writing by the State and the Licensor. At the end of the five (5) year initial ASP services term, the ASP services may, upon the written agreement of the parties, be renewed under the same terms and conditions for an

additional term, the length of which will be agreed upon by the parties. One hundred and eighty (180) days prior to the expiration of the initial hosting term or any renewal hosting term of this Agreement, Lessor shall notify MCCB and ITS of the impending expiration and MCCB shall have sixty (60) days in which to notify Lessor of its intention to either renew or cancel the ASP services.

2.2 This Agreement will become a binding obligation on the State only upon the issuance of a valid purchase order by MCCB following contract execution and the issuance by ITS of the CP-1 Acquisition Approval Document.

ARTICLE 3 SCOPE OF SERVICES

3.1 The Lessor agrees to provide to MCCB an ASP based Learning Management System (LMS) and Services and associated deliverables required to provide, host and maintain a web based application for MCCB as described in this Agreement. While the scope of work for this project is defined by the contract documents set forth herein in the article titled "Entire Agreement", a summary of such work is outlined in Article 3.5 below.

3.2 The Lessor acknowledges that MCCB intends to be actively involved in the day-to-day progress of the project. The Lessor agrees to (a) obtain MCCB's approval of all tasks and the time schedule for completion of said tasks prior to commencing performance, if not already contained in the approved project work plan; (b) make available to the State project team members all project work papers and work-in-progress for review; (c) ensure that the Lessor Project Manager works closely together with the State Project Manager, (d) provide MCCB access to the host website; (e) meet with MCCB on a regular basis at a mutually agreeable time, and as otherwise requested by MCCB, to discuss the status of the project, and (f) if required by MCCB, submit written project status reports.

3.3 The parties understand and agree that the project shall be structured with interim deliverables as set forth in the agreed upon project work plan so as to allow MCCB an opportunity to accept or reject the deliverables, including but not limited to, specifications, requirement definitions, process designs, data analyses, web layouts, screen layouts, and report layouts. The actual customizations shall not begin until after MCCB has communicated its conceptual approval of the results the Lessor plans to provide. MCCB shall have ten (10) business days to review interim materials, which review period can only be reduced by mutual agreement of the Lessor and MCCB.

3.4 It is understood by the parties that the project work plan must be in place within fifteen (15) business days of execution of this Agreement and prior to any other work being performed. Once this mutually agreed upon project work plan, which will identify specific time frames and deliverable target dates for this project, has been developed, it will be incorporated into and made a part of this Agreement. The dates in the project work plan will define the agreed upon period of performance. The parties acknowledge that the project work plan will evolve and change from time to time upon the mutual written agreement of both parties. The parties agree that the deliverables and schedule set forth in the latest version of the project work plan will take precedence over any prior plans.

3.5 Lessor shall be responsible for the following:

- A. Ensuring that all deliverables are complete and accepted by MCCB pursuant to the mutually agreed upon project work plan;
- B. Ensuring that the host site complies with PriorityOne of the World Wide Web Consortium's (W3C's) Web Accessibility Initiative and guidelines in Section 508 of the Rehabilitation Act that are not covered in W3C Priority;
- C. Ensuring that the site, if separately paid for, is accessible through MCCB's published universal resource locator ("URL") rather than through Lessor's site address;
- D. Reviewing with MCCB the Content a minimum of once a quarter to ensure that the Content remains timely and accurate and reaching an agreement with MCCB as to reasonable timelines for implementing Content updates delivered to the Lessor that will be posted on the site;
- E. Tracking date sensitive items to ensure timely updates;
- F. All Content provided by the Licensee and collected by the Software shall remain the sole and exclusive property of the Licensee. Upon the termination or expiration of this Agreement, Lessor shall provide such Content in its possession to the Licensee pursuant to a mutually agreed upon release schedule;
- G. Working with MCCB to achieve access rates that meet MCCB's needs;
- H. Providing security for the host site that is agreeable to MCCB with Lessor responsible for all necessary equipment and software related to security;
- I. Maintaining the accessibility of the site twenty-four (24) hours a day, seven (7) days a week at an uptime rate of 99% or greater, subject to the limitations set forth in this Agreement, including but not limited to, those in Article 4.4;
- J. Completing daily backups of the site;
- K. Notifying MCCB at least three (3) business days prior to any anticipated service interruption, with said notice containing a general description of the reason for the service interruption;
- L. Proposing and adhering to a disaster recovery plan and providing access to such plan to the State, all at Lessor's expense;
- M. Participating with MCCB in disaster recovery planning and testing based on a mutually agreed upon schedule;
- N. Maintaining the confidentiality of the data entered;
- O. Upon request, providing MCCB access to the technical information concerning operation of the site, including but not limited to, Internet connection information, personnel requirements and software implementations;
- P. Identifying any commercially available software, by vendor and version number, integrated into the Products and describing the particular functionality of any software that is proprietary to the Lessor;
- Q. Maintaining the host site, with the cost for such support, maintenance, and hosting for years following the initial five (5) year period not increasing annually beyond five percent (5%) or the percent increase in the consumer price index for all Urban Consumers, US City Average (C.P.I.-U) for the preceding year, whichever is less;
- R. Providing 24x7x365 support of the web site, including sub-domain support;

- S. Providing redundant internet connections;
- T. Providing Dual T1 or greater connectivity;
- U. Providing FTP and remote configuration access;
- V. Providing SSL secure server support;
- W. Upon request, providing monthly reports containing access reports and system performance data to MCCB;
- X. Maintaining sufficient bandwidth and server capacity to meet MCCB and Active Users' demand as it may fluctuate and increase during the term of this Agreement, and
- Y. Upon termination or expiration of this Agreement, Lessor shall export courses from Canvas and place them in a secure storage location to be provided by MCCB. Courses shall be exported in the Canvas Common Cartridge format. The export process would be completed within eight (8) weeks of notification of termination without charge to MCCB. Also, during the term of this Agreement and for three (3) months after expiration or termination, MCCB may export its content through the API or by using the export feature within the Software.

