INSTRUCTURE

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

Services Order Form

Order #: Q-11063-4
Date: 9/8/2016

Customer Information

Customer	Black Hawk College	Contact	Mitchell Bergeson (BHC ITS)
Address	6600 34th Ave	Phone	(309) 796-5643
City	Moline	Email	bergesonm@bhc.edu
State/Province	Illinois	Billing Contact	
Zip/Postal Code	61265-5899	Billing Phone	
Country	United States	Billing Email	

Recurring							
Description	Metric	Category	Start Date	End Date	Qty	Price	Ext. Price
Canvas Cloud Subscription	FTE	Cloud SaaS Subscription	2/1/2017	1/31/2018	3,872	USD 21.00	USD 81,312
Custom URL	$1,500 (Per Year)	Subscription Add-ons	2/1/2017	1/31/2018	1	USD 1,500.00	USD 1,500
24x7 Support	20% of Subscription (Min $2500)	Support	2/1/2017	1/31/2018	1	USD 16,262.00	USD 16,262
Year 1 Sub-Total							USD 99,074
Canvas Cloud Subscription	FTE	Cloud SaaS Subscription	2/1/2018	1/31/2019	3,872	USD 21.00	USD 81,312
Custom URL	$1,500 (Per Year)	Subscription Add-ons	2/1/2018	1/31/2019	1	USD 1,500.00	USD 1,500
24x7 Support	20% of Subscription (Min $2500)	Support	2/1/2018	1/31/2019	1	USD 16,262.00	USD 16,262
Year 2 Sub-Total							USD 99,074
Canvas Cloud Subscription	FTE	Cloud SaaS Subscription	2/1/2019	1/31/2020	3,872	USD 21.00	USD 81,312
Custom URL	$1,500 (Per Year)	Subscription Add-ons	2/1/2019	1/31/2020	1	USD 1,500.00	USD 1,500
24x7 Support	20% of Subscription (Min $2500)	Support	2/1/2019	1/31/2020	1	USD 16,262.00	USD 16,262
Year 3 Sub-Total							USD 99,074
Canvas Cloud Subscription	FTE	Cloud SaaS Subscription	2/1/2020	1/31/2021	3,872	USD 21.00	USD 81,312
Custom URL	$1,500 (Per Year)	Subscription Add-ons	2/1/2020	1/31/2021	1	USD 1,500.00	USD 1,500

Description	Metric	Category	Start Date	End Date	Qty	Price	Ext. Price
24x7 Support	20% of Subscription (Min $2500)	Support	2/1/2020	1/31/2021	1	USD 16,262.00	USD 16,262
Year 4 Sub-Total							USD 99,074
Canvas Cloud Subscription	FTE	Cloud SaaS Subscription	2/1/2021	1/31/2022	3,872	USD 21.00	USD 81,312
Custom URL	$1,500 (Per Year)	Subscription Add-ons	2/1/2021	1/31/2022	1	USD 1,500.00	USD 1,500
24x7 Support	20% of Subscription (Min $2500)	Support	2/1/2021	1/31/2022	1	USD 16,262.00	USD 16,262
Year 5 Sub-Total							USD 99,074
Total							USD 495,370

Grand Total:	USD 495,370.00

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

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

Duration: Instructure will commence the provision of support and cloud subscription services on the date that is the later of: (i) ninety days prior to the Start Date; and (ii) the effective date. This order begins on the initial date listed above under Term, and continues until the last date listed above, unless sooner terminated under the Agreement.

Miscellaneous: In connection with certain services, Instructure shall provide Customer access to its application-programming interface ("API") for no additional fee. Usage and access to the API will be subject to the Instructure API Policy, as may be updated by Instructure from time to time.

Instructure's support terms can be found at:
Canvas & Catalog: http://www.canvaslms.com/policies/support-terms
Bridge: https://www.getbridge.com/support-terms

The price associated with the order form is only available if executed no later than 5/11/2016

Notes

By executing this order form below, each party indicates that it agrees to be legally bound by this order form, including the attached terms and conditions or terms and conditions of the Customer's initial order form which govern this order form.

Black Hawk College

Signature:	Mike G Meleg
Name:	MIKE G MELEG
Title:	PURCHASING MANAGER
Date:	9/23/16

Instructure, Inc.

