API Developer License Agreement

1. Introduction

1.1 The D2L Application Programming Interfaces (referred to in this license agreemnt as the "**APIs**" and specifically including the keys, D2L API documentation, use of associated D2L APIs, tools, elements, software, development kits, libraries, metadata, codes, technology, and other materials made available by D2L) are licensed to you subject to the terms of this license agreement ("**License Agreement**"). This License Agreement forms a legally binding contract between you and D2L in relation to your development of applications which make use of the APIs.

1.2 "**D2L**" means D2L Corporation, an Ontario corporation with a principal place of business at 137 Glasgow Street, Suite 560, Kitchener, Ontario, N2G 4X8, and where applicable, its subsidiaries, divisions, or affiliates. We may refer to "D2L" as "**we**", "**our**", or "**us**" in this agreement.

2. Accepting D2L's License Agreement

2.1 In order to make use of the APIs and/or to develop applications using the APIs, you must agree to this License Agreement. You may not make use of the APIs and/or develop applications using the APIs, if you do not accept this License Agreement in its entirety.

2.2 By accepting this License Agreement, either by accessing or using the APIs, or authorizing or permitting any individual to access or use the APIs, you agree to be bound by this License Agreement.

2.3 You may not use or access the APIs and may not accept this License Agreement if you are a person barred from making use of the APIs under the laws of Canada, the United States, or the country in which you reside or plan to make use of the APIs.

2.4 By using or accessing D2L's APIs you warrant that:

- You have the power and authority to enter into and perform your obligations under this License Agreement;
- If you are agreeing to be bound by this License Agreement on behalf of your employer or other entity, you have full legal authority to bind your employer or such entity to this License Agreement; and
- That this License Agreement is not limited or restricted by, and is not in conflict with, any commercial arrangement, obligation, contract, agreement, or other instrument to which you or your employer or such other entity are bound or subject to.

2.5 If you do not have the requisite authority, you may not accept this License Agreement and you may not make use of or access the APIs.

2.6 If you are entering into this agreement on behalf of your employer or other entity, all references to you shall be deemed to be references to such employer or other entity, as applicable.

3. Customers' and Partners' API Licenses

3.1 If you are a current D2L customer with a valid contract ("**Customer**"), subject to the terms of this License Agreement, D2L grants you a limited, worldwide, royalty-free, non-assignable and non-exclusive license to develop applications which make use of the APIs for your organization's internal purposes. The license granted to you pursuant to this License Agreement permits you to develop "non-commercial" applications, meaning that you may not sell, rent, license, or otherwise provide access to such applications on a paid basis.

3.2 If you are a D2L partner who is a member of D2L's Partner Network Program ("**Partner**") with a valid agreement for such membership (a "**Master Partner Agreement**"), then subject to the terms of this License Agreement, D2L grants you a limited, worldwide, royalty-free, non-assignable and non-exclusive license to develop applications which make use of the APIs. The license granted to you pursuant to this License Agreement permits you to develop commercial applications utilizing the APIs, including integrations with D2L products, which you may sell, rent, license, or otherwise provide access to on a paid basis to your customers.

3.3 D2L owns all legal rights, title, and interests in and to the APIs, including any intellectual property rights that subsist in the APIs. Intellectual property rights means any and all rights under patent law, copyright law, trade secret law, trademark law, and any and all other proprietary rights. D2L reserves all rights not expressly granted to you.

3.4 At D2L's discretion and without prior notice to you, we may modify the form and nature of the APIs. Future versions of the APIs may be incompatible with applications developed on previous versions of the APIs. At D2L's discretion and without prior notice to you, we may permanently or temporarily stop providing the APIs, or any of APIs' features.

3.5 Subject to the limited licenses expressly provided herein, this License Agreement does not grant you a license to or a right to use any of D2L's trade names, trademarks, service marks, logos, domain names, business name, intellectual property rights, D2L technology, D2L data, or other distinctive brand features without our prior written consent.

3.6 Without D2L's prior written consent, you will not remove, obscure, or alter any proprietary rights notices (including copyright and trademark notices) that may be affixed to or contained within the APIs.

4. Use of the APIs by You

4.1 You may write applications which make use of the APIs only for purposes that are permitted by (a) this License Agreement and (b) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions (including any laws regarding the export of data or software to and from Canada or other relevant countries).

4.2 If you develop applications which make use of the APIs and for which users provide you with user names, passwords, or other login information or personal information, you will protect the privacy and legal rights of those users including making the users aware that the information will be available to your application and providing legally adequate privacy notice, acquiring any necessary consents, and protection for those users. If your application stores, uses, processes, or transfers personal or sensitive information provided by users, it must do so securely in accordance with applicable data and privacy laws. If the user provides your application with D2L account information, your application may only use that information to access the user's D2L account when, and for the limited purposes for which, the user has given you permission to do so, and only as permitted by law.