3.6 In the event Lessor creates any revisions to or upgrades of the system, Lessor shall provide Licensee release notes of such revision or upgrade, and shall, upon request of Licensee, furnish such revision or upgrade to Licensee free of charge as part of the ASP fees.

ARTICLE 4 SCOPE OF LICENSE AND HOSTING SERVICES

4.1 Subject to the terms and conditions of this Agreement, Lessor hereby grants to Licensee a non-exclusive and non-transferable license to access the Software over the Internet and to use it for Licensee's business operations and use it on the Lessor's host server for the initial term of the Agreement and any subsequent renewal hosting terms in accordance with, and subject to, the terms and conditions set forth in this Agreement. Licensee and Active Users are granted access to the Software with an annual availability percentage of 99.9% over a trailing 365 day period (excluding scheduled outages, force majeure, and outages that result from any MCCB or User technology issue). If MCCB has been using the Software for less than 365 days, the preceding 365 days will be used and any days prior to MCCB's use of the Software will be deemed to have had 100% availability. Any unavailability occurring prior to a successful credit claim cannot be used for any future claims.

4.2 Lessor will provide Licensee storage space on and access to Lessor's Software via the Internet and provide Internet access to the Software to the Active Users through Lessor's site ("ASP Services").

4.3 In connection with the ASP Services, Lessor will provide and maintain all Software and hardware, including, but not limited to, the server hardware and software, telecommunications hardware and software, security hardware and software and other software that is reasonably necessary to operate and maintain the Software.

4.4 MCCB is eligible for a service credit if the annual availability percentage drops below 99.9% for the preceding 365 days from the date of a service credit claim. Maximum amount of the credit/refund is 1/12 of the annual subscription fee for a twelve (12) month period. For

example, if a customer pays \$12,000 for its annual subscription fee and the availability falls below 99.9% in a certain month, the maximum amount of credit a customer shall receive is \$1,000.

To qualify for a service credit, MCCB must send an email to Lessor at salesrequest@instructure.com within the month MCCB becomes eligible for the credit or 30 days after. MCCB must also include the following information: (i) Lessor name and contact information, (ii) date and beginning/end time of the outage, (iii) a brief description and characteristics of the outage and (iv) the end user location and internet service provider used to access the Software. This credit is calculated by taking the number of hours that the Software was unavailable below the warranty, and multiplying it by 3% of 1/12 the annual subscription fee.

4.5 Lessor shall provide the Licensee with its standard managed firewall service, which shall enable secure delivery of Lessor's application services using fully redundant hardware-based firewalls. Lessor's managed firewall service will be available twenty-four (24) hours a day, seven (7) days a week.

4.6 The use of the Software by Active Users will be governed solely by the terms and conditions of this Agreement and, to the extent they do not violate Mississippi law, the Terms of Use document on Lessor's website. The parties agree that in the event of a conflict between the terms and conditions of this Agreement and the Terms of Use document on Lessor's website, this Agreement shall prevail.

4.7 Lessor acknowledges that the Content is and shall remain the sole and exclusive property of Licensee. MCCB grants Lessor the right to use the Content solely for the purpose of performing under this Agreement. Further, Lessor acknowledges that the Content may contain valuable trade secrets of Licensee and Lessor agrees to maintain the confidentiality of the Content and shall not make the Content publicly available except as may be necessary in performing the ASP Services.

4.8 Licensee acknowledges that the Software Products shall remain the exclusive property of Lessor. Licensee agrees that except as noted herein, it will not otherwise copy, translate, modify, adapt, decompile, disassemble or reverse engineer any of the Software without the prior written consent of Lessor.

ARTICLE 5 DELIVERY; RISK OF LOSS, AND ACCEPTANCE

5.1 Lessor shall deliver, install, and make available the Software and Documentation to the Lessor's hosting environment, except as otherwise specified, and pursuant to the delivery schedule mutually agreed to by the parties.

5.2 Lessor shall assume and bear the entire risk of loss and damage to the Products from any cause whatsoever while in transit and at all times throughout Lessor's possession thereof.

5.3 MCCB shall have thirty (30) calendar days after the Available Date to evaluate and

conduct the final acceptance testing of the Software to confirm that it performs without any defects and performs in accordance with the requirements of this Agreement. MCCB shall immediately thereafter notify Lessor of any defects in the Software, which must be corrected. Thereafter, Lessor shall have ten (10) business days in which to either repair or replace the defective Software unless both parties agree to extend this period, all at Lessor's expense. In the event Lessor is unable to repair or replace the Software within this ten (10) day period, MCCB may terminate this Agreement pursuant to the Termination Article herein.

