



Data Sharing/Use Agreement
Between
Jefferson County Board of Education
And
Instructure, Inc.

This Data Sharing/Use Agreement ("Agreement") between the Jefferson County Board of Education, a political subdivision of the Commonwealth of Kentucky doing business as the Jefferson County Public Schools ("JCPS"), and Instructure, Inc., a corporation organized under the laws of Delaware ("Services Provider"), describes the services to be provided to JCPS by Services Provider, and the means to be used by Services Provider to ensure the confidentiality and security of information and data exchanged between JCPS and Services Provider in connection with the provision of the services.

A. PERIOD OF THE AGREEMENT

This Agreement shall be effective as of July 28 2021 and will terminate when the services contract referenced in Paragraph B.1. below terminates, unless terminated earlier by either party pursuant to Section H.

B. SCOPE OF THE AGREEMENT AND INTENDED USE OF THE DATA

1. Services Provider will provide the following services to JCPS under the terms of a services contract between JCPS and Services Provider effective July 28, 2021: Services Provider shall provide software licenses to various schools for Case Assessments in the MasteryConnect platform, an assessment and curriculum platform designed to show student learning in an intuitive, visual way. Additional information on the Services is provided in the Services Provider's Quote, which is attached to this Agreement as Attachment C and incorporated by reference herein.
2. JCPS and Services Provider agree that Services Provider is an organization to which JCPS can disclose, personally identifiable information from an education record of a student, as defined in 34 CFR 99.3, under the "school official exception" of the Family Educational Rights and Privacy Act, 20 U.S.C. 1232(g) and 34 C.F.R. 99.31 (a)(1) ("FERPA"), because the disclosure is to a contractor to whom JCPS has outsourced institutional services or functions for which JCPS would otherwise use employees; the contractor is under the direct control of JCPS with respect to the use and maintenance of education records; and the

contractor is subject to the requirements of 34 CFR 99.33(a) governing the use and redisclosure of personally identifiable information from education records.

3. JCPS shall disclose to Services Provider, confidential, personally identifiable information from an education record of a student, as defined in 34 C.F.R. 99.3, under the "school official exception" of FERPA, 34 C.F.R. 99.31 (a)(1), when the disclosure is within such exception as stated in Paragraph B.2 above and Services Provider has a legitimate educational interest for access to such education records. The confidential data, including student and non-student information to be disclosed, is described in a document attached to this agreement as **Attachment A**. Services Provider shall use personally identifiable information from education records and other records in order to perform the services described in Paragraph B.1 above. Services Provider shall notify JCPS and JCPS shall provide written consent, if approved, of any changes to the list of disclosed data necessary for the services or any changes to the scope, purpose or duration of the services themselves. Any agreed upon changes to the data disclosed shall be reduced to writing and included in an update to Attachment A to this Agreement. Any agreed upon changes to the scope, purpose or duration of the services shall be reduced to writing and included in an amendment to the services contract described in Paragraph B.1 above.
4. Services Provider and JCPS shall work cooperatively to determine the proper medium and method for the transfer of confidential data between each other. Services Provider shall confirm the transfer of confidential data and notify JCPS as soon as practicable of any discrepancies between the actual data transferred and the data described in this Agreement. The same protocol shall apply to any transfer of confidential data from Services Provider to JCPS.

C. CONSTRAINTS ON USE OF DATA

1. Services Provider agrees that the services shall be provided in a manner that does not permit personal identification of parents and students by individuals other than representatives of Services Provider that have legitimate interests in the information.
2. Services Provider will not contact the individuals included in the data sets without obtaining advance written authorization from JCPS.
3. Services Provider shall not re-disclose any individual-level data with or without identifying information to any other requesting individuals, agencies, or organizations without prior written authorization by JCPS.
4. Services Provider shall use the data only for the purpose described in Paragraph B.1 above. The data shall not be used for personal gain or profit.

D. DATA CONFIDENTIALITY AND DATA SECURITY

Services Provider agrees to the following confidentiality and data security statements:

1. Services Provider acknowledges that the data is confidential data and proprietary to JCPS, and agrees to protect the data from unauthorized disclosures and to comply with all applicable Local, State and Federal confidentiality laws and regulations including but not limited to FERPA; the Kentucky Family Educational Rights and Privacy Act, KRS 160.700 et seq.; the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq.; the Child Nutrition Act of 1966, 42 U.S.C. 1771 et seq.; 7 C.F.R. 245.6 et seq.; the Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931 et seq.; and the Kentucky Open Records Act, KRS 61.820 et seq.
2. If the performance of this Agreement involves the transfer by JCPS to Services Provider of any data regarding any JCPS student that is subject to FERPA, Services Provider agrees to:
 - a. In all respects comply with the provisions of FERPA.
 - b. Use any such data for no purpose other than to fulfill the purposes of the services contract described in Paragraph B.1 above, and not share any such data with any person or entity other than Services Provider and its employees, contractors and agents, without the prior written approval of JCPS.
 - c. Require all employees, contractors and agents of Services Provider to comply with all applicable provisions of FERPA with respect to any such data.
 - d. Maintain any such data in a secure computer environment, and not copy, reproduce or transmit any such data except as necessary to fulfill the purposes of the services contract described in Paragraph B.1 above.
 - e. Provide the services under the services contract described in Paragraph B.1 above in a manner that does not permit the identification of an individual student by anyone other than employees, contractors or agents of Services Provider having a legitimate interest in knowing such personal identification.
 - f. Destroy or return to JCPS any such data obtained under this Agreement within thirty days (30) after the date within it is no longer needed by Services Provider for the purposes of the services contract described in Paragraph B.1 above.
3. Services Provider shall not release or otherwise reveal, directly or indirectly, the data to any individual, agency, entity, or third party not included in this Agreement, unless such disclosure is required by law or court order. Notwithstanding the foregoing, Services Provider may release data that does not include personally identifiable information about any student ("Non-identifiable information") to the following pre-approved third party vendors: Accusoft, Data Dog, Splunk, AWS, Clever and Salesforce. Services Provider shall provide

reasonable notice to JCPS before releasing data to any third-party not listed in this Agreement. If Services Provider becomes legally compelled to disclose any confidential and otherwise personally identifiable data (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise), then Services Provider shall use all reasonable efforts to provide JCPS with prior notice before disclosure so that JCPS may seek a protective order or other appropriate remedy to prevent the disclosure or to ensure JCPS's compliance with the confidentiality requirements of federal or state law; provided, however, that Services Provider will use all reasonable efforts to maintain the confidentiality of confidential and otherwise personally identifiable data. If a protective order or other remedy is not obtained prior to the deadline by which any legally compelled disclosure is required, Services Provider will only disclose that portion of confidential and otherwise personally identifiable data that Services Provider is legally required to disclose.

4. Services Provider shall not distribute, reprint, alter, sell, assign, edit, modify or create derivative works or any ancillary materials from or with the data.
5. Services Provider shall not use data shared under this Agreement for any purpose other than the services contract described in Paragraph B.1 above. Nothing in this Agreement shall be construed to authorize Services Provider to have access to additional data from JCPS that is not included in the scope of this Agreement (or addenda). Services Provider understands that this Agreement does not convey ownership of the data to Services Provider.
6. Services Provider shall take reasonable security precautions and protections to ensure that persons not authorized to view the data do not gain access to the data. Reasonable security precautions and protections include, but are not limited to:
 - a. Creating, distributing, and implementing data governance policies and procedures which protect data through appropriate administrative, technical and physical security safeguards, and outline staff responsibilities for maintaining data security;
 - b. Encrypting all data carried on mobile computers/devices;
 - c. Encrypting data before it is transmitted electronically;
 - d. Requiring that users be uniquely identified and authenticated before accessing data;
 - e. Establishing and enforcing well-defined data privilege rights which restrict users' access to the data necessary for this to perform their job functions;
 - f. Ensuring that all staff accessing data sign a nondisclosure statement, attached as **Attachment B**, and maintain copies of signed statements;

- g. Securing access to any physical areas/electronic devices where sensitive data are stored;
 - h. Installing a firewall to permit or deny network transmissions based upon a set of rules; and
 - i. Installing anti-virus software to protect the network.
- 7. If Services Provider receives Personal Information as defined by and in accordance with the Kentucky Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq. (the "Act"), Services Provider shall secure, protect and maintain the confidentiality of the Personal Information by, without limitation, complying with all requirements applicable to "non-affiliated third parties" set forth in the Act, including but not limited to the following:
 - a. "Personal Information" is defined in accordance with KRS 61.931(6) as an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:
 - i. An account, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
 - ii. A Social Security number;
 - iii. A taxpayer identification number that incorporates a Social Security number;
 - iv. A driver's license number, state identification card number or other individual identification number issued by an agency;
 - v. A passport number or other identification number issued by the United States government; or
 - vi. Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by FERPA.
 - b. As provided in KRS 61.931(5), a "non-affiliated third party" means any person or entity that has a contract or agreement with an agency and receives (accesses, collects or maintains) personal information from the agency pursuant to the contract or agreement.
 - c. Services Provider shall not re-disclose, without the written consent of JCPS, any "personal information," as defined in KRS 61.931, or any

