

MASTER AGREEMENT

This Master Agreement, including its Addenda and Schedules ("Master Agreement") governs terms and conditions between Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK 73104 ("Client") and Desire2Learn Inc., 305 King Street West, Suite 200, Kitchener ON, Canada, N2G 1B9, an Ontario corporation, or its subsidiaries, divisions or affiliates ("D2L") as listed in any Addendum to this Master Agreement.

1. Definitions

1.01 *Active Users* means any user that registers for or is enrolled in one or more courses, and/or logs into the system in each consecutive 12-month period following the Effective Date.

1.02 *Addendum* is any executed Addendum to this Master Agreement that provides specific terms and conditions of Products supplied to Client.

1.03 *Applications* mean D2L Software applications resident on D2L computers that Client is permitted to access and use through an Applications Hosting Addendum.

1.04 *Applications Services* are the means of accessing and using Applications.

1.05 *Applications Services Fee* is the fee paid to use Applications pursuant to an Applications Services Addendum.

1.06 *Authorizing Document* is any document signed or electronically agreed to by D2L and Client. An Authorizing Document may be an Addendum, a Statement of Work, an engagement letter, a purchase order letter, an e-mail (subject to reasonable authentication of sender's authority) or similar document.

1.07 *Confidential Information* is information provided to one Party about the other Party's products or services, business, affairs, computer systems, installations or clients, to the extent that the information might reasonably be expected to be confidential.

1.08 *Client* includes its employees, directors, officers, or agents, and to the extent they are specifically identified, its affiliates and subsidiaries.

1.09 *Consulting* is implementation, development, or other assistance provided pursuant to an Addendum, Statement of Work or other Authorizing Document.

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

1.11 *Documentation* is a document published for all clients such as a User's Manual, Release Notes or is otherwise designated as documentation.

1.12 *Effective Date* is the date that the Client signs this Master Agreement or Addendum, unless otherwise specified in the Addendum.

1.13 *End Users* are the persons who use the Software or Applications Services as a product during the course of this Master Agreement.

1.14 *Enrollment* means the total of each unique course registrations over the course of each consecutive 12-month period following the Effective Date. For clarity, if a student is registered in 2 course offerings during a particular year, it will count as 2 enrollments.

1.15 *FTE* means a count of the highest reported full-time equivalent students and or staff/faculty number over the course of a year. The FTE is typically based upon the FTE

Desire2Learn Inc. 2014-01-01

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reported to the Integrated Post-secondary Data System (IPEDS). Part time faculty or staff are normally considered 1/3rd FTE.

1.16 *Intellectual Property* is any present or future Software, Documentation, Materials, development work, copyright, patent, trade-mark, trade name, service mark, design, program, procedure and method of computation, trade secret, data model, invention, drawing, plan, specification, process or similar property.

1.17 *License Fee* is the fee paid to license the Software pursuant to a License Addendum.

1.18 *Maintenance & Support* are the support services and Upgrades provided pursuant to the Maintenance & Support Schedule.

1.19 *Materials* are resources produced by D2L, including all versions of printed or online instructor's guides, administrator's guides, custom handouts, and course templates.

1.20 *Network* is, collectively, D2L's hardware, Software, communications, cabling and other related resources through which Client accesses Services.

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

1.22 *Party* is D2L and Client.

1.23 *Product* includes Applications, Software, or Consulting specified in each Addendum and provided under this Master Agreement.

1.24 *Rates* are D2L's then-current fees for professional services it provides, except for out-of-pocket and *per diem* expenses.

1.25 *Software* is a D2L software application or any part thereof in object code form licensed to or accessed by Client. Software also includes Upgrades provided under the Maintenance & Support Schedule, but does not include software applications developed under a Consulting Addendum or related Statement of Work.

1.26 *Statement of Work* is a schedule to a Consulting Addendum that specifies the roles and responsibilities of the parties with respect to a particular engagement.