Signature:	
Name:	
Title:	
Date:	

BLACK HAWK COLLEGE
BOARD REPORT

Board Report #9020
September 22, 2016

AWARD OF FIVE-YEAR CONTRACT EXTENSION CANVAS LEARNING MANAGEMENT SYSTEM FROM INSTRUCTURE, INC. SOFTWARE LICENSING AGREEMENT

REPORT: In December 2011, a district-wide Black Hawk College Learning Management System (LMS) Committee recommended adoption of Canvas as the LMS for the College. A survey was conducted through the Teaching Learning Center to determine the efficiency and productivity of Canvas's ability to manage, document, track, and report e-learning content. The outcome of this survey documented satisfaction with the product to justify recommendation of the two-year contract extension in 2015. Canvas has been used since this time with a Fall 2012 to Fall 2015 increase in number of courses using the system by 130 courses; and 35 additional instructors using the system. While in Spring 2016, there were 3,602 students and 157 instructors utilizing Canvas. The current contract expires January 31, 2017.

A five-year contract renewal with Instructure, Inc. for Canvas LMS has been negotiated at $99,074 per year, for a total of $495,370. Our current annual rate is $122,446.

RECOMMENDATION:

It is the recommendation of the College President that the Board of Trustees approves the Award of a Five-Year Contract Extension of Canvas Learning Management System from Instructure, Inc. for a total of $495,370.00. Funding will come from the Technology Fees Fund.

Reviewed and Prepared by:

Amy M Maxeiner

Amy Maxeiner, Ed.D., PT
Vice President for Instruction and Student Services

Bettie A. Truitt, Ph.D.
President

Attachment to B.R. #9020
September 22, 2016

The contract renewal fees for the extension are:

Year 1	$99,074
Year 2	$99,074
Year 3	$99,074
Year 4	$99,074
Year 5	$99,074
Grant Total	**$495,370**

INSTRUCTURE

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

Services Order Form

Order #: Q-11063-1
Date: 2/11/2016

Customer Information

Customer	Black Hawk College	Contact	Mitch Bergeson
Address	6600 34th Ave	Phone	(309) 796-5643
City	Moline	Email	bergesonm@bhc.edu
State/Province	Illinois	Billing Contact	
Zip/Postal Code	61265-5899	Billing Phone	
Country	United States	Billing Email	

Recurring

Description	Metric	Category	Start Date	End Date	Qty	Price	Ext. Price
Canvas Cloud Subscription	FTE	Cloud SaaS Subscription	2/1/2017	1/31/2018	3,872	USD 26.03	USD 100,788
Custom URL	$1,500 (Per Year)	Subscription Add-ons	2/1/2017	1/31/2018	1	USD 1,500.00	USD 1,500
24x7 Support	20% of Subscription (Min $2500)	Support	2/1/2017	1/31/2018	1	USD 20,157.63	USD 20,158
Year 1 Sub-Total							USD 122,446
Recurring Total							USD 122,446

Grand Total:	USD 122,446.00

Canvas FTE

Description

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

Payment Terms: Customer agrees to pay to Instructure the applicable fees set forth on this order form. For any year 1 recurring costs and implementation fees, Customer must pay such amount to Instructure Net 30 on the date of this order. For each 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. All trainings are invoiced immediately and expire 12 months from the contract date. All other contract items subject to expiration will be billed 30 days prior to expiration and due subject to standard payment terms unless otherwise explicitly stated elsewhere in this agreement.

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.

Miscellaneous: In connection with certain services, Instructure shall provide Customer access to its application-programming interface ("API") for no additional fee. Usage and access to the API will be subject to the Instructure API Policy, as may be updated by Instructure from time to time.

Instructure's support terms can be found at:
Canvas & Catalog: http://www.canvaslms.com/policies/support-terms
Bridge: https://www.getbridge.com/support-terms

The price associated with the order form is only available if executed no later than **5/11/2016**

Notes

By executing this order form below, each party indicates that it agrees to be legally bound by this order form, including the attached terms and conditions or terms and conditions of the Customer's initial order form which govern this order form.