4.3 You will not engage in any activity, including the development or distribution of an application that interferes with, disrupts, damages, or accesses in an unauthorized manner the servers, networks, or other properties or services of any third party including D2L. You will not make use of open-source software in connection with your use of the APIs or the development or use of your application except to the extent expressly permitted in this License Agreement or as otherwise notified permitted by D2L in writing.

4.4 You are solely responsible for (and D2L has no responsibility to you or to any third party for) any data, content, or resources that you create, transmit, process, store, or display through the D2L platform and/or through applications which integrate with the D2L platform, and for the consequences of your actions, omissions, mistakes, negligence, and misconduct by doing so, including but not limited to any loss, damage, costs, claims, or liability which D2L may suffer as a result.

4.5 You are solely responsible for (and D2L has no responsibility to you or to any third party for) any breach of your obligations under this License Agreement or any applicable law or regulation, and for the consequences of any such breach, including but not limited to any loss, damage, costs, claims, or liability which D2L or any third party may suffer.

4.6 You are solely responsible for any data you may use, process, store, transfer, or access, including user data and personally identifiable information, and shall not use any such data in any unpermitted, illegal, offensive, or malicious manner.

4.7 You will not introduce any malicious software into the APIs, D2L's software, any service data, or other data stored, processed, used, or transmitted using the APIs; and (ii) you will not infringe upon any D2L or third party intellectual property rights and interests in relation to your use of the APIs and this License Agreement.

4.8 This License Agreement does not entitle you to any D2L support, including technical support, in relation to this License Agreement or your use of the APIs. To the extent D2L may offer any such support, which may be subject to additional fees, support terms shall be documented in a separate written agreement executed by you and D2L.

5. Application ID\Key Pair

5.1 A unique "**Key**" (e.g., Application ID\Key pair, API Key, or similar keys required to identify a developer, application or organization), together with the applicable username and password, or such other measures as may be implemented by D2L from time to time, may be required to enable any applications developed to make use of the APIs. D2L shall have the right in its sole discretion to make use of Keys, or such other measures as may be implemented by D2L from time to time, to block or otherwise control access by you or any third party application to any of the APIs and the D2L applications.

5.2 You are solely responsible for maintaining the confidentiality and protection of any Keys issued to you by D2L. You are solely responsible for all applications that are developed by or for you or make use of the Keys in any manner.

6. Privacy and Information

6.1 In order to continually innovate and improve its products and services, D2L may collect certain usage statistics including a unique identifier, associated IP address, version number of software, and information on which tools and/or services are being used and how they are being used. The data collected is examined in the aggregate to improve the products and services and is maintained in accordance with D2L's Privacy Policy, available at https://www.d2l.com/legal/privacy/.

7. Retrieving Data Using D2L APIs

7.1 If you or any application you develop uses any of the APIs to retrieve data from D2L applications, you acknowledge that the data may be protected by intellectual property rights that are owned by D2L or those parties that provide the data or by other persons or companies on their behalf. As such, your use of any API may be subject to additional terms and conditions. You may not modify, rent, lease, loan, sell, distribute or create derivative works based on this data, in whole or in part, unless allowed by the relevant and applicable additional terms and conditions.

8. Terminating this License Agreement

8.1 This License Agreement will continue to apply until terminated by either you or D2L as set out below.

8.2 If you wish to terminate this License Agreement, you may do so by ceasing use of the APIs and any relevant Keys and notifying D2L in writing.

8.3 D2L may terminate this License Agreement at any time by providing you written notification if:

- You breach any provision of this License Agreement;
- D2L is required to do so by law;
- D2L decides to no longer provide the APIs or certain parts of the APIs to users in the country in which you operate or from which you use the service, or the provision of the APIs or certain services associated with the APIs to you by D2L is, in D2L's sole discretion, no longer commercially viable; or
- Any direct competitor of D2L takes any kind of ownership stake in you.

8.4 If you are a Partner, this License Agreement will expire if:

- The Master Partner Agreement between you and D2L is terminated or expires;
- You fail to pay any applicable partnership program or other applicable fees and costs properly owed to D2L, and you fail to resolve such non-payment within 30 days of notification by D2L.

8.5 D2L will have no obligation to provide support for use of the APIs by you or any of your applications, and has the right to discontinue support of Keys at its discretion at any time after expiry of this agreement.

8.6 Any termination of this License Agreement shall also terminate the licenses granted to you hereunder. Upon termination of this License Agreement for any reason, you shall cease using, and either return to D2L, or destroy and remove from all computers, hard drives, networks, and other storage media, all copies of any materials licensed pursuant to this License Agreement and any Confidential Information (as defined below) in your possession; and upon written request shall immediately certify to D2L that such actions have occurred.

