



Contract

Between

TENNESSEE BOARD OF REGENTS

And

Desire2Learn Incorporated

December 31, 2006

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**CONTRACT
BETWEEN
TENNESSEE BOARD OF REGENTS
AND
DESIRE2LEARN INCORPORATED**

This Contract, by and between the Tennessee Board of Regents, for itself and its member institutions, hereinafter referred to as the "Institution" or "TBR" and Desire2Learn Incorporated, hereinafter referred to as the "Contractor" is for the provision of technology enhanced course management products and services, as further defined in the "SCOPE OF SERVICES."

The Contractor is a private, for profit, corporation organized under the laws of Ontario, Canada.

The Contractor's address is:

305 King Street West, Suite 200
Kitchener, Ontario
Canada N2G 1B9

A. SCOPE OF SERVICES:

The scope of products and services is attached as Attachment I and hereby incorporated by reference.

The course management system shall include all products and services provided by Contractor under this Contract ("System").

The System must support compliance with the web content accessibility guidelines (WCAG), developed pursuant to W3C and ADA standards.

B. CONTRACT TERM:

B.1. Contract Term. This Contract shall be effective for the period commencing on December 31, 2006 and ending on December 31, 2007 (the "first" or "initial" term). The Institution shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

This Contract is subject to the appropriation and availability of State and/or federal funds. In the event that funds are not appropriated or are otherwise unavailable, Institution reserves the right to terminate this Contract upon written notice to the Contractor. Such termination shall not be deemed a breach of Contract by the Institution. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized products received or services performed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the Institution any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

B.2. Term Extension. The Institution reserves the right to extend this Contract for an additional period or periods of time for a total of five contract terms, not to exceed a total term of sixty (60) months. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the Institution's maximum liability will also be effected through an amendment to the

Contract and shall be based upon rates provided for in the original Contract. In addition to the rights provided below in Section D. 5, at the time of any renewal TBR shall have the right to discontinue any software license and services provided under this Contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. **Maximum Liability.** In no event shall the maximum cost to the Institution for the first term under this Contract exceed \$2,532,500. The fees specified in Exhibit I to Attachment I and hereby incorporated by reference shall constitute the entire compensation due the Contractor for the Products and Services and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The fees include, but are not limited to, all applicable taxes (other than Contractor's business/income taxes for which the TBR has no liability), fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid for work not requested by the Institution. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the Institution requests work and the Contractor performs the work; in which case, the Contractor shall be paid in accordance with the fees set out in Exhibit I.

Exhibit I also provides the Contractor's costs for additional goods/services which may be purchased by TBR at the rates/costs provided. Any purchase based on these additional goods/services after the effective date of this Contract shall not be included in the maximum cost figure given in this Section C.1; provided, however, copies of any orders placed shall be attached to this Contract and become a part hereof.

- C.2. **Compensation Firm.** The fees specified in Exhibit I are firm for the duration of the Contract, including any extensions/renewals and are not subject to additional escalation for any reason unless the Contract is amended.
- C.3. **Payment.** The Contractor's compensation shall be contingent upon satisfactory performance including timely completion of units of service or project milestones, defined immediately below.

a) Milestones.

<u>SERVICE UNIT/MILESTONE</u>	<u>DUE DATE</u>
Training instance/organization of the System available to TBR	January 17, 2007
Project plan/schedule	Commenced January 4, 2007 and completed January 31, 2007
Administrative support helpdesk in place	February 14, 2007
Faculty trainers trained *	Finished by May 1, 2007 and Commenced by February 14, 2007
Software System set up for TBR instances.	February 14, 2007
Provide tools/training materials for migration*	February 14, 2007
System Administrators trained	Finished by May 1, 2007, and Commenced by March 1, 2007

<u>SERVICE UNIT/MILESTONE</u>	<u>DUE DATE</u>
Banner integration components completed for real time	December 1, 2007, and Commence by Spring 2007
Test pilot course on snapshot integration	July 14, 2007, and Commenced by April 1, 2007
Test pilot course on real time integration	December 4, 2007, and Commenced Spring 2007
All pre-testing implementation is to be completed.	October 31, 2007
System fully operational and functioning in a production mode	December 31, 2007

If the final milestone listed the chart above is met earlier than December 1, 2007, all remaining implementation fees shall be payable under Contractor's invoice for the month in which the milestone is reached, including the 5% withheld under Section C.9.

* D2L shall provide a license to use and copies of all training materials relating to the System. Current training materials shall be delivered to TBR by February 14, 2007 electronically, and D2L will provide any new materials as they are developed. Nine days of training are covered within the costs of this Contract. Materials shall mean any version of printed or online D2L materials, including without limitation the instructor's guide, administrator's guide, custom handouts, and course templates developed by D2L. In addition to its internal use, TBR may hire independent contractors for training, provided they are not organizations which are product competitors of Desire2Learn or employees of product competitors to Desire2Learn Inc. Such independent contractors will have a license to use the training materials and software provided under this Contract for only as long as necessary for the training to help achieve the December 31, 2007 milestone.

b) Payment Methodology.

Introduction

Exhibit I of Attachment I of this Contract details the amounts to be paid and the schedule of payment. TBR will issue payment for goods and services after receipt or performance and the receipt of an invoice. The Contractor shall submit invoices in form and substance acceptable to TBR with all of the necessary supporting documentation. All invoices for goods/services will be addressed to the TBR Contract Monitor. Except as otherwise provided in Exhibit I, D2L shall submit invoices for any services provided under this Contract within thirty (30) days after the service is completed. Payments under this Contract shall be governed by the provisions the Tennessee Prompt Pay Act (Tennessee Code Annotated Section 12-4-701 et seq.).

The following paragraphs outline the conditions under which payment will be made within each cost category.

Course Management System License Fees

Payments for licensing the D2L Learning Edition shall be made at the beginning of each annual term with all proper invoicing to be completed in advance of that date, provided, however, that the initial license payment shall not be payable until the software has been installed and made available to TBR for the conversion and installation of course content by D2L and provided further that upon the completion of the foregoing, D2L shall initially invoice sixty-five (65%) of the first term licensing fee (target December 31, 2006) with the remaining thirty-five (35%) to be paid on or after July 1, 2007 upon the receipt of a proper invoice. Licensing costs are treated as other costs under Section C. 9.

Hosting Service Fees

The Hosting Service fee shall be payable at the beginning of each annual term of the Contract. In the first term, D2L shall only be paid seventy five percent (75%) of the hosting fee to be paid in any subsequent terms.

Training Fees

Training Fees shall be payable after July 1, 2007 and then only after training sessions have been completed and a proper invoice has been submitted.

RDBMS License

The RDBMS fee shall be payable at the beginning of the first term of the Contract upon receipt of a proper invoice.

Integration Implementation

During the first term of the Contract, TBR will issue payment for 65% of the first term's SnapShot and LDAP Integration implementation costs after the software has been installed and made available to TBR, and D2L has issued a proper invoice. The TBR will issue the remaining 35% after July 1, 2007 upon receipt of a proper invoice and provided that all Snapshot and LDAP integration have been completed.

During the first term of the Contract, the TBR will issue payment for 35% of the first term's Real time integration implementation costs upon receipt of a proper invoice. TBR will issue an additional 35% of the first term's Real time integration implementation costs after July 1, 2007 upon receipt of a proper invoice. The TBR will issue the final 30% of the Real time integration implementation costs after July 1, 2008 upon receipt of a proper invoice.

TBR will issue no payment for Integration Maintenance during the first term of the Contract. Thereafter, the Integration Maintenance fee shall be payable at the beginning of each annual term of the Contract upon receipt of a proper invoice.

During the first term of the Contract, TBR will issue payment for 33% of the first term's integration software setup costs after the software has been installed and made available to TBR and D2L has issued a proper invoice. The TBR will issue the remaining 67% after July 1, 2007 upon receipt of a proper invoice provided that all implementation has been completed.

Test Site

During the first term of the Contract, the TBR will issue payment for 65% of the first term's test site setup costs after the software has been installed and made available to TBR and D2L has issued a proper invoice. The TBR will issue the remaining 35% of the first term's test site setup costs after July 1, 2007 upon receipt of a proper invoice.

The TBR will issue no payment for Test Site Maintenance during the first term of the Contract. Thereafter, the Test Site Maintenance shall be payable at the beginning of each annual term of the Contract upon the receipt of a proper invoice.

Help Desk

During the first term of the Contract, the TBR will issue payment for the setup of help desk services only after the service has been made available to TBR and D2L has issued a proper invoice.

Also after the setup is complete, TBR will issue payment for 50% of the first term's help desk services, and D2L has issued a proper invoice. TBR will issue the remaining 50% of the first term's help desk services fee after July 1, 2007 upon receipt of a proper invoice.

After the first term of the Contract, D2L will aggregate the number of monthly support contacts bi-annually, after June 30 and after December 31 of any term. The help desk services fee shall be payable after June 30 and after December 31. The help desk services fee in these subsequent terms will be based upon the base rate plus any approved sum of the monthly overage indicated in Exhibit I of Attachment I.

Live Room

During the first term of the Contract, TBR will issue payment for 50% of the first term's Live Room Setup fee after the software has been installed and made available to TBR and D2L has issued a proper invoice. TBR will issue the remaining 50% of the first term's Live Room Setup fee after July 1, 2007 provided that all setup has been completed and after D2L has issued a proper invoice.

After the first term of the Contract, D2L will aggregate the number of LiveRoom concurrent users bi-annually, after June 30 and after December 31 of any term. The LiveRoom concurrent user fee shall be payable after June 30 and after December 31. The Live Room current user fee will be based upon the base rate plus any approved aggregate overage at one twelfth of the annual concurrent hosted rate indicated in Exhibit I of Attachment I.

During the first term of the Contract, TBR will issue payment for 50% of the first term's LiveRoom Hosting fee after the service is available and D2L has issued a proper invoice. TBR will issue the remaining 50% of the first term's LiveRoom Hosting fee after July 1, 2007 and after D2L has issued an invoice. Thereafter, the LiveRoom Hosting fee shall be payable at the beginning of each annual term of the Contract upon receipt of a proper invoice.

Learning Object Repository (LOR)

During the first term of the Contract, TBR will issue payment for the Learning Object Repository setup costs after the service is available to all TBR institutions and D2L has issued a proper invoice.

During the first term of the Contract, TBR will issue payment for 65% of the first term's Learning Object Repository License fee after the service is available and D2L has issued an invoice. The TBR will issue the remaining 35% of the first term's Learning Object Repository License fee after July 1, 2007 and after D2L has issued an invoice. Thereafter, the Learning Object Repository License fee shall be payable at the beginning of each annual term of the Contract upon the receipt of a proper invoice.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. The payment of the invoice by the Institution shall not prejudice the Institution's right to object to or question any invoice or matter in relation thereto. Such

payment by the Institution shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any prior invoice or previously paid which are determined by the Institution, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services. Institution reserves the right to withhold payment on any invoice in which there is a bona fide dispute as to the quality of products or services provided under this Contract.
- C.7. Deductions. The Institution reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the Institution any amounts which are or shall become due and payable to the State of Tennessee or any of its subdivisions by the Contractor.
- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the Institution. Once this form has been completed and submitted to the Institution by the Contractor, all payments to the Contractor, under this or any other contract the Contractor has with the Institution shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the Institution for services until the Contractor has completed this form and submitted it to the Institution.
- C.9. Retention of Final Payment. An amount of \$126,625, representing five (5)% of the maximum total fees payable to Contractor under this Contract for the initial term, shall be withheld by the Institution until thirty (30) days after final completion and acceptance of the services to be performed by the Contractor under this Contract. The retention period is for the implementation period (first term) only.

D. TERMS AND CONDITIONS:

- D.1. Required Approvals. The Institution is not bound by this Contract until it is approved by the appropriate Institution officials indicated on the signature page.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by authorized signatories of the parties.
- D.3. Warranties. The products and services delivered under this Contract shall be warranted as to, but not limited to, merchantability and fitness for the proposed purpose.

Contractor specifically warrants as follows:

- Implementation of the System for all organizations will be successfully completed by December 31, 2007

This warranty, to meet the above deadline is subject to the following exceptions only:

- 1) Negligence , unreasonable failure to cooperate or breach by TBR; or
 - 2) Negligence or unreasonable failure to cooperate of a third party, which is required for successful implementation but not under a contract with Contractor nor acting on Contractor's behalf under this Contract;
- Contractor has the right to grant any and all proprietary software and third party software licenses conveyed in this Contract and in related documentation;

None of the software or other products delivered under this Contract are violative of the intellectual property rights of any third party. This warranty shall

extend for as long as TBR is contracting with the Contractor for maintenance or support of the System conveyed by this Contract, or any upgrade or substitute thereto;

- Contractor has made all changes to make the System compatible with TBR's Banner ERP system as specified in the RFP;
- Contractor has made all changes to the software provided under this Contract required by State or federal law, will continue to do so throughout the life of this Contract and that all such changes will function as required;
- All services, including third party services, contracted hereunder will be performed in a professional and workmanlike manner, using personnel with sufficient experience in the relevant service/technology required under the RFP. TBR will have the right to refuse any personnel assigned if TBR reasonably believes such personnel do not possess the requisite skill sets. Upon written notice from TBR detailing the nature and deficiency of any services not rendered in accordance with this warranty, Contractor will re-perform such services at no additional cost to TBR. If Contractor is unable to re-perform such services to TBR's satisfaction or it is not practicable to do so, TBR may take any action available at law or in equity. Services warranted under this subsection shall include, but are not limited to -
 - Implementation services, including all activities to make the System fully operational; planning, training, train-the-trainer, conversion, installation, testing, etc.
 - Operational training;
- By December 31, 2007, the System will operate in accordance with Contractor's proposal and its System documentation; implementation and testing period must be successful and the System functioning in a production mode. Further, future versions will operate in accordance with Contractor's applicable documentation;
- Maintenance will be provided for the software licensed under this Contract, including the Contractor's proprietary software and any third party software included in the System and for the updates/upgrades thereto, in a timely and professional manner. Contractor warrants that it will continue to provide maintenance service during the term of this Contract, including any renewal options exercised by TBR. ;
- RDBMS – Contractor warrants the compatibility of the product Microsoft SQL Server, which was specified in Contractor's proposal, with its System and shall notify the entity or entities hosting the System when upgrades to the RDBMS are needed or beneficial; and
- Other/additional/optional products and services offered under the Contract shall also be warranted as provided above.

Unless specifically stated above in this Section D. 3, all warranties shall run for the term of this Contract and renewal term options exercised by TBR.

- D.4. **Termination for Convenience.** The Institution may terminate this Contract without cause for any reason. Termination under this Section D. 4 shall not be deemed a Breach of Contract by the Institution. The Institution shall give the Contractor at least ninety (90) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized products received or services provided in an acceptable manner as of the termination date, but in no event shall the Institution be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual

general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.4.1. Termination for Cause. If the Contractor fails to perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the Institution shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for accepted products and services properly rendered; provided, however, Institution shall have the option to give Contractor written notice and a specified period of time in which to cure. Notwithstanding the above, the Contractor shall not be relieved of liability to the Institution for damages sustained by virtue of any breach of this Contract by the Contractor.

D 4.2 Contractor Performance / Breach. The Contractor shall be responsible for the completion of all work set out in the Contract. All work is subject to inspection, evaluation, and acceptance by Institution. TBR may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the Contract.

D.4.3 Events of Breach. A party shall be deemed to have breached this Contract if any of the following occurs through no fault of the other Party (However, this list is not exclusive.):

- failure to meet any Service Units/Milestones;
- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract; or
- violation of any warranty.

For purposes of this Contract, the above items shall hereinafter be referred to as a "Breach."

D.4.4. Remedies. The Institution shall have the following remedies:

- (1) In the event of a Breach by Contractor, its employees or others for whom it is legally responsible under this Contract, the Institution shall have available the remedy of actual damages and any other remedy available at law or in equity.
- (2) In addition to any other remedies set forth herein, in the event the Contractor fails to meet the October 1, 2007 or December 31, 2007 Service Unit / Milestone identified in Section C.3 through no fault of TBR, TBR may procure any necessary products or services from other sources or perform such services itself and hold the Contractor responsible for any resulting cost. Further, if such breach renders TBR unable to provide on-line courses/education in whole or in part, Contractor shall be liable for any actual, special or consequential damages that result. Damages shall be calculated based on course revenues for the prior academic year. Special or consequential damages, and only such damages, shall be limited to up to two times the total cost of the current term of this Contract.
- (3) Liquidated Damages. In the event of a Breach by Contractor, its employees or others for whom it is legally responsible under this Contract of a required Service Unit or Milestone requirement, the Institution may assess Liquidated Damages in the amount of the fixed fee/cost, plus 10% of those amounts, set out in Attachment I for the item/service for the contract term in which the Breach occurs. The Institution shall notify the Contractor of amounts to be assessed as

Liquidated Damages. The parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically calculate a monetary amount for a Breach by Contractor as the amounts are likely to be uncertain and not easily proven. Contractor hereby represents and covenants it has carefully reviewed the Liquidated Damages provisions in this Contract, and agrees that the amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Breach of this type, and are a reasonable estimate of the damages that would occur from such a Breach. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by the Institution in losing the benefit of the bargain with Contractor and do not include any compensation for injury or damage sustained by a third party nor are they punitive in nature. The Contractor agrees that the liquidated damage amount is in addition to any amounts Contractor may owe the Institution pursuant to the indemnity provision or other sections of this Contract.

The Institution may continue to withhold the Liquidated Damages or a portion thereof until the Contractor cures the Breach, the Institution exercises its option to declare a Partial Default, or the Institution terminates the Contract. The Institution is not obligated to assess Liquidated Damages before availing itself of any other remedy. The Institution may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or in equity; provided, however, Contractor shall receive a credit for Liquidated Damages previously withheld except in the event of a Partial Default.

- (4) **Partial Default.** In the event of a Breach of a required Service Unit or Milestone requirement, the Institution may declare a Partial Default. In which case, the Institution shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the Institution will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the Institution may extend the time periods contained in the notice written to the Contractor.

In the event the Institution declares a Partial Default, the Institution may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the Institution of providing the defaulted service, whether the service is provided by the Institution or a third party. To determine the amount the Contractor is being paid for any particular service, the Institution shall be entitled to receive within five (5) business days, any requested, pertinent material from Contractor. The Institution shall make the final and binding determination of the amount.

The Institution may assess Liquidated Damages against the Contractor for any failure to perform which ultimately results in a Partial Default with the Liquidated Damages to cease when the Partial Default is effective. Upon Partial Default, the Contractor shall have no right to recover from the Institution any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the Institution in the event a Partial Default is declared.

- (5) **Termination of Contract.** In the event of a Breach, the Institution may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the Institution. The notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages; provided, however, Institution shall have the option to give Contractor written notice and a specified period of time in which to cure. In the event of a termination, the Institution may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the Institution at law or in equity. The Contractor shall be liable to the Institution for any and all damages incurred by the Institution and any and all expenses incurred by the Institution which exceed the amount the Institution would have paid Contractor under this Contract. Contractor agrees to cooperate with the Institution in the event of a Contract Termination or Partial Takeover.
- If this Contract is terminated by any party for cause, TBR shall have the right to use the software, solely for purposes of transferring the courses to a new format, for 180 days after the effective date of the termination. A termination penalty may not be charged to TBR. TBR shall be liable for a pro rata license fee payment and payment for services rendered prior to the effective date of termination and any extension for course conversion.
- (6) **Institution Breach.** In the event of a Breach of contract by the Institution, the Contractor shall notify the Institution in writing and give Institution thirty (30) days to cure any Breach of contract by the Institution. The notice shall contain a description of the Breach. Failure by the Contractor to provide the written notice shall operate as an absolute waiver by the Contractor of the Institution's Breach. In the event of Breach by the Institution, the Contractor may avail itself of any remedy available in the Claims Commission; provided, however, failure by the Contractor to give the Institution written notice and an opportunity to cure as described herein operates as a waiver of the Institution's Breach. Failure by the Contractor to file a claim in the Claims Commission within one (1) year of the written notice of Breach shall operate as a waiver of the claim in its entirety. It is agreed by the parties that this provision establishes a contractual period of limitations for any claim brought by the Contractor.
- D.5. **Partial Takeover.** The Institution may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). A Partial Takeover shall not be deemed a Breach of Contract by the Institution. Contractor shall be given at least fourteen (14) days prior written notice of a Partial Takeover with the notice to specify the area(s) of service the Institution will assume and the date of assumption. Any Partial Takeover by the Institution shall not alter in any way Contractor's other obligations under this Contract. The Institution may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the Institution. The amounts shall be withheld effective as of the date the Institution assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the Institution

any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.6. **Subcontracting**. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the Institution. If such subcontracts are approved by the Institution, they shall contain, at a minimum, the sections of this Contract pertaining to "Conflicts of Interest", "Nondiscrimination", "Remedies", and "Governing Law". Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

D.7. **Conflicts of Interest**. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

No employee of a TBR institution responsible for initiating or approving requisitions shall accept or receive, directly or indirectly, from any firm, person or corporation to which any contract may be awarded, by rebate, gift, or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future awards or compensation. Whenever any contract is awarded contrary to this prohibition, the contract shall be void.

NOTE: If price-fixing, pricing collusion, multiple proposal submission, or any other behavior prohibited by the terms contained in this Section D. 7. or in the RFP is detected at any time during the course of this Contract, the Contract shall be deemed null and void.

D.8. **No Contingent Fees**. No person or selling agency shall be employed or retained or given anything of monetary value to solicit or secure this Contract, except bona fide employees of the Contractor or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this provision, the TBR shall have the right to reject the Proposal, annul the Contract without liability, or, at its discretion, deduct from the Contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee or other benefit.

D.9. **Non-discrimination**. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, veteran status, or any other classification protected by Federal or State constitutional or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.10. **Records**. The Contractor shall maintain documentation for all charges against the Institution under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the Institution, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or

his/her representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the Institution, the Comptroller of the Treasury, or their duly appointed representatives.

TBR's authorized representative, the Contract Monitor, for the purposes of administration and monitoring of this Contract is Robbie Kendall Melton, Associate Vice Chancellor for Academic Affairs, or her designee/successor. Such representative shall have final authority for acceptance of D2L's services and if such services are accepted as satisfactory, shall so certify on each invoice submitted pursuant to the terms of payment.

D2L shall provide a single point of contact, an Account/Project Manager, for TBR at a level able to make significant field decisions and who has access to D2L management. TBR shall approve the Account Manager assigned to TBR and may request an alternate Account Manager be provided in the event that TBR is not satisfied with the level of support provided.

- D.12. Progress Reports. The Contractor shall submit periodic progress reports to TBR as requested. During the initial term of the Contract, D2L shall submit at least monthly progress reports to the Contract Monitor detailing the status of the System implementation and Banner real time integration; these reports shall list all tasks accomplished since the prior report and provide a comparison between actual work accomplished and the implementation plan and schedule developed by the implementation team and D2L .
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- D.15. Institution Liability. The Institution shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to delay/prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.17. Institution and Federal Compliance. The parties shall comply with all applicable State and federal laws and regulations in the performance of this Contract.

- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the Tennessee Claims Commission in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. OTHER TERMS AND CONDITIONS

- E.1. Legislative Compliance. Contractor agrees that it will make all changes to the software provided under this Contract required by State or federal law, will continue to do so throughout the life of this Contract and that all such changes will function as required;
- E.2. Assignment. Except as otherwise provided for herein below, neither party may assign any of its rights or obligations pursuant to this Contract, and any attempt at such assignment will be void without the prior written consent of the other party. Notwithstanding the foregoing, D2L's assignment of this Contract or of any D2L's rights pursuant to this Contract to D2L's successor by merger or consolidation or to any person or entity that acquires all or substantially all of its capital stock or assets, or D2L's assignment of this Contract to any entity which now or in the future is controlled by, controlling or under common control with D2L will not be considered "prohibited assignments" for purposes of this Contract, provided that the party to whom D2L has so assigned this Contract agrees to be bound by all the pricing, costs, rates, terms and provisions of this Contract for the initial term and any renewals. AND PROVIDED FURTHER, however, and notwithstanding the foregoing, D2L will have no right to assign this Contract, or any of D2L's rights hereunder, to any entity that has been debarred by TBR or (with regard to any individual Institution, debarred by such Institution) from conducting business with or within TBR.
- E.3. Source Code Availability and Access. The Contractor agrees to establish an escrow account with a mutually acceptable escrow agent in which it will maintain a copy of the current and prior versions of the source code, object code, compiling instructions, and all relevant development and user related documentation for all software and all other documentation relating to the System licensed to TBR. The escrowed materials shall be updated within 45 days after any substantive release by D2L, or any successor organization, for the term of the Contract. The agreement with the escrow agent shall authorize the escrow agent to release the escrowed materials to the TBR in the event D2L, or any successor organization, shall in the ordinary course of business, and for the term, and at the prices provided in the Contract, cease, for any reason, including the filing of bankruptcy, offering on-going maintenance and support to the most recent version of the products licensed hereunder.
- E.4. Right to Modify Source Code. If the TBR shall come into possession of the source code for any of the software licensed to TBR under the Contract, the TBR shall thereafter have the absolute right to modify it to perform any function, which the TBR deems desirable and TBR shall thereafter be the owner of any additional source code of which its personnel are authors, unless, pursuant to the Escrow Agreement, the code is returned to Contractor.

