

**ELEARNING INNOVATION, LLC DBA EASE LEARNING**  
**HELP DESK SERVICES AGREEMENT**

THIS HELP DESK SERVICES AGREEMENT (this “**Agreement**”) is made to be effective as of the 21<sup>st</sup> day of August, 2020 (the “**Effective Date**”), by and between **eLearning Innovation, LLC, dba Ease Learning**, a New Hampshire limited liability company with a mailing address of 35 Manchester Road, Suite 11a, 238 Derry NH, 03038 (“**Support Provider**”), and the institution set forth below (“**Institution**”):

Institution Name: Dawson Community College

Institution Address: 300 College Drive  
Glendive, MT 59330

**WITNESSETH:**

**WHEREAS**, Support Provider has expertise in providing learner support services, which includes technical support, troubleshooting, data analysis, website support, and resolution of content-related issues in connection with online institutional and educational platforms (“**Services**”); and

**WHEREAS**, Institution provides a learning management system (“**LMS**”) for providing online educational resources to its students, faculty, administrators, learning designers, and others (“**End Users**”) and wishes to engage Support Provider to provide the Services in connection with the End Users’ use of the LMS.

**NOW THEREFORE**, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. SCOPE OF SERVICES**

**1.1 Quality Assurance Review and Improvement Plan.**

(a) At least 30 days prior to the Effective Date, Support Provider shall provide to Institution a properly completed End User Support Survey (“**EUSS**”), which Support Provider shall use as the basis to prepare a customized Quality Assurance Review and Improvement Plan (“**Customized Support Plan**”) as set forth in **Exhibit A** attached hereto.

(b) The Customized Support Plan shall describe the documentation and protocols Support Provider requires to provide the Services to support Institution’s End Users’ use of the LMS. In addition, the components of the Customized Support Plan will provide the basis for the nature, scope and cost of the Services.

(c) Institution shall promptly provide such information to Support Provider as Support Provider may reasonably request and otherwise cooperate with Support Provider in preparing and implementing the Customized Support Plan, and providing the Services.

## 1.2 The Services.

(a) **Services Generally.** The Services shall be comprised of the Basic Services (as defined in Section 1.2(b)), or the Standard Services (as defined in Section 1.2(c)) or the Expanded Services (as defined in Section 1.2(d)) that Institution engages Support Provider to provide.

(b) **Basic Services.** During the Term (as defined in Section 9.1) of this Agreement and subject to the terms of this Agreement, Support Provider shall provide to Institution the Basic Helpdesk Support Services set forth in **Exhibit B** attached hereto and incorporated herein (the “**Basic Services**”).

(c) **Standard Services.** For an additional fee and subject to the terms and conditions of this Agreement, during the Term of this Agreement and subject to the terms of this Agreement, Support Provider shall provide to Institution the Standard Helpdesk Support Services set forth in **Exhibit C** attached hereto and incorporated herein (the “**Standard Services**”).

(d) **Expanded Services.** For an additional fee and subject to the terms and conditions of this Agreement, Support Provider shall provide the Expanded Helpdesk Support Services set forth in **Exhibit D** attached hereto and incorporated herein (the “**Expanded Services**”).

(e) **Online Support Center.** The Services shall be delivered utilizing Support Provider’s online help center interface (the “**Online Support Center**”), which is described in **Exhibit E** attached hereto).

**1.3 Fees for Services.** For any of the Services, Institution shall pay the fees for such Services (the “**Service Fees**”) in accordance with the payment framework set forth on **Exhibit F** attached hereto.

**1.4 Increased Institution Enrollment.** Institution acknowledges that an increase in enrollment at Institution is expected to increase the usage of Services and the number of hours of support Services (“**Support Hours**”) that Institution requires and shall result in additional Service Fees. Therefore, Institution shall (a) not less than thirty (30) days prior to the commencement of each Renewal Term (as defined in Section 9.1), provide to Support Provider an estimate of the number of End Users that are expected to have access to the Services during the Renewal Term, and (b) at any time at which Institution becomes aware that, or expects, the number of End Users with access to the Services has increased or is reasonably expected to increase by twenty percent (20%) or more, promptly notify Support Provider of such increase. Promptly after receiving any such notice, Support Provider shall notify Institution of the increase in the amount of Support Fees that result from such increase in the anticipated use of Services and Institution agrees to pay such increased Support Fees amount in accordance with the provisions of this Agreement.

## 2. FEES; PAYMENT TERMS

**2.1 Payment Terms Generally.** Institution shall pay Support Provider the Support Fees and other amounts owed for Services in accordance with the fee table set forth in **Exhibit F** attached hereto. Such payment shall be made in full in advance prior to the commencement of the Initial Term (as defined in Section 9.1) or Renewal Term in which Support Provider is providing Services.

