



Order Form

ORDER#	Q-17504	D2L Ltd.
ORDER DATE	June 12, 2019	210 West Pennsylvania Avenue, Suite 400A
OFFER EXPIRATION DATE	June 28, 2019	Towson, MD 21204

CLIENT

Southern Illinois University Carbondale ("Client")
1400 Douglas Drive
Carbondale, IL 6290

ORDER START DATE	July 1, 2019	ORDER END DATE	June 30, 2022
CURRENCY	U.S. Dollar		

Pricing Summary

ITEM	YEAR 1	YEAR 2	YEAR 3
Pricing Period	July 1, 2019 - June 30, 2020	July 1, 2020 - June 30, 2021	July 1, 2021 - June 30, 2022
Fees Due	July 1, 2019	July 1, 2020	July 1, 2021
FTE	13500	13500	13500
Software	\$221,487.50	\$228,132.13	\$234,976.10
Support	\$57,248.13	\$58,965.57	\$60,734.54
Training	\$8,599.50	\$8,857.49	\$9,123.21
Total	\$287,335.13	\$295,955.19	\$304,833.85

Pricing quoted is in U.S. Dollar and does not include applicable taxes. Pricing is valid until June 28, 2019.

Pricing Details

Software

Brightspace Core with Performance Plus

Additional Organization Annual Maintenance

Integration Pack for Student Information System (IPSiS) / Banner Grades Export Annual Maintenance

Premium SIS/HRIS Integration - Annual Maintenance

Support

Plus Administrator Support

Technical Account Manager 1:10

Training

Subscription Training	1.00
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SPECIAL TERMS AND CONDITIONS

This Agreement is in accordance with the Master Agreement Number CNR01467 between E&I Cooperative Services and D2L Ltd., with an effective date of August 1, 2018

Client's funding for the fees under this Order are subject to approval by its Board of Directors ("Board"). If the Board approves funding required for this Order, and/or Client does not provide D2L notice by August 1, 2019, then this Order shall replace the Master Agreement with an effective date of July 15, 2011 between D2L and Client ("Master Agreement") in its entirety as of the Order Start Date and be binding for the entire term. For clarity, if Board fails to approve funding required for this Order by August 1, 2019, then the Master Agreement shall prevail and govern D2L and Client through the remainder of its term (i.e. June 30, 2021).

This Order Form between D2L and Client is governed by the terms of the existing executed agreement between the Parties ("Agreement"), and may be accepted as a binding agreement under the Agreement provided that (a) it is signed and returned, or (b) a valid Purchase Order ("PO") referencing D2L's Order # above is provided. Unless otherwise indicated on this Order Form, all other terms of the Agreement remain in full force and effect. No modifications to this Order Form or supplemental terms provided on a PO or similar document will have any binding effect.

This Order Form is valid up to and inclusive of the Offer Expiration Date. D2L reserves the right to accept or reject any signed Order Form after the Expiration Date.

Board of Trustees of
Southern Illinois University
To accept this Order Form, sign here:

Print Name:

Willie Abell

Date:

Debbie Abell

6/13/19

Statement of Work – Subscription Training

Solution Description

Unlimited enrollments from Client's institution in live virtual training and on-demand recorded training targeted at system administrators and users who build course content and/or deliver courses.

D2L's Responsibilities

D2L will:

- Provide a registration system for live virtual training and on-demand recorded training
- Configure D2L's registration system with the Client's email domain which will allow users with that domain in their email address to register for subscription training
- Post a schedule for live virtual training sessions
- Maintain the content in the on-demand recorded training aligned with product updates

Client's Responsibilities

Client will:

- Provide a point of contact to arrange session details
- Ensure all users who require access have an email that contains the Client's domain
- Communicate access and registration logistics to their users
- Provide a course or environment for their users to use in conjunction with subscription training (while this is not strictly required, it is strongly recommended)

Acceptance Criteria

Acceptance is deemed to have occurred once D2L notifies Client that Client's email domain has been configured and their users can register.

Assumptions

- Registration for subscription training will result in an account also being created in [Brightspace Community](#)
- Recording and distribution of D2L training in any manner other than handwritten notes is not permitted
- Users will have equipment and software that passes the D2L systems check
- Training is on Brightspace products and services only
- All training will be delivered in English
- Notwithstanding anything to the contrary in Client's Agreement with D2L, Client understands and agrees that portions of any training (if applicable) or Services may be hosted, and/or may process and store data, on Amazon Web Services or such other third party hosting services as D2L may use from time to time
- The deliverables will be produced remotely and during regular business hours
- Client understands and agrees that D2L's ability to provide the Services and deliverables under this SOW is dependent upon the active participation of, and D2L's timely access to, the appropriate Client resources as may be required by D2L and assigned by Client during the performance of this engagement. Delays not caused by D2L that result in the need to reschedule other project deliverables and resources may result in a change request that could impact the project budget and/or schedule. If Client unreasonably and persistently delays D2L in its carrying out of the Services and/or delays the paying of invoices and does not cure such delay within 30 days from receipt of notice from D2L, all fees and related charges for the Services under this SOW will immediately become due and payable to D2L, even if such Services have not been completed by D2L, and D2L's obligations under this SOW shall terminate

- If Client provides, selects, recommends or identifies materials to D2L for inclusion in the deliverables, Client (i) grants to D2L all rights and licenses that are necessary for D2L to fulfill its obligations under this SOW; and (ii) assumes all responsibility for such materials, and holds D2L harmless if the use of such materials in the deliverables infringe a third party's intellectual property rights
- Client has the appropriate Client and user technical requirements based on the [Brightspace Platform Requirements](#)
- Except for Client Information that may be included in the deliverables, D2L shall retain sole and exclusive ownership of and all intellectual property rights in the deliverables
- Client acknowledges that the hours and related charges for this SOW represent a non-binding estimate, and Client agrees to pay for any hours actually performed by D2L if such hours are in excess of the estimate. Unless otherwise agreed in writing between the parties, Services will be invoiced in advance, and payments shall follow the requirements of the payment section of the Agreement
- Upon D2L's commencement of work under this SOW, this SOW will be deemed to be accepted in full by Client
- If D2L believes that additional hours will be required under this SOW, D2L will notify Client as soon as reasonably practicable, and will not perform any additional hours unless Client has agreed in writing to the details. For clarity, D2L is under no obligation to perform any hours in excess of the number of hours agreed to in writing by the Client
- This SOW is subject to Client's signed Agreement and Order with D2L

MASTER AGREEMENT ADDENDUM

This Master Agreement Addendum, dated this 1st day of July 2019 (“Effective Date”), amends, is added to, and shall constitute a part of the Desire2Learn Order Form for Order # Q-17504 (“Order Form”) and any and all terms and conditions incorporated by reference therein, including without limitation the Master Agreement Number CNR01467 dated August 1, 2018 between D2L Ltd. And Educational and Institutional Cooperative Services, Inc. (collectively the Order Form and its incorporated terms and conditions will hereinafter be referred to as the “Contract”) by and between D2L Ltd., a Maryland corporation, (hereinafter referred to as “Vendor”) and the BOARD OF TRUSTEES OF SOUTHERN ILLINOIS UNIVERSITY, a body politic and corporate of the State of Illinois, by and on behalf of the Southern Illinois University Carbondale (identified as “Southern Illinois University Carbondale” and “Client” in the Contract and hereinafter referred to as “University” or “SIU”). University and Vendor may hereafter be referred to singly as a “Party” and collectively as the “Parties.” WHEREFORE, the parties further agree as follows:

1. Notwithstanding any term or condition of the Contract, the Parties covenant and agree that the following documents shall constitute the entire agreement of the parties and shall supersede and terminate any previous agreements, oral or written, concerning the subject matter thereof: (a) this Addendum; (b) the State of Illinois Contract Certifications; and (c) the Contract (the “Contract Documents”). To the extent any provision of one of the Contract Documents conflicts with or is inconsistent with another, the provision of the Contract Document first listed in this Section shall supersede the provision of the Contract Document that follows. The Contract Documents may only be modified by a written instrument signed by the authorized representative(s) of each Party. The Terms of this Addendum may only be modified by written agreement of the Parties that specifically refers to and expressly modifies the terms or conditions herein. All terms of this Addendum shall be applicable notwithstanding any term or condition of the Contract, including without limitation the following term from the Order Form: “No modifications to this Order Form or supplemental terms on a PO or similar document will have any binding effect.”

