

Professional Service Contract

Contract/Purchase Order Number: R0160647

THIS AGREEMENT, made and entered into this 26 day of June, 20 15 by and between
the Regents of New Mexico State University, hereinafter called the "University," and

Company/Individual Name: Instructure, Inc.

Address: 6330 South 3000 East, Suite 700

Salt Lake City, Utah 84121

hereinafter called the "Contractor."

WITNESSETH:

WHEREAS, the Director of Purchasing & Risk Management Administration of the University is advised and believes that the Contractor is one of such requisite character and qualifications and is willing to engage him/her for professional services, in accordance with the terms and conditions hereinafter set out, and the Contractor understanding and consenting to the foregoing is willing to render such professional services as outlined in paragraph one.

NOW THEREFORE, in consideration of the premises and of the mutual and reciprocal promises of the parties hereto, IS HEREBY covenanted and agreed by and between parties:

1. That the Contractor will render the following professional services to the University:
(Note: Attach Proposal if Contract is \$5,000 or more)

Please see attached Statement of Work provided by Instructure referencing the API enhancement project to support Canvas to Banner. The scope of work is detailed in the SOW.

2. That the contractor will devote the necessary hours each week to the performance of such duties that may be assigned to him/her by the University.
3. That the contractor will serve the University diligently and faithfully, and according to its ability and in all respects, will use his/her utmost endeavors to promote the interest of the university.
4. That the Contractor will maintain records indicating the date and length of time such services are rendered. These records shall be subject to inspection by the designated agent of the University.
5. That the services rendered by the Contractor shall be at the location of 6330 South 3000 East, Suite 700
Salt Lake City, Utah 84121 or where the University shall designate.
6. That for the services rendered satisfactory as per paragraphs one through five, the University agrees to pay the Contractor compensation as follows: at the following rate of \$ _____
_____ plus expenses (if applicable) as follows:

Such compensation and expenses not to exceed \$ in total, payable by the University upon receipt of a signed invoice or Payee Claim for Reimbursement. The contractor will pay the State of New Mexico the Gross Receipts Tax levied on the amounts payable under this contract.

Professional Service Contract

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7. Per IRS requirements, reimbursements to independent contractors for travel, entertainment or gift expenses must be included in income if an adequate accounting is not provided. For the purposes of this requirement, the University considers requests for reimbursement of these expenses to have not been adequately accounted (billed to the University) if the accounting is not received by the University within one hundred eighty (180) calendar days of when the independent contractor incurred the expense. For any such expenses reimbursed by the University, in which an adequate accounting as described above was not received, the independent contractor will be issued a 1099-MISC, provided the total amount of such reimbursements, combined with any other 1099-reportable payments issued to the independent contractor, exceed the published 1099 reporting threshold for the calendar year in which the payment was made.
8. That the Contractor is an independent contractor performing professional services for the University. The Contractor shall not accrue leave, retirement, insurance, or any other benefits afforded to the employees of the University as a result of this contract.
9. That the terms of this contract are contingent on sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this contract. The University's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.
10. That the Contractor shall not assign any interest in this contract or transfer any interest in same or assign any claim for money due or to become due under this contract without the prior written consent of the University.
11. That either party, independent or in concert, may terminate this contract by giving thirty (30) days written notice to the other party.
12. That this agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that all such covenants, agreements, and understandings, have been merged into this written agreement. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.
13. That this agreement shall not be altered, changed, or amended except by the instrument in writing executed by the parties hereto. The foregoing being clearly understood and agreed to, the parties hereto have set their hands and seals.
14. That this agreement shall be deemed to be a contract made in accordance with the laws of the State of New Mexico.
15. As between the parties, each party will be solely responsible for liability arising from personal injury, including death, or damage to property arising from the act or failure to act of the respective party or of its officials, agents and employees pursuant to this Agreement. The liability of the Regents of New Mexico State University shall be subject to the immunities and limitations of the Tort Claims Act, Sections 4 1-1-1 et. Seq., NMSU 1978, and of any amendments thereto.



New Mexico State University
Procurement Services and Risk Management
Professional Service Contract

ROUTING

PRSM
MSC 3890
purchasing@nmsu.edu
Phone 646-2916

SECTION 1: CONTRACTOR INFORMATION

Contractor Print Name: Instructure, Inc. E-mail Address: ldoxey@instructure.com Phone: 801-508-6959
Mailing Address: 6330 South 3000 East, Suite 700 City, State, Zip: Salt Lake City, Utah 84121

SECTION 2: DEPARTMENT INFORMATION

Department Name: _____ Mail Stop Code (MSC): _____
Contact Person: _____ Phone Number: _____ E-mail: _____

SECTION 3: CONTRACT TERM

Date Effective June 29, 2015
Termination Effective August 3, 2015

SECTION 4: PROFESSIONAL SERVICE CONTRACT APPROVAL

This Contract Between University and: Instructure, Inc. Has Been Approved By: _____

Signature of Department Head: [Signature] Print Name: Rennette Apodaca Title: _____
Signature of Director of Purchasing & Risk Management Administration: _____ Print Name: _____

SECTION 5: PROFESSIONAL SERVICE CONTRACT SIGNATURES

The terms & conditions provided for in this contract shall become effective and binding upon the signature of both parties.

