**New Trier Township High School District 203
and Instructure, Inc.
Data Privacy and General Terms Addendum (Student Data)**

This Data Privacy Addendum (the "**Addendum**") by and between New Trier Township High School District 203 (the "**School District**") and Instructure, Inc. (the "**Company**") (collectively, the "**Parties**") is incorporated in, effective simultaneously with, and modifies the agreement between the Parties, attached as Exhibit A, and all current and supplemental terms and conditions, order forms, policies, practices, procedures, and/or other documentation relating to the attached agreement (collectively, the "Agreement"). This Addendum supersedes the Agreement by adding to, deleting from, and modifying the Agreement. To the extent any provision in this Addendum results in any conflict or inconsistency between the Agreement and this Addendum, this Addendum shall govern and any term of the Agreement that conflicts with this Addendum or is inconsistent with this Addendum shall be of no force or effect.

1. Definition of School District Data

As used in this Addendum, "School District Data" includes:

- "Personally Identifiable Information" and "Education Records" of students as defined in regulations implementing the Family Educational Rights and Privacy Act ("FERPA"), 34 C.F.R. § 99.3;

- "School Student Records" as defined in the Illinois School Student Records Act ("ISSRA"), 105 ILCS 10/2(d);

- "Covered Information" as defined in the Illinois Student Online Personal Protection Act ("SOPPA"), 105 ILCS 85/5; and

- All other non-public information, including student data, metadata, and user content, of the School District's students.

2. Services and Data Provided

2.1 *Nature of Products or Services Provided.* The Company has agreed to provide the School District the products and/or services outlined in Exhibit B to this Addendum.

2.2 *School District Data Provided*. To allow the Company to provide the products and/or services described in *Section 2.1*, the School District will provide the following categories or types of School District Data to the Company in Exhibit C.

2.3 *Minimum Data Necessary Shared.* The School District attests that the data with the Company for the School District to access the Company's products and/or services represents the minimum necessary data for the products and/or services as described in the Agreement and this Addendum.

2.4   *Publication of Agreement and Subcontractors.* Under SOPPA, the School District must publish the Company's name and business address, a copy of the Agreement and this Addendum, and a list of any subcontractors to whom School District Data may be disclosed. The Company agrees to provide to the School District prior to execution of the Agreement and this Addendum the name, business address, and list of subcontractors to be published or a link to a list of subcontractors and shall update this list by January 1 and July 1 each year of the Agreement.

3. Compliance with Law

3.1   The Company agrees that all sharing, use, and storage of School District Data will be performed in accordance with all applicable Federal and State laws. The Company agrees that it will comply with all applicable laws and refrain from using School District Data in any way prohibited by any law, whether such requirements are specifically set forth in this Addendum. Applicable laws may include, but are not limited to, FERPA; ISSRA; SOPPA; the Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. 6501-6502; the Protection of Pupil Rights Amendment ("PPRA"), 20 U.S.C. 1232 h; and the Illinois Children's Privacy Protection and Parental Empowerment Act ("CPPPEA"), 325 ILCS 17/1 *et seq*.

4. Data Ownership and Use

4.1   *Data Ownership and Control.* The School District Data and any intellectual property rights thereto remain the property of and under the control of the School District. The Company does not obtain any right, title, or interest in any of the School District Data furnished by the School District.

4.2   *School District Access to Data.* Any School District Data in the possession or under the control of the Company shall be made available to the School District upon request by the School District. The Company shall be responsible to provide copies of or access to School District Data in the possession or under the control of the Company to the School District within a reasonable time frame and in all cases within time frames that will allow timely compliance by the School District with any statutorily or court ordered deadline. This includes requests under the Illinois Freedom of Information Act ("FOIA"), 5 ILCS 140/1 *et seq.*, requests regarding student records under FERPA or ISSRA, requests for records in discovery in state or federal court or administrative proceedings, and any other request.

4.3   *Company Use of Data*. The Company may use and disclose the School District Data only for the purposes described in the Agreement and only in a manner that does not violate local, state, or federal privacy laws and regulations. These include, but are not limited to, the following requirements, as applicable:

   4.3.1   School Officials Requirements. The Company acknowledges that it is acting and designated as a "school official" or "official of the school" with a "legitimate educational interest" in the School District Data as those

