MASTER AGREEMENT

This Master Agreement, including its attachments and Schedules ("Agreement") governs terms and conditions between Arizona Board of Regents on behalf of University of Arizona, 1401 E University Blvd, Tucson, AZ 85721-0001, an Arizona university corporation ("Client") and D2L Ltd., 500 York Road, Towson, MD 21204 ("D2L").

1 Definitions

1.01 *Acceptable Use Policy* means the applicable terms and conditions governing the use by End Users of a specific Product, Service or Application, as may be identified in an Order.

1.02 *Active User* means a License Model that accounts for any person who registers for or is enrolled in one or more courses in each consecutive 12-month period following the Effective Date.

1.03 *Applications* means a D2L software application or any part thereof resident on D2L's Network in object code form, including Upgrades, that Client is permitted to access and/or use in accordance with this Agreement, but does not include Vendor or third party software or other components, or software developed through Consulting or a related Statement of Work.

1.04 *Available* means the material components of the Applications are available for Client's use.

1.05 *Client* includes its affiliates and subsidiaries, to the extent that such affiliates and subsidiaries are specifically identified.

1.06 *Client Data* includes course content, materials, Personal Information, and any other data that Client (or any authorized End User User(s)) uploads or enters through their lawful use of Products and Services.

1.07 *Cloud* or *Cloud Services* means the hosting by D2L or its Vendors of the Applications and Client Data for Client's access and use under this Agreement.

1.08 *Confidential Information* means information provided to one Party about the other Party's products or services, business, affairs, Vendors, computer systems, installations or clients, to the extent that the information might reasonably be expected to be confidential. Confidential information may also include Client Data and Personal Information. For purposes of this Agreement, "Confidential Information" means all information, drawings, data, software, documentation, business plans and know-how relating to this Agreement, disclosed by one Party (the "Disclosing Party") to the other Party (the "Recipient") that in any way relates or pertains to the Disclosing Party, its research, technology, personnel, operations or business and: (a) if disclosed in written, electronic or other tangible form is conspicuously marked as "confidential," "proprietary," or other similar designation; (b) if disclosed in oral or visual form is identified in writing as confidential at the time of disclosure or promptly thereafter; (c) any and all information generated by the Recipient based in whole or in part on the Disclosing Party's Confidential Information; and/or (d) any software, code, or trade secrets of the Disclosing Party, whether marked or not marked as "confidential," "proprietary," or other similar designation.

1.09 *Consulting* means implementation, development, or other assistance provided pursuant to this Agreement, Statement of Work or Order.

1.10 *Courseware* is a Deliverable consisting of course content and other related elements developed under a Statement of Work.

1.11 *Creative Commons License* means a license or similar usage right as offered or published by the Creative Commons Corporation.

1.12 *Deliverable* means a tangible, verifiable work output such as a specification, programming, code, or other output developed under a Statement of Work.

1.13 *Documentation* means a document published by D2L for all clients such as a user's manual or release notes. Documentation does not include sales and/or marketing materials.

1.14 *Downtime* means those times in which material components of the Applications are not Available but shall not include Emergency Unavailability and Scheduled Unavailability.

1.15 *Effective Date* of this Agreement means the earlier of (i) the date indicated on the relevant Order; or (ii) the date that the Client signs this Agreement. An Order may have its own Effective Date as indicated on the Order.

1.16 *Emergency Unavailability* means those times when material components of the Applications are unavailable for Client use resulting from the existence or repair of software bug/virus/worm, hardware failure, third party communication failure, force majeure (excusable delay), Disruption (as defined in section 10.03), or other event that is outside D2L's commercially reasonable control to mitigate unavailability through industry standard processes and network design or those unavailable events arising from Client error or negligence.

1.17 *End Users* are the persons who access, attempt to access or use the Applications as a product during the course of this Agreement.

1.18 *Enrolment* means a License Model that accounts for the total number of all unique course registrations over the course of each consecutive twelve (12) month period following the Effective Date. For clarity, if an End User is registered in two (2) course offerings during a particular year, it will count as two (2) Enrolments.

1.19 *Fees* means those amounts to be paid for Products and Services under this Agreement.

1.20 *FTE* means a License Model that accounts for 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).

1.21 *Hardware* means the physical computing hardware including applicable peripherals that may be provided by D2L to Client under this Agreement.

1.22 *Intellectual Property* means 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.

1.23 *License Model* means the particular usage description for Client's use of the Applications under this Agreement. Active User, Enrolment and FTE as such terms are defined in this section 1, are License Models. The Fees for the relevant License Model(s) selected by Client will be as set out in the Order(s).

1.24 *Measurement Period* means each calendar month commencing from the Effective Date. Each calendar month shall constitute a distinct Measurement Period.

1.25   *Network* means, collectively, the items under D2L's control that may include hardware, software, communications, hosting and storage, cabling and other related resources that are used for the Services.

