



SERVICE AGREEMENT WITH INSTRUCTIONAL CONNECTIONS

This Service Agreement (“Agreement”) is entered into by and between Instructional Connections, LLC., a limited liability company (“IC”), and The Boise State University, acting for and on behalf of the Boise State University Board of Trustees (“Boise State”) as of August 24, 2015 (the “Effective Date”). IC and Boise State are sometimes referred to herein each as a “Party”, and collectively as the “Parties.”

Recitals

- A. Boise State is a higher educational institution that offers undergraduate, graduate, and post-graduate courses; which include courses that are delivered both offline in classroom teaching (“Offline Education”) and online through one or more Learning Management Systems, as herein defined (“Online Education”).
- B. IC provides Academic Coaches/Teaching Assistants (“TA’s) to assist universities in course instructional support and delivery in Online Education courses and degree programs.
- I. **Definitions.** Capitalized terms used in this Agreement shall have the meaning set forth below or elsewhere in the Agreement.
 - C. **“Census Date”** means the first day after the official Boise State add/drop period.
 - D. **“Learning Management System” (“LMS”)** means the proprietary learning management software platform used by Boise State. IC supports any LMS used by the university.
 - E. **“Faculty”** mean individuals appointed by Boise State as Boise State Faculty to teach the curriculum chosen by Boise State for each course and/or program.
 - F. **“Intellectual Property”** means any and all now known or hereafter existing rights associated with (i) works of authorship throughout the world, including exclusive exploitation rights, copyrights, moral rights and mask works; (ii) trade secret rights; (iii) trademark and trade name rights; (iv) patents, designs, algorithms and other industrial property rights; (v) other intellectual and proprietary rights of every kind and nature throughout the world whether arising by operation of law, by contract or license or otherwise; and (vi) all registrations, renewals, extensions, combinations, divisions, or reissues of any of the foregoing.
 - G. **“Program(s)”** means certain educational Online Education courses offered by Boise State resulting in the award of certain Boise State course credit and credentials that may be designated by Boise State from time to time hereunder and that will involve the assistance of one or more TAs provided by IC hereunder.
 - H. **Reserved.**
 - I. **“Start”** means the first day of a live Online Education course.
 - J. **“Student(s)”** means a student enrolled in the Online Education courses and/or programs.
 - K. **“TA”** means an instructional assistant provided by IC for purposes of course instructional support and delivery in Boise State Online Education courses and/or programs.

II. IC Obligations

As part of assisting Boise State in providing the Programs, IC agrees to fulfill the following services and obligations (collectively, the “IC Obligations”):

- A. Teaching Assistants.** Subject to the approval of Boise State, IC will identify individuals to serve as Academic Coaches/TAs (“TA’s) who will support Students enrolled in the Online Education courses and/or programs under the close supervision of the Faculty. If at any time Boise State determines, at its sole discretion, that a person appointed as a TA under this provision is unsuited to continue in that role, it shall so advise IC and IC will cause the removal of such person from his or her instructional assistant duties, and if requested by Boise State provide a replacement pursuant to the procedures set forth in this Section. Boise State may use any applicable or preferred terminology it chooses to call its “TAs.”
- B. Recruitment and Qualification System.** IC will provide a recruitment and qualification system for advertisement, screening, pre-qualification, conduct of criminal background checks, request of unofficial transcripts, qualification, and request of official transcripts for TA applicants in accordance with programmatic needs by Boise State for TAs. Such system is subject to Boise State approval, which shall not be unreasonably withheld.
- C. Credentialing System.** IC will provide a system to send qualification documents and transcripts of applicants to Boise State for purposes of approval for courses and/or programs.
- D. Independent Contractor Agreements.** IC will contract with TAs on a part-time basis who meets qualification criteria and acceptance by Boise State for its programs. Such TAs will be subcontractors or employees of IC, as appropriate, and will not be employees of Boise State.
- E. On-Boarding and Training.** IC will provide TAs with an “iconnect-na.com” email account on a secure server; provide Boise State with TA contact information; train TAs on Boise State’s LMS as necessary to ensure TAs understand the basic functions they will support faculty in the LMS; and provide instruction on Boise State’s programs, policies, and academic procedures when requested. IC can also provide individual Boise State Faculty with assistance and training on Boise State’s LMS when requested.
- F. Scheduling and Assignment.** IC will assist with Boise States designated representatives to schedule and assign TAs into live course sections prior to each Boise State course start. IC will notify Boise State of all assignments of TAs.
- G. Course Delivery.** IC will assist Faculty members with support and delivery of instruction within Boise State courses in accordance with Boise State program and/or Faculty requirements. Such assistance may include, but is not limited to: grading assignments, participating and monitoring of course discussions, posting announcements, and working with Faculty resolve issues relative to course delivery and the LMS.
- H. Course Communication and Coordination.** IC will assist Faculty with pre-course, during course, and post-course communication and coordination with TAs.
- I. Management and Pay of Teaching Assistants.** IC will manage, pay, and support TAs that provides support to Students through Boise State’s LMS.
- J. Courses with Small Enrollments.** IC and Boise State shall agree on the scheduling and assignment of a TA to courses with small enrollment numbers, as appropriate.
- K. Protection of Student Information.** Boise State has informed IC that Student specific information necessary for the performance of this Agreement may be protected from disclosure pursuant to the provisions of the Family Educational Rights and Privacy Act (FERPA), (20 U.S.C. § 1232g; 34 CFR Part 99). IC expressly agrees that to the extent it may have access to any such records it is solely for the purpose of assisting Boise State in the offering of the courses and/or Programs, it may not disclose

