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PROJECT NUMBER 35758

MASTER SOFTWARE LICENSE AND SERVICES AGREEMENT

BETWEEN

DESIRE2LEARN

AND

MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES

AS CONTRACTING AGENT FOR THE

AGENCIES AND INSTITUTIONS OF THE STATE OF MISSISSIPPI

This Master Software License and Services Agreement (hereinafter referred to as "Master Agreement") is entered into by and between Desire2Learn, a Canadian corporation having its principal offices at 72 Victoria Street South, Suite 401, Kitchener-Waterloo, Ontario, Canada N2G 4Y9 (hereinafter referred to as "Licensor") and the Mississippi Department of Information Technology Services, having its principal place of business at 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201 (hereinafter referred to as "ITS"), as contracting agent for the governmental agencies and educational institutions of the State of Mississippi (hereinafter referred to as "Licensee"). ITS and Licensee are sometimes collectively referred to herein as "State".

**WHEREAS**, ITS, pursuant to Request for Proposals ("RFP") Number 3452 requested proposals in order to assemble a list of approved vendors who may provide certain software and services necessary for the implementation of a learning management system; and

**WHEREAS**, the Licensor was one of the successful respondents in an open, fair and competitive procurement process to provide the above mentioned products; and

**WHEREAS**, ITS and Licensor desire to enter into this Master Agreement which contains the terms and conditions which will govern any orders placed by the governmental agencies and educational institutions within the state of Mississippi;

**NOW THEREFORE**, in consideration of the mutual understandings, promises, consideration and agreements set forth, the parties hereto agree as follows:

**ARTICLE 1 TERM OF AGREEMENT**

Unless terminated as prescribed elsewhere herein, this Master Agreement will become effective on the date it is signed by all parties (the "Effective Date") and will continue in effect for three (3) years thereafter, or until all warranties provided by Licensor to Licensee have expired, whichever occurs last. At the end of the initial term, the Master Agreement may, upon the written agreement of ITS and Licensor, be renewed for two (2) additional one (1) year terms. Licensor will notify ITS sixty (60) days in advance prior to the expiration of the initial or any renewal term and ITS shall have thirty (30) days in which to notify Licensor of its intention to either renew or cancel this Master Agreement.

## **ARTICLE 2 DEFINITIONS**

The following terms as used herein shall have the following meanings:

**2.1     “Documentation”** means the published user and technical manuals and documentation that Licensor makes generally available for the Software.

**2.2     “Enhancements”** means the fixes, updates, upgrades or new versions of the Software or Documentation that Licensor may provide to Licensee under this Master Agreement.

**2.3     “Licensee”** means, in each instance, the State Board for Community and Junior Colleges or a community college or junior college, or a governmental agency, educational institution or governing authority of the state of Mississippi who either (i) obtains a license from Licensor for the Software under this Master Agreement by submitting a Supplement to Licensor, or (ii) engages Licensor to perform installation, integration, training, and other like services pursuant to this Master Agreement, and their employees and any third party consultants engaged by Licensee who have a need to know, and who shall be bound by the terms and conditions of this Master Agreement.

**2.4     “Licensor”** means Desire2Learn and its successors and assigns.

**2.5     “Products”** means the Software, Documentation, Enhancements and any copy of the Software, Documentation or Enhancements.

**2.6     “Software”** means the machine-readable object code version of the “off-the-shelf” computer programs, whether embedded on disc, tape or other media, that are described in and specifically identified in a Supplement. As used herein, Software means the initial Software specified in a Supplement, as well as any Enhancements thereto that Licensor may provide to Licensee in the future.

**2.7     “Supplement”** means the document pursuant to which, among other things, Licensee orders services and/or Licensor grants the Licensee identified therein a perpetual license or term license, if so designated, to use the Software Products therein specified pursuant to the terms and conditions of this Master Agreement. In some cases a purchase order may substitute for/suffice as the Supplement.

## **ARTICLE 3 MODIFICATION OR RENEGOTIATION**

This Master Agreement may be modified only by written agreement signed by the parties hereto. The parties agree to renegotiate the Master Agreement and pertinent Supplements in the event that federal and/or state revisions of any applicable laws or regulations make changes in this Master Agreement necessary.

## **ARTICLE 4 INCLUDED PARTIES AND PRICING**

Licensor will accept orders from and furnish the Products and services under this Master Agreement to the State Board for Community and Junior Colleges, any community or junior college, and any governmental agency, governing authority or State-run educational institution within Mississippi based on Contractor’s pricing submitted in its proposal in response to RFP No. 3452 and attached

hereto as Exhibit A. At the end of the initial term of this Master Agreement, ITS and Contractor may mutually agree in writing to modify, amend or replace the pricing specified in Exhibit A.

## **ARTICLE 5 ADDITIONAL TERMS AND CONDITIONS**

All provisions in this Master Agreement are in addition to the requirements of RFP No. 3452 and Licensor's Proposal in response thereto, which are both incorporated into and made a part of this Master Agreement.

## **ARTICLE 6 ORDERS**

**6.1** The State does not guarantee that it will purchase any certain amount under this Master Agreement.

**6.2** When a Licensee decides to procure any Products and/or services from Licensor, the Licensee shall notify ITS who shall execute a Supplement to be signed by Licensor, ITS, and if necessary, an authorized representative of Licensee. The Supplement shall reference this Master Agreement and shall set forth the Products or services to be procured; the prices for same; the warranty period as provided by Licensor (if different from that provided herein); the specific details of the transaction, the Licensee's designated contact, and any additional terms and conditions that apply to the specific Supplement as agreed to in writing by the parties. Any additional terms and conditions contained in any Supplement shall apply solely to the Products or services being procured therein. All Supplements shall be governed by, and incorporate by reference, the terms and conditions of this Master Agreement. Excluding better pricing and/or discounts which may be specified in a Supplement, in the event of a conflict between the other terms and conditions in a Supplement and this Master Agreement, the terms and conditions of this Master Agreement shall prevail. The terms and conditions of this Master Agreement shall supersede any conflicting terms and conditions set forth in any subsequent documents provided by Licensor or its subcontractors to Licensee. The parties agree that the Licensee has the right to adjust the quantities of licenses procured based upon the availability of funding or as determined necessary by the Licensee.

**6.3** This Master Agreement is not a "state contract" and should not be construed by any party to operate in any manner except as an awarded contract which may be used by ITS staff to satisfy requests for Products or services within the scope of RFP No. 3452. This Master Agreement may not be referenced by Licensor as a vehicle to market products or issue quotations in lieu of the procurement process. Further, nothing in this Master Agreement should be taken to infer or to express that this Master Agreement may be substituted or used in lieu of a formal procurement process.

