

## MASTER AGREEMENT

This Master Agreement, including its Addenda and Schedules ("Master Agreement") governs terms and conditions between, [Client Name], [Client Address], a(n) [Client Location of Incorporation and Type of Organization] ("Client") and [Desire2Learn entity name], [Desire2Learn Address], or its subsidiaries, divisions or affiliates ("D2L") as listed in any Addendum to this Master Agreement.

### 1 Definitions

- 1.01 *Acceptable Use Policy* means the applicable terms and conditions governing the use by End Users of a specific Product, Service or Application, as may be identified on the Fees and Rates Schedule.
- 1.02 *Active User* means a License Model that accounts for any person who registers for or is enrolled in one or more courses in each consecutive 12-month period following the Effective Date.
- 1.03 *Addendum* means an executed document including, if applicable, its Schedule(s) attached to this Agreement that provides specific terms and conditions of Products and Services supplied to Client.
- 1.04 *Applications* means D2L Software resident on D2L's Network that Client is permitted to access and use through a Cloud Services Addendum.
- 1.05 *Client* includes its affiliates and subsidiaries, to the extent that such affiliates and subsidiaries are specifically identified.
- 1.06 *Client Data* includes course content, materials, Personal Information, and any other data that Client (or any authorized End User User(s)) uploads or enters through their lawful use of Products and Services.
- 1.07 *Cloud* or *Cloud Services* means the hosting by D2L or its Vendors of the Software and Client Data for Client's access and use under this Agreement.
- 1.08 *Confidential Information* means information provided to one Party about the other Party's products or services, business, affairs, Vendors, computer systems, installations or clients, to the extent that the information might reasonably be expected to be confidential. Confidential information may also include Client Data and Personal Information.
- 1.09 *Consulting* means implementation, development, or other assistance provided pursuant to an Addendum, Statement of Work or Order.
- 1.10 *Creative Commons License* means a license or similar usage right as offered or published by the Creative Commons Corporation.
- 1.11 *Deliverable* means a verifiable work output such as a specification, programming, code, or other output developed under a Statement of Work.
- 1.12 *Documentation* means a document published by D2L for all clients such as a user's manual or release notes. Documentation does not include sales and/or marketing materials.
- 1.13 *Effective Date* means the date that the Client signs this Agreement or, as applicable, any Addendum.
- 1.14 *End Users* are the persons who access, attempt to access or use the Software or Applications as a product during the course of this Agreement.
- 1.15 *Enrolment* means a License Model that accounts for the total number of all unique course registrations over the course of each consecutive twelve (12) month period following the Effective Date. For clarity, if an End User is registered in two (2) course offerings during a particular year, it will count as two (2) Enrolments.
- 1.16 *Fees* means those amounts to be paid for Products and Services under this Agreement.
- 1.17 *FTE* means a License Model that accounts for the highest reported full-time equivalents over the course of a year. The FTE is typically based upon the FTE reported to the Integrated Post-secondary Data System (IPEDS).
- 1.18 *Hardware* means the physical computing hardware including applicable peripherals that may be provided by D2L to Client under this Agreement.
- 1.19 *Intellectual Property* means any present or future development work, copyright, patent, trade-mark, trade name, service mark, design, program, procedure and method of computation, trade secret, data model, invention, drawing, plan, specification, process or similar property.
- 1.20 *License Model* means the particular usage description for Client's use of the Applications or Software under this Agreement. Active User, Enrolment and FTE as such terms are defined in this section 1, are License Models. The Fees for the relevant License Model(s) selected by Client will be as set out in the Order(s).
- 1.21 *Network* means, collectively, the hardware, Software, communications, cabling and other related resources under D2L's control through which Client accesses services.
- 1.22 *Order* means any document signed or electronically agreed to by D2L and Client that references this Agreement. An Order may be a quote, Statement of Work, acceptable purchase order, e-mail (subject to reasonable authentication of sender's authority) or similar document.
- 1.23 *Organizational Instance* means a single installation of Applications on one or more D2L servers for the exclusive use of Client.
- 1.24 *Party* means D2L or Client; *Parties* means D2L and Client.
- 1.25 *Personal Information* means any data, either alone or in combination with other information, by which a natural person can be identified or located, or that can be used to identify or locate a natural person.
- 1.26 *Products and Services* means Applications, Documentation, Software, Cloud Services, Support, Consulting, hardware, third party software, and/or any other material, duty, function or task D2L provides or performs under this Agreement.
- 1.27 *Rates* are D2L's then-current charges for professional services it provides, except for out-of-pocket and per diem expenses.

