

LICENCE AGREEMENT FOR
INSTRUCTURE SOFTWARE AS A SERVICE AND OTHER SERVICES PROVIDED BY
INSTRUCTURE (PRODUCT)

INSTRUCTURE GLOBAL LIMITED, a company whose registered office is at Birchin Court, 5th Floor, 19-25 Birchin Lane, London EC3V 9DU (**"Provider"**)

Offers to you, (the **"Institution"**), permission to access the Product and Documentation and use such Product and Documentation only on the terms and conditions as set out in this Licence.

Acceptance of this Licence will be by receipt of the Order Confirmation Email (as defined below) by the Provider. Acceptance shall be acceptance of all terms and conditions of this Licence and no variation or counter offer will be accepted by the Provider. In the event that no or partial compliance is made as to the manner or form described for acceptance, no licence will be granted and any Quote provided by the Provider (as defined below) is deemed withdrawn.

BACKGROUND

- A. The Provider is willing and able to make available to Institution the software as a service and other services provided thereby as more particular detailed in the Order (**"Product"**) along with any associated documentation describing the Product and providing user instructions for the same which are made available by the Provider with the Product (**"Documentation"**). The Provider shall: (a) deploy all updates and upgrades to the Product to the Subscribing Institution that Provider provides to its customers generally for no additional charge; and (b) provide support (**"Support"**) pursuant to the following specific terms updated from time-to-time by Provider: <https://www.instructure.com/canvas/support-terms>
- B. The Product and Documentation and all intellectual property rights in each of the same are owned or duly held by the Provider.
- C. The Provider has agreed with JSL (as defined below) to offer in accordance with the Offer (in Licence Annex 1) to provide access to and permit use of and the Product and Documentation ordered by the Institution in accordance with this Licence.
- D. The Provider is under a separate and binding contract agreed with JSL to use this Licence as the model for any agreement between the Provider and certain Institutions subscribing for access and use to the Products and Documentation (**"Contract"**).

IT IS AGREED AS FOLLOWS

1 DEFINITIONS

In this Licence, the following terms shall have the following meanings:

"Access Credentials"	means passwords, user names and any other information necessary to access the Product and Documentation or by such other authentication means reasonably agreed between the Provider and the Institution.
"Applicable Law"	means all applicable laws, statutes, regulations, directives, legislative enactments, orders, binding decisions of a competent court or tribunal, rules, regulatory policies, guidelines, codes, permits and licences and other instruments having the force of law, which are in force from time to time during the term of the Agreement to which a party and/or any Processing of Personal Data is subject from time to time.
"Authorised User"	means an individual who is authorised by the Institution to have access to the Product and Documentation and who is: • a current student registered with the Institution (including undergraduates and postgraduates); • a contractor of the Institution; or • a member of staff of the Institution (whether permanent or temporary, including retired members of staff and any teacher who teaches students registered with the Institution).
"Chest Website"	means the online subscription ordering service developed by Jisc at www.chest.ac.uk .
"Commercial Use"	means use for the purpose of earning monetary reward or generating profit (whether by or for the Institution or an Authorised User) by means of the sale, resale, loan, transfer, licence, hire or other form of exploitation of the Product or Documentation.,
"Controller"	has the meaning given to it in the UK GDPR.

"Data Protection Legislation"	means any Applicable Law, relating to the Processing of Personal Data and privacy to which a party is subject for the purposes of this Agreement, and including (a) the Privacy and Electronic Communications Regulations 2003 (as amended by SI 2011 no. 6), the Data Protection Act 2018 and the General Data Protection Regulation 2016/679 (EU GDPR) as each is amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586) and incorporated into UK law under the UK European Union (Withdrawal) Act 2018, as amended, to be referred to as PECR, DPA 2018 and the UK GDPR respectively; and (b) any code of practice or guidance published by the ICO or European Data Protection Board from time to time.
"Documentation"	has the meaning given in Recital A to this Licence.
"Educational Purposes"	means education, teaching, tuition, training, instruction, learning, private study and/or research, including distance learning and teaching.
"Eligible Body"	means further and higher education institutions, academic affiliates and research councils in the UK as listed at https://subscriptionsmanager.jisc.ac.uk/about/jisc-banding from time to time.
"End Date"	means the end date of the subscription for the Product.
"ICO"	means the UK Information Commissioner's Office (or any successor or replacement).
"Institution Content"	means any content made available or shared by the Subscribing Institution and/or its Authorised Users via the Product including documents, data, information, materials (but excluding, for the avoidance of doubt, the Provider's Documentation).
"JSL"	means Jisc Services Limited (Company Number 2881024), a company limited by guarantee incorporated in England and Wales whose registered office is at 4 Portwall Lane, Bristol BS1 6NB.
"Licence Fee"	means the fee payable for access to and use during the Subscription Period of the Product and Documentation as set out in this Licence.

"Offer"	means the offer negotiated with the Provider forming the basis on which the Provider will provide its Products to Institutions.
"Order"	means the form(s) completed and submitted by the Institution through the Chest Website in relation to a Product to confirm that: (a) it wishes to proceed to purchase a subscription for a Product on the basis of a Quote; and (b) it accepts the terms and conditions of the Licence.
"Order Confirmation Email"	means the email from JSL to the Provider - after the Institution and the Provider engaged in discussions to negotiate the details of service provision - confirming: (a) that the Institution has placed the relevant Order for a subscription to a Product on the basis of the Quote referred to in the email confirmation; (b) the start and end date of the envisaged Subscription Period; and (c) that in submitting its Order, the Institution has agreed to the terms and conditions of this Licence.
"Permitted Use"	means use in accordance with Clause 3 .
"Personal Data"	has the meaning set out in the UK GDPR and for the purposes of this Licence.
"Processing"	has the meaning set out in the UK GDPR (and Process , Processes and Processed will be construed accordingly).
"Processor"	has the meaning set out in the UK GDPR.
"Product"	has the meaning given in Recital A to this Licence.
"Prohibited Act"	means, directly or indirectly (a) to offer, promise or give any person working for or engaged by any party to the Licence a financial or other advantage to: (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Licence; (c) committing any offence: (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); (ii) under legislation or common law concerning fraudulent acts; (iii) defrauding, attempting to defraud or conspiring to defraud; (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such

