



UNIVERSITY OF ILLINOIS SYSTEM

CONTRACT BETWEEN  
THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS  
AND  
INSTRUCTURE, INC.



## Contract for Procurement of Supplies and Services

### **ARTICLE 1. Identification of Parties**

The parties to this contract are:

(a)The Board of Trustees of the University of Illinois, a public body corporate and politic of the State of Illinois ("University"), on behalf of University of Illinois Springfield and (b) Instructure, Inc., a Corporation with its principal office at 6330 South 3000 East, Suite 700, Salt Lake City, Utah ("Vendor").

### **ARTICLE 2. Supplies and/or Services**

**21. Supplies and/or Services.** Vendor will deliver the following "Supplies" and/or perform the following "Services" and will obtain at Vendor's expense all necessary licenses and permissions necessary for Vendor's delivery and/or performance:

Vendor will provide licensing and system support for a learning management system, Canvas, for the administration, documentation, tracking, reporting and delivery of educational courses, training programs and/or learning and development programs as defined in Vendor's proposal response to IPHEC2008, entitled Request of Proposal Learning Management System. All terms and conditions included in Vendor's response and pricing proposal to IPHEC2008 are hereby incorporated into this Agreement as fully set forth.

The Vendor's Terms and conditions as set forth in Appendix A of proposal to IPHEC2008 is deleted and replaced with Exhibit C of this Agreement.

It is understood by both Parties that if there are any conflicts in the terms and conditions of Vendor's proposal to IPHEC2008 and Exhibit C that conflict with this Agreement's terms and conditions, the Agreement's terms and conditions shall prevail.

Vendor's proposal response to IPHEC2008 Utilization Plan also included information on utilization of an Illinois Central Management System Business Enterprise Program vendor, Zia Learning from Chicago, Illinois. The BEP vendor will be utilized for services as deemed necessary by Vendor throughout the term of this contract.

**22. Work Product.** As part of Vendor's performance of Services, Vendor will furnish to University the following work product ("Work Product"): Vendor will provide all require work product as detailed in the Request for Proposal IPHEC2008 to University during the term of this Agreement.

**23. Discrepancies/Questions.** If any discrepancies or questions arise during Vendor's performance of the contract, Vendor is responsible for obtaining written clarification from University's Technical Representative before delivering the Supplies and/or providing the Services at issue. Vendor waives all claims for adjustment arising from Vendor's delivery of Supplies and/or performance outside what is described in Section 2.1,

- without a written contract amendment.
- 24. Warranty.** Unless otherwise agreed to in writing by the parties, Vendor warrants that (1) all Supplies furnished under this contract will be free of defects in material and workmanship, without liens or encumbrances of title, and will conform to applicable written drawings, specifications and other data, and if not of University's specified design, will be free of design defects and will be fit and sufficient for the purpose intended; and/or (2) the Services (i) will be performed in a timely, competent, workmanlike and professional manner and (ii) will conform to the contract specifications, documentation and requirements and to applicable industry standards for quality. All warranties, whether express or prescribed by law, shall extend for the longer of: (a) 180 days from delivery of Supplies or performance of Services; (b) the warranty period expressly provided by Vendor; or (c) the period set forth by law.
- 25. Title/Risk of Loss.** Unless otherwise stated on the face of the associated Purchase Order, title to all Supplies furnished under this contract and risk of loss shall pass to University upon delivery at final destination and acceptance by University; all shipments must be fully insured by Vendor, unless otherwise stated, and Vendor shall select the carrier and bear freight cost.
- 26. Inspection and Acceptance.** All Services provided and Supplies delivered under this contract must comply with applicable specifications and are subject to final inspection by University, notwithstanding any prior payments or inspections by University. University's acceptance after final inspection shall be conclusive, except with respect to latent defects or fraud. University may, at its option and without invalidating the remainder of this contract, direct Vendor to (a) promptly remove defective Supplies and issue a credit for the full value of the defective Supplies; (b) repair or replace defective Supplies; or (c) re-perform non-conforming Services at Vendor's expense and risk.

### **ARTICLE 3. Term and Termination**

- 3.1. Term.** This contract shall become binding as of date of execution. Unless renewed by University in accordance with Section 3.2, this contract shall expire on January 31, 2025.
- 3.2. Right to Renew.** This contract is renewable at University's election on the same terms and conditions except for any price adjustments permitted under Section 4.4. The terms of renewal are one (1) five-year renewal period. University may exercise its renewal right, if any, by providing written notice to Vendor not less than 30 days before the expiration date of the contract (whether in the original term or a renewal term). Notwithstanding the foregoing, any renewal that includes a price adjustment must be memorialized by a written amendment that is signed by both parties. Vendor has no right of renewal.

Notwithstanding the foregoing, if this contract is the result of a competitive solicitation for which an aspirational goal was established for utilization of certified vendors in accordance with the Business Enterprise for Minorities, Females, and Persons with Disabilities Act (30 ILCS 575), the University shall review this contract prior to the time of renewal to determine: (a) if the contract goal is being met; (b) if the goal should be increased based upon market conditions and availability of firms certified pursuant to this Act; and (c) if the awarded contract should be rebid if it is determined that Vendor has not demonstrated good faith

efforts towards meeting the contract goal. If this contract is the result of a competitive solicitation for which no aspirational goal was established, the University shall review this contract prior to the time of renewal to determine if a goal can be established; if it is determined that a contract goal can be established, the University may seek to amend the contract to include the contract goal and Vendor shall be required to complete a utilization plan to demonstrate how it intends to meet the contract goal.