- 1.28 *Schedule* means a document attached to this Agreement that (i) does not require signature by the Parties; and (ii) describes Services, Rates and/or Fees.
- 1.29 *Services* means the Consulting, Support and/or Cloud Services that D2L provides to Client under this Agreement.
- 1.30 *Software* means a D2L software application or any part thereof in object code form (i) licensed to Client under a License Addendum; or (ii) accessed by Client under a Cloud Services Addendum. Software also includes Upgrades provided under a Support Schedule, but does not include Vendor or third party software or other components, or software developed under a Consulting Addendum or related Statement of Work.
- 1.31 *Statement of Work (or Work Order)* means a document created pursuant to a Consulting Addendum that specifies the roles and responsibilities of the Parties with respect to a particular engagement for Consulting.
- 1.32 *Support* means support services provided pursuant to a Support Schedule, as more fully described in such Support Schedule.
- 1.33 *Upgrade(s)* means modifications, templates and newer versions of Software and/or Applications provided by D2L that are made available generally to D2L customers. Upgrades do not include new independently-priced modules or utilities.
- 1.34 *Vendor* means a third party provider of software, products or services to D2L.

## **2 Warranties**

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

- 2.01.1 The Software as provided under a License Addendum will substantially perform according to applicable Documentation provided that Client (or D2L at Client's request) has not modified the Software;
- 2.01.2 The Applications and Cloud Service procured by Client under a Cloud Services Addendum will achieve in all material respects, the functionality described in the applicable Documentation; and
- 2.01.3 Consulting Services shall be performed in accordance with industry standards and with the same level of care and skill as D2L provides to similarly-situated customers.

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

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

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

## **3 Confidentiality**

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

3.02 No Party shall be bound by confidentiality obligations if the Confidential Information (a) is required to be disclosed pursuant to court or regulatory order, provided that, where feasible, the owner of the Confidential Information is given a reasonable opportunity to limit the extent of disclosure; (b) was already rightfully in its possession before the commencement of negotiations that led to this Agreement; (c) is learned from a third party under no apparent duty of confidentiality and is not otherwise protected under law; or (d) becomes part of the public domain other than as a result of a breach of this section and is not otherwise protected under law.

3.03 If there is a valid Confidentiality Agreement (“NDA”) in force between the Parties, this section shall act as a supplement to any deficiencies in the NDA, and not as a replacement to the NDA.

3.04 D2L shall not collect, use or disclose Personal Information except to carry out its obligations under this Agreement. D2L shall limit access to Personal Information to those persons within D2L who require access in order to provide the Products and Services hereunder. D2L shall handle Personal Information it receives from Client in accordance with applicable laws. D2L shall notify Client as soon as commercially practical of any inquiries regarding the collection, use or disclosure of Personal Information by D2L.

3.05 Nothing in this section shall prohibit D2L from issuing a mutually-acceptable press release, or from naming Client in general client lists or having Client’s name disclosed as part of the natural use of the Products and Services (e.g., if Client uses D2L Community, or appends its name to a D2L URL).

#### **4 Proprietary Rights & Restrictions**

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

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

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

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

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

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

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

Any default in Client’s obligations under this section may cause irreparable harm to D2L. If Client takes or threatens any action that may infringe on D2L’s IP rights, D2L may seek injunctive or other equitable relief in addition to any damages to which D2L may be entitled.

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

#### **5 Indemnification**

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

5.02 *Exclusions and Limitations.* This indemnity shall not apply to the extent that D2L is prejudiced by Client’s delay or failure to notify D2L of a claim, or to the extent that the infringement claim results from (a) Client’s unauthorized modification to Applications, Deliverables, Services or Software; (b) Client’s failure to install an Upgrade that would have avoided the claim; (c) the combination of the Software, Applications, Services or Deliverables with third party products where the third party products are not provided under this Agreement; (d) D2L’s compliance with specifications furnished by Client; or (e) use of the Applications, Deliverables, Services or Software in a manner that is not in accordance with the Documentation or applicable law.

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

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

#### **6 Liability Limitations**

6.01 D2L’s liability to Client for damages, costs, losses or expenses provided pursuant to this Agreement, in contract, tort or otherwise, (except for indemnification obligations) is limited to six (6) months of Fees paid under the relevant Order under which the claim arose. The liability limitation is commensurate with the consideration paid under this Agreement.

