

## MASTER SERVICES AGREEMENT FOR INSTITUTIONS

**THIS MASTER SERVICES AGREEMENT** is dated as of \_\_\_\_\_ (the “**Effective Date**”) between **DIGITAL EDUCATION COMPANY LTD**, a corporation incorporated under the laws of Ontario and carrying on business as DigitalEd (“**DigitalEd**”) and \_\_\_\_\_[insert full corporate name], a \_\_\_\_\_[insert type of entity] formed under the laws of \_\_\_\_\_[insert jurisdiction of formation] (“**Customer**”)

### CONTEXT:

- A. Customer is an educational institution offering a secondary or higher education to its students through a variety of courses.
- B. DigitalEd provides a proprietary cloud-based service known as Möbius (the “**Service**”), which is an integrated suite of technologies that supports the development of digital lessons, automated assessments and a deployment environment for those assets.
- C. Customer wishes to use the Service to convert and develop Customer Content and, once such Customer Content has been made available to its students, then track and assess its students’ performance and learning outcome.

**NOW THEREFORE**, the Parties agree as follows:

### 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) “**Agreement**” means this Master Services Agreement, all schedules attached hereto, each Purchase Documentation and any other document incorporated by reference herein;
- (b) “**Analytical Data**” has the meaning ascribed in Section 3.4.
- (c) “**Confidential Information**” means any data, including Personal Information, Documentation, documents and other information of a proprietary or confidential nature of a Party, or its affiliates, identified as being confidential or proprietary, or which a reasonable party would deem to be non-public and confidential having regard to the nature of the information and the circumstances surrounding its disclosure, which is disclosed or made available to the other Party in connection with the negotiation, preparation or performance of this Agreement. The identity of all Instructional Users and End Users shall be considered Confidential Information. Confidential Information excludes information which is (i) in the public domain, (ii) known to the Receiving Party prior to receipt thereof from the Disclosing Party, (iii) available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party, if that source is not in breach of any obligations of confidentiality to the Disclosing Party, or (iv) is independently developed by the

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Receiving Party without reference to any Confidential Information of the Disclosing Party;

- (d) **“Customer Content”** means the content added to the Service by any User, including, in particular, any content added to the Service by a Instructional User for the purpose of customizing the content within the Service for certain End Users, whether text, images, data or otherwise. Customer Content shall specifically exclude any modifications, customization or manipulation of DigitalEd Content;
- (e) **“DigitalEd Content”** means the educational content provided by DigitalEd and available within the Service for Customer use;
- (f) **“Disclosing Party”** has the meaning ascribed in Section 6.1;
- (g) **“Documentation”** means the web-based user guide for the operation of the Service accessible from within the Service or available at [www.DigitalEd.com/documentation](http://www.DigitalEd.com/documentation), as may be amended by DigitalEd from time to time;
- (h) **“Effective Date”** has the meaning ascribed in the first paragraph of this Agreement;
- (i) **“End User”** means a student of Customer who needs access to the Service in order to consume the content within the Service and complete classroom and course requirements;
- (j) **“Fees”** have the meaning ascribed in Section 4.1;
- (k) **“Instructional User”** means a member of Customer’s faculty, academic staff, a teaching assistant, an IT professional, an administrator or other employee, consultant or representative of Customer who needs access to the Service to, among other things, upload and develop Customer Content, track and assess End User performance and maintain the technical connection with the Service;
- (l) **“Intellectual Property Rights”** means any right that is or may be granted or recognized under any Canadian, United States or foreign jurisdiction regarding patents, copyrights, neighbouring rights, moral rights, trade-marks (including trade names and service marks), trade secrets, confidential information, industrial designs, design rights, mask work, integrated circuit topography, privacy and publicity rights and any other statutory provision or common or civil law principle regarding intellectual and industrial property, whether registered or unregistered, and including rights in any application for any of the foregoing;
- (m) **“Parties”** means DigitalEd and Customer and **“Party”** means either one of them;
- (n) **“Personal Information”** means information that identifies or is capable of identifying a specific individual, as defined in the Personal Information Protection and Electronic Documents Act (PIPEDA).
- (o) **“Purchase Documentation”** means purchase order issued by Customer, a quotation issued by DigitalEd and signed by Customer or any other document agreed to in writing by Customer and DigitalEd, in each case describing the Services and other

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ancillary services, if any, to be purchased, the applicable Subscription Period(s), the professional services, if any, and the Fees related to each item in the Purchase Documentation, and further provided that each Purchase Documentation is consistent with the terms and conditions of this Agreement;

- (p) **“Receiving Party”** has the meaning ascribed in Section 6.1;
- (q) **“Service”** means the proprietary cloud-based service known as Möbius which is being made available to Customer;
- (r) **“Subscription”** means a subscription to access and use the Service and to receive support for the Service for the Subscription Period, as evidenced by Purchase Documentation;
- (s) **“Subscription Period”** means the time period of each Subscription as set out in Purchase Documentation, commencing upon the initial delivery of login credentials to the Service to Customer. If no time period is set out in the Purchase Documentation, the Subscription Period shall be a twelve (12) month period; and
- (t) **“Users”** mean any or all of the Instructional Users and End Users to whom Customer provides access to the Service via unique login credentials.