2. Vendor acknowledges and agrees (a) that University is a body politic and corporate of the State of Illinois; (b) that no term or condition of the Contract Documents is or shall be interpreted as (i) a waiver, in whole or in part, of University's sovereign immunity, or (ii) University's consent to suit; and (c) that University reserves the right to assert sovereign immunity as a defense in the event of any dispute arising out of the Contract Documents.

3. The term of the Contract Documents shall commence on July 1, 2019 and continue through June 30, 2022. The Contract Documents may be renewed or extended beyond the term set forth herein only by an additional written instrument signed by the authorized representatives of each Party. Any term or condition of the Contract providing for automatic renewal or extension, including without limitation such terms or conditions stating that renewal or extension shall be automatic unless notice of termination or non-renewal/extension is provided on or before a certain date; or that the term of the agreement shall continue beyond the initial term unless first terminated, are stricken in their entirety and shall not form part of the Contract Documents.

4. Any terms or conditions of the Contract providing that the law of any jurisdiction other than Illinois governs the Contract any section thereof or disputes arising thereunder; or that state the Contract shall be deemed entered into at any location other than within the State of Illinois are stricken in their entirety and shall not form part of the Contract Documents. The Contract Documents shall be governed by and construed according to the laws of the State of Illinois exclusively but without reference to its conflict of law provisions.

5. Any terms or conditions of the Contract that provide for or stipulate jurisdiction and/or venue in a court outside the State of Illinois, consent to such jurisdiction or venue, and/or that are inconsistent with Illinois law are stricken and shall not form part of the Contract Documents. The exclusive jurisdiction and venue for claims arising from or related to the Contract Documents is a court of competent jurisdiction sitting within the State of Illinois. Any and all claims against University arising from or related to the Contract Documents are subject to the Illinois Court of Claims Act.

6. Any and all terms or conditions of the Contract mandating arbitration, mediation or any other form of alternative dispute resolution as a method of resolving disputes between the Parties or mandating that disputes shall be resolved according to the rules of any arbitration or mediation organization, are stricken and shall not form part of the Contract Documents.

7. University's obligations pursuant to any non-disclosure, confidentiality or other such term or condition, shall be subject to and superseded by University's obligations under applicable law, including without limitation the Illinois Freedom of Information Act. The Parties expressly acknowledge and agree that the Contract Documents are "public records" as defined by the Illinois Freedom of Information Act and further agree that any term or condition of the Contract providing that the Contract Documents are confidential are stricken and shall not form part of the Contract Documents.

8. The Parties acknowledge and agree that all University payment obligations pursuant to the Contract Documents, including without limitation late payment penalties, liquidated damages, and interest, shall be governed by and construed according to the Illinois State Prompt Payment Act and that any terms or conditions of the Contract inconsistent or in conflict with the Illinois State Prompt Payment Act shall be superseded thereby to the fullest extent of such conflict or inconsistency.

9. Any and all indemnification or hold harmless obligations and any and all obligations to pay attorneys' fees or costs of litigation imposed on the University by the Contract are limited to the extent permitted by Illinois law and not inconsistent with the doctrine of sovereign immunity. University shall have no obligation to indemnify Vendor for any actions, suits, claims, liability, or costs to the extent such matters arise from the negligent or willful and wanton actions or omissions of the Vendor or its intentional misconduct and further shall have no obligation to "defend" Vendor.

10. In addition to any other termination rights afforded the University by the Contract Documents, the Contract Documents are subject to termination by University as follows: (a) immediately upon written notice in any year for which the Illinois General Assembly fails to make an appropriation or sufficient appropriation to the University to make payments under the terms of the Contract Documents.

11. To the extent any term or condition of the Contract requires University to name Vendor as an additional insured on any policy or program of insurance or provide a waiver of subrogation rights the term or condition is stricken.

12. Intentionally Omitted.

13. Vendor shall identify any and all known subcontractors with a subcontract having an annual value in excess of \$50,000 and pursuant to which the subcontractor provides some or all of the services to be provided pursuant to the Contract Documents by providing the following information for each such subcontractor: (a) Full legal name of subcontractor; (b) full address and phone number of subcontractor; (c) a description of the general type of work the subcontractor will perform; and (d) the expected amount of money the subcontractor will receive pursuant to the Contract Documents.

If at any time during the term of the Contract Documents Vendor adds or changes any subcontractors meeting the above specified requirements, Vendor shall promptly notify SIU in writing of such change or addition and provide the information for that subcontractor as specified above. The aforementioned notification to be provided to SIU pursuant to this Section shall, upon acceptance by SIU, be incorporated into this instrument by reference as though fully stated herein. Each and every subcontractor utilized pursuant to the Contract Documents shall be subject to the State Contract Certifications referred to in Section 1(b) herein. As used in this Section, the term "subcontractor" means a person or entity that *enters* into a contractual agreement with a total value of \$50,000 or more with a person or entity who *has or is seeking* a contract subject to the Illinois Procurement Code pursuant to which the person or entity provides some or all of the goods, services, real property, remuneration, or other monetary forms of consideration that are the subject of the primary State contract, including subleases from a lessee of a State contract. Notwithstanding the foregoing definition of "subcontractor," a person or entity is not a "subcontractor" if that person only provides supplies that are incidental to the performance of the Contract Documents. As used herein the term "services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports or supplies that are incidental to the required performance. As used herein the term "supplies" shall mean all personal property,

including, but not limited to, equipment, materials, printing, and insurance and the financing of those supplies that can be procured regularly or are available on the commercial market.

14. In the event the implementation of the terms and conditions of the Contract Documents requires the University's disclosure of "Personally Identifiable Information" from "Education Records," Vendor agrees that it shall comply with the Family Educational Rights & Privacy Act (20 U.S.C. 1232g) and its implementing regulations (34 C.F.R. Part 99) which said Act and regulations shall hereinafter be referred to as FERPA. Accordingly Vendor agrees as follows: (a) that should Vendor receive from University Personally Identifiable information from Education Records it shall not release that information to any other party without the prior, written consent of the eligible student(s) identified in the records or as otherwise expressly permitted by FERPA; and (b) that Vendor shall strictly limit its use of such information to the purpose for which the disclosure was made. As used herein the terms "Personally Identifiable Information" and "Education Records" have the meaning ascribed to them in FERPA.

15. Vendor shall maintain, for a minimum of 3 years after expiration or termination of the Contract Documents adequate books, records and supporting documents to verify the amounts, recipients, and uses of all disbursement of funds passing pursuant to the Contract Documents; the Contract Documents, and all books, records, and supporting documents related thereto, shall be made available for review and audit by the Illinois Auditor General; and Vendor agrees to cooperate fully with any such audit and to provide full access to all relevant materials. Failure to maintain the books, records, and supporting documents required by this section shall establish a presumption in favor of the University for recovery of any funds paid by the University under the Contract Documents for which adequate books, records and supporting documentation are not available to support their purported disbursement.

16. No Party shall be in default or breach of the Contract Documents if failure to perform any obligation thereunder is caused by supervening conditions beyond the party's control, including acts of God, civil commotion, strikes, labor disputes, governmental demands or requirements, or a service interruption from an underlying carrier or service provider; provided however, that any party claiming force majeure

shall provide written notice thereof to the other party and shall make all commercially reasonable efforts to comply with the Contract Documents notwithstanding the force majeure event(s).

17. Vendor certifies to University that Vendor is fully qualified to perform in conformance with the Contract Documents and that it will do so in accordance with all applicable laws, certifications, orders, rules, and regulations.

18. The “Offer Expiration Date” set forth on the first page of the Order Form is amended as follows: The Offer Expiration Date is changed to July 28, 2019.

19. All references to University’s “Board of Directors” made in the Order Form are stricken and replaced by the following: “Board of Trustees.”

20. Notwithstanding any other term or condition of the Contract Documents or its signature to this instrument or the Order Form, the following shall apply: (a) The Contract Documents shall supersede in its entirety the Master Agreement between the Parties dated July 15, 2011 and any Order Forms entered pursuant thereto (“2011 Master Agreement”); (b) Notwithstanding the foregoing subsection (a), the Contract Documents shall not be binding on University unless and until approved by its Board of Trustees; (c) University shall provide Vendor with written notice on or before August 1, 2019 informing Vendor of the decision of its Board of Trustees regarding the Contract Documents; (d) in the event University does not provide the aforementioned notice on or before August 1, 2019 the Contract Documents shall be considered void and have no force and effect and the Parties shall in that case continue under the terms and conditions of the 2011 Master Agreement, as amended, until the end of the term thereof, i.e., June 30, 2021.