6.02 Neither Party is liable for indirect, consequential or incidental damages, including loss of revenue, profits or data, even if the other Party had advised of the possibility of such damages. Each Party is liable to the other for direct losses and expenses incurred by the other Party as a result of any breach of the Confidentiality Section, and Client is liable to D2L against all losses and expenses incurred as any result of a breach of the Proprietary Rights & Restrictions Section.

6.03 Client is responsible for the Client Data and the content of its and its End User’s transmissions, including Client Data, over D2L’s Network. Client agrees that it and its End Users will not use the Network for illegal purposes, to infringe the rights of a third party, or to interfere with or disrupt the Network (“Disruption”). Disruptions include distribution of unsolicited advertising or chain letters, defamatory, libelous or offending content, propagation of computer worms and viruses, and

unauthorized use of the Network to enter, or attempt to enter, another Network machine or Organizational Instance. If a Disruption occurs, D2L may, in its reasonable discretion, immediately remove the Disruption, disable the mode of communication, suspend Client's and/or its End User's access to Network or terminate this Agreement, and Client is liable to D2L for claims arising from Client Data or any Disruption.

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

## **7 Payment Terms & Taxes**

7.01 D2L emails invoices to the address listed as Invoice Recipient. Unless otherwise agreed, payment is due within 30 days from Client's receipt of invoice. Late payments will be subject to an interest charge of 1.5% per month or 19.56% APR.

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

7.03 All fees and rates stated in this Agreement do not include taxes of any kind, which taxes shall be added to Client's invoices. Client shall pay taxes promptly to D2L if D2L is required by law to collect them, except for taxes payable upon the income or capital of D2L. If Client is tax exempt, Client shall furnish to D2L its certificate upon request.

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

7.05 D2L may accept payment from any entity without accepting that entity as Client and without waiving any provision against assignment. D2L may accept partial payments for amounts due without waiving its right to payment in full of all outstanding amounts.

## **8 Excusable Delay**

8.01 If a Party cannot perform any of its obligations under this Agreement because of natural disaster, actions of governmental bodies, strikes, lockouts, riots, acts of war, communication line failures, power failures, fires or similar events or circumstances outside that Party's control, the Party who cannot perform shall promptly notify the other in writing, and shall do everything reasonably possible to resume performance. Upon receipt of notice, and except for accrued payment-related obligations, all obligations under this Agreement are immediately suspended. If the period of non-performance exceeds 60 days from the receipt of notice, the Party receiving the notice may terminate this Agreement with written notice within 30 days.

## **9 Term & Termination**

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

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

9.01.2 by either Party if the other Party materially or repeatedly (which in the aggregate is material) defaults in performing its duties or obligations under this Agreement for a period of 60 days after written notice is given to the defaulting Party, unless the default is cured within the 60 day period; and

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

9.01.4 by D2L if Client fails to pay an invoice, which is not the subject of a good faith dispute, provided that the invoice remains unpaid 30 days after D2L's subsequent notice to Client that payment is required. Alternatively, at D2L's sole discretion and without prejudice to D2L's other rights hereunder, D2L may elect to suspend Client's right to use the Products and Services and charge a reasonable re-instatement fee if such invoice remains unpaid 30 days after D2L's subsequent notice to Client that payment is required.

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

9.03 D2L will delete, destroy or render inaccessible Client Data residing on D2L Networks 30 days after termination, unless otherwise agreed in writing. Prior to the end of such 30-day period, Client may avail itself of certain export tools within the Products to allow Client to export course content materials in a standard packaged format as well as to export grades and other specific data elements in the Products. If Client requires additional support, D2L shall provide such data export services for a fee on a time and materials basis under an Order.

## **10 Assignment**

10.01 No Party may assign, including by operation of law, its rights or obligations hereunder, except to an affiliate of or successor by operation of law to D2L, without the prior written consent of the other Party, such consent not to be unreasonably withheld. D2L's consent may be conditioned upon the payment of additional fees to D2L in amounts determined by D2L.

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

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

## 11 General

**11.01 Governing Law.** This Agreement is governed by the laws of the <<CI\_Governing Law>>, without regard to its conflict of laws principles. Legal action arising pursuant to this Agreement shall be filed in the courts of the <<CI\_Governing Law>>. The United Nations Commission on International Trade Law Conventions on Contracts for the International Sales of Goods and Related Transactions is specifically excluded from this Agreement. The Parties waive any right to a jury trial.

