



Services Order Form

Order #: Q-296355-4
Date: 2023-05-19
Offer Valid Through: 2023-07-14

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

Order Form For Boone County School District (KY)

Address: 8330 US Highway 42
City: Florence
State/Province: Kentucky
Zip/Postal Code: 41042
Country: United States

Order Information

Billing Frequency: Annual Upfront
Payment Terms: Net 30

Billing Contact

Name: _____
Email: _____
Phone: _____

Primary Contact

Name: Bonita Bolin
Email: bonita.bolin@boone.kyschools.us
Phone: +1 859 384 4640

Billing Frequency Term:

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

Year 1

Description	Start Date	End Date	Metric	Qty	Price	Amount
Mastery Connect Bundled Subscription	2023-07-15	2024-07-14	User	16,963	USD 4.85	USD 82,270.55
Mastery View Predictive Assessments KY - Full Year - District Pricing - District Pacing	2023-07-15	2024-07-14	User	15,531	USD 8.25	USD 128,130.75
Individual Student Reports	2023-07-15	2024-07-14	User	15,531	USD 0.20	USD 3,106.20
Item Bank - Mastery All 4 Subjects & Mastery View Bundle	2023-07-15	2024-07-14	User	16,963	USD 3.30	USD 55,977.90
Recurring Sub-Total						USD 269,485.40
Year 1 Total						USD 269,485.40
Grand Total:						USD 269,485.40

Package Information
Included in your Item Bank - Navigate All 4 Subjects & CASE Bundle:

Deliverable	Description	Expiration	Qty
Mastery Item Bank - Supplemental	Annual Subscription for Mastery Item Bank - Supplemental	N/A	16,963
Mastery Item Bank Subscription	Mastery Item Bank subscription for ELA, Math, Science and Social Studies featuring learning standards alignments for all 50 States, D.C., Common Core and Next Generation Science Standards.	N/A	16,963

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.

Metrics and Descriptions:

User: User Metric reflects the maximum number of individuals authorized by the Customer to access and/or use the Service and Customer has paid for such access and/or use.

In the event Customer enables access to the Service to more Users over a given contract year than are allocated to such contract year as set forth above, then Instructure reserves the right, in its sole discretion, to invoice the Customer for such additional number of Users. In addition, the User fees set forth above are based on the assumption that Customer's Users will use the Service commensurate with the average usage patterns of users across Instructure's user base in the aggregate (such average usage being referred to herein as "Typical Use") and do not account for usage of the Service by Customer's Users beyond such Typical Use. To the extent the Users' usage of the Service, in the aggregate, exceeds the Typical Use at any given time, Instructure reserves the right, in its sole discretion, to increase the fees by an amount proportional to such excess usage. In the event Instructure increases the fees pursuant to this paragraph, Instructure shall send an invoice to Customer for the applicable increase along with documentation evidencing the additional usage of or additional Users who have access to the Service giving rise to such fee increase. Any invoice sent pursuant to the foregoing shall be due and payable within 30 days of receipt.

Product	Description
Mastery View Predictive Assessments - Grade Levels	Mastery View Predictive Assessments for the State Tested Subject Areas.
Item Bank - Mastery All 4 Subjects & Mastery View Bundle	Annual Subscription for Mastery View + Mastery Item Banks

Elementary Assessment Order Detail				
Subject	Ordered	# of Tests per Year	Delivery Method	Grade Level
ELA	Yes	3	Paper-Pencil and MasteryConnect	K (2 BA);1;2;3;4;5
Math	Yes	3	Paper-Pencil and MasteryConnect	K (2 BA);1;2;3;4;5
Science	No			
Social Studies	No			

Middle Assessment Order Detail				
Subject	Ordered	# of Tests per Year	Delivery Method	Grade Level
ELA	Yes	3	Online - MasteryConnect	6;7;8
Math	Yes	3	Online - MasteryConnect	6;7;8
Science	Yes	3	Online - MasteryConnect	7;8
Social Studies	Yes	3	Online - MasteryConnect	7;8

