DATE:
03/01/24

AGENDA ITEM (ACTION ITEM):
Consider/Approve the order agreement for the Mastery View Predictive Assessment, formerly known as CASE, for Ignite students in English and Math for the 2024-2025 school year.

APPLICABLE BOARD POLICY:
01.011, (03.11)

HISTORY/BACKGROUND:
The Mastery View Predictive Assessment is utilized to assess student content knowledge and will be used as an assessment to inform instruction for students at Ignite. Students at Ignite have been taking the CASE assessment since 2019 and would like to continue using the assessment. The CASE Assessment, is now known as the Mastery View Predictive Assessment. The price has increased from $11.00 per student in the 23-24 school year to $12.10 per student. The required use of Mastery Connect to analyze the data from the Mastery View Predictive Assessment also now has a minimum base price of $6,588.80, which has also caused the price to increase. The increase from the 2023-2024 school year is $1,250.30.

FISCAL/BUDGETARY IMPACT:
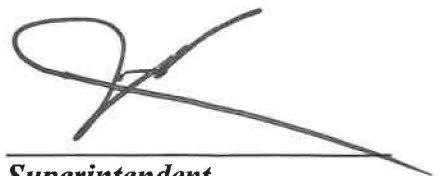$12,124.40 from the Assessment Budget

RECOMMENDATION:
Approval to the order agreement of the Mastery View Predictive Assessment, formerly known as CASE, for Ignite students in English and Math for the 2024-2025 school year in the amount of $12,124.40.

CONTACT PERSON:
Mary Beth Huss

_____ _____ _____
Principal/Administrator   *District Administrator*   *Superintendent*

Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.
Principal —complete, print, sign and send to your Director. Director —if approved, sign and put in the Superintendent's mailbox.

◆ INSTRUCTURE

Services Order Form

Order #:	Q-345411-1
Date:	2024-02-22
Offer Valid Through:	2024-07-01

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

Order Form For Kenton County

Address:	1055 Eaton Drive	**Order Information**	
City:	Ft. Wright	Billing Frequency:	Annual Upfront
State/Province:	Kentucky	Payment Terms:	Net 30
Zip/Postal Code:	41017		
Country:	United States		

Billing Contact		**Primary Contact**	
Name:		Name:	Mary Beth Huss
Email:		Email:	marybeth.huss@kenton.kyschools.us
Phone:		Phone:	+1 859 344 8888

Billing Frequency Term:
Non-Recurring items will be invoiced upon signing. Recurring items will be invoiced 30 days prior to the annual start date.

Year 1

Description	Start Date	End Date	Metric	Qty	Price	Amount
Mastery Connect Bundled Subscription	2024-07-15	2025-07-14	User	340	USD 19.32	USD 6,568.80
Mastery View Predictive Assessments KY - Full Year - District Pricing - District Pacing - State Tested Subjects - 9;10;11	2024-07-15	2025-07-14	User	340	USD 12.10	USD 4,114.00
Item Bank - Mastery All 4 Subjects & Mastery View Bundle	2024-07-15	2025-07-14	User	340	USD 4.24	USD 1,441.60
Recurring Sub-Total						USD 12,124.40
Year 1 Total						USD 12,124.40
					Grand Total:	USD 12,124.40

Package Information
Included in your Item Bank - Navigate All 4 Subjects & CASE Bundle:

Deliverable	Description	Expiration	Qty
Mastery Connect Subscription	Mastery Connect - Subscription	N/A	340
Mastery Connect Student Licensing - GradeCam	User means a learner, administrator, author, manager or designated user associated with Customer's organization, which is authorized by Customer to use the Service with a login credential. Includes access to GradeCam services allowing for bubblesheet scoring.	N/A	340
Mastery View Predictive Assessments KY - Full Year - District Pricing - District Pacing - State Tested Subjects - 9;10;11	Mastery View Predictive Assessments - Grade Levels	N/A	340
Mastery Item Bank - Supplemental	Annual Subscription for Mastery Item Bank - Supplemental	N/A	340
Mastery Item Bank Subscription	Mastery Item Bank subscription for ELA, Math, Science and Social Studies featuring learning standards alignments for all 50 States, D.C., Common Core and Next Generation Science Standards.	N/A	340

The items above must be completed during the time period beginning on the later of the Effective Date or the initial Start Date specified in this Order Form and ending pursuant to the time frame set forth in the Expiration column above.

3rd Party Product	Description	Expiration	Qty
Mastery Connect Student Licensing - GradeCam	User means a learner, administrator, author, manager or designated user associated with Customer's organization, which is authorized by Customer to use the Service with a login credential. Includes access to GradeCam services allowing for bubblesheet scoring.	N/A	340

Metrics and Descriptions:

User: User Metric reflects the maximum number of individuals authorized by the Customer to access and/or use the Service and Customer has paid for such access and/or use.

In the event Customer enables access to the Service to more Users over a given contract year than are allocated to such contract year as set forth above, then Instructure reserves the right, in its sole discretion, to invoice the Customer for such additional number of Users. In addition, the User fees set forth above are based on the assumption that Customer's Users will use the Service commensurate with the average usage patterns of users across Instructure's user base in the aggregate (such average usage being referred to herein as "Typical Use") and do not account for usage of the Service by Customer's Users beyond such Typical Use. To the extent the Users' usage of the Service, in the aggregate, exceeds the Typical Use at any given time, Instructure reserves the right, in its sole discretion, to increase the fees by an amount proportional to such excess usage. In the event Instructure increases the fees pursuant to this paragraph, Instructure shall send an invoice to Customer for the applicable increase along with documentation evidencing the additional usage of or additional Users who have access to the Service giving rise to such fee increase. Any invoice sent pursuant to the foregoing shall be due and payable within 30 days of receipt.

Product	Description
Mastery View Predictive Assessments - Grade Levels	Mastery View Predictive Assessments for the State Tested Subject Areas.
Item Bank - Mastery All 4 Subjects & Mastery View Bundle	Annual Subscription for Mastery View + Mastery Item Banks

Duration: The Services provided under this Order Form shall begin on the first year Start Date set forth above and continue through the last year End Date set forth above, provided, however, that Instructure may provide certain implementation related Services prior to the first year Start Date at its sole discretion.

Miscellaneous: Instructure's support terms are available as follows:
Canvas & Catalog: https://www.instructure.com/canvas/support-terms
Portfolium: https://portfolium.com/support-terms
MasteryConnect: https://www.masteryconnect.com/support/

As part of our commitment to provide the most innovative and trusted products in the industry, at times we must increase our renewal rates to cover additional expenses associated with advancing our products. If you have concerns with any increases, please reach out to your account representative.

In the event that Customer fails to execute this Order Form prior to the Start Date listed above, all fees shall become due payable upon Customer's receipt of an invoice.

Terms and Conditions

This Order Form and the linked Master Terms and Conditions shall be interpreted, governed, and construed by the laws of the Commonwealth of Kentucky without regard to principles of conflict of laws. Any reference to the laws of the State of Delaware in the Master Terms and Conditions shall be deleted.

https://www.instructure.com/policies/master-terms-and-conditions

The provision of any Item Bank Services shall also be governed by the Addendum which can be found here: https://www.instructure.com/policies/item-bank-addendum.

The provision of any Predictive Assessment Services shall also be governed by the Addendum which can be found here:

https://www.instructure.com/benchmark-assessment-addendum.

In the event of any conflict between this Master Terms and Conditions and any addendum thereto and this Order Form, the provisions of this Order Form shall control.

The parties agreement with regards to Instructure's processing of personal data or personally identifiable information can be found at: https://www.instructure.com/policies/data-processing

Notes
This quote is for Mastery View Predictive Assessments, Mastery Connect and the Mastery Item Banks for 9-11. This quote is for Ignite Academy.

PURCHASE ORDER INFORMATION	TAX INFORMATION
Is a Purchase Order required for the purchase or payment of the products on this order form?	Check here if your company is exempt from US state sales tax :
Please Enter (Yes or No):	*Please email all US state sales tax exemption certifications to ar@instructure.com*
If yes, please enter PO Number:	

Customer purchasing documentation, such as Purchase Orders, shall only be used as proof of acceptance of the Order Form referenced therein, and the associated Master Terms and Conditions. Any terms and conditions included in any such Customer purchasing documentation are hereby expressly disclaimed by Instructure, shall be void and of no effect, and shall in all cases be superseded by the applicable Master Terms and Conditions.

By executing this Order Form, each party agrees to be legally bound by this Order Form.

Kenton County

Signature: _____

Name: _____

Title: _____

Date: _____

Instructure, Inc.

Signature: _____

Name: Jeff Ebert

Title: Director, Deal Desk & Pricing

Date: 2/27/2024

THE KENTON COUNTY BOARD OF EDUCATION
1055 EATON DRIVE, FORT WRIGHT, KENTUCKY 41017
TELEPHONE: (859) 344-8888 / FAX: (859) 344-1531
WEBSITE: www.kenton.kyschools.us
Dr. Henry Webb, Superintendent of Schools

Kenton County School District | *It's about ALL kids*

VENDOR ASSURANCES REGARDING PROTECTION OF PERSONAL AND CONFIDENTIAL INFORMATION

Data Security and Breach Protocols

Vendors that receive Personal Information from Kenton County Board of Education (herein referred to as "KCBOE") as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

"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:

a)   An account number, 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;

b)   A Social Security number;

c)   A taxpayer identification number that incorporates a Social Security number;

d)   A driver's license number, state identification card number or other individual identification number issued by any agency as defined under the Act;

e)   A passport number or other identification number issued by the United States government; or

f)   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 the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

As provided in KRS 61.931(5), a "non-affiliated third party" includes any person or entity that has a contract or agreement with the KCBOE and receives (accesses, collects or maintains) personal information from the KCBOE pursuant to the contract or agreement.

The vendor hereby agrees to cooperate with the KCBOE in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The vendor shall notify as soon as possible, but not to exceed seventy-two (72) hours, KCBOE, the Commissioner of the Kentucky State Police, the Kentucky Auditor of Public Accounts, the Commonwealth (Kentucky) Office of Technology, and the Commissioner of the Kentucky Department of Education of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)(2) applies and the vendor abides by the requirements set forth in that exception. Notification shall be in writing on a form developed by the Commonwealth (Kentucky) Office of Technology.

The vendor hereby agrees to report to the KCBOE, immediately and within seventy-two (72) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor hereby agrees that the KCBOE may withhold payment(s) owed to the vendor for any violation of the Act's notification requirements.

The vendor hereby agrees to undertake a prompt and reasonable investigation of any security breach as defined under the Act in accordance with KRS 61.933.

Upon conclusion of an investigation of a security breach as defined under the Act as required by KRS 61.933, the vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a), the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth (Kentucky) Office of Technology and that are reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction.

