



EXECUTIVE SUMMARY

Recommendation that the Broward College District Board of Trustees authorize the amendment to the piggyback agreement with Desire2Learn, Ltd. under the E&I Contract CNR01467 that allows the College to participate in a 90-day pilot test of a new AI tool that simplifies content creation for faculty and instructional designers at no cost. Fiscal Impact: None (cumulative \$2,074,883.15).

Presenter(s): Raj Mettai, Chief Information Officer

What is the purpose of this contract and why is it needed?

D2L has a new Artificial Intelligence (AI) tool that makes the content creation easier for faculty and instructional designers. The D2L Generative AI Services tool allows users to use generative artificial intelligence models to create text, images an/or media using familiar Brightspace workflows. D2L is in the pilot testing phase and would like our institution to take part. This is to allow the College to participate in the pilot testing of this AI tool for approximately 90 days. There is no cost to the College for accessing this product during the pilot testing period. The College is expected to actively use the product and provide feedback.

The College executed a five (5) year agreement for the Brightspace Core Learning Management System (LMS) provided by D2L Ltd in 2021. The College has been utilizing this cloud LMS since 2011 successfully. In addition, Brightspace was one of the key software solutions that allowed the College to transition to a fully remote environment during the initial stages of the COVID-19 pandemic with no downtime nor performance impact.

What procurement process or bid waiver was used and why?

Bid waiver exemption pursuant to FLDOE 6A-14.0734(2)(c) and College Procedure A6Hx2-6.34 was used: Purchases at the unit or contract prices established through competitive solicitations by any unit of government established by law or buying cooperatives. The E&I Cooperative Services Agreement CNR01467 was utilized.

Is this a budgeted expenditure from the budget established at the last June Board of Trustees meeting?

This is not applicable as there is no cost to the College.

What fund, cost center and line item(s) were used? This is not applicable as there is no cost to the College.

Has Broward College used this vendor before for these products or services? Yes.

Was the product or service acceptable in the past? Yes.

Was there a return on investment anticipated when entering this contract? Yes.

Was that return on investment not met, met, or exceeded and how? By participating in the Beta Period testing of this product, the College will be able to utilize this tool for 90-days at no cost.

Does this directly or indirectly feed one of the Social Enterprise tactics and how? This is not applicable.

Did the vendor amend Broward College's legal terms and conditions [to be answered by the Legal Office] if the College's standard contract was used and was this acceptable to the Legal Office?

The General Counsel's office has reviewed the agreement and any deviation to the College's standard terms has been deemed acceptable.

FISCAL IMPACT:

Description: \$0 (cumulative total \$2,074,883.15).

APPROVAL PATH: 12549 Desire2Learn (D2L) Learning Management System E&I Amendment

 **Workflow**

 Edit View

 Add Work Item

Stage	Reviewer	Description	Due Date	Status	
1	Alina Gonzalez	Review & Approve		 Completed	
2	Raj Mettai	CIO Review		 Completed	
3	Donald Astrab	Chief Operating Officer		 Completed	
4	Natalia Triana-Aristizabal	Contracts Coordinator		 Completed	
5	Orlando Aponte	Procurement Approval 		 Completed	
6	Rabia Azhar	CFO Review		 Completed	
6	Christine Sims	Budget Departmental Review		 Completed	
6	Legal Services Review Group	Review and Approval for Form and		 Completed	
7	Board Clerk	Agenda Preparation		 Pending	
8	District Board of Trustees	Meeting	12/10/24 11:00 AM	 Pending	
9	Electronic Signature(s)	Signatures obtained via DocuSign b		 Pending	
10	Natalia Triana-Aristizabal	Contracts Coordinator		 Pending	



D2L Generative AI Services Addendum

Name of Organization: The District Board of Trustees of Broward College, Florida ("Client")

This Addendum forms part of the existing applicable agreement (the "Agreement") between D2L and Client attached hereto as Exhibit B. It specifically addresses the provision and use of D2L's Generative AI Services, as defined herein, supplementing the terms of the Agreement.

By signing this Addendum, the Client acknowledges and agrees to adhere to terms and conditions attached hereto as Exhibit A. This Addendum is effective upon the date of the last signature below and will remain in effect as long as Client makes use of the Generative AI Services, or until otherwise terminated in accordance with the terms of the Agreement.

Any obligations which by their nature are intended to survive under this Addendum, shall survive termination or expiration of this Addendum or the Agreement. Except as set out in this Addendum, all other terms of the Agreement remain in full force and effect.

The contents of Exhibit A are subject to change at D2L's reasonable discretion, with updates to be published at <https://www.d2l.com/legal/d2l-generative-ai-services-terms/>. In the event that the change has a material adverse impact on the services set out in Exhibit A, the parties will meet in good faith to discuss.

AGREED AND ACCEPTED

(By signing, the undersigned agrees that the undersigned has authority to bind its company)

D2L

CLIENT

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

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

D2L Generative AI Services Terms

These terms, together with the existing executed Agreement between the Parties (the “Agreement”), governs terms and conditions between Client and D2L relating to the D2L Generative AI Services (as defined below).

Notwithstanding anything to the contrary in the Agreement between D2L and Client, the following terms apply to Client’s use of all functionalities that can make predictions, recommendations, decisions, generate text, images, or other media through the use of artificial intelligence models (“D2L Generative AI Services”). These terms shall prevail over any conflicting terms set out in the Agreement with respect to D2L Generative AI Services.