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terms are used in FERPA, ISSRA, and SOPPA (a "School Official"). The Company agrees to abide by the limitations and requirements applicable to a School Official. The Company agrees it is performing an institutional service or function for which the school would otherwise use employees and is under the direct control of the school with respect to the use and maintenance of the School District Data. The Company agrees that it will use the School District Data only for authorized purposes and will comply with all applicable limitations and requirements imposed on a School Official under FERPA, ISSRA, and SOPPA, including the requirements that the Company: (1) collect and use School District Data only for the purpose of fulfilling its duties under the Agreement and this Addendum and only for the benefit of the School District and its end users; (2) will not share, disclose, or re-disclose the School District Data to any third party or affiliate except as permitted by FERPA, ISSRA, and SOPPA or provided for in this Addendum, otherwise authorized in writing by the School District, or pursuant to a court order; (3) will not use School District Data (including metadata) for advertising or marketing purposes unless such use is specifically authorized by this Addendum or otherwise authorized in writing by the School District.

4.3.2   PPRA Requirements. With respect to the Company's collection, disclosure, or use of School District Data as governed by the PPRA, the Company's collection, disclosure, or use of any School District Data shall be for the exclusive purpose of developing, evaluating, or providing educational products or services for, or to, the School District's students or educational institutions, or otherwise for the use and benefit of the school. The Company will not use the School District Data for any purpose other than the School District's purpose.

4.3.3   COPPA Requirements. To the extent applicable, the Company agrees that its use of the School District Data will be solely for the benefit of the School District's students and for the school system, and that the Company will not collect personal information from students for any purpose other than the School District's purpose, including any other commercial purpose.

4.3.4   Notwithstanding anything to the contrary in the Agreement or this Addendum, Company is permitted to subcontract cloud-related infrastructure elements of the Services to third-parties to allow Company to fulfill its obligations under this Agreement (collectively, the "**Cloud Providers**"). Company agrees that it shall require each of its Cloud Providers to agree to a written agreement containing obligations of confidentiality, security and privacy that are no less stringent than those contained in this Addendum. The Company shall ensure that any Cloud Service Providers that may have access to School District Data: (a) are put through a thorough assessment procedure; (b) are informed of the confidential nature of the School District Data; (c) are aware of the Company's obligations hereunder; (d) have undertaken appropriate

training in relation to the security requirements herein; and (e) are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

4.4 *Internal Company Disclosure.* The Company attests that only individuals or classes of individuals who are authorized to perform the work under the Agreement will have access to the School District Data and that those individuals and classes of individuals will be familiar with and bound by obligations of confidentiality. The Company shall cause each officer, director, employee, subcontractor, and other representative who will have access to any School District Data during the term of the Agreement to comply with all legal requirements applicable to the School District Data, including but not limited to those outlined in this Agreement and under relevant law.

5. Company Obligations Regarding Data

5.1 *Safeguards.* The Company agrees to take appropriate administrative, technical, and physical safeguards reasonably designed to protect the security, privacy, confidentiality, and integrity of School District Data. The Company shall ensure that School District Data are secured and encrypted in accordance with industry standards during use, storage and/or transmission.

   5.1.1 *Security Procedures and Practices.* The Company agrees that it will implement and maintain security procedures and practices that, at a minimum, are designed to protect covered information School District Data from unauthorized access, destruction, use, modification, or disclosure that, based on the sensitivity of the data and the risk from unauthorized access, will: (i) use technologies and methodologies that are consistent with the U.S. Department of Commerce's National Institute of Standards and Technology's Framework for Improving Critical Infrastructure Cybersecurity Version 1.1. and any updates to it; or (ii) maintain technical safeguards as they relate to the possession of covered information in a manner consistent with the provisions of 45 C.F.R. 164.312.

   5.1.2 *Storage of Data.* The Company agrees to store and process the School District Data in a manner that is no less protective than those methods used to secure the Company's own data. The Company agrees that School District Data will be stored on equipment or systems located within the United States.

   5.1.3 *Audit of Safeguards.* The Company shall maintain complete and accurate records of its security measures for School District Data and produce such records to the School District for purposes of audit upon reasonable prior notice during normal business hours. Company shall maintain robust administrative, technical and physical safeguards. Annually, Company shall complete a SOC 2 Type II third-party audit on all five trust principles related to security, availability, processing integrity, confidentiality and privacy, as outlined by the American

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Institution of CPAs (AICPA). Upon written request, Company shall provide the SOC 2 report to School District so long as the Parties have a valid non-disclosure agreement in place.

  5.1.4 Reasonable Methods. The Company agrees to use "reasonable methods" to ensure to the greatest extent practicable that the Company are compliant with state and federal law..