## **ARTICLE 7 METHOD AND TIME OF PAYMENT**

**7.1** Once the Products have been accepted by Licensee as prescribed in Article 8 herein, Licensor shall submit an invoice for the cost and shall certify that the billing is true and correct. The State may, at its sole discretion, require Licensor to submit invoices and supporting documentation electronically at any time during the term of this Master Agreement. Services will be invoiced as they are rendered. Licensee agrees to pay Licensor in accordance with Mississippi law on "Timely

Payments for Purchases by Public Bodies”, Sections 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by the State within forty-five (45) days of receipt of the invoice. All payments shall be in United States currency. Payments by state agencies that make payments through the Statewide Automated Accounting System (“SAAS”) shall be made and remittance information provided electronically as directed by the State. Payments by SAAS agencies shall be deposited into the bank account of the Lessor’s choice. Lessor understands and agrees that Licensee is exempt from the payment of taxes. No payment, including final payment, shall be construed as acceptance of defective Products or incomplete work, and Lessor shall remain responsible and liable for full performance in strict compliance with the contract documents specified in the article titled “Entire Agreement” herein.

**7.2** If payment of undisputed amounts is not made to Lessor within forty-five (45) days of Licensee’s receipt of the invoice, Licensee shall be liable to Lessor for interest at a rate of one and one-half percent (1 ½%) per month (or such lesser rate as may be the maximum permissible rate under the law) on the unpaid balance from the expiration of such forty-five (45) day period until such time as payment is made. This provision for late payments shall apply only to undisputed amounts for which payment has been authorized.

**7.3** Acceptance by Lessor of the last payment from the Licensee under a Supplement shall operate as a release of all claims against the State by Lessor and any subcontractors or other persons supplying labor or materials used in the performance of any work under a Supplement.

## **ARTICLE 8 DELIVERY; RISK OF LOSS; INSTALLATION, AND ACCEPTANCE**

**8.1** Lessor shall deliver the Products to the location specified by Licensee and pursuant to the delivery schedule mutually agreed to by the parties.

**8.2** Lessor shall assume and bear the entire risk of loss and damage to the Products from any cause whatsoever while in transit and at all times throughout its possession thereof.

**8.3** If installation by Lessor is required, Lessor shall provide Licensee with an installation schedule identifying the date, time and location within the scheduling timelines agreed to by the parties and shall complete installation of the Products pursuant to the requirements of RFP No. 3452, or as may otherwise be agreed to by the parties. Further, Lessor acknowledges that installation of the Products shall be accomplished with minimal interruption of Licensee’s normal day-to-day operations.

**8.4** Unless a different acceptance period is agreed to by Licensee and Lessor and specified in the Supplement, Licensee shall have thirty (30) calendar days after installation of the Software by Lessor to evaluate and test the Software to confirm that it performs without any defects and performs in accordance with RFP No. 3452, Lessor’s Proposal in response thereto, and Lessor’s user Documentation. Licensee shall immediately thereafter notify Lessor in writing of any defects in the Software which must be corrected prior to payment being made. Thereafter, Lessor shall have ten (10) working days or such other time period as may be agreed upon by the

parties, in which to either repair or replace the defective Software, all at Licensor's expense.

**8.5** Upon receipt of corrected or replaced Software, Licensee shall have another acceptance period as set forth in Article 8.4 herein, in which to re-evaluate/re-test such Software. If, after Licensor has tendered to Licensee Licensor's attempt to correct the Software, Licensee again determines the Software to have a defect, Licensee may take such actions as it deems appropriate, including either (i) notifying Licensor that it has elected to keep the Software despite such defects; (ii) returning the Software to Licensor and providing Licensor with an opportunity to deliver substitute Software acceptable to Licensee within the time period specified by Licensee, or (iii) returning the Software to Licensor at Licensor's expense and terminating the Supplement.

## **ARTICLE 9 SCOPE OF LICENSE**

**9.1** Subject to the terms and conditions of this Master Agreement and the respective Supplement, Licensor hereby grants to Licensee a non-exclusive, non-transferable, enterprise-wide term-based license (unless otherwise specifically identified as a "perpetual" license by Licensor at the time of sale) to use and copy for use the Products for Licensee's business operations. Licensee may license additional Products by executing a new Supplement and paying an additional license fee. It is understood that any term licenses shall commence on the date of the Licensee's acceptance of the Software as specified in Article 8 herein, unless returned in accordance with Article 8. Licensor understands and agrees that Licensee is also granted the following rights: (a) the right to make sufficient copies of such Products for safekeeping, back-up and disaster recovery purposes during its license term, and (b) use of the disaster recovery copy of the Software during a disaster and for disaster recovery testing.

**9.2** Licensee acknowledges that the Software shall remain the exclusive property of Licensor, one of Licensor's subsidiaries, a Licensor supplier, or in third parties from whom Licensor has acquired license rights by the means of a software license, and are copyrighted and licensed (not sold). Licensee acknowledges that it has no right to nor interest in the Software other than as expressly granted herein. Licensee shall not remove any identification notices affixed to the Software or its packaging. Licensee shall include Licensor's confidentiality and proprietary rights notices on any copies made of the Software. Licensee acknowledges that Licensor retains all rights, title, and including all copyrights and other intellectual property rights to Licensor's Software and Materials.

**9.3** Licensee agrees that except as noted herein, it will not otherwise use, reproduce, transmit, copy, translate, modify, adapt, decompile, disassemble, create derivative works, or reverse engineer any of the Software, in whole or in part, without the prior written consent of Licensor. Licensee may not rent, lease, transfer, assign, sell or otherwise provide access to the Software or Materials, in whole or in part, on a temporary or permanent basis, except as otherwise permitted by this Agreement. Licensee may not use the Software in any unlawful manner whatsoever.

**9.4** Licensee acknowledges that the Software Products are trade secrets and confidential information of Licensor. Neither the Software Products nor any physical media containing the Software may be used, copied, disclosed, broadcast, sold, re-licensed, distributed or otherwise

published by Licensee except as expressly permitted by this Master Agreement. Licensee shall use reasonable efforts to maintain the confidential nature of the Software Products.

**9.5** The parties agree that Licensee shall be able to develop Licensee proprietary software with interfaces to the licensed Software to be utilized by Licensee in conjunction with the licensed Software. Such Licensee proprietary software shall remain the exclusive property of the Licensee.

**9.6** Upon termination of any Software license due to any reason, including Licensee's uncured breach, use of the Software by Licensee shall be discontinued and Licensee shall return same to Licensor or destroy all copies of same and provide written confirmation thereof to Licensor. In such event, the license and rights granted hereunder shall expire and Licensee shall have no further rights or access to the licensed Software.

## **ARTICLE 10 WARRANTIES**

**10.1** Licensor represents and warrants that it has the right to license the Products provided under this Agreement.

**10.2** Licensor represents and warrants that the Products provided by Licensor shall meet or exceed the minimum specifications set forth in RFP No. 3452 and Licensor's Proposal in response thereto upon installation.

**10.3** Licensor represents that all work performed hereunder, including but not limited to consulting, training and Software maintenance, shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of this Agreement. For any breach of this representation, the Licensor shall, for a period of ninety (90) days from the performance of service, perform the services again, at no additional cost to the Licensee, or if the Licensor is unable to perform the services as represented, the Licensor shall reimburse the Licensee the fees paid to the Licensor for the unsatisfactory services.

