THE STATE OF TEXAS §

COUNTY OF WILLIAMSON §

━━

COUNTY ADDENDUM
FOR
ELEMENT SOFTWARE

**(Sheriff's Office - Element
Learning Management Solutions)
(Skinnycat Software, LLC, DIR-CPO-4463)**

━━

Important Notice: County Purchase Orders and Contracts constitute expenditures of public funds, and all vendors are hereby placed on notice that such procurement is subject to the extent authorized by Texas law, including but not limited to Tex. Const. art. XI, § 7, the Texas Government Code, the Texas Local Government Code, and the Texas Transportation Code, the Texas Health & Safety Code.

THIS ADDENDUM TO ELEMENT SOFTWARE AGREEMENT is made and entered into by and between **Williamson County, Texas** ("The County" or "Licensee"), a political subdivision of the State of Texas, acting herein by and through its governing body, and **Skinnycat Software, LLC d/b/a Element Learning Management Solutions** ("Skinnycat Software" or "Element"). The County agrees to engage Skinnycat Software to assist in providing certain goods and services pursuant to the following terms, conditions, and restrictions:

I.

Incorporated Documents: This Agreement constitutes the entire Agreement between the parties and may not be modified or amended other than by a written instrument executed by all parties. Documents expressly incorporated (as if copied in full) into this Agreement include the following:

  A. Element Learning Management System Proposal, dated 4/27/22;
  B. DIR Contract #DIR -CPO-4463;
  C. Element Standard SAAS License with General Terms and Conditions;
  D. Element Maintenance & Technical Support Standards Addendum; and
  E. This Williamson County Contract Addendum.

The County reserves the right and discretion (pursuant to public policy and Texas Constitutional principles) to determine applicable provisions where there is any conflict between this Addendum and any of the above-referenced agreement documents/exhibits or incorporated documents.

II.

No Waiver of Sovereign Immunity or Powers: Nothing in the agreement relevant to this addendum will be deemed to constitute a waiver of sovereign immunity or powers of The County, the Williamson County Commissioners Court, or the Williamson County Judge.

III.

Texas Law Applicable to Indemnification: All indemnifications or limitations of liability or statutes of limitations shall be to the extent authorized under Texas law and shall follow Texas law without modifying the rights.

IV.

Compliance with All Laws: Skinnycat Software expressly agrees and will comply with any and all local, state or federal requirements with respect to the services rendered.

V.

Good Faith: Skinnycat Software expressly agrees to act in good faith in the performance of the agreement relevant to this addendum.

VI.

Payment: Payment for goods and services shall be governed by Chapter 2251 of the Texas Government Code. An invoice shall be deemed overdue the 31st day after the later of (1) the date The County receives the goods under the contract; (2) the date the performance of the service under the contract is completed; or (3) the date the Williamson County Auditor receives an invoice for the goods or services. Interest charges for any overdue payments shall be paid by The County in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of The County's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

VII.

Termination for Convenience: This agreement may be terminated at any time at the option of either party, without future or prospective liability for performance upon giving ninety (90) days written notice thereof. In the event of termination, The County will only be liable for its pro rata share of services rendered and goods actually received.

VIII.

Right to Audit: Skinnycat Software expressly agrees that The County or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine and photocopy any and all books, documents, papers and records of Skinnycat Software which are directly pertinent to the services to be performed under this Contract for the purposes of making audits, examinations, excerpts, and transcriptions. Skinnycat Software expressly agrees that The County shall have access during normal working hours to all necessary Skinnycat Software facilities and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. The County shall give Skinnycat Software reasonable advance notice of intended audits. In no circumstances will Skinnycat Software be required to create or maintain documents not kept in the ordinary course of Skinnycat Software's business operations, nor will Skinnycat Software be required to disclose any information, including but not limited to product cost data, which it considers confidential or proprietary.

IX.

Mediation: The parties agree to use mediation for dispute resolution prior to and formal legal action being taken on the agreements relevant to this agreement.

X.

Venue and Governing Law: Venue of this agreement shall be Williamson County, Texas, and the law of the State of Texas shall govern.

XI.

County Judge or Presiding Officer Authorized to Sign Contract: The presiding officer of The County's governing body who is authorized to execute this instrument by order duly recorded may execute this addendum on behalf of The County.

WITNESS the signatures of all parties in duplicate originals to be effective as of the date of the last party's execution below.

WILLIAMSON COUNTY: SKINNYCAT SOFTWARE:

_____   _____
Authorized Signature   Authorized Signature
Date:_____, 2022   Date: _November 11th___, 2022

Learning Management System Proposal
specifically designed for

Williamson County Sheriff's Office

April 27, 2022

Kim Bickley
Partner, Sr Account Executive
Austin, Texas
971-724-0705
kimbickley@elementlms.com
Certified Vendor-Texas Department of Information Resources
DIR Contract Number: DIR-CPO-4463

Dear Sgt. Guinn,

We appreciate the opportunity to present a revised proposal for review.

The team at Element is honored to be considered as a potential partner by you and the team at WCSO and are excited about your vision to move to a centralized training management solution.

The following outlines some key points of the revised proposal and Element's offer:

1. The original pricing structure, Active Course Registrations (ACRs), was designed so that our clients pay by use of the system versus active employees (license seats) who may or may not use the system in a given a subscription cycle.
   a. The revised proposal is a flat rate with unlimited users, courses, ACRS, guest accounts and storage
   b. The WCSO and Element teams will review usage periodically through the first-year cycle in order to budget accordingly for Year 2. (Year 2 pricing in the revised proposal)
2. Element offer of no cost usage of Inventory Management module remains in place
3. Element offer of training at no cost remains in place
4. Based on funding availability, Element offers a pro-rated amount to get the project started before new FY 2022-2023 budget. WCSO can pay for the Standard LMS configuration fee ($12,000) to start the project and pay the remaining balance in the new budget cycle.

We look forward to continued conversations and are available to answer any questions you may have regarding the revisions.

Best regards,

Kim Bickley

Price Schedule	Product Number		Year One	Year Two
SaaS LMS Annual Maintenance & Support: - Hosting at **AWS GovCloud** - Security maintenance - Includes software maintenance and updates - Technical support - Forms and maintenance **- Unlimited Users, Unlimited Courses** **- Unlimited Active Course Registrations-Annually** **- Unlimited Storage; Unlimited Monthly Data Transfer**	Standard ELEMENT LMS		$12,474 (Includes DIR discount)	$12,848
Learning Plan Annual License: Compliance and Certification Manager 600 Users Configure and maintain Element LPs - Includes testing, validation, and security lockdown - Includes updates & maintenance	LPs		$4,710 (Includes DIR discount)	$4,851
Standard LMS configuration: Professional Services, including project management, to configure Element LMS for use as specified in the SOW developed upon contract Forms configuration Learning Plans Configuration	Implement		$12,000	$0
External System Integration: API Integration (1-way API) for HR system nightly upload into LMS and maintenance of API	Custom integration		$2,500	$2,100
External System Integration: API Integration (1-way API) to RMS system	Custom integration		$2,500	$2,100

Inventory (Training Unit) Management Module Option to use at no charge	Inventory		fee waived	$0
Training Services: One day – onsite – T&E included	Train		fee waived	$0
GRAND TOTAL			$34,184	$21,899
OPTIONAL ADD-ON: **Element E-commerce Gateway Annual License - Payment processing and integration for Texas NIC or other gateway. - Includes testing, validation, and security lockdown - Includes updates & maintenance**			$4,400	$2,200
OPTIONAL ADD-ON: **Single Sign On (SSO) integration**	Custom integration		$4,000	$2,100
OPTIONAL ADD-ON: **SCORM Annual Active Course Registrations - Includes 5,000 SCORM registrations - Overage registrations at $0.75 each - Additional registrations in blocks of 1,000 at $750.**			$3,188	$3,188

COUNTY TERMS AND CONDITIONS

1. No Waiver of Sovereign Immunity or Powers: Nothing in this agreement will be deemed to constitute a waiver of sovereign immunity or powers of Customer, the Williamson County Commissioners Court, or the Williamson County Judge.

2. Texas Law Applicable to Indemnification: All indemnifications or limitations of liability or statutes of limitations shall be to the extent authorized under Texas law and shall follow Texas law without modifying the rights.

3. Termination for Convenience: This agreement may be terminated at any time at the option of either party, without future or prospective liability for performance upon giving ninety (90) days written notice thereof. In the event of termination, The Customer will only be liable for its pro rata share of services rendered and goods actually received. However, and notwithstanding the foregoing, subscription fees paid by Customer prior to a termination for convenience shall not be eligible for refund, pro-ration, or offset.