- other personally identifiable information of a student or other persons, such as employees.
- d. Services Provider agrees to cooperate with JCPS in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.
 - e. Services Provider agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.
8. If Services Provider is a cloud computing service provider (as defined in KRS 365.734(1)(b) as "any person other than an educational institution that operates a cloud computing service"), Services Provider agrees that:
- a. Services Provider shall not process student data for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the provider receives express permission from the student's parent. Services Provider shall work with the student's school and district to determine the best method of collecting parental permission. KRS 365.734 defines "process" and "student data."
 - b. Pursuant to KRS 365.734(2), Services Provider shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
 - c. Pursuant to KRS 365.734(2), Services Provider shall not sell, disclose, or otherwise process student data for any commercial purpose.
 - d. Pursuant to KRS 365.734(3), Services Provider shall certify in writing to the agency that it will comply with KRS 365.734(2).
9. Services Provider shall report all known breaches of the data, in any format, to Dr. Kermit Belcher, Chief Information Officer. The report shall include (1) the name, job title, and contact information of the person reporting the incident; (2) the name, job title, and contact information of the person who discovered the incident; (3) the date and time the incident was discovered; (4) the nature of the incident (e.g. system level electronic breach, an electronic breach of one computer or device, a breach of hard copies of records, etc.); (5) a description of the information lost or compromised; (6) the name of the electronic system and possible interconnectivity with other systems; (7) the storage medium from which information was lost or compromised; (8) the controls in place to prevent unauthorized use of the lost or compromised information; (9) the number of individuals potentially affected; and (10) whether law enforcement was contacted.
10. Services Provider shall securely and permanently destroy the data, and any and all hard and soft (electronic) copies thereof, upon the termination of this Agreement. Services Provider agrees to require all employees, contactors, or agents of any kind using JCPS data to comply with this provision. Services

Provider agrees to document the methods used to destroy the data, and upon request, provide certification to JCPS that the data has been destroyed.

11. For purposes of this agreement and ensuring Services Provider's compliance with the terms of this Agreement and all application of the state and Federal laws, Services Provider designates Josh Blackwelder (or an alternative designee specified in writing) as the temporary custodian ("Temporary Custodian") of the data that JCPS shares with Services Provider. JCPS will release all data and information under this Agreement to Temporary Custodian. Temporary Custodian shall be responsible for transmitting all data requests and maintain a log or other record of all data requested and received pursuant to this Agreement, including confirmation of the return or destruction of the data as described below. JCPS or its agents may, upon request, review the records Services Provider is required to keep under this Agreement.
12. Services Provider acknowledges that any violation of this Agreement and/or the provisions of FERPA or accompanying regulations related to the nondisclosure of protected student information constitutes just cause for JCPS to immediately terminate this Agreement.
13. Services Provider shall maintain, during the term of this Agreement, a cyber-insurance liability policy, in the amount of \$5M. Upon request, Services Provider shall furnish the certificate of insurance evidencing this coverage. The certificate of insurance shall name the Board of Education of Jefferson County as additional insured in the Description of Operations section of the Certificate of Insurance which shall read:

Board of Education of Jefferson County
Attn: Insurance/Real Estate Dept.
3332 Newburg Road
Louisville, Kentucky 40218

14. Services provider shall maintain, during the term of this Agreement, ISO27001 or SOC2 certification. If Services Provider is unable to provide ISO27001 or SOC2 certification, minimum requirements on a JCPS-provided standardized questionnaire must be met. Upon request, Services Provider shall furnish a current ISO27001, SOC2 certification, or updated questionnaire.

E. FINANCIAL COSTS OF DATA-SHARING

Each party shall be responsible for their portion of costs that may result from data sharing. Examples of potential costs to JCPS are costs associated with the compiling of student data requested under this agreement and costs associated with the electronic delivery of the student data to Services Provider.

No payments will be made under this Agreement by either party. Any payments to Services Provider will be made under the services contract described in Paragraph B.1 above.

F. OBLIGATIONS OF JCPS

During the term of this Agreement, JCPS shall:

1. Prepare and deliver the data described in **Attachment A**.

G. LIABILITY

Services Provider agrees to be responsible for and assumes all liability for any claims, costs, damages or expenses (including reasonable attorneys' fees) that may arise from or relate to Services Provider's intentional or negligent release of personally identifiable student, parent or staff data ("Claim" or "Claims"). Services Provider agrees to hold harmless JCPS and pay any costs incurred by JCPS in connection with any Claim. The provisions of this Section shall survive the termination or expiration of this Agreement. This indemnification requirement is subject to the limitation of liability cap in the applicable services agreement.