**2.2 Payment for Services Overage.** In the event Institution exceeds its maximum allotted number of Support Hours for any reason, then Support Provider shall invoice Institution monthly for any such overages (“**Overages**”) at the rate for such Overages set forth on **Exhibit F** attached hereto. Such amount shall be calculated every three (3) months during the Term. Payment for Overages shall be made by Institution within thirty (30) days of receipt of an invoice therefor.

### **2.3 Late Payments.**

(a) Any amount (including for Support Fees or Overages) which is not paid when due will bear interest until paid in full at the rate of one percent (1%) per month. If Support Provider takes any action to collect any amount overdue, then Institution shall pay Support Provider all costs that Support Provider incurs in collecting any overdue amounts, including, but not limited to, reasonable attorneys' fees.

(b) In addition, in the event any amount owed is past due, then Support Provider may provide notice to Institution of such overdue amount. In the event that Institution fails to pay in full the overdue amount within ten (10) days after receipt of such notice, then Support Provider may, in its discretion, immediately suspend providing all or any portion of the Services until such overdue amount (and any interest thereon) is paid in full.

## **3. INTELLECTUAL PROPERTY RIGHTS**

### **3.1 Defined Term.**

(a) “**Intellectual Property Rights**” means all worldwide rights in and to trade secrets, patents, patent rights copyrights, trademarks, service marks, know-how, as well as moral rights and similar rights of any type, including all renewals thereof, whether registered or unregistered.

(b) “**Know-How**” means knowledge, information, data, know-how, methodologies, processes, ideas, concepts, or discoveries.

**3.2 Know-How.** In the course of providing the Services, Support Provider may create or provide Know-How (including with regard to the functionality or use of the LMS). All Know-How, and all Intellectual Property Rights therein, provided or created by Support Provider is and shall remain the sole and exclusive property of Support Provider.

**3.3 Other Materials.** In addition to the Know-How, all other materials or products used or created in connection with the Services, including, but not limited to, any computer software (in object code and source code form), data, or information developed or provided by Support Provider, any content (including email correspondence) and any identifiers or passwords used to access any portion of the Services or otherwise provided by Support Provider (“**Additional Materials**”) is and shall remain the sole and exclusive property of Support Provider.

**3.4 Instructional Design Process.** Support Provider may utilize its instructional design process to provide Services and may develop, augment, modify and otherwise improve such process in the course of providing the Services (collectively, the “**Process**”). Institution hereby acknowledges and agrees that the Process and all Intellectual Property Rights therein is and shall be owned by Support Provider.

**3.5 Confirmation.** In the event that by operation of law or otherwise Institution obtains any right, title, or interest in or to the Know-How, Additional Materials, or Process, then Institution hereby assigns to Support Provider all of Institution's right, title, and interest in and to the Know-How, Additional Materials, or Process, together with any and all Intellectual Property Rights therein or related thereto. Both during the performance of Services and thereafter, Institution agrees to take all such actions and to sign all such applications, assignments, and other documents as may be reasonably requested by Support Provider from time to time in order to protect Support Provider's right, title, and interest in the Know-How, Additional Materials, and Process and/or to obtain or maintain any Intellectual Property Rights therein or related thereto.

#### 4. INSTITUTION REPRESENTATIONS AND OBLIGATIONS

**4.1 Institution Materials.** Institution hereby warrants and represents to Support Provider, with respect to materials supplied by Institution, if any, that:

(a) Institution is the owner of all right, title, and interest in and to, or has all necessary rights in, all text, images, icons, logos, characters, likenesses, graphics, sounds, music, photographs, recordings, video, film, animations, cartoons, illustrations, accompanying text captions, scripts, skits, or other materials (and all Intellectual Property Rights therein) that Institution provides or otherwise makes available to Support Provider for use in connection with the Services (the “**Institution Materials**”);

(b) Support Provider’s use of the Institution Materials in connection with this Agreement does not infringe or misappropriate the Intellectual Property Rights of any third party and does not violate the privacy or other rights of any third party;

(c) The Institution Materials are free and clear of any and all encumbrances and/or liens of any nature whatsoever which would preclude or otherwise limit Support Provider’s usage of such Institution Materials in connection with providing the Services; and

#### **4.2 Certain Institution Obligations.**

(a) Institution shall, at Institution’s own cost and expense, commit and provide such time, facilities, personnel, resources, and assistance as Support Provider may reasonably request in connection with the performance of Services. Specifically, Institution shall provide Support Provider with sufficient access to the LMS and other systems to effectively provide the Services.