High School Assessment Order Detail				
Subject	Ordered	# of Tests per Year - Traditional	# of Tests per Semester - Block	Delivery Method
Standard Package - All Subjects	Yes	3	2	Online - MasteryConnect
Standard English	No			
Standard Math	No			
Standard Science	No			
Standard Social Studies	No			

Additional Assessment Details					
Assessment Package			Option 1 (3BA): 1st BA, 2nd BA, & Final Comp		
College Prep Assessments					
Grades to Test		# of Students		# of Administrations	
Item Bank Subscription					
Grades to Access			2;3;4;5;6;7;8;9;10;11;12		
Notes					
This quote for Mastery View Predictive assessments for grades 2-11. Only 50 students will be using MVPA's for 12th grade. 2-12 will be administered with Mastery Connect online. The quote also includes the Mastery Item Banks for grades 2-12.					

Duration: The Services provided under this Order Form shall begin on the first year Start Date set forth above and continue through the last year End Date set forth above, provided, however, that Instructure may provide certain implementation related Services prior to the first year Start Date at its sole discretion.

Miscellaneous: Instructure's support terms are available as follows:
Canvas & Catalog: <https://www.instructure.com/canvas/support-terms>
Portfolium: <https://portfolium.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 expenses associated with advancing our products. If you have concerns with any increases, please reach out to your account representative.

In the event that Customer fails to execute this Order Form prior to the Start Date listed above, all fees shall become due payable upon Customer's receipt of an invoice.

Terms and Conditions

This Order Form shall be governed by the Master Terms and Conditions which can be found here: <https://www.instructure.com/policies/master-terms-and-conditions>

The provision of any Item Bank Services shall also be governed by the Addendum which can be found here: <https://www.instructure.com/policies/item-bank-addendum>.

The provision of any Predictive Assessment Services shall also be governed by the Addendum which can be found here:

<https://www.instructure.com/benchmark-assessment-addendum>.

In the event of any conflict between this Master Terms and Conditions and any addendum thereto and this Order Form, the provisions of this Order Form shall control.

The parties agreement with regards to Instructure's processing of personal data or personally identifiable information can be found at: <https://www.instructure.com/policies/data-processing>

Notes

This quote for Mastery View Predictive assessments for grades 2-11. Only 50 students will be using MVPA's for 12th grade. 2-12 will be administered with Mastery Connect online. The quote also includes the Mastery Item Banks for grades 2-12.

PURCHASE ORDER INFORMATION	TAX INFORMATION
Is a Purchase Order required for the purchase or payment of the products on this order form?	Check here if your company is exempt from US state sales tax : _____
Please Enter (Yes or No): _____	<i>Please email all US state sales tax exemption certifications to ar@instructure.com</i>
If yes, please enter PO Number: _____	

By executing this Order Form, each party agrees to be legally bound by this Order Form.

Boone County School District (KY)

Signature:	
Name:	
Title:	
Date:	

Instructure, Inc.

Signature:	
Name:	
Title:	
Date:	

Master Terms and Conditions | Policy

These terms and conditions apply to the provision of the products or services identified on the Order Form by Instructure, Inc. (“**Instructure**”) to the entity identified in the Order Form (“**Customer**”). An “**Order Form**” means any order for the provision of products or services signed by Customer. These terms and any applicable Addendum related thereto are incorporated into the Order Form and together with the Order Form, form the “**Agreement**.” To the extent there is any conflict between the Order Form, these Master Terms and Conditions, or any Addendum related thereto, such conflict shall be resolved pursuant to the following order of precedence: (i) the Order Form, (ii) any applicable Addendum, 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) made available through a URL in a hosted environment (together with any other products and services identified in the Order Form, the “**Service**”). All rights in and to the Service not expressly granted to Customer in this Agreement are reserved by Instructure. 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 Customer has purchased a subscription.
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) use or access the Service for competitive purposes; (c) copy, modify, adapt, or create