Student Data Security

Pursuant to KRS 365.734, if the vendor is a cloud computing service provider (which is defined pursuant to KRS 365.734(1)(b) as any person or entity other than an educational institution that operates cloud computing services) or, through service to the KCBOE, becomes the equivalent of a cloud computing service provider, the vendor further hereby agrees that:

- The vendor shall not process student data as defined pursuant to KRS 365.734 for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the vendor receives express permission from the student's parent. The vendor shall work with the KCBOE to determine the best method of collecting parental permission.
- With a written agreement for educational research, the vendor may assist the KCBOE to conduct educational research as permitted by the Family Education Rights and Privacy Act of 1974, as amended, 20 U.S.C.sec.1232g.
- Pursuant to KRS 365.734, the vendor 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.
- Pursuant to KRS 365.734, the vendor shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, the vendor shall certify in writing to the agency that it will comply with KRS 365.734(2).

Family Educational Rights and Privacy Act, National School Lunch Act and Child Nutrition Act

If during the course of this agreement, the KCBOE discloses to the vendor any data protected by the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended (20 U.S.C. sec. 1232g, et seq.), and its regulations, and data protected by the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. sec. 1751 et seq., and the Child Nutrition Act of 1966 (CNA) (42 U.S.C. sec. 1771 et seq.), the vendor agrees that it is bound by and will comply with the confidentiality, security and redisclosure requirements and restrictions stated in FERPA, NSLA and CNA.

The vendor hereby agrees to report to the KCBOE, immediately and within seventy-two (72) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor agrees that FERPA-protected information is confidential information. FERPA-protected information includes, but is not limited to the student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's social security number, student number, or biometric record, other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, and other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge

of the relevant circumstances, to identify the student with reasonable certainty.

The vendor understands and acknowledges that any unauthorized disclosure of confidential information is illegal as provided in FERPA and in the implementing federal regulations found in 34 CFR, Part 99. The penalty for unlawful disclosure is a fine of not more than $250,000 (under 18 U.S.C. sec. 3571) or imprisonment for not more than five years (under 18 U.S.C. sec. 3559), or both.

The vendor understands and acknowledges that children's free and reduced price meal and free milk eligibility information or information from the family's application for eligibility, obtained under provisions of the NSLA or the CNA is confidential information and that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit is illegal. The penalty for unlawful disclosure is a fine of not more than $1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.

In the event there is a conflict between this agreement and any other agreement between KCBOE and Vendor, the terms of this agreement shall apply.

Instructure, Inc.
Vendor Name

6330 S 3000 E, Ste. 700, Salt Lake City, UT 84121
Vendor Address

(800) 203-6755
Vendor Telephone

privacy@instructure.com
Vendor Email Address

Daisy Bennett
Signature by Vendor's Authorized Representative

Daisy Bennett
Print Name

February 29, 2024
Date

Master Terms and Conditions | Policy

These terms and conditions apply to the provision of the products or services identified on the Order Form by Instructure, Inc. ("**Instructure**") to the entity identified in the Order Form ("**Customer**"). An "**Order Form**" means any order for the provision of products or services signed by Customer. These terms and any applicable Addendum related thereto are incorporated into the Order Form and together with the Order Form, form the "**Agreement**." To the extent there is any conflict between the Order Form, these Master Terms and Conditions, or any Addendum related thereto, such conflict shall be resolved pursuant to the following order of precedence: (i) the Order Form, (ii) any applicable Addendum, and (iii) these Master Terms and Conditions. Instructure and Customer are referred to in this Agreement each as a "**party**" and together as the "**parties**."

1. **Service**. Subject to the terms of this Agreement, Instructure will provide to Customer proprietary software as a service offering(s) made available through a URL in a hosted environment (together with any other products and services identified in the Order Form, the "**Service**"). All rights in and to the Service not ·· Can I ask you a quick r ir Agreement are reserved by Instructure. Instructu question? ın. upgrades to the Service to Customer that Instructure provides to its customers generally

for no additional charge; and (b) provide support ("**Support**") pursi   he terms described on the Order Form. For purposes of this Agreement, "**User**" means an individual who is authorized by the Customer to use the Service and for whom Customer has purchased a subscription.

2. **Customer Restrictions.** Customer shall not (and shall not permit Users to): (a) sell, resell, rent, lease, lend, sublicense, distribute, assign, timeshare, or otherwise transfer or provide access to the Service to any third party except as expressly authorized under this Agreement; (b) use or access the Service for competitive purposes; (c) copy, modify, adapt, or create derivative works from any feature, function, interface, or graphic in the Service; (d) remove or modify Instructure's policies or proprietary markings displayed within the Service; (e) use, interfere with, disrupt or circumvent the integrity, security or performance of the Service, including by probing, scanning, or testing any Instructure system or network or its security or authentication measures; (f) store or transmit any malicious code; (g) permit direct or indirect access to or use of any Service or Customer Content (as defined below) in a way that circumvents a contractual usage limit; (h) attempt to gain unauthorized access to the Service, its related systems or networks or Third-Party Services (as defined below); (i) use the Service or any Third-Party Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; or (j) use the Service to distribute software or tools that gather information, distribute advertisements, or engage in conduct that may result in retaliation against Instructure or its data, systems, or networks. Use and access to the Application Program Interface ("**API**") will be subject to the Instructure API Policy available at https://www.instructure .com/policies/api-policy (https://www.instructure.com/policies/api-policy).

3. **Customer Responsibilities.** Customer shall have sole responsibility for Customer Content and use of the Service by Users in compliance with this Agreement and the Acceptable Use Policy provided within the Service and available at https://www.instructure.com/policies/acceptable-use (https://www.instructure.com/policies/acceptable-use) (the "**AUP**"). Customer agrees to reasonably assist Instructure in connection with a User's adherence to the AUP. Customer further agrees to: (a) maintain the confidentiality and security of passwords and abide by any access protocols or credential requirements set by Instructure; (b) obtain from Users any consents necessary under this Agreement or to allow Instructure to provide the Service; (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Service; (d) notify Instructure promptly of any such unauthorized

access or use of which it learns; (e) cooperate reasonably in all re   with respect to implementation, access, support, and maintenance of the Service; and (f) ensure that a current email address is associated with each User's account.

4. **Representations.** Each party represents that (a) it has the power and authority to validly enter into this Agreement, (b) this Agreement has been duly and validly authorized, executed and delivered by such party, (c) the execution and delivery of this Agreement does not violate or conflict with any other agreement, license, or obligation of such party, (d) it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from or on behalf of any employees or agents of the other party in connection with this Agreement, and (e) it is financially solvent and has the ability to perform its obligations hereunder.

5. **Instructure Warranties**. Instructure warrants that: (a) it shall 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; (b) the functionality or features of the Service and Support may change but will not materially degrade during the Term; and (c) the Service will materially conform to its then-current documentation. As Customer's sole and exclusive remedy for Instructure's breach of the warranties set forth in this Section 5: (i) Instructure shall correct the non-conforming Service at no additional charge to Customer; or (ii) 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. Customer must report deficiencies in writing to Instructure within thirty (30) days of their identification in order to receive any warranty remedies herein. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 5 AND TO THE MAXIMUM EXTENT OF THE LAW, INSTRUCTURE AND ITS SUPPLIERS DISCLAIM 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. WITHOUT LIMITING THE FOREGOING, INSTRUCTURE DOES NOT WARRANT: (A) THE RESULTS OR OUTCOMES FROM USE OF THE SERVICE OR THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE; OR (B) THE VALIDITY, FAIRNESS OR QUALITY OF ANY CONTENT PROVDIED BY INSTRUCTURE. TO THE EXTENT THE FOREGOING DISCLAIMER IS EXPRESSLY PROHIBITED BY LAW, ANY AVAILABLE WARRANTY SHALL BE LIMITED TO THIRTY (30) DAYS AND TO THE SERVICE REMEDIES PROVIDED BY INSTRUCTURE IN

6. **Fees**. As consideration for the subscription to the Service, Customer shall pay all fees set forth in an Order Form ("**Fees**") annually in advance, thirty (30) days after receipt of an invoice or as otherwise agreed to in the Order Form. All Fees owed by Customer are exclusive of, and Customer shall pay all applicable sales, use, VAT, excise, withholding, and other taxes that may be levied in connection with this Agreement. Instructure reserves the right (in addition to any other rights or remedies Instructure may have) to discontinue the Service and to suspend all Users' and Customer's access to the Service if any Fees are overdue until such amounts are paid in full. Except as expressly set forth in this Agreement, all Fees are non-refundable.

7. **Service Standard**. Instructure will use commercially reasonable efforts to make each 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 Fees paid and attributable to the Service that is unavailable for a twelve (12) month period. The service credit is calculated by taking the number of hours the applicable Service was unavailable below the Service Commitment, and multiplying it by 3% of 1/12 of the applicable annual subscription Fees. Any days prior to Customer's initial use of the Service will be deemed to have had 100% availability. Any unavailability used to calculate a prior service 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 not originating from Instructure. Customer's sole and exclusive remedy for breach of the Service Commitment in this Section 7 will be for Instructure to provide a credit as provided in this Section 7; on the condition that Customer notifies Instructure in writing of such claim within thirty (30) days of becoming eligible for such claim.

8. **Compliance**. Each party will comply with all applicable laws and regulations with respect to its activities under this Agreement, including with respect to personally identifiable information from records that are subject to applicable privacy laws, including, but not limited to, the Family Educational Rights and Privacy Act, as amended ("**Personal Information**"). Without limiting the generality of the foregoing, Customer shall not make the Service available to any person or entity that: (a) is located in a country that is subject to a U.S. government embargo; or (b) is listed on any U.S. government list of prohibited or

restricted parties.

9. **Customer 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 ("**Customer Content**") remain the sole property of Customer. Instructure may use the Customer Content solely to provide and improve the Service in accordance with this Agreement or Customer's instructions.

10. **Data Use.** Customer agrees that data derived from Instructure's provision of the Service or Customer's use of the Service ("**Usage Data**") may be used by Instructure for the purposes of analysis, including statistical analysis, trend analysis, creation of data models, and creation of statistical rules. Such Usage Data will only be used in its aggregated or anonymized form and such results may be used by Instructure for any lawful purpose not otherwise excluded by this Agreement. As between the parties, Instructure owns the Usage Data. Notwithstanding anything contained in this Agreement to the contrary, Usage Data does not include Customer Content or any information that identifies or can be reasonably used to identify an individual person or Customer.

11. **Third-Party Services.** Customer may access third-party services, content or links through the use of the Service (collectively "**Third-Party Services**"). Instructure does not control Third-Party Services or make any representations or warranties with respect to Third-Party Services. In addition, Instructure is not responsible for Third-Party Services.

12. **Limitation of Liability.** 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 SERVICE (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY, LOSS OR INACCURACY OF DATA, RECORDS OR INFORMATION, COST(S) OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, 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 17.1, 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 UNDER THIS AGREEMENT WITHIN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO LIABILITY.