**1.2 Certain Rules of Interpretation.** (a) In this Agreement, words signifying the singular number include the plural and vice versa. Every use of the words “including” or “includes” in this Agreement is to be construed as meaning “including, without limitation” or “includes, without limitation”, respectively. (b) The division of this Agreement into Articles, Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

**1.3 Schedules.** The following schedules are attached to and form a part of this Agreement:

- Schedule A - Service Level Schedule
- Schedule B - Support Schedule
- Schedule C - Additional Professional Service Terms
- Schedule D - Fees

Schedules A and B may be updated by DigitalEd from time to time, in its sole discretion acting reasonably, and posted at [www.digitaled.com/terms](http://www.digitaled.com/terms).

## Article 2. Terms Of Service

**2.1 Access, Use and Delivery.** Customer may access and use the Service on a non-exclusive, non-transferable basis during the Subscription Period, subject at all times to the terms and conditions of this Agreement. DigitalEd shall arrange for delivery of Service to Customer by providing login credentials to one of the Instructional Users, at which point delivery will be deemed to be complete. Customer shall be responsible for ensuring its Users have been provided with their individual login credentials.

**2.2 Integrity of Access Methods; Responsibility for Users.** Customer agrees that it is responsible for protecting the security and integrity of the login credentials of its various Users. Customer agrees that it is responsible for all actions taken by its Users and is liable for any acts

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or omissions by Users, whether authorized or not, in the Service. Users shall not gain, or attempt to gain, or permit any third party to gain, unauthorized access to the Service or to use the Service in an unauthorized manner. Customer shall use commercially reasonable efforts to prevent and stop any unauthorized access and shall immediately report any suspected or known unauthorized access or use of the Service to DigitalEd. Users will be required to accept and agree to DigitalEd's acceptable use policy before accessing the Service.

**2.3 Acceptable Use.** Customer shall not do or attempt to do, or permit any User or third party to do, any of the following: (a) access or use the Service to provide services for or on behalf of any third party, or to commercially exploit the Service in any way; (b) access or use the Service to build a competitive product or service or otherwise modify the Service or make derivative works based on the Service, including without limitation to build a product using any similar ideas, features, functions or graphics of the Service, or to copy or modify any or all of the Service; (c) use any security testing tools in order to probe, scan or attempt to penetrate or ascertain the security of the Service, or to otherwise engage in denial of service attacks; (d) impose an unreasonable or disproportionately large load on the Service or infrastructure used to operate and to make the Service available; (e) access or use the Service for purposes of monitoring the Service availability, performance or functionality, or for any other benchmarking, comparison or competitive purpose; (f) modify, reverse engineer, adapt, translate, decompile or otherwise derive the source code for the Service; (g) use any software in connection with the Service that may require the Service or portion of the Service, or other intellectual property of Customer or its third party suppliers or licensors to be disclosed or distributed in source code form, made available free of charge to recipients, or modifiable without restriction by recipients; (h) remove, modify or obscure any proprietary notices, labels or marks in or on any or all of the Service; (i) sell, assign, sublicense, rent, lease, loan, provide, copy, reproduce, distribute or otherwise transfer all or any portion of the Service; or (j) access or use the Service in a manner inconsistent with the Documentation or this Agreement, or in a manner that is contrary to applicable law, rule or regulation, including, without limitation, any privacy laws.

**2.4 Service Level Schedule.** During the Subscription Period, DigitalEd will make the Service available to the Customer in accordance with the Service Level Schedule attached hereto as Schedule A. The remedies listed in the Service Level Schedule are Customer's sole remedy for any failure of the Service. DigitalEd's obligations in the Service Level Schedule do not apply to the extent: (a) Customer's or a User's system does not meet the minimum requirements listed in the Documentation to support the Service; and (b) Customer or a User has breached or continues to breach this Agreement.

**2.5 Support Schedule.** During the Subscription Period, DigitalEd will provide support to Customer in accordance with the Support Schedule attached hereto as Schedule B.

**2.6 Professional Services.** In connection with access to the Service, DigitalEd shall provide the professional services described in Purchase Documentation. The terms and conditions that apply to any professional services are set out in Schedule C.

**2.7 Security.** DigitalEd will maintain commercially reasonable administrative, physical and technical safeguards for the protection, confidentiality and integrity of the Service.