**10.4** Licensor represents and warrants that neither the Software nor Enhancements shall contain a disabling code, lockup program or device. Licensor further agrees that it will not, under any circumstances including enforcement of a valid contract right, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Licensee's licensed use of the Software or Enhancements and/or which would restrict Licensee from accessing its data files or in any way interfere with the transactions of Licensee's business. For any breach of this warranty, Licensor at its expense shall, within five (5) working days after receipt of notification of the breach, deliver Products to Licensee that are free of such disabling code, lockup program or device.

**10.5** In addition, Licensor represents and warrants that neither the Software nor Enhancements delivered to Licensee contain a computer virus. For purposes of this provision, a computer virus shall be defined as code intentionally inserted in the Software or Enhancements that will damage or destroy Licensee's applications or data. For any breach of this warranty, Licensor at its expense shall,

within five (5) working days after receipt of notification of the breach, deliver Products to Licensee that are free of any virus.

**10.6** Licensor represents and warrants that the Software will operate free from significant defects during the term of the Supplement and will provide Licensee complete functionality necessary for the operation of the system as stated in Licensor's technical documentation. Licensor's obligations pursuant to this warranty shall include, but are not limited to, the repair of all significant defects or the replacement of the Software at the expense of Licensor. In the event Licensor is unable to repair or replace the Software within fifteen (15) working days after receipt of notice of the defect, or within such other period of time as may be mutually agreed upon by the parties, Licensee shall be entitled to a pro-rated refund of pre-paid license fees and shall have the right to terminate the Supplement in whole or in part. Licensee's rights hereunder are in addition to any other rights Licensee may have.

## **ARTICLE 11 INFRINGEMENT INDEMNIFICATION**

**11.1** Licensor represents and warrants that neither the Products, their elements nor the use thereof violates or infringes on any copyright, patent, trade secret or other proprietary right of any person or entity. Licensor, at its own expense, shall defend or settle any and all infringement actions filed against Licensor or Licensee which involve the Products provided under this Master Agreement and shall pay all costs, attorney fees, settlements, damages and judgments finally awarded against Licensee, provided that: (i) Licensee promptly notifies Licensor in writing of any such claim of which it has knowledge; (ii) Licensor has, to the extent authorized by Mississippi law, sole control of the defense of any actions and negotiations related to the defense or settlement of any such claim, and (iii) Licensee cooperates in the defense of the claim by supplying Licensor all relevant information currently available and in its possession, all at Licensor's expense.

**11.2** If Licensor believes that the Products are or will become the subject of an infringement claim, or in the event that use of the Products is enjoined, Licensor, at its own expense shall: (a) procure for Licensee the right to continue using the Products, or upon failing to procure such right; (b) modify or replace the Products to make them non-infringing while maintaining substantially similar software functionality or data/informational content, or upon failing to secure either such right, (c) request Licensee to return the infringing items to Licensor and Licensor shall refund the pre-paid unused fees paid by Licensee for the Products that the Licensee may no longer use. Said refund shall be paid within ten (10) working days of notice to Licensee to discontinue said use.

## **ARTICLE 12 EMPLOYMENT STATUS**

**12.1** Licensor shall, during the entire term of this Master Agreement, be construed to be an independent contractor. Nothing in this Master Agreement is intended to nor shall it be construed to create an employer-employee relationship, partnership, agency, or joint venture relationship.

**12.2** Licensor represents that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the required duties identified in a Supplement. Such personnel shall not be deemed in any way directly or indirectly, expressly or by implication, to be

employees of Licensee. Neither Licenser nor employees of Licenser are entitled to state retirement or leave benefits.

**12.3** Any person assigned by Licenser to perform the services hereunder shall be the employee of Licenser, who shall have the sole right to hire and discharge its employee. Licensee may, however, request a substitute employee be provided in place of any Licenser employee performing services under this Master Agreement.

#### **ARTICLE 13 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS**

Licenser will be responsible for the behavior of all its employees and subcontractors while on the premises of any Licensee location. Any Licenser employee or subcontractor acting in a manner determined by the administration of that location to be detrimental, abusive or offensive to any of Licensee's staff and/or student body, will be asked to leave the premises and may be suspended from further work on the premises. All Licenser employees and subcontractors who will be working at such locations to install or repair Products shall be covered by Licenser's comprehensive general liability insurance policy.

#### **ARTICLE 14 CHANGE ORDER RATE AND PROCEDURE**

**14.1** It is understood that the Licensee may, at any time by a written order, make changes in the scope of the project that is the subject of a Supplement. No changes in scope are to be conducted or performed by Licenser except by the express written approval of the Licensee. Licenser shall be obligated to perform all changes requested by the Licensee which have no price or schedule effect.

**14.2** Licenser shall have no obligation to proceed with any change that has a price or schedule effect until the parties have mutually agreed in writing thereto. Neither the Licensee nor Licenser shall be obligated to execute such a change order; and if no such change order is executed, Licenser shall not be obliged or authorized to perform services beyond the scope of the Supplement and the contract documents. All executed change orders shall be incorporated into previously defined deliverables.

**14.3** With respect to any change orders issued in accordance with this Article, Licenser shall be compensated for work performed under a change order in accordance with the hourly change order rates specified in the Supplement. If there is a service that is not defined in the change order rates, Licenser and the Licensee will negotiate the rate. Unless agreed to otherwise in a Supplement, the parties agree that each change order rate shall be a "fully loaded rate", that is, it includes the cost of all materials, travel expenses, per diem, and all other expenses and incidentals incurred by Licenser in the performance of the change order. Licenser shall invoice the Licensee upon acceptance by the Licensee of all work documented in the change order.

**14.4** Upon agreement of the parties to enter into a change order, the parties will execute such a change order setting forth in reasonable detail the work to be performed thereunder, the revisions necessary to the specifications or performance schedules of any affected project work plan, and the estimated number of professional services hours that will be necessary to implement the work. The

price of the work to be performed under any change order will be determined based upon the change order rate; however, the change order will be issued for a total fixed dollar amount and may not be exceeded regardless of the number of hours actually expended by the Licenser to complete the work required by that change order. The project work plan will be revised as necessary.

**14.5** Licensor will include in the progress reports delivered pursuant to the project, the status of work performed under all then current change orders.

**14.6** In the event Licensor and the Licensee enter into a change order which increases or decreases the time required for the performance of any part of the work under the project, Licensor shall submit to the Licensee a revised version of the project work plan, clearly indicating all changes, at least five (5) working days prior to implementing any such changes.

**14.7** The Licensee shall promptly review all revised project work plans submitted, and shall notify Licensor of its approval or disapproval, in whole or in part, of the proposed revisions, stating with particularity all grounds for any disapproval, within ten (10) working days of receiving the revisions from Licensor or within such other time period as may be agreed to by the parties.