Use Limitations

- 01** If D2L has a reasonable basis to believe that Client’s use of D2L Generative AI Services, or Client data submitted to D2L Generative AI Services (“Client Input”), is inconsistent with the terms of this Agreement, D2L may limit, restrict, or terminate a Client’s access to or use of D2L Generative AI Services. Notwithstanding the foregoing, Client understands and agrees that D2L is under no obligation to monitor Client’s use of the D2L Generative AI Service or the Client Input.
- 02** D2L prohibits the use of D2L Generative AI Services for generating any text, images, or other media (“Output Content”) that inflicts harm on individuals or society. Client may not use the D2L Generative AI Service for the purposes listed below, or for any illegal or harmful activity, including but not limited to:
 - 01** Child sexual abuse material or any content that may exploit or harm children
 - 02** Generation of hateful, harassing, or violent content
 - 03** Generation of malware
 - 04** Activity or information that could lead to high risk of physical harm
 - 05** Activity or information that could lead to high risk of economic harm
 - 06** Fraudulent or deceptive activity
 - 07** Adult content, adult industries, and dating apps
 - 08** Activity or information that violates people’s privacy
 - 09** Engaging in the unauthorized practice of law, or offering tailored legal advice without a qualified person reviewing the information
 - 10** Offering tailored financial advice without a qualified person reviewing the information
 - 11** Telling someone that they have or do not have a certain health condition, or providing instructions on how to cure or treat a health condition
 - 12** High risk government decision-making
- 03** Client shall not represent that the Output Content was human generated when it was not.
- 04** Client shall use commercially reasonable efforts to remove and/or depersonalize any personal information included or incorporated into Client Input. Client shall not include or incorporate personal information of any child under the age of 13 years old in Client Input.

- 05** Client understands and acknowledges that generative artificial intelligences models may produce text, images, and other media that is inappropriate and/or inaccurate. Client agrees that it will use all reasonable means to validate all Output Content for accuracy and appropriateness.
- 06** Client warrants that it has sufficient rights in the Client Input to submit it to the D2L Generative AI Service and that such Client Input does not infringe, misappropriate or violate a third-party's intellectual property. To this end, to the extent permitted by applicable law, Client agrees to indemnify and hold D2L harmless against any third-party claim related to Client's use of the D2L Generative Service, including claims of infringement related to Client Input submitted to or Output Content generated from the D2L Generative AI Services.
- 07** Client may not use the D2L Generative AI Services to decompile, disassemble, modify the source code of, or reverse engineer the underlying generative artificial intelligence model(s), including exfiltrating the weights of such model(s). Client may not use the D2L Generative AI Services for web scraping, web harvesting, or similar methods designed to extract data from the D2L Generative AI Service.
- 08** Client acknowledges and agrees that Client Input (and its associated Output Content) may be processed and/or stored outside of Client's hosting jurisdiction country.

Intellectual Property

- 09** Client owns all Client Input. D2L will not use Client Input to train, retrain the underlying generative artificial intelligence models.
- 10** D2L does not own Output Content. To the extent D2L owns Output Content, D2L grants all its right, title, and interest in and to the Output Content to Client. Notwithstanding the foregoing, Client understands and acknowledges that Output Content from D2L Generative AI Services may not be unique. Therefore, Client's rights in Output Content (including ownership thereof) may not be enforceable against third parties.
- 11** Client understands and agrees that D2L and/or its third-party suppliers (who are under obligations of confidentiality with D2L) may temporarily store Client Input submitted to the D2L Generative AI Service, or its Output, for debugging and to monitor for and prevent abusive or harmful uses or outputs of the services.

Warranties

- 12** Client understands that the D2L Generative AI Service is provided "AS IS" WITHOUT WARRANTY OF ANY KIND. THE ENTIRE RISK, INCLUDING DIRECT AND INDIRECT DAMAGES, ARISING OUT OF THE USE OR PERFORMANCE OF THE PRODUCT REMAINS WITH CLIENT. IN NO EVENT SHALL D2L BE LIABLE FOR ANY DIRECT CONSEQUENTIAL, INCIDENTAL, DIRECT, INDIRECT, SPECIAL, PUNITIVE, OR OTHER DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE PRODUCT, EVEN IF D2L HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Termination

- 14** D2L may terminate Client's access to the D2L Generative AI Service at any time by providing Client 30 days written notice. If D2L terminates Client's access to the D2L Generative AI Service as set out in this section, D2L shall remit to Client a prorated (to the date of termination) reimbursement of any pre-paid fees for such D2L Generative AI Service.

Fees

- 15** *D2L Generative AI Services Offered at No Additional Cost*
Client shall have reasonable, but not excessive use, of any D2L Generative AI Services that may be made generally available to D2L clients at no additional charge (e.g., as part of a trial or pilot offering). D2L reserves the right, at its sole discretion, to determine what constitutes reasonable use and may limit Client's access to the Generative AI Services, if Client is excessive in its usage.

16 *Paid Offerings of the D2L Generative AI Services*

For paid features of the D2L Generative AI Services, Client shall be entitled to the number of AI Generations as set out in an Order. If Client exceeds its number of AI Generations during a contract year, D2L may limit Client's use of the D2L Generative AI Services.

Any obligations which by their nature are intended to survive under these terms, shall survive termination or expiration of these terms or the Agreement. Except as set out in these terms, all other terms of the Agreement remain in full force and effect.

Last modified: July 2, 2024

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Attachment B



Order Form

ORDER#	Q-29832	D2L Ltd.
ORDER DATE	May 6, 2021	210 West Pennsylvania Avenue, Suite 400A
OFFER EXPIRATION DATE	June 15, 2021	Towson, MD 21204

CLIENT

The District Board of Trustees of Broward College, Florida ("Client")
 111 E Las Olas Boulevard
 Fort Lauderdale, Florida 33301
 US

ORDER START DATE	August 1, 2021	ORDER END DATE	July 31, 2026
CURRENCY	U.S. Dollar		

Pricing Summary

ITEM	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
Pricing Period	August 1, 2021 - July 31, 2022	August 1, 2022 - July 31, 2023	August 1, 2023 - July 31, 2024	August 1, 2024 - July 31, 2025	August 1, 2025 - July 31, 2026
Fees Due	August 1, 2021	August 1, 2022	August 1, 2023	August 1, 2024	August 1, 2025
FTE	27446	27446	27446	27446	27446
Software	\$315,267.50	\$315,267.50	\$315,267.50	\$315,267.50	\$315,267.50
Prepaid Annual Services	\$46,900.00	\$53,375.00	\$53,375.00	\$53,375.00	\$53,375.00
Services	\$6,570	-	-	-	-
Support	\$46,315.13	\$46,315.13	\$46,315.13	\$46,315.13	\$46,315.13
Total	\$415,052.63	\$414,957.63	\$414,957.63	\$414,957.63	\$414,957.63

Pricing quoted is in U.S. Dollar and does not include applicable taxes. Pricing is valid until June 15, 2021.
 If Client exceeds its entitled use under this Order, overage fees shall apply.