ARTICLE 6 CONSIDERATION AND METHOD OF PAYMENT

6.1 The total compensation to be paid to the Lessor by MCCB for all development, maintenance and ASP services, customizations, products, travel, performances and expenses under this Agreement shall not exceed the specified sum of \$4,334,016.00, and shall be payable as set forth in the Payment Schedule attached hereto as Exhibit A.

6.2 Lessor shall submit invoices with the appropriate documentation to MCCB annually for ASP services and monthly for any month in which other Services are rendered. Lessor shall submit invoices and supporting documentation to MCCB electronically during the term of this Agreement using the processes and procedures identified by the State. MCCB agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies", Section 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by MCCB within forty-five (45) days of receipt of the invoice. Lessor understands and agrees that MCCB is exempt from the payment of taxes. All payments shall be in United States currency. Payments by state agencies using the Statewide Automated Accounting System ("SAAS") shall be made and remittance information provided electronically as directed by the State. These payments by SAAS agencies shall be deposited into the bank account of the Lessor's choice. No payment, including final payment, shall be construed as acceptance of defective or incomplete work, and the Lessor shall remain responsible and liable for full performance.

6.3 Acceptance by the Lessor of the last payment due from MCCB under this Agreement shall operate as a release of all claims for money against the State by the Lessor and any subcontractors or other persons supplying labor or materials used in the performance of the work under this Agreement.

ARTICLE 7 WARRANTY

7.1 Lessor represents and warrants that it has the right to license the Products provided under this Agreement.

7.2 Lessor represents and warrants that the Products provided by Lessor shall meet or exceed the minimum specifications set forth in RFP No. 3692 and Lessor's Proposal, as accepted by the State, in response thereto.

7.3 During the term of this Agreement, the Lessor represents and warrants that all deliverables shall be free from any defect, deficiency, faultiness, imperfection, inadequacy, incompleteness or other condition (collectively referred to herein as "Defect") which would

render any such deliverable inoperable in any way or which would prevent full performance in accordance with this Agreement. This warranty includes, without limitation, correction of errors, design deficiencies, performance deficiencies, and incorrect or defective Documentation, including those found during acceptance testing, implementation, and the warranty period. Acceptance testing shall not in any way relieve the Licenser of its responsibilities to correct any Defect during the warranty period. The Licenser shall repair any Defect at no cost to the State within ten (10) business days of receiving notice of the Defect from the State, unless MCCB consents in writing to a longer period of repair time. In the event Licenser is unable to repair or replace the Software within the mutually agreed upon time frame after receipt of notice of the Defect, MCCB shall be entitled to a full refund of fees paid and shall have the right to terminate this Agreement in whole or in part as provided for in the Termination Article herein. Licensee's rights hereunder are in addition to any other rights Licensee may have.

7.4 During the term of this Agreement, the Licenser represents and warrants that its Services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such Services and shall comply in all respects with the requirements of this Agreement. For any breach of this warranty, Licenser shall perform the Services again, at no cost to the State, or if Licenser is unable to perform the Services as warranted, Licenser shall reimburse the State the fees paid to Licenser for the unsatisfactory Services.

7.5 Licenser represents and warrants that neither the Software, nor Enhancements shall contain a disabling code, lockup program or device. Licenser further agrees that it will not, under any circumstances including enforcement of a valid contract right, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Licensee's licensed use of the Software, or Enhancements and/or which would restrict Licensee from accessing its data files or in any way interfere with the transaction of Licensee's business. For any breach of this warranty, Licenser at its expense shall use commercially reasonable means to, within ten (10) business days after receipt of notification of the breach, deliver Products to Licensee that are free of such disabling code, lockup program or device.

7.6 Licenser represents and warrants that neither the Software, nor Enhancements delivered to Licensee contain a computer virus. For purposes of this provision, a computer virus shall be defined as code intentionally inserted in the Software or Enhancements that will damage or destroy Licensee's applications or data. For any breach of this warranty, Licenser at its expense shall use commercially reasonable means to, within five (5) business days after receipt of notification of the breach, deliver Products to Licensee that are free of any virus, and shall be responsible for repairing, at Licenser's expense, any and all damage done by the virus to Licensee's site.

7.7 The Licenser represents and warrants that, upon completion of the project, the Licenser, and all subcontractors, if any, shall convey to MCCB copies of all interim reports, cost records, data collection forms, and any working papers that support the final acceptance.

7.8 Licenser represents and warrants that it has obtained all necessary rights to permit use of

the graphics on the site and that the Licensor shall provide MCCB with evidentiary proof of graphic licenses and releases. Further, the Licensor represents and warrants that all Licensor-supplied graphics and content contains no scandalous or libelous material.

7.9 The Licensor represents and warrants that the deliverables provided to MCCB under this Agreement, and their use by Active Users, will not infringe or constitute an infringement of any copyright, patent, trademark, servicemark, trade secret or other proprietary right of any person or entity. Licensee agrees that it will promptly notify Licensor in writing of any such claim or action of which it has knowledge, and that it will cooperate fully in the defense and investigation of the claim by supplying Licensor all relevant information currently available and in its possession, all at Licensor's expense. Licensor shall, to the extent authorized by Mississippi law, have sole control over the defense or settlement of any such claim or action. Licensor, at its own expense, shall defend or settle any and all infringement actions filed against Licensor or the State which involve the deliverables or other items provided under this Agreement and shall pay all settlements, as well as all costs, attorney fees, damages and judgment finally awarded against the State. If, in any such suit arising from such claim, the continued use of the items for the purpose intended is enjoined or threatened to be enjoined by any court of competent jurisdiction, Licensor shall, at its expense: (a) procure for the State the right to continue using such items, or (b) modify or replace them with non-infringing items with equivalent functionality, or, to the extent (a) or (b) cannot be done despite Licensor's commercially reasonable efforts, (c) refund to the State the fees previously paid but unused by the State for the infringing Products. Said refund shall be paid within ten (10) business days of notice to the State to discontinue said use. In addition to the foregoing, the Licensor shall indemnify the State in accordance with the provisions of Article 18 herein.