## **ARTICLE 15 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS**

**15.1** In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the parties agree that Licensor represents all contractors, third parties, and/or subcontractors Licensor has assembled for any given Licensee project. The Licensee is only required to negotiate with Licensor, as Licensor's commitments are binding on all proposed contractors, third parties, and subcontractors.

**15.2** Neither Licensee nor Licensor may assign or otherwise transfer the Supplement and this Master Agreement or its obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of its obligations without such consent shall be null and void. The Supplement and this Master Agreement shall be binding upon the parties' respective successors and assigns.

**15.3** Licensor must obtain the written approval of the State before subcontracting any portion of the Supplement and this Master Agreement. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of Licensee in addition to the total fixed price agreed upon in the Supplement. All subcontracts shall incorporate the terms of the applicable Supplement and this Master Agreement and shall be subject to the terms and conditions of same and to any conditions of approval that Licensee may deem necessary.

**15.4** Licensor represents and warrants that any subcontract agreement Licensor enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the Licensee, and that the subcontractor acknowledges that no privity of contract exists between the Licensee and the subcontractor and that Licensor is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with Licensor. Licensor shall indemnify and hold harmless the State from and

against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Licensor's failure to pay any and all amounts due by Licensor to any subcontractor, materialman, laborer or the like.

**15.5** All subcontractors shall be bound by any negotiation, arbitration, appeal, adjudication or settlement of any dispute between Licensor and the Licensee, where such dispute affects the subcontract.

## **ARTICLE 16 AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of Licensee to proceed under this Master Agreement and the Supplement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the fulfillment of this Master Agreement and the Supplement are, at any time, not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to Licensee for the payments or performance due under this Master Agreement, Licensee shall have the right to immediately terminate the Supplement and this Master Agreement as to itself only, without damage, penalty, cost or expense to Licensee of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Licensee shall have the sole right to determine whether funds are available for the payments or performances due under the Supplement and this Master Agreement. In the event of termination due to unavailability of funds, Licensor shall be entitled to receive just and equitable compensation for satisfactory work completed by Licensor in connection with this Master Agreement and accepted by Licensee prior to the date of receipt of notification of termination.

## **ARTICLE 17 TERMINATION**

**17.1 Termination Upon Mutual Agreement:** A Supplement may be terminated in whole or in part upon the mutual written agreement of Licensor and the Licensee.

**17.2 Termination Due To Bankruptcy:** Should Licensor become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or execute an assignment for the benefit of its creditors, the Licensee may, upon the giving of thirty (30) calendar days prior written notice, terminate a Supplement and this Master Agreement without the assessment of penalties, solely as between those two parties.

**17.3 Termination Other Than For Cause:** A Licensee may terminate a Supplement and this Master Agreement as to itself only, in whole or in part and without the assessment of penalties, for any reason by giving thirty (30) calendar days written notice specifying the effective date thereof to Licensor.

**17.4 Termination For Cause:** If either party fails to comply with the terms and conditions of the Supplement or this Master Agreement and that breach continues for thirty (30) days after the defaulting party receives written notice from the other party, then the non-defaulting party has the

right to terminate the Supplement and this Master Agreement solely as between those two parties. The non-defaulting party may also pursue any remedy available to it in law or in equity.

**17.5 Termination of Master Agreement:** ITS may terminate this Master Agreement without the assessment of penalties for any reason after giving thirty (30) calendar days written notice specifying the effective date thereof to Licensor but any Supplement entered into prior to the termination date of this Master Agreement shall survive the termination of the Master Agreement. The terms of this Master Agreement shall survive its termination/expiration with respect to any un-expired Supplements.

**17.6 Refund Of Unexpended Fees:** Upon termination of a Supplement for cause, Licensor shall refund any and all applicable unexpended pro-rated maintenance/service fees previously paid by the Licensee.

## **ARTICLE 18 GOVERNING LAW**

This Master Agreement and each Supplement shall be construed and governed in accordance with the laws of the State of Mississippi. Further, nothing in this Master Agreement shall affect any statutory rights Licensor and Licensee may have that cannot be waived or limited by contract.

## **ARTICLE 19 WAIVER**

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Master Agreement. A waiver by the State to be effective, must be in writing, must set out the specifics of what is being waived, and must be signed by an authorized representative of the State.

## **ARTICLE 20 SEVERABILITY**

If any term or provision of a Supplement or this Master Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of the Supplement or this Master Agreement shall be valid and enforceable to the fullest extent permitted by law provided that the Licensee's purpose for entering into the Supplement can be fully achieved by the remaining portions of the Supplement that have not been severed.

## **ARTICLE 21 CAPTIONS**

The captions or headings in this Master Agreement are for convenience only, and in no way define, limit or describe the scope or intent of any provision or section of this Master Agreement.

## **ARTICLE 22 THIRD PARTY ACTION NOTIFICATION**

Licensor shall give Licensee prompt notice in writing of any action or suit filed, and prompt notice of any claim made against Licensor by any entity that may result in litigation related in any way to the Supplement or this Master Agreement, and/or which may affect Licensor's performance under the Supplement and this Master Agreement.

## **ARTICLE 23 AUTHORITY TO CONTRACT**

Licensor warrants that it is a validly organized business with valid authority to enter into this Master Agreement; that entry into and performance under this Master Agreement is not restricted or prohibited by any loan, security, financing, contractual or other agreement of any kind, and notwithstanding any other provision of this Master Agreement to the contrary, that there are no existing legal proceedings, or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under a Supplement and this Master Agreement.

## **ARTICLE 24 NOTICE**

Any notice required or permitted to be given under this Master Agreement shall be in writing and personally delivered or sent by facsimile provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, to the party to whom the notice should be given at their usual business address. ITS' address for notice is: Mr. David L. Litchliter, Executive Director, Mississippi Department of Information Technology Services, 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201. Licensor's address for notice is: Daryl Hemingway, Vice President of Global Business Development, Desire2Learn, 72 Victoria Street South, Suite 401, Kitchener-Waterloo, Ontario, Canada N2G 4Y9. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address or points of contact.

## **ARTICLE 25 RECORD RETENTION AND ACCESS TO RECORDS**

Licensor shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Master Agreement and the Supplement. The Licensee, ITS, any state or federal agency authorized to audit Licensee, and/or any of their duly authorized representatives, accountants or attorneys, shall, at their expense and upon prior reasonable notice to Licensor, have access to any of Licensor's books, documents, papers and/or records that are pertinent to the Supplement and this Master Agreement to make audits, examinations, excerpts and transcriptions at Licensor's office where such records are kept during Licensor's normal business hours. All records relating to this Master Agreement and the Supplement shall be retained by Licensor for three (3) years from the date of receipt of final payment under this Master Agreement and the Supplement. However, if any litigation or other legal action, by or for the state or federal government has begun that is not completed at the end of the three (3) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution.

