

MASTER AGREEMENT

This Master Agreement, including its Addenda and Schedules ("Master Agreement") governs terms and conditions between Minnesota State Colleges and Universities, 30 7th Street East, Suite 350 Saint Paul, MN, 55101-7804, a Minnesota educational institution, ("Client") and D2L Ltd., 715 St. Paul Street, Baltimore MD 21202, a Maryland corporation, or its subsidiaries, divisions or affiliates ("D2L") as listed in any Addendum to this Master Agreement.

1 Definitions

- 1.01 *Active User* means any person who registers for or is enrolled in one or more courses, and/or logs into the system in each consecutive 12-month period following the Effective Date.
- 1.02 *Addendum* is an executed document attached to this Master Agreement that provides specific terms and conditions of Products supplied to Client.
- 1.03 *Applications* mean D2L Software applications resident on D2L computers that Client is permitted to access and use through an Applications & Hosting Addendum.
- 1.04 *Authorizing Document* is any document signed or electronically agreed to by D2L and Client. An Authorizing Document may be an Addendum, a Statement of Work, an engagement letter, a purchase order letter, an e-mail (subject to reasonable authentication of sender's authority) or similar document.
- 1.05 *Client* includes its employees, directors, officers, or agents, and to the extent they are specifically identified, its affiliates and subsidiaries.
- 1.06 *Client Information* includes course content, materials, personal information, and any other data that Client (or its authorized users) uploads or enters through its lawful use of Products and Services.
- 1.07 *Confidential Information* is information provided to one Party about the other Party's products or services, business, affairs, computer systems, installations or clients, to the extent that the information might reasonably be expected to be confidential. Confidential information also includes Client information and personal information protected under privacy laws.
- 1.08 *Consulting* is implementation, development, or other assistance provided pursuant to an Addendum, Statement of Work or other Authorizing Document.
- 1.09 *Deliverable* is a tangible, verifiable work output such as a specification, programming, code, or other output developed under a Statement of Work.
- 1.10 *Documentation* is a document published by D2L for all clients such as a user's manual, release notes or is otherwise designated as documentation. Documentation does not include sales and/or marketing materials.
- 1.11 *Effective Date* is the date that the Client signs this Master Agreement or Addendum, unless otherwise specified in the Addendum.
- 1.12 *End Users* are the persons who access, attempt to access or use the Software or Applications as a product during the course of this Master Agreement.
- 1.13 *Enrollment* means the total of each unique course registrations over the course of each consecutive 12-month period following the Effective Date. For clarity, if an End User is registered in 2 course offerings during a particular year, it will count as 2 Enrollments.
- 1.14 *FTE* means a count of the highest reported full-time equivalents over the course of a year. The FTE is typically based upon the FTE reported to the Integrated Post-secondary Data System (IPEDS).
- 1.15 *Hosting* is the use of Applications on D2L equipment within D2L facilities.
- 1.16 *Intellectual Property* is any present or future development work, copyright, patent, trade-mark, trade name, service mark, design, program, procedure and method of computation, trade secret, data model, invention, drawing, plan, specification, process or similar property.
- 1.17 *License Fee* is the fee paid to license the Software pursuant to a License Addendum.
- 1.18 *Network* is, collectively, D2L's hardware, Software, communications, cabling and other related resources through which Client accesses services. *Party* is D2L and Client.
- 1.19 *Products and Services* include Applications, Software, Hosting, Consulting and any other duty, function or task D2L performs under this Master Agreement.
- 1.20 *Rates* are D2L's then-current charges for professional services it provides, except for out-of-pocket and per diem expenses.
- 1.21 *Schedule* is a document attached to this Master Agreement that is not an Addendum, or a document attached to an Addendum.
- 1.22 *Software* is a D2L software application or any part thereof in object code form licensed to or accessed by Client. Software also includes Upgrades provided under the Support Schedule, but does not include software applications developed under a Consulting Addendum or related Statement of Work.
- 1.23 *Statement of Work (or Work Order)* is a document created pursuant to a Consulting Addendum that specifies the roles and responsibilities of the Parties with respect to a particular engagement.
- 1.24 *Support* is support services provided pursuant to a Support Schedule, as more fully described in the Support Schedule.
- 1.25 *Upgrades* are modifications, templates and newer versions of Software and Applications provided by D2L that are made available generally to D2L clients. Upgrades do not include new independently-priced modules or utilities.
- 1.26 *Vendor* is a 3rd party provider of products or services to D2L.

2 Warranties. For Products and Services provided under this Agreement by D2L warrants that:

- 2.01 Its employees are appropriately trained and competent to and will perform Consulting; and

2.02 Applications and Software will substantially perform according to applicable Documentation provided that Client (or D2L at Client's request) has not modified Software.

2.03 Except as set forth in this Master Agreement, D2L makes no warranties, conditions, or guarantees, express or implied, oral or written, with respect to the Products and Services or Network. D2L does not warrant that Products and Services or Network are error-free. D2L makes no warranties of merchantability, fitness for a particular purpose, or arising from a course of performance, dealing, or usage of trade.

3 Confidentiality

3.01 No Party shall furnish Confidential Information to any unauthorized person or entity.

3.02 Neither Party shall be bound by confidentiality obligations if the Confidential Information (a) 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; (b) was already rightfully in its possession before negotiations commenced that led to this Master Agreement; (c) is learned from a 3rd party under no apparent duty of confidentiality and is not otherwise protected under law; or (d) becomes part of the public domain other than as a result of a breach of this section and is not otherwise protected under law.

3.03 Nothing in this section is intended to prohibit D2L from issuing a mutually-acceptable press release, or naming Client in client listings or having Client's name disclosed as part of the natural use of the Products and Services.

4 Proprietary Rights & Restrictions

4.01 D2L has all appropriate rights and interest in its Applications, Software, Documentation, materials, Deliverables, and other Intellectual Property (collectively, the "IP"), and D2L reserves these rights and privileges in connection with the IP, except as expressly granted to Client pursuant to this Master Agreement or applicable Creative Commons License. Except as may be expressly granted in a Statement of Work, D2L does not transfer any title or interest in its IP. The IP contains valuable intellectual property of D2L and its licensors. The IP is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties.

4.02 Except as permitted by this Master Agreement, or applicable Creative Commons License Client shall not:

4.02.1 attempt to decompile, disassemble, modify the source code of, or reverse engineer the IP;

4.02.2 use, reproduce, transmit, modify, adapt or translate the IP;

4.02.3 rent, lease, license, transfer, assign, sell or otherwise provide access to the IP on a temporary or permanent basis;

4.02.4 alter, remove or cover proprietary notices in or on the IP.

4.03 Client owns and retains all right, title and interest to, or has appropriate possessory rights in Client Information. D2L makes no claim of license, title or ownership to Client Information.

4.04 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.

5 Indemnification

5.01 *Claims.* D2L may indemnify, defend and hold harmless Client from any direct costs, expenses, damages, judgments or settlements incurred because of an action or claim by 3rd parties alleging that Client's use of Applications, Software, Deliverables or Documentation is an infringement of patent or trademark rights of a 3rd party in Canada or the United States, but only if Client (a) promptly notifies D2L in writing of any claim; (b) allows D2L to control the defense or settlement of the claim; and (c) takes no action that, in D2L's reasonable judgment, impairs D2L's defense of the claim.

5.02 *Exclusions and Limitations.* This indemnity shall not apply to the extent that the infringement claim results from (a) Client's unauthorized modification to Applications, Deliverables or Software; (b) Client's failure to install an Upgrade that would have avoided the claim; (c) the combination of the Software or Deliverables with 3rd party products where the 3rd party products are or reasonably should be governed by an agreement between Client and the 3rd party; or (d) D2L's compliance with specifications furnished by Client.

