

**Definitions**

In the Master Agreement dated \_\_\_\_\_ (“Agreement”) the following words and phrases shall have the following respective meanings, unless the context otherwise requires:

- a. **“Copyrights”** and **“Intellectual Property”** shall refer to those copyrights or copyright registrations and images, trademarks or patents for **the Platform** and **Related Materials** and shall include all existing and any future copyrights belonging to **THINKGATE**, or any third-party **related** or **unrelated** to **THINKGATE**, for improvements and enhancements of **the Platform** to include but not be limited to existing and future **Product Modules** developed by **THINKGATE** for registration of copyrights including improvements and enhancements thereof;
- b. **“Enhancements”** means, with regard to **the Platform**, changes and/or improvements to **the Platform**, arising out of a particular request by a **CUSTOMER**. **Enhancements** are created by taking specific business request of the **CUSTOMER** and including the functionality to support that request in **the Platform**. The business rules and requirements for any specific **Enhancement** may be modified by **THINKGATE** to have broad market appeal, and **THINKGATE** reserves the right to charge for requested **Enhancements** and also include any **Enhancement** in **the Platform** for any and all customers, even if a particular **Enhancement** has been paid for by a specific **CUSTOMER**. **Enhancements** shall be deemed to have been accepted by **CUSTOMER** upon the lapse of forty (45) days following successful installation of any **Enhancements** unless **CUSTOMER** notifies **THINKGATE** in writing prior to the lapse of such period that the **Enhancements** in question does not conform to **Specifications**;
- c. **“Upgrades”** means, with regard to **the Platform**, changes and/or improvements to **the Platform**, arising from the advancement of the feature set as part of the normal progression of **the Platform** based on the research and marketing efforts of **THINKGATE**. **Upgrades** that are added to an existing Element™ are included in the cost of that particular Element™ and are delivered on a schedule as determined by **THINKGATE**. **Enhancements**, at the sole discretion of **THINKGATE**, can be made a part of the regular **Upgrade** process, but will be delivered as part of **the Platform** on a time table set by **THINKGATE**. **THINKGATE** reserves the right to determine if an **Upgrade** is included in an existing Element™ or if it becomes a new Element™ that must be purchased in addition to the existing functionality.
- d. **“Errors or Bugs”** means, with regard to **the Platform**, incorrect source code or object code or anything not in compliance with published **Specifications**. Most software solutions contain “minor” **Bugs** and it is commonly accepted that not all **Bugs** can or will be resolved. Minor **Bugs** are deemed to be those things that cause features or functions to require a “work around” or extra steps in order to have **the Platform** support all defined **Specifications**.
- e. **“Software Limitations”** means, with regard to **the Platform**, any function that a **CUSTOMER** desires to have that is not currently in **the Platform Specifications**. A **Software Limitation** is not a **Bug**, but a feature or function that seems desirable, but is not available for use. **THINKGATE** is under no obligation to address issues related to **Software Limitations**, but encourages the **CUSTOMER** to report all **Software Limitations** as **Upgrade** Request as this helps to improve the product over time.
- f. **“Know-How”** includes all technology, source code, object code, local area network manager code, technical information, procedures, processes, trade secrets, methods, practices, techniques, information, logic/flow charts, sketches, drawings, specifications, application and modification manuals and data relating to the design, manufacture, production, inspection, and testing of **the Platform**, which are from time to time in **THINKGATE**’s possession;
- g. **“Manuals”** means the programmer’s manuals, the technical manuals and the user manuals and other similar documentation for **the Platform**;