**11.02 Order of Precedence.** An Addendum shall supersede the provisions of this Agreement where the documents are in conflict. The Agreement shall supersede the provisions of an Order, unless the Order refers to the provision of the Agreement it supersedes.

**11.03 Security.** D2L shall maintain commercially reasonable administrative, physical and technical safeguards for the protection, confidentiality and integrity of Client Data. During the Term, D2L shall maintain PCI DSS compliance for the portions of the Products and Services that store and process credit card data. Any changes made to the Products and Services by Client or at the Client's direction may affect the Client's compliance with PCI DSS requirements and Client shall be solely responsible for ensuring that any such changes are compliant with PCI DSS requirements. Client acknowledges that Client's use of Products and Services will involve transmission over the Internet and other networks, only part of which may be owned or controlled by D2L. Client further acknowledges that Client Data may be accessed by unauthorized parties when communicated across the Internet, Network or other electronic means. D2L is not responsible for any Client Data which is delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across networks not owned or controlled by D2L.

**11.04 Third Parties.** Some Products and Services may be provided or hosted by Vendors. If Vendor software or services are selected or agreed by Client for use 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 Vendor 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 Vendors. D2L reserves the right to use Vendors (who are under a covenant of confidentiality with D2L), including offshore subcontractors to assist with the Products and Services, including hosting, data migration, configuration, implementation and custom code development processes.

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

**11.06 Notices.** All notices shall be in writing and delivered (a) by hand, (b) by registered mail, postage prepaid, return receipt requested, (c) reputable overnight delivery service, (d) by facsimile, provided that the sender retains proof of successful transmission, or (e) by email. All notices shall be deemed received, if delivered by hand, on the date of delivery; if mailed, on the date of receipt appearing on the return receipt card; if sent by courier, on the date recorded by the courier company as having been received by the addressee; or, if sent by facsimile, on the date of receipt by the facsimile machine when it reports that the transmission is complete. Notices shall be sent or faxed to the names, addresses and numbers set forth below the signature lines to this Agreement. All "Legal Notices" required hereunder shall be in writing and delivered in person, by registered mail, return receipt requested, by facsimile with confirmation sheet, or by courier to the Parties at their addresses as set forth in this Agreement. Legal Notices include formal notices between the Parties regarding an alleged breach (other than for nonpayment), and indemnification communications relating to this Agreement.

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

**11.08 Products and Services Analysis.** To deliver, develop, test and improve the Products and Services required under this Agreement and provide to its clients generally, D2L may collect, analyze, and interpret data elements acquired by, associated with, or provided in the use of Applications and Software ("Analysis"). All individual data elements of the Analysis are property of their respective owners and shall be governed by the Confidentiality and Intellectual Property provisions of this Agreement. All algorithm, computational, or cumulative results of the Analysis are wholly-owned by D2L. This provision is in addition to, and not a substitute for, any other provision of this Agreement.

**11.09 Amendment/Waivers.** No amendment, modification, termination or waiver of any provision of this Agreement is effective unless it is in writing and signed by both Parties. Any waiver or consent shall be effective only in the specific instance and purpose for which it was given. Terms or conditions that Client purports to include in a purchase order or similar instrument are void and of no force and effect.

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

**11.11 Severability.** If a court declares void or unenforceable any term of this Agreement, the remaining terms and provisions of this Agreement shall remain unimpaired and the invalid term shall be replaced by a valid term that comes closest to the intention underlying the invalid term.

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

**11.13 Entire Agreement.** This Agreement contains the entire understanding between the Parties with respect to its subject matter. All prior agreements, representations, inducements and negotiations, and any and all existing contracts previously executed between the Parties with respect to this subject matter are superseded hereby.



**AGREED AND ACCEPTED**

**[DESIRE2LEARN]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title:

Date: \_\_\_\_\_

**[CLIENT NAME]**

By: \_\_\_\_\_  
(Authorized Signatory)

Name: \_\_\_\_\_

Title:

Date: \_\_\_\_\_

**NOTICE INFORMATION**

**[DESIRE2LEARN]**

**[CLIENT NAME]**

To: John Baker  
Title: President  
Copy to: Legal Department  
Fax: 519 772 0324  
Address:  
[address]

To: \_\_\_\_\_  
Title: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_

**INVOICING INFORMATION**

**INVOICE RECIPIENT**

**PAYABLE ENQUIRY**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_

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



## CLOUD SERVICES ADDENDUM

This Cloud Services Addendum, together with the Agreement, governs terms and conditions between [Client Name] and D2L relating to Applications.