any such information to any third parties, and it must take such measures as are reasonable and prudent to protect such information from inadvertent disclosure. Further, IC shall indemnify and otherwise hold harmless Boise State for any IC unlawful disclosure or failure of notification as required by FERPA.

III. Boise State Obligations

Boise State and IC expressly acknowledge that nothing in this Agreement is intended to impair the authority of Boise State respecting the academic attributes of the courses and Programs, including the admission of Students to the Programs, the delivery of the courses and Programs, the evaluation of Student performance and the decision to award course credit and academic credentials and to exercise customary oversight respecting Faculty engaged in its offering. Boise State agrees to cooperatively engage in maximizing the utilization of its LMS through the participation in this Agreement. In furtherance thereof, Boise State agrees to provide the following services and obligations (collectively, the "Boise State Obligations"):

- A. Communication.** Boise State shall provide IC with one primary point of contact for IC to communicate with on an ongoing basis with respect to Boise State Obligations and this Agreement (the "POC"). The POC will designate, in writing, particular Online Education courses as "Programs" hereunder and will provide written notice to IC at least fourteen (14) days prior to commencement of the Program indicating Boise State's desire to use a TA provided by IC under this Agreement. No particular number of Programs is guaranteed over the course of this Agreement.
- B. Academic Supervision.** Boise State will have and exercise overall academic supervision of all TA engaged in the Programs. IC will immediately remove any TA upon receipt of written advice from the POC that Boise State desires the removal of such TA at any time for any reason in the exercise of its sole discretion.
- C. Granting of Credentials.** Within five (5) business days, Boise State designated representative will evaluate TA candidates presented to them by IC, and communicate in writing to IC if such candidates meet standards for purposes of IC contracting with candidates as part time TAs. Under no circumstances will IC assign a TA in any live course without written pre-approval by Boise State.
- D. Transcripts:** Access to Original graduate transcripts and a professional vita will be provided to Boise State for each TA assigned a Boise State Program. If the TA is currently pursuing a graduate degree, IC will collect and supply an original transcript to reflect hours earned. Updated vitas should be submitted as appropriate. These documents will be made available the POC and/or designated representative by Boise State.
- E. Evaluation of Performance.** Boise State Faculty will evaluate the performance of TAs enrolled in the Programs in such manner as it shall deem appropriate, in the exercise of its sole discretion.
- F. Curriculum and Academic Oversight.** Boise State will review the curriculum with the TA chosen for each Program in accordance with its customary academic procedures with TAs. Boise State may require IC to make adjustments to its instructional support by TAs to meet its academic standards prior to such adoption.
- G. Student Information Systems.** Boise State will be responsible for maintaining, supporting and administering the student information systems necessary to facilitate and process Student enrollment, including but not limited to enabling Student registration for courses, providing transcripts, and enabling the entering of grades and the tracking of grades.
- H. Accrediting:** IC will support Boise State with complete and timely data sharing for accreditation purposes.

