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## TERMS OF USE AND NON-DISCLOSURE ADDENDUM

**THE TERMS OF USE AGREEMENT** ("Agreement") is entered into between Manitou Springs School District ("District14") and Instructure, Inc. ("hereinafter referred to as "The Vendor"). Hereafter, each may be referred to in the singular as, the "Party" or collectively, as the "Parties" in this Agreement.

**WHEREAS**, The Vendor acknowledges and understands that District 14 is required to safeguard the privacy of its students' educational records in a manner consistent with the mandates of:

- A. FERPA (The Family Educational Rights and Privacy Act ), 20 U.S.C. § 1232g and the applicable regulations promulgated thereunder.
- B. The Colorado House Bill 16-1423 (Student Data Transparency and Security Act) and the applicable regulations promulgated thereunder.
- C. COPPA (Children's Online Privacy and Protection Act, 15 U.S.C. 6501-6505

**WHEREAS**, The Vendor agrees that any information given to it by District 14 in order to perform its services (such as passwords, E-mail addresses, student demographic data, or financial data), whether provided through electronic transfer or on physical drives, is the sole property of District 14. Any discovery of information by the Vendor through accessing personal E-mail, personal files, all privacy act information, images etc. during the execution of Vendor's work remains confidential.

**WHEREAS**, The Vendor acknowledges and holds harmless District 14 in publishing a list of vendors on its public website in non-compliance with these terms of use. District 14 will comply with all state laws in reporting vendors in non-compliance, to include reporting to the Colorado Department of Education for publication on their public website. Changes to Vendor's practices, Privacy Policy, or End User License Agreement that conflict with existing statutes may result in immediate termination of any vendor contract with District 14.

### DEFINITIONS

A. "Student Personally Identifiable Information" (Student PII) means information that, alone or in combination, personally identifies an individual student or the student's parent or family, and that is collected, maintained, generated, or inferred by a public education entity, either directly or through a school service, or by a school service contract provider or school service on-demand provider.

B. "Aggregate data" means data collected and reported at the group, cohort, or institutional level that is aggregated using protocols that are effective for preserving the anonymity of each individual included in the data.

C. "Destroy" means to overwrite data, or use another effective method of data destruction, as necessary to render the data permanently irretrievable from every data storage region in which it may be stored. Destroying data does not require an entity to physically destroy disc drives, servers, or other data-storage-related hardware.

D. "Targeted advertising" means selecting and sending advertisements to a student based on information obtained or inferred over time from the student's online behavior, use of applications, or personally identifiable information. "targeted advertising" does not include:

- i. Advertising to a student:

1. At an online location based on the student's current visit to that location or in response to the student's request for information or feedback;
2. Without the collection and retention of a student's online activities over time;
- ii. Adaptive learning, personalized learning, or customized education; or
- iii. With the consent of a student or the student's parent, using the student's personally identifiable information to identify for the student institutions of higher education or scholarship providers that are seeking students who meet specific criteria.

## TERMS AND CONDITIONS

### Transparency

The Vendor shall provide clear information that is understandable by a layperson about the elements of student personally identifiable information that the Vendor collects, the learning purpose for which the Vendor collects the student personally identifiable information, and how the Vendor uses and shares the student personally identifiable information. The information must include all student personally identifiable information that the Vendor collects regardless of whether it is initially collected or ultimately held individually or in the aggregate. The Vendor shall provide the information to District 14 in a format that is easily accessible through a website, with the knowledge that District 14 will post this information on their public website. The Vendor shall update the information as necessary to maintain accuracy. The Vendor shall provide clear notice to District 14 before making material changes to its privacy policy for school services contracted herein. The Vendor shall facilitate access to and correction of any factually inaccurate student personally identifiable information (PII) for District 14 at the request of the affected student or his or her parent.

### Use of data.

(1)(a) The Vendor may collect, use, and share student personally identifiable information only for the purposes authorized in the contract between the parties in this agreement and/or with the consent of the student who is the subject of the information or the student's parent.