- E.5. **Notices.** All instructions, notices, consents, demands, or other communications shall be sent in a manner that verifies proof of delivery. Any communication by facsimile transmission shall also be sent by United States mail on the same date as the facsimile transmission. All communications which relate to any changes to the Contract shall not be considered effective until agreed to, in writing, by both parties. Notice shall be given as set out below or as otherwise provided in writing.

The Institution:

Angela A. Gregory
Director of Purchasing and Contracts
Tennessee Board of Regents
1415 Murfreesboro Road, Suite 350
Nashville, TN 37217
(615) 366-4436 PHONE
(615) 366-3902 FAX
angela.gregory@tbr.edu

The Contractor:

John Baker
President & CEO
Desire2Learn Inc.
305 King Street West, Suite 200
Kitchener, Ontario
Canada N2G 1B9

cc: Legal Department

(519) 772-0325 PHONE
(519) 772-0324 FAX

John.Baker@Desire2Learn.com
CC: Diane.Lank@Desire2Learn.com (Legal Dept)

- E.6. **Performance Bond.** D2L shall provide to TBR a performance bond for the products and services provided under this Contract. The amount of the performance bond must be ten percent (10%) of the maximum fees/cost of the Contract and must be issued by a surety company that is licensed to do business in the State of Tennessee. The performance bond must be maintained by the Contractor throughout the Term of the contract, in the amount of 10% of the maximum fees/cost of each term. The amount of the bond for each of the five terms is set out in Attachment II to this Contract. The Contractor shall obtain the required performance bond in form and substance acceptable to TBR and provide it to TBR on or before the first invoice for this Contract. Failure to provide the performance bond by the deadline as required shall result in disqualification and void the Contract. Certificates of Insurance will not be acceptable substitutions for this requirement.

- E.7. **Insurance.** Throughout the Contract Term, the Contractor will at all times maintain at its own cost the following minimum insurance coverage in substance and form reasonably acceptable to TBR, naming TBR as an additional insured, excepting specifically for the Workers' compensation coverage, and, by not later than the first invoice, will furnish TBR with certificates evidencing such insurance. Each such certificate will provide in pertinent part that the issuer will use reasonable efforts to provide TBR with prior written notice in the event of any cancellation of the insurance coverage provided for under this

Agreement. In the event of non-renewal, the Contractor shall provide TBR evidence of new insurance within ten (10) calendar days. Coverages to be maintained include: (i) Workers' compensation as required by the laws of the jurisdiction in which the employee is located; (ii) Employer's Liability Insurance with a combined single limit of One Million Dollars (\$1,000,000); (iii) Comprehensive Commercial General Liability Insurance, including operations/completed operations, products and contractual liability (including defense and investigating costs, and covering, without limitation but in particular, this Agreement), with limits of Two Million Dollars (\$2,000,000) each occurrence (BI and PD combined), and Five Million Dollars (\$5,000,000) Products and Completed Operations aggregate; (iv) Comprehensive Business Automobile Liability insurance, including property damage covering all owned, rented and/or utilized vehicles used in connection with performance of Contractor's services under this Agreement, with a combined single limit of not less than One Million Dollars (\$1,000,000) (BI and PD combined); and (v) Travel Agents' Errors and Omissions Insurance, in the amount of One Million Dollars (\$1,000,000) per wrongful act and One Million Dollars (\$1,000,000). Any deductibles or self-insured retention in the above described policies must be paid and are the sole responsibility of Successful Proposer. Coverage is to be primary and non-contributory with other coverage, if any, purchased by TBR, and all of these required policies must include a Waiver of Subrogation in favor of TBR.

Failure to provide evidence of such insurance coverage is a material breach and grounds for termination of the Contract.

- E.8. Secretary of State Certification. The Contractor shall furnish certification of authority to conduct business in the State of Tennessee as a condition of the Contract award. Such registration is obtained from the Secretary of State, who will also provide the certification thereof.
- E.9. Institution Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the Institution for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the Institution in as good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the Institution for the residual value of the property at the time of loss.
- E. 10. Contract Documents. Included in this Contract by reference are the following documents:
 - a. This Contract document and its attachments;
 - b. The Request for Proposal and its associated amendments; and
 - c. D2L's Proposals dated July 20 and September 14, 2006.
- In the event of a discrepancy or ambiguity regarding the interpretation of this Contract, these documents shall govern in order of precedence as listed above.
- E.11. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the Institution hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractors services are endorsed. D2L shall not use the TBR name or other intellectual property such as the TBR's trademarks in any promotional or marketing materials or press release without prior written approval of the TBR's, with the exception of use on a customer list.
- E.12. Public Records. This Contract is subject to, and both parties will comply with the provisions of the Tennessee Open Records Act.

E.13. Copyrights and Patents / Institution Ownership of Work Products. Contractor grants Institution a world-wide, annual, non-exclusive, fully paid up (after full payment to Contractor for the applicable term) license to use any proprietary software products delivered under this Contract. The Institution shall have royalty-free and unlimited right to use, disclose, reproduce, or publish, for any purpose whatsoever, as well as share in any benefits derived from all work products created, designed, developed, or derived from the services provided under and during any term of this Contract. The Institution shall have the right to copy, distribute, modify and use any training materials delivered under and during any term of this Contract for internal purposes only. The license granted herein shall inure to the benefit of TBR and all its member institutions for their internal business operations and cover any number of future terminals, branches, or business locations.

The Contractor agrees to indemnify and hold harmless the Institution as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the Institution for infringement of any third party's intellectual property rights, including but not limited to, any alleged patent or copyright violations. The Institution shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof. In any such action brought against the Institution, the Contractor shall take all reasonable steps to secure a license for Institution to continue to use the alleged infringing product or, in the alternative, shall find or develop a reasonable, non-infringing alternative to satisfy the requirements of this Contract and shall install and implement such solution for the TBR at no additional cost to TBR. If, and only if, neither of these options is feasible, Contractor shall return the applicable pro-rata portion of the license fee for the then current term.

The Contractor further agrees that it shall be liable for the payment of reasonable attorney fees for the Institution in the event such service is necessitated to enforce the obligations of the Contractor to the Institution.

Product Licensing. TBR shall not be required to accept or sign nor shall its use be subject to any service/product license other than this Contract for any service/product provided by Contractor under this Contract.

E.14. Hold Harmless. The Contractor agrees to indemnify and hold harmless the state of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on Contractor's behalf under this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the Institution in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the Institution. Special or consequential damages, and only such damages, shall be limited to up to two times the total cost of the current term of this Contract.

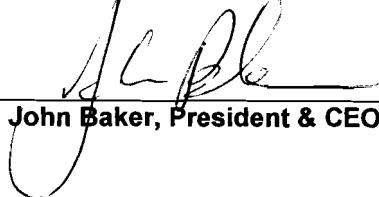
In the event of any such suit or claim, the Contractor shall give the Institution immediate notice thereof and shall provide all assistance required by the Institution in the Institution's defense. The Institution shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the Institution of Tennessee in any legal matter, such rights being governed by **Tennessee Code Annotated**, Section 8-6-106.

E.15. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining attempting to obtain, or performing a public (Federal, state, or local) transaction or grant under a public transaction; violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, state, or local) terminated for cause or default.
- E.16. Change in Organization. D2L shall promptly notify TBR of any changes in its officers, directors, and key employees, change of location of its principal offices, material change in the business or financial affairs of D2L which could affect its ability to provide the products and services under this Contract.
- E.17. Educational Support. For each year during the term, D2L will provide TBR with financial support in the amount of \$10,000 either in cash or in-kind, to hold, present or attend educational meetings regarding on-line education. Additional support by D2L could include providing speakers, conference materials or a display booth.
- E.18. Advisory Board Membership. After the effective date of this Contract, D2L shall make available a seat on its Advisory Board for TBR's appointed representative, which seat shall continue to be made available during the term of this Contract and any renewals.

IN WITNESS WHEREOF:

DESIRE2LEARN INC.:

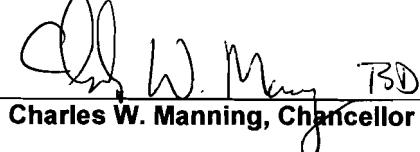


John Baker, President & CEO

December 21, 2006

Date

TENNESSEE BOARD OF REGENTS:



Charles W. Manning, Chancellor

12/22/06

Date

ATTACHMENT I

The spreadsheet labeled Exhibit I, which is attached to this Attachment I, lists all products and services purchased and the price for each as well as the total Contract cost for the initial term and up to four one year renewals. The fixed costs/rates provided on Exhibit I may only be modified by amendment to this Contract. Rates set forth on Exhibit I are not subject to escalation; however, licensing charges for the D2L Learning Edition software (and no other software) and hosting costs may be increased based on increases in users at the rates provided on Exhibit I. All other costs, including the rates for optional/additional products and services, are fixed for the initial term and four annual renewals. The information provided in this Attachment is intended to supplement the information provided in the RFP and Contractor's proposal, and shall take precedence in interpreting this Contract.

In the event that a change or development substantially reduces any of D2L costs for providing any of the products or services provided under this Contract, D2L will provide TBR a lower cost and/or credit for other future payments under the Contract in recognition of the savings opportunity.

CONTRACT DELIVERABLES:

D2L Learning Environment. D2L shall provide its most current D2L Enterprise e-Learning platform (System), which shall include all related documentation and user manuals, printed code, as well as technical support, which shall include access to web resources (FAQs, web-based knowledge forum), email and telephonic support for system integrity issues, service patches, upgrades/updates, service packs, and subsequent enhancements provided by D2L.

The aggregate number of licensed users (NLU) across all TBR organizations for the initial term of this Contract is 175,000 users per semester. A licensed user is defined to be a unique user id within an organization. Licensed users shall include all faculty, staff, and on-line users/students of all TBR institutions.

The number of users will be evaluated annually at the end of each term of the Contract in order to determine if the NLU has been exceeded during the previous term. The mean NLU shall be calculated by averaging the fall and spring NLUs. Should the mean NLU in the prior term of this Contract have been in excess of 185,000, the annual hosting services cost for the new term to the TBR system may be increased to the amount equal to the number by which the mean NLU is in excess of 185,000 times the annual license fee rate per user. The annual license rate per user for the TBR system is \$4.70.

Hosting Service. For the initial term, and unless specified by TBR otherwise for later terms, D2L will provide two instances of the software for the TBR system at its facility in North America. The first instance will recognize 23 production organizations – each of the 19 TBR colleges and universities shall be allocated an organization; the ROCC, ROCE, TTCs and Central Office will each be allocated 1 organization. The second instance will be the test site which can be accessed for testing and development by all organizations.

D2L will provide, such managed hardware networking, firewalls, redundant high-bandwidth connectivity to internet backbone loops, high performance server infrastructure, backups and software so as to allow the operation of the System for the benefit of each of the organizations as well as a test environment for those organizations. D2L shall be responsible for all support, maintenance, security and disaster recovery relating to the System for the benefit of TBR.

The hosting services provided under this Contract shall be equal to or exceed the standards that are common and acceptable within the industry.

If at any time the System cannot be accessed or there is some other emergency, D2L shall provide notice and other pertinent information to the Authorized Service Administrators (ASAs) as soon as reasonably possible.

Other than a change required in an emergency, D2L will provide advance notice to the TBR ASAs of any scheduled changes to the System which might impact TBR access to the System. D2L and TBR will evaluate use of the System and agree upon periods of low demand for routine maintenance and the implementation of upgrades/patches.

There will be a limit/quota of 1.75 Terabytes of total storage for TBR. Additional storage shall be available for purchase by TBR under the terms set forth in Exhibit I to this Attachment. There will be no limits/quotas on the memory/space allocated for any course, or the total content or courses of TBR. There will be no automatic deletion of courses or users.

The aggregate number of licensed users (NLU) across all TBR organizations for the initial term of this Contract is 175,000 users per semester. A licensed user is defined to be a unique user id within an organization. Licensed users shall include all faculty, staff, and on-line users/students of all TBR institutions.

The number of users will be evaluated annually at the end of each term of the Contract in order to determine if the NLU has been exceeded during the previous term. The mean NLU shall be calculated by averaging the fall and spring NLUs. Should the mean NLU in the prior term of this Contract have been in excess of 185,000, the annual hosting services cost for the new term to the TBR system may be increased to the amount equal to the number which the mean NLU exceeds 185,000 times the annual hosting services rate per user (HSRU). The Annual Hosting Services Rate per User for the TBR System is \$3.96.

At TBR's discretion, the term of D2L hosting services may not be renewed after the third term even though the Contract is being renewed. TBR shall give D2L at least ninety (90) days written notice before the end of third term if it does not intend to renew the hosting service but does intend to renew the Contract. D2L shall provide any information and assistance reasonably required for TBR to assume responsibility for the hosting service, including providing TBR a current image for each organization in DVD or the then applicable format. The annual D2L Learning Environment License fee per NLU will also be increased to \$5.70 for 175,000 NLU, subject to the overage formula set forth above, for the remainder of the term if this option is selected. This provision is an exception to Section D.5 of this Contract which permits TBR to discontinue services.

Training. D2L shall provide an initial round of nine (9) days of training under the Contract with a maximum class size of 12 instructors or 10 administrators. After the initial round of training there will be a maximum of 8 administrators in a training session. Additional trainers would be required for larger classes. TBR will specify the location and allocation of the training courses.

No later than January 17, 2007, D2L will provide access to a training instance of the System for TBR.

RDBMS License. TBR reserves the right to provide the license(s) for the Microsoft SQL Server relational database management system (RDBMS) to be utilized by D2L in the D2L hosting environment. In the event that TBR elects not to provide the RDBMS, it shall give D2L notice within 45 days of the effective date of this Contract, and D2L shall provide such RDBMS at the price set forth in Exhibit I.

Integration Implementation. All implementation services shall be timely completed during the initial term. Such services will include software and hosting environment set up, test site set up, project planning/scheduling, training, and integration of all SIS interfaces including Snapshot, LDAP/AD and Real Time. Within ten (10) days of effective date of this Contract, or as otherwise

agreed by the parties, D2L will send the Account/Product Manager, Dana Frigula, or another appropriate representative agreed upon by the parties, to TBR's Central Offices in Nashville to meet with the TBR implementation team to formulate the project plan and schedule of the implementation for the TBR system.

Project planning/scheduling will include developing a timeline to meet the Milestones in this Contract, as well as but not limited to, the setup for the software and initial implementation services required to setup the proper organizational structures. The Account/Project Manager will meet with TBR representatives as provided in Section D. 11 of this Contract, to develop a plan for the implementation and shortly thereafter complete the Snapshot integration of all campuses and then complete the LDAP/AD integrations and shall develop a plan for Real time integration.

The written project plan shall define the services to be performed by D2L, the roles and responsibilities of D2L and TBR and any appropriate measurements, in addition to meeting the Contract Milestones, or evaluation criteria such as would be common and acceptable within the industry, for timeliness and success of the implementation as compared to the plan/schedule. The Account/Project Manager and the TBR implementation team shall have, no less frequently than weekly unless mutually agreed, a conference to evaluate the status of the implementation and develop solutions for any problems identified.

For emphasis, but not for purposes of limitation, the parties agree that the requirements of Section 6.5.3, Contractor implementation personnel, of the RFP are material terms and that failure to conform to these requirements shall constitute a Breach of this Contract as provided in Section D.4.3.

Snapshot. D2L shall initially provide integration for the interface that links the System to the SIS being utilized by each of the 20 organizations and to its Snapshot product and shall maintain in force the licenses for this interface until such time as the Banner Real time interface has been developed and successfully tested. Individual organizations shall have the right to continue using Snapshot and/or Real time Banner after the Real time Banner interface is available.

LDAP/AD. D2L shall provide for log-on validation via campus hosted external directory, on an organization basis, integration between the directory service and D2L via LDAP and/or Active Directory.

Real Time. D2L will provide Real Time integrations for the organizations. When an integration for Real Time is provided for an organization, the fee paid for Snapshot will be subtracted from the cost. Exhibit I shows the maximum cost per organization for Real Time. As part of the project plan and schedule D2L and TBR will develop an SOW for Real time integrations. When two or more organizations are ready for Real time, D2L will evaluate its costs for the integration, and if the costs are materially less than the maximum cost, D2L will provide TBR a lower cost.

Integration Maintenance. D2L will make timely upgrades or patches or other required changes which would allow communication between the System and the SIS system then being utilized by each of the organizations at all times. D2L will provide telephonic and email support 24x7x365 to resolve all technical issues relating to the integration of the System and the SIS systems.

Support service. Under this Contract, D2L shall provide to TBR access to web resources (FAQs, web-based knowledge forum, technical support email) and on-going access to patches and service packs.

Software Setup D2L will provide software setup and testing services for both its hosting site and the individual organizations as provided in the project plan.

Test Site. D2L will provide a second instance of the software with one organization which will serve as the test site.

Setup. The test site will have a database separate from the first instance.

Maintenance. As part of the maintenance service for the test site, D2L will ensure that upgrades or patches work properly before application to the production environment. TBR is responsible for final approval/acceptance of a patch or upgrade.

Help Desk Services. D2L shall provide D2L Premium support to 21 TBR ASAs, plus designated backup for each ASA, on a 24x7x365 basis. The services to be provided include the following:

- Server Issues
- Campus Network/Administrator Issues
- Query Campus Access Point
- Course corruption involving the underlying application software and/or database.
- Backup restoration
- Access (search) of web access logs and/or error logs in case of legal appeal
- Assistance in Issues with batch archival of backups to local campus storage
- Other

TBR will provide to D2L a list of ASAs and a back-up for each organization and for the TBR Tier 2 help desk. TBR will be responsible for keeping this list current.

The initial term of this Contract provides for 200 ASA contacts per month which will be aggregated on a TBR system-wide basis for all organizations. No ASA shall be denied helpdesk service even if TBR has exceeded its 200 contacts in any particular month.

D2L will provide TBR a monthly report detailing usage by ASA, by organization. An ASA "contact" is defined as a trouble ticket concerning one issue from one ASA and the efforts to resolve it; it may include multiple telephone, email, chat and/or other means of communication between an ASA and D2L.

The helpdesk services provided under this Contract shall be equal to or exceed the standards that are common and acceptable within the industry.

LiveRoom. The LiveRoom license provided under this Contract also provides for LiveRoom Express licensing.

Setup. For the initial term and renewal terms, unless specified in an SOW between the parties, setup services for LiveRoom shall be provided for 500 concurrent users/across all organizations.

LiveRoom Hosting. Hosting services shall be provided for LiveRoom and LiveRoom Express.

Learning Object Repository (LOR). D2L will provide licensing and set up services for LOR for TBR. The LOR provided under this Contract shall be rule based and conform to industry standards.

Optional Products and Services. Exhibit I also lists all optional/additional products and services which may be purchased under this Contract and the price/rate for each. The fixed costs provided on Exhibit I may only be modified by amendment to this Contract. The optional/additional products and services are identified on Exhibit I.

Technology Enhanced Teaching and Learning Environment
Exhibit I
Tennessee Board of Regents
Cost Summary

	Rate	Unit	Year 1	Year 2	Year 3	Year 4	Year 5	Total	Comment
D2L Learning Edition License	\$4.70	Annual	\$822,500	\$855,400	\$889,616	\$925,201	\$962,209	\$4,454,925	
Hosting Service	\$3.96	Annual	\$519,750	\$693,000	\$693,000	\$693,000	\$693,000	\$3,291,750	
Training									
Faculty/Admin	\$31,500	9 days	\$31,500	\$0	\$0	\$0	\$0	\$31,500	
RDBMS License	\$150,000	One time	\$150,000	\$0	\$0	\$0	\$0	\$150,000	
Integration Implementation									
Snapshot	\$7,500	One time / Org	\$150,000	\$0	\$0	\$0	\$0	\$150,000	To be subtracted from Real Time cost
LDAP/AD	\$5,000	One time / Org	\$105,000	\$0	\$0	\$0	\$0	\$105,000	
Real Time	\$30,000	One time / Org	\$315,000	\$135,000	\$0	\$0	\$0	\$450,000	Not to exceed \$30K per organization
Integration Maintenance	\$25,000	Annual	\$0	\$25,000	\$25,000	\$25,000	\$25,000	\$100,000	No Year 1 maint
Software Setup	\$120,000	One time	\$120,000	\$0	\$0	\$0	\$0	\$120,000	
Test Site									
Setup	\$10,000	One time	\$10,000	\$0	\$0	\$0	\$0	\$10,000	
Maintenance	\$20,000	Annual	\$0	\$20,000	\$20,000	\$20,000	\$20,000	\$80,000	No Year 1 maint
Help Desk									
Premium Plus Admin Support (All Organizations)									
Setup, Administrator	\$10,000	One time	\$10,000	\$0	\$0	\$0	\$0	\$10,000	Funded by RODP
High Volume (200 con/month)	\$72,000	Annual	\$36,000	\$72,000	\$72,000	\$72,000	\$72,000	\$324,000	Funded by RODP
Low Volume (75 con/month)	\$37,500	Annual	\$0	\$0	\$0	\$0	\$0	\$0	Funded by RODP
TBR Tier 2 Help Desk									
High Volume (200 con/month)	\$0	Annual	\$0	\$0	\$0	\$0	\$0	\$0	Funded by RODP
LiveRoom									
Setup	\$6,500	One time	\$49,000					\$49,000	
LiveRoom Express	\$0	Included w/license	\$0	\$0	\$0	\$0	\$0	\$0	
License	\$90,000	500 concurrent users	\$45,000	\$90,000	\$90,000	\$90,000	\$90,000	\$405,000	
LiveRoom Hosting	\$37,500	Annual	\$18,750	\$37,500	\$37,500	\$37,500	\$37,500	\$168,750	
Learning Object Repository (LOR)									
Setup	\$25,000	One time	\$25,000					\$25,000	
License	\$125,000	Annual	\$125,000	\$125,000	\$125,000	\$125,000	\$125,000	\$625,000	
Total without help desk			\$2,486,500	\$1,980,900	\$1,880,116	\$1,915,701	\$1,952,709	\$10,215,925	
Total with Help Desk			\$2,532,500	\$2,052,900	\$1,952,116	\$1,987,701	\$2,024,709	\$10,549,925	
Bond Amount			\$253,250	\$205,290	\$195,212	\$198,770	\$202,471		

Technology Enhanced Teaching and Learning Environment
Exhibit I

D2L Implementation - 20061221.xls
Page 2 of 5

Working Document
Cost Summary

TETI/E D21, Contract - 20061221 - Final

Technology Enhanced Teaching and Learning Environment
Exhibit I

Tennessee Board of Regents
Cost Summary

	Year 4			Year 5		
	Q1	Q3	Total	Q1	Q3	Total
D2L Learning Edition License	\$ 925,201	\$ 925,201	\$ 925,201	\$ 962,209	\$ 962,209	\$ 962,209
Hosting Service Training	\$ 693,000	\$ 693,000	\$ 693,000	\$ 693,000	\$ 693,000	\$ 693,000
Faculty/Admin RDBMS License						
Integration Implementation Snapshot						
LDAP/AD						
Real Time Integration Maintenance	\$ 25,000	\$ 25,000	\$ 25,000	\$ 25,000	\$ 25,000	\$ 25,000
Software Setup Test Site Setup						
Maintenance Help Desk Premium Plus Admin Support (All Organizations)	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000
Setup, Administrator High Volume (200 con/month) Low Volume (75 con/month) TBR Tier 2 Help Desk High Volume (200 con/month) LiveRoom Setup	\$ 72,000	\$ 72,000	\$ 72,000	\$ 72,000	\$ 72,000	\$ 72,000
LiveRoom Express License	\$ 90,000	\$ 90,000	\$ 90,000	\$ 90,000	\$ 90,000	\$ 90,000
LiveRoom Hosting Learning Object Repository (LOR) Setup License	\$ 37,500	\$ 37,500	\$ 37,500	\$ 37,500	\$ 37,500	\$ 37,500
Total without help desk	\$ 1,915,701	\$ 1,915,701	\$ 1,952,709	\$ 1,952,709	\$ 1,952,709	\$ 1,952,709
Total with Help Desk Bond Amount	\$ 1,987,701	\$ 1,987,701	\$ 2,024,709	\$ 2,024,709	\$ 2,024,709	\$ 2,024,709

