

# Master Subscription Services Agreement

This Master Subscription Services Agreement is between Instructure, Inc., a Delaware corporation (**Instructure**), and the entity or individual agreeing to these terms (**Customer**). It is dated as of the date Instructure signs below.

**LEARNING MANAGEMENT SYSTEM SOFTWARE SERVICE.** This agreement provides Customer access to a learning management system software as-a-service, under an order. Instructure will provide this service through a unique URL to be provided by Instructure within a hosted server environment under the terms below (**Service**). This agreement contemplates one or more orders for the Services, which orders are governed by the terms of this agreement.

- **User means** a student, teacher, or administrator of Customer's educational institution, which is authorized by Customer to use the Service with a login credential.

## 1) USE OF SERVICES.

- a). **Instructure Responsibilities.** Instructure must provide customer support for the Services under the terms of Instructure's Customer Support (**Support**), which is located at <http://www.instructure.com/policies/support-terms>, and are incorporated into this agreement for all purposes.
- b). **Customer Responsibilities.** Customer (i) is solely responsible for Customer Content, User activity and all activity in its account in the Service, (ii) must use commercially reasonable efforts to prevent unauthorized access to its account, and notify Instructure promptly of any such unauthorized access, and (iii) may use the Services only in accordance with applicable law.
- c). **Customer Restrictions:** *Customer may not, and will ensure that each User does not,*
  - i. sell, resell, rent or lease the Services or API (defined below),
  - ii. use the Services (for non-Customer educational purposes) to store or transmit infringing, unsolicited marketing emails, libelous, obscene, deceptive, defamatory, pornographic, racist, sexual, hateful, or otherwise objectionable, unlawful or tortious material, or any other material in violation of a third-party right,
  - iii. use the Services to harm or impersonate any person, or for any commercial purpose,
  - iv. interfere with or disrupt the integrity or performance of the Services, or
  - v. attempt to gain unauthorized access to the Services or their related systems or networks.
- d). **API Access.** Instructure provides access to its application-programming interface (**API**) as part of the Service for no additional fee. Subject to the other terms of this Agreement, Instructure grants Customer a non-exclusive, nontransferable, terminable license to operate the API only for purposes of interfacing Customer's technology applications or services with the Service as allowed by the API. The Instructure **API Policy** is located at <http://www.instructure.com/policies/api-policy>.
  - i. Customer may not use the API in a manner--as reasonably determined by Instructure--that exceeds reasonable request volume, constitutes excessive or abusive usage, or fails to comply with the API policy or with any part of the API. If any of these occur, Instructure can suspend or terminate Customer's access to the API on a temporary or permanent basis.
  - ii. Instructure may change or remove existing endpoints or fields in API results upon at least 30 days notice to Customer (via email), but Instructure will use commercially reasonable efforts to support the previous version of the API for at least 6 months. However, Instructure may add new endpoints or fields in API results without prior notice to Customer.
  - iii. Instructure will maintain and provide access to an API, unless it terminates the API for all customers with notice, as it is not technically feasible or economically viable to continue granting access to the API.
  - iv. The API is provided on an 'AS IS' and 'WHEN AVAILABLE' basis. Instructure has no liability to Customer as a result of any change, temporary unavailability, suspension, or termination of access to the API.

- 2) **PAYMENT TERMS.** Customer must pay all fees as specified on the order, but if not specified then within 30 days of receipt of an invoice. Customer is responsible for the payment of all sales, use and other similar taxes. All orders are non-cancelable and the fees are non-refundable (except as expressly provided below).

## 3) WARRANTY/SERVICE LEVEL AGREEMENT and REMEDY.

- A). **Compliance with Laws Warranty.** Each party represents and warrants to the other party that it will comply with all applicable provisions of the Family Education Rights and Privacy Act, as amended, and other laws with respect to its activities under this agreement.
- B). **Services Availability Warranty.** Instructure warrants to Customer, (i) that commercially reasonable efforts will be made to maintain the online availability of the Service for a minimum of availability in any given month as provided in the chart below (*excluding* scheduled outages, force majeure, and outages that result from any Customer or user technology issue), (ii) the functionality or features of the Services may change but will not materially decrease during a paid term, and (iii) that Support may change but will not materially degrade during any paid term.