Pricing Details

Services

Implementation Health Check

Homepage Widget Expansion Pack – 3 widgets

Software

Brightspace Core

Premium SIS/HRIS Integration - Annual Maintenance

Customization Annual Maintenance

Prepaid Services (Annual)

Support

Plus Administrator Support



SPECIAL TERMS AND CONDITIONS

The parties hereby agree to extend this Agreement through and until July 31, 2026.

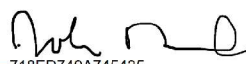
This Agreement is in accordance with the Master Agreement Number CNR01467 between E&I Cooperative Services and D2L Ltd., with an effective date of August 1, 2018. The Agreement includes Supplemental Addendum - Software, attached.

This Order shall include one (1) Implementation Health Check per Year at no cost.

Each Year of this Order includes a Prepaid Services (Annual) credit that must be used by the end of the Pricing Period (July 31) of each Year. Prepaid services can only be used for services available on the Pricing Schedule, Attachment A, of the CNR01467 E&I agreement. For clarity, if the Client does not use the Prepaid Services (Annual) credit by July 31 of any Year under this Order, the credit included in that Pricing Period shall be deemed consumed. Client must indicate to D2L that Services requested are to be billed against the Prepaid Service credit under this Order.

This Order Form between D2L and Client is governed by the terms of the existing executed agreement between the Parties ("Agreement"), and may be accepted as a binding agreement under the Agreement provided that (a) it is signed and returned, or (b) a valid Purchase Order ("PO") referencing D2L's Order # above is provided. Unless otherwise indicated on this Order Form, all other terms of the Agreement remain in full force and effect. No modifications to this Order Form or supplemental terms provided on a PO or similar document will have any binding effect.

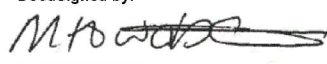
This Order Form is valid up to and inclusive of the Offer Expiration Date. D2L reserves the right to accept or reject any signed Order Form after the Expiration Date.

To accept this Order Form, sign here: DocuSigned by:

718ED749A745435...

Print Name: John Dunnuck SVP Finance & Operati

Date: 5/26/2021

D2L LTD.

By: DocuSigned by:

9E62A98EA040469...

Name: Melissa Howatson

Title: CFO

Date: May 27, 2021 | 4:01 PM EDT



D2L Order Terms and Conditions

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

1. **Services.** D2L will provide the Services set out in the Order: "**Services**" means the applications made available to Client and/or any other material, duty, function or task D2L provides, facilitates, makes available or performs under this Agreement. D2L shall maintain, and shall see that its vendors maintain commercially reasonable administrative, physical and technical safeguards for the security, privacy and integrity of Client Data (as defined in section 7 below), which may include relevant certifications such as ISO 27001 and SSAE 16 SOC 1 and SOC 2. Client acknowledges that Client's use of Services will involve transmission over the Internet and other networks, only part of which may be owned or controlled by D2L. D2L is not responsible for any Client Data which is delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across networks not owned or controlled by D2L.

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

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

4. **Confidentiality.** No party shall furnish **Confidential Information** (defined as technical, business, marketing, proprietary, trade secret, personal or other information in any form (e.g., oral, written, electronic)) to any unauthorized person or entity. No party shall be bound by confidentiality obligations if the Confidential Information (i) is required to be disclosed pursuant to court or regulatory order, provided that, where feasible, the owner of the Confidential Information is given a reasonable opportunity to limit the extent of disclosure; (ii) was already rightfully in its possession before the commencement of negotiations that led to this Agreement; (iii) is learned from a third party under no apparent duty of confidentiality and is not otherwise protected under law; or (iv) becomes part of the public domain other than as a result of a breach of this section and is not otherwise protected under law. If there is a valid Confidentiality Agreement ("**NDA**") in force between the parties, this section shall 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 or its licensors retain sole and exclusive ownership of and all intellectual property rights ("**IP**") in the Services, which include: tools, methodologies, questionnaires, responses, and proprietary research, data, requirements, specifications, and code generated in the course of performing the Services. The IP is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. D2L reserves its rights and interests in connection with the IP, except as expressly granted to Client pursuant to this Agreement. D2L does not transfer any title to or interest in its IP. D2L may render services to others and develop work products that are competitive with, or functionally comparable to, the Services. Client shall not make the Services available to anyone outside of Client without the prior written consent of D2L, except Client may share the Services with (i) its outside auditors and/or accountants, (ii) third parties who have signed appropriate confidentiality agreements with Client who are engaged by Client to review or implement suggestions or to further research the issues contained in the Services (provided such third parties are not competitors of D2L), and (iii) governmental or regulatory bodies as required by law. D2L shall not be restricted in its use of ideas, concepts, know-how, data and techniques acquired or learned in the course of performing the Services, provided that D2L shall not use or disclose any of Client's Confidential Information.



7. **Client Data and Branding.** Client owns and retains all right, title and interest to, or has appropriate possessory rights in any information, data, results, or other materials uploaded to or through the Service ("**Client Data**"). D2L makes no claim of title or ownership to or in Client Data. Client permits D2L to use Client Data to the extent required to provide and perform the Services under this Agreement. D2L will comply with Client's branding guidelines where Client engages D2L to create a Client-branded offering of Services, and Client grants D2L non-exclusive, worldwide permission to use its logo and branding for the sole purpose of creating, distributing and maintaining for Client a Client-branded version of Services. D2L will not use Client's logo and branding for any other purpose 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.** Except as permitted by this Agreement, Client shall not: (i) attempt to decompile, disassemble, modify the source code of, or reverse engineer the IP; (ii) use, reproduce, transmit, modify, adapt or translate the IP; (iii) rent, lease, license, transfer, assign, sell or otherwise provide access to the IP on a temporary or permanent basis; (iv) use or cause or allow a third party to use the Services in any way to develop competing products or services; (v) alter, remove or cover proprietary notices in or on the IP. Any default in Client's obligations under this section may cause irreparable harm to D2L. If Client takes or threatens any action that may infringe on D2L's IP rights, D2L may seek injunctive or other equitable relief in addition to any damages to which D2L may be entitled.