21. Each person signing this Addendum represents and warrants that he or she is authorized to sign on behalf of and to bind the party on whose behalf he or she is signing.

IN WITNESS WHEREOF, each Party hereto has executed this instrument by its duly authorized representatives of the date first above written.

**BOARD OF TRUSTEES OF
SOUTHERN ILLINOIS UNIVERSITY**

VENDOR

Deborah Abell, Director of Procurement
Southern Illinois University Carbondale

SAC
APPROVED
AS TO
LEGAL FORM
Nut
7-9-2019

Signature

Printed Name

Title



Master Agreement

D2L Ltd.
Learning Management Software
Master Agreement Number CNR01467
August 1, 2018

This Master Agreement (the "Agreement") is effective as of August 1, 2018 by and between D2L Ltd., a corporation with offices located at 210 W. Pennsylvania Avenue, Suite 400A, Towson, MD 21204 (hereinafter referenced as the "Supplier"), and Educational and Institutional Cooperative Services, Inc., a New York not-for-profit corporation with offices located at 2 Jericho Plaza, Suite 309, Jericho, NY 11753 (hereinafter referenced as "E&I").

This Agreement has been established based on the RFP # 683369 for Learning Management Software, all addenda, Supplier response, best and final offer, and negotiations.

I. Scope

This National agreement shall apply to all E&I member institutions (as listed in the Official Member List, as updated from time to time, to be provided to the Supplier), their divisions, subsidiaries and affiliates. In addition, if E&I or any of its affiliates elect to participate in the Agreement, they shall be considered member institutions.

This Agreement does not constitute a purchase order or a commitment to purchase products and/or services by E&I or its members. Any purchases made under this Agreement shall be made by the individual participating member institutions and any resulting contract shall be between the member and the Supplier.

II. Term of Agreement

The Agreement term will be for three (3) years, effective August 1, 2018 through July 31, 2021, with one (1) two (2) year renewal. Prior to the end of the initial three (3) year term, and for each successive term, the program will be evaluated in overall context and performance. Exercise of any renewal will require formal written notification and mutual agreement between E&I and Supplier at least one (1) year prior to Agreement expiration.

III. Pricing

The pricing/discount percentage for the products and/or services as listed on Attachment A shall be applicable to all purchases made under this Agreement. Supplier may update the products and/or services listed on Attachment A no more than twice every twelve (12) months upon prior written notice to E&I. Rate changes to the products and services identified in Attachment A may be made by Supplier no more than once annually upon thirty (30) days prior written notice to E&I. Percentage discounts off Supplier's list price shall remain firm for the life of the Agreement unless improved for the benefit of the membership. Supplier is authorized to offer members enhanced pricing on a case-by-case basis or under a Member Specific Agreement ("MSA") and both shall be considered part of this Agreement.

IV. Terms and Conditions

Unless otherwise superseded by the terms and conditions agreed between Supplier and the contracting member institution, the terms and conditions contained herein shall apply to all purchases made under this Agreement. See Attachment B for E&I's General Terms and Conditions.

V. Entire Agreement

This Agreement together with the Attachments annexed hereto constitutes the entire agreement between the parties and supersedes all prior agreements whether written or oral between the parties. Documents subject to Freedom of Information Act may only be released after award.

VI. Member List

The Official list of E&I member institutions will be sent to the Supplier via an electronic file from E&I Member Relations once this Agreement is signed.

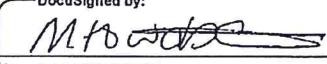


Master Agreement

D2L Ltd.
Learning Management Software
Master Agreement Number CNR01467
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VII. Signatures

In witness whereof, the parties have executed this Agreement and do hereby warrant and represent that their respective signatories whose signatures appear below have been and are on the date of this Agreement duly authorized to execute this Agreement.

D2L Ltd.
Supplier docuSigned by:

Signature EA02498EA040469...
Melissa Howatson
Printed Name
CFO
Title
July 24, 2018 | 10:04 PM EDT
Date

E&I Cooperative Services, Inc

Signature
Gary D. Link, C.P.M.
Printed Name
Sr. Vice President, Consulting Group & Contracts
Title
July 25, 2018
Date

*Master Agreement*

D2L Ltd.
Learning Management Software
Master Agreement Number CNR01467
August 1, 2018

Attachment A**Pricing Schedule**

Software Tier Pricing					
User/FTE Count	<2,000	2,000-5,000	5,001-10,000	10,000-15,000	15,000+
Brightspace Core: Higher Education (FTE)	\$14.05	\$13.80	\$13.50	\$12.25	Call D2L
Brightspace Core: K12 (Active Users)	\$6.75	\$6.00	\$5.50	\$5.00	Call D2L
Brightspace Core: Corporate (Active Users)	\$19.00	\$18.30	\$14.51	\$15.65	Call D2L

Software Add-Ons					
Performance Plus*	30% of Brightspace Core Pricing				
Engagement Plus*	30% of Brightspace Core Pricing				
Performance & Engagement Plus	50% of Brightspace Core Pricing				
Course Adventure Pack	\$2.50				

*Requires a minimum of Plus Admin Support

Support Options					
Core Admin Support	Included				
Plus Admin Support	15% of Software Fees (minimum \$3,000 per year)				
Premium Admin Support	30% of Software Fees (minimum \$45,000 per year)				

Higher Ed and Corporate Implementation Tier Pricing					
User/FTE Count	<2,000	2,000-5,000	5,001-10,000	10,000-15,000	15,000+
Brightspace Core - Essential Services	\$11,500	\$11,500	\$15,000	\$18,000	Call D2L
Brightspace Core - Standard Services	\$21,000	\$21,000	\$32,500	\$40,000	Call D2L
Brightspace Core - Premium Services	\$33,000	\$33,000	\$42,000	\$53,000	Call D2L

K12 Implementation Tier Pricing					
User/FTE Count	<2,000	2,000-5,000	5,001-12,500	12,501-50,000	50,000+
Brightspace Core - K12 Essential Services	\$5,000	n/a	n/a	n/a	n/a
Brightspace Core - K12 Standard Services	\$7,500	\$7,500	\$12,500	\$17,500	Call D2L

Implementation Add-Ons (all segments)					
User/FTE Count	0-50,000		50,000+		
Performance Plus Implementation <i>Includes: Insights Implementation, Student Success Implementation, Leap Implementation</i>	\$20,000		Call D2L		
Engagement Plus Implementation <i>Includes: Capture Implementation and Course Catalog Implementation</i>	\$8,000		Call D2L		
Course Adventure Pack	\$10,000		Call D2L		

*Master Agreement*

D2L Ltd.
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Training		
Included with D2L's Implementation Services		
<p>Brightspace Core - Essential Services includes unlimited access to video tutorials and Brightspace Help for administrators, instructors, and learners, enabling your users to get the most out of their learning experience. Our online user community also provides access to video tutorials, webinars, release notes, product enhancement forums, and more.</p>		
<p>Brightspace Core - Standard Services includes 3 days with a D2L Trainer and 1 Account in the Brightspace Teaching and Learning Certificate Program.</p>		
<p>Brightspace Core - Premium Services includes 5 days with a D2L Trainer and 5 Accounts in the Brightspace Teaching and Learning Certificate Program.</p>		
<p>Brightspace Core - K12 Essential Services includes 1 day of Training Workshop + 0.5 day of Admin Enablement training.</p>		
<p>Brightspace Core - K12 Standard Services includes 1.5 days of Training Workshop + 0.5 day of Admin Enablement training.</p>		
Training Add-ons		
Description	Cost	Type
Additional Training Day	\$2,500 per day	One-Time
Subscription Training	10% of License Fees in Year 1; 4% in subsequent years	Annual
Support Add-ons		
Description	Cost	Type
Technical Account Manager 1:10	\$25,000	Annual
Technical Account Manager 1:5	\$50,000	Annual
Technical Account Manager 1:2	\$125,000	Annual
Technical Account Manager 1:1	\$250,000	Annual
Basic End User Support	\$2.25/User or FTE (Minimum \$3,000 per year)	Annual
Standard End User Support	\$3.25/User or FTE (Minimum \$15,000 per year)	Annual
Branded End User Support**	\$4.25/User or FTE (Minimum \$45,000 per year)	Annual
**Minimum Plus Admin Support required		
Integration Add-ons		
Description	Cost	Type
Premium SIS Integration Implementation	\$17,500	One-Time
Premium SIS Integration Maintenance	\$6,500	Annual
Creative Services Add-ons		
Description	Cost	Type
Course Uplift	\$14,000	One-Time
Courseware Accessibility Audit	\$10,000	One-Time
HTML Templates	\$5,000	One-Time

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Advisory/Consulting & Customization Add-Ons		
Description	Cost	Type
Advisory & Consulting Services	\$200	Hourly
Learning and Creative Services	\$175	Hourly
Services Customization Level 1	\$175	Hourly
Services Customization Level 2	\$200	Hourly
Services Customization Level 3	\$290	Hourly

FTE Aggregate Discount (Total Memberships)	
At 200,000 total aggregate FTEs under this Agreement, a 5% volume discount shall apply to all annual fees for members who have selected Brightspace Core Software under this Agreement. D2L shall apply such discount on member invoices effective on the next annual billing date. For purposes of calculating aggregate FTE, Client and D2L have established a Contract Year anniversary date of July 1st.	