(b) The Vendor must obtain the consent of the student or the student's parent before using student personally identifiable information in a manner that is materially inconsistent with the Vendor's privacy policy or materially inconsistent with the contract between the parties that applies to the collection of the student personally identifiable information.

(c) The Vendor will not make use of and/or publish, disclose or otherwise disseminate any of the passwords, student information, student performance data, or financial data supplied and/or data stored on the District 14's equipment to a third party.

(2) The Vendor shall not:

(a) Sell student personally identifiable information; except that this prohibition does not apply to the purchase, merger, or other type of acquisition of the Vendor, or any assets of the Vendor, by another entity, so long as the successor entity continues to be subject to the provisions of this contract with respect to student personally identifiable information that the Vendor acquired while subject to the provisions of this article;

(b) Use or share student personally identifiable information for purposes of targeted advertising to students; or

(c) Use student personally identifiable information to create a personal profile of a student other than for supporting purposes authorized by the contracting public education entity or with the consent of the student or the student's parent.

(3) Notwithstanding any provision of paragraph (b) 1 subsection (1) or of subsection (2) of this section to the contrary:

(a) (i) The Vendor may use or disclose student personally identifiable information to:

(A) Ensure legal or regulatory compliance or after pre-approval from the district take precautions against liability;

(B) Respond to or participate in the judicial process;

(C) Protect the safety of users or others on the Vendor's website, online service, online application, or mobile application; or

(D) Investigate a matter related to public safety.

(ii) If the Vendor uses or discloses student personally identifiable information as allowed in subparagraph (i) of this paragraph (a), the Vendor shall notify District 14 as soon as possible after the use or disclosure of the information.

(b) The Vendor may use, or disclose student personally identifiable information to, a subcontractor only if the Vendor contractually requires the subcontractor to comply with this contract in its entirety to include CO HB 16-1423 sections 22-16-108 through 22-16-111. The provisions of this paragraph (b) apply to the ability of an initial or subsequent subcontractor to further subcontract. If District 14 determines that an initial or subsequent subcontractor has committed a material breach of the contract that involves the misuse or unauthorized release of student personally identifiable information, District 14 shall terminate the contract with the Vendor; except that District 14 is not required to terminate the contract if the Vendor terminates the contract with the subcontractor as soon as possible after the Vendor knows or has reason to know of the initial or subsequent subcontractor's material breach.

(4) For purposes of this section and section "data destruction", a student may consent to the use, sharing, or retention of the student's student personally identifiable information only if the student is at least eighteen years of age or legally emancipated.

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**Data Security and Data Destruction**

(1) The Vendor shall maintain a comprehensive information security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of student personally identifiable information. The information security program must make use of appropriate administrative, technological, and physical safeguards.

(2) During the term of a contract between the Vendor and District 14, if District 14 requests destruction of a student's student personally identifiable information collected, generated, or inferred as a result of the contract, the Vendor shall destroy the information as soon as practicable after the date of the request unless:

(a) The Vendor obtains the consent of the student or the student's parent to retain the student's student personally identifiable information; or

(b) The student has transferred to another public education entity and the receiving public education entity has requested that the Vendor retain the student's student personally identifiable information.

(3) Following the termination or conclusion of this contract, the Vendor shall, within the time period specified in the contract, destroy all student personally identifiable information collected, generated, or inferred as a result of the contract. If the contract does not specify a period for destruction of student personally identifiable information, the Vendor shall destroy the information when the information is no longer needed for the purpose of the contract between the Vendor and District 14. The Vendor shall notify District 14 of the date upon which all of the student personally identifiable information is destroyed.

Naziol S. Nazarinia Scott  
Instructure, Inc. (Vendor)

Assistant General Counsel  
Title

05/02/2017  
Date

Naziol S. Nazarinia Scott  
Printed name

  
District 14 Representative Signature

Asst Supt.  
District 14 Representative Title

May 3, 2017  
Date

Tim Miller  
District 14 Rep. Printed Name