	activity, practice or conduct had been carried out in the UK.
“Service Levels”	means (where applicable) the service levels, if any, to which the Product is to be provided, as set out in Licence Schedule 2.
“Start Date”	means the start date of the subscription for the Product.
“Subscribing Institution”	means an Institution that has discussed the details of the desired Product(s) with the Provider, submitted an Order for such Product(s), whose Order has been approved and accepted by the Provider and who acknowledged and agreed to the contents of this Licence.
“Subscription Period”	means the period from and including the Start Date up to and including the End Date.
“Subscription Year”	means the period from the Start Date until the expiry of the first Calendar Year, and each subsequent Calendar Year thereafter during the Subscription Period.
“Term”	means the term of this Licence in accordance with Clause 10.
“Working Day”	means a day other than a Saturday, Sunday or public holiday in England.

- 1.1 Clause, Schedule and Annex headings shall not affect the interpretation of this Licence.
- 1.2 The Schedules and Annexes form part of this Licence and shall have effect as if set out in full in the body of this Licence. Any reference to this Licence includes the Licence Schedules and Licence Annexes.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.5 A reference to writing or written includes email and any written submission made on the Jisc Ordering Platform.
- 1.6 Any words following the terms “including”, “include”, “in particular”, “for example” or any similar expression shall be construed as illustrative and shall not limit the sense of the words term preceding those terms.
- 1.7 References to web addresses in this Licence refer to the current web address, and any updated or replacement content/address.

- 1.8 The Quote, Order and Order Confirmation Email shall be expressly incorporated into and form part of this Licence. However, the Order Confirmation Email shall control over the Quote and the Order. To the extent there is any conflict between the Order Confirmation Email and this Licence or any Addendum related thereto, such conflict shall be resolved pursuant to the following order of precedence: (i) the Order Confirmation Email, (ii) this Licence.

2 ORDERING PROCEDURE AND LICENCE GRANT

- 2.1 The Subscribing Institution has discussed its requirements with the Provider and agreed a specification or the Product. Based on such specification, the Provider has provided a Quote to the Subscribing Institution for the Licence Fees due for a subscription to the Product under this Licence. The Subscribing Institution has accepted the Quote by placing an Order for the Product the Chest Website to confirm that: (a) it wishes to proceed to purchase a subscription for a Product on the basis of a Quote; and (b) it accepts the terms and conditions of the Licence.

- 2.2 By completing the steps specified under Section 2.1. above, Provider grants to the Subscribing Institution a non-exclusive, non-transferable right during the Subscription Period only to:

2.2.1 access and make Permitted Use of the Product and Documentation (including Permitted Use for Educational Purposes); and

2.2.2 permit Authorised Users to access and make Permitted Use of the Product and Documentation (including Permitted Use for Educational Purposes)

in each case, subject to any applicable Usage Limits specified in the Offer and the restrictions in Clause 4.

3 RESTRICTIONS ON USE

- 3.1 Subscribing Institution shall not (and shall not permit its Authorised Users to): (a) sell, resell, rent, lease, lend, sublicense, distribute, assign, timeshare, or otherwise transfer or provide access to the Product and the Documentation to any third party except as expressly authorized under this Agreement; (b) use or access the Product and the Documentation for competitive purposes; (c) copy, modify, adapt, or create derivative works from any feature, function, interface, or graphic in the Product; (d) remove or modify Provider's policies or proprietary markings displayed within the Product and the Documentation; (e) use, interfere with, disrupt or circumvent the integrity, security or performance of the Product, including by probing, scanning, or testing any Provider system or network or its security or authentication measures; (f) store or transmit any malicious code; (g) permit direct or indirect access to or use of any Product, Documentation or Institution Content in a way that circumvents a contractual usage limit, if applicable; (h) attempt to gain unauthorised access to the Product, its related systems

or networks or Third-Party Services; (i) use the Product or any third-party services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; or (j) use the Product to distribute software or tools that gather information, distribute advertisements, or engage in conduct that may result in retaliation against Provider or its data, systems, or networks. Use and access to the Application Program Interface ("API") will be subject to Provider's API Policy available at <https://www.instructure.com/policies/api-policy>.

- 3.2 Subscribing Institution shall have sole responsibility for Institution Content and use of the Product by its Authorised Users in compliance with this Licence and the Acceptable Use Policy provided within the Product and available at <https://www.instructure.com/policies/acceptable-use> (the "AUP"). Subscribing Institution agrees to reasonably assist Provider in connection with an Authorised User's adherence to the AUP. Subscribing Institution further agrees to: (a) maintain the confidentiality and security of passwords and abide by any access protocols or credential requirements set by Provider; (b) obtain from its Authorised Users any consents necessary under this Licence or to allow Provider to provide the service; (c) use commercially reasonable efforts to prevent unauthorised access to or use of the Product; (d) notify Provider promptly of any such unauthorised access or use of which it learns; (e) cooperate reasonably in all respects with respect to implementation, access, support, and maintenance of the Product; and (f) ensure that a current email address is associated with each Authorised User's account.