IV. License Grants by Boise State

A. Boise State grants IC limited use of its name, logo, and trademark (“Boise State Brands”) to IC. IC will only use Boise State Brands for presentation purposes and for insertion into its web site for promotional purposes, provided that Boise State will be provided with written or electronic copy of the media into which the Boise State Brands will be inserted at least ten (10) days prior to use and, if Boise State believes use of the Boise State Brand is inappropriate or misleading, IC will make any adjustment required by Boise State prior to use.

B. All rights not expressly granted to IC in this section are reserved to Boise State.

V. Term

A. The Term of this Agreement commences on the Effective Date and ends on the 3rd anniversary of the Effective Date, unless terminated under Section V.B or Section X.

B. Both Parties may mutually agree, at any time, in writing to terminate this Agreement.

VI. Payment and Taxes

A. Boise State will collect all tuition and any other payments made by students in connection with the Programs.

B. The number of Student(s) for each Start shall be counted at the Census Date. Boise State and IC shall communicate on each Census Date and agree in writing on the official count of Student(s). The communication from Boise State shall be in writing and shall be provided by Boise State’s POC.

C. IC shall invoice Boise State for the official count of Student(s) on the Census Date, and upon written agreement for the official count with Boise State’s POC.

D. Boise State shall remit to IC no later than fifteen (15) business days following the Census Date as follows:

a. The amount per Program set forth in Addendum A (the “Compensation”).

b. If Boise State changes course lengths, combines courses, or otherwise makes substantial changes to course curriculum within its full control included in a Program in connection with which a TA has commenced work, Boise State and IC agree to negotiate an appropriate adjustment to Compensation for such Program.

E. IC will be responsible for payment of taxes due on the Compensation paid under this contract. IC will be responsible for payment of, or will assure that each TA will be responsible for payment of, any employment taxes, unemployment taxes, worker’s compensation, or other taxes, assessments, or insurance payable in connection with its engagement of TAs.

VII. Intellectual Property

A. **Ownership of IC Intellectual Property.** IC retains all ownership rights to any Intellectual Property owned by IC and used in furtherance of this Agreement.

B. **Ownership of Boise State Intellectual Property.** Boise State retains all ownership rights to any Intellectual Property owned by Boise State and used in furtherance of this Agreement.

C. **Ownership of Developed Materials.** Each Party shall promptly disclose to the other any Intellectual Property arising from or attributed to any of the work or activities undertaken as part of this Agreement. Any right, title and interest in and to any Intellectual Property arising from or attributed to any of the work or activities undertaken as part of this Agreement shall belong to the Party that created such Intellectual Property, unless mutually agreed otherwise in writing.

VIII. Liability

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES.

VII. Indemnification

- A. Claims and Procedures.** IC will defend and indemnify Boise State, to the extent permitted by Idaho Law, against a claim that any IC Material furnished by IC infringes a United States copyright, provided that: (a) Boise State notifies IC in writing within thirty (30) days of the claim; (b) IC has sole control of the defense and all related settlement negotiations; and (c) Boise State provides IC with the assistance, information, and authority reasonably necessary to perform the above; reasonable out-of-pocket expenses incurred by Boise State in providing such assistance will be reimbursed by IC.
- B. Exceptions.** IC shall have no liability and Boise State shall indemnify IC, to the extent permitted by the State of Idaho law, for any claim of infringement resulting from: (a) modifications, upgrades or updates to the IC Material made by Boise State; (b) any Boise State Material; and (c) any combination of the IC Material and Boise State Material with other material by Boise State that, but for the combination, the IC Material would not be infringing.
- C. Remedies.** In the event that some or all of the IC Material are held or are believed by IC to infringe, IC shall have the option, at its expense: (a) to modify the IC Material to be non-infringing; or (b) to obtain a license to continue using the IC Material. If it is not commercially feasible to perform either of the above options, then IC may require from Boise State the return of the infringing IC Material and all rights thereto. Upon return of the infringing Programs to IC, Boise State may terminate this Agreement with ten (10) days written notice. This Section IX states IC's entire liability and Boise State's exclusive remedy for infringement claims or damages.