1.26   *Order or Authorizing Document* means any document signed or electronically agreed to by D2L and Client that references this Agreement. An Order may be a quote, Statement of Work, acceptable purchase order, e-mail (subject to reasonable authentication of sender's authority) or similar document

1.27   *Organizational Instance* means a single installation of Applications on one or more D2L servers for the exclusive use of Client.

1.28   *Party* means D2L or Client; *Parties* means D2L and Client.

1.29   *Personal Information* means 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.

1.30   *Products and Services* means Applications, Documentation, software, Cloud Services, Support, Consulting, Hardware, third party software, and/or any other material, duty, function or task D2L provides or performs under this Agreement.

1.31   *Rates* are D2L's then-current charges for Consulting, except for out-of-pocket and per diem expenses.

1.32   *Schedule* means a document attached to or referenced in this Agreement that (i) does not require signature by the Parties; and (ii) describes Services, Rates and/or Fees.

1.33   *Scheduled Unavailability* means the times in which the material components of the Applications are not Available: 1) in accordance with posted maintenance schedules which may, in the sole discretion of D2L, be changed from time-to-time on 30 days' notice, or; 2) as a result of an agreement between Client and D2L, for example, to accomplish an Upgrade.

1.34   *Services* means the Consulting, Support and/or Cloud Services that D2L provides to Client under this Agreement.

1.35   *Statement of Work (or Work Order)* means a document created pursuant to this Agreement that specifies the roles and responsibilities of the Parties with respect to a particular engagement for Consulting.

1.36   *Support* means support services provided to Client, as more fully described in such Support Schedule.

1.37   *Upgrade(s)* means modifications, templates and newer versions of Applications provided by D2L that are made available generally to D2L customers. Upgrades do not include new independently-priced modules or utilities.

1.38   *Vendor* means a third party provider or subcontractor of software, products, infrastructure or services to D2L.

2   **Warranties**

2.01   For Products and Services provided under this Agreement, D2L warrants that:

2.01.1 The Applications and Cloud Service procured by Client will achieve in all material respects, the functionality described in the applicable Documentation; and
2.01.2 Consulting Services shall be performed in accordance with industry standards and with the same level of care and skill as D2L provides to similarly-situated customers.

2.02   If Client purchases Hardware, D2L will provide a limited parts and labour warranty for a period of one (1) year from the shipment date of the Hardware ("Hardware Warranty Period"), under the following terms:

2.02.1 Hardware will substantially perform in the commercially reasonable manner expected to support software or Applications 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 Hardware ("Qualifying Defect"). After the Hardware Warranty Period, there is no warranty or condition of any kind on Hardware.
2.02.2 If D2L determines the existence of a Qualifying Defect, D2L shall: (a) authorize Client to ship the affected Hardware back to D2L or D2L's designated affiliate or partner at Client's own expense (FOB D2L or FOB D2L's designated affiliate or partner), (b) provide Client, directly or with a local third-party affiliate or partner, with onsite technical assistance to address the Qualifying Defect or, (c) provide Client with replacement Hardware (FOB D2L or D2L's designated affiliate or partner). If D2L recommends onsite technical assistance, Client agrees to provide all commercially reasonable accommodations commensurate with onsite technical assistance. D2L will charge Client for the replacement Hardware if the affected Hardware has not been shipped to D2L within fifteen (15) days of D2L providing Client with the replacement Hardware.
2.02.3 D2L shall replace at its own costs any or all components it deems necessary to repair the Hardware, and D2L shall ship at its own expense (FOB Client) the repaired/replaced Hardware back to Client.
2.02.4 Client acknowledges that there is no guarantee that data which may be present on the affected 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.
2.02.5 Client may elect to extend the one (1) year Hardware Warranty Period for two additional years at any time before or during the Hardware Warranty Period by notifying D2L and paying the applicable fee.
2.02.6 If Client submits an Incident under this section and it is not covered under this section, Client shall be required to pay an assessment fee not to exceed $500.00.

2.03   Except as set forth in this Agreement, the Products and Services are provided "as-is", and D2L makes no warranties, representations, or guarantees, express or implied, oral or written, with respect to the Products and Services or Network. There is no such thing as perfect security, and D2L cannot guarantee or warrant the security of any data (including Confidential Information or Personal Information) that D2L receives and stores on the D2L Network or Vendor systems. D2L does not warrant that Products and Services or Network 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. Except as may be expressly set forth in an Order, D2L does not warrant any Vendor software or services. Client assumes all responsibility for determining if the Products and Services are sufficient for Client's purposes.

3   Confidentiality

3.01   No Party shall furnish Confidential Information to any unauthorized person or entity. The recipient of Confidential Information shall not actively disclose Confidential Information pursuant to the confidentiality obligation in this Agreement. However, the recipient cannot guarantee that such non-disclosure of information shall extend beyond five (5) years following termination of this Agreement except for trade secrets, which will be protected for such time as they have not been made public.