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

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

11. **Downtime Credit.** If after investigation and classification, D2L determines that Downtime during a calendar month was such that availability fell below the level stated in this section, Client 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 third party claims arising out of Client's use of the Services in breach of this Agreement, Client will defend D2L against that claim at Client's expense and pay all costs, expenses, damages, and attorney's fees, provided that D2L: (i) promptly notifies Client in writing of any claim; (ii) allows Client to control the defense or settlement of the claim; and (iii) takes no action that, in Client's reasonable judgment, impairs Client's defense of the claim.

13. Liability Limitations. Except for (i) a party's indemnification obligations in section 12 or (ii) Disruptions as defined herein, a party's maximum aggregate liability for damages, costs, losses or expenses provided pursuant to this Agreement, in contract, tort or otherwise is limited to six (6) months of fees paid under the relevant Order under which the claim arose. Limitations on D2L's liability as stated shall in this section shall extend to its third party licensors. The liability limitation is commensurate with the consideration paid under this Agreement. Neither party is liable for indirect, consequential or incidental damages, including loss of revenue, profits or data, even if the other party had advised of the possibility of such damages. Client is responsible for the Client Data and the content of its and its user's transmissions, including Client Data, over D2L's network. Client agrees that it and its users will not cause a "**Disruption**" defined as use of the Service for illegal purposes, to infringe the rights of a third party, or to interfere with or disrupt the Services, including distribution of unsolicited communications or chain letters, defamatory, libelous or offending content, propagation of computer worms and viruses, and unauthorized use of the network to enter, or attempt to enter, another system. If a Disruption occurs, D2L may, in its reasonable discretion, immediately remove the Disruption, disable the mode of communication, suspend Client's and/or its user's access to the Services or terminate this Agreement, and Client is liable to D2L for claims arising from Client Data or any Disruption.

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

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

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

17. Term and Termination. This Agreement shall continue until all Orders expire or are terminated as set out in this section ("**Term**") or may be terminated as specified elsewhere in this Agreement. This Agreement may be terminated by either party if the other party materially or repeatedly (which in the aggregate is material) defaults in performing its duties or obligations under this Agreement for a period of 30 days after written notice is given to the defaulting party, unless the default is cured within the 30-day period. On termination, all rights and obligations of the parties cease except as set out in this section. Client shall return all copies of documentation and other materials to D2L within 30 days of termination. D2L will delete or destroy Client Data residing on D2L networks upon termination. Prior to termination, Client may use



certain export tools within the Services to allow Client to export course content materials in a standard packaged format as well as to export grades and other specific data elements in the Services. If Client requires additional support, D2L shall provide such data export services for a fee on a time and materials basis under an Order. The Confidentiality, Intellectual Property, Restrictions, Indemnification (to the extent the claim arose before the relevant Order was terminated), Liability Limitations, Payment and the General sections shall survive termination of this Agreement, regardless of the reason for the termination.

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

19. **General.** All notices shall be in writing and delivered (a) by hand, (b) by registered mail, postage prepaid, return receipt requested, (c) reputable overnight delivery service, or (d) by email, provided that the sender retains proof of successful transmission. All notices shall be deemed effective upon receipt. Notices shall be sent to the names, addresses and numbers set out in the Order. All notices to D2L shall include a copy to Legal Department, D2L Corporation, 151 Charles Street W., Suite 400, Kitchener Ontario N2G 1H6, Canada, or, if sent by email, to Legal@D2L.com. If a party cannot perform any of its obligations under this Agreement because of natural disaster, actions of governmental bodies, strikes, lockouts, riots, pandemics or public health emergencies, acts of war, communication line failures, power failures, hardware failure, hacker attacks, existence or repair of software bug/virus/worm, fires or similar events or circumstances outside that party's control, the party who cannot perform shall promptly notify the other in writing, and shall do everything reasonably possible to resume performance. Upon receipt of notice, and except for payment-related obligations, all obligations under this Agreement are immediately suspended for as long as the circumstances exist. Client's delays may affect D2L's ability to perform Service under an Order. If D2L is unable to perform any material portion of the Services due to Client's unreasonable and persistent delays, D2L shall notify Client and, if Client is unable or unwilling to remedy the delays within 30 days from notification: i) all fees and related charges under the Order become due and payable and D2L may immediately invoice for such fees and, ii) D2L's obligation to perform such delayed Services shall terminate. This Agreement is governed by the laws of Maryland, 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. Client agrees to cooperate with D2L to serve as a reference account upon D2L's request. These Terms and Conditions shall supersede the provisions of an Order, unless the Order refers to the provision of the Terms and Conditions it supersedes. This Agreement contains the entire understanding between the parties with respect to its subject matter. All prior agreements, representations, inducements and negotiations, and any and all existing contracts previously executed between the parties with respect to this subject matter are superseded hereby.



BROWARD COLLEGE SUPPLEMENTAL ADDENDUM - SOFTWARE



1. Incorporation by Reference. The District Board of Trustees of Broward College, Florida ("BC") and the undersigned ("Vendor") hereby incorporate this Supplemental Addendum–Software ("Addendum") into the agreement between BC and Vendor ("Agreement"). If this Addendum conflicts with the Agreement terms, this Addendum shall control.

2. Payment. Vendor shall submit bills for compensation for goods, services, and/or expenses in detail sufficient for a pre- and post-audit of charges. Invoices may be submitted via email, facsimile or U.S. mail. The time at which payment will be due from BC will be approximately thirty (30) days from receipt of an undisputed invoice, acceptance of deliverables, and upon satisfaction of the BC conditions that are detailed herein. In lieu of all provisions in the Agreement pertaining to penalties for late payment, if BC does not issue payment within approximately thirty days of receipt of a proper invoice, BC shall pay Vendor an interest penalty from the date the invoice was due until it was paid at the rate established pursuant to Section 55.03(1), Florida Statutes, if the interest exceeds one dollar.