1.27 *Support* is support services provided pursuant to a Maintenance & Support Schedule, as more fully described in the Schedule.

1.28 *Upgrades* are modifications, templates and newer versions of Software and Applications provided by D2L that are made available generally to D2L clients. Upgrades do not include new independently-priced modules or utilities.

1.29 *Vendor* is a 3rd party provider of products or services to D2L.

2. Warranties

D2L warrants that:

2.01 It has Intellectual Property rights in the Applications and Software;

2.02 It will use its best efforts to ensure the Products do not contain any virus, worm, or time bomb, or other similar forms of code or any other code intended to cause harm or damage to any computer systems or data;

2.03 Its employees are appropriately trained and skilled to perform Consulting; and

2.04 Applications and Software will substantially perform according to Documentation, provided that Client has not modified Software.

2.05 Except as set forth in this Master Agreement, D2L makes no warranties, conditions, or guarantees, express or implied, oral or written, with respect to the Products or Network.

D2L does not warrant that Products or Network are error-free. D2L makes no warranties of merchantability, fitness for a particular purpose, or arising from a course of performance, dealing, or usage of trade.

3. Confidentiality

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

3.02 Neither Party shall be bound by confidentiality obligations if the Confidential Information (a) is required to be disclosed pursuant to court or regulatory order, provided that, where feasible, the owner of the Confidential Information is given a reasonable opportunity to limit the extent of disclosure; (b) was already rightfully in its possession before negotiations commenced that led to this Master Agreement; (c) is learned from a 3rd party under no apparent duty of confidentiality; or (d) becomes part of the public domain other than as a result of a breach of this section.

3.03 Nothing in this section is intended to prohibit D2L from issuing a mutually-acceptable press release, or naming Client in client listings.

3.04 The Client is a governmental entity of the State of Oklahoma, by virtue of which it is subject to the Oklahoma Open Records Act ("ORA"), codified at 51 O.S. § 24.A.1, *et seq.* The parties agree that any provision of this Agreement that conflicts with the ORA is ineffective. The Client undertakes to protect proprietary information provided by D2L to the full extent permitted by the ORA.

4. Proprietary Rights & Restrictions

4.01 D2L owns and retains all right, title and interest to its Applications, Software, Documentation, Materials, Deliverables, and other Intellectual Property (collectively, the "IP"), and D2L reserves all rights and privileges in connection with the IP, except as granted to Client pursuant to this Master Agreement. The IP contains valuable Intellectual Property of D2L. The IP is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties.

4.02 Except as permitted by this Master Agreement, Client shall not:

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

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

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

4.02.4 alter, remove or cover proprietary notices in or on the Software, or Materials

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

4.04 Any default in Client's obligations under this section may cause irreparable harm to D2L. If Client takes or threatens any action that may infringe on D2L's IP rights, D2L may

seek injunctive or other equitable relief in addition to any damages to which D2L may be entitled.

5. Indemnification

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

5.02 *Exclusions and Limitations.* This indemnity shall not apply to the extent that the infringement claim results from (a) Client's unauthorized modification to Applications, Deliverables or Software; (b) Client's failure to install an Upgrade that would have avoided the claim; or (c) the combination of the Software or Deliverables with 3rd party products where the 3rd party products are governed by an agreement between Client and the 3rd party. D2L's liability to Client for damages, costs, losses or expenses under this Indemnification section shall not exceed the amount paid under the relevant Addendum in a calendar year.

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 feasible, cancel the Addendum.

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 relating to Products provided pursuant to this Master Agreement, in contract, tort or otherwise, (except for the Indemnification section) is limited as follows:

6.02 *Software:* License Fees paid by Client for the six months prior to the date of the underlying claim;

6.03 *Applications:* Amount paid by Client in the month under which the claim arises;

6.04 *Consulting:* Amount paid by Client under the applicable Statement of Work.

