

Master Subscription Services Agreement

This agreement is between Instructure, Inc., a Delaware corporation (**Instructure**), and the entity or individual agreeing to these terms (**Customer**). It is effective as of the date of the last signature.

LEARNING MANAGEMENT SYSTEM SOFTWARE SERVICE. With a signed order, Instructure will provide its learning management system software as a service through a URL within a hosted server environment under the terms below (**Service**). This agreement contemplates one or more orders for the Service, which are governed by the terms of this agreement. **User** means a student, teacher, or administrator of Customer's educational institution, who is authorized by Customer to use the Service with an assigned login credential.

(1) USE OF SERVICE.

- a). **Customer Owned 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**). 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 within the Service. Instructure has no obligation to maintain the Customer Content 3 months after expiration or termination.
- b). **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, but Instructure will use commercially reasonable efforts to support the previous version of the API for at least 6 months. 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.
- c). **Customer Responsibilities.** Customer (i) is solely responsible for Customer Content (defined below), and User activity in its account in the Service, (ii) must keep its passwords secure and confidential, and notify Instructure promptly of any known unauthorized access, and (iii) may use the Service only in accordance with applicable law.
- d). **Customer Restrictions.** Customer may not, and will use reasonable means to ensure that each User does not,
 - i. sell, resell, rent or lease the Service or API (defined above);
 - ii. use the Service, 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 Service to harm or impersonate any person, or for any commercial purpose;
 - iv. interfere with or disrupt the integrity or performance of the Service; or
 - v. attempt to gain unauthorized access to the Service or their related systems or networks.
- e). **Disclosure of User Information.** Instructure may access, preserve, and disclose User's registration and any other information if required to do so by law or based on Instructure's good faith belief that such access preservation or disclosure is necessary to: (i) enforce this agreement; (ii) respond to claims of a violation of the rights of third parties, whether or not the third party is a User, individual, or government agency; (iii) respond to customer service inquiries; or (iv) protect the rights, property, or personal safety of Instructure, other users or the public.
- f). **Customer Support.** Instructure must provide customer support for the Service under the terms of Instructure's Customer Support (**Support**), which are located at <http://www.instructure.com/policies/support-terms>, and are incorporated into this agreement for all purposes.

(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.** Each party represents and warrants to the other party that it will comply with all applicable provisions of the Family Educational Rights and Privacy Act, as amended (FERPA), and other laws with respect to its activities under this agreement. Instructure will implement reasonable and typical administrative, technical, and physical safeguards to secure its facilities and systems from unauthorized access, and to secure the Customer Confidential Information (defined below) and data. Instructure agrees: to not use or disclose education records created or received from, by, or on behalf of Customer or its students for any purpose other than the purpose than providing the Services to students, except that Instructure may create, use, and disclose de-identified and aggregated data based upon education records; and to not use or disclose such education records except as permitted by this agreement, as required by law, or as authorized by Customer in writing.
- b). **Service 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 availability in a trailing 365-day period as provided below (excluding scheduled outages, force majeure, and outages that result from any Customer or User technology issue), (ii) the functionality or features of the Service 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.

Annual Availability Warranty: 99.9% availability percentage

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

A Customer is eligible for a service credit if the annual availability percentage drops below 99.9% for the preceding 365 days from the date of a service credit claim. The maximum amount of the credit is 1/12 of the annual subscription fee for a twelve (12) month period. This service credit is calculated by taking the number of hours that the Service was unavailable below the warranty, and multiplying it by 3% of 1/12 the annual subscription fee. Customer's exclusive remedy and Instructure's sole obligation for breach of the warranty in b(i) will be for Instructure to provide a credit as provided above; provided that Customer notifies Instructure in writing of such claim within the applicable month Customer becomes eligible or 30 days after.

- c). **Third Party Links/Service 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 sites or services.
- d). **Warranty Disclaimer.** INSTRUMENT DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. THE SERVICE MAY BE INTERRUPTED OR CONTAIN AN ERROR. WHILE INSTRUMENT TAKES REASONABLE MEASURES TO SECURE THE SERVICE, INSTRUMENT DOES NOT GUARANTY THAT THE SERVICE CANNOT BE COMPROMISED.

(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).
- 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. 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, third party technology and other technologies provided by Instructure as part of the Service 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*:
 - i. reverse engineer the Service or the API;
 - ii. remove or modify any proprietary marking or restrictive legends in the Service; or
 - iii. access the Service to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.
- c). **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 Service 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 Service.

(6) EXCLUSION OF DAMAGES AND LIMITATION OF LIABILITY.

- a). **EXCLUSION OF CERTAIN DAMAGES.** INSTRUMENT 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 SERVICE).
- b). **LIMITATION OF LIABILITY.** EXCEPT FOR INSTRUMENT'S INDEMNITY OBLIGATIONS, INSTRUMENT'S LIABILITY FOR DIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) DOES NOT EXCEED THE AMOUNT PAID BY CUSTOMER WITHIN THE PRECEDING 12 MONTHS UNDER THIS AGREEMENT.

(7) TERM, TERMINATION, 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). **Suspension of Service and Removal of Customer Content for Violations of Law or Policy.** Instructure may immediately suspend the Service and remove applicable Customer Content if it in good faith believes that, as part of using the Service, 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 the Service (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 Service or to modify it. If Instructure determines that these alternatives are not reasonably available, Instructure may terminate the Service 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 Service is used other than in accordance with this agreement, or with third party technology it is not designed to operate with.

- 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 Service, *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). **Notices.** For purposes of service messages and notices about the Service, Instructure may place a banner notice or send an email to an email address associated with an account.
- k). **CISG.** The Convention on Contracts for the International Sale of Goods does not apply.
- l). **Force Majeure.** Neither party is liable for force majeure events.

Humboldt University

Ann C. Diaz
Signature

Carlos Diaz
Name

BUYER II
Title

5/23/14
Date

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