**2.8 Updates and Modifications to Service.** Customer acknowledges and agrees that DigitalEd shall provide continuous updates and revisions to the Service and that such updates and/or revisions may result in additions, modifications or removal of functionality, features,

content or the appearance of the Service; provided, however, the upgrades will not adversely affect the functionality or delivery of the Service.

## **Article 3. Content, Personal Information and Analytical Data**

**3.1 Customer Content.** Customer, by its Instructional Users, may upload and share Customer Content in the Service, subject to the following conditions:

(a) Customer shall, and shall ensure that its Users shall, have all necessary licenses, permissions and consents to use and share such Customer Content and Customer and its Users shall remain in compliance with any such licenses, permissions and consents. DigitalEd may, but has no obligation to, monitor any Customer Content uploaded into the Service for any reason.

(b) Customer shall, and shall ensure that its Users shall, not upload, share or make accessible any Customer Content that (i) is illegal, harmful, threatening, abusive, tortious, profane or invasive of another person's privacy; (ii) contains any viruses, malicious code, malware or any components designed to harm or limit the functionality of the Service; and (iii) negatively affects the performance, operation or security of the Service.

(c) Customer shall, and shall ensure that its Users shall, not disclose any Personal Information in the Customer Content without first complying with its legal obligations around the collection, use and storage of that Personal Information.

**3.2 DigitalEd Content.** All DigitalEd Content, whether in its original form or as modified, customized or manipulated by Customer, belongs to DigitalEd and must remain within the Service. DigitalEd Content may only be accessed and used by Customer's Users.

**3.3 Personal Information.** Customer acknowledges and agrees that the Service shall contain each User's email address (or other unique identifier) and for End Users, the Service will map grades and performance results to the appropriate End Users. The Service does not, nor is it designed to contain, any other Personal Information. In some instances, the performance results of an individual End User may be used to understand learning patterns, however, in these circumstances, the information is identified with a random unique identifier and is disassociated from the individual End User, except to Instructional Users who are able to see individual results of End Users. In addition, Customer hereby represents and warrants that all Personal Information disclosed to DigitalEd or entered into the Service has been collected and disclosed in accordance with all applicable laws and that all necessary consents have been properly and lawfully obtained from the necessary individual(s).

**3.4 Analytical Data.** Customer acknowledges and agrees that DigitalEd may monitor and compile any anonymized statistical data based upon Customer's and End Users' use of the Service, which may be combined with data from other customers of the Service, but always in an aggregate and anonymous manner to derive statistical and performance information related to the provision and operation of the Service (collectively, the "**Analytical Data**"). In no event shall the Analytical Data contain any Personal Information. Analytical Data shall only be used for analysis and research purposes, such as providing statistical and performance information to Instructional Users, to improve the Service or for internal analysis and research purposes.

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**3.5 Feedback.** Customer acknowledges and agrees that any information, feedback, comments or suggestions provided by Customer or any of its Users to DigitalEd regarding the Service shall belong solely to DigitalEd.

## **Article 4. Fees And Payment**

**4.1 Fees.** Customer hereby agrees to pay the Subscription fees for the Service and the fees for any other services to be performed by DigitalEd set out Schedule D and in the corresponding Purchase Documentation (collectively, the “**Fees**”), plus any applicable taxes.

**4.2 Additional Fees.** As set out in Purchase Documentation, DigitalEd may provide additional services, including training sessions for Users, professional services for the development of Customer Content, fees for hosting a development site, customization for branding purposes, and extended access and storage. Pricing is available from DigitalEd upon request.

**4.3 Purchase Documentation.** All orders for the Service and any ancillary services shall be evidenced by Purchase Documentation. Unless otherwise expressly specified, the terms of all Purchase Documentation must be consistent with the terms and conditions of this Agreement.

**4.4 Payment Terms; No Refund.** Upon delivery of the Services, DigitalEd shall issue an invoice to the Customer. All invoices are due in full thirty (30) days from the date of invoice without deduction or set off. All applicable sales, use and value add taxes shall be identified on the invoice and are the responsibility of the Customer. All Fees and applicable taxes are calculated and payable in United States dollars. All overdue amounts shall be subject to interest at a rate of one and one half percent (1.5%) per month or the maximum charge permitted by law, whichever is less. Company shall also pay all sums expended in collecting overdue payments, including reasonable legal fees. Once paid, all Environment Fees and User Fees are non-refundable.

**4.5 Excess Fees.** If (a) the number of Instructional Users or End Users exceeds the allowable limits per instance, or (b) the actual number of End Users is greater than that paid for by Customer, DigitalEd shall promptly advise and invoice Customer for any additional Environment Fees or Usage Fees, as the case may be.

