State of Oklahoma

Office of Management and Enterprise Services

ADDENDUM 1 TO
STATE OF OKLAHOMA CONTRACT WITH INSTRUCTURE, INC.
RESULTING FROM STATE WIDE CONTRACT No. 1066

This Addendum 1 ("Addendum") is an Amendment to the Contract awarded to Instructure, Inc. in connection with Solicitation 0900000370 ("Solicitation") and is effective March _____, 2020. 4/7/2020

Recitals

Whereas, the State issued a Solicitation for proposals to provide Oklahoma K-12 public schools access to a list of Learning Management Systems (LMS) and Student Information Systems (SIS) to offer software, licensing, technical support, migration services (consulting), and hosting options, as more particularly described in the Solicitation;

Whereas, Instructure, Inc. ("Instructure") submitted a proposal which contained exceptions to the Solicitation terms and various other Contract Documents; and

Whereas, the State and Instructure have negotiated the final terms under Instructure will perform the Services under the Contract.

Now, therefore, in consideration of the foregoing and the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

1. **Addendum Purpose.**

   This Addendum memorializes the agreement of the parties with respect to negotiated terms of the Contract that is being awarded to Instructure as of even date with execution of this Addendum. The parties agree that Supplier has not yet begun performance of work contemplated by the Solicitation.

2. **Negotiated Documents of the Contract**.

   2.1. The parties have negotiated certain terms of the Contract as follows:

      i. certain exceptions to the Solicitation as contained in Attachment A to this Addendum titled "Negotiated Exceptions and Additional Terms to the Solicitation";

1

      ii.   revisions to Instructure's Terms and Conditions as contained in Attachment B to this Addendum titled, "Terms and Conditions";

    iii.   revisions to the State's Hosting Agreement as contained in Attachment C to this Addendum titled, "Hosting Agreement";

    iv.   revisions to Instructure's Service Order Form as contained in Attachment D to this Addendum titled, "Service Order Form"; and

    v.   revisions to the statement of work initially proposed by Instructure as contained in Attachment E to this Addendum titled "Statement of Work."

Contract Documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above.

2.2.   Accordingly, any reference to a Contract Document refers to such Contract Document as it may have been amended. If and to the extent any provision is in multiple documents and addresses the same or substantially the same subject matter but does not create an actual conflict, the more recent provision is deemed to supersede earlier versions.

2.3.   Instructure affirmatively acknowledges it will not ask the State or any Customer to execute additional documents not listed above in connection with this Contract.

State of Oklahoma by and through the Office of Management and Enterprise Services

By: _____ *DJerryMoore* _____

Name: _Jerry Moore_____

Title: _Chief Information Officer_____

Date: _____

Instructure, Inc.

By: _Elizabeth Powell_____
DocuSigned by:
3415CBF9A62B404

Name: _Elizabeth Powell_____

Title: _Manager, Deal Desk_____

Date: _4/7/2020_____

Attachment A to
ADDENDUM 1 TO
STATE OF OKLAHOMA CONTRACT WITH INSTRUCTURE INC.
RESULTING FROM STATE WIDE CONTRACT No. 1066

Negotiated Exceptions and Additional Terms to the Solicitation

The Solicitation is hereby amended to include the terms as set forth below and supersedes all prior terms and Exceptions submitted by **Instructure, Inc.** or discussed by the parties.

RFP Section	Exception
A. General Provisions, 20. Insurance	**Solicitation, Section A. General Provisions, subsection A.20. Insurance, is hereby deleted in its entirety and replaced with the following:** a) Worker's Compensation and Employer's Liability Insurance in accordance with applicable law. b) Commercial General Liability Insurance on a per occurrence basis with limits of liability not less than $5,000,000 per occurrence and aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage; c) Automobile Liability Insurance with limits of liability of not less than $5,000,000 per occurrence combined single limit including bodily injury and property damage and with coverage, if applicable, for all owned vehicles, all non-owned vehicles, and all hired vehicles; and d) Professional Errors and Omissions Insurance which shall include Consultant's Computer Errors and Omissions Coverage with limits not less than $10,000,000 per claim and in the aggregate.
A. General Provisions, 23. Compliance with Applicable Laws	**Solicitation, Section A. General Provisions, subsection 23.3 is hereby deleted in its entirety and replaced with the following:** The Supplier shall ensure that its employees, agents, and subcontractors who perform services for the State under this Contract are subject to contractual obligations no less restrictive than those contained in this Contract.
A. General Provisions, A.28. Confidentiality	**Solicitation, Section A. General Provisions, Subsection 28.1 is hereby deleted in its entirety and replaced with the following:** The Supplier shall maintain strict security of all State data and records entrusted to it or to which the Supplier gains access, in accordance with and subject to applicable federal and state laws, rules, regulations and policies and shall use any such data or records only as needed by Supplier for performance of its obligations hereunder. The Supplier further agrees to evidence such confidentiality obligation in a separate writing if required under such applicable federal or state laws, rules and regulations. If Supplier utilizes a permitted subcontractor, the Supplier shall ensure that its

1

RFP Section	Exception
	employees, agents and subcontractors who perform services for the State under this Contract are subject to confidentiality obligations no less restrictive than those contained in this Contract.
A. General Provisions, A.32. Assignment	**Solicitation, Section A. General Provisions, Subsection A.32 is hereby deleted in its entirety and replaced with the following:** Either party's obligations under a Contract Document may not be assigned or transferred to any other person or entity without the prior written consent of the other party which may be withheld in its sole discretion. Rights granted under the terms of this Contract may be assigned or transferred, at no additional cost, to other entities within the State. Consent for assignment shall not be required, in any case, where the assignment is any affiliate or to any surviving entity in a merger, acquisition or in the event of transfer of all or substantially all of its asset so long as the transferor entity assumes all rights, duties and obligations, including the obligation to pay, under the resulting agreement.
A. General Provisions, A.35. Failure to Enforce	**Solicitation, Section A. General Provisions, Subsection A.35 is hereby deleted in its entirety and replaced with the following:** Failure by the either party, as applicable, at any time to enforce a provision of, or exercise a right under, any Contract Document shall not be construed as a waiver of any such provision. Such failure to enforce or exercise shall not affect the validity of any Contract Document, or any part thereof, or the right of either party to enforce any provision of, or exercise any right under, a Contract Document at any time in accordance with its terms. Likewise, a waiver of a breach of any provision in a Contract Document shall not affect or waive a subsequent breach of the same provision or a breach of any other provision in a Contract Document.
A. General Provisions, Subsections A.41.Agency Policies and A.42. Compliance with Technology Policies	**Solicitation, Section A. General Provisions, Subsections A.41 and A. 42 shall be amended to include the following:** With respect to any policies described in Sections A.41 and A.42, in the event such policies change in a way that makes Supplier no longer compliant with such policies, and the State does not waive such non-compliance, Supplier shall have the option, in its sole discretion, to terminate the Contract, in such event Supplier shall refund the State any prepaid and unused fees, including fees for subscription services. Supplier shall give thirty (30) days' notice to the State for an