IX. Warranties

- A. Each Party Warrants,** to the best of its knowledge, that it has the authority to enter into the Agreement and to perform its obligations set forth herein.

X. Termination

- A.** If either Party materially breaches the terms of this Agreement and fails to correct the breach within thirty (30) days after the non-breaching Party provides written notification, the non-breaching Party may terminate this Agreement.
- B.** This Agreement may be terminated by Boise State for any reason upon provision of written notice at least sixty (60) days prior to the beginning of any academic year during the term of this Agreement. (The academic year, as used herein, commences on the first day of classes of the fall semester.)
- C.** If IC uses any information provided to it by Boise State hereunder in any manner that exceeds the permissions or licenses granted to IC herein, and fails to immediately cease within 30 days after provided written notification of such unpermitted use, Boise State may immediately terminate this Agreement with written notice.

XI. General

- A. Relationship between the Parties.** Each Party is an independent contractor and will be solely responsible for payment of all compensation owed to its employees, as well as employment related taxes. Each Party will maintain appropriate worker's compensation for its employees as well as general liability insurance. The Parties are and shall act as, each an independent contractor and not as an agent or employee of the other Party. Neither this Agreement, nor any terms and conditions contained herein, shall be construed as creating a partnership, joint venture, agency or franchise relationship.

- B.** **Governing Law.** This Agreement, and all matters arising out of, or relating to, this Agreement, shall be governed by the laws of the State of Idaho, United States of America.
- C.** **Compliance with Federal, State and Local Laws.** The Parties shall comply with all applicable federal, state and local laws in the conduct of the work supported by this Agreement. Neither Party nor any of its employees are or shall be deemed to be employees of the other Party for any purpose including, without limitation, application of the Fair Labor Standards Act minimum wage and overtime payment provisions, the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, any state or local revenue or tax laws, state worker compensation laws and state unemployment insurance laws. Each Party accepts full responsibility for payment of all taxes including, without limitation, unemployment compensation insurance premiums, all income tax deductions, Social Security deduction, and any and all other taxes or payroll deductions required for all employees engaged by either Party in the performance of the work supported by this Agreement. Each Party represents and warrants that it is qualified to do business in the geographies in which it will perform its obligations under this Agreement, and will obtain all necessary licenses and permits, and satisfy any other legal, regulatory and administrative requirements, necessary to its performance hereunder.
- D.** **Workplace Environment.** The Parties agree to comply with all applicable federal, state, and local laws regarding smoke-free and drug-free workplaces.
- E.** **Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization.** If applicable, the Parties will provide certification attesting that they do not provide material assistance to any organization on the U.S. Department of State exclusion list.
- F.** **Equal Opportunity Workplace.** In performing this Agreement, the Parties shall not discriminate against any employee, applicant for employment or other person because of race, religion, color, sex, national origin, disability, age or ancestry. The Parties will take affirmative steps to ensure that applicants are employed and that employees are treated during their employment without regard to race, religion, sex, national origin, disability, age, or ancestry.

G. Notice

All notices, including notices of address change, required to be sent hereunder shall be in writing and shall be deemed to have been given when mailed by first class mail to:

If to IC:

Instructional Connections, LLC
Attn: Dr. Robert F. Williams, President
1320 Spring Ridge Lane
Flower Mound, TX 75028
[REDACTED]

If to Boise State:

Boise State University
Attn: Brian O'Morrow
College of Business and Economics, MS 1600
1910 University Drive
Boise, ID 83725
[REDACTED]

- I.** The Parties agree that they each may treat documents faxed by the other Party as original documents; nevertheless, either Party may require the other to exchange original signed documents.