## **Article 5. Intellectual Property**

**5.1 Intellectual Property Owned by DigitalEd.** As between Customer and DigitalEd, all Intellectual Property Rights to the Service, any updates or improvements to the Service, all Documentation, the Analytical Data and the DigitalEd Content (and any modification, customization or manipulation of the DigitalEd Content), belong to DigitalEd and its licensor(s). Except as set forth in Section 5.2, Customer is only being provided with access to and use of the Service and no part of the Service is being sold to Customer. All rights not expressly granted to Customer in this Agreement are reserved to DigitalEd.

**5.2 Limited License to DigitalEd Content.** DigitalEd hereby grants to Customer a non-exclusive, worldwide, non-transferable, non-sublicensable, limited license to use the DigitalEd Content within the Service during the Subscription Period solely for the purpose of creating

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content for Customer's End Users; provided that any modifications, customization or manipulation of the DigitalEd Content must remain within the Service.

**5.3 Intellectual Property Owned by Customer.** As between DigitalEd and Customer, all Intellectual Property Rights to the Customer Content (subject to the limited license set forth in Section 5.4) belong to Customer.

**5.4 Limited License to Customer Content.** Customer hereby grants to DigitalEd a non-exclusive, worldwide, non-transferable, non-sublicensable, limited license to use the Customer Content during the Subscription Period solely for the purpose of, and to the extent necessary to, provide the Services to Customer. Customer hereby grants to DigitalEd the right to modify, delete or disclose any Customer Content upon the following circumstances: (a) if required by law or by a regulatory body with sufficient jurisdiction over DigitalEd; or (b) if in the good faith belief by DigitalEd that such action is required to comply with any law or legal process, to comply with this Agreement or to protect the rights, property or personal safety of DigitalEd, any Customer User or any other customer or user of the Service.

## Article 6. Confidentiality

**6.1 Obligation of Confidentiality.** During the Term of this Agreement, a Party (the "**Disclosing Party**") may disclose certain Confidential Information to the other Party (the "**Receiving Party**"). The Receiving Party acknowledges that any Confidential Information of the Disclosing Party furnished to or acquired by it, directly or indirectly, is and shall be treated by the Receiving Party as valuable, proprietary and confidential information of the Disclosing Party. The Receiving Party will use commercially reasonable efforts to maintain the confidentiality of Confidential Information against loss, alteration, or unauthorized access by employees or contractors of the Receiving Party and in no case less than a reasonable standard of care. The Receiving Party shall not permit the disclosure of the Disclosing Party's Confidential Information to any third party without the Disclosing Party's prior consent, except for Confidential Information which the Receiving Party is required to disclose by law or regulation. The Receiving Party shall use the Confidential Information of the Disclosing Party only for the purposes of providing or using, as the case may be, the Services. These confidentiality obligations shall survive for a period of two (2) years following the termination or expiration of this Agreement, except in respect of trade secrets for which the confidentiality obligation shall be perpetual.

**6.2 Analytical Data is Confidential Information.** DigitalEd Confidential Information shall include all Analytical Data.

**6.3 No Rights to Confidential Information.** All Confidential Information remains the sole property of the Disclosing Party and no license or other rights to Confidential Information is granted or implied by this Agreement, except as specifically identified herein.

**6.4 Irreparable Harm.** The Receiving Party acknowledges that any unauthorized disclosure and use of Confidential Information of the Disclosing Party may cause irreparable harm to the Disclosing Party for which damages may not be an adequate remedy. In the event of unauthorized disclosure and use of its Confidential Information, the Disclosing Party shall, in addition to any other rights or remedies it may have in law or equity, under this Agreement or otherwise, be entitled to seek injunctive relief.

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**6.5 Destruction or Return of Confidential Information.** The Receiving Party agrees that, immediately upon request by the Disclosing Party, and in any event, immediately upon termination of this Agreement, the Receiving Party shall, at its discretion, destroy all copies of all Confidential Information of the Disclosing Party in its possession or deliver them to the Disclosing Party, except as to executed original copies of any contractual documents or other materials customarily held by the Receiving Party as legal archival material. Retention of any Confidential Information shall continue to otherwise be governed by this Article 6. The Receiving Party shall, if requested by the Disclosing Party, certify to the Disclosing Party that such materials have been destroyed or returned.

## Article 7. Indemnification

**7.1 Indemnification by DigitalEd.** DigitalEd shall indemnify and hold harmless Customer, its officers, directors, employees, representatives and agents (collectively, “**Customer Group**”) from and against all costs, losses, damages and liability which may be incurred on account of a finding of infringement of a third party’s Intellectual Property Rights by the Service (except for any Customer Content) by a court of competent jurisdiction in Canada; provided that (a) Customer has promptly notified DigitalEd of such a claim and DigitalEd is not prejudiced by any delay by Customer; (b) DigitalEd has full control over the defence of the claim, provided that any settlement or resolution entered into by DigitalEd shall not require an admission of liability or payment by Customer without its consent; (c) Customer has not made any admission against DigitalEd’s interests and has not agreed to any settlement of any claim or demand without DigitalEd’s consent; and (d) Customer will cooperate with DigitalEd in any defense of the claim, at DigitalEd’s expense.