RFP Section	Exception
	opportunity to waive such non-compliance before Supplier may exercise its right to terminate.
A. General Provisions, Subsection A.49. Publicity	**Solicitation, Section A. General Provisions, Subsection A.49 is hereby deleted in its entirety and replaced with the following:** The award of this Contract to Supplier is not in any way an endorsement by the State of Supplier or the products and shall not be so construed by Supplier in any advertising or publicity materials. Supplier agrees to submit to the State all advertising, sales promotion, and other publicity matters relating to this Contract wherein the State's name is mentioned or language used from which the connection of the State's name therewith may, in the State's judgment, be inferred or implied as an endorsement. Neither party will use the name, any trademark or logo of the other party without the prior written consent of the other party in any advertising promotions, publicity or commercial materials. Notwithstanding the foregoing, as a publicly traded company, Instructure may disclose the relationship between Instructure and Customer in its public filings and disclosures.
B. Special Provisions, B.2 Obligations of Permitted Subcontractor	**Solicitation, Section B Special Provisions, Subsection B.2.1. is hereby deleted in its entirety and replaced with the following:** If the Supplier is permitted to utilize subcontractors in support of this Contract, the Supplier shall remain solely responsible for its obligations under the terms of this Contract and for its actions and omissions and those of its agents, employees and subcontractors. Any proposed subcontractor shall be identified by entity name and by employee name in the applicable proposal and shall include the nature of the services to be performed. In the event a new subcontractor is utilized by the Supplier for migration or hosting options in connection with provision of the products, the Supplier shall give State ten (10) business day's written notice of such change. If the State objects to such subcontractor, the State shall have the option to terminate this Agreement within 30 days of being notified of the use of such new subcontractor and shall receive a refund of any prepaid but unused fees. Such approval is within the sole discretion of the State. The Supplier shall ensure the subcontractor agrees to perform covenants and be subject to conditions, and make certifications to facts and criteria that are as at lease as beneficial to the State as the covenants, conditions and certificates made by Supplier under the terms of all applicable Contract Documents. Supplier agrees that maintaining such agreement with any subcontractor and obtaining prior approval by the State of any subcontractor shall be a continuing obligation for use of any new subcontractors for migration or hosting options. The State further reserves the right to revoke approval of a subcontractor in instances of poor performance, misconduct or for other similar reasons.
B. Special Provisions, B.2 Obligations of	**Solicitation, Section B Special Provisions, Subsection B.2.3. is hereby added:**

3

RFP Section	Exception
Permitted Subcontractor	Per Solicitation, Section B Special Provisions, Subsection B.2 the State approves Supplier's use of the following as a subcontractor(s) under this Contract: Amazon Web Services, Kimono, Twilio, Salesforce, Splunk, Google Analytics, Big Blue Button, Heroku, Netsuite. Without waiving the order of precedence herein, the state accepts the terms and conditions of these approved subcontractors to the extent the terms and conditions do not reduce any rights or enlarge any obligations of the State or authorized users as set forth in the Solicitation.
B. Special Provisions, B.4. Administrative Fee	**Solicitation, Section B Special Provisions, Subsection B.4 is hereby deleted in its entirety and replaced with the following:** Except for Acquisitions subject to E-Rate and/or OUSF participation, Instructure agrees to pay an administrative fee in the sum of 1.0% of the combined total quarterly expenditures, as evidenced by the aggregate amount of Acquisitions under this Contract. All products or service prices shall be inclusive of the administrative fee. Notwithstanding anything to the contrary herein, the State reserves the right to increase or decrease the administrative fee as long as Instructure has an obligation under this Contract without further requirement for an Amendment and shall provide written notice of such change to the Supplier. In the event the State increases the administrative fee it will provide Instructure with sixty (60) days' written notice and an opportunity to submit a proportionate increase in its pricing subject to final CPO approval, increases up to 2% or the current CPI, whichever is higher, shall automatically be approved. If the State increases the administrative fee above 3% without accepting Instructure's proportional increase in its pricing, Instructure reserves the right to terminate the Agreement without penalty. Such proposed updated pricing shall be submitted within forty-five days from which notice was provided to Instructure. The administrative fee amount shall be noted on the quarterly "Contract Usage Report" and paid by Instructure to the Oklahoma Office of Management and Enterprise Services within thirty (30) calendar days of the quarterly reporting period stated under the section below titled "Contract Usage Reporting Requirements". Instructure shall list this Contract number and identify the reporting year and quarter (for example, ITSW1014 4th Qtr. 2014) on the check stub of each administrative fee paid hereunder. The check shall be mailed to: Oklahoma Office of Management and Enterprise Services Accounts Receivable 5005 North Lincoln Boulevard Oklahoma City, Oklahoma 73118-8500 Attention: CFO

Attachment B to
ADDENDUM 1 TO
STATE OF OKLAHOMA CONTRACT WITH INSTRUCTURE, INC.
RESULTING FROM STATE WIDE CONTRACT No. 1066

The **Terms and Conditions** is hereby amended as set forth below and supersedes all prior documents submitted by **Instructure, Inc.** or discussed by the parties.

Terms & Conditions

This Terms and Conditions is a Contract Document in connection with the contract resulting from Solicitation 0900000370 ("Contract") between the State of Oklahoma by and through the Office of Management and Enterprise Services ("State") on behalf of State or Interlocal Entities ("Customer") and Instructure, Inc. ("Instructure" or "Vendor"). This document outlines the standard contractual terms and conditions that apply to the provision of any products or services by Instructure, Inc. ("**Instructure**") to the state or interlocal 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 are incorporated into the Order Form and together, the Order Form and these Terms are the "**Agreement**." Instructure and Customer may be referred to herein each as a "**party**" and together as the "**parties**."

1. **Services**. Subject to the terms of this Agreement, Instructure will provide the Service specified in the Order Form. "**Service(s)**" means the proprietary software as a service offering(s) provided by Instructure and made available through a URL in a hosted environment, together with any other related products and services to be provided by Instructure as described in the Order Form. "**User**" means an individual who is authorized by the Customer to use the Service and Customer has paid for such use.

2. **Customer Restrictions.** Customer shall not (and shall not permit Users to): (a) sell, rent, lease, lend, sublicense, distribute, or otherwise transfer or provide access to the Service to any person, firm, or entity except as expressly authorized herein, access the Service to build a competitive service or product, or copy any feature, function or graphic for competitive purposes; (b) modify, adapt, alter or create derivative works from or merge the Service or any subpart thereof (including proprietary markings) with other services or software; (c) remove or modify any proprietary markings or restrictive legends in the Service; or (d) use the Service or any of Instructure's data, systems, network, or services to engage in, foster, or promote illegal, abusive, or irresponsible behavior, including, without limitation, accessing or using Instructure data, systems, or networks in an unauthorized manner, attempting to probe, scan, or test the vulnerability of a Instructure system or network, circumventing any Instructure security or authentication measures, monitoring Instructure data or traffic, interfering with any Instructure services, collecting or using from the Service email addresses, screen names, or other identifiers, collecting or using from the Service information without the consent of the owner or licensor, using any false, misleading, or deceptive information, using the Service to distribute software or tools that gather information, distribute advertisements, or engage in conduct that may result in retaliation against Instructure or its data, systems, or network. 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 is responsible for Customer Content and use of the Service by Users. Customer further agrees to: (a) maintain the confidentiality and security of passwords; (b) obtain from Users any consents necessary under this Agreement or to allow Instructure to provide the Services; (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 and maintenance of the Service.

4. **Instructure Responsibilities**. Instructure shall: (a) deploy all updates and upgrades to the Service to Customer that Instructure provides to its customers generally for no additional charge; and (b) provide Support ("**Support**") pursuant to the standard terms of Instructure's customer support.