9. DISCLAIMER OF WARRANTIES

9.1 USE OF THE APIs IS AT YOUR SOLE RISK. THE APIs ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY, REPRESENTATION, OR CONDITION OF ANY KIND FROM D2L. D2L EXPRESSLY DISCLAIMS ALL WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

9.2 USE OF THE APIs AND ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE APIs IS AT YOUR OWN DISCRETION AND RISK AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA THAT MAY RESULT FROM SUCH USE.

10. LIMITATION OF LIABILITY

10.1 D2L, ITS SUBSIDIARIES, EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, AND AFFILIATES, AND ITS LICENSORS SHALL NOT BE LIABLE TO YOU UNDER ANY THEORY OF LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES THAT MAY BE INCURRED BY YOU OR ANY THIRD PARTY IN CONNECTION WITH THIS LICENSE AGREEMENT AND THE APIS, INCLUDING ANY LOSS OF DATA, LOSS OF PROFITS, LOSS OF GOODWILL, BUSINESS INTERUPTION, WHETHER OR NOT D2L OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING.

10.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LICENSE AGREEMENT, D2L'S AGGREGATE LIABILITY TO YOU OR ANY THIRD PARTY ARISING OUT OF THIS LICENSE AGREEMENT, SHALL IN NO EVENT EXCEED ONE HUNDRED U.S. DOLLARS

($100.00 USD). ANY CLAIM ARISING OUT OF OR RELATING TO THIS LICENSE AGREEMENT MUST BE BROUGHT WITHIN ONE (1) YEAR OF THE FIRST EVENT OR OCCURRENCE GIVING RISE TO THE CLAIM.

11. Confidentiality

11.1 You may from time to time, gain access to D2L's confidential information, including but not limited to business information, personally identifiable information, trade secrets, and sensitive information ("**Confidential Information**"). You may only use Confidential Information to the extent necessary to exercise your rights under this License Agreement. Subject to the express permissions set forth herein, you may not disclose D2L's Confidential Information to a third party without D2L's prior written consent. You agree that you will protect D2L's Confidential Information from unauthorized use, access, processing, transfer, or disclosure in the same manner that you would use to protect your own confidential and proprietary information of a similar nature and in any event with no less than a reasonable degree of care.

12. Indemnification

12.1 To the maximum extent permitted by law, you shall defend, indemnify and hold harmless D2L, its affiliates and their respective directors, officers, employees and agents from and against any and all claims, actions, suits or proceedings, as well as any and all losses, liabilities, damages, costs and expenses (including reasonable legal fees) arising out of or accruing from (a) use of the APIs, (b) any application you develop which makes use of the APIs and that infringes any copyright, trademark, trade secret, trade dress, patent or other intellectual property right of any person or defames any person or violates their rights of publicity or privacy, and (c) any non-compliance by you with this License Agreement.

13. General Legal Terms

13.1 This License Agreement constitutes the entire agreement between you and D2L and governs use of the APIs by you and any application you develop (excluding any services which D2L may provide to you under a separate written agreement), and replaces (a) any prior agreements between you and D2L in relation to the APIs and/or (b) any click-through terms accepted to access the APIs.

13.2 If D2L does not exercise or enforce any legal right or remedy which is contained in this License Agreement (or of which D2L has the benefit under any applicable law), this will not be taken to be a formal waiver of D2L's rights, and those rights or remedies will still be available to D2L.

13.3 If any court of law, having the jurisdiction to decide on this matter, rules that any provision of this License Agreement is invalid, then that provision will be removed from this License Agreement without affecting the rest of this License Agreement. The remaining provisions of this License Agreement will continue to be valid and enforceable.

13.4 EXPORT RESTRICTIONS. THE APIs MAY BE SUBJECT TO CANADIAN AND U.S. EXPORT LAWS AND REGULATIONS. YOU MUST COMPLY WITH ALL DOMESTIC AND INTERNATIONAL EXPORT LAWS AND REGULATIONS THAT APPLY TO THE APIs. THESE LAWS INCLUDE RESTRICTIONS ON DESTINATIONS, END USERS AND END USE.

13.5 The rights granted in this License Agreement may not be assigned or transferred by you without the prior written approval of D2L. You shall not be permitted to delegate your responsibilities or obligations under this License Agreement without the prior written approval of D2L.

13.6 The parties are independent contractors. This License Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship among the parties herein.

13.7 This License Agreement shall be governed by the laws of the jurisdiction listed below, without regard to its conflict of laws provisions. The United Nations Commission on International Trade Law Conventions on Contracts for the International Sales of Goods and Related Transactions is specifically excluded from this License Agreement.

(a) If you are a Customer, this License Agreement is governed by the laws of the jurisdiction governing your contract with D2L for Brightspace service;
(b) If you are a Partner, this License Agreement is governed by the laws of the jurisdiction governing your Master Partner Agreement with D2L; or
(c) If neither (a) nor (b) apply to you, this License Agreement is governed by the laws of the province of Ontario, Canada.