



David J. Webb, C.P.M.  
Director/Purchasing Agent

## Arlington Public Schools

Purchasing Office  
1426 N. Quincy St., Arlington, VA 22207 • Phone: (703) 228-6123 • Fax: (703) 841-0681  
[www.apsva.us](http://www.apsva.us)

Ellen H. Wills, CPPB, VCO  
Assistant Director/Purchasing

Joshua A. Makely, CPPB  
Senior Buyer

Kenneth R. Lawson, CPPB, VCO  
Buyer

July 20, 2017

Via Email

Instructure, Inc.  
Brian Grow  
Regional Director, K-12  
6330 South 3000 East Suite 700  
Salt Lake City, UT 84121  
[bgrow@instructure.com](mailto:bgrow@instructure.com)

Subject: **LEARNING MANGEMENT SYSTEM FOR ARLINGTON PUBLIC SCHOOLS – OFFER OF CONTRACT #40FY17**

Dear Mr. Grow:

You are hereby offered a contract for the Learning Management Systems for Arlington Public Schools (APS). The work is to be performed in accordance with the Contract Documents as attached.

A contract is being offered for the services referenced above. Please have an officer of your firm sign *two (2) originals* of the Acceptance of the Offer of Contract and return to my attention via mail to the address above for signature by APS. A copy of the fully executed Contract will be returned to you for your records.

Your prompt response is appreciated. If you have any questions please feel free to contact me directly at 703-228-6126 or via email at [joshua.makely@apsva.us](mailto:joshua.makely@apsva.us).

Sincerely,

Joshua A. Makely, CPPB  
Senior Buyer

JAM:jam

Enclosure:

**EXHIBIT A**  
**AGREEMENT #40FY17**

**Title:** Learning Management System for Arlington Public Schools

This Contract 40FY17 entered into this 21<sup>st</sup> day of July, 2017; by and between Instructure Inc. located at 6330 South 3000 East, Suite 700, Salt Lake City, UT 84121, hereinafter called "Contractor" and Arlington Public School hereinafter called "APS"; and shall terminate on the last day of the thirty-sixth (36) month following the execution of the Contract by the APS Purchasing Agent. This duration shall be referred to as the "Contract Term". APS reserves the right, in its sole discretion, to renew the Contract for an additional one-year term; this option to renew may be exercised by APS up to but not more than for two (2) additional one year terms ("Renewal Contract Term").

APS and the Contractor, having given adequate consideration, agree that the Contractor will perform all services to assist APS in providing the Learning Management System for Arlington Public Schools in accordance with the Contract which shall consist of the following documents, all of which are incorporated into and are part of the Contract, and which, in the event of a conflict, shall be given precedence in the order listed, with any Amendment or Modification having precedence over preceding provisions.

- 1 Exhibit A – Agreement #40FY17 and all modifications properly incorporated into the Agreement
- 2 Exhibit B – Scope of Services
- 3 Exhibit C – Fee Schedule
- 4 Exhibit D – Contractor Certification Regarding Criminal Convictions
- 5 Exhibit E – Non Disclosure and Data Security Agreement
- 6 Exhibit F – Student Data Usage and Privacy Agreement
- 7 Exhibit G – Contract Terms & Conditions
- 8 Exhibit H – Instructure Terms & Conditions as Negotiated
- 9 Exhibit I – Certificate(s) of Insurance
- 10 Exhibit J – Negotiated Items List
- 11 Exhibit K – Instructure Order Form

The following are incorporated by reference:

- 12 The Request for Proposal (RFP) documents, and
- 13 The Proposal Response from Instructure, Inc.

In the event of a conflict within a Contract Document at the same level of precedence, that provision requiring the higher quality of performance or quantity shall prevail. In the event of a conflict which is not resolved by the foregoing, the Owner shall determine the provision having precedence.

The services shall be provided in accordance with the above-referenced contract documents and is the complete agreement between APS and the Contractor and may not be altered except by written amendment signed by APS and the Contractor in compliance with the requirements of the Contact Documents.

The signatures of APS and the Contractor, or their authorized representatives, are set out below in acknowledgment and acceptance of this Agreement.

IN WITNESS WHEREOF, APS and Contractor have executed this Agreement as of the date written above.

**ACCEPTANCE:**

**ARLINGTON PUBLIC SCHOOLS**  
Authorized Signature: *David J. Webb*  
Printed Name: David J. Webb, C.P.M.  
Title: Director/Purchasing Agent  
Date: July 21, 2017

**INSTRUCTURE, INC.**  
Authorized Signature: *Matthew Searle*  
Printed Name: Matthew Searle  
Title: Director, Deal Desk  
Date: 7/21/2017

**EXHIBIT B**  
**SCOPE OF SERVICES**

- A. Contractor shall provide the utility of the Canvas Learning Management System (LMS) to be accessed and used by students, teachers, other APS staff, and parents/guardians, as appropriate, ("the Users) 24 hours a day, 7 days a week, 365 days a year. LMS responsibilities are shared between the Contractor and APS. Statistics on student registration, retention, graduation, and staff licensing and employment will be maintained and shared between APS and the Contractor. The Department of Instruction (DOI), located at the Syphax Academic Center at Sequoia Plaza, 2110 Washington Blvd., Arlington, Virginia 22204, is the lead group in utilizing and deploying this resource.
- B. The Contractor shall provide all training necessary for Users.
- C. The expectation is that all Users will be able to access and utilize all functions of the LMS as appropriate to their role, so differentiated access and permissions by role are required. Some staff roles in APS are unique, so flexibility to specify and structure customized role-based permission sets is required.
- D. The LMS and included support services must meet or exceed the following requirements:
1. Canvas shall be able to export or share data generated within the LMS with external systems, specifically systems of record like SIS, SE and ERP
  2. Canvas shall be offered as a 100% hosted Software as a Contractor hosted software
  3. Canvas shall function effectively on a wide variety of environments and devices, including: Apple iOS, MacOS / OSX (including the Safari, Firefox & Chrome browsers), Microsoft Windows (including the Internet Explorer, Firefox & Chrome browsers)
  4. Canvas shall support trust based authentication via a SAML v2 IdP for all user types
  5. Canvas shall comply with the terms of the APS Student Data Use and Privacy Agreement
- E. Canvas shall meet or exceed the following criteria:
1. **Integration**
    - support integration with resource providers [utilizing interoperability specifications such as Learning Tools Interoperability® (LTI®) and Sharable Content Object Reference Model (SCORM)]
    - integrate with G Suite for Education, Microsoft Office 365, and Apple's iCloud Suite in addition to other collaborative platforms
    - support Question & Test Interoperability (QTI®) standards (importing of test items))
    - integrate data created in the LMS, such as grades, into the systems of record (e.g. ERP)
    - integrate Virginia Department of Education Standards of Learning and APS standards
    - allow for sharing of lessons, assessments, etc. between teachers within and across schools via specific permissions
    - ability to identify student groups within and across courses and target instructional resources to those groups
  2. **Instructional Tools**
    - support the complete, reiterative instructional cycle:
      - provide for a variety of options for teachers to deliver content
      - allow for a variety of collaboration strategies to be utilized synchronously and asynchronously
      - provide formative and summative assessment options
      - allow for the development and/or use of rubrics in providing feedback to students
      - allow for re-assessment when defined by instructor
      - provide for real-time feedback to students on assignments and documents within the LMS
    - allow teachers to access the student view

### 3. Data Reports and Analytics

- provide for a variety of summative and formative assessment results by item, standard, and assessment/administration aggregated at student, classroom, program, school, and district levels for all students
- show topics mastered in a variety of ways (for example, by time period, standard, teacher, grade level, course, school, etc.)
- include analysis of usage of system and its components by individual user, site, and for the district as a whole

### 4. Professional Development

- provide online, on-demand training on use of LMS:
  - holistically and by component or feature for staff
  - for students (training materials for students should also be assignable to students by teachers)
  - for parents/guardians
- provide technical assistance regarding use of LMS to all APS staff during school hours (7:00 a.m. – 4:00 p.m. Eastern)
- provide for a variety of communication, content delivery, and assessment tools

### 5. Communication and Family Outreach

- Include
  - a variety of synchronous and asynchronous communication tools
  - a variety of collaboration tools
- allow for communication within the school system and with other districts around content
- include language supports (such as: translation, English glosses, multilingual glosses, visual supports)

### Technical Specifications

Canvas interface must:

- be accessible via multiple digital devices and multiple platforms including, but not limited to: desktop computer, laptop computer, tablet, cell phone, Windows and Apple operating systems
- provide adequate storage space for content and resources
- allow students to work offline and/or protect students from data loss in the event of interrupted internet connection
- allow courses and course instances to be duplicated, modified, and archived
- allow for content (e.g., standards, power standards, curricular maps, resources) to be defined by curricular offices at the district level and pushed to appropriate courses and/or users
- support overlapping terms, staff assignments, and student enrollments
- support appropriate accommodations for students with disabilities and English learners (as defined by applicable U.S. and Virginia regulations)

In addition, the Contractor must provide specification of details concerning launch of the system initially, scheduled updates, and unscheduled updates as well as their development practices with a go-live date of **August 21, 2017**.

**EXHIBIT C**  
**FEE SCHEDULE**

<b>CONTRACT YEAR 1</b> <b>School Year: 2017 – 2018</b>	<b>Unit Price \$</b>	<b>Quantity</b>	<b>Extended Price</b>
1. Student Subscriptions	\$3.75	25,678*	\$96,292.50
2. Staff Subscriptions	\$3.75	2,910†	\$10,912.50
3. Annual Professional Development (% of annual subscriptions)	10 %	\$107,242.50**	\$10,720.50
4. Daily Rate for Professional Development at selected APS sites	\$2,500.00	10	\$25,000.00
5. 24x7+Tier 1 Support			\$32,161.50
6. Implementation Fees			\$40,000.00

<b>CONTRACT YEAR 2</b> <b>School Year: 2018 – 2019</b>	<b>Unit Price \$</b>	<b>Quantity</b>	<b>Extended Price</b>
1. Student Subscriptions	\$3.75	25,678*	\$96,292.50
2. Staff Subscriptions	\$0.00	2,910†	\$0.00
3. Annual Professional Development (% of annual subscriptions)	5 %	\$96,292.50**	\$4,814.63
4. Daily Rate for Professional Development at selected APS sites	\$2,500.00	3‡	\$7,500.00
5. 24x7+Tier 1 Support			\$28,899.00

<b>CONTRACT YEAR 3</b> <b>School Year: 2019 – 2020</b>	<b>Unit Price \$</b>	<b>Quantity</b>	<b>Extended Price</b>
1. Student Subscriptions	\$3.75	25,678*	\$96,292.50
2. Staff Subscriptions	No fee	2,910†	\$0.00
3. Annual Professional Development (% of annual subscriptions)	5 %	\$96,292.50**	\$4,814.63
4. Daily Rate for Professional Development at selected APS sites	\$2,500.00	3‡	\$7,500.00
5. 24x7+Tier 1 Support			\$28,899.00

<b>CONTRACT YEAR 4</b> <b>School Year: 2020 – 2021</b>	<b>Unit Price \$</b>	<b>Quantity</b>	<b>Extended Price</b>
1. Student Subscriptions	\$3.75	25,678*	\$96,292.50
2. Staff Subscriptions	No fee	2,910†	\$0.00
3. Annual Professional Development (% of annual subscriptions)	5 %	\$96,292.50**	\$4,814.63
4. Daily Rate for Professional Development at selected APS sites	\$2,500.00	3‡	\$7,500.00
5. 24x7+Tier 1 Support			\$28,899.00

<b>CONTRACT YEAR 5</b> <b>School Year: 2021 – 2022</b>	<b>Unit Price \$</b>	<b>Quantity</b>	<b>Extended Price</b>
1. Student Subscriptions	\$3.75	25,678*	\$96,292.50
2. Staff Subscriptions	No fee	2,910†	\$0.00
3. Annual Professional Development (% of annual subscriptions)	5 %	\$96,292.50**	\$4,814.63
4. Daily Rate for Professional Development at selected APS sites	\$2,500.00	3‡	\$7,500.00
5. 24x7+Tier 1 Support			\$28,899.00

\* Quantity is subject to change based on actual APS student enrollment.