- 4 [Intentionally omitted]

5 RESPONSIBILITIES OF THE PROVIDER

- 5.1 The Provider shall during the Subscription Period make the Product and Documentation available through the relevant Product Access Route as specified in the Quote to the Subscribing Institution and its Authorised Users for access and use for the Permitted Use in accordance with this Licence.
- 5.2 In providing the Product, the Provider shall ensure the Service Levels are achieved.
- 5.3 Where required and depending on the Product Access Route, provide, set-up and/or activate the relevant Access Credentials necessary for the Subscribing Institution and/or its Authorised Users to access the Product and Documentation through the Provider Authentication.
- 5.4 Where the Product Access Route specifies the Product is provided as a service, the Provider shall during the Subscription Period:

- 5.4.1 allocate and use commercially reasonable resources (including, servers and communications and network equipment) to provide the Product in accordance with the terms of this Licence; and
 - 5.4.2 subject to routine maintenance (which the Provider shall use reasonable endeavours to conduct outside Support Hours and which the Provider shall in any event conduct in such a manner to minimise disruption to Authorised Users of the Product), provide access to the Product on a continuous and uninterrupted basis and shall, on any interruption or suspension of the Product, restore the Product as soon as reasonably practicable.
- 5.5 During the Subscription Period and in respect of Product and Documentation made available under Clause 5.1, the Provider shall:
- 5.5.1 as a minimum and save as otherwise specified in the Offer, provide support to Authorised Users by e-mail or by a telephone help desk, and assist Authorised Users with general enquiries in connection with the Product and Documentation, including relating to access, use, functionality and content of the Product and Documentation, during the Support Hours, and shall use reasonable endeavours to answer any such query - further rules governing the support services shall be found at the following link: <https://www.instructure.com/canvas/support-terms>;
 - 5.5.2 shall provide to the Subscribing Institution Documentation relating to the Product which is reasonably sufficient to enable its Authorised Users to access and make use of the Product, which the Subscribing Institution shall be entitled to copy and distribute to its Authorised Users only, provided such documents are copied in full and such copies include an acknowledgement of the Provider as the licensor of the Documentation; and
 - 5.5.3 shall provide the Subscribing Institution with a monthly report detailing its performance in respect of the Service Levels. Such reports shall be available on a self-serve basis.

6 RESPONSIBILITIES OF THE PROVIDER: AUTHORISED USERS AND DATA PROTECTION

- 6.1 The Provider shall not require Authorised Users to enter into an end user licence agreement or other terms and conditions of use in connection with their access to or use of the Product and Documentation under this Licence or otherwise impose any restrictions on an Authorised User's use of the Product and Documentation other than provided in this Licence. No such end user licence agreement or terms or conditions or restrictions sought to be imposed shall be of any effect.

- 6.2 The Provider shall not, and shall not seek to, Process Personal Data in relation to any Authorised User other than as is reasonably and properly required for the purposes of performing its obligations under this Licence, and shall fully comply with its obligations under the applicable Data Protection Legislation in relation to the Processing of any such Personal Data.
- 6.3 Where a party acts as a Controller in respect of any Personal Data Processed under or in connection with this Licence, it shall comply with its respective obligations under the Data Protection Legislation.

7 RESPONSIBILITIES OF INSTITUTION

- 7.1 The Subscribing Institution shall:

- 7.1.1 where the Product Access Route specified the Product is provided as a service:
- (i) timely provide all necessary details required by the Provider as specified in the Offer or otherwise as agreed between the Subscribing Institution and the Provider to enable the Provider to provide, set-up and activate the Access Credentials for authentication;
 - (ii) ensure Access Credentials are only provided to and used by the relevant Authorised User to which those Access Credentials are provided and take reasonable steps to prevent Authorised Users from providing such Access Credentials to anyone else;
- 7.1.2 use reasonable efforts to ensure that only Authorised Users are permitted access to the Product and Documentation;
- 7.1.3 inform the Authorised Users about the conditions of use of the Product and Documentation provided for in this Licence and to the extent that such terms apply to them, use reasonable efforts to ensure that all Authorised Users are made aware of and undertake to abide by the terms of this Licence.
- 7.2 The Subscribing Institution shall use reasonable efforts to monitor compliance with the terms of this Licence and shall promptly notify the Provider, providing full particulars (to the extent that it is not prohibited by law or contractual obligation from doing so), on becoming aware of any of the following:
- 7.2.1 any unauthorised access to or use of the Product and Documentation or unauthorised use of Access Credentials ; or
 - 7.2.2 any act or an omission by an Authorised User which gives rise to a breach of this Licence.

7.3 As soon as the Subscribing Institution is aware of any breach of the terms of this Licence, the Subscribing Institution shall:

7.3.1 take reasonable steps to investigate such breach for the purpose of ensuring that the relevant activity ceases and preventing any recurrence; and

7.3.2 if the Subscribing Institution considers this appropriate, take steps against the individual concerned in accordance with the Subscribing Institution's disciplinary procedure.

8 AGGREGATED STATISTICS/FEEDBACK

8.1 Notwithstanding anything to the contrary in this Licence, the Provider shall have the right to collect and analyse data and other information and/or feedback, in an aggregated or anonymized manner, including to compile statistical and performance information and/or feedback, relating to the provision, use, and performance of various aspects of the Product and related systems and technologies ("**Aggregated Statistics**"), and the Provider will be free (during and after the Subscription Period) to use the Aggregated Statistics to improve and enhance the Product and for other development purposes in connection with the Product. For the avoidance of doubt, as between the Provider and Subscribing Institution, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by the Provider.

