

# Master Terms and Conditions

*Effective as of June 1, 2024*

These terms and conditions apply to the provision of the products or services identified on the Order Form by the Instructure entity identified on such Order Form ("Instructure") to the customer entity identified on such Order Form ("Customer"). An "Order Form" means any order for the provision of products or services signed by Customer. These terms and any applicable supplement related thereto (each a "Supplement") are incorporated into the Order Form and together with the Order Form, form the "Agreement." Supplements, which can be found here: <https://www.instructure.com/policies/product-supplements>, apply to the extent that the applicable product and/or feature is listed on the Order Form and/or utilized by Customer. To the extent there is any conflict between the Order Form, these Master Terms and Conditions, or any Supplement related thereto, such conflict shall be resolved pursuant to the following order of precedence: (i) the Order Form, (ii) any applicable Supplement, and (iii) these Master Terms and Conditions. Instructure and Customer are referred to in this Agreement each as a "party" and together as the "parties."

1. **Service.** Subject to the terms of this Agreement, Instructure will provide to Customer proprietary software as a service offering(s) (together with any other products and services identified in the Order Form, collectively the "**Service**") for the duration of such Order Form. Instructure shall: (a) deploy all updates and upgrades to the Service to Customer that Instructure provides to its customers generally for no additional charge; and (b) provide support ("**Support**") pursuant to the terms described on the Order Form. For purposes of this Agreement, "**User**" means an individual who is authorized by the Customer to use the Service and for whom the Customer has purchased a subscription.
2. **Service Restrictions.** Prohibited uses of the Service shall include: (a) selling, sublicensing, or otherwise transferring or providing access to the Service, or any output from the Service, to any third party except as expressly authorized under this Agreement; (b) using or accessing the Service for competitive purposes; (c) copying, modifying, adapting, or creating derivative works from any feature, function, interface, or graphic in the Service; (d) removing or modifying Instructure's policies, notices or proprietary markings displayed within the Service or on output from the Service; (e) using, interfering with, overloading, probing, scanning, disrupting, altering, translating, or modifying the Service, or circumventing the integrity, security or performance of the Service; (g) permitting direct or indirect access to or using the Service in a way that circumvents the contractual usage limit; (h) attempting to gain unauthorized access to the Service, its related systems or networks ; (i) using the Service to store or transmit any malicious code or data, infringing, libelous, or otherwise unlawful or tortious material, or material which violates any third-party privacy rights; (j) modifying, reverse engineering, decompiling, disassembling, decrypting, extracting, or otherwise attempting to derive or determine the source code, underlying ideas, algorithms, structure, organization, or training data associated with the Service; or (k) using the Service to distribute software or tools that gather information, distribute advertisements, or engaging in conduct that may result in retaliation against Instructure or its data, systems, or networks. Violation of any of the foregoing prohibitions by Customer or its Users will be a material breach of this Agreement. 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 the use of the Service by Users in compliance with this Agreement and the Acceptable Use Policy provided within the Service and available at <https://www.instructure.com/policies/acceptable-use> (the "**AUP**"). Customer agrees to reasonably assist Instructure in connection with a User's adherence to the AUP. Customer further agrees to: (a) maintain the confidentiality and security of passwords and abide by any access protocols or credential requirements set by Instructure; (b) obtain from Users any consents necessary under this Agreement or to allow Instructure to provide the Service; (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Service; (d) notify Instructure promptly of any such unauthorized access or use of which it learns; and (e) cooperate reasonably in all respects with respect to implementation, access, support, and maintenance of the Service.
4. **Customer Representations.** Customer represents that (a) it has the power and authority to validly enter into this Agreement and to fulfill its obligations hereunder; (b) the execution and delivery of this Agreement does not violate or conflict with any other agreement, license, or obligation; (c) it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from or on behalf of any employees or agents of Instructure in connection with this Agreement; and (e) it is financially solvent and has the ability to perform its obligations hereunder.
5. **Instructure Warranties.** Instructure warrants that: (a) 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. In the event of a breach of the foregoing warranties, Instructure shall, as Customer's sole and exclusive remedy, and at Instructure's sole discretion, either (i) correct such breach or (ii) provide Customer with a refund of the fees paid attributed to the affected Service. Customer must notify Instructure in writing of any such breach within thirty (30) days of its discovery in order to receive such warranty remedies. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION

5 AND TO THE MAXIMUM EXTENT OF THE LAW, INSTRUTURE 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, INSTRUTURE DOES NOT WARRANT: (A) THE FUNCTIONALITY OR FEATURES OF ANY THIRD-PARTY SERVICE USED IN CONNECTION WITH THE SERVICE; (B) THE RESULTS OR OUTCOMES FROM USE OF THE SERVICE OR THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE; OR (C) THE VALIDITY, FAIRNESS OR QUALITY OF ANY CONTENT PROVIDED BY INSTRUTURE. 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 INSTRUTURE IN THIS SECTION 5.