3.02   No 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 the commencement of negotiations that led to this Agreement; (c) is learned from a third 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. Client is a public institution and, as such, is subject to A.R.S. §§ 39-121 through 39-127 regarding public records. Accordingly, notwithstanding any other provision of this Agreement to the contrary, any provision regarding confidentiality is limited to the extent necessary to comply with the provisions of Arizona law.

3.03   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.

3.04   D2L shall not collect, use or disclose Personal Information 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 Products and 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 (and in any case within fifteen (15) business days) of any inquiries regarding the collection, use or disclosure of Personal Information by D2L.

3.05   Nothing in this section shall prohibit D2L from issuing a mutually-acceptable press release, or from naming Client in general client lists or having Client's name disclosed as part of the natural use of the Products and Services (*e.g.*, if Client uses D2L Community, or appends its name to a D2L URL). For clarity, D2L will not use Client's logo without express permission, nor will D2L disclose Client's name in a manner that is construed as an endorsement of D2L without express permission.

4   Consulting Services. This section governs terms and conditions between Client and D2L relating to Deliverables produced under a Statement of Work.

4.01   *Intellectual Property - Deliverables*. Except as set out in section 4.02 below, or 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. Subject to payment in full of the applicable fees, D2L grants to Client a time-limited, non-exclusive, royalty-free license to use and to disclose the Deliverables, subject to the limitations set out in this section. 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.

4.02   *Intellectual Property - Courseware*. Client shall own all foreground Intellectual Property in the Courseware once payment in full for such Courseware is received by D2L. D2L shall retain sole and exclusive ownership of and all rights in the background Intellectual Property rights in the Courseware, which include: tools, methodologies, questionnaires, responses, and proprietary research, data, requirements, specifications, and code generated in the course of performing the Consulting services. Subject to payment in full of the applicable fees, D2L grants to Client a perpetual, non-exclusive, royalty-free license to use, modify and disclose the background Intellectual Property rights in the Courseware, subject to the limitations set forth below.

4.03   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.

4.04   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.

4.05   *No Third-Party Beneficiaries*. This section 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.

4.06   *Required Skills*. Consulting billing rates are dependent upon the scope of the engagement/implementation and the Consulting skill levels required. Project Managers are assigned to oversee all Consulting implementations at a rate dependent upon complexity of the project and skill level required.

5   Proprietary Rights & Restrictions

5.01   D2L has appropriate rights and interest to or in its Applications, software, hardware, Documentation, and other Intellectual Property (collectively, the "IP"), and D2L reserves these rights and interests in connection with the IP, except as expressly granted to Client pursuant to this Agreement. Except as may be expressly granted in a Statement of Work, D2L does not transfer any title to or interest in its IP. The IP contains valuable Intellectual Property of D2L and its Vendors. The IP is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties.

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

5.02.1 attempt to decompile, disassemble, modify the source code of, or reverse engineer the IP;
5.02.2 use, reproduce, transmit, modify, adapt or translate the IP;

D2L

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

5.02.4 use or cause or allow a third party to use the Products and services in any way to develop competing products or services;

5.02.5 use any Vendor or third party Intellectual Property or components on a standalone basis unless such standalone use is expressly authorized by D2L or its Vendors;

5.02.6 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.

5.03   Client owns and retains all right, title and interest to, or has appropriate possessory rights in Client Data. D2L makes no claim of title or ownership to or in Client Data. Client permits D2L and its Vendors to use Client Data to the extent required to provide and perform the Services under this Agreement. Where Client engages D2L to create a Client-branded offering of Products and Services, Client grants D2L non-exclusive, worldwide permission to use its logo and branding in accordance with Client's reasonable branding use guidelines or similar documentation, for the sole purpose of creating, distributing and maintaining for Client a Client-branded version of Products and Services, in accordance with the Statement of Work or other applicable document. D2L will not use Client's logo and branding for any other purpose without the express written consent of Client.

6   Grant of Use

6.01   Upon the Effective Date or start date listed in the relevant Order, D2L shall permit Client to use Applications 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 according to section 11, this Agreement is terminated.

6.02   Client may use or access Applications for its use only. No third party, other educational institution or business group or entity other than that identified in the attached Schedules(s) may make use of, or obtain access to, Applications without a separate Agreement.

6.03   *Audit.* D2L may view 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 the audit reveals that Client's use of Applications exceeds its permitted use, Client shall pay D2L's then-current Fees and reasonable administrative fees.

7   Support

7.01   Support services are set forth in the Support Schedule attached to this Agreement and are coterminous with this Agreement.

8   Service Levels

8.01   *Availability.* Throughout each Measurement Period the material components of the Applications shall be Available at least 99.9% of the time.

8.02   *Downtime and Emergency Unavailability.* D2L shall undertake commercially reasonable efforts to rectify any Downtime or Emergency Unavailability.

8.03   *Notice of Emergency Unavailability.* If possible, D2L shall make commercially reasonable efforts (in any event, within forty-eight (48) hours) to provide Client reasonable notice prior to making the material components of the Applications unavailable for Client use during Emergency Unavailability.