- 33. Termination for Cause.** A party that defaults in performance or commits a material breach of this contract ("defaulting party") shall have 10 days to cure the default or breach after receiving notice from the other party. The non-defaulting party may terminate this contract without further notice and pursue other available legal remedies if the defaulting party fails to cure the breach within the prescribed period, or within such other period of time that is agreed by the parties in writing.
- 34. Termination for Convenience.** University may terminate this contract for convenience and without any cause by providing at least 30 calendar days' prior written notice to Vendor.
- 35. Termination for Non-Appropriation.** This contract is subject to termination by University in any year for which the General Assembly fails to make an appropriation to make payments under the contract.
- 36. Effect of Termination.** In the event of early termination Vendor shall stop performance in accordance with the notice of termination and shall submit to University a final bill for Supplies delivered and/or Services performed up to the date of termination. University is not obligated to pay Vendor for Services until Vendor provides all Work Product that is in progress or completed as of the date of termination. Vendor must comply with University's instructions to either destroy or return to University all information previously furnished to Vendor.

#### **ARTICLE 4. Compensation**

- 41. Compensation.** University shall pay Vendor compensation at the rate as listed in Exhibit D, Instructure Services Order Form, for Services performed to University's reasonable satisfaction in accordance with the Services set forth in Section 2.1 above and with the specifications and requirements set forth in Section 2.2 above, if any. University's obligation for total compensation shall not exceed \$354,728.16 unless approved by written amendment to this contract in accordance with University policies and applicable law.
- 42. Billing and Payment.** In order to be paid, Vendor must submit a proper invoice to University Technical Represented as listed in Article 5.2 no more frequently than monthly. A proper bill must include: itemized detail, invoice number, invoice date, invoice amount, remittance address and the University purchase order number. University will either approve the bill for payment, or deny a bill with defects, in accordance with the State Prompt Payment Act (30 ILCS 540) (the "Act"). University will assign a new date of receipt to a bill resubmitted in proper form. University will pay interest on approved bills that are not paid within the time period prescribed by the Act. The rate of interest shall be the rate established in the Act on the date that payment becomes late within the meaning of the Act. University will not pay interest of \$5 or less and may subtract any applicable discounts before payment.
- 43. Withholdings.** University may withhold or may void any invoice to the extent University deems necessary to

protect University from loss due to Vendor's: (a) unsatisfactory performance; (b) failure to pay subcontractors; (c) damage to University property; or (d) incomplete, inaccurate or unauthorized billing. University may withhold final payment until Vendor has delivered all Supplies and/or performed all Services to University's reasonable satisfaction in accordance with the specification and/or requirements identified in Article 2.

- 44. Price Adjustments upon Renewal.** If renewals are permitted, Vendor must notify University at least 90 calendar days prior to the contract expiration date of any changes to rates and price schedules. Any rate changes shall be in accordance with Vendor's original quotation or response to solicitation. The parties will reflect any rate/price changes in a written contract amendment.

## **ARTICLE 5. Notices**

- 5.1. Delivery.** To be enforceable, all notices must be in writing and delivered to the party's representative(s) named below, appropriate to the nature of the notice, by either certified mail, return receipt requested, or commercial carrier with delivery receipt. Notices are effective upon receipt by the designated representative. A party may change its representative at any time by written notice to the other party.
- 5.2. Directing Notices.** Vendor shall direct all general notices or matters of contract interpretation to University's Contract Representative and notices involving technical or scheduling issues to University's Technical Representative. Vendor must include University's contract number or relevant purchase order number in any notice. Vendor shall direct all formal legal notices to the Board of Trustees.

<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center; padding: 5px;">University Contract Representative</th><th style="text-align: center; padding: 5px;">Vendor Contract Representative</th></tr> </thead> <tbody> <tr> <td style="padding: 10px;">           Jill Menezes            University of Illinois Springfield            Purchasing Department            One University Plaza, MS BSB106            Springfield, Illinois 62703-5407            Telephone: 217/206-6651            Email: <a href="mailto:jmene1@uis.edu">jmene1@uis.edu</a> </td><td style="padding: 10px;">           Instructure, Inc.            G. K. Risser            6330 South 3000 East, Suite 700            Salt Lake City, Utah 84121            Telephone: 801/903-7864            Email: <a href="mailto:gkrisser@instructure.com">gkrisser@instructure.com</a> </td></tr> </tbody> </table>	University Contract Representative	Vendor Contract Representative	Jill Menezes University of Illinois Springfield Purchasing Department One University Plaza, MS BSB106 Springfield, Illinois 62703-5407 Telephone: 217/206-6651 Email: <a href="mailto:jmene1@uis.edu">jmene1@uis.edu</a>	Instructure, Inc. G. K. Risser 6330 South 3000 East, Suite 700 Salt Lake City, Utah 84121 Telephone: 801/903-7864 Email: <a href="mailto:gkrisser@instructure.com">gkrisser@instructure.com</a>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center; padding: 5px;">University Technical Representative</th><th style="text-align: center; padding: 5px;">University Legal Notices</th></tr> </thead> <tbody> <tr> <td style="padding: 10px;">           Tilio Llosa            Information Technology Services            University of Illinois Springfield            One University Plaza,            Springfield, Illinois 62703-5407            Telephone:            Email:         </td><td style="padding: 10px;">           The Board of Trustees of the University of Illinois            Attn: Secretary of the Board            352 Henry Administration Building, MC-350            506 South Wright Street            Urbana, Illinois 61801         </td></tr> </tbody> </table>	University Technical Representative	University Legal Notices	Tilio Llosa Information Technology Services University of Illinois Springfield One University Plaza, Springfield, Illinois 62703-5407 Telephone: Email:	The Board of Trustees of the University of Illinois Attn: Secretary of the Board 352 Henry Administration Building, MC-350 506 South Wright Street Urbana, Illinois 61801
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## **ARTICLE 6. INSURANCE**