(i) Regarding Standard Services, Institution shall cooperate with Support Provider (including providing login access to the LMS) in order for Support Provider to be able to: (A) access student online accounts, (B) reset passwords or provide a link enabling students to reset their own password, (C) access course listings, (D) access advanced course settings for the purpose of troubleshooting technical issues, and (E) access activity availability criteria.

(ii) In addition, regarding Expanded Services, Institution shall cooperate with Support Provider in order for Support Provider to be able to: (A) access user accounts in the related management or directory system, (B) authenticate an End User’s identity, (C) carry out related support operations, such as resetting passwords or enabling settings, (D) enable and authenticate Institution email accounts, and (E) provide guest access to campus WiFi.

(b) Institution shall promptly provide Support Provider with the information and materials (including the Institution Materials) requested by Support Provider in connection with Support Provider’s performance of the Services, including any information and support necessary to resolve a Client Action Request (as defined in **Exhibit E** attached hereto).

(c) Institution acknowledges and agrees that Support Provider’s performance of the Services is dependent on Institution’s performance of its responsibilities hereunder, and that Institution’s failure to fulfill, or delay in fulfilling any of its duties or obligations hereunder shall entitle Support Provider to delay performance of the Services caused by such failure or delay. Such delay by Support Provider shall not affect Institution’s other obligations hereunder, including Institution’s obligations to pay for the Services in the amounts and in accordance with the payment schedule set forth in this Agreement.

(d) Institution acknowledges and agrees that Support Provider is not the provider of the LMS and is not responsible for the LMS's performance, operation, uptime, functionality, or compliance with applicable law (including pertaining to Personal Information) or data security standards.

## 5. Personal Information.

**5.1 Personal Information Defined.** For purposes of this Agreement, “**Personal Information**” means information relating to an identified or identifiable natural person (i.e., an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to such person's physical, physiological, mental, economic, cultural or social identity).

### 5.2 Institution's Compliance.

(a) Institution shall comply with all state, federal, and other applicable laws governing the protection of Personal Information (defined above). Such compliance shall include compliance with the states' information security laws, including any laws regarding the protection of Personal Information or requiring written information security programs. In accordance with these requirements, Institution represents and warrants it has an established information security program containing appropriate administrative, technical and physical measures to protect student data (including any Personal Information therein) against accidental or unlawful destruction, alteration, unauthorized disclosure or access that complies with applicable laws and data processing industry standards.

(b) Institution (i) shall provide to Support Provider access to the portion of the LMS that contains End User academic, course related information only to the extent needed for Support Provider to provide the Services, and (ii) acknowledges and agrees that Support Provider does not need, and shall not be provided, access to the entire LMS, including but not limited to such portion of the LMS that contains any End User financial or demographic information.

(c) Institution acknowledges and agrees that in the event Support Provider suspects any unauthorized access to, or use of, the Online Support Center or any other platform by which Support Provider may provide the Services, Support Provider may suspend access to the Services to the extent Support Provider deems necessary, including to preserve the security of End Users' Personal Information.

(d) Support Provider shall use any Personal Information it collects or to which it otherwise has access only to provide the Services and shall collect, use and store such Personal Information in accordance with Support Provider's Privacy Policy, as such Privacy Policy may be updated from time to time. Support Provider's Privacy Policy is accessible online at:  
[http://eillcmedia.com/public/Ease\\_Learning\\_Privacy\\_Policy.pdf](http://eillcmedia.com/public/Ease_Learning_Privacy_Policy.pdf)

## 6. NON-SOLICITATION

Each party (the “**Restricted Party**”) agrees that it will not, during the Term and for a period of two (2) years thereafter, directly or indirectly solicit for employment or for an engagement as a contractor, or employ or engage as a contractor any person who is employed or engaged as a contractor by the other party during the Term and who is involved in the planning for, implementation, or provision of Services, without the prior written consent of the other party; provided, however, that the Restricted Party shall not be prohibited from employing or engaging any such person if such person was initially made aware or hired or engaged in response to a general public advertisement.

## 7. CONFIDENTIALITY

### 7.1 Certain Definitions.

(a) “Confidential Information” means any non-public information concerning Disclosing Party and/or its business, whether disclosed orally, in writing, or by other means before, on or after the Effective Date and all of Disclosing Party’s non-public information otherwise learned or obtained by Recipient in the course of Disclosing Party’s involvement under this Agreement. Without limiting the generality of the foregoing, Support Provider’s Confidential Information includes (i) information regarding the instructional design process utilized by Support Provider in providing Services, including, but not limited to, all ideas, concepts, methodologies, inventions, innovations and developments related thereto or arising therefrom, and (ii) the terms of this Agreement (including pricing information).

