

# DigitalEd

## MASTER SERVICES AGREEMENT

THIS AGREEMENT is dated as of [DATE].

**BETWEEN:** **DIGITAL EDUCATION COMPANY LTD.**, a corporation  
incorporated under the laws of Ontario in Canada  
("DigitalEd")

**AND:** **[INSERT INSTITUTION NAME HERE]**,  
an institution incorporated under the laws of  
[PROVINCE/STATE] in [COUNTRY] and carrying  
on business as [COMMON NAME HERE]  
("Company")

### RECITALS:

- A. WHEREAS, Company wishes to engage DigitalEd as an independent contractor to provide the services set out in this agreement; and
- B. WHEREAS, DigitalEd provides a proprietary platform-as-a-service online courseware commercialization and distribution solution known as Möbius, which is an integrated suite of technologies that supports the development of digital lessons, automated assessments within and a robust deployment environment for those assets;

**NOW THEREFORE**, in consideration of the mutual promises, covenants and terms set out in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

THE FOLLOWING TERMS AND CONDITIONS APPLY TO ALL USE OF THE SOFTWARE (AND ANY OTHER SERVICES OR FEATURES OFFERED IN CONNECTION THEREWITH FROM TIME TO TIME) LICENSED BY DIGITALEL TO THE COMPANY, INCLUDING THE MÖBIUS PLATFORM (THE "**SOFTWARE**").

**NOTICE:** THIS IS A CONTRACT BETWEEN THE COMPANY AND DIGITALEL. BEFORE THE COMPANY USES THE SOFTWARE FOR THE FIRST TIME, THE COMPANY MUST CAREFULLY READ THIS AGREEMENT. BY USING THE SOFTWARE, THE COMPANY CONSENTS TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND BE BOUND BY ALL OF ITS TERMS AND CONDITIONS. IF THE COMPANY DOES NOT WISH TO BECOME A PARTY TO THIS AGREEMENT AND BE BOUND BY ALL OF ITS TERMS AND CONDITIONS, THE COMPANY MAY NOT USE THE SOFTWARE.

### ARTICLE 1 - INTERPRETATION

1.1 **Definitions.** In this Agreement, in addition to the terms defined elsewhere in this Agreement, the following terms have the following meanings:

- a. "**Added Content**" means any Content added or uploaded to, or otherwise made accessible through, the Software by the Company, including any Personal Information, which is not Original Content.

# DigitalEd

- b. **"Affiliate"** means, with respect to a party to this Agreement, any individual or Entity which, directly or indirectly controls, is controlled by, or is under common control with such party. The term "control" means possession, direct or indirect, of the power to direct or cause the direction of the management of policies of a person or Entity; whether through ownership or equity participation, voting securities, beneficial interest, contract, agreement or otherwise.
- c. **"Content"** means the text, images, audio, video, graphics, lessons, assignments, tests and other electronics uploaded to, and displayed within, the Software.
- d. **"DigitalEd IP"** has the meaning set forth in Article 6.
- e. **"Documentation"** means the user guides, study guides and other documentation made available by DigitalEd from time to time, whether or not made available in connection with the delivery of the Software, as may be updated from time to time. Documentation may be delivered in printed and/or online forms, and in one or more languages.
- f. **"Effective Date"** means the date the date referred to in Schedule A of this Agreement.
- g. **"Fee"** means the applicable fee payable to DigitalEd by the Company for the Company's access to and use of the Software during the Term.
- h. **"Including"** or **"Includes"** means including, without limitation or includes, without limitation.
- i. **"Licensor IP"** has the meaning set forth in Article 6.
- j. **"Möbius"** means the version of the Möbius platform solution hosted by DigitalEd and sold to the Company to make available to End Users, including all instances or deployments thereof that are configured for use by the Company, Academic Institutions or End Users.
- k. **"Original Content"** means any Content, including but not limited to any testing or assessment Content, included in the Software prior to any access by the Company or any Registered User or added to the Software by DigitalEd from time to time.
- l. **"Personal Information"** means any information, recorded in any form, about an identifiable individual, including Registered Users or other individuals, or an individual whose identity may be inferred or determined from the information. Personal Information also includes any "student education record" or "personally identifiable information" as defined by FERPA.
- m. **"Registered User"** means a user of the Software that is (i) the Company's employee or consultant, who is an instructor, faculty or academic staff member, or (ii) one of the Company's Students.