5. **Fees**. As consideration for the subscription to the Service, Customer shall pay all fees ("**Fees**") set forth in the Order Form. All Fees will be due from Customer within forty-five (45) days after receipt of invoice.

6. **Service Standard**. Instructure will use commercially reasonable efforts to make the Service available with an Annual Uptime Percentage of at least 99.9% ("**Service Commitment**"). In the event Instructure does not meet the Service Commitment, Customer will be eligible to receive a service credit as described below. The maximum amount of the credit is 1/12 of the annual subscription fee for a twelve (12) month period. The service credit is calculated by taking the number of hours the Service was unavailable below the Service Commitment, and multiplying it by 3% of 1/12 the annual subscription fee. If the Customer has been using the Service for less than 365 days, the preceding 365 days will be used, but any days prior to Customer's use of the Service will be deemed to have had 100% availability. Any unavailability occurring prior to a credit cannot be used for any future claims. The Service Commitment does not apply to any scheduled outages, standard maintenance windows, force majeure, and outages that result from any technology issue originating from Customer or a User. Customer's sole and exclusive remedy for breach of the Service Commitment in this Section 6 will be for Instructure to provide a credit as provided in this Section .6; provided that Customer notifies Instructure in writing of such claim within thirty (30) days of becoming eligible for such claim.

7. **Representations and Warranties**. Instructure warrants that: (a) the functionality or features of the Service and Support may change but will not materially degrade during the Term; and (b) the Service will materially conform to its then current documentation. As Customer's exclusive remedy and Instructure's sole liability for breach of the warranties set forth in this Section 7: (i) Instructure shall correct the non-conforming Service at no additional charge to Customer; or (ii) in the event Instructure is unable to correct such deficiencies after good-faith efforts, Instructure shall refund Customer amounts paid that are attributable to the defective Service from the date Instructure received such notice. To receive warranty remedies, Customer must promptly report deficiencies in writing to Instructure, but no later than thirty (30) days after the deficiency is identified by Customer. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 7, INSTRUCTURE AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES, WHETHER WRITTEN, ORAL, OR EXPRESS, IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT,

AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, INSTRUCTURE DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR BE ERROR-FREE.

8. **Compliance**. Each party will comply with all applicable laws and regulations (including all applicable export control laws and restrictions) with respect to its activities under this Agreement. Instructure will implement reasonable administrative, technical, and physical safeguards in an effort to secure its facilities and systems from unauthorized access and to secure the Customer Content.

9. **Data.** As between Instructure and Customer, any and all information, data, results, plans, sketches, text, files, links, images, photos, videos, audio files, notes or other materials uploaded by a User through the Service ("**Customer Content**") remain the sole property of Customer. Instructure may use the Customer Content solely to provide and improve the Services in accordance with this Agreement or Customer's instructions. As between the parties, Instructure owns the aggregated and statistical data generated or related to the provision, operation or use of the Service, including measurement and usage statistics, configurations, survey responses, and performance results (the "**Aggregated Data**"). Nothing herein shall be construed as prohibiting Instructure from utilizing the Aggregated Data, provided that Instructure's use of Aggregated Data will not reveal the identity, whether directly or indirectly, of any User or Customer.

10. **Limitation of Liability**. EACH PARTY AND ITS SUPPLIERS SHALL NOT BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE USE OR INABILITY TO USE THE SERVICES (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY, LOSS OF DATA, RECORDS OR INFORMATION, AND ANY FAILURE OF DELIVERY OF THE SERVICE), EVEN IF THE OTHER PARTY HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES. EXCEPT FOR A PARTY'S INDEMNITY OBLIGATIONS IN SECTION 15, EACH PARTY'S CUMULATIVE MAXIMUM LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO THIS CONTRACT (WHETHER IN CONTRACT, TORT OR OTHERWISE) SHALL NOT EXCEED THE AMOUNT PAYABLE BY CUSTOMER UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTHS TERM. CUSTOMER ACKNOWLEDGES THAT INSTRUCTURE IS NOT RESPONSIBLE FOR THIRD-PARTY SERVICES OR CONTENT MADE AVAILABLE THROUGH THE SERVICE.

Notwithstanding anything to the contrary in the Agreement, the foregoing provisions of this Section shall not apply to or limit damages, expenses, costs, actions, claims and liabilities arising from or related to property damage, bodily injury or death caused by Instructure; the indemnification obligations set forth in Section 15 of these Terms and Conditions; Instructure's confidentiality obligations set forth in this Agreement; data security and breach notification obligations set forth in the Agreement as well as Attachment C contained herein; the gross negligence or intentional misconduct of Instructure or its employees agents and subcontractors; or other acts for which applicable law does not allow exemption from liability. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, EACH PARTY'S CUMULATIVE MAXIMUM LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO DATA SECURITY AND BREACH NOTIFICATION OBLIGATIONS SET FORTH IN THE AGREEMENT AS WELL AS ATTACHMENT C CONTAINED HEREIN SHALL NOT EXCEED FIVE (5) TIMES THE AMOUNT PAYABLE BY CUSTOMER UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTHS TERM.

11. **Confidentiality**.   By virtue of the Agreement, Customer may be exposed to or be provided with certain confidential and proprietary information of the Instructure. Instructure shall clearly mark any such information as confidential. ("Confidential Information"). Customer is a state agency and subject to the Oklahoma Open Records Act and Instructure acknowledges information marked Confidential Information will be disclosed to the extent permitted under Customer's Open Records Act and in accordance with this section. Customer agrees to use the same degree of care that each such party uses to protect its own confidential information, but in no event less than a reasonable amount of care. Customer will not use Instructure's Confidential Information for purposes other than those necessary to directly further the purposes of the Agreement. Confidential Information shall not include information that: (i) the receiving party possesses prior to acquiring it from the other; (ii) becomes available to the public or trade through no violation by the receiving party of this paragraph; (iii) is given to the receiving party by a third-party not under a confidentiality obligation to the disclosing party; or (iv) is developed by the receiving party independently of and without reliance on confidential or proprietary information provided by the disclosing party The Customer will be responsible for the accuracy and completeness of all Customer Data provided to Instructure. Customer Data shall mean all data supplied by the Customer in connection with the Contract. The Customer shall retain exclusive ownership of all Customer Data and such Customer Data shall be deemed to be the Customer's Confidential Information, as set forth in the Contract. Instructure shall restrict access to Customer Data to Customer's employees and agents as necessary to perform the Services, and to Instructure and its employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein). Instructure will protect the Customer Data from unauthorized dissemination and use with the same degree of care that it uses to protect its own Confidential Information and, in any event, will use no less than a reasonable degree of care in protecting Customer Data. Instructure shall promptly notify the Customer upon receipt of any requests from unauthorized third parties which in any way might reasonably require access to Customer Data or Customer's use of the hosted environment. Instructure shall notify the Customer at the contact set forth herein by the fastest means available and also in writing. In no event shall Instructure provide such notification more than 24 hours after Instructure receives the request. Except to the extent required by law, Instructure shall not respond to subpoenas, service or process, FOIA requests, and other legal request related to Customer without first notifying the Customer and obtaining the Customer's prior approval, which shall not be unreasonably withheld, of Instructure's proposed responses. Instructure agrees to provide its completed responses to the Customer with adequate time for Customer review, revision and approval.