5.03 *D2L Options.* If a claim arises, D2L shall (a) substitute equivalent non-infringing Applications or Software; (b) modify the Applications or Software so that they no longer infringe but remain functionally equivalent; or (c) if neither (a) nor (b) is reasonably feasible, cancel the Addendum, and refund the unused pro-rated amounts.

5.04 *Entire Liability.* This section states the entire liability and obligation of D2L regarding infringement claims.

6 Liability Limitations

6.01 D2L's liability to Client for damages, costs, losses or expenses provided pursuant to this Master Agreement, in contract, tort or otherwise, (except for the Indemnification section) is limited to six months of fees paid under the relevant Addendum or Statement of Work under which the claim arose. The liability limitation is commensurate with the consideration paid under this Master Agreement.

6.02 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 may be 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 may be liable to D2L against all direct losses and expenses incurred as any result of a breach of the Proprietary Rights & Restrictions Section.

6.03 Client is responsible for the content of its and its End User's transmissions, including Client Information, over D2L's Network. Client agrees that it and its End Users will not use the Network for illegal purposes, to infringe the rights of a 3rd party, or to interfere with or disrupt the Network ("Disruption"). Disruptions include distribution of unsolicited advertising 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 Network machine or organizational instance. If a Disruption occurs, D2L may, in its reasonable discretion, immediately remove the Disruption, terminate the mode of communication, suspend Client's and its End User's access to Network or terminate this Master Agreement, and Client may be liable to D2L for claims arising from any Disruption.

6.04 No act or omission by D2L under this Master Agreement shall be interpreted or construed as being for the benefit of, or creating any D2L obligation toward, any 3rd party or legal entity other than Client.

7 Payment Terms & Taxes

7.01 D2L emails invoices to the address listed as Invoice Recipient. Payment is due on receipt of an invoice. Late payments are subject to an interest charge of 1.5% per month or 19.56% APR.

7.02 If D2L incurs costs in collecting overdue invoices, Client is responsible for reimbursing D2L for collection costs, including reasonable legal fees.

7.03 Client shall pay taxes promptly to D2L if D2L is required by law to collect them, except for taxes payable upon the income or capital of D2L. If Client is tax exempt, Client shall furnish to D2L its certificate upon request.

7.04 Client shall not deduct or set-off any amount from payments due to D2L without D2L's consent, which will not be unreasonably withheld.

7.05 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.

8 Excusable Delay. If a Party cannot perform any of its obligations under this Master Agreement because of natural disaster, actions of governmental bodies, strikes, lockouts, riots, acts of war, communication line failures, power failures, 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 Master Agreement are immediately suspended. If the period of non-performance exceeds 60 days from the receipt of notice, the Party receiving the notice may terminate this Master Agreement with written notice within 30 days.

9 Term & Termination

9.01 **Master Agreement.** This Master Agreement shall continue until all Addenda are terminated, or may be terminated as specified elsewhere in this Master Agreement or as follows:

9.01.1 by either Party if the other breaches the provisions of Confidentiality, Import/Export Restrictions and Proprietary Rights & Restrictions sections;

9.01.2 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 Master Agreement for a period of 60 days after written notice is given to the defaulting Party, unless the default is cured within the 60 day period; and

9.01.3 by either Party in the event the other Party ceases conducting business in the normal course, become insolvent, makes a general assignment for the benefit of creditors, seeks creditor protection, suffers or permits the appointment of a receiver for its business or assets, or becomes bankrupt.

9.01.4 by D2L if Client fails to pay an invoice, which is not the subject of a good faith dispute, provided that the invoice remains unpaid 30 days after D2L's subsequent notice to Client that payment is required.

10 Rights on Termination; Survival

10.01 On termination, all rights and obligations of the Parties cease except payment obligations.

10.02 Client shall return all copies of Software, Documentation and materials within 30 days of termination.

10.03 **Survivability.** The Confidentiality, Proprietary Rights & Restrictions, Indemnification (to the extent the claim arose before the relevant Addendum was terminated), Liability Limitations, and the General sections shall survive termination of this Master Agreement, regardless of the reason for the termination.

11 Assignment

11.01 Neither this Master Agreement nor any rights hereunder may be assigned or transferred by Client, whether directly or by operation of law, without the prior written consent of D2L. D2L's consent may be conditioned upon the payment of additional fees to D2L in amounts determined by D2L.

11.02 **Deemed Assignment.** A change of control of Client, sale of substantially all of the assets of Client, merger or consolidation involving Client or any affiliate of Client effecting a change of control of Client, is deemed an assignment or transfer of this Master Agreement and the rights under it by operation of law requiring the prior written consent of D2L.

11.03 **Assignment Void.** Any assignment or transfer of this Master Agreement or the Product without the prior written consent of D2L shall constitute a material breach of this Master Agreement. Subject to the foregoing, this Master Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and assigns. Any attempted transfer or assignment prohibited by this Master Agreement is null and void.

12 General

12.01 **Governing Law.** This Master Agreement is governed by the laws of the state of Maryland, without regard to its conflict of laws principles. Legal action arising pursuant to this Master Agreement shall be filed in the courts of the state of Maryland. The United Nations Commission on International Trade Law Conventions on Contracts for the International Sales of Goods and Related Transactions is specifically excluded from this Master Agreement. This section maybe modified under the F&R Schedule upon a showing by Client of applicable law requiring a different jurisdiction.

12.02 **Conflict between Master Agreement and Addendum or other Authorizing Document.** An Addendum shall supersede the provisions of this Master Agreement where the documents are in conflict. The Master Agreement shall supersede the provisions of an Authorizing Document, unless the Authorizing Document refers to the provision of the Master Agreement it supersedes. No Addendum or Authorizing Document modifies any other Addendum or Authorizing Document unless the Parties agree in writing.

12.03 **Remedies Cumulative.** All rights and remedies under this Master Agreement are cumulative and in addition to all other rights and remedies of either Party at law or in equity.

12.04 **Notices.** 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 received, if delivered by hand, on the date of delivery; if mailed, on the date of receipt appearing on the return receipt card; if sent by courier, on the date recorded by the courier company as having been received by the addressee; or, if sent by facsimile, on the date of receipt by the facsimile machine when it reports that the transmission is complete. Notices shall be sent or faxed to the names, addresses and numbers set forth below the signature lines to this Master Agreement.

12.05 **Import/Export Controls.** Client shall comply with all applicable export, re-export and foreign policy laws that may be imposed by the United States government.

12.06 *Entire Agreement.* This Master 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.

12.07 *Amendment/Waivers.* No amendment, modification, termination or waiver of any provision of this Master 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.

12.08 *Severability.* If a court declares void or unenforceable any term of this Master Agreement, the remaining terms and provisions of this Master 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.

12.09 *Independent Parties.* Neither Party is an agent, employee, partner, joint venturer or legal representative of the other.

Agreed and Accepted

D2L LTD.

MINNESOTA STATE COLLEGES AND UNIVERSITIES

By: BTW
Name: BILL TRICK
Title: Sec'y - TREAS.
Date: 20 - Oct. - 2011

By: LMK
Name: LAURA M KING
Title: Vice Chancellor
Date: 11/1/11



Notice Information:

D2L LTD.