Additional Pricing Terms	
<ul style="list-style-type: none"> • D2L is pleased to offer new customers our Performance Plus or Engagement Plus solution with no annual license fees for the first 2 years of the initial contract term. A one-time implementation fee will apply (listed in the Implementation Add-Ons section) and requires either Plus Support or Platinum Support as detailed in the Support section in the pricing table. • Contract term conditions: <ul style="list-style-type: none"> - "5-year contract with 0% annual increase during initial contract term, with 50% transition discount for new D2L customers on Annual Fees in Year 1 OR - 3-year contract with 3% annual increase during initial contract term, with 25% transition discount for new D2L customers on Annual Fees in Year 1" • Multi-institutional consortia are excluded from the above pricing and should contact D2L directly for a custom quote to meet their needs for both software and implementation. • Existing D2L clients can switch to E&I pricing at the end of their current agreement with D2L. For existing D2L customers switching to E&I pricing from their previous D2L contract, the maximum allowed cost reduction will be 10% of the customer's previous annual fees. Customers may add additional products and services to reach this cost threshold. • Pricing tiers are based on the total number of FTEs within a single institution or purchase. • Minimum annual fees are set at \$10,000 per institution. 	

Relevant Terms

A1. Orders

All terms and conditions of an individual member's standard procurement terms for ordering may apply as mutually agreed to by Supplier and member. With each ordering occurrence, it is mutually agreed that the Supplier's notice of acceptance shall create an agreement between the parties thereto containing all specifications, terms and conditions of the Agreement.

A2. Invoices and Payment

Invoices shall be directed to the appropriate location(s) specified by the member. Invoices and payment terms must comply with the requirements of each member. The member placing the order with the Supplier shall alone be liable or responsible for payment for products and/or services ordered and will be invoiced direct by the Supplier. Neither E&I nor its other members shall be liable for the indebtedness of any one member.



Master Agreement

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Unless otherwise agreed to by Supplier and member, the default payment term for members shall include invoicing at time of billing. Payments would then be made within thirty (30) days after receipt of a valid invoice, or as required by member's statutory requirements.

Cash discounts for prompt payment may be offered to any member from the date of receipt and acceptance of products or the invoices, whichever is later. Supplier is encouraged to offer/propose cash discounts for expedited payment of invoices rendered under this Agreement. Negotiated cash discounts with member institutions for aggregated billing (monthly/bi-weekly, etc.) may be negotiated on an individual basis. Cash discounts are not to be netted against sales in calculating the CAF.

A3. Order Fulfillment, Distribution and Installation Agreements

Members may have their own order fulfillment/distribution/installation agreements with a third party agent or distributor. The terms and pricing of this Agreement are passed through to the member and separate from any additional distributor terms and conditions, fees or markups resulting from members' separate fulfillment/distribution/installation agreements.

A4. Delivery – Not Applicable

A5. Member Specific Agreements

Member and Supplier shall enter into a separate Member Specific Agreement ("MSA") to define the service requirements, e.g., service levels, invoice requirements, ordering requirements, on campus service, etc. Any Member Specific Agreement developed is exclusively between the member and Supplier. E&I, its agents, members and employees shall not be made party to any claim for breach of such agreement. Supplier's standard Order Terms and Conditions that would apply to members is attached hereto as Attachment C, and such terms shall govern the relationship between Supplier and members to the exclusion of any other terms.

A6. Third Party Distributors/Subcontractors

In the event that Supplier chooses to subcontract any service or delivery of the products under the terms herein, Supplier shall fully warrant prompt performance of the subcontractor in a fully complete, workmanlike manner customary to the trade. Failure by the subcontractor to perform in a timely manner as specified above shall not relieve Supplier of its obligations to make complete timely delivery of products, supplies or service at no additional cost to the member.

A7. Substitutions – Not Applicable

A8. Minimum Orders

Supplier must specify any minimum order charge or conditions under which the established price will be adjusted. Minimum annual software fees per member shall be US\$ 10,000.00.

A9. Supplemental Charges

Supplier shall be required to state all supplemental charges that may be assessed in addition to the pricing for the products and/or services provided including cost of services, or any other charges incurred by the member. If Supplier offers multiple pricing options they must be specified herein.

A10. Emergency Purchases

Members reserve the right to make purchases of items included under this Agreement when emergency conditions exist. All emergency purchases shall be reported as regular sales to E&I.

A11. Storage – Not Applicable

A12. Tracking Lost and Damaged Shipments – Not Applicable



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A13. Returns – Defective and Non-Conforming Products or Services

If any products or services furnished under the Agreement are defective or non-conforming, or fail to meet warranties, specifications or any other provisions of the Agreement or members' purchase orders, any of the following remedies shall be available to the member:

- Repair and Replacement: Supplier shall promptly repair, replace, or correct non-conforming or defective products and services at the Supplier's own expense.
- Supplier Liability: Subject to Section B42, the Supplier shall be liable for any and all losses, claims, expenses, (including reasonable attorney's fees and court costs) and other incidental and consequential damages resulting from such failure to meet all the requirements of this Agreement and/or a member order.

A14. Reasons for Return or Credit – Not Applicable

A15. Warranty and Product Condition of Sale – Not Applicable

A16. New and Discontinued Products – Not Applicable

A17. Replacement Parts – Not Applicable

A18. Product Demonstrations

Product demonstrations may be requested at no charge. Pilot programs are available at a cost.



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Attachment B

E&I General Terms and Conditions

B1. Interpretation, Enforcement and Forum of Laws

For disputes between the member and Supplier, this Agreement shall be governed by, construed, interpreted, and enforced solely in accordance with the laws of the state in which the member resides and the venue of any action shall lie in such state.

For disputes between E&I and Supplier, this Agreement shall be governed by, construed, interpreted, and enforced solely in accordance with the laws of New York and the venue of any action shall lie in New York.

B2. Compliance with Law

Supplier warrants and certifies that in the performance of this Agreement, it has complied with and will comply with all applicable federal, state, and local laws, statutes, rules, regulations and orders of the United States, and any state or political subdivision thereof, including but not limited to, laws and regulations pertaining to labor, wages, hours and other conditions of employment.

B3. Funding Provided by Federal Contracts or Grants

Where Federal Contracts or Grants provide funding to members, it is the responsibility of the Supplier and the member to comply with all FAR (Federal Acquisition Regulations) and EDGAR (Educational Department General Administrative Regulations) applicable laws and regulations by completing any certifications and disclosures and any other requirements.

B4. Insolvency

In the event of any proceedings in bankruptcy or insolvency by or against Supplier, or in the event of the appointment (with or without its consent) of an assignee for the benefit of creditors, or a receiver, E&I may cancel this Agreement without prior notice and without incurring any liability whatsoever to Supplier.

B5. Assignments

Supplier shall not assign this agreement or any of Supplier's rights or obligations hereunder, without E&I's prior written consent, except to a subsidiary of Supplier or subsequent to a corporate reorganization. Any purported assignment made without E&I's prior written consent shall be void and of no effect.