† Quantity is subject to change based on actual APS staff.

\*\* Amount is subject to change based on the change in APS enrollment (life of contract) and staff accounts (contract year 1 only).

‡ Quantity is subject to change based on the demand for the given school year.

**EXHIBIT D**  
**CONTRACTOR CERTIFICATION REGARDING CRIMINAL CONVICTIONS**

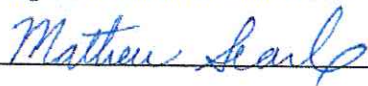
This form must be completed by an authorized official for any organization contracting to provide services under a contract with the Arlington Public Schools or any of its schools or departments, or any subcontractor under such contractor.

The completed form from the Contractor is a condition precedent to the award of the Contract.

As the official authorized to enter into this Contract on behalf of my organization, I certify that:

1. No employee of the organization who will be in direct contact with students on school property during regular school hours or during school-sponsored activities during the performance of this Contract has been convicted of a felony or of any offense involving the sexual molestation, physical or sexual abuse or rape of a child; and
2. As more particularly set forth in Virginia Code Ann. Section 18.2-370.4, no employee who has been convicted of rape, forcible sodomy or object sexual penetration, all of a child under 13, during the commission of abduction, in the course of entering a dwelling with intent to commit murder, rape, robbery, arson, larceny, assault and battery, or any felony, or of aggravated malicious wounding will enter upon the property of an existing elementary or secondary school in the performance of the Work; and
3. As more particularly set forth in Virginia Code Ann. Section 18.2-370.5, no employee who has been convicted of a sexually violent crime shall enter upon the property of any existing elementary or secondary school during school hours or during school-related or school sponsored activities in the performance of the Work.

I understand that a materially false statement regarding this certification is a Class 1 misdemeanor and that conviction of such misdemeanor shall result in the revocation of this Contract and of any related license that I may hold. I declare under penalty of perjury that the foregoing statements are true and correct.

<u>Instructure, Inc.</u>	
Name of Firm	Signature
<u>6330 South 3000 East</u>	<u>Mathew Searle</u>
Address of Firm	Name and Title (please type or print)
<u>801.869.5006</u>	<u>January 20, 2017</u>
Telephone	Date



**EXHIBIT E**  
**NON DISCLOSURE AND DATA SECURITY AGREEMENT (CONTRACTOR)**

The undersigned, an authorized agent of the Contractor and on behalf of Instructure, Inc. (Contractor) hereby agree that the Contractor will hold Arlington Public Schools (APS) provided information, documents, data, images, records and the like (hereafter "information") confidential and secure and to protect it against loss, misuse, alteration, destruction or disclosure. This includes but is not limited to the information of the APS, its employees, contractors, residents, clients, patients, taxpayers and property as well as information that the APS shares with Contractor for testing, support, conversion or other services provided under APS (the "Project" or "APS Contract" as applicable) or which may be accessed through other APS owned or controlled databases (all of the above collectively referred to herein as "information" or "APS information").

In addition to the DATA SECURITY obligations set in the APS Contract, the Contractor agrees that it will maintain the privacy and security of the APS information, control and limit internal access and authorization for access to such information and not divulge or allow or facilitate access to APS information for any purpose or by anyone unless expressly authorized. This includes but is not limited to information that in any manner describes, locates or indexes anything about an individual including, but not limited to, his/her (hereinafter "his") Personal Health Information, treatment, disability, services eligibility, services provided, investigations, real or personal property holdings, and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, social security number, tax status or payments, date of birth, address, phone number or that affords a basis of inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual, and the record of his presence, registration, or membership in an organization or activity, or admission to an institution (also collectively referred to herein as "information" or "APS information").

Contractor also agree that it will not directly or indirectly use or facilitate the use or dissemination of information (whether intentionally or by inadvertence, negligence or omission verbally, electronically, through paper transmission or otherwise) for any purpose other than that directly associated with its work under the Project. Contractor acknowledges that any unauthorized use, dissemination or disclosure of information is prohibited and may also constitute a violation of Virginia or federal laws, subjecting it or its employees to civil and/or criminal penalties.

The Contractor agrees that it will not divulge or otherwise facilitate the disclosure, dissemination or access to or by any unauthorized person, for any purpose, of any information obtained directly, or indirectly, as a result of its work on the Project. Contractor shall coordinate closely with the APS Project Officer to ensure that its authorization to its employees or approved subcontractors is appropriate, tightly controlled and that such persons also maintain the security and privacy of information and the integrity of APS networked resources.

~~Contractor agrees to take strict security measures to ensure that information is kept secure, properly stored, that if stored that it is encrypted as appropriate, stored in accordance with industry best practices and otherwise protected from retrieval or access by unauthorized persons or unauthorized purpose. Any device or media on which information is stored, even temporarily, will have strict security and access control. Any information that is accessible will not leave the Contractor's work site or the APS' physical facility, if working onsite, without written authorization of the APS Project Officer. If remote access or other media storage is authorized, Contractor is responsible for the security of such storage device or paper files.~~

Contractor will ensure that any laptops, PDAs, netbooks, tablets, thumb drives or other media storage devices, as approved by the APS, and connected to the APS network are secure and free of all computer viruses, or running the latest version of an industry standard virus protection program. Contractor will ensure that all passwords used by its employees or subcontractors are robust, protected and not shared. No information may be downloaded expect as agreed to by the parties and then only onto an APS approved device. Downloading onto a personally owned device is prohibited. Contractor agrees that it will notify the APS Project Officer immediately upon discovery, becoming aware or suspicious of any unauthorized disclosure of information, security breach, hacking or

other breach of this Agreement, the APS Contract, APS policy, Contractor's security policies, or any other breach of Project protocols. The Contractor will fully cooperate with the APS to regain possession of any information and to prevent its further disclosure, use or dissemination. The Contractor also agrees, if requested, to promptly notify others of a suspected or actual breach.

Contractor agrees that all duties and obligations enumerated in this agreement also extend to its employees, agents or subcontractors who are given access to APS information. Breach of any of the above conditions by Contractor's employees, agents or subcontractors shall be treated as a breach by Contractor. Contractor agrees that it shall take all reasonable measures to ensure its employees, agents and subcontractors are aware of and abide by the terms and conditions of this Agreement and related data security provisions in the APS Contract.

It is the intent of this *Non-Disclosure and Data Security Agreement* to ensure that the Contractor has the highest level of administrative safeguards, disaster recovery and best practices are in place to ensure confidentiality, protection, privacy and security of APS information and APS networked resources and to ensure compliance with all applicable local, state and federal law or regulatory requirements. Therefore, to the extent that this *Non-Disclosure and Data Security Agreement* conflicts with the APS Contract or with any applicable local, state, or federal law, regulation or provision, the more stringent APS Contract requirement, law, regulation or provision shall control.

At the conclusion of the Project, Contractor agrees to return all APS information to the APS Project Officer. These obligations remain in full force and effect throughout the Project and shall survive any termination of the APS Contract.

Authorized Signature: Mathew Searle

Printed Name and Title: Mathew Searle, Sr. Finance Manager

Date: January 20, 2017

**EXHIBIT F**  
**STUDENT DATA USAGE AND PRIVACY AGREEMENT**

This Student Data Usage and Privacy Agreement ("SDUPA") dated [date] is between **Arlington Public Schools**, located at 1426 N. Quincy Street, Arlington, VA 22207 ("APS" or "Customer") and **Instructure Inc.** located at 6330 South 3000 East, Suite 700, Salt Lake City, UT 84121 ("Provider") hereinafter individually a "Party" and collectively "the Parties", APS and Provider mutually agree to the terms of this SDUPA whereby APS will provide the following Data to Provider for the Approved Purposes only.

The Parties hereby agree as follows:

**1.0 Definitions**

- 1.1. "Agreement" or "Agreements" shall mean any contract or contracts between APS and the Provider for the provision of any Authorized Services.
- 1.2. "Approved Purposes" shall mean the use of Data by the Provider for the purposes of providing services authorized by APS in Agreements entered into between APS and the Provider ("Authorized Services") during the term of the SDUPA., and for no other purpose.
- 1.3. "Data" shall include all Personally Identifiable Information (PII), Education Records as defined by the Family Educational Rights and Privacy Act ("FERPA"), and other non-public information relating directly to APS students. Data include, but are not limited to, student data, metadata, forms, logs, cookies, tracking pixels, and user content.
- 1.4. "Subcontractors" shall include Provider subcontractors, subcontractors of Providers subcontractors, their subcontractors, and all successor entities.

**2 Security Controls**

- 2.1 Provider will store and process Data in accordance with commercially reasonable practices. This includes appropriate administrative, physical, and technical safeguards to secure Data from unauthorized access, disclosure, and use.
- 2.2 Provider will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner.
- 2.3 Provider will also have a written incident response plan, to include immediate (within one (1) business day) notification of APS in the event of a security or privacy incident involving Data . Provider agrees to share its incident response plan upon request.

**3 Access and Control**

- 3.1 Any Data held by Provider will be made available to APS upon request by APS.
- 3.2 All Data must remain under the direct control of APS to the extent required by FERPA. Where Data is in possession of Provider, APS may direct Provider to take certain actions with regards to the Data, in conformity with the SDUPA and applicable law.
- 3.3 Parents and eligible students must be able to access the Data upon request. This request shall occur through APS to ensure only authorized individuals have access to the Data.
- 3.4 Provider shall use Data solely as necessary to perform Authorized Services. Provider may not access, collect, store, process, or use Data for any reason other than as necessary to provide the Authorized Services.

**4 Marketing and Advertising**

- 4.1 Provider may not use any Data to advertise or market to students or their parents.
- 4.2 Provider may not use Data to target individual students with directed advertisements, and may never directly collect personal information from students under the age of 13.

