

DIR-CPO-4463 Appendix D Maintenance & Support Agreement

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 and DIR Contract No. DIR-CPO-4463. 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 DIR Contract No. DIR-CPO-4463 and 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, and shall be in accordance with DIR-CPO-4463 Appendix C Pricing Index.

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.

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. Pricing for training shall be in accordance with DIR-CPO-4633 Appendix C Pricing Index.

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 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 in DIR-CPO-4463.

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

In the event of a conflict between the documents listed under this agreement, DIR Contract No. DIR- CPO-4463 Terms and Conditions will take precedence.