D2L Order Terms and Conditions

These terms and conditions, along with any document(s) signed or electronically agreed to by D2L and Client that accompany or reference these terms and conditions for D2L Services ("**Order**"), form the agreement ("**Agreement**") between the D2L entity signing the Order ("**D2L**") and the Client identified in the Order ("**Client**").

1. **Services.** D2L will provide the Services set out in the Order: "**Services**" means the applications made available to Client and/or any other material, duty, function or task D2L provides, facilitates, makes available or performs under this Agreement. D2L shall maintain, and shall see that its vendors maintain commercially reasonable administrative, physical and technical safeguards for the security, privacy and integrity of Client Data (as defined in section 7 below), which may include relevant certifications such as ISO 27001 and SSAE 16 SOC 1 and SOC 2. Client acknowledges that Client's use of Services will involve transmission over the Internet and other networks, only part of which may be owned or controlled by D2L. 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.

2. **Grant of Use.** Upon the start date listed in the relevant Order, D2L shall permit Client to use the Services in a non-exclusive, non-transferable, time-limited (revoked upon termination) manner as set forth in the Order by the specified number of users in the Order(s). Client may increase its number of such users upon paying the appropriate fee. Should Client not pay, D2L may terminate this Agreement. Client may use or access Services for its use only. No third party, other educational institution or business group or entity other than that identified in the attached relevant Order may make use of, or obtain access to, Services without a separate agreement. D2L allocates up to 500MB of storage space per user and may charge additional fees of no more than $8.00USD per GB per year in excess of the allocated amount. D2L may review 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 such review reveals that Client's use of Services exceeds its permitted use, Client shall pay D2L's then-current fees and reasonable administrative fees.

3. **Warranty.** D2L warrants that the Services will (i) achieve in all material respects, the functionality described in the applicable documentation, and (ii) be performed in accordance with industry standards and with the same level of care and skill as D2L provides to similarly-situated customers. Except as set forth in this Agreement, the Services are provided "as-is", and D2L makes no warranties, representations, or guarantees, express or implied, oral or written, with respect to the Services. D2L does not warrant that Services 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. There is no such thing as perfect security, and D2L cannot guarantee or warrant the security of any data that D2L receives and stores. Client assumes all responsibility for determining if the Services are sufficient for Client's purposes.

4. **Confidentiality.** No party shall furnish **Confidential Information** (defined as technical, business, marketing, proprietary, trade secret, personal or other information in any form (e.g., oral, written, electronic)) to any unauthorized person or entity. No party shall be bound by confidentiality obligations if the Confidential Information (i) 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; (ii) was already rightfully in its possession before the commencement of negotiations that led to this Agreement; (iii) is learned from a third party under no apparent duty of confidentiality and is not otherwise protected under law; or (iv) becomes part of the public domain other than as a result of a breach of this section and is not otherwise protected under law. 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.

5. **Personal Information.** D2L shall not collect, use or disclose **Personal Information** (defined as 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) except to carry out its obligations under this Agreement. D2L shall limit access to Personal Information to those persons who require access in order to provide the 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.

6. **Intellectual Property.** D2L or its licensors retain sole and exclusive ownership of and all intellectual property rights ("**IP**") in the Services, which include: tools, methodologies, questionnaires, responses, and proprietary research, data, requirements, specifications, and code generated in the course of performing the Services. The IP is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. D2L reserves its rights and interests in connection with the IP, except as expressly granted to Client pursuant to this Agreement. D2L does not transfer any title to or interest in its IP. D2L may render services to others and develop work products that are competitive with, or functionally comparable to, the Services. Client shall not make the Services available to anyone outside of Client without the prior written consent of D2L, except Client may share the Services 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 Services (provided such third parties are not competitors of D2L) , and (iii) governmental or regulatory bodies as required by law. 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 Services, provided that D2L shall not use or disclose any of Client's Confidential Information.

7. **Client Data and Branding.** Client owns and retains all right, title and interest to, or has appropriate possessory rights in any information, data, results, or other materials uploaded to or through the Service ("**Client Data**"). D2L makes no claim of title or ownership to or in Client Data. Client permits D2L to use Client Data to the extent required to provide and perform the Services under this Agreement. D2L will comply with Client's branding guidelines where Client engages D2L to create a Client-branded offering of Services, and Client grants D2L non-exclusive, worldwide permission to use its logo and branding for the sole purpose of creating, distributing and maintaining for Client a Client-branded version of Services. D2L will not use Client's logo and branding for any other purpose without the express written consent of Client. 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 hereunder.

8. **Restrictions.** Except as permitted by this Agreement, Client shall not: (i) attempt to decompile, disassemble, modify the source code of, or reverse engineer the IP; (ii) use, reproduce, transmit, modify, adapt or translate the IP;(iii) rent, lease, license, transfer, assign, sell or otherwise provide access to the IP on a temporary or permanent basis; (iv) use or cause or allow a third party to use the Services in any way to develop competing products or services; (v) 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.

9. **Support.** Support services are set out at https://www.d2l.com/legal/d2l-support-schedule/ and are coterminous with this Agreement.

10. **Service Levels.** D2L will use reasonable commercial efforts to make the Brightspace Learning Environment available at least 99.9% of the time. Unavailability of the Services ("**Downtime**") may result in service credits under this section. Scheduled outages, maintenance windows, and other outages resulting from events beyond D2L's control are not included when calculating Downtime. Client shall report incidents to D2L Support that it considers Downtime immediately, but in no event later than 24 hours from when Client became aware of, or reasonably should have become aware of, the occurrence; failure to do so shall disentitle Client to any credit for that incident under this Agreement. In reporting, Client shall provide D2L sufficient information to investigate and classify the incident, including: date, duration, and description of occurrence. D2L shall investigate and reasonably classify any reported outage/occurrences Downtime. In making its classification, D2L shall rely solely upon its own statistics software and monitoring equipment.

11. **Downtime Credit.** If after investigation and classification, D2L determines that Downtime during a calendar month was such that availability fell below the level stated in this section, Client shall be entitled to a credit on cloud hosting ("**Cloud Services**") fees during the relevant calendar month, calculated on the following basis:

Availability (x = Availability)	Client credit
99.9% <= x	N/A
99.5% <= x < 99.9%	1% of Client's Cloud Services fee for that calendar month
99% <= x < 99.5%	2.5% of Client's Cloud Services fee for that calendar month
98% <= x < 99%	5% of Client's Cloud Services fee for that calendar month
x < 98%	10% of Client's Cloud Services fee for that calendar month

For the purposes of calculating downtime credits for which Client may be eligible under this Agreement, the Cloud Service Fees for each Measurement Period shall be 1/12 of 20% of all annual Software, Cloud Services and Maintenance Fees for the then-current contract year. For clarity, Support Fees are not included in the Software, Cloud Services and Maintenance Fees if Support is priced separately. Any credit so determined may only be applied against subsequent Cloud Services fees invoiced for the next annual period and shall be Client's sole remedy if that Availability falls below the level stated in this section; provided, however, that if this Agreement or the relevant Order is terminated or expires such that the entire credit cannot be applied for Client's benefit, D2L shall promptly refund such amount to Client.

12. **Indemnification.** 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 the Services is an infringement of copyright, patent or registered trademark rights of a third party, but only if Client (i) promptly notifies D2L in writing of any claim; (ii) allows D2L to control the defense or settlement of the claim; and (iii) takes no action that, in D2L's reasonable judgment, impairs D2L's defense of the claim. 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 the Services (b) Client's failure to install an update that would have avoided the claim; (c) the combination of the 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 Services or deliverables in a manner that is not in accordance with the documentation or applicable law. If a claim arises, D2L may (x) substitute equivalent non-infringing Services; (y) modify the Services so that they no longer infringe but remain functionally equivalent; or (z) if neither (x) nor (y) is reasonably commercially feasible, cancel the Agreement and refund any unused pro-rated amounts to Client. This section states the entire liability and obligation of D2L regarding infringement claims.

If a third party claims that any part of the Client Data infringes a copyright, patent or trademark or other intellectual property right of a third party, or there are third party claims arising out of Client's use of the Services in breach of this Agreement, Client will defend D2L against that claim at Client's expense and pay all costs, expenses, damages, and attorney's fees, provided that D2L: (i) promptly notifies Client in writing of any claim; (ii) allows Client to control the defense or settlement of the claim; and (iii) takes no action that, in Client's reasonable judgment, impairs Client's defense of the claim.

13. **Liability Limitations.** Except for (i) a party's indemnification obligations in section 12 or (ii) Disruptions as defined herein, a party's maximum aggregate liability for damages, costs, losses or expenses provided pursuant to this Agreement, in contract, tort or otherwise is limited to six (6) months of fees paid under the relevant Order under which the claim arose. Limitations on D2L's liability as stated in this section shall extend to its third-party licensors. The liability limitation is commensurate with the consideration paid under this Agreement. 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. Client is responsible for the Client Data and the content of its and its user's transmissions, including Client Data, over D2L's network. Client agrees that it and its users will not cause a "**Disruption**" defined as use of the Service for illegal purposes, to infringe the rights of a third party, or to interfere with or disrupt the Services, including distribution of unsolicited communications or chain letters, defamatory, libelous or offending content, propagation of computer worms and viruses, and unauthorized use of the network to enter, or attempt to enter, another system. 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 user's access to the Services or terminate this Agreement, and Client is liable to D2L for claims arising from Client Data or any Disruption.

14. **Payment Terms and Taxes.** Client shall pay fees and rates as specified in an Order. Unless otherwise agreed, payment is due within 30 days from Client's receipt of invoice. The number of users purchased according to the Order shall be the billable minimum number of such users for the term of the Agreement unless otherwise mutually agreed. Overdue amounts not subject to a good faith dispute may incur interest charges at a rate of 1.5% per month or 19.56% APR. All fees and rates stated in the Order do not include taxes of any kind, which taxes shall be added to Client's invoices and paid by Client. 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. Annual Fees for any renewal period shall have an annual increase of 5% applied unless otherwise indicated on the applicable Order.

15. **Orders.** Optional Products and Services set out on an Order and any other D2L offerings not on an Order may be subject to additional terms and conditions. Optional Products may have associated support costs. Travel and per diem expenses are not included in Consulting or Training fees and per diem and actual travel costs and will be billed to Client upon completion. The number of users purchased according an Order shall be the billable minimum number of such users for the term of such Order, and the Order is binding for the entire term unless otherwise stated.

16. **Analyses.** To deliver, develop, test and improve the Services required under this Agreement and provide to its clients generally, D2L may collect, store, analyze, and interpret data elements acquired by, associated with, or provided in the use of the Services ("**Analysis**") All individual data elements of the Analysis are property of their respective owners. All usage data related to performance or use of the Services and algorithm, computational, or cumulative results of the Analysis are wholly-owned by D2L. In the event Client wishes to access or generate any computational or cumulative results from Client Data using certain Services with analytic capabilities, additional fees may apply for such additional Services.

17. **Term and Termination.** This Agreement shall continue until all Orders expire or are terminated as set out in this section ("**Term**") or may be terminated as specified elsewhere in this Agreement. This Agreement may be terminated 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 30 days after written notice is given to the defaulting party, unless the default is cured within the 30-day period. On termination, all rights and obligations of the parties cease except as set out in this section. Client shall return all copies of documentation and other materials to D2L within 30 days of termination. D2L will delete or destroy Client Data residing on D2L networks upon termination. Prior to termination, Client may use certain export tools within the Services 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 Services. If Client requires additional support, D2L shall provide such data export services for a fee on a time and materials basis under an Order. The Confidentiality, Intellectual Property, Restrictions, Indemnification (to the extent the claim arose before the relevant Order was terminated), Liability Limitations, Payment and the General sections shall survive termination of this Agreement, regardless of the reason for the termination.

18. **Renewal.** Unless and until either party notifies the other of its intent to terminate or modify this Agreement at least 60 days before the end of the then-current Term, at the end of the Term, this Agreement along with any annual fees listed on any Order made under this Agreement and in effect at the end of the Term shall be extended for additional consecutive terms equal in duration to the period between the Order start date and Order end date as set out in the initial Order made under this Agreement, but in no event shall be less than one year unless otherwise agreed in writing between the parties (each, a "**renewal term")**. Pricing and the terms and conditions in this Agreement are commensurate with the term length, number of users and Services selected under an Order. D2L may increase the pricing and/or alter the terms of this Agreement in any renewal term if Client requests changes to the term length, number of users and/or Services selected for such renewal term.

19. **General.** 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 email, provided that the sender retains proof of successful transmission. All notices shall be deemed effective upon receipt. Notices shall be sent to the names, addresses and numbers set out in the Order. All notices to D2L shall include a copy to Legal Department, D2L Corporation, 151 Charles Street W., Suite 400, Kitchener Ontario N2G 1H6, Canada, or, if sent by email, to Legal@D2L.com. 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, hardware failure, hacker attacks, existence or repair of software bug/virus/worm, 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 for as long as the circumstances exist. Client's delays may affect D2L's ability to perform Service under an Order. If D2L is unable to perform the Services due to Client's delays, D2L shall notify Client and, if Client is unable or unwilling to remedy the delays within 30 days from notification, all fees and related charges under the Order become due and payable and D2L may immediately invoice for such fees. This Agreement is governed by the laws of [in the case of a Client in the United States, Maryland; in the case of a Client in Australia, Victoria; in the case of a client in Singapore, Singapore; in the case of a Client in Canada or any other country, Ontario without regard to its conflict of laws principles. 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. 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. 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. Neither party is an agent, employee, partner, joint venturer or legal representative of the other, and D2L is an independent contractor to Client. Client agrees that D2L may use Client's name and logo in D2L's marketing communications in accordance with Client's guidelines. Client agrees to cooperate with D2L to serve as a reference account upon D2L's request. These Terms and Conditions shall supersede the provisions of an Order, unless the Order refers to the provision of the Terms and Conditions it supersedes. 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.