H. TERMINATION

1. This Agreement may be terminated as follows, after notification via the United States Postal Service (certified mail or registered mail) or recognized overnight delivery service (e.g., UPS, DHL, or FedEx):
 - a. By either party in the event of a material breach of this Agreement by another party provided however, the breaching party shall have thirty (30) days to cure such breach and this Agreement shall remain in force.
 - b. By either party after thirty (30) days advance written notice to the other party, for any reason or no reason.
2. The confidentiality provisions of this Agreement shall survive the termination of this Agreement. If this Agreement is terminated by either party for material breach or for any other reason with thirty (30) days written notice, within ninety (90) days of the termination the confidential information shall be returned or destroyed within ninety (90) days of the termination and the Temporary Custodian shall provide JCPS confirmation of the return or destruction of the data pursuant to Paragraph D.11. If this Agreement terminates at the end of the term described in Section A, within ninety (90) days after the end of the term, Services Provider shall return or destroy all confidential information and the Temporary Custodian shall provide JCPS confirmation of the return or destruction of the data pursuant to Paragraph D.11.
3. Destruction of the confidential information shall be accomplished by utilizing an approved method of confidential destruction, including but not limited to

shredding, burning or certified/witnessed destruction for physical materials and verified erasure of magnetic media using approved methods of electronic file destruction.

I. PUBLICATIONS AND COPYRIGHTS

Both parties recognize that each organization may have extant work that predates this agreement. If those materials and/or data are used in the course of this work, they remain the property of the original developer. If new materials are developed during the term of the services contract described in Paragraph B.1 above, ownership and copyright of such will be governed by the terms of the services contract.

J. MODIFICATION

No waiver, alteration or modification of the provisions of this Agreement shall be binding unless in writing and mutually agreed upon. Any modifications or additions to this Agreement must be negotiated and approved by both parties.

K. Reserved

L. BREACH OF DATA CONFIDENTIALITY

Services Provider acknowledges that the breach of this agreement or its part may result in irreparable and continuing damage to JCPS for which money damages may not provide adequate relief. In the event of a breach or threatened breach of this agreement by Services Provider, JCPS, in addition to any other rights and remedies available to JCPS at law or in equity, may be entitled to preliminary and permanent injunctions to enjoin and restrain the breach or threatened breach. If the United States Department of Education's Family Policy Compliance Office determines that Services Provider has violated paragraph 34 C.F.R. 99.31(a)(6)(iii)(B), JCPS may not allow Services Provider access to personally identifiable information from its education records for at least five (5) years.

M. CHOICE OF LAW AND FORUM

This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky. Any action or Claim arising from, under or pursuant to this Agreement shall be brought in the Jefferson County, Kentucky, Circuit Court, and the parties expressly waive the right to bring any legal action or Claims in any other courts.

N. WAIVER

No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Agreement.

O. SEVERABILITY

If any part of this Agreement is held to be void, against public policy or illegal, the balance remaining provisions of this Agreement shall continue to be valid and binding.

P. NOTICES

Any notices or reports by one party to the other party under this Agreement shall be made in writing, to the address shown in the signature portions of this Agreement, or to such other address as may be designated in writing by one party to the other. Notices shall be effective when received if personally delivered, or three days after mailing if mailed.

Q. RELATIONSHIP OF PARTIES

JCPS is not an employee, agent, partner or co-venturer of or with Services Provider. Neither Services Provider nor JCPS shall represent or imply to any party that it has the power or authority to enter into a contract or commitment in the name of or on behalf of the other, or to otherwise bind the other.

R. ENTIRE AGREEMENT; ASSIGNMENT

This Agreement, together with any attachments hereto and any amendment or modifications that may hereafter be agreed to, constitute the entire understanding between the parties with respect to the subject-matter hereof and supersede any and all prior understandings and agreements, oral and written, relating hereto. Services Provider shall not assign this Agreement or any portion thereof to a subcontractor or other third party without the prior written consent of JCPS, and any attempted assignment without such prior written consent in violation of this Section R shall automatically terminate this Agreement.

AGREED:

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

BY:  _____
16E6B01B5BD4478...

Name: Daisy Bennett

Title: Instructure Privacy Officer

Date: 7/12/2021 _____

AGREED:

Jefferson County Board of Education
3332 Newburg Road
Louisville KY 40218

BY: _____

Name: Martin A. Pollio, Ed. D.,

Title: Superintendent

Date: _____

Attachment A

CONFIDENTIAL INFORMATION TO BE DISCLOSED

The data fields that will be required for the administration of the CASE Assessments in the MasteryConnect platform are: student name, student ID (assigned by the district or state), teacher name, teacher ID (assigned by the district or state). There should be no additional Personally Identifiable Information required.