8.04   *Reporting, Investigation & Classification.* 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 Scheduled Unavailability, Emergency Unavailability, or Downtime. In making its classification, D2L shall rely solely upon its own statistics software and monitoring equipment.

8.05   *Downtime Credit.* If after investigation and classification, D2L determines that Downtime during the Measurement Period was such that Availability fell below the level stated in this section, Client shall be entitled to a credit on Cloud Services Fees during the relevant Measurement Period, calculated on the following basis:

Availability	Client credit
$99.9\% \leq x^1$	N/A
$99.5\% \leq x < 99.9\%$	1% of Client's Cloud Services fee for that Measurement Period
$99\% \leq x < 99.5\%$	2.5% of Client's Cloud Services fee for that Measurement Period
$98\% \leq x < 99\%$	5% of Client's Cloud Services fee for that Measurement Period
$x < 98\%$	10% of Client's Cloud Services fee for that Measurement Period

8.06   *Remedy.* 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. If both Parties agree that it is in their shared best interest for Client to begin self-hosting the Application due to Availability issues (e.g., less than 90% during three consecutive Measurement Periods or any four Measurement Periods in a consecutive

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[1] x = Availability

12-month period), then both Parties will attempt to allow Client to self-host on an agreed upon timeframe. Pricing during the Term will not be adjusted if this were to occur.

9 Indemnification

9.01 *Claims.* 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 Applications, or Documentation is an infringement of copyright, patent or registered trademark rights of a third 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.

9.02 *Exclusions and Limitations.* 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 Applications, Deliverables, or Services (b) Client's failure to install an Upgrade that would have avoided the claim; (c) the combination of the Applications, 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 Applications, Deliverables, or Services in a manner that is not in accordance with the Documentation or applicable law.

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

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

10 Liability Limitations

10.01 D2L's liability to Client for damages, costs, losses or expenses provided pursuant to this Agreement, in contract, tort or otherwise, (except for indemnification obligations in section 9) 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.

10.02 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 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 Proprietary Rights & Restrictions Section.

10.03 Client is responsible for the Client Data and the content of its and its End User's transmissions, including Client Data, 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 third party, or to interfere with or disrupt the Network ("Disruption"). Disruptions include 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 Network machine or Organizational Instance. 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 End User's access to Network or terminate this Agreement, and Client is responsible for claims arising from Client Data or any Disruption.

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

11 Payment Terms & Taxes

11.01 Client shall pay Fees and Rates as specified in an Order. D2L emails invoices to the address listed as Invoice Recipient. Unless otherwise agreed, payment is due within 30 days from Client's receipt of invoice. Late payments will be subject to an interest charge of 10% per annum.

11.02 If D2L incurs costs in collecting overdue invoices for invoiced amounts that are not subject to a good faith dispute, Client is responsible for reimbursing D2L for collection costs, including reasonable legal fees.

11.03 All fees and rates stated in the Order do not include taxes of any kind, which taxes shall be added to Client's invoices. 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.

11.04 Client shall not deduct or set-off any amount from payments due to D2L.

11.05 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.

12 Excusable Delay

12.01 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, 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. If the period of non-performance exceeds 60 days from the receipt of notice, the Party receiving the notice may terminate this Agreement with written notice within 30 days.

13 Term & Termination

13.01 *Agreement.* This Agreement shall continue for a maximum of five (5) years until all Orders expire or are terminated, or may be terminated as specified elsewhere in this Agreement or as follows:

13.01.1 by either Party if the other breaches the provisions of Import/Export Restrictions and/or Proprietary Rights & Restrictions sections;

13.01.2 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 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

13.01.3 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.

13.01.4 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. Alternatively, at D2L's sole discretion and without prejudice to D2L's other rights hereunder, D2L may elect to suspend Client's right to use the Products and Services and charge a reasonable re-instatement fee if such invoice remains unpaid 30 days after D2L's subsequent notice to Client that payment is required.

13.02 On termination, all rights and obligations of the Parties cease except payment obligations. Client shall return all copies of Documentation and other materials to D2L within thirty (30) days of termination.

13.03 D2L may delete or destroy Client Data residing on D2L Networks 30 days after termination, unless otherwise agreed in writing. At any time during the term and prior to the end of such 30-day period, Client may avail itself of certain export tools within the Products 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 Products. If Client requires additional support, D2L shall provide such data export services for a fee on a time and materials basis under an Order.

13.04 Automatic renewal. At the end of the initial three (3) year term as set out in the Order, this Agreement may be extended for two (2) additional consecutive one (1) year terms (each, a "renewal term"), 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.

14   Assignment

14.01 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. D2L's consent may be conditioned upon the payment of additional fees to D2L in amounts determined by D2L.

14.02 *Deemed Assignment.* Any change of control of Client or an affiliate of Client, including a sale of all or substantially all of the assets of Client or an affiliate of Client, which results in a competitor of D2L having the power to direct or cause the direction of the management of Client or Client's assets, is deemed an assignment.