13. **Confidentiality**. Each party acknowledges that it or any entity that   or indirectly through one or more intermediaries' controls, is controlled by or is under common control with such party (an **"Affiliate"**) may disclose (in such capacity the **"Disclosing Party"**) Confidential Information to the other party or its Affiliates (in such capacity, the **"Receiving Party"**) in the performance of this Agreement. Accordingly, the Receiving Party shall: (a) keep the Confidential Information disclosed by the other party confidential; (b) use Confidential Information only for purposes of fulfilling its obligations and exercising its rights hereunder; and (c) disclose such Confidential Information only to the Receiving Party's employees or Affiliates who have a need to know and only for the purposes of fulfilling this Agreement or to the extent required by law. As used herein, **"Confidential Information"** means any and all non-public, confidential and proprietary information, data, or know-how, including all Personal Information and information about the Disclosing Party's businesses, operations, finances, properties, employees, relationships with third parties, plans, trade secrets, and other intellectual property and all analyses, compilations, forecasts, studies, summaries, notes, reports, memoranda, interpretations, data, and other materials which contain or are generated from the Confidential Information, whether disclosed in writing, orally, electronically, or by other means, and whether or not identified as confidential. For the avoidance of doubt, any non-public aspect of the Service will be considered the Confidential Information of Instructure. Confidential Information shall not include information that: (i) is or becomes a matter of public knowledge through no fault of the Receiving Party; (ii) is rightfully received by the Receiving Party by a third party without a duty of confidentiality; (iii) is independently developed by the Receiving Party without the use of any Confidential Information of the Disclosing Party; or (iv) is identified by the Disclosing Party in writing as no longer confidential and proprietary. Notwithstanding the restrictions above, the Receiving Party may disclose the Confidential Information pursuant to law, regulation, subpoena or court orders, provided that the Receiving Party promptly notifies the Disclosing Party in writing prior to making any such disclosure to permit the Disclosing Party an opportunity to prevent disclosure or seek an appropriate remedy from the proper authority. The Receiving Party agrees to cooperate with the Disclosing Party in seeking such order or other remedy. The Receiving Party further agrees that if the Disclosing Party is not successful in precluding the requesting legal body from requiring the disclosure of the Confidential Information, it will furnish only that portion of the Confidential Information which is legally required (based on the advice of counsel) and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be afforded the Confidential Information. Further, any information obtained by monitoring, reviewing, or recording is subject to review by law enforcement

organizations in connection with investigation or prosecution of p   criminal or unlawful activity on the Service as well as to disclosures required by or under applicable law or related government agency actions. Instructure will also comply with all court orders or subpoenas involving requests for such information.

14. **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. Instructure shall have the right, in its sole discretion, to modify the Instructure Intellectual Property. "**Instructure Intellectual Property**" means: (a) the Service; (b) all improvements, changes, enhancements, translations and components thereof; (c) all other proprietary materials of Instructure and/or its licensors; (d) all individual questions on any assessment, as well as all revisions, modifications, translations, or other adaptations or transformations thereof; and (e) all other intellectual property owned by Instructure including, but not limited to, all copyrights, patents, trademarks and trade names, trade secrets, specifications, methodologies, documentation, algorithms, criteria, designs, report formats, and know-how, as well as any underlying source code and object code related thereto.

15. **Term and Termination**. The term of this Agreement is specified in the Order Form ("**Term**") and shall continue for its full duration unless earlier terminated by a party in accordance with this Section 15. In addition to any other rights and remedies that may be available, either party may terminate this Agreement for a material breach of any provision of this Agreement 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. 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 Service; and (b) in connection with certain aspects of the Service that feature an export function Customer may export the Customer Content by using the export feature within the Service for a period of three (3) months from termination, after which Instructure shall have no obligation to maintain or provide any Customer Content.

16. **Suspension of Service**. Instructure may suspend a User's access to the Service for a violation of Section 3 of this Agreement, any applicable law, or third-party rights to the extent and for the duration necessary to address any such violation. Instructure will use commercially reasonable efforts to provide notice to Customer in advance of any suspension unless such violation may cause direct harm to the Service or may result in liability to Instructure. Customer agrees that Instructure will not be liable to Customer or a

User if Instructure exercises its suspension rights as permitted by ʌtion 16.

17. **Indemnification**.

1. Instructure will indemnify and defend Customer from and against any and all losses, liabilities, and claims (including reasonable attorneys' fees) arising out of any claim by a third party alleging that the Service infringes or misappropriates the intellectual property rights of that third party. Notwithstanding the foregoing, Instructure shall not be obligated to indemnify Customer if such infringement or misappropriation claim arises from: (a) the Customer Content; (b) Customer's or User's misuse of the Service; or (c) Customer's or User's use of the Service in combination with any products, services, or technology not provided by Instructure. If a claim of infringement or misappropriation is made, Instructure may, in its sole discretion: (i) modify the Service so that it becomes non-infringing; (ii) obtain a license permitting continued use of the Service; or (iii) terminate the Agreement with no liability to Customer, other than Instructure's obligation to indemnify hereunder, and return the unused portion of any prepaid Fees. Customer will indemnify and defend Instructure from and against any and all losses, liabilities, and claims (including reasonable attorneys' fees) arising out of any claim by a third party alleging: (z) the Customer Content infringes or misappropriates the intellectual property rights of that third party; or (y) use of the Service by Customer or any User in violation of this Agreement or the AUP.

2. The party seeking indemnification (the **"Indemnified Party"**) shall provide the other party (the **"Indemnifying Party"**) with prompt written notice upon becoming aware of any claim subject to indemnification hereunder and shall provide reasonable cooperation to the Indemnifying Party in the defense or investigation of any claim, suit or proceeding. The Indemnifying Party, at its option, will have sole control of such defense, provided that the Indemnified Party is entitled to participate in its own defense at its sole expense. The Indemnifying Party shall not enter into any settlement or compromise of any such claim, suit, or proceeding without the Indemnified Party's prior written consent, except that the Indemnifying Party may without such consent enter into any settlement of a claim that resolves the claim without liability to the Indemnified Party and without impairment to any of the Indemnified Party's rights or requiring the Indemnified Party to make any admission of liability.

18. **General**. Each party acknowledges that any breach, threatened or actual, of this Agreement, including, without limitation, with respect to unauthorized use of proprietary assets, will cause irreparable injury to the other party, such injury would not be quantifiable in monetary damages, and the other party would not have an adequate

remedy at law. Each party therefore agrees that the other party sh   ntitled, in addition to other available remedies, to seek and be awarded an injunction or other appropriate equitable relief from a court of competent jurisdiction restraining any breach, threatened or actual, of this Agreement. Each party waives any requirement that the other party post any bond or other security in the event any injunctive or equitable relief is sought by or awarded to enforce any provision of this Agreement. Any legal notice by a party under this Agreement shall be in writing and either personally delivered, delivered by email or 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 18. A copy of all notices to Instructure shall be sent to: Instructure, Inc., 6330 South 3000 East, Suite 700, Salt Lake City, UT 84121, Attention: General Counsel and, if by email, to legal@instructure.com (legal@instructure.com). For purposes of service messages and notices about the Service, Instructure may place a banner notice or send an email to the current email address associated with an account and all notices shall be in English and 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 principles of conflict of laws. Instructure is 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. Instructure may amend, revise or update these Master Terms and Conditions at any time. Such amendment, revision or update shall be effective upon 30 days' notice to Customer by any means reasonable to give Customer actual or constructive notice, including by posting such terms on Instructure's website. In the event Customer does not agree with any amendment, revision or update, Customer shall give Instructure notice within 30 days of receiving actual or constructive notice from Instructure and Customer and Instructure shall negotiate in good faith to come to an agreement solely with respect to such amendment, revision or update. In the event Customer does not give notice to Instructure, Customer's continued use of the Service after the 30-day notice period shall indicate Customer's agreement with any such amendment, revision or update. The Parties agree that: (a) this Agreement constitutes the entire agreement between the

parties with respect to the subject matter thereof, and any prior re   ations, statements, and agreements relating thereto are superseded by the terms of this Agreement; and (b) Customer may use purchase orders or similar documents only as proof of acceptance of each Order Form and for convenience only, and all terms and conditions (preprinted or otherwise and regardless of how referenced) shall be void and of no effect. To the extent there is any conflict between the Order Form, these Master Terms and Conditions, or any Addendum related thereto, such conflict shall be resolved pursuant to the following order of precedence: (i) the Order Form, (ii) any applicable Addendum, and (iii) these Master Terms and Conditions. Any attempt by Customer to assign this Agreement, in whole or part, to any entity, without Instructure's prior written consent 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 4, 5, 6, 13, 14, 15, 16, and 18).

INSTRUCTURE PRODUCT SPECIFIC ADDENDUMS

These product specific addendums shall only apply to the extent the applicable products and services have been purchased by Customer.

Provisions applicable to Mastery Iten____nk products

1. This section applies to and governs one or multiple of Instructure's Services identified on the Order Form as a Mastery Item Bank Service (each, an **"Item Bank"** and together, the **"Item Banks"**).

2. **Item Bank License**. Subject to the terms of this Agreement, Instructure grants to Customer a license to access and use the Item Bank product offerings set forth on the Order Form for the term specified on the Order Form for noncommercial purposes and only for students registered within Customer's schools/district(s) (the **"Territory"**) for the sole purpose of performing formative assessments of those students (the **"Item Bank License"**). Pursuant to the Item Bank License, Customer acknowledges and agrees that certain parts of the Item Bank(s) may include material licensed by third parties to Instructure (**"Third-Party Content"**) and that Instructure's rights in and to such Third-Party Content may not extend to Customer's Territory or may expire or otherwise terminate during the term of the Item Bank License. Any rights in and to Third-Party Content will at all times be limited and subject to Instructure's rights in and to the respective Third-Party Content, notwithstanding anything to the contrary in this Agreement. Throughout the term of the Item Bank License, Instructure will have the right, at its sole discretion, to modify the Item Bank(s), and to delete, and require the deletion by Customer, of specific Items and/or passages from the Item Bank(s).

3. **Customer Item Bank Restrictions.** Customer Agrees not to use the Item Bank(s): (1) unless Customer is an elementary, middle, and/or secondary school or school district in the United States, a state education agency or a state authorized educational information/service center that provides services and/or software to local educational entities), or a school outside of the United States using a United States based curriculum for English-speaking students; or (2) to promote any items in the Item Bank(s) as high-stakes assessments, where the results of high-stakes assessments are used for purposes other than improving instruction and student learning, such as graduation tests, college admissions tests and teacher evaluation assessments. The Item Bank(s) in its/their entirety is/are protected by copyright laws. All rights, licenses and privileges not expressly granted to Customer under the Item Bank License will remain exclusive to Instructure. Without limiting the generality of the foregoing, Customer acknowledges that Instructure retains all rights under copyright and all other intellectual property rights in and to the Item Bank(s), all items included therein, all revisions, modifications,

translations, or other adaptations or transformations of the Item B[...]cluding assessments, and other derivative works created there from (collectively the **"Derivative Works"**).

4. **Termination of Item Bank License**. Upon any termination of the Item Bank License granted hereunder, Customer's access to the Item Bank(s) will be disabled and Customer and its Users must cease using such Item Bank(s) and all Derivative Works, including any printed copies of items and/or Derivative Works.

Provisions applicable to Mastery View Assessment products

1. This section applies to and governs one or multiple of Instructure's Services identified on the Order Form as a Mastery View Assessment Service (each, an **"Mastery View Assessment"** and together, the **"Mastery View Assessments"**).