modify Instructure's policies or proprietary markings displayed within the Service; (e) use, interfere with, disrupt or circumvent the integrity, security or performance of the Service, including by probing, scanning, or testing any Instructure system or network or its security or authentication measures; (f) store or transmit any malicious code; (g) permit direct or indirect access to or use of any Service or Customer Content (as defined below) in a way that circumvents a contractual usage limit; (h) attempt to gain unauthorized access to the Service, its related systems or networks or Third-Party Services (as defined below); (i) use the Service or any Third-Party Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; or (j) use 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 and 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; (e) cooperate reasonably in all respects with respect to implementation, access, support, and maintenance of the Service; and (f) ensure that a current email address is associated with each User's account.
4. **Representations.** Each party represents that (a) it has the power and authority to validly enter into this Agreement, (b) this Agreement has been duly and validly authorized, executed and delivered by such party, (c) the execution and delivery of this Agreement does not violate or conflict with any other agreement, license, or obligation of such party, (d) 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 the other party 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) it shall 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; (b) the functionality or features of the Service and Support may change but will not materially degrade during the Term; and (c) 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 5: (i) Instructure shall correct the non-conforming Service at no additional charge

faith efforts, Instructure shall refund Customer amounts paid that are attributable to the defective Service from the date Instructure received such notice. Customer must report deficiencies in writing to Instructure within thirty (30) days of their identification in order to receive any warranty remedies herein. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 5 AND TO THE MAXIMUM EXTENT OF THE LAW, INSTRUMENT 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, INSTRUMENT DOES NOT WARRANT: (A) THE RESULTS OR OUTCOMES FROM USE OF THE SERVICE OR THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE; OR (B) THE VALIDITY, FAIRNESS OR QUALITY OF ANY CONTENT PROVIDED BY INSTRUMENT. 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 INSTRUMENT IN THIS SECTION 5.

6. **Fees.** As consideration for the subscription to the Service, Customer shall pay all fees set forth in an 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. 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.
7. **Service Standard.** Instructure will use commercially reasonable efforts to make each 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 Fees paid and attributable to the Service that is unavailable 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 of the applicable annual subscription Fees. Any days prior to Customer's initial use of the 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 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. Customer's sole and exclusive remedy for breach of the Service Commitment in this Section 7 will be for Instructure to provide a credit as provided in this Section 7; on the condition that Customer notifies Instructure in writing of such claim within thirty (30) days of becoming eligible for such claim.
8. **Compliance.** Each party will comply with all applicable laws and regulations with respect to its activities under this Agreement, including with respect to personally identifiable information from records that are subject to applicable privacy laws, including, but not

Information"). Without limiting the generality of the foregoing, Customer shall not make the Service available to any person or entity that: (a) is located in a country that is subject to a U.S. government embargo; or (b) is listed on any U.S. government list of prohibited or restricted parties.

9. **Customer Content.** 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.
10. **Data Use.** Customer agrees that data derived from Instructure's provision of the Service or Customer's use of the Service ("**Usage Data**") may be used by Instructure for the purposes of analysis, including statistical analysis, trend analysis, creation of data models, and creation of statistical rules. Such Usage Data will only be used in its aggregated or anonymized form and such results may be used by Instructure for any lawful purpose not otherwise excluded by this Agreement. As between the parties, Instructure owns the Usage Data. Notwithstanding anything contained in this Agreement to the contrary, Usage Data does not include Customer Content or any information that identifies or can be reasonably used to identify an individual person or Customer.
11. **Third-Party Services.** Customer may access third-party services, content or links through the use of the Service (collectively "**Third-Party Services**"). Instructure does not control Third-Party Services or make any representations or warranties with respect to Third-Party Services. In addition, Instructure is not responsible for Third-Party Services.
12. **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 17.1, 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.
13. **Confidentiality.** 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**") may disclose (in such capacity the "**Disclosing Party**") Confidential Information to the other party or its Affiliates (in such capacity, the "**Receiving Party**") in the performance of this Agreement. Accordingly, the Receiving Party shall: (a) keep the Confidential Information disclosed by the other party confidential; (b) use Confidential

and (c) 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. As used herein, "**Confidential Information**" means 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, 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. 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 the use of 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, 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 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. 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.