6.05 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. To the extent permitted under Oklahoma law, each Party indemnifies the other against all direct losses and expenses incurred by the other Party as a result of any breach of the Confidentiality Section, and Client indemnifies D2L against all direct losses and expenses incurred as any result of a breach of the Proprietary Property Section.

6.06 Client is responsible for the content of its and its End User's transmissions over D2L's Network. Client agrees that it and its End Users will not use the Network for illegal purposes, to infringe the rights of a 3rd party, or to interfere with or disrupt the Network ("Disruption"). Disruptions include distribution of unsolicited advertising or chain letters, defamatory, libelous or offending content, propagation of computer worms and viruses, and unauthorized use of the Network to enter, or attempt to enter, another Network machine or Organizational Implementation. If a Disruption occurs, D2L may, at its option, immediately remove the Disruption, terminate the mode of communication, suspend Client's and its End User's access to Network or terminate this Agreement, and, to the extent permitted by Oklahoma law, Client indemnifies D2L for claims arising from the Disruption.

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

6.08 To the extent any limitation of liability contained herein is construed by a court of competent jurisdiction to be a limitation of liability in violation of Oklahoma law, such limitation of liability shall be void.

7. Payment Terms & Taxes.

7.01 Payment is due on receipt of an invoice. Late payments are subject to an interest charge at the maximum rate permitted under Oklahoma law.

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

7.03 Client shall pay taxes promptly to D2L if D2L is required by law to collect them, except for taxes payable upon the income or capital of D2L, unless otherwise prohibited by Oklahoma law.

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

9. Term & Termination

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

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

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

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

9.02 *Addendum.* An Addendum shall continue as specified in the Addendum unless the Master Agreement is terminated 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 notice to Client that payment is required.

10. Rights on Termination; Survival

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

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

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

11. Assignment.

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

11.01.1 "Change of control" means a person not in control of the Client before the Effective Date acquiring the power to direct or cause the direction of the management and policies of the Client;

11.01.2 an "affiliate" is a person that controls, is under common control with, or is controlled by another person;

11.01.3 "control" means the possession of the power to direct or cause the direction of the management and policies of a person;

11.01.4 "person" means an individual, a corporation, partnership, association, trust, fund or any organized group of persons, whether incorporated or not and any receiver, bankruptcy trustee or similar official.

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

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

12. General

12.01 *Governing Law.* This Master Agreement is governed by the laws of the State of Oklahoma, without regard to its conflict of laws principles. Legal action arising pursuant to this Master Agreement shall be filed in the courts of the State of Oklahoma. The United Nations Commission on International Trade Law Conventions on Contracts for the International Sales of Goods and Related Transactions is specifically excluded from this Master Agreement. To the extent permitted by Oklahoma law, the Parties waive any right to a jury trial.

12.02 *Conflict between Master Agreement and Addendum or other Authorizing Document.* An Addendum shall supersede the provisions of this Master Agreement where the documents are in conflict. The Master Agreement shall supersede the provisions of an Authorizing Document, unless the Authorizing Document refers to the provision of the

Master Agreement it supersedes. No Addendum or Authorizing Document modifies any other Addendum or Authorizing Document unless the Parties agree in writing.

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

12.04 *Notices.* All notices shall be in writing and delivered (a) by hand, (b) by registered mail, postage prepaid, return receipt requested, (c) reputable overnight delivery service, or (d) by facsimile, provided that the sender retains proof of successful transmission. All notices shall be deemed received, if delivered by hand, on the date of delivery; if mailed, on the date of receipt appearing on the return receipt card; if sent by courier, on the date recorded by the courier company as having been received by the addressee; or, if sent by facsimile, on the date of receipt by the facsimile machine when it reports that the transmission is complete. Notices shall be sent or faxed to the names, addresses and numbers set forth below the signature lines to this Master Agreement.

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

12.06 *Currency.* All fees, costs and expenses under this Agreement are in U.S. dollars.