Signature of Contractor: [Signature] Print Name: Chris [unclear] Date: 7/7/15
Signature For New Mexico State University: [Signature] Title: Director - Purchasing Date: 7/8/15

Statement of Work (SOW)

This Statement of Work ("SOW") is governed by the terms and conditions of the Instructure Services Agreement attached herein as Exhibit A.

1. Request Summary

New Mexico State University is engaging Instructure Professional Services to accelerate an enhancement to the courses API to surface the grading standard id in API calls.

2. Professional Services and Deliverables

Instructure will complete the enhancement of the API using Exhibit B as a minimum. Additional enhancements may be made to the API at the discretion of Instructure.

3. Project Assumptions

Execution of this agreement assumes that deliverables will be added to the core Canvas product and available to all users at the conclusion of the project.

4. Customer's Responsibilities

New Mexico State University is responsible for conducting user acceptance testing within 5 business days of release of the feature to the Canvas beta environment.

5. Fees, Timing and Payment

Upon delivery of the professional services as set forth in this document, New Mexico State University will be invoiced [REDACTED]

It is currently anticipated that the deliverables will be completed and released in the July 18, 2015 release to the Canvas product.

This statement of work is subject to expiration if Instructure does not receive a signed copy of this agreement before Instructure prior to June 28, 2015.

Agreed to and accepted by:

Instructure, Inc.
6330 South 3000 East, Suite 700
Salt Lake City, Utah 84121

By: _____

Name: Chris Tannen

Title: Corp. Counsel

_____ ("Customer")

By: _____

Name: _____

Title: _____

EXHIBIT A
INSTRUCTURE SERVICES AGREEMENT
GENERAL TERMS AND CONDITIONS

1. DEFINITIONS.

"Professional Services" means the professional services to be performed as detailed in a statement of work(s) attached to this Agreement and incorporated herein.

"Statement of Work" means each description of the Professional Services to be provided to Customer by Company hereunder, associated fees, and other details, in the form attached hereto as Exhibit A.

"Deliverable" means each item that is (a) described in, and developed by Instructure in accordance with, a Statement of Work and (b) delivered by Instructure to Customer under this Agreement.

"Customer Content" means any content (whether information, data, specifications, text, images, video, or audio) provided to Instructure by Customer hereunder.

2. ENGAGEMENT.

Scope of Work. Subject to the terms and conditions set forth in the Agreement, Customer agrees to purchase and Instructure agrees to perform the Professional Services and provide the Deliverables, which are detailed in the applicable Statement of Work, attached hereto. Such Statement of Work and any attachments / appendixes thereto are subject to the terms and conditions of this Agreement and shall be incorporated herein by reference. Customer may request additional Professional Services from Instructure and all such requests are subject to acceptance by Instructure and execution of a separate Statement of Work. Accordingly, subsequent Statement of Work may be negotiated by the parties and upon execution of each such additional Statement of Work that Statement of Work shall be subject to the terms and conditions of this Agreement and shall be incorporated herein by reference.

Customer's Responsibilities. Customer must provide Instructure with all Customer Content, information, access, and full good faith cooperation reasonably necessary to enable Instructure to deliver the Professional Services, and must do anything that is identified in the Statement of Work as Customer's responsibility. If Customer fails to do this, Instructure will be relieved of its obligations to the extent that the obligations are dependent upon Customer's performance.

Change Orders. A party desiring to make a change (the "Requestor") to the Statement of Work must submit a written change request ("Change Request") to the other party (the "Requestee"). The Requestee will use commercially reasonable efforts to promptly notify the Requestor of its acceptance or rejection of the Change

Request. If the Change Request is accepted, Instructure in its discretion will determine whether implementing the suggested change would result in a delay in schedule or increase in costs and will advise Customer on the effect of the Change Request. If Customer accepts the effects on schedule and costs, the applicable Statement of Work will be modified to reflect the terms of the Change Request. If either party rejects a Change Request submitted by the other party, this Agreement will remain in effect with no change to the applicable Statement of Work.

3. LICENSE.

Deliverables License. Subject to the terms and conditions of this Agreement, Instructure hereby grants to Customer a nonexclusive, nontransferable, royalty-free, worldwide, license solely to use the Deliverables solely for Customer's internal business purposes. Customer agrees not to (a) modify, adapt, alter, translate, or create derivative works from the Deliverables; (b) sublicense, lease, rent, loan, or otherwise transfer the Deliverables to any third party, or (c) otherwise use or copy the Deliverables except as expressly allowed herein or in the applicable Statement of Work. Instructure shall retain all title, right, interest in, and ownership rights to the Professional Services and the Deliverables.

Customer Content License. Subject to the terms and conditions of this Agreement, Customer hereby grants to Instructure a nonexclusive, nontransferable, royalty-free, worldwide, license to use, reproduce, create derivative works from, and modify the Customer Content solely for the purposes of providing Customer the Professional Services and Deliverables hereunder and in the applicable Statement of Work. Customer shall retain all title, right, interest in, and ownership rights to the Customer Content

4. PAYMENT.

Fees. Customer must pay all fees as specified in the Statement of Work, 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 herein).