Unless exempt by law, Vendor and its subcontractors shall maintain the insurance coverages stated below during the

term of this contract and shall provide evidence of such coverage to University's Contract Representative upon request. Insurance must be placed with companies with an A.M. Best rating of B+ VI or better rating and will be maintained for the duration of the project or the term for which Supplies will be delivered and/or Services will be rendered.

**6.1. Commercial General Liability** - limits of not less than:

Bodily Injury & Property Damage - Each Occurrence	\$1,000,000
Bodily Injury & Property Damage - General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury Liability	\$1,000,000
Fire Damage Legal Liability	\$ 100,000

**6.2. Worker's Compensation**, as required by applicable law, with limits of not less than:

Coverage A (Statutory Benefits)	Illinois Statutory
Coverage B (Employer's Liability)	\$500,000 each disease
	\$500,000 each employee
	\$500,000 policy limit

**6.3. Automobile Liability**, when any motor vehicles are used in connection with work to be performed, Vendor must provide Automobile Liability insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage, combined. Vendor and its subcontractors providing the following charter transportation services will provide limits as follows:

Bus (25+ passengers)	\$10,000,000
Mini-bus (16-25 passengers)	\$7,000,000
Shuttle bus or van (up to 14 passengers + driver)	\$5,000,000
Van (up to 8 passengers)	\$2,000,000
Sedan	\$1,000,000

Umbrella liability insurance may be used to meet the coverage requirements shown in 6.1, 6.2, and 6.3 and must be also be primary and non-contributory to any University insured or self-insured program.

**6.4. Professional Liability.** When the Services provided under this contract include any professional services, Vendor and its subcontractors shall maintain professional liability insurance coverage at minimum limits as indicated below, for itself, and its employees and agents to include coverage for acts, errors and/or omissions related to the rendering or failure to render such professional services. When the policy is renewed or replaced, the policy retroactive date must coincide with, or precede commencement of services by Vendor and its subcontractors under this Contract. A claims-made policy that is replaced or not renewed must have an extended reporting period of at least two years. When Vendor and its subcontractors provide medical related services, the policy shall include coverage specific to medical malpractice.

Professional Liability/Errors and Omissions	\$1,000,000 per claim
	\$3,000,000 annual aggregate

Failure of the University to obtain Certificate(s) or other evidence of insurance from Vendor and its subcontractors shall not be deemed a waiver of these insurance requirements. Vendor shall ensure all subcontractors maintain insurance as required herein and will make proof of such insurance available to University upon request. Vendor and its subcontractors' failure to comply with the insurance requirements constitute a material breach of contract terms.

## **ARTICLE 7. Indemnification**

Intentionally Removed.

## **ARTICLE 8. Subcontracts**

Vendor shall provide an attachment listing all known or anticipated subcontracts with an annual value of \$50,000 or more. The attachment shall include the proposed value of each subcontract and the name and address of the subcontractor. Vendor shall not subcontract any portion of the Supplies and/ or Services without University's prior written permission and shall promptly notify University of any proposed change in subcontractors, together with all relevant information requested by University.

## **ARTICLE 9. Confidentiality**

- 9.1. **General.** Vendor must treat all information relating to this contract ("University Information") as confidential. Unless required by law, or authorized by University in writing, Vendor shall not disclose University Information to third parties or use University Information for any purpose other than in delivering the Supplies and/or performing the Services.
- 9.2. **Family Educational Rights and Privacy Act, 20 U.S.C. §1232g (FERPA).** Unless authorized by law or by written permission of each affected student, Vendor shall not disclose to any third party information concerning University students. Vendor shall protect all records containing student information in accordance with FERPA, its implementing regulations, and University policy. In addition to other remedies, University may terminate this contract immediately upon information that Vendor may have violated this provision.
- 9.3. **Illinois Personal Information Protection Act, 815 Ill. Comp. Stat. 530 (PIPA).** If applicable, Vendor will cooperate in good faith with University to maintain security and integrity of *personal information* in compliance with PIPA.
- 9.4. **Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, 45 C.F.R. parts 160, 162, and 164.** If Vendor is University's *Business Associate*, as that term is defined by the HIPAA Privacy Rule at 45 C.F.R. §160.103, then Vendor agrees to the terms of the HIPAA Business Associate Agreement attached as Exhibit C.