4. Texas Prompt Payment Act Compliance: Payment for goods and services shall be governed by Chapter 2251 of the Texas Government Code. An invoice shall be deemed overdue the 31st day after the later of (1) the date Customer receives the goods under the contract; (2) the date the performance of the service under the contract is completed; or (3) the date the Williamson County Auditor receives an invoice for the goods or services. Interest charges for any overdue payments shall be paid by Customer in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.

5. Mediation: The parties agree to use mediation for dispute resolution prior to and formal legal action being taken on this Contract.

6. Venue and Governing Law: Venue of this contract shall be Williamson County, Texas, and the law of the State of Texas shall govern.

7. Right to Audit: Element LMS agrees that Customer or its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of Element LMS which are directly pertinent to the services to be performed under this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Customer shall give Element LMS reasonable advance notice of intended audits.

NOTE: ELEMENT LEARNING MANAGEMENT SOLUTIONS AGREES TO THE COUNTY TERMS AND CONDITIONS.

Vendor

Client

Kim Bickley
Print Name of Person Signing for Vendor

Print Name of Representative

(signature)
Vendor Signature

Client Signature

Partner
Title of Vendor Representative

Title of Client Representative

10-3-22
Date

Date

ELEMENT STANDARD SAAS LICENSE

DBA OF SKINNY CAT SOFTWARE LLC

THESE GENERAL TERMS AND CONDITIONS, TOGETHER WITH (I) THE SALES QUOTATION BY AND BETWEEN SKINNYCAT SOFTWARE, LLC. (ELEMENT LEARNING MANAGEMENT SOLUTIONS IS A DBA OF SKNNY CAT SOFTWARE) AND LICENSEE, AND (II) EACH ATTACHMENT OR ADDENDUM LISTED IN THE SALES QUOTATION (COLLECTIVELY, THE "AGREEMENT"), CONSTITUTE AN AGREEMENT BETWEEN SKINNYCAT SOFTWARE AND LICENSEE WITH REFERENCE TO THE FOLLOWING FACTS:

(1) SKINNYCAT SOFTWARE HAS PROPRIETARY RIGHTS IN A PROFESSIONAL DEVELOPMENT MANAGEMENT SYSTEM AND WEB-BASED TRAINING DELIVERY VEHICLE KNOWN COMMERCIALLY AND DESCRIBED IN SKINNYCAT SOFTWARE MARKETING DOCUMENTS AS "ELEMENT LMS" AS THE SAME MAY BE AMENDED AND UPDATED FROM TIME TO TIME, COLLECTIVELY REFERRED TO AS "SKINNYCAT SOFTWARE PRODUCTS"; AND

(2) LICENSEE WISHES TO ACQUIRE THE RIGHT TO USE SKINNYCAT SOFTWARE PRODUCTS IN CONJUNCTION WITH ITS BUSINESS; AND

(3) SKINNYCAT SOFTWARE IS WILLING TO GRANT SUCH RIGHTS IN CONSIDERATION OF THE PAYMENT BY LICENSEE OF THE REQUIRED FEES SET FORTH ON THE ATTACHED SALES QUOTATION AND CONTINGENT UPON AGREEMENT OF LICENSEE TO BE BOUND BY THE TERMS AND CONDITIONS SET FORTH HEREIN.

THESE GENERAL TERMS AND CONDITIONS SET FORTH BELOW ARE FULLY APPLICABLE TO EACH ATTACHMENT OR ADDENDUM LISTED ON THE SALES QUOTATION. IN THE EVENT OF ANY CONFLICT, THESE GENERAL TERMS AND CONDITIONS SHALL PREVAIL, UNLESS SPECIFICALLY AMENDED UNDER AN ATTACHMENT OR ADDENDUM.

1. GRANT OF LICENSE

A. <u>SUBSCRIPTION LICENSE GRANT.</u> SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THE AGREEMENT, SKINNYCAT SOFTWARE GRANTS TO LICENSEE A NONEXCLUSIVE, PERSONAL, NON-TRANSFERABLE, FEE-BEARING LICENSE, WITHOUT RIGHT TO SUBLICENSE, TO USE SKINNYCAT SOFTWARE PRODUCTS IN OBJECT CODE FORM FOR THE TERM SET FORTH IN THE SALES QUOTATION SOLELY IN THE LOCATION OR LOCATIONS, AND ONLY FOR THE NUMBER OF USERS, SET FORTH ON THE SALES QUOTATION. THIS LICENSE WILL NOT BE REVOKED DURING THE TERM OF THE AGREEMENT SO LONG AS LICENSEE MEETS ALL THE TERMS OF THIS AGREEMENT. CONSISTENT WITH THE FOREGOING, LICENSEE EXPRESSLY ACKNOWLEDGES AND AGREES THAT IN THE EVENT LICENSEE WISHES TO DISCONTINUE ITS USE OF THE SKINNYCAT SOFTWARE PRODUCTS FOR THE REMAINDER OF THE TERM FOR ANY REASON, SUCH EARLY CANCELLATION OR TERMINATION DOES NOT ABATE OR OTHERWISE PRO-RATE ANY LICENSE FEES FOR THE REMAINDER OF THE TERM UNLESS EXPRESSLY WAIVED BY AN OFFICER OF SKINNYCAT SOFTWARE IN WRITING.

B. <u>RESTRICTIONS</u>. LICENSEE SHALL NOT REVERSE ENGINEER, DISASSEMBLE OR REVERSE COMPILE THE SKINNYCAT SOFTWARE PRODUCTS IN WHOLE OR IN PART, OR OTHERWISE APPLY ANY PROCESS, TECHNIQUE, OR PROCEDURE TO ASCERTAIN OR DERIVE THE SOURCE CODE TO THE SKINNYCAT SOFTWARE PRODUCTS. LICENSEE SHALL NOT USE, REPRODUCE, TRANSLATE, MODIFY OR PREPARE DERIVATIVE WORKS FROM, DISPLAY, PERFORM, SELL, LICENSE, SUBLICENSE, OR OTHERWISE DISTRIBUTE, TRANSFER OR DISPOSE OF THE SKINNYCAT SOFTWARE PRODUCTS EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT. LICENSEE SHALL USE THE SKINNYCAT SOFTWARE PRODUCTS FOR ITS OWN INTERNAL USE AND FOR THAT OF ITS 50% OR MORE OWNED SUBSIDIARIES AND SHALL NOT PROVIDE USE OF THE SKINNYCAT SOFTWARE PRODUCTS TO ANY THIRD PARTY OR PROVIDE SERVICES OR PRODUCTS TO ANY THIRD PARTY USING THE SKINNYCAT SOFTWARE PRODUCTS EXCEPT AS PROVIDED FOR HEREIN.

C. <u>GRANT LIMITATIONS</u>. NO OTHER LICENSE RIGHTS IN THE SKINNYCAT SOFTWARE PRODUCTS AND ATTENDANT SOFTWARE ARE HEREBY GRANTED OR TRANSFERRED TO LICENSEE EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT.

D. <u>SOFTWARE AS A SERVICE AGREEMENT</u>. THIS AGREEMENT IS A SOFTWARE AS A SERVICE (SAAS) LICENSE AGREEMENT AND NOT A TRADITIONAL SOFTWARE LICENSE. IN A SAAS AGREEMENT, SKINNYCAT SOFTWARE PROVIDES CLIENT WITH A FULLY HOSTED SOLUTION AND THE CLIENT WILL NOT BE INSTALLING OR MANAGING ANY PART OF THE APPLICATION FOR ITS USE. SKINNYCAT SOFTWARE HOSTS AND MAINTAINS THE SOFTWARE, INCLUDING OUR OWN AND OTHER OPEN SOURCE SOFTWARE, UNDER THE GNU GENERAL PUBLIC LICENSE (GPLV3) WITH WHICH SKINNYCAT SOFTWARE COMPLIES. LICENSEE EXPRESSLY ACKNOWLEDGES THAT SKINNYCAT SOFTWARE MAY INCORPORATE CERTAIN THIRD-PARTY SOFTWARE SUBJECT TO THIRD PARTY LICENSES WHICH MAY BE PROVIDED TO LICENSEE BY SKINNYCAT SOFTWARE OR THIRD PARTIES AS WRITTEN SOFTWARE LICENSE AGREEMENTS, SHRINK WRAP LICENSES, ELECTRONIC LICENSE DURING BOOT UP OR OTHER COMMENCEMENT OF OPERATION, OR THIRD PARTY LICENSE AGREEMENTS IN ANY OTHER APPROPRIATE FORM, AND AGREES THAT SUCH THIRD PARTY LICENSES SHALL BE HONORED IN FULL. LICENSEE FURTHER ACKNOWLEDGES THAT THE SKINNYCAT SOFTWARE PRODUCTS MAY ALSO INCLUDE THIRD PARTY SOFTWARE THAT REQUIRES SPECIAL LIMITATIONS AND/OR EXECUTION OF SPECIFIC LICENSES AS A CONDITION OF SKINNYCAT