MINNESOTA STATE COLLEGES AND UNIVERSITIES

To: John Baker
cc: Legal Department
Title: President
Fax: 519 772 0324
Phone: 519 772 0325
Address: 715 St. Paul Street
Baltimore, MD 21202
Email: John.Baker@Desire2Learn.com
Legal@Desire2Learn.com

To: NATHAN SORENSEN
Title: ITS CONTRACTS
Fax: N/A
Phone: 651-201-1524
Address: 30 SEVENTH STREET EAST
SUITE 350
SAINT PAUL, MN 55101-7804
Email: NATHAN.SORENSEN@csu.mnscu.edu

Invoicing Information

MINNESOTA STATE COLLEGES AND UNIVERSITIES
INVOICE RECIPIENT

MINNESOTA STATE COLLEGES AND UNIVERSITIES
PAYABLE ENQUIRY

Name: ITS OFFICE MANAGER

Name: _____

Title: N/A

Title: _____

Fax: N/A

Fax: _____

Phone: 651-201-1800

Phone: _____

Address: 30 SEVENTH STREET EAST

Address: _____

SUITE 350

SAINT PAUL, MN 55101

Email: _____

Email: _____

Note: all invoices are provided via e-mail, unless otherwise requested in writing.

MINNEDU REQUESTS INVOICES BE PROVIDED IN WRITING.

LICENSE ADDENDUM

This License Addendum, together with the Master Agreement, governs terms and conditions between Minnesota State Colleges and Universities and D2L Ltd. relating to licensed software.

L1 Grant of License. Upon the Effective Date, D2L grants to Client a non-exclusive, non-transferable, time-limited (revoked upon termination), object-code License for use of the Software set forth in the attached Fees and Rates Schedule for use on the specified number of FTE. Should Client not pay according to Section L7, this Addendum is terminated and the License is automatically revoked.

L2 Term. This Addendum shall be effective for six (6) years from the Effective Date listed in the Fees and Rates Schedule ("Initial Term") with four (4) one year renewal options to be mutually agreed to by the parties.

L3 Delivery. Within 60 days of the Effective Date or as otherwise agreed, D2L shall make available to Client Software ("Delivery"). Client shall be responsible for acquiring and installing computer hardware and necessary 3rd party software Licenses prior to the installation.

L4 Installation. The initial installation will have a cost as described in the Fees and Rates Schedule, except for out-of-pocket and per diem expenses.

L5 Warranty

L5.01 Within 90 days following Delivery ("Warranty Period") Client shall establish to its reasonable satisfaction that the Software operates as warranted.

L5.02 Client shall notify D2L of material defects as soon as practicable during the Warranty Period ("Defect Notice"). Upon receipt, D2L will use reasonable efforts to correct the reported defects and provide Client with an updated version of Software or workaround within 45 days.

L5.03 Client's Warranty Period shall extend another 30 days from receipt of the updated Software ("Extended Warranty").

L5.04 During the Warranty Period or Extended Warranty Period, if D2L is unable to cure material defects, and the defects materially impair Client's use of the Software, Client may return the Software for a prorated refund of the License Fee paid, provided it certifies that it has not retained any copies of the Software, materials, or Documentation.

L5.05 If Client does not notify D2L of a Defect Notice, or the Defect Notice does not disclose any defects, or Client fails to return Software pursuant to this Section, the Warranty Period shall not be extended.

L6 Support. Support services are set forth in the Support Schedule attached to this Addendum and are coterminous with this Addendum.

L7 Payments

L7.01 Client shall pay the installation fee as set forth in the Fees and Rates Schedule.

L7.02 Client shall begin paying the License Fee upon execution of this Addendum, or, for additional work, as specified in an Authorizing Document.

L7.03 Rates for professional services may be modified on 90 days notice.

L7.04 After the initial 24-month period, fees may be adjusted by any increase reflected in the Consumer Price Index-Urban Consumers, as published by the U.S Department of Labor, or 5%, whichever is greater.

L8 Use of Software

L8.01 Client may use or access Software for its use only. No 3rd party, other educational institution or business group or entity other than that identified in the attached Exhibit(s) may make use of, or obtain access to, Software without a separate License for Software.

L8.02 Audit. Client shall maintain records of the number and location of all copies of Software, and shall advise D2L, upon request, of the location of each copy. D2L may visit the Client's site no more than twice a year to ensure compliance by Client with the terms of this Master Agreement. D2L may retain a professional independent 3rd party to audit Client's compliance with this Master Agreement at Client's premises during normal business hours at D2L's expense, upon satisfactory arrangements with Client, including execution by the auditor of a confidentiality agreement. If the visit or audit reveals that Client's use of Software exceeds its permitted use, Client shall promptly pay D2L's then-current fees and reasonable administrative fees.

L8.03 Client shall not use more than one version of Software in production.

L8.04 Should Client purchase a license for a test environment, the test environment may not be used in production. The test environment is only to be used for evaluating and testing the Software, including upgrades and integrations.

L9 Copies of Software. In addition to the production copy of Software, Client may make 2 extra copies of the Software solely for disaster recovery or backup purposes. Unless Client cannot use the production copy, Client shall not use the disaster recovery or backup copies of Software in production.

L10 Additional FTEs. Client may increase its number of FTEs upon paying the appropriate fee.

Agreed and Accepted

D2L LTD.

MINNESOTA STATE COLLEGES AND UNIVERSITIES

By:

Name:

Title:

Date:

Bill Trick
Bill Trick
Secy - TREAS.
20-Oct-2011

By:

Name:

Title:

Date:

Lauren M. King
Lauren M. King
Vice Chancellor
11/1/11

SUPPORT SCHEDULE (PREMIUM – 24/7)

Support shall be as specified below. These terms are subject to change in the reasonable discretion of D2L after informing Client. Support fees are set forth in the Fees and Rates Schedule.

S1 Definitions

S1.01 *Client Support* means Software or Applications remote support.

S1.02 *Emergency* means an Issue that is time critical, materially impairs the use of Software and is essential to the operation of Client's business.

S1.03 *General Support* means access to the client web site, general notifications, advisories, and similar services.

S1.04 *Incident* means a query regarding, or user-identified concern about, Software or Applications.

S1.05 *Supported Version* means the current and most recent prior release.

S2 Authorized Support Contact Name(s) (ASC. Client shall provide name(s) of the authorized contact(s) to D2L. Only Client's authorized support contact(s) may contact D2L for Support under this Schedule. Contact may be made by phone or email methods.

S2.01 D2L provides Premium Client Support on a 24/7 basis.

S2.02 Client Support is available to record Issues, explain the functions and features of Software and clarify the contents of Documentation.

S2.03 Client may access D2L's client web site (www.Desire2Learn.com) for information about how to obtain Documentation and, for Software, available Upgrades.

S3 Unsupported Versions. D2L will support versions other than Supported Versions or versions modified by Client at its sole discretion and on an as-available basis only. Client Support for Unsupported Versions will be charged at 200% of the applicable Rate.

S4 Remote Access. To allow D2L to assess Issues in the Software, Client shall use reasonable efforts to permit D2L remote access to Client's systems.

S5 Additional Authorized Support Contact(s). Additional Authorized Support Contact(s), beyond the one(s) currently included in the Fees and Rates Schedule, shall have a cost as described in the Fees and Rates Schedule.

S6 Other services. Client may not use Client Support for services other than Client Support. Services not identified in this Schedule, including training, implementation, modifications, configuration and communications, will be charged at the Rates, except for out-of-pocket and *per diem* expenses.

S7 Termination. Support is terminated when the relevant Addendum expires or is terminated.

S8 Reinstatement. If Client is in default for payment under the Master Agreement, D2L may, at its option, (a) charge a reinstatement fee to reinstate Support and charge for future Support according to D2L's then-current support policies; or (b) decline to provide Client Support.