**5 Collection and use of Data**

- 5.1 Solely for purposes of this SDUPA with respect to Data, Provider is deemed a 'School Official' within the meaning of that term as defined in 20 USC §1232g et seq., with a legitimate educational interest to the Data performing services and providing functions which would otherwise be performed by APS staff, for the sole purpose of providing Authorized Services.
  - 5.1.1 No relationship of employer and employee is created by this SDUPA or any Agreement. Provider its sub-contractors, and its employees shall not be employees of APS and shall not have any claim under this SDUPA or any Agreement or otherwise against APS for vacation pay, sick leave, retirement benefits, social security contribution, worker's compensation, disability or unemployment insurance benefits or any other employee benefit of any kind. Provider shall not be the agent of APS, nor shall Provider make any representation to the contrary to any third parties.
- 5.2 Provider may not sell Data or disclose Data to third parties except under provision 5.4.
- 5.3 Provider will collect and use Data only for the purpose of fulfilling its duties and providing Authorized Services under

- any Agreement and for improving Authorized Services under such Agreement.
- 5.4 APS understands that Provider may rely on one or more Subcontractors to perform Authorized Services under an Agreement. Provider shall share the names of these Subcontractors, including sub-subcontractors, with APS upon request. If Provider intends to provide any Data which was received from, or created for APS, to a Subcontractor, then Provider shall require such Subcontractor and sub-subcontractor to countersign this SDUPA. APS reserves the right to reject any Subcontractor if, in its sole discretion, APS determines that such subcontractor or sub-subcontractor is unsuitable for performance of the SDUPA. Provider acknowledges and agrees that the Provider's obligations under this SDUPA shall not be assigned to any other person or entity without the prior written consent of APS, which APS shall be under no obligation to grant. Provider shall include in all subcontracts, and require that its subcontractors include in all sub-subcontracts, acknowledgement and agreement that the subcontractor and sub-subcontractor are bound by the terms of this SDUPA, and if so requested by APS, will execute a separate SDUPA as a condition of acceptance by APS as a subcontractor or sub-subcontractor.
- 6 Data Transfer or Destruction
- 6.1 Provider will ensure that all Data in its possession and in the possession of any Subcontractors, or agents to which the Provider may have transferred Data, are destroyed or transferred to APS under the direction of APS when the Data are no longer needed to provide Authorized Services, at the request of APS within one (1) month, or as agreed upon between the Parties. Where there is a conflict between applicable law and this SDUPA, the applicable law will prevail.
- 7 Rights and License in and to use Data
- 7.1 Parties agree that all rights, including all intellectual property rights, shall remain the exclusive property of APS and Provider has a limited, nonexclusive license solely for the purpose of performing its obligations.
- 7.2 This SDUPA shall not be construed to give the Provider any rights, implied or otherwise, to Data, content, or intellectual property, except as expressly stated in this SDUPA to provide Approves Services. This includes the right to sell or trade Data.
- 8 Data De-identification
- 8.1 Provider may use de-identified Data for product development, research, or other purposes. De-identified Data will have all direct and indirect personal identifiers removed. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID.
- 8.2 Provider agrees not to attempt to re-identify de-identified Data and not to transfer de-identified Data to any third party unless that third party agrees not to attempt re-identification.
- 8.3 De-identified data may be used to improve the Provider's products or services, but may not be provided to third parties or sold.
- 9 Data Mining
- 9.1 Provider is prohibited from mining Data for any purposes except as expressly authorized by APS in any Agreement or in this SDUPA. Data mining or scanning of user content for the purpose of advertising or marketing to students or their parents is prohibited.
- 10 Modification of Terms of Service
- 10.1 During the term of the SDUPA, Provider will not materially change its methods for the collection, use, and sharing of Data, including its storage and destruction protocols, without advance notice to and consent from APS.
- 11 Precedence Over Agreements
- 11.1 Unless this SDUPA is specifically amended, in the event of a discrepancy between this SDUPA language and the terms and conditions of any Agreements between APS and the Provider relating to Data, the SDUPA language shall take precedence.

ACCEPTED AND AGREED:

ARLINGTON PUBLIC SCHOOLS  
Authorized Signature: David Webb  
Printed Name: David J. Webb, C.P.M.  
Title: Director/Purchasing Agent  
Date: July 21, 2017

INSTRUCTURE INC.  
Authorized Signature: Matthew Searle  
Printed Name: Matthew Searle  
Title: Director, Deal Desk  
Date: 7/21/2017

**EXHIBIT G**  
**CONTRACT TERMS AND CONDITIONS**

The Contract with Instructure, Inc. ("Contractor") will contain the following contract terms and conditions, with incomplete information to be added based upon the final negotiations between APS and the Contractor.

**1. CONTRACT DOCUMENTS**

The Contract consists of the following documents: all of which are incorporated into and are part of the Contract, and which, in the event of a conflict, shall be given precedence in the order listed, with any Amendment or Modification having precedence over preceding provisions. In the event of a conflict within a Contract Document at the same level of precedence, that provision requiring the higher quality of performance or quantity shall prevail. In the event of a conflict which is not resolved by the foregoing, the Owner shall determine the provision having precedence.

- 1 Exhibit A – Agreement #40FY17 and all modifications properly incorporated into the Agreement
- 2 Exhibit B – Scope of Services
- 3 Exhibit C – Fee Schedule
- 4 Exhibit D – Contractor Certification Regarding Criminal Convictions
- 5 Exhibit E – Non Disclosure and Data Security Agreement (Contractor)
- 6 Exhibit F – Student Data Usage and Privacy Agreement
- 7 Exhibit G – Contract Terms & Conditions
- 8 Exhibit H – Instructure Terms & Conditions as Negotiated
- 9 Exhibit I – Certificate(s) of Insurance
- 10 Exhibit J – Negotiated Items List
- 11 Exhibit K – Instructure Order Form

The following are incorporated by reference:

- 12 The Request for Proposal (RFP) documents, and
- 13 The Proposal Response from Instructure Inc.

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement shall prevail over the other Contract Documents.

The Contract Documents set forth the entire Agreement between APS and the Contractor. APS and the Contractor agree that no representative or agent of either of them has made any representation or promise with respect to this Agreement which is not contained in the Contract Documents. The Contract Documents may be referred to herein below as the "Contract" or "Agreement."

**2. SCOPE OF WORK**

The Contractor agrees to perform the services described in the Contract Documents (hereinafter the "Work"). The primary purpose of the Work is to obtain the services of a qualified Contractor to provide and implement a Learning Management System for Arlington Public Schools. The Scope of Work is more fully described in Exhibit A. The Contract Documents set forth the minimum work estimated by APS and the Contractor to be necessary to complete the Work. It shall be the Contractor's responsibility, at the Contractor's sole cost, to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of its Work. The end result of the project will be provision and delivery of a Learning Management System to Arlington Public Schools.

**3. STANDARD OF CARE**

In the performance or furnishing of services hereunder, the Contractor and all its agents, shall exercise the highest degree of skill and care normally accepted as practices and procedures by members of the same profession for provision of a Learning Management System to Arlington Public Schools.

4. RESPONSIBILITY OF THE CONTRACTOR

The Contractor shall be responsible for the quality, technical accuracy, and the coordination of all deliverables and other services furnished by the Contractor under this Agreement. The Contractor shall, without additional compensation, correct, or revise any errors or deficiencies that significantly affect the production environment, as determined by the Project Officer, which are discovered within a twelve-month period of final completion of Work.

5. RESPONSIBILITY FOR CLAIMS AND LIABILITIES

APS' review, approval, or acceptance of, or payment for, any services or deliverables required under this Contract shall not be construed to operate as a waiver by APS of any rights or of any cause of action arising out of the Contract. The Contractor shall be and remains liable to APS for the accuracy and competency of deliverables, plans, specifications, or other documents.

6. CONTRACT TERM

Time is of the essence. The Contract Term shall be for a period of three (3) years commencing on the date the APS Purchasing Agent fully executes the Contract and terminating on the last day of the thirty-sixth (36) month following the execution of the Contract by the APS Purchasing Agent.

The Contract Term may be renewed, one (1) year at a time ("Renewal Contract Term"), upon mutual agreement of the parties, at any time prior to thirty (30) days following expiration of the Contract Term, and such Renewal Contract Term shall be effective immediately upon expiration of the latest Renewal Contract Term. The parties shall have this right of renewal for up to but not more than two (2) Renewal Contract Terms, making a maximum of three (3) Contract Terms.

7. CONTRACT AMOUNT

APS will pay the Contractor in accordance with the prices shown in Exhibit C – Fee Schedule. The Fee Schedule shall include all of the Contractor's costs in performance of the Work under this Contract, including but not limited to, travel, overhead and profit. The Fee Schedule shall not be subject to change during the Contract Term.

8. PAYMENT

Contractor will be paid upon Acceptance of the submission of a complete invoice satisfactory to the Project Officer which meets the requirements of this section and other applicable provisions of the Contract. APS will pay the Contractor within thirty (30) calendar days after the date of receipt of a correct (as determined by the Project Officer) invoice approved by the APS Project Officer. The number of the issued Purchase Order shall appear on all invoices.

9. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the APS Project Officer ("Project Officer") who shall be appointed by the Director of the Arlington APS department requesting the work under this Contract. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its work under the Contract Documents. The Contractor shall participate in an annual evaluation of the program to be completed by the APS Project Officer.

10. ADJUSTMENTS FOR CHANGE IN SCOPE

APS may order changes in the Work within the general scope of the work consisting of additions, deletions or other revisions. No claim may be made by the Contractor that the scope of the project or of the Contractor's services has been changed requiring adjustments to the amount of compensation due the Contractor unless such adjustments have been made by a written amendment to the Contract signed by APS and the Contractor. If the Contractor believes that any particular work is not within the scope of the Project or is a material change or otherwise will call for more compensation to the Contractor, the Contractor must immediately notify the Project Officer after the change or event occurs and within ten (10) calendar days thereafter must provide written notice to the Project Officer. The Contractor's notice must provide to the Project Officer the amount of additional compensation claimed, together with the basis therefore and supportive documentation for the amount. The Contractor will not be compensated for performing any work unless a Proposal complying with this paragraph has been submitted in the time specified above and a written amendment has been signed by APS and the

Contractor and an APS purchase order is issued covering the cost of the services to be provided under the amendment.

11. ADDITIONAL SERVICES

The Contractor shall not be compensated for any goods or services provided except those included in the Contract Documents and included in the Contract Amount unless those goods or services are covered by a written amendment to this Agreement signed by APS and the Contractor and an APS purchase order is issued covering the expected cost of such services.

APS may determine the need for additional work by the Contractor. Upon a request from APS, the Contractor shall prepare a cost Proposal for any such work. No Additional Services shall be performed unless a written amendment to this Agreement has been executed by both parties.

12. REIMBURSABLE EXPENSES

All expenses shall be included in the Firm Fixed Price for provision of Professional Learning and Framework for Project Based Learning for APS. APS shall not approve any request for reimbursement of travel-related expenses submitted by the Contractor.

13. REIMBURSABLE TRAVEL-RELATED EXPENSES

All travel-related expenses shall be included in the Firm Fixed Price for provision of Professional Learning and Framework for Project Based Learning for APS. APS shall not approve any request for reimbursement of travel-related expenses submitted by the Contractor.

Non-reimbursable Expenses: The following expenses are not allowable for reimbursement and should not be included in Firm Fixed Price:

1. Alcoholic beverages
2. Personal phone calls
3. Self-entertainment activities (i.e. pay TV, movies, night clubs, health clubs, theaters, bowling)
4. Personal expenses (i.e. laundry, valet, haircuts)
5. Personal travel insurance (i.e. life, medical, or property insurance) for air fare or rental cars.
6. Auto repairs, maintenance and insurance costs for personal vehicles
7. Travel expenses incurred to obtain or maintain training and/or certificates that are not associated with an employee's job requirements.

14. PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven (7) calendar days after receipt of amounts paid to the Contractor by APS for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from APS attributable to the work performed by the subcontractor under this Contract; or
- b. Notify APS and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor that remain unpaid after seven (7) calendar days following receipt by the Contractor of payment from APS for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in b., above. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.



The Contractor's obligation to pay an interest charge to a subcontractor pursuant to the above provisions may not be construed to be an obligation of APS. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

15. NON-APPROPRIATION

All funds for payments by APS under this Contract are subject to the availability of an annual appropriation for this purpose by APS School Board. In the event of non-appropriation of funds by APS School Board for the goods or services provided under this Contract or substitutes for such goods or services which are as advanced or more advanced in their technology, APS will terminate the Contract, without termination charge or other liability to APS, on the last day of the then current fiscal year or when the appropriation made for the then current year for the services covered by this Contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor on thirty (30) calendar days prior written notice, but failure to give such notice shall be of no effect and APS shall not be obligated under this Contract beyond the date of termination specified in APS's written notice.

16. APS PURCHASE ORDER REQUIREMENT

APS purchases are authorized only if an APS Purchase Order is issued in advance of the transaction, indicating that the ordering school or department has sufficient funds available to pay for the purchase. Such a Purchase Order is to be provided to the Contractor by the order agency. APS will not be liable for payment for any purchases made by its employees without appropriate purchase authorization issued by APS Purchasing Agent. Contractors providing goods or services without a signed APS Purchase Order do so at their own risk and expense.

17. REPLACEMENT OR AUGMENTATION OF KEY PERSONNEL AND SUBCONTRACTORS

The key personnel and sub-contractors submitted by the Contractor in its Proposal and thereafter accepted by APS are considered essential to the Contractor's qualifications. The Contractor may not replace, substitute or augment any key personnel or sub-contractor without prior written approval of APS. A request to replace or substitute any key personnel or subcontractor for any reason, shall be provided to the APS Project Officer at least fifteen (15) calendar days in advance of such proposed replacement or substitution and the request shall contain sufficient justification, including identification of the proposed replacement or substitute and their qualifications, in sufficient detail to permit evaluation by APS.

Additionally, the Contractor shall not remove or replace the approved Project Manager without written approval of APS. In cases of the approved Project Manager's prolonged illness or other extended leave of absence, Contractor shall provide an interim Project Manager whose continued work on the project shall be subject to approval by APS.

In the event of the Project Manager's resignation or termination from the Contractor's employment, the Contractor shall replace the Project Manager with an individual with similar qualifications and experience and only with APS' prior written approval.

18. PROJECT STAFF

APS has the right of reasonable rejection and approval of staff or subcontractors assigned to the project by the Contractor. If APS reasonably rejects staff or subcontractors, the Contractor must provide replacement staff or subcontractors satisfactory to APS in a timely manner and at no additional cost to APS. The day-to-day supervision and control of the Contractor's employees, and employees of any of its subcontractors, shall be the sole responsibility of the Contractor.

19. SUPERVISION BY CONTRACTOR

The Contractor shall at all times enforce strict discipline and good order among the workers performing under this Contract, and shall only employ on the work persons reasonably proficient in the work assigned.

20. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of this Contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an Equal Opportunity Employer.
- C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.
- E. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontract or vendor.

21. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with §2.2-4311.1 of the Virginia Code, the Contractor acknowledges that it does not, and shall not during the performance of this Contract for goods and/or services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

22. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During the performance of the work pursuant to this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Contractor by APS in accordance with the APS Purchasing Resolution, the employees of which Contractor are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

23. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

The Contract shall remain in force for the Initial Contract Term or any Subsequent Contract Term(s) and until APS determines that all of the following requirements and conditions have been satisfactorily met: APS has accepted the Work, and thereafter until the Contractor has met all requirements and conditions relating to the Work under the Contract Documents, including warranty and guarantee periods. However, APS shall have the right to terminate this Contract sooner if the Contractor is in breach or default or has failed to perform satisfactorily the Work required, as determined by APS in its discretion.

If APS determines that the Contractor has failed to perform satisfactorily, then APS will give the Contractor written notice of such failure(s) and the opportunity to cure such failure(s) within at least fifteen (15) days before termination of the Contract takes effect ("Cure Period"). If the Contractor fails to cure within the Cure Period or as otherwise specified in the notice, the Contract may be terminated for the Contractor's failure to provide satisfactory Contract performance. Upon such termination, the Contractor may apply for compensation for

Contract services satisfactorily performed by the Contractor, allocable to the Contract and accepted by APS prior to such termination unless otherwise barred by the Contract ("Termination Costs"). In order to be considered, such request for Termination Costs, with all supporting documentation, must be submitted to APS Project Officer within fifteen (15) calendar days after the expiration of the Cure Period. APS may accept or reject, in whole or in part, the application for Termination Costs and notify the Contractor of same within a reasonable time thereafter.

If APS terminates the Contract for default or breach of any Contract provision or condition, then the termination shall be immediate after notice from APS to the Contractor (unless APS in its discretion provides for an opportunity to cure) and the Contractor shall not be permitted to seek Termination Costs.

Upon any termination pursuant to this section, the Contractor shall be liable to APS for all costs incurred by APS after the effective date of termination, including costs required to be expended by APS to complete the Work covered by the Contract, including costs of delay in completing the Work or the cost of repairing or correcting any unsatisfactory or non-compliant work performed or provided by the Contractor or its subcontractors. Such costs shall be either deducted from any amount due the Contractor or shall be promptly paid by the Contractor to APS upon demand by APS. Additionally, and notwithstanding any provision in this Contract to the contrary, the Contractor is liable to APS, and APS shall be entitled to recover, all damages to which APS is entitled by this Contract or by law, including, and without limitation, direct damages, indirect damages, consequential damages, delay damages, replacement costs, refund of all sums paid by APS to the Contractor under the Contract and all attorney fees and costs incurred by APS to enforce any provision of this Contract.

Except as otherwise directed by APS in the notice, the Contractor shall stop work on the date of receipt of notice of the termination or other date specified in the notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims. Any purchases after the date of termination contained in the notice shall be the sole responsibility of the Contractor. For a period of six (6) months following expiration or termination, Customer may export Customer Content through API or by using the export features within the Service.

24. **INDEMNIFICATION** (NOTE: Virginia does not permit the indemnification of others; cross indemnity provisions are not acceptable). The Contractor covenants for itself, its employees, and subcontractor to save, defend, hold harmless, and indemnify APS, and all of their elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards, and commissions (collectively the "APS" for purposes of this section) from and against any and all claims made by third parties or by APS for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, demands or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor's acts or omissions or errors in performance or nonperformance of its work called for by the Contract Documents, whether such act or omission or error is attributable to Contractor, subcontractor, any material supplier, or anyone directly or indirectly employed by them, called for by the Contract Documents. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract.

If any action or proceeding relating to the indemnification required by this Section is brought against APS, then upon written notice from APS to the Contractor, Contractor shall at Contractor's expense, resist or defend such action or proceeding by counsel approved by APS in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend same.

If, after Notice by APS, the Contractor fails or refuses to save, defend, hold harmless and/or indemnify APS, the Contractor shall be liable for and reimburse APS for any and all expenses, including but not limited to, reasonable attorney's fees incurred and settlements or payments made. The Contractor shall pay such expenses upon demand by APS and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

Contractor understands and agrees that it is Contractor's responsibility to provide indemnification to APS pursuant to this section. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements and the failure of Contractor's insurance to fully fund any indemnification shall not relieve the Contractor of any obligation assumed under this indemnification.

25. INTELLECTUAL PROPERTY INDEMNIFICATION

The Contractor warrants and guarantees that no intellectual property rights (including, but not limited to, copyright, patent, mask rights and trademark) of third parties are infringed or in any manner involved in or related to the services provided hereunder.

The Contractor further covenants for itself, its employees, and subcontractors to save, defend, hold harmless, and indemnify APS, and all of its officers, officials, departments, agencies, agents, and employees from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, for or on account of any trademark, copyright, patented or unpatented invention, process, or article manufactured or used in the performance of this Contract, including its use by APS. If the Contractor, or any of its employees or subcontractors, uses any design, device, work, or materials covered by letters patent or copyright, it is mutually agreed and understood, without exception, that the Contract Amount includes all royalties, licensing fees, and any other costs arising from the use of such design, device, work, or materials in any way involved with the Work. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after Notice by APS, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse APS for any and all expenses, including but not limited to, reasonable attorney's fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by APS and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

26. COPYRIGHT

The Contractor hereby irrevocably transfers, assigns, sets over and conveys to APS all right, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Agreement. The Contractor further agrees to execute such documents as APS may request to affect such transfer or assignment.

Further, the Contractor agrees that the rights granted to APS by this paragraph are irrevocable. Notwithstanding anything else in this Agreement, the Contractor's remedy in the event of termination of or dispute over the terms of this Agreement shall not include any right to rescind, terminate or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this paragraph. Similarly, no termination of this Agreement shall have the effect of rescinding, terminating or otherwise invalidating the rights acquired pursuant to the provisions of this "Copyright" paragraph.

The use of subcontractors or third parties in developing or creating input into any copyrightable materials produced as a part of this Agreement is prohibited unless APS approves the use of such subcontractors or third parties in advance and such subcontractors or third parties agree to include the provisions of this paragraph as part of any contract they enter into with the Contractor for work related to work pursuant to this Agreement.

27. OWNERSHIP AND RETURN OF RECORDS

This Contract confers no ownership rights to the Contractor nor any rights or interests to use or disclose APS' data or inputs.

The Contractor agrees that all drawings, specifications, blueprints, data, information, findings, memoranda, correspondence, documents or records of any type, whether written or oral or electronic, and all documents generated by the Contractor or its subcontractors as a result of APS' request for services under this Contract, are the exclusive property of APS ("Record" or "Records"), and all such Records shall be provided to and/or returned to APS upon completion, termination, or cancellation of this Contract. The Contractor shall not use, willingly allow, or cause such materials to be used for any other purpose other than performance of all obligations under the Contract without the written consent of APS. Additionally, the Contractor agrees that the Records are confidential records and neither the Records nor their contents shall be released by the Contractor, its

subcontractors, or other third parties; nor shall their contents be disclosed to any person other than the Project Officer or his or her designee. The Contractor agrees that all oral or written inquiries from any person or entity regarding the status of any Record generated as a result of the existence of this Contract shall be referred to the Project Officer or his or her designee for response. At APS' request, the Contractor shall deliver all Records to the Project Officer, including "hard copies" of computer records, and at APS's request, shall destroy all computer records created as a result of APS' request for services pursuant to this Contract.

The Contractor agrees to include the provisions of this section as part of any contract or agreement the Contractor enters into with subcontractors or other third parties for work related to work pursuant to this Contract. No termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating this section of the Contract.

28. CONFIDENTIAL INFORMATION

The Contractor, and its employees, agents, and subcontractors, hereby agree to hold as confidential all APS information obtained as a result of its Work under this Contract. Confidential information includes, but is not limited to, nonpublic personal information, personally identifiable health information, social security numbers, proprietary systems, addresses, dates of birth, other contact information or medical information about a person's, information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans, expertise and any information entrusted to any affiliate of the parties. The Contractor shall take reasonable measures to ensure that all of its employees, agents, and subcontractors are informed of, and abide by, this requirement.