## **ARTICLE 26 INSURANCE**

Licensor represents that it will maintain workers' compensation insurance as prescribed by law which shall inure to the benefit of Licensor's personnel, as well as comprehensive general liability and employee fidelity bond insurance. Licensor will, upon request, furnish Licensee with a certificate of conformity providing the aforesaid coverage.

## **ARTICLE 27 DISPUTES**

**27.1** Should disputes arise with respect to a Supplement or this Master Agreement, Licensor and Licensee agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes. Both parties agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all of their responsibilities under the Supplement and/or this Master Agreement. Should Licensor fail to continue without delay to perform its responsibilities under the Supplement and/or this Master Agreement in the accomplishment of all work, any additional costs incurred by Licensor or Licensee as a result of such failure to proceed shall be borne by Licensor and Licensor shall make no claim against Licensee for such costs.

**27.2** If Licensor and Licensee cannot resolve a dispute within ten (10) calendar days following written notification by either party of the existence of said dispute, then the following procedure shall apply:

**A.** The parties agree to resolve such matters through submission of their dispute to the Executive Director of ITS, who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the parties within ten (10) calendar days after presentation of such dispute for his/her decision.

**B.** The Executive Director's decision shall not be a final determination of the parties' rights and obligations under the terms of this Master Agreement. Such disagreeing party shall be entitled to seek such other rights and remedies available it may have at law or in equity.

## **ARTICLE 28 COMPLIANCE WITH LAWS**

Licensor shall comply with, and all activities under a Supplement and this Master Agreement shall be subject to all Licensee policies and procedures of which Licensor has knowledge, and all applicable federal, state and local laws and regulations as now existing and as may be amended or modified. Specifically, but not limited to, Licensor shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of the Supplement and this Master Agreement because of race, creed, color, sex, age, national origin or disability.

## **ARTICLE 29 CONFLICT OF INTEREST**

Licensor shall notify Licensee of any potential conflict of interest resulting from the representation of or service to other clients. If such conflict cannot be resolved to Licensee's satisfaction, Licensee reserves the right to terminate the Supplement and this Master Agreement as to itself only.

## **ARTICLE 30 SOVEREIGN IMMUNITY**

By entering into this Master Agreement with Licensor, the State of Mississippi does in no way waive its sovereign immunities or defenses as provided by law.

## **ARTICLE 31 CONFIDENTIAL INFORMATION**

**31.1** Licensor shall treat all Licensee data and information to which it has access by its performance under the Supplement and this Master Agreement as confidential and shall not disclose such data or information to a third party without specific written consent of Licensee. In the event

that Licensor receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, Licensor shall promptly inform Licensee and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive the termination or completion of the Supplement or this Master Agreement and shall continue in full force and effect and shall be binding upon the Licensor and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in the Supplement or this Master Agreement on behalf of, or under the rights of the Licensor following any termination or completion of the Supplement or this Master Agreement.

**31.2** It is understood by Licensor that copies of this executed Master Agreement may be distributed to the governmental agencies, governing authorities, and educational institutions of the State of Mississippi.

#### **ARTICLE 32 EFFECT OF SIGNATURE**

Each person signing a Supplement or this Master Agreement represents that he or she has read the Supplement and this Master Agreement in its entirety, understands its terms, is duly authorized to execute the Supplement or this Master Agreement on behalf of the parties and agrees to be bound by the terms contained herein. Accordingly, the Supplement and this Master Agreement shall not be construed or interpreted in favor of or against the State or the Licensor on the basis of draftsmanship or preparation hereof.

#### **ARTICLE 33 STATE PROPERTY**

Licensor shall be responsible for the proper custody of any Licensee-owned property furnished for Licensor's use in connection with work performed pursuant to any Supplement. Licensor shall reimburse the Licensee for any loss or damage, normal wear and tear excepted.

#### **ARTICLE 34 NEWS RELEASES**

News releases pertaining to a Supplement or this Master Agreement or the products, study, data, or project to which it relates will not be made without the State's prior written approval, and then only in accordance with the explicit written instructions from the State. The State agrees to review and provide approval for a joint news release within sixty (60) days of signature of this contract if so requested by the Licensor.

#### **ARTICLE 35 SURVIVAL**

Articles 10, 11, 18, 25, 30, 31, 38, and all other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of the Supplement or this Master Agreement.

#### **ARTICLE 36 ENTIRE AGREEMENT**

**36.1** This Master Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations,

understandings and agreements, written or oral, between the parties relating hereto, including all terms of any unsigned or "shrink-wrap" license included in any package, media or electronic version of Licensor-furnished Software, or any "click-wrap" or "browse-wrap" license presenting in connection with a purchase via the internet. The Supplement, RFP No. 3452, and Licensor's Proposal submitted in response thereto are hereby incorporated into and made a part of this Master Agreement as far as the individual Licensee is concerned.

**36.2** The Master Agreement made by and between the parties hereto shall consist of, and precedence is hereby established by the order of the following:

- A. This Master Agreement signed by Licensor and ITS;
- B. Any Exhibits attached to this Master Agreement;
- C. The Supplement signed by Licensor, ITS and Licensee, as applicable;
- D. RFP No. 3452 and all written clarifications/addenda, and
- E. Licensor's Proposal, as accepted by ITS, in response to RFP No. 3452.

**36.3** The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by Licensor. The documents are complementary, and what is required by one shall be binding as if required by all. A higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency arising under the various provisions thereof; provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur by reason thereof. The documents listed above are shown in descending order of priority, that is, the highest document begins with the first listed document ("A. This Master Agreement") and the lowest document is listed last ("E. Licensor's Proposal").

## **ARTICLE 37 DEBARMENT AND SUSPENSION CERTIFICATION**

Licensor certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this Master Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and (d) have, within a three (3) year period preceding this Master Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

## **ARTICLE 38 NON-SOLICITATION OF EMPLOYEES**

Both Licensor and Licensee agree not to employ or to solicit for employment, directly or indirectly, any of the other party's employees until at least one (1) year after the expiration/termination of the Supplement unless mutually agreed to the contrary in writing by the Licensee and Licensor and provided that such an agreement between these two entities is not a violation of the laws of the State of Mississippi or the federal government. This Article is not intended to prevent either party from employing an individual who responds to a public notice or who approaches the hiring party on his/her initiative to seek employment.

## **ARTICLE 39 NETWORK SECURITY**

Licensor and Licensee understand and agree that the State of Mississippi's Enterprise Security Policy mandates that all remote access to and/or from the State network must be accomplished via a Virtual Private Network (VPN). If remote access is required at any time during the life of this Master Agreement, Licensor and Licensee agree to implement/maintain a VPN for this connectivity. This required VPN must be IPSec-capable (ESP tunnel mode) and will terminate on a Cisco VPN-capable device ( i.e. VPN concentrator, PIX firewall, etc.) on the State's premises. Licensor agrees that it must, at its expense, implement/maintain a compatible hardware/software solution to terminate the specified VPN on Licensor's premises. The parties further understand and agree that the State protocol standard and architecture are based on industry-standard security protocols and manufacturer engaged at the time of contract execution. The State reserves the right to introduce a new protocol and architecture standard and require Licensor to comply with same, in the event the industry introduces a more secure, robust protocol to replace IPSec/ESP and/or there is a change in the manufacturer engaged.