14. **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. 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, translations and components thereof; (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 other intellectual property owned by Instructure including, but not limited to, all copyrights, patents, trademarks and trade names, trade secrets, specifications, methodologies, documentation, algorithms, criteria, designs, report formats, and know-how, as well as any underlying source code and object code related thereto.

15. 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 15. 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.

16. 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 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.

17. 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 such infringement or misappropriation claim arises from: (a) the Customer Content; (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 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. 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: (z) 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

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.

18. **General.** Each party acknowledges that any breach, threatened or actual, of this Agreement, including, without limitation, with respect to unauthorized use of proprietary assets, will cause irreparable injury to the other party, such injury would not be quantifiable in monetary damages, and the other party would not have an adequate remedy at law. Each party therefore agrees that the other party shall be entitled, in addition to other available remedies, to seek and be awarded an injunction or other appropriate equitable relief from a court of competent jurisdiction restraining any breach, threatened or actual, of this Agreement. Each party waives any requirement that the other party post any bond or other security in the event any injunctive or equitable relief is sought by or awarded to enforce any provision of this Agreement. Any legal notice by a party under this Agreement shall be in writing and either personally delivered, delivered by email or reputable overnight courier (such as Federal Express) or certified mail, postage prepaid and return receipt requested, addressed to the other party at the address specified in the Order Form or such other address of which either party may from time to time notify the other in accordance with this Section 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. 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 and all notices shall be in English and deemed effective upon receipt. If Instructure is unable to perform its obligations under this Agreement due to circumstances beyond its reasonable control, including, but not limited to, acts of God, earthquakes, hacker attacks, actions or decrees of governmental bodies, changes in applicable laws, or communication or power failures, such obligations will be suspended so long as those circumstances persist. This Agreement shall be interpreted, governed, and construed by the laws of the State of Delaware without regard to principles of conflict of laws. Instructure is 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. Instructure may amend, revise or update these Master Terms and Conditions at any time. Such amendment, revision or update shall be effective upon 30 days' notice to Customer by any means reasonable to give Customer actual or constructive notice, including by posting such terms on Instructure's website. In the event Customer does not agree with any amendment, revision or update, Customer shall give Instructure notice within 30 days of receiving actual or constructive notice from Instructure and Customer and Instructure shall negotiate in good faith to come to an agreement solely with respect to such amendment, revision or update. In the event Customer does not give notice to Instructure, Customer's continued use of the Service after the 30-day notice period shall indicate Customer's agreement with any such amendment, revision or update. 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

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. To the extent there is any conflict between the Order Form, these Master Terms and Conditions, or any Addendum related thereto, such conflict shall be resolved pursuant to the following order of precedence: (i) the Order Form, (ii) any applicable Addendum, and (iii) these Master Terms and Conditions. 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. 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 4, 5, 6, 13, 14, 15, 16, and 18).

INSTRUCTURE PRODUCT SPECIFIC ADDENDUMS

These product specific addendums shall only apply to the extent the applicable products and services have been purchased by Customer.

Provisions applicable to Mastery Item Bank products

1. This section applies to and governs one or multiple of Instructure's Services identified on the Order Form as a Mastery Item Bank Service (each, an "**Item Bank**" and together, the "**Item Banks**").
2. **Item Bank License.** Subject to the terms of this Agreement, Instructure grants to Customer a license to access and use the Item Bank product offerings set forth on the Order Form for the term specified on the Order Form for noncommercial purposes and only for students registered within Customer's schools/district(s) (the "**Territory**") for the sole purpose of performing formative assessments of those students (the "**Item Bank License**"). Pursuant to the Item Bank License, Customer acknowledges and agrees that certain parts of the Item

and that Instructure's rights in and to such Third-Party Content may not extend to Customer's Territory or may expire or otherwise terminate during the term of the Item Bank License. Any rights in and to Third-Party Content will at all times be limited and subject to Instructure's rights in and to the respective Third-Party Content, notwithstanding anything to the contrary in this Agreement. Throughout the term of the Item Bank License, Instructure will have the right, at its sole discretion, to modify the Item Bank(s), and to delete, and require the deletion by Customer, of specific Items and/or passages from the Item Bank(s).