## Availability Warranty

## Credit/Refund

99.9% Annual Availability Percentage      3% of the pro-rated subscription fee (for that month).

Maximum amount of the credit/refund is 100% of the pro-rated subscription fee (for that month).

**Annual Availability Percentage** is calculated by subtracting from 100% the percentage of 5-minute periods during the preceding 365 days in which all of the Services were in a state of no connectivity during a 5-minute period.

- If Customer has been using the Services for less than 365 days, the preceding 365 days will be used but any days prior to Customer's use of the Services will be deemed to have had 100% availability.
- Any unavailability occurring prior to a successful credit claim cannot be used for any future claims.

- C). **LIMITED REMEDY.** CUSTOMER'S EXCLUSIVE REMEDY AND INSTRUCTURE'S SOLE OBLIGATION FOR BREACH of the warranty in B will be for Instructure to provide a credit as provided in the chart above (if this agreement is not renewed, then a refund), for the month; provided that Customer notifies Instructure of such claim within 30 days of the last reported incident in the claim.
- D). **Third Party Links and Third-Party Services Disclaimer.** The Service may contain links to third-party web sites (including without limitation, links provided by instructors) or access third-party services (including without limitation, turnitin.com and Google docs). Such sites and services are not under the control of Instructure, and Instructure is not responsible for the content or any link on such sites or for the temporary or permanent unavailability of such third party services.
- E). **WARRANTY DISCLAIMER.** INSTRUCTURE DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. THE SERVICES MAY BE INTERRUPTED OR CONTAIN AN ERROR. INSTRUCTURE DOES NOT GUARANTY THAT THE SERVICE CANNOT BE HACKED.

## 4) MUTUAL CONFIDENTIALITY.

- a). **Definition of Confidential Information.** Confidential Information means all confidential information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). Instructure's Confidential Information includes without limitation the Services and its parts and pricing (including without limitation the Service user interface design, icons and layout).
- b). **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.
- c). **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information.
- d). **Disclosure Required by Law.** The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

## 5) PROPRIETARY RIGHTS.

- a). **Reservation of Rights by Instructure.** The software, workflow processes, user interface, designs, know-how, API information and other technologies provided by Instructure as part of the Services are the proprietary property of Instructure and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with Instructure. Instructure reserves all rights unless expressly granted in this agreement.
- b). **Customer Restrictions.** Customer *may not*:
- reverse engineer the Services or the API;
  - remove or modify any proprietary marking or restrictive legends in the Service; or
  - access the Service to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.
- c). **Customer Content.** All information, data, results, plans, sketches, texts, files, links, images, photos, videos, audio files, notes, or other materials uploaded under Customer's account in the Service remains the sole property of Customer, as between Instructure and Customer (**Customer Content**), subject to the other terms of this agreement. Customer grants Instructure the right to use the Customer Content solely for purposes of performing under this agreement. During the term of this agreement and for 3 months after expiration or termination, Customer may export the Customer Content through the API or by using the export feature of the Service.

- d). **Feedback.** Instructure may contact each User (no more than once each year) for the *sole purpose* of seeking aggregate anonymous feedback regarding performance of the Services and suggestions for improvements. Customer, and each User (to the extent Customer has such right), hereby grants Instructure an irrevocable, royalty-free perpetual license to all feedback and suggestions regarding the Services.

**6) EXCLUSION OF DAMAGES AND LIMITATION OF LIABILITY.**

- a). **EXCLUSION OF CERTAIN DAMAGES.** INSTRUCTURE IS NOT LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY, LOSS OF DATA, RECORDS OR INFORMATION, AND ANY FAILURE OF DELIVERY OF THE SERVICES).
- b). **LIMITATION OF LIABILITY.** EXCEPT FOR INSTRUCTURE'S INDEMNITY OBLIGATIONS, INSTRUCTURE'S LIABILITY FOR DIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) DOES NOT EXCEED THE ACTUAL AMOUNT PAID BY CUSTOMER WITHIN THE PRECEDING 12 MONTHS UNDER THIS AGREEMENT.