29. DATA SECURITY

The Contractor agrees that it shall hold all APS data obtained or accessed as a result of its work under this Contract confidential in accordance with the Nondisclosure and Data Security Agreement attached hereto. If individual employees or subcontractors of the Contractor are performing work under this Contract on APS-owned property, then such individual employees or subcontractors shall be required to sign a separate Nondisclosure and Data Security Agreement, which shall be incorporated by reference into this Contract, prior to performing any work or being allowed access to APS data.

The Contractor shall hold APS Information in the strictest confidence and comply with all applicable APS security and network resources policies as well as all local, state and federal laws or regulatory requirements concerning data privacy and security. The Contractor shall develop, implement, maintain, continually monitor and use appropriate administrative, technical and physical security measures to preserve the confidentiality, privacy, integrity and availability of all electronically maintained or transmitted APS Information received from, created or maintained on behalf of APS and strictly control access to APS Information. For purposes of this provision, and as more fully described in this Contract and APS's Non-Disclosure and Data Security Agreement (NDA), "APS Information" (also referred to as "APS Data" or "data") includes, but is not limited to, electronic information, documents, data, images, and records including, but not limited to, financial records, personally identifiable information, Personal Health Information (PHI), personnel, educational, voting, registration, tax or assessment records, information related to public safety, APS networked resources, and APS databases, software and security measures which is created, maintained, transmitted or accessed to perform the work under this Contract.

- (b) APS' Non-Disclosure and Data Security Agreement (NDA). The Contractor shall require that an authorized Contractor designee, and all key employees, agents or subcontractors working on-site at APS facilities or otherwise performing non-incident work under this Contract, sign the NDA (attached as an Exhibit hereto) prior to performing any work or permitting access to APS networked resources, application systems or databases under this Contract. A copy of the signed NDAs shall be available to APS Project Officer upon request.
- (c) Use of Data. The Contractor shall ensure that the use, distribution, disclosure or access ("use") to APS Information and APS networked resources shall not occur in an unauthorized manner. Use of APS Information for other than as specifically outlined in this Contract is strictly prohibited, unless such other

use is agreed to in writing by the parties. The Contractor will be solely responsible for any unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access or disclosure of APS Information and any non-compliance with this DATA SECURITY AND PROTECTION provision or any NDA.

- (d) Data Protection. The Contractor agrees that it will protect APS Information according to standards established by the National Institute of Standards and Technology, including 201 CMR 17.00, Standards for the Protection of Personal Information of Residents of the Commonwealth and the Payment Card Industry Data Security Standard (PCI DSS), as applicable, and no less rigorously than it protects its own data, proprietary and/or confidential information. The Contractor shall provide to APS a copy of its data security policy and procedures for securing APS Information and a copy of its disaster recovery plan/s. The Contractor shall provide, if requested by APS, on an annual basis, results of an internal Information Security Risk Assessment provided by an outside firm.
- (e) Data Sharing. Except as otherwise specifically provided for in this Contract, the Contractor agrees that it shall not share, disclosure, sell or grant access to APS Information to any third party without the express written authorization of the APS Chief Information Security Officer or designee.
- (f) Security Requirements. The Contractor shall maintain the most up to date anti-virus, industry accepted firewalls and/or other protections on its systems and networking equipment. The Contractor certifies that all systems and networking equipment that support, interact or store APS Information meet the above standards and industry best practices for physical, network and system security requirements. Printers, copiers or fax machines that store APS Data into hard drives must provide data at rest encryption. Significant deviation from these standards must be approved by the APS Chief Information Security Officer or designee, the downloading of APS information onto laptops or other portable storage medium is prohibited without the express written authorization of the APS Chief Information Security Officer or designee.
- (g) Data Protection Upon Conclusion of Contract. Upon termination, cancellation, expiration or other conclusion of this Contract, the Contractor shall return all APS Information to APS unless APS requests that such data be destroyed. This provision shall also apply to all APS Information that is in the possession of subcontractors or agents of the Contractor. The Contractor shall complete such return or destruction not less than thirty (30) calendar days after the conclusion of this Agreement and shall certify completion of this task, in writing, to APS Project Officer.
- (h) Notification of Security Incidents. The Contractor agrees to notify the APS Chief Information Officer and APS Project Officer within twenty-four (24) hours of the discovery of any unintended access to, use or disclosure of APS Information.
- (i) Subcontractors. To the extent the use of subcontractors is permitted under this Contract, the requirements of this entire section shall be incorporated into any subcontractor agreement entered into by the Contractor and any data sharing shall be compliant with these security and protection requirements and the NDA. In the event of data sharing, subcontractors shall provide to the Contractor a copy of their data security policy and procedures for securing APS Information and a copy of their disaster recovery plan/s.

### 31. ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference Article 9 of the APS Purchasing Resolution, as well as any state or federal law related to ethics, conflicts of interest, or bribery, including by way of illustration and not limitation, the Virginia State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq., and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its offer is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this purchase any payment, loan, subscription, advance, deposit of money, services, or anything

of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

32. APS EMPLOYEES

No employee of Arlington Public Schools, Virginia, shall be admitted to any share in any part of this Contract or to any benefit that may arise there from which is not available to the general public.

33. FORCE MAJEURE

The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, acts of terrorism, or an act of God beyond control of the Contractor, and outside and beyond the scope of the Contractor's then current, by industry standards, disaster plan, that make performance impossible or illegal, unless otherwise specified in the Contract. APS shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, acts of terrorism, or an act of God beyond control of APS that make performance impossible or illegal, unless otherwise specified in the Contract.

34. AUTHORITY TO TRANSACT BUSINESS

The Contractor shall pursuant to Code of Virginia §2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the Initial Term and any Subsequent Contract Term(s) of this Contract. A contract entered into by a Contractor in violation of this requirement is voidable, without any cost or expense, at the sole option of APS.

35. RELATION TO APS

The Contractor will be legally considered as an independent contractor and neither the Contractor nor its employees will, under any circumstances, be considered employees, servants or agents of APS. APS will not be legally responsible for any negligence or other wrongdoing by the Contractor, its employees, servants or agents. APS will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Furthermore, APS will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by APS for its employees.

36. ANTITRUST

By entering into this Contract, the Contractor conveys, sells, assigns and transfers to APS all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States or the Commonwealth of Virginia, relating to the goods or services purchased or acquired by APS under this Contract.

37. REPORT STANDARDS

Reports or written material prepared by the Contractor in response to the requirements of this Contract or request of the Project Officer shall, unless otherwise provided for in the Contract, meet standards of professional writing established for the type of report or written material provided, shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors, shall be submitted in a format approved in advance by the Project Officer, and shall be submitted for advance review and comment by the Project Officer. The cost of correcting grammatical errors, correcting report data, or other revisions required to bring the report or written material into compliance with these requirements shall be borne by the Contractor.

When submitting documents to APS, The Contractor shall comply with the following guidelines:

- All submittals and copies shall be printed on at least thirty percent (30%) recycled-content and/or tree-free paper;
- All submittals must be in the required tabular format in a binder.
- Report covers / binders shall be recyclable, made from recycled materials, and/or easily removable to allow for recycling of report pages (reports with glued bindings that meet all other requirements are acceptable);

- The use of plastic covers or dividers should be avoided; and
- Unnecessary attachments or documents not specifically asked for should not be submitted, and superfluous use of paper should be avoided.

38. AUDIT

The Contractor agrees to retain all books, records and other documents related to this Contract for at least five (5) years after final payment. APS or its authorized agents shall have full access to and the right to examine any of the above documents during this period and during the Initial Contract Term or any Subsequent Contract Term. If the Contractor wishes to destroy or dispose of records (including confidential records to which APS does not have ready access) within five (5) years after final payment, the Contractor shall notify APS at least thirty (30) days prior to such disposal, and if APS objects, shall not dispose of the records.

39. ASSIGNMENT

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Contract, without the prior written consent of APS.

40. AMENDMENTS

This Contract shall not be modified except by written amendment executed by persons duly authorized to bind the Contractor and APS

41. ARLINGTON PUBLIC SCHOOLS PURCHASING RESOLUTION AND APS POLICIES

Notwithstanding any provision to the contrary herein, no provision of the Arlington Public Schools Purchasing Resolution or any applicable APS policy is waived in whole or in part.

42. DISPUTE RESOLUTION

All disputes arising under this Agreement, or its interpretation, whether involving law or fact, or extra work, or extra compensation or time, and all claims for alleged breach of Contract shall be submitted in writing to the Project Officer for decision at the time of the occurrence or beginning of the work upon which the claim is based, whichever occurs first. Such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. Claims denied by the Project Officer may be submitted to APS Superintendent or designee in writing no later than sixty (60) days after final payment in accordance with the Arlington Public Schools Purchasing Resolution.

The time limit for final written decision by APS Superintendent or designee in the event of a contractual dispute, as that term is defined in the Arlington Public Schools Purchasing Resolution, is thirty (30) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Arlington Public Schools Purchasing Resolution, incorporated herein by reference. A copy of the Arlington Public Schools Purchasing Resolution is available upon request from the Office of the Purchasing Agent. The Contractor shall not cause a delay in the Work pending a decision of the Project Officer, APS Superintendent or designee, School Board, or a court of competent jurisdiction.

43. APPLICABLE LAW, FORUM, VENUE AND JURISDICTION

This Contract and the work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia and the jurisdiction, forum, and venue for any litigation with respect thereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In performing the Work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

44. ARBITRATION

It is expressly agreed that nothing under the Contract shall be subject to arbitration, and any references to arbitration are expressly deleted from the Contract.

45. NONEXCLUSIVITY OF REMEDIES

All remedies available to APS under this Contract are cumulative, and no such remedy shall be exclusive of any other remedy available to APS at law or in equity.



46. NO WAIVER

The failure of either party to exercise in any respect a right provided for in this Contract shall not be deemed to be a subsequent waiver of the same right or any other right.

47. SEVERABILITY

The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by the valid judgment or decree of a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

48. NO WAIVER OF SOVEREIGN IMMUNITY

Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by APS pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or governmental immunity of APS. The parties intend for this provision to be read as broadly as possible.

49. SURVIVAL OF TERMS

In addition to any numbered section in this Agreement which specifically state that the term or paragraph survives the expiration or termination of this Contract, the following sections if included in this Contract also survive: INDEMNIFICATION; RELATION TO APS; OWNERSHIP AND RETURN OF RECORDS; AUDIT; COPYRIGHT; INTELLECTUAL PROPERTY INDEMNIFICATION; CONFIDENTIAL INFORMATION, AND DATA SECURITY AND PROTECTION.

50. HEADINGS

The section headings in this Contract are inserted only for convenience and are not to be construed as part of this contract or a limitation on the scope of the particular section to which the heading refers.