3. **Customer Item Bank Restrictions.** Customer Agrees not to use the Item Bank(s): (1) unless Customer is an elementary, middle, and/or secondary school or school district in the United States, a state education agency or a state authorized educational information/service center that provides services and/or software to local educational entities), or a school outside of the United States using a United States based curriculum for English-speaking students; or (2) to promote any items in the Item Bank(s) as high-stakes assessments, where the results of high-stakes assessments are used for purposes other than improving instruction and student learning, such as graduation tests, college admissions tests and teacher evaluation assessments. The Item Bank(s) in its/their entirety is/are protected by copyright laws. All rights, licenses and privileges not expressly granted to Customer under the Item Bank License will remain exclusive to Instructure. Without limiting the generality of the foregoing, Customer acknowledges that Instructure retains all rights under copyright and all other intellectual property rights in and to the Item Bank(s), all items included therein, all revisions, modifications, translations, or other adaptations or transformations of the Item Bank(s), including assessments, and other derivative works created there from (collectively the **"Derivative Works"**).
4. **Termination of Item Bank License.** Upon any termination of the Item Bank License granted hereunder, Customer's access to the Item Bank(s) will be disabled and Customer and its Users must cease using such Item Bank(s) and all Derivative Works, including any printed copies of items and/or Derivative Works.

Provisions applicable to Mastery View Assessment products

1. This section applies to and governs one or multiple of Instructure's Services identified on the Order Form as a Mastery View Assessment Service (each, an **"Mastery View Assessment"** and together, the **"Mastery View Assessments"**).
2. **Customer Mastery View Assessments Restrictions.** Mastery View Assessments delivered via paper/pencil format or online through any delivery platform cannot be shared, duplicated, or reproduced in part or in whole without written permission of Instructure. Use of Mastery View Assessments is limited to students registered within the Customer's schools/districts

the sole purpose of delivering formative assessments to those students. Customer's right to access and use Mastery View Assessments in paper or electronic format shall be limited to use in Customer's classrooms and shall be limited to review and instructional purposes for those registered students within such classroom in the academic year of assessment delivery. **The Customer does NOT have any right to reproduce the tests in whole nor to dissect and reproduce any questions from the Mastery View Assessments individually; distribute copies of the assessments in whole or any individual questions from the assessment; prepare derivative works of the assessments or the questions individually; import or otherwise load the assessments in whole or any of the questions individually to any internal or external item bank or question data warehouse; upload any assessments in whole or questions individually to any platform partner "community boards"; or publicly display the assessments or questions outside Customer's classrooms.**

Provisions applicable to Elevate Standards Alignment products

1. This section applies to and governs one or multiple of Instructure's Services identified on the Order Form as an Elevate Standards Alignment Service, which may include (i) access to Instructure's proprietary data repository of Curriculum Standards (as defined below), the related Global Unique Identifiers (as defined below), and any metadata related to the Curriculum Standards or the Global Unique Identifiers (collectively, the **"ESA Content"**), and/or (ii) access to Instructure's software as a service offerings used for access to the ESA Content (the **"Content Management Systems"** and, together with ESA Content, **"Elevate Standards Alignment Products"**).
2. **Academic Benchmark License.** Subject to the terms of this Agreement, Instructure grants to Customer a license to access and use the Academic Benchmark Product offerings set forth on the Order Form for the term specified on the Order Form (the **"AB License"**). Notwithstanding anything contained in Section 2 the Agreement to the contrary, Customer may provide access to and permit use of the Curriculum Standards and/or Content Management Systems to its clients for use solely in conjunction with such client's use of Customer's products. In the event Customer's client has purchased a license to use Global Unique Identifiers from Instructure, Customer may also provide access to and permit use of the Global Unique Identifiers to such client. For the avoidance of doubt, Customer shall be prohibited from providing access to, permitting use of, or otherwise sharing any Global Unique Identifier with any client or other third party unless such client or other third party has purchased a current license to use such Global Unique Identifiers from Instructure.
3. **Customer Academic Benchmark Restrictions.** Customer shall (and shall require its clients to) (i) keep all non-public information comprising the ESA Content and/or Content Management Systems confidential, (ii) not reproduce, copy, distribute, sublicense, lease, rent, loan or

Content or Content Management Systems or any of the Customer's rights to the ESA Content or Content Management Systems (including by way of creating Internet "links" or "framing" or "mirroring" any web-based ESA Content or Content Management Systems).