B6. Resale – Not Applicable

B7. Patent Trademark and Copyright Infringement

The Supplier warrants that the products/services hereby sold, either alone or in combination with other materials, do not infringe upon or violate any patent, copyright, trademark, trade secret, application or any other proprietary right of any third party existing under laws of the United States or any foreign country. The Supplier agrees, at its own expense, to defend any and all actions or suits alleging such infringements and will hold E&I, its officers, agents, servants, employees and members harmless from any and all losses, expenses, claims, (including reasonable legal fees), or judgments arising out of cases of such infringement. The foregoing obligation to defend is the sole remedy under this Section.

B8. Use of Name, Logos, etc. in Advertising

Supplier agrees not to make reference to this Agreement or use the logo of E&I or any of its members in any advertising material of any kind without the expressed written permission of the party involved. E&I agrees not to make reference to this Agreement or use the logo of Supplier in any advertising and marketing materials of any kind without the expressed written permission of the Supplier.

B9. Transactions between Supplier and E&I member

The purchase of products and/or services by a member from Supplier is a transaction solely between member and Supplier. It is understood and agreed that if any litigation arises between Supplier and any E&I member, Supplier shall not make E&I a party to that litigation. A violation of this provision shall be deemed a material breach of this Agreement warranting



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termination by E&I, and Supplier agrees to indemnify E&I against and hold it harmless from all costs associated with such litigation, including reasonable legal fees.

B10. Education Pricing/Pricing Parity

The Education pricing, terms and conditions established under this Agreement are to be equal to or better than those offered to other comparable institutions, government sector and/or consortiums serving public and private Education and Healthcare taking into consideration the products and services purchased, the specific requirements of the member, and the specific terms and conditions under which the services are offered. If, during the term of this Agreement, Supplier offers more favorable terms, conditions or prices to members, other comparable institutions, and/or consortiums (taking all factors into consideration in assessing the foregoing), Supplier agrees to notify E&I in writing. Supplier agrees to immediately amend the agreement to reflect the more favorable terms, conditions or prices. E&I must be notified of any proposed changes thirty (30) days prior to their implementation.

B11. Responsibility for Damage Claims

Subject to Section B42, the Supplier shall hold harmless E&I and the member from all suits, actions or claims brought on account of any injuries or damages sustained by any person or property as a consequence of any neglect in safeguarding the work by the Supplier; or from claims or amounts arising or recovered under the "Workman's Compensation Law" or any other laws. Supplier shall be responsible for all damage or injury to property occurring during the prosecution of the work resulting from any act, omission, neglect, or misconduct on their part or on the part of any of their employees, in the manner or method of executing the work; or from their failure to execute the work properly; until all claims have been settled and suitable evidence to that effect furnished to E&I and the member.

B12. Protection of Property and Liability

The Supplier shall take care not to damage the premises or the property of others, and in case such damage occurs as the result of operations under this contract, they shall make appropriate restitution. If the Supplier fails to pay for damage, the damages may be deducted from any remaining balance due to the Supplier or may be processed as a breach of contract to the full extent the law allows.

B13. Indemnification of E&I and Member

Subject to Section B42, Supplier agrees to indemnify and hold harmless E&I and its members from and against all liability, to the extent of and in proportion to, losses, damages, claims, liens, and expenses (including reasonable legal fees) arising out of or connected with the work or services performed, and/or design of any services furnished hereunder, excepting only such liability as may result solely from the acts of negligence of the member, E&I or its employees. Supplier, at the request of the member and E&I, shall undertake to defend any and all suits and to investigate and defend any and all claims whether justified or not, if such claim or suit is commenced against member or E&I, or their respective officers, agents, servants, and employees.

Member shall be responsible for its own acts and omissions and shall be liable for payment of that portion of any and all claims, liabilities, injuries, suits, and demands and expenses of all kinds that may result or arise out of any alleged malfeasance or neglect caused or alleged to have been caused by Member, its employees, agents, or subcontractors, in the performance or omission of any act or responsibility of Member under this Agreement. In the event that a claim is made against both parties, it is the intent of both parties to cooperate in the defense of said claim and to cause their insurers to do likewise. Both parties shall, however, retain the right to take any and all actions they believe necessary to protect their own interests.

B14. Insurance

If fabrication, construction, installation, service or other work is specified to be conducted on member's premises, Supplier shall maintain in force during the period of such work the following coverages: (a) worker's compensation, as required by the laws of the State of member; (b) commercial general liability for bodily injury and/or property damage in an amount of not less than \$1,000,000 single limit, per occurrence; (c) automobile liability for bodily injury and/or property damage in an amount of not less than \$1,000,000 single limit, per occurrence. Upon request, Supplier shall furnish to E&I satisfactory proof of such insurance coverage.



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Individual members may require coverage in addition to the above limits. If the need for additional coverage develops, it will be the responsibility of the member to arrange for such coverage with the Supplier. Supplier shall furnish to member satisfactory proof of such insurance coverage prior to commencement of the work.

B15. Licenses/Permits/Taxes and Tax Exempt Status

Supplier shall be responsible for obtaining all permits, licenses and bonding, to comply with the rules and regulations of any state, federal, municipal or county laws or any city government, bureau or department applicable and assume all liability for all applicable taxes.

E&I is a not-for-profit corporation. Members are 501(c)(3) corporations but have varying requirements to either pay or are exempt from state sales tax.

All prices listed and discounts offered are exclusive of all taxes. Supplier has the duty to collect all taxes in connection with the sale, delivery or use of any items, products or services included herein from member or from E&I (if for the purpose of resale), at the taxable rate in effect at the time of invoicing. Supplier shall comply with the state sales tax requirements of each member. If sales to member are exempt from such taxes, member shall furnish to Supplier a certificate of exemption in form and timeliness acceptable to the applicable taxing authority.

B16. Americans With Disabilities Act and Rehabilitation Act

Supplier shall comply with all applicable provisions of the Americans with Disabilities Act, the Rehabilitation Act of 1973 and applicable federal regulations. All electronic and information technology and products and services to be used by E&I member institutions' faculty/staff, students program participants or other constituencies must be compliant with the Americans With Disabilities Act and Section 508 of the Rehabilitation Act of 1973, as amended from time to time. Compliance means that a disabled person can acquire the same information, engage in the same interactions and enjoy the same services as a nondisabled person, in an equally effective manner, with substantially equivalent ease of use.

B17. Compliance with Immigration Reform and Control Act of 1986

Supplier is aware of, is fully informed, and in full compliance with its obligations under the Immigration Reform and Control Act of 1986. Supplier shall be responsible for assuring that all persons engaged in the performance of work hereunder are authorized to work as required by the Act in both its present form and any future requirements passed under said Act.

B18. Alcohol, Tobacco & Drug Rules and Regulations

In the event that Supplier performs services on-site for members, employees of the Supplier and its subcontractors shall comply with all instructions, pertaining to conduct and building regulations of the members. The member reserves the right to request the removal or replacement of any undesirable employee at any time.

All buildings on the member's grounds are tobacco-free. Use of tobacco products is not permitted in any area inside member's buildings. The Supplier is expected to respect this tobacco-free policy and fully comply with it. The Supplier agrees that in the performance of this Agreement, neither the Supplier nor any of its employees shall engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance, including alcohol, in conducting any activity covered by this Agreement. E&I and the member reserve the right to request a copy of the Drug Free Workplace Policy. The Supplier further agrees to insert a provision similar to this statement in all subcontracts for services required.

B19. Non-Appropriation of Funds

An order by a member may be cancelled due to non-appropriation of funds. This funding out clause is required by several states and can be for non-appropriation of State and Federal funds.

B20. Weapons, Explosive Devices and Fireworks

In the event that Supplier performs services on-site for members, Supplier agrees that neither its employees or agents nor its subcontractors, their employees or agents shall use, possess, display or store any weapon, explosive device or fireworks on all



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land and buildings owned, leased or under the control of E&I member institutions or their affiliated or related entities, unless written permission is given by the commanding officer of the member's police department or a designated representative. Notification by Supplier to all persons or entities who are employees, agents, officers, subcontractors, consultants, guests, invitees or licensees of Supplier ("Supplier Notification Parties") is a requirement of this Agreement. Supplier further agrees to enforce this requirement against all Supplier Notification Parties.

B21. Equal Opportunity and Non-Discrimination

The parties will comply with all applicable federal and state laws, rules, regulations, and executive orders governing equal employment opportunity, immigration, and non-discrimination, including but not limited to the Americans with Disabilities Act.

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

The provisions of Section 202 of Executive Order 11246.41 CFR 60-1.1 CFR 60-250.4 and 41 CFR 60-741.4 are incorporated herein by reference and shall be applicable to this Agreement unless this Agreement is exempted under the rules, regulations, or orders of the U.S. Secretary of Labor.