7.10 Licensor represents and warrants that the host site provided by the Licensor shall be reasonably expandable and scalable so MCCB can add and support additional business functions and users over time. It is understood and agreed that any standard revisions, enhancements, improvements, and upgrades to the licensed Software and host site equipment during the term of this Agreement, including operating system, database management system, and other software, shall be provided by Licensor to MCCB at no additional cost to MCCB.

7.11 Licensor represents and warrants that it presently has and will continue to maintain, at its own expense, throughout the term of this Agreement, valid licenses for all software, trademarks, service marks, patents and copyrighted material and any other proprietary information of a third party that it will deploy in support of all products Licensor uses in the performance of this Agreement.

7.12 If applicable under the given circumstances, Licensor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as

the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Licensor agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security where required, to provide a copy of each such verification to the State. Licensor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Licensor understands and agrees that any breach of these warranties may subject Licensor to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Licensor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Licensor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

7.13 Licensor represents and warrants that the system provided pursuant to this Agreement will pass both internal security audits and independent security audits performed by a reputable auditor using applicable industry security standards. Licensor shall, at its own expense and at no cost to Licensee, remediate any material defect, anomaly or security vulnerability in the system in order for the system to be secure.

7.14 Licensor represents and warrants that no official or employee of Licensee or of ITS, and no other public official of the State of Mississippi who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of said project, voluntarily acquire any personal interest, direct or indirect, in this Agreement. The Licensor warrants that it has removed any material conflict of interest prior to the signing of this Agreement, and that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its responsibilities under this Agreement. The Licensor also warrants that in the performance of this Agreement no person having any such known interests shall be employed.

7.15 The Licensor represents and warrants that no elected or appointed officer or other employee of the State of Mississippi, nor any member of or delegate to Congress has or shall benefit financially or materially from this Agreement. No individual employed by the State of Mississippi shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom. The State of Mississippi may, by written notice to the Licensor, terminate the right of the Licensor to proceed under this Agreement if it is found, after notice and hearing by the ITS Executive Director or his/her designee, that gratuities in the form of entertainment, gifts, jobs, or otherwise were offered or given by the Licensor to any officer or employee of the State of Mississippi with a view toward securing this Agreement or securing favorable treatment with respect to the award, or amending or making of any determinations with respect to the performing of such contract, provided that the existence of the facts upon which the ITS Executive Director makes such findings shall be in issue and may be reviewed in any competent court. In the event this Agreement is terminated under this article, the State of Mississippi shall be entitled to pursue the same remedies against the Licensor as it would pursue in the event of a

breach of contract by the Licensor, including punitive damages, in addition to any other damages to which it may be entitled at law or in equity.

7.16 FERPA Compliance Warranty: Licensor represents and warrants that it will comply with all applicable provisions of the Family Educational Rights and Privacy Act, as amended ("FERPA"), and other laws with respect to its activities under this Agreement, including without limitation, Licensor's obligations under FERPA as a "school official" and FERPA's "legitimate educational interests" limitation on use or disclosure of education records. Licensor will implement reasonable and typical administrative, technical, and physical safeguards to secure its facilities and systems from unauthorized access, and to secure the Licensee confidential information and data. Licensor agrees: to abide by FERPA's limitations on re-disclosure of personally identifiable information in education records; to not use or disclose education records created or received from, by, or on behalf of Licensee or its students for any purpose other than the purpose for which such disclosure is made; and to not use or disclose such education records except as permitted by this Agreement, as required by law, or as authorized by Licensee in writing.

ARTICLE 8 EMPLOYMENT STATUS

8.1 Licensor shall, during the entire term of this Agreement, be construed to be an independent contractor. Nothing in this Agreement is intended to nor shall be construed to create an employer-employee relationship, or a joint venture relationship.

8.2 Licensor represents that it is qualified to perform the duties to be performed under this Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the duties required under this Agreement. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of Licensee.

8.3 Any person assigned by Licensor to perform the Services hereunder shall be the employee of Licensor, who shall have the sole right to hire and discharge its employee. Licensee may, however, direct Licensor to replace any of its employees under this Agreement.

8.4 Licensor shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither Licensor nor employees of Licensor are entitled to state retirement or leave benefits.

ARTICLE 9 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS

Licensor will be responsible for the behavior of all its employees and subcontractors while on the premises of any Licensee location. Any employee or subcontractor acting in a manner determined by the administration of that location to be detrimental, abusive or offensive to any of the staff and/or students will be asked to leave the premises and may be suspended from further work on the premises. All Licensor employees and subcontractors who will be working at such locations shall be covered by Licensor's comprehensive general liability insurance policy.

ARTICLE 10 MODIFICATION OR RENEGOTIATION

This Agreement may be modified only by written agreement signed by the parties hereto, and any attempt at oral modification shall be void and of no effect. The parties agree to renegotiate the Agreement if federal and/or state revisions of any applicable laws or regulations make changes in this Agreement necessary.