## **ARTICLE 10. Intellectual Property Rights**

- 10.1. Intentionally Removed.

## **ARTICLE 11. Records Retention and Audits**

- 11.1. **Maintenance of Books and Records.** Vendor shall maintain, and shall cause any subcontractors to maintain,

books and records that relate to performance of this contract, including subcontracts, and that support amounts charged, and shall maintain such books and records for three years from the date of final payment or for such longer period of time as is necessary to complete ongoing or announced audits or to comply with any applicable federal requirements. All such books and records shall be available for review and audit by the Auditor General, chief procurement officer for higher education (CPO-HE), internal auditor, or University. Vendor and any of Vendor's subcontractors shall cooperate fully with any audit or request for information from the Auditor General, CPO-HE, internal auditor, or University pursuant to 30 ILCS 500/20-65 and shall not impose any charge for audit or examination.

- 11.2. Right of Inspection.** University may reasonably inspect Vendor's premises, facilities, equipment, and investigate the business reputation and other qualifications of Vendor and any of Vendor's subcontractors throughout the term of this contract.
- 11.3. Litigation Hold Order Compliance.** Vendor shall, and shall cause Vendor's employees and subcontractors to, fully comply with any litigation hold order issued by University in anticipation of third party litigation relating to this contract. Vendor shall promptly retrieve, recover, preserve, retain and, subject to legal privileges, deliver any information and documents, in any format, covered by a litigation hold order.

## **ARTICLE 12. Additional Statutory and Regulatory Terms:**

To the extent applicable, the following provisions shall apply to the Vendor:

- 12.1. Excluded Parties.** Vendor certifies that neither Vendor nor any of Vendor's directors, officers, employees, agents, and subcontractors who may deliver supplies and/or provide services pursuant to this contract (individually an "Agent") is presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from transactions with the U.S. government or by any federal government agency. Vendor shall provide University immediate written notice if Vendor learns that this certification was erroneous when made or if Vendor or any Agent hereafter becomes debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from transactions with the U.S. government or by any federal agency. Vendor further certifies that neither Vendor nor any Agent is presently subject to an investigation or proceeding to exclude either as a provider under Medicare or Medicaid or under any other federal or state health care program or under any third party insurance program, nor is currently excluded or debarred from submitting claims to Medicare or Medicaid or to any other federal or state health care program or to any third party insurer. University may terminate this contract immediately without any penalty to University if either of these certifications was erroneous when made or becomes no longer valid during the term of this contract.
- 12.2. Equal Employment Opportunity.** The clause at Ill. Adm. Code tit. 44, § 750.10, Appx. A is incorporated into this contract by reference. If this contract is federally funded and exceeds \$10,000, the following clause applies: Vendor shall abide by the requirements of 41 C.F.R. §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin.

These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status. Vendor will include this clause in every subcontract awarded under this contract so that the provision is binding upon the subcontractor.

- 12.3. Employment of Illinois Workers on Public Works Act.** Pursuant to the Employment of Illinois Workers on Public Works Act, 30 ILCS 570, Vendor shall employ at least 90% Illinois laborers on all public works projects or improvements or for the clean-up and on-site disposal of hazardous waste whenever there is a period of excessive unemployment in Illinois, except as otherwise permitted in the Act.
- 12.4. Veterans Preference Act.** Pursuant to the Veterans Preference Act, 330 ILCS 55, Vendor shall give preference to veterans of United States military and naval service in appointments and employment on public works projects.
- 12.5. Public Works Employment Discrimination Act.** Pursuant to the Public Works Employment Discrimination Act, 775 ILCS 10, Vendor shall not refuse or deny employment to any person in any capacity on the ground of unlawful discrimination as defined in the Illinois Human Rights Act, nor subject any person to unlawful discrimination in any manner, in connection with the performance of this Contract.
- 12.6. Export Control.** Vendor shall comply with all relevant laws, whether United States or foreign, governing the exports and re-exports of items and information made under this contract. Prior to providing University with any items subject to the International Traffic in Arms Regulations (ITAR), 22 C.F.R. §§ 120-130, Vendor will notify University and identify the items at issue and the applicable categories and subcategories of the United States Munitions List. University may decline to accept any items or information controlled under ITAR. Vendor will direct all notices under this section to the University Contract Representative.
- 12.7. Medical Goods and Services.** If Vendor furnishes, or otherwise authorizes the furnishing of, Medicaid healthcare items or services, performs billing or coding functions, or is involved in monitoring of healthcare provided by University, then Vendor shall comply with applicable provisions of the Deficit Reduction Act of 2005, 42 U.S.C. §1396a, and adopt University's policies for detecting and preventing waste, fraud, and abuse, which are located at: <http://go.uillinois.edu/DRAVendor>.
- 12.8. Prevailing Wage.** If this contract involves (a) a "public works" project within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130, or (b) printing, janitorial, cleaning, window cleaning, building and grounds, site technicians, natural resources, food, or security contracts of \$2,000 or more (or \$200 or more per month) within the meaning of the Illinois Procurement Code, 30 ILCS 500/25-60, all contractors and subcontractors must pay no less than the general prevailing rate of wages (hourly cash wages plus fringe benefits) in the locality in which the work is produced or performed and comply with all other requirements of the Act. Refer to the prevailing wage rates on the Illinois Department of Labor website at:<http://go.uillinois.edu/IDOL>.
- 12.9. Use of Soybean Oil- or Vegetable Oil- Based Ink for Offset Printing Services.** If this contract is for offset printing services, Vendor shall use soybean oil- or vegetable oil-based ink unless a State Purchasing Officer determines in writing another ink is more appropriate to assure high quality and reasonable pricing. 30 ILCS 500/45-15.

## **ARTICLE 13. General Terms**

- 13.1. Ambiguities.** Any rule of construction that would resolve ambiguities against the drafting party shall not apply in interpreting this contract.
- 13.2. Amendments.** No modification of this contract shall be effective unless made by a written amendment signed by each party's authorized signatory.
- 13.3. Assignment.** Neither party may assign its obligations under this contract without the prior written consent of the other party.
- 13.4. Authorized Signatories.** The individuals signing this contract on a party's behalf represent that they have the requisite authority and intent to bind that party to this contract.
- 13.5. Choice of Law.** This contract and all claims arising out of or relating to this contract shall be governed and construed by application of the laws of the State of Illinois without regard to its conflict of law provisions.
- 13.6. Compliance with Laws.** Vendor shall perform all obligations under this contract in compliance with all applicable laws governing the performance. Breach of this provision constitutes a material breach of this contract.
- 13.7. Counterparts/Facsimile Signatures.** This contract may be signed in counterparts. Facsimile signatures constitute original signatures for all purposes.
- 13.8. Force Majeure.** A party is excused from performing its obligations under this contract when conditions beyond its control and unforeseen by the parties make its performance commercially impractical, illegal, or impossible. Conditions of excuse include, but are not limited to: natural disasters, strikes, fires, war, terrorism and threats of terrorism, government actions, and acts or omissions of third parties. So long as the conditions continue, the party whose performance is affected shall keep the other party fully informed about the conditions and the prospects of their ending.
- 13.9. Headings.** Headings in this contract are intended only to assist with readability and are not substantive.
- 13.10. Independent Contractor.** The parties are independent contractors with respect to each other. Nothing in this contract is intended to create any employment, association, partnership, joint venture, or agency relationship between them.
- 13.11. Integration.** This contract with its attachments, amendments and incorporated references constitutes the parties' entire agreement regarding the subject matter.

**Attachments include:**

Exhibit A - State Clauses and Certifications (Included below) Optional Attachments:

- Exhibit B – Instructure Terms and Conditions
- Exhibit C – Instructure Services Order Form
-

- 13.12. Jurisdiction.** Any claims against University must be filed in accordance with the Illinois Court of Claims Act.
- 13.13. Severability.** If any provision of this contract is held by a court of competent jurisdiction to be unenforceable, the provision shall be severed from this contract so long as severance does not affect the enforceability or essential purpose of the remainder of the contract.
- 13.14. Sovereign Immunity.** By entering into this contract, University does not waive the sovereign immunity or any other defenses and immunities afforded to it by Illinois and federal law.
- 13.15. Use of Name.** Vendor shall not use University's name or protected marks for any commercial purpose without University's advance written consent. Vendor shall be allowed to use University's name, logo and non-competitive use details as part of customer lists, so long as it does not state expressly or imply that the University endorses Vendor. Vendor shall work with University to ensure all use of University's name and logo meet University standards as determined by the University.
- 13.16. Waiver.** The failure of either party to enforce any provision of this contract shall not waive the party's right to later enforce the provision or the contract.

THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS INSTRUCTURE, INC.

By:

b(2)(2)

Date

Avijit Ghosh, Comptroller  
Signature of Comptroller Delegate  
Jill Menezes, Director of Purchases

By:

b(2)(2)

Printed Name: Elizabeth Powell

Title: Sr. Manager, Deal Desk

Date: June 22, 2020

Timothy L. Killeen, President

Signature of President Delegate, Printed Name & Title

✓

Gerard Joseph, Associate Provost Budget & Administrative Planning

Thomas Bearrows, Chief Legal Counsel

Signature of Chief Legal Counsel Delegate, Printed Name & Title

Rhonda Perry, University Campus Legal Counsel

Approved as to legal form by Office of University Counsel MS/6-28-18 Purchasing

## Exhibit A

### Certifications

Vendor acknowledges and agrees that compliance with this subsection in its entirety for the term of any resulting contract and any renewals is a material requirement and condition of the contract. By executing the contract Vendor certifies compliance with this subsection in its entirety, and is under a continuing obligation to remain in compliance and report any non-compliance.

This subsection, in its entirety, applies to subcontractors used on this contract. Vendor shall include these Standard Certifications in any subcontract used in the performance of the contract using the Standard Subcontractor Certification form provided by the State.

If the contract extends over multiple fiscal years, including the initial term and all renewals, Vendor and its subcontractors shall confirm compliance with this section in the manner and format determined by the State by the date specified by the State and in no event later than July 1 of each year that the contract remains in effect.

1. As part of each certification, Vendor acknowledges and agrees that should Vendor or its subcontractors provide false information, or fail to be or remain in compliance with the Standard Certification requirements, one or more of the following sanctions will apply:
  - the contract may be void by operation of law,
  - the State may void the contract, and
  - the Vendor and its subcontractors may be subject to one or more of the following: suspension, debarment, denial of payment, civil fine, or criminal penalty.

Identifying a sanction or failing to identify a sanction in relation to any of the specific certifications does not waive imposition of other sanctions or preclude application of sanctions not specifically identified.

2. Vendor certifies it and its employees will comply with applicable provisions of the United States Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act, and applicable rules in performance of this contract.
3. **This applies to individuals, sole proprietorships, partnerships and LLCs, but is otherwise not applicable.**  
Vendor, if an individual, sole proprietor, partner or an individual as member of a LLC, certifies he/she is not in default on an educational loan. 5 ILCS 385/3
4. Vendor certifies that it has reviewed and will comply with the Department of Employment Security Law (20 ILCS 1005/1005-47) as applicable.
5. **This applies only to certain service contracts and does NOT include contracts for professional or artistic services.** To the extent there was a current Vendor providing the services covered by this contract and the employees of that Vendor who provided those services are covered by a collective bargaining agreement, Vendor certifies (i) that it will offer to assume the collective bargaining obligations of the prior employer, including any existing collective bargaining agreement with the bargaining representative of any existing collective bargaining unit or units performing substantially similar work to the services covered by the contract subject to its bid or offer; and (ii) that it shall offer employment to all employees currently employed in any existing bargaining unit who perform substantially similar work to the work that will be performed pursuant to this contract. This does not apply to heating, air conditioning, plumbing and electrical service contracts. 30 ILCS 500/25-80

6. Vendor certifies it has neither been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois or any other State, nor made an admission of guilt of such conduct that is a matter of record. 30 ILCS 500/50-5
7. If Vendor has been convicted of a felony, Vendor certifies at least five years have passed after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business. 30 ILCS 500/50-10
8. If Vendor or any officer, director, partner, or other managerial agent of Vendor has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, Vendor certifies at least five years have passed since the date of the conviction. Vendor further certifies that it is not barred from being awarded a contract. 30 ILCS 500/50-10.5
9. Vendor certifies it is not barred from having a contract with the State based upon violating the prohibitions related to either submitting/writing specifications or providing assistance to an employee of the State of Illinois by reviewing, drafting, directing, or preparing any invitation for bids, a request for proposal, or request of information, or similar assistance (except as part of a public request for such information). 30 ILCS 500/50-10.5(e)
10. Vendor certifies that it and its affiliates are not delinquent in the payment of any debt to the State (or if delinquent have entered into a deferred payment plan to pay the debt. 30 ILCS 500/50-11, 50-60
11. Vendor certifies that it and all affiliates shall collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with provisions of the Illinois Use Tax Act. 30 ILCS 500/50-12
12. Vendor certifies that it has not been found by a court or the Pollution Control Board to have committed a willful or knowing violation of the Environmental Protection Act within the last five years, and is therefore not barred from being awarded a contract. 30 ILCS 500/50-14
13. Vendor certifies it has neither paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract. 30 ILCS 500/50-25
14. Vendor certifies it has read, understands and is not knowingly in violation of the "Revolving Door" provisions of the Illinois Procurement Code. 30 ILCS 500/50-30
15. Vendor certifies that if it hires a person required to register under the Lobbyist Registration Act to assist in obtaining any State contract, that none of the lobbyist's costs, fees, compensation, reimbursements or other remuneration will be billed to the State. 30 ILCS 500/50-38
16. Vendor certifies that it will not retain a person or entity to attempt to influence the outcome of a procurement decision for compensation contingent in whole or in part upon the decision or procurement. 30 ILCS 500/50-38
17. Vendor certifies it will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anti-competitive practice among any bidders, offerors, contractors, proposers, or employees of the State. 30 ILCS 500/50-40, 50-45, 50-50
18. Vendor certifies that if it is awarded a contract through the use of the preference required by the Procurement of Domestic Products Act, then it shall provide products pursuant to the contract or subcontract that are manufactured in the United States. 30 ILCS 517
19. Vendor certifies steel products used or supplied in the performance of a contract for public works shall be manufactured or produced in the United States, unless the executive head of the procuring Agency/University grants an exception. 30 ILCS 565
20. Drug Free Workplace

- 20.1 If Vendor employs 25 or more employees and this contract is worth more than \$5,000, Vendor certifies it will provide a drug free workplace pursuant to the Drug Free Workplace Act
- 20.2 If Vendor is an individual and this contract is worth more than \$5000, Vendor certifies it shall not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance during the performance of the contract. 30 ILCS 580
21. Vendor certifies that neither Vendor nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the United States Department of Commerce. 30 ILCS 582
22. Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been or will be produced in whole or in part by forced labor or indentured labor under penal sanction. 30 ILCS 583
23. Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been produced in whole or in part by the labor of any child under the age of 12. 30 ILCS 584
24. This applies to information technology contracts and is otherwise not applicable. Vendor certifies that information technology, including electronic information, software, systems and equipment, developed or provided under this contract comply with the applicable requirements of the Illinois Information Technology Accessibility Act Standards as published at ([www.dhs.state.il.us/iitaa](http://www.dhs.state.il.us/iitaa)). 30 ILCS 587
25. **This only applies to vendors who own residential buildings but is otherwise not applicable.** Vendor certifies, if it owns residential buildings, that any violation of the Lead Poisoning Prevention Act has been mitigated. 410 ILCS 45
26. Vendor certifies it has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any state or of the United States. 720 ILCS 5/33 E-3, E-4
27. Vendor certifies it complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, which include providing equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies. 775 ILCS 5/2-105
28. Vendor certifies it does not pay dues to or reimburse or subsidize payments by its employees for any dues or fees to any "discriminatory club." 775 ILCS 25/2
29. Vendor warrants and certifies that it and, to the best of its knowledge, its subcontractors have and will comply with Executive Order No. 1 (2007). The Order generally prohibits Vendors and subcontractors from hiring the then-serving Governor's family members to lobby procurement activities of the State, or any other unit of government in Illinois including local governments if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity.
30. Vendor certifies that if an individual, sole proprietor, partner or an individual as a member of a LLC, he/she has not received an early retirement incentive prior to 1993 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code or an early retirement incentive on or after 2002 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code. 30 ILCS 105/15a; 40 ILCS 5/14-108.3; 40 ILCS 5/16-133
31. Vendor certifies that it has read, understands, and is in compliance with the registration requirements of the Elections Code (10 ILCS 5/9-35) and the restrictions on making political contributions and related requirements of the Illinois Procurement Code. Vendor will not make a political contribution that will violate these requirements. 30 ILCS 500/20-160 and 50-37

**In accordance with section 20-160 of the Illinois Procurement Code, Vendor certifies as applicable: Vendor is**

**not required to register as a business entity with the State Board of Elections.**

**or**

- Vendor has registered with the State Board of Elections. As a registered business entity, Vendor acknowledges a continuing duty to update the registration as required by the Act.**
32. A person (other than an individual acting as a sole proprietor) must be a duly constituted legal entity and authorized to do business in Illinois prior to submitting a bid or offer. If you do not meet these criteria, then your bid or offer will be disqualified. 30 ILCS 500/20-43

**Vendor must make one of the following four certifications by checking the appropriate box. If C or D is checked, then Vendor must attach to this form the requested documentation.**

- A.  Vendor certifies it is an individual acting as a sole proprietor and is therefore not subject to the requirements of section 20-43 of the Procurement Code.
- B.  Vendor certifies that it is a legal entity, and was authorized to do business in Illinois as of the date for submitting this bid or offer. The State may require Vendor to provide evidence of compliance before award.
- C.  Vendor certifies it is a legal entity, and is a foreign corporation performing activities that do not constitute transacting business in Illinois as defined by Illinois Business Corporations Act (805 ILCS 5/13.75). A vendor claiming exemption under the Act must include a detailed explanation of the legal basis for the claim with its bid or offer and must provide additional detail upon request. If Vendor fails to provide the mandatory documentation with the bid or offer, or does not provide additional detail upon request within the timeframe specified in said request, then the State may deem the Vendor as being non-responsive or not responsible and may disqualify the Vendor.
- D.  Vendor certifies it is a legal entity, and is an entity otherwise recognized under Illinois law as eligible for a specific form of exemption similar to those found in the Illinois Business Corporation Act (805 ILCS 5/13.75). A vendor claiming exemption under a specific law must provide a detailed explanation of the legal basis for the claim with its bid or offer and must provide additional detail upon request. If Vendor fails to provide the mandatory documentation with the bid or offer, or does not provide additional detail upon request within the timeframe specified in said request, then the State may deem the Vendor as being non-responsive or not responsible and may disqualify the Vendor.

v.14.2

## EXHIBIT B

### 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**” and “**Vendor**”) to the entity identified in the Order Form (The Board of Trustees of the University of Illinois on behalf of University of Illinois Springfield) (“**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, *Contract Agreement* 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 THREE TIMES (3X) THE AMOUNT PAID BY CUSTOMER UNDER THIS AGREEMENT. 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"). 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 *may* 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 *Illinois* 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. 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 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).