SOFTWARE'S AUTHORIZATION TO REDISTRIBUTE SUCH SOFTWARE TO LICENSEE (INCLUDING BUT NOT LIMITED TO OPEN SOURCE SOFTWARE, PLUG-INS AND EXTENSIONS) AND AGREES TO COMPLY FULLY WITH ALL SUCH APPLICABLE SPECIAL LIMITATIONS AND LICENSES. LICENSEE SHALL TAKE ALL REASONABLE STEPS TO ENSURE AWARENESS BY ITS END-USERS OF ANY LICENSE TERMS FOR THIRD PARTY SOFTWARE CONTAINED IN THE SKINNYCAT SOFTWARE PRODUCTS LICENSED TO LICENSEE. SKINNYCAT SOFTWARE FURTHER RESERVES THE RIGHT TO SUBSTITUTE OR REPLACE ANY THIRD PARTY SOFTWARE CONTAINED IN THE SKINNYCAT SOFTWARE PRODUCTS, PROVIDED THAT SUCH SUBSTITUTION IS SIMILAR IN FUNCTION TO THE ORIGINAL THIRD PARTY SOFTWARE.

E. MAINTENANCE & SUPPORT. SUBJECT TO LICENSEE'S COMPLIANCE WITH THE TERMS OF THIS AGREEMENT, SKINNYCAT SOFTWARE WILL PROVIDE ONGOING MAINTENANCE AND SUPPORT FOR THE SKINNYCAT SOFTWARE PRODUCTS LICENSED UNDER THIS AGREEMENT UNDER THE TERMS OF A FULLY-EXECUTED MAINTENANCE & SUPPORT ADDENDUM REFERENCED ON THE SALES QUOTATION, WHICH IS INCORPORATED INTO THIS AGREEMENT BY REFERENCE.

2. OWNERSHIP

A. COPYRIGHTS.

(I) GENERAL. ALL TITLE AND COPYRIGHT IN AND TO THE SKINNYCAT SOFTWARE PRODUCTS, WHETHER IN PRINTED, AUDIO-VISUAL, DIGITAL OR ELECTRONIC MEDIA, IS OWNED BY SKINNYCAT SOFTWARE AND IS PROTECTED BY UNITED STATES COPYRIGHT LAWS AND INTERNATIONAL TREATIES. SKINNYCAT SOFTWARE IS THE COPYRIGHT OWNER OF THE SKINNYCAT SOFTWARE PRODUCTS OR HAS AND SHALL RETAIN THE AUTHORITY TO ENTER INTO AND PERFORM THIS AGREEMENT AND TO GRANT LICENSES TO LICENSEE TO SUCH SKINNYCAT SOFTWARE PRODUCTS IN CONFORMANCE WITH THE TERMS OF THIS AGREEMENT. SKINNYCAT SOFTWARE RETAINS ALL RIGHTS NOT EXPRESSLY GRANTED AND NOTHING IN THIS AGREEMENT CONSTITUTES A WAIVER OF SKINNYCAT SOFTWARE'S RIGHTS UNDER COPYRIGHT LAWS OR ANY OTHER FEDERAL OR STATE LAW.

(II) COPYRIGHT NOTICES. LICENSEE AGREES THAT IT WILL CAUSE TO APPEAR ON OR WITHIN ALL MATERIALS RELATING TO THE SUBJECT MATTER OF THE SKINNYCAT SOFTWARE PRODUCTS, APPROPRIATE NOTICE OF COPYRIGHT AND OWNERSHIP INDICATING OR PRESERVING THE PROPRIETARY RIGHTS OF SKINNYCAT SOFTWARE AS SKINNYCAT SOFTWARE MAY FROM TIME TO TIME REASONABLY REQUEST.

(III) OBLIGATION AGAINST NON-INFRINGEMENT. LICENSEE ACKNOWLEDGES THAT THE USE OF THE SKINNYCAT SOFTWARE PRODUCTS OUTSIDE THE SCOPE OF THIS LICENSE WITHOUT SKINNYCAT SOFTWARE'S PRIOR WRITTEN CONSENT CONSTITUTES AN INFRINGEMENT OF SKINNYCAT SOFTWARE'S COPYRIGHTS IN AND TO THE SKINNYCAT SOFTWARE PRODUCTS AND LICENSEE EXPRESSLY COVENANTS THAT, DURING THE TERM OF THIS AGREEMENT AND AFTER THE EXPIRATION OR TERMINATION OF THIS AGREEMENT, LICENSEE SHALL NOT, EITHER DIRECTLY OR INDIRECTLY, COMMIT AN ACT OF INFRINGEMENT, OR CONTEST OR AID IN CONTESTING THE VALIDITY OR OWNERSHIP OF ANY OF SKINNYCAT SOFTWARE'S COPYRIGHTS IN AND TO THE SKINNYCAT SOFTWARE PRODUCTS OR ANY VARIATIONS THEREOF, OR TAKE ANY OTHER ACTION IN DEROGATION OF SKINNYCAT SOFTWARE'S OR ANY OF ITS AFFILIATES' OR SUBSIDIARIES' OWNERSHIP AND RIGHTS IN AND TO THE SKINNYCAT SOFTWARE PRODUCTS.

B. TRADEMARKS. LICENSEE ACKNOWLEDGES THAT THE TRADEMARKS, TRADE NAMES AND IDENTIFYING MARKS UNDER WHICH SKINNYCAT SOFTWARE MARKETS THE SKINNYCAT SOFTWARE PRODUCTS (THE "ELEMENT LMS MARKS") ARE THE EXCLUSIVE PROPERTY OF SKINNYCAT SOFTWARE AND THAT NO LICENSE TO SUCH SKINNYCAT SOFTWARE MARKS IS GRANTED TO LICENSEE UNDER THIS AGREEMENT. LICENSEE WILL NOT CHANGE OR OTHERWISE MODIFY ANY OF THE SKINNYCAT SOFTWARE MARKS ON THE SKINNYCAT SOFTWARE PRODUCTS WITHOUT THE EXPRESS WRITTEN CONSENT OF SKINNYCAT SOFTWARE UNDER A SEPARATE AGREEMENT. LICENSEE SHALL AT NO TIME ADOPT OR USE WITHOUT SKINNYCAT SOFTWARE'S PRIOR REVIEW AND WRITTEN CONSENT, ANY NEW MARK OR ANY VARIATION OF ANY ELEMENT LMS MARKS, OR ANY MARK LIKELY TO BE SIMILAR TO OR CONFUSING WITH ANY ELEMENT LMS MARKS.

C. PROTECTION AGAINST INFRINGEMENT. LICENSEE WILL ASSIST SKINNYCAT SOFTWARE IN PROTECTING ALL RIGHTS OF SKINNYCAT SOFTWARE IN AND TO THE SKINNYCAT SOFTWARE PRODUCTS, AND WILL GIVE WRITTEN NOTICE TO SKINNYCAT SOFTWARE OF ANY INFRINGEMENT OF ANY COPYRIGHTS AND/OR TRADEMARKS IN AND TO THE SKINNYCAT SOFTWARE PRODUCTS BY ANY OTHER PERSON IMMEDIATELY UPON LICENSEE'S DISCOVERY OF SUCH INFRINGEMENT. SKINNYCAT SOFTWARE MAY, IN ITS SOLE AND ABSOLUTE DISCRETION AND AT ITS OWN EXPENSE, BRING LEGAL OR OTHER ACTION AGAINST ANY PERSON REGARDING WHOM SUCH NOTICE HAS BEEN GIVEN TO SKINNYCAT SOFTWARE. FAILURE OF SKINNYCAT SOFTWARE TO BRING LEGAL OR OTHER ACTION AGAINST ANY ALLEGED INFRINGER AT THE REQUEST OF LICENSEE OR ANY OTHER PERSON WILL NOT TERMINATE THIS AGREEMENT OR AFFECT ANY OF THE RIGHTS OR OBLIGATIONS OF THE PARTIES. LICENSEE WILL FULLY COOPERATE AND PROVIDE SKINNYCAT SOFTWARE WITH SUCH INFORMATION AS SKINNYCAT SOFTWARE MAY REQUEST IN CONNECTION WITH SUCH PROCEEDINGS. LICENSEE IS NOT PERMITTED OR AUTHORIZED TO ENTER INTO ANY SETTLEMENT WITH RESPECT TO ANY ALLEGED INFRINGEMENT OR ANY OTHER ACTION. ANY DAMAGES OBTAINED IN ANY SUCH INFRINGEMENT PROCEEDINGS WILL BELONG EXCLUSIVELY TO SKINNYCAT SOFTWARE.