6. **Fees.** As consideration for the subscription to the Service, Customer shall pay all fees specified in each Order Form (“**Fees**”) annually in advance, thirty (30) days after receipt of an invoice or as otherwise agreed to in the Order Form. All Fees owed by Customer are exclusive of, and Customer shall pay, all applicable sales, use, VAT, excise, withholding, and other taxes that may be levied in connection with this Agreement. Instruture reserves the right (in addition to any other rights or remedies Instruture may have) to discontinue the Service and to suspend all Users’ and Customers’ access to the Service if any Fees are overdue until such amounts are paid in full. Except as expressly set forth in this Agreement or an Order form, (a) payment obligations are non-cancelable and all Fees paid are non-refundable; (b) fees are based on subscriptions purchased and not actual usage; and (c) quantities purchased cannot be decreased during the relevant subscription term.
7. **Service Standard.** Instruture will use commercially reasonable efforts to make each Service identified in the Order Form as a subscription (a “**Subscription Service**”) available with an annual uptime percentage of at least 99.9% (“**Subscription Service Commitment**”). In the event Instruture does not meet the Subscription Service Commitment, Customer will be eligible to receive a service credit as described below. The maximum amount of the credit is 1/12 of the annual subscription Fees paid and attributable to the Subscription Service that is unavailable for a twelve (12) month period. The service credit is calculated by taking the number of hours the applicable Subscription Service was unavailable below the Subscription Service Commitment and multiplying it by 3% of 1/12 of the applicable annual subscription Fees. Any days prior to Customer’s initial use of the Subscription Service will be deemed to have had 100% availability. Any unavailability used to calculate a prior service credit cannot be used for any future claims. The Subscription Service Commitment does not apply to any scheduled outages, standard maintenance windows, force majeure events, and outages that result from any technology issue not originating from Instruture. Customer’s sole and exclusive remedy for breach of the Subscription Service Commitment in this Section 7 will be for Instruture to provide a credit as outlined in this Section 7 and only on the condition that Customer notifies Instruture in writing of such claim within thirty (30) days of becoming eligible for such claim.
8. **Compliance.** Each party shall comply with all applicable laws and regulations with respect to its activities under this Agreement, including, without limitation, (a) any and all applicable export control laws and restrictions; and (b) any laws pertaining to personally identifiable information from records that are subject to applicable privacy laws (“**Personal Information**”).
9. **Customer Content.** As between Instruture and Customer, the information, data, results, plans, sketches, text, files, links, images, photos, videos, audio files, notes, or other materials uploaded or created by a User through the Service (collectively, “**Customer Content**”) remain the sole property and responsibility of Customer. Customer hereby agrees that Instruture and its suppliers and licensors may access, use, or otherwise display any and all Customer Content as necessary to provide Customer and/or Users with access to and use of the Service, and to improve the Service.
10. **Usage Data.** Customer agrees that statistical and analytical data related to Instruture’s provision of the Service or Customer’s use and interactions with the Service (e.g., browsing history, inputs, outputs, feedback), and de-identified Customer Content (collectively, “**Usage Data**”) is owned by Instruture, and may be used by Instruture for any lawful purpose not otherwise excluded by this Agreement. Such Usage Data will only be used in its aggregated form and shall not include any information that identifies or can be reasonably used to identify an individual person.
11. **Limitation of Liability.** NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE EITHER PARTY’S LIABILITY FOR: (A) DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE; (B) FRAUD OR FRAUDULENT MISREPRESENTATION; OR (C) ANY OTHER LIABILITY WHICH CANNOT BE LIMITED OR EXCLUDED BY APPLICABLE LAW. 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 16.1 OR CUSTOMER’S PAYMENT OBLIGATIONS, EACH PARTY’S CUMULATIVE MAXIMUM LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN

CONTRACT, TORT OR OTHERWISE) SHALL NOT EXCEED THE AMOUNT PAID BY CUSTOMER UNDER THIS AGREEMENT WITHIN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO LIABILITY.