2. **Customer Mastery View Assessments Restrictions**. Mastery View Assessments delivered via paper/pencil format or online through any delivery platform cannot be shared, duplicated, or reproduced in part or in whole without written permission of Instructure. Use of Mastery View Assessments is limited to students registered within the Customer's schools/districts during the academic year in which the Mastery View Assessments are initially delivered for the sole purpose of delivering formative assessments to those students. Customer's right to access and use Mastery View Assessments in paper or electronic format shall be limited to use in Customer's classrooms and shall be limited to review and instructional purposes for those registered students within such classroom in the academic year of assessment delivery. **The Customer does NOT have any right to reproduce the tests in whole nor to dissect and reproduce any questions from the Mastery View Assessments individually; distribute copies of the assessments in whole or any individual questions from the assessment; prepare derivative works of the assessments or the questions individually; import or otherwise load the assessments in whole or any of the questions individually to any internal or external item bank or question data warehouse; upload any assessments in whole or questions individually to any platform partner "community boards"; or publicly display the assessments or questions outside Customer's classrooms.**

Provisions applicable to Elevate Standards Alignment products

1. This section applies to and governs one or multiple of Instructure's Services identified on the Order Form as an Elevate Standards Alignment Service, which may include (i) access to Instructure's proprietary data repository of Curriculum Standards (as defined below), the related Global Unique Identifiers (as defined below), and any metadata related to the Curriculum Standards or the Global Unique Identifiers (collectively, the **"ESA Content"**), and/or (ii) access to Instructure's software as a service offerings used for access to the ESA Content (the **"Content Management Systems"** and, together with ESA Content, **"Elevate Standards Alignment Products"**).

2. **Academic Benchmark License.** Subject to the terms of this Agreement, Instructure grants to Customer a license to access and use the Academic Benchmark Product offerings set forth on the Order Form for the term specified on the Order Form (the **"AB License"**). Notwithstanding anything contained in Section 2 the Agreement to the contrary, Customer may provide access to and permit use of the Curriculum Standards and/or Content Management Systems to its clients for use solely in conjunction with such client's use of Customer's products. In the event Customer's client has purchased a license to use Global Unique Identifiers from Instructure, Customer may also provide access to and permit use of the Global Unique Identifiers to such client. For the avoidance of doubt, Customer shall be prohibited from providing access to, permitting use of, or otherwise sharing any Global Unique Identifier with any client or other third party unless such client or other third party has purchased a current license to use such Global Unique Identifiers from Instructure.

3. **Customer Academic Benchmark Restrictions.** Customer shall (and shall require its clients to) (i) keep all non-public information comprising the ESA Content and/or Content Management Systems confidential, (ii) not reproduce, copy, distribute, sublicense, lease, rent, loan or otherwise transfer to any third party (except as permitted by this Agreement) the ESA Content or Content Management Systems or any of the Customer's rights to the ESA Content or Content Management Systems (including by way of creating Internet "links" or "framing" or "mirroring" any web-based ESA Content or Content Management Systems).

4. Definitions.

a. **"Curriculum Standards"** means the compilation, capturing, and structuring of, and the taxonomies created by Instructure based on, the standards adopted by a state or other third party, which have been made available for use to the general public by such state or third party which define what a student must know, be able to do, or be proficient at, with respect to various subject areas or skill sets.

b. **"Global Unique Identifiers"** means the 36-character identification numbers that are assigned to Curriculum Standards or any metadata related thereto.

Provisions applicable to Elevate products

1. This section applies to and governs Instructure's Service identified on the Order Form as Elevate Data Sync. **"Platform"** means Instructure's proprietary software platform, and all enhancements thereof, that allows for the integration of the Customer Product with a SIS.

2. **Use of Platform.** Subject to the terms and conditions contained herein and/or in the Order Form, and Customer's compliance therewith, Customer may during the Term, (a) access and use the Platform and (b) access and use the Instructure Components as components of the Integration Solution. If applicable, Customer grants Instructure a revocable, limited, non-exclusive, and non-transferable license to (a) access and use any API or other interface provided by Customer and (b) access and use the Customer Product Components as components of the Integration Solution. Customer shall not assign or sublicense the Platform or the Instructure Components except for the purposes of creating accounts for the End Organization and as otherwise set forth in this Agreement and the Order Form. Instructure shall not assign or sublicense the Customer Product or the Customer Product Components except for the purposes of exchanging data and as otherwise set forth in this Agreement and the Order form.

3. **End Organization Data.** Customer agrees that End Organization Data data remains the property of the End Organization. Customer understands that its connection to End Organization Data will not be established until the End Organization takes some affirmative technical action to provide that access (such as providing API keys, connecting a SIF agent or authorizing an Instructure platform integration), and that at all times the End Organization will retain the right and power to disable or limit Customer's access to End Organization Data in the Platform. Customer agrees to abide by all data privacy laws applicable to the End Organization Data and, where applicable, acknowledges that its use of End Organization Data is also **governed by** Customer's own

agreements directly with the End Organization.

4. **Consents.** Customer hereby represents and warrants that it owns or otherwise has and will have throughout the term of this Agreement the necessary rights and consents in and relating to End Organization Data so that Instructure and its subcontractor's access and use of the End Organization Data in accordance with this Agreement and the Order Form do not violate any privacy or other rights of any third party or violate any applicable law. It is the Customer's responsibility to ensure that the End Organization (and their end users where applicable) has authorized Instructure to collect and store such End Organization Data and provide the End Organization Data to Customer.

5. **Suspension.** Instructure may, directly or indirectly, suspend, terminate, or otherwise deny access to or use of all or any part of the Platform or Instructure components, without incurring any resulting obligation or liability, if: (a) Instructure is required by law to do so; or (b) Instructure reasonably believes that: (i) Customer or an End Organization or end user failed to comply with any material term of this Agreement, or accessed or used the Platform, or Instructure Components beyond the scope of Platform use set out in section 1.1 above or for a purpose not authorized under this Agreement; or (ii) Customer or End Organization or end-user is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities. To the extent Instructure exercises its rights under this section, it shall only be for the duration necessary to address any such violation. This section does not limit any of Instructure's other rights or remedies, whether at law, in equity, or under this Agreement.

6. **Definitions.**
   a. **"Customer Product"** means the application or system which Customer intends to integrate with the Platform.

   b. **"Customer Product Components"** means the individual parts, programs and supporting tools that make up the Customer Product.

   c. **"End Organization"** means any school, school district, college, university, other education agency, or other organization. The End Organization may be (i) the Customer or (ii) a different party that Customer indicates to Instructure that receives or is to receive the Customer Product and which has been designated by Customer to provide Customer with its End Organization Data via the Platform, and which has authorized Instructure to collect and store such End Organization Data and provide

the End Organization Data to Customer.

d. **"End Organization Data"** means all information and data pertaining to the End Organization and/or its end users that is transmitted to, received by, or processed by Instructure under this Agreement.

e. **"Integration Solution"** means an eco-system of multiple software products and related components provided by both parties that enables Customer Product to provide, facilitate, transfer and receive data to and from SISs.

f. **"Instructure Components"** means the Instructure-provided connectors, integrations and other software products.

g. **"SIS"** means the End Organization's student information system or other authoritative source of data regarding students, staff, courses and rosters.

Provisions applicable to Professional Services

1. This section applies to and governs any professional services (**"Professional Services"**) provided to Customer by Instructure. To the extent there is a conflict between the express terms of this Agreement and an SOW, the terms of this Agreement shall control unless the SOW expressly states otherwise.

2. Customer shall provide Company with all Customer Content required to enable Company to perform the Professional Services, including all obligations specified in any applicable statement of work (**"SOW"**). If Customer fails to do this, Company will be relieved of its obligations to the extent that the obligations are dependent upon Customer's performance.

3. Customer hereby grants to Company a nonexclusive, nontransferable, royalty-free, worldwide, license to use, reproduce, create derivative works from, and modify the Customer Content solely in connection with Company's performance of such Professional Services. As between Customer and Company, the Customer Content is, and shall at all times remain, the sole and exclusive property of Customer, including, without limitation, all worldwide intellectual property rights embodied in, related to, or represented by, the Customer Content.

4. Subject to the terms and conditions of this Agreement, Company hereby grants to Customer a nonexclusive, nontransferable, royalty-free, worldwide, license solely to use the Deliverables (as defined below) in connection with any product or service purchased

by Customer from Company. Customer agrees not to (a) modify, a̶̶̶̶̶̶̶̶̶̶̶̶̶̶ er, translate, or create derivative works from the Deliverables; (b) sublicense, lease, rent, loan, or otherwise transfer the Deliverables to any third party; or (c) otherwise use or copy the Deliverables except as expressly allowed herein or in the applicable SOW. **"Deliverables"** mean items that Company is obligated to provide Customer under an applicable SOW.

Provisions applicable to LearnPlatform products

1. This section applies to and governs Instructure's Service identified on the Order Form as LearnPlatform EdTech Effectiveness Solution and LearnPlatform EdTech Essentials
2. Customer agrees that the usage of any Service owned or controlled by Instructure (including, without limitation, LearnPlatform's platform) shall be governed by the LearnPlatform terms of service, which are incorporated herein by reference, found at the following address: https://learnplatform.com/terms-of-service. In the event of any conflict or inconsistency between this Agreement and the terms of service, this Agreement shall control.
3. Customer acknowledges and agrees that all rights in and to the Service, and the results, conclusions and insights generated by Instructure (the "Results"), belong exclusively to Instructure, and are made available to Customer solely for Customer's internal purposes. Customer shall not at any time do or omit, or suffer to be done or omitted, any act or thing which may impair Instructure's rights in and to the Service or the Results.
4. To the extent applicable, Instructure will provide Customer with those LearnPlatform Evidence-as-a-Service subscriptions set forth in the Order Form (collectively the "EaaS Deliverables"). Instructure may also grant Customer the right to use one or more certification statements or logos provided by Instructure to indicate that Instructure has assessed Customer's product and confirmed that the product meets certain qualities and standards as determined by Instructure (each an "Impact Badge"). In the event Customer elects to use the Impact Badge in connection with the marketing, sale, promotion or distribution of its product, Customer shall conspicuously place the Impact Badge on the LearnPlatform listing that features and describes the product. The use of the Impact Badge shall at all times be subject to the quality standards and requirements of Instructure. Customer shall at all times use the EaaS Deliverables and Impact Badge in a manner that is not false, misleading or injurious to the goodwill or reputation of Customer or Instructure. Customer shall (i) refrain from making any representations or claims about the report or Impact Badge that are outside the scope of the report and the applicable Services; and (ii) ensure that any and all distributors, dealers, resellers, and retailers of Customer's products adhere to these same requirements. In the event Customer

breaches this provision, Instructure may terminate Customer's rig   cense to use the EaaS Deliverables and/or Impact Badge upon written notice.

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Benchmark Assessment Addendum | Policy

This Addendum modifies the Master Terms and Conditions governing the provision of products and services by Instructure to Customer and together with the Master Terms and Conditions governs the license of one or multiple of Instructure's Benchmark Assessment products identified on the Order Form (each, a "Benchmark Assessment" and together, the "Benchmark Assessments"). This addendum is incorporated into the Order Form and the Master Terms and Conditions and together, along with any other addendums identified on the Order Form, form the "**Agreement**." Any capitalized term used but not defined herein shall have the meaning ascribed to such term in the Master Terms and Conditions.