3. Taxes. BC is immune and/or exempt from the payment of taxes and shall not be responsible for the payment thereof. BC shall provide an appropriate exemption certificate.

4. Travel Expenses. If BC is reimbursing travel expenses, Section 112.061, Florida Statutes, applies to those reimbursements. In order to be reimbursed, travel expenses must be expressly stated in the Agreement or otherwise approved by an authorized BC official in writing in advance.

5. No Automatic Renewals or Extensions. Provisions resulting in the automatic renewal or extension of the term of the Agreement shall be of no force and effect and are hereby deleted. To renew or extend the term of the Agreement, the parties shall enter into an amendment.

6. Compliance with Laws. Vendor represents, warrants and covenants as of the date of the Agreement and throughout the term of the Agreement that it complies with all applicable legal requirements, including, but not limited to, the Americans with Disabilities Act and related regulations.

7. Vendor Intellectual Property Indemnification. Vendor shall indemnify, defend, and hold harmless BC and its officers, directors, board of trustees, agents, assigns, and employees from liabilities, damages, losses, and costs, including but not limited to reasonable attorneys' fees, for any claim or lawsuit brought alleging infringement of any intellectual property right arising out of the rights granted by Vendor to BC under the Agreement. This section shall not be subject to any limitations of liability provisions in the Agreement, but shall be subject to any conditions therein (e.g., the indemnity shall not apply to the extent that the infringement was caused Vendor's compliance with BC's written specifications, or by BC's unauthorized modification of the services). This paragraph shall survive the expiration or early termination of the Agreement.

8. Announcements and Press Statements. No party shall, except with prior written consent of the other party on each occasion, make any press or media announcements concerning the Agreement or use the name, logos, or trademarks of any other party, or any version, abbreviation, or representation of them, in any advertising or other form of publicity or fundraising without the written permission of the party whose name, logo, or trademark is sought for use. In the case of BC, permission must be granted by its Office of Public Affairs and Marketing or that position's designee, and in the case of the other party, permission must be granted by its General Counsel or that position's designee.

9. Relationship of the Parties. Each of the parties is an independent contractor and nothing in the Agreement shall designate any of the employees or agents of one party as employees or agents of the other.

10. Use of BC Information Not Allowed. Pursuant to the Agreement, Vendor may access, maintain, collect, record, organize, structure, store, retrieve, adapt, alter, use, process or otherwise handle information owned or held by BC and may create information from or with such existing information owned or held by BC (collectively, the "BC Data"). Vendor shall not have the right to use BC Data (whatever the medium) except to perform its obligations under the Agreement and improve the services. Without limitation of the foregoing, Vendor shall not give any third party access to BC Data without BC's written permission except as expressly authorized in the Agreement or this Addendum.

11. BC Rights in Information. BC retains all rights to, title to, and interest in BC Data, and Vendor's use and possession thereof is solely on BC's behalf. BC



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may access and copy any BC Data in Vendor's possession at any time, and Vendor shall facilitate such access and copying promptly after BC's request.

12. Annual Appropriation Contingency. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. In the event funding is not approved for any subsequent fiscal year, this Agreement shall terminate upon expenditure of the current funding, notwithstanding other provisions to the contrary. BC shall notify Vendor in writing after the adoption of the final budget for each subsequent fiscal year if funding is not approved.

13. State of Florida Public Entity Contracting Prohibitions. Vendor represents, warrants and covenants that it is not currently and, throughout the term of this Agreement shall not be, ineligible for the award or continuation of this Agreement under Sections 287.133, 287.134 and 287.135, Florida Statutes. Vendor understands and accepts that this Agreement may be void, voidable or subject to immediate termination by BC if the representation, warranty and covenant set forth above is violated. BC, in the event of such termination, shall not incur any liability to Vendor for any work or materials furnished.

14. BC's Sovereign Immunity. Nothing in the Agreement shall act, or be construed, to increase or alter BC's liability for tort claims beyond the waiver of immunity limits set forth in Section 768.28, Florida Statutes

15. Governing Law and Other Legal Matters. The laws of the State of Florida shall govern all aspects of the Agreement without regard to any conflict-of-law principles. The exclusive venue of any legal actions arising out of the Agreement shall be Broward County, Florida. BC is entitled to the benefits of sovereign immunity, including but not limited to immunity from suit in federal court. Any provisions in the Agreement requiring arbitration and/or mediation of matters arising out of or relating to the Agreement or altering the time to bring lawsuits or to make claims under the

Agreement shall be of no force and effect and are hereby deleted. Any provisions resulting in the Agreement's causing a default under another agreement or otherwise triggering rights and responsibilities under another agreement between the parties shall be of no force and effect and are hereby deleted.

16. Confidentiality Obligations. Vendor shall comply with any and all applicable state and federal laws and BC policies and procedures governing the use and/or safekeeping of BC Data, including but not limited to the Family Educational Rights and Privacy Act, laws governing personally identifiable information (collectively, "Privacy Laws"). If the Agreement involves Vendor's access to education records, Vendor is hereby designated a school official and will comply with all legal requirements applicable thereto.

In the event Vendor is required by subpoena, law, or other judicial or administrative process to disclose BC Confidential Information, Vendor shall (i) provide BC with prompt notice thereof; (ii) consult with BC on taking steps to resist or narrow such disclosure; (iii) furnish only that portion of BC Confidential Information that is responsive to the request; (iv) comply with the requirements of all Privacy Laws; and (v) reasonably cooperate with BC in any attempt that BC may make to obtain an order or other reliable assurance that confidential treatment shall be accorded.