# DigitalEd

- n. **“Registered User Data”** means any data, Content and other information, (including the names of Registered Users, assignment and test answers and test scores attributable to Registered Users and any other information about an identifiable individual or an individual whose identity may be inferred or determined from the information) or other materials of any nature recorded in any form whatsoever disclosed or provided to DigitalEd by Registered Users (as hereinafter defined) in the course of using the Software and all information generated by the Registered Users’ use of the Software.
- o. **“Software”** has the meaning set out at the beginning of this Agreement.
- p. **“Student”** means: (i) a full-time or part-time undergraduate student who is either working toward a degree or a diploma in an Academic Institution and actively enrolled therein at the material time; (ii) a student registered in a continuing or professional education program of an accredited institution; (iii) a student enrolled in a high school, vocational institute or other accredited institution; or (iv) any person endorsed by an accredited institution as being a student. Students may be enrolled on campus or in distance education courses. DigitalEd shall determine whether or not an institution is “accredited”, in its sole discretion. Students are required to provide applicable proof of their Student designation, either at the time of purchase or afterward as directed by DigitalEd in its sole discretion.
- q. **“Student Use”** means the installation and use of the Software by a Student for the purpose of meeting classroom requirements of courses, self-study and non-commercial research. For greater certainty, Student Use shall exclude use as an employee or otherwise for commercial gain, instruction, teaching or research.
- r. **“Systems”** means DigitalEd’s hosted facility and/or other computer, software and cloud-based systems. Parts of the Systems may be owned and operated by Third Parties.
- s. **“Support”** means the general maintenance services and technical support provided in respect of the Software set forth in Section 13.
- t. **“Third Party”** means any person or legal person that is not DigitalEd, the Company, an Affiliate, or a Registered User.
- u. **“Third Party IP Rights”** has the meaning set forth in Article 9.
- v. **“Third Party Licensor”** means a person who, or Entity which, licenses intellectual property to DigitalEd.

1.2 **Rules of Interpretation.** Any capitalized term used in this Agreement that is not defined in Article 1 or elsewhere in this Agreement will have the generally accepted industry or technical meaning given to such term.

1.3 **Relationship of the Parties.** It is the intention of the Parties, and the Parties understand and agree, that the Parties are and shall be independent contractors to one another, and neither DigitalEd, Company nor any of their respective representatives is an employee,



# DigitalEd

agent, joint venture, or partner of the other Party. Neither Party shall claim to be the agent, representative, or employee of the other nor contract or incur obligations in the name of the other.

## **ARTICLE 2 - SERVICES, SECURITY & SUPPORT**

- 2.1 **Added Content.** Company may upload and share Added Content through the Software, subject to the following terms:
- a. Company retains all rights, titles and interest in and to Company Added Content, subject to the limited rights granted to DigitalEd pursuant to this Agreement.
  - b. Company will only upload Added Content to the Software for which Company has obtained the necessary licenses and permissions to use and share such Added Content and Company will comply with the terms of any such licenses and permissions. DigitalEd may, but has no obligation to monitor, view and analyze Added Content to ensure compliance with this Agreement.
  - c. Company will not upload, share or make accessible Added Content that (i) is illegal, harmful, threatening, abusive, tortious, profane, or invasive of a person's privacy; (ii) contains any viruses, malicious code, malware, or any components designed to harm or limit the functionality of the Services or Software; or (iii) negatively affects the performance, operation or security of the Systems (as determined by DigitalEd in its reasonable discretion).
  - d. DigitalEd may request; and Company may grant DigitalEd a non-exclusive, worldwide, royalty-free, sublicensable and transferable licence to, store, modify, delete or disclose Added Content if required to do so by law or in the good faith belief that such action is reasonably necessary to: (i) comply with legal processes; (ii) comply with this Agreement; or (iii) protect the rights, property, or personal safety of DigitalEd, other users or the public.
- 2.2 **Updates.** DigitalEd may update the Software from time to time. Prior to any update, DigitalEd will make reasonable efforts to notify Company of such update and to work with Company to minimize the impact of the update on Company's use of the software. If Company does not promptly respond to DigitalEd's notice of a pending update, Company agrees that DigitalEd may update the Software at a time chosen at its discretion. If a critical security issue is identified in the Software by DigitalEd, DigitalEd may update the Software with no notice to Company.
- 2.3 **Security.** DigitalEd shall maintain commercially reasonable security procedures to help protect Company's Added Content. Company will promptly notify DigitalEd if Company becomes aware of any security breach of the Software or Added Content.
- 2.4 **Support.** DigitalEd shall provide Company with reasonable support for the Software through DigitalEd's Support Page located at <https://www.digitaled.com/support>. Once DigitalEd receives
- a request for support from Company, DigitalEd will use reasonable efforts to respond in a timely manner.
- 2.5 **Exclusions.** Notwithstanding the above, DigitalEd shall have no obligation to provide