5.2 *Privacy Policy.* The Company must publicly disclose material information about its collection, use, and disclosure of covered information, including, but not limited to, publishing a terms of service agreement, privacy policy, or similar document. Any changes the Company may implement with respect to its privacy policies that reduces or diminishes the protections of School Student Data described in this Addendum shall be ineffective and inapplicable with respect to the School District and/or School District Data unless the School District affirmatively consents in writing to be bound by such changes. Access by students or parents/guardians to the Company's programs or services governed by the Agreement and this Addendum or to any School District Data stored by the Company shall not be conditioned upon agreement by the parents/guardians to waive any of the student data confidentiality restrictions or a lessening of any of the confidentiality or privacy requirements contained in this Addendum.

5.3 *Data Return/Destruction.* Within 90 days after expiration of the term of the Agreement, upon the earlier termination of the Agreement for any reason, or upon the School District's request, the Company covenants and agrees that it promptly shall return to the School District all School District Data in the Company's possession and control. If return of the data is not feasible or if the School District agrees, then the Company shall destroy the data. Upon written request from the School District, the Company agrees to send a written certificate that the data was properly destroyed or returned. Such certificate shall be delivered within 30 days of the School District's request or notification to the Company that the data is no longer needed for the purposes of the Agreement. The Company shall destroy School District Data in a secure manner and in such a manner that it is permanently irretrievable in the normal course of business. The only exception to the requirements of this *Section 5.3* is if the Company has express written consent from a student's parent or legal guardian consenting to the maintenance of the covered information.

5.4 *Authorizations*. The Company agrees to secure individual School District or parent/guardian written authorizations to maintain or use the School District Data in any manner beyond the scope of or after the termination of the Agreement.

5.5 *Data Breach.* For purposes of this section, "data breach" means the unauthorized disclosure of School District Data, or other unauthorized access, alteration, use or release of School District Data, as well as any other

circumstances that have resulted in such unauthorized disclosure, access, alteration, or use of School District Data.

5.5.1 In the event of a data breach, the Company agrees to the following: (1) notify the School District by email within the most expedient time possible and without unreasonable delay, but no later than 72 hours after the determination that a breach has occurred; (2) at the time notification of the breach is made, provide the School District with the name and contact information for an employee of the Company who shall serve as the Company's primary security contact; (3) reasonably assist the School District with any investigation, including interviews with Company employees and review of all relevant records; (4) provide the School District within fifteen (15) days after notification to the School District that a data breach occurred, the number of students whose covered information is involved in the breach; the date, estimated date, or estimated date range of the breach; a description of the covered information that was compromised or reasonably believed to have been compromised in the breach; and (4) assist the School District with any notification required by applicable law related to the data breach. The Company agrees to comply with the terms of this *Section 5.5.1* regardless of whether the data breach is the result of or constitutes a material breach of the Agreement or this Addendum.

5.5.2 The Company shall not, unless required by law, provide any notices related to a data breach of School Student Data except to the School District without prior written permission from the School District.

5.5.3 To the extent that a security breach results from Company's failure to comply with its obligations under this Agreement, and subject to the limitations of liability in the Agreement, Company will indemnify the School District for reasonable out-of-pocket remediation costs incurred by the School District in connection with a third party claim related to that security breach. "Reasonable out-of-pocket remediation costs" consist of: (a) commercially reasonable out-of-pocket expenses for legally-required notifications of the School District's end users of the security breach (but not the costs of any professional third-party services, including those relating to crisis management, public relations or media relations services, which are indirect and consequential damages under the Agreement) and; (b) actual costs of payments, fines, penalties, or sanctions imposed by a court, tribunal, arbitration panel, government body or regulatory agency for the security breach. the School District must document all such reasonable out-of-pocket remediation costs and, upon Company's request, those costs must be validated by an independent third party chosen by both parties. For avoidance of

doubt, the reasonable out-of-pocket costs reimbursed by Company under this Section 5.5.3 will be characterized as direct damages and not as indirect, consequential, special or incidental damages excluded in the Agreement and constitute Company's sole financial responsibilities to the School District in the event of a security breach.

6. Prohibited Uses

6.1   The Company shall not do any of the following:

    6.1.1 Sell School District Data; use or share School District Data for purposes of targeted advertising, as defined in Section 85/5 of SOPPA; or use School District Data to create a personal profile of a student other than for accomplishing the purposes described in the Agreement and this Addendum and explicitly authorized in writing by the District;

    6.1.2 Use information, including persistent unique identifiers, created or gathered by the operator's site, service, or application to amass a profile about a student, except in furtherance of "K through 12 school purposes," as defined by SOPPA. "Amass a profile" does not include the collection and retention of account information that remains under the control of the student, the student's parent or legal guardian, or the School District; or

    6.1.3 Sell or rent a student's information, including covered information. This S*ection d*oes not apply to the purchase, merger, or other type of acquisition of the Company by another entity if the Company or its successor entity complies with all relevant law and this Addendum regarding previously acquired School District Data.