(b) “Disclosing Party” means the party (i.e., either Support Provider or Institution) disclosing Confidential Information to the other party hereto.

(c) “Recipient” means the party (i.e., either Support Provider or Institution) receiving or otherwise obtaining Confidential Information of the other party hereto.

### 7.2 Non-Disclosure of and Use Restrictions Regarding Confidential Information.

Except as may otherwise be approved in writing by Disclosing Party, Recipient shall not at any time use Disclosing Party’s Confidential Information for any purpose other than as needed in connection with the provision of Services. Recipient shall not at any time disclose any of Disclosing Party’s Confidential Information to any third party and shall use reasonable efforts to maintain the confidentiality of Disclosing Party’s Confidential Information, such efforts to be not less than the efforts used by Recipient to maintain the confidentiality of Recipient’s own trade secret information.

**7.3 Non-Disclosure Exceptions.** Recipient shall not be liable for any disclosure of Disclosing Party’s Confidential Information if the same is (a) disclosed after it becomes generally available to the public without breach of this Agreement and not through the fault of Recipient, (b) is properly and lawfully known by Recipient prior to disclosure by Disclosing Party, as demonstrated by Recipient’s prior written records, (c) disclosed after it is lawfully received by Recipient from a third party who is not bound by a non-disclosure agreement with Disclosing Party or is not otherwise prohibited from transmitting the information to Recipient by a contractual, legal, fiduciary, or other obligation, or (d) disclosed by Recipient with Disclosing Party’s prior written approval.

**7.4 Required Disclosure.** If Recipient is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand, or other similar process) to disclose any of Disclosing Party’s Confidential Information, Recipient shall provide Disclosing Party with prompt notice of any such request or requirement so that Disclosing Party may (a) seek a protective order or other assurance that confidential treatment will be accorded such Confidential Information by such tribunal, or (b) at Disclosing Party’s discretion, waive compliance with the provisions of this Agreement. Recipient agrees to cooperate with Disclosing Party in any efforts that Disclosing Party reasonably requests be taken to obtain any such protective order or assurance from such tribunal; provided, that Disclosing Party shall reimburse Recipient for reasonable out-of-pocket expenses incurred by Recipient in providing any such requested cooperation. If, in the absence of any such requested protective order or assurance, Recipient is nonetheless, in the opinion of counsel, legally compelled to disclose any of Disclosing Party’s Confidential Information to such tribunal, Recipient may disclose to such tribunal only that portion of Disclosing Party’s Confidential Information which such counsel advises is legally required to be disclosed; provided, that Recipient must exercise reasonable efforts to preserve the confidentiality of such requested Confidential Information.

## **7.5 Return of Confidential Information and Data.**

(a) Upon completion or termination of Services hereunder, or the earlier expiration or termination of this Agreement, the Recipient shall (at the Disclosing Party's request) return to the Disclosing Party (or at the Disclosing Party's request, destroy) all of the Disclosing Party's Confidential Information and other data and all copies, excerpts, and notes thereof in any form.

(b) If the Disclosing Party does not request the return of Confidential Information or other data within thirty (30) days after the termination of this Agreement, then the Recipient may without notice to Disclosing Party, purge, destroy and otherwise delete such Confidential Information and other data from Recipient's systems.

## **8. INDEMNIFICATION**

**8.1 Indemnification by Support Provider.** Subject to the provisions of this Section 8.1, Support Provider shall indemnify, defend, and hold harmless Institution, its officers, directors, equity holders, and employees (collectively, the "**Institution Indemnified Parties**") from and against any and all losses, claims, or damages (including reasonable attorneys' fees) incurred by Institution Indemnified Parties arising from a claim by a third party that the Services infringe upon such third party's trade secrets, patents, patent rights, copyrights, or trademarks.

**8.2 Indemnification by Institution.** Institution shall indemnify, defend, and hold harmless Support Provider, its officers, directors, equity holders, and employees (collectively, the "**Support Provider Indemnified Parties**") from and against any and all losses, claims, or damages (including reasonable attorneys' fees) incurred by the Support Provider Indemnified Parties arising from (a) a breach of Institution's representations set forth in Section 4.1; (b) a claim by a third party that the Services infringe upon such third party's Intellectual Property Rights to the extent that such claim is based upon specifications, direction, or documentation approved by Institution or provided to Support Provider by Institution (or on Institution's behalf), or (c) Institution's failure to comply with applicable law or its policies regarding the protection of Personal Information.