# DigitalEd

Support with respect to the following matters: (i) any problem resulting from misuse, improper use, alteration, or damage of the Software; (ii) any problem caused by modifications in any version of the Software not made or authorized by DigitalEd; (iii) any problem resulting from Company combining or merging the Software with any hardware or software not supplied by DigitalEd, or not identified by DigitalEd as compatible with the Software; or (iv) any problem caused by any action taken by Company in breach of this Agreement.

- 2.6 **Statistical Information.** Notwithstanding any other provision of this Agreement, DigitalEd may monitor and compile any anonymized statistical data, based upon Company's use of the Software (which may be combined with other data of DigitalEd's other customers and users, but always in an aggregate and anonymous manner) to derive statistical and performance information related to the provision and operation of the Software ("**Aggregated Statistical Information**") and DigitalEd may use or make such Aggregated Statistical Information publicly available, provided that such Aggregated Statistical Information does not include any data that would enable, directly or indirectly, the identification of any person or the disclosure of Personal Information. DigitalEd retains all rights, title and interest in and to such Aggregated Statistical Information.
- 2.7 **Feedback.** If Company sends information to DigitalEd, for example feedback, comments, or suggestions relating to the Software that is not Personal Information ("**Submissions**"), Company grants DigitalEd a perpetual sublicensable, royalty-free, transferable license to use, modify and incorporate such Submissions into DigitalEd's products and services. Company hereby waives all moral rights in and to such Submissions.

## **ARTICLE 3 - FEES AND PAYMENT TERMS**

- 3.1 **Möbius Access Fee.** This access shall be available to Registered Users for the duration of the Term (as defined in Section 4.1) as set forth in Schedule A. The payment of these fees is due to DigitalEd by the date referenced in Company's quote.
- 3.2 **Terms.** Company shall not use the Software unless Company has paid the applicable Fee or Company is a Registered User for whom the Fee has been paid by an Academic Institution. All payments shall be non-refundable except as otherwise expressly provided in this agreement.
- 3.3 **Surplus Registered Users.** Company is permitted to exceed the number of Registered Users for whom the Fee has been paid by Company at the rate determined in Section 3.1 until the time of this Agreement's renewal. As and when Company exceeds the permitted number of Registered Users for whom the Fee has been paid by Company, DigitalEd will invoice Company for the surplus Registered Users.
- 3.4 **Late Payments.** Any amounts due DigitalEd under this Agreement not received by DigitalEd by the date due shall be subject to a service charge of one and one half percent (1 ½ %) per month, being eighteen percent (18%) per annum, or the maximum charge permitted by law, whichever is less. Company shall also pay all sums expended (including reasonable legal fees) in collecting any overdue payments.
- 3.5 **Currency.** Unless otherwise set forth in this Agreement, all fees (plus applicable taxes), or amounts to be invoiced, paid, or calculated under this Agreement will be invoiced, paid

# DigitalEd

or calculated in **U.S. Dollars** and will be paid by certified cheque or wire transfer of immediately available funds. Unless otherwise specified, the word “dollar” and the (\$) sign refer to **US Dollars**.

- 3.6 **Taxes.** Company shall be responsible and agree to pay any applicable sales, excise or other taxes, levies or other charges, of any kind (“**Taxes**”) imposed by any governmental authority with respect to the Software, the Support, if applicable, or otherwise arising out of or in connection with in connection with this Agreement or the License granted hereunder. Company shall hold DigitalEd harmless from all claims and liability arising from Company’s failure to pay any applicable taxes.