D2L Implementation - 20061221.xls
Page 3 of 5

TETLE D2L Contract - 20061221 - Final

Working Document
Cost Summary

Technology Enhanced Teaching and Learning Environment
Exhibit I

Tennessee Board of Regents
Cost Summary

FY Payment Distribution

Total	2006 - 2007	2007 - 2008	2008 - 2009	2009 - 2010	2010 - 2011	Total
Internal TBR Allocation Total	\$1,741,850	\$2,672,550	\$2,123,116	\$1,987,701	\$2,024,709	\$10,549,925
	\$1,713,850	\$2,618,550	\$2,015,116	\$1,915,701	\$1,952,709	\$10,215,925

Number of Licensed Users	175,000
License Rate/user	\$4.70
License Rate Escalation	0%
Real Time Integration Proration	70% 30% 0% 0%

Costs and Rates for Additional Services during the Term of the Contract

Optional Implementation Services

IS Consulting	\$140	per hour	
Custom Integration requiring SOV	\$140	per hour	
New Instance Creation	\$2,500	per Instance	As needed over the term of the contract
New Organization Creation	\$1,500	per Org	
Self-Registration	\$1,500	per Org	
E-Commerce	\$7,500	per Org	

Optional Training Rates

Onsite per day	\$3,500	per Day		
Virtual	\$2,500	per day	As needed over the term of the contract	max 12, incl. travel max 12

Live Room

Setup (Under 100 users)	\$2,500	per Org	
Setup (101-300 users)	\$4,500	per Org	
Annual (over 500 users)	\$175	per user	As needed over the term of the contract
Annual w/Hosting (over 500 users)	\$250	per user	

Help Desk

Premium Plus End-User			
Help Desk (750 con/month)	\$250,000	Annual	As needed over the term of the contract

Additional ASA

Basic Support	\$5,500	Annual	
Premium Admin Support	\$4,000	Annual	As needed over the term of the contract

Premium Plus Admin Support			
Low Volume Add-on	\$19,750	50 con/month	
High Volume Add-on	\$16,000	50 con/month	
Monthly Overage Rate	\$30	per contact	As needed over the term of the contract

D2L ePortfolio

D2L SynergIC3 (Collaborative Au

D2L Digital MarketPlace

D2L Hosting Storage Expansion

D2L DR Secondary Site

Billing is to be actual cost - not to exceed \$100,000

	SnapShot	LDAP/AD	RealTime	SnapShot	LDAP/AD	RealTime
APSU	Y	Y	Y	\$7,500	\$5,000	\$22,500
ETSU	Y	Y	Y	\$7,500	\$5,000	\$22,500
MTSU	Y	Y	Y	\$7,500	\$5,000	\$22,500
TSU	Y	Y	Y	\$7,500	\$5,000	\$22,500
TTU	Y	Y	Y	\$7,500	\$5,000	\$22,500
UOM	Y	Y	Y	\$7,500	\$5,000	\$22,500
ECOM	N	N	N			
CSTCC	Y	Y	Y	\$7,500	\$5,000	\$22,500
CLSCC	Y	Y	Y	\$7,500	\$5,000	\$22,500
COSCC	Y	Y	Y	\$7,500	\$5,000	\$22,500
DSCC	Y	Y	Y	\$7,500	\$5,000	\$22,500
JSCC	Y	Y	Y	\$7,500	\$5,000	\$22,500
MSCC	Y	Y	Y	\$7,500	\$5,000	\$22,500
NSCC	Y	Y	Y	\$7,500	\$5,000	\$22,500
NSTCC	Y	Y	Y	\$7,500	\$5,000	\$22,500
PSTCC	Y	Y	Y	\$7,500	\$5,000	\$22,500
RSCC	Y	Y	Y	\$7,500	\$5,000	\$22,500
STCC	Y	Y	Y	\$7,500	\$5,000	\$22,500
VSCC	Y	Y	Y	\$7,500	\$5,000	\$22,500
WSCC	Y	Y	Y	\$7,500	\$5,000	\$22,500
RODP	Y	Y	Y	\$7,500	\$5,000	\$22,500
ROCE	N	N	N			
TTC	N	N	N			
TBR	N	Y	N			\$5,000
				\$150,000	\$105,000	\$450,000

Cost for RealTime integration should exceed \$30,000/per organization.
Snapshot integration costs will be subtracted from RealTime integration costs.

ATTACHMENT II

Bond

(10% of the maximum fees/cost for each of the five potential terms.)

Term 1	\$253,250
Term 2	\$205,290
Term 3	\$195,212
Term 4	\$198,770
Term 5	\$202,471

Attachment III
Desire2Learn Availability Guarantee

Definitions:

"Emergency Unavailability" means those times where, in the reasonable discretion of Desire2Learn, the System should be down for situations such as an emergency software bug fix or hardware replacement. In all situations of Emergency Unavailability, Desire2Learn shall make commercially reasonable efforts to request permission from Client to take the System down, which permission shall not be untimely or unreasonably denied. Should Desire2Learn not be able to contact Client, or if Client does not respond promptly, a management-level employee of Desire2Learn shall make the decision, taking into account the effect on Client's business.

"Scheduled Unavailability," means the times in which the System is not available due to mutually-agreed upon and scheduled downtimes or extensions thereof (Maintenance Windows) for backups and Emergency Unavailability.

"Available" means the material components of the System are accessible for Client's use, and shall not include Scheduled Unavailability.

"Downtime" means those times in which the System is not Available for Client's use, but shall not include hardware/firmware failures, 3rd party communication failures, force majeure or other failures outside Desire2Learn's control, including Client error, and shall not include Scheduled Unavailability, provided that D2L had taken commercially reasonable steps to mitigate against hardware/firmware failures and 3rd party communication failures through, by way of example only, redundancy planning, appropriate equipment purchases, and maintenance agreements. Should D2L not take such steps, hardware/firmware failures and 3rd party communications failures may be considered Downtime. Notwithstanding anything to the contrary in the foregoing, in the event that there shall be 4 or more occasions when the System is not Available because of hardware/firmware failure in any quarter, in every subsequent quarter for the remainder of the number of terms under this Contract, hardware/firmware failure will be included in the calculation of downtime.

"Measurement Period" means each calendar quarter (the initial calendar quarter to be prorated from the Effective Date).

1. Availability guarantee.

Over each Measurement Period, the System shall be Available 99.9%

2. Desire2Learn Downtime and Emergency Unavailability obligations.

Desire2Learn will, if possible in consultation with Client, use commercially reasonable efforts to resolve any Downtime or Emergency Unavailability.

3. Downtime/Emergency Unavailability reporting.

Client shall report incidents that it considers Downtime as soon as reasonably possible. At the end of every measurement period, Desire2Learn and Client shall confer and classify any reported outage as Scheduled Unavailability, Emergency Unavailability, or Downtime applying a standard of commercial reasonableness. If the outage is classified as Downtime, Client may impose the penalties as outlined below.

4. Penalties.

- a. The second time in a calendar quarter that Downtime exceeds the above-mentioned limits, Client shall be entitled to a rebate of 5% of the pre-paid pro-rated hosting fees for that quarter.
- b. The third time in a calendar quarter that Downtime exceeds the above-mentioned limits, Client shall be entitled to a rebate of 10% of the pre-paid pro-rated hosting fees for that quarter.
- c. The fourth time in a calendar quarter that Downtime exceeds the above-mentioned limits, Client shall be entitled to a rebate of 25% of the pre-paid pro-rated hosting fees for that quarter, or, in the alternative, terminate this Agreement.
- d. Client shall impose no penalties if the Downtime was of no inconvenience to Client.

5. Throughput Standards. D2L uses at least 2 gigabyte fiber channel technology in its storage area network, in order to provide that the environment meets commercially reasonable industry standards for throughput of data at the hosting facility's internet egress.

6. Security. D2L shall provide full application filtering at the layer 7 level, utilize and necessary firewall and password protection and will take all steps commercially reasonable to secure all TBR data. In the event of a breach of security which causes material damage to TBR, the remedies set forth in Section D.4.4 of the Contract shall be available to TBR.

7. Disaster Recovery. D2L shall provide a disaster recovery solution consistent with commercially reasonable industry practices pursuant to our tape backup procedures. A premium Disaster Recovery service is available at additional cost.

AMENDMENT TO AGREEMENT
BETWEEN
TENNESSEE BOARD OF REGENTS
AND
DESIRE2LEARN INCORPORATED

This renewal of agreement, made this 4th day of December, 2007, by and between The Tennessee Board of Regents (“Board”) and Desire2Learn Incorporated (“Contractor”), for the purpose of renewing the Agreement between the parties providing technology enhanced course management products and services.

W I T N E S S E T H

Section B.1. is modified to read as follows: The Contract shall be effective for the period commencing on January 1, 2008 to December 31, 2008. The Institution shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

In addition, the following provision is hereby added to the Agreement:

- E.9. Prohibition on Hiring Illegal Immigrants. Tennessee Public Chapter No. 878 of 2006, TCA 12-4-124, requires that Contractor attest in writing that Contractor will not knowingly utilize the services of illegal immigrants in the performance of this Contract and will not knowingly utilize the services of any subcontractor, if permitted under this Contract, who will utilize the services of illegal immigrants in the performance of this Contract. The attestation shall be made on the form, Attestation re Personnel Used in Contract Performance (“the Attestation”), which is attached and hereby incorporated by this reference as Attachment A.

If Contractor is discovered to have breached the Attestation, the Commissioner of Finance and Administration shall declare that the Contractor shall be prohibited from contracting or submitting a bid to any Tennessee Board of Regents institution or any other state entity for a period of one (1) year from the date of discovery of the breach. Contractor may appeal the one (1) year by utilizing an appeals process in the Rules of Finance and Administration, Chapter 0620.

All other terms and conditions of the original agreement are hereby ratified and affirmed.

IN WITNESS WHEREOF, the parties, through their authorized representatives, have affixed their signatures.

TENNESSEE BOARD OF REGENTS

Charles Manning / mms 12-19-07
Charles W. Manning Date
Chancellor

DESIRE2LEARN INCORPORATED

Jeremy Auger 12-19-07
COO Date



ATTACHMENT A

**ATTESTATION RE PERSONNEL USED IN CONTRACT
PERFORMANCE**

CONTRACT NUMBER:	Contract # 100240 and RFP # 06-0295
CONTRACTOR LEGAL ENTITY NAME:	Desire2Learn Incorporated
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	98-0464830

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

**SIGNATURE &
DATE:**

Jeremy Auger
COO

05.December.07

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

AMENDMENT TO AGREEMENT
BETWEEN
TENNESSEE BOARD OF REGENTS
AND
DESIRE2LEARN INCORPORATED

This renewal of agreement, made this 24th day of November, 2008, by and between The Tennessee Board of Regents ("Board") and Desire2Learn Incorporated ("Contractor"), for the purpose of renewing the Agreement between the parties providing technology enhanced course management products and services.

W I T N E S S E T H

Section B.1. is modified to read as follows: The Contract shall be effective for the period commencing on January 1, 2009 to December 31, 2009. The Institution shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

In addition, the following provision is hereby added to the Agreement:

All other terms and conditions of the original agreement are hereby ratified and affirmed.

IN WITNESS WHEREOF, the parties, through their authorized representatives, have affixed their signatures.

TENNESSEE BOARD OF REGENTS

Charles W. Manning

Charles W. Manning
Chancellor

12-9-08

Date

DESIRE2LEARN INCORPORATED

Jeremy Auger
COO



Date

RENEWAL AGREEMENT
BETWEEN
DESIRE2LEARN INCORPORATED
AND
TENNESSEE BOARD OF REGENTS

WHEREAS, DESIRE2LEARN (Contractor), and the Tennessee Board of Regents (Board), entered into an Agreement on January 2007, in which the Contractor agreed generally to provide technology enhanced course management products and services to the institutions of the Tennessee Board of Regents, and

WHEREAS, the said parties desire to extend said Agreement in the manner described below.

NOW THEREFORE, the said parties hereby incorporate by reference all the terms and provisions of that said Agreement and supplement said Agreement with the following provisions:

Section B of the original Agreement is modified to read as follows:

- B.1. Term. This contract shall be effective for the period commencing on January 1, 2010 to December 31, 2010. TBR shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

The following sections are added to this Agreement to read as follows:

- E.20. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.
- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
 - b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.
 - c. With reference to either subsection a. or b. above, a Contractor may make a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: www.state.tn.us/finance/rds/ocr/waiver.html. The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

- E.21. Federal Economic Stimulus Funding. This Contract requires the Contractor to provide products and/or services that are funded in whole or in part under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, (Recovery Act). The Contractor is responsible for ensuring that all applicable requirements, including but not limited to

those set forth herein, of the Recovery Act are met and that the Contractor provides information to the State as required.

The Contractor (and any subcontractor) shall comply with the following:

- a. Federal Grant Award Documents, as applicable.
- b. Executive Office of the President, Office of Management and Budget (OMB) Guidelines as posted at www.whitehouse.gov/omb/recovery_default/, as well as OMB Circulars, including but not limited to A-102 and A-133 as posted at www.whitehouse.gov/omb/financial_offm_circulars/.
- c. Office of Tennessee Recovery Act Management Directives (posted on the Internet at www.tnrecovery.gov).
- d. Any subrecipient Contractor, if covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, agrees to specifically identify Recovery Act expenditures separately for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133.
- e. The Recovery Act, including but not limited to the following sections of that Act:
 - (1) Section 1604 – Disallowable Use. No funds pursuant to this Contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.
 - (2) Section 1512 – Reporting and Registration Requirements.
 - i. The Contractor must report on use of Recovery Act funds provided through this Contract. Information from these reports will be made available to the public.
 - ii. The subrecipient Contractor must maintain current registrations in the Central Contractor Registration (www.ccr.gov) at all times during which they have an active Contract funded with Recovery Act funds.
 - (3) Section 1553 – Recovery Act Whistleblower Protections. An employee of any non-Federal employer receiving covered funds under the Recovery Act may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee believes is evidence of one or more of the following related to the implementation or use of covered funds:
 - i. gross mismanagement,
 - ii. gross waste,
 - iii. substantial and specific danger to public health or safety,
 - iv. abuse of authority, or
 - v. violation of law, rule, or regulation (including those pertaining to the competition for or negotiation of a Contract).

Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: The Contractor and any subcontractor shall post notice of the rights and remedies as required under Section 1553. (Refer to Section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 located at www.recovery.gov, for specific requirements of this section and prescribed language for the notices.)

- (4) Section 902 – Access Of Government Accountability Office. The Contractor shall provide that the Comptroller General and his representatives are authorized:
- i. to examine any records of the Contractor or any of its subcontractors, that directly pertain to, and involve transactions relating to, this Contract or a subcontract; and
 - ii. to interview any officer or employee of the Contractor or any of its subcontractors regarding such transactions.
- (5) Section 1514 – Inspector General Reviews. Any inspector general of a federal department or executive agency has the authority to review, as appropriate, any concerns raised by the public about specific investments using such funds made available in the Recovery Act. In addition, the findings of such reviews, along with any audits conducted by any inspector general of funds made available in the Recovery Act, shall be posted on the inspector general's website and linked to the website established by Recovery Act Section 1526, except that portions of reports may be redacted to the extent the portions would disclose information that is protected from public disclosure under sections 552 and 552a of title 5, United States Code.
- (6) Section 1515 – Access of Offices of Inspector General to Certain Records and Employers. With respect to this Contract, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:
- i. to examine any records, of the Contractor or any of its subcontractors, that pertain to and involve transactions relating or pursuant to this Contract; and
 - ii. to interview any officer or employee of the Contractor or any subcontractors regarding such transactions.
- (7) Section 1606 – Wage Rate Requirements. All laborers and mechanics employed by pursuant to this Contract shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference.
- For purposes of this Contract, laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards.
- (8) Section 1605 – Buy American Requirements for Construction Material – Buy American, Use of American Iron, Steel, and Manufactured Goods. None of the funds provided by this Contract may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.
- f. The Contractor agrees to comply with any modifications or additional requirements that may be imposed by law and future guidance and clarifications of Recovery Act requirements.
- g. If the Contractor enters into one or more subcontracts for any of the services performed under this Contract, each subcontract shall contain provisions specifically imposing on the subcontractor all requirements set forth in this Contract Section E.21., "Federal Economic Stimulus Funding."

IN WITNESS WHEREOF, the parties have by their duly authorized representative set their signatures.

DESIRE2LEARN INCORPORATED

Jeremy Auger
COO



DATE: 10/10/09

TENNESSEE BOARD OF REGENTS

Charles Manning Jr
Charles W. Manning, Chancellor

DATE: 10/10/09

**RENEWAL AGREEMENT
BETWEEN
DESIRE2LEARN INCORPORATED
AND
TENNESSEE BOARD OF REGENTS**

WHEREAS, DESIRE2LEARN (Contractor), and the Tennessee Board of Regents (Board), entered into an Agreement on January 2007, in which the Contractor agreed generally to provide technology enhanced course management products and services to the institutions of the Tennessee Board of Regents, and

WHEREAS, the said parties desire to extend said Agreement in the manner described below.

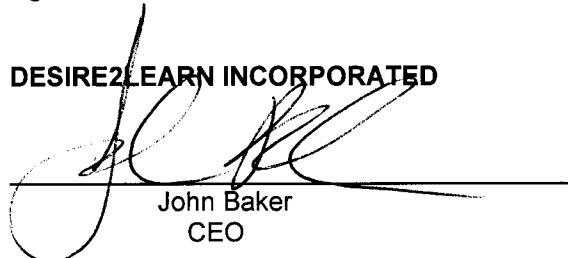
NOW THEREFORE, the said parties hereby incorporate by reference all the terms and provisions of that said Agreement and supplement said Agreement with the following provisions:

Section B of the original Agreement is modified to read as follows:

- B.1. Term. This contract shall be effective for the period commencing on January 1, 2011 to December 31, 2011. TBR shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

IN WITNESS WHEREOF, the parties have by their duly authorized representative set their signatures.

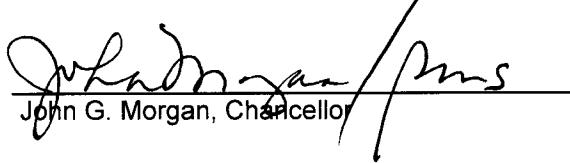
DESIRE2LEARN INCORPORATED



John Baker
CEO

DATE: Nov 18 / 10

TENNESSEE BOARD OF REGENTS



John G. Morgan, Chancellor

DATE: 11/30/10



Contract

Between

Tennessee Board of Regents

and

Desire2Learn Incorporated

Table of Contents

Contract

Attachment I – List of Products & Services

Exhibit I – Contract Rates

Attachment II – Performance Metrics

**CONTRACT
BETWEEN
TENNESSEE BOARD OF REGENTS
AND
DESIRE2LEARN INCORPORATED**

This Contract, by and between the Tennessee Board of Regents, for itself and its member institutions, hereinafter referred to as the "Institution" or "TBR" and Desire2Learn Incorporated, hereinafter referred to as "D2L" or the "Contractor" is for the provision of technology enhanced course management products ("System") and services, as further defined in the "SCOPE OF SERVICES." The Contractor is a private, for profit, corporation organized under the laws of Ontario, Canada.

The Contractor's address is:

151 Charles Street West, Suite 400
Kitchener, Ontario
Canada N2G 1H6

A. SCOPE OF SERVICES:

- A.1 The scope of products and services is attached as Attachment I and hereby incorporated by reference. The course management system ("System") shall include all products and services provided by Contractor under this Contract.
- A.2 The System must support compliance with the web content accessibility guidelines (WCAG), developed pursuant to W3C and ADA standards and all hosting and other services must be performed pursuant to the rules promulgated by the U.S. Family Educational Rights and Privacy Act (FERPA).

B. CONTRACT TERM:

- B.1 Contract Term. This Contract shall be effective for the period commencing on January 1, 2012 and ending on December 31, 2012 (the "first" or "initial" term). The Institution shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

This Contract is subject to the appropriation and availability of State and/or federal funds. In the event that funds are not appropriated or are otherwise unavailable in the initial term and for any additional term, Institution reserves the right to terminate this Contract upon written notice to the Contractor. Such termination shall not be deemed a breach of Contract by the Institution. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized products received or services performed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the Institution any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- B.2 Term Extension. The Institution reserves the right to extend this Contract for an additional period or periods of time for a total of five contract terms, not to exceed a total term of sixty (60) months. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the Institution's maximum liability

will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original Contract. In addition to the rights provided below in Section D. 5, at the time of any renewal TBR shall have the right to discontinue any software license and services, including hosting services provided under this Contract, with or without cause.

- B.3 In the event that Institution shall elect to discontinue hosting services in any future term, Contractor shall cooperate with and provide consulting services to Institution to accomplish the a smooth transition of such services. Charges for such consulting shall be those set forth in Exhibit I to Attachment 1.

C. PAYMENT TERMS AND CONDITIONS:

- C.1 Maximum Liability. (a) In no event shall the maximum cost to the Institution for the first term under this Contract exceed \$2,265,250.00. The fees specified in Exhibit I to Attachment I and hereby incorporated by reference shall constitute the entire compensation due the Contractor for the Products and Services and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The fees include, but are not limited to, all applicable taxes (other than Contractor's business/income taxes for which the TBR has no liability), fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

(b) The Contractor is not entitled to be paid for work not requested by the Institution. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the Institution requests work and the Contractor performs the work; in which case, the Contractor shall be paid in accordance with the fees set out in Exhibit I to Attachment 1.

(c) Exhibit I also provides the Contractor's costs for additional goods/services which may be purchased by TBR at the rates/costs provided. Any purchase based on these additional goods/services after the effective date of this Contract shall not be included in the maximum cost figure given in this Section C.1; provided, however, copies of any orders placed shall be attached to this Contract and become a part hereof.

- C.2 Compensation Firm. The fees specified in Exhibit I are firm for the duration of the Contract, including any extensions/renewals and are not subject to additional escalation for any reason unless the Contract is amended.

- C.3 Payment. The Contractor's compensation shall be contingent upon satisfactory delivery of any products or services contracted for in Exhibit I to Attachment 1.

- C.4 Payment Methodology. Exhibit I of Attachment I of this Contract details the amounts to be paid and the schedule of payment. TBR will issue payment after receipt of an invoice in form and substance acceptable to TBR with all of the necessary supporting documentation. All invoices for goods/services will be addressed to the TBR Contract Monitor. Except as otherwise provided herein, D2L shall submit invoices for any consulting or similar services provided under this Contract within thirty (30) days after the service is completed. Payments under this Contract shall be governed by the provisions the Tennessee Prompt Pay Act (Tennessee Code Annotated Section 12-4-701 et seq.).

- C.5 Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

- C.6 Payment of Invoice and Protests. The payment of the invoice by the Institution shall not prejudice the Institution's right to object to or question any invoice or matter in relation thereto. Such payment by the Institution shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

- C.7 **Invoice Reductions.** The Contractor's invoice shall be subject to reduction for amounts included in any prior invoice or previously paid which are determined by the Institution, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services. Institution reserves the right to withhold payment on any invoice in which there is a bona fide dispute as to the quality of products or services provided under this Contract.
- C.8 **Deductions.** The Institution reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the Institution any amounts which are or shall become due and payable to the State of Tennessee or any of its subdivisions by the Contractor.
- C.9 **Automatic Deposits.** The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the Institution. Once this form has been completed and submitted to the Institution by the Contractor, all payments to the Contractor, under this or any other contract the Contractor has with the Institution shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the Institution for services until the Contractor has completed this form and submitted it to the Institution.

D. TERMS AND CONDITIONS:

- D.1 **Required Approvals.** The Institution is not bound by this Contract until it is approved by the appropriate Institution officials indicated on the signature page.
- D.2 **Modification and Amendment.** This Contract may be modified only by a written amendment executed by authorized signatories of the parties.
- D. 3 **Warranties.** The products and services delivered under this Contract shall be warranted as to, but not limited to, merchantability and fitness for the proposed purpose.