If applicable, the parties will abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

B22. Sexual Harassment

Title IX protects individuals from discrimination based on sex, including sexual harassment. E&I fosters an environment that is built on respect and free of sexual harassment. Federal law and the policies of E&I prohibit sexual harassment. Supplier is required to exercise control over its employees so as to prohibit acts of sexual harassment. If a member in its reasonable judgment determines that any employee of Supplier has committed an act of sexual harassment, Supplier agrees as a term and condition of this Agreement to cause such person to be removed from member's facility and to take such other action as may be reasonably necessary to cause the sexual harassment to cease.

B23. Employee Documentation

At any time during the term of the Agreement, a member may require Supplier to provide a complete dossier of each employee who has been given an assignment at the member institution. This may include employment history, education, job references, certificates and licenses, conviction records and documentation of random drug testing, if and as permitted by applicable law.

B24. Expropriation – Not Applicable

B25. Hazardous Materials and OSHA Communication Standards – Not Applicable

B26. Compliance with Specifications

Supplier warrants that all of the services to be performed under this Agreement shall be performed in a professional and workmanlike manner and in conformity with industry standards by persons reasonably suited by skill, training, and experience for the type of services they are assigned to perform, that Supplier owns or has sufficient rights in all products and services to be delivered by Supplier, that services delivered by Supplier will comply in all material respects with the relevant specifications.



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B27. Gratuities

E&I may, by written notice to Supplier, cancel the Agreement if it discovers that gratuities, in the form of entertainment, gifts or the like, were offered or given by Supplier to any officer or employee of E&I or any member with a view toward securing an agreement or securing favorable treatment with respect to the awarding of this Agreement.

B28. Covenant Against Contingency Fees

Supplier certifies that it has neither offered nor paid a contingency fee to any individual, agent, employee of E&I, or employee of any member to secure or influence the decision to award this Agreement to Supplier.

B29. Suspension or Debarment

Supplier certifies that it is presently not debarred, suspended, proposed for debarment, declared ineligible, is not in the process of being debarred, nor is voluntarily excluded from covered transactions by any federal department or agency.

E&I may, by written notice to the Supplier, immediately terminate the Agreement if it is determined that the Supplier has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor by any public procurement unit or other governmental body.

Supplier certifies that the Supplier and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity, that Supplier is in compliance with all applicable State statutes and rules relating to procurement, and that Supplier is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

B30. Conflict of Interest

In order to avoid even the appearance of any conflict of interest, neither E&I nor Supplier shall employ any officer or employee of the other party for a period of one year from the date hereof.

B31. Strikes or Lockouts

In the event Supplier should become involved in a labor dispute, strike or lockout, Supplier will be required to make whatever arrangements that may be necessary to ensure that the conditions of this Agreement are met in their entirety. Should the Supplier be unable to fulfill its obligations under this Agreement, E&I and/or member shall have the right to make alternative arrangements to insure the satisfactory performance of the Agreement during the time Supplier is unable to perform the required duties. Any costs incurred by E&I and/or any member, as a result of such job action, shall be reimbursed by the Supplier.

B32. Force Majeure

Neither party shall be held responsible for any losses resulting if the fulfillment of any terms or provisions of this Agreement are delayed or prevented by any cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence, said party is unable to prevent.

B33. Modification of Terms

No waiver or modification of any of the provisions hereof shall be binding unless mutually agreed upon by E&I and the Supplier, in writing, with signatures of authorized representatives of all parties authorizing said modification.

B34. Termination for Convenience

E&I and Supplier may terminate this Agreement for any reason (convenience) by delivering not less than one hundred eighty (180) calendar days prior written notice thereof to the Supplier. Such termination shall not affect or terminate any agreement between member and Supplier for services provided thereunder, which agreement shall continue through the entire duration of the term as agreed between member and Supplier.

B35. Termination for Default

E&I will notify the Supplier upon discovery of a breach of this Agreement. E&I may terminate this Agreement immediately upon the breach of this Agreement by Supplier by delivering written notice to Supplier, or if such breach is capable of being



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cured, E&I shall notify the Supplier in writing of such breach and demand that the same be cured within thirty (30) calendar days. Should the Supplier fail to cure the same within said period, E&I shall then have the right to terminate this Agreement at the end of the thirtieth (30th) day. A notice will be sent to the Supplier to confirm the termination.

The failure of E&I on behalf of its members to exercise its rights of termination for cause due to Supplier's failure to perform as required in any instance shall not constitute a waiver of termination rights in any other instance. Such termination as between E&I and Supplier shall not affect or terminate any agreement between member and Supplier for services provided thereunder.

B36. Continuation of Performance Through Termination

Supplier shall continue to perform, in accordance with the requirements of this Agreement, up to the date of termination, as directed in the termination notice.

B37. Holdover Clause

This holdover clause authorizes Supplier to continue to provide products and services pursuant to any quotation, purchase order, or MSA executed prior to the expiration or termination of this Agreement. The term of this Agreement shall then automatically extend through the final invoice date or expiration of the MSA. The terms and conditions specified herein shall remain in effect for the duration of the holdover period.

B38. Independent Audit

Members may, for a period of three years after expiration of the Agreement, audit the Supplier's records pertaining to its compliance with the terms of this Agreement. The audit will be conducted by member and/or its designee. Supplier will provide member with access to records. The audit shall be limited to contract pricing, order processing, order fulfillment, invoicing, and receipt of payment. For clarity, such audit shall not apply to performance of the products or services.

B39. Open Records

All information, documentation, and other materials submitted by Supplier in response to the solicitation or under this Agreement may be subject to public disclosure under the Freedom of Information Act and/or Open Records laws of the members. If any E&I or any member is called upon to disclose information that Supplier has designated as being confidential and/or a trade secret, E&I and/or such member shall notify Supplier in advance such that Supplier may oppose such disclosure in accordance with the relevant Freedom of Information Act and/or Open Records laws.

B40. Student Educational Records.

Student educational records are protected by the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA). Supplier will comply with FERPA and will not access or make any disclosures of student educational records to third parties without prior notice to and consent from Member or as otherwise provided by law.

B41. Strict Compliance

The parties may at any time insist upon strict compliance with these terms and conditions, notwithstanding any previous custom, practice or course of dealing to the contrary.

B42. Limitation of Liability

As between Supplier and E&I, a party's maximum aggregate liability for damages, costs, losses or expenses provided pursuant to this Agreement, in contract, tort or otherwise, is limited to \$1,000,000.00. The liability limitation is commensurate with the consideration paid under this Agreement. Neither party is liable for indirect, consequential or incidental damages, including loss of revenue, profits or data, even if the other party had advised of the possibility of such damages.



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B43. Notices

Any notice to be given by any party hereunder shall be in writing, mailed by certified mail, return receipt requested, or by delivery to a reputable overnight courier and shall be effective the earlier of (a) actual receipt or (b) five days after mailing or one day after delivery to overnight courier and shall be addressed as follows:

If to E&I: Gary D. Link C.P.M.
 Sr. Vice President, Contracts and Consulting Services
 E&I Cooperative Services, Inc.
 2 Jericho Plaza, Suite 309
 Jericho, NY 11753

If to Supplier: Legal Department
 D2L Ltd.
 210 W. Pennsylvania Avenue, Suite 400A
 Towson, MD 21204
 519-772-0325
 legal@D2L.com

With copy to: General Counsel
 D2L Corporation
 151 Charles St. West, Suite 400
 Kitchener, Ontario N2G 1H6
 legal@D2L.com



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Attachment C

D2L ORDER TERMS AND CONDITIONS

These terms and conditions, along with the accompanying document(s) signed or electronically agreed to by D2L and Client that references these terms and conditions for D2L Services ("Order"), form the agreement ("Agreement") between the D2L entity signing the Order ("D2L") and the Client identified in the Order ("Client").

1. Services. D2L will provide the Services set out in the Order: "Services" means the applications made available to Client and/or any other material, duty, function or task D2L provides, facilitates, makes available or performs under this Agreement. D2L shall maintain, and shall see that its vendors maintain commercially reasonable administrative, physical and technical safeguards for the protection, confidentiality and integrity of Client Data (as defined in section 7 below), which may include relevant certifications such as ISO 27001 and SSAE 16 SOC 1 and SOC 2. Client acknowledges that Client's use of Services will involve transmission over the Internet and other networks, only part of which may be owned or controlled by D2L. D2L is not responsible for any Client Data which is delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across networks not owned or controlled by D2L.