**7) TERM, TERMINATION, RETURN OF DATA AND SUSPENSION OF SERVICE.**

- a). **Term.** This agreement continues for the duration specified on the order (**Term**).
- b). **Mutual Termination for Material Breach.** If either party is in material breach of this agreement (including without limitation non-payment of any amounts owed Instructure), the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.
- c). **Return or Destroy Upon Termination.** *Upon termination or expiration of this agreement for any reason*, Customer must pay Instructure all amounts owed, and destroy or return all property of Instructure. Customer will confirm this destruction or return requirement in writing upon request of Instructure.
- d). **Return of Customer Content.**
- i. *Within 3 months after termination*, upon request Instructure will make the Service available for Customer to export the Customer Content as further described in Section 5 (c).
  - ii. *After such 3-month period*, Instructure has no obligation to maintain the Customer Content and may destroy it.
- e). **Suspension of Service and Removal of Customer Content for Violations of Law or Policy.** Instructure may immediately suspend the Services and remove applicable Customer Content if it in good faith believes that, as part of using the Services, Customer may have violated a law or a restriction in this agreement. Instructure may try to contact Customer in advance, but it is not required to do so.

- 8) GOVERNING LAW AND FORUM.** This agreement is governed by the laws of the State of Utah, without regard to conflict of law principles. Any dispute arising out of or related to this agreement may only be brought in the state and federal courts for Salt Lake County, UT. Both parties consent to the personal jurisdiction of such courts and waive any claim that it is an inconvenient forum. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

**9) INDEMNITY.**

- a). **By Instructure for Infringement.** If a third-party claims that Customer's use of the Services (other than related to any Customer Content) 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:
- i. promptly notifies Instructure in writing of the claim; and
  - ii. allows Instructure to control, and cooperates with Instructure in, the defense and any related settlement.

If such a claim is made, Instructure could continue to enable Customer to use the Services or to modify it. If Instructure determines that these alternatives are not reasonably available, Instructure may terminate the Services (without any liability to Customer) upon notice to Customer and with the return of any prepaid and unused fees.

- b). **By Customer.** If a third-party claims against Instructure that any part of the Customer Content infringes or violates a patent, copyright or other right, 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:
- i. promptly notifies Customer in writing of the claim; and
  - ii. allows Customer to control, and cooperates with Customer in, the defense and any related settlement.

**10) MISCELLANEOUS OTHER TERMS.**

- a). **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.
- b). **Entire Agreement and Changes.** This agreement and the order constitute the entire agreement between the parties, and supersede all prior or contemporaneous negotiations, agreements and representations, whether oral or written, related to this subject matter. No modification or waiver of any term of this agreement is effective unless both parties sign it.
- c). **Publicity.** Customer agrees to act as a reference account that will, upon Instructure's reasonable request, provide Service-related comments to the press, potential investors, and current or prospective customers and participate in Service-related case studies. Customer agrees to issue joint press releases with Instructure regarding the Services, *as approved by Instructure*. Customer agrees to allow Instructure to use its name, logo and non-competitive use details in both text and pictures in its various marketing communications and materials, in accordance with Customer's trademark guidelines and policies.
- d). **No Assignment.** Neither party may assign or transfer this agreement or an order to a third party, except that this agreement with all orders may be assigned as part of a merger, or sale of all or substantially all of the business or assets, of a party.
- e). **Independent Contractors.** The parties are independent contractors with respect to each other.
- f). **Enforceability.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect.
- g). **No Additional Terms.** Instructure rejects additional or conflicting terms of any Customer form-purchasing document.
- h). **Order of Precedence.** If there is an inconsistency between this agreement and an order, the order prevails.
- i). **Survival of Terms.** Any terms that by their nature survive termination or expiration of this agreement, will survive.
- j). **CISG does Not Apply.** The Convention on Contracts for the International Sale of Goods does not apply.
- k). **Force Majeure.** Neither party is liable for force majeure events.