6.2   Notwithstanding the previous paragraphs and any other terms of this Addendum, the Company may use School District Data for maintaining, developing, supporting, improving, or diagnosing the operator's site, service, or application if such use is authorized by Federal or State law. The Company agrees to notify the School District if it believes release of School District Data is otherwise justified under law, including the reasons set forth in SOPPA Section 84/10(4); however, any such disclosure must be made by the School District and pursuant to valid ISSRA and FERPA exceptions.

7. Miscellaneous

7.1   *Harmful Code.* Company will use commercially reasonable efforts in accordance with industry practices to check its software and other systems used by Company to deliver the products or services to the School District for any harmful code, including, without limitation, any viruses, worms, or similar harmful code, and will use commercially reasonable efforts to eliminate any such harmful code that the Company discovers.

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7.2   *Insurance*.   During the term of this Agreement, the Contractor, at its sole cost and expense, and for the benefit of the District, shall maintain the following insurance:

   7.2.1 Comprehensive general liability and property damage insurance, insuring against all liability of the Contractor related to this Agreement, with a combined single limit of One Million Dollars ($1,000,000.00) per occurrence, One Million Dollars ($1,000,000) Personal & Advertising Injury, Two Million Dollars ($2,000,000) Products/Completed Operations Aggregate, and Two Million Dollars ($2,000,000) general aggregate;

   7.2.2 Professional Liability/Technology Errors & Omissions Insurance with limits of Two Million Dollars ($2,000,000.00) and the annual aggregate of Two Million Dollars ($2,000,000);

   7.2.3 Automobile liability Insurance with a combined single limit of One Million Dollars ($1,000,000) (only required if Contractor will be on-site);

   7.2.4 Cyber liability/identity theft insurance with a combined limit of Two Million Dollars ($2,000,000) per claim and Two Million Dollars ($2,000,000) general aggregate;

   7.2.5 Workers' Compensation Insurance covering all costs, statutory benefits, and liabilities under State Workers' Compensation and similar laws for the Contractor's respective employees with Employers Liability of limits of $1,000,000 Each Accident; $1,000,000 Disease – Each Employee; $1,000,000 – Policy Limit; and

   7.2.6 Umbrella liability insurance with a combined single limit of Five Million dollars ($5,000,000) per occurrence and Five Million Dollars ($5,000,000) general aggregate.

   The insurance shall include sexual abuse and molestation coverage if the Contractor will be on District premises. All insurers shall be licensed by the State of Illinois and rated A-VII or better by A.M. Best or comparable rating service. The comprehensive general liability, property damage, auto liability, and umbrella liability insurance policy shall name the District, its Board, Board members, employees, volunteers, and agents as an additional insured on a primary noncontributory basis with a waiver of subrogation in favor of the District (if the Contractor will be on the District's premises the waiver of subrogation shall also apply to the workers' compensation insurance the waiver of subrogation shall also apply to the workers' compensation insurance). The Contractor shall provide the District with certificates of insurance reasonably acceptable to the District evidencing the existence of the coverage described above, including form and deductibles, during the duration of this Agreement. If requested the Contractor shall provide copies of applicable policy endorsements. All policies of insurance shall provide by endorsement that no coverage may be canceled, terminated, or reduced by the insuring company

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without the insuring company having first endeavored to give at least 30 days prior written notice to the District by certified mail, return receipt requested.

7.3   *Taxes.*   The School District is a tax-exempt organization. Federal excise tax does not apply to the School District and State of Illinois Sales Tax does not apply. The amounts to be paid to the Company hereunder are inclusive of all other taxes that may be levied, including sales, use, nonresident, value-added, excise, and similar taxes levied or imposed upon the work. The Company shall be responsible for any taxes levied or imposed upon the income or business privileges of the Company.

7.4   *Payments*.   The School District shall make payments to the Company in accordance with the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1. If the School District is late in making a payment it shall make interest payments at the maximum amount permitted under the Illinois Local Government Prompt Payment Act, 50 ILCS 505/4.

7.5   *Force Majeure.*   Neither party will be liable for any failure or delay in its performance under this Agreement (except for the obligation to continue to pay Fees) due to any cause beyond its reasonable control, including acts of war, acts of God, acts of terrorism, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet (not resulting from the actions or inactions of the delayed party), provided that the delayed party: (i) gives the other party prompt notice of such cause, and (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance.