### A1 Definitions

Terms not defined in this Addendum shall have the meanings given to them in the Agreement.

A1.01 *Available* means the material components of the Applications are available for Client's use.

A1.02 *Downtime* means those times in which material components of the Applications are not Available but shall not include Emergency Unavailability and Scheduled Unavailability.

A1.03 *Emergency Unavailability* means those times when material components of the Applications are unavailable for Client use resulting from the existence or repair of software bug/virus/worm, hardware failure, third party communication failure, force majeure (excusable delay), Disruption (as defined in the Agreement), or other event that is outside D2L's commercially reasonable efforts to mitigate unavailability through industry standard processes and network design or those unavailable events arising from Client error or negligence.

A1.04 *Measurement Period* means each calendar month commencing from the Effective Date. For purposes of clarification each calendar month shall constitute a distinct Measurement Period.

A1.05 *Scheduled Unavailability* means the times in which the material components of the Applications are not Available: 1) in accordance with posted maintenance schedules which may, in the sole discretion of D2L, be changed from time-to-time on 30 days' notice, or; 2) as a result of an agreement between Client and D2L, for example, to accomplish an Upgrade.

### A2 Grant of Use

A2.01 Upon the Effective Date, D2L shall permit Client to use Applications in a non-exclusive, non-transferable, time-limited (revoked upon termination) manner as set forth in the attached Fees and Rates Schedule by the specified number of Active Users. Should Client not pay according to Section A4, this Addendum is terminated.

### A3 Term

A3.01 This Addendum shall be effective for the Term specified below in the Fees and Rates Schedule ("Initial Term").

A3.02 Automatic renewal. At the end of the Initial Term, this Addendum shall be extended for additional consecutive terms equal in duration to the initial term, unless and until either Party notifies the other of its intent to terminate or modify this Addendum at least 60 days before the end of the then-current term.

### A4 Support

A4.01 Support services are set forth in the Support Schedule attached to this Addendum and are coterminous with this Addendum.

A4.02 Modifications to Applications or Cloud Services. D2L may modify the Applications or Cloud Services. D2L will advise Client of material modifications where feasible.

### A5 Payments

A5.01 Client shall pay the Fees as per the Fees and Rates Schedule, or, for additional work, as specified in an Order.

### A6 Use of Applications

A6.01 Client may use or access Applications for its use only. No third party, other educational institution or business group or entity other than that identified in the attached Schedules(s) may make use of, or obtain access to, Applications without a separate Agreement.

A6.02 *Audit*. D2L may view the Client's site no more than twice a year for the purpose of ensuring compliance by Client with the terms of this Agreement. If the audit reveals that Client's use of Applications exceeds its permitted use, Client shall pay D2L's then-current Fees and reasonable administrative fees.

### A7 Service Objectives

A7.01 *Availability*. Throughout each Measurement Period the material components of the Applications shall be Available at least 99.9% of the time.

A7.02 *Downtime and Emergency Unavailability*. D2L shall undertake commercially reasonable efforts to rectify any Downtime or Emergency Unavailability.

A7.03 *Notice of Emergency Unavailability*. If possible, D2L shall make commercially reasonable efforts to provide Client reasonable notice prior to making the material components of the Applications unavailable for Client use during Emergency Unavailability.

A7.04 *Reporting, Investigation & Classification*. Client shall report incidents to D2L Support that it considers Downtime immediately, but in no event later than 24 hours from when Client became aware of, or reasonably should have become aware of, the occurrence; failure to do so shall disentitle Client to any credit for that incident under this Addendum. In reporting, Client shall provide D2L sufficient information to investigate and classify the incident, including: date, duration, and description of occurrence. D2L shall investigate and reasonably classify any reported outage/occurrence as Scheduled Unavailability, Emergency Unavailability, or Downtime. In making its classification, D2L shall rely solely upon its own statistics software and monitoring equipment.

A7.05 *Downtime Credit*. If after investigation and classification, D2L determines that Downtime during the Measurement Period was such that Availability fell below the level stated in this Addendum, Client shall be entitled to a credit on Cloud Services Fees during the relevant Measurement Period, calculated on the following basis:



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

A7.06 *Remedy*. 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.

**A8 Additional Users**

Client may increase its number of Users upon paying the appropriate fee.

**AGREED AND ACCEPTED**

**[DESIRE2LEARN]**

**[CLIENT NAME]**

By: \_\_\_\_\_

By: \_\_\_\_\_  
(Authorized Signatory)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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<sup>1</sup> x = Availability

**SUPPORT SCHEDULE**

The applicable support schedule terms will be added upon contract finalization.