14.03 *Assignment Void.* Any assignment of this Agreement without the prior written consent of the other Party shall constitute a material breach of this Agreement and shall be null and void. Subject to the foregoing, this Agreement shall bind and will inure to the benefit of the Parties and their permitted successors and assigns.

15   General

15.01 *Governing Law.* This Agreement is governed by the laws of Arizona, without regard to its conflict of laws principles. Legal action arising pursuant to this Agreement shall be filed in the courts of Arizona. 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 Agreement. The Parties waive any right to a jury trial.

15.02 *Order of Precedence.* This Agreement shall supersede the provisions of an Order, unless the Order refers to the provision of the Agreement it supersedes.

15.03 *Security.* D2L shall maintain commercially reasonable administrative, physical and technical safeguards for the protection, confidentiality and integrity of Client Data. During the Term, D2L shall maintain (i) PCI DSS compliance for the portions of the Products and Services that store and process credit card data; and (ii) ISO 27001 certification report, and Client may request a summary of D2L's ISO 27001 certification no more than once annually. Client may request copies of available certification reports from D2L's hosting Vendors no more than once annually, and such Vendor certification reports may be subject to separate non-disclosure agreements with Client prior to disclosure. Any changes made to the Products and Services by Client or at the Client's direction may affect the Client's compliance with PCI DSS requirements and Client shall be solely responsible for ensuring that any such changes are compliant with PCI DSS requirements. Client acknowledges that Client's use of Products and Services will involve transmission over the Internet and other networks, only part of which may be owned or controlled by D2L. Client further acknowledges that Client Data may be accessed by unauthorized parties when communicated across the Internet, Network or other electronic means. 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. In the event of a security incident involving unauthorized disclosure of Client Data, D2L will notify Client in accordance with applicable law.

15.04 Third Parties.

15.04.1 D2L reserves the right to use Vendors (who are under a covenant of confidentiality with D2L), including subcontractors located in other countries (as permitted by applicable laws) to assist with the Products and Services, including hosting, data migration, configuration, implementation and custom code development processes. D2L shall be responsible to Client for the acts and/or omissions of such Vendors. For certain Products and Services such as mobile apps or collaborative workspaces, D2L may enter into agreements directly with End Users.

15.04.2 If Client requests or selects other third party software or services to be integrated or used with the Products and Services, Client agrees that D2L may allow such third party providers to access Client Data as required for the interoperation of such software or services with the Products and Services, and any exchange of data or other interaction between Client and a third party provider is solely between Client and such third party provider. D2L shall not be responsible for any disclosure, modification or deletion of Client Data resulting from any such access by such third-party.

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

15.06 *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, (d) by facsimile, provided that the sender retains proof of successful transmission, or (e) by email. 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; if sent by facsimile, on the date of receipt by the facsimile machine when it reports that the transmission is complete; or, if sent by email, on

the date of delivery to a valid and accurate address. Notices shall be sent or faxed to the names, addresses and numbers set forth below the signature lines to this Agreement. All "Legal Notices" required hereunder shall be in writing and delivered in person, by registered mail, return receipt requested, by facsimile with confirmation sheet, or by courier to the Parties at their addresses as set forth in this Agreement. Legal Notices include formal notices between the Parties regarding an alleged breach (other than for nonpayment), and indemnification communications relating to this Agreement.

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

15.08 *Products and Services Analysis.* To deliver, develop, test and improve the Products and Services required under this Agreement and provide to its clients generally, D2L may collect, analyze, and interpret data elements acquired by, associated with, or provided in the use of Applications and Software ("Analysis"). All individual data elements of the Analysis are property of their respective owners. All usage data related to performance or use of the Products and Services and algorithm, computational, or cumulative results of the Analysis are wholly-owned by D2L. Client may be responsible for the payment of Fees to D2L should Client wish to access or generate any computational or cumulative results from Client Data using certain Products and Services with analytic capabilities. Client agrees that D2L may store depersonalized Client Data indefinitely for the limited purposes listed above.

15.09 *Amendment/Waivers.* 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.

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

15.11 *Severability.* 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.

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

15.13 *Non-Discrimination.* The Parties shall comply with all applicable state and federal statutes and regulations governing Equal Employment Opportunity, Non-Discrimination, and Immigration.

15.14 *Conflict of Interest.* Client may, within three years after its execution, cancel this Agreement without penalty or further obligation if any person significantly involved in negotiating, drafting, securing or obtaining this Agreement for or on behalf of Client becomes an employee in any capacity of any other party or a consultant to any other party with reference to the subject matter of Agreement while the Agreement or any extension hereof is in effect.

15.15 *Inspection and Audit.* D2L agrees to keep all books, accounts, invoices and timesheets directly relating to this Agreement for five (5) years after completion of the Agreement. In addition, D2L agrees that such books, accounts, invoices and timesheets shall be subject to audit pursuant to A.R.S. § 35-214 at Client's expense, no more than once per calendar year during normal business hours and upon 30 days prior written notice.