12. **Proprietary Rights**. As between Customer and Instructure, the Instructure Intellectual Property is, and shall at all times remain, the sole and exclusive property of Instructure. Customer shall have no right to use, copy, distribute or create derivative works of the Instructure Intellectual Property except as expressly provided herein. Instructure shall have the right, in its sole discretion, to modify the Instructure Intellectual Property. "**Instructure Intellectual Property**" means: (a) the Service; (b) all improvements, changes, enhancements and components thereof; (c) all other proprietary materials of Instructure and/or its licensors that are delivered, provided or used by Instructure in the course of providing the Service; and (d) all other intellectual property owned by Instructure and all copyrights, patents, trademarks and trade names, trade secrets, specifications, methodologies, documentation, algorithms, criteria, designs, report formats and know-how, as well as and any underlying source code and object code related thereto.

13. **Term and Termination**. The order term of this Agreement is specified in the Order Form ("Order **Term**") and shall continue for its full duration unless earlier terminated by a party in accordance with this the Solicitation. Such termination right shall be in addition to any other rights and remedies that may be available to the non-breaching party. In the event the Agreement is terminated, all Order Forms in connection with said Customer are simultaneously terminated. Upon expiration or termination of this Agreement: (a) Customer shall immediately cease using the Services; and (b) in connection with certain aspects of the Service that feature an export function, for a period of three (3) months following expiration or termination, Customer may export the Customer Content by using the export feature within the Service.

14. **Suspension of Service**. Instructure may suspend a User's access to the Service for a violation of Section 3 of this Agreement, any applicable law or third-party rights and may suspend the offending User's access to the Service to the extent and for the duration necessary to address any such violation. Instructure will use commercially reasonable efforts to provide notice to Customer in advance of any suspension unless such violation may cause direct harm to the Service or may result in liability to Instructure. Customer agrees that Instructure will not be liable to Customer if Instructure exercises its suspension rights as permitted by this Section 14. In the event of suspension for any reason Custom shall not be responsible for payment related to User's access during that time.

15. **Indemnification**. Instructure will indemnify, hold harmless, and defend the State of Oklahoma and Customer, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES that a court finally awards or that are included in a settlement approved in writing by Instructure arising out of, or resulting from third-party alleging that the Service infringes or misappropriates the intellectual property rights of that third-party. Notwithstanding the foregoing, Instructure shall not be obligated to indemnify Customer if such infringement or misappropriation claim arises from: (a) the Customer Content or content from any User; (b) Customer's or User's misuse of the Service and misuse gives rise to the claim; or (c) Customer's or User's use of the Service in combination with any products, services, or technology provided by a third-party, if third-party is solely responsible for claim. If such a claim of infringement or misappropriation is made or threatened,

Instructure may, in its sole discretion: (i) modify the Service so that it becomes non-infringing; (ii) obtain a license for Customer to continue its use of the Service; or if the foregoing options fails, (iii) notwithstanding Instructure's obligation to indemnify hereunder, terminate the Agreement in accordance with Sections A.18 and 19 in the Solicitation with no liability to Customer or any User along with the return of the unused portion of any prepaid fees. Customer shall provide Instructure with prompt written notice upon becoming aware of any claim subject to indemnification hereunder and shall provide reasonable cooperation to the Indemnifying Party in the defense of or investigation of any claim, suit or proceeding. THE DEFENSE SHALL BE COORDINATED BY INSTRUCTURE WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN OKLAHOMA STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND INSTRUCTURE MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL UNLESS SUCH SETTLEMENT RESULTS IN NO LIABILITY OF ANY SORT TO OKLAHOMA STATE AGENCIES. INSTRUCTURE AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

16. **General**. Each party acknowledges that any breach, threatened or actual, of this Agreement, including, without limitation, with respect to unauthorized use of proprietary assets, may cause irreparable injury to the other party, such injury may not be quantifiable in monetary damages, and the other party may 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 an injunction or other appropriate equitable relief from a court of competent jurisdiction restraining any breach, threatened or actual, of this Agreement. Any notice by a party under this Agreement shall be in writing and either personally delivered, or reputable overnight courier (such as Federal Express) or certified mail, postage prepaid and return receipt requested, addressed to the other party at the address specified in the Order Form or such other address of which either party may from time to time notify the other in accordance with this Section 16. A copy of all notices to Instructure shall be sent to: Instructure, Inc., 6330 South 3000 East, Suite 700, Salt Lake City, UT 84121, Attention: General Counsel. For purposes of service messages and notices about the Service, Instructure may place a banner notice or send an email to an email address associated with an account. It is the User's responsibility to ensure that a current email address is associated with their account. All notices shall be in English and shall be deemed effective upon receipt.

17. **Force Majeure.** Either party shall be temporarily excused from performance to the extent delayed as a result of unforeseen causes beyond its reasonable control including fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority provided the party experiencing the force majeure event has prudently and promptly acted to take any and all steps within the party's control to ensure continued performance and to shorten duration of the event. In the event that a party's performance of its obligations is materially hindered as a result of a force majeure event, such party shall promptly notify the other party of its best reasonable assessment of the nature and duration of the force majeure event and steps it is taking, and plans to take, to mitigate the effects of the force majeure event. The party shall use commercially reasonable best efforts to continue performance to the extent possible during such event and resume full performance as soon as reasonably practicable. Subject to the conditions set forth above, such non-performance shall not be deemed a default. However, a Customer may terminate a

purchase order if Instructure cannot cause delivery of Products or Services in a timely manner to meet the business needs of the Customer.

Non-suspended Obligations: Notwithstanding the foregoing or any other provisions in the Agreement, (1) in no event will any of the following be considered a force majeure event: (a) shutdowns, disruptions or malfunctions in Instructure's systems or any of Instructure's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to Instructure's systems; or (b) the delay or failure of Instructure or subcontractor personnel to perform any obligation of Instructure hereunder unless such delay or failure to perform is itself by reason of a force majeure event; and (2) no force majeure event modifies or excuses Instructure's confidentiality, indemnification or data security and breach notification obligations set forth herein and Attachment C.

18. **Governing Law**. This Agreement shall be interpreted, governed and construed by the laws of the State of Oklahoma without regard to principles of conflict of laws. Instructure is acting in performance of this Agreement as an independent contractor to Customer. If any term of this agreement is invalid or unenforceable, the other terms remain in effect and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Amendments to this Agreement must be made in writing and signed by both the State and Instructure. The State and Instructure agree that: (a) this Agreement, the Solicitation, and Instructure's response, the Hosting Agreement, and any other documents attached hereto 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. Customer shall not assign this Agreement, in whole or in part, to any entity without Instructure's prior written consent, which shall not be unreasonably withheld. Any attempt to assign this Agreement, in whole or part, in contravention of this Section 16, shall be void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns. Any failure by either party to enforce the other party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement. Neither party will use the name, any trademark or logo of the other party without the prior written consent of the other party in any advertising promotions, publicity or commercial materials. Notwithstanding the foregoing, as a publicly traded company, Instructure may disclose the relationship between Instructure and Customer in its public filings and disclosures. Any terms that by their nature survive termination or expiration of this agreement, will survive (including, but not limited to, Sections 10, 11, 12, 15 and 16).