## **ARTICLE 4 - TERM AND TERMINATION**

- 4.1 **Term.** This Agreement shall commence as of the Effective Date and shall continue for 365 days or until terminated pursuant to the terms of this Agreement. Unless either Party delivers notice to the other Party of its intention not to renew at least 90 days prior to the end of the Term, this Agreement shall be open to renew for successive one year terms, unless a longer renewal term is negotiated or this Agreement is otherwise terminated pursuant to the provisions therein.
- 4.2 **Suspension by DigitalEd.** DigitalEd may suspend Support and Company’s access to the Software and/or take any remedial action under any applicable law if Company fails to comply with any provision of this Agreement within five (5) business days of Company receiving written notice from DigitalEd.
- 4.3 **Automatic Termination.** This Agreement shall terminate immediately after the Term, unless Company renews the Licence by paying the then-current Fee for a new Term prior to such expiry date.
- 4.4 **Termination by Either Party With Cause.** Either Party may terminate this Agreement upon the occurrence of any of the following events, which shall be deemed to be a breach of the terms of this Agreement:
- a. the other party ceases or threatens to cease to carry on its business, commits an act of bankruptcy or winding-up, makes an assignment or bulk sale of its assets, proposes a compromise or arrangement to its creditors, obtains an order to appoint a receiver over any part of that party’s assets or is subject to any proceeding involving any of the foregoing; or
  - b. if the other party fails to perform any of its obligations, or there is a material breach of any of the provisions of this agreement; provided that the party terminating this Agreement shall first have given prior written notice to the other of its intent to terminate, together with details of the default causing the termination, and the party receiving such notice shall have been given twenty (20) days to cure any such default.
- 4.5 **Termination by Either Party Without Cause.** Either Party may terminate this Agreement without cause so long as the receiving party has received ninety (90) days written notice.
- 4.6 **Obligations Upon Termination.** Upon termination of this Agreement:
- a. each of the parties shall release the other from all obligations under this Agreement, save and except for those surviving obligations set forth in Section 4.5.(c) hereof. Notwithstanding the foregoing, in the event this Agreement is terminated by DigitalEd



# DigitalEd

pursuant to Section 4.4, Company agrees to pay, as compensation for the damages suffered by DigitalEd, those fees and charges otherwise payable by Company for the remainder of the applicable Term;

- b. Company shall immediately discontinue use of the software; and
- c. Notwithstanding any termination of this Agreement, Sections 2.1 and Articles 6 - 10 (inclusive) shall survive termination of this Agreement. All other rights and licenses granted hereunder will cease upon termination.

## **ARTICLE 5 - LICENCE GRANTS**

5.1 **Licence to Use the Software.** In consideration of the payment of the Fee and subject to the terms and conditions of this Agreement, DigitalEd hereby grants Company a limited, revocable, personal, non-transferable, non-sublicensable, non-exclusive licence (the "**Licence**") during the Licence Term to use the Software as set out in this Agreement.

5.2 **General Licence Restrictions.** Company will not misuse or abuse the software. Without limiting the generality of the foregoing, without the express written permission of DigitalEd, Company shall not, and shall not permit any Registered User or Third party to:

- a. reproduce, transmit, modify, adapt, translate or create any derivative work of, any part of the software, in whole or in part;
- b. reverse engineer, disassemble, or decompile the Software, create derivative works based on the Software or any DigitalEd IP or otherwise attempt to gain access to the Software's method of operation, underlying ideas, algorithms or source codes;
- c. sell, licence, sublicense or otherwise transfer (whether by sale, exchange, lease, rent, gift, loan or otherwise) the Software, any copy or portion thereof, in whole or in part, to a Third Party, other than as contemplated in this Agreement;
- d. use, alter, remove, or obscure DigitalEd's name, trade names, logos, or other trademarks of DigitalEd, or any of its Affiliates or Third Party Licensors, whether in written, electronic, or other form, without DigitalEd's prior written consent;
- e. attempt to probe, scan, render unusable or test the vulnerability of the Software or any Systems or to breach or tamper with any security or authentication measures thereof;
- f. disclose Company login credentials or purchase code(s) to a Third Party; or
- g. violate any local, state, federal or foreign law, treaty, regulation or convention applicable to Company in connection with the use of the Software, including, the Canadian *Personal Information Protection Protection and Electronic Documents Act* ("**PIPEDA**"), the EU Data Protection Directive (Directive 95/46/EC), General Data Protection Regulation ("**GDPR**", GDPR (EU) 2016/679), the US *Family Educational Rights and Privacy Act* ("**FERPA**", 20 U.S.C. § 1232g; 34 CFR part 99)





and other laws applicable to Company related to privacy, data protection and electronic communications).