12.07 *Non-solicitation.* During the term of this Master Agreement, and for 1 year following its termination, neither Party shall recruit or solicit any employee of the other Party, including as an independent contractor or consultant, without that Party's prior written consent.

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

12.09 *Amendment/Waivers.* No amendment, modification, termination or waiver of any provision of this Master Agreement is effective unless it is in writing and signed by both Parties. Any waiver or consent shall be effective only in the specific instance and purpose for which it was given.

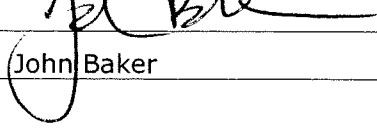
12.10 *Severability.* If a court declares void or unenforceable any term of this Master Agreement, the remaining terms and provisions of this Master Agreement shall remain unimpaired and the invalid term shall be replaced by a valid term that comes closest to the intention underlying the invalid term.

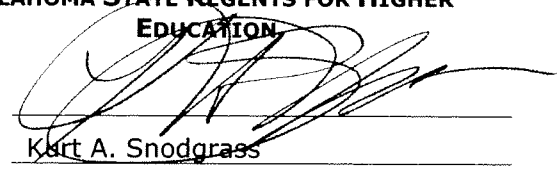
12.11 *Independent Parties.* Neither Party is an agent, employee, partner, joint venturer or legal representative of the other.

Agreed and Accepted

DESIRE2LEARN INCORPORATED

**OKLAHOMA STATE REGENTS FOR HIGHER
EDUCATION**

By: 
Name: John Baker
Title: President and CEO
Date: Sept 25, 2007

By: 
Name: Kurt A. Snodgrass
Title: Vice Chancellor for Information
Technology and
Telecommunications
Date: 19 September 2007



Notice Information:

DESIRE2LEARN INCORPORATED

**OKLAHOMA STATE REGENTS FOR HIGHER
EDUCATION**

To: John Baker
Title: President and CEO
Fax: 519 772 0324
Address: 305 King Street West,
Suite 200, Kitchener ON,
Canada, N2G 1B9

To: Kurt A. Snodgrass
Title: Vice Chancellor for Information
Technology and
Telecommunications
Fax: 405-225-9444
Address: Oklahoma State Regents for
Higher Education
655 Research Parkway, Suite 200
Oklahoma City, OK 73104
Phone: 405.225.9444

LICENSE ADDENDUM

This License Addendum, together with the Master Agreement, governs terms and conditions between Client and D2L relating to licensed software.

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

L2. Term & Non-Funding Termination.

L2.01. This Addendum shall be effective for 1 year with 4 annually renewable option years from the Effective Date listed in the Fee & Rates Schedule ("Initial Term").

L2.02. Automatic renewal. If neither Party notifies the other of its intent to terminate or modify this Addendum at least 30 days before the end of the Initial Term, it shall be extended for an additional 1-year term, effective at the end of the Initial or any renewal Term. Renewal terms shall be repeated until either Party notifies the other of its intent to terminate or modify this Addendum at least 30 days before the end of that Term.

L2.03. The annual fees may be adjusted by the Consumer Price Index, plus 5%

L2.04. Non-funding clause. Client may terminate this Agreement on 60 days written notice without penalty should the legislature (1) fail to appropriate sufficient funding to Client for this Addendum; (2) reduce the appropriations or Client's authority to spend appropriations; or (3) limit funding to a level that Client reasonably deems insufficient to continue this Addendum. This section does not relieve Client of payment obligations for services provided prior to Client's termination notice.

L3. Delivery. Within 30 days of the Effective Date, D2L shall make available to Client Software ("Delivery"). Client shall be responsible for acquiring and installing computer hardware and necessary 3rd party software Licenses prior to the installation.

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

L5. Warranty.

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

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

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

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

L5.05. If Client does not notify D2L of a Defect Notice, or the Defect Notice does not disclose any defects, or Client fails to return Software pursuant to Section L6.04, the Warranty Period shall not be extended.