Attachment B

SERVICE PROVIDER'S EMPLOYEE NONDISCLOSURE STATEMENT

CONFIDENTIALITY AND INTELLECTUAL PROPERTY AGREEMENT

In consideration of my employment or continued employment by Instructure, Inc. ("Company"), and the compensation now and hereafter paid to me, I hereby agree to the terms of this agreement (the "Agreement") as follows:

1. **Nondisclosure.**

(a) **Nondisclosure.** At all times during my employment and thereafter, I will hold in strictest confidence and will not disclose, use, lecture upon or publish any of Company's Proprietary or Confidential Information (defined below), except as such disclosure, use or publication may be required in connection with my work for Company, or unless an officer of Company expressly authorizes such in writing. I will obtain Company's written approval before publishing or submitting for publication any material (written, verbal, or otherwise) that relates to my work at Company and/or incorporates any Proprietary or Confidential Information. I hereby assign to Company any rights I may have or acquire in such Confidential Information and recognize that all Confidential Information shall be the sole property of the Company and its assigns.

(b) **Confidential Information.** The term "Confidential Information" means any documentation, data, or information which is valuable to the Company and not generally known to the public, including but not limited to any and all knowledge, data or information related to Company's business or its actual or demonstrably anticipated research or development, including without limitation (a) trade secrets, mask works, ideas, processes, formulas, source and object codes, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques; (b) information regarding plans for research, development, new products and services, marketing and selling, business plans, budgets and unpublished financial statements, licenses, prices and costs, suppliers and customers; (c) information regarding the skills and compensation of other employees, contractors, and any other service providers of Company; and (d) the existence of any business discussions, negotiations, or agreements between Company and any third party.

(c) **Third Party Information.** I understand that the Company has received and in the future will receive from third parties confidential or proprietary information ("Third Party Information") subject to a duty to maintain the confidentiality of such information and to use it only for certain limited

purposes. During the term of my employment and thereafter, I will hold Third Party Information in the strictest confidence and will not disclose to any person, firm or corporation (other than Company personnel who need to know such information in connection with their work for Company) or use it except as necessary in carrying out my work for Company consistent with Company's agreement with such third party or unless expressly authorized by an officer of Company in writing.

(d) **Former Employer Information.** I represent that my employment by Company does not and will not breach any agreement with any former employer, including any non-compete agreement or any agreement to keep in confidence or refrain from using information acquired by me prior to my employment by Company. I further represent that I have not entered into, and will not enter into, any agreement, either written or oral, in conflict with my obligations under this Agreement. I will not, during my employment with Company, improperly use or disclose any confidential information or trade secrets of any former or concurrent employer or other person or entity and that I will not bring onto the premises of Company, or upload onto the Company's systems, any unpublished documents or confidential information belonging to any such employer, in violation of any lawful agreements with such employer, person or entity. I will use in the performance of my duties only information that is generally known and

used by persons with training and experience comparable to my own, is common knowledge in the industry or otherwise legally in the public domain, or is otherwise provided or developed by Company.

2. **Assignment of Inventions.**

(a) **Definitions.** As used in this Agreement, the term "Invention(s)" means any ideas, concepts, information, materials, processes, data, programs, know-how, improvements, discoveries, developments, designs, artwork, formulae, other copyrightable works, and techniques and all Intellectual Property

Rights in any of the items listed above. The term "Intellectual Property Rights" means all trade secrets, copyrights, trademarks, mask work rights, patents and other intellectual property rights recognized by the laws of any jurisdiction or country. The term "Moral Rights" means all paternity, integrity, disclosure, withdrawal, special and any other similar rights recognized by the laws of any jurisdiction or country.

(b) **Prior Inventions.** I have set forth on Exhibit A (Inventions) a complete list of all Inventions that I have, alone or jointly with others, conceived, developed or reduced to practice or caused to be conceived, developed or reduced to practice prior to the commencement of my employment with Company, in which I have an ownership interest or which I have a license to use and that I wish to have excluded from the scope of this agreement (collectively referred to as "Prior Inventions"). If no Prior Inventions are listed in Exhibit A, I warrant that there are no Prior Inventions. If, in the course

of my employment with Company, I incorporate a Prior Invention into a Company product, process or machine, I hereby grant Company a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to reproduce, make derivative works of, distribute, publicly perform, publicly display in any form or medium, whether now known or later developed, make, have made, modify, use, sell, import, offer for sale, and exercise any and all present or future rights in, such Prior Invention. Notwithstanding the foregoing, I agree that I will not incorporate, or permit to be incorporated, any Prior Inventions in any Company Inventions (as defined below) without Company's prior written consent.