1. **Service**. Subject to the terms of this Agreement, Instructure grants to Customer a license to access and use the Benchmark Assessment product offerings set forth on the Order Form for the term specified on the Order Form (the "License").

   👋 Can I ask you a quick question?

2. **Customer Benchmark Assessments Restrictions.**   ere.

   paper/pencil format or online through any delivery platform cannot be shared,

duplicated, or reproduced in part or in whole without written perm   f Instructure. Use of Benchmark Assessments is limited to students registered within the Customer's schools/districts during the academic year in which the Benchmark Assessments are initially delivered for the sole purpose of delivering formative assessments to those students. Customer's right to access and use Benchmark Assessments in paper or electronic format shall be limited to use in Customer's classrooms and shall be limited to review and instructional purposes for those registered students within such classroom in the academic year of assessment delivery. **The Customer does NOT have any right to reproduce the tests in whole nor to dissect and reproduce any questions from the Benchmark Assessments individually; distribute copies of the assessments in whole or any individual questions from the assessment; prepare derivative works of the assessments or the questions individually; import or otherwise load the assessments in whole or any of the questions individually to any internal or external item bank or question data warehouse; upload any assessments in whole or questions individually to any platform partner "community boards"; or publicly display the assessments or questions outside Customer's classrooms.**

3. **No Ownership/Intellectual Property**. Customer acknowledges that it has no ownership claims in the Benchmark Assessments, the questions contained therein, and all rights related thereto. The Customer acknowledges that Instructure retains all rights under copyright and all other intellectual property rights in and to the Benchmark Assessments in whole and all individual questions on the assessment, as well as all revisions, modifications, translations, or other adaptations or transformations thereof. Nothing the Agreement shall give Customer any right, title, or interest in Benchmark Assessments or the questions it contains other than the rights specifically granted above

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Data Processing Addendum | Policy

Last Updated Date: December 21st, 2022

This Instructure Data Processing Addendum ("**DPA**") forms part of the Instructure Services Order Form and Instructure Standard Terms and Conditions, or other written or electronic agreement ("**Agreemen**t") between Customer Instructure, Inc., or its Affiliates (collectively "**Instructure**") (each a "**Party**", collectively "**Parties**"). The Parties hereby agree that the terms and conditions set out below shall be added as an addendum to the Agreement. In case of any discrepancy or conflict between this DPA and the Agreement, this DPA shall prevail. In case of any discrepancy between this DPA and the Standard Contractual Clauses, the Standard Contractual Clauses shall prevail. Any capitalized terms not defined herein shall have the meanings set forth in the Agreement.

How this DPA Applies: Instructure provides the ̪er ... Can I ask you a quick ien⁺' Customer which may include the Processing of Per question? ⌐ t. provision of the Services. This DPA does not replace any rights related to the Processing of

Customer Personal Data previously negotiated by Customer in the A[   ]nt. Instructure agrees to comply with this DPA with respect to any Customer Personal Data Processed by Instructure in the provision of the Services under applicable Data Protection Laws.

1. **DEFINITIONS.** In this DPA, the following terms shall have the meanings set out below:

    1.1   **"Affiliates"** means any entity which is controlled by, controls or is in common control with a Party.

    1.2   **"Customer Personal Data"** means Personal Data provided by or on behalf of Customer to be Processed by Instructure in connection with providing the Services.

    1.3   **"Data Controller"** means the entity which determines the purposes and means of the Processing of Personal Data.

    1.4   **"Data Processor"** means the entity which Processes Personal Data on behalf of the Data Controller.

    1.5   **"Data Protection Laws"** means the laws and regulations which are applicable to the Processing of Personal Data under the Agreement.

    1.6   **"Data Subject"** means an individual whose Personal Data is being processed by the Data Processor under the Agreement.

    1.7   **"EEA"** means the European Economic Area, consisting of the Member States of the European Union and Iceland, Liechtenstein, and Norway.

    1.8   **"GDPR"** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC and the UK equivalent.

    1.9   **"Personal Data"** means any information relating to an identified or reasonably identifiable person.

    1.10   **"Processing"** means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction (**"Process"**, **"Processes"** and **"Processed"** shall have the same meaning).

    1.11   **"Sell,"** **"Selling,"** **"Sale,"** and **"Sold"** shall have the meanings provided under applicable Data Protection Laws.

    1.12   **"Security Breach"** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, the Personal Data transmitted, stored, or otherwise processed by Instructure.

1.13 **"Standard Contractual Clauses"** means the contractual clau[...] [...]ed by the European Commission by implementing decision 2021/914 of 4th of June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council, the UK International Data Transfer Addendum (**"UK Addendum"**), and any similar measures promulgated pursuant to the GDPR to address the transfer of Personal Data to a Third-country and any amendments and replacements thereto as may be promulgated from time to time.

1.14 **"Supplementary Measures"** means technical, organizational, and contractual measures as described in EDPB Guideline adopted on 18th June 2021 ("Recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data").

1.15 **"Sub-processor"** means any Data Processor acting on behalf of Instructure.

1.16 **"Third-country"** means a country that is neither part of the EEA nor has been declared adequate by a decision of the European Commission according to the mechanism lined out in Article 45 GDPR.

1.17 **"UK"** means the United Kingdom, Wales, and Northern Ireland.

2. PROCESSING OF CUSTOMER PERSONAL DATA.

2.1 The Parties agree that with regard to the Processing of Customer Personal Data, Customer is the Data Controller and Instructure is the Data Processor, except for certain services provided by Instructure where Instructure is also a Data Controller with respect to the Customer Personal Data.

2.2 Customer shall, in its use or receipt of the Services, process Customer Personal Data in accordance with the requirements of the Data Protection Laws and Customer will ensure that its instructions for the Processing of Customer Personal Data comply with the Data Protection Laws. Customer shall have sole responsibility for the accuracy, quality, and legality of Customer Personal Data, the means by which Customer obtained the Customer Personal Data, and for fulfilling all requirements under Data Protection Laws necessary to make the Customer Personal Data available to Instructure for Processing as provided herein and under the Agreement.

2.3 During the Term of the Agreement, Instructure shall only Process Customer Personal Data on behalf of and in accordance with the Agreement and Customer's written instructions unless required to do so by law to which Instructure is subject; in such case Instructure shall inform the Customer of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

2.4 Customer instructs Instructure to Process Customer Personal Data for the following limited and specified purposes: (i) Processing in accordance with the Agreement, any applicable orders, and Data Protection Laws; and (ii) Processing to comply with other reasonable instructions provided by Customer where such instructions are consistent with the terms of the Agreement and Data Protection Laws. Instructure shall not Sell, or share for targeted advertising purposes, Customer's Personal Data except as expressly instructed by Customer. Instructure shall not combine Customer Personal Data with other Personal Data except as permitted by Data Protection Laws.

2.5 The objective of Processing of Customer Personal Data by Instructure is the performance of the Services pursuant to the Agreement. The duration of the Processing, the nature and purpose of the Processing, the types of Personal Data and categories of Data Subjects Processed under this DPA are further specified in Appendix 1, Annex I B.

2.6 If Instructure determines that it can no longer comply with Data Protection Laws, Instructure will notify Customer within five (5) business days of making such determination.

3. **ASSISTANCE TO CUSTOMER AND RIGHTS OF DATA SUBJECTS.**

3.1 To the extent Customer, in its use or receipt of the Services, does not have the ability to take steps required to comply with Data Protection Laws, including without limitation correcting, amending, restricting, blocking or deleting Customer Personal Data, and implementing reasonable security procedures or practices designed to protect Customer Personal Data, as and to the extent required by the Data Protection Laws, Instructure will use commercially reasonable efforts to comply with reasonable requests by Customer to facilitate such actions to the extent Instructure is legally permitted to do so, taking into account the nature of the Processing of Customer Personal Data and the information available to Instructure.

3.2 Instructure shall, to the extent legally permitted, promptly notify Customer if it receives a request from a Data Subject for access to, correction, amendment, deletion of or objection to the processing of that person's Personal Data. Instructure shall not respond to any such Data Subject request without Customer's prior written consent except to confirm that the request relates to Customer or as otherwise required by Data Protection Laws. Instructure shall provide Customer with commercially reasonable cooperation and assistance in relation to the handling of a Data Subject's request, to the extent legally permitted and to the extent Customer does not have access to such Customer Personal

Data through its use or receipt of the Services, taking into _____ the nature of the Processing of Customer Personal Data and the information available to Instructure.

4. **PROCESSOR PERSONNEL.**

   4.1   Instructure shall use commercially reasonable efforts to ensure that its personnel engaged in the Processing of Customer Personal Data are subject to obligations of confidentiality.

   4.2   Instructure shall use commercially reasonable efforts to ensure that access to Customer Personal Data is limited to those personnel who require such access to perform the Services.

5. **SUB-PROCESSORS.**

   5.1   Instructure shall not transfer or otherwise make available Customer Personal Data to any third party without Customer's prior authorization.

   5.2   Upon signing of the DPA, Customer gives its general authorization to Instructure to use Instructure Affiliates as Sub-processors; and third-party Sub-processors in connection with the provision of the Services provided that the following conditions are met:

   (i)   Instructure shall ensure that obligations not materially less protective than those set out in this DPA are imposed on Sub-processors by way of a written contract;

   (ii)   Instructure remains liable towards Customer for the work of its Sub-processors as if and to the extent such work was performed by Instructure;

   (iii) Instructure shall provide the list of its Sub-processors by giving a link to a website where the information about the Sub-processors is kept up to date; and

   (iv)   Instructure shall inform Customer of any intended changes to Sub-processors concerning the addition or replacement of Sub-processors. To the extent required by Data Protection Laws, Instructure shall thereby give Customer the opportunity to object to such changes by notifying Instructure in writing within 30 days after the receipt of Instructure's notice about the changes, and if, within 20 days of receipt of that notice, Customer notifies Instructure in writing of any objections on reasonable grounds to the proposed engagement of a Sub-processor, Instructure shall not use that proposed Sub-processor to Process Customer Personal Data until reasonable steps have been taken to address the objections raised by

Customer and Customer has been provided with a re‌‌‌‌‌‌‌‌‌e written explanation of the steps taken.

6. INTERNATIONAL DATA TRANSFERS

6.1 Customer acknowledges and agrees that Instructure is established in a Third Country and that providing the Services defined in the Agreement require transfer to, and Processing of Customer Personal Data within, a Third Country. All transfers to a Third Country are subject to the following conditions:

(i) Customer has given prior authorization for the transfer by signing the Agreement as documented in Appendix 1;

(ii) The Customer Personal Data is Processed under the terms of the Agreement;

(iii) There is a valid transfer mechanism in place in accordance with the GDPR; and

(iv) Instructure shall implement the Supplementary Measures, where necessary.