15.16 *Insurance.* D2L will be responsible for purchasing and maintaining appropriate insurance, including Commercial General Liability, Employers Liability, Professional Liability, and Workers Compensation. D2L will name Client as additional insured on the Commercial General Liability policy, and D2L will provide a copy of such policy to Client no more than once annually upon request.

15.17 *Entire Agreement.* 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.

AGREED AND ACCEPTED

D2L LTD.	ARIZONA BOARD OF REGENTS ON BEHALF OF UNIVERSITY OF ARIZONA
By: *Anna Forgione* 32DCC3D70D98484...	By: _____ (Authorized Signatory)
Name: Anna Forgione	Name: EDWARD NASSOR
Title: General Counsel and Corporate Secretary	Title: Director, Procurement & Contracting
Date: 3/31/2016	Date: 3/31/2016

D2L

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NOTICE INFORMATION

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D2L LTD.		**ARIZONA BOARD OF REGENTS ON BEHALF OF UNIVERSITY OF ARIZONA**	
To:	John Baker	To:	Adam Brokamp or Lauren Babson
Title:	President	Title:	Business Analyst Director, ETS
Copy to:	Legal Department	Fax:	
Fax:	1-519-772-0324	Phone:	520-626-6092 or 520-626-2552
Address:		Address:	
		Email:	abrokamp@email.arizona.edu
			lbabson@email.arizona.edu

INVOICING INFORMATION

INVOICE RECIPIENT	PAYABLE ENQUIRY
Name: Accounts Payable	**Name:** Same
Title: N/A	**Title:**
Fax: 520-626-1243	**Fax:**
Phone: 520-621-9097	**Phone:**
Address: 1303 E University Blvd, Box 5 Tucson, AZ 85719-0521	**Address:**
Email: invoices@fso.arizona.edu	**Email:** accts_pay@fso.arizona.edu

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

D2L

SUPPORT SCHEDULE

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 applicable Order.

S1   Definitions

S1.01   General Support means access to the client web site, general notifications, advisories, newsletters and similar services.

S1.02   Incident means a query regarding, or user-identified concern about Applications.

S1.03   Support means Application assistance, help desk and remote support, Upgrades, fixes, and other services set out in this Support Schedule.

S2   Authorized Support Contact Name(s) (ASC)

S2.01   Client shall provide name(s) of its Authorized Support Contact(s) (ASC) to D2L. Authorized Support Contact(s) will have privileges to log and monitor Support. Authorized Support Contact(s) may access D2L's client website (www.Brightspace.com) for information about how to obtain Documentation and available Upgrades. The Authorized Support Contact may contact D2L Support up to the number of Incidents specified below in section S12 based on the level of Support selected.

S3   Support

S3.01   D2L provides Support to Client during the times specified in the tabled below in section S12 based on the level of Support selected.

S3.02   Support is available to record Incidents, explain the functions and features of Applications and clarify the contents of Documentation. Incidents may be submitted through D2L's web-based portal, or using a predefined D2L Support email address, or by calling the D2L helpdesk.

S4   Remote Access

S4.01   To allow D2L to assess Incidents in the Applications, Client shall use reasonable efforts to permit D2L remote access to Client's systems.

S5   Additional Authorized Support Contact(s); Number of Contacts

S5.01   Additional Authorized Support Contact(s), beyond the one(s) currently included in the Fees and Rates Schedule, are available at the cost set forth in the Fees and Rates Schedule.

S6   Escalation

S6.01   If D2L is unable to resolve a request in a reasonable length of time as set out in Exhibit A, or if the priority or severity of the request changes due to external factors, the request will be escalated. D2L support may request additional information to assist in the understanding of the problem. Escalation may require further research by the Help Desk, consultation of other D2L support staff members, and/or consultation with the D2L development team.

S7   Other Services

S7.01   Client may not use Support for services other than 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.

S8   Language of Support

S8.01   All Support will be provided in the English language unless agreed otherwise in the Order. If Support is provided in another language without written agreement or modification through an Authorizing Document, then there is no guarantee of follow-up or to provide further Support in a language other than English.

S9   Termination

S9.01   Support is terminated when the Agreement expires or is terminated.

S10   Reinstatement

S10.01   If Client is in default for payment under the 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.

S11   End Users

S11.01   If Client elects to purchase optional End User support, End User Support for questions about Applications will be available to Client's End Users via the options listed in the table in section S12 based on the level of support selected.