## **ARTICLE 40 SOFTWARE MAINTENANCE AND ANNUAL LICENSE**

**40.1** Prior to expiration of the license term, Licensor shall notify Licensee in writing or email of the impending license term expiration, and Licensee shall in turn notify Licensor of its decision to either obtain an extension of the Software license term or to forgo a Software license. Upon notification of intent to obtain a Software license, Licensor shall provide Licensee, for the annual fee specified in the Supplement, the Software maintenance services as herein described.

**40.2** As part of the Software technical support services, Licensor shall maintain the Software in an operable condition according to the specifications contained in the technical manuals. Licensor shall furnish all updates, Enhancements or new versions of the Software to Licensee as they become available. Licensor shall also provide unlimited toll-free telephone support in the operation of the Software products twenty-four (24) hours per day, seven (7) days per week, 365 days per year, with a guaranteed one (1) hour telephone response time for emergency issues (e.g., System not available), as per Licensor's Proposal in response to RFP No. 3452 and the Cost Proposal. Priority placement in the support queue shall be given to all system locking situations or problems claimed by Licensee to be a mission critical process. Finally, Licensor shall provide on-site support in the operation of the Software products if reasonably convenient or necessary in the opinion of the Licenser.

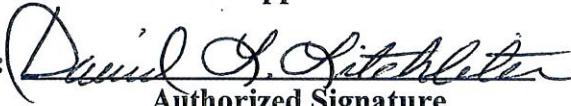
**40.3** Sixty (60) days prior to the expiration of the initial Software license/maintenance period or any renewal term thereof, Licensor shall notify the State in writing or email of the impending expiration and Licensee shall have thirty (30) days in which to notify Licensor of its intentions to either renew or cancel any further Software maintenance. The cost for software maintenance and/or licenses shall not increase by more than five percent (5%) per year.

#### **ARTICLE 41 LIABILITY ISSUES**

Unless jointly agreed otherwise in writing, Licensor's liability shall not exceed the total amount paid by Licensee to Licensor during the then-current twelve (12) month period. In no event will Licensor be liable to Licensee for any indirect, special, incidental or consequential damages including lost profits, lost savings or lost revenues of any kind unless Licensor was advised of the possibility of such loss or damage. Excluded from the liability limitation in this article are claims related to infringement issues addressed in Article 11 herein; bodily injury; death; physical damage to tangible personal property and real property, and the intentional and willful or gross negligent acts of Licensor. The limitation of liability language contained herein will apply to Licensee to the extent it is permitted and not prohibited by the laws or Constitution of the State of Mississippi.

For the faithful performance of the terms of this Master Agreement, the parties have caused this Master Agreement to be executed by their undersigned representatives.

**State of Mississippi, Department of  
Information Technology Services, on  
behalf of the agencies and institutions  
of the State of Mississippi**

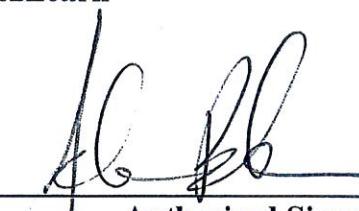
By:   
Authorized Signature

Printed Name: David L. Litchliter

Title: Executive Director

Date: 12-22-05

**Desire2Learn**

By:   
Authorized Signature

Printed Name: John Baker

Title: PRESIDENT & CEO

Date: Dec 19, 2005

**EXHIBIT A*****A.1. License and Setup Fees***

**Migration Costs:** There is a tool included to move courses at zero (\$0) cost.

**Documentation:** Online documentation is provided at zero (\$0) cost.

**Setup Fees:** There are one-time costs for the setup of an organization/college LMS and/or LOR of \$5,500.00 each.

**License Fees:** The licensee will pay a license fee for the Learning Platform and optionally the Learning Object Repository according to the following schedules. The cost is based on FTE-user model. FTE counts will be defined by aggregated IPEDS FTE numbers, or other agreed upon reported FTE figure, for the colleges that are licensing Desire2Learn. Non-FTE learners (e.g. partnership offerings with local companies) will be billed separately.

There will be several Tiers. Each tier will apply until the next tier is reached in terms of FTE. Desire2Learn will conduct a semi-annual audit or review in January and July of each year and the rates listed will apply. If the user count exceeds the current tier during a year, the difference will be billed either when a new college joins, semi-annually, or at the end of the year.

**License Costs Schedule:**

Tier	FTE	Annual LMS Cost	Annual LOR Cost	Cost Per Additional FTE (LMS)	Cost Per Additional FTE (LOR)
1	0 to 2,500	\$38,750	\$13,500	\$15.50	\$5.00
2	2,501 to 5,000	\$53,750	\$16,500	\$10.75	\$5.00
3	5,001 to 7,500	\$67,500	\$18,500	\$9.00	\$3.40
4	7,501 to 10,000	\$79,500	\$20,250	\$7.95	\$3.40
5	10,001 to 15,000	\$97,500	\$24,500	\$6.50	\$2.00
6	15,501 to 20,000	\$115,000	\$27,000	\$5.75	\$2.00
7	20,501 to 25,000	\$128,750	\$33,500	\$5.15	\$1.30
8	25,501 to 30,000	\$139,500	\$38,250	\$4.65	\$1.30
9	Over 30,000	\$4.65/FTE	\$1.25/FTE	\$4.65	\$1.25

***A.2. Integration Fees***

Please note that the estimated time for completion will vary based upon requirements and need to be scheduled several weeks or months in advance. We recommend contacting D2L for specific quotes.

Project	Description	Typical Ranges
SIS Integration Projects	Typically based upon IMS-Enterprise specification. Costs vary dramatically, based upon requirements and type of integration (e.g. real-time, or batch).	Setup: \$7,500 - \$30,000+ Maintenance:

	These projects typically take 1-4 months to complete due to the requirements gathering and testing required.	\$2,500/yr to \$6,500/yr
LDAP/AD	Authentication system integration. These projects typically take <1 month to complete.	Setup: \$5,000 Maintenance: \$350/yr

### *A.3. Training*

The following rates would apply to training: \$1,800/day for on-site training with a maximum of twelve instructor participants, or a maximum of eight administrator participants for each D2L instructor and each session. A second D2L instructor is required for sessions with 12-24 instructors or 9-16 administrators in a class to insure adequate individual attention. Multiple sessions are required for groups planned to be more than 24 instructors or 16 administrators.

Virtual training is also available. The web-accessible training materials will be available to participants beyond the training period.