**7.2 Exceptions to DigitalEd indemnification.** Notwithstanding Section 7.1, DigitalEd shall have no obligation to indemnify or defend Customer if any infringement claim arises as a result of: (a) access or use of the Service by Customer or its Users in a manner inconsistent with this Agreement; (b) modification of the Service by a party other than DigitalEd or in a manner not authorized by DigitalEd and that modification has resulted in the claim; and (c) access or use of the Service after DigitalEd has notified the Customer to discontinue such access and use.

**7.3 Sole Remedy.** In response to any pending or potential infringement claim, DigitalEd may, in its sole discretion and at its sole expense: (a) obtain a licence for Customer to continue using the Service, or (b) replace or modify the Service so as to be commercially substantially equal but non-infringing.

**7.4 Indemnification by Customer.** Customer shall indemnify and hold harmless DigitalEd, its affiliates, its officers, directors, employees, representatives and agents (collectively, “**DigitalEd Group**”) from and against all costs, losses, damages and liability which may be incurred on account of a finding of infringement of a third party’s Intellectual Property Rights by the Customer Content by a court of competent jurisdiction in Canada; provided that (a) DigitalEd has promptly notified Customer such a claim and Customer is not prejudiced by any delay by DigitalEd; (b) Customer has full control over the defence of the claim, provided that any settlement or resolution entered into by Customer shall not require an admission of liability or payment by DigitalEd without its consent; (c) DigitalEd has not made any admission against Customer’s interests and has not agreed to any settlement of any claim or demand without Customer’s consent; and (d) DigitalEd will cooperate with Customer in any defense of the claim, at Customer’s expense.

## **Article 8.      Limitation of Liability**

**8.1 Disclaimer.** TO THE MAXIMUM EXTENT PERMISSIBLE BY LAW, THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE". DIGITALE D MAKES NO REPRESENTATIONS, WARRANTIES, CONDITIONS, ENDORSEMENTS, UNDERTAKINGS OR GUARANTEES, OF ANY KIND, EITHER EXPRESS OR IMPLIED (INCLUDING ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF QUALITY, PERFORMANCE, RESULTS, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, MERCHANTABILITY OR ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF THE TRADE), INCLUDING, WITHOUT LIMITATION, ANY CLAIMS REGARDING ACCESSIBILITY, RELIABILITY, SECURITY, AVAILABILITY, UNINTERRUPTED USE, OR THAT THE SERVICE IS OR WILL BE ERROR FREE OR VIRUS FREE OR WILL ACHIEVE ANY INTENDED RESULT, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICE. NO WRITTEN OR ORAL INFORMATION OR ADVICE GIVEN BY DIGITALE D WILL CREATE ANY REPRESENTATION, WARRANTY OR CONDITION.

**8.2 Exclusions.** NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICE (INCLUDING LOST PROFITS, ANTICIPATED OR LOST REVENUE, LOSS OF DATA, LOSS OF USE OF ANY INFORMATION SYSTEM, FAILURE TO REALIZE EXPECTED SAVINGS OR ANY OTHER COMMERCIAL OR ECONOMIC LOSS, OR ANY THIRD PARTY CLAIM), WHETHER ARISING IN NEGLIGENCE, TORT, STATUTE, EQUITY, CONTRACT, COMMON LAW, OR ANY OTHER CAUSE OF ACTION OR LEGAL THEORY EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES.

**8.3 Limitation.** NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, EACH PARTY'S TOTAL CUMULATIVE LIABILITY FOR DAMAGES, EXPENSES, COSTS AND LOSSES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICE, IS (A) LIMITED TO DIRECT, ACTUAL, PROVABLE DAMAGES, AND (B) IN NO EVENT WILL EXCEED IN THE AGGREGATE AMOUNTS PAID BY CUSTOMER TO DIGITALE D UNDER THIS AGREEMENT IN THE SIX (6) MONTHS IMMEDIATELY PRIOR TO THE EVENTS GIVING RISE TO SUCH CLAIM FOR DAMAGES.

## **Article 9.      Subscription Period; Term and Termination**

**9.1 Subscription Period; Automatic Renewal.** Unless otherwise indicated in the applicable Purchase Documentation, Subscription Periods shall automatically renew for periods of the same length as the initial Subscription Period at the then current list price for the applicable Service. A Subscription Period, and any renewal thereof, may not be cancelled with less than sixty (60) days' notice prior to the expiration of the then-current term.

**9.2 Term of the Agreement.** This Agreement shall commence as of the Effective Date and shall continue until the date that the last Purchase Documentation hereunder expires or is terminated, unless this Agreement is terminated earlier in accordance with this Agreement.