Black Hawk College

Signature:	DocuSigned by: Mike Meleg AB2AB69A9AAF4E9...
Name:	Mike Meleg
Title:	Purchasing Manager
Date:	2/16/2016

Instructure, Inc.

Signature:	
Name:	
Title:	
Date:	

Instructure Standard Terms and Conditions

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

1. **Services.** Subject to the terms of this Agreement, Instructure will provide the Service specified on the Order Form. "**Service**" means the proprietary software as a service provided by Instructure and made available through a URL in a hosted environment and other related services provided by Instructure as further described in the Order Form. "**User**" means an individual who is authorized by the Customer to use the Service and Customer has paid for such use.

2. **Restrictions.** Customer shall not (and shall not permit Users to): (a) sell, rent, lease, lend, sublicense, distribute, or otherwise transfer or provide access to the Service or the API to any person, firm, or entity except as expressly authorized herein, or access the Service to build a competitive service or product, or copy any feature, function or graphic for competitive purposes; (b) modify, adapt, alter or create derivative works from the Service or the API or to merge the Service or any subpart thereof (including proprietary markings) with other services or software, or remove or modify any proprietary markings or restrictive legends in the Service, except as provided in this Agreement; (c) use the Service to: (i) store, transmit or create libelous, obscene, deceptive, defamatory, pornographic, racist, sexual, hateful, unlawful, tortious materials or otherwise objectionable (except as necessary for Customer's instructional purposes, but in all cases in compliance with applicable law and regulation), or (ii) harm or impersonate any person or violate the rights of any third-party rights; (d) interfere with or disrupt the integrity or performance of the Service; (e) attempt to gain unauthorized access to the Service or its related systems or networks; or (f) introduce viruses, Trojan horses, worms, spyware, or other such malicious code into the Service.

3. **Customer Responsibilities.** Customer: (a) is solely responsible for Customer Content and all activities arising from its Users, and (b) must keep its passwords secure and confidential, and notify Instructure promptly of any known or suspected unauthorized access to the Service.

4. **Instructure Responsibilities.** Instructure shall provide: (a) all updates and upgrades to the Service to Customer that Instructure provides to its customers generally for no additional charge; and (b) Support ("**Support**") pursuant to the terms of Instructure's customer support, which is specified at http://www.canvaslms.com/policies/support-terms.

5. **Fees.** As consideration for the subscription to the Service, Customer shall pay all fees ("**Fees**") set forth in the Order Form. All Fees will be due from Customer within thirty (30) days of receipt of invoice, unless otherwise agreed to in the Order Form. All Fees owed by Customer are exclusive of, and Customer shall pay, all sales, use, VAT, excise, withholding, and other taxes that may be levied in connection with this Agreement. Except as set forth in this Agreement, all fees are non-refundable.

6. **Service Level Agreement.** Instructure will use commercially reasonable efforts to make the Service available with an Annual Uptime Percentage of at least 99.9% ("**Service Commitment**"). In the event Instructure does not meet the Service Commitment, Customer will be eligible to receive a service credit as described below. The maximum amount of the credit is 1/12 of the annual subscription fee for a twelve (12) month period. The service credit is calculated by taking the number of hours the Service was unavailable below the Service Commitment, and multiplying it by 3% of 1/12 the annual subscription fee. If the Customer has been using the Service for less than 365 days, the preceding 365 days will be used, but any days prior to Customer's use of the Service will be deemed to have had 100% availability. Any unavailability occurring prior to a credit cannot be used for any future claims. The Service Commitment does not apply to any scheduled outages, standard maintenance windows, force majeure, and outages that result from any technology issue originating from Customer or a User. Customer's sole and exclusive remedy for breach of the warranty in this Section 6 will be for Instructure to provide a credit as provided in this Section 6; provided that Customer notifies Instructure in writing of such claim within the applicable month Customer becomes eligible or 30 days after.

7. **Representations and Warranties.** Instructure warrants that: (a) the functionality or features of the Service and Support may change but will not materially degrade during the Term, and (b) the Services will conform to its then current documentation. As Customer's exclusive remedy and Instructure's sole liability for breach of the warranty set forth in this Section 7, (a) Instructure shall correct the non-conforming Service at no additional charge to Customer, or (b) in the event Instructure is unable to correct such deficiencies after good-faith efforts, Instructure shall refund Customer amounts paid that are attributable to the defective Service from the date Instructure received such notice. To receive warranty remedies, Customer must promptly report deficiencies in writing to Instructure, but no later than thirty (30) days of the first date the deficiency is identified by Customer.

8. **Compliance.** Each party will comply with all applicable laws and regulations (including all applicable export control laws and restrictions) with respect to its activities under this Agreement. Instructure will implement reasonable, administrative, technical, and physical safeguards in an effort to secure its facilities and systems from unauthorized access and to secure the Customer Content.

9. **Aggregated Data.** As between the parties, Instructure owns the aggregated and statistical data derived from the operation of the Service, including, without limitation, the number of records in the Service, the number and types of transactions, configurations, and reports processed in the Service and the performance results for the Service (the "**Aggregated Data**"). Nothing herein shall be construed as prohibiting Instructure from utilizing the Aggregated Data, provided that Instructure's use of Aggregated Data will not reveal the identity, whether directly or indirectly, of any individual or specific data entered by any individual into the Service.

10. **Limitation of Liability.** EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 6 & 7, INSTRUCTURE DISCLAIMS ALL WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. INSTRUCTURE DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR BE ERROR-FREE. EACH PARTY AND ITS SUPPLIERS SHALL NOT BE LIABLE TO

THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE USE OR INABILITY TO USE THE SERVICES (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY, LOSS OF DATA, RECORDS OR INFORMATION, AND ANY FAILURE OF DELIVERY OF THE SERVICE), EVEN IF THE OTHER PARTY HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES. EXCEPT FOR A PARTY'S INDEMNITY OBLIGATIONS IN SECTION 18, EACH PARTY'S CUMULATIVE MAXIMUM LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) SHALL NOT EXCEED THE AMOUNT PAID BY CUSTOMER WITHIN THE PRECEDING 12 MONTHS UNDER THIS AGREEMENT. CUSTOMER ACKNOWLEDGES THAT INSTRUCTURE IS NOT RESPONSIBLE FOR THIRD-PARTY SERVICES MADE AVAILABLE THROUGH THE SERVICE.

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

12. Proprietary Rights. As between Customer and Instructure, the Instructure Intellectual Property is, and shall at all times remain, the sole and exclusive property of Instructure. Customer shall have no right to use, copy, distribute or create derivative works of the Instructure Intellectual Property except as expressly provided herein. Instructure shall have the right, in its sole discretion, to modify the Instructure Intellectual Property. **"Instructure Intellectual Property"** means the Service, and all improvements, changes, enhancements and components thereof, and all other proprietary materials of Instructure and/or its licensors that are delivered, provided or used by Instructure in the course of performing the Services, as well as all other intellectual property owned by Instructure and all copyrights, patents, trademarks and trade names, trade secrets, specifications, methodologies, documentation, algorithms, criteria, designs, report formats and know-how, as well as and any underlying source code and object code related thereto.

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

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

15. Term. The term (**"Term"**) of this Agreement shall begin on date identified as the Effective Date on the Order Form and shall continue for the time period set forth in the Order Form, unless terminated by the parties in accordance with Section 16.

16. Termination. Either party may terminate this Agreement for the material breach of any provision by the other party if such material breach remains uncured for thirty (30) days after receipt of written notice of such breach from the non-breaching party. Such termination right shall be in addition to any other rights and remedies that may be available to the non-breaching party. In the event the Agreement is terminated, all Order Forms are simultaneously terminated. Upon expiration or termination of this Agreement: (a) Customer shall immediately cease using the Services; and (b) in connection with certain Services, for a period of 3 months following expiration or termination, Customer may export the Customer Content through the API or by using the export feature within the Service.

17. Suspension of Service. Instructure may immediately suspend the Service and remove applicable Customer Content if Customer and/or its Users have violated a law or the terms of this Agreement. Instructure may try to contact Customer in advance, but it is not required to do so.

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

19. General. Any notice by a party under this Agreement shall be in writing and either personally delivered, delivered by facsimile or sent via reputable overnight courier (such as Federal Express) or certified mail, postage prepaid and return receipt requested, addressed to the other

party at the address specified in the Order Form or such other address of which either party may from time to time notify the other in accordance with this Section 19. A copy of all notices to Instructure shall be sent to: Instructure, Inc., 6330 South 3000 East, Ste. 700 Salt Lake City, UT 84121, Attention: General Counsel. For purposes of service messages and notices about the Service, Instructure may place a banner notice or send an email to an email address associated with an account. It is the User's responsibility to ensure that a current email address is associated with their account. All notices shall be in English and shall be deemed effective upon receipt. If Instructure is unable to perform its obligations under this Agreement due to circumstances beyond its reasonable control, including, but not limited to, acts of God, earthquakes, hacker attacks, actions or decrees of governmental bodies, changes in applicable laws, or communication or power failures, such obligations will be suspended so long as those circumstances persist. This Agreement shall be interpreted, governed and construed by the laws of the State of Delaware without regard to the actual state or country of incorporation or residence of Customer. Instructure is acting in performance of this Agreement as an independent contractor to Customer. If any term of this agreement is invalid or unenforceable, the other terms remain in effect and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law. Amendments to this Agreement must be made in writing and signed by both parties unless otherwise specified in the Agreement. This Agreement constitute the entire agreement between the parties with respect to the subject matter of this Agreement, and any prior representations, statements, and agreements relating thereto are superseded by the terms of this Agreement. Instructure rejects additional or conflicting terms of any Customer form-purchasing document. Customer shall not assign this Agreement, in whole or in part, to any entity without Instructure's prior written consent. Any attempt to assign this Agreement, in whole or part, in contravention of this Section, shall be void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns. Any failure by either party to enforce the other party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement. 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. Any terms that by their nature survive termination or expiration of this agreement, will survive (including, but not limited to, Sections 10, 12, 15, 16 and 19).

BLACK HAWK COLLEGE
BOARD REPORT

Board Report #8749
October 16, 2014

AWARD OF TWO-YEAR CONTRACT EXTENSION CANVAS LEARNING MANAGEMENT SYSTEM FROM INSTRUCTURE, INC. SOFTWARE LICENSING AGREEMENT

REPORT: Initially, a district-wide Black Hawk College Learning Management System (LMS) Committee was established to analyze LMS options due to the expiration of the contractual services with the Blackboard Corporation vendor. Following a thorough product evaluation which also included bid processes and specifications conducted in accordance with College procedures and Illinois law, it was the unanimous recommendation of the LMS Committee that BHC contract the services of Instructure, Inc. for the provision of training, migration/conversion support, access, and user support for Canvas LMS (December, 2011).

The Instructure Inc. proposal (associated with RFP 06-12) included a three-year contract (expires 1/31/15) which granted the College the option of extending the agreement for an additional two years at the College's discretion. A survey was conducted through the Teaching Learning Center to determine the efficiency and productivity of Canvas's ability to manage, document, track, and report e-learning content. The outcome of this survey documented satisfaction with the product to justify recommendation of the two-year contract extension.

Additional noted features to support the two-year renewal of the services of Instructure, Inc. include:

- Instructure Inc. services are provided directly to Black Hawk College via a hosted system, which eliminates the need for a third party vendor to provide hardware and operating system software; thus, relieves the College of the custodial burden of maintaining and supporting the LMS system and data locally.
- The Canvas application contains: tools to facilitate course preparation; assessment; multiple forms of communication with students; analytic; customizability; and flexibility to allow instruction to deliver content to students in various modes with the primary consideration being functionality and ease of use for students and instructors.
- Canvas is extremely reliable; averages more than 99.9% uptime.
- Canvas has exceptional security strengths, disaster recovery protocols, and resource allocation to support varying levels of demand by the College. Updates are securely implemented.

The contract renewal fees for the extension are:

Year 1	$116,684
Year 2	122,492
Grand Total	$239,176

RECOMMENDATION:

It is the recommendation of the President that the Board of Trustees approves the Award of a Two-Year Contract Extension of Canvas Learning Management System from Instructure, Inc. for $239,176. Funding will come from the Technology Fees Fund.