Incidental Expenses. Unless otherwise set forth in the applicable Statement of Work, Customer shall reimburse Instructure for material(s) and reasonable travel, administrative, and out-of-pocket pre-approved expenses incurred in conjunction with the Professional Services.

5. TERM AND TERMINATION.

Term. This agreement continues for the duration specified on the Statement of Work (Term).

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.

Effect of Termination. Termination of this Agreement shall not limit either party from pursuing any other remedies available to it, including injunctive relief, nor shall termination relieve Customer of its obligation to pay all charges and expenses accruing prior to such termination. Upon termination of this Agreement, Customer shall immediately pay Instructure for all work performed under all applicable Statements of Work prior to the date of termination plus all applicable expenses unless otherwise provided in a Statement of Work and Instructure will turn over all completed Deliverables and in-progress and related documents to Customer upon receipt of payment.

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.

6. MUTUAL CONFIDENTIALITY.

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.

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 of a similar kind and nature (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser 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.

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. 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.

7. INDEMNITY.

By Instructure for Infringement. If a third-party claims that the Professional Services or Deliverables infringes such party's U.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; (ii) provides Instructure with reasonable assistance and cooperation, at Instructure's expense, in the defense of such claim or action, and (iii) allows Instructure to control, and cooperates with Instructure in, the defense and any related settlement. Notwithstanding the foregoing, Instructure will have no obligation under this subsection or otherwise with respect to any infringement claim based upon: (i) any unauthorized use, reproduction, or distribution of the Deliverables or Professional Services by Customer; (ii) any use of the Deliverables in combination with other products, equipment, software, or data not supplied by Instructure; (iii) the Customer Content; (iv) Instructure following any specifications or instructions provided by Customer; or (v) any modification of the Deliverables by any person other than Instructure or its authorized agents or contractors ("**Customer Responsibilities**").

If such a claim is made, Instructure could continue to enable Customer to use the Professional Services or to modify it. If Instructure determines that these alternatives are not reasonably available, Instructure may terminate the Professional Services without any liability to Customer upon notice to Customer and with the return of any prepaid and unused fees. This indemnity does not apply to the extent of any technology not provided by Instructure, if the Professional Services are used other than in accordance with this agreement, or with third party technology it is not designed to operate with. THIS SECTION STATES INSTRUCTURE'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.

By Customer. If a third-party claims that Instructure infringes or violates a U.S. patent, copyright or other proprietary right (including privacy and publicity rights) as a result of the Customer Responsibilities, 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; (ii) provides Customer with reasonable assistance and cooperation, at Customer's expense, in the defense of such claim or action, and (iii) allows Customer

to control, and cooperates with Customer in, the defense and any related settlement.

8. WARRANTY AND DISCLAIMERS.

a. Instructure warrants that the Professional Services will be performed in a professional and workmanlike manner, in accordance with generally accepted industry standards.

b. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND INSTRUCTURE HEREBY DISCLAIMS ALL OTHER WARRANTIES WITH REGARD TO THE PROFESSIONAL SERVICES AND THIS AGREEMENT, WHETHER EXPRESS, STATUTORY, OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE.

c. For any breach of the warranty in Section 8(a), Customer's sole and exclusive remedy, and Instructure's sole and exclusive liability, shall be the re-performance of the Professional Services. If Instructure is unable to re-perform the Professional Services as warranted, Customer shall be entitled to recover the fees paid to Instructure for the deficient Professional Services. These remedies are contingent upon Customer reporting any deficiencies in the Professional Services to Instructure in writing within thirty (30) days of performance of such Professional Services.

9. EXCLUSION OF DAMAGES AND LIMITATION OF LIABILITY.

EXCLUSION OF CERTAIN DAMAGES. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER IN TORT, CONTRACT, OR OTHERWISE, 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 SERVICE).

LIMITATION OF LIABILITY. EXCEPT FOR INSTRUCTURE'S INDEMNITY OBLIGATIONS HEREUNDER, IN NO EVENT SHALL INSTRUCTURE'S AGGREGATE CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) EXCEED THE AMOUNT PAID BY CUSTOMER FOR THE PROFESSIONAL SERVICES GIVING RISE TO THE CLAIM.

11. GENERAL.

Choice of Law and Venue. This Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed exclusively by the laws of the State of Utah, without giving effect to Utah's choice of law rules or 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. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

Survival of Terms. Any terms that by their nature survive termination or expiration of this agreement (including, but not limited to, Sections relating to limitations of liability, warranty disclaimers, and confidentiality) will survive.

Enforceability. If any term of this agreement is invalid or unenforceable, the remainder of the Agreement remains valid and enforceable and shall be enforced to the fullest extent as if such clause had not been included.

Independent Contractors. The parties are independent contractors with respect to each other and no other formal legal relationship is intended.

Assignment. Neither party may assign or transfer this Agreement or a Statement of Work to any third party without the other party's written consent, except that this Agreement together with all Statements of Work may be assigned as part of a merger, or sale of all or substantially all of the business or assets, of a party. Any purported assignment or transfer in violation of this provision shall be null and void.