**9.3 Termination for Breach.** Either Party may terminate this Agreement and/or any outstanding Purchase Documentation if the other Party: (a) 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

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a receiver over any part of that Party's assets or is subject to any proceeding involving any of the foregoing; or (b) fails to perform any of its obligations in this Agreement or is in breach of any of the terms of this Agreement and such failure or breach is not cured within twenty (20) days of written notice of same. DigitalEd may terminate this Agreement and any outstanding Purchase Documentation or Subscription, including any obligation to provide access to the Services or to provide Support, upon non-payment of fees by Customer.

**9.4 Suspension of Service.** In the event that DigitalEd, acting reasonably, suspects or learns of any of the following circumstances, then DigitalEd may immediately suspend access to the Service for Customer and all its Users in addition to any other remedies that DigitalEd may have: (a) any breach of Sections 2.2, 2.3 or 3.1; (b) any failure by Customer to cooperate in any reasonable investigation of any suspected violation of this Agreement; (c) access or use or manipulation of the Service without DigitalEd's consent; (d) any circumstance that requires immediate suspension of the Service in order to protect the integrity of the Service and its infrastructure; and (e) any suspension required by law.

**9.5 Termination Obligations.** Upon termination of this Agreement, Customer shall (a) cease to access the Service and shall ensure its Users cease to access the Service, (b) comply with Section 6.5, and (c) immediately pay all amounts outstanding and owing to DigitalEd.

**9.6 Survival.** Notwithstanding the termination or expiry of this Agreement, all obligations which either expressly or by their nature are to continue after the termination of this Agreement shall survive and remain in effect, including, without limitation, Sections 2.2, 2.3, 3.1, 3.2, 3.4, 4.1, Article 5, 6 7 and 8.

## Article 10. General

**10.1 Audit Rights.** DigitalEd reserves the right to audit and monitor Customer and User's use of the Service and compliance with this Agreement.

**10.2 Press Releases; Marketing.** DigitalEd may use Company's name and logo for the limited purpose of identifying it as a customer in sales and marketing materials, including on the DigitalEd website.

**10.3 Force Majeure.** Except for payment and confidentiality obligations contained in this Agreement, neither Party shall be liable to the other Party for any failure or delay in performance caused by circumstances beyond its control, including acts of God, fire, natural disasters, pandemic, labour stoppages, government action, terrorism, failures or delays by internet service providers or cloud computing providers, civil unrest, war, and criminal acts of third parties; provided that the Party seeking to rely on such circumstances gives written notice of such circumstances to the other Party hereto and uses commercially reasonable efforts to overcome such circumstances.

**10.4 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, and there are no representations, warranties or other agreements between the Parties, express or implied, in connection with the subject matter of this Agreement except as specifically set out in this Agreement.

**10.5 Amendment.** This Agreement shall not be amended other than by an instrument in writing signed by both Parties and stating that the Parties intend to amend this Agreement.

**10.6 Waivers.** No waiver of any provision of this Agreement shall bind a Party unless consented to in writing by that Party. No waiver of any provision of this Agreement shall be a waiver of any other provisions, nor shall any waiver be a continuing waiver, unless otherwise expressly provided in the waiver.

**10.7 Assignment.** Without the prior written consent of DigitalEd, Customer may not assign this Agreement or any of its rights or obligations hereunder, except to an affiliate which agrees to be bound by the terms of this Agreement and Customer remains responsible for the affiliate's compliance with this Agreement, including the payment of all fees.

**10.8 Governing Law.** This Agreement is governed by and construed in accordance with the laws of the Province of Ontario and the Canadian federal laws applicable therein.

**10.9 Notices.** Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery, mail delivery by a nationally recognized overnight courier or by electronic means of communication addressed to the recipient Party at the address indicated on the signature page of this Agreement and/or to such other individuals and addresses as may be designated by notice given by either Party to the other. Any demand, notice or other communication given by electronic communication shall be deemed delivered on the day of transmittal thereof if transmitting during the normal business hours of the recipient, and on the next business day if not transmitted during such hours on any day.

**10.10 Counterparts.** This Agreement may be signed in one or more counterparts (including through electronic signatures), and each of which may be delivered by facsimile, email or other functionally equivalent electronic means of transmission, and those counterparts will together constitute one and the same instrument.

**10.11 For European Union Users.** Any contractual provisions of this Agreement contrary to the 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 Customer 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.

**[SIGNATURE PAGE FOLLOWS]**

Each of the Parties below has duly executed and delivered this Master Services Agreement as of the Effective Date.