Contractor specifically warrants as follows:

- Contractor has the right to grant any and all proprietary software and third party software licenses conveyed in this Contract and in related documentation;
- Neither the System or other D2L products delivered under this Contract are violative of the intellectual property rights of any third party. This warranty shall extend for as long as TBR is contracting with the Contractor for maintenance or support of the System conveyed by this contract or any upgrade or substituted system. This warranty shall extend to any products developed by third parties and licensed to D2L for inclusion in the System. Contractor has made all changes to make the System compatible with Institution's Banner ERP system and will continue to do so with each new release of either a "standard version" Banner or the System throughout the life of this contract provide that the standard version shall include the baseline Banner ERP software and all modifications to Banner made for the TBR which are in use on the effective date of the contract;
- Contractor has made all changes to the software provided under this Contract required by State or federal law, will continue to do so throughout the life of this Contract and that all such changes will function as required;
- All services, including third party services, contracted hereunder will be performed in a professional and workmanlike manner, using personnel with sufficient experience in the relevant service/technology. Institution will have the right to refuse any personnel assigned if Institution reasonably believes such personnel do not possess the requisite skill sets. Upon written notice from TBR detailing the nature and deficiency of any services not rendered in accordance with this warranty, Contractor

will re-perform such services at no additional cost to TBR. If Contractor is unable to re-perform such services to TBR's satisfaction or it is not practicable to do so, TBR may take any action available at law or in equity. Services warranted under this subsection shall include, but are not limited to -

-Implementation services, including all activities to make the System fully operational; planning, training, train-the-trainer, conversion, installation, testing, etc.

-Operational training;

- All components of the System, any Contractor owned auxiliary software licensed to Institution and any third party programs provided Institution for the purpose of operating in conjunction with the System or auxiliary software will operate in accordance with the Contractor's proposal and the documentation related to the software provided;
- Maintenance will be provided for the software licensed under this Contract, including the Contractor's proprietary software and any third party software included in the System and for the updates/upgrades thereto, in a timely and professional manner. Contractor warrants that it will continue to provide maintenance service during the term of this Contract, including any renewal options exercised by Institution;
- RDBMS – Contractor warrants the compatibility of the product Microsoft SQL Server, or any other database management product it shall elect to work with the System and shall provide sufficient early notification to the Institution and the entity or entities hosting the System when upgrades to the RDBMS are needed or beneficial; and
- Other/additional/optional services offered under the Contract shall also be warranted as provided above.

Unless specifically stated above in this Section D. 3, all warranties shall run for the term of this Contract and renewal term options exercised by Institution. These warranties are in addition to the performance standards and penalties set forth in Attachment 3.

- D.4 Termination for Convenience. The Institution may terminate this Contract without cause for any reason. Without limiting the breadth of the foregoing, the right to terminate without specifying a cause shall include the right to terminate hosting services provided by the Contractor. Termination under this Section D. 4 shall not be deemed a Breach of Contract by the Institution. The Institution shall give the Contractor at least ninety (120) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized products received or services provided in an acceptable manner as of the termination date, but in no event shall the Institution be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.5 Termination for Cause. If the Contractor fails to perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the Institution shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for accepted products and services properly rendered; provided, however, Institution shall have the option to give Contractor written notice and a specified period of time in which to cure. Notwithstanding the above, the Contractor shall not be relieved of liability to the Institution for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.6 Contractor Performance / Breach. The Contractor shall be responsible for the completion of all work and the provision of all products as set out in the Contract. All work is subject to

inspection, evaluation, and acceptance by Institution. TBR may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the Contract.

D.7 **Events of Breach.** A party shall be deemed to have breached this Contract if any of the following occurs through no fault of the other Party (However, this list is not exclusive.):

- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract; or
- violation of any warranty.

For purposes of this Contract, the above items shall hereinafter be referred to as a "Breach."

D.8 **Remedies.** The Institution shall have the following remedies:

(a) **Actual Damages.** In the event of a Breach by Contractor, its employees or others for whom it is legally responsible under this Contract, the Institution shall have available the remedy of actual damages and any other remedy available at law or in equity. Actual Damages shall include but not be limited to damages incurred by the Institution if it, through no fault of the Institution, is unable to provide on line courses/education in whole or in part as a result of Contractor being unable to provide the contracted for software, hosting or support to the Institution as required by this Contract thereby requiring the Institution to cancel courses and refund money to the students. Damages shall be calculated based on either revenues Institution is required to re-pay students upon cancellation, or in the case of having to cancel courses for a future semester, damages shall be calculated by subtracting from the amount of gross revenues received by the Institution in the immediately preceding semester, those costs the Institution would have incurred by providing said on line courses/education in the same manner as it did in the immediately preceding semester.

(b) **Special Damages.** In addition to any other remedies set forth herein, in the event the Contractor fails to provide software, support or hosting services necessary for the Institution to timely operate using the System to meet its LMS needs through no fault of the Institution, the Institution may procure any necessary products or services from other sources or perform such services itself and hold the Contractor responsible for any resulting cost.

(c) **Partial Default.** In the event of a Breach related to hosting services, the Institution may declare a Partial Default. In which case, the Institution shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the Institution will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the Institution may extend the time periods contained in the notice written to the Contractor. Contractor agrees to cooperate fully with the Institution in the event a Partial Default is declared.

In the event the Institution declares a Partial Default, the Institution may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the Institution of providing the defaulted service, whether the service is provided by the Institution or a third party. To determine the amount the Contractor is being paid for any particular service, the Institution shall be entitled to receive within five (5) business days, any requested, pertinent material from

Contractor. The Institution shall make the final and binding determination of the amount.

- (d) **Termination of Contract.** In the event of a Breach, the Institution may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the Institution. The notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages; provided, however, Institution shall have the option to give Contractor written notice and a specified period of time in which to cure. In the event of a termination, the Institution may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the Institution at law or in equity. The Contractor shall be liable to the Institution for any and all actual or special damages incurred by the Institution and any and all expenses incurred by the Institution which exceed the amount the Institution would have paid Contractor under this Contract. Contractor agrees to cooperate with the Institution in the event of a Contract Termination or Partial Takeover.

If this Contract is terminated by any party for cause, Institution shall have the right to use the software, solely for purposes of transferring the courses to a new format, for 180 days after the effective date of the termination. A termination penalty may not be charged to TBR. TBR shall be liable for a pro rata license fee payment and payment for services rendered prior to the effective date of termination and any extension for course conversion.

- (e) **Institution Breach.** In the event of a Breach of contract by the Institution, the Contractor shall notify the Institution in writing and give Institution thirty (30) days to cure any Breach of contract by the Institution. The notice shall contain a description of the Breach. Failure by the Contractor to provide the written notice shall operate as an absolute waiver by the Contractor of the Institution's Breach. In the event of Breach by the Institution, the Contractor may avail itself of any remedy available in the Tennessee Claims Commission; provided, however, failure by the Contractor to give the Institution written notice and an opportunity to cure as described herein operates as a waiver of the Institution's Breach. Failure by the Contractor to file a claim in the Tennessee Claims Commission within one (1) year of the written notice of Breach shall operate as a waiver of the claim in its entirety. It is agreed by the parties that this provision establishes a contractual period of limitations for any claim brought by the Contractor.

- D.9 **Partial Takeover.** The Institution may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). A Partial Takeover shall not be deemed a Breach of Contract by the Institution. Contractor shall be given at least one hundred twenty (120) days prior written notice of a Partial Takeover with the notice to specify the area(s) of service the Institution will assume and the date of assumption. Any Partial Takeover by the Institution shall not alter in any way Contractor's other obligations under this Contract. The Institution may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the Institution. The amounts shall be withheld effective as of the date the Institution assumes the service. Upon Partial Takeover, the Contractor shall have no

right to recover from the Institution any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- D.10 **Subcontracting**. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the Institution. If such subcontracts are approved by the Institution, they shall contain, at a minimum, the sections of this Contract pertaining to "Conflicts of Interest", "Nondiscrimination", "Remedies", and "Governing Law". Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.11 **Conflicts of Interest**. (a) The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- (b) No employee of a TBR institution responsible for initiating or approving requisitions shall accept or receive, directly or indirectly, from any firm, person or corporation to which any contract may be awarded, by rebate, gift, or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future awards or compensation. Whenever any contract is awarded contrary to this prohibition, the contract shall be void.
- (c) If price-fixing, pricing collusion, multiple proposal submission, or any other behavior prohibited by the terms contained in this Section D. 7 is detected at any time during the course of this Contract, the Contract shall be deemed null and void.
- D.12 **No Contingent Fees**. No person or selling agency shall be employed or retained or given anything of monetary value to solicit or secure this Contract, except bona fide employees of the Contractor or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. In no event shall Institution be directly responsible for paying any commission or similar fee to and person or entity engaged by Contractor for the purpose of soliciting or securing this agreement.
- D.13 **Non-discrimination**. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, veteran status, or any other classification protected by Federal or State constitutional or statutory law.
- D.14 **Records**. The Contractor shall maintain documentation for all charges against the Institution under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the Institution, the Tennessee Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles. The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his/her representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.
- D.15 **Monitoring**. (a) The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the Institution, the Comptroller of the Treasury, or their duly appointed representatives. Institution's authorized representative, the Contract Monitor, for the purposes of administration and monitoring of this Contract is Dr.

Raylean Henry, Associate Vice Chancellor for Academic Affairs, or her designee/successor. Such representative shall have final authority for acceptance of Contractor's services and if such services are accepted as satisfactory, shall so certify on each invoice submitted pursuant to the terms of payment.

- (b) Contractor shall provide an Account Manager, and a Technical Account Representative to the Institution at a level able to make significant field decisions and who has access to D2L senior management. Institution shall approve the Account Manager and Technical Account Representative assigned to TBR and may request an alternate Account Manager Technical Account Representative be provided in the event that Institution is not satisfied with the level of support provided.
- D.16 Performance Analysis. (a) The Contractor shall provide Institution with analytical tools, such as a "dashboard that will allow the Institution to make periodic analyses of the Contractor's performance under this agreement. Contractor, through its Account Manager and/or its Technical Account Representative, or such designee as agreed to by Institution agrees to hold periodic (at least monthly) telephone or in person meetings with Institution's Contract Monitor, or her designee for the purpose of reviewing the performance of the parties and to take such other actions as the parties deem necessary for the proper performance of the Contract. This does not include the Contractor's product named Analytics.
- (b) Attachment 3 to this agreement sets forth a series of performance metrics agreed to by the parties. The performance standards and penalties provided for in that attachment are in addition to the parties duties to meet and confer under this Section D.12.
- D.17 Archive – Purge – Storage. The parties agree to work together to design, develop and implement an archive and purge tool that will be both easily used and robust. Until such time as Contractor can deliver such a tool, Contractor agrees to refrain from charging Institution any amounts for increased storage.
- D.18 Strict Performance. Except as otherwise specifically provided herein, failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.19 Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- D.20 Institution Liability. The Institution shall have no liability except as specifically provided in this Contract.
- D.21 Force Majeure. The obligations of the parties to this Contract are subject to delay/prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.22 Institution and Federal Compliance. The parties shall comply with all applicable State and federal laws and regulations in the performance of this Contract.

- D.23 Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the Tennessee Claims Commission in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.24 Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.25 Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. OTHER TERMS AND CONDITIONS:

- E.1 Legislative Compliance. Contractor agrees that it will make all changes to the software provided under this Contract required by State or federal law, will continue to do so throughout the life of this Contract and that all such changes will function as required;
- E.2 Assignment. Except as otherwise provided for herein below, neither party may assign any of its rights or obligations pursuant to this Contract, and any attempt at such assignment will be void without the prior written consent of the other party. Notwithstanding the foregoing, Contractor's assignment of this Contract or of any Contractor's rights pursuant to this Contract to Contractor's successor by merger or consolidation or to any person or entity that acquires all or substantially all of its capital stock or assets, or Contractor's assignment of this Contract to any entity which now or in the future is controlled by, controlling or under common control with Contractor will not be considered "prohibited assignments" for purposes of this Contract, provided that the party to whom Contractor has so assigned this Contract agrees to be bound by all the pricing, costs, rates, terms and provisions of this Contract for the initial term and any renewals. AND PROVIDED FURTHER, however, and notwithstanding the foregoing, Contractor will have no right to assign this Contract, or any of Contractor's rights hereunder, to any entity that has been debarred by the State of Tennessee, the Institution or (with regard to any individual Institution, debarred by such Institution) from conducting business with or within the Institution or the State of Tennessee and provided further that the right of automatic assignment of the Contract shall not apply if the purchaser or merging party of Contractor shall be Blackboard, Inc. or any parent, subsidiary of Blackboard, Inc.
- E.3 Source Code Availability and Access. The Contractor agrees to establish an escrow account with a mutually acceptable escrow agent in which it will maintain a copy of the current and prior versions of the source code, object code, compiling instructions, and all relevant development and user related documentation for all software and all other documentation relating to the System licensed to Institution. The escrowed materials shall be updated within 45 days after any substantive release by Contractor, or any successor organization, for the term of the Contract. The agreement with the escrow agent shall authorize the escrow agent to release the escrowed materials to the Tennessee Board of Regents in the event Contractor, or any successor organization, shall in the ordinary course of business, and for the term, and at the prices provided in the Contract, cease, for any reason, including the filing of bankruptcy, offering on-going maintenance and support to the most recent version of the products licensed hereunder.

- E.4 **Right to Modify Source Code.** If the Institution shall come into possession of the source code for any of the software licensed to Institution under the Contract, the Institution shall thereafter have the absolute right to modify it to perform any function, which the Institution deems desirable and Institution shall thereafter be the owner of any additional source code of which its personnel are authors, unless, pursuant to the Escrow Agreement, the code is returned to Contractor.
- E.5 **Notices.** All instructions, notices, consents, demands, or other communications shall be sent in a manner that verifies proof of delivery. Any communication by facsimile transmission shall also be sent by United States mail on the same date as the facsimile transmission. All communications which relate to any changes to the Contract shall not be considered effective until agreed to, in writing, by both parties. Notice shall be given as set out below or as otherwise provided in writing.

The Institution:

Angela Gregory Flynn
Director of Purchasing and Contracts
Tennessee Board of Regents
1415 Murfreesboro Road, Suite 350
Nashville, TN 37217
(615) 366-4436 PHONE
(615) 366-2243 FAX
angela.flynn@tbr.edu

The Contractor:

John Baker
President & CEO
Desire2Learn Incorporated
151 Charles Street West, Suite 400
Kitchener, Ontario
Canada N2G 1H6

cc: Legal Department
Attn: Diane Lank, General Counsel

(519) 772-0325 PHONE
(519) 772-0324 FAX

John.Baker@Desire2Learn.com
CC: Diane.Lank@Desire2Learn.com (Legal Dept)

- E.6 **Training.** Contractor shall provide a license to use and copies of all training materials relating to the System. Materials shall mean any version of printed or online D2L materials, including without limitation the instructor's guide, administrator's guide, custom handouts, and course templates developed by Contractor.
- E.7 **Insurance.** Throughout the Contract Term, the Contractor will at all times maintain at its own cost the following minimum insurance coverage in substance and form reasonably acceptable to Institution, naming the Tennessee Board of Regents as an additional insured, excepting specifically for the Workers' compensation coverage, and, by not later than the first invoice, will furnish Institution with certificates evidencing such insurance. Each such certificate will provide in pertinent part that the issuer will use reasonable efforts to provide Institution with prior written notice in the event of any cancellation of the insurance coverage provided for under this Agreement. In the event of non-renewal, the Contractor shall provide Institution

evidence of new insurance within ten (10) calendar days. Coverage to be maintained shall include: (i) Workers' compensation as required by the laws of the jurisdiction in which the employee is located; (ii) Employer's Liability Insurance with a combined single limit of One Million Dollars (\$1,000,000); (iii) Comprehensive Commercial General Liability Insurance, including operations/completed operations, products and contractual liability (including defense and investigating costs, and covering, without limitation but in particular, this Agreement), with limits of Two Million Dollars (\$2,000,000) each occurrence (BI and PD combined), and Five Million Dollars (\$5,000,000) Products and Completed Operations aggregate; (iv) Comprehensive Business Automobile Liability insurance, including property damage covering all owned, rented and/or utilized vehicles used in connection with performance of Contractor's services under this Agreement, with a combined single limit of not less than One Million Dollars (\$1,000,000) (BI and PD combined); and (v) Travel Agents' Errors and Omissions Insurance, in the amount of One Million Dollars (\$1,000,000) per wrongful act and One Million Dollars (\$1,000,000). Any deductibles or self-insured retention in the above described policies must be paid and are the sole responsibility of Contractor. Failure to provide evidence of such insurance coverage is a material breach and grounds for termination of the Contract.

- E.8 Secretary of State Certification. The Contractor shall furnish certification of authority to conduct business in the State of Tennessee as a condition of the Contract award. Such registration is obtained from the Secretary of State, who will also provide the certification thereof.
- E.9 Institution Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the Institution for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the Institution in as good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the Institution for the residual value of the property at the time of loss.
- E.10 Contract Documents. Included in this Contract by reference are the following documents:
- a. This Contract document and its attachments;
 - b. The 2006 Request for Proposal and its associated amendments; and
 - c. D2L's Proposals dated July 20 and September 14, 2006 to the extent that the content of the proposal does not refer to original implementation matters. In the event of a discrepancy or ambiguity regarding the interpretation of this Contract, these documents shall govern in order of precedence as listed above.
- E.11 Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the Institution hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractors services are endorsed. Contractor shall not use the Tennessee Board of Regents or the name or trademark or the name or trademark of any of the Tennessee Board of Regents' constituent institutions in any promotional or marketing materials or press release without prior written approval of the Tennessee Board of Regents, with the exception of use on a customer list.
- E.12 Public Records. This Contract is subject to, and both parties will comply with the provisions of the Tennessee Open Records Act.
- E.13 Copyrights and Patents / Institution Ownership of Work Products.(a) Grant of License. Contractor grants Institution a world-wide, annual, non-exclusive, fully paid up (after full payment to Contractor for the applicable term) license to use any proprietary software products delivered under this Contract. The Institution shall have royalty-free and unlimited right to use, disclose, reproduce, or publish, for any purpose whatsoever, as well as share in

any benefits derived from all work products created, designed, developed, or derived from the services provided under and during any term of this Contract. The Institution shall have the right to copy, distribute, modify and use any training materials delivered under and during any term of this Contract for internal purposes only. The license granted herein shall inure to the benefit of the Tennessee Board of Regents and all its member institutions, and, without limiting the generality of the foregoing, any institute, or Center of Excellence or similar organization connected to or affiliated with the Tennessee Board of Regents, for their internal business operations and cover any number of future terminals, branches, or business locations.

(b) Indemnification. The Contractor agrees to indemnify and hold harmless the Institution as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the Institution for infringement of any third party's intellectual property rights, including but not limited to, any alleged patent or copyright violations. The Institution shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof. In any such action brought against the Institution, the Contractor shall take all reasonable steps to secure a license for Institution to continue to use the alleged infringing product or, in the alternative, shall find or develop a reasonable, non-infringing alternative to satisfy the requirements of this Contract and shall install and implement such solution for the Institution at no additional cost to Institution. If, and only if, neither of these options is feasible, Contractor shall return the applicable pro-rata portion of the license fee for the then current term.

Contractor further agrees that any settlement of any claim brought against Institution is subject to the approval of the Tennessee Attorney General pursuant to **Tennessee Code Annotated**, Section 8-6-106.

(b) Product Licensing. TBR shall not be required to accept or sign nor shall its use be subject to any service/product license other than this Contract for any service/product provided by Contractor under this Contract.

E.14 Hold Harmless. The Contractor agrees to indemnify and hold harmless the state of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on Contractor's behalf under this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the Institution in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the Institution. Special or consequential damages, and only such damages, shall be limited to up to two times the total cost of the current term of this Contract.

In the event of any such suit or claim, the Contractor shall give the Institution immediate notice thereof and shall provide all assistance required by the Institution in the Institution's defense. The Institution shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the Institution of Tennessee in any legal matter, such rights being governed by **Tennessee Code Annotated**, Section 8-6-106.

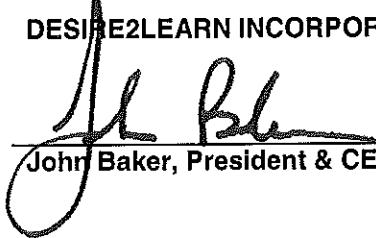
E.15 Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or state department or agency;

- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining attempting to obtain, or performing a public (Federal, state, or local) transaction or grant under a public transaction; violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, state, or local) terminated for cause or default.
- E.16 Change in Organization. Contractor shall promptly notify Institution of any changes in its officers, directors, and key employees, change of location of its principal offices, material change in the business or financial affairs of Contractor which could affect its ability to provide the products and services under this Contract.
- E.17 Educational Support. For each year during the term, Contractor will provide Institution with financial support in the amount of \$10,000 either in cash or in-kind, to hold, present or attend educational meetings regarding on-line education. Additional support by Institution could include providing speakers, conference materials or a display booth.
- E.18 Advisory Board Membership. Contractor shall continue to make available a seat on its Advisory Board for Institution's appointed representative, which seat shall continue to be made available during the term of this Contract and any renewals.

IN WITNESS WHEREOF:

DESIRE2LEARN INCORPORATED:

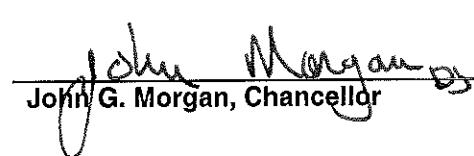


John Baker, President & CEO

December 16, 2011

Date

TENNESSEE BOARD OF REGENTS:



John G. Morgan, Chancellor

1/25/12

Date

ATTACHMENT I

LIST OF PRODUCTS & SERVICES

The spreadsheet labeled Exhibit I, which is attached to this Attachment I, lists all products and services purchased and the price for each as well as the total Contract cost for the initial term and up to four one year renewals. The fixed costs/rates provided on Exhibit I may only be modified by amendment to this Contract. Rates set forth on Exhibit I are not subject to escalation; however, charges for the Desire2Learn software as listed under each yearly charge reflect agreed upon increases. The Desire2Learn software and services total yearly charge, may be increased based on increases in users at the rates provided on Exhibit I. All other costs, including the rates for hosting and optional/additional products and services, are fixed for the initial term and four annual renewals. The information provided in this Attachment shall take precedence in interpreting this Contract.

With regard to charging of Desire2Learn software and services, the initial number of aggregate number of licensed users (NLU) across all TBR organizations for the initial term of this Contract is 175,000 users per semester. A licensed user is defined to be a unique individual user across the TBR organizations who has accessed the system at least one time. The intent of this provision to be to eliminate the double counting of a user because he or she may play more than one role at their institution or another related institution, including ROCC and RODP, and to eliminate from the total those account id's that are created to allow for the performance of administrative tasks but are not associated with an individual person. TBR will work with D2L to help identify duplicated users properly and timely. Licensed users shall include all faculty, staff, and on-line users/students of all TBR institutions.

The number of users will be evaluated annually at the end of each term of the Contract in order to determine if the NLU has been exceeded during the previous term. The mean NLU shall be calculated by averaging the fall and spring NLUs. Should the mean NLU in the prior term of this Contract have been in excess of 185,000, the cost for the new term to the TBR system for the D2L Learning Edition software may be increased to an amount where the charge for the D2L Learning Edition software is equal to the average of the fall and spring NLUs times the annual D2L Learning Edition software license fee rate per user for the appropriate year in which the evaluation is performed, as set forth on Exhibit 1.

In the event that a change or development substantially reduces any of D2L costs for providing any of the products or services provided under this Contract, D2L will provide TBR a lower cost and/or credit for other future payments under the Contract in recognition of the savings opportunity.

CONTRACT DELIVERABLES:

Products. D2L shall provide its most current version of Desire2Learn® Learning Environment, Learning Repository and LiveRoom products (System), which shall include all related documentation and user manuals, printed code, as well as technical support, which shall include access to web resources (FAQs, web-based knowledge forum), email and telephonic support for system integrity issues, service patches, upgrades/updates, service packs, and subsequent enhancements provided by D2L.

Hosting Service. For the initial term, and unless specified by TBR otherwise, for all subsequent terms, D2L will provide two instances of the software for the TBR system at its facility in North America. The first instance will recognize 23 production organizations – each of the 19 TBR colleges and universities shall be allocated an organization; the ROCC, ROCE, TTCs and Central Office will each be allocated 1 organization. The second instance which will also recognize the same 23

organizations will be the test site which can be accessed for testing and development by all organizations.

D2L will provide such managed hardware networking, firewalls, redundant high-bandwidth connectivity to internet backbone loops, high performance server infrastructure, backups and software so as to allow the operation of the System for the benefit of each of the organizations as well as a test environment for those organizations. D2L shall be responsible for all support, maintenance, security and optional disaster recovery relating to the System for the benefit of TBR. At the end of each semester, D2L will provide the various organizations with a copy, on appropriate media, of that organizations then current system.