**PROJECT NUMBER 38056  
SUPPLEMENT TO  
MASTER LICENSE AND APPLICATION SERVICE PROVIDER AGREEMENT  
BETWEEN  
DESIRE2LEARN INCORPORATED  
AND  
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES  
AS CONTRACTING AGENT FOR THE  
STATE BOARD OF COMMUNITY AND JUNIOR COLLEGES**

This document shall serve as a Supplement to the original Master License and Application Service Provider Agreement executed December 22, 2005, and amended on September 21, 2007, May 29, 2008, and April 29, 2009 (hereinafter referred to as "Master ASP Agreement"), between Desire2Learn Incorporated (hereinafter referred to as "Desire2Learn") and Mississippi Department of Information Technology Services (hereinafter referred to as "ITS"), as contracting agent for the agencies and institutions of the State of Mississippi. It is understood by the parties that ITS is executing this Supplement on behalf of the State Board of Community and Junior Colleges (hereinafter referred to as "Licensee"). ITS and Licensee are sometimes collectively referred to herein as "State."

**WHEREAS**, the State, pursuant to Request for Proposals ("RFP") No. 3452 requested proposals in order to assemble a list of approved vendors who may provide certain software and services necessary for the implementation of an Application Services Provider ("ASP") solution for a learning management system; and

**WHEREAS**, Desire2Learn was one of the successful respondents in an open, fair, and competitive procurement process to provide the above mentioned products; and

**WHEREAS**, the Licensee desires to purchase software and services for an ASP solution for a learning management system;

**NOW THEREFORE**, in consideration of the mutual understandings, promises, consideration and agreements set forth, the parties hereto agree as follows:

(1) This Supplement will become effective on the date it is signed by all parties and will continue in effect until all tasks and ASP services required herein have been completed. Provided this Supplement is executed by May 29, 2009, Desire2Learn agrees to complete all initial setup and implementation tasks required under this Supplement on or before June 19, 2009, or within such other period as may be agreed to by the parties.

(2) The period of performance of ASP services under this Supplement shall begin on or before June 19, 2009 and continue until the close of business on June 18, 2012. During this period of time, Desire2Learn shall provide ASP services as specified in the Master ASP Agreement. The total price (setup, annual fees, and licensing) shall be \$193,073.13 for the first year, \$189,601.79 for the second year, and \$199,081.88 for the third year, and will be payable as

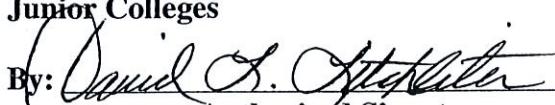
set forth in the attached Exhibit A which is incorporated herein by reference and at the license fees set forth therein. Thereafter, the cost for software support and/or licenses shall not increase by more than five percent (5%) per year if renewed in years four and five. In no event will the total compensation to be paid hereunder exceed the specified sum of \$581,756.80, unless prior written authorization from ITS has been obtained. The parties understand and agree that this acquisition is subject to and controlled by the terms and conditions set forth in the Master ASP Agreement, including but not limited to, the terms related to acceptance, invoicing and payment.

(3) Lessor's proper Canadian name is "Desire2Learn Incorporated" (no comma), with its short name being "Desire2Learn".

(4) All other provisions in the underlying Master ASP Agreement shall remain unchanged.

For the faithful performance of the terms of this Supplement, the parties have caused this Supplement to be executed by their undersigned representatives.

**State of Mississippi, Department of  
Information Technology Services, on  
behalf of State Board of Community and  
Junior Colleges**

By:   
Authorized Signature

Printed Name: David L. Litchliter

Title: Executive Director

Date: 5-18-09

**Desire2Learn Incorporated**

By:   
Authorized Signature

Printed Name: Bill Trick

Title: Dir, Financial Svcs.

Date: 15 May 09



## EXHIBIT A

**Licensee's Contact Information:**

Christian Pruett, Director of eLearning  
State Board for Community and Junior Colleges  
3825 Ridgewood Road  
Jackson, Mississippi 39211  
Phone: (601) 432-6391  
E-mail address: [cpruett@mscjc.edu](mailto:cpruett@mscjc.edu)

<b>YEAR 1</b>	<b>COST</b>
Batch SIS Integration (one-time cost)	\$12,500.00
LMS Software License: 7,501 to 10,000 users	\$87,648.75
Learning Object Repository (LOR)	\$22,325.63
Hosting	\$65,598.75
Support	\$0.00
Batch SIS Annual Maintenance	\$5,000.00
<b>NOT-TO-EXCEED TOTAL:</b>	<b>\$193,073.13</b>

<b>YEAR 2</b>	<b>COST</b>
LMS Software License: 7,501 to 10,000 users	\$92,031.19
Learning Object Repository (LOR)	\$23,441.91
Hosting	\$68,878.69
Support	\$0.00
Batch SIS Annual Maintenance	\$5,250.00
<b>NOT-TO-EXCEED TOTAL:</b>	<b>\$189,601.79 *</b>

<b>YEAR 3</b>	<b>COST</b>
LMS Software License: 7,501 to 10,000 users	\$96,632.75
Learning Object Repository (LOR)	\$24,614.01
Hosting	\$72,322.62
Support	\$0.00
Batch SIS Annual Maintenance	\$5,512.50
<b>NOT-TO-EXCEED TOTAL:</b>	<b>\$199,081.88 *</b>

\*Includes a 5% annual increase

Effective Date 01/01/2009  
 Expiration Date 07/31/2012  
 Date Printed 05/28/2009  
 Procurement Type COMPETITIVE PROCUREMENT

**CP-1 Acquisition Approval Form**  
**Dept. of Information Technology Services**  
**301 North Lamar Street, Suite 508**  
**Jackson, MS 39201-1495**  
**(601) 359-1395**

CP-1  
 Approval Number **20090484**  
 Acquisition Method: PURCHASE

Page: 1

This document is your authorization from ITS to purchase the following products and/or services from the vendor listed, at or below the prices itemized. If no vendor is listed, proceed according to ITS exemption instructions or instructions included on the Planned Purchase Approval Letter accompanying this CP-1. This procurement is contingent upon availability of funds and will not become final until the vendor has received your purchase order. Keep this form with your financial records as an audit trail of ITS procurement approval.

For additional information regarding the ITS Procurement Process and CP-1 Approval Documents, refer to the ITS Procurement Handbook, located at <http://www.its.state.ms.us/its/procman.nsf>. The following sections of the Procurement Handbook include information specifically related to CP-1 approvals: 009-025, 013-040, and 013-080.

If you need additional assistance regarding this CP-1, please contact the ITS Procurement Help Desk at 601 576-HELP (576-4357) or e-mail [isshelp@its.state.ms.us](mailto:isshelp@its.state.ms.us).