51. AMBIGUITIES

Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

52. NOTICES

Unless otherwise provided herein, all notices and other communications hereunder shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

TO THE CONTRACTOR:

Mr. Brian Grow  
Regional Director  
Instructure, Inc.  
6330 South 3000 East  
Suite 700  
Salt Lake City, UT 84121  
[bgrow@instructure.com](mailto:bgrow@instructure.com)

TO APS:

Tara Natrass, Ph. D.  
Assistant Superintendent, Instruction  
Arlington Public Schools  
2110 Washington Blvd.  
Arlington, VA 22204

AND

David J. Webb, C.P.M.  
Purchasing Agent  
Arlington Public Schools  
1426 N. Quincy Street,  
Arlington, Virginia 22207

53. NON-DISCRIMINATION NOTICE

APS does not discriminate against faith-based organizations.

54. INSURANCE REQUIREMENTS

The Contractor shall provide to the APS Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force the coverage below prior to the start of any Work under this Contract and upon any contract extension. The Contractor agrees to maintain such insurance until the completion of this Contract or as otherwise stated in the Contract Documents. All required insurance coverages must be acquired from insurers authorized to do business in the Commonwealth of Virginia, rating of "B" or better and a financial size of "Class VII" or better in the latest edition of A.M. Best Co., and acceptable to APS. The minimum insurance coverage shall be:

- a. Workers Compensation (if applicable)- Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employers liability with limits of \$100,000/100,000/500,000.
- b. Commercial General Liability - \$500,000 combined single limit coverage with \$1,000,000 general aggregate covering all premises and operations and including Personal Injury and Independent Contractors. The general aggregate limit shall apply to this Contract. coverage
- c. Automobile Liability - \$100,000 per person / \$300,000 per accident.
- d. Product Liability - \$500,000 combined single limit coverage, \$1,000,000 general aggregate
- e. Cyber Liability Insurance – not less than \$500,000 per occurrence or claim, \$1,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not be limited to, claims involving, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, crisis management and notification expenses, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs, regulatory fines and penalties, and credit monitoring expenses with limits sufficient to respond to these obligations.
- f. Arlington Public Schools, its officers, elected and appointed officials, employees and agents, are to be named as additional insured under all coverages except Workers' Compensation and Automobile Liability, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as respects APS, its officers, elected and appointed officials, agents and employees. The following definition of the term "APS" applies to all policies issued under the Contract: "APS School Board and any affiliated or subsidiary Board, Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board, Authority, Committee, or Independent Agency is either a Body Politic created by the School Board of Arlington Public Schools, Virginia, or one in which controlling interest is vested in Arlington Public Schools".

- g. Cancellation - All insurance policies required by this Contract shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation or non-renewal until thirty (30) days prior written notice has been given to the Purchasing Agent, Arlington Public Schools, Virginia." If there is a material change or reduction in coverage the Contractor shall notify the Purchasing Agent immediately upon Contractor's notification from the insurer. Any policy on which the Contractor has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be replaced with another policy consistent with the terms of this Contract, and APS notified of the replacement, in such a manner that there is no lapse in coverage. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- h. Any insurance coverage that is placed as a "claims made" policy must remain valid and in force, or the Contractor must obtain an extended reporting endorsement consistent with the terms of this Contract, until the applicable statute of limitations has expired, such date as determined to begin running from the date of the Contractor's receipt of final payment.
- i. Contract Identification - The insurance certificate shall state this Contract's number and title.

The Contractor must disclose the amount of any deductible or self-insurance component applicable to the General Liability and Automobile Liability, or any other policies required herein, if any. APS reserves the right to request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible. Thereafter, at its option, APS may require a lower deductible, funds equal to the deductible be placed in escrow, a certificate of self-insurance, collateral, or other mechanism in the amount of the deductible to ensure protection for APS.

The Contractor shall require all subcontractors to maintain during the term of this Contract, Commercial General Liability insurance, Automobile Liability insurance, and Workers' Compensation insurance (if applicable) in the same form and manner as specified for the Contractor. The Contractor shall furnish subcontractors' certificates of insurance to APS immediately upon request by APS.

No acceptance or approval of any insurance by APS shall be construed as relieving or excusing the Contractor from any liability or obligation imposed upon the Contractor by the provisions of the Contract Documents.

The Contractor shall be responsible for the work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the work. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.

The Contractor shall be as fully responsible to APS for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.

Notwithstanding any of the above, the Contractor may satisfy its obligations under this section by means of self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate financial capacity and the alternative coverage's are submitted to and acceptable to APS. The Contractor must also provide its most recent actuarial report and provide a copy of its self-insurance resolution to determine the adequacy of the insurance funding.

#### 55. ACCESSIBILITY OF WEB SITE

If any work performed under this Contract results in design, development, maintenance or responsibility for content and/or format of any APS websites, or APS' presence on other party websites, the Contractor shall perform such work in compliance with the requirements set forth in the U.S. Department of Justice document entitled "Accessibility of State and Local Government Websites to People with Disabilities." The document is located at: <http://www.ada.gov/websites2.htm>.

56. ARLINGTON COUNTY BUSINESS LICENSE

The Contractor must comply with the provisions of Chapter 11 (Business Licenses) of the Arlington County Code. For further information on the provisions of this chapter and its applicability to this contract, contact the Arlington County Business License Division, Commissioner of the Revenue of Arlington, Virginia, Telephone Number (703) 228-3060.

57. FAILURE TO DELIVER

In case of failure to deliver goods or services in accordance with the contract terms and conditions, APS, after due oral or written notice, may procure the goods or services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which APS may have; provided that if public necessity requires the use of materials or supplies not conforming to the specifications, they may be accepted and payment therefore shall be made at a reduction in price to be determined solely by APS.

58. SUBCONTRACTS

The Contractor shall not enter into any subcontract with any subcontractor who has been suspended or debarred from doing federal, state or local government work for any reason.

The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.

The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the work of subcontractors.

Nothing contained in this contract shall create any contractual relationship between any subcontractor and APS.

59. CONTRACTOR CERTIFICATION REGARDING CRIMINAL CONVICTIONS

As a condition of awarding a contract for the provision of Work that requires the Contractor or his employees to have direct contact with students on school property during regular school hours or during school-sponsored activities, the Arlington School Board shall require the Contractor to provide certification that all persons who will provide such services have not (i) been convicted of a felony or of any offense involving the sexual molestation or physical or sexual abuse or rape of a child; (ii), as more particularly set forth in Va. Code Ann. Section 18.2-370.4 no person shall perform any part of the Work on the property of an existing elementary or secondary school who has been convicted of rape, forcible sodomy or object sexual penetration, all of a child under 13, during the commission of abduction, in the course of entering a dwelling with intent to commit murder, rape, robbery, arson, larceny, assault and battery, or any felony, or of aggravated malicious wounding; and (iii) as more particularly set forth in Va. Code Ann. Section 18.2-370.5, no person shall perform any part of the Work on the property of an existing elementary or secondary school during school hours or during school-related or school sponsored activities who has been convicted of a sexually violent offense. The Contractor certification covers its employees, its Subcontractors and the employees thereof. (See Exhibit D).

The Contractor shall also certify for its employees, its Subcontractors and employees thereof, assigned to the Work after Contract award. The Contractor upon demand from APS shall provide all information which allowed for the certification.

The Contractor shall submit to the APS a completed Contractor Certification Regarding Criminal Convictions on the form provided by the APS (See Exhibit D).

60. NON-ENDORSEMENT CLAUSE FOR CONTRACTS & AGREEMENTS

ARLINGTON PUBLIC SCHOOLS may be identified as a "Participant" in Professional Learning and Framework for Project Based Learning with the following statement added. "This shall not constitute an endorsement of any products or services". For further information, please contact the Arlington Public Schools School and Community Relations office.

61. ADVERTISING AND USE OF PROPRIETARY MARKS OR LOGOS

Contractor shall not use the name of Arlington Public Schools (APS) or any Authorized User or refer to APS or any Authorized User, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of APS or such Authorized User. In no event may Supplier use a proprietary mark of APS or an Authorized User without receiving the prior written consent of APS or the Authorized User.

62. EXTENSION OF CONTRACT TERM

The APS Purchasing Office, at its sole and absolute discretion, may extend the final Contract term or final Contract renewal term of the resultant Contract for a period of not more than twelve (12) months, unless specifically stated otherwise in the solicitation.

63. STUDENT DATA USAGE AND PRIVACY AGREEMENT

During the term of the Contract the Contractor will have access to student data. As a condition of awarding a contract for the provision of work that requires the Contractor to have access to the student data the Contractor is required to sign the Student Data Usage and Privacy Agreement (See Exhibit D).

**EXHIBIT H**  
**INSTRUCTURE STANDARD TERMS & CONDITIONS AS NEGOTIATED**

This document outlines the standard contractual terms and conditions ("Terms") that apply to the provision of any products or services by Instructure, Inc. ("Instructure", "Contractor") to the entity identified on the Order Form ("Customer", "APS"). These terms are incorporated into the Order Form and together, the Order Form and these Terms are the "Agreement." An "Order Form" means any order for the provision of products or services signed by Customer.

1. **Services.** Subject to the terms of this Agreement, Instructure will provide the Service specified on the Order Form. "Service" means the proprietary software as a service provided by Instructure and made available through a URL in a hosted environment and other related services provided by Instructure as further 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. **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 or the API to any person, firm, or entity except as expressly authorized herein, or 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 the Service or the API or to merge the Service or any subpart thereof (including proprietary markings) with other services or software, or remove or modify any proprietary markings or restrictive legends in the Service, except as provided in this Agreement; (c) use the Service to: (i) store, transmit or create libelous, obscene, deceptive, defamatory, pornographic, racist, sexual, hateful, unlawful, tortious materials or otherwise objectionable (except as necessary for Customer's instructional purposes, but in all cases in compliance with applicable law and regulation), or (ii) harm or impersonate any person or violate the rights of any third-party rights; (d) interfere with or disrupt the integrity or performance of the Service; (e) attempt to gain unauthorized access to the Service or its related systems or networks; or (f) introduce viruses, Trojan horses, worms, spyware, or other such malicious code into the Service.
3. **Customer Responsibilities.** Customer: (a) is solely responsible for Customer Content and all activities arising from its Users, and (b) must keep its passwords secure and confidential, and notify Instructure promptly of any known or suspected unauthorized access to the Service.
4. **Instructure Responsibilities.** Instructure shall provide: (a) all updates and upgrades to the Service to Customer that Instructure provides to its customers generally for no additional charge; and (b) Support ("Support") pursuant to the terms of Instructure's customer support as specified on the Order Form.
5. **Fees.** As consideration for the subscription to the Service, Customer shall pay all fees ("Fees") set forth in the Order Form. All Fees will be due from Customer within thirty (30) days of receipt of invoice, unless otherwise agreed to in the Order Form. All Fees owed by Customer are exclusive of, and Customer shall pay, all sales, use, VAT, excise, withholding, and other taxes that may be levied in connection with this Agreement. Except as set forth in this Agreement, all fees are non-refundable.
6. **Service Level Agreement.** 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 warranty 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 the applicable month Customer becomes eligible or 30 days after.

**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 Services will conform to its then current documentation. As Customer's exclusive remedy and Instructure's sole liability for breach of the warranty set forth in this Section 7, (a) Instructure shall correct the non-conforming Service at no additional charge to Customer, or (b) 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 of the first date the deficiency is identified by Customer.