**CONSULTING ADDENDUM**

This Consulting Addendum, together with the Master Agreement, governs terms and conditions between [Client Name] and D2L relating to Deliverables produced under a Statement of Work.

**C1 Intellectual Property**

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

C1.02 D2L may render services to others and develop work products that are competitive with, or functionally comparable to, the Deliverables. D2L shall not be restricted in its use of ideas, concepts, know-how, data and techniques acquired or learned in the course of performing the consulting services or producing Deliverables, provided that D2L shall not use or disclose any of Client's Confidential Information.

C1.03 Unless otherwise stated, Client shall retain its rights in any proprietary material that Client supplies to D2L. If Client provides D2L with materials owned or controlled by Client or with use of, or access to, such materials, Client grants to D2L all rights and licenses that are necessary for D2L to fulfill its obligations under each Statement of Work for consulting services.

**C2 Use of Deliverables**

C2.01 Subject to payment in full of the applicable fees, D2L grants to Client for internal purposes only a worldwide, royalty-free, time-limited license to use, reproduce, and display of the Deliverables. Client shall not make the Deliverables available to anyone outside of Client, without the prior written consent of D2L, except Client may share the Deliverables with (i) its outside auditors and/or accountants, (ii) third parties who have signed appropriate confidentiality agreements with Client who are engaged by Client to review or implement suggestions or to further research the issues contained in the Deliverables, and (iii) governmental or regulatory bodies as required by law.

**C3 No Third-Party Beneficiaries**

C3.01 This Addendum is for the benefit of the Parties only. None of its provisions are for the benefit of, or enforceable by, any third party. No third party shall have the right to (i) rely on the consulting services provided by D2L or (ii) seek to impose liability on D2L as a result of the consulting services or any Deliverables furnished to Client.

**C4 Required Skills**

C4.01 Professional services billing rates are dependent upon the scope of the engagement/implementation and the consulting skill levels required. Project Managers are assigned to oversee all professional services implementations at a rate dependent upon complexity of the project and skill level required.

**C5 Content of Statement of Work**

C5.01 Each Statement of Work authorized under this Consulting Addendum shall include, at a minimum, the following information:

C5.01.1 Project Name and Number	C5.01.2 Client Obligations
C5.01.3 Project ID	C5.01.4 Software Requirements Specifications
C5.01.5 Client Project Manager	C5.01.6 Intellectual property transfers (if any transfers are applicable)
C5.01.7 Client Technical Lead	C5.01.8 Project Start Date
C5.01.9 D2L Project Manager	C5.01.10 Project End Date
C5.01.11 D2L Technical Lead	C5.01.12 Project Location
C5.01.13 Project Description	C5.01.14 Project Price & expenses (if applicable)
C5.01.15 D2L Deliverables	C5.01.16 Special Conditions
C5.01.17 A reference to this Consulting Addendum.	

**AGREED AND ACCEPTED**

**[DESIRE2LEARN]**

**[CLIENT NAME]**

By: \_\_\_\_\_

By: \_\_\_\_\_  
(Authorized Signatory)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# FEES AND RATES SCHEDULE

**Effective Date:**

**Term:**

**Client:** [Client Name]

**User Type:** (FTE, Active User, or Enrolment)

**Support Type:** TBD

**Instance Type:** TBD

**Fees and Rates Currency:** TBD

Component	Measure	Fees	Due
One-time Fees:			
One-time Fees Total			
Annual Fees:			
Annual Fees Total:			
Additional Fees & Rates			
Support Incident overage	Any incidents above the contracted amount	\$45	
Learning Environment Active User overage	per Active User in excess of contracted amount	TBD	
Storage overage	Storage over 100 MB per TBD	\$0.01 per MB/Month	
Optional/Additional Fees			

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

Please note:

- Rates For professional services may be modified on 90 days' notice.
- Professional Services billing rates are dependent upon the scope of the engagement/implementation and the consulting skill levels required. Project Managers are assigned to oversee all professional services implementations at a rate dependent upon complexity of the project and skill level required.
- The Allocated Storage is the expected maximum amount of storage required by Client under this Master Agreement. Client may use additional storage above the Allocated Storage, but may be subject to additional fees. D2L provides Allocated Storage number for planning purposes.
- Travel and per diem expenses are not included in Consulting or Training Rates.

- Optional products set out above and any other D2L offerings not contained in this Master Agreement may be subject to additional terms and conditions.