**12. Confidentiality.**

1. **Definition of Confidential Information.** Each party acknowledges that it, or any entity that directly, or indirectly through one or more intermediaries' controls, is controlled by or is under common control with such party (an "Affiliate"), or Instructure's licensors, may disclose (in such capacity the "Disclosing Party") Confidential Information to the other party or its Affiliates or Instructure's licensors (in such capacity, the "Receiving Party") in the performance of this Agreement. As used herein, "Confidential Information" includes, without limitation, any and all non-public, confidential and proprietary information, data, or know-how, including all Personal Information and information about the Disclosing Party's businesses, operations, finances, properties, employees, relationships with third parties, plans, trademarks, trade secrets, and other intellectual property and all analyses, compilations, forecasts, studies, summaries, notes, reports, memoranda, interpretations, data, and other materials which contain or are generated from the Confidential Information, whether disclosed in writing, orally, electronically, or by other means, and whether or not identified as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. For the avoidance of doubt, any non-public aspect of the Service will be considered the Confidential Information of Instructure or Instructure's licensors.
  2. **Protection of Confidential Information.** The Receiving Party shall: (a) protect the Confidential Information using the same degree of care that it uses to protect the confidentiality of its own Confidential Information (but in no event less than reasonable care); (b) keep the Confidential Information disclosed by the other party confidential; (c) use Confidential Information only for purposes of fulfilling its obligations and exercising its rights hereunder; and (d) disclose such Confidential Information only to the Receiving Party's employees or Affiliates who have a need to know and only for the purposes of fulfilling this Agreement or to the extent required by law.
  3. **Exclusions.** Confidential Information shall not include information that: (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) is rightfully received by the Receiving Party from a third party without knowledge of breach of any obligation owed to the Disclosing Party; (d) was independently developed by the Receiving Party without the use of any Confidential Information of the Disclosing Party; or (e) is identified by the Disclosing Party in writing as no longer confidential and proprietary.
  4. **Compelled Disclosure.** Notwithstanding the restrictions above, the Receiving Party may disclose the Confidential Information pursuant to law, regulation, subpoena or court orders, provided that the Receiving Party promptly notifies the Disclosing Party in writing prior to making any such disclosure to permit the Disclosing Party, at the Disclosing Party's cost, an opportunity to prevent disclosure or seek an appropriate remedy from the proper authority. The Receiving Party agrees to cooperate with the Disclosing Party in seeking such order or other remedy.
- 13. Instructure Proprietary Assets and Rights.** As between Customer and Instructure, Instructure owns and shall retain all right, title, and interest in: (a) the Service; (b) all improvements, changes, enhancements, translations and components, source code, object code, documentation, criteria, designs, report formats, know-how, underlying ideas, algorithms, or structure associated with the Service; (c) all other proprietary materials of Instructure and/or its licensors; (d) all individual questions on any assessment, as well as all revisions, modifications, translations, or other adaptations or transformations thereof; and (e) all intellectual property related to the aforementioned, including, but not limited to, all copyrights, patents, trademarks and trade names, and trade secrets ("Instructure Intellectual Property"). The Instructure Intellectual Property is and shall at all times remain the sole and exclusive property of Instructure. Instructure shall have the right, in its sole discretion, to modify any Instructure Intellectual Property.
- 14. Term and Termination.** The term of this Agreement is specified in the Order Form ("Term") and shall continue for its full duration unless earlier terminated by a party in accordance with this Section 14. In addition to any other rights and remedies that may be available, either party may terminate this Agreement for a material breach of any provision of this Agreement by the other party if such material breach remains uncured for thirty (30) days after receipt of written notice of such breach from the non-breaching party. In the event the Agreement is terminated, all Order Forms are simultaneously terminated. Upon expiration or termination of this Agreement: (a) Customer shall immediately cease using the Service; and (b) in connection with certain aspects of the Service that feature an export function, Customer may export the Customer Content by using the export feature within the Service for a period of three (3) months from termination, after which Instructure shall have no obligation to maintain or provide any Customer Content. Any terms that by their nature survive termination or expiration of this Agreement will survive (including, but not limited to, Sections 4, 5, 6, 11, 12, 13, 14, 16, 17, 19, and 21).