D2L

S12   Support Features Table

	Bronze	Silver	Gold	Platinum
Features				
Incidents included per month	5 (Additional monthly contacts, are available at the cost set forth in the applicable Order)	Unlimited	Unlimited	Unlimited
Approved Support Contacts	1 ASC	2 ASCs	3 ASCs*	5 ASCs
Hours of Support	8:00am to 8:00 pm EST Mon-Fri	24x7x365	24x7x365	24x7x365 Dedicated 800#
Reporting and Review Meetings				
Incident Reports	n/a	n/a	Monthly	Monthly
SLO Reports	n/a	n/a	Quarterly	Monthly
Cloud Performance Dashboard	n/a	n/a	Yes	Yes
Root Cause Analysis Reporting	n/a	n/a	n/a	Yes
Historical Incident Access	Yes	Yes	Yes	Yes
Support Review Meetings	n/a	n/a	Semi-Annual	Quarterly
End User Support (if selected)				
End User Support Access	n/a	chat, email, and web	chat, email, web and phone	chat, email, web and phone

* Notwithstanding the number of ASCs in the table above, Client and D2L agree that Client shall have 10 ASCs for as long as Client receives Gold support.

EXHIBIT A

Target Service Level Response Times and Support Service Level Objectives (SLO) are attached as below. These service level responses are intended to be a general guideline of expectations for providing service to our customers.

Severity Level Definitions & Target Response Times

Severity Levels	Scope
Severity 1 – Emergency:	
D2L Software is down or Client is unable to restart it; critical Software problem with a very high impact on day-to-day use	Software 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 Software The security of the Software is being compromised
Severity 2 – High	
Use of the Software is significantly impaired, making it very difficult to use in the manner intended	Software is up and running yet users are unable to access entire components Presence of the problem prevents a particular tool or function from working and there are no alternatives to achieve the desired end result A problem that is causing significant impact to portions of the Software. For example, a high number of End Users in a class having difficulty posting information in a discussion area, or End Users cannot access a specific course. Custom Tools that are not working after an Upgrade
Severity 3 – Moderate	
All major functionalities of the Software are working and the installation is up and running, but there are several small Incidents within some functionalities that make the Software difficult to use; minimal impact on the Software as a whole	Problem is not serious by nature No data loss Overall Software has not failed Unexpected results within routine tool or function An Incident limited to a small number of End Users Incidents specific to an End User not significantly affecting use of the Software
Severity 4 – Low (default)	
Authorized Support Contact needs instructions, minor issues with little to no impact on the Software as a whole. Informational requests about the Software, feature requests and general inquiries are considered low in severity. All tickets default to "Low Severity" initially.	No effect on Software Minor questions on usability, informational requests about the Software, or feature requests Isolated unexpected behavior that cannot be reproduced and has little to no impact on the Software or the End Users

SLO Target	End User SLO (if End User support is selected)			Administrator SLO			
	Web Response	Phone Response	Chat Response	Severity Level	Initial Response	Communication Frequency	Target Resolution
80% (Within Time Shown)	60 Minutes	45 Seconds	90 Seconds	One	30 Minutes	Every 4 Hours	24 Hours
				Two	4 Hours	Every 8 Hours	48 Hours
				Three	12 Hours	Daily	72 Hours
				Four	24 Hours	Daily	5 Business Days

ORDER FORM

Order # 01190597

ORDER DATE	MARCH 02, 2016
ORDER EXPIRATION DATE	JUNE 30, 2016

D2L Ltd.

500 York Road
Towson, MD 21204
Phone: 1-519-772-0325

To   Arizona Board of Regents on behalf of University of Arizona ("Client")
1401 E University Blvd
Tucson, AZ, United States 85721-0001

RE: University of Arizona

Order Effective Date	July 01, 2016
Order End Date	June 30, 2021
Initial Term	3 years plus 2 optional 1-year renewals
User Model	FTE
Currency	$ USD

Pricing Breakdown

Item	Year 1	Year 2	Year 3	Optional Year 4	Optional Year 5
Pricing Period	July 01, 2016 - June 30, 2017	July 01, 2017 - June 30, 2018	July 01, 2018 - June 30, 2019	July 01, 2019 - June 30, 2020	July 01, 2020 - June 30, 2021
Fees Due	July 01, 2016	July 01, 2017	July 01, 2018	July 01, 2019	July 01, 2020
User Count	42000	42000	42000	42000	42000
Software	$235,600.00	$365,400.00	$368,760.00	$372,540.00	$376,320.00
Support	$86,272.00	$108,900.00	$109,989.00	$111,190.90	$112,302.81
Services	$42,000.00	$0.00	$0.00	$0.00	$0.00
Total	$363,872.00	$474,300.00	$478,749.00	$483,730.90	$488,622.81

Pricing does not include applicable taxes.

D2L is pleased to present the following pricing for the University of Arizona's Community Service course users.

First 10,000 Licenses	$0 – No Charge
All Subsequent Licenses for those paid courses	$1/3 of the fee for an FTE (User Price)
All Subsequent Licenses for those free courses	$0 – No Charge

Users who log in during the contract year will be counted as a license, and those that do not log in will not be counted as a license.