Upon termination of the Agreement or upon request by BC, Vendor shall promptly return or make available all BC Confidential Information. Notwithstanding any limitation of liability provision in the Agreement, to the extent that Vendor has breached its obligations under this section 17 and such breach results in BC being liable for government fines and penalties related to such breach by Vendor, Vendor's liability under this section to indemnify BC for any such government fines and penalties shall be limited to US\$ 1,000,000.00. Vendor agrees to include all such terms and conditions in this section in any subcontractor or agency contracts providing services on behalf of Vendor, provided this requirement is not intended to authorize any subcontracting or agency unless permitted hereby; the foregoing does not apply to suppliers used by Vendor in the ordinary course of business for hosting and other ancillary services.



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17. Vendor's Confidential Information / Public Records Law. BC is subject to the public records laws of Florida, including records retention requirements, and any provisions in the Agreement pertaining to confidentiality obligations on the part of BC are hereby deleted and shall be of no force and effect. Vendor shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should Vendor assert any exemptions to the requirements of Chapter 119 and related statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon Vendor and Vendor shall bear all costs and fees related to the same. Vendor shall identify at the time of disclosure information is proprietary. Records must be marked "Proprietary," or "Confidential" or other similar designation in order for BC to not disclose records without the written authorization of Vendor. Information transmitted orally or visually and identified at the time as being proprietary shall be confidential information covered under this Section if it is identified at the time of disclosure by the Vendor as being confidential or proprietary and thereafter reduced to writing by the Vendor, confirming in the writing that the information is confidential or proprietary, and such writing is transmitted to BC within ten (10) days after the oral or visual disclosure of the information; notwithstanding such identification requirement, BC acknowledges and agrees that software, code, roadmaps, and trade secrets in Vendor's services offerings are confidential and proprietary to Vendor and/or its licensors.

If Vendor meets the definition of "contractor" under Section 119.0701, Florida Statutes, in addition to other Agreement requirements provided by law, Vendor must comply with public records laws, and shall:

- (a) Keep and maintain public records required by BC to perform the service.
- (b) Upon request from the BC, provide the BC with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or

confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if Vendor does not transfer the records to the BC.

- (d) Upon completion of the Agreement, transfer or make available, at no cost, to the BC all public records in possession of Vendor or keep and maintain public records required by the BC to perform the service. If Vendor transfers all public records to the BC upon completion of the Agreement, Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Vendor keeps and maintains public records upon completion of the Agreement, Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the BC, upon request from the BC's custodian of public records, in a format that is compatible with the information technology systems of the BC
- (e) IF VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT BC AT (954) 201-7639, LEGALSERVICES@BROWARD.EDU, OR 111 EAST LAS OLAS BOULEVARD, #523, FORT LAUDERDALE, FL 33301.

IN ADDITION, VENDOR ACKNOWLEDGES THAT BC CANNOT AND WILL NOT PROVIDE LEGAL ADVICE OR BUSINESS ADVICE TO VENDOR WITH RESPECT TO ITS OBLIGATIONS UNDER THIS SECTION. VENDOR FURTHER ACKNOWLEDGES THAT IT WILL NOT RELY ON BC OR ITS COUNSEL TO PROVIDE SUCH BUSINESS OR LEGAL ADVICE, AND THAT VENDOR IS HEREBY ADVISED TO SEEK BUSINESS/LEGAL ADVICE WITH REGARD TO PUBLIC RECORDS MATTERS ADDRESSED BY THIS AGREEMENT. VENDOR ACKNOWLEDGES THAT ITS FAILURE TO COMPLY WITH FLORIDA LAW AND THIS AGREEMENT WITH RESPECT TO PUBLIC RECORDS SHALL CONSTITUTE A MATERIAL BREACH OF THIS AGREEMENT AND GROUNDS FOR TERMINATION.

18. Miscellaneous. Any terms and/or conditions in



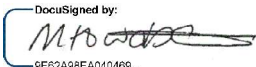
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the Agreement on the following subject matters are hereby deleted in their entirety and shall be of no force and effect: (i) grants of exclusivity by BC to Vendor; (ii) restrictions on the hiring of Vendor's employees; and (iii) attorneys' or collection-fees provisions.

By signing below, Vendor's authorized representative agrees to incorporate this Addendum into the Agreement, and hereby executes this Addendum as of the date set forth below.

VENDOR: D2L LTD.

By:  _____
DocuSigned by:
SE62A98EA040469...

Name: Melissa Howatson

Title: CFO

Date: May 27, 2021 | 4:01 PM EDT



Statement of Work – Implementation Health Check

Solution Description

D2L will create and present a report containing recommendations for improving Client's D2L implementation. The recommendations will focus on the following themes:

- Key areas of concern with the current implementation of the D2L products and tools
- Key areas of improvement (with respect to business process and workflow efficiencies)
- Key areas of potential expansion of use of the D2L products and tools

Deliverables

D2L will complete the following Deliverables during the system health check project:

- Two requirement gathering calls, which will focus on the key areas of concern and improvement identified by the Client. Topics may include, but are not limited to:
 - Organizational Pain Points
 - Discovery of client main issues for resolution
 - Organization Structure Review
 - User flow accessing course/organization resources
 - Maintenance of structure
 - Visualization of organizational structure
 - Integration(s)
 - Process flow of integration(s)
 - Managing course mappings
 - Semester start-up process
 - Content load (re-offering)
 - Batch integration process
 - Tool usage
 - Are the current tools installed being used effectively?
 - Promote new tools that can be leveraged
 - Current business process
 - Investigation of specific pain points
 - Common functionality requests from users
 - Course structure review
 - Content design/delivery layout
 - Use of sections/groups
 - Use of course tools
- Investigation and analysis by a D2L Implementation Consultant, using input from subject matter experts from the appropriate departments within the D2L organization, as needed.
- Technical and Usage Review call intended to go over applicable reports as well as technical details of the client's implementation.
- Recommendations Review and Discussion call to go over the recommendations and next steps being made by the consultant.
- Generation and delivery of a recommendations document based on the information gathered during the system health check project.

Acceptance Criteria

Acceptance will be deemed complete when:

- Two requirement gathering calls have been held.