NMMI / Customer

**Instructure, Inc.**

Charles C. Hendrickson  
 Signature  
Charles C. Hendrickson  
 Name  
Asst. VP of Finance  
 Title  
12/9/11  
 Date

\_\_\_\_\_  
 Signature  
 \_\_\_\_\_  
 Name  
 \_\_\_\_\_  
 Title  
 \_\_\_\_\_  
 Date

101 W. College Blvd  
 Address Roswell, NM 88209

6415 South 3000 East, Suite 100  
 Salt Lake City, Utah 84121



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

## Services Order Form

### Customer Contact Information

Customer	New Mexico Military Institute	Contact	Todd Lupien
Address	101 W. College Blvd	Phone	(575) 624-8110
		Email	todd@nmimi.edu
City	Roswell		
State/Province	NM		
Zip/Postal Code	88201		
Country	United States		

### Products & Fees

#### Year 1

Description	Term		Metric	Quantity	Price	Total
Canvas Cloud Subscription	1/1/2015	12/31/2015	FTE	900	\$22.12	\$19,908.00
					<b>Sub-Total</b>	\$19,908.00

#### Year 2

Description	Term		Metric	Quantity	Price	Total
Canvas Cloud Subscription	1/1/2016	12/31/2016	FTE	900	\$22.12	\$19,908.00
					<b>Sub-Total</b>	\$19,908.00

#### Year 3

Description	Term		Metric	Quantity	Price	Total
Canvas Cloud Subscription	1/1/2017	12/31/2017	FTE	900	\$22.12	\$19,908.00
					<b>Sub-Total</b>	\$19,908.00

#### Non Recurring

Description	Term	Metric	Quantity	Price	Total
				<b>Sub-Total</b>	\$0.00
				<b>Grand Total</b>	\$59,724.00

#### FTE Definition

FTE means the number of full-time equivalent students calculated in accordance with the definition published by the Integrated Postsecondary Education Data System.

#### Additional Notes:

Lack of Appropriation. Performance by Customer under this order may be dependent upon appropriation and allotment of funds by the state legislature and/or allocation of funds by local government (together know as Appropriation Body). Customer warrants that this appropriation and allotment of funds is beyond the control of Customer. If the Appropriation Body fails to appropriate or allot the necessary funds, then Customer will issue written notice to Instructure within 30 days of its intent to terminate this order. No refunds shall be made for any pre-paid fees.



**Payment Terms:** Customer agrees to pay to Instructure the applicable fees set forth on this order form.

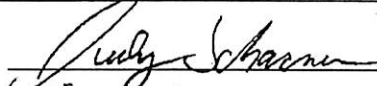
**For the initial term Customer must pay such amount to Instructure on the date of this order.**

**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.**

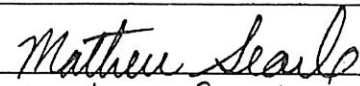
**Duration:** This order begins on the initial date listed above under Term, and continues until the last date listed above, unless sooner terminated under the Agreement.

**Terms:** This order is governed by the terms of Master Subscription Services Agreement between the parties (**Agreement**), which terms are incorporated into this order for all purposes. If there is a conflict between the terms of this order and the Agreement, this order governs. This order and the Agreement are the entire agreement between the parties, and they supersede and replace all prior and contemporaneous negotiations, agreements, representations and discussions regarding this subject matter. Only a signed writing of the parties may amend this order. Any terms used in this order but not defined, will use the definitions in the Agreement.

**New Mexico Military Institute**

Signature:	
Name:	Judy Scharrer
Title:	CFO
Date:	10/7/14

**Instructure, Inc.**

Signature:	
Name:	Mathew Seark
Title:	Sr. BI Analyst
Date:	Oct 7, 2014