## **DIGITAL EDUCATION COMPANY LTD.**

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Christina Perdikoulis  
President  
Date:  
Address for Notices:

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DigitalEd  
630 Weber St. North  
Suite 100  
Waterloo, Ontario  
N2V 2N2

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cp@digitaled.com

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Telephone: (888) 355-4511

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## **CUSTOMER:**

B  
y  
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Name:  
Title:  
Date:  
Address for Notices:

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Physical Address

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Email

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Telephone

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## SCHEDULE A

### SERVICE LEVEL SCHEDULE

DigitalEd is committed to providing its customers with the following service levels, which are incorporated by reference and forms part of the Master Services Agreement between Customer and DigitalEd, as may be updated by DigitalEd from time to time, in its sole discretion, acting reasonably, and posted at [www.digitaled.com/terms](http://www.digitaled.com/terms). The remedies set forth in this Service Level Schedule are Customer's sole and exclusive remedy for any failure to achieve the service levels set forth herein. Capitalized terms used herein but not defined shall have the meaning ascribed to them in the Agreement.

1. **Service Level Objective.** DigitalEd's service level objective is to provide Customer and its Users with an Availability of at least 99.5%
2. **Availability.** Availability and Available refer to the time in any given calendar month during a Subscription Period that the Service is available for access and use by Customer's Users, but specifically excludes any Excusable Downtime and any Emergency Downtime. Availability is calculated as  $((X-Y) * 100)/X$  where "X" equals the total number of minutes in a given calendar month and "Y" equals the total number of minutes the Service is not Available that month. The calculation of Availability will be prorated in any month in which the Customer's access to the Service commences on a day other than the first day of the month.
3. **Excusable Downtime.** Excusable Downtime means any suspension of access or use of the Service as a result of any of the following: (i) Planned Maintenance, (ii) a force majeure event or condition, (iii) failure of any component of the Service caused by Customer or any of its Users, including any suspension of the Service as a result of Customer's breach of its obligations under the Agreement, (iv) failure or delay of any component of the Service, including its infrastructure, caused by a third party outside the control of DigitalEd, including, without limitation, any failure or delay by a internet service provider or cloud computing provider.
4. **Planned Maintenance.** Except as otherwise agreed to between the Parties, DigitalEd shall perform all planned maintenance to the Service only during the following window and shall endeavor to provide prior notice of such planned maintenance at least fourteen (14) days in advance in accordance with DigitalEd's standard notification process.

Tuesdays from 0100 - 0400 UTC for the Americas, or  
Thursdays from 1900 - 2100 UTC for the rest of the world

5. **Emergency Downtime.** Emergency Downtime means any emergency suspension of access or use of the Service required as a result of conditions or circumstances which may pose immediate danger to any component of the Service, including its infrastructure, and requires an immediate response, as determined by DigitalEd, acting reasonably and in good faith.
6. **Service Level Default.** If DigitalEd fails to meet its service level objective as set out above, then Customer shall be entitled to a service credit calculated as a percentage of the Access Fee, pro-rated for the affected month for the number of Users affected and the number of days that month where the service level objective was not met (the "**Service Credit**"). In order to receive the Service Credit, Customer must request such credit in writing by opening

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a case within fourteen (14) days of the end of the applicable month and DigitalEd has investigated and confirmed the entitlement and amount of the Service Credit. In no event shall the Service Credit exceed 100% of the Access Fee, pro rated per month. Upon confirmation, the Service Credit shall be applied to any renewal of the Subscription Period.

## SCHEDULE B

### SUPPORT SCHEDULE

DigitalEd is committed to providing its customers with the following support services, which are incorporated by reference and forms part of the Master Services Agreement between Customer and DigitalEd, as may be updated by DigitalEd from time to time, in its sole discretion, acting reasonably, and posted at [www.digitaled.com/terms](http://www.digitaled.com/terms). Capitalized terms used herein but not defined shall have the meaning ascribed to them in the Agreement.

1. **Method of Communication.** During the Subscription Period, DigitalEd shall provide Customer with access to its support services via the following methods of communication:
  - a) Telephone support is available over the phone between Monday to Friday (excluding statutory holidays) from 800 - 2200 UTC. Customer support can be reached in the United States and Canada at 1-833-450-2211, in Australia at 1-800-824-239, and internationally at 0-800-069-8801.
  - b) Email support is available over email between Monday to Friday (excluding statutory holidays) from 800 - 2200 UTC at [support@digitaled.com](mailto:support@digitaled.com).
  - c) Website support is available for submitting support requests at [www.digitaled.com/support](http://www.digitaled.com/support)
2. **Reporting of Errors.** Customer shall report any failure of the Service to function in conformity with the Documentation (an “**Error**”) as promptly as possible by providing the information necessary for DigitalEd to create a software problem report (“**SPR**”). A SPR will not be assigned a Support Case Number until all necessary information has been provided by Customer to DigitalEd.
3. **Classification of Errors.** DigitalEd shall respond to SPRs with a Support Case Number depending on the severity of the Error within the time frames indicated below. The severity level assigned to any SPR with a Support Case Number shall be determined, or adjusted, by DigitalEd in its sole discretion acting reasonably.