The hosting services provided under this Contract shall be equal to or exceed the standards that are common and acceptable within the industry.

If at any time the System cannot be accessed or there is some other emergency, D2L shall provide notice and other pertinent information to the Authorized Service Administrators (ASAs) as soon as reasonably possible.

Other than a change required in an emergency, D2L will provide advance notice to the TBR ASAs of any scheduled changes to the System which might affect TBR access to the System. D2L and TBR will evaluate use of the System and agree upon periods of low demand for routine maintenance and the implementation of upgrades/patches.

Subject to storage pricing overages, there will be no limits/quotas on the memory/space allocated for any course, or the total content or courses of TBR. There will no automatic deletion of courses or users unless and until the parties make a further agreement in writing. Subject to the terms of Section D 17 of the Contract, the amount charged TBR for any additional storage shall be limited to One Hundred Thousand Dollars or the market price, whichever is less.

At TBR's discretion, the term of D2L hosting services may be terminated as is set forth in Section D.4 of the Contract. Subject to D2L consulting fees, D2L shall provide any information and assistance reasonably required for TBR to assume responsibility for the hosting service, including providing TBR a current image for each organization in DVD or the then applicable format. For so long as D2L is providing hosting services, D2L acknowledges and agrees that it will take all reasonable steps necessary to protect all student records pursuant to the U.S. Family Educational Rights and Privacy Act of 1974, (FERPA) and the applicable Federal Regulations set forth at 34 C.F.R. Sec. 99.31.l

Services/Implementation/Special Projects. Any implementation or services or special projects contracted for under this Contract shall be timely completed pursuant to the plan of work relating to the project. All Project planning/scheduling will include developing a comprehensive written plan, a timeline and appropriate milestones. The written project plan shall define the services to be performed by D2L, the roles and responsibilities of D2L and TBR and any appropriate measurements as would be common and acceptable within the industry. For emphasis, but not for purposes of limitation, the parties agree that the requirements of this Section are material terms to any services, implementation or special projects and that failure to conform to these requirements shall constitute a Breach of this Contract as provided in Section D.4.3.

Integration Maintenance. D2L will make timely upgrades or patches or other required changes which would allow communication between the System and the SIS system then being utilized by each of the organizations at all times. D2L will provide telephonic and email support 24x7x365 to resolve all technical issues relating to the integration of the System and the SIS systems.

Support service. Under this Contract, D2L shall provide to TBR access to web resources (FAQs, web-based knowledge forum, technical support email) and on-going access to patches and service packs.

Test Instance. As noted above, D2L will provide a second instance of the software which will serve as the test site. The test site, and without limiting the generality of the foregoing, the servers utilized at the test site, shall be sufficiently robust to all for the testing of all upgrades, patches, integrations or other element which can be incorporated into the instance that runs in the production environment for each organization.

Setup. The test site will have a database separate from the first instance.

Maintenance. As part of the maintenance service for the test site, D2L will ensure that upgrades or patches work properly before application to the production environment.

Help Desk Services. D2L shall provide D2L Premium support to TBR ASAs on a 24x7x365 basis. The services to be provided include the following:

- Server Issues;
- Campus Network/Administrator;
- Query Campus Access Point;
- Course corruption involving the underlying application software and/or database;
- Backup restoration;
- Access (search) of web access logs and/or error logs in case of legal appeal;
- Assistance in batch archival of backups to local campus storage;
- Integration issues;
- Other.

TBR will provide to D2L a list of ASAs and a back-up for each organization and for the TBR Tier 2 help desk. TBR will be responsible for keeping this list current.

The initial term of this Contract provides for 200 ASA contacts per month which will be aggregated on a TBR system-wide basis for all organizations. No ASA shall be denied helpdesk service even if TBR has exceeded its 200 contacts in any particular month.

D2L will provide TBR a monthly report detailing usage by ASA, by organization. An ASA "contact" is defined as a trouble ticket concerning one issue and the efforts to resolve it; it may include multiple telephone, email, chat and/or other means of communication between an ASA and D2L. No ticket or communication which is occasioned by a D2L programming, network, software or hardware error shall be counted as a contact.

The helpdesk services provided under this Contract shall be equal to or exceed the standards that are common and acceptable within the industry.

LiveRoom. The LiveRoom license provided under this Contract also provides for LiveRoom Express licensing.

LiveRoom Hosting. If requested, hosting services shall be provided for LiveRoom and LiveRoomExpress.

Learning Object Repository (LOR). If requested, D2L will provide licensing and set up services for LOR for TBR. The LOR provided under this Contract shall be rule based and conform to industry standards.

Optional Products and Services/Technical Account Manager (TAM). Exhibit I also lists all optional/additional products and services which may be purchased under this Contract and the price/rate for each. The fixed costs provided on Exhibit I may only be modified by amendment to this Contract. The optional/additional products and services are identified on Exhibit I. Included in Exhibit

1 is a listing for Technical Account Manager (TAM) services made available at three levels, from lowest to highest, "Named", "Assigned" and "Dedicated", together with the annual charge for each level of service. Notwithstanding the listing on Exhibit 1, the parties hereby agree that D2L will continue to provide TAM services to TBR, at least at the Assigned level, without charge from the date of this contract to and including October 1, 2012 in order for TBR to be able to evaluate during subsequent spring, summer and fall semester start-up cycles, the effectiveness and value of continuing to utilize TAM services. By September 15, 2012, D2L will provide TBR a report setting forth the areas in which the TAM services previously provided to TBR have added value by providing services and results that are in excess of the service levels and results TBR would have expected to have realized had no TAM services been provided. Upon the receipt of the report TBR shall have thirty (30) days in which to analyze its contents and thereafter TBR shall elect one of the following options: (1) discontinue TAM services, or (2) elect to pay for TAM services at the level of its choosing at the corresponding annual rate set forth in Exhibit 1, including a pro-rated amount for October 1, 2012 to the end of that contract year.

CONTRACT RATES

Attachment 1
Exhibit 1

	Unit	CY 2012	CY 2013	CY 2014	CY 2015
Products & Services In Use					
Learning Environment Unit Charge (3.3% annual escalator)		\$ 5.25	\$ 5.42	\$ 5.60	\$ 5.79
Learning Environment Payment (assumes 175,000 users)	Annual	\$ 918,750	\$ 949,069	\$ 980,388	\$ 1,012,741
Hosting Service	Annual	\$ 693,000	\$ 693,000	\$ 693,000	\$ 693,000
Integration Maintenance	Annual	\$ 32,500	\$ 32,500	\$ 32,500	\$ 32,500
Test Environment Maintenance	Annual	\$ 31,000	\$ 31,000	\$ 31,000	\$ 31,000
Premium Administrator Support	Annual	\$ 72,000	\$ 72,000	\$ 72,000	\$ 72,000
LiveRoom License	Annual	\$ 90,000	\$ 90,000	\$ 90,000	\$ 90,000
LiveRoom Hosting	Annual	\$ 37,500	\$ 37,500	\$ 37,500	\$ 37,500
Learning Repository	Annual	\$ 125,000	\$ 125,000	\$ 125,000	\$ 125,000
Additional Storage (7TB Total)	Annual	\$ 253,500	\$ 253,500	\$ 253,500	\$ 253,500
End of Semester Back-ups		\$ 12,000	\$ 12,000	\$ 12,000	\$ 12,000
Subtotal - Services Currently Utilized		\$ 2,265,250	\$ 2,295,569	\$ 2,326,888	\$ 2,359,241
Optional Services					
IS Consulting		\$ 185	per Hour		
Custom Integrations SOW		\$ 210	per Hour		
New Instance Creation		\$ 2,500	Per Instance		
New Organization Creation		\$ 1,500	Per Org		
Optional Training Rates					
Onsite (per Instructor)		\$ 3,500	per Day		
Virtual (per Instructor)		\$ 2,500	per Day		
LiveRoom					
<u>Setup</u>					
Setup (under 100 users)		\$ 2,500	per Org		
Setup (101-300 Users)		\$ 4,500	per Org		
<u>Overages</u>					
Annual (over 500 concurrent users)		\$ 175	per user		
Annual w/hosting (over 500 concurrent users)		\$ 250	per user		
<u>Institutional Pricing</u>					
50 concurrent users (Includes hosting)		\$ 12,500	annual		
100 concurrent users (Includes hosting)		\$ 25,000	annual		
Support Services					
<u>Premium Plus End-User</u>					
Help Desk (750 contacts/month)		\$ 250,000	Annual		
<u>Additional ASC's</u>					
Basic Support		\$ 5,500	Annual		
Premium Admin Support		\$ 4,000	Annual		
<u>Premium Plus Admin Support</u>					
Low Volume Add-on		\$ 19,750	50 con/mth		
High Volume Add-on		\$ 16,000	50 con/mth		
Monthly overage		\$ 30	per contact		
<u>Technical Account Manager</u>					
Named		\$ 25,000	Annual		
Assigned		\$ 50,000	Annual		
Dedicated		\$ 200,000	Annual		

Additional Products			
Desire2Learn ePortfolio (System Based Pricing)	Set Up	Per User	
0 to 50,000 users	\$ 30,000	\$ 4.75	
50,001 to 100,000 users	\$ 40,000	\$ 3.25	
100,001 to 150,000 users	\$ 50,000	\$ 2.75	
150,001 users and greater	\$ 60,000	\$ 2.20	
Hosting Storage Expansion	\$100,000	\$100,000	per TB per year
Business Continuity Services (Disaster Recovery)			
Cold Replication (RPO 24 Hours, RTO 72 Hours)	\$265,350		per Year
Warm Replication - Bronze Level (RPO 12 Hours, RTO 24 Hours)	\$473,250		per Year
Warm Replication - Silver Level (RPO 8 Hours, RTO 12 Hours)	\$646,500		per Year
Warm Replication - Gold Level (RPO 4 Hours, RTO 6 Hours)	\$646,500		per Year
Desire2Learn Analytics (System Based Pricing)	Set Up	Per User	
0 to 50,000 users	\$ 20,000	\$ 2.50	
50,001 to 100,000 users	\$ 30,000	\$ 1.47	
100,001 to 150,000 users	\$ 40,000	\$ 1.25	
150,001 users and greater	\$ 50,000	\$ 1.20	
Desire2Learn Campus Life (Institution Based Pricing)	Set Up	Annual	
2,501 to 5,000 users	\$ 2,500	\$ 3,850	
5,001 to 7,500 users	\$ 3,500	\$ 5,650	
7,501 to 10,000 users	\$ 5,000	\$ 10,250	
10,001 to 20,000 users	\$ 8,000	\$ 18,500	
20,001 to 30,000 users	\$ 11,000	\$ 24,950	
Desire2Learn Capture			
One Time Costs			
Capture Station 300 (HW & SW)	\$ 6,000		per station
Capture Station - Desktop (SW only)	\$ 2,800		per desktop
Server Software (for on premise only)			
Enterprise On-Premise (per server)	\$ 15,000		Annual
On-Premise Server Implementation	\$ 1,500		One time
Additional Supported Device License (per device, station or desktop)	\$ 500		Annual
Enterprise Hosting (storage & bandwidth)			
Starter	\$ 6,700		Annual Note: Portal + 25 GB/month
Basic	\$ 6,900		Annual Note: Portal + 50 GB/month
Regular	\$ 7,500		Annual Note: Portal + 100 GB/month
Advanced	\$ 9,000		Annual Note: Portal + 250 GB/month
Premium	\$ 11,700		Annual Note: Portal + 500 GB/month
Support			
Standard	\$ 2,750		Annual Note: up to 10 incidents per year
Premium	\$ 4,000		Annual Note: up to 20 incidents per year

ATTACHMENT II

TBR PERFORMANCE METRICS

To help assure that the performance of the hosting services provided by D2L remain within an acceptable range and to provide D2L with an incentive to continue to improve the responsiveness of its hosting services, the Parties have agreed to the following set of standards by which the hosting performance is to be measured and have also agreed to the financial penalties set forth below which D2L will incur if the articulated performance standards are not met. Nothing in this Addendum II is intended to replace or supplant any other remedies available to the Tennessee Board of Regents based on inadequate performance set forth in the Agreement which this Addendum supplements.

Prior to the commencement of the agreement, D2L shall be responsible for developing or procuring at its sole cost, a software performance monitor (hereinafter the "Monitor") capable of measuring the Criteria listed below on a scheduled basis (initially every 20 minutes) and providing succinct reports to the TBR regarding the performance level of D2L's hosting service and specifically providing D2L and TBR information regarding the date, time and duration of any incident as reported by monitoring (unless the monitor is falsely reporting) where any of the Availability Metrics fall below the standards set forth below. Said Monitor shall be located at an agreed upon location within D2L's firewall.

The following is a listing of the Criteria by which the performance of the D2L applications in the hosted environment will be measured and the specific time limits for each performed task (note, no listed metrics shall apply during, and no penalties shall flow from, scheduled maintenance or a force majeure event).

Application Availability Criteria

Availability Metrics	Measurement*
Home Page Response Time - The time it takes for an org home page to load in a browser.	Expected pre-defined page load time should not exceed 5 seconds. The Executive Director of Operations of ROCC and the Senior Director, Services of D2L (or their designees) shall agree on the pre-defined page.
Login Time - Process of authentication into an org	Expected pre-defined authentication completion time should not exceed 10 seconds. The Executive Director of Operations of ROCC and the Senior Director, Services of D2L (or their designees) shall agree on the pre-defined page.
Upload Time – completion of uploading a 10MB file to the Dropbox Tool	File upload completion should not exceed 60 seconds
Download Time – completion of downloading a 10MB file to the Dropbox Tool	File download completion should not exceed 60 seconds

<p>Quizzing Tool Response Time – The time it takes for a quiz in a course to load complete in a browser</p>	<p>Quiz Tool load time in pre-defined courses should not exceed 30 seconds. The Executive Director of Operations of ROCC and the Senior Director, Services of D2L (or their designees) shall agree on the pre-defined page.</p>

If during the performance of the Agreement, the Parties mutually come to understand that there are additional criteria which should be included or a different schedule for monitoring, they agree to confer and amend this section.

D2L agrees to provide TBR with a copy of a report of the performance of the hosting service, including copies of any relevant print outs from the Monitor showing incidents that exceed the Criteria set forth above, no later than 30 days after the end of the first ten days of the semester and every 45 days thereafter.

In the event that the Monitor reports that incidents which exceed the Availability Criteria have occurred more frequently during the Measurement Periods set forth below, D2L will owe the amount listed:

Availability Metric	Measurement Period	Client Credit
≥3 missed performance metrics occurring concurrently	During the first 10 days of a semester	2% Credit on Hosting Fees in Measurement Period
≥4 missed performance metrics occurring concurrently	During the first 10 days of a semester	3% Credit on Hosting Fees in Measurement Period
≥3 missed performance metrics occurring concurrently	At any point between 11 th day of the semester until the last day of the semester	1% Credit on Hosting Fees in Measurement Period

There is no limitation on the number of incidents which violate an Availability Metric and invoke a Client Credit which can occur within any particular measurement period. A separate incident will be deemed to have occurred when, after a first incident where the Availability Criteria have returned to a state in which all Metrics are within an acceptable range, a new incident qualifying under one of the Availability Metrics occurs or eight hours have elapsed and the Availability Criteria have not yet returned to a state in which all Metrics are within an acceptable range, whichever occurs first.

The maximum credit for all missed availability metrics is 5% of Hosting fees on an annual basis. All Credits will be applied to the subsequent year's hosting fees except that if hosting services are terminated by TBR before all credits have been applied, D2L will be required to make a cash payment to TBR at the conclusion of the last hosting period.

**RENEWAL AGREEMENT
BETWEEN
DESIRE2LEARN INCORPORATED
AND
TENNESSEE BOARD OF REGENTS**

WHEREAS, DESIRE2LEARN (Contractor), and the Tennessee Board of Regents (Board), entered into an Agreement in January 2012, in which the Contractor agreed generally to provide technology enhanced course management products and services to the institutions of the Tennessee Board of Regents, and

WHEREAS, the said parties desire to extend said Agreement in the manner described below.

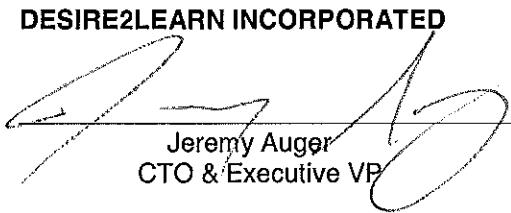
NOW THEREFORE, the said parties hereby incorporate by reference all the terms and provisions of that said Agreement and supplement said Agreement with the following provisions:

Section B of the original Agreement is modified to read as follows:

- B.1. Term. This contract shall be effective for the period commencing on January 1, 2013 to December 31, 2013. TBR shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

IN WITNESS WHEREOF, the parties have by their duly authorized representative set their signatures.

DESIRE2LEARN INCORPORATED



APPROVED BY
Co. 5
OK
29-09-12
DATE

DATE: 10/29/12

Jeremy Auger
CTO & Executive VP

TENNESSEE BOARD OF REGENTS



John G. Morgan, Chancellor Date Sui

DATE: 11/15/12

**Desire2Learn Incorporated**

151 Charles Street West, Suite 400

Kitchener, ON N2G 1H6

+1 519.772.0325

TO Angela Gregory Flynn, Director of Purchasing
Tennessee Board of Regents
1415 Murfreesboro Road
Nashville, TN - Tennessee, 37217

ADDENDUM TO MASTER AGREEMENT

Quote # CAMPO01

DATE	SEPTEMBER 19, 2013
EXPIRATION DATE	OCTOBER 19, 2013

Governing Agreement Name
Contract Between Tennessee Board of Regents and Desire2Learn
Governing Agreement Effective Date
01-Jan-2012

RE: Campus Life

CHANGES TO EXISTING GOVERNING AGREEMENT TERMS

- | | |
|---|--|
| 1 | Addition of terms to Governing Agreement relating to Campus Life |
|---|--|

Quotation Attachments

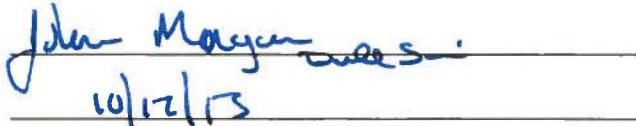
- | | |
|---|---|
| 1 | Mobile Applications Addendum (Signature Required) |
|---|---|

This Quotation may be accepted as a binding agreement (Authorizing Document) if it is signed and returned, or if a valid Purchase Order ("PO") referencing D2L's Quote # above is provided. Unless otherwise indicated, all other terms of the Governing Agreement remain in full force and effect. No modifications to this Quote or supplemental terms provided on a PO or similar document will have any binding effect.

This Quotation is valid up to and inclusive of the Expiration Date. D2L reserves the right to accept or reject any PO or signed Quote after the Expiration Date.

To accept this Quotation, either issue a PO referencing the
Quote # above, or sign here:

Date:


10/17/13

THE INDIVIDUAL SIGNING IS AUTHORIZED TO BIND THE CLIENT.

MOBILE APPLICATIONS ADDENDUM

This Mobile Applications Addendum, together with the Master Agreement, governs terms and conditions between Tennessee Board of Regents and D2L relating to Mobile Applications.

M1 Definitions:

M1.01 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.

M1.02 Branding means the trade-marks, service-marks, colour schemes, names and fonts used by any Party for purposes of communication, identification, and marketing.

M1.03 End User License Agreement for Mobile Applications means the terms and conditions presented by the Mobile Applications Distribution Agent on behalf of Desire2Learn, that the Authorized End Users 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.

M1.04 Mobile Applications are those Software elements provided by Desire2Learn, for Client and its Authorized End Users, through the Mobile Applications Distribution Agent.

M1.05 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 Store SM, Android™ Market and or Blackberry App World TM.

M2 Mobile Application Development

M2.01 Where applicable, Desire2Learn and Client will execute a Statement of Work or other applicable document that outlines the Branding elements, which Mobile Applications Distribution Agents will use, and other applicable requirements pertaining to the Mobile Application. Desire2Learn 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.

M3 Use of Branding and Trademarks

M3.01 Client grants Desire2Learn 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 Mobile Applications, in accordance with the Statement of Work or other applicable document. Desire2Learn will not use Client's Branding for any other purpose without the express written consent of Client.

M4 Grant of license

M4.01 Desire2Learn only grants Client, and their 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.

M5 Disclaimer of Warranty

M5.01 To the maximum extent permitted by law, Desire2Learn 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 Desire2Learn shall have with respect to Mobile Applications is two times the annual fee paid, or payable by the Client in the year in which the claim arose.

M6 Disclaimer of Liability

M6.01 To the maximum extent permitted by law, Desire2Learn disclaims all liabilities to Client as it relates to the unlawful or unauthorized use of the Mobile Applications by end users. Client is solely responsible for all Client Information made available to or by the Mobile Applications, and Desire2Learn.

M7 Indemnification

M7.01 To the maximum extent permitted by Tennessee statute, Client will be responsible for any and all claims, losses and damages Desire2Learn and/or the Mobile Application Distribution Agent suffers arising out of any cause of action for which the law recognizes a remedy against Client including the unlawful, unlicensed or misuse of the Branding, Client Information, and/or the Mobile Application by Authorized End Users. Any actions brought against Client except for those that arise out of a violation of the U.S. Copyright Act, shall be brought before the Tennessee Claims Commission pursuant to the rules then pertaining. Any copyright actions shall be brought before the U.S. District Court for the Middle District of Tennessee in Nashville, Tennessee.

M8 Suspension and Termination Rights

M8.01 Desire2Learn and Client reserve the right to suspend or terminate, where feasible, any Authorized End User(s) for any breach of 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). Upon notice served by D2L upon Client and an opportunity to cure within 14 days from receiving notice of any alleged breach (if such breach is capable of cure), unless otherwise ordered to do so sooner by a Court of competent jurisdiction, Desire2Learn reserves the right to suspend or terminate, where feasible, all access to Mobile Applications if required to do so by law, or judicial order.

M9 Client Information Obligations

M9.01 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. Desire2Learn has no, and shall not incur any responsibility with respect to policing, or monitoring Client Information.

M10 EULA

M10.01 Client will not permit, allow, or enable any user to circumvent the acceptance of the End User License Agreement for Mobile Applications.

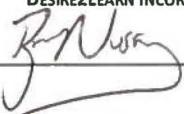
M11 General

M11.01 This Addendum shall supersede conflicting terms that may be found in the Master Agreement but only as regards the Mobile Applications.

AGREED AND ACCEPTED

DESIRE2LEARN INCORPORATED

By:



Name:

Brandon Nussey

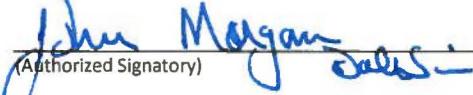
Title:

CFO

Date:

October 22, 2013

TENNESSEE BOARD OF REGENTS

By:

(Authorized Signatory)

Name:

John Morgan

Title:

Chancellor

Date:

10/11/13

**AMENDMENT No. 2 to the CONTRACT BETWEEN DESIRE2LEARN INCORPORATED AND TENNESSEE
BOARD OF REGENTS**

This Amendment No. 2 to the Contract effective January 1, 2012 ("Contract") is entered into on January 1 2014 (the "Effective Date") by and between DESIRE2LEARN INCORPORATED ("D2L"), and TENNESSEE BOARD OF REGENTS ("TBR").

WITNESSETH

WHEREAS, D2L and TBR desire to enter into this Amendment No. 2 in order to make certain changes to the Contract, as set forth below.

NOW THEREFORE, in consideration of the foregoing and mutual covenants contained in this Amendment No. 2 the parties agree as follows:

A. 1. Term. Section B of the original Agreement is modified to read as follows:

B.1. Term. This Contract shall be effective for the period commencing on January 1, 2014 to December 31, 2014. TBR shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

B. The following shall be added as new Section E.19 to the Contract and a new Attachment III shall be added:

E.19. Prohibition on Hiring Illegal Immigrants. Tennessee Public Chapter No. 878 of 2006, TCA 12-4-124, requires that Contractor attest in writing that Contractor will not knowingly utilize the services of illegal immigrants in the performance of this Contract and will not knowingly utilize the services of any subcontractor, if permitted under this Contract, who will utilize the services of illegal immigrants in the performance of this Contract. The attestation shall be made on the form, Attestation re Personnel Used in Contract Performance ("the Attestation"), which is attached and hereby incorporated by this reference as Attachment III.

If Contractor is discovered to have breached the Attestation, the Commissioner of Finance and Administration shall declare that the Contractor shall be prohibited from contracting or submitting a bid to any Tennessee Board of Regents institution or any other state entity for a period of one (1) year from the date of discovery of the breach. Contractor may appeal the one (1) year by utilizing an appeals process in the Rules of Finance and Administration, Chapter 0620.