D. RESERVATION OF RIGHTS.

(I) SKINNYCAT SOFTWARE RESERVES THE RIGHT UPON THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO LICENSEE TO CHANGE OR MODIFY, IN WHOLE OR IN PART, OR DISCONTINUE ANY AND ALL OF THE SKINNYCAT SOFTWARE PRODUCTS.

(II) SKINNYCAT SOFTWARE RETAINS ALL RIGHTS, TITLE AND INTEREST IN AND TO THE SKINNYCAT SOFTWARE PRODUCTS, SOFTWARE AND ALL ATTENDANT INTELLECTUAL PROPERTY RIGHTS. AT NO TIME SHALL TITLE TO, OR OWNERSHIP OF, THE SKINNYCAT SOFTWARE PRODUCTS AND ATTENDANT SOFTWARE VEST IN LICENSEE. IN THE EVENT THAT LICENSEE MAKES SUGGESTIONS TO SKINNYCAT SOFTWARE REGARDING NEW FEATURES, FUNCTIONALITY OR PERFORMANCE THAT SKINNYCAT SOFTWARE ADOPTS FOR THE SKINNYCAT SOFTWARE PRODUCTS ("MODIFICATIONS"), SUCH MODIFICATIONS SHALL BECOME THE SOLE AND EXCLUSIVE PROPERTY OF SKINNYCAT SOFTWARE, FREE FROM ANY RESTRICTION IMPOSED UPON SKINNYCAT SOFTWARE. LICENSEE FURTHER AGREES TO TAKE ANY ACTIONS SKINNYCAT SOFTWARE DEEMS REASONABLY NECESSARY TO VEST ALL RIGHTS, TITLE AND INTEREST IN SKINNYCAT SOFTWARE TO SUCH MODIFICATIONS, AT SKINNYCAT SOFTWARE'S COST. NOTHING CONTAINED IN THIS AGREEMENT SHALL BE OTHERWISE CONSTRUED TO GRANT TO LICENSEE OR ITS SUBSIDIARIES, SUCCESSORS AND ASSIGNS ANY OTHER RIGHTS EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT. ALL OTHER RIGHTS ARE EXPRESSLY RESERVED IN SKINNYCAT SOFTWARE.

3. PRICING

A. LICENSE FEES. FOR USE OF SKINNYCAT SOFTWARE PRODUCTS, AND ANY CUSTOMIZATION AND/OR MAINTENANCE AND SUPPORT SERVICES, SKINNYCAT SOFTWARE WILL BE COMPENSATED BASED ON THE PRICING STRUCTURE SET FORTH ON THE COMMERCIAL QUOTATION AND/OR THE ATTACHED SALES QUOTATION. PRIOR TO EACH TERM RENEWAL, LICENSEE WILL REPORT TO SKINNYCAT SOFTWARE ANY CHANGE IN THE NUMBER OF USERS AND/OR ACTIVE COURSE REGISTRATIONS IN ORDER THAT SKINNYCAT SOFTWARE MAY INCREASE OR DECREASE LICENSE FEES AS APPROPRIATE (IF APPLICABLE). PRICES STATED ARE EXCLUSIVE OF ANY FEDERAL, STATE, MUNICIPAL OR OTHER GOVERNMENTAL TAXES, DUTIES, LICENSES, FEES, EXCISES OR TARIFFS NOW OR HEREAFTER IMPOSED IN THE PRODUCTION, STORAGE, LICENSING, SALE, TRANSPORTATION, IMPORT, EXPORT OR USE OF THE SKINNYCAT SOFTWARE PRODUCTS.

B. RECORDS AND PAYMENT. DURING THE TERM OF THIS AGREEMENT, LICENSEE AGREES TO KEEP ALL USUAL AND PROPER RECORDS AND BOOKS OF ACCOUNT AND ALL USUAL AND PROPER ENTRIES RELATING TO USE OF THE SKINNYCAT SOFTWARE PRODUCTS. LICENSE AND LICENSE RENEWAL FEES ARE DUE AT THE BEGINNING OF EACH ANNUAL LICENSE TERM.

C. AUDIT. SKINNYCAT SOFTWARE MAY, UPON REASONABLE NOTICE AND AT ITS OWN EXPENSE, AUDIT THE APPLICABLE RECORDS AT LICENSEE'S OFFICES, OR THOSE OF ITS AFFILIATES, IN ORDER TO VERIFY THAT LICENSEE HAS CONTRACTED WITH SKINNYCAT SOFTWARE BASED ON AN ACCURATE NUMBER OF USERS. ANY SUCH AUDIT SHALL BE CONDUCTED ONLY BY A CERTIFIED PUBLIC ACCOUNTANT AND SHALL TAKE PLACE ONLY DURING REASONABLE BUSINESS HOURS AND IN SUCH MANNER SO AS NOT TO INTERFERE WITH LICENSEE'S NORMAL BUSINESS ACTIVITIES. ALL OF THE INFORMATION CONTAINED IN LICENSEE'S BOOKS AND RECORDS SHALL BE KEPT CONFIDENTIAL EXCEPT TO THE EXTENT NECESSARY TO PERMIT ENFORCEMENT OF SKINNYCAT SOFTWARE'S RIGHTS UNDER THIS AGREEMENT. SKINNYCAT SOFTWARE AGREES THAT SUCH INFORMATION INSPECTED AND/OR COPIED ON BEHALF OF SKINNYCAT SOFTWARE HEREUNDER SHALL BE USED ONLY FOR THE PURPOSES OF DETERMINING THE ACCURACY OF THE RECORDS, AND SHALL BE REVEALED ONLY TO SUCH OFFICERS, EMPLOYEES, AGENTS AND/OR REPRESENTATIVES OF SKINNYCAT SOFTWARE AS NECESSARY TO VERIFY THE ACCURACY OF THE REPORTS EXCEPT TO THE EXTENT NECESSARY TO PERMIT ENFORCEMENT OF SKINNYCAT SOFTWARE'S RIGHTS UNDER THIS AGREEMENT.

4. WARRANTIES & DISCLAIMERS

SKINNYCAT SOFTWARE WARRANTS THAT ITS SKINNYCAT SOFTWARE PRODUCTS WILL BE FREE FROM MATERIAL DEFECTS, AND WILL REPLACE ANY DEFECTIVE SKINNYCAT SOFTWARE PRODUCTS PROVIDED TO LICENSEE PURSUANT TO THIS AGREEMENT FREE OF CHARGE. SUCH REPLACEMENT SHALL BE LICENSEE'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF THE ABOVE WARRANTY. THE WARRANTIES SET FORTH ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. RELIANCE BY LICENSEE OR ITS PERSONNEL OR CLIENTS ON ANYTHING IN THE SKINNYCAT SOFTWARE PRODUCTS OR ANYTHING SAID OR DISTRIBUTED BY SKINNYCAT SOFTWARE OR ITS AGENTS IN CONNECTION WITH ANY SKINNYCAT SOFTWARE PRODUCT SHALL BE AT LICENSEE'S SOLE RISK. ANY AND ALL INTERPRETATIONS AND DECISIONS MADE BY LICENSEE AS A RESULT OF USING SKINNYCAT SOFTWARE PRODUCTS OR OTHER INFORMATION PROVIDED BY SKINNYCAT SOFTWARE UNDER THE TERMS HEREOF ALSO INCLUDE THE OPINION AND JUDGMENT OF LICENSEE. LICENSEE HAS FULL RESPONSIBILITY FOR ALL SUCH INTERPRETATIONS AND DECISIONS MADE BY LICENSEE USING SKINNYCAT SOFTWARE PRODUCTS OR OTHER INFORMATION PROVIDED BY SKINNYCAT SOFTWARE UNDER THE TERMS OF THIS AGREEMENT. SKINNYCAT SOFTWARE MAKES NO REPRESENTATION, WARRANTY, OR GUARANTEE OF THE ABILITY, COMPETENCE, KNOWLEDGE OR SKILL OF LICENSEE'S PERSONNEL OR CLIENTS TO UTILIZE SUCCESSFULLY OR APPROPRIATELY, IN ANY CIRCUMSTANCE, ANY OF THE TRAINING CONTENT OR LESSONS CONTAINED WITHIN THE SKINNYCAT SOFTWARE PRODUCTS.