(c) **Assignment of Inventions.** Subject to Sections 2(d) and 2(f), I hereby assign and agree to assign in the future (when any such Inventions or Intellectual Property Rights are first reduced to practice or first fixed in a tangible medium, as applicable) to Company all my right, title and interest in and to any and all Inventions (and all Intellectual Property Rights with respect thereto) whether or not patentable or registrable under copyright or similar statutes, made or conceived or reduced to practice or learned by me, either alone or jointly with others, during the period of my employment with Company. Inventions assigned to Company, or to a third party as directed by Company pursuant to Section 2(f) are referred to as "Company Inventions." I further agree that all original works of authorship which are made by me (solely or jointly with others) within the scope of and during the period of my employment and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act. Any assignment of Inventions (and all Intellectual Property Rights with respect thereto) hereunder includes an assignment of all Moral Rights. To the extent such Moral Rights cannot be assigned to Company and to the extent the following is allowed by the laws in any country where Moral Rights exist, I hereby unconditionally and irrevocably waive the enforcement of such Moral Rights, and all claims and causes of action of any kind against Company or related to Company's customers, with respect to such rights. I further acknowledge and agree that neither my successors-in-interest nor legal heirs retain any Moral Rights in any Inventions (and any Intellectual Property Rights with respect thereto).

(d) **Non-assignable Inventions.** I understand that this agreement does not apply to an Invention which I can prove qualifies fully as a non-assignable Invention under applicable law. I have reviewed the Limited Exclusion Notification section on Exhibit A (Inventions) and agree that my signature on this agreement acknowledges receipt of the notification.

(e) **Obligation to Keep Company Informed.** During the period of my employment and for one (1) year after termination of my employment with Company, I will promptly disclose to Company in writing all Inventions authored, conceived or reduced to practice by me, either alone or jointly with others, including any that may qualify as a non-assignable Invention under applicable law. In addition, I will promptly disclose to Company all patent applications filed by me or on my behalf, or in which I am named as an inventor or co-inventor, within a year after termination of employment. At the time of each such disclosure, I will advise Company in writing of any Inventions that I believe fully qualify as non-assignable under applicable law; and I will at that time provide to Company in writing all evidence necessary to substantiate that belief. Company will keep in confidence and will not use for any purpose or disclose to third parties without my consent any confidential information disclosed in writing to Company pursuant to this Agreement relating to Inventions that qualify fully as non-assignable under the provisions of applicable law.

(f) **Government or Third Party.** I agree to assign all my rights, title and interest in and to any particular Company Invention to a third party, including without limitation the United States, as directed by Company.

(g) **Enforcement of Intellectual Property Rights.** During and after the period of my employment and at Company's request and expense, I will assist Company in every proper way, including consenting to and joining in any action, to obtain and enforce United States and foreign Intellectual Property Rights and Moral Rights relating to Company Inventions in all countries. If Company is unable to secure my signature on any document needed in connection with such purposes, I hereby irrevocably designate and appoint Company and its duly authorized officers and agents as my agent and attorney in fact, which appointment is coupled with an interest, to act on my behalf to execute and file any such documents and to do all other lawfully permitted acts to further such purposes with the same legal force and effect as if executed by me.

3. **Records.** I agree to keep and maintain adequate and current records of all Inventions developed by me (solely or jointly) during the period of my employment at Company. The records shall be available to and remain the sole property of the Company at all times.

4. **Unfair Competition.** I understand and agree that the Company is engaged in a highly competitive business and has expended, and continues to expend, significant resources to develop and maintain valuable customer and employee relationships, Proprietary and Confidential Information, and good will in the business community and the marketplace it serves. I understand and agree that my work for Company will bring me into close contact with many Company customers and employees, and it will provide me access to Proprietary and Confidential Information. Accordingly, I further agree that the covenants in this Agreement are reasonable and necessary to protect Company's legitimate business interests in its customer and employee relationships, its good will, and its Proprietary and Confidential Information. To protect these legitimate interests, I agree as follows:

(a) **Solicitation of Employees.** I agree that for the period of my employment by Company and for twelve (12) months after the date of termination of my employment I will not, either directly or indirectly, solicit, or attempt to solicit, or participate in the solicitation of, any employee, independent contractor or consultant of Company to terminate his or her relationship with Company in order to become an employee, consultant or independent contractor to or for any other person or entity. This restriction is limited to those Company employees, consultants, and independent contractors (i) who held such status with Company as of the date of my termination of employment or (ii) who would have held such status as of the date of my termination of employment but for my having encouraged or solicited them to terminate their employment. (b) **Solicitation of Customers.** I agree that for the period of my employment by Company and for twelve (12) months after the date of termination of my employment, I will not solicit the business of any customer of Company for any other business, individual, or party that competes with the products and services offered by Company. "Customer" means any person or entity (i) that is doing business with Company at the time of my termination, or has done business with Company during the

twelve (12) month period immediately preceding termination of my employment, and (ii) for which I provided any services, or for which I was responsible for the provision of services by others, or about which I had access to Proprietary or Confidential Information during the twelve (12) month period immediately preceding my termination. If I am employed by Company in California, this provision shall only apply for the period of my employment by Company and shall not apply following the termination of my relationship with Company.