- Investigation and analysis has been conducted by a D2L Implementation Consultant and documented in a Recommendation Report delivered to the Client.
- Walkthrough of Recommendations Report to ensure that Client understands the recommendations.

Assumptions

Client acknowledges that its participation and cooperation are critical for effective completion of the project set out in this Statement of Work (SOW). The following assumptions are based on information provided by Client to D2L and have been used to develop the initial estimate for D2L's time and fees under this SOW. Deviations from these assumptions may lead to commensurate changes in the time and fees necessary to meet Client's requirements.

- Implementation of recommendations is not included in the scope of this project
- Total project hours¹ from D2L will not exceed 24 hours
- Delays in any deliverables or dependencies such as approvals or acceptance may result in the need to reschedule this project (and may also have a corresponding budget impact)
- Deliverables not explicitly described as in scope of this SOW are explicitly out of scope of this SOW
- The products that comprise the Brightspace Core package will be delivered as selected by Client as part of the same implementation project; if Client decides not to have D2L implement one or more of the items included in the Brightspace Core package during the initial implementation of the Service, fees may apply if Client elects to have D2L implement them thereafter
- Notwithstanding anything to the contrary in Client's Agreement with D2L, Client understands and agrees that portions of any customization (if applicable) or Services may be hosted, and/or may process and store data, on Amazon Web Services or such other third party hosting services as D2L may use from time to time
- Travel and related expenses are not included in scope of this SOW
- The deliverables will be produced remotely and during regular business hours unless otherwise agreed
- Deliverables will substantially conform to their documentation. Acceptance of each deliverables will be deemed (i) if Client does not issue a written notice of rejection within five (5) business days from D2L's delivery of such deliverable; or (ii) if Client uses the deliverable in production, whichever is earlier
- Client understands and agrees that D2L's ability to provide the Services and deliverables under this SOW is dependent upon the active participation of, and D2L's timely access to, the appropriate Client resources as may be required by D2L and assigned by Client during the performance of this engagement. Delays not caused by D2L that result in the need to reschedule other project deliverables and resources may result in a change request that could impact the project budget and/or schedule. If Client unreasonably and persistently delays D2L in its carrying out of the Services and/or delays the paying of invoices and does not cure such delay within 30 days from receipt of notice from D2L, all fees and related charges for the Services under this SOW will immediately become due and payable to D2L, even if such Services have not been completed by D2L, and D2L's obligations under this SOW shall terminate
- Any proposed or requested changes to requirements documents represent a project change that will be documented using a change request form that summarizes the change and project impact (in terms of scope, budget, and schedule)
- If Client provides, selects, recommends or identifies materials to D2L for inclusion in the deliverables, Client (i) grants to D2L all rights and licenses that are necessary for D2L to fulfill its obligations under this SOW; and (ii) assumes all responsibility for such materials, and holds D2L harmless if the use of such materials in the deliverables infringe a third party's intellectual property rights
- Client has the appropriate Client and user technical requirements based on the **Brightspace Platform Requirements**
- Except for Client Information that may be included in the deliverables, D2L shall retain sole and exclusive ownership of and all intellectual property rights in the deliverables
- Client will provide to D2L at least five (5) days written notice prior to cancelling any scheduled consulting time (including all onsite or remote technical assistance and/or training); if Client fails to notify D2L within such five (5)-day period, Client will forfeit the scheduled hours and D2L may, in its sole discretion, charge the Client the full amount for the scheduled consulting time.

¹ Total Project Hours includes all Client-facing workshops, research, and documentation time



- Client acknowledges that the hours and related charges for this SOW represent a non-binding estimate, and Client agrees to pay for any hours actually performed by D2L if such hours are in excess of the estimate. Unless otherwise agreed in writing between the parties, Services will be invoiced in advance, and payments shall follow the requirements of the payment section of the Agreement. Upon D2L's commencement of work under this SOW, this SOW will be deemed to be accepted in full by Client.
- If D2L believes that additional hours will be required under this SOW, D2L will notify Client as soon as reasonably practicable, 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.
- This SOW is subject to Client's signed Agreement and Order with D2L.



Statement of Work – Homepage Widgets Expansion Pack (3 Widgets)

Purpose of this Document

This Statement of Work (“SOW”) describes the scope, deliverables, assumptions, acceptance criteria, work effort limitations, and other particulars associated with the Homepage Widgets Expansion Pack.

Solution Description

The Homepage Widgets Expansion Pack includes the configuration and implementation of three (3) standard homepage widgets developed by D2L’s Learning and Creative Services team. These widgets are standard solutions, but are not part of the Brightspace core product suite. Three (3) widgets can be selected from the menu of standard widgets, provided in Appendix A.

Deliverables

D2L Responsibilities

D2L will provide the following:

- Configuration of three (3) standard homepage widgets
- Deployment of selected widgets to one test course, specified by the Client
- Administrator documentation that describes configuration and implementation options

Client Responsibilities

Client will provide the following:

- Completed configuration documentation
- Any required content in digital format at the start of the project (ex. high resolution images, brand guidelines)
- Consolidated feedback on configuration options

Assumptions

- Available configuration options are described in the documentation for each widget, which is supplied by D2L. Any additional features or functionality are customizations and not in scope for this project
- Creation of custom graphics and design of homepage layouts is out of scope
- This project allows for one round of Client review and approval of deployed widgets
- Widget implementation and documentation are available in English only

Warranty

Widgets created by the D2L Learning and Creative Services team and accepted by the Client are warranted against stoppages and failures for 90 days after final project sign off. The warranty is conditional as long as the widget, assets, and code have not been modified, revised, or changed in any manner. If a warranty issue is identified, D2L will determine the issue and how to troubleshoot a solution based on these included options in this warranty package:

- Product changes resulting in errors in Standard Widgets
- Valence (API) issues
- Changes to the D2L configuration variables tool that affects the solution built by D2L



Note: D2L Support will engage with the Client for any additional support needed.