5. LIMITATIONS

A. GENERAL. SKINNYCAT SOFTWARE SHALL NOT BE LIABLE TO LICENSEE, ITS AFFILIATES, SUBSIDIARIES, EMPLOYEES, REPRESENTATIVES, AGENTS, ASSIGNS OR ANY THIRD PARTY FOR ANY LOSSES, CLAIMS, OR DAMAGES WHATSOEVER (INCLUDING SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES) BY OR AGAINST LICENSEE OR ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, CLIENTS OR OTHER LICENSEES, WHICH MAY ARISE OUT OF THIS AGREEMENT, EVEN IF SKINNYCAT SOFTWARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, CLAIM OR DAMAGES. NEITHER SKINNYCAT SOFTWARE NOR LICENSEE SHALL, BY REASON OF THE EXPIRATION OR TERMINATION OF THIS AGREEMENT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER FOR COMPENSATION, REIMBURSEMENT OR DAMAGES ON ACCOUNT OF THE LOSS OF PROSPECTIVE PROFITS ON ANTICIPATED SALES, OR ON ACCOUNT OF EXPENDITURES OR COMMITMENTS IN CONNECTION WITH THE BUSINESS OR GOODWILL OF SKINNYCAT SOFTWARE OR LICENSEE, OR OTHERWISE.

B. DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, ARISING IN ANY WAY OUT OF THIS AGREEMENT. THIS LIMITATION SHALL APPLY EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SKINNYCAT SOFTWARE BE LIABLE FOR DAMAGES IN EXCESS OF AMOUNTS PAID TO SKINNYCAT SOFTWARE BY LICENSEE FOR THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD.

6. INDEMNIFICATION

A. INDEMNIFICATION BY LICENSEE. LICENSEE AGREES TO INDEMNIFY SKINNYCAT SOFTWARE, AND TO HOLD IT HARMLESS FROM AND AGAINST ANY AND ALL DAMAGES, DEMANDS, CLAIMS, LOSSES, CAUSES OF ACTION, LIABILITIES, LAWSUITS, JUDGMENTS AND EXPENSES (INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES AND EXPENSES) ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH (I) A BREACH OF ANY OF LICENSEE'S DUTIES AND OBLIGATIONS AS SET FORTH IN THIS AGREEMENT, OR (II) ANY OF LICENSEE'S ACTIVITIES PURSUANT TO THIS AGREEMENT; PROVIDED THAT (A) LICENSEE IS GIVEN PROMPT NOTICE OF ANY SUCH CLAIM AND THE RIGHT TO CONTROL AND DIRECT THE INVESTIGATION, PREPARATION, DEFENSE AND SETTLEMENT OF EACH SUCH CLAIM, (B) SUCH CLAIM, LOSS OR DAMAGE DOES NOT ARISE OUT OF ANY WILLFUL OR NEGLIGENT ACT OR OMISSION OF SKINNYCAT SOFTWARE OR SKINNYCAT SOFTWARE'S EMPLOYEES OR AGENTS, AND (C) SKINNYCAT SOFTWARE SHALL FULLY COOPERATE WITH LICENSEE IN CONNECTION WITH THE FOREGOING. NOTWITHSTANDING THE FOREGOING, SKINNYCAT SOFTWARE SHALL HAVE THE RIGHT TO APPEAR AT ITS OWN COST IN ANY FORUM BY COUNSEL OF ITS CHOICE.

B. INDEMNIFICATION BY SKINNYCAT SOFTWARE. SKINNYCAT SOFTWARE AGREES TO INDEMNIFY LICENSEE, AND TO HOLD IT HARMLESS FROM AND AGAINST ANY AND ALL DAMAGES, DEMANDS, CLAIMS, LOSSES, CAUSES OF ACTION, LIABILITIES, LAWSUITS, JUDGMENTS AND EXPENSES (INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES AND EXPENSES) ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH A CLAIM AGAINST LICENSEE THAT THE SKINNYCAT SOFTWARE PRODUCTS INFRINGE UPON OR MISAPPROPRIATE A UNITED STATES PATENT, OR ANY COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER SIMILAR PROPRIETARY RIGHT OF A THIRD PARTY, PROVIDED THAT (A) SKINNYCAT SOFTWARE IS GIVEN PROMPT NOTICE OF ANY SUCH CLAIM AND THE RIGHT TO CONTROL AND DIRECT THE INVESTIGATION, PREPARATION, DEFENSE AND SETTLEMENT OF EACH SUCH CLAIM, (B) SUCH CLAIM, LOSS OR DAMAGE DOES NOT ARISE OUT OF ANY WILLFUL OR NEGLIGENT ACT OR OMISSION OF LICENSEE, ITS AFFILIATES, SUBSIDIARIES, EMPLOYEES OR AGENTS, AND (C) LICENSEE SHALL FULLY COOPERATE WITH SKINNYCAT SOFTWARE IN CONNECTION WITH THE FOREGOING. NOTWITHSTANDING THE FOREGOING LICENSEE SHALL HAVE THE RIGHT TO APPEAR AT ITS OWN COST IN ANY FORUM BY COUNSEL OF ITS CHOICE.

7. CONFIDENTIALITY

EACH PARTY UNDERSTANDS THAT THE OTHER PARTY HERETO (SUCH OTHER PARTY BEING REFERRED TO AS THE "OWNING PARTY") POSSESSES AND WILL CONTINUE TO POSSESS INFORMATION, SOFTWARE, DATA, HARDWARE, FURNITURE, COURSE BOOKS, CATALOGUES, BROCHURES, MARKETING MATERIAL AND OTHER PRINTED MATERIAL, AND OTHER TANGIBLE AND INTANGIBLE PROPERTY OF A PROPRIETARY NATURE THAT HAS BEEN CREATED AND DEVELOPED BY SUCH OWNING PARTY (INCLUDING WITHOUT LIMITATION ANY SUCH INFORMATION OR PROPERTY CREATED OR DEVELOPED BY SUCH OWNING PARTY DURING THE TERM OF THIS AGREEMENT), OR IN WHICH PROPERTY RIGHTS HAVE BEEN ASSIGNED OR OTHERWISE CONVEYED TO SUCH OWNING PARTY (COLLECTIVELY, "PROPRIETARY INFORMATION"), WHICH PROPRIETARY INFORMATION HAS COMMERCIAL VALUE IN THE BUSINESS IN WHICH SUCH OWNING PARTY IS ENGAGED. LICENSEE EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE SOFTWARE UNDERLYING THE SKINNYCAT SOFTWARE PRODUCTS EMBODIES SUBSTANTIAL CREATIVE EFFORTS, IDEAS AND EXPRESSIONS, AND SHALL BE INCLUDED IN SKINNYCAT SOFTWARE'S PROPRIETARY INFORMATION. EACH OWNING PARTY AGREES THAT ALL SUCH PROPRIETARY INFORMATION PROVIDED TO THE OTHER PARTY (SUCH PARTY BEING REFERRED TO AS A "RECEIVING PARTY") IN CONNECTION WITH THE SKINNYCAT SOFTWARE PRODUCTS IS AND SHALL REMAIN THE PROPERTY OF THE OWNING PARTY. AT ALL TIMES DURING THE TERM OF THIS AGREEMENT AND AFTER ITS TERMINATION, EACH RECEIVING PARTY SHALL KEEP IN ITS STRICTEST CONFIDENCE AND TRUST ALL PROPRIETARY INFORMATION AND WILL NOT LET ANY OTHER PERSON DISCLOSE, COPY, REPRODUCE, TRANSMIT OR OTHERWISE USE ANY OF THE PROPRIETARY INFORMATION, EXCEPT (A) AS MAY BE NECESSARY IN CONNECTION WITH SKINNYCAT SOFTWARE'S DELIVERY OF THE TRAINING PURSUANT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, (B) WITH THE WRITTEN CONSENT OF THE OWNING PARTY, (C) TO ITS EMPLOYEES, CONTRACTORS, ATTORNEYS AND ACCOUNTANTS WHO NEED TO KNOW SUCH INFORMATION IN ORDER TO PERFORM THEIR DUTIES WITH THE RECEIVING PARTY; PROVIDED THAT EACH SUCH PERSON