ARTICLE 11 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS

11.1 In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the parties agree that Lessor represents all contractors, third parties, and/or subcontractors Lessor has assembled for this project. The Licensee is required to negotiate only with Lessor, as Lessor's commitments are binding on all proposed contractors, third parties, and subcontractors.

11.2 Neither party may assign or otherwise transfer this Agreement or its obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of its obligations without such consent shall be null and void. This Agreement shall be binding upon the parties' respective successors and assigns.

11.3 Lessor must obtain the written approval of MCCB before subcontracting any portion of this Agreement. No such approval by MCCB of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of MCCB in addition to the total fixed price agreed upon in this Agreement. All subcontracts shall incorporate the terms of this Agreement and shall be subject to the terms and conditions of this Agreement and to any conditions of approval that MCCB may deem necessary.

11.4 Lessor represents and warrants that any subcontract agreement Lessor enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the Licensee, and that the subcontractor acknowledges that no privity of contract exists between the Licensee and the subcontractor and that the Lessor is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with the Lessor. The Lessor shall indemnify and hold harmless the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Lessor's failure to pay any and all amounts due by Lessor to any subcontractor, third party licensor, materialman, laborer or the like.

11.5 All subcontractors shall be bound by any negotiation, arbitration, appeal, adjudication or settlement of any dispute between the Lessor and the Licensee, where such dispute affects the subcontract.

ARTICLE 12 AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of MCCB to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds for the performances required under this Agreement.

If the funds anticipated for the fulfillment of this Agreement are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to MCCB for the payments or performance due under this Agreement, MCCB shall have the right to immediately terminate this Agreement, in whole or in part, without damage, penalty, cost or expense to MCCB of any kind whatsoever, except for payment for work completed by Licensor and accepted by MCCB prior to termination. The effective date of termination shall be as specified in the notice of termination. MCCB shall have the sole right to determine whether funds are available for the payments or performances due under this Agreement.

ARTICLE 13 TERMINATION

13.1 Notwithstanding any other provision of this Agreement to the contrary, this Agreement may be terminated, in whole or in part, as follows: (a) upon the mutual, written agreement of the parties; (b) If either party fails to comply with the terms of this Agreement, the non-defaulting party may terminate the Agreement upon the giving of thirty (30) calendar days written notice unless the breach is cured within said thirty (30) day period; (c) MCCB may terminate the Agreement in whole or in part without the assessment of any penalties upon ten (10) calendar days written notice to Licensor if Licensor becomes the subject of bankruptcy, reorganization, liquidation or receivership proceedings, whether voluntary or involuntary, or (d) MCCB may terminate this Agreement in whole or in part without the assessment of any penalties after giving thirty (30) calendar days written notice specifying the effective date thereof to Licensor in the event: (i) Licensor sells its company to another company without the prior written approval of MCCB; or (ii) there are excessive instabilities in the Software, which are defined as complete inaccessibility of Software occurring for a consecutive twenty-four (24) hour period for more than two (2) separate times every calendar month or if the uptime annual availability percentage (calculated on a trailing 365 day period) drops below 95%. The provisions of this Article 13 do not limit either party's right to pursue any other remedy available at law or in equity.

13.2 In the event MCCB terminates this Agreement, Licensor shall receive just and equitable compensation for Services rendered by Licensor and accepted by MCCB prior to the termination. Further, upon termination of this Agreement, Licensor shall refund any and all applicable unexpended prorated annual ASP fees previously paid by Licensee.

ARTICLE 14 GOVERNING LAW

This Agreement shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. Licensor expressly agrees that under no circumstances shall the State be obligated to pay an attorney's fee, prejudgment interest or the cost of legal action to Licensor. Further, nothing in this Agreement shall affect any statutory rights the parties may have that cannot be waived or limited by contract.

ARTICLE 15 WAIVER

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or

power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Agreement. A waiver by either party, to be effective, must be in writing, must set out the specifics of what is being waived, and must be signed by an authorized representative of that party.

ARTICLE 16 SEVERABILITY

If any term or provision of this Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law provided that the State's purpose for entering into this Agreement can be fully achieved by the remaining portions of the Agreement that have not been severed.

ARTICLE 17 CAPTIONS

The captions or headings in this Agreement are for convenience only, and in no way define, limit or describe the scope or intent of any provision or Article in this Agreement.

ARTICLE 18 HOLD HARMLESS

To the fullest extent allowed by law, Licensor shall indemnify, defend, save and hold harmless, protect and exonerate Licensee, ITS and the State, its Board Members, officers, employees, agents and representatives from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever, including without limitation, court costs, investigative fees and expenses, attorney fees and claims for damages arising out of or caused by the intentional, willful misconduct or gross negligence of Licensor and/or its partners, principals, agents, employees or subcontractors in the performance of or failure to perform this Agreement.

ARTICLE 19 THIRD PARTY ACTION NOTIFICATION

Licensor shall notify MCCB in writing within five (5) business days of Licensor filing bankruptcy, reorganization, liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Licensor or MCCB by any entity that may result in litigation related in any way to this Agreement and/or which may affect the Licensor's performance under this Agreement. Failure of the Licensor to provide such written notice to MCCB shall be considered a material breach of this Agreement and MCCB may, at its sole discretion, pursue its rights as set forth in the Termination Article herein and any other rights and remedies it may have at law or in equity.