9 FEES AND PAYMENT

9.1 The Licence Fee payable by the Institution for the Products shall be calculated in accordance with the Offer and shall be as confirmed in the Order Confirmation Email. The Subscribing Institution shall pay to the Provider (via JSL) the Licence Fee in the amounts set out in the Order Confirmation Email. Unless otherwise agreed, the Licence Fee shall be paid annually in advance, thirty (30) days after receipt of an invoice. All fees owed by Subscribing Institution are exclusive of, and Subscribing Institution shall pay all applicable sales, use, VAT, excise, withholding, and other taxes that may be levied in connection with this Agreement. The Provider reserves the right (in addition to any other rights or remedies the Provider may have) to discontinue the provision of the Product and to suspend all Authorised Users' and Subscribing Institution's access to the Product and Documentation if any amounts are overdue until such amounts are paid in full. Except as expressly set forth in this Licence, all Licence Fees are non-refundable.

10 TERM AND TERMINATION

- 10.1 Subject to Clauses 10.2 to 10.4, this Licence shall commence upon the Start Date, and shall continue, unless terminated earlier in accordance with this Clause 10, until the expiry of the Subscription Period.
- 10.2 Without affecting any other right or remedy available to it, either party may terminate this Licence with immediate effect by giving written notice to the other party if:
- 10.2.1 the other party becomes insolvent, admits insolvency or a general inability to pay its debts as they become due, has appointed a receiver or administrative receiver over it or over any part of its undertaking or assets, passes a resolution for winding up other than a bona fide plan of solvent amalgamation or reconstruction, files a petition for protection under any applicable bankruptcy code, or has filed against it or becomes subject to an insolvency petition in bankruptcy or an order to that effect;
- 10.2.2 the other party commits a material or persistent breach of any term of this Licence which breach is irremediable or, if such breach is remediable, fails to remedy that breach within a period of sixty (60) days after being notified in writing to do so.
- 10.3 Without affecting any other right or remedy available to it, the Subscribing Institution may terminate this Licence with immediate effect by giving written notice to the Provider if the Provider:
- 10.3.1 has committed a breach of Clause 5 and fails remedy that breach within a period of sixty (60) days after being notified in writing to do so; or
- 10.3.2 is no longer entitled to make the Product available for access and Permitted Use by the Institution and Authorised Users.
- 10.4 Without affecting any other right or remedy available to it, the Provider may terminate this Licence with immediate effect by giving written notice to the Subscribing Institution if the Subscribing Institution:
- 10.4.1 fails to pay any undisputed amount due under this Licence on the due date for payment and remains in default for not less than sixty (60) days after being notified in writing to make such payment;
- 10.4.2 wilfully and repeatedly infringes, or wilfully permits its Authorised Users repeatedly to infringe, the copyright in the Product or Documentation; or
- 10.4.3 has committed a breach of Clause 3 or Clause 7 and fails to remedy that breach within a period of sixty (60) days after being notified in writing to do so.

11 CONSEQUENCES OF TERMINATION

- 11.1 On expiry or termination of this Licence for any reason and subject to any express provisions set out elsewhere in this Licence:
- 11.1.1 all rights and licences granted pursuant to this Licence shall cease and the Subscribing Institution shall cease to access and use, and permit access to and use of, the Product and Documentation;
 - 11.1.2 the Provider shall cease to make available the Product and Documentation for access and use by the Subscribing Institution and Authorised Users, provided that the Subscribing Institution and/or its Authorised Users may retain and use any copies of the Documentation made by the Institution or Authorised Users in accordance with this Licence, subject to the terms of this Licence.
 - 11.1.3 where any Institution Content is stored by the Subscribing Institution in the Product, the Provider shall give the Institution or its Authorised Users continued access to the Product for a period of 30 days ("**Retrieval Period**") following the date of termination or expiry of this Licence for the purpose only of allowing the Subscribing Institution and/or Authorised Users to export such Institution Content, and after expiry of such Retrieval Period, the Provider may destroy or delete the Institution Content.
- 11.2 On any termination by the Institution under Clause 10.3, the Provider shall reimburse such part of the Licence Fee which has been paid by the Subscribing Institution and is in respect of any remaining part of the Subscription Period.
- 11.3 Any provision of this Licence that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Licence shall continue in force.
- 11.4 Termination or expiry of this Licence shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Licence which existed at or before the date of termination or expiry. For the avoidance of doubt, termination of the Contract between the Provider and JSL does not terminate this Licence.

12 INTELLECTUAL PROPERTY RIGHTS

- 12.1 The Subscribing Institution acknowledges that all copyright in the Product and Documentation are the exclusive property of the Provider or its licensors and that this Licence does not assign or transfer to the Institution any right, title or interest in such copyright except for the right to

access and use the Product and Documentation in accordance with the terms and conditions of this Licence.

- 12.2 Where the Product contains third party components or links thereto (which may services / software / platform made available by such third parties) which are subject to additional restrictions ("**Third-Party Services**"):

12.2.1 any Third-Party Software in the Product shall be distributed by the Provider in accordance with the applicable Third-Party Service licence terms and conditions as made available by the Provider to the Subscribing Institution;

12.2.2 the Subscribing Institution shall comply with the terms and conditions of any Third-Party Service licence made available by the Provider in accordance with Clause 12.2;

12.2.3 in the event of a conflict between an applicable Third-Party Service's license and the terms of this Licence, the Third-Party Service component's license will take precedence (but solely with respect to the Third-Party Service component(s) to which the license relates);

12.2.4 all intellectual property rights of third parties in relation to the Third-Party Service are the property of those third parties and nothing in this Licence purports to create, assign or transfer to the Subscribing Institution any right, title or interest in those rights except for the right to make reasonable use of the Third-Party Service as part of the Product in accordance with this Licence; and

12.2.5 the Provider does not control Third-Party Service or make any representations or warranties with respect to any Third-Party Service. In addition, the Provider shall not be responsible for Third-Party Service.