HAS A LEGAL OR CONTRACTUAL OBLIGATION TO MAINTAIN THE CONFIDENTIALITY OF SUCH INFORMATION COMPARABLE TO THE OWNING PARTY'S OBLIGATIONS UNDER THIS SECTION 7, AND THE RECEIVING PARTY SHALL BE LIABLE FOR ANY SUCH PERSON'S FAILURE TO COMPLY WITH SUCH OBLIGATION, AND (D) AS OTHERWISE MAY BE REQUIRED BY LAW, SUBPOENA OR COURT ORDER, PROVIDED THAT THE RECEIVING PARTY PROMPTLY GIVES THE DISCLOSING PARTY PRIOR NOTICE OF SUCH REQUIREMENT IN ORDER TO GIVE THE DISCLOSING PARTY AN OPPORTUNITY TO LAWFULLY PREVENT OR LIMIT THE SCOPE OF SUCH DISCLOSURE AND FULLY COOPERATES WITH THE DISCLOSING PARTY TO LIMIT THE SCOPE OF SUCH DISCLOSURE. UPON TERMINATION OF THIS AGREEMENT, EACH RECEIVING PARTY SHALL RETURN TO THE OWNING PARTY ALL PROPRIETARY INFORMATION MADE AVAILABLE TO SUCH RECEIVING PARTY, AND SHALL NOT TAKE OR USE ANY OF THE PROPRIETARY INFORMATION, ANY REPRODUCTION OR SUMMARY OF THE PROPRIETARY INFORMATION, WHETHER EMBODIED IN A TANGIBLE MEDIUM OR OTHERWISE. NOTWITHSTANDING THE FOREGOING, LICENSEE ACKNOWLEDGES THAT ANY VIOLATION OF THIS SECTION 7, INCLUDING WITHOUT LIMITATION ANY UNAUTHORIZED USE OF THE SKINNYCAT SOFTWARE PRODUCTS BY LICENSEE OR ANY OTHER PERSON OR ENTITY WHO RECEIVES THE SKINNYCAT SOFTWARE PRODUCTS IN CONTRAVENTION OF THE TERMS OF THIS AGREEMENT, SHALL CAUSE IRREPARABLE DAMAGE TO SKINNYCAT SOFTWARE, FOR WHICH THERE WOULD BE NO ADEQUATE REMEDY AT LAW, AND THAT DAMAGES RESULTING FROM SUCH BREACH WOULD BE IMPOSSIBLE TO ASCERTAIN. LICENSEE ACKNOWLEDGES AND AGREES THAT SKINNYCAT SOFTWARE SHALL BE ENTITLED TO OBTAIN INJUNCTIVE RELIEF, WITHOUT BOND, IF THE PROVISIONS OF THIS SECTION 7 ARE VIOLATED.

8. TERM AND TERMINATION OF AGREEMENT

A. TERM. THIS AGREEMENT SHALL COMMENCE ON THE LICENSE START DATE RECORDED ON THE SALES QUOTATION AND CONTINUE IN FULL FORCE AND EFFECT FOR THE PERIOD STIPULATED ON THE SALES QUOTATION. FOR TERM-SPECIFIC SUBSCRIPTION LICENSES (WHICH INCLUDE MAINTENANCE AND SUPPORT SERVICES), OR FOR ANY OTHER MAINTENANCE AND SUPPORT SERVICES NOT OTHERWISE INCLUDED AS PART OF THE LICENSE, THE TERM FOR SUCH SUBSCRIPTION LICENSES AND/OR MAINTENANCE AND SUPPORT SERVICES SHALL AUTOMATICALLY RENEW FOR AN ADDITIONAL ONE (1) YEAR TERM PROVIDED THAT (1) ALL FEES DUE AND PAYABLE UNDER THIS AGREEMENT SHALL HAVE BEEN RECEIVED BY SKINNYCAT SOFTWARE; AND (2) LICENSEE IS NOT IN BREACH OF ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT.

B. TERMINATION. THIS AGREEMENT AND ALL LICENSES GRANTED HEREUNDER MAY BE TERMINATED IMMEDIATELY BY SKINNYCAT SOFTWARE UPON NOTICE TO LICENSEE IF (I) LICENSEE BREACHES ANY OF THE TERMS AND CONDITIONS SET FORTH IN SECTION 1 OF THIS AGREEMENT, OR (II) LICENSEE BREACHES ANY OF THE RESTRICTIONS ON USE OR DISCLOSURE OF ANY CONFIDENTIAL INFORMATION OF SKINNYCAT SOFTWARE. THIS AGREEMENT AND ALL LICENSES GRANTED HEREUNDER MAY OTHERWISE BE TERMINATED BY SKINNYCAT SOFTWARE UPON THIRTY (30) DAYS NOTICE BY SKINNYCAT SOFTWARE UPON (I) ANY MATERIAL BREACH BY LICENSEE OF THIS AGREEMENT THAT REMAINS UNCURED FOR A PERIOD OF THIRTY (30) DAYS FOLLOWING NOTICE BY SKINNYCAT SOFTWARE OF SUCH MATERIAL BREACH OF THIS AGREEMENT; (II) THE INSOLVENCY, BANKRUPTCY OR RECEIVERSHIP OF LICENSEE; (III) ANY CHANGE IN CONTROL OF LICENSEE (WHETHER THROUGH TRANSFER OF OWNERSHIP, MERGER OR OTHERWISE); OR (IV) THE SALE OR TRANSFER BY LICENSEE OF ALL OR A SUBSTANTIAL PART OF LICENSEE'S ASSETS. IN ADDITION, THIS AGREEMENT MAY BE TERMINATED UPON THIRTY (30) DAYS NOTICE BY LICENSEE FOR ANY REASON WHATSOEVER. UPON TERMINATION BY EITHER PARTY, LICENSEE WILL IMMEDIATELY (A) PAY TO SKINNYCAT SOFTWARE ANY AND ALL UNPAID AMOUNTS DUE UNDER THIS AGREEMENT; (B) RETURN TO SKINNYCAT SOFTWARE ANY AND ALL MATERIALS, AND ALL COPIES THEREOF, RELATING TO THE SKINNYCAT SOFTWARE PRODUCTS; AND (C) CERTIFY IN A SWORN WRITING TO SKINNYCAT SOFTWARE THAT ALL ACTIONS REQUIRED BY THE PRECEDING CLAUSES (A) AND (B) HAVE BEEN SATISFIED. FURTHER, BOTH PARTIES SHALL EITHER RETURN OR DESTROY ANY AND ALL PROPRIETARY INFORMATION, AND ALL COPIES THEREOF, AT THE DIRECTION OF THE OWNING PARTY AND PROVIDE WRITTEN PROOF OF SAME UPON THE OWNING PARTY'S REASONABLE REQUEST. IN THE EVENT OF LIQUIDATION OR BANKRUPTCY OF SKINNYCAT SOFTWARE, THE LICENSE WILL REMAIN IN FULL FORCE AND EFFECT FOR THE APPLICABLE REMAINING TERM OF THIS AGREEMENT WITH LICENSE FEES REMAINING DUE AND PAYABLE TO SKINNYCAT SOFTWARE AS DEBTOR-IN-POSSESSION, OR ITS SUCCESSOR-IN-INTEREST.

9. MISCELLANEOUS PROVISIONS

A. WAIVER, AMENDMENT OR MODIFICATION. THE WAIVER, AMENDMENT OR MODIFICATION OF ANY PROVISION OF THIS AGREEMENT OR ANY RIGHT, POWER OR REMEDY HEREUNDER SHALL NOT BE EFFECTIVE UNLESS IN WRITING AND SIGNED BY THE PARTY AGAINST WHOM ENFORCEMENT OF SUCH WAIVER, AMENDMENT OR MODIFICATION IS SOUGHT. THE TERMS OF THIS AGREEMENT SHALL NOT BE AMENDED OR CHANGED BY THE TERMS OF ANY PURCHASE ORDER, ACKNOWLEDGMENT, INVOICE OR SIMILAR DOCUMENT EVEN THOUGH A PARTY MAY HAVE SIGNED OR ACCEPTED SUCH DOCUMENTS. NO FAILURE OR DELAY BY A PARTY IN EXERCISING ANY RIGHT, POWER OR REMEDY WITH RESPECT TO ANY OF THE PROVISIONS OF THIS AGREEMENT SHALL OPERATE AS A WAIVER THEREOF.