Severity Level Definitions & Target Response Times For Premium Support

Severity Levels	Scope
Severity 1 – Emergency:	Initial Response: 15 Minutes Target Resolution: 8 Hours
D2L application is down or unable to restart the system; critical software problem with a very high impact on day-to-day use	System is not accessible to any users Critical tools needed for normal operation are not usable Critical data is not accessible Data is being lost due to a problem with the D2L application. The security of the system is being compromised
Severity 2 – High	Initial Response: 1 Hour Target Resolution: 24 Hours
Servers are up and running yet users are unable to access entire sections on the installation, no alternatives for problem resolution	Problem is not necessarily serious in nature, but has a significant impact on some users Presence of the problem prevents a particular tool or function from working and there are no alternatives to achieve the desired end result Backup failure of mission critical application
Severity 3 – Moderate	Initial Response: 2 Hours Target Resolution: 48 Hours
All major sections are working and, obviously, the installation is up and running, but there seems to be several small issues within some sections that make the software difficult to use, minimal impact on the production server as a whole	Problem is not serious by nature No data loss Overall system has not failed Unexpected results within routine tool or function Issues specific to a user/course/resource not significantly affecting use of the system
Severity 4 – Low (default)	Initial Response: 4 Hours Target Resolution: 72 Hours
End user needs instructions, minor issues with little to no impact on the production system as a whole. Informational requests about the system, feature requests and general inquiries are considered low in severity. All tickets default to “Low Severity” initially.	No effect on production system Minor questions on usability, informational requests about the platform or feature requests Isolated unexpected behaviour that cannot be reproduced and has little to no impact on the system or the users at large

Consulting Addendum

This Consulting Addendum, together with the Master Agreement, and the standard MnSCU Professional/Technical Contract form, governs terms and conditions between Minnesota State Colleges and Universities and D2L Ltd. relating to Deliverables produced under a Statement of Work.

C1 Intellectual Property

C1.01 Except as specifically set forth in a Statement of Work, D2L shall retain sole and exclusive ownership of and all intellectual property rights in the Deliverables, which include: tools, methodologies, questionnaires, responses, and proprietary research, data, requirements, specifications, and code generated in the course of performing the consulting services. D2L grants to Client a time-limited, non-exclusive, royalty-free license to use and to disclose the Deliverables, subject to the limitations set forth below.

C1.02 D2L may render services to others and develop work products that are competitive with, or functionally comparable to, the Deliverables. 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 consulting services or producing Deliverables, provided that D2L shall not use or disclose any of Client's Confidential Information.

C1.03 Unless otherwise stated, Client shall retain its rights in any proprietary material that Client supplies to D2L. 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 under each Statement of Work for consulting services.

C2 Use of Deliverables. Subject to payment in full of the applicable fees, D2L grants to Client for internal purposes only a worldwide, royalty-free, time-limited license to use, reproduce, and display of the Deliverables. Client shall not make the Deliverables available to anyone outside of Client, without the prior written consent of D2L, except Client may share the Deliverables 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 Deliverables, and (iii) governmental or regulatory bodies as required by law.

C3 No Third-Party Beneficiaries. This Addendum is for the benefit of the Parties only. None of its provisions are for the benefit of, or enforceable by, any third party. No third party shall have the right to (i) rely on the consulting services provided by D2L or (ii) seek to impose liability on D2L as a result of the consulting services or any Deliverables furnished to Client.

C4 Required Skills. Professional services billing rates are dependent upon the scope of the engagement/implementation and the consulting skill levels required. Project Managers are assigned to oversee all professional services implementations at a rate dependent upon complexity of the project and skill level required.

C5 Content of Statement of Work. Each Statement of Work authorized under this Consulting Addendum shall include, at a minimum, the following information:

- C5.01 Project Name and Number
- C5.02 Project ID
- C5.03 Client Project Manager
- C5.04 Client Technical Lead
- C5.05 D2L Project Manager
- C5.06 D2L Technical Lead
- C5.07 Project Description
- C5.08 D2L Deliverables
- C5.09 Client Obligations
- C5.10 Software Requirements Specifications
- C5.11 Intellectual property transfers (if any transfers are applicable)
- C5.12 Project Start Date
- C5.13 Project End Date
- C5.14 Project Location
- C5.15 Project Price & expenses (if applicable)
- C5.16 Special Conditions
- C5.17 A reference to this Consulting Addendum.

Agreed and Accepted

D2L LTD.

MINNESOTA STATE COLLEGES AND UNIVERSITIES

By: [Signature]
Name: Bill Erick
Title: Sec'y - TREAS.
Date: 20 - Oct - 2011

By: [Signature]
Name: LAURA M. King
Title: Vice Chancellor
Date: 11/1/11



Mobile Applications Addendum

MBA 1 Definitions:

MBA 1.1 Authorized End Users are those individuals who have been granted permission by the Client to use the Mobile Applications, and who have accepted and are not in breach of the applicable End User License Agreement for Mobile Applications.

MBA 1.2 Branding means the trade-marks, service-marks, colour schemes, names and fonts used by any Party for purposes of communication, identification, and marketing.

MBA 1.3 End User License Agreement for Mobile Applications means the terms and conditions presented by the Mobile Applications Distribution Agent on behalf of D2L, that the Authorized End Users, or their respective guardians must accept prior being granted a license to use the Mobile Applications. The current End User License Agreements for Mobile Applications are available at www.desire2learn.com/mobile/eula.

MBA 1.4 Mobile Applications are those Software elements provided by D2L, for Client and its Authorized End Users, through the Mobile Applications Distribution Agent.

MBA 1.5 Mobile Applications Distribution Agent is the company who is providing the service for which the Mobile Applications may be downloaded by the Authorized End User. This may include the iTunes® App StoreSM, Android™ Market and or Blackberry App World™.

MBA 2 Mobile Application Development. Where applicable, D2L and Client will execute a Statement of Work or other applicable document that outlines the Branding elements, which Mobile Applications Distribution Agents will be used, and other applicable requirements pertaining to the Mobile Application. D2L will perform and deliver the Mobile Applications in a manner agreed in the Statement of Work. There is no transfer of Intellectual Property rights with respect to Mobile Application Development unless agreed in writing.

MBA 3 Use of Branding and Trademarks. Client grants D2L non-exclusive, worldwide, permission to use their Branding in accordance with Clients reasonable branding use guideline or similar documentation, for the sole purpose of creating, distributing and maintaining a Client branded version of Mobile Applications, in accordance with the Statement of Work or other applicable document. D2L will not use Client's Branding for any other purpose without the express written consent of Client.

MBA 4 Grant of license. D2L only grants Client, and it's Authorized End Users, a non-exclusive, time limited right to use Mobile Applications, subject to the End User License Agreement for Mobile Applications. The use of the Mobile Applications may include the presentation of Client Information, and Branding. Client Information as defined in the Master Agreement includes any content that Client makes available to the Authorized End User of Mobile Applications under this Addendum. Each Party retains their respective Intellectual Property rights.

MBA 5 Disclaimer of Warranty. To the maximum extent permitted by law, D2L disclaims all warranties, both express and implied with respect to the Mobile Applications, including merchantability, fitness for a particular purpose, or arising from a course of performance, dealing, or usage of trade. With respect to Mobile Applications, these provisions shall supersede any other warranty provisions previously agreed by the Parties. If this absolute waiver of warranty is deemed non-enforceable by a court of competent jurisdiction, then the maximum liability D2L shall have with respect to Mobile Applications is the annual fee paid, or payable by the Client in the year in which the claim arose.

MBA 6 Disclaimer of Liability. To the maximum extent permitted by law, D2L disclaims all liabilities to Client, through any act or omission as it relates to the unlawful or unauthorized use of the Mobile Applications. Client is solely responsible for all Client Information made available to or by the Mobile Applications, and D2L.