Attachment C to
ADDENDUM 1 TO
STATE OF OKLAHOMA CONTRACT WITH INSTRUCTURE, INC.
RESULTING FROM STATE WIDE CONTRACT No. 1066

HOSTING AGREEMENT

This Hosting Agreement ("Hosting Agreement") is a Contract Document in connection with the Contract issued as a result of Solicitation No. 0900000370 (the "Contract") and entered into between Instructure, Inc. ("Vendor") and the State of Oklahoma by and through the Office of Management and Enterprise Services ("State" or "Customer"), the terms of which are incorporated herein. This Hosting Agreement is applicable to any Customer Data stored, processed, or accessed by Vendor in connection with the Contract. Unless otherwise indicated herein, capitalized terms used in this Hosting Agreement without definition shall have the respective meanings specified in the Contract.

I.   **Definitions**

     a.   "Customer Data" shall mean all data supplied by or on behalf of Customer in connection with the Contract, excluding any confidential information of Vendor.

     b.   "Data Breach" shall mean the unauthorized access by an unauthorized person that results in the access, use, disclosure or theft of Customer Data.

     c.   "Non-Public Data" shall mean Customer Data, other than Personal Data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by Customer because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information. Non-Public Data includes any data deemed confidential pursuant to the Contract, otherwise identified by Customer as Non-Public Data, or that a reasonable person would deem confidential.

     d.   "Personal Data" shall mean Customer Data that contains 1) any combination of an individual's name, social security numbers, driver's license, state/federal identification number, account number, credit or debit card number and/or 2) contains electronic protected health information that is subject to the Health Insurance Portability and Accountability Act of 1996, as amended.

     e.   "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the hosted environment used to perform the services.

II. Customer Data

a. Customer will be responsible for the accuracy and completeness of all Customer Data provided to Vendor by Customer. Customer shall retain exclusive ownership of all Customer Data. Non-Public Data and Personal Data shall be deemed to be Customer's confidential information. Vendor shall restrict access to Customer Data to their employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein).

b. Vendor shall promptly notify the Customer upon receipt of any requests from unauthorized third parties which in any way might reasonably require access to Customer Data or Customer's use of the hosted environment. Vendor shall notify the Customer by the fastest means available and also in writing pursuant to Contract notice provisions and the notice provision herein. Except to the extent required by law, Vendor shall not respond to subpoenas, service or process, FOIA requests, and other legal request related to Customer without first notifying the Customer and obtaining the Customer's prior approval, which shall not be unreasonably withheld, of Vendor's proposed responses. Vendor agrees to provide its completed responses to the Customer with adequate time for Customer review, revision and approval.

c. Vendor will use commercially reasonable efforts to prevent the loss of or damage to Customer Data in its possession and will maintain commercially reasonable back-up procedures and copies to facilitate the reconstruction of any Customer Data that may be lost or damaged by Vendor. Vendor will promptly notify Customer of any loss, damage to, or unauthorized access of Customer Data. Vendor will use commercially reasonable efforts to reconstruct any Customer Data that has been lost or damaged by Vendor as a result of its negligence or willful misconduct. If Customer Data is lost or damaged for reasons other than as a result of Vendor's negligence or willful misconduct, Vendor, at the Customer's expense, will, at the request of the State, use commercially reasonable efforts to reconstruct any Customer Data lost or damaged.

III. Data Security

a. Vendor will use commercially reasonable efforts, consistent with industry standards, to provide security for the hosted environment and Customer Data and to protect against both unauthorized access to the hosting environment, and unauthorized communications between the hosting environment and the Customer's browser. Vendor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized industry practice

and not less stringent than the measures the Vendor applies to its own personal data and non-public data of similar kind.

b. All Personal Data and Non-public Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Vendor is responsible for encryption of Personal Data.

c. Vendor represents and warrants to the Customer that the hosting equipment will be routinely checked with a commercially available, industry standard software application with up-to-date vulnerability definitions. Vendor will regularly update the vulnerability definitions to ensure that the definitions are as up-to-date as is commercially reasonable. Vendor will promptly remediate all exploitable vulnerabilities discovered during checks. If there is a reasonable basis to believe that a virus may have been transmitted to Customer by Vendor, Vendor will promptly notify Customer of such possibility in a writing that states the nature of the virus, the date on which transmission may have occurred, and the means Vendor has used to remediate the virus. Should the virus propagate to Customer's IT infrastructure, Vendor is responsible for costs incurred by Customer for Customer to remediate the virus.

d. Vendor shall provide its services to Customer and its users solely from data centers in the U.S. Storage of Customer Data at rest shall be located solely in data centers in the U.S. Vendor shall not allow its personnel or contractors to store Customer Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. Vendor shall permit its personnel and contractors to access Customer Data remotely only as required to fulfill Vendor's obligations under the Contract.

e. Vendor shall perform an independent audit of its services at least annually at its expense, and provide the audit report upon request. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.

f. Offshore Services

  i. No offshore services are provided for under the Contract. State data shall not be used or accessed internationally for troubleshooting or any other use not specifically provided for herein without the prior written permission, which may be withheld in the State's sole discretion, from the appropriate authorized representative of the State. Notwithstanding the above, back office administrative functions of the Vendor may be located offshore and the follow-the-sun support model

may be used by the Vendor to the extent allowed by law applicable to any Customer data being accessed or used.

IV.   Security Assessment

a. The State requires any entity or third-party vendor hosting Oklahoma Customer Data to submit to a State Certification and Accreditation Review process to assess initial security risk. Vendor submitted to the review and met the State's minimum security standards at time the Contract was executed. Failure to maintain the State's minimum security standards during the term of the Contract, including renewals, constitutes a material breach.

b. To the extent Vendor requests a different third-party hosting sub-contractor than the third-party hosting Vendor already approved by the State (which, for the avoidance of doubt, is Amazon Web Services), the different third-party hosting sub-contractor is subject to the State's approval. Instructure shall provide written notice of Instructure's intent to utilize a different third-party hosting sub-contractor prior to migrating Customer Data to the new third-party hosting sub-contractor. The different sub-contractor must submit to a State Certification and Accreditation Review within two weeks of Instructure's written notice to the State. If such information is not submitted within this time frame, or to the extent the different third-party hosting sub-contractor fails to pass areas of the State Certification and Accreditation Review, the State and Instructure, in coordination with the different third-party hosting sub-contractor (if reasonably necessary) will identify a time frame in which Instructure, in its utilization of the different third-party hosting sub-contractor must provide such information or become compliant and/or evaluate if Instructure can otherwise make a commercially reasonable change to the configuration of the State's use of the Instructure services in order to not utilize the non-compliant third-party hosting provider. Failure to submit the required information or to become compliant, and/or find a suitable alternative that would not utilize the non-compliant third-party within an agreed upon timeframe constitutes a material breach, the sole remedy of which shall be the State's right to terminate this Contract, and Instructure shall coordinate effort with the State and different third party hosting sub-contractor to return Customer data within thirty days of the material breach. State shall remain responsible for all fees for Services rendered and shall be permitted a pro-rata refund of any pre-paid unused fees for the remainder of the then-current term.

V. **Security Incident Notification and Responsibilities**: Vendor shall inform Customer of any Data Breach

    a. Vendor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. If a Data Breach involves Customer Data, Vendor will coordinate with Customer prior to making any such communication unless such communication is required by applicable law.

    b. Vendor shall report a Data Breach to the Customer identified contact set forth herein within five (5) days of discovery of the Data Breach or within a shorter notice period required by applicable law or regulation (i.e. HIPAA requires notice to be provided within 24 hours).

    c. Vendor shall: (i) maintain processes and procedures to identify, respond to and analyze Security Incidents; (ii) make summary information regarding such procedures available to Customer at Customer's request, (iii) mitigate, to the extent practicable, harmful effects of Security Incidents that are known to Vendor; and (iv) documents all Security Incidents and their outcomes.