C. The following shall be added to the Contract as "Attachment IV":

1. D2L grants to TBR (or its colleges and universities, as applicable) a non-exclusive, non-transferable, time-limited (revoked upon termination), object-code license for use of the Degree Compass software ("Software") upon the purchase by TBR of the relevant licenses.
2. This license shall be coterminous with the term set out in the Contract.
3. TBR shall arrange for the ordering and payment of all Software set out in this Attachment IV on behalf of its colleges and universities.
4. TBR (or its colleges and universities, as applicable) shall be responsible for acquiring and installing computer hardware and necessary third party software licenses prior to the installation.
5. Within 90 days following Delivery ("Warranty Period") TBR shall establish to its reasonable satisfaction that the Software operates as warranted. TBR 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 TBR with an updated version of Software or workaround within 45 days. TBR's Warranty Period shall extend another 30 days from receipt of the updated Software ("Extended Warranty"). During the Warranty Period or Extended Warranty Period, if D2L is unable to cure material defects, and the defects materially impair TBR's use of the Software, TBR 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 or documentation. If TBR does not notify D2L of a Defect Notice, or the Defect Notice does not disclose any defects, the Warranty Period shall not be extended.

6. Each TBR college and university may use or access Software for its use only. No third party, other educational institution or business group or entity may make use of, or obtain access to, Software without a separate license for Software.
7. TBR 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 TBR's and its colleges' and universities' site no more than once a year to ensure compliance with the terms of this Contract. At D2L's expense, D2L may retain a professional independent third party to audit compliance with this Contract at TBR's or its colleges' and universities' premises during normal business hours, upon satisfactory arrangements with TBR, including execution by the auditor of a confidentiality agreement. If the visit or audit reveals that use of Software exceeds its permitted use, TBR shall promptly pay D2L's then-current fees.
8. Software may contain functionalities that collect, analyze and interpret TBR data elements. Use of such functionalities is entirely dependent on the accuracy and quality of the TBR data elements. D2L shall not be responsible in any way for the use of or reliance on such functionalities by TBR or its end users.
9. Notwithstanding anything to the contrary in the Contract, the prices in this Attachment IV shall not be subject to increase until after December 31, 2016.
10. Pricing for the Software shall be as follows:

Degree Compass			
Annual License Fees (per User)	Implementation Fee for each TBR College or University	Annual Support Fees	
Per FTE:	\$1.80	\$5,000 (per Banner installation)	15% of total annual license fees

- C. **Entire Agreement.** The Contract, as amended by this Amendment No. 2, is the entire agreement between the parties. All other terms and conditions of the Contract that have not been expressly amended by this Amendment No. 2 shall remain the same.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be signed by their respective officers thereunto duly authorized, all as of the Effective Date.



DESIRE2LEARN INCORPORATED

By: Brandon Nussey
 Name: Brandon Nussey
 Title: CFO
 Date: November 13, 2013

TENNESSEE BOARD OF REGENTS

By: John Morgan
 Name: John Morgan
 Title: Chancellor
 Date: 11/14/13

ATTACHMENT III**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

CONTRACT NUMBER:	102279
CONTRACTOR LEGAL ENTITY NAME:	Desire2Learn Incorporated
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	98-0464830

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.



SIGNATURE &
DATE:

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.



QUOTATION

Quote # 005203

Desire2Learn Incorporated

151 Charles Street West, Suite 400
Kitchener, ON N2G 1H6

+1 519.772.0325

TO Tennessee Board of Regents
1415 Murfreesboro Road
Nashville, TN - Tennessee, 37217-2833

CC Angela Gregory Flynn, Director of Purchasing

DATE JANUARY 16, 2014
EXPIRATION DATE MARCH 17, 2014

Governing Agreement Name
Contract Between Tennessee Board of Regents and Desire2Learn Incorporated
Governing Agreement Effective Date
2012-01-01

RE: TBR - Video Note

COMPONENT	DESCRIPTION	ONE-TIME FEE	ANNUAL FEES	DUEDUE
The Video Note Tool	Up to 50MB per FTE per year	\$ 0	\$ 0	n/a
The Video Note Tool Overage Fees	\$2 per Gigabyte per year			
Total Fees		\$ 0	\$ 0	n/a

CHANGES TO EXISTING GOVERNING AGREEMENT TERMS

1 | Addition of The Video Note Tool Addendum

Quotation Attachments

1 | Video Note Tool Addendum

This Quotation may be accepted as a binding agreement (Authorizing Document) if it is signed and returned, or if a valid Purchase Order ("PO") referencing D2L's Quote # above is provided. Unless otherwise indicated, all other terms of the Governing Agreement remain in full force and effect. No modifications to this Quote or supplemental terms provided on a PO or similar document will have any binding effect. The effectiveness of this Authorizing Document is subject to all Tennessee Board of Regents Purchasing rules and may require approval by the Fiscal Review Committee of the Tennessee Legislature. This Quotation is valid up to and inclusive of the Expiration Date. D2L reserves the right to accept or reject any PO or signed Quote after the Expiration Date.

I accept this Quotation, either issue a PO referencing the
Quote # above, or sign here:

Date:

John Weller

2/10/14

as

THE INDIVIDUAL SIGNING IS AUTHORIZED TO BIND THE CLIENT.

THE VIDEO NOTE TOOL ADDENDUM

This The Video Note Tool Addendum, together with the Master Agreement, governs terms and conditions between Tennessee Board of Regents and Desire2Learn Incorporated relating to the Video Note Tool ("VNT") feature of the Desire2Learn Learning Environment.

VN1 Definitions

- VN1.01 Amazon Cloud means the Amazon Elastic Compute Cloud and Amazon Web Services platforms provided by Amazon.com Inc., a Washington corporation.
- VN1.02 Data includes the schema comprised of (i) Desire2Learn Learning Environment database elements (the instance name, org name, org id, org unit id, username, title, description, data/time and location); and (ii) the content created, uploaded and downloaded to the Amazon Cloud by the End User.
- VN1.03 Service means the VNT feature of the Desire2Learn Learning Environment in combination with Amazon Cloud.
- VN1.04 URL means the uniform resource locator generated by the VNT Service for a specific VNT Data element such as video.

VN2 Disclaimer of Warranty

VN2.01 VNT Service is a beta service. To the maximum extent permitted by law, D2L disclaims all warranties, both express and implied with respect to the VNT Service, including warranties of merchantability or fitness for a particular purpose, or warranties arising from a course of performance, dealing or usage of trade. With respect to the VNT Service, these provisions shall supersede any other warranty provisions previously agreed by the Parties.

VN3 Limitation of Liability.

VN3.01 To the maximum extent permitted by law, D2L disclaims all liability to Client for any act or omission relating to the unlawful or unauthorized use of the VNT Service. The maximum liability D2L shall have with respect to the VNT Service is two times the annual fee paid by the Client for the VNT Service in the year in which the claim arose.

VN4 Indemnification

- VN4.01 Client understands that the VNT Service is provided by D2L through Amazon Cloud, a third Party service used by D2L.
- VN4.02 Notwithstanding anything to the contrary in the Master Agreement or other Authorizing Document, Client agrees to be liable to the maximum extent permitted by law to D2L and its third Party service providers for any damages associated with or resulting from Client's or its End User's use of the VNT Service.

VN5 Security and Personally Identifiable Information

VN5.01 Client and its End Users use the VNT Service at their own risk. D2L is not responsible for the VNT Data. D2L does not, and disclaims any obligation to, police, monitor or control the VNT Data.

VN5.02 D2L does not control the Amazon Cloud. D2L recommends that Client implement appropriate policies and procedures, including restrictions on VNT Data, to govern the personal information that may be processed in the course of use of the VNT Service as well as the acceptable use of the VNT Service by End Users.

VN6 Usage

VN6.01 Clients are responsible for managing their storage and bandwidth usage by utilizing the provided VNT functions to assist with monitoring and purging of videos.

VN6.02 Clients are responsible for all additional storage and bandwidth charges incurred through their and their End Users' use of the VNT Service. Storage and bandwidth usage are calculated at the end of each month and accrued on an annual basis. Overage rates are set out on the Fees and Rates Schedule or the attached quote, as the case may be. Fees and rates for such additional storage and bandwidth may be subject to change at any time, at D2L's sole discretion, upon 30 days' prior written notice to Client.

VN7 Suspension and Termination Rights

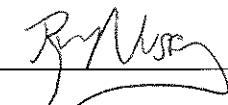
- VN7.01 The Parties reserve the right to suspend or terminate this Addendum at any time without penalty.
- VN7.02 D2L may suspend or terminate the VNT Service for any breach of this Addendum, including any breach claimed by any third Party that VNT Data infringes their intellectual property rights (e.g., a DMCA claim).
- VN7.03 D2L reserves the right to suspend or terminate access to the Amazon Cloud or the VNT Service at any time without notice.
- VN7.04 Unused prepaid amounts for the VNT Service are eligible to be refunded on a pro-rata basis if D2L has terminated this Addendum for convenience.

VN8 Support

VN8.01 Support services shall be provided in accordance with the Support Schedule attached to the Applications Hosting Addendum.

VN9 TERM

VN9.01 This Addendum shall be coterminous with the Applications Hosting Addendum, as amended.

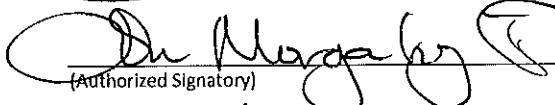
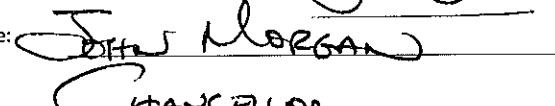
By: 
Name: Brandon Nussey
Title: CFO
Date: January 16, 2014

AGREED AND ACCEPTED

DESIRE2LEARN INCORPORATED

TENNESSEE BOARD OF REGENTS

agb

By: 
(Authorized Signatory)
Name: 
Title: CHANCELLOR
Date: 2/6/14



QUOTATION

Quote # TBR-WA-112013

Desire2Learn Incorporated

DATE NOVEMBER 20, 2013
EXPIRATION DATE MARCH 30, 2014

151 Charles Street West
Kitchener, ON N2G 1H6

TO Patrick Wilson
Tennessee Board of Regents
1415 Murfreesboro Road, Ste. 350
Nashville, TN
USA 37217-2833

Governing Agreement Name
Contract Between Tennessee Board of Regents and Desire2Learn Incorporated
Governing Agreement Effective Date
1/1/2012

RE: Wiggio

COMPONENT	DESCRIPTION	ANNUAL FEES	DUE
Desire2Learn Wiggio	Per user storage is limited to existing contracted storage amounts for Learning Environment.	\$ 0*	n/a
Total Fees		\$ 0	n/a

* This offering of Desire2Learn Wiggio is conditional on Client having an existing agreement with Desire2Learn Incorporated which includes the Desire2Learn Learning Environment.

CHANGES TO EXISTING GOVERNING AGREEMENT TERMS	
1	Addition of Wiggio

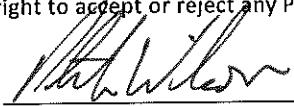
This Quotation may be accepted as a binding agreement (Authorizing Document) if it is signed and returned, or if a valid Purchase Order ("PO") referencing D2L's Quote # above is provided. Unless otherwise indicated, all other terms of the Governing Agreement remain in full force and effect. No modifications to this Quote or supplemental terms provided on a PO or similar document will have any binding effect. The effectiveness of this Authorizing Document is subject to all Tennessee Board of Regents Purchasing rules and may require approval by the Fiscal Review Committee of the Tennessee Legislature.

This Quotation is valid up to and inclusive of the Expiration Date. D2L reserves the right to accept or reject any PO or signed Quote after the Expiration Date.

To accept this Quotation, either issue a PO referencing the Quote # above, or
sign here

Additionally, please sign the attached Addendum:

Date:


2/10/14

THE INDIVIDUAL SIGNING IS AUTHORIZED TO BIND THE CLIENT.

Wiggio Addendum

This Desire2Learn® Wiggio Addendum, together with the Master Agreement, governs terms and conditions between Tennessee Board of Regents and D2L relating to licensed software.

WA1 Definitions

- WA1.01 Authorized End Users are those individuals who have been granted permission by the Client to use Wiggio.
- WA1.02 Branding means the trade-marks, service-marks, colour schemes, names and fonts used by any Party for purposes of communication, identification, and marketing.
- WA1.03 Terms of Use for Wiggio means the rules governing the use of Wiggio by Client and its Authorized End Users, as may be published at <http://wiggio.com/terms.html>.
- WA1.04 Wiggio means those Applications provided by D2L to Client under this Addendum.

WA2 Wiggio Deployment

- WA2.01 Where applicable and appropriate, D2L and Client will execute a Statement of Work or other applicable document that outlines the Branding elements, and other applicable requirements pertaining to Wiggio. There is no transfer of Intellectual Property rights with respect to Wiggio unless agreed in writing.

WA3 Use of Branding and Trademarks

- WA3.01 Client grants D2L non-exclusive, worldwide permission to use its Branding in accordance with Client's reasonable branding use guidelines or similar documentation, for the sole purpose of creating, distributing and maintaining a Client branded version of Wiggio, 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.

WA4 Grant of Licence

- WA4.01 D2L only grants Client and its Authorized End Users a non-exclusive, time limited right to use Wiggio, subject to the then current Terms of Use for Wiggio. The use of Wiggio 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 Wiggio under this Addendum. Each Party retains their respective Intellectual Property rights.

WA5 Disclaimer of Warranty

- WA5.01 Unless otherwise agreed, Desire2Learn disclaims all warranties, both express and implied with respect to Wiggio, 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 Wiggio, 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 Wiggio is the annual fee paid, or payable by the Client in the year in which the claim arose.

WA6 Disclaimer of Liability

- WA6.01 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 Wiggio. Client is solely responsible for all Client Information made available to or by Wiggio.

WA7 Indemnification

- WA7.01 Client will be liable to D2L and/or the relevant D2L partner participating in the delivery of Wiggio, to the maximum extent permitted by law for any and all claims, losses and damages D2L and/or the relevant D2L partner participating in the delivery of Wiggio suffers as a result of the unlawful, unlicensed or misuse of the Branding, Client Information, and/or Wiggio by Authorized End Users.

WA8 Suspension and Termination Rights

- WA8.01 D2L reserves the right to suspend or terminate, where feasible, any Authorized End User(s) for any breach or suspected breach of this Addendum or the Terms of Use for Wiggio, 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 Wiggio if required to do so by law, or judicial order.
- WA8.02 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 Wiggio. Client shall terminate an Authorized End User for any breach or suspected breach of this Addendum or Acceptable User Policy for Wiggio. D2L has no, and shall not incur any responsibility with respect to policing, or monitoring Client Information.

WA8.03 Client shall have the right to terminate this Wiggio Addendum upon 30 days notice to D2L.

WA9 Support

- WA9.01 Support services shall be provided in accordance with the Support Schedule attached to the Applications Hosting Addendum.

WA10 Term

- WA10.01 This Addendum shall be coterminous with the Applications Hosting Addendum, as amended.

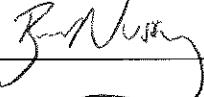
WA11 General

WA11.01 This Addendum shall supersede conflicting terms that may be found in the Master Agreement.

AGREED AND ACCEPTED

DESIRE2LEARN INCORPORATED

By:



Name:

Brandon Nussey

Title:

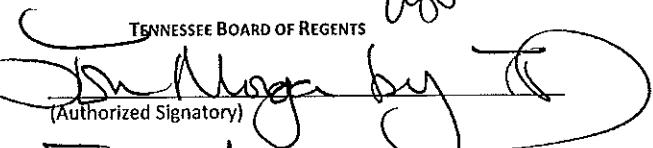
CFO

Date:

January 16, 2014

TENNESSEE BOARD OF REGENTS

By:



AGB

Name:

S. Tom Morgan

Title:

Chancellor

Date:

2/6/14

QUOTATION

Quote # 3694

D2L Corporation
 151 Charles Street West, Suite 400
 Kitchener, ON N2G 1H6

DATE: 12/15/2014

EXPIRATION DATE: 12/31/2014

+1 519.772.0325

TO Tennessee Board of Regents
 1415 Murfreesboro Road Suite 350
 Nashville, TN - Tennessee, 37217-2833

CC Angela Gregory Flynn, Director of Purchasing

Governing Agreement Name
Contract Between Tennessee Board of Regents and Desire2Learn Incorporated
Governing Agreement Effective Date
1-Jan-12

RE: Degree Compass - Pilot Program

COMPONENT	DESCRIPTION	ONE-TIME FEES	ANNUAL FEES	DUE
Degree Compass	D2L Degree Compass Implementation - Banner only	Included		
Degree Compass	D2L Degree Compass Annual Fee for the Pilot Program - Active User - for 1/1/2015 to 12/31/2016 - for up to 175000 Active Users		\$250,000.00	See Payment Terms
Total Fees		\$0.00	\$250,000.00	

Pricing only valid upon client signature on or before December 31, 2014

Payment Terms		
\$ 150,000.00	Due 30 days upon signing	
\$ 100,000.00	Due April 30th 2015	

This Quotation may be accepted as a binding agreement (Authorizing Document) if it is signed and returned, or if a valid Purchase Order ("PO") referencing D2L's Quote # above is provided. This Quotation includes the "Degree Compass - High Level Plan - 2015", which provides an overview of certain activities that D2L plans to undertake in 2015, including an estimated timeline. Unless otherwise indicated, all other terms of the Governing Agreement remain in full force and effect. No modifications to this Quotation or supplemental terms provided on a PO or similar document will have any binding effect.

This Quotation is valid up to and inclusive of the Expiration Date. D2L reserves the right to accept or reject any PO or signed Quote after the Expiration Date.

To accept this Quotation, either issue a PO referencing the Quote # above, or sign

here:

John Morgan
 Date: 12/19/14

THE INDIVIDUAL SIGNING IS AUTHORIZED TO BIND THE CLIENT.

**RENEWAL AGREEMENT
BETWEEN
D2L CORPORATION
AND
TENNESSEE BOARD OF REGENTS**

WHEREAS, D2L Corporation (Contractor), and the Tennessee Board of Regents (Board), entered into an Agreement in January 2012, in which the Contractor agreed generally to provide technology enhanced course management products and services to the institutions of the Tennessee Board of Regents, and

WHEREAS, the said parties desire to extend said Agreement in the manner described below.

NOW THEREFORE, the said parties hereby incorporate by reference all the terms and provisions of that said Agreement and supplement said Agreement with the following provisions:

Section B of the original Agreement is modified to read as follows:

- B.1. Term. This contract shall be effective for the period commencing on January 1, 2015 to December 31, 2015. TBR shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

IN WITNESS WHEREOF, the parties have by their duly authorized representative set their signatures.

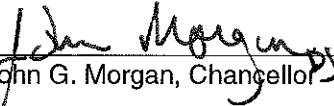
D2L CORPORATION



Bill Trick, Director of Finance

DATE: Dec 10/2014

TENNESSEE BOARD OF REGENTS



John G. Morgan, Chancellor

DATE: 12/10/14

**RENEWAL AGREEMENT
BETWEEN
DESIRE2LEARN INCORPORATED
AND
TENNESSEE BOARD OF REGENTS**

WHEREAS, DESIRE2LEARN (Contractor), and the Tennessee Board of Regents (Board), entered into an Agreement in January 2012, in which the Contractor agreed generally to provide technology enhanced course management products and services to the institutions of the Tennessee Board of Regents, and

WHEREAS, the said parties desire to extend said Agreement in the manner described below.

NOW THEREFORE, the said parties hereby incorporate by reference all the terms and provisions of that said Agreement and supplement said Agreement with the following provisions:

Section B of the original Agreement is modified to read as follows:

- B.1. **Term.** This contract shall be effective for the period commencing on January 1, 2016 to December 31, 2016. TBR shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

Attachment I of the original Agreement is modified to read as follows:

Help Desk Services. D2L shall provide D2L Gold Administrator with Branded End User Support to TBR ASAs and end users on a 24x7x365 basis. The services to be provided include the following:

- Server issues;
- Campus Network/Administrator;
- Query Campus Access Point;
- Course corruption involving the underlying application software and/or database;
- Backup restoration;
- Access (search) of web access logs and/or error logs in case of legal appeal;
- Assistance in batch archival of backups to local campus storage;
- Integration Issues;
- Other

TBR will provide to D2L a list of ASAs and a back-up for each organization and for the TBR Tier 2 help desk. TBR will be responsible for keeping this list current.

The number of ASA contacts per month is unlimited.

D2L will provide TBR a monthly report detailing usage by ASA, by organization. An ASA "contact" is defined as a trouble ticket concerning one issue and the efforts to resolve it; it may include multiple telephone, email, chat and/or other means of communication between an ASA and D2L. No ticket or communication which is occasioned by a D2L programming, network, software or hardware error shall be counted as a contact.

End User Support

D2L shall provide 24x7x365 help desk support for faculty and students. Support will be provided through chat, email, and telephone, as well as the ability to log incidents directly in the support portal via an optional widget embedded in your instance of the D2L Learning Environment.

The helpdesk services provided under this Contract shall be equal to or exceed the standards that are common and acceptable within the industry.

In addition to the aforementioned modifications, the following sections are added:

Brightspace ePortfolio. The ePortfolio license provides a network where students can collect and showcase evidence of their learning; reflect and discuss with peers, mentors and instructors; and continue to grow their ePortfolio after graduation with migration to a D2L hosted platform.

Brightspace Insights. The Insights license provides a rich data analysis system to track, analyze, and visualize engagement and outcomes across your organization. High-performance reports, comprehensive data visualizations, and predictive analytics help provide insight into individual learner success so institutions can discover new ways to continuously improve the learning experience.

Student Success System The Student Success System (S3) is an early intervention system that empowers institutions with predictive analytics to improve student success, retention, completion, and graduation rates. S3 provides educators with early indicators and predictions of student success and risk levels. Predictions are based on predictive models that are created by applying machine learning algorithms on historic course data (prior offerings of the same course.)

IN WITNESS WHEREOF, the parties have by their duly authorized representative set their signatures.

DESIRE2LEARN INCORPORATED

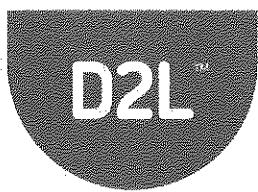

John Butler Jeremy Auger Brandon Hossler
CEO eeo Jr. GFS JP

DATE: 12/9/15

TENNESSEE BOARD OF REGENTS


John G. Morgan, Chancellor OS

DATE: 12/8/15



ORDER FORM

Order # 01190393

D2L Ltd.

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

ORDER DATE SEPTEMBER 30, 2015
ORDER EXPIRATION DATE DECEMBER 15, 2015

TO Tennessee Board of Regents ("Client")
1415 Murfreesboro Road, Suite 350
Nashville, TN, United States 37217-2833

RE: Tennessee Board of Regents Renewal including EUS

Order Effective Date	January 1, 2016
Order End Date	December 31, 2016
Initial Term	1 year
User Model	FTE
Currency	\$ USD

Pricing Breakdown

Item Year 1	
Pricing Period	January 1, 2016 – December 31, 2016
Fees Due	Upon Signing
User Count	175000
Software	\$2,654,161.00
Support	\$477,500.00
Discount	<\$263,750.00>
Services	\$91,000.00
Total	\$2,958,911.00

Pricing does not include applicable taxes.

Pricing Details

SOFTWARE INCLUDES
Brightspace Learning Environment - Annual Fees
Cloud Services Annual Fee
Brightspace Learning Repository - Annual Fee
Brightspace ePortfolio Annual Fees
Brightspace Insights Annual Fee
Student Success System Annual Fees
1 Test Environment Annual Maintenance
Annual Maintenance for Custom Integration
End of Semester Back-ups
Additional Storage 7TB Total
LeaP Pilot Annual Fee - 5 Institutions, 5 courses per institution (\$75,000 annually, 100% Discounted)
2 Additional Org Annual Maintenance
SUPPORT INCLUDES
Gold Administrator with Branded End User Support (with one-time 50% Discount)
Premier Account Services Shared 1:2
SERVICES INCLUDES
Brightspace ePortfolio Implementation
Brightspace Insights Implementation
Student Success System Implementation
10 Training Days
2 Additional Org Implementation
LeaP Implementation (with one-time 100% Discounted)

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, or if a valid Purchase Order ("PO") referencing D2L's Quote # above is provided. 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 PO or signed Order Form after the Expiration Date.

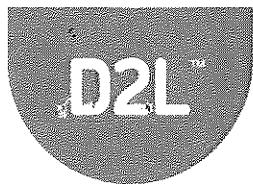
To accept this Quotation, sign here:

Print Name:

Date:

John Morgan
John Morgan
12/9/15

THE INDIVIDUAL SIGNING IS AUTHORIZED TO BIND CLIENT.