- H.** **Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force.
- I.** **Waiver.** The waiver by either Party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.
- J.** **Headings.** The headings appearing in this Agreement are inserted for convenience only, and will not be used to define, limit or enlarge the scope of this Agreement or any of the obligations herein.
- K.** **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be an original, and such counterparts together will constitute one and the same instrument. Execution may be effected by delivery of facsimiles of signature pages (and the Parties will follow such delivery by prompt delivery of originals of such pages).
- L.** **Confidential Information.** Each Party agrees that subject to the terms of this Agreement not to use or disclose to any third party, except for the purpose of performing this Agreement, any business and technical information of the other Party which, in the exercise of reasonable judgment, should be recognized by such Party as confidential and which is not a public record subject to Chapter 119, Florida Statutes, or Article I, Section 24(a) of the Florida Constitution ("Confidential Information"). The obligation of confidentiality shall not apply to information which: (i) is or becomes part of the public domain through no fault of the receiving Party; (ii) is furnished by the disclosing Party to others without restrictions on use and disclosure; (iii) becomes known or available to the receiving Party without restriction from a source other than the disclosing Party without breach of any agreement with the disclosing Party; (iv) is disclosed with prior written approval of the disclosing Party; (v) is independently developed by the receiving Party without the use of any Confidential Information; (vi) is previously known to the receiving Party on a non-confidential basis; or (vii) is required by applicable law, court order or government agency to be disclosed, in which case, the receiving Party shall give the disclosing Party as much notice as is reasonably practical so that the disclosing Party may seek a protective order or other confidential protection as the disclosing Party, in its sole discretion, may elect and the receiving Party shall reasonably cooperate with the disclosing Party in disclosing Party's efforts to obtain such order or protection.
- M.** **Force Majeure.** Neither Party will be liable for delays or failure in its performance hereunder to the extent such delay or failure is caused by any act of God, war, natural disaster, strike, lockout, labor dispute, work stoppage, fire, third-party criminal act, quarantine restriction or act of government, or any other event beyond the reasonable control of that Party (an "Excusable Delay"). This Agreement may be terminated, with written notice; by either Party under this Section should the Excusable Delay of the non-performing Party continue for more than 90 days.
- N.** **Entire Agreement.** This Agreement and any Exhibits and Addenda hereto constitute the complete agreement between the Parties and supersede all previous and contemporaneous agreements, proposals, or representations, written or oral, concerning the subject matter of this Agreement. Neither this Agreement nor an Exhibit or Addendum may be modified or amended except in a writing signed by a duly authorized representative of each Party; no other act, document, usage, or custom shall be deemed to amend or modify this Agreement or an Exhibit or Addendum.
- O.** **Successors and Assigns.** This Agreement will be binding upon, and will inure to the benefit of, the permitted successors and assigns of each Party hereto. Boise State may not assign, delegate, transfer, or otherwise convey this Agreement or any of its rights hereunder, to any entity without the prior written consent of IC, and any attempted assignment or delegation without such consent shall be void.
- P.** **Survivability.** The following Sections shall survive the expiration and termination of this Agreement: VI, VIII, IX, X, and XI.

INSTRUCTIONAL CONNECTIONS, LLCSignature: 

Name: Dr. Robert F. Williams

Title: President

Date: 3/8/14**BOISE STATE UNIVERSITY**Signature: 

Name: Joellen Dmochowski

Title: AVP-A

Date: 2/19/16



ADDENDUM A – PRICING SCHEDULE – 3 YEAR CONTRACT
August 24, 2015

Undergraduate Courses

- 5 Week Undergraduate \$32 / Student
- 6-7 Week Undergraduate \$34 / Student
- 8-9 Week Undergraduate \$36 / Student
- 10-14 Week Undergraduate \$40 / Student
- 15-16 Week Undergraduate \$42 / Student

Graduate Courses

- 5 Week Graduate \$34 / Student
- 6-7 Week Graduate \$36 / Student
- 8-9 Week Graduate \$38 / Student
- 10+ Week Graduate \$42 / Student

Doctoral Courses

- 6-7 Week Doctoral \$40 / Student
- 8-9 Week Doctoral \$42 / Student
- 10+ Week Doctoral \$44 / Student