MBA 7 Indemnification. Client may be liable to D2L and/or the Mobile Applications Distribution Agent, to the maximum extent permitted by law for any and all claims, losses and damages D2L and/or the Mobile Application Distribution Agent suffers as a result of the unlawful, unlicensed or misuse of the Branding, Client Information, and/or the Mobile Application by Authorized End Users.

MBA 8 Suspension and Termination Rights. D2L and Client reserve the right to suspend or terminate, where feasible, any Authorized End User(s) for any breach of this Addendum or the End User License Agreement for Mobile Applications, including any breach claimed by any person or entity that the Client Information or Branding infringes their intellectual property rights (e.g. a DMCA claim). D2L reserves the right to suspend or terminate, where feasible, all access to Mobile Applications if required to do so by law, or judicial order.

MBA 9 Client Information Obligations. Client shall ensure that a process is established, maintained, and communicated to Authorized End Users with respect to any claim the Authorized End User may have with respect to the quality, accuracy, or appropriateness of Client Information provided over the Mobile Applications. D2L has no, and shall not incur any responsibility with respect to policing, or monitoring Client Information.

MBA 10 EULA. Client will not permit, allow, or enable any user to circumvent the acceptance of the End User License Agreement for Mobile Applications.

MBA 11 GENERAL. This Addendum shall supersede conflicting terms that may be found in the Master Agreement.

Agreed and Accepted

D2L LTD.

MINNESOTA STATE COLLEGES AND UNIVERSITIES

By: _____
Name: Bill Trick
Title: Sec'y - TREAS
Date: 20-Oct-2011

By: _____
Name: Laura McKinney
Title: Vice Chancellor
Date: 11/1/11



Capture Hardware, Software and Applications Addendum

This D2L® Capture Hardware, Software and Applications Addendum, together with the Master Agreement, governs terms and conditions between Minnesota State Colleges and Universities and D2L Ltd. ("D2L") relating to licensed software.

MBA 12 Definitions:

MBA 12.1 Acceptable Use Policy for Capture means the rules governing the use of Capture by Client and its Authorized End Users, as may be published at www.desire2learn.com/legal/capture.

MBA 12.2 Authorized End Users are those individuals who have been granted permission by the Client to use Capture.

MBA 12.3 Branding means the trade-marks, service-marks, colour schemes, names and fonts used by any Party for purposes of communication, identification, and marketing.

MBA 12.4 Capture means anything related to Capture Hardware, Capture Software or Capture Applications.

MBA 12.5 Capture Applications means those Applications provided by D2L to Client under this Addendum.

MBA 12.6 Capture Hardware means the physical computing hardware including applicable peripherals provided by D2L to Client under this Addendum.

MBA 12.7 Capture Software means those object code elements provided by D2L to Client under this Addendum that are resident on Capture Hardware, or Client hardware.

MBA 13 Capture Deployment. Where applicable, D2L and Client will execute a Statement of Work or other applicable document that outlines the Branding elements, and other applicable requirements pertaining Capture. There is no transfer of Intellectual Property rights with respect to Capture unless agreed in writing.

MBA 14 Use of Branding and Trademarks. Client grants D2L non-exclusive, worldwide permission to use its Branding in accordance with Client's reasonable branding use guideline or similar documentation, for the sole purpose of creating, distributing and maintaining a Client branded version of Capture, in accordance with the Statement of Work or other applicable document. D2L will not use Client's Branding for any other purpose without the express written consent of Client.

MBA 15 Grant of Licence. D2L only grants Client and its Authorized End Users a non-exclusive, time limited right to use Capture, subject to the then current Acceptable Use Policy for Capture. The use of Capture may include the presentation of Client Information and Branding. Client Information as defined in the Master Agreement includes any content that Client makes available to the Authorized End User of Capture under this Addendum. Each Party retains their respective Intellectual Property rights.

MBA 16 Disclaimer of Warranty. Except as provided for in the Capture Support Schedule and unless otherwise agreed, D2L disclaims all warranties, both express and implied with respect to Capture, including merchantability, fitness for a particular purpose, or arising from a course of performance, dealing, or usage of trade to the maximum extent permitted by law. With respect to Capture, these provisions shall supersede any other warranty provisions previously agreed by the Parties. If this absolute waiver of warranty is deemed non-enforceable by a court of competent jurisdiction, then the maximum liability D2L shall have with respect to Capture is the annual fee paid, or payable by the Client in the year in which the claim arose.

MBA 17 Disclaimer of Liability. To the maximum extent permitted by law, D2L disclaims all liabilities to Client, through any act or omission as it relates to the unlawful or unauthorized use of Capture. Client is solely responsible for all Client Information made available to or by Capture.

MBA 18 Indemnification. Client may be liable to D2L and/or the relevant D2L partner participating in the delivery of Capture, to the maximum extent permitted by law for any and all claims, losses and damages D2L and/ the relevant D2L partner participating in the delivery of Capture suffers as a result of the unlawful, unlicensed or misuse of the Branding, Client Information, and/or Capture by Authorized End Users.

MBA 19 Suspension and Termination Rights. D2L reserve the right to suspend or terminate, where feasible, any Authorized End User(s) for any breach or suspected breach of this Addendum or the Acceptable Use Policy for Capture, including any breach claimed by any person or entity that the Client Information or Branding infringes their intellectual property rights (e.g. a DMCA claim). D2L reserves the right to suspend or terminate, where feasible, all access to Capture if required to do so by law, or judicial order.

MBA 20 Client Information Obligations. Client shall ensure that a process is established, maintained, and communicated to Authorized End Users with respect to any claim the Authorized End User may have with respect to the quality, accuracy, or appropriateness of Client Information provided over or via Capture. Client shall terminate an Authorized End User for any breach or suspected breach of this Addendum or Acceptable User Policy for Capture. D2L has no, and shall not incur any responsibility with respect to policing, or monitoring Client Information.

MBA 21 GENERAL. This Addendum shall supersede conflicting terms that may be found in the Master Agreement.

Agreed and Accepted

D2L LTD.

MINNESOTA STATE COLLEGES AND UNIVERSITIES

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

CAPTURE SUPPORT SCHEDULE (STANDARD)

**[FINAL EXECUTED CAPTURE ADDENDUM WILL INCLUDE EITHER (CAPTURE STANDARD SUPPORT SCHEDULE OR CAPTURE PREMIUM SUPPORT SCHEDULE (NOT BOTH))
ONLY ONE WILL BE ATTACHED TO THE FINAL ADDENDUM]**

Support shall be as specified below. These terms are subject to change in the reasonable discretion of D2L after informing Client. Support fees are set forth in the fees and Rates Schedule.

S1 Definitions.

- S1.01 *Business Hours* mean 10:00 a.m. to 6:00 p.m. (EST), Monday to Friday, except public holidays.
- S1.02 *Client Capture Support* means remote support for Capture related Hardware, Software or Applications;
- S1.03 *Emergency* means an Incident that is time critical, materially impairs the use of Software and is essential to the operation of Client's business.
- S1.04 *General Support* means access to the client web site, general notifications, advisories, and similar services.
- S1.05 *Incident* means a query regarding, or user-identified concern about, Capture related Hardware, Software or Applications.
- S1.06 *Supported Version* means the current and most recent prior release of Capture related Software or Applications.

S2 Hardware Warranty. For a period of one (1) year from the Effective Date of this Addendum, D2L provides limited parts and labour warranty for Capture Hardware ("Hardware Warranty Period") under the following terms:

S2.01 Capture Hardware will substantially perform in the commercially reasonable manner expected to support Capture Software provided that Client or any other entity under Client's implied or actual instruction has not attempted to, disassemble, modify or repair any portion of Capture Hardware ("Qualifying Defect"). After the Hardware Warranty Period, there is no warranty or condition of any kind on Capture Hardware unless supported by an Authorizing Document.