2. Grant of Use. Upon the start date listed in the relevant Order, D2L shall permit Client to use the Services in a non-exclusive, non-transferable, time-limited (revoked upon termination) manner as set forth in the Order by the specified number of users in the Order(s). Client may increase its number of such users upon paying the appropriate fee. Should Client not pay, D2L may terminate this Agreement. Client may use or access Services for its use only. No third party, other educational institution or business group or entity other than that identified in the attached relevant Order may make use of, or obtain access to, Services without a separate agreement. D2L allocates up to 500MB of storage space per user and may charge additional fees of no more than \$8.00USD per GB in excess of the allocated amount. D2L may review the Client's site no more than twice a year for the purpose of ensuring compliance by Client with the terms of this Agreement. If such review reveals that Client's use of Services exceeds its permitted use, Client shall pay D2L's then-current fees and reasonable administrative fees.

3. Warranty. D2L warrants that the Services will (i) achieve in all material respects, the functionality described in the applicable documentation, and (ii) be performed in accordance with industry standards and with the same level of care and skill as D2L provides to similarly-situated customers. Except as set forth in this Agreement, the Services are provided "as-is", and D2L makes no warranties, representations, or guarantees, express or implied, oral or written, with respect to the Services. D2L does not warrant that Services are error-free. D2L makes no warranties of merchantability, fitness for a particular purpose (including Client's compliance with its statutory or regulatory obligations), or arising from a course of performance, dealing, or usage of trade. There is no such thing as perfect security, and D2L cannot guarantee or warrant the security of any data that D2L receives and stores. Client assumes all responsibility for determining if the Services are sufficient for Client's purposes.

4. Confidentiality No party shall furnish **Confidential Information** (defined as technical, business, marketing, proprietary, trade secret, personal or other information in any form (e.g., oral, written, electronic)) to any unauthorized person or entity. No party shall be bound by confidentiality obligations if the Confidential Information (i) is required to be disclosed pursuant to court or regulatory order, provided that, where feasible, the owner of the Confidential Information is given a reasonable opportunity to limit the extent of disclosure; (ii) was already rightfully in its possession before the commencement of negotiations that led to this Agreement; (iii) is learned from a third party under no apparent duty of confidentiality and is not otherwise protected under law; or (iv) becomes part of the public domain other than as a result of a breach of this section and is not otherwise protected under law. If there is a valid Confidentiality Agreement ("NDA") in force between the parties, this section shall act as a supplement to any deficiencies in the NDA, and not as a replacement to the NDA.

5. Personal Information. D2L shall not collect, use or disclose **Personal Information** (defined as any data, either alone or in combination with other information, by which a natural person can be identified or located, or that can be used to identify or locate a natural person) except to carry out its obligations under this Agreement. D2L shall limit access to Personal Information to those persons who require access in order to provide the Services hereunder. D2L shall handle Personal Information it receives from Client in accordance with applicable laws. D2L shall notify Client as soon as commercially practical of any inquiries regarding the collection, use or disclosure of Personal Information by D2L.

6. Intellectual Property. D2L retains sole and exclusive ownership of and all intellectual property rights ("IP") in the Services, which include: tools, methodologies, questionnaires, responses, and proprietary research, data, requirements, specifications, and code generated in the course of performing the Services. The IP is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. D2L reserves its rights and interests in connection with the IP, except as expressly granted to Client pursuant to this Agreement. D2L does not transfer any title to or interest in its IP. D2L may render services to others and develop work products that are competitive with, or functionally comparable to, the Services. Client shall not make the Services available to anyone outside of Client without the prior written consent of D2L, except Client may share the Services with (i) its outside auditors and/or accountants, (ii) third parties who have signed appropriate confidentiality agreements with Client who are engaged by Client to review or implement suggestions or to further research the issues contained in the Services (provided such third parties are not competitors of D2L), and (iii) governmental

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or regulatory bodies as required by law. D2L shall not be restricted in its use of ideas, concepts, know-how, data and techniques acquired or learned in the course of performing the Services, provided that D2L shall not use or disclose any of Client's Confidential Information.

7. Client Data and Branding. Client owns and retains all right, title and interest to, or has appropriate possessory rights in any information, data, results, or other materials uploaded to or through the Service ("Client Data"). D2L makes no claim of title or ownership to or in Client Data. Client permits D2L to use Client Data to the extent required to provide and perform the Services under this Agreement. D2L will comply with Client's branding guidelines where Client engages D2L to create a Client-branded offering of Services, and Client grants D2L non-exclusive, worldwide permission to use its logo and branding for the sole purpose of creating, distributing and maintaining for Client a Client-branded version of Services. D2L will not use Client's logo and branding for any other purpose without the express written consent of Client. If Client provides D2L with materials owned or controlled by Client or with use of, or access to, such materials, Client grants to D2L all rights and licenses that are necessary for D2L to fulfill its obligations hereunder.

8. Restrictions. Except as permitted by this Agreement, Client shall not: (i) attempt to decompile, disassemble, modify the source code of, or reverse engineer the IP; (ii) use, reproduce, transmit, modify, adapt or translate the IP; (iii) rent, lease, license, transfer, assign, sell or otherwise provide access to the IP on a temporary or permanent basis; (iv) use or cause or allow a third party to use the Services in any way to develop competing products or services; (v) alter, remove or cover proprietary notices in or on the IP. Any default in Client's obligations under this section may cause irreparable harm to D2L. If Client takes or threatens any action that may infringe on D2L's IP rights, D2L may seek injunctive or other equitable relief in addition to any damages to which D2L may be entitled.

9. Support. Support services are set out at <https://www.d2l.com/legal/d2l-support-schedule/> and are coterminous with this Agreement.

10. Service Levels. D2L will use reasonable commercial efforts to make the Brightspace Learning Environment available at least 99.9% of the time. Unavailability of the Services ("Downtime") may result in service credits under this section. Scheduled outages, maintenance windows, and other outages resulting from events beyond D2L's control are not included when calculating Downtime. Client shall report incidents to D2L Support that it considers Downtime immediately, but in no event later than 24 hours from when Client became aware of, or reasonably should have become aware of, the occurrence; failure to do so shall disentitle Client to any credit for that incident under this Agreement. In reporting, Client shall provide D2L sufficient information to investigate and classify the incident, including: date, duration, and description of occurrence. D2L shall investigate and reasonably classify any reported outage/occurrence as Downtime. In making its classification, D2L shall rely solely upon its own statistics software and monitoring equipment.

11. Downtime Credit. If after investigation and classification, D2L determines that Downtime during a calendar month was such that availability fell below the level stated in this section, Client shall be entitled to a credit on cloud hosting ("Cloud Services") fees during the relevant calendar month, calculated on the following basis:

Availability (x = Availability)	Client credit
99.9% ≤ x	N/A
99.5% ≤ x < 99.9%	1% of Client's Cloud Services fee for that calendar month
99% ≤ x < 99.5%	2.5% of Client's Cloud Services fee for that calendar month
98% ≤ x < 99%	5% of Client's Cloud Services fee for that calendar month
x < 98%	10% of Client's Cloud Services fee for that calendar month

For the purposes of calculating downtime credits for which Client may be eligible under this Agreement, the Cloud Service Fees for each Measurement Period shall be 1/12 of 20% of all annual Software, Cloud Services and Maintenance Fees for the then-current contract year. For clarity, Support Fees are not included in the Software, Cloud Services and Maintenance Fees if Support is priced separately. Any credit so determined may only be applied against subsequent Cloud Services fees invoiced for the next annual period and shall be Client's sole remedy if that Availability falls below the level stated in this section; provided, however, that if this Agreement or the relevant Order is terminated or expires such that the entire credit cannot be applied for Client's benefit, D2L shall promptly refund such amount to Client.