Reviewed and Prepared by:

Lee J. Weimer, D.M.A.
Interim Vice President for Instruction and Student Services

Bettie A. Truitt, Ph.D.
Interim President

canvas

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

Services Order Form

Customer Contact Information

Customer	Black Hawk College	Contact	Mike Meleg
Address	6600 34th Ave	Phone	(309) 796-5002
		Email	melegm@bhc.edu
City	Moline		
State/Province	IL		
Zip/Postal Code	61265-5899		
Country	United States		

Year 1

Description	Term		Metric	Quantity	Price	Total
Canvas Cloud Subscription	2/1/2015	1/31/2016	FTE	3,872	$24.79	$95,987.00
Premium Support	2/1/2015	1/31/2016	20% of subscription (Min 2.5K)	1	$19,197.00	$19,197.00
Custom URL	2/1/2015	1/31/2016	$1,500 (Per Year)	1	$1,500.00	$1,500.00
					Sub-Total	$116,684.00

Year 2

Description	Term		Metric	Quantity	Price	Total
Canvas Cloud Subscription	2/1/2016	1/31/2017	FTE	3,872	$26.04	$100,827.00
Premium Support	2/1/2016	1/31/2017	20% of subscription (Min 2.5K)	1	$20,165.40	$20,165.00
Custom URL	2/1/2016	1/31/2017	$1,500 (Per Year)	1	$1,500.00	$1,500.00
					Sub-Total	$122,492.00

Non Recurring

Description	Term	Metric	Quantity	Price	Total
				Sub-Total	$0.00
				Grand Total	$239,176.00

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.

One Time Opt-Out: Customer has the one time option to cancel this Order Form, and any associated agreements, by providing written notification to Instructure no later than 30 days prior to the end of the initial term (1/31/2016). Any prepaid amounts to Instructure will not be refunded.

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.

Black Hawk College	
Signature:	
Name:	Lee Weimer
Title:	Int VP Instructional Student Servic
Date:	10/7/14

Instructure, Inc.	
Signature:	Matthew Seale
Name:	Matthew Seale
Title:	Sr. BI Analyst
Date:	Oct 20, 2014

canvas

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

Services Order Form

Customer Contact Information

Customer	Black Hawk College	Contact	Mike Meleg
Address	6600 34th Ave	Phone	(309) 796-5002
		Email	melegm@bhc.edu
City	Moline		
State/Province	IL		
Zip/Postal Code	61265-5899		
Country	United States		

Products & Fees

Year 1

Description	Term		Metric	Quantity	Price	Total
Canvas Cloud Subscription	2/1/2015	1/31/2016	FTE	3,872	$24.79	$95,987.00
Premium Support	2/1/2015	1/31/2016	20% of subscription (Min 2.5K)	1	$19,197.00	$19,197.00
Custom URL	2/1/2015	1/31/2016	$1,500 (Per Year)	1	$1,500.00	$1,500.00
					Sub-Total	$116,684.00

Year 2

Description	Term		Metric	Quantity	Price	Total
Canvas Cloud Subscription	2/1/2016	1/31/2017	FTE	3,872	$26.04	$100,827.00
Premium Support	2/1/2016	1/31/2017	20% of subscription (Min 2.5K)	1	$20,165.40	$20,165.00
Custom URL	2/1/2016	1/31/2017	$1,500 (Per Year)	1	$1,500.00	$1,500.00
					Sub-Total	$122,492.00

Non Recurring

Description	Term	Metric	Quantity	Price	Total
				Sub-Total	$0.00
				Grand Total	$239,176.00

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.

One Time Opt-Out: Customer has the one time option to cancel this Order Form, and any associated agreements, by providing written notification to Instructure no later than 30 days prior to the end of the initial term (1/31/2016). Any prepaid amounts to Instructure will not be refunded.

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.

Black Hawk College

Signature:	
Name:	LEE WEIMER
Title:	Int VP Instructional Student Servic
Date:	10/11/14

Instructure, Inc.