ARTICLE 20 AUTHORITY TO CONTRACT

Licensor warrants that it is a validly organized business with valid authority to enter into this Agreement; that entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual or other agreement of any kind, and notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

ARTICLE 21 NOTICE

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their business address listed herein. ITS' address for notice is: Craig P. Orgeron, Ph.D., Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. Mississippi Community College Board's address for notice is: Mr. Christian Pruitt, Ph.D., Assistant Executive Director for eLearning and Instructional Technology, Mississippi Community College Board, 3825 Ridgewood Road, Jackson, Mississippi 39211. The Lessor's address for notice is: Mr. Steve Kaminsky, Chief Financial Officer, Instructure Inc., 9020 Sandy Parkway, Suite 300, Sandy, Utah 84070. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

ARTICLE 22 RECORD RETENTION AND ACCESS TO RECORDS

Licensor shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Agreement. The Licensee, ITS, any state or federal agency authorized to audit Licensee, and/or any of their duly authorized representatives, shall have unimpeded, prompt access to this Agreement and to any of the Licensor's proposals, books, documents, papers and/or records that are pertinent to this Agreement to make audits, copies, examinations, excerpts and transcriptions at the State's or Licensor's office as applicable where such records are kept during normal business hours. All records relating to this Agreement shall be retained by the Licensor for three (3) years from the date of receipt of final payment under this Agreement. However, if any litigation or other legal action, by or for the state or federal government has begun that is not completed at the end of the three (3) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution.

ARTICLE 23 INSURANCE

Licensor represents that it will maintain workers' compensation insurance as prescribed by law which shall inure to the benefit of Licensor's personnel, as well as comprehensive general liability and employee fidelity bond insurance. Licensor will, upon request, furnish MCCB with a certificate of conformity providing the aforesaid coverage.

ARTICLE 24 DISPUTES

Any dispute concerning a question of fact under this Agreement which is not disposed of by agreement of the Licensor and Licensee, shall be decided by the Executive Director of ITS or his/her designee. This decision shall be reduced to writing and a copy thereof mailed or furnished to the parties. Disagreement with such decision by either party shall not constitute a breach under the terms of this Agreement. Such disagreeing party shall be entitled to seek such other rights and remedies it may have at law or in equity.

ARTICLE 25 COMPLIANCE WITH LAWS

Licensor shall comply with, and all activities under this Agreement shall be subject to, all

Licensee policies and procedures which Licensor has received copies of, and all applicable federal, state, and local laws, regulations, policies and procedures as now existing and as may be amended or modified. Specifically, but not limited to, Licensor shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of this Agreement because of race, creed, color, sex, age, national origin or disability.

ARTICLE 26 CONFLICT OF INTEREST

Licensor shall notify MCCB of any potential conflict of interest resulting from the provision of services to other customers. If such conflict cannot be resolved to MCCB's satisfaction, MCCB reserves the right to terminate this Agreement.

ARTICLE 27 SOVEREIGN IMMUNITY

By entering into this Agreement with Licensor, the State of Mississippi does in no way waive its sovereign immunities or defenses as provided by law.

ARTICLE 28 CONFIDENTIAL INFORMATION

28.1 Licensor shall treat all Licensee data and information to which it has access by its performance under this Agreement as confidential and shall not disclose such data or information to a third party without specific written consent of Licensee. In the event that Licensor receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a validly issued judicial order requiring divulgence of such information, Licensor shall promptly inform Licensee and thereafter respond in conformity with such court order to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive the termination or completion of this Agreement and shall continue in full force and effect and shall be binding upon the Licensor and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in this Agreement on behalf of, or under the rights of the Licensor following any termination or completion of this Agreement.

28.2 With the exception of any attached exhibits which are labeled as "confidential", the parties understand and agree that this Agreement, including any amendments and/or change orders thereto, does not constitute confidential information, and may be reproduced and distributed by the State without notification to Licensor. ITS will provide third party notice to Licensor of any requests received by ITS for any such confidential exhibits so as to allow Licensor the opportunity to protect the information by court order as outlined in ITS Public Records Procedures.

28.3 Confidential information excludes information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the confidential information. The Recipient may disclose confidential information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

ARTICLE 29 EFFECT OF SIGNATURE

Each person signing this Agreement represents that he or she has read the Agreement in its entirety, understands its terms, is duly authorized to execute this Agreement on behalf of the parties and agrees to be bound by the terms contained herein. Accordingly, this Agreement shall not be construed or interpreted in favor of or against the State or the Lessor on the basis of draftsmanship or preparation hereof.

ARTICLE 30 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS

All Content collected by the Software shall be the property of Licensee. Lessor may use the Content only in the performance of this Agreement, unless otherwise agreed upon between the parties. Licensee acknowledges that the Products shall remain the exclusive property of Lessor and are excluded from this Article.

ARTICLE 31 NON-SOLICITATION OF EMPLOYEES

Lessor agrees not to employ or to solicit for employment, directly or indirectly, any of MCCB's employees until at least one (1) year after the expiration/termination of this Agreement unless mutually agreed to the contrary in writing by MCCB and the Lessor and provided that such an agreement between these two entities is not a violation of the laws of the State of Mississippi or the federal government.