- h. “**Related Materials**” means all templates, designs, printed materials, user and technical documentation, training documentation and confidential activation code for **the Platform** supplied by **THINKGATE** to **CUSTOMER**;
- i. “**The Platform**”, which includes the Know-How and, unless otherwise hereinafter set out to the contrary, all **Product Modules**, and any **Enhancements** to specific **Product Modules** and includes all actual copies of all or any portion of the computer programs delivered by **THINKGATE** to **CUSTOMER**, inclusive of backups, updates and merged copies either permitted by this agreement or supplied subsequently by **THINKGATE** or any party related to **THINKGATE**.
- j. “**Specifications**” means the functional performance parameters of **the Platform** or **Product Modules** as defined in a design or code release documents.
- k. “**Product Modules**”, which includes, but is not limited to, certain components of the **Platform** including page templates, menu definitions, search definitions, reports, stored procedures and access control rules that in combination with **the Platform** perform the functions and have the features described in Schedule “C”, Purchased Elements. **Product Modules** are packaged for distribution in code sets referenced as Elements™.
- l. **CUSTOMER** includes the school board, school district, local education agencies (school sites), its employees, servants, agents and assigns, including independent contractors.
- m. **CONTENT** includes any and all materials placed into **the Platform** including, but not limited to, standards, questions, item stems, answers, text, graphics, charts, methodologies, forms, layouts, plans, addendums, images, plans, documents, templates, rubrics, resources, custom reports, or any other subject matter loaded into **the Platform** solution by **CUSTOMER** or by **THINKGATE** acting on **CUSTOMER**'s behalf.
- n. “**Elements™ Product Suite**” includes **the Platform** and **Related Materials** assigned to the Elements™ brand that can be purchased as **Product Modules** defined in Schedule “C”, Purchased Elements.
- o. “**Annual License Fee**” is the amount of monies paid for the rights to lease the use of the **Elements™ Product Suite** based on a per student per year fee.
- p. “**User Community**” is a combination of all users of the **Elements™ Product Suite** from across a varied geographic territory.
- q. “**Public Domain**” is an intellectual property designation for the range of content that is not owned or controlled by anyone. These materials are "public property", and available for anyone to use freely for any purpose. The status of publications, products, and processes that are not protected under patent or copyright.
- r. “**Perpetual License**” is a license to use **the Platform** and **Related Materials** for an unspecified period of time. The license is paid for once and does not need to be renewed.
- s. “**Subscription License**” is **THINKGATE**'s business model that allows the **CUSTOMER** to lease and to have access to **the Platform** utilizing an annual subscription price rather than requiring a transfer of ownership that necessitates the purchase of the products. The model was pioneered by magazines and newspapers, but is now used by many businesses and websites allowing for a more cost effective leasing model. Rather than selling the **Elements™ Product Suite**, the **Subscription License** allows periodic (annual) access to **the Platform** and **Related Materials**.
- t. “**Trouble Ticket**” is a file contained within **THINKGATE**'s issue tracking system which contains information about support interventions made by **THINKGATE**'s technical support staff on behalf of the **CUSTOMER** who has reported an incident that is preventing them from working with the

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- Elements™ Product Suite** as they would expect to be able to. Incidents can be reported by authorized personnel by contacting the **THINKGATE** support staff either by email, phone or through the support center provided in the **Elements™ Product Suite**.
- u. **“Hosting Environment”** is a physical environment provided and managed by **THINKGATE** to support all hardware, software, servers, operating systems, cabinets, rack space, bandwidth, firewalls and any other components necessary to support the web based technology associated with making the **Elements™ Product Suite** available to the **CUSTOMER**. The **Hosting Environment** does not include any computer equipment needed by the **CUSTOMER** to access the internet from their individual locations. **THINKGATE’s Hosting Environment** is managed by a professional hosting provider in a secured location.
  - v. **“(SaaS) Software as a Service”** is a business model that provides computer-based services to customers over the internet or a network. Software offered using an **SaaS** model is also sometimes called **On-demand software**. **THINKGATE** offers a software delivered as a service model and provides access to the required hardware components associated with running the actual **Elements™ Product Suite**. The **SaaS** model does not include any computer equipment needed by the **CUSTOMER** to access the internet or use local peripherals (scanners, clickers, office productivity tools, etc.) associated with the use of the **Elements™ Product Suite** from their individual locations.
  - w. **“Self-Hosted Environment”** is a physical environment provided and managed by the **CUSTOMER** to support all hardware, software, servers, operating systems, cabinets, rack space, bandwidth, firewalls and any other components necessary to support the web based technology associated with making the **Elements™ Product Suite** available to the **CUSTOMER**.
  - x. **“Change Management”** is a structured approach to transitioning the **Elements™ Product Suite** from a current version to a desired future state. This future state may include, but is not limited to, applying patches, upgrades, bug fixes, enhancements and other modifications intended to improve the use or functionality of the **Elements™ Product Suite**. Change management (or change control) is the process during which the changes of a system are implemented in a controlled manner by following a pre-defined framework/model with, to some extent, reasonable modifications as approved by both **THINKGATE** and **CUSTOMER**.
  - y. **“Production Push”** is the physical process of applying changes to the actual code base of the **Elements™ Product Suite** in use by the **CUSTOMER**.
  - z. **“Quick Start Guides”** are documents provided to the **CUSTOMER** that show screen shots and step by step instruction on how to use many of the features and functions of the **Elements™ Product Suite**.
  - aa. **“Release Notes”** is a document(s) that outlines major changes to the features, functions or technical requirements associated with a **Production Push**. The **Release Notes** is a supplementary document that may be delivered to the customer when a bug is fixed or an enhancement is made to the product.
  - bb. **“OMR HALO Application”** is a proprietary software product created by **THINKGATE** using the Scantron™ Scantools Plus SDK that allows scanning assessment results into the **Elements™ Product Suite** from approved optical mark reader (OMR) scanners.
  - cc. **“PPS Scan Application”** is a proprietary software product created by **THINKGATE** that allows scanning assessment results into the **Elements™ Product Suite** from approved plain paper scanners (PPS).