B. NOTICE. ANY NOTICE OR OTHER COMMUNICATION REQUIRED OR PERMITTED HEREUNDER SHALL BE IN WRITING, SHALL BE DEEMED TO HAVE BEEN GIVEN OR MADE AND SHALL BE DEEMED SUFFICIENT IN ALL RESPECTS WHEN DELIVERED PERSONALLY, OR SENT BY FACSIMILE OR E-MAIL (PROVIDED THE SENDER CONFIRMS THE FACSIMILE OR E-MAIL BY SENDING AN ORIGINAL CONFIRMATION COPY BY CERTIFIED OR REGISTERED MAIL OR EXPEDITED DELIVERY SERVICE WITHIN THREE (3) BUSINESS DAYS AFTER TRANSMISSION) OR WHEN PLACED IN THE MAIL, AIR MAIL POSTAGE PREPAID, ADDRESSED TO THE RESPECTIVE PARTY'S ADDRESS AS SET FORTH ON THE SALES QUOTATION.

C.   RELATIONSHIP OF THE PARTIES. IN THE PERFORMANCE OF DUTIES ASSIGNED PURSUANT TO THIS AGREEMENT, THE STATUS OF THE PARTIES, INCLUDING ITS EMPLOYEES AND AGENTS, WILL BE THAT OF INDEPENDENT CONTRACTORS AND NOT AS EMPLOYEES OR AGENTS, OR FIDUCIARIES OF THE OTHER PARTY, AND AS SUCH WILL HAVE NOT RIGHT TO MAKE ANY COMMITMENTS FOR OR ON BEHALF OF THE OTHER PARTY. NOTHING IN THIS AGREEMENT WILL CREATE ANY ASSOCIATION, PARTNERSHIP OR JOINT VENTURE BETWEEN THE PARTIES. THE OPERATION AND CONTROL OF EACH PARTY'S RESPECTIVE BUSINESSES ARE NOT SUBJECT TO THE CONTROL OR APPROVAL OF THE OTHER PARTY EXCEPT AS EXPRESSLY PROVIDED HEREIN.

D.   ABSENCE OF THIRD-PARTY BENEFICIARY RIGHTS. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, NO PROVISION OF THIS AGREEMENT IS INTENDED NOR SHALL BE INTERPRETED TO PROVIDE OR CREATE ANY THIRD PARTY BENEFICIARY RIGHTS OR ANY OTHER RIGHTS OF ANY KIND IN ANY AFFILIATE OF SUBSIDIARY, AND ALL PROVISIONS HERETO SHALL BE PERSONAL SOLELY BETWEEN THE PARTIES HERETO.

E.   GOVERNING LAW. THE VALIDITY, CONSTRUCTION AND PERFORMANCE OF THIS AGREEMENT, AND THE LEGAL RELATIONS AMONG THE PARTIES TO THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, EXCLUDING THAT BODY OF LAW APPLICABLE TO CONFLICTS OF LAW. THE PARTIES SUBMIT SOLELY AND EXCLUSIVELY TO THE JURISDICTION OF, AND WAIVE ANY OBJECTION TO PERSONAL JURISDICTION AND VENUE IN, THE COURTS OF STATE OF TEXAS IN ANY ACTION ARISING OUT OF OR RELATING TO THE AGREEMENT.

F.   SEVERABILITY. IN THE EVENT ANY PROVISION HEREOF SHALL BE HELD BY A TRIBUNAL OF COMPETENT JURISDICTION TO BE CONTRARY TO THE LAW, THE REMAINING PROVISIONS OF THIS AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT.

G. PROPRIETARY AGREEMENT. THIS AGREEMENT IS CONFIDENTIAL AND SHALL BE TREATED AS A PROPRIETARY DOCUMENT OF THE PARTIES. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, EACH PARTY AGREES THAT NEITHER THIS AGREEMENT NOR ANY SPECIFIC PROVISION HEREOF SHALL BE REVEALED OR DISCLOSED BY IT WITHOUT THE PRIOR WRITTEN CONSENT OF THE OTHER PARTY. NOTWITHSTANDING THE FOREGOING, LICENSEE EXPRESSLY AGREES THAT SKINNYCAT SOFTWARE MAY LIST LICENSEE AS A CLIENT IN ANY OF ITS PRINT OR ELECTRONIC MARKETING MATERIALS.

H.   HEADINGS. SECTION HEADINGS ARE INCLUDED SOLELY FOR CONVENIENCE, ARE NOT TO BE CONSIDERED A PART OF THIS AGREEMENT AND ARE NOT INTENDED TO BE FULL AND ACCURATE DESCRIPTIONS OF THE CONTENTS THEREOF.

I. ACCEPTANCE AND COUNTERPARTS. NEITHER THIS AGREEMENT NOR ANY EXHIBIT HERETO SHALL BECOME EFFECTIVE UNTIL SIGNED BY THE LICENSEE ON THE SALES QUOTATION. THIS AGREEMENT AND ITS EXHIBITS MAY BE EXECUTED BY ANY NUMBER OF COUNTERPARTS, AND ALL SUCH COUNTERPARTS SHALL BE DEEMED TO CONSTITUTE ONE IN THE SAME INSTRUMENT.

J. NON-ASSIGNMENT. THIS AGREEMENT SHALL NOT BE ASSIGNED BY LICENSEE WITHOUT THE EXPRESS WRITTEN CONSENT OF SKINNYCAT SOFTWARE. ANY ASSIGNMENT IN CONTRAVENTION OF THIS PARAGRAPH SHALL BE NULL AND VOID.

K. SURVIVAL. THE FOLLOWING PROVISIONS SHALL SURVIVE THE EXPIRATION, CANCELLATION OR EARLY TERMINATION OF THIS AGREEMENT: SECTIONS 2, 4 THROUGH 9.

L. GOVERNMENTAL RESTRICTED RIGHTS. THE SOFTWARE COMPRISING THE SOFTWARE AND DOCUMENTATION WHICH IS USED OR OTHERWISE ACCESSED FOR OR ON BEHALF OF THE UNITED STATES OF AMERICA, ITS AGENCIES AND/OR INSTRUMENTALITIES ("U.S. GOVERNMENT"), IS PROVIDED WITH RESTRICTED RIGHTS. USE, DUPLICATION, OR DISCLOSURE BY THE U.S. GOVERNMENT IS SUBJECT TO RESTRICTIONS AS SET FORTH IN SUBPARAGRAPH (C)(1)(II) OF THE RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE CLAUSE AT DFARS 252.227-7013 OR SUBPARAGRAPHS (C)(1) AND (2) OF THE COMMERCIAL COMPUTER SOFTWARE - RESTRICTED RIGHTS AT 48 CFR 52.227-19, AS APPLICABLE. CONTRACTOR/MANUFACTURER: SKINNYCAT SOFTWARE LLC, 3256 RANCH PARK TRAIL, ROUND ROCK, TX 78681.

M.   ENTIRE AGREEMENT. THIS AGREEMENT, INCLUDING THE STATEMENT OF WORK, PRICING QUOTE, AND EXHIBITS HERETO WHICH ARE INCORPORATED HEREBY BY REFERENCE, REPRESENTS THE ENTIRE UNDERSTANDING OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND SUPERSEDES ALL PRIOR REPRESENTATIONS AND AGREEMENTS, WHETHER ORAL OR WRITTEN, WITH RESPECT TO THE SAME SUBJECT MATTER.

Element Maintenance & Technical Support Standards

This Maintenance and Support Addendum to the General Terms and Conditions ("Support Addendum") describes the maintenance and technical support services (the "Support Services") to be provided by Element Learning Management Solutions (ElementLMS)to Licensee for the ElementLMS Products licensed under the Agreement. Capitalized terms not defined in this Support Addendum have the same meanings as such terms are defined in the Agreement.