## **ARTICLE 6 - INTELLECTUAL PROPERTY**

- 6.1 **Retention of Right, Title, and Interest in Intellectual Property.** DigitalEd does not sell any rights in and to the Software pursuant to the terms of this Agreement. The Software, Original Content, Licensor IP and all intellectual property therein (including copyrights, patents, trade secrets, trademarks, moral rights, and other intellectual property rights), and all intellectual property rights relating to the provision of Support (collectively, **“DigitalEd IP”**) shall at all times remain the property of DigitalEd or Third Party Licensors as applicable and Company shall have no right, title, or interest therein, except as expressly set forth in this Agreement. Any and all modifications, enhancements, improvements, changes and derivative works to the Software, created by DigitalEd or Company, shall be the sole intellectual property of DigitalEd or Third Party Licensors. DigitalEd exclusively reserves all rights not explicitly granted herein. To the extent Company acquires rights in the Software or DigitalEd IP, Company hereby assigns such rights to DigitalEd and waives any moral rights Company may have therein in favour of DigitalEd.
- 6.2 **Third Party Intellectual Property.** Intellectual property licensed to DigitalEd by a Third Party Licensor (the **“Licensor IP”**) may form part of the Software. If applicable, Licensor IP shall be made available to Company pursuant to the terms and conditions of this Agreement. In the event any additional terms and conditions are imposed upon the use of such Licensor IP, such terms and conditions shall be made available to Company in the Software or otherwise by DigitalEd in advance of DigitalEd providing Licensor IP.

## **ARTICLE 7 - PERSONAL INFORMATION**

- 7.1 **Personal Information.** Where Company discloses Personal Information to DigitalEd in any manner, including through Company’s use of the Software, Company represents, warrants and covenants that:
- a. Company is solely and exclusively responsible for the collection, accuracy or completeness of Personal Information disclosed or provided to DigitalEd, whether such Personal Information was generated directly by Company or through an agent employed by Company;
  - b. All Personal Information disclosed to DigitalEd has been collected and disclosed in accordance with all applicable laws pertaining to the Personal Information in question, and where applicable, all applicable consents to disclose to DigitalEd or, more generally, to a service provider by Company, have been obtained from the individual(s) whose Personal Information is provided; and
  - c. Company will identify an individual, employed or otherwise authorized by Company, to respond to enquiries concerning any Personal Information provided to DigitalEd and to promptly address all enquiries concerning such information.
- 7.2 **Privacy Policy.** DigitalEd’s collection and use of Personal Information is governed by DigitalEd’s Privacy Policy which can be found here: <https://www.digitaled.com/privacy/>





# DigitalEd

- 7.3 **Access and Use of Personal Information.** DigitalEd shall have the right to access and use Personal Information for the limited purposes of invoicing for the Software, providing Support, administering and maintaining the Systems and the Software, and to inspect Company's use of the Software so as to ensure Company's compliance with this Agreement. DigitalEd shall access and use Personal Information in accordance with all applicable laws and shall not permit access to or use any Personal Information for any purposes other than as expressly set forth in this Agreement or with Company's prior Consent.