**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. Aggregated Data.** As between the parties, Instructure owns the aggregated and statistical data derived from the operation of the Service, including, without limitation, the number of records in the Service, the number and types of transactions, configurations, and reports processed in the Service and the performance results for the Service (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 individual or specific data entered by any individual into the Service. Notwithstanding the foregoing, Instructure shall not charge Customer for access to use data related to Customer's use of the Service.

**10. Limitation of Liability.** EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 6 & 7, INSTRUMENT DISCLAIMS 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. INSTRUMENT DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR BE ERROR-FREE. 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. INSTRUMENT'S CUMULATIVE MAXIMUM LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) SHALL NOT EXCEED FOUR TIMES THE AMOUNT PAID BY CUSTOMER WITHIN THE PRECEDING 12 MONTHS UNDER THIS AGREEMENT. CUSTOMER ACKNOWLEDGES THAT INSTRUMENT IS NOT RESPONSIBLE FOR THIRD-PARTY SERVICES MADE AVAILABLE THROUGH THE SERVICE.

**11. Confidentiality.** Each party acknowledges that the other party may disclose its Confidential Information to the other in the performance of this Agreement. Accordingly, each party shall: (a) keep the Confidential Information disclosed by the other party confidential, (b) use Confidential Information only for purposes of fulfilling its obligations hereunder, and (c) disclose such Confidential Information only to the receiving party's employees who have a need to know and only for the purposes of fulfilling this Agreement. As used herein, "Confidential Information" means information in the possession or under the control of a party of a proprietary nature relating to the technical, marketing, product and/or business affairs or proprietary and trade secret information of that party in oral, graphic, written, electronic or machine readable form. Confidential Information shall not include information that: (a) the receiving party possesses prior to acquiring it from the other, (b) becomes available to the public or trade through no violation by the receiving party of this paragraph, (c) is given to the receiving party by a third party not under a confidentiality obligation to the disclosing party, (d) is developed by the receiving party independently of and without reliance on confidential or proprietary information provided by the disclosing party, or (e) the receiving party is advised by counsel is required to be disclosed by law.

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 the Service, and all improvements, changes, enhancements and components thereof, and all other proprietary materials of Instructure and/or its licensors that are delivered, provided or used by Instructure in the course of performing the Services, as well as 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 any underlying source code and object code related thereto.

13. **Customer Owned Content.** As between Instructure and Customer, any and all information, including any course content created by Customer, data, results, plans, sketches, text, files, links, images, photos, videos, audio files, notes or other materials uploaded by a User through the Service remain the sole property of Customer ("Customer Content"). Instructure may use the Customer Content to provide and improve the Services in accordance with this Agreement or Customer's instructions.

14. **Feedback.** Instructure may send surveys to Users (no more than once each year) to solicit feedback regarding performance of the Service and suggestions for improvements (such feedback will be stored in anonymous and aggregate form). Customer, and each User (to the extent Customer has such right), hereby grants Instructure an irrevocable, royalty-free perpetual license to use all feedback and suggestions regarding the Service.

15. **Contract Term.** Time is of the essence. The Contract Term shall be for a period of three (3) years commencing on the date the Contract is fully executed by the APS Purchasing Agent and expiring on the last day of the thirty-sixth (36) month following the execution of the Contract by the APS Purchasing Agent, unless otherwise stated in the contract. The Order Form

The Contract Term may be renewed, one (1) year at a time ("Renewal Contract Term"), upon mutual agreement of the parties, at any time prior to thirty (30) days following expiration of the Contract Term, and such Renewal Contract Term shall be effective immediately upon expiration of the latest Renewal Contract Term. The parties shall have this right of renewal for up to but not more than two (2) Renewal Contract Terms, making a maximum of three (3) Contract Terms.

16. **Termination for Cause, Including Breach and Default; Cure.** The Contract shall remain in force for the Initial Contract Term or any Subsequent Contract Term(s) and until APS determines that all of the following requirements and conditions have been satisfactorily met: APS has accepted the Work, and thereafter until the Contractor has met all requirements and conditions relating to the Work under the Contract Documents, including warranty and guarantee periods. However, APS shall have the right to terminate this Contract sooner if the Contractor is in breach or default or has failed to perform satisfactorily the Work required, as determined by APS in its discretion.

If APS determines that the Contractor has failed to perform satisfactorily, then APS will give the Contractor written notice of such failure(s) and the opportunity to cure such failure(s) within at least fifteen (15) days before termination of the Contract takes effect ("Cure Period"). If the Contractor fails to cure within the Cure Period or as otherwise specified in the notice, the Contract may be terminated for the Contractor's failure to provide satisfactory Contract performance. Upon such termination, the Contractor may apply for compensation for Contract services satisfactorily performed by the Contractor, allocable to the Contract and accepted by APS prior to such termination unless otherwise barred by the Contract ("Termination Costs"). In order to be considered, such request for Termination Costs, with all supporting documentation, must be submitted to APS Project Officer within fifteen (15) calendar days after the expiration of the Cure Period. APS may accept or reject, in whole or in part, the application for Termination Costs and notify the Contractor of same within a reasonable time thereafter.

If APS terminates the Contract for default or breach of any Contract provision or condition, then the termination shall be immediate after notice from APS to the Contractor (unless APS in its discretion provides for an opportunity to cure) and the Contractor shall not be permitted to seek Termination Costs.



Upon any termination pursuant to this section, the Contractor shall be liable to APS for all costs incurred by APS after the effective date of termination, including costs required to be expended by APS to complete the Work covered by the Contract, including costs of delay in completing the Work or the cost of repairing or correcting any unsatisfactory or non-compliant work performed or provided by the Contractor or its subcontractors. Such costs shall be either deducted from any amount due the Contractor or shall be promptly paid by the Contractor to APS upon demand by APS. Additionally, and notwithstanding any provision in this Contract to the contrary, the Contractor is liable to APS, and APS shall be entitled to recover, all damages to which APS is entitled by this Contract or by law, including, and without limitation, direct damages, indirect damages, consequential damages, delay damages, replacement costs, refund of all sums paid by APS to the Contractor under the Contract and all attorney fees and costs incurred by APS to enforce any provision of this Contract.

Except as otherwise directed by APS in the notice, the Contractor shall stop work on the date of receipt of notice of the termination or other date specified in the notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims. Any purchases after the date of termination contained in the notice shall be the sole responsibility of the Contractor. For a period of six (6) months following expiration or termination, Customer may export Customer Content through API or by using the export features within the Service.

**17. Suspension of Service.** Instructure may immediately suspend the Service and remove applicable Customer Content if Customer and/or its Users have violated a law or the terms of this Agreement. Instructure may try to contact Customer in advance, but it is not required to do so. In the event Instructure suspends the Service pursuant to this Section 17, Instructure shall limit such suspension to the offending content and/or User(s).

**18. Infringement.** If a third party claims the Service infringes that party's patent, copyright or other proprietary right, Instructure will defend Customer against that claim at Instructure's expense and pay all costs, damages, and attorney's fees, that a court finally awards or that are included in a settlement approved by Instructure, provided that Customer: (a) promptly notifies Instructure in writing of the claim; and (b) allows Instructure to control, and cooperates with Instructure in, the defense and any related settlement. If such a claim is made, Instructure may, by mutual agreement, continue to enable Customer to use the Service or to modify it such that it becomes non-infringing. The infringement indemnity obligations in this Section 18 do not apply to the extent the infringement claim arises from (a) any technology not provided by Instructure or otherwise identified by Instructure in writing as interoperable, (b) use of the Service other than in accordance with this agreement and the applicable Services documentation, (c) the Customer Content, and/or (d) modification or alteration to the Services by anyone other than Instructure. If a third party claims that any part of the Customer Content infringes or violates a patent, trademark, trade secret, copyright or other intellectual property right, or there are third-party claims arising out of Customer's breach of this Agreement, Customer will defend Instructure against that claim at Customer's expense and pay all costs, damages, and attorney's fees, that a court finally awards or that are included in a settlement approved by Customer, provided that Instructure: (a) promptly notifies Customer in writing of the claim; and (b) allows Customer to control, and cooperates with Customer in, the defense and any related settlement.

**19. General.** Any notice by a party under this Agreement shall be in writing and either personally delivered, delivered by facsimile or sent via 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 19. A copy of all notices to Instructure shall be sent to: Instructure, Inc., 6330 South 3000 East, Ste. 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. Amendments to this Agreement must be made in writing and signed by both parties unless otherwise specified in the Agreement.

**EXHIBIT I**  
**CERTIFICATE(S) OF INSURANCE**



**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)  
7/18/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER ABD Insurance & Financial Services 450 Sansome Street, #300 San Francisco, CA 94111  www.theabdteam.com		CONTACT NAME: Amy Baird PHONE (A/C No. Ext): (206) 866-6722 FAX (A/C No.): (206) 788-8989 E-MAIL ADDRESS: amy.baird@theabdteam.com	
INSURED Instructure, Inc. 6330 South 3000 East Suite 700 Salt Lake City UT 84121		INSURER(S) AFFORDING COVERAGE INSURER A: Great Northern Insurance Company NAIC# 20303 INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	

**COVERAGES** CERTIFICATE NUMBER: 36736844 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		36027222	4/1/2017	4/1/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A			<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 RE: Agreement 40FY17 Learning Management System for APS

<b>CERTIFICATE HOLDER</b> Arlington Public Schools 1426 N Quincy St Arlington VA 22207	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE Rod Sockolov
---	--

**EXHIBIT J**  
**NEGOTIATED ITEMS LIST**

Negotiations Items for Instructure

Request for Proposals (RFP) #40FY17 Learning Management System for Arlington Public Schools

- mt 1. Instructure shall participate in an annual evaluation of the program to be completed by the APS Project Officer.
- 

*Initial Negotiation Request from APS:*

Instructure shall provide access to the implemented Canvas solution to each student user of APS for the annual subscription fee of \$3.75 in year 1, and in the first two contract renewal periods (years 2 and 3), and at the annual subscription fee of \$3.80 per student for the third contract renewal period (year 4) and at the annual subscription fee of \$3.95 per student for the fourth contract renewal period (year 5).

- mt 2. *Instructure Counter Offer:*  
Instructure shall provide access to the implemented Canvas solution to each [student] user of APS for the annual subscription fee of \$3.75 for years 1-5.
- 

*Initial Negotiation Request from APS:*

Instructure shall provide access to the implemented Canvas solution to all certified staff at no cost to APS during the initial term of the contract (year 1). During succeeding contract renewal periods, Instructure shall provide all certified staff with access to Canvas for the annual subscription fee of \$2.00 per certified staff member in years 2, 3, 4 and 5.

- mt 3. *Instructure Counter Offer:*  
Instructure shall provide access to the implemented Canvas solution to all certified staff for \$3.75 for the first school year of the contract and at no cost to APS for years 2 through 5.
- 

*Initial Negotiation Request from APS:*

Instructure shall provide all services as requested in the RFP and as proposed in its proposal response for the Annual Professional Development for the annual cost of \$80,000 for year 1 of the contract, and at the annual rate of 10% of subscription fees plus on-site training at a daily rate of \$2,500 per school site in years 2, 3, 4 and 5. Note not all school sites may require on-site training each year.

*Instructure Counter Offer:*

Instructure shall provide all services as requested in the RFP and as proposed in its proposal response for the Annual Professional Development for the annual cost of \$80,000 for year 1 of the contract. Annual subscription training shall be 10% [of subscription fees] for year 1 of the contract, and 5% [of subscription fees] for years 2-5.

On-Site face to face training may be purchased at \$2,500/day. This offer is limited to 5 individual days of training for each year of the contract. Additional training days may still be purchased at \$2,500 per day however they must be purchased in 3-day blocks and delivered in 3 consecutive days.

W 4.

APS Counter Offer to Instructure.

Instructure shall provide all services as requested in the RFP and as proposed in its proposal response for the **Annual Professional Development** for the annual cost of **\$25,000 for year 1** of the contract (**10 days of training at \$2,500 per day**). Annual subscription training shall be **10% of subscription fees for year 1** of the contract, and **5% of subscription fees for years 2-5.**

Instructure shall provide the **24x7 + Tier 1 support All Certified Staff and teachers** as referenced in its proposal submission for a select number of users for the annual fees outlined in the table below:

Contract Terms	Initial Term 1 (2017-2020)			Renewal Option 1 (2020-2021)	Renewal Option 2 (2021-2022)
	Y1	Y2	Y3	Y4	Y5
24x7 + Tier 1	\$32,161.50	\$28,899.00	\$28,899.00	\$28,899.00	\$28,899.00

On-Site face to face training may be purchased at **\$2,500/day**. This offer is limited to 5 individual days of training for each year of the contract. Additional training days may still be purchased at \$2,500 per day however they must be purchased in 3-day blocks and delivered in **3 consecutive days**.

Initial Negotiation Request from APS:

Instructure shall provide all included services associated with the **Premium Implementation Services package** with a **4-8 weeks' implementation** window for the total cost of **\$38,000**.

W 5.

Instructure Counter Offer:

Instructure shall provide all included services associated with the **Premium Implementation Services package** with a **4-8 weeks' implementation** window for the total cost of **\$40,000**.

Instructure is requested to provide its best and final offer (**BAFO**) regarding the proposed Fees Schedule Section XII. Appendix F.

BAFO Descriptions	Contract YR 1	Contract YR 2	Contract YR 3	Contract YR 4	Contract YR 5
Student Subscription Fee	\$3.75	\$3.75	\$3.75	\$3.75	\$3.75
Certified Staff Subscription Fee	\$3.75	\$0.00	\$0.00	\$0.00	\$0.00
Annual PD per day (limit 5)	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00
Annual PD per day (beyond 5 day limit – 3 day consecutive required)	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00
Annual Subscription Training (% of subscriptions per year)	10%	5%	5%	5%	5%

**Payment Terms:**

**Subscription Payment Terms:** Customer agrees to pay to Instructure the applicable fees set forth on this order form. For any Year 1 recurring costs, training and implementation fees, Customer must pay such amount to Instructure Net 30 on the date of this order. For each subsequent term, Instructure will invoice Customer 30 days prior to the beginning of such term and Customer must pay such invoice within 30 days of receipt. Trainings will expire at 12 months from the later of the contract start date or the subscription start date, specific to this order form, unless otherwise specified by other start and end dates in the order above. All other contract items subject to expiration will be billed 30 days prior to expiration and due subject to standard payment terms unless otherwise explicitly stated elsewhere in this agreement.

**Implementation/Training Payment Terms:** Invoice Implementation 50% upon signing Net30, remaining 50% will be invoiced when completed Net30. Invoice On-site Training as completed, training has an expiration date of a year per payment terms. Come expiration date, any remaining training will be invoiced in full Net30.

**ACKNOWLEDGEMENT AND AGREEMENT OF:**

Organization: Instructure Inc.  
Authorized  
Signature: *Matthew Searle*  
Printed Name: Matthew Searle

Title: *Director, Real Desk*  
Date: *6/22/2017*

**EXHIBIT K**  
**INSTRUCTURE ORDER FORM**

Customer Information

Customer:	Arlington Public Schools	Billing Contact:	
Contact:	David J. Webb	Billing Phone:	
Phone:	(703) 228-6127	Billing Email:	
Email:	david.webb@apsva.us		
Address:	1426 N Quincy St		
City:	Arlington	P.O. Required?	
State/Province:	Virginia	P.O. Number:	
Zip/Postal Code:	22207		
Country:	United States	State Sales Tax Exempt?	

Recurring

Description	Metric	Category	Start Date	End Date	Qty	Price	Ext. Price
Canvas Cloud Subscription	User	Cloud SaaS Subscription	7/1/2017	6/30/2018	28,588	USD 3.75	USD 107,205
Canvas Subscription Training - Annual Unlimited	% of subscription (Min \$3,000)	Training	7/1/2017	6/30/2018	1	USD 10,721.00	USD 10,721
24x7 Tier 1 Support (Faculty Only)	30% of Subscription (Min \$3500)	Support	7/1/2017	6/30/2018	1	USD 32,162.00	USD 32,162
Year 1 Sub-Total							USD 150,088
Canvas Cloud Subscription	User	Cloud SaaS Subscription	7/1/2018	6/30/2019	25,888	USD 3.75	USD 96,330
Canvas Subscription Training - Annual Unlimited	% of subscription (Min \$3,000)	Training	7/1/2018	6/30/2019	1	USD 4,817.00	USD 4,817
24x7 Tier 1 Support (Faculty Only)	30% of Subscription (Min \$3500)	Support	7/1/2018	6/30/2019	1	USD 28,899.00	USD 28,899
Year 2 Sub-Total							USD 130,046
Canvas Cloud Subscription	User	Cloud SaaS Subscription	7/1/2019	6/30/2020	25,888	USD 3.75	USD 96,330
Canvas Subscription Training - Annual Unlimited	% of subscription (Min \$3,000)	Training	7/1/2019	6/30/2020	1	USD 4,817.00	USD 4,817

Description	Metric	Category	Start Date	End Date	Qty	Price	Ext. Price
24x7 Tier 1 Support (Faculty Only)	30% of Subscription (Min \$3500)	Support	7/1/2019	6/30/2020	1	USD 28,899.00	USD 28,899
Year 3 Sub-Total							USD 130,046
Canvas Cloud Subscription	User	Cloud SaaS Subscription	7/1/2020	6/30/2021	25,688	USD 3.75	USD 96,330
Canvas Subscription Training - Annual Unlimited	% of subscription (Min \$3,000)	Training	7/1/2020	6/30/2021	1	USD 4,817.00	USD 4,817
24x7 Tier 1 Support (Faculty Only)	30% of Subscription (Min \$3500)	Support	7/1/2020	6/30/2021	1	USD 28,899.00	USD 28,899
Year 4 Sub-Total							USD 130,046
Canvas Cloud Subscription	User	Cloud SaaS Subscription	7/1/2021	6/30/2022	25,688	USD 3.75	USD 96,330
Canvas Subscription Training - Annual Unlimited	% of subscription (Min \$3,000)	Training	7/1/2021	6/30/2022	1	USD 4,817.00	USD 4,817
24x7 Tier 1 Support (Faculty Only)	30% of Subscription (Min \$3500)	Support	7/1/2021	6/30/2022	1	USD 28,899.00	USD 28,899
Year 5 Sub-Total							USD 130,046
Total							USD 670,272

Non-Recurring

Description	Metric	Category	Start Date	End Date	Qty	Price	Ext. Price
Premium Implementation	Per Implementation	Implementation			1	USD 40,000.00	USD 40,000
Onsite Training (1 Day) Travel Expenses Included	Per Each	Training			5	USD 2,500.00	USD 12,500
Onsite Training (3 Day) Travel Expenses Included	Per Each	Training			1	USD 7,500.00	USD 7,500
Onsite Training (2 Day) Travel expenses to be Invoiced separately	Per Each	Training			1	USD 5,000.00	USD 5,000
Year 1 Sub-Total							USD 65,000
Total							USD 65,000

**Grand Total:** USD 735,272.00

Canvas

**Deliverables**

Migration of up to 5,000 courses from currently supported formats\*. For content that is not supported, Instructure will provide best practices on how to migrate into Canvas, if available.

The following content packages are supported for bulk import into Canvas: Angel, Blackboard 6/7/8/9, Blackboard Vista/CE, WebCT 6+ Course, Common Cartridge 1.0/1.1/1.2/1.3 Package, D2L, Moodle 1.9/2.x .zip file

As needed, your implementation will include the following:

Expertise and best practices on any SIS import and automation work with Canvas. This includes access to API documentation and consulting with client resources on the client initiated strategy.

Assistance in configuring and testing authentication integration for currently supported technologies including LDAP, SAML, and CAS. Instructure will take a consultant role on the effort and guide client resources to complete the integration.

Through the Theme Editor, branding for Canvas including application of a color scheme and logos for the top navigation and login page.

Access to guides, public courses, and best practices documentation.

Documented best practices for driving high Canvas adoption and usage.

Implementation Consultant to take an active project management role by providing a customized project plan, assigning resources to tasks, identifying critical path, and scheduling regular project check-in calls with client staff.

Customized project plan to complete all tasks in eight to ten weeks. May extend to a total of 24 weeks as necessary to accommodate institutional needs and resource availability.

Up to two onsite visits by the Implementation Consultant and Customer Success Manager. These visits will facilitate needs discovery and execution of the implementation. Lead institution marketing activities with to drive adoption.

One-hour consult on the Canvas organizational structure for K12

Canvas User

**Description**

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

**Duration:** Instructure will commence the provision of support, subscription training and cloud subscription services on the date that is the later of: (i) ninety days prior to the Start Date; and (ii) the date of the last signature on this Order Form ("Effective Date"). This order begins on the initial date listed above under Term, and continues until the last date listed above, unless sooner terminated under the Agreement. If Customer has purchased any third-party content under this order form, that content will be made available on the start date listed above.

**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>

The price associated with the order form is only available if executed no later than 7/31/2017

Notes

7/31/2017.



**Notes**

**Payment Terms:**

**Subscription Payment Terms:** Customer agrees to pay to Instructure the applicable fees set forth on this order form. For any Year 1 recurring costs, training and implementation fees, Customer must pay such amount to Instructure Net 30 on the date of this order. For each subsequent term, Instructure will invoice Customer 30 days prior to the beginning of such term and Customer must pay such invoice within 30 days of receipt. Trainings will expire at 12 months from the later of the contract start date or the subscription start date, specific to this order form, unless otherwise specified by other start and end dates in the order above. All other contract items subject to expiration will be billed 30 days prior to expiration and due subject to standard payment terms unless otherwise explicitly stated elsewhere in this agreement.

**Implementation/Training Payment Terms:** Invoice Implementation 50% upon signing Net30, remaining 50% will be invoiced when completed Net30. Invoice On-site Training as completed, training has an expiration date of a year per payment terms. Come expiration date, any remaining training will be invoiced in full Net30.

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.

**Arlington Public Schools**

Signature:	<u>David J. Webb</u>
Name:	<u>David J. Webb, C.P.M.</u>
Title:	<u>Director / Purchasing Agent</u>
Date:	<u>July 21, 2017</u>

**Instructure, Inc.**

Signature:	<u>Matthew Seale</u>
Name:	<u>Matthew Seale</u>
Title:	<u>Director Deal Desk</u>
Date:	<u>7/21/2017</u>