(c) **Covenant Not to Compete.** I agree that during the course of my employment and for twelve (12) months following the termination of my relationship with Company by either party for any reason, I will not, directly or indirectly, as a partner, employee, officer, director, agent, investor, owner, consultant or otherwise, solicit, perform or provide, or attempt to perform or provide Conflicting Services (defined below) anywhere in the Territory (defined below), nor will I assist another person to solicit, perform or provide or attempt to perform or provide Conflicting Services anywhere in the Territory. If I am employed by Company in California, this provision shall only apply for the period of my employment by Company and shall not apply following the termination of my relationship with Company.

(d) **Reasonableness of Restrictions.** For purposes of this Agreement, "Conflicting Services" means any product, service, or process or the research and development thereof, of any person or organization other than Company that directly competes with a product, service, or process, including the research and development thereof, of Company with which I worked directly or indirectly during my employment by Company or about which I acquired Proprietary or Confidential Information during my employment by Company. For purposes of this Agreement, "Territory" shall mean any geographic area for which I had functional or actual responsibility during the twelve (12) month period immediately preceding the termination of my employment, as well as any area for which my knowledge of Confidential Information jeopardizes Company's interest in protecting that information. Nothing contained herein shall prohibit me from being the passive owner of not more than 1% of the outstanding stock of any class of a corporation which is engaged in a competitive business of Company and which is publicly traded. Nothing contained herein shall prohibit me from seeking a waiver from Company of these obligations at the time of any termination and waiver will not be unreasonably withheld. I acknowledge that my fulfillment of the obligations contained in this agreement is necessary to protect Company's legitimate interests and, consequently, to preserve the value and goodwill of Company. I further acknowledge the time, geographic and scope limitations of my obligations under this section are reasonable and represent restrictions which are no greater than necessary so as to afford Company the opportunity to protect its legitimate interests. Further, I acknowledge that employment opportunities exist such that I can be gainfully employed without violating these restrictions.

(e) **Non-Disparagement.** During Employee's employment with the Company and thereafter, Employee will not make, issue, release or authorize any written or oral statements, derogatory or defamatory in nature, about the Company or its subsidiaries or their respective stockholders, members, directors, managers, officers or employees. However, nothing in this paragraph prohibits Employee from making truthful statements required by legal process issued by a court or tribunal of competent jurisdiction, and/or to any federal, state, or local government agency.

5. **No Conflicting Obligation.** I represent that I have not entered into any agreements and am not subject to any duties to third parties, which are inconsistent with the terms of this agreement. I agree that, during my employment with Company, I will not without Company's express written consent, engage in any other employment, occupation, consulting or other business activity directly related to the

business in which Company is now involved or becomes involved during my employment, nor will I enter into any agreements or commitments or engage in any other activities that conflict with my obligations to Company.

6. **Return of Company Documents.** When I leave the employ of Company or upon Company's request at any other time, I will deliver to Company all of Company's property, equipment, drawings, notes, memoranda, specifications, devices, formulas, and documents, together with all copies thereof, and any other material containing or disclosing any Inventions, Third Party Information or Confidential Information of Company and certify in writing that I have fully complied with the foregoing obligation. I agree that I will not copy, delete, or alter any information contained upon my Company computer or Company equipment before I return it to Company. In addition, if I have used any personal computer, server, or e-mail system to receive, store, review, prepare or transmit any Company information, including but not limited to Confidential Information, I agree to provide the Company with a computer-useable copy of all such Confidential Information and then permanently delete and expunge such Confidential Information from those systems; and I agree to provide the Company access to my system as reasonably requested to verify that the necessary copying and/or deletion is completed. I further agree that any property situated on Company's premises and owned by Company, including disks and other storage media, filing cabinets or other work areas, is subject to inspection by Company personnel at any time with or without further notice.

7. **Notification of New Employer.** In the event that I leave the employ of Company, I hereby consent to the notification of my new employer of my rights and obligations under this agreement, but Company providing a copy of this Agreement or otherwise.

8. **General Provisions.**

(a) **Governing Law; Consent to Personal Jurisdiction.** This Agreement will be governed by and construed according to the laws of the State of Utah, without giving effect to any conflict of laws principles that require the application of the law of a different state. I expressly consent to the exclusive personal jurisdiction and venue in the state and federal courts located in the County of Salt Lake, State of Utah, for any litigation related to or arising from this Agreement or related to the employment relationship between the parties.