291 Community and Junior Colleges, Board for ATTN: Christian Pruitt E & R Center, Room 519 Box 3, 3825 Ridgewood Road Jackson, MS 39211 Distance Learning		<b>PLACE ORDER TO:</b> DESIRE2LEARN 72 VICTORIA ST SOUTH STE 401 KITCHENER ONT CAN N2G4Y9  <b>MAKE PAYMENT TO:</b> DESIRE2LEARN 72 VICTORIA ST SOUTH STE 401 KITCHENER ONT CAN N2G4Y9	V0002065920
MAX ANNUAL % INCREASE      0.00		<b>CP1 LIFECYCLE LIMIT</b> 606,031.80	<b>NUMBER OF PAYMENTS</b> 1
The scope was revised to increase licensing and include services for Mississippi Gulf Coast Community College.			
SBCJC is authorized to exceed the default director approval dollar limit, as this project is included in the agency's technology plan. The ITS long range project ID number is 100144. This CP1 approval is for State Fiscal Years 2009 - 2012.			
A Supplement to the Master License and Application Service Provider Agreement has been executed. This CP-1 covers an invoice issued while the new agreement was being negotiated. The 5% maximum annual increase is contractually guaranteed, and is included in the line items.			

APPROVED ITS DATE:05/28/2009

#### PRODUCTS AND SERVICES PURCHASE DETAILS

QTY	PRODUCTS	EACH NET	EXTENDED NET
2,500	Fees for January 1, 2009 - April 20, 2009		
	Learning Platform for up to 2,500 FTE	4.67	11,675.00
2,500	Learning Repository for up to 2,500 FTE	1.63	4,075.00
2,500	Hosting for up to 2,500 FTE	3.01	7,525.00
	Fees for June 19, 2009 - June 18, 2012		
1	Year 1	193,073.13	193,073.13
1	Year 2	189,601.79	189,601.79
1	Year 3	199,081.88	199,081.88
TOTAL		MAXIMUM	605,031.80

Effective Date 01/01/2009  
Expiration Date 07/31/2012  
Date Printed 05/28/2009  
Procurement Type COMPETITIVE PROCUREMENT

CP-1 Acquisition Approval Form  
Dept. of Information Technology Services  
301 North Lamar Street, Suite 508  
Jackson, MS 39201-1495  
(601) 359-1395

Page: 2  
CP-1  
Approval Number **20090484**  
Acquisition Method: PURCHASE

COMMODITY CODES -- 20554000000, 20556000000, 20558000000, 20560000000, 20599000000

REPLACED CP1S -- 20060333

Increase scope; increase dollar amount

DISTRIBUTION TO

PRNO	ATHY	REPLACEMENT EXCEPTION	RFP No(s)
TAW00-38056-1	DIRECTOR APRV		3452

**CP-1 LIFECYCLE REPORT**

Product/Services

Desire2Learn Annual Licensing and ASP Services for 3 Years & 5 Months

Payment frequency MAXIMUM  
Max Annual % Increase 0.00

YEAR	PERIOD	PAYMENT AMOUNT	# PMTS	TOTAL FOR YEAR
1	01/01/2009	605,031.80	1	605,031.80
Total			1	605,031.80
+MIN(1% / \$1,000)				1,000.00
Lifecycle				606,031.80

**PROJECT NUMBER 39878**  
**SUPPLEMENT TO**  
**MASTER LICENSE AND APPLICATION SERVICE PROVIDER AGREEMENT**  
**BETWEEN**  
**DESIRE2LEARN INCORPORATED**  
**AND**  
**MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES**  
**AS CONTRACTING AGENT FOR**  
**MISSISSIPPI COMMUNITY COLLEGE BOARD**

This document shall serve as a Supplement to the original Master License and Application Service Provider Agreement executed December 22, 2005, and amended on September 21, 2007, May 29, 2008, April 29, 2009, and August 8, 2012 (hereinafter referred to as "Master ASP Agreement") between Desire2Learn Incorporated (hereinafter referred to as "Desire2Learn") and Mississippi Department of Information Technology Services (hereinafter referred to as "ITS"), as contracting agent for the agencies and institutions of the State of Mississippi. It is understood by the parties that ITS is executing this Supplement on behalf of the Mississippi Community College Board (hereinafter referred to as "Licensee"). ITS and Licensee are sometimes collectively referred to herein as "State".

**WHEREAS**, the State, pursuant to Request for Proposals ("RFP") No. 3452 requested proposals in order to assemble a list of approved vendors who may provide certain software and services necessary for the implementation of an Application Services Provider ("ASP") solution for a learning management system; and

**WHEREAS**, Desire2Learn was one of the successful respondents in an open, fair and competitive procurement process to provide the above mentioned software and services; and

**WHEREAS**, the Licensee desires to purchase software and services for an ASP solution for a learning management system;

**NOW THEREFORE**, in consideration of the mutual understandings, promises, consideration and agreements set forth, the parties hereto agree as follows:

1) This Supplement will become effective on the date it is signed by all parties and will continue in effect until all tasks and ASP services required herein have been completed. Provided this Supplement is executed by August 18, 2012, Desire2Learn agrees to complete all initial setup and implementation tasks required under this Supplement on or before August 25, 2012, or within such other period as may be agreed to by the parties.

2) The period of performance of ASP services under this Supplement shall begin on or before August 25, 2012 and continue until the close of business on June 30, 2013. During this

period of time, Desire2Learn shall provide ASP services as specified in the Master ASP Agreement. The total price (setup, annual fees, and licensing) shall be \$211,747.85, and will be payable as set forth in the attached Exhibit A which is incorporated herein by reference and at the license fees set forth therein. In no event will the total compensation to be paid hereunder exceed the specified sum of \$211,747.85, unless prior written authorization from ITS has been obtained. The parties understand and agree that this acquisition is subject to and controlled by the terms and conditions set forth in the Master ASP Agreement, including but not limited to, the terms related to acceptance, invoicing and payment.

- 3) All other provisions in the underlying Master ASP Agreement shall remain unchanged.

For the faithful performance of the terms of this Supplement, the parties have caused this Supplement to be executed by their undersigned representatives.

**State of Mississippi, Department of  
Information Technology Services, on  
behalf of Mississippi Community College  
Board**

By: Craig P. Orgeron  
Authorized Signature *[Signature]*

Printed Name: Craig P. Orgeron, Ph.D.

Title: Executive Director

Date: August 22, 2012

**Desire2Learn Incorporated**

By: Brandon Nussey  
Authorized Signature

Printed Name: Brandon Nussey

Title: CFO

Date: Aug. 10, 2012



## EXHIBIT A

**Licensee's Contact Information:**

Christian Pruett  
Assistant Executive Director of eLearning  
Mississippi Community College Board  
3825 Ridgewood Road  
Jackson, Mississippi 39211  
Phone: (601) 432-6391  
E-mail address: [cpruett@mccb.edu](mailto:cpruett@mccb.edu)

<b>YEAR 4 (7,501 to 10,000 FTE)</b>	<b>COST</b>
LMS Software License	\$101,464.39
Learning Object Repository (LOR)	\$25,844.71
Hosting	\$75,938.75
Support	\$0.00
SIS Batch Integration Maintenance	\$5,000.00
Integration with Synchronous Communication Tool Vendor Setup (One-Time Fee)	\$3,500.00
<b>NOT-TO-EXCEED COST:</b>	<b>\$211,747.85</b>