Pricing Details

SOFTWARE INCLUDES
Brightspace Learning Environment Annual Fee, Brightspace ePortfolio Annual Fee, Brightspace Learning Repository Annual Fee, Brightspace Cloud Services Annual Fee, Test Environment Annual Maintenance, Test Environment Cloud Services, LDAP Integration Annual Maintenance, SSO Integration Annual Maintenance, Standard SIS Integration Maintenance, Self-Directed Training - Annual Fee
Brightspace Insights Annual Fee
SUPPORT INCLUDES
Premier Account Services Shared 1:5
Gold Administrator Support - 10 ASCs and unlimited incidents per month
SERVICES INCLUDES
Brightspace Smart Start Services This Includes: Brightspace Learning Environment Implementation, Brightspace ePortfolio Implementation, Brightspace Learning Repository Implementation, Test Environment Implementation, LDAP Integration Implementation, SSO Integration Implementation, Standard SIS Integration Implementation
Migration fee from On Prem to SaaS
Brightspace Insights Implementation

Additional Financial Terms

Item	Year 1	Year 2	Year 3	Year 4	Year 5
Support Overage	$225.00	$225.00	$225.00	$225.00	$225.00
Annual Fee Per Active User	$5.61	$8.70	$8.78	$8.87	$8.96
Total Allocated Storage	12TB	12TB	12TB	12TB	12TB
Video Note Tool Storage	2100GB	2100GB	2100GB	2100GB	2100GB
Storage Overage Per GB Per Year	$8.00	$8.00	$8.00	$8.00	$8.00

Please Note:

D2L

- D2L emails invoices to the address listed as Invoice Recipient.
- Rates for Consulting may be modified on 90 days' notice.
- Consulting billing rates are dependent upon the scope of the engagement/implementation and the Consulting skill levels required. Project Managers are assigned to oversee all Consulting implementations at a rate dependent upon complexity of the project and skill level required.
- Travel and per diem expenses are not included in Consulting or Training Rates and per diem and actual travel costs and will be billed to Client upon completion.
- The "Allocated Storage" is defined as the expected maximum amount of storage required by Client under this Agreement. Client may use additional storage above the Allocated Storage, but may be subject to additional fees. D2L provides the Allocated Storage number for planning purposes.
- Optional Products and Services set out above and any other D2L offerings not contained in this Agreement may be subject to additional terms and conditions.
- Annual Fees have had an annual increase of 1% applied
- Optional Products may have associated support costs.
- If Client decides not to have D2L implement one or more of the items included in this Smart Start Services bundle during the initial implementation of the Service, fees may apply if Client elects to have D2L install them thereafter.
- For the purposes of calculating downtime credits for which Client may be eligible under the Cloud Services Addendum, Core Components shall mean Learning Environment and the Cloud Service Fees for each Measurement Period shall be 1/12 of 23.5% 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.
- D2L will provide one refresh per year to Client's three environments (production, test and development) at no additional charge.

This Order Form between D2L and Client may be accepted as a binding agreement under the terms of the applicable signed agreement between the Parties ("Governing Agreement") if it is signed and returned. Unless otherwise indicated on this Order Form, all other terms of the Governing 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 Order Expiration Date. D2L reserves the right to accept or reject any signed Order Form after the Expiration Date.

AGREED AND ACCEPTED

D2L LTD.

By: *Anna Forgione*
DocuSigned by
32DCC3D70D98484...

Name: Anna Forgione

Title: General Counsel and Corporate Secretary

Date: 3/31/2016

ARIZONA BOARD OF REGENTS ON BEHALF OF UNIVERSITY OF ARIZONA

By: _____
(Authorized Signatory)

Name: EDWARD NASSER

Title: Director, Procurement & Contracting

Date: 3/31/2016

THE INDIVIDUAL SIGNING IS AUTHORIZED TO BIND CLIENT.

THE UNIVERSITY OF ARIZONA.

Procurement and Contracting Services

January 28, 2016

Attn: Mark Lang
D2L Ltd
500 York Road
Townson, MD 21204

Dear Mr.Lang,

It is my pleasure to inform you of the acceptance of your Proposal for RFP L191603 to provide a Learning Management Solution for the University of Arizona pending the successful completion of a signed agreement. The term of this award is for three (3) years with the option to renew for two (2) additional one (1) year periods upon mutual agreement of both parties.

The terms, conditions, and specifications of the contract are clear and have been agreed to by all parties. The University will closely monitor the performance of D2L in order to ensure compliance with the contract.

Lastly, the cooperation and responsiveness provided by D2L throughout the entire RFP and evaluation process is sincerely appreciated and we look forward to a continuing business relationship.

Sincerely,
The Arizona Board of Regents on Behalf of the University of Arizona

By: _Celeste Kanzig_ Date: _3/31/2016_
Celeste Kanzig, Buyer
Procurement and Contracting Services
University of Arizona

THIS AWARD AS DESCRIBED ABOVE IS ACCEPTED ON BEHALF OF D2L Ltd.

DocuSigned by:
By: _Anna Forgione_ Date: 3/31/2016
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Name: Anna Forgione Title: General Counsel and Corporate Secretary