15. **Suspension of Service.** Instructure may suspend a Customer's access (and/or any of its User's access) to the Service for a violation of Sections 2 (Customer Restrictions) or 3 (Customer Responsibilities) of this Agreement, including any violation of Instructure's API Policy or AUP, any applicable law, or third-party rights to the extent and for the duration necessary to address any such violation. Instructure will use commercially reasonable efforts to provide notice to Customer in advance of any suspension unless such violation may cause direct harm to the Service or may result in liability to Instructure. Customer agrees that Instructure will not be liable to Customer or a User if Instructure exercises its suspension rights as permitted by this Section.
16. **Indemnification.**
1. Instructure will indemnify and defend Customer from and against any and all losses, liabilities, and claims (including reasonable attorneys' fees) arising out of any claim by a third party alleging that the Service infringes or misappropriates the intellectual property rights of that third party. Notwithstanding the foregoing, Instructure shall not be obligated to indemnify Customer if any Fees remain unpaid after they become due or where such infringement or misappropriation claim arises from: (a) the Customer Content; (b) Customer's or User's misuse of the Service, including any use of the Service by unauthorized users or after the termination of the Agreement; or (c) Customer's or User's use of the Service in combination with any products, services, or technology not provided by Instructure. If a claim of infringement or misappropriation is made, Instructure may, in its sole discretion: (i) modify the Service so that it becomes non-infringing; (ii) obtain a license permitting continued use of the Service; or (iii) terminate the Agreement with no liability to Customer, other than Instructure's obligation to indemnify hereunder, and return the unused portion of any prepaid Fees. The aforesaid remedies are the Customer's sole and exclusive remedies for any third-party claims of infringement or misappropriation of intellectual property rights relating to the Service. To the extent not prohibited by applicable law, Customer will indemnify and defend Instructure from and against any and all losses, liabilities, and claims (including reasonable attorneys' fees) arising out of any claim by a third party alleging: (x) the Customer Content infringes or misappropriates the intellectual property rights of that third party; or (y) use of the Service by Customer or any User in violation of this Agreement or the AUP.
  2. The party seeking indemnification (the "**Indemnified Party**") shall provide the other party (the "**Indemnifying Party**") with prompt written notice upon becoming aware of any claim subject to indemnification hereunder and shall provide reasonable cooperation to the Indemnifying Party in the defense or investigation of any claim, suit or proceeding. The Indemnifying Party, at its option, will have sole control of such defense, provided that the Indemnified Party is entitled to participate in its own defense at its sole expense. The Indemnifying Party shall not enter into any settlement or compromise of any such claim, suit, or proceeding without the Indemnified Party's prior written consent, except that the Indemnifying Party may without such consent enter into any settlement of a claim that resolves the claim without liability to the Indemnified Party and without impairment to any of the Indemnified Party's rights or requiring the Indemnified Party to make any admission of liability.
17. **Non-Performance and Relief; Force Majeure.** Either party may apply to a court of competent jurisdiction for injunctive or other appropriate equitable relief restraining any threatened or actual breach 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. Instructure will not be liable for failure or delay in its performance to the extent caused by circumstances beyond its reasonable control, including, but not limited to, acts of God, natural disasters, pandemics, actions or decrees of governmental bodies, changes in applicable laws, or communication or power failures.
18. **Notices.** Any legal notice by a party under this Agreement shall be in writing and either personally delivered, delivered by email or reputable overnight courier (such as Federal Express) or certified mail, postage prepaid and return receipt requested, addressed to the other party at the address specified in the Order Form or such other address of which either party may from time to time notify the other in accordance with this Section 18. A copy of all notices to Instructure shall be sent to: Instructure, Inc., 6330 South 3000 East, Suite 700, Salt Lake City, UT 84121, Attention: General Counsel and, if by email, to [legal@instructure.com](mailto:legal@instructure.com).
19. **Choice of Law.** To the extent that the Instructure entity identified on the Order Form is Instructure, Inc., this Agreement shall be interpreted, governed, and construed by the laws of the State of Delaware, without regard to principles of conflict of laws. To the extent that the Instructure entity identified on the Order Form is Instructure Global Limited, this Agreement shall be interpreted, governed, and construed by the laws of England and Wales without regard to principles of conflict of laws and the parties hereby submit to the exclusive jurisdiction of the English courts.
20. **Modifications to the Agreement.** Instructure may modify this Agreement at any time by posting a revised version on Instructure's website. By continuing to use the Service after the effective date of any modifications, Customer consents to be bound by the modified terms. To the extent Instructure determines that such modification results in Instructure

engaging in more permissive data practices, or materially changes Customers' rights or obligations, Instructure will notify Customer of the modifications in writing, such as by e-mail.

21. **General.** Instructure is an independent contractor to Customer. If any term of this Agreement is invalid or unenforceable, the other terms remain in effect and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. The Parties agree that: (a) this Agreement constitutes the entire agreement between the parties with respect to the subject matter thereof, and any prior representations, statements, and agreements relating thereto are superseded by the terms of this Agreement; and (b) Customer may use purchase orders or similar documents only as proof of acceptance of each Order Form and for convenience only, and all terms and conditions (preprinted or otherwise and regardless of how referenced) shall be void and of no effect. Any attempt by Customer to assign this Agreement, in whole or part, to any entity, without Instructure's prior written consent shall be void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns. Other than in respect of Instructure's Affiliates, this Agreement does not create any third-party beneficiary rights in any individual or entity that is not a party to this Agreement. 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 and logo in both text and pictures in its various marketing communications and materials, in accordance with Customer's trademark guidelines and policies.