6.2 EU/UK Standard Contractual Clauses: The valid transfer mechanism referred in Section 6.1(iii) is, where Instructure acts as a Processor and Customer acts as a Controller, the Standard Contractual Clauses, Module TWO: Transfer Controller to Processor; where Instructure acts as a Controller and Customer acts as a Controller, the Standard Contractual Clauses, Module ONE: Transfer Controller to Controller; and in both cases, the UK Addendum thereto attached as Appendix 2, and all of the foregoing are deemed to be incorporated herein by reference as set forth below. In respect of the Standard Contractual Clauses, the Parties agree on the following:

(i) in clause 7, the Parties choose to include the "docking clause";

(ii) where Module Two applies, in clause 9, the Parties choose Option 2: "general written authorization";

(iii) where Module Two applies, in clause 9, the Parties choose twenty (20) days as the specific time period;

(iv) in clause 11, the Parties do not choose the optional complaint mechanism;

(v) in clause 17, the governing law is the law of the EU Member State :

a. Option 1: Where Customer is established in an EU Member State, the law in that EU Member State;

b. Option 2: Where Customer is not established in an EU Member State but has appointed a representative pursuant to Article 27(1) of the GDPR, the law in the EU Member State in which the Customer's representative is located;

c. Option 3: Where the data exporter is not established in an EU Member State and is not required to appoint a representative pursuant to Article

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    (vi)   in clause 18, the country of the applicable court in respect of any disputes arising from Standard Contractual Clauses is the courts of the EU Member State in which in which the Parties have denoted choice of law per 6.2(v) above.

  6.3   To the extent that Instructure uses a Sub-processor in a Third-Country for the Processing of Customer Personal Data, the following shall apply in addition to **Section 5** above:

    (i)   Customer has given prior authorization for the transfer by signing the DPA;

    (ii)   There is a valid transfer mechanism in place in accordance with the GDPR; and

    (iii)   Instructure makes information on the transfer mechanism, and where applicable, the Standard Contractual Clauses, available without undue delay to Customer.

7. SECURITY; AUDIT RIGHTS; PRIVACY IMPACT ASSESSMENTS.

  7.1   Instructure shall maintain technical and organizational measures designed to protect of the security, confidentiality, and integrity of Customer Personal Data.

  7.2   No more than once per year, Customer may engage a mutually agreed upon third party to audit Instructure solely for the purposes of meeting its audit requirements pursuant to the Data Protection Laws. To request an audit, Customer must submit a detailed audit plan at least four (4) weeks in advance of the proposed audit date describing the proposed scope, duration, and start date of the audit. Audit requests must be sent to privacy@Instructure.com. The audit must be conducted during regular business hours, subject to Instructure's policies, and may not unreasonably interfere with Instructure's business activities. Any audits are at Customer's expense.

  7.3   Any request for Instructure to assist with an audit is considered a separate service if such audit assistance requires the use of resources different from or in addition to those required by law. Customer shall reimburse Instructure for any time spent for any such audit at the rates agreed to by the Parties. Before the commencement of any such audit, Customer and Instructure shall mutually agree upon the scope, timing, and duration of the audit in addition to the reimbursement rate for which Customer shall be responsible. All reimbursement rates shall be reasonable, considering the resources expended by Instructure. Customer shall promptly notify Instructure with information regarding any non-compliance discovered during an audit.

7.4 Instructure will reasonably cooperate with Customer, at Customer's expense, where Customer is conducting a privacy impact assessment that is required by Data Protection Laws.

8. SECURITY BREACH MANAGEMENT AND NOTIFICATION.

8.1 In the event of a Security Breach, Instructure shall: (i) notify Customer of the Security Breach without undue delay after becoming aware of the Security Breach. Notification shall include at least the information required by the Data Protection Laws; (ii) investigate the Security Breach and provide Customer with information about the Security Breach; and (iii) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Breach and to allow Customer to take reasonable and appropriate steps to do the same to the extent such steps are within Customer's control.

8.2 Instructure shall cooperate with Customer, and with any third parties designated by Customer, to respond to the Security Breach.

9. RETURN AND DELETION OF CUSTOMER DATA.

Instructure shall provide functionality for Customer to download Customer Personal Data from the Services, to the extent possible, and/or delete Customer Personal Data in accordance with Instructure's data retention policies which adhere to requirements of the Data Protection Laws, and in a manner consistent with the terms of the Agreement.

10. SEVERANCE.

Should any provision of this DPA be invalid or unenforceable, then the remainder of this DPA shall remain valid and in force. The invalid or unenforceable provision shall be either amended as necessary to ensure its validity and enforceability, while preserving the Parties' intentions as closely as possible or, if this is not possible, construed in a manner as if the invalid or unenforceable part had never been contained therein.

11. LEGAL EFFECT.

This DPA shall only become legally binding between Customer and Instructure when the Parties the Agreement for the Services.

12. LIMITATION OF LIABILITY.

To the extent permitted by Data Protection Laws, Customer's remedies with respect to any breach by Instructure of the terms of this DPA or Data Protection Laws will be subject to any aggregate limitation of liability that applies to Instructure and/or Customer under the Agreement.

APPENDIX 1 - EU STANDARD CONTRACTUAL CLAUSES

INSTRUCTURE(/).

A. LIST OF PARTIES

Data exporter(s): As defined in the Agreement

Name: As defined in the Agreement

Address: As defined in the Agreement

Contact person's name, position and contact details: As defined in the Agreement

Activities relevant to the data transferred under these Clauses: As defined in the Agreement

Signature and date: As defined in the Agreement

Role: Controller

Data importer(s): As defined in the Agreement

Name: As defined in the Agreement

Address: As defined in the Agreement

Contact person's name, position, and contact details: As defined in the Agreement

Activities relevant to the data transferred under these Clauses:

The data importer provides a Software-as-a-Service Internet accessible learning management software, for use by the data exporter as described in the Agreement.

Signature and date: As defined in the Agreement

Role: Processor

B. DESCRIPTION OF TRANSFER

| Categories of data subjects whose personal data is transferred: | Users of the services as authorized by the data exporter. |

Canvas LMS & Canvas for Corporate Educat___ ___ (including mobile applications):

- Name (e.g., John Doe)

 - Username/ID

 - Password

- Short Name (e.g., John)

- Email (e.g., John.Doe@awesomeu)

- School Name (e.g., Awesome University)

- School Position (e.g., Student)

- Avatar URL (e.g., URL of Avatar image)

- Pronouns (e.g., she/her) (Optional)

- Locale (e.g., en - language selection)

- Browser Locale (e.g., en, browser language setting)

- Country Code (e.g., CAN)

- Submitted content (e.g., research paper, assignments)

- Assessment results (e.g., 86%)

- Course results (e.g., B+)

- Conversation comments (e.g., discussion)

- Course content (e.g., Lesson #4)

- IP Address (e.g., 127.0.0.1)

- Messages (e.g., notifications and course conversations)

 - Video content created by the user (e.g., images, voice recording, comments)

Canvas Commons:

INSTRUCTURE(l)

- Canvas User Id

- Canvas User Login name

- Name (e.g., John Doe)

- Email (e.g., John.Doe@awesomeu)

- Avatar Url (e.g., URL of Avatar image)

- Commons resource ids favorited by the user

- Comments the user made to any resources

- IP Address (e.g., 127.0.0.1)

Canvas Catalog:

- Credit card processing token via third party credit card processor

- Canvas LMS User ID

- Order ID

- Account ID

- Item ID and Item Type (e.g., Intro to Statistics, online class)

- Name (e.g., John Doe)

- Email (e.g., John.Doe@awesomeu)

- External ID (Canvas enrollment ID)

- Canvas Root Account ID (Institution ID)

- Product ID (e.g., class name/ID)

- Class Completed Date

- Enrollment status

- Purchase date

Canvas Studio:

- Video content created by the user (e.g., images, voice recording, comments)

- Name (e.g., John Doe)

- Email (e.g., John.Doe@awesomeu.com (mailto:John.Doe@awesomeu.com))

- Canvas LMS User ID

- Username/ID

- Password

- Messages

Canvas Credentials:

- Name (e.g., John Doe)

- Email (e.g., John.Doe@awesomeu)

- Physical address of badge recipients

- Phone number of badge recipients

- IP address

- Badge information such as issuing institution or program

- User name and password

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Elevate Data (Elevate Data Quality, Elevate K-12 Analytics, Elevate Standards Alignment, Elevate Data Sync):

- All data from the Student Information System authorized by the applicable customer engagement.

Impact by Instructure Data:

- User ID

- Password

- School role (e.g., student, teacher)

- Full name (e.g, first, middle, last)

- Student ID number

- Email address (e.g., John.Doe@awesomeu)

- School Name (e.g., Awesome University)

- Education Level

- Birthdate (Optional)

- Language (e.g., Eng)

- Zip code

- City (e.g., London)

- Country (e.g., CAN)

- State

- Browser Locale (e.g., en, browser language setting)

INSTRUCTURE(/)

- Profile Image (Optional)

- Gender (Optional)

- Learning Management System Username

- Slack notifications (Administrators)

- Application activity (e.g., page clicks in the application)

Mastery Data (Item Bank, Mastery View Predictive Assessmntes, Mastery View Interim Assessments, Mastery Connect):

- Name (e.g., John Doe)

- School Student ID Number

- State Student ID Number

- Username/ID

- Password

- Short Name (e.g., John)

- Email (e.g., John.Doe@awesomeu)

- Phone Number (Optional)

- School Name (e.g., Awesome University)

- School Position (e.g., Student)

- Assessment results (e.g., 86%)

- Birthdate

- Race (e.g., Hispanic, White, Asian)

INSTRUCTURE(*/*)

- Ethnicity (e.g, Native Hawaiian, Irish, Austr
- English Language Learner status (True/False/Null)
- Individualized Education Program status (True/False/Null)
- Free or reduced lunch status (True/False/Null)

Sensitive data transferred:	None
The frequency of the transfer (e.g., whether the data is transferred on a one-off or continuous basis):	Continuous for the duration of the Agreement.
Nature of the processing:	Performance of the Services described in the Agreement.

Purpose(s) of the data transfer and further processing:	Processing Customer Personal Data on behalf of and in accordance with Customer's documented instructions for the following purposes: (i) Processing in accordance with the Agreement; (ii) Processing initiated by Data Subjects as required under EU/UK Data Protection Law; and (iii) Processing to comply with other documented, reasonable instructions provided by Customer where such instructions are consistent with the terms of the Agreement.

Instructure's data centers for the Services are in the following regions for EU, EEA, or UK based customers: Ireland and/or Germany.

Canvas Commons is hosted in the USA exclusively.

Instructure's limited Processing that occurs outside of the European Union is related to the following activities:

- *Contract Management.* This Processing includes providing contract and customer relationship management services.

- *Customer Support.* This Processing includes user helpdesk support and technical operations support. Instructure's user support ticketing system is hosted in the USA. Any Customer Personal Data submitted through a support ticket is stored and Processed in the USA.

- *Professional Services.* This Processing includes integration services, implementation services, and configuration services as purchased by Customer.

- *Engineering and Security Support.* This Processing includes, user issue tickets, application logs, security logs, database logs, systems logs, and security alerting tools may be reviewed by security and engineering personnel located in the EU, USA, and UK.

- *Data Anonymization for Internal Analytics.* ...ure transfers (/) Services databases to its data center in the USA for a period of 48 hours where Customer Personal Data is anonymized prior to being used by Instructure.