S2.02 If in D2L's sole and reasonable discretion, pursuant to the applicable Support Schedule, the Capture Hardware has a Qualifying Defect, D2L shall authorize Client to ship the affected Capture Hardware back to D2L at its own expense (FOB D2L).

S2.03 Upon receipt of the affected Capture Hardware, D2L shall replace at its own costs any or all components it deems necessary to repair the Capture Hardware. D2L shall ship at its own expense (FOB Client) the repaired/replaced Capture Hardware back to Client.

S2.04 Without guarantee or liability, D2L will use commercially reasonable efforts to correct a Qualifying Defect in a timely manner.

S2.05 Any Incident which is attributed to a Qualifying Defect shall be excluded from the Incident limits on the Fee and Rate Schedule.

S2.06 Client acknowledges that there is no guarantee that data which may be present on the affected Capture Hardware will be preserved. Client will not hold D2L responsible, and D2L waives all liability and responsibility, for any losses or claims related to this Section.

S3 Authorized Support Contact Name(s) (ASC).

- S3.01 Client shall provide name(s) of the authorized contact(s) to D2L. Only Client's authorized support contact(s) may contact D2L for Support under this Schedule. Contact may be made by phone or email methods.
- S3.02 D2L provides Client Capture Support during Business Hours. Outside Business Hours, Client Capture Support will be provided for an Emergency only.
- S3.03 Client Capture Support is available to record Incidents, explain the functions and features of Capture related Hardware, Software or Applications and clarify the contents of Documentation.
- S3.04 Client may access D2L's client web site (www.Desire2Learn.com) for information about how to obtain Capture related Documentation and, for Capture related Software, available Upgrades.

S4 Incidents. Client is permitted to have their ASC's contact D2L for Incident support based on the number of Incidents listed on the Fee & Rates Schedule. There may be a commercially reasonable charge, at D2L's then current rates, for Incident support requested in excess of the contract amount.

S5 Unsupported Versions. D2L will support versions other than Supported Versions or versions modified by Client at its sole discretion and on an as-available basis only. Client Capture Support for non-Supported Versions will be charged at 200% of the applicable Rate.

S6 Remote Access. To allow D2L to assess Incidents in the Capture related Hardware, Software or Applications, Client shall use reasonable efforts to permit D2L remote access to Client's systems.

S7 Additional Authorized Support Contact(s). Additional Authorized Support Contact(s), beyond the one(s) currently included in the Fees and Rates Schedule, shall have a cost as described in the Fees and Rates Schedule.

S8 Other services. Client may not use Client Capture Support for services other than Client Capture Support. Services not identified in this Schedule, including training, implementation, modifications, configuration and communications, will be charged at the Rates, except for out-of-pocket and *per diem* expenses.

S9 Termination. Support is terminated when the relevant Schedule or Addendum expires or is terminated.

S10 Reinstatement. If Client is in default for payment under the relevant Capture related agreement, D2L may, at its option, (a) charge a reinstatement fee to reinstate Support and charge for future Support according to D2L's then-current support policies; or (b) decline to provide Client Capture Support.

CAPTURE SUPPORT SCHEDULE (PREMIUM – 24/7)

**[FINAL EXECUTED CAPTURE ADDENDUM WILL INCLUDE EITHER (CAPTURE STANDARD SUPPORT SCHEDULE OR CAPTURE PREMIUM SUPPORT SCHEDULE (NOT BOTH))
ONLY ONE WILL BE ATTACHED TO THE FINAL ADDENDUM]**

Support shall be as specified below. These terms are subject to change in the reasonable discretion of D2L after informing Client. Support fees are set forth in the fees and Rates Schedule.

CS1 Definitions.

- CS1.01 *Client Capture Support* means remote support for Capture related Hardware, Software or Applications;
- CS1.02 *Emergency* means an Incident that is time critical, materially impairs the use of Software and is essential to the operation of Client's business.
- CS1.03 *General Support* means access to the client web site, general notifications, advisories, and similar services.
- CS1.04 *Incident* means a query regarding, or user-identified concern about, Capture related Hardware, Software or Applications.
- CS1.05 *Supported Version* means the current and most recent prior release of Capture related Software or Applications.

CS2 Hardware Warranty. For a period of one (1) year from the Effective Date of this Addendum, D2L provides limited parts and labour warranty for Capture Hardware ("Hardware Warranty Period") under the following terms:

CS2.01 Capture Hardware will substantially perform in the commercially reasonable manner expected to support Capture Software provided that Client or any other entity under Client's implied or actual instruction has not attempted to, disassemble, modify or repair any portion of Capture Hardware ("Qualifying Defect"). After the Hardware Warranty Period, there is no warranty or condition of any kind on Capture Hardware unless supported by an Authorizing Document.

CS2.02 If in D2L's sole and reasonable discretion, pursuant to the applicable Support Schedule, the Capture Hardware has a Qualifying Defect, D2L shall authorize Client to ship the affected Capture Hardware back to D2L at its own expense (FOB D2L).

CS2.03 Upon receipt of the affected Capture Hardware, D2L shall replace at its own costs any or all components it deems necessary to repair the Capture Hardware. D2L shall ship at its own expense (FOB Client) the repaired/replaced Capture Hardware back to Client.

CS2.04 Without guarantee or liability, D2L will use commercially reasonable efforts to correct a Qualifying Defect in a timely manner.

CS2.05 Any Incident which is attributed to a Qualifying Defect shall be excluded from the Incident limits on the Fee and Rate Schedule.

CS2.06 Client acknowledges that there is no guarantee that data which may be present on the affected Capture Hardware will be preserved. Client will not hold D2L responsible, and D2L waives all liability and responsibility, for any losses or claims related to this Section.

CS3 Authorized Support Contact Name(s) (ASC. Client shall provide name(s) of the authorized contact(s) to D2L. Only Client's authorized support contact(s) may contact D2L for Support under this Schedule. Contact may be made by phone or email methods.

CS3.01 D2L provides Premium Client Capture Support on a 24/7 basis.

CS3.02 Client Capture Support is available to record Issues, explain the functions and features of Software and clarify the contents of Documentation.

CS3.03 Client may access D2L's client web site (www.Desire2Learn.com) for information about how to obtain Documentation and, for Software, available Upgrades.

CS4 Incidents. Client is permitted to have their ASC's contact D2L for Incident support based on the number of Incidents listed on the Fee & Rates Schedule. There may be a commercially reasonable charge, at D2L's then current rates, for Incident support requested in excess of the contract amount.

CS5 Unsupported Versions. D2L will support versions other than Supported Versions or versions modified by Client at its sole discretion and on an as-available basis only. Client Capture Support for non-Supported Versions will be charged at 200% of the applicable Rate.

CS6 Remote Access. To allow D2L to assess Incidents in the Capture related Hardware, Software or Applications, Client shall use reasonable efforts to permit D2L remote access to Client's systems.

CS7 Additional Authorized Support Contact(s). Additional Authorized Support Contact(s), beyond the one(s) currently included in the Fees and Rates Schedule, shall have a cost as described in the Fees and Rates Schedule.

CS8 Other services. Client may not use Client Capture Support for services other than Client Capture Support. Services not identified in this Schedule, including training, implementation, modifications, configuration and communications, will be charged at the Rates, except for out-of-pocket and *per diem* expenses.

CS9 Termination. Support is terminated when the relevant Schedule or Addendum expires or is terminated.

CS10 Reinstatement. If Client is in default for payment under the relevant Capture related agreement, D2L may, at its option, (a) charge a reinstatement fee to reinstate Support and charge for future Support according to D2L's then-current support policies; or (b) decline to provide Client Capture Support.

