



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**").



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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 (including any Order and (if applicable) Statement of Work ("**SOW**"). 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. All Services, including implementation, training, consulting, and/or creative Services (collectively, "**Professional Services**") purchased by Client will be provided remotely unless otherwise agreed in a SOW. Client will provide to D2L at least five (5) days written notice prior to cancelling any scheduled Professional Services; if such prior notice is not provided, D2L may charge Client for the forfeited hours. Any changes to Professional Services provided under a SOW will be documented using a change request form that summarizes the agreed change and project impact (in terms of scope, budget, and schedule). If D2L believes that additional hours will be required under a SOW, D2L will notify Client and will not perform any additional hours unless Client has agreed in writing to the details. For clarity, D2L is under no obligation to perform any hours in excess of the number of hours agreed to in writing by the client.

2. Grant of Use.

Upon the start date listed in the relevant Order, D2L shall permit Client and its authorized users 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) for Client's own business purposes. Client may increase its number of such users upon paying the appropriate fee. Should Client not pay, D2L may terminate this Agreement. Client and its authorized users may use or access Services for its use only. D2L allocates up to 500MB of storage space per user and may charge additional fees of no more than \$2.00USD per GB per year in excess of the allocated amount. D2L may review the Client's usage 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. Each party under this Agreement warrants that it will comply with all applicable laws. 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, beyond its obligation to comply with measures and safeguards referred to in Section 1. Client assumes all responsibility for determining if the Services are sufficient for Client's purposes. To the extent that certain jurisdictions prohibit the exclusion of some warranties or provide additional warranties that are not provided above, such laws shall take precedence over this section.

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 supersede and replace 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 and/or its vendors retains 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 may make the Services available to (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's logo, or Client's branding. 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 except as set out in this Agreement 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.

Client shall not (and shall not permit its users to) use or access the Services to: (i) decompile, disassemble, modify the source code of, or reverse engineer the IP; (ii) copy, modify, adapt, create derivative works, or translate the IP; (iii) rent, lease, license, lend, transfer, sublicense, assign, sell or otherwise transfer or provide access to the IP to any third party except as expressly authorized hereunder; (iv) use or allow anyone to use the Services to compete with D2L in any way; (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 may claim 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 calendar month shall be 1/12 of 20% of all annual Software fees for the then-current contract year. For clarity, Support Fees are not included in the Software 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 claims arising out of Client's or its users' 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 twelve (12) months of fees paid under the relevant Order under which the claim arose. The liability limitation is commensurate with the consideration paid under this Agreement. 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, unsolicited advertising, defamatory, libelous or offending content, propagation of computer worms and viruses, unauthorized use of the network to enter, or attempt to enter, another system, or to affect or circumvent the integrity, performance or security of the Services through unauthorized tests, scans or probes, or an unreported vulnerability in Client's systems that could impact the Services. 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, all Services are invoiced in advance, and 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. Client is responsible for payment of all applicable taxes and duties resulting from this Agreement, including any later tax assessments, except for taxes based on D2L's net income. If applicable, Client shall withhold any amounts owed under the applicable tax laws and regulations in force as of the date of payment and pay all applicable withholding taxes; in connection with the foregoing, Client agrees that it shall increase the amounts payable to D2L so that after making all required deductions for withholding, D2L receives an amount equal to the sum it would have received prior to the calculation of any withholding taxes. 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. In pursuit of D2L's mission to provide its clients with continuous and innovative enhancements to D2L services, over time our fees must increase to cover additional product development expenses associated with improving our services. The fees for the first pricing period shall be invoiced as set out on an Order. Unless otherwise stated, all subsequent pricing periods include a 5.00% annual increase ("Annual Increase"). If the inflation rate for England as published by the World Bank (www.data.worldbank.org) for the most recently reported twelve-month period ("CPI") exceeds the Annual Increase, then the fees for any subsequent annual periods may be increased, instead, by applying the applicable CPI rate. Annual fees for any renewal period may be increased by the greater of 5% or CPI as set out above.

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. From time to time, D2L may make available optional or add-on products or services that are subject to additional or modified terms (each, "Service-Specific Terms"). If Customer

subscribes to or uses any such product or service, the applicable Service-Specific Terms will apply in addition to this Agreement. Service-Specific Terms are available at <https://www.d2l.com/legal/additional-service-terms/> or as otherwise communicated by D2L in writing, and are incorporated by reference into this Agreement. In the event of a conflict between this Agreement and any applicable Service-Specific Terms, the Service-Specific Terms shall govern solely with respect to the relevant product or service. 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 all years of the entire term through and until the Order End Date as set out on the applicable Order.