Acceptance Criteria

Final Acceptance will be deemed complete when:

- Three (3) standard homepage widgets have been deployed and configured according to the options selected in the configuration documentation
- Administrator documentation has been delivered

Assumptions

Client acknowledges that its participation and cooperation are critical for effective completion of the project set out in this Statement of Work (SOW). The following assumptions are based on information provided by Client to D2L and have been used to develop the initial estimate for D2L's time and fees under this SOW. Deviations from these assumptions may lead to commensurate changes in the time and fees necessary to meet Client's requirements.

- Deliverables not explicitly described as in scope of this engagement are explicitly out of scope of this engagement
- Notwithstanding anything to the contrary in Client's Agreement with D2L, Client understands and agrees that portions of any customization (if applicable) or Services may be hosted, and/or may process and store data, on Amazon Web Services or such other third party hosting services as D2L may use from time to time
- Travel and related expenses are not included in scope of this SOW
- The deliverables will be produced remotely and during regular business hours unless otherwise agreed
- Deliverables will substantially conform to their documentation. Acceptance of each deliverables will be deemed (i) if Client does not issue a written notice of rejection within five (5) business days from D2L's delivery of such deliverable; or (ii) if Client uses the deliverable in production, whichever is earlier
- Client understands and agrees that D2L's ability to provide the Services and deliverables under this SOW is dependent upon the active participation of, and D2L's timely access to, the appropriate Client resources as may be required by D2L and assigned by Client during the performance of this engagement. Delays not caused by D2L that result in the need to reschedule other project deliverables and resources may result in a change request that could impact the project budget and/or schedule. If Client unreasonably and persistently delays D2L in its carrying out of the Services and/or delays the paying of invoices and does not cure such delay within 30 days from receipt of notice from D2L, all fees and related charges for the Services under this SOW will immediately become due and payable to D2L, even if such Services have not been completed by D2L, and D2L's obligations under this SOW shall terminate
- Any proposed or requested changes to requirements documents represent a project change that will be documented using a change request form that summarizes the change and project impact (in terms of scope, budget, and schedule)
- If Client provides, selects, recommends or identifies materials to D2L for inclusion in the deliverables, Client (i) grants to D2L all rights and licenses that are necessary for D2L to fulfill its obligations under this SOW; and (ii) assumes all responsibility for such materials, and holds D2L harmless if the use of such materials in the deliverables infringe a third party's intellectual property rights
- Client has the appropriate Client and user technical requirements based on the **Brightspace Platform Requirements**
- Except for Client Information that may be included in the deliverables, D2L shall retain sole and exclusive ownership of and all intellectual property rights in the deliverables
- Client will provide to D2L at least five (5) business days written notice prior to cancelling any scheduled consulting time (including all onsite or remote technical assistance and/or training); if Client fails to notify D2L within such five (5)-



business day period, Client will forfeit the scheduled hours and D2L may, in its sole discretion, charge the Client the full amount for the scheduled consulting time, as well as any rescheduled time, and travel expenses that are not subject to refund

- Client acknowledges that the hours and related charges for this SOW represent a non-binding estimate, and Client agrees to pay for any hours actually performed by D2L if such hours are in excess of the estimate. Unless otherwise agreed in writing between the parties, Services will be invoiced in advance, and payments shall follow the requirements of the payment section of the Agreement
- Upon D2L's commencement of work under this SOW, this SOW will be deemed to be accepted in full by Client
- If D2L believes that additional hours will be required under this SOW, D2L will notify Client as soon as reasonably practicable, 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
- This SOW is subject to Client's signed Agreement and Order with D2L



APPENDIX A - AVAILABLE WIDGETS

Client may select any three (3) of the following homepage widgets:

Welcome Window

The Welcome Window widget allows for a pop-up message to be displayed for all users.

The message text can be populated and managed using Brightspace content authoring tools, and can be used on an org homepage or a course homepage. The welcome message can also be triggered through the use of a link or button on a course homepage. Administrators or instructors can modify the content of the welcome message at any time.

Slim Announcements

Slim Announcements allows increased control over the presentation of announcements that have been created using the system Announcements tool. Slim Announcements presents the first 2-3 sentences of an Announcement, along with a small thumbnail image. Users can click the announcement header or 'Read More' link to view an announcement in the full Brightspace Announcements tool. Slim Announcements is added to a course homepage as a custom widget.

Visual Table of Contents

This widget shows interactive 'flip tile' visual representations of modules in a course. Each course module's title and image will be displayed on the front of a tile, along with the number of completed topics in a module and a visual indication of the learner's progress through that module. Learners can click on an *Information* button on each tile, which will appear to flip over and reveal a description of the module. The Visual Table of Contents is added to a course homepage as a custom widget.

Photo Banner

The Photo Banner widget allows instructors to easily upload images into a rotating carousel directly from their device (phone, tablet, laptop). Photos are added through an in-line authoring tool, including upload, zoom and cropping functionality, as well as background border and color changes. The Photo Banner is added to a course homepage as a custom widget.

Awards Widget

The Awards widget allows instructors to easily update their homepage to let each learner observe their progress towards earning various rewards setup through the Awards tool in the course. Both earned and available Award names are displayed within the widget as well as the image and the description for the Award. The Awards widget is added to a course homepage as a custom widget.

Profile Card

The Profile Card widget allows instructors, facilitators, tutors, etc. to introduce themselves to learners easily through an in-line authoring tool. Instructors can upload a photo, add a brief bio, and, if desired, provide links to Facebook and Twitter profiles. This is an alternative to creating a custom widget and manually entering this information, and is intended for instructors who may not have the permissions to modify course homepages otherwise. This is added to a course homepage as a custom widget.

Content Navigator Widget



The Content Navigator widget provides a view of available course content, including links to modules and topics as they appear in the Table of Contents view. Icons are used to indicate types of content (topic, module, quiz, discussion, etc.). The widget keeps track of learner progress with a visual progress meter. The widget will allow learners to select a 'last visited' link to return to where they left off in the content. The widget is populated automatically with modules and topics as they are added to Content.

All standard widgets support the following languages: English, Brazilian Portuguese, LATAM Spanish, Canadian French
Slim Announcements widget supports the following additional languages: Japanese, Turkish, Arabic, Dutch