## EXHIBIT C

CN-00048933

## Services Order Form

Order #:

Q-116526-4

Date:

3/18/2020

Offer Valid Through:

6/1/2020

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

## Order Form For The Board of Trustees of the University of Illinois on behalf of UIS

Address: One University Plaza  
 City: Springfield  
 State/Province: Illinois  
 Zip/Postal Code: 62703-5407  
 Country: United States

**Order Information**  
 Billing Frequency: Annual Upfront  
 Payment Terms: Net 30 As per Illinois Prompt Payment Act

## Billing Contact

Name:   
 Email:   
 Phone:

## Primary Contact

Name: Tulio Llosa  
 Email: tllos1@uis.edu  
 Phone: (217) 206-8311

## Year 1

Description	Start Date	End Date	Metric	Qty	Price	Amount
Canvas Cloud Subscription	7/1/2020	6/30/2021	FTE	3,636	USD 20.16	USD 73,301.76
Basic Support	7/1/2020	6/30/2021	Included	1	USD 0.00	USD 0.00
Recurring Sub-Total						USD 73,301.76
Year 1 Total						USD 73,301.76

## Year 2

Description	Start Date	End Date	Metric	Qty	Price	Amount
Canvas Cloud Subscription	7/1/2021	6/30/2022	FTE	3,636	USD 20.76	USD 75,483.36
Basic Support	7/1/2021	6/30/2022	Included	1	USD 0.00	USD 0.00
Recurring Sub-Total						USD 75,483.36
Year 2 Total						USD 75,483.36

## Year 3

Description	Start Date	End Date	Metric	Qty	Price	Amount
Canvas Cloud Subscription	7/1/2022	6/30/2023	FTE	3,636	USD 21.38	USD 77,737.68

Description	Start Date	End Date	Metric	Qty	Price	Amount
Basic Support	7/1/2022	6/30/2023	Included	1	USD 0.00	USD 0.00
Recurring Sub-Total						USD 77,737.68
Year 3 Total						USD 77,737.68

## Year 4

Description	Start Date	End Date	Metric	Qty	Price	Amount
Canvas Cloud Subscription	7/1/2023	6/30/2024	FTE	3,636	USD 22.02	USD 80,064.72
Basic Support	7/1/2023	6/30/2024	Included	1	USD 0.00	USD 0.00
Recurring Sub-Total						USD 80,064.72
Year 4 Total						USD 80,064.72

## Year 5

Description	Start Date	End Date	Metric	Qty	Price	Amount
Canvas Cloud Subscription	7/1/2024	1/31/2025	FTE	3,636	USD 13.24	USD 48,140.64
Basic Support	7/1/2024	1/31/2025	Included	1	USD 0.00	USD 0.00
Recurring Sub-Total						USD 48,140.64
Year 5 Total						USD 48,140.64
						Grand Total: USD 354,728.16

Deliverable	Description	Expiration
Canvas Cloud Subscription	FTE Metric is measured by the number of full-time equivalent students in accordance with the definition published by the Integrated Postsecondary Education Data System.	N/A

The items above must be completed during the time period beginning on the later of the Effective Date or the initial Start Date specified in this Order Form and ending pursuant to the time frame set forth in the Expiration column above.

Metric	Description
FTE	FTE Metric is measured by the number of full-time equivalent students in accordance with the definition published by the Integrated Postsecondary Education Data System.

Product	Description
Canvas Cloud Subscription	Storage included in the annual subscription fee is (i) Unlimited files and database storage, and (ii) 500 MB per (FTE/User/Enrollment/Seat) multimedia storage. Additional multimedia storage can be purchased for USD \$1.00 per 1GB per year.

**Duration:** Instructure may begin providing the services on the later of: (i) ninety (90) days prior to the earliest start date; or (ii) the date of the last signature on this Order Form ("Effective Date"). Notwithstanding the foregoing, any third-party content purchased under this order form will be made available on the applicable start date listed above.

**Miscellaneous:** Instructure's support terms are available as follows:

Canvas & Catalog: <https://www.canvaslms.com/policies/support-terms>

Bridge: <https://www.getbridge.com/support-terms>

Portfolio: <https://portfolio.com/support-terms>

MasteryConnect: <https://www.masteryconnect.com/support/>

As part of our commitment to provide the most innovative and trusted products in the industry, at times we must increase our renewal rates to cover additional costs associated with developing and maintaining our products. If you have concerns with any increases, please reach out to your account representative.

**Notes**

Procurement and pricing provided via IPHEC award number IPHEC2008.

Initial agreement to changes above  AG

**Billing Frequency Term:**

Non-Recurring items will be invoiced upon signing. Recurring items will be invoiced 30 days prior to the annual start date.

**PURCHASE ORDER INFORMATION**

Is a Purchase Order required for the purchase or payment of the products on this order form?

Please Enter (Yes or No): \_\_\_\_\_

If yes, please enter PO Number: \_\_\_\_\_

**TAX INFORMATION**

Check here if your company is tax exempt: \_\_\_\_\_

Please email any/all exemption certifications to [ar@instructure.com](mailto:ar@instructure.com).

By executing this Order Form, each party agrees to be legally bound by this Order Form and the applicable terms and conditions - as attached.

The Board of Trustees of the University of Illinois

Instructure, Inc.

Signature: 

Avijit Ghosh, Comptroller  
Signature of Comptroller Delegato  
Jill Monozos, Director of Purchases

Date: 6/23/20

Signature: 

Name: Elizabeth Powell

Title: Sp. Manager, Legal Dept

Date: June 22, 2020

President, Timothy L. Killeen 

Signature of President Delegate, Gerard Joseph,  
Associate Provost for Budget & Administrative Planning

Chief Legal Counsel, Thomas Bearrow 

Signature of Chief Legal Counsel, Rhonda Perry,  
University Legal Counsel