Subcontract. Instructure may subcontract any Deliverables under this Statement of Work. Instructure warrants that any Deliverables subcontracted will be in accordance with the terms of this Statement of Work.

Order of Precedence. This Agreement includes all Statements of Work, which are incorporated herein by reference. In the event of a conflict, ambiguity, or inconsistency between the provisions of any Statement of Work and the terms of the body of the Agreement, the provisions of the body of the Agreement will govern and control.

Notices. All notices, consents, and approvals under this Agreement must be delivered in writing by courier, by electronic facsimile (fax), or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address set forth beneath such party's signature, and will be effective upon receipt or three (3) business days after being deposited in the mail as required above, whichever occurs sooner. Either party may change its address by giving notice of the new address to the other party.

Force Majeure. Neither party shall be held liable or responsible for any losses arising out of any delay or failure in performance of any part of this Agreement, other than payment obligations hereunder, due to any act of God, act of governmental authority, act of the public enemy or due to war, riot, flood, civil commotion, insurrection, labor difficulty, severe or adverse weather conditions, lack or shortage of electrical power, failure of communications services or devices, malfunctions of equipment or software

programs, failure of performance by any third party hosting service, failure of equipment provided or maintained by others, including general performance of the Internet itself, or any other cause beyond the reasonable control of the party delayed or prevented from performing.

Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument.

Final Agreement. This Agreement, including any incorporated Statement of Work, constitutes the entire agreement and understanding between the Parties and supersedes all other prior and contemporaneous communications, discussions, understandings,

negotiations, arrangements and agreements between the Parties, whether written or oral, relating to the subject matter of this Agreement. No modification or amendment of this Agreement, a Change Request, or a Statement of Work or any of their provisions shall be binding upon any party unless made in writing and duly executed by authorized representatives of both parties. Documents, including, but not limited to, a purchase order, which purport to modify or change the terms and conditions of this Agreement, a Change Request, or a Statement of Work and which are not duly executed by authorized representatives of both parties, shall have no force or effect with regards to such proposed changes.

EXHIBIT B

FEATURE ENHANCEMENT REQUIREMENTS

1. Changes to the Course object

The course object utilized in the Canvas API (documented at <https://canvas.instructure.com/doc/api/courses.html#Course>) will be altered to include the `grading_standard_id` attribute any time a course object is returned through the API.

2. Changes to the Update Courses method

The data returned as a response to the update courses API method (documented at <https://canvas.instructure.com/doc/api/courses.html#method.courses.update>) will be altered to include the `grading_standard_id` attribute any time the method is used.



New Mexico State University
Central Purchasing and Risk Management Office
P.O. Box 30001, MSC 3890
Las Cruces, New Mexico 88003
purchasing.nmsu.edu
purchasing@nmsu.edu
575.646.2916 (V) 575.646.1351 (F)

Page 1

PO Number: P0153322	P0153322
PO Date: 06/30/15	
Requisition Number: R0160647	
Delivery Date: 07/31/15	
Payment Terms: Net 10 FOB: Not applicable	

Vendor: Instructure Inc
6330 South 3000 E
Suite 700
Salt Lake City UT 84121

No: 800513394

Submit Invoices To: New Mexico State University
Accounts Payable
P.O. Box 30001, MSC 3AP
Las Cruces, New Mexico 88003
575.646.1189 (V) 575.646.1077 (F)
E-Mail: accountspayable@nmsu.edu

Ship to: ICT, MSC 3AT
1275 Stewart Street
Computer Center Bldg RM 148
(575) 646-6007
Las Cruces NM 880038001
ATTN: Susanne Berger

Buyer: FOR TERMS/CONDITIONS GO TO - PURCHASING.NMSU.EDU

Elsa Henry

PURCHASE ORDER NUMBER MUST APPEAR ON ALL CARTONS AND INVOICES

Item	Description	Quantity	Unit Cost	Total Cost
1	***** Professional Service Contract ***** TERM: 06/29/2015 TO 08/03/2015 Services are to be performed in accordance with our Professional Service Contract attached hereto and made a part hereof. AN INVOICE REFERENCING THE PO NUMBER AND APPROVED BY THE NMSU DEPARTMENT IS REQUIRED. RECEIVING IN SYSTEM IS NOT REQUIRED. 9204 API enhancemnt project to support Canvas to Banner	1.00 LOT		

TOTAL: [Redacted]

Elsa Henry

Director of Purchasing or Designee

06/30/2015

Date

Index / Account
120034 761001

Amount Item
[Redacted]