L6. Use of Software.

L6.01. Client may use or access Software for its use and for the use of those institutions who are affiliated with Client and who have signed the Participation Agreement in the form attached as Exhibit 1 ("Participant") only. No 3rd party, other educational institution or business group or entity other than that identified in the attached Exhibit(s) may make use of, or obtain access to, Software without a separate License for Software.

L6.02. Client shall advise D2L promptly of any Participant prior to implementation of sublicensee on Client's system;

L6.03. Client shall not use more than one version of Software in production.

L7. Support. Support services are set forth in the Support Schedule attached to this Addendum and begin upon execution of this Addendum.

L8. Payments.

L8.01. Client shall pay the Installation fee by the date set forth in the Fee and Rates Schedule.

L8.02. Client shall begin paying the Annual License Fee upon execution of this Addendum, or, for Additions, as specified in an Authorizing Document.

L8.03. Participants are responsible for their own payments to D2L.

L8.04. All License and Support fees shall be prorated to July 1 of each year.

L8.05. Maintenance is included in the Annual License Fee.

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

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

Agreed and Accepted

DESIRE2LEARN INCORPORATED

By:

Name: John Baker

Title: President & CEO

Date: Sept 25, 2007



OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION

By:

Name: Kurt A. Snodgrass

Title: Vice Chancellor for Information Technology and Telecommunications

Date: 19 September 2007

SUPPORT SCHEDULE (PREMIUM)

Support shall be as specified below. These terms are subject to change in the reasonable discretion of D2L after informing Client. Support is included in the fees specified in the relevant Addendum.

S1.01. *Business Hours* mean 8:00 a.m. to 8:00 p.m., Monday to Friday, except public holidays, at the local D2L office.

S1.02. *Client Support* means Software, Applications or Data assistance and remote support.

S1.03. *Contact* means an interaction with the client through a communication channel including email, telephone, or web portal. It does not include General Support.

S1.04. *Emergency* means an Issue that is time critical, materially impairs the use of Software and is critical to the operation of Client's business.

S1.05. *General Support* means access to the client web site, general notifications, advisories, and similar services.

S1.06. *Incident* means an event that deviates from the standard operation of Software that results in an interruption or reduction in the quality; typically reported by the Client to the support desk.

S1.07. *Issue* means a query regarding, or user-identified concern about, Software, Applications or Data.

S1.08. *Supported Version* means the current and most recent prior release.

S2. Authorized Support Contact Names. Client shall provide name(s) of the authorized contact(s) to D2L.

S2.01. D2L provides Client Support 24/7.

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

S2.03. Client may access D2L's client web site (www.desire2learn.com) for information about how to obtain Documentation and, for Software, and available Upgrades.

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

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

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

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

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

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

FEE AND RATES SCHEDULE

Effective Date: July 1, 2007.

Term: 1 year, with 4 annually renewable option years

Client: Oklahoma State Regents for Higher Education

User Type: FTEs

COMPONENT	MEASURE	FEES	DUE
One-time Fees per Participant:	FTE Level Per Participant		
Learning Environment Setup (per Participant)	< = 5,000	\$7,500	50% upon signing; 50% upon completion
	5,001 - 7,500	\$7,500	
	7,501 - 10,000	\$12,500	
	10,001 - 12,500	\$12,500	
	12,501 - 15,000	\$12,500	
	15,001 - 20,000	\$20,000	
	20,001 - 25,000	\$22,500	
LOR Setup (per Participant)	< = 5,000	\$4,950	
	5,001 - 15,000	\$6,750	
	>15,001	\$9,000	
Annual Fees:	FTE Level	Per FTE	
Learning Environment (Aggregate*)	5,001 - 7,500	\$10.75	Upon signing
	7,501 - 10,000	\$9.00	Upon signing
	10,001 - 12,500	\$7.95	Upon signing
	12,501 - 15,000	\$7.15	Upon signing
	15,001 - 20,000	\$6.50	Upon signing
	20,001 - 25,000	\$5.75	Upon signing
	> 25,001 - 30,000	\$5.15	Upon signing