7.6   *Freedom of Information Act.* The Company acknowledges that School District is subject to the Illinois FOIA, and that the School District shall not be in breach of any confidentiality provisions contained in the Agreement if the School District releases a record in compliance with the FOIA.

7.7   *Governing Law.* The Agreement and this Addendum shall be governed by, construed, and enforced in accordance with the laws of the State of Illinois without regard to conflict of law principles.

7.8   *Renewal of Agreement.*   The parties may renew the Agreement and this Addendum in writing. Any provision in the Agreement that provides for an automatic renewal of the Agreement is deleted.

7.9   *Termination.* The School District may immediately terminate the Agreement if the School District makes the determination that the Company has breached a material term of the Agreement or this Addendum, and such material breach has gone uncured for a period of thirty (30) days from receipt of written notice of such breach.

7.10 *Amendment.* No amendment or modification to the Agreement and this Addendum shall be effective unless and until the amendment or modification is in writing and signed by all parties to the Agreement and this Addendum.

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7.11 *Effective Date.* The Addendum shall be deemed dated and become effective on the date the last of the parties signs as set forth below the signature of their duly authorized representatives.

Company Name

School District

Daisy Bennett
Signature

Michael Marassa
Signature

Daisy Bennett
Name

Michael Marassa
Name

Privacy Officer
Title

Chief Technology Officer
Title

June 21, 2021
Date

June 10, 2021
Date

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Exhibit A

Agreement

Exhibit B
Nature of Products or Services Provided

The Company shall be providing the following products or services to the School District:

Canvas is a web-based learning management system, or LMS. It is used by learning institutions, educators, and students to access and manage online course learning materials and communicate about skill development and learning achievement. Canvas includes a variety of customizable course creation and management tools, course and user analytics and statistics, and internal communication tools.

Updated 6/21/21

Exhibit C
SCHOOL DISTRICT DATA PROVIDED

Category of Data	Elements	Check if Used by Your System
Application Technology Meta Data	IP Addresses of users, Use of cookies, etc.	☑
	Other application technology meta data-Please specify:	☐
Application Use Statistics	Meta data on user interaction with application	☑
Assessment	Standardized test scores	☐
	Observation data	☑
	Other assessment data-Please specify:	☐
Attendance	Student school (daily) attendance data	☐
	Student class attendance data	☐
Communications	Online communications captured (emails, blog entries)	☑
Conduct	Conduct or behavioral data	☐
Demographics	Date of Birth	☐
	Place of Birth	☐
	Gender	☐
	Ethnicity or race	☐
	Language information (native, or primary language spoken by student)	☑
	Other demographic information-Please specify:	☐
Enrollment	Student school enrollment	☑
	Student grade level	☑

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	Homeroom	☑
	Guidance counselor	☑
	Specific curriculum programs	☑
	Year of graduation	☑
	Other enrollment information-Please specify:	☐
Parent/Guardian Contact Information	Address	☐
	Email	☑
	Phone	☐
Parent/Guardian ID	Parent ID number (created to link parents to students)	☑
Parent/Guardian Name	First and/or Last	☑
Schedule	Student scheduled courses	☑
	Teacher names	☑
Special Indicator	English language learner information	☐
	Low income status	☐
	Medical alerts/health data	☐
	Student disability information	☐
	Specialized education services (IEP or 504)	☐
	Living situations (homeless/foster care)	☐
	Other indicator information-Please specify:	☐
Student Contact Information	Address	☐
	Email	☑
	Phone	☐

Student Identifiers	Local (School district) ID number	☑
	State ID number	❏
	Provider/App assigned student ID number	☑
	Student app username	☑
	Student app passwords	❏
Student Name	First and/or Last	☑
Student in App Performance	Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level)	☑
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	☑
Student Survey Responses	Student responses to surveys or questionnaires	☑
Student work	Student generated content; writing, pictures, etc.	☑
	Other student work data-Please specify: PDF/Word documents are uploaded.	☑
Transcript	Student course grades	☑
	Student course data	☑
	Student course grades/performance scores	☑
	Other transcript data-Please specify	❏
Transportation	Student bus assignment	❏
	Student pick up and/or drop off location	❏
	Student bus card ID number	❏
	Other transportation data-Please specify:	❏

Other	Please list each additional data element used, stored, or collected by your application: Canvas is also used as a Communicating tool/Email server. Students and staff are provided with an Inbox and they can send and receive emails.	☑

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None	No Student Data collected at this time. Provider will immediately notify the District if this designation is no longer applicable.	❏