FILE COPY

View Document

Requisition Header

Requisition	Order Date	Trans Date	Delivery Date	Print Date	Total
R0160647	Jun 26, 2015	Jun 26, 2015	Jul 31, 2015		
Origin: BANNER					
Complete:	Y	Approved:	N	Type:	Procurement
Cancel Reason:				Date:	
Requestor:	Susanne Berger		450200	ICT FINANCIAL OPERATIONS	
Phone Number:	575-646--6688				
E-mail:	sberger@nmsu.edu				
Accounting:	Commodity Level				
Ship to:	ICT, MSC 3AT				
	1275 Stewart Street				
	Computer Center Bldg RM 148				
	(575) 646-6007				
	Las Cruces, NM 880038001 United States of America				
Attention:	Susanne Berger				
Contact:	ICT, MSC 3AT				
Phone Number:	575-646-4241				
Vendor:	800513394	Instructure Inc			
	6330 South 3000 E				
	Suite 700				
	Salt Lake City, UT 84121				
Phone Number:					
Fax Number:					
Document Text:	*****				
	Professional Service Contract				

	AN INVOICE REFERENCING THE PO NUMBER AND APPROVED				
	BY THE NMSU DEPARTMENT IS REQUIRED.				
	RECEIVING IN SYSTEM IS NOT REQUIRED.				
	.				
	SOW between Instructure and NMSU, June 2015				

Requisition Commodities

Item	Commodity	Description	U/M	Qty	Unit Price	Ext Amount	
				Disc	Addl	Tax	Cost
1	9204	API enhancemnt project to support Canvas to Banner	LOT	1			
				0.00	0.00	0.00	

Requisition Accounting

Seq#	COA	FY	Index	Fund	Orgn	Acct	Prog	Actv	Locn	Proj	NSFSusp	NSFOvr	Susp	Amount
1	N	15	120034	111808	450001	761001	1800				N	N	N	
Total of displayed sequences:														

✓ No Related Documents Available

Statement of Work (SOW)

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Agreed to and accepted by:

Instructure, Inc.
6330 South 3000 East, Suite 700
Salt Lake City, Utah 84121

_____("Customer")

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A
INSTRUCTURE SERVICES AGREEMENT
GENERAL TERMS AND CONDITIONS

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3. LICENSE.

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Term. This agreement continues for the duration specified on the Statement of Work (Term).

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.

Effect of Termination. Termination of this Agreement shall not limit either party from pursuing any other remedies available to it, including injunctive relief, nor shall termination relieve Customer of its obligation to pay all charges and expenses accruing prior to such termination. Upon termination of this Agreement, Customer shall immediately pay Instructure for all work performed under all applicable Statements of Work prior to the date of termination plus all applicable expenses unless otherwise provided in a Statement of Work and Instructure will turn over all completed Deliverables and in-progress and related documents to Customer upon receipt of payment.

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.

6. MUTUAL CONFIDENTIALITY.

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.

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 of a similar kind and nature (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser 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.

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. 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.

7. INDEMNITY.

By Instructure for Infringement. If a third-party claims that the Professional Services or Deliverables infringes such party's U.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; (ii) provides Instructure with reasonable assistance and cooperation, at Instructure's expense, in the defense of such claim or action, and (iii) allows Instructure to control, and cooperates with Instructure in, the defense and any related settlement. Notwithstanding the foregoing, Instructure will have no obligation under this subsection or otherwise with respect to any infringement claim based upon: (i) any unauthorized use, reproduction, or distribution of the Deliverables or Professional Services by Customer; (ii) any use of the Deliverables in combination with other products, equipment, software, or data not supplied by Instructure; (iii) the Customer Content; (iv) Instructure following any specifications or instructions provided by Customer; or (v) any modification of the Deliverables by any person other than Instructure or its authorized agents or contractors ("Customer Responsibilities").

If such a claim is made, Instructure could continue to enable Customer to use the Professional Services or to modify it. If Instructure determines that these alternatives are not reasonably available, Instructure may terminate the Professional Services without any liability to Customer upon notice to Customer and with the return of any prepaid and unused fees. This indemnity does not apply to the extent of any technology not provided by Instructure, if the Professional Services are used other than in accordance with this agreement, or with third party technology it is not designed to operate with. THIS SECTION STATES INSTRUCTURE'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.

By Customer. If a third-party claims that Instructure infringes or violates a U.S. patent, copyright or other proprietary right (including privacy and publicity rights) as a result of the Customer Responsibilities, 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; (ii) provides Customer with reasonable assistance and cooperation, at Customer's expense, in the defense of such claim or action, and (iii) allows Customer

to control, and cooperates with Customer in, the defense and any related settlement.

8. WARRANTY AND DISCLAIMERS.

a. Instructure warrants that the Professional Services will be performed in a professional and workmanlike manner, in accordance with generally accepted industry standards.
b. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND INSTRUCTURE HEREBY DISCLAIMS ALL OTHER WARRANTIES WITH REGARD TO THE PROFESSIONAL SERVICES AND THIS AGREEMENT, WHETHER EXPRESS, STATUTORY, OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE.

c. For any breach of the warranty in Section 8(a), Customer's sole and exclusive remedy, and Instructure's sole and exclusive liability, shall be the re-performance of the Professional Services. If Instructure is unable to re-perform the Professional Services as warranted, Customer shall be entitled to recover the fees paid to Instructure for the deficient Professional Services. These remedies are contingent upon Customer reporting any deficiencies in the Professional Services to Instructure in writing within thirty (30) days of performance of such Professional Services.