Annual Fees:			
	FTE Level	Fees	
LOR (Aggregate*)	< = 5,000	\$14,500.00	Upon signing
	5,001 - 7,500	\$17,500.00	Upon signing
	7,501 - 10,000	\$19,500.00	Upon signing
	10,001 - 20,000	\$26,500.00	Upon signing
	20,001 - 30,000	\$37,500.00	Upon signing
	> 30,000	\$1.25/FTE	Upon signing
Premium Support for Client only	1 Authorized Contact Name; 25 Incidents per month	Included**	
Standard Support – per Participant (required)	1 Authorized Contact Name (Standard Support); 20 Incidents per month	\$5,500	
Optional/Additional Fees			
Per additional Incident	overage	\$45	
Premium Upgrade over Standard	Per Authorized Contact Name	\$4,000/yr	
SIS Integration (One-time***)	(per Participant / integration)	\$10,000 - \$25,000	50% upon completion of Phase 1&2;
SIS Integration Maintenance	(per Participant / integration)	\$5,000/yr	50% upon completion of Phase 3&4
LDAP/AD Integration (One-time)	(per Participant / integration)	\$5,000	Upon signing
LDAP/AD Maintenance	(per Participant / integration)	\$350/yr	50% upon completion of Phase 1&2;
			50% upon completion of Phase 3&4
			Upon signing

*Annual licensing fees are based on the aggregate FTE counts of the Participants. It is the duty of each Participant to report to Desire2Learn, each year on May 1st, its most current FTE.

**Based on Participant aggregate reaching 20,000 FTE by May 1, 2008. If Participant aggregate is fewer than 20,000 FTE on May 1, 2008, Client shall pay \$4,000 in arrears for Premium Support.

***The SIS Estimate is a per-FTE snapshot integration fee based on IMS-Enterprise specification. Costs may vary, based on requirements and type of integration (e.g. real-time, or batch). These projects typically take 1-4 months to complete due to the requirements gathering and testing required, and are subject to a Statement of Work.

CONSULTING RATES	
Position	Hourly Rate
Consultant Specialist	\$165
Senior Consultant	\$185
Consultant Architect / Project Manager	\$210
Enterprise Consultant / Senior Project Manager	\$225
Managing Consultant	\$300
TRAINING	
	DAILY RATE
Maximum of twelve instructor participants or a maximum of eight administrator participants.	\$2,500 per instructor per day

Please note:

- Consulting and Training Rates may be modified on 90 days notice.
- Travel and per diem expenses are not included in Consulting or Training Rates.
- Professional Services billing rates are dependant upon the scope of the engagement/implementation and the consulting skill levels required. Project Managers are assigned to oversee all PS implementations at a rate dependant upon complexity of the project and skill level required.

EXHIBIT 1

PARTICIPATION AGREEMENT

This Participation Agreement, together with the July 1, 2007 Master Agreement ("Master Agreement") governs terms and conditions among Oklahoma State Regents for Higher Education, 655 Research Parkway, Suite 200, Oklahoma City, OK 73104 ("Client"), [PARTICIPANT NAME & ADDRESS], and Desire2Learn Inc., 305 King Street West, Suite 200, Kitchener ON, Canada, N2G 1B9 regarding use of D2L Software, as permitted under the License Addendum of the Master Agreement.

PA1. Purpose

1.01 D2L and Client wish to permit a Participant (as that term is defined in the License Addendum) to use Software.

1.02 In consideration of Participant's use of Software, Participant agrees to be bound by the terms of the Master Agreement.

1.03 All terms defined in the Master Agreement and License Addendum have the same meaning in this Addendum.

PA2. Grant of Right to Sublicense; Reporting

2.01 *Grant & Conditions:* D2L grants to Client and Participant the right for Participant to use ("Sublicense") Client's license granted under Section L1 of the Master Agreement ("Underlying License") to Participant, subject to the following conditions:

2.01.1 The Sublicense is coterminous with the Underlying License;

2.01.2 Participants must use Software on Client's system;

2.01.3 Participant agrees to comply with those sections of the Master Agreement and its addenda designed to protect D2L's confidentiality and intellectual property rights, including Sections 3 and 4 of the Master Agreement;

2.01.4 Client may not grant greater rights, nor on behalf of D2L incur greater liabilities, than those granted to Client or incurred by D2L in the Master Agreement and addenda;

2.02 In Year 1, Participant acknowledges licensing pricing is based on a minimum number of FTE across all Participants of 20,000. Should Participant, together with other Participants, not aggregate to at least 20,000 FTE, Participant shall pay list price per FTE in arrears.

2.03 D2L shall audit aggregate FTE of Participants on May 1st of each year. Invoicing for the following year will be based on that audit result.

PA3. Client Consortium & Support. All parties acknowledge that Participants are part of the consortium formed by Client. Client is responsible for hosting, communications, backups, and general infrastructure and application maintenance. D2L is responsible to Participant for Applications support only.

PA4. Payments. Participant shall pay Fees as specified in the attached Participation Fee Schedule.

Agreed and Accepted

DESIRE2LEARN INCORPORATED

**OKLAHOMA STATE REGENTS FOR HIGHER
EDUCATION**

By: _____

By: _____

Name: John Baker

Name: _____

Title: President & CEO

Title: _____

Date: _____

Date _____

PARTICIPANT

By: _____

Name: _____

Title: _____

Date: _____

Support Schedule (Standard)

Support shall be as specified below. These terms are subject to change in the reasonable discretion of D2L after informing Client. Support is included in the fees specified in the relevant Addendum.

S1.01. *Business Hours* mean 8:00 a.m. to 8:00 p.m., Monday to Friday, except public holidays, at the local D2L office.

S1.02. *Client Support* means Software, Applications or Data assistance and remote support;

S1.03. *Emergency* means an Issue that is time critical, materially impairs the use of Software and is essential to the operation of Client's business.

S1.04. *General Support* means access to the client web site, general notifications, advisories, and similar services.

S1.05. *Issue* means a query regarding, or user-identified concern about, Software, Applications or Data.

S1.06. *Supported Version* means the current and most recent prior release.

S2. Authorized Contact Names. Client shall provide name(s) of the authorized contact(s) to D2L.

S2.01. D2L provides Client Support during Business Hours. Outside Business Hours, Client Support will be provided for an Emergency only.

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

S2.03. Client may access D2L's client web site (www.desire2learn.com) for information about how to obtain Documentation and, for Software, available Upgrades.

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

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

S5. Additional Named Support Contacts. Additional Named Support Contacts, beyond the one(s) currently included in the Fee and Rates Schedule, shall have a cost as described in the Fee and Rates Schedule.

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

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

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

PARTICIPATION FEE & RATES SCHEDULE

Effective Date: [DATE].

Term: Coterminous with Master Agreement

Participant: [PARTICIPANT NAME]

User Type: FTE

COMPONENT	MEASURE	FEE	DUE
One-time Fees:			
Learning Environment Setup			
LOR Setup			
One-time Fees Total			
Annual Fees:			
Learning Environment	FTE*		1 July
Learning Object Repository	FTE		1 July
Standard Support	Per Authorized Support Contact(s)	\$5,500	1 July
Annual Fees Total:			
Optional/Additional Fees			
Per additional Incident	overage	\$45	
SIS Integration (One-time fee)	per integration		
SIS Integration Maintenance	per integration		
LDAP/AD Maintenance	per integration		
LDAP/AD Integration (One-time fee)	per integration		
Premium Upgrade over Standard	per Authorized Contact Name	\$4,000/yr	

*Based on Participant aggregate reaching 20,000 FTE by June 30, 2008. If Participant aggregate is fewer than 20,000 FTE on June 30, 2008, Participant shall pay its portion of licensing fees in arrears for outstanding licensing at then current aggregate FTE level.

CONSULTING RATES	
Position	Hourly Rate
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Consultant Architect / Project Manager	\$210
Enterprise Consultant / Senior Project Manager	\$225
Managing Consultant	\$300
TRAINING	
Maximum of twelve instructor participants or a maximum of eight administrator participants.	\$2,500 per instructor

Please note:

- Consulting and Training Rates may be modified on 90 days notice.
- Travel and per diem expenses are not included in Consulting or Training Rates.
- Professional Services billing rates are dependant upon the scope of the engagement/implementation and the consulting skill levels required. Project Managers are assigned to oversee all PS implementations at a rate dependant upon complexity of the project and skill level required.

CONSULTING ADDENDUM

This Consulting Addendum, together with the Master Agreement, governs terms and conditions between Client 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 Client shall retain its rights in any proprietary material that Client supplies to D2L. If Client provides D2L with materials owned or controlled by Client or with use of, or access to, such materials, Client grants to D2L all rights and licenses that are necessary for D2L to fulfill its obligations under each Statement of Work for consulting services.

C2. Use of Deliverables. Subject to payment in full of the applicable fees, D2L grants to Client for internal purposes only a worldwide, royalty-free, time-limited license to use, reproduce, and display of the Deliverables. Client shall not make the Deliverables available to anyone outside of Client, without the prior written consent of D2L, except Client may share the Deliverables with (i) its outside auditors and/or accountants, (ii) third parties who have signed appropriate confidentiality agreements with Client who are engaged by Client to review or implement suggestions or to further research the issues contained in the Deliverables, and (iii) governmental or regulatory bodies as required by law and subject to the Oklahoma Open Records Act ("ORA"), codified at Okla. Stat. tit. 51, § 24.A.1 *et seq.*

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

C4. Content of Statement of Work.

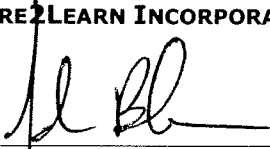
Each Statement of Work authorized under this Consulting Addendum shall include, at a minimum, the following information:

- C4.01 Project Name and Number
- C4.02 Project ID
- C4.03 Client Project Manager
- C4.04 Client Technical Lead
- C4.05 D2L Project Manager
- C4.06 D2L Technical Lead
- C4.07 Project Description
- C4.08 D2L Deliverables
- C4.09 Client Obligations
- C4.10 Software Requirements Specifications

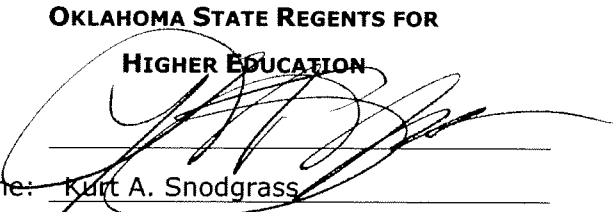
- C4.11 Intellectual Property transfers (if any IP transfers are applicable)
- C4.12 Project Start Date
- C4.13 Project End Date
- C4.14 Project Location
- C4.15 Project Price & expenses (if applicable)
- C4.16 Special Conditions
- C4.17 A reference to this Consulting Addendum.

Agreed and Accepted

DESIRE2LEARN INCORPORATED

By: 
Name: John Baker
Title: President & CEO
Date: Sept 25, 2007

**OKLAHOMA STATE REGENTS FOR
HIGHER EDUCATION**

By: 
Name: Kurt A. Snodgrass
Title: Vice Chancellor for Information
Technology and
Telecommunications
Date: 19 September 2007