The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period:	Processor will process Customer Personal Data for the duration of the Agreement. Upon termination of the Agreement, it will be deleted in accordance with this DPA or the Agreement.
For transfers to (sub-) processors, also specify subject matter, nature, and duration of the processing:	The duration will be until the termination of the Agreement.

C. COMPETENT SUPERVISORY AUTHORITY

Identify the competent supervisory authority/ies in accordance with Clause 13: The competent supervisory authority is the supervisory authority denoted in Section 6.2 of the DPA.

ANNEX II

TECHNICAL AND ORGANISATIONAL MEASURES INCLUDING TECHNICAL AND ORGANISATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA

Instructure's technical and organizational measures are described at: https://www.instructure.com/products/canvas/security

ANNEX III

LIST OF SUB-PROCESSORS

This Annex must be completed in case of the specific authorization of sub-processors (Clause 9(a), Option 1).

INSTRUCTURE(/)

UK International Data Transfer Addendum to the EU Commission Standard Contractual Clauses

VERSION B1.0, in force 21 March 2022

This Addendum has been issued by the Information Commissioner for Parties making Restricted Transfers. The Information Commissioner considers that it provides Appropriate Safeguards for Restricted Transfers when it is entered into as a legally binding contract.

Part 1: Tables

Table 1: Parties

Start date	The effective date of the DPA to which this Addendum has been attached	
The Parties	**Exporter (who sends the Restricted Transfer)**	**Importer (who receives the Restricted Transfer)**
Parties' details	Full legal name: As described in the Agreement.	Full legal name: As described in the Agreement.
	Trading name (if different): As described in the Agreement.	Trading name (if different): As described in the Agreement.
	Main address (if a company registered address): As described in the Agreement.	Main address (if a company registered address): As described in the Agreement.
	Official registration number (if any) (company number or similar identifier): As described in the Agreement.	Official registration number (if any) (company number or similar identifier): As described in the Agreement.

Key Contact	Full Name (optional): As described in the Agreement.	Full Name ~~al~~): As described in the Agreement.
	Job Title: As described in the Agreement.	Job Title: As described in the Agreement.
	Contact details including email: As described in the Agreement.	Contact details including email: As described in the Agreement.
Signature (if required for the purposes of Section 2)	As described in the Agreement.	As described in the Agreement.

Table 2: Selected SCCs, Modules and Selected Clauses

Addendum EU SCCs	X the Approved EU SCCs, including the Appendix Information and with only the following modules, clauses or optional provisions of the Approved EU SCCs brought into effect for the purposes of this Addendum:

Module	Module in operation	Clause 7 (Docking Clause)	Clause 11 (Option)	Clause 9a (Prior Authorisation or General Authorisation)	Clause 9a (Time period)	Is personal data received from the Importer combined with personal data collected by the Exporter?
1	Yes	Yes	No			
2	Yes	Yes	No	General	20 days	N/A
3	No	N/A	N/A	N/A	N/A	N/A
4	No	N/A	N/A			N/A

Table 3: Appendix Information

"Appendix Information" means the information which must be provided for the selected modules as set out in the Appendix of the Approved EU SCCs (other than the Parties), and which for this Addendum is set out in:

Annex 1A: List of Parties: Appendix 1, Annex IA

Annex 1B: Description of Transfer: Appendix 1, Annex IB

Annex II: Technical and organisational measures including technical and organisational measures to ensure the security of the data: Appendix 1, Annex II

Annex III: List of Sub processors (Modules 2 and 3 only): Not applicable to a general authorisation to engage subprocessors, but a list of Instructure subprocessors is available as descrived in Section 5.2(iii) of the DPA.

Table 4: Ending this Addendum when the Approved Addendum Changes

	Which Parties may end this Addendum as set out in Section 19:
Ending this Addendum when the Approved Addendum changes	☒ Importer
	☒ Exporter
	☐ neither Party

Part 2: Mandatory Clauses

Alternative Part 2 Mandatory Clauses:

Mandatory Clauses	Part 2: Mandatory Clauses of the Approved Addendum, being the template Addendum B.1.0 issued by the ICO and laid before Parliament in accordance with s119A of the Data Protection Act 2018 on 2 February 2022, as it is revised under Section 18 of those Mandatory Clauses.

APPENDIX 3: JURISDICTION SPECIFIC TERMS

To the extent that Services involve Customer Personal Data originating from the following countries, the relevant provisions set out below will apply.

1. **Provisions relevant to Turkey**
   a. The provisions of this paragraph 1 apply where Instructure processes Customer Personal Data that originates from Turkey.
   b. Instructure will comply with the Turkish Data Protection Act ("**Turkish DPA**") numbered 6698 and dated 7 April 2016 and any related regulations, and all decisions of the Turkish Data Protection Authority.
   c. Instructure will promptly assist the Customer:
      i. by implementing appropriate technical and organizational measures, insofar as this is possible, taking into account the nature of the processing, to fulfil the Customer's obligations to respond to requests from individuals exercising their rights under data protection law which applies to the Customer (such as, but not limited to, rights to rectify, erase, or block Customer Personal Data); and
      ii. in ensuring compliance with the Customer's obligations pursuant to Article 12 of the Turkish Data Protection Act (security, notification of personal data breaches to authorities and individuals), taking into account the nature of the processing and the information available to Instructure.
   d. Where Instructure processes, outside of Turkey, Customer Personal Data subject to the Turkish DPA originating from Turkey, then Instructure shall cooperate with Customer with any formalities required by the Turkish Data Protection Authority.

2. **Provisions relevant to Switzerland**
   a. The provisions of this paragraph 2 apply where Instructure processes Customer Personal Data that originates from Switzerland.
   b. The definition of "Applicable Data Protection Law" includes the Swiss Federal Act on Data Protection, as revised ("**FADP**").
   c. When Instructure engages a Sub-processor under Section 7.1 (Authorization for Onward Sub-processing) of this DPA, it will:
      i. require any appointed Sub-processor to protect the Customer Personal Data to the standard required by applicable Data Protection Law, such as including the same data protection obligations referred to in Article 28(3) of the GDPR, in particular providing sufficient guarantees to implement appropriate technical and organizational measures in such a manner that the Processing will meet the requirements of the GDPR, and
      ii. require any appointed Sub-processor to (i) agree in writing to only Process Customer Personal Data in a country that Switzerland has declared to have an "adequate" level of protection or (ii) only process Customer Personal Data on terms equivalent to the EU Standard Contractual Clauses.

d. To the extent that Customer Personal Data transfers from S_____d are subject to the EU Standard Contractual Clauses, the following amendments will apply to the EU Standard Contractual Clauses:
  i. references to "EU Member State" and "Member State' will be interpreted to include Switzerland, and
  ii. insofar as the transfer or onward transfers are subject to the FADP:
    1. references to "Regulation (EU) 2016/679" are to be interpreted as references to the FADP;
    2. the "competent supervisory authority" in Annex I, Part C will be the Swiss Federal Data Protection and Information Commissioner;
    3. in Clause 17 (Option 1), the EU Standard Contractual Clauses will be governed by the laws of Switzerland; and
    4. in Clause 18(b) of the EU Standard Contractual Clauses, disputes will be resolved before the courts of Switzerland.

3. **Provisions relevant to Australia**
  a. The provisions of this paragraph 3 apply where Instructure processes Customer Personal Data that originates from Australia.
  b. **"APPs"** shall mean the Australian Privacy Principles in the Privacy Act.
  c. **"Personal Information"** has the meaning given to that term in the Privacy Act.
  d. **"Privacy Act"** shall mean the Australian Privacy Act 1988 (Cth).
  e. Instructure shall in respect of any Customer Personal Data it receives or has access to under the Agreement:
    i. comply with the APPs (except for APP 1) as if it were bound by the APPs to the same extent as the Customer; and
    ii. without limiting sub-paragraph (i), enter into a similar contractual arrangement with any third party to whom it discloses the Personal Information (whereby the third party agrees to comply with the APPs in respect of such information (except for APP 1) as if that third party were bound by the APPs to the same extent as the Customer).

4. **Provisions relevant to Hong Kong**
  a. The provisions of this paragraph 4 apply where Instructure processes Customer Personal Data that originates from Hong Kong.
  b. To the extent that Instructure carries out direct marketing on behalf of the Customer, Instructure shall implement effective measures designed to inform data subjects of the scope of the marketing and provide effective means designed to

allow data subjects to give consent in accordance with the requirements of the Personal Data (Privacy) Ordinance (Cap. 486) ("**PDPO**").

c. Instructure shall comply with the data retention requirement (DDP2) and data security requirement (DPP4) as contained in the PDPO.

5. Provisions relevant to India

The provisions of this paragraph 5 apply where Instructure processes Customer Personal Data that originates from India. When Providing the Services, Instructure shall comply with the requirements of the Information Technology Act 2000, the Information Technology (reasonable security practices and procedures and sensitive personal data or information) Rules 2011 (each as amended, modified, supplemented from time to time) as applicable to a body corporate, and any other laws, rules, regulations, notifications, judgements relating to data protection or privacy that are in force as of date of the Agreement, or that may be brought into force in India at any time in the future during the term of the Agreement.

6. Provisions relevant to Japan

a. The provisions of this paragraph 6 apply where Instructure processes Customer Personal Data that originates from Japan.

b. Instructure shall not obtain any Customer Personal Data from the Customer in Japan or another party through any deceptive, fraudulent, or other wrongful means.

c. Instructure shall make a reasonable effort to ensure that the transferred Customer Personal Data is accurate and up to date and within the scope necessary to perform the Services.

d. Instructure will take the appropriate technical and organizational security measures designed to adequately protect all Customer Personal Data in Japan against not only misuse and loss, but also leakage and damage, in accordance with any relevant Order, the Agreement, this DPA, and the Act on the Protection of Personal Information (Act No. 57 of 2003, as amended) (the "**APPI**").

e. Instructure will implement appropriate technical and organizational measures, insofar as this is possible taking into account the nature of the processing, to fulfil the Customer's obligations to respond to requests from individuals exercising their rights under applicable Data Protection Law which applies to the Customer (such as, but not limited to, rights to rectify, erase, or block Customer Personal Data);

f. If Instructure acquires Customer Personal Data of Data Subjects in Japan directly from those Data Subjects, in connection with the Services by Instructure to those Data Subjects, Instructure will process Customer Personal Data of those Data

Subjects in compliance with the APPI and all accompanying   ons and guidelines issued by the Personal Information Protection Commission of Japan, and all other privacy legislation and other laws which the Instructure is subject to, even when it handles Customer Personal Data of those data subjects outside Japan.

g. Instructure will notify the Customer of any notices, requests, orders or queries from Data Subjects, any data protection or other governmental authority, law enforcement agency, court order or tribunal, which the Customer or Instructure is obliged to comply with under the APPI or other applicable laws to facilitate timely resolution of any matter arising in connection with the foregoing or any related investigation.