VI. **Data Breach Notification and Responsibilities:** This section only applies when a Data Breach occurs with respect to Personal Data or Non-Public Data within the possession or control of Vendor.

    a. Vendor, unless stipulated otherwise, shall promptly notify the Customer identified contact within 24 hours or sooner, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a Data Breach. Vendor shall (1) cooperate with Customer as reasonably requested by Customer to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

    b. Unless otherwise stipulated, if a Data Breach is a direct result of Vendor's breach of its obligation to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Vendor shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by state law; (3) credit monitoring services required by state or federal law; (4) a website or toll-free numbers and call center for affected individuals required by state law – (2), (3) and (4) not to exceed the agency per record per person cost calculated for data breaches in the United States on the most recent Cost

of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the Data Breach; and (5) complete all corrective actions as reasonably determined by Vendor based on root cause.

c. If a Data Breach is a direct result of Vendor's breach of its obligations to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Vendor shall indemnify and hold harmless the Customer against all penalties assessed to Indemnified Parties by governmental authorities in connection with the Data Breach.

VII. **Notice:** Contact information for Customer for notifications pursuant this Hosting Agreement are consistent with the Contract with a copy sent to:

Chief Information Officer
3115 N. Lincoln Blvd
Oklahoma City, OK 73105

And

Chief Information Security Officer
3115 N. Lincoln Blvd
Oklahoma City, OK 73105

And

OMES Information Services General Counsel
3115 N. Lincoln Blvd
Oklahoma City, OK 73105

For immediate notice which does not constitute written notice:
OMES Service Desk
405-521-2444
servicedesk@omes.ok.gov
Attn: Chief Information Security Officer

VIII. **Vendor Representations and Warranties:** Vendor represents and warrants the following

a. To Vendors knowledge as of the effective date of the Contract, the product and services provided under this Hosting Agreement do not infringe a third party's patent or copyright or other intellectual property rights.

b. Vendor will protect Customer's Non-Public Data and Personal Data from unauthorized dissemination and use with the same degree of care that each such

party uses to protect its own confidential information and, in any event, will use no less than a reasonable degree of care in protecting such confidential information.

c. The execution, delivery and performance of the Contract, the Hosting Agreement and any ancillary documents and the consummation of the transactions contemplated by the Contract or any ancillary documents by Vendor will not violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Vendor and any third parties retained or utilized by Vendor to provide goods or services for the benefit of the Customer.

d. Vendor shall not knowingly upload, store, post, e-mail or otherwise transmit, distribute, publish or disseminate to or though the Hosting Environment any material that contains software viruses, malware or other surreptitious code designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or circumvent any "copy-protected" devices, or any other harmful or disruptive program.

IX. Indemnity

a. <u>Vendor's Duty of Indemnification</u>. Vendor agrees to indemnify and shall hold the State of Oklahoma and State, its officers, directors, employees, and agents harmless from all liabilities, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees) (collectively "<u>Damages</u>") (other than Damages that are the fault of Customer) arising from or in connection with Vendor's breach of its express representations and warranties or other obligations in this Hosting Agreement and the Contract. If a third party claims that any portion of the products or services provided by Vendor under the terms of the Contract or this Hosting Agreement infringes that party's patent or copyright, Vendor shall defend and indemnify the State of Oklahoma and Customer against the claim at Vendor's expense and pay all related costs, damages, and attorney's fees incurred by or assessed to, the State of Oklahoma and/or Customer. The State of Oklahoma and/or Customer shall promptly notify Vendor of any third party claims and the defense shall be coordinated by Instructure with the office of the attorney general when Oklahoma state agencies are named defendants in any lawsuit and Instructure may not agree to any settlement without first obtaining the concurrence from the office of the attorney general unless such settlement results in no liability of any sort to Oklahoma state agencies. Should the software become, or in Vendor's opinion, be likely to become the subject of a claim or an injunction preventing its use as contemplated under this Hosting Agreement, Vendor may, at its option (i) procure for the State the right to continue using the

software or (ii) replace or modify the software with a like or similar product so that it becomes non-infringing.

X. Termination and Suspension of Service:

a. In the event of a termination of the Contract, Vendor shall implement an orderly return of Customer Data in a mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of Customer Data.

b. During any period of service suspension, Vendor shall not take any action to intentionally erase any Customer Data.

c. In the event of termination of any services or agreement in entirety, Vendor shall not take any action to intentionally erase any Customer Data for a period of:

    i. 10 days after the effective date of termination, if the termination is in accordance with the contract period

    ii. 30 days after the effective date of termination, if the termination is for convenience

    iii. 60 days after the effective date of termination, if the termination is for cause

After such period, Vendor shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited or otherwise stipulated, delete all Customer Data in its systems or otherwise in its possession or under its control.

d. The State shall be entitled to any post termination assistance generally made available with respect to the services.

e. Vendor shall securely dispose of all requested data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the Customer. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to Customer.

Attachment D to
ADDENDUM 1 TO
STATE OF OKLAHOMA CONTRACT WITH INSTRUCTURE, INC.
RESULTING FROM STATE WIDE CONTRACT No. 1066

The **Service Order Form** is hereby amended as set forth below and supersedes all prior documents submitted by **Instructure, Inc.** or discussed by the parties. The parties agree to use this **Service Order Form** or a document substantially similar.

INSTRUCTURE

Services Order Form
Order #: **
Date: **

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

Customer Information

Customer	Contact
Address	Phone
City	Email
State/Province	Billing Contact
Zip/Postal Code	Billing Phone
Country	Billing Email

Recurring

Description	Metric	Category	Start Date	End Date	Qty	Price	Ext. Price
Year 1 Sub-Total							
Year 2 Sub-Total							
Year 3 Sub-Total							
Recurring Total							

Non-Recurring

Description	Metric	Category	Start Date	End Date	Qty	Price	Ext. Price
Year 1 Sub-Total							
Non-Recurring Total							

Grand Total:	

Canvas
Deliverables

Canvas User
Description
Canvas K-12 subscription based on number of full-time or part-time users (students, teachers, administrators) per year.

Payment Terms: Customer agrees to pay to Instructure the applicable fees set forth on this order form. For any year 1 recurring costs and implementation fees, Customer must pay such amount to Instructure Net 45 on the date of this order. For each term, Instructure will invoice Customer 45 days prior to the beginning of such term and Customer must pay such invoice within 45 days of receipt. All trainings are invoiced immediately and expire 12 months from the contract date. All other contract items subject to expiration will be billed 45 days prior to expiration and due subject to standard payment terms unless otherwise explicitly stated elsewhere in this agreement.

Duration: This order begins on the initial date listed above under Service Order Term, and continues until the last date listed above, unless sooner terminated under the Agreement.

Miscellaneous: In connection with certain services, Instructure shall provide Customer access to its application-programming interface ("**API**") for no additional fee. Usage and access to the API will be subject to the Instructure API Policy, as may be updated by Instructure from time to time.

Instructure's support terms can be found at:
Canvas & Catalog: http://www.canvaslms.com/policies/support-terms
Bridge: https://www.getbridge.com/support-terms

Notes

By executing this order form below, each party indicates that it agrees to be legally bound by this order form, including the attached terms and conditions or terms and conditions of the Customer's initial order form which govern this order form.