ARTICLE 32 ENTIRE AGREEMENT

32.1 This contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating thereto, including all terms of any "shrink-wrap", "click-wrap" or "browse-wrap" license of the Software. The RFP No. 3692, and Lessor's Proposal, as accepted by the State, in response thereto are hereby incorporated into and made a part of this Agreement.

32.2 The contract made by and between the parties hereto shall consist of, and precedence is hereby established by the order of the following:

- A. This Agreement signed by the parties hereto;
- B. Any exhibits attached to this Agreement;
- C. RFP No. 3692 and written addenda; and
- D. Lessor's Proposal, as accepted by the State, in response to RFP No. 3692.

32.3 The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by the Lessor. The documents are complementary, and what is required by one shall be binding as if required by all. A higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency arising under the various provisions thereof; provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur by reason thereof. The documents listed above are shown in descending order of priority, that is, the highest document begins with the first listed document ("A. This Agreement") and the lowest document is listed last ("D. Lessor's Proposal").

ARTICLE 33 STATE PROPERTY

Licensor shall be responsible for the proper custody of any Licensee-owned property furnished for Licensor's use in connection with Services performed pursuant to this Agreement. Licensor shall reimburse the Licensee for any loss or damage, normal wear and tear excepted.

ARTICLE 34 SURVIVAL

Articles 7, 14, 18, 22, 27, 28, 30, 31, and all other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this Agreement.

ARTICLE 35 DEBARMENT AND SUSPENSION CERTIFICATION

Licensor certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and (d) have, within a three (3) year period preceding this Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

ARTICLE 36 SPECIAL TERMS AND CONDITIONS

It is understood and agreed by the parties to this Agreement that there are no special terms and conditions except as specifically provided in this Agreement.

ARTICLE 37 STATUTORY AUTHORITY

By virtue of Section 25-53-21 of the Mississippi Code Annotated, as amended, the executive director of ITS is the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of information technology equipment, software and services. The parties understand and agree that ITS as contracting agent is not responsible or liable for the performance or non-performance of any of the Licensee's or Licensor's contractual obligations, financial or otherwise, contained within this Agreement.

ARTICLE 38 COMPLIANCE WITH ENTERPRISE SECURITY POLICY

Licensor and Licensee understand and agree that all products and services provided by Licensor under this Agreement must be and remain in compliance with the State of Mississippi's Enterprise Security Policy. The parties understand and agree that the State's Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines at the time of contract

execution. The State reserves the right to introduce a new policy during the term of this Agreement and require the Lessor to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

ARTICLE 39 SOFTWARE SUPPORT AND MAINTENANCE

As part of the Software support and maintenance services, Lessor will maintain the Products in an operable condition according to the specifications contained in the technical manuals and as outlined in RFP No. 3692 and the Lessor's Proposal in response thereto. Lessor shall provide Licensee with Enhancements to the Software as they are made generally available from time to time. Notwithstanding any other provisions of this Agreement, Lessor shall provide support only with respect to the then-current generally available version of the Software. Lessor shall provide Premium support for the Service as set forth in the attached Exhibit B.

ARTICLE 40 FORCE MAJEURE

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war or terrorism, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"). When such a cause arises, the Lessor shall notify the Licensee immediately in writing of the cause of its inability to perform; how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate this Agreement.

ARTICLE 41 CHANGE ORDER RATE AND PROCEDURE

37.1 It is understood that the State may, at any time by a written order, make changes in the scope of the project. No changes in scope are to be conducted or performed by the Lessor except by the express written approval of the State. The Lessor shall be obligated to perform all changes requested by the MCCB, which have no price or schedule effect.

41.2 The Lessor shall have no obligation to proceed with any change that has a price or schedule effect until the parties have mutually agreed in writing thereto. Neither the State nor the Lessor shall be obligated to execute such a change order; and if no such change order is executed, the Lessor shall not be obliged or authorized to perform services beyond the scope of this Agreement and the contract documents. All executed change orders shall be incorporated into previously defined deliverables.

41.3 With respect to any change orders issued in accordance with this Article, the Lessor shall be compensated for work performed under a change order according to the hourly change order rate of \$175.00. If there is a service that is not defined in the change order rate, the Lessor and the State will negotiate the rate. The Lessor agrees that this change order rate shall be a "fully loaded" rate, that is, it includes the cost of all materials, travel expenses, per

diem, and all other expenses and incidentals incurred by the Lessor in the performance of the change order. The Lessor shall invoice the MCCB upon acceptance by the MCCB of all work documented in the change order, and the MCCB shall pay invoice amounts on the terms set forth in this Agreement. The Lessor acknowledges and agrees that the fully-loaded change order hourly rates in Exhibit A must remain valid for the duration of the Agreement, with annual increases not to exceed the lesser of a five percent increase or an increase in the consumer price index, all Urban Consumer U.S. City Average (C.P.I.-U).

41.4 Upon agreement of the parties to enter into a change order, the parties will execute such a change order setting forth in reasonable detail the work to be performed thereunder, the revisions necessary to the specifications or performance schedules of any affected project work plan, and the estimated number of professional services hours that will be necessary to implement the work contemplated therein. The price of the work to be performed under any change order will be determined based upon the change order rate; however, the change order will be issued for a total fixed dollar amount and may not be exceeded regardless of the number of hours actually expended by the Lessor to complete the work required by that change order. The project work plan will be revised as necessary.

41.5 The Lessor will include in the progress reports delivered under this Agreement, the status of work performed under all then current change orders.