Signature:	
Name:	
Title:	
Date:	

INSTRUCTURE

Services Order Form

9020 South Sandy Parkway, Suite 300, Sandy, UT 84070

Customer Contact Information

Customer	Black Hawk College	Contact	Mike Meleg
Address	6600 34th Ave	Phone	(309) 796-5002
City	Moline	email	melegm@bhc.edu
State/Province	IL		
Zip/postal code	61265-5899		

Description	Term	Metric	Quantity	Price	Total
Canvas Vanity URL	4/17/12 to 1/31/13	$1,500	1	$1,500.00	$1,500
	2/1/13 to 1/31/14	$1,500	1	$1,500.00	$1,500
	2/1/14 to 1/31/15	$1,500	1	$1,500.00	$1,500
				Total	$4,500

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 (Test instance that refreshes weekly)

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.

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Black Hawk College/Customer

By: [signature]

Name: [illegible]

Title: [illegible]

Date: [illegible]

Instructure, Inc.

By: Matthew Searle

Name: Matthew Searle

Title: Finance & Accounting

Date: 4/19/12

INSTRUCTURE

Services Order Form

9020 South Sandy Parkway, Suite 300, Sandy, UT 84070

Customer Contact Information

Customer	Black Hawk College	Contact	Mike Meleg
Address	6600 34th Ave	Phone	(309) 796-5002
City	Moline	email	melegm@bhc.edu
State/Province	IL		
Zip/postal code	61265-5899		

Products & Fees

Description	Term	Metric	Quantity	Price	Total
Canvas Vanity URL	4/17/12 to 1/31/13	$1,500	1	$1,500.00	$1,500
	2/1/13 to 1/31/14	$1,500	1	$1,500.00	$1,500
	2/1/14 to 1/31/15	$1,500	1	$1,500.00	$1,500
				Total	$4,500

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.)
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- Production Support Configuration for support ticketing system.
- Test Instance (Test instance that refreshes weekly)

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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.

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BLACK HAWK COLLEGE/Customer

By: R Campbell

Name: DR. ROSE CAMPBELL

Title: EXECUTIVE VICE PRESIDENT AND VICE PRESIDENT FOR INSTRUCTION AND ITS

Date: 4/18/12

Instructure, Inc.

By: _____

Name: _____

Title: _____

Date: _____

INSTRUCTURE

Services Order Form

9020 South Sandy Parkway, Suite 300, Sandy, UT 84070

Customer Contact Information

Customer	Black Hawk College	Contact	Mike Meleg
Address	6600 34th Ave	Phone	(309) 796-5002
City	Moline	email	melegm@bhc.edu
State/Province	IL		
Zip/postal code	61265-5899		

Products & Fees

Description	Term	Metric	Quantity	Price	Total
Canvas Vanity URL	4/17/12 to 1/31/13	$1,500	1	$1,500.00	$1,500
	2/1/13 to 1/31/14	$1,500	1	$1,500.00	$1,500
	2/1/14 to 1/31/15	$1,500	1	$1,500.00	$1,500
				Total	$4,500

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.)
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- Production Support Configuration for support ticketing system.
- Test Instance (Test instance that refreshes weekly)

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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.

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Black Hawk College Customer	Instructure, Inc.
By: [signature]	By:
Name: Dr. Dave Campbell	Name:
Title: Executive Vice President and Vice President for Instruction and IT	Title:
Date: 4/18/12	Date:

INSTRUCTURE

9002 South Sandy Parkway, Sandy, UT 84070

Services Order Form

Customer Contact Information

Customer	Black Hawk College	Contact	Mike Meleg
Address	6600 34th Ave	Phone	(309) 796-5002
City	Moline	email	melegm@bhc.edu
State/Province	IL		
Zip/postal code	61265-5899		

Description	Term	Metric	Quantity	Price	Total
Canvas Cloud	2/1/12 to 1/31/13	FTE	3,872	$21.41	$82,900
	2/1/13 to 1/31/14	FTE	3,872	$22.48	$87,050
	2/1/14 to 1/31/15	FTE	3,872	$23.61	$91,400
Canvas Support-Basic	2/1/12 to 5/31/12		N/A		$0
Canvas Support-Premium	6/1/12 - 1/31/13	20% of subscription	N/A	$11,053	$11,053
Canvas Support-Premium	2/1/13 to 1/31/14	20% of subscription	N/A	$17,410	$17,410
Canvas Support-Premium	2/1/14 to 1/31/15	20% of subscription	N/A	$18,280	$18,280
Implementation & Training	N/A	N/A	N/A	$8,000	$8,000
Training Workshop	N/A		3	$1,000	$3,000
				Total	$319,093

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.
Customer will be invoiced for the Premium Support term of 6/1/12 - 1/31/13 on 7/1/12 with a payment due date of 7/15/12.