Customer Name   **Instructure, I**

Signature:	*DJerryMoore*
Name:	
Title:	
Date:	

Signature:	
Name:	
Title:	
Date:	

Attachment E to
ADDENDUM 1 TO
STATE OF OKLAHOMA CONTRACT WITH INSTRUCTURE, INC.
RESULTING FROM STATE WIDE CONTRACT No. 1066

The **Statement of Work** is hereby amended as set forth below and supersedes all prior documents submitted by **Instructure, Inc.** or discussed by the parties. The parties agree to use this **Statement of Work** or a document substantially similar.

Statement of Work

INSTRUCTURE

<Full Name of Institution>

<Project Name>

SUBMITTED BY:

Solutions Consultant

Month 00, 20XX   Updated:

This Statement of Work ("SOW") is governed by the terms and conditions of the Instructure Professional Services Agreement between the parties contained herein at Attachment B.

Summary

<Full name of institution> ("**Customer**") is engaging Instructure Professional Services ("**Instructure**") to <high-level description of the problem and how we will solve it> ("the **Solution**").

IMPLEMENTATION COST[1]	ESTIMATED DURATION[2]
$XX,000	X Days

Project Approach

Deliverables will be created in phases (referred to as milestones in this SOW) according to the requirements documented in Appendix A.

Communication Plan

- After this SOW is signed, Instructure will review objectives, plans, and risks with Customer.

- A weekly, written update from Instructure will communicate status, schedule, open issues, and risks.

- A closing document will be provided to Customer after the Solution is delivered.

- Additional communication (e.g., weekly calls, User Acceptance Testing status emails) may be required, depending on Solution complexity.

---

[1] Excludes hosting, maintenance, and support fees; see Fees & Billing for full pricing.

[2] Base estimate, after development begins, of business days to complete all project development work and testing; see Development Timeline & Milestones for details.

Change Management

This SOW contains the complete scope of the project as understood by Instructure and Customer. Any changes to the scope defined by this SOW will be subject to review by Instructure. If approved, the changes will be classified and handled by Instructure as follows:

- Changes to the Solution affecting scope, specifications, timeline or milestone schedule, pricing, or estimates may be requested in writing and are only effective if signed by both parties (each, a "Change Order").

- Minor changes to the Solution that do not affect the scope, specifications, timeline or milestone schedule, pricing, or estimates may be accepted by Instructure via email confirmation and without a signed Change Order.

User Stories

User stories briefly and simply describe the Solution's users, what features they need, and why. They are the foundation for the Solution's requirements, milestones, and test cases.

1	*For projects with a design phase:* As a user, I can access a user interface so that I can interact with data.
2	As a <type of user>, I can <goal>, so that <reason>.
3	As a <type of user>, I can <goal>, so that <reason>.
4	As a <type of user>, I can <goal>, so that <reason>.

Development Timeline & Milestones

Development will begin approximately 18-20 weeks after this agreement is executed. Instructure's base estimate is X **business days** to complete all project development work and testing (i.e., user interface design[3], development, quality assurance, and user acceptance testing for all milestones).

Detailed descriptions of the Solution's milestones and deliverables are included in Appendix A.

Assumptions

1.   Anything the customer should be aware of that is not explicitly called out elsewhere.

---

[3] If applicable

Limitations & Exclusions

Any scope exclusions or limitations to the Solution given the architecture and data available. If

this project is a custom report or impacts core Canvas:

1. Because the Solution affects the core Canvas product, the following restrictions apply:

    1.1. The Solution must be deployed to the Canvas beta environment for one release cycle (4 weeks) before going into the Canvas production environment.

    1.2. Instructure has complete and final approval of all core product UI/UX design elements. Any changes to the Solution design will be made solely at Instructure's discretion.

    1.3. Instructure has complete and final approval of all core product functionality. Functionality added to the core product as part of this Solution may be changed or removed at Instructure's discretion.

If this project includes Student Access to an LTI:

2. The Solution is not designed nor guaranteed to function with [Student View functionality](#). Support for Student View will require a separate agreement for which there may be additional charges.

If this project includes custom JavaScript:

3. There will always be a small degree of latency between page/element load and execution of changes by custom JavaScript.

4. JavaScript overrides do not impact or apply to mobile application functionality.

5. Custom JavaScript maintenance includes fixing issues that are supported by Canvas' functionality. User interface changes or deprecated features that prevent the custom JavaScript from working as defined in this SOW will not be corrected.

If this project includes automated testing for custom JavaScript:

6. Instructure's automated testing engine for custom JavaScript supports testing against the latest two versions of Chrome, Firefox, and Microsoft Edge; and the latest version of Safari.

If project is using customer-hosted SFTP:

7. Project delivery will be delayed if the Customer SFTP server is not set up and ready before the scheduled start of development.

Fees & Billing

IMPORTANT*: For foreign customers, please follow these* guidelines*.*

Implementation Costs

DESCRIPTION	AMOUNT
Milestone 1: <Title or Design Solution (if applicable)>	$X
Milestone 2: <Title>	$X
Milestone 3: <Title>	$X
Milestone 4: <Title>	$X
TOTAL	**$X**

IMPORTANT*: If management has approved a discount for your project, please use the table below to show the original cost, as well as the discounted amount.*

DESCRIPTION	LIST	DISCOUNT	FINAL
Milestone 1: <Title or Design Solution (if applicable)>	$X	($X)	$X
Milestone 2: <Title>	$X	($X)	$X
Milestone 3: <Title>	$X	($X)	$X

Milestone 4: <Title>	$X	($X)	$X
TOTAL	$X	($X)	$X

Invoices for implementation will be generated upon acceptance of each milestone[4]. Invoices are due at net 45 days.

Hosting, Maintenance, and Support Costs

Delete any years that don't apply to the customer's Canvas contract length.

DESCRIPTION	AMOUNT
Year 1	$X

The first annual maintenance invoice will be prorated to align with Customer's Canvas subscription renewal and is generated upon either the date of delivery of the final milestone (i.e., the full Solution) to Customer[5] or 12 weeks after execution of this SOW, whichever is earlier.
Invoices are due at net 45 days.

Maintenance and support will be provided at the amounts quoted in the table above, provided Customer retains an active subscription contract with Instructure.

After the period(s) quoted in the table above, the following applies:

---

[4] See Acceptance & Delivery

[5] See Acceptance & Delivery

- Customer may opt out of continuing maintenance and support by providing written notice 60 days before the Solution-delivery anniversary date. **In the event of Instructure's cancellation, termination, expiration, lapse, suspension, or discontinuation of this SOW for any other reason Instructure shall issue a pro-rated refund for all fees paid in advance.**

If this is a change order/enhancement to an existing product, **delete the Hosting, Maintenance, and Support Costs section.**

If this project affects **only** *core product, replace the table and text above with:*

This Solution affects only the core Canvas code. Hosting, maintenance, and support costs for the Solution are covered by the Order Form and attachment B.

If this project has no maintenance, replace the table and text above with:

No hosting, maintenance, or support will be provided or charged for this Solution.