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 commence on the earlier of the start date of the first applicable Order between Client and D2L or the date this Agreement or an Order is first signed by Client and 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 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, 137 Glasgow St Suite 560, Kitchener, ON, Canada, N2G 4X8 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, pandemics or public health emergencies, acts of war, and other similar events or circumstances outside that party's control that could not be mitigated using commercially reasonable means including communication line failures, power failures, hacker attacks, existence or repair of software bug/virus/worm, fires, 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. The parties agree to comply with all applicable laws and regulations including but not limited to any applicable privacy or data protection regulations and any applicable export control laws. 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 England, 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 and other documents, including D2L's communication of its public company filings. This right to use Client's name and logo is limited to disclosing that Client is a customer of D2L. Further, Client agrees in good faith to be a reference for D2L, and to participate in marketing materials (e.g., press release, customer story, etc.), upon D2L's reasonable request, subject to Client's prior review and approval in each instance. 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.

D2L Data Processing Addendum

This Data Processing Addendum (“Addendum”) supplements the signed Agreement and Order(s) (“Agreement”) entered into by and between the Client named in the D2L Order Form (“Controller” or “Client”) and D2L Europe Ltd. (“Processor” or “D2”). The purpose of this Addendum is to outline each party’s respective duties related to applicable data protection laws or regulations (“Data Protection Laws”), including the General Data Protection Regulation (EU) 2016/679 (“GDPR”). Any terms not defined in this Addendum shall have the meaning set forth in the Agreement. In the event of a conflict between the terms and conditions of this Addendum and the Agreement, the terms and conditions of this Addendum shall supersede and control so far as the subject matter concerns the processing of Personal Data, as defined below.

1. Definitions

- 1.1. “Authorized Employee” means an employee of Processor who has a need to know or otherwise access Personal Data to enable Processor to perform its obligations under this Addendum or the Agreement.
- 1.2. “Authorized Individual” means an Authorized Employee or Authorized Sub-processor.
- 1.3. “Authorized Sub-processor” means a third-party vendor, agent, reseller, or auditor who has a need to know or otherwise access Personal Data to enable Processor to perform its obligations under this Addendum or the Agreement.
- 1.4. “Data Subject” means an identified or identifiable person to whom Personal Data relates.
- 1.5. “Instructions” means the directions, either in writing, in textual form (e.g. by e-mail) or by using a software or online tool, issued by Controller to Processor and directing Processor to Process Personal Data.
- 1.6. “Personal Data” means any information relating to a Data Subject which Processor Processes on behalf of Controller, and includes, without limitation, personal characteristics, gender, ethnicity, age, address, phone number, or identification number. This definition expressly excludes any data which can no longer be attributed to an identified or identifiable natural person.
- 1.7. “Personal Data Breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored, or otherwise processed.
- 1.8. “Process” or “Processing” means any operation or set of operations which is performed upon the Personal Data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure, or destruction.
- 1.9. “Services” shall have the meaning set forth in the Agreement.
- 1.10. “Supervisory Authority” means an independent public authority which is established by a member

state of the European Union, Iceland, Liechtenstein, Norway or the independent public authority governing privacy data security and/or data protection which has supervisory authority and jurisdiction over Controller.

2. Processing of Data

- 2.1. Controller's Obligations. Controller shall, in its use of the Services, at all times Process Personal Data, and provide Instructions for the Processing of Personal Data, in compliance with applicable Data Protection Laws, and shall ensure that the Processing of Personal Data in accordance with Controller's Instructions will not cause Processor to be in breach of the Data Protection Laws. Controller is solely responsible for the accuracy, quality, and legality of (i) the Personal Data provided to Processor by or on behalf of Controller, (ii) the means by which Controller acquired any such Personal Data, and (iii) the Instructions it provides to Processor regarding the Processing of such Personal Data. Controller shall not provide or make available to Processor any Personal Data in violation of the Agreement or which is otherwise inappropriate for the nature of the Services. Controller shall indemnify, defend, and hold harmless Processor from and against all claims or losses due to Controller's non-compliance with its obligations in this section.
- 2.2. Processor's Obligations. Processor shall Process Personal Data only (i) for the purposes set forth in the Agreement, (ii) in accordance with the terms and conditions set forth in this Addendum and any other documented Instructions provided by Controller, and (iii) in compliance with applicable Data Protection Laws.
- 2.3. The subject matter, nature, purpose and duration of this Processing, as well as the types of Personal Data collected and categories of Data Subjects, are described in Exhibit A to this Addendum.
- 2.4. Following completion of the Services, except as required to be retained by applicable law, D2L may delete or destroy Client Data residing on D2L networks at the end of the Term, unless otherwise agreed in writing. Prior to the end of the term, 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.