4. Definitions.

- a. "**Curriculum Standards**" means the compilation, capturing, and structuring of, and the taxonomies created by Instructure based on, the standards adopted by a state or other third party, which have been made available for use to the general public by such state or third party which define what a student must know, be able to do, or be proficient at, with respect to various subject areas or skill sets.
- b. "**Global Unique Identifiers**" means the 36-character identification numbers that are assigned to Curriculum Standards or any metadata related thereto.

Provisions applicable to Elevate products

1. This section applies to and governs Instructure's Service identified on the Order Form as Elevate Data Sync. "**Platform**" means Instructure's proprietary software platform, and all enhancements thereof, that allows for the integration of the Customer Product with a SIS.
2. **Use of Platform.** Subject to the terms and conditions contained herein and/or in the Order Form, and Customer's compliance therewith, Customer may during the Term, (a) access and use the Platform and (b) access and use the Instructure Components as components of the Integration Solution. If applicable, Customer grants Instructure a revocable, limited, non-exclusive, and non-transferable license to (a) access and use any API or other interface provided by Customer and (b) access and use the Customer Product Components as components of the Integration Solution. Customer shall not assign or sublicense the Platform or the Instructure Components except for the purposes of creating accounts for the End Organization and as otherwise set forth in this Agreement and the Order Form. Instructure shall not assign or sublicense the Customer Product or the Customer Product Components except for the purposes of exchanging data and as otherwise set forth in this Agreement and the Order form.
3. **End Organization Data.** Customer agrees that End Organization Data data remains the property of the End Organization. Customer understands that its connection to End Organization Data will not be established until the End Organization takes some affirmative technical action to provide that access (such as providing API keys, connecting a SIF agent or authorizing an Instructure platform integration), and that at all times the End Organization will retain the right and power to disable or limit Customer's access to End Organization Data in the Platform. Customer agrees to abide by all data privacy laws applicable to the End Organization Data and, where applicable, acknowledges that its use of End Organization Data is also governed by Customer's own agreements directly with the End Organization.
4. **Consents.** Customer hereby represents and warrants that it owns or otherwise has and will have throughout the term of this Agreement the necessary rights and consents in and

the End Organization Data in accordance with this Agreement and the Order Form do not violate any privacy or other rights of any third party or violate any applicable law. It is the Customer's responsibility to ensure that the End Organization (and their end users where applicable) has authorized Instructure to collect and store such End Organization Data and provide the End Organization Data to Customer.

5. **Suspension.** Instructure may, directly or indirectly, suspend, terminate, or otherwise deny access to or use of all or any part of the Platform or Instructure components, without incurring any resulting obligation or liability, if: (a) Instructure is required by law to do so; or (b) Instructure reasonably believes that: (i) Customer or an End Organization or end user failed to comply with any material term of this Agreement, or accessed or used the Platform, or Instructure Components beyond the scope of Platform use set out in section 1.1 above or for a purpose not authorized under this Agreement; or (ii) Customer or End Organization or end-user is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities. To the extent Instructure exercises its rights under this section, it shall only be for the duration necessary to address any such violation. This section does not limit any of Instructure's other rights or remedies, whether at law, in equity, or under this Agreement.

6. **Definitions.**

- a. **"Customer Product"** means the application or system which Customer intends to integrate with the Platform.
- b. **"Customer Product Components"** means the individual parts, programs and supporting tools that make up the Customer Product.
- c. **"End Organization"** means any school, school district, college, university, other education agency, or other organization. The End Organization may be (i) the Customer or (ii) a different party that Customer indicates to Instructure that receives or is to receive the Customer Product and which has been designated by Customer to provide Customer with its End Organization Data via the Platform, and which has authorized Instructure to collect and store such End Organization Data and provide the End Organization Data to Customer.
- d. **"End Organization Data"** means all information and data pertaining to the End Organization and/or its end users that is transmitted to, received by, or processed by Instructure under this Agreement.
- e. **"Integration Solution"** means an eco-system of multiple software products and related components provided by both parties that enables Customer Product to provide, facilitate, transfer and receive data to and from SISs.
- f. **"Instructure Components"** means the Instructure-provided connectors, integrations and other software products.
- g. **"SIS"** means the End Organization's student information system or other authoritative source of data regarding students, staff, courses and rosters.