AMENDMENT FOR UPDATED SERVICES

D2L Ltd.

500 York Road
Towson, MD, 21204

DATE

APRIL 11, 2016

TO Tennessee Board of Regents
1415 Murfreesboro Road, Suite 350
Nashville, TN
37217-2833 USA

Governing Agreement Name
Contract Between Tennessee Board of Regents and Desire2Learn Incorporated
Governing Agreement Effective Date
1/1/2012

RE: Amendment to the Governing Agreement

CHANGES TO EXISTING GOVERNING AGREEMENT TERMS

EFFECTIVE IMMEDIATELY AND NOTWITHSTANDING ANYTHING TO THE CONTRARY IN ANY AGREEMENT BETWEEN CLIENT AND D2L:

1. D2L reserves the right to use third parties ("Vendors") located in Canada, the United States, or the European Union who are under a covenant of confidentiality with D2L, 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 as between D2L and Client. For certain Products and Services such as mobile apps or collaborative workspaces, D2L may enter into separate agreements directly with End Users. For clarity, Vendors used by D2L for hosting, data migration, support, configuration, implementation and custom code development processes in the ordinary course of D2L's business are not deemed to be "subcontractors" for purposes of this section; D2L will require such Vendors to maintain the same or equivalent standards for data security as set out in the Contract. D2L will be responsible to the Institution for the acts and/or omissions of such vendors as between D2L and the Client.
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.
3. Notwithstanding anything to the contrary in the Governing Agreement, to deliver, develop, test and improve the Products and Services required under this Agreement and provide to its clients generally, D2L may collect, store, analyze, and interpret data elements acquired by, associated with, or provided in the use of Applications and Software ("Analysis") as may be required for Analysis purposes. 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.
4. Except as expressly set out above, all other terms of the Governing Agreement remain in full force and effect, and this Amendment will prevail in the event of any inconsistency or conflict with the Governing Agreement.

AGREED AND ACCEPTED

D2L Ltd.

By:

Name: Brandon Nussey

Title: CFO

Date: April 11, 2016

TENNESSEE BOARD OF REGENTS

By:

(Authorized Signatory)

Name:

John Chancellor

Title:

Date:

S. Gregay

NOTARIAL CERTIFICATE

CANADA)
PROVINCE OF ONTARIO)

I, Daniel Micak, a Notary Public for the Province of Ontario, duly appointed by Royal Authority, residing in Kitchener, Ontario, certify that the document attached to this certificate is a true copy of a document produced, shown to me, and purporting to be:

a Resolution of the Sole Director of D2L Ltd dated May 13, 2015 appointing signing authorities for D2L Ltd.

I have compared this copy against the original document and have certified the copy under my notarial seal of office.

I have signed my name and affixed my notarial seal of office to this certificate at Kitchener, Ontario this 28th day of March 2016.



A Notary Public for the Province of Ontario.
My commission does not expire.

RESOLUTION OF THE SOLE DIRECTOR

OF

D2L LTD.
(the "Corporation")

APPOINTMENT OF OFFICERS AND SIGNING AUTHORITIES

WHEREAS pursuant to Article V of the Corporation's By-laws, the Board of Directors may from time to time elect officers of the Corporation; and

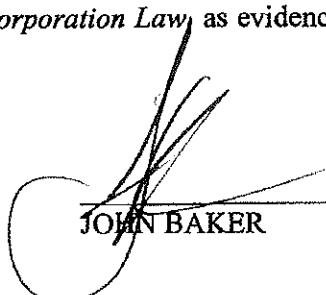
WHEREAS pursuant to Article VI of the Corporation's By-laws, the Board of Directors may from time to time authorize any officer to execute and deliver any instrument in the name of and on behalf of the Corporation;

NOW THEREFORE BE IT RESOLVED that the following people be and are hereby appointed to the offices set forth next to their respective names and are authorized for and on behalf of the Corporation to execute and deliver, under corporate seal or otherwise, all instruments, documents, directions, writings, transfers, assignments, contracts and obligations of the Company and to do such other acts and things as each may consider necessary, desirable or useful for the purpose of giving effect to this resolution as may be required from time to time:

Name	Office
John Baker	President and Chief Executive Officer
Brandon Nussey	Chief Financial Officer
Jeremy Auger	Chief Strategy Officer
Anna Forgione	General Counsel and Corporate Secretary
Bill Trick	Secretary and Treasurer
Melissa Howatson	Controller

THE FOREGOING RESOLUTION is hereby consented to by the sole director of the Corporation pursuant to the *Maryland General Corporation Law*, as evidenced by the signature below.

DATED May 13, 2015.



JOHN BAKER

**CONTRACT
BETWEEN
TENNESSEE BOARD OF REGENTS
AND
D2L LTD.**

This Contract, by and between Tennessee Board of Regents, hereinafter referred to as the "Institution" and D2L Ltd., hereinafter referred to as the "Contractor," is for the provision of technology enhanced course management products, as further defined in the "SCOPE OF SERVICES."

The Contractor is a for-profit corporation. The Contractor's address is:

500 York Road,
Towson, MD 21204

The Contractor's place of incorporation or organization is Maryland.

A. SCOPE OF SERVICES:

- A.1. The scope of products and services is attached as Attachment A and hereby incorporated by reference. The course management system ("System") shall include all products and services provided by Contractor under this Contract.
- A.2. The Contractor will use commercially reasonable efforts to see that the products identified in the Accessibility Statement attached hereto, including any updates, provided to the Institution will meet the accessibility standards set forth in WCAG 2.0 AA (also known as ISO standard, ISO/IEC 40500:2012), and Section 508 of the Vocational Rehabilitation Act. To the extent that the above products fail to meet the WCAG 2.0 AA, and Section 508 standards, the Contractor will apply those technically feasible solutions available to remediate non-compliant products and provide Institution with a fully completed Accessibility Statement and Conformance and Remediation forms (Attachments D & E).

B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period set out in the Attachments. The Institution shall have no obligation for services rendered by the Contractor which are not performed within the specified period.
- B.2. Term Extension. The Institution reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that the Institution notifies the Contractor in writing of its intention to do so at least sixty (60) days prior to the Contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the Institution's maximum liability will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original Contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the Institution under this Contract exceed Sixteen Million, Two Hundred Fifty Three Thousand, Six Hundred Twenty Five Dollars (\$16,253,625.00). The Service Rates in Attachment B include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the Institution requests work and the Contractor performs the work.
- C.2. Compensation Firm. The Service Rates and the Maximum Liability of the Institution under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless this Contract is amended.
- C.3. Payment Method. The Contractor agrees that TBR shall issue payment for all goods/services under this Agreement via ACH Payment and Contractor agrees that no payment shall be made prior to the completion of the Substitute W-9/ACH Authorization Form.
- C.4. Payment Methodology. The Contractor shall be compensated based on the Service Rates in Attachment for units of service authorized by the Institution in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones identified in Attachment B.

The Contractor shall submit invoices, in form and substance acceptable to the Institution with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

- C.5. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.6. Payment of Invoice. The payment of an invoice by the Institution shall not prejudice the Institution's right to object to or question any invoice or matter in relation thereto. Such payment by the Institution shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Institution, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The Institution reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the Institution any amounts which are or shall become due and payable to the Institution by the Contractor.

D. TERMS AND CONDITIONS:

- D.1. Required Approvals. The Institution is not bound by this Contract until it is approved by the appropriate officials in accordance with applicable Tennessee laws and regulations as shown on the signature page of this Contract.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate officials.

- D.3. Ethnicity. This Contract shall not be executed until the Contractor has completed the Minority/Ethnicity Form.
- D.4. Termination for Convenience. The Institution may terminate this Contract without cause for any reason. Termination under this Section D. 4 shall not be deemed a Breach of Contract by the Institution. The Institution shall give the Contractor at least one hundred twenty (120) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the Institution be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.5. Termination for Cause. If the Contractor fails to perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any term of this Contract, the Institution shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services; provided, however, Institution shall have the option to give Contractor written notice and a specified period of time in which to cure. Notwithstanding the above, the Contractor shall not be relieved of liability to the Institution for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.6. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the Institution. If such subcontracts are approved by the Institution, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination". Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed. For clarity, vendors used by Contractor for hosting, data migration, support, configuration, implementation and custom code development processes in the ordinary course of Contractor's business are not deemed to be "subcontractors" for purposes of this section. Contractor will require such vendors to maintain the same or equivalent standards for data security as set forth in Section E.17.3.1 of the Contract. Contractor will be responsible to the Institution for the acts and/or omissions of such vendors as between Contractor and the Institution.
- D.7. Conflicts of Interest. The Contractor warrants that no part of the total Contract amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.8. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, veteran status, national origin, or any other classification protected by Federal, or State constitutional or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.9. Records. The Contractor shall maintain documentation for all charges against the Institution under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the Institution, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the Institution, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the Institution as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that the parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the Institution, agrees to carry adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.14. Liability. (a) The Institution shall have no liability except as specifically provided in this Contract.
 - (b) Contractor's liability to the Institution for damages, costs, losses or expenses provided pursuant to this Contract, in contract, tort or otherwise, (except for indemnification obligations in section E.4) is limited to twelve (12) months of fees paid under the relevant order under which the claim arose.
 - (c) 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.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, epidemics or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations, including Institution policies and guidelines in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the Tennessee Claims Commission in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the Institution or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under **Tennessee Code Annotated**, Sections 9-8-101 through 9-8-407.
- D.18. Severability. If any terms or conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

D.19. **Headings.** Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. **ADDITIONAL TERMS AND CONDITIONS:**

E.1. **Communications and Contacts.**

The Institution:

Angela Gregory Flynn
Assistant Vice Chancellor for Purchasing and Contracts
Tennessee Board of Regents
1415 Murfreesboro Road, Suite 346
Nashville, TN 37217
(615) 366-4436
(615) 366-2243 Fax
angela.flynn@tbr.edu

The Contractor:

D2L Ltd.
500 York Road
Towson, MD 21204
Attn: Legal Department
(519) 772-0325
(519) 772-0324 Fax

All instructions, notices, consents, demands, or other communications shall be sent in a manner that verifies proof of delivery. Any communication by facsimile transmission shall also be sent by United States mail on the same date as the facsimile transmission. All communications which relate to any changes to the Contract shall not be considered effective until agreed to, in writing, by both parties.

E.2. **Subject to Funds Availability.** The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Institution reserves the right to terminate the Contract upon written notice to the Contractor. Termination under this Section E.2 shall not be deemed a breach of Contract by the Institution. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the Institution any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.3. **Breach.** A party shall be deemed to have breached the Contract if any of the following occurs (However, this list is not exclusive.):

- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract, or
- violation of any warranty.

For purposes of this Contract, these items shall hereinafter be referred to as a "Breach."

- a. Contractor Breach— Institution shall notify Contractor in writing of a Breach.

- (1) In event of a Breach by Contractor, the Institution shall have available the remedy of actual damages and any other remedy available at law or equity.
- (2) Liquidated Damages—If Contractor does not meet the Availability metrics set out in Attachment A, the Institution may claim service credits as set out in that Attachment..
- (3) Partial Default— In the event of a Breach, the Institution may declare a Partial Default. In which case, the Institution shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the Institution will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the Institution may revise the time periods contained in the notice written to the Contractor.

In the event the Institution declares a Partial Default, the Institution may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the Institution of providing the defaulted service, whether said service is provided by the Institution or a third party. To determine the amount the Contractor is being paid for any particular service, the Institution shall be entitled to receive within five (5) days of any request, pertinent material from Contractor. The Institution shall make the final and binding determination of the amount.

- b. Institution Breach— In the event of a Breach of contract by the Institution, the Contractor shall notify the Institution in writing within 30 days of any Breach of contract by the Institution. The notice shall contain a description of the Breach. In the event of Breach by the Institution, the Contractor may avail itself of any remedy available in the Claims Commission; provided, however, failure by the Contractor to give the Institution written notice and opportunity to cure as described herein operates as a waiver of the Institution's Breach. Failure by the Contractor to file a claim before the Claims Commission within one (1) year of the written notice of Breach shall operate as a waiver of the claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.
- E.4. Copyrights and Patents/Institution Ownership of Work Products. Contractor grants Institution a world-wide, perpetual, non-exclusive, irrevocable, fully paid up license to use any proprietary software products delivered under this Contract. The Institution shall have royalty-free and unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, as well as share in any financial benefits derived from the commercial exploitation of all work products created, designed, developed, or derived from the services provided under this Contract. The Institution shall have the right to copy, distribute, modify and use any training materials delivered under this Contract for internal purposes only.

The Contractor agrees to indemnify and hold harmless the Institution as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the Institution for infringement of any third party's intellectual property rights, including but not limited to, any alleged patent or copyright violations. The Institution shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof. In any such action brought against the Institution, the Contractor shall take all reasonable steps to secure a license for Institution to continue to use the alleged infringing product or, in the alternative, shall find or develop a reasonable, non-infringing alternative to satisfy the requirements of this Contract.

E.5. Insurance. The Contractor shall maintain a commercial general liability policy. The commercial general liability policy shall provide coverage which includes, but is not limited to, bodily injury, personal injury, death, property damage and medical claims, with minimum limits of \$1,000,000 per occurrence, \$3,000,000 in the aggregate. The Contractor shall maintain workers' compensation coverage or a self-insured program as required under Tennessee law. The Contractor shall deliver to the Institution both certificates of insurance no later than the effective date of the Contract. If any policy providing insurance required by the Contract is cancelled prior to the policy expiration date, the Contractor, upon receiving a notice of cancellation, shall give immediate notice to the Institution.

The enumeration in the Contract of the kinds and amounts of liability insurance shall not abridge, diminish or affect the Contractor's legal responsibilities arising out of or resulting from the services under this Contract.

E.6 [Not Used]

E.7. Competitive Procurements. If this Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or services, such procurements shall be made on a competitive basis, when practical.

E.8. Inventory/Equipment Control. No equipment shall be purchased under this Contract.

E.9. Institution Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the Institution for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the Institution in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the Institution for the residual value of the property at the time of loss.

E.10. Contract Documents. Included in this Contract by reference are the following documents:

- a. This Contract document and its attachments
- b. The Request for Proposal #14-0052 and its associated amendments, to the extent that the content of the Request for Proposal #14-0052 and its associated amendments do not refer to original implementation matters
- c. The Contractor's Proposals dated January 15, 2015 and cost clarification dated Aug 11th, 2015, to the extent that the content of the proposals do not refer to original implementation matters.

In the event of a discrepancy or ambiguity regarding the interpretation of this Contract, these documents shall govern in order of precedence as listed above.

E.11. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the Institution hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.

E.12. Hold Harmless. The Contractor agrees to indemnify and hold harmless the Institution as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the Institution in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the Institution.

In the event of any such suit or claim, the Contractor shall give the Institution immediate notice thereof and shall provide all assistance required by the Institution in the Institution's defense. The Institution shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the Institution in any legal matter, such rights being governed by **Tennessee Code Annotated**, Section 8-6-106.

- E.13. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses listed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

- E.14. Prohibition on Hiring Illegal Immigrants. Tennessee Public Chapter No. 878 of 2006, TCA 12-4-124, requires that Contractor attest in writing that Contractor will not knowingly utilize the services of illegal immigrants in the performance of this Contract and will not knowingly utilize the services of any subcontractor, if permitted under this Contract, who will utilize the services of illegal immigrants in the performance of this Contract. The attestation shall be made on the form, Attestation re Personnel Used in Contract Performance ("the Attestation"), which is attached and hereby incorporated as Attachment C.

If Contractor is discovered to have breached the Attestation, the Commissioner of Finance and Administration shall declare that the Contractor shall be prohibited from contracting or submitting a bid to any Tennessee Board of Regents institution or any other state entity for a period of one (1) year from the date of discovery of the breach. Contractor may appeal the one (1) year by utilizing an appeals process in the Rules of Finance and Administration, Chapter 0620.

- E.15. Red Flags and Identity Theft. The Contractor shall have policies and procedures in place to detect relevant Red Flags that may arise in the performance of the Contractor's activities under the Agreement, or review the Institution's Red Flags identity theft program and report any Red Flags to Institution.

- E.16. Sales and Use Tax. The Contractor shall be registered or have received an exemption from the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.

- E.17. Data Security and Access Standards.

- E.17.1 Definitions. The following terms have these meanings assigned to them:

- a. "Authorized Employees" means Contractor's employees who have a need to know or otherwise access Personal Information to enable Contractor to perform its obligations under this Contract.
- b. "Authorized Persons" means (i) Authorized Employees; and (ii) Contractor's sub-contractors, agents, outsourcers, outside service providers and auditors who have a need to know or otherwise access Personal Information to enable Contractor to perform its obligations under this Contract.
- c. "Confidential Information" means all trade secrets, business and financial information, computer software, machine and operator instructions, business methods, procedures, know-how and other information that relates to the business or technology of either party and is marked or identified as confidential, or disclosed in circumstances that would lead a reasonable person to believe such information is confidential. The Software and Documentation shall be considered Contractor's Confidential Information, notwithstanding any failure to mark or identify it as such.
- e. "Personal Information" means information provided to Contractor by or at the direction of Institution, or to which access was provided to Contractor by or at the direction of Institution, in the course of Contractor's performance under this Contract that: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, e-mail addresses and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, financial account numbers, credit report information, biometric or health data, answers to security questions and other personal identifiers), in case of both sub-clauses. Institution's business contact information is not by itself deemed to be Personal Information.
- f. "Privacy Laws" means the Gramm-Leach-Bliley Act ("GLBA"); the Family Educational Rights and Privacy Act ("FERPA") of 1974 (20 U.S.C.1232g), and any applicable federal or state laws, as amended ,together with regulations promulgated thereunder.
- g. "Security Incident" means any breach of information security, unauthorized access to any system, server or database, or any other unauthorized access, use, or disclosure of Personal Information occurring on systems under Contractor's control.
- h. "Unauthorized Third Parties" means any person other than an Authorized Employee or Authorized Person.

E.17.2. Data Privacy

- E.17.2.1. Except as otherwise expressly set out in this Contract, all information collected and stored by Contractor pursuant to this Contract is considered the property of the Institution. Contractor shall (i) keep and maintain all Personal Information in strict confidence using such degree of care as is appropriate to avoid unauthorized access, use or disclosure; (ii) use and disclose Personal Information solely and exclusively for the purposes for which the Personal Information, or access to it, is provided pursuant to the terms and conditions of this Contract, and not use, sell, rent, transfer, distribute, or otherwise disclose or make available Personal Information for the benefit of any third party, in each case, without Institution's prior written consent; and (iii) not, directly or indirectly, disclose Personal Information to an Unauthorized Third Party without express written consent from Institution unless, or to the extent required by governmental authorities or applicable law, in which case, Contractor shall (i) use reasonable efforts to notify Institution before such disclosure or as soon thereafter as reasonably possible; and (ii) to the extent that Contractor sub-contracts any part of its duties to a third Party, be responsible for and remain liable to Institution for the actions and omissions of such third Party concerning the treatment of such Personal Information as if they were Contractor's own actions and omissions.

E.17.2.2 To the extent the burden of compliance lies with Contractor under this Contract, Contractor represents and warrants that its collection, access, use, storage, disposal and disclosure of Personal Information complies with all applicable federal and state privacy and data protection laws, including without limitation those referenced in the definition of Privacy Laws above.

E.17.2.3 Some Personal Information provided by Institution to Contractor is subject to FERPA. Contractor acknowledges that its improper disclosure or re-disclosure Personal Information covered by FERPA may, under certain circumstances, result in Contractor's exclusion from eligibility to contract with Institution for at least five (5) years.

E.17.2.3. Except to the extent prohibited by applicable Privacy Laws, if, to perform the services contemplated by this Contract, Contractor requires access to Personal Information within Institution's internal databases, then Institution will make such information available to Contractor or its subcontractors through such means as Contractor may reasonably specify.

E.17.2.4. The Institution represents to Contractor and its subcontractors that Institution complies with all Privacy Laws and agreements governing the information provided or made available under this Contract and that the Institution is authorized to disclose and make available to Contractor and to permit Contractor (or its subcontractors) to use, adapt, augment , supplement , and/or modify any Personal Information provided to Contractor and to do so in the manner contemplated by this Contract. Institution recognizes that Contractor is a service provider and as such does not control the purpose or means of the processing of the information and Contractor is not liable for the acts or omissions of the Institution related to the Institution's collection, handling, processing, or disclosure of information.

E.17.3.1 Data Security

E.17.3.2 Contractor represents and warrants that if Contractor hosts data of Institution that includes any Personal Information, it will maintain compliance with the ISO 27001 standard, and shall undertake any audits and risk assessments Contractor deems necessary to maintain compliance with ISO 27001. To the extent that Contractor sub-contracts the hosting of any of Institutions Personal Information, it will require the sub-contractors to maintain compliance with ISO 27001 and, for cloud hosting providers and data center providers, SSAE 16 SOC 2 Type II.

E.17.3.3 At a minimum, Contractor 's safeguards for the protection of Personal Information shall include:
(i) limiting physical access to Personal Information to Authorized Employees/Authorized Persons;(ii) implementing reasonable security measures on business facilities ,data centers, paper files, servers, back-up systems and computing equipment, including , but not limited to, all mobile devices and other equipment with information storage capability; (iii) implementing reasonable network, device application, database and platform security; (iv) reasonably securing information transmission, storage and disposal; (v) implementing reasonable authentication and access controls within media, applications, operating systems and equipment; (vi) encrypting Personal Information transmitted over public or unsecured wireless networks; (vii) strictly segregating Institution's Personal Information so that it is not commingled with that of any other organizations; (viii) implementing appropriate personnel security and integrity procedures and practices, including , but not limited to, conducting background checks on new hires; (ix) providing appropriate privacy and information security training to Contractor's employees.

E.17.3.4. During the term of each Authorized Employee's employment by Contractor, Contractor shall at all times cause such Authorized Employees to abide strictly by Contractor's obligations under this Contract and Contractor's standard policies and procedures.

E.17.3.5 During the term of this Contract, Contractor will periodically, but not less often than every 18 months, have penetration testing performed on the data system on which the product which is the subject of this Contract is running and will share a summary of the results of such testing with the

Institution. To the extent that the penetration test reveals any vulnerabilities, Contractor will remedy those vulnerabilities in a manner and timeframe consistent with their severity levels.

E.17.4. Incident Response

E.17.4.1. Contractor shall: (i) provide Institution with the name and contact information for an employee of Contractor who shall serve as Institution's primary security contact and shall be available to assist Institution in resolving obligations associated with a Security Incident; (ii) notify Institution of a Security Incident as soon as practicable, but no later than seventy-two (72) hours after Contractor becomes aware of it, except where disclosure is prohibited by law; and (iii) notify Institution of any such Security Incident by telephone at the following number:

Jon Calisi: Office: 615-366-4456
Fax: 615-268-0782

and e-mailing Institution with a read receipt at Jon.Calisi@tbr.edu with a copy by e-mail to Contractor's primary business contact at the Institution.

E.17.4.2. Immediately following Contractor's notification to Institution of a Security Incident, the parties shall coordinate with each other to investigate the Security Incident. Contractor agrees to fully cooperate with Institution in Institution's handling of the matter, including, without limitation: (i) assisting with any investigation ; (ii) facilitating interviews with Contractor's employees and others involved in the matter; and (iii) making reasonably available all relevant records, logs, files, data reporting and other materials required to comply with applicable law, regulation, industry standards.

E.17.4.3. Contractor shall use commercially reasonable efforts to mitigate or resolve any Security Incident, and if such Security Incident is caused by Contractor, at Contractor's expense and in accordance with applicable privacy rights, laws, regulations and standards. If such Security Incident is attributable to Contractor or Contractor's sub-contractors, Contractor shall reimburse Institution for actual reasonable costs incurred by Institution in responding to, and mitigating damages caused by, any Security Incident, including all reasonable costs of notice and/or remediation incurred under applicable law as a result of the Security Incident. If such Security Incident is caused by Institution, Institution shall reimburse Contractor for actual reasonable costs incurred by Contractor in responding to, and mitigating damages caused by, any Security Incident, including all reasonable costs of notice and/or remediation incurred under applicable law as a result of the Security Incident.

E.17.4.4. Contractor agrees that it shall not inform any third party of any Security Incident without first obtaining Institution's prior written consent, other than to inform a complainant that the matter has been forwarded to Institution's legal counsel, as is required by applicable law, or to inform Contractor's legal counsel, incident response team, or other party , including law enforcement personnel, who may be reasonably or foreseeably involved in Contractor's response to a Security Incident..