User Acceptance Testing

User Acceptance Testing (UAT) is Customer-performed validation after development and internal quality assurance testing are complete. UAT ensures that user stories and requirements defined in this SOW and Appendix A are delivered. The UAT process is as follows:

1. Instructure schedules UAT dates.

2. Instructure provides UAT instructions and test cases to Customer.

3. Instructure stages milestone deliverable(s) to an environment that Customer can access.

4. Customer has **up to 4 business days** to validate the Solution is functioning as specified in this agreement.

5. Instructure reviews any reported issues and determines which, if any, are defects.

     5.1.   If any defects are identified, Instructure provides a defect-resolution plan to Customer within 4 business days.

          5.1.1.   Only defects or in-scope changes will be resolved; new functions or scope will require a separate SOW.

     5.2.   Instructure notifies Customer when defect fixes are complete.

     5.3.   Customer has 2 business days to validate defect fixes.

*If this project affects **only** core product, replace the text above with:*

No user acceptance testing is included with the Solution.

Acceptance & Delivery

A milestone is considered accepted when Customer acknowledges that it is performing as designed (i.e., either no defects were found or fixes/changes authorized by Customer during UAT are completed).

Note: Acceptance is automatic if no UAT is required, or if Customer does not perform UAT[6] or validate defect fixes within 5 business days[7].

Upon completion of each milestone, Instructure will send an Acceptance Confirmation to Customer for Customer's signature ("**Acceptance Confirmation**"). If Instructure does not receive a signed copy of the Acceptance Confirmation, or a written response disputing acceptance of the applicable milestone, from Customer within 5 business days from the date of the Acceptance Confirmation, such milestone shall be considered accepted.

After the last milestone is accepted, the Solution will be delivered (e.g., moved to Customer's production environment). If delivery is delayed by Customer for more than 60 days after the final milestone is accepted, additional time for re-testing may be required before the Solution can be put into production. Issues identified after acceptance or delivery will be addressed as defined in the Maintenance & Support section, below.

*If this project affects **only** core product, replace the text above with:*

The Solution is considered accepted and delivered when it has been deployed into the <product> beta environment. Instructure requires new core product code to remain in the beta environment for a set period of time; after that time has elapsed, the Solution will be deployed into the <product> production environment. Issues identified after the Solution has moved to the production environment will be addressed as defined in the Maintenance & Support section, below.

---

[6] Step 4 in User Acceptance Testing

[7] Step 5.3 in User Acceptance Testing

User Documentation

For LTI projects:

A basic user guide describing the Solution's functions will be produced by Instructure. Work on the user guide will begin after the Solution is accepted by Customer, and it will be delivered within 2-4 weeks. No other user documentation is included with this SOW.

For Core projects:

User documentation will be produced with the standard Canvas format, timing, and access used for all core product documentation. No additional documentation is included with this SOW.

For migration / integration (i.e., when we deliver mapping docs):

A basic user guide, dependent on the scope of work, is attached to this SOW as Appendix C. No other user documentation is included with this SOW. Nothing in the user guide will reduce the state's/Customer's rights or enlarge the state's/Customer's obligations.

For all other projects:

No user documentation is included with this SOW.

Maintenance & Support

Instructure agrees to provide maintenance and support to the Solution as detailed below. Support request responses will be handled according to the service level in Customer's purchased support package.

INCLUDED	EXCLUDED
● Instructure Support Desk answers Customer's questions. ● Instructure Professional Services prioritizes and fixes bugs reported to Support Desk. Bugs are: ○ Features or processes not performing as defined in this SOW, including issues caused by supported browser updates. ○ Solution outages. ○ User access issues. ● Instructure Professional Services hosts the Solution; includes scheduled tasks and running the custom Solution code.	● Any modifications to the Solution other than bug fixes, including but not limited to Solution changes to utilize feature enhancements or new features for Instructure's core products. ● Using changes to an integrated application. ○ Adding these at Customer request requires a separate SOW. ○ Instructure may opt to apply these changes (at **no charge** to Customer) to meet its business needs and maintain the Solution's functional integrity.

If this is a change order/enhancement to an existing product, replace the table and text above with this:

Costs and terms for hosting, maintenance, and support of the Solution are covered by a separate agreement with Customer (<SOW Name>, executed Month DD, YYYY). This SOW does not alter that agreement.

*If this project affects **only** core product, delete the table and paragraphs above and replace with this:*

None of the deliverables in this SOW will be hosted, maintained, or supported by Instructure Professional Services. Changes to Instructure's core product code as a result of this solution will be maintained and supported by Instructure's Engineering and Support teams, respectively.

Expiration & Effective Date

This SOW is only valid if signed and returned to Instructure ninety (90) days following the Version date (shown in the footer) of the document ("**Expiration Date**"). Instructure has the right, in its sole discretion, to reject this SOW if it is received after the Expiration Date; acceptance of this SOW after the Expiration Date is subject to Instructure's discretionary review and revision. The Effective Date of this SOW is the date of the last signature below.

—Signature page follows—

Agreed To & Accepted By

IMPORTANT: *For foreign customers, please follow these* *guidelines*.

Instructure, Inc.	**[FULL NAME OF INSTITUTION]**
Signature:	Signature:
By:	By:
Title:	Title:
Date:	Date:
Address: 6330 S 3000 E	Address:
Suite 700	
Salt Lake City, UT 84121	

APPENDIX A

Project Milestones

If the project requires design, it should be MS1.

Milestone 1: Design Solution

USER STORIES INCLUDED	1. As a user, I can access a user interface so that I can interact with data.
DELIVERABLES	Finalized user interface design mockups for <screens/functions>.

Note: Solution designs proposed and accepted in this milestone supersede any other mockups.

Instructure Requirements

1. Provide a UI/UX design resource.

2. Create visual mock-ups for the deliverables identified above which reflect the requirements in the remaining milestones.

3. Present mock-ups for review and iterate once (if necessary) to integrate customer feedback.

Customer Requirements

1. Provide a primary stakeholder to review and approve mockup designs.

2. Provide any feedback needed to complete the mockup.

3. UAT consists of review and approval of final draft of UI mockup for <screen/function> interface.

Milestone X: <Title>

USER STORIES INCLUDED	2. Copy/paste from User Story table.
DELIVERABLES	What the customer will get.

Instructure Requirements

1. Outline the requirements that the Instructure is responsible for to turn each user story into a deliverable.

    1.1. Sub-requirements should be numbered like this.

Customer Requirements

1. Outline the requirements that the Customer is responsible for to turn each user story into a deliverable.

    1.1. Sub-requirements should be numbered like this.

If project is using Customer-hosted SFTP:

2. Customer will grant Instructure read/write/update/delete permissions to any SFTP server directory that is required for the Solution.

If the project is for an LTI application:

APPENDIX B

User Access

The following table defines user access to the application.

- Custom roles based on standard Canvas roles have the same access as standard roles.

- All administrator roles are treated equally for access purposes.

ROLE	CAN ACCESS	LAUNCH POINT
Administrator	<mark>Yes/No</mark>	Account Navigation Course Navigation User Profile Navigation ("N/A" if role can't access)
Teacher	<mark>Yes/No</mark>	Account Navigation Course Navigation User Profile Navigation ("N/A" if role can't access)
TA	<mark>Yes/No</mark>	Account Navigation Course Navigation User Profile Navigation ("N/A" if role can't access)
Designer	<mark>Yes/No</mark>	Account Navigation Course Navigation User Profile Navigation ("N/A" if role can't access)
Student	<mark>Yes/No</mark>	Account Navigation Course Navigation User Profile Navigation ("N/A" if role can't access)
Observer	<mark>Yes/No</mark>	Account Navigation Course Navigation User Profile Navigation ("N/A" if role can't access)