3. Authorised Employees

- 3.1. Processor shall take commercially reasonable steps to ensure the reliability and appropriate training of any Authorised Employee.
- 3.2. Processor shall ensure that all Authorised Employees are made aware of the confidential nature of Personal Data and have executed confidentiality agreements that prevent them from disclosing or otherwise Processing, both during and after their engagement with Processor, any Personal Data except in accordance with their obligations in connection with the Services.
- 3.3. Processor shall take commercially reasonable steps to limit access to Personal Data to only Authorised Individuals.
- 3.4. Processor has appointed a data protection officer where such appointment is required by Data Protection Laws. The appointed person may be reached at privacy@d2l.com.

4. Authorised Sub-processors

- 4.1. Controller acknowledges and agrees that Processor may (1) engage the Authorised Sub-processors, listed below in 4.5, who are under a covenant of confidentiality with D2L, to assist with the Products and Services to access and Process Personal Data in connection with the Services, and (2) from time to time engage additional third parties for the purpose of providing the Services, including without limitation the Processing of Personal Data. D2L will notify Controller from time to time as to its Authorised Sub-processors or will provide details upon request.
 - 4.2. Processor shall ensure that all Authorised Sub-processors have executed confidentiality agreements that prevent them from disclosing or otherwise Processing any Personal Data both during and after their engagement by Processor.
 - 4.3. Processor shall, by way of contract or other legal act under applicable Data Protection Laws (including without limitation approved codes of conduct and standard contractual clauses), ensure that every Authorised Sub-processor is subject to obligations regarding the Processing of Personal Data that are no less protective than those to which the Processor is subject under this Addendum.
 - 4.4. Processor shall be liable to Controller for the acts and omissions of Authorised Sub-processors to the same extent that Processor would itself be liable under this Addendum had it conducted such acts or omissions.
 - 4.5. List of Authorised Sub-Processors
 - By agreeing to this DPA, Controller acknowledges and approves the applicable Sub-Processors identified in this Sub-Processor list (<https://www.d2l.com/legal/d2ls-third-party-subprocessors/>), understanding that only those Sub-Processors relevant to the specific services purchased or used by Controller will apply.
- ### 5. Security of Personal Data
- 5.1. Processor shall maintain appropriate technical and organizational measures to ensure a level of security appropriate to the risk of Processing Personal Data, including the security measures described at www.d2l.com/security.

6. Transfers of Personal Data

- 6.1. Any transfer of Personal Data made subject to this Addendum from member states of the European Union, Iceland, Liechtenstein, Norway, Switzerland or the United Kingdom to any countries which do not ensure an adequate level of data protection within the meaning of the laws and regulations of these countries shall, to the extent such transfer is subject to such laws and regulations, be undertaken by Processor the Standard Contractual Clauses are prescribed by the European Commission and are supplemented by an additional addendum if required by Data Protection laws.

7. Rights of Data Subjects

- 7.1. To the extent Controller, in its use of the Services, does not have the ability to correct, amend, block, or delete Personal Data, as required by Data Protection Laws, Processor shall provide assistance to a commercially reasonable request by Controller to facilitate such actions to the extent Processor is legally permitted to do so.
- 7.2. Processor shall, to the extent permitted by law, notify Controller without undue delay, upon receipt of a request by a Data Subject to exercise the Data Subject's right of: access, rectification, erasure, data portability, restriction or cessation of Processing, withdrawal of consent to Processing, and/or objection to being subject to Processing that constitutes automated decision-making (such requests individually and collectively "Data Subject Request(s)"). If Processor receives a Data Subject Request in relation to Controller's data, Processor will advise the Data Subject to submit their request to Controller and Controller will be responsible for responding to such request, including, where necessary, by using the functionality of the Services.
- 7.3. Processor shall, at the request of the Controller, and taking into account the nature of the Processing applicable to any Data Subject Request, apply appropriate technical and organizational measures to assist Controller in complying with Controller's obligation to respond to such Data Subject Request and/or in demonstrating such compliance, where possible, provided that (i) Controller is itself unable to respond without Processor's assistance and (ii) Processor is able to do so in accordance with all applicable laws, rules, and regulations. Controller shall be responsible to the extent legally permitted for any costs and expenses arising from any such assistance by Processor.