7. **Provisions relevant to Malaysia**

a. The provisions of this paragraph 7 apply where Instructure processes Customer Personal Data that originates from Malaysia.

b. For the purposes of this paragraph 6, "**Personal Data**", "**Sensitive Personal Data**" and "**Data User**" have the meanings given to those terms in the Personal Data Protection Act 2010.

c. Instructure shall comply with the Personal Data Protection Act 2010 to the extent that this applies to Data Processors and the Customer Personal Data to be Processed hereunder.

d. No Personal Data shall be transferred to a country outside Malaysia unless to such country as specified by the Minister by notification published in the Gazette (if any) or with the consent of the data subject or as otherwise permitted in the circumstances as prescribed in the Personal Data Protection Act 2010 with regards to the transfer of Personal Data.

e. No processing of special categories of data/sensitive data within the meaning of Sensitive Personal Data, including any transfer thereof, may be made without the explicit consent of the data subject or as otherwise permitted in the circumstances as prescribed in the Personal Data Protection Act 2010 with regards to the processing of Sensitive Personal Data.

f. Instructure will promptly assist the Data User to fulfil the Data User's obligations to respond to requests from individuals exercising their rights under data protection law which applies to the Data User within the time as prescribed by the Personal Data Protection Act 2010.

8. **Provisions relevant to New Zealand**

The provisions of this paragraph 8 apply where Instructure processes Customer Personal Data that originates from New Zealand. Instructure shall comply with the

Information Privacy Principles set out in the New Zealand Privac   93 (as though Instructure were Customer) and shall cooperate with the Customer in a manner designed to ensure that the Customer can meet its obligations (including in relation to information privacy requests and investigations) under that Act.

9. **Provisions relevant to the Philippines**
   a. The provisions of this paragraph 9 apply: (i) where Instructure processes Customer Personal Data about a Philippine citizen or resident; (ii) where Instructure, Data Processor or Customer is found or established in the Philippines; (iii) where the processing of Customer Personal Data is done in the Philippines; or (iv) where the processing of Customer Personal Data is done or engaged in by an entity with links to the Philippines.
   b. Instructure will comply with the following obligations:
      i. comply with applicable local laws and regulations and issuances of the Philippine National Privacy Commission;
      ii. assist the Customer, by appropriate technical and organizational measures and to the extent possible, to fulfil the obligation to respond to requests by Data Subjects relative to the exercise of their rights;
      iii. assist the Customer in ensuring compliance with applicable local laws and regulations and issuances of the Philippine National Privacy Commission, taking into account the nature of processing and the Customer Personal Data available to Instructure;
      iv. make available to the Customer all information necessary to demonstrate compliance with the obligations laid down in applicable local laws and regulations; and
      v. immediately inform the Customer if, in its opinion, a Direction from the Customer infringes any applicable local law, regulation or issuance of the Philippine National Privacy Commission.
   c. Instructure shall process Customer Personal Data contained in the Services in Australia and Singapore.

10. **Provisions relevant to Singapore**
    Instructure shall comply with the Personal Data Protection Act 2012 to the extent that this applies to Data Processors and the Customer Personal Data to be Processed hereunder. Instructure shall host the Customer Personal Data contained in the Services in Australia and Singapore

11. **Provisions relevant to South Korea**

a. The provisions of this paragraph 11 apply: (i) where Instructu sses Customer Personal Data that originates from South Korea; or (ii) where Instructure is an entity located in South Korea.

b. Instructure will comply with the Personal Data Protection Act (as amended), and the Act on Promotion of Data and Communications Network Utilization and Data Protection, etc., (as amended).

c. Subject to the limitations and waivers of liability in the Agreement, Instructure shall be liable to the Customer for damages that it causes by any breach of provisions in this DPA.

d. Instructure hosts the Services in Singapore for customers located in South Korea.

12. **Provisions relevant to Taiwan**

a. The provisions of this paragraph 12 apply where Instructure processes Customer Personal Data that originates from Taiwan or is the Customer Personal Data of Taiwanese national Data Subjects anywhere in the world. Instructure hosts the Services in Singapore for Customers located in Taiwan.

b. Instructure will comply with the provisions of the current Taiwan Personal Information Act (the "**PIPA**"), the Enforcement Rules to the Personal Information Protection Act (the "**PIPA Enforcement Rules**"), and any other data protection regulations currently in force in Taiwan.

c. Instructure will promptly assist the Customer:

   i. by implementing appropriate technical and organizational measures, insofar as this is possible taking into account the nature of the processing, to fulfil the Customer's obligations to respond to requests from individuals exercising their rights under the PIPA which apply to the Customer (such as, but not limited to, rights to review, to copy, to rectify, to cease collection, processing, or use, or to erase Customer Personal Data);

   ii. in ensuring compliance with the Customer's obligations pursuant to Article 12 of the PIPA (prompt investigation of data breach and notice to individuals) and any applicable industry-specific regulations issued under Article 27 of the same (including but not limited to any industry-specific duty to notify the regulator of a data breach) taking into account the nature of the processing and the information available to Instructure; and

   iii. by immediately informing the Customer if, in Instructure's opinion, an instruction from the Customer to collect, process, or use Customer Personal Data violates the PIPA.

d. Instructure shall adopt the technical and organizational measures set forth in Article 12(2) of the PIPA Enforcement Rules proportional to the purpose of the

prevention of Customer Personal Data from being stolen, a lamaged, destroyed or disclosed.

e. In addition to informing the Customer of any serious interruption of Instructure's processing operations, any suspicion of security breaches, or violation of the PIPA, the PIPA Enforcement Rules, or other Taiwan data protection regulations, Instructure shall inform the Customer of all remedial measures taken to remedy the interruption, breach, or violation.

f. Instructure shall comply with any reserved instruction from the Customer and has an obligation to provide information evidencing compliance with any such reserved instruction to the Customer.

13. **Provisions relevant to China**

a. The provisions of this paragraph 13 apply where Instructure processes Customer Personal Data that originates from the People's Republic of China.

b. The definition of Customer Personal Data shall include all information specifically identified as "personal information" under the applicable local law.

c. Instructure shall, at no additional cost, assist each Customer to obtain all consents necessary from the individuals regarding the collection, processing or use of Customer Personal Data in China.

d. Instructure shall at all times comply with all applicable local law, including if applicable, the Cyber Security Law on the protection of personal information, as if Instructure were the user in respect of all Personal Identifiable Information.

e. Instructure hosts the Services in Singapore for Customers located in China.

South America: Instructure hosts the Services in the USA for customers located in South America.

14. **Provisions relevant to Brazil**

a. The provisions of this paragraph 14 apply where Instructure processes Customer Personal Data that originates from Brazil.

b. The definition of "Data Protection Laws" includes the Lei Geral de Proteção de Dados (LGPD).

c. The definition of "Security Breach" includes a security incident that may result in any relevant risk or damage to Data Subjects.

d. The definition of "processor" includes "operator" as defined under the LGPD.

e. To the extent Customer Personal Data is processed through the Internet, the provisions of the Brazilian Internet Act (Law 12,965/2014) must be observed. Instructure will comply with the so-called Habeas Data Law (Law 9,507/1997) to the extent applicable.

15. **Provisions relevant to Chile**

a. The provisions of this paragraph 15 apply where Instructure processes Customer Personal Data that originates from Chile.

b. Instructure will comply with paragraph 15 of this Appendix 3.

c. Instructure will comply with the Data Protection Act Nº 19.628, as amended. The substantive provisions of the Data Protection Act entered into force on October 27, 1999, and August 22, 2000.

16. **Provisions relevant to Colombia**

a. The provisions of this paragraph 16 apply where Instructure processes Customer Personal Data that originates from Colombia.

b. Instructure will comply with paragraph 16 of this Appendix 3.

c. For the purposes of this paragraph 16:

i. "**Colombian GDP**" shall mean the Colombian General Data Protection legal framework (Law 1581 of 2012 and Decree 1074 of 2015); and

ii. Customer Persona Data flows between Instructure and Customer will be understood as 'data transmissions' under the Colombian GDP.

d. Instructure will comply with the following obligations:

i. process Customer Personal Data only for the purposes authorized by the individuals who are the subjects of such information;

ii. process Customer Personal Data pursuant to the Customer's instructions and privacy notice; and

iii. process Customer Personal Data pursuant to the principles set forth in the Colombian GDP.

17. **Provisions relevant to Mexico**

a. The provisions of this paragraph 17 apply where Instructure processes Customer Personal Data that originates from Mexico.

b. Instructure will comply with paragraph 17 of this Appendix 3.

c. Instructure will comply with the security measures set out in Article 52 of the Mexican Data Protection Regulations (Reglamento de la Ley Federal de Protección de Datos Personales en Posesión de los Particulares) where applicable.

d. Instructure will process Customer Personal Data in accordance with the privacy notice of the Customer, provided that Customer shall ensure that the Customer's privacy notice adequately describes the processing of Customer Personal Data by Instructure under the Agreement in a manner compliant with Mexican law.

18. **Provisions relevant to the Republic of Argentina**

a. The provisions of this paragraph 18 apply where Instructure ses Customer Personal Data that originates from the Republic of Argentina.

b. Instructure agrees to comply with the obligations of a data importer as set out in the model contract titled *Contrato Modelo de Transferencia Internacional de Datos Personales con Motivo de Prestación de Servicios* adopted by the Data Protection Agency of the Republic of Argentina under Disposition 60 — E/2016 (the **'Argentinian SCCs'**) for the transfer of personal data to data processors established in third countries.

c. Instructure acknowledges that each Customer Affiliate in the Republic of Argentina will be a Customer. In particular, and without limiting the above obligation:

   i. Instructure agrees to grant third party beneficiary rights to Data Subjects, as set out in Clause 3 of the Argentinian SCCs, provided that Instructure's liability shall be limited to its own Processing operations; and

   ii. Instructure agrees that its obligations under the Argentinian SCCs shall be governed by the laws of the Republic of Argentina in which the Customer Affiliates that are the data exporter(s) are established; and

   iii. the details of the appendices applicable to the Argentinian SCCs are set out in Appendix 1 to this DPA.

d. For the purposes of Annex A to the Argentinian SCCs, the data exporter is an educational institution; the data importer is an international education technology company and details about the data subjects, categories of data, processing operations and security measures are as set out in Appendix 1 to this DPA.

e. Instructure shall neither apply nor use the Customer Personal Data for any purpose other than the one specified in this DPA nor shall Instructure, except as permitted in this DPA and the Agreement, communicate to other parties such Customer Personal Data, even for storage purposes. Once the corresponding contractual obligations have been performed, the Customer Personal Data processed must be destroyed, except where there is an express authorization given by the person for account of whom such services are rendered, by reason of a possibility of the Customer Personal Data being used for future services, in which case the Customer Personal Data may be stored under due security conditions for a maximum term of up to two (2) years. The parties agree to adopt confidentiality measures to protect the Customer Personal Data following section 9 of the Data Protection Act and its Regulations. Instructure shall process the Customer Personal Data following only instructions from the Customer.

North America

19. **Provisions relevant to Canada**

    a. The provisions of this paragraph 19 apply where Instructure processes Customer Personal Data that originates from Canada.

    b. Instructure shall comply with the Personal Information Protection and Electronic Documents Act and any provincial statute that is declared substantially similar pursuant to section 26(2)(b), where applicable Instructure shall promptly inform Customer if the location where the Customer Personal Data is stored ever changes.

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