E.17.5.1 Return of Personal Information. At the Institution's written request within 30 days after termination or expiration of this Contract for any reason, Contractor shall, and shall instruct all Authorized Persons to dispose of Personal Information and certify in writing to the Institution that such information has been disposed of securely.

E.17.6.1 Breach is Material. The Parties acknowledges that any breach of its covenants or obligations set forth in this Section E.17 are material and may cause the other party irreparable harm. Any remedies which are sought by a Party shall not be deemed to be exclusive but shall be in addition to other remedies available at law or in equity, subject to any express exclusions or limitations in this Contract to the contrary. Either party's failure to comply with any of the

provisions of this Section E.17 is a material breach of this Contract. In such event, Institution may terminate the Contract in accordance with this Contract.

- E.17.7.1 **Hardware/Software Upgrades.** Contractor agrees to provide the Services in a professional and workmanlike manner. Contractor shall use reasonable efforts to install the latest security and system patches on hardware and software directly controlled by Contractor. Contractor agrees to use reasonable efforts to ensure that that Contractor's internal systems will be replaced/upgraded on a timely schedule to ensure that all systems are supported and does not reach "end of life" and/or "end of support" conditions.
- E.18. **Contractor Commitment to Diversity.** The Contractor shall assist the Institution in monitoring the Contractor's performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and Tennessee service-disabled veterans. Such reports shall be provided to the Institution in form and substance as required by Institution.

IN WITNESS WHEREOF:

D2L LTD.:



[NAME AND TITLE]

A handwritten signature of Brandon Nusscy.

Brandon Nusscy

March 28, 2016

Date

APPROVED:

TENNESSEE BOARD OF REGENTS:

A handwritten signature of David B. Gregory, Chancellor.

3/31/2016

Date

ATTACHMENT A

CONTRACTOR (D2L) RESPONSIBILITIES

List of Products and Services

Attachment B lists all products and services purchased and optional for purchase and the price for each as well as the total Contract cost for the initial two (2)-year term and up to three (3) one (1)-year renewals. This Contract will automatically renew for each of the three (3) renewal terms unless TBR provides D2L with at least sixty (60) days prior written notice that it does not wish to renew for the subsequent renewal term. The fixed costs/rates provided in Attachment B may only be modified by amendment to this Contract. Rates set forth on Attachment B are not subject to escalation; however, charges for the D2L software as listed under each yearly charge reflect agreed upon increases. The D2L software and services total yearly charge, may be increased based on increases in users at the rates provided on Attachment B. All other costs, including the rates for Cloud hosting and optional/additional products and services, are fixed for the initial two (2)-year term and three (3) annual one-(1) year renewals. The information provided in this Attachment shall take precedence in interpreting this Contract.

With regard to charging of D2L software and services, the initial number of aggregate licensed users (NLU) across all TBR organizations for the Initial term of this Contract is 175,000 users per semester. A licensed user is defined to be a unique individual user across the TBR organizations who has accessed the system at least one time. The Intent of this provision is to eliminate the double counting of a user because he or she may play more than one role at their institution or another related institution, including TN eCampus, and to eliminate from the total those account IDs that are created to allow for the performance of administrative tasks but are not associated with an individual person. TBR will work with D2L to help identify duplicated users properly and timely. Licensed users shall include all faculty, staff, and on-line users/students of all TBR Institutions.

The number of users will be evaluated annually at the end of each term of the Contract in order to determine if the NLU has been exceeded during the previous term. The mean NLU shall be calculated by averaging the fall and spring NLUs. Should the mean NLU in the prior term of this Contract have been in excess of 185,000, the cost for the new term to the TBR system for the D2L Learning Environment and other D2L products and services purchased by TBR may be increased to an amount where the charge for the D2L Learning Edition software is equal to the average of the fall and spring NLUs times the annual D2L Learning Edition software license fee rate per user for the appropriate year in which the evaluation is performed, as set forth on Attachment B.

In the event that a change or development substantially reduces any of D2L costs for providing any of the products or services provided under this Contract, D2L will provide TBR a lower cost and/or credit for other future payments under the Contract in recognition of the savings opportunity.

CONTRACT DELIVERABLES:

LICENSE(S):

License(s). D2L shall make available its most current version of D2L Learning Environment, D2L Learning Repository, D2L ePortfolio and D2L Insights products ("System"), which shall include all related documentation and user manuals, upgrades, updates, and subsequent enhancements provided by D2L.

D2L Cloud Services. D2L will provide two instances of the software for the TBR system at a hosting location in North America. The first instance will recognize 23 production organizations - each of the 19 TBR colleges and universities shall be allocated an organization; TN eCampus (formerly ROCC) ROCE, TCATs and Central Office will each be allocated 1 organization. In addition, D2L shall provide each of the

universities, colleges, TN eCampus, ROCE, TCATS and the Central Office with one Test environment. D2L will provide managed hardware, networking, firewalls, redundant high-bandwidth connectivity to internet, high performance server infrastructure, backups and software so as to allow the operation of the System. D2L shall be responsible for all support, maintenance, and security relating to the System.

Material components of the Production instance of the "System" shall be available at least 99.9% of each measurement period. The measurement period shall be one calendar month.

D2L shall undertake commercially reasonable efforts to rectify any Downtime or Emergency Unavailability. If at any time the System cannot be accessed or there is some other emergency, D2L shall provide notice and other pertinent information to the Authorized Support Contacts (ASCs) as soon as reasonably possible.

Each TBR institution shall report incidents to D2L Support that it considers downtime immediately, but in no event later than 24 hours from when they became aware of, or reasonably should have become aware of, the occurrence; failure to do so shall disentitle TBR to any credit for that incident under this Addendum. In reporting, TBR 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. Upon request, D2L shall share all data used for TBR availability with the technical contacts at TN eCampus. D2L shall provide TBR with a client dashboard that displays a snapshot view of the system status, including 30 day historical view of key metrics.

If after investigation and classification, D2L determines that Downtime during the Measurement Period was such that Availability fell below 99.9%, TBR 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% ≤ x ¹	N/A
99.5% ≤ x < 99.9%	1% of Client's Cloud Services fee for that Measurement Period
99% ≤ x < 99.5%	2.5% of Client's Cloud Services fee for that Measurement Period
98% ≤ 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

Any credit so determined may only be applied against subsequent Cloud Services Fees on renewal of the Cloud Services Addendum and shall be Client's sole remedy if that Availability falls below the level stated in this Addendum; provided, however, that if this Cloud Services Addendum is terminated or expires such that the entire credit cannot be applied for Client's benefit, D2L shall promptly refund such amount to Client.

Other than a change required in an emergency, D2L will provide minimum of 3 weeks advance notice of scheduled maintenance windows which is reasonably expected to affect TBR access to the System.

Subject to storage pricing overages, there will be no limits/quotas on the memory/space allocated for any course, or the total content or courses of TBR. There will no automatic deletion of courses or users unless and until the parties make a further agreement in writing. The amount charged TBR for any additional storage shall be limited to One Hundred Thousand Dollars or the market price, whichever is less.

¹x = Availability

D2L acknowledges and agrees that it will take all reasonable steps necessary to protect all student records pursuant to the U.S. Family Educational Rights and Privacy Act of 1974, (FERPA) and the applicable Federal Regulations set forth at 34 C.F.R. Sec. 99.31.1.

The hosting services provided under this Contract shall be equal to or exceed the standards that are common and acceptable within the industry.

Test Environment Cloud Services. As noted above, D2L will provide an instance of the software which will serve as the test site. The servers utilized at the test site shall be sufficiently robust for the testing of upgrades, updates, and integrations as well as performing development work.

Test Environment Maintenance. As part of the maintenance service for the Test instances, D2L will ensure that upgrades and updates are deployed on the test instance and work properly before application to the production environment.

Integration Maintenance (LDAP, IPAS (SSO), Premium SIS). D2L will maintain the integration components for LDAP, IPAS (SSO) and Premium SIS. D2L will provide telephone and email support to resolve technical issues relating to these integrations as part of the Administrator Support package referenced below.

Language Packs. D2L will provide system Language Packs for US English and Latin American Spanish.

Additional Storage. D2L will provide an additional storage allocation of 7 TB.

Self-Directed Training. D2L will make available Self Directed Training in the form of videos through the Brightspace Community. D2L will provide updated videos with new releases.

Products and Services Analysis. To deliver, develop, test and improve the products and services required under this Contract and provide to its clients generally, D2L may collect, store, analyse, 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 and shall be governed by the Confidentiality and Intellectual Property provisions of the Contract. 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.

MAINTENANCE:

Gold Administrator Support – Unlimited Incidents per Month. D2L will provide Gold Administrator Support to TBR. This service includes:

- 24x7x365 email, telephone, and web-based support for a number of named contacts
- Unlimited number of incidents per month
- Priority queuing and major incident management
- Monthly incident reporting
- Quarterly SLO reporting
- Semi-annual reviews of support service experience
- Cloud performance dashboard
- Annual product roadmap review meetings

TBR will provide to D2L a list of Approved Support Contacts (ASCs) and a back-up for each organization. TBR will be responsible for keeping this list current.

The support services provided under this Contract shall be equal to or exceed the standards that are common and acceptable within the industry.

Premier Account Services – Dedicated. D2L will provide a Technical Account Manager (TAM) dedicated to all TBR instances collectively. This TAM is a named technical contact that provides technical guidance for projects, infrastructure and support issues. The TAM will provide input to D2L internal teams to represent TBR's specific needs.

Standard End User Support. D2L will provide Standard End User Support Services to TBR faculty and students. This service includes:

- 24x7x365 email, telephone, chat and web-based support for end users (faculty, students)
- Unlimited number of incidents per month
- 1-800 toll free support phone number

Disaster Recovery:

Business Continuity Annual Fee – Bronze. D2L will provide Disaster Recovery service for TBR. If D2L experiences a Disaster, D2L shall use reasonable efforts to ensure that TBR has access to the backup capability in a secondary location within the Recovery Time Objective (RTO) of 24 hours. D2L shall use reasonable efforts to ensure TBR has no more than 12 hours of data loss (Recovery Point Objective - RPO). D2L will restore TBR production environment to normal, fully-functional operations as soon as reasonably possible.

D2L will make reasonable effort to schedule annual testing of the Disaster Recovery process for TBR.

Optional Products and Services:

Attachment B also lists optional products and services which may be purchased under this Contract and the fees for each. The fees provided on Attachment B may only be modified by amendment to this Contract.

Orders:

Public and private colleges and universities in the State of Tennessee may utilize this Contract to purchase Products and Services from D2L, and this Contract is limited to such entities. Any such entity (a "Participant") desiring to utilize this Contract shall execute an Order Form substantially in the form attached as Exhibit 1. Implementation and Support fees for Participants will be dependent upon each institution's requirements. Contractor will work with each institution to determine the implementation and Support fees and training requirements.

It is understood between the Parties that in order for Participants to abide by the terms and conditions of the Contract (including any future amendments), Participants shall have the right to request a copy of the Contract from TBR and TBR shall reasonably comply with any such request. It is further understood that it is the Participant's responsibility to request the above; any failure to do so shall not lessen Participant's obligations under the Order Form.

EXHIBIT 1 – ORDER TEMPLATE

ORDER FORM
Order # 00000000

D2L Ltd.

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

ORDER DATE
ORDER EXPIRATION DATE

TO _____ ("Client")
[address]

RE: Type of Product/Service

Order Effective Date	
Order End Date	
Initial Term	_ year(s)
User Model	
Currency	\$ USD

Pricing Breakdown

Item	Year 1
Pricing Period	
Fees Due	
User Count	
Software	\$0.00
Services	\$0.00
Total	\$0.00

Pricing does not include applicable taxes.

Pricing Details

SOFTWARE INCLUDES
Type of software
SERVICES INCLUDES
Type of services

SPECIAL TERMS AND CONDITIONS

1. In consideration of Client's use of Applications and/or Software, Client agrees to be bound by the terms of the Contract between TBR ("Parent") and D2L with an effective date of 01-01-2017 ("Governing Agreement") for this Order as well as any subsequent Orders made by Client, unless otherwise expressly stated on such subsequent Order.
2. It is understood between D2L and Client that in order for Client to abide by the terms and conditions of the Governing Agreement (including any future amendments), Client shall obtain a copy of the above referenced documents from Parent. It is further understood that it is Client's responsibility to obtain the above along with Parent's consent to leverage the terms of the Governing Agreement for the purpose of purchasing from D2L, and Client represents and warrants to D2L that it has all necessary consents and permissions from Parent; any failure to obtain these shall not lessen Client's obligations under this Order Form. Client shall be fully responsible to D2L for any claims by Parent that may arise from Client's breach of its obligations under this provision.
3. The right to use by Client is coterminous with the Governing Agreement.
4. Client shall pay Fees as specified in this Order Form.

This Order Form between D2L and Client may be accepted as a binding agreement under the terms of the 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.

AGREED AND ACCEPTED

D2L Ltd.

CLIENT

By: _____

By: _____

(Authorized Signatory)

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT B
CONTRACT RATES

Effective Date	January 1, 2017
Agreement End Date	December 31, 2018
Term	2 Years
User Model	FTE
Currency	\$ USD

Online Course Management System (Hosted Solution)					
	January 1, 2017- December 31, 2017	January 1, 2018- December 31, 2018	January 1, 2019- December 31, 2019 (optional)	January 1, 2020- December 31, 2020 (optional)	January 1, 2021- December 31, 2021 (optional)
Contract Term:					
Fees Due:	1-Jan-17	1-Jan-18	1-Jan-19	1-Jan-20	1-Jan-21
User Count:	175,000	175,000	175,000	175,000	175,000
Item No.	Description	Setup/Year 1	Year 2	Year 3	Year 4
1	Annual Software License (inclusive of the RDBMS)	\$2,348,000.00	\$2,348,000.00	\$2,348,000.00	\$2,348,000.00
2	Annual Software Maintenance (inclusive of the RDBMS)	\$477,500.00	\$477,500.00	\$477,500.00	\$477,500.00
5	Disaster Recovery	\$205,625.00	\$205,625.00	\$205,625.00	\$205,625.00
6	Insights	\$210,000.00	\$210,000.00	\$210,000.00	\$210,000.00
	TOTAL	\$3,241,125.00	\$3,241,125.00	\$3,241,125.00	\$3,241,125.00

Additional Financial Terms

Support Overage	N/A	N/A	N/A	N/A	N/A
Annual Fee Overage Per User	\$18.52	\$18.52	\$18.52	\$18.52	\$18.52
Total Allocated Storage	17,500 GB				
Video Note Tool Storage	8,750 GB				
Storage Overage per GB per Year				\$5.00	

Online Course Management System (Hosted Solution)

<u>Item No.*</u>	<u>Description</u>	<u>Set Up/Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
1	Software License(s)	\$2,348,000.00	\$2,348,000.00	\$2,348,000.00	\$2,348,000.00	\$2,348,000.00
1.a	D2L Learning Environment Annual Fee – FTE. Including analytical and statistical tools, grade book functions and tools, email and communication functions and tools, content and file functions and tools, assessment functions and tools, student service functions and tools, additional tools and functions, and help resources and documentation.	Included	Included	Included	Included	Included
1.b	D2L ePortfolio Annual Fee – FTE. Including communication tools, student service functions and tools, and additional tools and functions.	Included	Included	Included	Included	Included
1.c	D2L Learning Repository Annual Fee – FTE. Including content and file functions and tools, student service functions and tools, and additional tools and functions.	Included	Included	Included	Included	Included
1.d	D2L Cloud Services Annual Fee - FTE	Included	Included	Included	Included	Included
1.e	Test Environment Annual Maintenance	Included	Included	Included	Included	Included
1.f	Test Environment Cloud Services	Included	Included	Included	Included	Included

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 13.33% 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.

Optional Items*				
<u>Item No.*</u>	<u>Description</u>	<u>Setup Fees</u>	<u>Annual Fees</u>	<u>Annual Fee Unit Type</u>
1	D2L Insights **	Included	\$1.20	per FTE
2	D2L Insights - Student Success**	\$1,000.00	Included	N/A
3	D2L Insights - Achievement Reports**	\$11,000.00	Included	N/A
4	D2L Leap	\$10,000.00	\$2.25	per FTE
7	D2L Capture Enterprise Cloud	Included	\$2.00	per FTE
8	D2L Degree Compass (for periods after December 31, 2016)	\$5,000.00	\$1.80	per FTE
9	Language Packs - Enterprise Package	N/A	\$12,500.00	per FTE
10	Business Continuity Annual Fee - Silver	N/A	\$1.76	per course
11	Business Continuity Annual Fee - Gold	N/A	\$2.35	per course
12	D2L Open Courses - Basic	Included	N/A	N/A
13	D2L Open Courses - Premium	\$7,000.00	N/A	N/A
14	SSO Integration	\$5,000.00	Included	Flat Rate
15	LDAP Integration	\$5,000.00	Included	Flat Rate
16	CAS Integration	\$5,000.00	Included	Flat Rate
17	IPAS Integration	\$5,000.00	Included	Flat Rate

18	IPSCT Integration	\$3,500.00	N/A	Flat Rate
19	Custom Login Logic	\$2,500.00	N/A	Flat Rate
20	Switch to Standard SIS Integration from Premium (Holding Tank)	\$4,000.00	Included	Flat Rate
21	Switch to IPSIS Integration from Premium (Holding Tank)	\$5,000.00	Included	Flat Rate
22	Test/Dev/QA Environment	\$2,500.00	\$9,500.00	Flat Rate
23	New Org	\$1,500.00	Included	Flat Rate
24	Full Day Training (Including Travel, Accommodations, and Per Diem)	\$3,000.00	N/A	Flat Rate
25	Half Day Training (Including Travel, Accommodations, and Per Diem)	\$1,750.00	N/A	Flat Rate
26	Full Day Training (Virtual)	\$2,500.00	N/A	Flat Rate
27	Half Day Training (Virtual)	\$1,500.00	N/A	Flat Rate
28	Consulting Day Rate	\$2,500.00	N/A	per day
29	Consulting Level III	\$305.00	N/A	per hour
30	Consulting Level II	\$215.00	N/A	per hour
31	Consulting Level I	\$185.00	N/A	per hour
32	Creative Services Day Rate	\$2,500.00	N/A	per day
33	Creative Services Level III	\$305.00	N/A	per hour
34	Creative Services Level II	\$200.00	N/A	per hour
35	Creative Services Level I	\$150.00	N/A	per hour
36	Dedicated Onsite Product Support team	N/A	\$365,000	Flat Rate
37	Adoption Specialist	N/A	\$165,000	Flat Rate
38	D2L Managed Services	N/A	\$500,000	Flat Rate

*All prices above are per institution where applicable. Implementation and Support fees for Participants will be dependent upon each institution's requirements. Contractor will work with each institution to determine the implementation and Support fees and training requirements. ** Insights was not included in TBR's latest RFP; however, TBR has purchased Insights for 175,000 FTE in 2016 as part of TBR's renewal with Contractor. Any additional FTE may be added at the price set out in the table above, and additional support fees may apply.

ATTACHMENT C

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

SIGNATURE & DATE:

March 28, 2016

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

ATTACHMENT D

Vendor Product Accessibility Statement and Documentation

Purpose of Accessibility Statement

An Accessibility Statement is an important component in an organization's overall accessibility strategy. An effective Accessibility Statement includes several key components including:

- A clear statement of commitment to ensuring equal access for all users
- A summary of the overall level of conformance with accessible information and technology standards
- Information for users with disabilities regarding product/service accessibility features and gap
- A mechanism to allow users to provide accessibility feedback
- Links to resources (internal or external) that provide additional or related information

The Key Components section of this document describes each of these components in more detail and provides specific examples and recommendations that clarify the role and importance of each component.

Key Components

Commitment Statement

- Clearly convey awareness of Information Material and Technology (IMT) accessibility.
- Emphasize commitment to ensuring the accessibility of the IMT product/service.
- Note ongoing efforts to monitor for and remediate accessibility issues as they are identified.

Compliance Status

- Indicate the specific IMT accessibility standards that are targeted for compliance. For example, specify "Section 508", the "Web Content Accessibility Guidelines (WCAG) 2.0, level A & AA" and or EPub3 Accessibility Guidelines (note – response to all three standards is required).
 - Note any other best practices or guidelines utilized during design and development (if applicable).
 - List any third-party agencies with whom you have worked to evaluate accessibility support.
 - Describe any formal testing process you use to determine accessibility support.
 - Indicate if you conduct user testing with persons with disabilities to verify accessibility support.
 - Provide an Access Development/Remediation Plan and timeline for resolving existing product accessibility gaps.

Product Usage Information for Users with Disabilities

- Describe any product features that may improve accessibility for users with disabilities including:
 - Accessibility-specific features (e.g. the ability to adjust font size and color/contrast settings for text or the availability of closed captions for videos)
 - General product features that may especially benefit users with disabilities (e.g. an 'HTML 5' mode optimized for mobile platforms that also improves keyboard-only navigation).
 - Describe any high-impact product accessibility gaps along with suggested interim workarounds that allow users to complete key tasks until the gaps are resolved. For example, if a technical support website isn't compatible with screen readers used by persons who are blind, appropriate interim workarounds might include:
 - Alternative business processes that bypass the accessibility barrier (e.g. providing phone-based support until the web-based support site is accessible)
 - Use of a third-party product to replace or supplement inaccessible product functions (e.g. indicating that users may submit or check the status of technical support tickets via email).
 - Describe accessibility features provided by your communication channels (e.g. a deaf or hard-of-hearing user may contact you via a TTY line or access support personnel familiar with telephone relay services).
 - Indicate whether you have specific resources devoted to handling accessibility questions/concerns and provide the contact information for these resources.
- Provide a specific mechanism for users to contact in order to:
 - Request accessibility-related assistance
 - Report accessibility problems
 - Request information in accessible alternate formats
- Required Documentation
 - Provide documentation on accessibility testing results and written documentation on how the IMT product/service meets applicable technical accessibility standards (Section 508, WCAG 2.0 A&AA guidelines, EPUB3) and your most recent Voluntary Product Accessibility Templates (VPATs) and
 - Include the ROCC Accessibility Conformance and Remediation Form when standards conformance is not fully achieved
 - Provide links to any other internal accessibility documentation (e.g., accessibility information within general product documentation,

FAQs, best practices, tutorials, case studies, or white papers).

Implementation Recommendations

Ensure that the Accessibility Statement is Easily Located on Company Website.

- Provide a hyperlink that points to the Accessibility Statement and meets the following criteria:
 - Descriptive (e.g. 'Accessibility' or 'Disability Access')
 - Prominently positioned (e.g. on the landing page, help/support page, and/or site map)
 - Easily identified (e.g. adequate text size and color/contrast, not the last link in a complex page)

Keep the Information in the Accessibility Statement, Documentation and VPAT Current.

- Since accessibility support changes over time due to product updates, accessibility evaluations, and remediation activities, regularly review and update the Accessibility Statement so it remains up-to-date.
 - Include a revision date for the Accessibility Statement so end users know whether the info is current.

ATTACHMENT E

Accessibility Conformance and Remediation Form

Instructions

This form serves as means for auditors and vendors to document accessibility gaps associated with AIMT products and to indicate plans for addressing these gaps in the future.

We ask that you complete the form provided on the next page as follows:

1. Product/Vendor Information: Provide the information requested
2. Issue Description: List each major accessibility issue for the product Including the following:
 - Gaps identified from the Accessibility Standards and Voluntary Product Accessibility Template (VPAT)
 - Gaps identified in other product support documentation
 - Gaps identified by a third-party accessibility evaluation report (if available)
3. Current Status: Enter one of the following values:
 - Open: The issue has not yet been resolved
 - Closed: The issue has already been resolved
 - IP: The issue is currently under investigation
 - Other
4. Disposition: Enter one of the following values:
 - Planned: The issue will be resolved
 - Deferred: The issue will not be resolved
 - IP: The issue is currently under investigation
 - Other
5. Remediation Timeline: Enter when you anticipate that the issue will be resolved
6. Available Workarounds (for vendor only): Describe the business processes vendor will offer or third-party products that should be considered to work around the issue until full remediation
7. Comments (optional): Provide details/description regarding the issue
8. Additional Information (optional): Provide any additional discussion regarding accessibility plans

Vendor/Product Information

Vendor Name

Product Name

Product Version

Completion Date

Contact Name/Title

Contact Email/Phone

Specific Issues

Issue Description (Open, Closed, I/P)	Current Status Disposition (Planned, Deferred, I/P)	Remediation Timeline	Available Workarounds
Comments			

Images on the landing page lack equivalent alternate text

Functional images will receive descriptive alternate text; decorative images will receive null alternate text.

Additional Information: