

Schedule A



MASTER AGREEMENT

This Master Agreement, including its Addenda and Schedules ("Master Agreement") governs terms and conditions between The Corporation of the City of London, 300 Dufferin Avenue, London, Ontario, an Ontario municipality for the benefit of the London Fire Department ("Client") and Desire2Learn Incorporated, 151 Charles Street, Suite 400, Kitchener ON N2G 1H6, an Ontario corporation, or its subsidiaries, divisions or affiliates ("D2L") as listed in any Addendum to this Master Agreement.

1 Definitions

- 1.01 *Active User* means any person who 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 an executed document attached 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 *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 similarly executed document.
- 1.05 *Client* includes its employees, directors, officers, or agents, and to the extent they are specifically identified, its affiliates, subsidiaries, and departments.
- 1.06 *Client Information* includes course content, materials, personal information, and any other data that Client (or its authorized users) uploads or enters through its lawful use of Products and Services.
- 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. Confidential information also includes Client information and personal information protected under privacy laws.
- 1.08 *Consulting* is implementation, development, or other assistance provided pursuant to an Addendum, Statement of Work or other Authorizing Document.
- 1.09 *Deliverable* is a tangible, verifiable work output such as a specification, programming, code, or other output developed under a Statement of Work.
- 1.10 *Documentation* is a document published by D2L for all clients such as a user's manual, release notes or is otherwise designated as documentation. Documentation does not include sales and/or marketing materials.
- 1.11 *Effective Date* is the date that the Client signs this Master Agreement or Addendum, unless otherwise specified in the Addendum.
- 1.12 *End Users* are the persons who access, attempt to access or use the Software or Applications as a product during the course of this Master Agreement.
- 1.13 *Enrolment* means the total of each unique course registrations over the course of each consecutive 12-month period following the Effective Date. For clarity, if an End User is registered in 2 course offerings during a particular year, it will count as 2 Enrolments.
- 1.14 *FTE* means a count of 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).
- 1.15 *Hosting* is the use of Applications on D2L equipment within D2L facilities.
- 1.16 *Intellectual Property* is 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.
- 1.17 *License Fee* is the fee paid to license the Software pursuant to a License Addendum.
- 1.18 *Network* is, collectively, D2L's hardware, Software, communications, cabling and other related resources through which Client accesses services.
- 1.19 *Party* is D2L and Client.
- 1.20 *Products and Services* include Applications, Software, Hosting, Consulting and any other duty, function or task D2L performs under this Master Agreement.
- 1.21 *Rates* are D2L's then-current charges for professional services it provides, except for out-of-pocket and per diem expenses.
- 1.22 *Schedule* is a document attached to this Master Agreement that is not an Addendum, or a document attached to an Addendum.
- 1.23 *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 Support Schedule, but does not include software applications developed under a Consulting Addendum or related Statement of Work.
- 1.24 *Statement of Work (or Work Order)* is a document created pursuant to a Consulting Addendum that specifies the roles and responsibilities of the Parties with respect to a particular engagement.
- 1.25 *Support* is support services provided pursuant to a Support Schedule, as more fully described in the Support Schedule.

Desire2Learn Incorporated
151 Charles Street West, Suite 400
Kitchener, Ontario N2G 1H6

Toll Free: 1 888.772.0325 (U.S & Canada)
Telephone: +1 519.772.0325
Fax: +1 519.772.0324

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- 1.26 *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.
- 1.27 *Vendor* is a 3rd party provider of products or services to D2L.
- 2 Warranties. For Products and Services provided under this Agreement by D2L warrants that:**
- 2.01 Its employees are appropriately trained and competent to and will perform Consulting; and
- 2.02 Applications and Software will substantially perform according to applicable Documentation provided that Client (or D2L at Client's request) has not modified Software.
- 2.03 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 and Services or Network. D2L does not warrant that Products and Services 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 Subject to the requirements of the *Municipal Freedom of Information and Protection of Privacy Act*, no Party shall furnish Confidential Information to any unauthorized person or entity.
- 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 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 Nothing in this section is intended to prohibit D2L from issuing a mutually-acceptable press release, or naming Client in client listings or having Client's name disclosed as part of the natural use of the Products and Services.
- 4 Proprietary Rights & Restrictions**
- 4.01 D2L has all appropriate rights and interest in its Applications, Software, Documentation, Materials, Deliverables, and other Intellectual Property (collectively, the "IP"), and D2L reserves these rights and privileges in connection with the IP, except as expressly granted to Client pursuant to this Master Agreement or applicable Creative Commons License. Except as may be expressly granted in a Statement of Work, D2L does not transfer any title or interest in its IP. The IP contains valuable intellectual property of D2L and its licensors. 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, 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 alter, remove or cover proprietary notices in or on the IP.
- 4.03 Client owns and retains all right, title and interest to, or has appropriate possessory rights in Client Information. D2L makes no claim of license, title or ownership to Client Information.
- 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 may 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 patent or trademark 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; (c) the combination of the Software or Deliverables with 3rd party products where the 3rd party products are or reasonably should be governed by an agreement between Client and the 3rd party; or (d) D2L's compliance with specifications furnished by Client.
- 5.03 *D2L Options.* If a claim arises, D2L shall (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, and refund the unused pro-rated amounts.
- 5.04 *Entire Liability.* This section states the entire liability and obligation of D2L regarding infringement claims.

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6 Liability Limitations

6.01 D2L's liability to Client for damages, costs, losses or expenses provided pursuant to this Master Agreement, in contract, tort or otherwise, (except for the Indemnification section) is limited to six months offees paid under the relevant Addendum or Statement of Work under which the claim arose. The liability limitation is commensurate with the consideration paid under this Master 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 direct losses and expenses incurred as any result of a breach of the Proprietary Rights & Restrictions Section.

6.03 Client is responsible for the content of its and its End User's transmissions, including Client Information, 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 Instance. If a Disruption occurs, D2L may, in its reasonable discretion, immediately remove the Disruption, terminate the mode of communication, suspend Client's and its End User's access to Network or terminate this Master Agreement, and Client is liable to D2L for claims arising from any Disruption.

6.04 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.

7 Payment Terms & Taxes

7.01 D2L emails invoices to the address listed as Invoice Recipient. Payment is due on receipt of an invoice. Late payments are 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 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.

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:

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

9.03 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;

9.04 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; and

9.05 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.

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 & 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 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.

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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 province of Ontario, without regard to its conflict of laws principles. Legal action arising pursuant to this Master Agreement shall be filed in the courts of province of Ontario. 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. The Parties waive any right to a jury trial. This section maybe modified under the F&R Schedule upon a showing by Client of applicable law requiring a different jurisdiction.

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 *Insurance.* During the performance of this Master Agreement, D2L shall maintain insurance levels equal or equivalent to those described in the Memorandum of Insurance in Exhibit A.

12.05 *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.

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

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. Terms or conditions that Client purports to include in a purchase order or similar instrument are void and of no force and effect.

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.

12.12 *Execution of Master Agreement.* D2L reserves the right to cancel or renegotiate this Master Agreement if Client fails to execute this Master Agreement on or before the Effective Date.

AGREED AND ACCEPTED

DESIRE2LEARN INCORPORATED

THE CORPORATION OF THE CITY OF LONDON

By: 
 Name: Brandon Murray
 Title: CFO
 Date: Apr 26/12



By: _____
 Name: Joe Fontana
 Title: Mayor
 Date: _____

Schedule A



By: [Signature]
Name: Brandon Nussey
Title: CFD
Date: Apr 26/12



By: _____
Name: Catherine Saunders
Title: Clerk
Date: _____

NOTICE INFORMATION:

DESIRE2LEARN INCORPORATED
John Baker
To: cc: Legal Department
Title: President
Fax: 519 772 0324
Phone: 519 772 0325
Address: 151 Charles Street West, Suite 400
Kitchener, Ontario N2G 1H6

John.Baker@Desire2Learn.com
Email: Legal@Desire2Learn.com

THE CORPORATION OF THE CITY OF LONDON
John Kobarda
To: Cc Gwen Francis
Title: Fire Chief
Fax: 519-661-6507
Phone: 519-661-2500 x4750
Address: 400 Horton St E
London, Ontario N6B 1L7

jkobarda@london.ca
Email: gfrancis@london.ca

INVOICING INFORMATION

THE CORPORATION OF THE CITY OF LONDON
INVOICE RECIPIENT
Doreen O'Brien
Name: Cc Gwen Francis
Title: Administrative Clerk - Training
Fax: 519-661-8419
Phone: 519-661-2500 x4565
Address: 400 Horton St E
London, Ontario N6B 1L7

dtobrien@london.ca
Email: gfrancis@london.ca

THE CORPORATION OF THE CITY OF LONDON
PAYABLE ENQUIRY
Doreen O'Brien
Name: Doreen O'Brien
Title: Administrative Clerk - Training
Fax: 519-661-8419
Phone: 519-661-2500 x4565
Address: 400 Horton St E
London, Ontario N6B 1L7

dtobrien@london.ca
Email: _____

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

Schedule A



APPLICATIONS & HOSTING ADDENDUM

This Applications & Hosting Addendum, together with the Master Agreement, governs terms and conditions between Client and D2L relating to Applications.

A1 Grant of Use

Upon the Effective Date, D2L shall permit to 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.

A2 Term

This Addendum shall be effective for 3 years from the Effective Date listed in the below Fees and Rates Schedule ("Initial Term").

A3 Support

A3.01 Support services are set forth in the Support Schedule attached to this Addendum and are coterminous with this Addendum.

A3.02 Modifications to Applications or Hosting. D2L may modify the Applications or Hosting. D2L will advise Clients of material Modifications where feasible.

A4 Payments

A4.01 Client shall pay the fees as per the Fees and Rates Schedule, or, for additional work, as specified in an Authorizing Document.

A5 Use of Applications

A5.01 Client may use or access Applications for its use only. No 3rd 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.

A5.02 *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 Master 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. D2L shall treat all Client's Confidential Information and proprietary information communicated to or acquired by it, or disclosed by the Client in the course of carrying out the services provided for herein in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*. Except as provided in this Master Agreement, no such information shall be used by D2L on any other project without the approval in writing of the Client.

A6 Additional Active Users

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

AGREED AND ACCEPTED

DESIRE2LEARN INCORPORATED

THE CORPORATION OF THE CITY OF LONDON

By: *R. N. W. [Signature]*
Name: *Branton W. [Signature]*
Title: *CFO*
Date: *Apr 26/12*



By: _____
Name: _____
Title: _____
Date: _____

Schedule A



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 fees are set forth in the fees and Rates Schedule.

S1 Definitions

S1.01 *Business Hours* mean 8:00 a.m. to 8:00 p.m., Monday to Friday, except public holidays, in Client's time zone.

S1.02 *Client Support* means Software or Applications 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 or Applications.

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

S2 Authorized Support Contact Name(s) (ASC)

S2.01 Client shall provide name(s) of the authorized contact(s) to D2L. Only Client's authorized support contact(s) may contact D2L for Support under this Schedule. Contact may be made by phone or email methods.

S2.02 D2L provides Client Support during Business Hours. Outside Business Hours, Client Support will be provided for an Emergency only.

S2.03 Client Support is available to record Issues, explain the functions and features of Software and clarify the contents of Documentation.

S2.04 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 at 200% of the 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 Authorized Support Contact(s).

Additional Authorized Support Contact(s), beyond the one(s) currently included in the Fees and Rates Schedule, shall have a cost as described in the Fees and Rates Schedule.

S6 Other services.

Client may not use Client Support 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 Client Support.

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Capture Hardware, Software and Applications Addendum

This Desire2Learn® Capture Hardware, Software and Applications Addendum, together with the Master Agreement, governs terms and conditions between Client and Desire2Learn Incorporated ("D2L") relating to licensed software.

CHSA 1 Definitions:

CHSA 1.1 Acceptable Use Policy for Capture means the rules governing the use of Capture by Client and its Authorized End Users, as may be published at www.desire2learn.com/legal/capture.

CHSA 1.2 Authorized End Users are those individuals who have been granted permission by the Client to use Capture.

CHSA 1.3 Branding means the trade-marks, service-marks, colour schemes, names and fonts used by any Party for purposes of communication, identification, and marketing.

CHSA 1.4 Capture means anything related to Capture Hardware, Capture Software or Capture Applications.

CHSA 1.5 Capture Applications means those Applications provided by D2L to Client under this Addendum.

CHSA 1.6 Capture Hardware means the physical computing hardware including applicable peripherals that may be provided by D2L to Client under this Addendum.

CHSA 1.7 Capture Software means those object code elements provided by D2L to Client under this Addendum that are resident on Capture Hardware, or Client hardware.

CHSA 2 Capture Deployment. Where applicable, D2L and Client will execute a Statement of Work or other applicable document that outlines the Branding elements, and other applicable requirements pertaining Capture. There is no transfer of Intellectual Property rights with respect to Capture unless agreed in writing.

CHSA 3 Use of Branding and Trademarks. Client grants D2L non-exclusive, worldwide permission to use its Branding in accordance with Client's reasonable branding use guideline or similar documentation, for the sole purpose of creating, distributing and maintaining a Client branded version of Capture, in accordance with the Statement of Work or other applicable document. D2L will not use Client's Branding for any other purpose without the express written consent of Client.

CHSA 4 Grant of Licence. D2L only grants Client and its Authorized End Users a non-exclusive, time limited right to use Capture, subject to the then current Acceptable Use Policy for Capture. The use of Capture may include the presentation of Client Information and Branding. Client Information as defined in the Master Agreement includes any content that Client makes available to the Authorized End User of Capture under this Addendum. Each Party retains their respective Intellectual Property rights.

CHSA 5 Disclaimer of Warranty. Except as provided for in the Capture Support Schedule and unless otherwise agreed, Desire2Learn disclaims all warranties, both express and implied with respect to Capture, including merchantability, fitness for a particular purpose, or arising from a course of performance, dealing, or usage of trade to the maximum extent permitted by law. With respect to Capture, these provisions shall supersede any other warranty provisions previously agreed by the Parties. If this absolute waiver of warranty is deemed non-enforceable by a court of competent jurisdiction, then the maximum liability D2L shall have with respect to Capture is the annual fee paid, or payable by the Client in the year in which the claim arose.

CHSA 6 Disclaimer of Liability. To the maximum extent permitted by law, D2L disclaims all liabilities to Client, through any act or omission as it relates to the unlawful or unauthorized use of Capture. Client is solely responsible for all Client Information made available to or by Capture.

CHSA 7 Indemnification. Client will indemnify, or where prohibited by law, may be liable to D2L and/or the relevant D2L partner participating in the delivery of Capture, to the maximum extent permitted by law for any and all claims, losses and damages D2L and/ the relevant D2L partner participating in the delivery of Capture suffers as a result of the unlawful, unlicensed or misuse of the Branding, Client Information, and/or Capture by Authorized End Users.

CHSA 8 Suspension and Termination Rights. D2L reserve the right to suspend or terminate, where feasible, any Authorized End User(s) for any breach or suspected breach of this Addendum or the Acceptable Use Policy for Capture, including any breach claimed by any person or entity that the Client Information or Branding infringes their intellectual property rights (e.g. a DMCA claim). D2L reserves the right to suspend or terminate, where feasible, all access to Capture if required to do so by law, or judicial order.

CHSA 9 Client Information Obligations. Client shall ensure that a process is established, maintained, and communicated to Authorized End Users with respect to any claim the Authorized End User may have with respect to the quality, accuracy, or appropriateness of Client Information provided over or via Capture. Client shall terminate an Authorized End User for any breach or suspected breach of this Addendum or Acceptable User Policy for Capture. D2L has no, and shall not incur any responsibility with respect to policing, or monitoring Client Information.

CHSA 10 GENERAL. This Addendum shall supersede conflicting terms that may be found in the Master Agreement.

Agreed and Accepted

DESIRE2LEARN INCORPORATED

The Corporation of the City of London

By: *Brandon Niskey*
 Name: Brandon Niskey
 Title: CFD
 Date: Apr 26/12



By: _____
 Name: _____
 Title: _____
 Date: _____

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Desire2Learn Capture 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 fees are set forth in the Fees and Rates Schedule.

CS1. Definitions

- CS1.01. *Standard Support Hours* mean 8:00 a.m. to 8:00 p.m. (Client Local Time), Monday to Friday, except public holidays.
- CS1.02. *Client Capture Support* means remote support for Capture related Hardware, Software or Applications;
- CS1.03. *Emergency* means an Incident that is time critical, materially impairs the use of Software and is essential to the operation of Client's business.
- CS1.04. *General Support* means access to the client web site, general notifications, advisories, and similar services.
- CS1.05. *Incident* means a query regarding, or user-identified concern about, Capture-related Hardware, Software or Applications.
- CS1.06. *Supported Version* means the current and most recent prior release of Capture-related Software or Applications.

CS2. Hardware Warranty. For a period of one (1) year from the Effective Date of this Addendum, D2L provides limited parts and labour warranty for Capture Hardware ("Hardware Warranty Period") under the following terms:

- CS2.01. Capture Hardware will substantially perform in the commercially reasonable manner expected to support Capture Software 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 Capture Hardware ("Qualifying Defect"). After the Hardware Warranty Period, there is no warranty or condition of any kind on Capture Hardware unless supported by an Authorizing Document.
- CS2.02. If in D2L's sole and reasonable discretion, pursuant to the applicable Support Schedule, the Capture Hardware has a Qualifying Defect, D2L shall authorize Client to ship the affected Capture Hardware back to D2L at its own expense (FOB D2L).
- CS2.03. Upon receipt of the affected Capture Hardware, D2L shall replace at its own costs any or all components it deems necessary to repair the Capture Hardware. D2L shall ship at its own expense (FOB Client) the repaired/replaced Capture Hardware back to Client.
- CS2.04. Without guarantee or liability, D2L will use commercially reasonable efforts to correct a Qualifying Defect in a timely manner.
- CS2.05. Any Incident which is attributed to a Qualifying Defect shall be excluded from the Incident limits on the Fee and Rate Schedule.
- CS2.06. Client acknowledges that there is no guarantee that data which may be present on the affected Capture 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.

CS3. Authorized Support Contact Name(s) (ASC)

- CS3.01. Client shall provide name(s) of the authorized contact(s) to D2L. Only Client's authorized support contact(s) may contact D2L for Support under this Schedule. Contact may be made by phone or email methods.
- CS3.02. D2L provides Client Capture Support during Standard Support Hours. Outside Standard Support Hours, Client Capture Support will be provided for an Emergency only.
- CS3.03. Client Capture Support is available to record Incidents, explain the functions and features of Capture-related Hardware, Software or Applications and clarify the contents of Documentation.
- CS3.04. Client may access D2L's client web site (www.Desire2Learn.com) for information about how to obtain Capture-related Documentation and, for Capture-related Software, available Upgrades.
- CS4. **Incidents.** Client is permitted to have their ASC's contact D2L for Incident support based on the number of Incidents listed on the Fee & Rates Schedule. There may be a commercially reasonable charge, at D2L's then current rates, for Incident support requested in excess of the contract amount.
- CS5. **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 Capture Support for non-Supported Versions will be charged at 200% of the applicable Rate.
- CS6. **Remote Access.** To allow D2L to assess Incidents in the Capture related Hardware, Software or Applications, Client shall use reasonable efforts to permit D2L remote access to Client's systems.
- CS7. **Additional Authorized Support Contact(s).** Additional Authorized Support Contact(s), beyond the one(s) currently included in the Fees and Rates Schedule, shall have a cost as described in the Fees and Rates Schedule.
- CS8. **Other services.** Client may not use Client Capture Support for services other than Client Capture 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.
- CS9. **Termination.** Support is terminated when the relevant Schedule or Addendum expires or is terminated.
- CS10. **Reinstatement.** If Client is in default for payment under the relevant Capture-related 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 Client Capture Support.

Schedule A



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 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.

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.

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.

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.

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

- | | |
|-------------------------------|---|
| C5.01 Project Name and Number | C5.10 Software Requirements Specifications |
| C5.02 Project ID | C5.11 Intellectual property transfers (if any transfers are applicable) |
| C5.03 Client Project Manager | C5.12 Project Start Date |
| C5.04 Client Technical Lead | C5.13 Project End Date |
| C5.05 D2L Project Manager | C5.14 Project Location |
| C5.06 D2L Technical Lead | C5.15 Project Price & expenses (if applicable) |
| C5.07 Project Description | C5.16 Special Conditions |
| C5.08 D2L Deliverables | C5.17 A reference to this Consulting Addendum. |
| C5.09 Client Obligations | |

AGREED AND ACCEPTED

DESIRE2LEARN INCORPORATED

THE CORPORATION OF THE CITY OF LONDON

By: Brandon Nussley
 Name: Brandon Nussley
 Title: CFO
 Date: Apr 26/12



By: _____
 Name: _____
 Title: _____
 Date: _____

Schedule A



FEE AND RATES SCHEDULE

Effective Date: September 1, 2012

Term: 3 years

Client: The Corporation of the City of London

User Type: Active User

Support Type: Standard

Instance Type: Shared-Dedicated

Component	Measure	Fees (\$)	Due
One-time Fees:			
Learning Environment	Implementation	2,500.00	September 1, 2012
Learning Repository	Implementation	2,500.00	September 1, 2012
Capture	1 Desire2Learn Capture Station(s) - Hardware	6,000.00	September 1, 2012
Capture	Upgrade - 1TB Storage	200.00	September 1, 2012
Training	2 days	5,000.00	September 1, 2012
One-time Fees Total		16,200.00	
Annual Fees*:			
Learning Environment	Up to 400 Active Users @ \$25/Active User	10,000.00	1-September
Hosting Fee	Up to 400 Active User @ \$15/Active User	6,000.00	1-September
Learning Repository	Up to 400 Active Users	5,000.00	1-September
Capture	Basic Standard Server Hosting Package (50GB Storage + Bandwidth per month)	3,000.00	1-September
Capture	Standard Capture Support	2,750.00	1-September
Standard Support	1 ASC(s) / 20 Incidents per Month	1,500.00	1-September
Annual Fees Total:		28,250.00	
Additional Fees & Rates			
Support Incident overage	Any incidents above the contracted amount	\$350	
Storage and Bandwidth overage	Storage + Bandwidth over 50GB/month	\$1.75/GB/Month	
Consulting Rates			
Position		Hourly Rate	
Level 3 Consultant/Architect/Manager		\$300	
Level 2 Consultant/Architect/Manager		\$215	
Level 1 Consultant		\$185	
Training		Daily Rate	

Schedule A



Maximum of twelve participants or a maximum of eight participants responsible for system administration.	\$2,500	
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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.
- Storage amounts are currently set at 20MB per Active User.
- Travel and per diem expenses are not included in Consulting or Training Rates.
- After the initial 12-month period, fees may be adjusted by any increase reflected in Consumer Price Index, as published by Statistics Canada, or 3%, whichever is greater.
- Other divisions or departments of Client may purchase off of this Master Agreement for their benefit on execution of an Authorizing Document.

Schedule A



EXHIBIT A

		MEMORANDUM OF INSURANCE			
This memorandum is issued as a matter of information only and confers no rights upon the certificate holder and imposes no liability on the insurer. This memorandum does not amend, extend or alter the coverage afforded by the policies below.					
INSURED'S FULL NAME AND MAILING ADDRESS			BROKER'S FULL NAME AND MAILING ADDRESS		
Desire2Learn Incorporated			Cowan Insurance Group Ltd.		
400-151 Charles Street West			705 Fountain Street N. PO Box 1510		
Kitchener, Ontario			Cambridge, Ontario		
N2G 1H6			N1R 5T2		
			BROKER'S CLIENT ID: DESIR-U		
COVERAGES					
This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain. The insurance afforded by the policies described herein is subject to all terms, exclusions and conditions of such policies.					
LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS					
TYPE OF INSURANCE	INSURANCE COMPANY AND POLICY NUMBER	EFFECTIVE DATE (YYYY/MM/DD)	EXPIRY DATE (YYYY/MM/DD)	LIMITS OF LIABILITY <small>(Canadian dollars unless indicated otherwise)</small>	
COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> Claims Made or <input checked="" type="checkbox"/> Occurrence <input checked="" type="checkbox"/> Products and/or Completed Operations <input checked="" type="checkbox"/> Tenants Legal Liability <input checked="" type="checkbox"/> Non-Owned Automobiles <input type="checkbox"/> <input type="checkbox"/>	St. Paul Fire & Marine CPC0123120	2011/11/09	2012/11/09	Each Occurrence	\$2,000,000
				General Aggregate	\$2,000,000
				Products & Completed Operations Aggregate	\$2,000,000
				Personal Injury	\$2,000,000
				Tenants Legal Liability	\$2,000,000
				Non-Owned Auto	\$2,000,000
AUTOMOBILE LIABILITY <input type="checkbox"/> Described Automobiles <input type="checkbox"/> All Owned Autos <input type="checkbox"/> Leased Automobiles** <input type="checkbox"/> <input type="checkbox"/> ** All Automobiles Leased In Excess Of 30 Days Where The Insured Is Required to Provide Insurance				Bodily Injury and Property Damage Combined	\$
				Bodily Injury (Per Person)	\$
				Bodily Injury (Per Accident)	\$
				Property Damage	\$
EXCESS LIABILITY <input checked="" type="checkbox"/> Umbrella or Excess Form <input type="checkbox"/> Other _____	St. Paul Fire & Marine CPC0123120	2011/11/09	2012/11/09	Each Occurrence	\$8,000,000
				Aggregate	\$8,000,000
OTHER COVERAGE <input checked="" type="checkbox"/> Errors & Omissions Liability <input type="checkbox"/> <input type="checkbox"/>	St. Paul Fire & Marine CPC0123120	2011/11/09	2012/11/09	Each Claim:	\$5,000,000
				Aggregate:	\$5,000,000
NAME AND MAILING ADDRESS			Above limits are in US Currency		
TO WHOM IT MAY CONCERN:					
SIGNATURE OF AUTHORIZED REPRESENTATIVE			PRINT NAME OF AUTHORIZED REPRESENTATIVE		
			Jolanda Palach, CAIB		
PHONE NUMBER	FAX NUMBER	EMAIL ADDRESS		DATE (YYYY/MM/DD)	
519-650-6360	519-650-6366	Jolanda.palach@cowangroup.ca		2011/12/12	

Cowan Edition: 10/2006