**8.3 Indemnitee's Obligations.** A party's (the "**Indemnifying Party**") obligation to indemnify the other party hereto (the "**Indemnified Party**") is subject to Indemnified Party: (i) promptly giving the Indemnifying Party written notice of the claim, (ii) giving Indemnifying Party sole control of the defense and settlement of the claim (except that the Indemnifying Party may not settle any such claim unless it unconditionally releases the Indemnified Party of all liability), and (iii) giving Indemnifying Party reasonable assistance, at Indemnifying Party's expense.

## **9. TERM AND TERMINATION**

**9.1 Term.** The initial term of this Agreement shall commence on the Effective Date and continue for a period of one (1) year (the "**Initial Term**") and shall automatically renew for periods of one (1) year each with a 5% annual increase (each, a "**Renewal Term**" and together with the Initial Term, the "**Term**") unless either party provides to the other party notice of non-renewal at least sixty (60) days prior to the expiration of the then current Initial Term or Renewal Term. In addition, this Agreement may be terminated at any time pursuant to the provisions of Section 9.2 below.

### **9.2 Termination For Cause.**

(a) Either party may terminate this Agreement at any time by giving written notice to the other party, which notice shall be effective immediately or as otherwise set forth therein, if the other party files a petition of any type as to its bankruptcy, is declared bankrupt, is or becomes insolvent, makes an assignment for the benefit of creditors, or commences liquidation or receivership proceedings.

(b) Either party may terminate this Agreement at any time by giving written notice to the other party in the event that such other party breaches any of the provisions of this Agreement and fails to remedy such breach within ten (10) days after receipt of written notice of such breach (or if such breach cannot be remedied during such period, the other party fails to make (and maintain) good faith, diligent attempts during such period to remedy such breach).

(c) In the event that Institution fails to pay any amount due hereunder on or before the applicable due date, then Support Provider provide to Institution notice that such amount is overdue. In the event that Institution fails to pay such overdue amount within fifteen (15) days after receipt of such notice, then Support Provider may terminate this Agreement immediately at any time thereafter while any portion of such amount remains unpaid by providing to Institution written notice of termination.

**9.3 Effect of Termination.** Upon expiration or the earlier termination of this Agreement, Institution shall immediately pay all amounts then due for Services provided and expenses incurred during the Term. In addition, upon expiration or earlier termination of this Agreement, Sections 2.2, 2.3, 3.1-3.5 (inclusive), 4.1, 5, 6, 7.1-7.5 (inclusive), 8.1 – 8.3 (inclusive), this 9.3, 10.2, 11.1, 11.2, 13.1-13.3 (inclusive), and 15.1-15.9 (inclusive) of this Agreement shall survive.

## **10. WARRANTIES.**

**10.1 Limited Warranty.** Support Provider warrants that Support Provider shall provide the Services in a professional, diligent manner utilizing properly trained personnel.

**10.2 Warranty Limitation.** EXCEPT AS SET FORTH IN SECTION 10.1, SUPPORT PROVIDER PROVIDES THE SERVICES “AS IS”, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND. INSTITUTION ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SPECIFICALLY SET FORTH IN SECTION 10.1 OF THIS AGREEMENT, SUPPORT PROVIDER HAS NOT MADE, AND DOES NOT INTEND TO MAKE, ANY EXPRESS OR IMPLIED WARRANTIES OF ANY KIND WITH RESPECT TO ANY OF THE SERVICES RENDERED HEREUNDER REGARDING THE SERVICES OR OTHERWISE, AND ANY WARRANTIES WHICH COULD BE IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, COMPLIANCE WITH ANY SPECIFICATIONS OR DOCUMENTATION, AND NON-INFRINGEMENT, ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED.

## **11. LIMITATION ON DAMAGES**

### **11.1 Consequential Damages.**

(a) EXCEPT AS SET FORTH IN SECTION 11.1(b), IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY HERETO FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUES, ARISING OUT OF THIS AGREEMENT OR ANY OBLIGATION RESULTING THEREFROM, OR THE USE OR PERFORMANCE OF ANY SERVICES, WHETHER IN AN ACTION FOR OR ARISING OUT OF ANY CAUSE OF ACTION WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) THE LIMITATION SET FORTH IN THIS SECTION SHALL NOT APPLY IN THE EVENT OF A PARTY’S GROSS NEGLIGENCE, INTENTIONAL MISCONDUCT, OR BREACH OF THE PROVISIONS OF SECTION 7 HEREOF.