12. Indemnification. D2L shall defend Client from any direct costs, expenses, damages, judgments or settlements incurred because of an action or claim by third parties alleging that Client's use of the Services is an infringement of copyright, patent or registered trademark rights of a third party, but only if Client (i) promptly notifies D2L in writing of any claim; (ii) allows D2L to control the defense or settlement of the claim; and (iii) takes no action that, in D2L's reasonable judgment, impairs D2L's defense of the claim. This indemnity shall not apply to the extent that D2L is prejudiced by Client's delay or failure to notify D2L of a claim, or to the extent that the infringement claim results from (a) Client's unauthorized modification to the Services (b) Client's failure to install an update that would have avoided the claim; (c) the combination of the Services or deliverables with third party products where the third party products are not provided under this Agreement; (d) D2L's compliance with specifications furnished by Client; or (e) use of the Services or deliverables in a manner that is not in accordance with the documentation or applicable law. If a claim arises, D2L may (x) substitute equivalent non-infringing Services; (y) modify the Services so that they no longer infringe but remain functionally equivalent; or (z) if neither (x) nor (y) is reasonably commercially feasible,



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cancel the Agreement and refund any unused pro-rated amounts to Client. This section states the entire liability and obligation of D2L regarding infringement claims. If a third party claims that any part of the Client Data infringes a copyright, patent or trademark or other intellectual property right of a third party, or there are third party claims arising out of Client's use of the Services in breach of this Agreement, Client will defend D2L against that claim at Client's expense and pay all costs, expenses, damages, and attorney's fees, provided that D2L: (i) promptly notifies Client in writing of any claim; (ii) allows Client to control the defense or settlement of the claim; and (iii) takes no action that, in Client's reasonable judgment, impairs Client's defense of the claim.

13. Liability Limitations. Except for (i) a party's indemnification obligations in section 12 or (ii) Disruptions as defined herein, a party's maximum aggregate liability for damages, costs, losses or expenses provided pursuant to this Agreement, in contract, tort or otherwise is limited to six (6) months of fees paid under the relevant Order under which the claim arose. The liability limitation is commensurate with the consideration paid under this Agreement. Neither party is liable for indirect, consequential or incidental damages, including loss of revenue, profits or data, even if the other party had advised of the possibility of such damages. Each party is liable to the other for direct losses and expenses incurred by the other party as a result of any breach of the Confidentiality section, and Client is liable to D2L against all losses and expenses incurred as any result of a breach of the Intellectual Property and Restrictions sections. Client is responsible for the Client Data and the content of its and its user's transmissions, including Client Data, over D2L's network. Client agrees that it and its users will not cause a "Disruption", defined as use of the Service for illegal purposes, to infringe the rights of a third party, or to interfere with or disrupt the Services, including distribution of unsolicited communications or chain letters, defamatory, libelous or offending content, propagation of computer worms and viruses, and unauthorized use of the network to enter, or attempt to enter, another system. If a Disruption occurs, D2L may, in its reasonable discretion, immediately remove the Disruption, disable the mode of communication, suspend Client's and/or its user's access to the Services or terminate this Agreement, and Client is liable to D2L for claims arising from Client Data or any Disruption.

14. Payment Terms and Taxes. Client shall pay fees and rates as specified in an Order. Unless otherwise agreed, payment is due within 30 days from Client's receipt of invoice. The number of users purchased according to the Order shall be the billable minimum number of such users for the term of the Agreement unless otherwise mutually agreed. Overdue amounts not subject to a good faith dispute may incur interest charges at a rate of 1.5% per month or 19.56% APR. All fees and rates stated in the Order do not include taxes of any kind, which taxes shall be added to Client's invoices and paid by Client. D2L may accept payment from any entity without accepting that entity as Client and without waiving any provision against assignment. D2L may accept partial payments for amounts due without waiving its right to payment in full of all outstanding amounts. Annual Fees for any renewal period shall have an annual increase of 5% applied unless otherwise indicated on the applicable Order.

15. Orders. Optional Products and Services set out on an Order and any other D2L offerings not on an Order may be subject to additional terms and conditions. Optional Products may have associated support costs Travel and per diem expenses are not included in Consulting or Training fees and per diem and actual travel costs and will be billed to Client upon completion. The number of users purchased according an Order shall be the billable minimum number of such users for the term of such Order, and the Order is binding for the entire term unless otherwise stated.

16. Analyses. To deliver, develop, test and improve the Services required under this Agreement and provide to its clients generally, D2L may collect, store, analyze, and interpret data elements acquired by, associated with, or provided in the use of the Services ("Analysis"). All individual data elements of the Analysis are property of their respective owners. All usage data related to performance or use of the Services and algorithm, computational, or cumulative results of the Analysis are wholly-owned by D2L. In the event Client wishes to access or generate any computational or cumulative results from Client Data using certain Services with analytic capabilities, additional fees may apply for such additional Services.

17. Term and Termination. This Agreement shall continue until all Orders expire or are terminated as set out in this section ("Term"), or may be terminated as specified elsewhere in this Agreement. This Agreement may be terminated by either party if the other party materially or repeatedly (which in the aggregate is material) defaults in performing its duties or obligations under this Agreement for a period of 30 days after written notice is given to the defaulting party, unless the default is cured within the 30-day period. On termination, all rights and obligations of the parties cease except as set out in this section. Client shall return all copies of documentation and other materials to D2L within 30 days of termination. D2L will delete or destroy Client Data residing on D2L networks 30 days after the end of the Term, unless otherwise agreed in writing. Prior to the end of such period, Client may use certain export tools within the Services to allow Client to export course content materials in a standard packaged format as well as to export grades and other specific data elements in the Services. If Client requires additional support, D2L shall provide such data export services for a fee on a time and materials basis under an Order. The Confidentiality, Intellectual Property, Restrictions, Indemnification (to the extent the claim arose before the relevant Order was terminated), Liability Limitations, Payment and the General sections shall survive termination of this Agreement, regardless of the reason for the termination.

18. Renewal. Unless and until either party notifies the other of its intent to terminate or modify this Agreement at least 60 days before the end of the then-current Term, at the end of the Term, this Agreement along with any annual fees listed on any Order made under this



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Agreement and in effect at the end of the Term shall be extended for additional consecutive terms equal in duration to the period between the Order start date and Order end date as set out in the initial Order made under this Agreement, but in no event shall be less than one year unless otherwise agreed in writing between the parties (each, a "renewal term"). Pricing and the terms and conditions in this Agreement are commensurate with the term length, number of users and Services selected under an Order. D2L may increase the pricing and/or alter the terms of this Agreement in any renewal term if Client requests changes to the term length, number of users and/or Services selected for such renewal term.

19. General. All notices shall be in writing and delivered (a) by hand, (b) by registered mail, postage prepaid, return receipt requested, (c) reputable overnight delivery service, or (d) by facsimile, provided that the sender retains proof of successful transmission. All notices shall be deemed effective upon receipt. Notices shall be sent or faxed to the names, addresses and numbers set out in the Order. All notices to D2L shall include a copy to Legal Department, D2L Corporation, 151 Charles Street W., Suite 400, Kitchener Ontario N2G 1H6, Canada. If a party cannot perform any of its obligations under this Agreement because of natural disaster, actions of governmental bodies, strikes, lockouts, riots, acts of war, communication line failures, power failures, hardware failure, hacker attacks, existence or repair of software bug/virus/worm, fires or similar events or circumstances outside that party's control, the party who cannot perform shall promptly notify the other in writing, and shall do everything reasonably possible to resume performance. Upon receipt of notice, and except for accrued payment-related obligations, all obligations under this Agreement are immediately suspended for as long as the circumstances exist. This Agreement is governed by the laws of Maryland, without regard to its conflict of laws principles. No party may assign, including by operation of law, its rights or obligations hereunder, except to an affiliate of or successor by operation of law to D2L, without the prior written consent of the other party, such consent not to be unreasonably withheld. No amendment, modification, termination or waiver of any provision of this Agreement is effective unless it is in writing and signed by both parties. Any waiver or consent shall be effective only in the specific instance and purpose for which it was given. Terms or conditions that Client purports to include in a purchase order or similar instrument are void and of no force and effect. If a court declares void or unenforceable any term of this Agreement, the remaining terms and provisions of this Agreement shall remain unimpaired and the invalid term shall be replaced by a valid term that comes closest to the intention underlying the invalid term. Neither party is an agent, employee, partner, joint venturer or legal representative of the other, and D2L is an independent contractor to Client. Client agrees that D2L may use Client's name and logo in D2L's marketing communications in accordance with Client's guidelines. These Terms and Conditions shall supersede the provisions of an Order, unless the Order refers to the provision of the Terms and Conditions it supersedes. This Agreement contains the entire understanding between the parties with respect to its subject matter. All prior agreements, representations, inducements and negotiations, and any and all existing contracts previously executed between the parties with respect to this subject matter are superseded hereby.