8. Actions and Access Requests

- 8.1. Processor shall promptly inform Controller (i), if, in the opinion of Processor, an Instruction from Controller violates, or could reasonably be expected to violate, applicable Data Protection Laws, (ii) if Processor becomes aware of any material noncompliance by it or its Authorized Individuals with the provisions of this Addendum relating to the protection of Personal Data Processed under the Agreement, (iii) if Processor becomes aware of any notice, inquiry or investigation by a Supervisory Authority with respect to Personal Data Processed under the Agreement, or (iv) to the extent permitted under applicable laws, if Processor becomes aware of any legally binding request for disclosure of Personal Data Processed under the Agreement by a Supervisory Authority.
- 8.2. Processor shall, taking into account the nature of the Processing and the information available to Processor, provide Controller with reasonable cooperation and assistance, where necessary for Controller to comply with its obligations under the Data Protection Laws, conduct a data protection

impact assessment and/or to demonstrate such compliance, provided that Controller does not otherwise have access to the relevant information. Controller shall be responsible to the extent legally permitted for any costs and expenses arising from any such assistance by Processor.

- 8.3. Processor shall, taking into account the nature of the Processing and the information available to Processor, provide Controller with reasonable cooperation and assistance with respect to Controller's cooperation and/or prior consultation with any Supervisory Authority, where necessary and where required by applicable Data Protection Laws. Controller shall be responsible to the extent legally permitted for any costs and expenses arising from any such assistance by Processor.
- 8.4. Processor shall maintain records sufficient to demonstrate its compliance with its obligations under this Addendum.
- 8.5. Processor shall make available for Controller's review at <https://www.d2l.com/security> (i) copies of Processor's certifications; and/or (ii) upon Controller's request no more than once per calendar year, reports demonstrating Processor's compliance with prevailing data security standards applicable to the Processing of Controller's Personal Data. Should Controller have serious cause to believe that Processor is in material breach of its obligations hereunder, Processor shall allow Controller or its authorised representative, upon reasonable notice and at a mutually agreeable date and time, to conduct an audit or inspection of Processor's data security infrastructure that is sufficient to demonstrate Processor's compliance with its obligations under this Addendum, provided that Controller shall provide reasonable prior notice of any such request for an audit and such inspection shall not be unreasonably disruptive to Processor's business. Controller shall be responsible for the costs of any such audits or inspections. However, if the requested audit scope is addressed in an ISO, SOC, or similar audit report performed by a qualified third-party auditor within twelve (12) months of Controller's request and Processor confirms there are no known material changes in the controls audited, Controller agrees to accept those findings in lieu of requesting an audit of the controls covered by the report.
- 8.6. In the event of a Personal Data Breach, Processor shall, without undue delay, inform Controller of the Personal Data Breach and take such steps as Processor in its sole discretion deems necessary and reasonable to remediate such violation (to the extent that remediation is within Processor's reasonable control).
- 8.7. In the event of a Personal Data Breach, Processor shall, taking into account the nature of the Processing and the information available to Processor, provide Controller with reasonable cooperation and assistance necessary for Controller to comply with its obligations under applicable Data Protection Laws with respect to notifying (i) the relevant Supervisory Authority and (ii) Data Subjects affected by such Personal Data Breach without undue delay.
- 8.8. The obligations described in Sections 8.5 and 8.6 shall not apply in the event that a Personal Data Breach results from the actions or omissions of Controller. Processor's obligation to report or respond to a Personal Data Breach under Sections 8.5 and 8.6 will not be construed as an acknowledgement by Processor of any fault or liability with respect to the Personal Data Breach.

Contract Terms. This Addendum is without prejudice to the rights and obligations of the parties under the Agreement, which shall continue to have full force and effect.

IN WITNESS WHEREOF, Controller and Processor have executed this Data Processing Addendum, as of the date of the last signature written below.

D2L Europe Ltd.

Controller

By: _____

Name
: _____

Title: _____

Date: _____

By: _____
(Authorized Signatory)

Name: _____

Title: _____

Date: _____

EXHIBIT A - Details of Processing

Nature and Purpose of Processing: as specified in the Agreement.

Duration of Processing: Term of the Agreement

Categories of Data Subjects: Controller's end-users/customers

Type of Personal Data: None, unless such data is provided by Controller; however, such data is not required for proper use of the Services.

Typically, the following data may be provided by the Controller:

- First and last name
- Title/position
- Employer/institution
- Contact information
- ID data
- Log-in information
- Learner records and related information (e.g. courses, programs, grades)
- Personal details
- Connection data
- Localisation data