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.

BLACK HAWK COLLEGE/Customer

By: Mike G Meleg

Name: MIKE G. MELEG

Title: PURCHASING MANAGER

Date: 1/26/12

Instructure, Inc.

By: Mathew Searle

Name: Mathew Searle

Title: Controller

Date: 1/31/12

INSTRUCTURE

9002 South Sandy Parkway, Sandy, UT 84070

Services Order Form

Customer Contact Information

Customer	Black Hawk College	Contact	Mike Meleg
Address	6600 34th Ave	Phone	(309) 796-5002
City	Moline	email	melegm@bhc.edu
State/Province	IL		
Zip/postal code	61265-5899		

Description	Term	Metric	Quantity	Price	Total
Canvas Cloud	2/1/12 to 1/31/13	FTE	3,872	$21.41	$82,900
	2/1/13 to 1/31/14	FTE	3,872	$22.48	$87,050
	2/1/14 to 1/31/15	FTE	3,872	$23.61	$91,400
Canvas Support-Basic	2/1/12 to 5/31/12		N/A		$0
Canvas Support-Premium	6/1/12 - 1/31/13	20% of subscription	N/A	$11,053	$11,053
Canvas Support-Premium	2/1/13 to 1/31/14	20% of subscription	N/A	$17,410	$17,410
Canvas Support-Premium	2/1/14 to 1/31/15	20% of subscription	N/A	$18,280	$18,280
Implementation & Training	N/A	N/A	N/A	$8,000	$8,000
Training Workshop	N/A		3	$1,000	$3,000
				Total	$319,093

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.
Customer will be invoiced for the Premium Support term of 6/1/12 - 1/31/13 on 7/1/12 with a payment due date of 7/15/12.

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.

BLACK HAWK COLLEGE Customer	Instructure, Inc.
By: Mike G. Meleg	By:
Name: MIKE G. MELEG	Name:
Title: PURCHASING MANAGER	Title:
Date: 1/26/12	Date:

INSTRUCTURE

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.

e). **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 of the Service.

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 FERPA Warranty** 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, including without limitation, Instructure's obligations under FERPA as a "school official" and FERPA's "legitimate educational interests" limitation on use or disclosure of education records. 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 abide by FERPA's limitations on re-disclosure of personally identifiable information in education records; 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 for which such disclosure is made; 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). **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 the applicable month or 30 days after.

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*:

i. reverse engineer the Services 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.** Instrucutre 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 ANDSUSPENSION 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 1(e).
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.

BLACK HAWK COLLEGE /Customer	**Instructure, Inc.**
Signature	Signature
DR. ROSE CAMPBELL Name	Name
EXECUTIVE V.P. /V.P. OF INSTRUCTION & IT Title	Title
1/27/12 Date	Date
6600 34TH AVE. MOLINE, IL 61265 Address	9020 South Sandy Parkway Sandy, UT 84070

INSTRUCTURE

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.

e). **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 of the Service.

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 FERPA Warranty** 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, including without limitation, Instructure's obligations under FERPA as a "school official" and FERPA's "legitimate educational interests" limitation on use or disclosure of education records. 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 abide by FERPA's limitations on re-disclosure of personally identifiable information in education records; 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 for which such disclosure is made; 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). **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 the applicable month or 30 days after.

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*:

i. reverse engineer the Services 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. Instrucutre 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 ANDSUSPENSION OF SERVICE.

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BLACK HAWK COLLEGE
Customer

Signature

DR. RAFIC CAMPBELL
Name

EXECUTIVE V.P. / U.C. DEAN INSTRUCTION & IT
Title

1/27/12
Date

6600 34TH AVE
MOLINE, IL 61265
Address

Instructure, Inc.

Signature

Mathew Searle
Name

Controller
Title

1/31/12
Date

9020 South Sandy Parkway
Sandy, UT 84070