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Severity Level	Definition of Severity Level	Response Time
High	Service is inaccessible to users	0 - 4 hours during business hours
Medium	Service operation is not working as expected for users	Within 2 business days
Low	The user is experiencing administrative issues	Within 5 business days

4. **Support Disclaimer.** DIGITALED MAKES NO WARRANTY OR GUARANTEE, WHETHER EXPRESS OR IMPLIED, ON THE TIME REQUIRED TO RESOLVE AN ERROR.
5. **Exclusion.** DigitalEd's obligations to provide support do not apply to the extent: (a) Customer's system does not meet the minimum requirements outlined in the Documentation; (b) Customer has breached or continues to breach the Agreement; and (c) DigitalEd has provided recommendations or guidance on how to resolve the Error but Customer has failed to incorporate such recommendations and guidance.
6. **Customer Cooperation.** Customer shall make all reasonable efforts to cooperate with DigitalEd to reproduce and troubleshoot Errors. Failure to cooperate with DigitalEd may result in delays in resolving issues.

## SCHEDULE C

### ADDITIONAL PROFESSIONAL SERVICE TERMS

In addition to the terms and conditions set forth in the Master Services Agreement, which shall continue to apply to professional services to the extent not inconsistent herewith, the following terms and conditions apply specifically to professional services performed by DigitalEd. Capitalized terms used herein but not defined shall have the meaning ascribed to them in the Agreement.

1. **Professional Services.** All professional services to be provided by DigitalEd to Customer shall be described in Purchase Documentation signed by both Parties and referencing the Agreement.
2. **Time and Materials.** Unless explicitly stated in the Purchase Documentation, all professional services are performed on a “time and material” basis.
3. **Expenses.** Unless explicitly stated in the Purchase Documentation, Customer shall reimburse DigitalEd for all reasonable and documented expenses, including travel, parking, accommodations and meals.
4. **Change Orders.** If either Party wishes to make a change to the scope of work set out in Purchase Documentation or to content that is publicly available in the Service, a change order must be submitted which describes the scope of the professional services to be performed, the revised time frame and a cost estimate. Each change order must be accepted by both Parties to be binding.
5. **Delivery Dates.** Delivery dates in the Purchase Documentation are estimates only and are not binding completion dates.
6. **Invoices.** Unless otherwise agreed in the Purchase Documentation, DigitalEd will invoice Customer for services performed and expenses incurred on a monthly basis. Payment is due thirty (30) days from invoice delivery.
7. **Limited License re. Deliverables.** All specific deliverables identified in the Purchase Documentation are not “work made for hire” and any Intellectual Property Rights in the deliverables remain with DigitalEd and are licensed to Customer for use only in connection with the Service.
8. **Warranty.** For a period of thirty (30) days from the performance of the professional services, DigitalEd warrants that the professional services are performed in a professional manner using qualified and experienced personnel familiar with the Service and its infrastructure. Any warranty claims must be reported to DigitalEd within thirty (30) days of the related professional services. This warranty does not apply if there is any change, addition, deletion or other modification made to the deliverables, except as specifically authorized by DigitalEd in writing.
9. **Warranty Remedy.** Upon a valid deficiency claim of the professional services warranty by Customer, DigitalEd shall remedy the deficiency within a reasonable period of time and failing that, DigitalEd may refund any fees paid by Customer for the professional services and attributable to the deficiency giving rise to the warranty claim.



**SCHEDULE D**  
**FEE SCHEDULE**

**HIGHER EDUCATION FEES** (All Fees in USD):

<b>Pricing</b>			<b>Price</b>
Environment Fee (annual)			<b>\$4,000</b>
Usage Fee (per End User per Subscription Period)	Min	Max	
End Users	1	10,000	<b>\$30</b>
End Users	10,001	20,000	<b>\$25</b>
End Users	20,001	30,000	<b>\$20</b>
End Users	30,001	Unlimited	<b>\$15</b>
Additional Fees			

1. **Environment Fee.** The Environment Fee is an annual fee that covers the setup, administration and maintenance of one Customer instance and the additional items listed below. The Environment Fee also includes the following:

- (a) up to ½ day online training;
- (b) up to a maximum of 250 Instructional Users;
- (c) up to a maximum of 10,000 End Users;
- (d) unlimited courses per End User; and
- (e) includes DigitalEd Content (only for use within the Service).

DigitalEd shall advise if additional instances, and therefore, an additional Environment Fee, is required to support the Customer’s environment, including, when Customer has over 250 Instructional Users or over 10,000 End Users.

2. **Usage Fee.** The Usage Fee is a fee per End User per Subscription Period. Pricing is tiered depending on the aggregate number of End Users.

3. **Additional Terms.** Training is available at \$2,000/day plus expenses.