9. EXCLUSION OF DAMAGES AND LIMITATION OF LIABILITY.

EXCLUSION OF CERTAIN DAMAGES. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER IN TORT, CONTRACT, OR OTHERWISE, 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 SERVICE).

LIMITATION OF LIABILITY. EXCEPT FOR INSTRUCTURE'S INDEMNITY OBLIGATIONS HEREUNDER, IN NO EVENT SHALL INSTRUCTURE'S AGGREGATE CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) EXCEED THE AMOUNT PAID BY CUSTOMER FOR THE PROFESSIONAL SERVICES GIVING RISE TO THE CLAIM.

11. GENERAL.

Choice of Law and Venue. This Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed exclusively by the laws of the State of Utah, without giving effect to Utah's choice of law rules or 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. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

Survival of Terms. Any terms that by their nature survive termination or expiration of this agreement (including, but not limited to, Sections relating to limitations of liability, warranty disclaimers, and confidentiality) will survive.

Enforceability. If any term of this agreement is invalid or unenforceable, the remainder of the Agreement remains valid and enforceable and shall be enforced to the fullest extent as if such clause had not been included.

Independent Contractors. The parties are independent contractors with respect to each other and no other formal legal relationship is intended.

Assignment. Neither party may assign or transfer this Agreement or a Statement of Work to any third party without the other party's written consent, except that this Agreement together with all Statements of Work may be assigned as part of a merger, or sale of all or substantially all of the business or assets, of a party. Any purported assignment or transfer in violation of this provision shall be null and void.

Subcontract. Instructure may subcontract any Deliverables under this Statement of Work. Instructure warrants that any Deliverables subcontracted will be in accordance with the terms of this Statement of Work.

Order of Precedence. This Agreement includes all Statements of Work, which are incorporated herein by reference. In the event of a conflict, ambiguity, or inconsistency between the provisions of any Statement of Work and the terms of the body of the Agreement, the provisions of the body of the Agreement will govern and control.

Notices. All notices, consents, and approvals under this Agreement must be delivered in writing by courier, by electronic facsimile (fax), or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address set forth beneath such party's signature, and will be effective upon receipt or three (3) business days after being deposited in the mail as required above, whichever occurs sooner. Either party may change its address by giving notice of the new address to the other party.

Force Majeure. Neither party shall be held liable or responsible for any losses arising out of any delay or failure in performance of any part of this Agreement, other than payment obligations hereunder, due to any act of God, act of governmental authority, act of the public enemy or due to war, riot, flood, civil commotion, insurrection, labor difficulty, severe or adverse weather conditions, lack or shortage of electrical power, failure of communications services or devices, malfunctions of equipment or software

programs, failure of performance by any third party hosting service, failure of equipment provided or maintained by others, including general performance of the Internet itself, or any other cause beyond the reasonable control of the party delayed or prevented from performing.

Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument.

Final Agreement. This Agreement, including any incorporated Statement of Work, constitutes the entire agreement and understanding between the Parties and supersedes all other prior and contemporaneous communications, discussions, understandings,

negotiations, arrangements and agreements between the Parties, whether written or oral, relating to the subject matter of this Agreement. No modification or amendment of this Agreement, a Change Request, or a Statement of Work or any of their provisions shall be binding upon any party unless made in writing and duly executed by authorized representatives of both parties. Documents, including, but not limited to, a purchase order, which purport to modify or change the terms and conditions of this Agreement, a Change Request, or a Statement of Work and which are not duly executed by authorized representatives of both parties, shall have no force or effect with regards to such proposed changes.

EXHIBIT B

FEATURE ENHANCEMENT REQUIREMENTS

1. Changes to the Course object

The course object utilized in the Canvas API (documented at <https://canvas.instructure.com/doc/api/courses.html#Course>) will be altered to include the `grading_standard_id` attribute any time a course object is returned through the API.

2. Changes to the Update Courses method

The data returned as a response to the update courses API method (documented at <https://canvas.instructure.com/doc/api/courses.html#method.courses.update>) will be altered to include the `grading_standard_id` attribute any time the method is used.

RECEIVED

By Samantha Dominguez at 2:40 pm, Jul 29, 2015

INSTRUCTURE

Instructure, Inc. BU4

6330 South 3000 East, Suite 700

Salt Lake City, Utah 84121

United States

ar@instructure.com 801-869-5000

P0153322

C-17

e-mailed 07-31-15

Invoice

Date	Invoice #
07/29/2015	INV7149

Bill To

New Mexico State University

Accounts Payable

PO Box 30001, MSC 3AP

Las Cruces NM 88003

Remit ACH/Wire:

Silicon Valley Bank

ABA: 121140399

Account: 3300926617

International Swift: SVBKUS6S

Remit Check:

Dept CH 16968

Palantine, IL 60055-6968

Terms	Due Date	PO #	Sales Rep	Tax Exempt No
Net 30	08/28/2015	R0160647	Maylett, Alexis	85-6000401

Description	No. of FTE/User	Start Date	End Date	Qty	Unit Price	Amount	
Canvas - Professional Services (Non-recurring) Enhancement of API for SOW executed July 10, 2015 Work has been completed.	1			1			