Fees and Rates Schedule

Effective Date: September 1, 2012

Term: 6 Years, 4 one year renewals

Client: Minnesota State Colleges and Universities

User Type: FTE and Other Learner

Support Type: Premium

Component	Measure	Fee	Due
Annual Fee - September 1, 2012 - August 31, 2013			
Learning Environment	Up to 150,000 FTE @ \$4.54/FTE	680,625	01-Sep
Learning Environment	Up to 5,000 Other Learners @ 7.61 / Other Learner	38,055	01-Sep
Learning Object Repository	Up to 150,000 FTE	83,490	01-Sep
Test Environment	Annual Maintenance	28,550	01-Sep
Enterprise Support	Annual Maintenance	146,410	01-Sep
Technical Account Manager	Upgrade to an Assigned Technical Account Manager -Named TAM with no more than 5 Accounts -Guaranteed 8 Hour Response Time -Two annual technical reviews -One annual technical review of hosting -Weekly reporting on support tickets -Monthly reporting of hosting metrics -Annual roadmap review with Product Strategy and Development team	25,000	01-Sep
Escrow	Annual Maintenance	1,830	01-Sep
Premium Support	7 Approved Support Contacts	59,296	01-Sep
Annual Fees Total:		1,063,256	01-Sep

Annual Fee - September 1, 2013 Onward			
Learning Environment+	Up to 150,000 FTE @ \$3.85/FTE	577,500	01-Sep
Learning Environment+	Up to 5,000 Other Learners @ 7.70 / Other Learner	38,500	01-Sep
Learning Object Repository+	Up to 150,000 FTE	90,000	01-Sep
Test Environment+	Annual Maintenance	28,000	01-Sep
Enterprise Support+	Annual Maintenance	110,000	01-Sep
Technical Account Manager+	Upgrade to an Assigned Technical Account Manager -Named TAM with no more than 5 Accounts -Guaranteed 8 Hour Response Time -Two annual technical reviews -One annual technical review of hosting -Weekly reporting on support tickets -Monthly reporting of hosting metrics -Annual roadmap review with Product Strategy and Development team	25,000	01-Sep
Escrow+	Annual Maintenance	1,250	01-Sep
Premium Support+	7 Approved Support Contacts	59,500	01-Sep
Annual Fees Total:		929,750	01-Sep

+ The annual fees above starting September 1, 2013 reflect the base level for determining annual fees for year three (3) and beyond for this Master Agreement. The actual fees will be increased by an adjustment based on the compounded increase of CPI or 5%, whichever is greater as stated in License Addendum L7.04. .

Optional/Additional Fees			
Analytics	Installation	60,000.00	One-Time
Analytics++	Up to 150,000 FTE @ \$1.47/FTE	220,500.00	Annual Fee
ePortfolio	Installation	80,000.00	One-Time
ePortfolio	Up to 150,000 FTE @ \$2.85/FTE	427,500.00	Annual Fee
Hosting Fee	Up to 585,000 Active Users @ \$4.00/Active User	2,340,000.00	Annual Fee
Test Environment - Hosting	Hosting	Included with Hosting	Annual Fee
Disaster Recovery	Bronze Disaster Recovery (12 hrs RPO, 24 hrs RTO)	Included with Hosting	Annual Fee
Premium Plus Support	Implementation	10,000.00	One-Time
Premium Plus Support - High	2 ASC's / 200 Incidents per month	72,000.00	Annual Fee
Capture	Capture Station - 300 (HW+SW)	6,000.00	One-Time
Capture	Capture Station - Desktop (SW only)	2,800.00	One-Time
Standard Server Hosting - Starter	Portal + 25 GB / month (storage + bandwidth)	2,640.00	Annual Fee
Standard Server Hosting - Basic	Portal + 50 GB / month (storage + bandwidth)	3,000.00	Annual Fee
Standard Server Hosting - Regular	Portal + 100 GB / month (storage + bandwidth)	3,600.00	Annual Fee
Standard Server Hosting - Advanced	Portal + 250 GB / month (storage + bandwidth)	5,040.00	Annual Fee
Standard Server Hosting - Premium	Portal + 500 GB / month (storage + bandwidth)	7,800.00	Annual Fee

CampusLife*	Setup - Up to 5,000FTE	3,500.00	One-Time
CampusLife*	Up to 5,000 FTE	5,650.00	Annual Fee
* Additional packages are available.			
++ D2L will provide a one time 100,000 credit off of the Annual fee for Analytics if Analytics is purchased before September 1, 2012.			
Additional Fees & Rates			
Support Incident coverage	Any incidents above the contracted amount	\$45	
Learning Environment coverage	per FTE in excess of contracted amount	\$4.54/FTE	
Learning Environment (Other Learner) coverage	per Other Learner in excess of contracted amount	\$7.61/Other Learner	
Learning Object Repository	per FTE in excess of contracted amount	\$0.56/FTE	
Analytics	per FTE in excess of contracted amount	\$1.47/FTE	

Consulting Rates

Position	Hourly Rate	
Level 3 Consultant/Architect/Manager	\$300	
Level 2 Consultant/Architect/Manager	\$215	
Level 1 Consultant	\$185	
Training	Daily Rate	
Maximum of twelve participants or a maximum of eight participants responsible for system administration.	\$2,500	

Please note:

- Rates for professional services may be modified on 90 days' notice. Professional Services billing rates are dependent upon the scope of the engagement/implementation and the consulting skill levels required. Project Managers are assigned to oversee all professional services implementations at a rate dependent upon complexity of the project and skill level required.
- Storage amounts are currently set at 30MB per FTE.
- Travel and per diem expenses are not included in Consulting or Training Rates.

SUPPLEMENTAL TERMS AND CONDITIONS ADDENDUM

This Addendum is entered into between the State of Minnesota, by and through its Board of Trustees of the Minnesota State Colleges and Universities ("Customer") and D2L Ltd., 715 St. Paul Street, Baltimore, MD 21202, a Maryland corporation ("Contractor") to amend the MASTER AGREEMENT and LICENSE ADDENDUM (the "Agreement"). Both parties agree to the following terms and conditions and expressly agree that if any of the following terms and conditions are in conflict with the terms and conditions of the Agreement, the following terms and conditions will prevail.

The terms and conditions of this Agreement are governed by the Agreement, this Addendum, D2L's response to the Minnesota State Colleges and Universities Request for Proposal for Instructional Management System, and the Minnesota State Colleges and Universities Request for Proposal for Instructional Management System and any other amendments which are agreed to by both parties. Any additions or changes to this Agreement must be in writing and must be agreed to by each party by having the proper authorized designees sign each amendment, exhibit, and addendum. In the event of any conflicts between the below-listed documents, the conflict shall be resolved according to the following order of precedence:

- i. This Addendum;
- ii. The Master Agreement, and License Addendum, or any End User License Agreement (EULA);
- iii. D2L's response to the Minnesota State Colleges and Universities Request for Proposal for Instructional Management System;
- iv. The Minnesota State Colleges and Universities Request for Proposal for Instructional Management System.

1. State Audit. The books, records, documents and accounting practices and procedures of Contractor relevant to this Agreement shall be subject to examination by the Customer, and either the Minnesota Legislative Auditor or State Auditor as appropriate for a minimum of six years.

2. Lack of Appropriation. Continuation of this Agreement beyond June 30 of any year is contingent upon continued legislative appropriation of funds for the purpose of this Agreement. If these funds are not appropriated, the Customer will immediately notify Contractor in writing and the Agreement will terminate on June 30 of that year. Customer shall not be assessed any penalty if the Agreement is terminated because of the decision of the legislature not to appropriate funds.