41.6 In the event the Lessor and the State enter into a change order which increases or decreases the time required for the performance of any part of the work under this Agreement, the Lessor shall submit to the MCCB a revised version of the project work plan, clearly indicating all changes, at least five (5) working days prior to implementing any such changes.

41.7 The MCCB shall promptly review all revised project work plans submitted under this Agreement, and shall notify the Lessor of its approval or disapproval, in whole or in part, of the proposed revisions, stating with particularity all grounds for any disapproval, within ten (10) working days of receiving the revisions from the Lessor. If the MCCB fails to respond in such time period or any extension thereof, the MCCB shall be deemed to have approved the revised project work plan.

ARTICLE 42 API ACCESS

Lessor provides access to its application-programming interface ("API") as part of the Service for no additional fee. Subject to the other terms of this Agreement, Lessor grants Licensee a non-exclusive, nontransferable, terminable license to operate the API only for purposes of interfacing Licensee's technology applications or services with the Service as allowed by the API. The API policy is attached here as Exhibit C. The following applies to API access:

(a) Licensee may not use the API in a manner, as reasonably determined by Lessor, that exceeds reasonable request volume, constitutes excessive or abusive usage, or fails to comply with the API Policy or with any part of the API. If any of these occur, Lessor can, upon prior written notice to Licensee, suspend or terminate Licensee's access to the API on a temporary or permanent basis.

- (b) Licensor may change or remove existing endpoints or fields in API results upon at least thirty (30) days notice to Licensee, but Licensor will use commercially reasonable efforts to support the previous version of the API for at least six (6) months. Licensor may add new endpoints or fields in API results without prior notice to Licensee.
- (c) Licensor will maintain and provide access to an API, unless it terminates the API for all customers with notice, due to it not being technically feasible or economically viable to continue granting access to the API.
- (d) The API is provided on an "as is" and "when available" basis. Licensor has no liability to Licensee as a result of any change, temporary unavailability, suspension or termination of access to the API.

ARTICLE 43 LICENSEE RESPONSIBILITIES

MCCB (a) is responsible for MCCB Content and Active User activity in its account in the Service; (b) will use reasonable efforts to keep its passwords secure and confidential, and notify Licensor of any known unauthorized access; and (c) may use the Services only in accordance with applicable law and this Agreement.

ARTICLE 44 LICENSEE RESTRICTIONS

Licensee may not, and will take reasonable steps to see that each Active User does not:

- (a) sell, resell, rent or lease the Service or API;
- (b) use the Services, for non-Licensee educational purposes, to store or transmit infringing, unsolicited marketing emails, libelous, obscene, deceptive, defamatory, pornographic, racist, sexual, hateful, or otherwise objectionable, unlawful or tortious material, or any other material in violation of a third-party right;
- (c) use the Services to harm or impersonate any person, or for any commercial purpose;
- (d) interfere with or disrupt the integrity or performance of the Service; or
- (e) attempt to gain unauthorized access to the Service or their related systems or networks.

ARTICLE 45 THIRD PARTY LINKS/SERVICE DISCLAIMER

The Service may contain links to third party web sites (including without limitation, links provided by instructors) or access third-party services (including without limitation, turnitin.com and Google docs). Such sites and services are not under the control of Licensor, and Licensor is not responsible for the content or any link on such sites or for the temporary or permanent unavailability of such third party sites or services.

ARTICLE 46 PUBLICITY

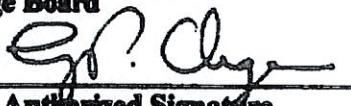
MCCB agrees to act as a reference account that will, upon Licensor's reasonable request, provide Service-related comments to the press, potential investors, and current or prospective customers and participate in Service-related case studies. MCCB agrees to issue joint press releases with Licensor regarding the Service, as mutually agreed upon by Licensor and MCCB. MCCB agrees to allow Licensor 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 MCCB's trademark guidelines and policies.

ARTICLE 47 LIABILITY

Unless jointly agreed otherwise in writing, Lessor's liability shall not exceed the total amount paid by Licensee to Lessor under this Agreement, including any amounts paid pursuant to amendments and change orders. In no event will Lessor be liable to Licensee for special, indirect, consequential or incidental damages including lost profits, lost savings or lost revenues of any kind unless Lessor was advised of the possibility of such loss or damage or unless such loss or damage could have been reasonably foreseen. Excluded from this or any liability limitation are claims related to fraud, bad faith, infringement issues, bodily injury, death, physical damage to tangible personal property and real property, and the intentional and willful misconduct or gross negligent acts of Lessor. The language contained herein tending to limit the liability of the Lessor will apply to Licensee to the extent it is permitted and not prohibited by the laws or constitution of Mississippi. Further, the parties understand and agree that the Lessor is precluded from relying on any contractual damages limitation language within this Agreement where the Lessor acts fraudulently or in bad faith.

For the faithful performance of the terms of this Agreement, the parties hereto have caused this Agreement to be executed by their undersigned authorized representatives.

**State of Mississippi, Department of
Information Technology Services, on
behalf of the Mississippi Community
College Board**

By: 
Authorized Signature

Printed Name: Craig P. Orgeron, Ph.D.

Title: Executive Director

Date: February 1, 2013

Instructure Inc.

By: 
Authorized Signature

Printed Name: Howard Baik

Title: Senior Counsel

Date: February 1, 2013