Subtotal

Tax Total @ rate of 0%

Total

Amount Due



New Mexico State University
Central Purchasing and Risk Management Office
P.O. Box 30001, MSC 3890
Las Cruces, New Mexico 88003
purchasing.nmsu.edu
purchasing@nmsu.edu
575.646.2916 (V) 575.646.1351 (F)

Page 1

PO Number: P0152603	P0152603
PO Date: 07/01/15	
Requisition Number:	
Delivery Date: 06/30/16	
Payment Terms: Net 30 FOB: Destination - prepaid/add	

Vendor: Instructure Inc
6415 South 3000 East Ste 100
Salt Lake City UT 84121

No: 800513394

Submit Invoices To: New Mexico State University
Accounts Payable
P.O. Box 30001, MSC 3AP
Las Cruces, New Mexico 88003
575.646.1189 (V) 575.646.1077 (F)
E-Mail: accounts payable@nmsu.edu

Ship to: ICT, MSC 3AT
1275 Stewart Street
Computer Center Bldg RM 148
(575) 646-6007
Las Cruces NM 880038001
ATTN: Susanne Berger

Buyer: John F. Kuckens **FOR TERMS/CONDITIONS GO TO: PURCHASING@NMSU.EDU**

PURCHASE ORDER NUMBER MUST APPEAR ON ALL CARTONS AND INVOICES

Item	Description	Quantity	Unit Cost	Total Cost
1	<p>***** Maintenance Agreement *****</p> <p>AN INVOICE REFERENCING THE PO NUMBER AND APPROVED BY THE NMSU DEPARTMENT IS REQUIRED. RECEIVING IN SYSTEM IS NOT REQUIRED.</p> <p>Instructure Canvas Learning Management System Annual subscription, support and maintenance fee Term: 07/01/15 - 06/30/16 Contract ends: 6/30/17 Previous PO#: P0141450</p> <p>Per RFP I00112612-RA</p> <p>7099 Canvas Cloud [REDACTED] annual subscription fee</p>	EA		[REDACTED]

TOTAL: [REDACTED]

Director of Purchasing or Designee

06/15/2015

Date

Index / Account	Amount	Item
120034 754240	[REDACTED]	[REDACTED]



orders@instructure.com

FILE COPY

Central Purchasing and Risk Management Administration

New Mexico State University

P.O. Box 30001 MSC 3890, Las Cruces, NM 88003-8001

575-646-2916, fax: 575-646-3736

TO: ICT

MSC: 3AT

DATE: APRIL 09, 2015

MAINTENANCE AGREEMENT RENEWAL

The following Maintenance Agreement expires: JUNE 30, 2015

PO # P0141450



VENDOR: INSTRUCTURE INC

Description: CANVAS CLOUD ANNUAL SUBSCRIPTIONS FEE

Please complete the section below and have your Department Head/Director and your Fiscal Monitor sign and return this notice as soon as possible to Purchasing & Risk Management indicating if you wish to renew or cancel.

PLEASE NOTE: Most vendors require a 30-day written notice of cancellation.

You are not required to enter a Requisition into the Banner system. Upon renewal, Purchasing & Risk Management will return to you a copy of the contract along with your copy of the Purchase Order.

DEPT CONTACT: _Susanne Berger_ E-MAIL: _sberger@nmsu.edu_ PH #: _646-6688_

ORG. CODE: _____ SHIP CODE: SH 0185 FAX #: _646-6300_

MAINTENANCE AGREEMENT PRICING:

BASE PRICE: \$ _____

TAX: \$ _____

TOTAL AMOUNT FOR FY 2014/2015: \$ _____

BILLING FREQUENCY: _____ annually _____ (i.e. annually, quarterly, monthly)

PLEASE ATTACH ANY QUOTES OR INVOICES YOU RECEIVED TO THIS FORM BEFORE SUBMITTING.


FOAPAL FOR FY 2015/2016:

INDEX#	ACCT#	%	\$	INDEX#	ACCT#	%	\$
120034	754240	100					
INDEX#	ACCT#	%	\$	INDEX#	ACCT#	%	\$

RENEW X

[] DO NOT RENEW _____ (REASON FOR NON-RENEWAL)

Signature: _____



(Department Head-Required for Renewal or Cancellation)

Date: _____

6-5-15

Signature: _____



(Dean, Director or Vice President-Required for Renewal or Cancellation)

Date: _____

6-5-15

Signature: _____

(Fiscal Monitor)

Date: _____

If you have any questions regarding this memo, please contact Beth Clair at 646-1937 or betclai@nmsu.edu

Customer Contact Information

Customer	New Mexico State University	Contact	Rennette Apodaca
Address	PO Box 30001, MSC 3090	Phone	575-646-3553
City	Las Cruces	Email	rennette@nmsu.edu
State/Province	New Mexico		
Zip/postal code	88003		