3. Taxpayer Identification. Contractor is required by Minnesota Statutes § 270C.65 to provide its Minnesota Tax Identification Number or Federal Employer I.D. No. if Contractor does business with the State of Minnesota. This information may be used in the enforcement of federal and State tax laws. Supplying these numbers could result in action to require Contractor to file state tax returns and pay delinquent state tax liabilities. This Agreement will not be approved unless these numbers are provided. These numbers will be available to federal and state tax authorities and state personnel involved in the payment of state obligations.

Minnesota Tax I.D. No.
Federal Employer I.D. No.

2097388
26-1163681

4. Affirmative Action (when applicable). Contractor certifies it has received a certificate of compliance from the Commissioner of Human Rights pursuant to Minnesota Statutes § 363A.36 or, if appropriate, has certified that it is in compliance with federal affirmative action requirements. The Customer intends to carry out its responsibility for requiring affirmative action by its Contractors.

Covered Contracts and Contractors. If the Contract exceeds \$100,000 and the contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.

Minn. Stat. § 363A.36. Minn. Stat. § 363A.36 requires the Contractor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

Minn. R. 5000.3400-5000.3600. (A) *General.* Minn. R. 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.

Disabled Workers. The Contractor must comply with the following affirmative action requirements for disabled workers.

- (1) The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or

termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- (2) The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- (3) In the event of the Contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with Minnesota Statutes Section 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- (4) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
- (5) The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minnesota Statutes Section 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

Consequences. The consequences for the Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this contract by the Commissioner or the State.

Certification. The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for non-compliance.

5. Effective Date. The Agreement shall be effective when all the necessary signatures and approvals have been obtained pursuant to Minn. Stat. § 16C.05, subd. 2.

6. Insurance. In accordance with Minnesota Statutes § 16B.85, the Customer is self-insured for property damage. The Customer's liability is governed by Minnesota Statutes § 3.736 and other applicable law.

7. Indemnification. The Customer, including any of customer's employees acting within the scope and course of their employment, will not indemnify the Contractor, including

indemnification in any EULA, for any claim brought against it by any third parties nor is the Customer responsible for attorney fees or costs incurred by Contractor.

8. Taxes. The Customer will only pay user taxes. The Customer will pay no taxes based on Contractor's income.

9. Inspection of Equipment. If necessary, Contractor may inspect the equipment during the Customer's normal business hours.

10. Payment. The Customer will make payments 30 days after the payment is due. No advance payments will be made before performance except as permitted by Minnesota Statutes § 16A.065.

11. Expenses. The Customer will not pay for any expenses associated with collection and repossession except for those expenses taken out of the proceeds of the sale of the collateral.

12. Late Payment. The Customer will pay no more than 1.5% per month or 18% per annum interest on any late payment, as provided in Minnesota Statutes § 16A.124, subd. 5.

13. Confidential Data. The Customer will keep all confidential, proprietary, private, trade secret, etc. data pursuant to the Minnesota Data Practices Act (Minn. Stat. ch. 13). To the extent that Contractor has access to the private, nonpublic or confidential data of customer, Contractor will agree to comply with the requirements of the Minnesota Government Data Practices Act (Minn. Stat. ch. 13) in providing services under this Agreement. Contractor agrees to indemnify, save, and hold the State of Minnesota, its agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce this provision of this Agreement. In the event Contractor subcontracts any or all of the work to be performed under this Agreement, Contractor shall retain responsibility under the terms of this paragraph for such work. Such indemnification and hold harmless obligation shall not apply to incidental, indirect, special or consequential damages, or for lost profits, savings or revenues of any kind, whether or not Contractor has been advised of the possibility of such damages.

D2L acknowledges that Customer stored data may contain confidential student records. D2L will take the appropriate action to protect and secure the Data in accordance with Minnesota State and United States law.

14. Venue. The Agreement will be governed by the laws of Minnesota.

15. Assignment of Agreement. This Agreement shall be binding upon and inure to the benefit of D2L and Customer. This Agreement may only be assigned by a party after adequate notice of intent and written approval by D2L and Minnesota State Colleges and Universities. Any consent shall be conditioned upon an undertaking from the assignee to be

directly bound by the provisions of this Agreement and not to further assign its rights hereunder without complying with the provisions of this Section.

16. Renewal. There will be no automatic renewals of the Agreement. Customer will notify Contractor in writing of its intention to renew the Agreement three months prior to the termination date.

17. Security Deposit. The Customer will pay no security deposit.

18. No Arbitration; Remedies. Customer does not agree to binding arbitration nor does it waive trial by jury. Both parties shall have the right to legal action to enforce available remedies.

19. Escrow. Contractor maintains a current Escrow Agreement with a 3rd party vendor (currently Escrow Associations, LLC), and has designated the 3rd party vendor as its Escrow agent ("Escrow Agent"). Contractor regularly deposits source code with the Escrow Agent with every major version. Provided Customer is not in breach of its obligations under the Master Agreement and any Addenda, including those relating to payment and should Customer elect and pay the fees set forth on the Fee & Rates Schedule, Contractor shall list Customer as a beneficiary under the Escrow Agreement with the Escrow Agent. Release conditions under the Escrow Agreement include:

- (1) Contractor notifies Escrow Agent to release the source code; or
- (2) Customer makes written request to the Escrow Agent; and (i) Contractor becomes unable to continue to do business in the ordinary course, through bankruptcy, pursuant to the United States Bankruptcy Code or otherwise, following a reasonable opportunity to restructure or cure any such breach, or (ii) Contractor is adjudged to be in breach of the Master Agreement by materially failing or refusing to support the products that are the subject Master Agreement.

Release conditions are subject to the terms and conditions of the Master Agreement. After release, Customer may use the released materials for the sole purpose of supporting its use of the Applications. Customer shall be obligated to honour the proprietary and confidentiality rights of the released materials. Any modifications or derivative works created by Customer through use of the released materials shall be Software governed by the Master Agreement. If the release event has been remedied, Contractor has the right to recover the released materials and associated Intellectual Property from Customer.

20. Disclosure. The Customer agrees to protect all properly identified Contract Trade Secret material, as the term "Trade Secret" is defined in Minn. Stat. § 13.37. In the event a request is made for information which the Contractor has identified as "Trade Secret," the Customer agrees to immediately notify the Contractor of said request and provide its determination as to whether disclosure is legally required, in addition to anticipated disclosure date, if any, and to allow the Contractor an opportunity, in its discretion and at its sole expense, to seek a protective order or otherwise protect the confidentiality of the information.

21. Notwithstanding the foregoing, this contract shall not be construed to deprive the State of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applying to this contract or afforded by the State by Minnesota law.

22. Additional Warranties. D2L warrants that the D2L Learning Platform will operate substantially in accordance with D2L's response to the Customer's RFP during the term of this agreement.

In the event the D2L software experiences a downtime due to a failure to perform and Customer advises D2L in writing, or e-mail, of a reproducible error, D2L shall use commercially reasonable efforts to correct any defect in the D2L Software. In the event that D2L is unable to correct a significant defect in a timely manner, Customer may obtain a pro rata refund of any prepaid license fees for the time the D2L Software affected.

CONTRACTOR

By: [Signature]

Title: Sec'y - TREAS.

Date: 20. Oct. - 2011

ENCUMBERED BY To be encumbered in F413 20.0.11

By: [Signature]

Title: Business Office Accountant

Date: 11/3/11

CUSTOMER

By: [Signature]

Title: Vice Chancellor

Date: 11/1/11

4. AS TO FORM AND EXECUTION:

By (authorized signature and printed name)	<u>[Signature]</u> Heidi Siegers
Title	<u>Legal Assistant</u>
Date	<u>11/3/11</u>