1.   DEFINITIONS
1.1.   "Defect" means a failure of the Software to substantially conform to the functional specifications set forth in the Software documentation.
1.2.   "Major Release" means a subsequent release of the Software that ElementLMS makes generally available to its supported customers, as indicated by a version number increase to the left of the first decimal point (e.g., 2.0 to 3.0).
1.3.   "Minor Release" means a subsequent release of the Software that ElementLMS makes generally available to its supported customers, as indicated by a version number increase to the right of the first decimal point (e.g., 2.1 to 2.2).
1.4.   "Patch" means a modification for a particular version of the Software, which may be of a temporary or interim nature, to resolve a Defect.
1.5.   "Software" means the proprietary ElementLMS software components of the ElementLMS Products licensed under the Agreement to Licensee.
1.6.   "Updates and Upgrades" means Minor Releases and Major Releases. Updates and Upgrades shall not include any products that ElementLMS licenses separately for an additional fee.
1.7.   "Workaround" means a procedure or technique to provide a temporary or interim fix to a claimed Defect in a particular version of the Software.
2.   STANDARD MAINTENANCE AND SUPPORT.
2.1.   Coverage. Subject to the General Terms and Conditions of the Agreement, ElementLMS shall offer Support Services solely for the Software licensed under the Agreement.
2.2.   Annual Software Maintenance. ElementLMS shall use commercially reasonable efforts to maintain the Software so that it operates without Defects.
2.3.   Updates and Upgrades. ElementLMS shall supply Licensee with Updates and Upgrades for the Software that are released to the general public during the term of this Agreement. Such Updates and Upgrades shall be provided to Licensee at no charge. Except for Updates and Upgrades, Licensee shall not be entitled to any other software as part of the Support Services. Updates and Upgrades may be delivered via physical media or made available electronically, at ElementLMS's sole discretion.
2.4.   Telephone Support.
2.4.1.   General. Telephone support will be available from 7:00 am to 7:00 pm, Central Time, Monday through Friday, excluding holidays. Unless otherwise designated by ElementLMS, Licensee should call the following numbers for support:

Contact Name	
Toll Free Number:	
Local Number:	
Email	support@elementlms.com
URL	www.elementlms.com

2.4.2.   Problem Definition. To assist in expeditiously resolving Licensee's problem, the Licensee should record the following information for reference and should provide the information to ElementLMS: (a) error messages and indications that Licensee received when the malfunction occurred, (b) what the user was doing when the malfunction occurred, (c) what steps Licensee has taken to reproduce the malfunction, (d) what steps Licensee may have already taken to solve the problem and (e) product version.
2.5.   Internet Support. ElementLMS may provide Internet assistance to Licensee through access to a website that may include any of the following: a knowledge base, on-line case tracking, frequently asked questions, Updates and Upgrades, and Software documentation.

2.6.   Defect Severity Levels. Defects in the Software are classified according to severity of impact on the use of the Software as follows:

Severity	Impact
1	Production site not working
2	Continued performance of one or more essential functions is impaired and may be circumvented or avoided on a temporary basis by the intended user.
3	Continued performance of one or more non-essential functions is impaired.

2.7.   Response Time Goals: ElementLMS agrees to use reasonable efforts to acknowledge software Defects promptly reported to ElementLMS by Licensee and to use all reasonable efforts to provide Workarounds and Updates. Acknowledgements will be sent to Licensee via the online support system, e-mail or phone. The following response time goals will be in effect:

2.7.1.   Severity 1. If a Severity 1 Defect occurs during normal operating hours (8:30 am – 5:30 pm Central Time weekdays), ElementLMS will begin immediate and continuous efforts to reproduce and resolve the Defect, and will carry out those efforts until the Defect is resolved. ElementLMS will use all reasonable efforts to resolve all Severity 1 Defects in the shortest time possible, and will review with Licensee the status on a daily basis or more frequently, if requested.

2.7.2.   Severity 2. If the Defect is a Severity 2 issue, ElementLMS will begin efforts to reproduce the problem no later than the opening of the next business day. ElementLMS will use reasonable efforts to resolve Severity 2 problems as rapidly as practical.

2.7.3.   Severity 3. Severity 3 Defects will be addressed in ElementLMS's normal maintenance or enhancement release schedule.

2.8.   Inclusion. All Workarounds and Updates shall be considered Software and licensed pursuant to and subject to the terms and conditions of the Agreement.

3.   ADDITIONAL MAINTENANCE AND TECHNICAL SUPPORT

3.1.   Coverage. For an additional fee, Licensee may elect to receive certain additional maintenance and support services as outlined in this section. Fees related to such services will be determined by ElementLMS on a quoted basis and all services are subject to the mutual agreement of the parties.

3.2.   On-Site Services. For an additional fee, Licensee may elect to receive on-site support and maintenance.

3.3.   Training. For an additional fee, Licensee may elect to receive on-site training with respect to the Software.

3.4.   Consulting Related to Licensee Defects. For an additional fee, Licensee may elect to receive consulting services related to Defects caused by issues other than the Software.

4.   OBLIGATIONS OF LICENSEE.

4.1.   First Level Support/Single Point of Contact. All communications relating to the Maintenance and Technical Support shall be supervised, coordinated, and undertaken by no more than two (2) designated contact persons per Licensee location who shall act as a single point of contact between Licensee and ElementLMS. At a minimum, the Support Services require the Licensee to ensure the following:

4.1.1.   Reproduction. If possible and practical, the situation giving rise to the problem is reproducible in a single supported Software installation;

4.1.2.   Release Level. The Software is at a supported release level in accordance with Section 6.2;

4.1.3.   Access. The full system, including all software and hardware, is available to the Licensee contact without limit during any telephone discussions with ElementLMS support personnel; and

4.1.4.   Cooperation. The Licensee contact will follow the instructions and suggestions of ElementLMS's support personnel when servicing the Software.

4.2.   Remote Connection. If appropriate, Licensee will cooperate with ElementLMS to allow and enable ElementLMS to perform support services via remote connection using standard, commercially available remote control software. Licensee shall be solely responsible for instituting and maintaining proper security safeguards to protect Licensee's systems and data.

4.3.   Updates and Upgrades.   Licensee acknowledges and agrees that Updates and Upgrades provided by ElementLMS pursuant to this Agreement may, in Element's sole discretion, require additional training of Licensee's personnel.

4.4.   Disclaimer. ElementLMS shall not be responsible to provide Support Services, Updates and Upgrades, or any other maintenance and support to the extent that Defects arise because Licensee (a) misuses, improperly uses, mis-configures, alters, or damages the Software; (b) uses the Software with any hardware or software not supplied or supported by ElementLMS; (c) fails to install an Update to the Software if such Update would have resolved the Defect; or (d) otherwise uses the Software in a manner not in accordance with the Agreement.   Notwithstanding anything in this Support Addendum to the contrary, the Support Services do not obligate ElementLMS to provide: (i) project management; (ii) personnel management; (iii) application design or development; (iv) performance of Support Services on-site; (v) consulting, training or other support services relating to software other than the Software; (vi) support or maintenance services relating to any hardware or peripheral devices; (vii) recreation or reentry of data lost for any reason whatsoever; (viii) provision of any functional deliverables; (ix) performance of the generalized duties of a software developer engaged to create miscellaneous software applications at Licensee's discretion; or (x) delivery of customized improvements or enhancements to existing Software functions.

5.   LIMITATION ON STANDARD MAINTENANCE AND SUPPORT.

5.1.   Licensee Defects. If Licensee notifies ElementLMS of a problem and ElementLMS correctly determines that the problem is due to Licensee's incorrect or improper use of the Software or failure to comply with the terms of this Agreement (as opposed to a Defect in the Software), the resolution of such problem is not covered by the Support Services. However, at Licensee's request in writing approving the fees therefore, ElementLMS may provide consulting services to correct the problem pursuant to Section 4.4.

5.2.   Release Support Period. ElementLMS shall support a release of the Software if such release (a) was made generally available during the previous twenty four (24) months, or (b) is no more than one Major Release behind the current release of the Software. Other versions of the Software will not be supported unless ElementLMS and Licensee mutually agree otherwise in writing.

5.3.   Third Party Products. The Support Services do not cover the operation or use of third party hardware or software, nor do they cover Software to the extent modified by Licensee without the express authorization of ElementLMS or used in any manner in violation of the Agreement or inconsistent with the Software documentation.

6.   TERM.

6.1.   Term. Support Services are provided on an annual basis as part of a valid license for ElementLMS Products. The Support Services shall commence on the Effective Date and shall continue for one (1) year unless a different term is specified on the Sales Quotation.

6.2.   Termination of Agreement. If ElementLMS or Licensee terminates the Agreement as provided therein, then the Support Services shall also terminate.

7.   **LIMITATIONS & DISCLAIMER.**

        In addition to the limited warranties set forth in the Agreement, ElementLMS warrants that the Support Services will be performed in a professional and workmanlike manner consistent with acceptable industry standards. Other the foregoing, **ElementLMS DISCLAIMS ALL WARRANTIES WITH REGARD TO ANY SERVICES PROVIDED TO CUSTOMER HEREUNDER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS. IN NO EVENT WILL ElementLMS BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA OR PROFITS, WHETHER IN AN ACTION OF CONTRACT, NEGLIGENCE OR OTHER TORTIOUS ACTION, ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF ANY SUPPORT SERVICES PROVIDED HEREUNDER**.

This page intentionally left blank