**11.2 Direct Damages.** SUPPORT PROVIDER'S ENTIRE LIABILITY AND INSTITUTION'S ENTIRE REMEDY FOR ANY CLAIM, LOSS, DAMAGE, OR EXPENSE FROM ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, SHALL BE LIMITED TO DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED IN THE AGGREGATE THE TOTAL FEES PAID TO SUPPORT PROVIDER FOR THE SERVICES DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE ACT OR OMISSION GIVING RISE TO THE CLAIM OCCURRED.

## **12. FORCE MAJEURE**

**12.1 Definition of Force Majeure.** "Force Majeure" means a circumstance beyond the reasonable control of the parties, which results in a party being unable to observe or perform on time an obligation under this Agreement, including, without limitation, (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires, and any natural disaster, (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, and revolution, (c) Internet outages, and (d) labor strikes.

**12.2 Suspension of obligations.** Each obligation of a party, other than the obligation to pay money, will be suspended during the time and to the extent that the party is prevented from or delayed in complying with that obligation by Force Majeure.

**12.3 Reliance.** Any party seeking to rely on Section 12.2 must use diligent, commercially reasonable efforts to bring the circumstances giving rise to the failure or delay to an end, and must give written notice to the other party of the reason for the failure or delay by it.

## **13. DISPUTE RESOLUTION**

**13.1 Mandatory Arbitration.** Except as set forth in Section 13.2 below, any controversy or claim arising out of or relating to this Agreement, or any breach or default under this Agreement, shall, with respect to all actions at law pertaining to such controversy, claim, breach, or default be settled by arbitration in Boston, Massachusetts, before a single arbitrator that is mutually agreeable by the parties in accordance with the then-prevailing Rules of Commercial Arbitration of the American Arbitration Association (the "AAA Rules"); provided that if the parties cannot mutually agree upon a single arbitrator, then such claims shall be settled by a single arbitrator selected in accordance with the AAA Rules. The arbitrator shall not contravene or vary in any respect any of the terms or provisions of this Agreement. The award of the arbitrator shall be final and binding upon the parties hereto, and judgment upon such award may be entered in any court having jurisdiction thereof. The fees charged by the arbitrator(s) shall be paid equally by the parties thereto, provided that each party shall be responsible for such party's own attorneys' fees and other costs.

**13.2 Equitable Relief.** Neither this arbitration provision nor a pending arbitration shall prevent a party from seeking or obtaining injunctive or other equitable relief for any matter at any time. Any suit for equitable relief under this Agreement may only be brought in a United States District Court located in the State of New Hampshire or in the Hillsborough County Superior Court of the State of New Hampshire. Support Provider and Subscriber hereby consent to the exercise of personal jurisdiction by any such court with respect to any such proceeding.

**13.3 UN Convention on Contracts.** The provisions of the United Nations Convention on Contracts for the International Sale of Goods are hereby excluded.

## 14. PARTY CONTACT

Each party shall designate a contact person (“**Party Contact**”) who has authority to manage all aspects of the relationship reflected in this Agreement, including, but not limited to regarding the Customized Support Plan and addressing and resolving questions regarding the Services. Each party shall provide to the other party the name and contact information of its Party Contact. Either party may change the person who serves as Party Contact at any time by providing written notice thereof to the other party, which notice may be sent by email and shall include contact information for the new Party Contact.

## 15. MISCELLANEOUS

**15.1 Notices.** Except as set forth in Section 14, any notice which is required or provided to be given under this Agreement shall be in writing and deemed to have been sufficiently given and received for all purposes when delivered by hand, one (1) business day after being sent by FedEx or other reputable overnight courier by overnight mail, or five (5) days after being sent by certified or registered mail, postage and charges prepaid, return receipt requested, to the following address set forth in the Preamble of this Agreement. Either party may modify the address to which notices shall be sent by sending notice in accordance of this Section of any updated contact information.

**15.2 Relationship of the Parties.** Support Provider shall perform the Services under this Agreement as an independent contractor, and not as an employee or agent of Institution. Nothing in this Agreement shall be construed as creating an agency, partnership, joint venture, franchise, or employment relationship between the parties hereto. Neither party shall have the authority to make any statements, representations, or commitments of any kind or to take any action binding on the other.

**15.3 Assignment.** Institution may not assign this Agreement or any of its obligations hereunder without the express written consent of Support Provider, provided that Support Provider’s consent shall not be required for an assignment in connection with the sale of all or substantially all of Institution’s assets if the transferee agrees in writing to be bound by this Agreement in its entirety.

