

**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. *Consulting* means implementation, development, or other assistance provided pursuant to an Addendum, Statement of Work or Order.
2. *Creative Commons License* means a license or similar usage right as offered or published by the Creative Commons Corporation.
3. *Deliverable* means a verifiable work output such as a specification, programming, code, or other output developed under a Statement of Work.
4. *Documentation* means a document published by D2Lfor all clients such as a user’s manualor release notes. Documentation does not include sales and/ormarketing materials.
5. *Effective Date* means the date that the Client signs this Agreement or, as applicable, any Addendum.
6. *End Users* are the persons who access, attempt to access or use the Software or Applications as a product during the cour*s*e of this Agreement.
7. *Enrolment* means a License Model that accounts for the total number of all unique course registrations over the course of each consecutive twelve (12) monthperiod 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.
8. *Fees* means those amounts to be paid for Products and Services under this Agreement.
9. *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 FTEreported to the Integrated Post-secondary Data System (IPEDS).
10. *Hardware* means the physical computing hardware including applicable peripherals that may be provided by D2L to Client under this Agreement.
11. *Intellectual Property* means any present or future development work, copyright, patent, trade-mark, trade name, service mark, design, program, procedure andmethod of computation, trade secret, data model, invention, drawing, plan, specification, process or similar property.
12. *License Model* means the particular usage description forClient’s use of the Applications or Software under this Agreement. Active User, Enrolment and FTE assuch terms are defined in this section [1,](#page1) are License Models. The Fees for the relevant License Model(s) selected by Client will be as set out in the Order(s).
13. *Network* means, collectively, the hardware, Software, communications, cabling and other related resourcesunder D2L’s controlthrough which Client accessesservices.
14. *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.
15. *Organizational Instance* means a single installation of Applications on one or more D2L servers for the exclusive use of Client.
16. *Party* means D2L or Client; *Parties* means D2L and Client.
17. *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 canbe used to identify or locate a natural person.
18. *Product*s *and Services* means Applications, Documentation, Software, Cloud Services, Support, Consulting, hardware, third party software, and/or any othermaterial, duty, function or task D2L provides or performs under this Agreement.
19. *Rates* are D2L’s then-current charges for professional services it provides, except for out-of-pocket and per diem expenses.

Desire2Learn Toll Free: number

Address Telephone: number

Address Fax: number

Address



1. *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.
2. *Services* means the Consulting, Support and/or Cloud Services that D2L provides to Client under this Agreement.
3. *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 Clientunder 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.
4. *Statement of Work (or Work Order)* means a document created pursuant to a Consulting Addendum that specifies the roles and responsibilities of the Partieswith respect to a particular engagement for Consulting.
5. *Support* means support services provided pursuant to a Support Schedule, as more fully described in such Support Schedule.
6. *Upgrade(s)* means modifications, templates and newer versions of Software and/or Applications provided by D2L that are made available generally to D2Lcustomers. Upgrades do not include new independently-priced modules or utilities.
7. *Vendor* means a third party provider of software, products or services to D2L.

2 **Warranties**

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

* 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.

* 1. 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. D2L shall replace at its own costs any or all components it deems necessary to repair the Hardware, andD2L shall ship at its own expense (FOB Client) the repaired/replaced Hardware back to Client.
  3. 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.
  4. 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.
  5. 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.

1. 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.

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