- 12.3 The Provider acknowledges that all proprietary and intellectual property rights in the Institution Content are the exclusive property of the Institution or its licensors or the Authorised Users and that this Licence does not assign or transfer to the Provider any right, title or interest in such Institution Content save that the Subscribing Institution shall grant to the Provider (or procure the grant to the Provider) all rights necessary for the Provider to access and use the Institution Content to the extent necessary to provide access to and use of and to ensure functionality of the Product in the manner provided for in this Licence.

- 12.4 For the avoidance of doubt, any and all intellectual property, know-how, technical information, proprietary processes, materials, methodologies, models, trade secrets, and modifications to any of the foregoing (incl. arrangement, analytical or search methods, metadata, etc.) owned, developed, first reduced to practise by Provider or its subcontractor(s) prior to the Subscription Period, developed independently of this Licence at any time or developed in connection with

this Agreement but not incorporating any data or information / material made available by the Subscribing Institution or its Authorised Users shall be regarded as the sole property of Provider. The Subscribing Institution or its Authorised Users shall have no right in, title or interest to such materials.

13 WARRANTIES, INDEMNITIES AND LIABILITY

13.1 The Provider warrants to the Institution that:

13.1.1 all intellectual property rights in the Product and Documentation are owned by or validly licensed to the Provider and that the Permitted Use of the Product and Documentation will not infringe any intellectual property of any person; and

13.1.2 the content of the Product and Documentation is not unlawful.

13.2 THE PROVIDER SHALL INDEMNIFY THE SUBSCRIBING INSTITUTION (FOR ITSELF AND FOR THE BENEFIT OF ANY AUTHORISED USERS) AGAINST ALL LIABILITIES, COSTS, EXPENSES, DAMAGES AND LOSSES (EXCLUDING ANY DIRECT, INDIRECT OR CONSEQUENTIAL LOSSES, LOSS OF PROFIT, LOSS OF REPUTATION AND ALL INTEREST, PENALTIES AND REASONABLE LEGAL COSTS (CALCULATED ON A FULL INDEMNITY BASIS) AND ALL OTHER REASONABLE PROFESSIONAL COSTS AND EXPENSES) SUFFERED OR INCURRED BY THE SUBSCRIBING INSTITUTION OR ITS AUTHORISED USERS ARISING OUT OF OR IN CONNECTION WITH ANY CLAIM BY OR ACTION BROUGHT BY ANY THIRD PARTY THAT THE ACCESS AND PERMITTED USE BY THE SUBSCRIBING INSTITUTION OR BY ANY AUTHORISED USER IN ACCORDANCE WITH THIS LICENCE INFRINGES THE INTELLECTUAL PROPERTY RIGHTS OF THAT THIRD PARTY.

13.3 In relation to any claim made or action brought to which Clause 13.2 applies, the Institution shall:

13.3.1 promptly give the Provider written notice;

13.3.2 give the Provider immediate and complete control of the defence and settlement of such claim provided that the Provider gives the Institution reasonable security in respect of any liability the Institution may have in respect of such claim or action and any indemnity to which the Institution may be entitled under Clause 13.2; and

13.3.3 give the Provider all reasonable assistance with the defence and settlement of such claim.

- 13.4 The indemnity in Clause 13.2 will not apply to the extent that the relevant claim arises as a result of any change, alteration or amendment in any way to any Product and/or Documentation by the Subscribing Institution or any of its Authorised Users.
- 13.5 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 PRODUCT (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY, LOSS OR INACCURACY OF DATA, RECORDS OR INFORMATION, COST(S) OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, AND ANY FAILURE OF DELIVERY OF THE SERVICE), EVEN IF THE OTHER PARTY HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES. EXCEPT FOR A PARTY'S INDEMNITY OBLIGATIONS IN THIS SECTION, EACH PARTY'S CUMULATIVE MAXIMUM LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) SHALL NOT EXCEED THE AMOUNT PAID BY SUBSCRIBING INSTITUTION UNDER THIS AGREEMENT WITHIN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO LIABILITY.
- 13.6 Provider warrants that: (a) it shall implement reasonable administrative, technical, and physical safeguards in an effort to secure its facilities and systems from unauthorised access and to secure the Institution Content; (b) the functionality or features of the Product and the support may change but will not materially degrade during the term of this Licence; and (c) the Product will materially conform to its then-current Documentation. As Subscribing Institution's sole and exclusive remedy for Provider's breach of the warranties set forth herein: (i) the Provider shall correct the non-conforming Product at no additional charge to Subscribing Institution; or (ii) in the event Provider is unable to correct such deficiencies after good-faith efforts, Provider shall refund Subscribing Institution amounts paid that are attributable to the defective Product from the date Provider received such notice. Subscribing Institution must report deficiencies in writing to Provider within thirty (30) days of their identification in order to receive any warranty remedies herein.
- 13.7 EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION AND TO THE MAXIMUM EXTENT OF THE LAW, PROVIDER AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, PROVIDER DOES NOT WARRANT: (A) THE RESULTS OR OUTCOMES FROM USE OF THE PRODUCTS PROVIDED OR THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE; OR (B) THE VALIDITY, FAIRNESS OR QUALITY OF ANY CONTENT PROVIDED BY PROVIDER. TO THE EXTENT THE FOREGOING DISCLAIMER IS EXPRESSLY PROHIBITED BY LAW, ANY AVAILABLE WARRANTY SHALL

BE LIMITED TO THIRTY (30) DAYS AND TO THE REMEDIES PROVIDED BY INSTRUCTURE IN THIS SECTION 5.

- 13.8 Each Party hereby represents and warrants to the other Party that: (a) It has the full right, power and authority to enter into this Licence and to perform its obligations hereunder. (b) the delivery of this agreement by such Party, have been duly authorised by all necessary action on the part of such Party.
- 13.9 Nothing in this Licence shall make the Institution liable for any act by any Authorised User which gives rise to a breach of the terms of this Licence, provided that the Institution did not cause or knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.
- 13.10 Except as provided for in Clause 13.1 or 13.2, neither the Subscribing Institution nor any Authorised User nor the Provider will be liable to the other in contract or negligence or otherwise for:
- 13.10.1 any special, indirect, incidental, punitive or consequential damages; or
 - 13.10.2 loss of direct or indirect profits, business, contracts, revenue or anticipated savings;
or
 - 13.10.3 for any increased costs or expenses.
- 13.11 No party excludes or limits its liability under this Licence for:
- 13.11.1 death or personal injury to the extent it results from its negligence, or that of its employees or agents in the course of their engagement; or
 - 13.11.2 its own fraud or that of its employees or agents in the course of their engagement.

14 FORCE MAJEURE

- 14.1 Without prejudice to Clause 13, neither party shall have any liability under or be deemed to be in breach of this Licence for any failure to perform any term or condition of this Licence which result from circumstances beyond the reasonable control of such party, including war, strikes, flood, governmental restrictions, power, telecommunications or Internet failures or damage to or destruction of any network facilities not arising from an act or omission of such party or its employees or contractors ("Force Majeure Event").
- 14.2 Each party shall promptly notify the other party in writing of any Force Majeure Event which is causing delay or failure in performance of such party's obligations under this Licence, or will or is likely to do so, including the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this

Licence, and use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

- 14.3 Provided it has complied with Clause 14.2, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Licence by a Force Majeure Event ("**Affected Party**"), the Affected Party shall not be in breach of this Licence or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 14.4 If a Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 60 (sixty) days, the party not affected by the Force Majeure Event may terminate this Licence by giving 14 days' written notice to the Affected Party.

15 ASSIGNMENT

- 15.1 Subject to Clauses 15.2 and 15.3, this Licence is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Licence, without the prior written consent of the other party, such consent shall not be unreasonably withheld or delayed.
- 15.2 If the Subscribing Institution merges with any other Eligible Body or transfers the whole or part of its activities as an Eligible Body to another Eligible Body, the Subscribing Institution or successor Subscribing Institution (as the case may be), and the Authorised Users who were Authorised Users through the Subscribing Institution, shall be entitled to receive the benefit of this Licence for the remainder of the current Subscription Period, subject to remaining bound by the obligations under this Licence and subject always to the Usage Limits, as applicable.
- 15.3 If the Provider is subject to any merger or acquisition, or if the Provider or any licensor or other owner of any rights in any part of the Product and/or Documentation transfers or grants any rights inconsistent with the Subscribing Institution's rights under this Licence, this Licence shall continue in effect, and the Provider shall procure that any such transfer or grant of rights is subject to the Subscribing Institution's rights under this Licence.
- 15.4 In any assignment to which the other party has given consent under Clause 15.1, the assigning party shall procure and ensure that the assignee shall assume all rights and obligations of the assigning party under this Licence and agrees to be bound to all the terms of this Licence.

16 GOVERNING LAW AND JURISDICTION

- 16.1 This Licence and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

17 DISPUTE RESOLUTION

- 17.1 If any dispute arises out of or in connection with this Licence or the performance, validity or enforceability of it (“**Dispute**”), the parties shall attempt to settle it by negotiation. To this end they shall use their respective reasonable endeavours to consult or negotiate with each other in good faith, and recognising their mutual interests, attempt to reach a just and equitable settlement satisfactory to both parties. Negotiations shall be conducted between the Managing Director (or equivalent position) of the Provider, or its nominated representative, and the current Vice Chancellor (or equivalent post) of the Institution, or their nominated representative.
- 17.2 If the dispute cannot be resolved by the parties within one month of being escalated as referred to in Clause 17.1, the dispute may by agreement between the parties be referred to a neutral adviser or mediator (the “Mediator”) chosen by agreement between the parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the parties in any further proceedings.
- 17.3 Where the parties agree that a Dispute would best be resolved by a court, Parties may take the necessary measures to initiate proceedings before the competent court of law.

18 NOTICES

- 18.1 Any notice given to a party under or in connection with this Licence shall be in writing and shall be delivered by hand or email, or by pre-paid first-class post or other next Working Day delivery service at its address set out below:
- 18.1.1 if to the Provider: Email: to both sfortier@instructure.com and snyc@instructure.com, and labelled (in the Subject line) as a Contract Notice]
- 18.1.2 if to the Subscribing Institution: as stated in the Order and/or Order Confirmation Email
- 18.2 Any notice or communication shall be deemed to have been received:
- 18.2.1 if delivered by hand, on signature of a delivery receipt; or
- 18.2.2 if sent by pre-paid first-class post or other next Working Day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service; or
- 18.2.3 if sent by email, on delivery of the email (as evidenced by a delivery receipt) if delivered during working hours on a Working Day, and otherwise on the first Working Day following delivery; or

18.2.4 if sent via the Jisc Ordering Platform (if any), on delivery of the Confirmation Notice.

18.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

19 PREVENTION OF FRAUD AND CORRUPTION

19.1 Each party represents and warrants that neither it, nor to the best of its knowledge any of its employees, agents or contractors have at any time prior to the Start Date:

19.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

19.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

19.2 Neither party during the term of this Licence shall offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing any act in relation to the obtaining or execution of this Licence or for showing or refraining from showing favour or disfavour to any person in relation to this Licence.

19.3 Each party shall take all reasonable steps in accordance with good industry practice to prevent fraud by its employees, and the party (including its shareholders, members and directors), in connection with this Licence and shall notify the other party in writing immediately if it has reason to suspect that any fraud is occurring or is likely to occur.

19.4 If a party or its staff engages in conduct prohibited by Clause 19.1.1 or commits fraud in relation to this Licence, the other shall be entitled to:

19.4.1 terminate this Licence and recover from the first party the amount of any loss suffered resulting from the termination, including the cost reasonably incurred by making other arrangements for the provision of access to the Product and Documentation and any additional expenditure incurred by the other party throughout the remainder of this Licence; and

19.4.2 recover in full from the first party any other loss sustained in consequence of any breach of this clause.

20 THIRD PARTY RIGHTS

- 20.1 Except as expressly provided elsewhere in this Licence, a person who is not a party to this Licence is not intended to have any rights to, and shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Licence.
- 20.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Licence are not subject to the consent of any other person, and a person who is not a party to this Licence shall not be entitled to require its consent to any amendment.

21 GENERAL

- 21.1 This Licence its Schedules and Annexes constitute the entire agreement between the parties and supersede all prior communications, promises, assurances, warranties, representations and understandings and agreements (whether written or oral) relating to its subject matter, but without prejudice to any continuing rights and obligations arising under any prior formal licence agreements between the Institution and the Provider.
- 21.2 This Licence may not be amended or modified except by agreement of both parties in writing.
- 21.3 Nothing in this Licence shall be construed to create any relationship of partnership, agency or employment between any of the parties.
- 21.4 If any provision or part-provision of this Licence is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Licence.
- 21.5 The rights of the parties arising under this Licence shall not be waived except in writing. Any waiver of any of a party's rights under this Licence or of any breach of this Licence by the other party shall not be construed as a waiver of any other rights or of any other or further breach. Failure by either party to exercise or enforce any rights conferred upon it by this Licence shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.

Licence Schedule 1

LICENCE FEE

Licence Fee:

As detailed in the Offer.

LICENCE SCHEDULE 2

SERVICE LEVELS

The Provider will use commercially reasonable efforts to make each Product available with an annual uptime percentage of at least 99.9% ("Service Commitment"). In the event Provider does not meet the Service Commitment, Subscribing Institution will be eligible to receive a service credit as described below. The maximum amount of the credit is 1/12 of the annual Licence Fees paid and attributable to the Product that is unavailable for a twelve (12) month period. The service credit is calculated by taking the number of hours the applicable Product was unavailable below the Service Commitment and multiplying it by 3% of 1/12 of the applicable annual Licence Fees. Any days prior to Subscribing Institution's initial use of the Product will be deemed to have had 100% availability. Any unavailability used to calculate a prior service credit cannot be used for any future claims. The Service Commitment does not apply to any scheduled outages, standard maintenance windows, force majeure, and outages that result from any technology issue not originating from Instructure. Subscribing Institution's sole and exclusive remedy for breach of the Service Commitment will be for Provider to provide a credit as provided in this Annex; on the condition that Subscribing Institution notifies the Provider in writing of such claim within thirty (30) days of becoming eligible for such claim.

LICENCE ANNEX 1: OFFER

Instructure Learning Platform agreement 2024	Target group

Publisher: Full legal name and registered address	Instructure Global Ltd. Birchin Court 5th Floor, 19-25 Birchin Lane, London, UK, EC3V 9DU
Product Name:	Instructure Learning Platform (Canvas VLE)
Agreement Name:	Instructure Learning Platform agreement 2024
Product Description:	The Instructure Learning Platform, comprises of its flagship product Canvas and several products, supports tens of millions of educators and learners around the world. Canvas is a flexible, easy-to-use, cloud-native Virtual Learning Environment. A software-as-a-service platform (SAAS), Canvas offers powerful functionality and provides powerful tools to extend learning beyond the classroom. It bundles content creation and delivery, learning management, messaging, assessments, grading, learning analytics, a learning object repository and more, all in one easy-to-use package.

Access URL:	
Product Information URL:	

PART A: The Offer
1. Commercial Information
Start and End date: 23rd September 2024 – 22nd September 2029. This is the term of the agreement, however this is a rolling contract so when you join the agreement your commitment is from your institutional start date until the agreed end date with Instructure, and our licence terms reflect this. E.g. start date 01/09/25 for three years your end date will be 31/08/28.

Options available are 1-year, 2-year, 3-year, 4-year and 5-year commitments.

Eligible Institutions/group: Further and Higher Education institutions.

Resource Type: Virtual Learning Platform.

List price / Full price: Cost is based on student FTE count.

The offer is available to new and existing subscribers.

Discounts will be offered based on the Jisc Bands.

- Bands 1 - 5: 5% Discount on Canvas VLE
- Bands 6 - 10: 10% Discount on Canvas VLE
- Bands C - G: 5% Discount on Canvas VLE
- Bands H - J: 10% Discount on Canvas VLE

Discounts are offered only on a commitment of greater than 3 years and subject to the below fee cap / increase per annum.

Further discounts will be offered on "additional solutions". When 2 or more additional solutions are purchased, a flat 15% discount on those solutions is applied. When 3 or more additional solutions are purchased, a flat 20% discount on those solutions is applied.

No discounts are available on Implementation, Support or Canvas Archiving.

Pricing is dependent on institutional requirements and will be quote based

Institution will request a quote via the Licence Subscriptions Manager (LSM) by ticking the relevant / required items (additional items can be added during and after your discussions)

The vendor will contact the institution direct to discuss and finalise options.

The quote will then be added to LSM, and this will enable the order and licence to be accepted by the institutional contact and passed over to the vendor.

New Subscribers are quote based dependent on discussions with the vendor.

Existing subscribers

Existing subscribers fees are based on your existing product selections and relevant pricing / quote provided by Instructure, with Jisc fee cap applied.

Fee cap/increase per annum:

Minimum 1 year commitment, 5 year commitment available.