(b) **Defend Trade Secrets Act of 2016 Notice.** Under the federal Defend Trade Secrets Act of 2016, Employee shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (a) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (b) is made to Employee's attorney in relation to a lawsuit for retaliation against Employee for reporting a suspected violation of law; or (c)

is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

(c) **Severability.** If one or more of the provisions in this Agreement are deemed invalid or unenforceable for any reason, the parties agree that the court should modify the provision to the minimum extent necessary to render said provision enforceable. Should any court of competent jurisdiction determine that any provision of this Agreement is unenforceable and cannot be modified to be enforceable, that provision shall become void, leaving the remaining provisions in full force and effect.

(d) **Successors and Assigns.** This Agreement will be binding upon my heirs, executors, administrators and other legal representatives and will be for the benefit of Company, its successors, and its assigns.

(e) **Survival.** The provisions of this Agreement shall survive the termination of my employment and the assignment of this Agreement by Company to any successor in interest or other assignee.

(f) **Employment.** I agree and understand that nothing in this agreement shall confer any right with respect to continuation of employment by Company, nor shall it interfere in any way with my right or Company's right to terminate my employment at any time, with or without cause and with or without advance notice.

(g) **Notices.** Any notices required or permitted hereunder shall be given to the appropriate party at the address specified below or at such other address as the party shall specify in writing. Such notice shall be deemed given upon personal delivery to the appropriate address or if sent by certified or registered mail, three (3) days after the date of mailing.

(h) **Legal and Equitable Remedies.** Because my services are personal and unique and because I may have access to and become acquainted with the Confidential Information of Company, any breach of this Agreement by me would cause irreparable injury to the Company for which monetary damages would not be an adequate remedy and, therefore, Company shall have the right to enforce this Agreement and any of its provisions by temporary, preliminary, and permanent injunction, specific performance or other equitable relief, without bond and without prejudice to any other rights and remedies that Company may have for a breach of this agreement.

(i) **Waiver.** No waiver by Company of any breach of this Agreement shall be a waiver of any preceding or succeeding breach. No waiver or failure by Company to enforce any right under this Agreement shall be construed as a waiver of that right or any other right on any other occasion. Company shall not be required to give notice to enforce strict adherence to all terms of this agreement.

(j) **Export.** I agree not to export, reexport, or transfer, directly or indirectly, and U.S. technical data acquired from Company or any products utilizing such data, in violation of the United States export laws or regulations.

(k) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

(l) **Entire Agreement.** The obligations pursuant to Sections 1 and 2 of this agreement shall apply to any time during which I was previously employed, or am in the future employed, by Company as a consultant if no other agreement governs nondisclosure and assignment of Inventions during such period. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior communications between us with respect to such matters. No modification of or amendment to this Agreement, other than by a court pursuant to paragraph (c) of this Section 8, nor any waiver of any rights under this Agreement, will be effective unless in writing and signed by me and the CEO of Company. Any subsequent change or changes in my duties, salary or compensation will not affect the validity or scope of this Agreement.

[Signature Page to Follow]

I have read this Agreement carefully and understand and accept its terms, and have been given the opportunity to review it with independent legal counsel. I have completely filled out Exhibit A to this agreement. This Agreement shall be effective as of the first day of my employment with Company.

EMPLOYEE:

Signature

{candidate_name}

Printed Name

Accepted and Agreed To:

INSTRUCTURE, INC.:

By: _____

Title: EVP, People & Places

6330 South 3000 East, Suite 700

Salt Lake City, UT 84121

Exhibit A
INVENTIONS

1. Prior Inventions Disclosure. The following is a complete list of all inventions or improvements relevant to the subject matter of my employment by Instructure, Inc. ("Company") that have been made or conceived or first reduced to practice by me alone or jointly with others prior to my engagement by Company. If no Prior Inventions are listed below, I represent that there are no Prior Inventions.

2. Limited Exclusion Notification.

This is to notify you pursuant to applicable law, which could include applicable statutory restrictions on the assignment of inventions under the laws of California, Illinois, Washington and Utah, that the foregoing Agreement between you and Company does not require you to assign or offer to assign to Company any invention that you conceived, developed, reduced to practice or created entirely (1) outside of your scope of employment, (2) completely on your own time; and (3) without using Company's equipment, facilities, supplies, resources or intellectual property except for those inventions that either:

1. Relate at the time of conception or reduction to practice of the invention to the current or demonstrably anticipated business, research, or development of Company; or

2. Result from any work, services, or duties performed by you for Company.

See, e.g., Utah Code Title 34, Chapter 39, Section 2 (U.C.A. 34-39-2) or California Labor Code 2870.