**15.4 Binding Effect.** The provisions of the Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns.

**15.5 No Waiver.** No waiver of any portion of this Agreement will be effective unless in writing signed by the waiving party. The failure of either party at any time to require performance by the other party of any provision of this Agreement will in no way affect the right of such party to enforce that or any other provision of this Agreement. No waiver of any breach of this Agreement will constitute a waiver of any subsequent breach of the same or any other provision of this Agreement.

**15.6 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire, without regard to the conflicts of law provisions of that or any other jurisdiction.

**15.7 Severability.** Each term, condition, and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law. If any provision of this Agreement is declared to be invalid or unenforceable, such provision shall be modified to the minimum extent necessary to bring it within the legal requirements. Such invalidity or unenforceability will not affect the remaining provisions of this Agreement.

**15.8 Entire Agreement; Amendment.** This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof. Any amendment of any term or condition of this Agreement shall be effective only if signed by authorized representatives of both parties hereto.

**15.9 Counterparts.** This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered will be an original, but all of which together will constitute one and the same agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.  
SIGNATURE PAGE FOLLOWS.]**

THIS HELP DESK SERVICES AGREEMENT has been executed by duly authorized representatives of the parties, to be effective as of the Effective Date.

**SUPPORT PROVIDER:**  
eLearning Innovation, LLC  
dba Ease Learning

**INSTITUTION:**  
Dawson Community College

By: \_\_\_\_\_  
Duly Authorized

By: \_\_\_\_\_  
Duly Authorized

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

Billing Contact: \_\_\_\_\_

Billing email: \_\_\_\_\_

**Exhibit A**  
**to**  
**Help Desk Services Agreement**  
  
**Customized Support Plan**

The process for the development and maintenance of a Customized Support Plan is as follows:

- (1) At least 30 days prior to the Effective Date, Institution shall complete an EUSS, in a form to be provided by Support Provider.
- (2) Promptly after Institution properly completes the EUSS and returns the completed EUSS to Support Provider, Support Provider shall contact Institution to arrange a follow-up session with a member of Support Provider's Support Management team to finalize information required to complete Institution's Customized Support Plan.
- (3) After the Customized Support Plan is developed and Support Provider commences providing the Services, a Support Provider Quality Assurance Specialist shall review Support Tickets ("**Support Tickets**") to assess the on-going needs of Institution and the End Users and to document and suggest modifications to the protocols by which the Services are provided to End Users.
  - a) Support Provider may modify the manner in which Services are provided as Support Provider deems necessary, at no cost to Institution.
  - b) In addition, Support Provider may make recommendations to Institution regarding the scope and nature of the Services provided to improve the End Users' use of the LMS and the additional cost that would be required to implement such modifications. Such recommendations shall be implemented only by mutual agreement of the parties regarding such revised Services and the additional fees for such modified Services.

**Exhibit B**  
**to**  
**Help Desk Services Agreement**

**Basic Support Services**

The Basic Services consist of:

- unlimited tickets
- USA-based team
- dedicated Online Support Center
- general and custom knowledge base articles (the “**Knowledge Base**”)
- customized important announcements on Support Center home page.
- custom banner with Institution’s name and logo (to be provided by Institution). Custom colors for Knowledge Base article buttons
- instructor/faculty, end user, & administrative LMS Support
- basic support for 3rd party systems
- quality assurance
- remote assistance
- analytics & reporting on demand
- dedicated so-called “light agent” account allowing Institution to review tickets for Institution and leave feedback/suggestions to Support Provider's support agents.
- Knowledge Base articles
  
- **support by email only Support Channel**
- **48 hour response window**
  
- one-time branding & setup fee \$7,500
- annual admin \$1,500 fee included in package price

**Exhibit C**  
**to**  
**Help Desk Services Agreement**  
**Standard Support Services**

The Standard Services consist of the Basic Services as well as the additional services set forth below:

- dedicated chat Support Channel
- dedicated telephone number and Support Channel
- quicker response time (4 business hours of receipt instead of 48 hours)
  
- Standard Services are available:
  - via phone or live chat 9:00 AM to 9:00 PM Mountain Time, Monday through Friday (excluding all U.S. national holidays)
  - via email 24 hours a day, 7 days a week (other than holidays for which Support Provider has limited holiday hours); and
  - all email/ticket form tickets will be responded to within 4 business hours of receipt

**Exhibit D**  
**to**  
**Help Desk Services Agreement**  
**Expanded Support Services**

The **Expanded Services** consist of the following:

- All **Basic Services** and all **Standard Services**; and
- Support for other online campus systems determined by mutual agreement:
  - **Expanded Support** may include support for any of the following examples:
    - email accounts;
    - on campus computer access;
    - campus WiFi access;
    - registration and enrollment access;
    - any other system managed through a Single Sign-On (SSO) or Active Directory style system, regardless of whether or not the End User is using the LMS.
  - The additional support services set forth below

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**Exhibit E**  
**to**  
**Help Desk Services Agreement**

**Online Support Center**

**I. Overview**

The Services are delivered using the Online Support Center. All phone, live chat, and email support requests must be created through the Online Support Center. When directing End Users for support, Institution shall direct End Users to the Online Support Center, which provides access to all Services available to Institution and its End Users.