Provisions applicable to Professional Services

1. This section applies to and governs any professional services (“**Professional Services**”) provided to Customer by Instructure. To the extent there is a conflict between the express terms of this Agreement and an SOW, the terms of this Agreement shall control unless the SOW expressly states otherwise.
2. Customer shall provide Company with all Customer Content required to enable Company to perform the Professional Services, including all obligations specified in any applicable statement of work (“**SOW**”). If Customer fails to do this, Company will be relieved of its obligations to the extent that the obligations are dependent upon Customer’s performance.
3. Customer hereby grants to Company a nonexclusive, nontransferable, royalty-free, worldwide, license to use, reproduce, create derivative works from, and modify the Customer Content solely in connection with Company’s performance of such Professional Services. As between Customer and Company, the Customer Content is, and shall at all times remain, the sole and exclusive property of Customer, including, without limitation, all worldwide intellectual property rights embodied in, related to, or represented by, the Customer Content.
4. Subject to the terms and conditions of this Agreement, Company hereby grants to Customer a nonexclusive, nontransferable, royalty-free, worldwide, license solely to use the Deliverables (as defined below) in connection with any product or service purchased by Customer from Company. Customer agrees not to (a) modify, adapt, alter, translate, or create derivative works from the Deliverables; (b) sublicense, lease, rent, loan, or otherwise transfer the Deliverables to any third party; or (c) otherwise use or copy the Deliverables except as expressly allowed herein or in the applicable SOW. “**Deliverables**” mean items that Company is obligated to provide Customer under an applicable SOW.

Provisions applicable to LearnPlatform products

1. This section applies to and governs Instructure’s Service identified on the Order Form as LearnPlatform EdTech Effectiveness Solution and LearnPlatform EdTech Essentials
2. Customer agrees that the usage of any Service owned or controlled by Instructure (including, without limitation, LearnPlatform’s platform) shall be governed by the LearnPlatform terms of service, which are incorporated herein by reference, found at the following address: <https://learnplatform.com/terms-of-service>. In the event of any conflict or inconsistency between this Agreement and the terms of service, this Agreement shall control.
3. Customer acknowledges and agrees that all rights in and to the Service, and the results, conclusions and insights generated by Instructure (the “**Results**”), belong exclusively to Instructure, and are made available to Customer solely for Customer’s internal purposes. Customer shall not at any time do or omit, or suffer to be done or omitted, any act or thing which may impair Instructure’s rights in and to the Service or the Results.
4. To the extent applicable, Instructure will provide Customer with those LearnPlatform Evidence-as-a-Service subscriptions set forth in the Order Form (collectively the “**EaaS Deliverables**”). Instructure may also grant Customer the right to use one or more certification statements or logos provided by Instructure to indicate that Instructure has assessed

determined by Instructure (each an “Impact Badge”). In the event Customer elects to use the Impact Badge in connection with the marketing, sale, promotion or distribution of its product, Customer shall conspicuously place the Impact Badge on the LearnPlatform listing that features and describes the product. The use of the Impact Badge shall at all times be subject to the quality standards and requirements of Instructure. Customer shall at all times use the EaaS Deliverables and Impact Badge in a manner that is not false, misleading or injurious to the goodwill or reputation of Customer or Instructure. Customer shall (i) refrain from making any representations or claims about the report or Impact Badge that are outside the scope of the report and the applicable Services; and (ii) ensure that any and all distributors, dealers, resellers, and retailers of Customer’s products adhere to these same requirements. In the event Customer breaches this provision, Instructure may terminate Customer’s right and license to use the EaaS Deliverables and/or Impact Badge upon written notice.

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