Description	Term	Metric	Quantity	Price	Total
Canvas Cloud	9/1/11 - 12/31/11				
Canvas Cloud	1/1/12 - 6/30/13				
Canvas Cloud	7/1/13 - 6/30/14				
Canvas Cloud	7/1/14 - 6/30/15				
Canvas Cloud	7/1/15 - 6/30/16				
Canvas Cloud	7/1/16 - 6/30/17				
Canvas Support-Premium	9/1/11 - 6/30/13				
Canvas Support-Premium	7/1/13 - 6/30/14				
Canvas Support-Premium	7/1/14 - 6/30/15				
Canvas Support-Premium	7/1/15 - 6/30/16				
Canvas Support-Premium	7/1/16 - 6/30/17				
Implementation & Training	N/A				
Additional training					

STF FY12 \$
\$136069 Index
100643, Index
101912
\$51,131

Index 101912

STF FY12 \$

STF FY12 \$

Note: Items billed to 101912 will be billed to Community college per attached schedule. Total

Implementation & Training Services includes:

- Production account setup.
- Authentication integration assistance (for supported identity providers only, (i.e., LDAP, CAS or SAML 2.0).
- Starter training to be delivered online. Administrator Training, Support Training, User Training.
- Site Branding (school color header w/ logo).
- Basic SIS endpoint (We enable the Instructure bulk enrollment API which accepts updates provided in the Canvas SIS Import Format.)
- Production Support Configuration for support ticketing system.
- Test Instance (We provide a test instance for a period of 60 days.)

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

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

Customer must annually notify Instructure of its most recent reported FTE count within 30 days of the filing.

If the reported FTE count for such year is different than the number of estimated FTEs in the Fee table above, then the reported FTE count will be used to calculate the Fees for the renewal Subscription Term directly following the filing date of the most recent reported FTE count.

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 State University/Customer

By: _____
Name: _____
Title: _____
Date: _____

Instructure, Inc.

By: _____
Name: _____
Title: _____
Date: _____

U * *

217-212-0000

26-000-0000

245-261-0000

RECEIVED

By Samantha Dominguez at 4:16 pm, Jun 15, 2015

INSTRUCTURE

Invoice

Instructure, Inc.

6330 South 3000 East, Suite 700
Salt Lake City, Utah 84121
United States
ar@instructure.com 801-869-5000

Date	Invoice #
06/01/2015	INV6352

Bill To

Accounts Payable MSC 3AP
New Mexico State University
PO Box 30001
Las Cruces NM 88003

Remit ACH/Wire:
Silicon Valley Bank
ABA: 121140399
Account: 3300926617
International Swift: SVBKUS6S

Remit Check:
Dept CH 16968
Palantine, IL 60055-6968

Terms	Due Date	PO #	Sales Rep	Tax Exempt No
Net 30	07/01/2015	(please provide)	Kane-, Heather	85-6000401

Description	No. of FTE/User	Start Date	End Date	Qty	Unit Price	Amount	
Premium				1	\$0.00		
Canvas LMS				1	\$0.00		

Subtotal

Tax Total @ rate of 0%

Total

Amount Due

needs PO
ictpurchase

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/support>, and is 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,
 - ii. use the Services to store or transmit infringing, unsolicited marketing emails, libelous, obscene, deceptive, defamatory, pornographic, racist, sexual, hateful, or otherwise objectionable, unlawful or tortious material, or to store or transmit any material in violation of a third-party right,
 - iii. use the Services to harm or impersonate any person, or for any commercial purpose,
 - iv. engage any type of unsolicited communication or messaging (whether for commercial purposes or not),
 - v. interfere with or disrupt the integrity or performance of the Services, or
 - vi. attempt to gain unauthorized access to the Services or their related systems or networks.
- d). **API Access.** Instructure grants Customer a non-exclusive revocable license to operate the Instructure application-programming interface (**API**) only for purposes of interfacing Customer's applications or services with the Service.
 - i. Customer may not reverse engineer the API or use it in a manner (in each case, as reasonably determined by Instructure): that exceeds reasonable request volume; constitutes excessive or abuse usage; or fails to comply with API protocols or with any part of the API.
 - ii. Instructure may change or terminate Customer's API license upon at least 30 days advance notice.
 - iii. Instructure is not liable for any costs, losses, or damages sustained by Customer as a result of any change or termination of the API license by Instructure.

- 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.

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, Licensed Software and Documentation (defined below), 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;
 - 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.** Customer, and each User (to the extent Customer has such right), hereby grants Instructure an irrevocable, royalty-free perpetual license to all feedback, suggestions or ideas provided to Instructure 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 INSTRUTURE'S INDEMNITY OBLIGATIONS, INSTRUTURE'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 New Mexico, without regard to conflict of law principles. Any dispute arising out of or related to this agreement may only be brought in a court of competent jurisdiction. 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 such relief as may be ordered by the court.

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.** Customer will be responsible to Instructure for any liabilities resulting from or related to any (1) improper or unauthorized use of the Services by Customer or any Users or (2) Customer Content:

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.

NMSU /Customer


Signature For The Regents of NMSU
Renette Apodaca

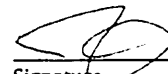
Name
Asst. Director-Purchasing

Title
9/6/11

Date

PO Box 30001 Las Cruces, NM 88003
Address

Instructure, Inc.


Signature
Josh Coates
Name

CEO

Title
9/7/11

Date

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