## **ARTICLE 8 - COMPLIANCE, AUDIT RIGHTS & MARKETING**

- 8.1 **Compliance and Audit Rights.** Company agrees to notify DigitalEd promptly of any failure by Company or Company's Registered Users to comply with one or more licenses granted under this Agreement, or any failure to comply with any other material term of this Agreement. Company agrees to allow a Third Party auditor appointed by DigitalEd or by a Third Party Licensor (if applicable) (the "**Auditor**") to (i) audit Company's use of the Software to verify that Company's use of the Software is in conformity with the terms of this Agreement; and (ii) access Company's property, facilities, and computer systems, and provide cooperation from Company's employees and consultants, as reasonably requested by the Auditor in order to perform such audit, all during normal business hours, and after reasonable prior notice from Auditor. If the audit discloses a shortfall in licenses for the Software or Services, Company will immediately acquire any necessary licenses, subscriptions, and applicable back maintenance and support. If the underpaid Fees exceed 5% of the value of the payable Fees, then Company will also pay the cost of such audit.
- 8.2 **Marketing.** Unless otherwise agreed to by Company and DigitalEd in writing, Company agrees that DigitalEd may use Company's name and logo as a customer of DigitalEd on DigitalEd's website, and as a part of a general list of DigitalEd customers for use and reference in DigitalEd's corporate, promotional and marketing literature.
- 8.3 **Marketing of Added Content.** Unless otherwise agreed to by Company and DigitalEd in writing, Company agrees that DigitalEd may use Added Content for non-mass marketing, non-commercial, non-reselling, demonstrative purposes, provided that DigitalEd does not modify, adapt, or create derivative works of the Added Content and that the Added Content retains all of Company's logos, trademarks and watermarks.

## **ARTICLE 9 - INDEMNIFICATION**

- 9.1 **Infringement and DigitalEd's Indemnification.** DigitalEd warrants to Company that the Software does not infringe any registered patent, copyright, trademark or trade secret right or other intellectual property rights of a third party resident in Canada or the United States (collectively, the "**Third Party IP Rights**"). DigitalEd shall indemnify and hold harmless Company from costs, losses, damages and liability which may be incurred on account of a finding of infringement of Third Party IP Rights by the Software by a court of competent jurisdiction, and DigitalEd shall, at its own expense, defend all claims against Software by a court of competent jurisdiction, and DigitalEd shall, at its own expense, defend all claims against Software by a court of competent jurisdiction, and DigitalEd shall at its own expense, defend all claims Company alleging such infringement of Third Party IP Rights, provided that DigitalEd (i) is promptly notified of such claims; (ii) is given all evidence in Company's possession; and (iii) is given reasonable assistance by



# DigitalEd

Company in, and sole control of, the defence thereof and all negotiations for the claim's settlement or compromise. In the event of such a claim of infringement of Third Party IP Rights, DigitalEd's obligation under this Agreement shall be fulfilled if DigitalEd: (i) obtains a licence for Company to continue the use of the Software, or (ii) replaces or modifies the Software so as to be commercially substantially equal but non-infringing. DigitalEd shall not have any indemnification obligation under this Section for any claim of infringement of Third Party IP Rights related to (i) the Added Content; (ii) any breach of the Agreement by Company; or (iii) any settlement or compromise made without DigitalEd's prior written consent.

- 9.2 **Company's Indemnification.** Company agrees to indemnify and hold DigitalEd and any Third Party Licensors harmless from and against any loss, liability, cost, expense or damage (including reasonable legal fees) excluding any indirect, special, or consequential or incidental damages (including damages for loss of revenues or profits, business interruption, testing interruptions, loss of business information and the like) arising directly or indirectly out of any claim, suit action or judgment brought against DigitalEd or its Affiliates related to any: (i) act or omission by Company relating to the Software that is contrary to the terms of this Agreement (ii) breach of any representations, warranties or covenants made by Company hereunder, (iii) failure by Company to comply with any of the terms of this Agreement, (iv) claim that Added Content infringes, misappropriates or violates any copyrights, trademarks, tradeseecrets or other proprietary rights of, or has otherwise caused harm to, a Third party or (v) violation by Company of any provincial, state, federal, foreign, or other laws or regulations or any Third Party rights.

## **ARTICLE 10 - LIMITED LIABILITY**

- 10.1 OTHER THAN AS EXPRESSLY SET OUT IN ARTICLE 9, INFRINGEMENT AND DIGITALE D'S INDEMNIFICATION OR OTHERWISE HEREIN AND OT THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, THE SOFTWARE AND ANY SUPPORT IS PROVIDED "AS IS" WITHOUT ANY WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY DIGITALE D, ITS AFFILIATES, DEALERS, RESELLERS OR DISTRIBUTORS, SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. YOU ASSUME THE ENTIRE RISK AS OT THE USE AND PERFORMANCE OF THE SOFTWARE, SUPPORT AND DOCUMENTATION IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, CURRENTNESS, OR OTHERWISE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IN NO EVENT SHALL DIGITALE D, ITS AGENTS OR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF THE SOFTWARE, SUPPORT AND/OR DOCUMENTATION BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF REVENUES OR PROFITS, BUSINESS INTERRUPTION, TESTING INTERRUPTIONS, LOSS OF BUSINESS information (EXCLUDING LOSS OF PERSONAL INFORMATION), AND THE LIKE) ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, THE SUPPORT, THE TERMINATION OF THIS AGREEMENT, THE FAILURE OF EQUIPMENT RELATED TO YOUR COMPUTER OR DAMAGE TO YOUR COMPUTER, SOFTWARE OR OTHER PROPERTY RESULTING FROM YOUR USE OF THE SOFTWARE OR SUPPORT, EVEN IF DIGITALE D OR ITS AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR CLAIM, OR IT IS FORESEEABLE BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO



YOU

IN SUCH A CASE. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, DIGITALEd'S MAXIMUM AGGREGATE LIABILITY TO YOU PURSUANT TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY YOU TO DIGITALEd FOR YOUR MASTER SERVICES AGREEMENT. THE LIMITATIONS OF THIS SECTION SHALL APPLY WHETHER OR NOT THE ALLEGED BREACH OR DEFAULT IS A BREACH OF A FUNDAMENTAL CONDITION OR TERM. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON DURATION OF AN IMPLIED WARRANTY, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

## **ARTICLE 11 - GENERAL**

- 11.1 **For European Union Users Only.** Any contractual provisions of this Agreement contrary to laws implemented under Article 6 of Appendix V of the European Union Software Directive or to the exceptions provided for in Article 5(2) and (3) of such Appendix, amended from time to time, shall be null and void solely to the extent decompiling, disassembling, or otherwise reverse-engineering of the Software is necessary to enable Company to create an independent software that is interoperable with the Software or any other permitted objectives specified by such laws implemented under such directive (collectively, the "Permitted Objectives"), provided that any such information gained is used solely for such Permitted Objectives.
- 11.2 **Force Majeure.** Neither party to this Agreement shall be liable to the other for any failure or delay in performance by circumstances beyond its control, including acts of God, fire, strikes, governmental action, terrorism, or telecommunications infrastructure failure, provided that the party seeking to rely on such circumstances gives written notice of such circumstances to the other party hereto and uses reasonable efforts to overcome such circumstances.
- 11.3 **Governing Law.** This Agreement is governed by the laws of the Province of Ontario, Canada and if the Software was acquired within Canada, each of the parties hereto irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Ontario without regard to conflicts of laws principles. If the Software was acquired outside Canada, each of the parties hereto irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario; provided that Company agrees that any claim or action brought by Company shall be commenced in the courts of the Province of Ontario. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.
- 11.4 **Successors and Assigns.** These terms and conditions inure to the benefit of, and shall be binding upon, the parties' respective heirs, successors or permitted assigns. Neither Party shall assign this Agreement without prior, written consent of the other Party.
- 11.5 **Invalidity of Terms.** If any of the terms and conditions of this Agreement are found by a court of competent jurisdiction to be invalid, the parties hereto nevertheless agree that the court should endeavour to give effect to the parties' intentions as reflected in such terms or conditions, and the other terms and conditions shall remain in full force and effect.
- 11.6 **Entire Agreement.** Unless otherwise agreed to by DigitalEd in writing, this Agreement (including any Schedules hereto, and all terms incorporated herein by reference) constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth herein. This Agreement may only be amended by written agreement of both Parties.



# DigitalEd

11.7 **Contact Information.** Should you have any questions concerning this Agreement, contact DigitalEd at: Customer Service Department, 630 Weber Street North, Suite 100, Waterloo, Ontario, Canada, N2V 2N2; Email: [support@digitaled.com](mailto:support@digitaled.com); Phone: Canada/US: 1-888-355-4511 or International: +800-069-8801 **[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on **INSERT DATE.**

**DIGITAL EDUCATION COMPANY LTD.**

**INSTITUTION NAME**

By: \_\_\_\_\_

**Name:** Christina Perdikoulis

**Title:** President & COO

**Date:** \_\_\_\_\_

I have authority to bind DigitalEd

By: \_\_\_\_\_

**Name:**

**Title:**

**Date:** \_\_\_\_\_

I have authority to bind the **University**



**SCHEDULE A**  
**QUOTE (TERM, FEES, AND PAYMENT SCHEDULE)**