5% per annum fee increase to factor in continuous development and platform maintenance starting from 2024 on new and existing agreements.

Currency: GBP

Transaction Charge: Yes

Pro-rating of Fees: Not available – 12-month rolling subscription, start date determined by access to resources. 1-year, 2-year, 3-year, 4-year & 5-year options available.

Will VAT be included on the invoice to JSL: Yes

If yes, VAT number: GB197078169

2. Product/Licensed Material on offer

Product consists of:

Canvas is a flexible, easy-to-use, cloud-native Virtual Learning Environment. A software-as-a-service platform, Canvas offers powerful functionality while remaining easy-to-use. Canvas provides powerful tools to extend learning beyond the classroom. It bundles content creation and delivery, learning management, messaging, assessments, grading, learning analytics, a learning object repository and more, all in one easy-to-use package.

Features

- Flexible Assignments and Assessments, with Effective Evaluation and Feedback
- Real-time Collaboration and Communication, including via native mobile apps
- Comprehensive and Actionable Learning Analytics, with Impact driving enhanced outcomes
- Intuitive, easy-to-use Content Creation and Organisation Tools
- Open and Flexible API, Allowing for One-Click LTI Integrations
- An Attractive and Customisable Marketplace through Catalog
- Interactive Video Learning and Management Experiences through Studio
- Portfolio network and Badging/Credential tools to optimise student success
- Implementation and change management services through our in-house team
- Native video conferencing and integrations with other leading video tools

Benefits

- Assess assignments and deliver personalised feedback while on the go
- Improve collaboration through real-time document and conference collaborations
- Give personalised video and audio feedback without leaving the platform
- Enhance learning through integrating innovative LTI teaching and learning tools
- Engage users with rich content, incorporating multimedia and LTI tools
- Implement various pedagogical styles, from blended learning to virtual classrooms
- Improve understanding through easy content organisation and automated learning paths
- Gain meaningful insights into teaching and learning through actionable analytics
- Easily connect to proprietary applications via our flexible, standards-based architecture
- Simple administration of users, accounts, permissions, branding, courses and templates

Products available as part of the agreement as core and additional solutions.

Core – Canvas VLE

Implementation packages: These implementation packages are flexible in that Instructure can add or remove additional services (training / technical consulting) as needed. This would be scoped following expression of interest with the institution so Instructure can deliver success in the partnership.

Standard Implementation: Institution participate in a 6-week implementation program. The experienced team provides weekly meetings and training program during the initial 6 weeks to answer your questions and provide implementation support. (6 weeks)

Enhanced Implementation: Instructure provide dedicated resources, core, additional training and consulting and help to manage your project to ensure a successful implementation process. (Typically, 14-20 weeks)

Premium Implementation: We fully manage your project and apply proven best practices to rapidly drive implementation and work with you to meet your vision and goals for Canvas. (Typically, 30 – 44 weeks)

Training: Provides the initial context to enable your core project team to make the most of your technical consultancy

Enhanced and Premium Implementations can include but are not limited to:

Core training: (included in implementation).

4 x Admin & Support Sessions (6 Hours)

Designed to introduce the tools and principles that new Canvas Administrators need to be aware - we'll explain how a Canvas account is configured, managed & supported. From users, courses to feature management, you'll be guided through key areas that will help facilitate configuration and technical discussions with your Implementation Consultant.

2 x Teaching with Canvas (4 Hours)

Focusing on the simplicity of creating structure, presenting material and designing learning activities, these two webinars will show instructors how to get started with the essentials of teaching and allow time for hands-on with Canvas.

Enhanced training:

Accessibility & Course Design

- Developing & Delivering Accessible Learning Environments
- Mobile Enhanced Learning Data and Analytics

Building Blocks

- Quizzes & the Power of Questions
- Assignments, Grading & Feedback
- Communication for Online Learning

Video & Media

- Enhancing Learning with Video - Canvas & Studio
- Enhancing Learning with Video - Canvas Only

Data & Analytics

- Leveraging Canvas Data from your Learning Platform
- Analytics to Support Teaching & Learning

Enabling Learning Pathways within Canvas

- Creating a Connected Online Classroom
- Beyond File Sharing: Blended Learning
- Groups & Collaborative Online Learning
- Outcomes, Rubrics & Learning Mastery

Support Packages:

- Standard
- 24/7
- Tier 1

Additional solutions:

Canvas Studio: Canvas Studio is the video engagement platform that sits within Canvas and

allows for the creation of interactive content and use of video to promote active learning including the embedding of quizzes, discussions. Also provides auto captioning for accessibility and engagement analytics of users.

Canvas Catalog: Canvas Catalog is a shopfront that will market individual or multi-course programmes courses to users and allow them to register immediately. Catalog will integrate with multiple payment gateways as an “all-in-one” solution for lifelong learning and the provision of non-credit bearing courses.

Canvas Credentials: Canvas Credentials is a digital badging platform that aligns to the open badge standard and enables users to receive an unlimited number of badges that are stored in their digital backpack and available to them for life. Digital credentials / badges are portable, verifiable and stackable through our Pathways functionality.

Impact: Impact allows administrative user of Canvas to surface insights on platform adoption and target specific groups of users with messaging to enhance the learning experience. Impact also provides a contextual support centre for users.

Canvas Archiving: Canvas Archiving allows for the backup of teaching and learning content / submissions in order to keep your VLE data clean and within governance policy.

3. Business model

Licence duration periods:

1-year, 2-year, 3-year, 4-year or 5 -year commitments Periods available.

Access: Via Publisher platform

Payment process:

Contract + Licence - payment through JSL to the Publisher on receipt of payment by institution (60 days)

Acceptance of the Licence Via Chest website