The Online Support Center provides End Users access to the following resources:

- Important announcements pertaining to general End User support, known issues that may affect the LMS or supporting systems, and security bulletins;
- Email support form for 24/7 Support Ticket submission (submission also provides vital diagnostic information to troubleshoot login issues, cookies, JavaScript, and other browser plug-ins);
- Toll-free number (Continental US and Canada only) for live phone support in English during support hours of operation; and
- Self-serve knowledgebase articles and instructional videos for resolution for many common issues.

The Online Support Center Support Options (“**Support Channel Options**”) (the **Support Channels** are within the Support Channel Options) are available through the Online Support Center, and detail the options available to End Users for contacting Support Provider at a specific time. The Support Channel Options dynamically update according to the time of day.

Online Methods: End Users must submit requests online via the Online Support Center. To guarantee timely response from Support Provider, all issues must be directed through the Online Support Center. Whenever possible, support requests should be submitted directly by the End User rather than by a third-party. In the event that an existing issue or attachment needs to be forwarded to Support Provider directly, A dedicated email address will be provided upon completion of initial Support Center setup

Phone and Chat Methods: Support Provider’s support representatives (“**Support Representative**”) are available to assist End Users by phone and chat in Standard and Expanded support packages. End Users may reach a live Support Representative by clicking the chat link available through the Online Support Center or by calling the phone number available through the Online Support Center. Please note that the Support Representatives may not be available for chat during times of high call volume. At such time, End Users will be directed to open a Support Ticket or call for assistance.

Since many support announcements and resources are posted on the Online Support Center, End Users should initiate their contact through the Online Support Center. Although not required, End Users are encouraged to submit an online case before calling the Online Support Center, so that Support Representatives are able to more efficiently provide support.

The Online Support Center and call center is for End User support services only. Other business conducted with Support Provider should be handled by contacting the Support Provider's administrative office at 1-844-435-3276.

### **III. Client Action Requests (Escalations)**

If a Support Ticket or specific protocol requires action from Institution, the Support Representative will email to Institution a request in writing for such assistance or other participation ("**Client Action Request**") or more commonly referred to as an "**Escalation**") with Support Ticket details and outline the action that Institution is required to take

### **VII. Online Support Center Support Links**

Promptly after the Services are initiated, Support Provider's engagement team will place links to the Online Support Center, customized for Institution. The links shall be posted in a standard LMS HTML block or navigation bar, as well as, the LMS login page if applicable. These links shall remain for the duration of the Term.

**Exhibit F**  
**to**  
**Help Desk Services Agreement**

**Schedule of Fees**

**Standard Services:**

The service fees below include support for up to 100 hours per year based upon 1,000 users. In the event that usage is likely to exceed or has exceeded contracted number of hours, service provider will invoice for overages as listed below.

**Service Type: Standard**

<b>Year 1</b>	<b>Fees</b>
Implementation (one-time)	\$7,500
Administration	\$1,500
Support	\$10,000
<b>Total Year 1</b>	<b>\$19,000</b>

The agreement shall automatically renew for periods of one (1) year each with a 5% annual increase pursuant to the provisions of Section 9.1 above.

**Overages:**

As of the Effective Date, Service Provider will monitor usage throughout the contract year and will alert Institution if they are on track for overage. In the event that usage is likely to exceed contracted number of hours, service provider will work with Institution to amend and invoice for additional hours at the contracted rate (as described in the Fee Schedule in Exhibit F) to avoid overage.

As of the Effective Date, any Overages shall be a rate of \$5,000 per every block of fifty (50) additional hours of Services. Support Provider may increase the rate for Overages at any time during the Term upon thirty (30) days advance written notice to Institution.

**Payments:**

100% payment is due upon 30 days of invoice date.

Payments can be made via ACH.

Please direct inquiries regarding your payments or account to [accounting@easelearning.com](mailto:accounting@easelearning.com)

**ACH Instructions**

Wire/ACH Payment Instructions:

Beneficiary Name: eLearning Innovation

Beneficiary Routing #: 011301798

Beneficiary Acct #: 601644461

Beneficiary Bank: Eastern Bank

Beneficiary Bank Address: 195 Market St, Lynn MA 01901