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FIRST AMENDMENT TO AGREEMENT No. 11375 BETWEEN ALACHUA COUNTY AND SKILLSOFT COPRPORATION FOR E-LEARNING

THIS FIRST AMENDMENT TO AGREEMENT No.11375, made and entered into on July 13, 2021 by and between Alachua County, a charter county and political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "County", and **Skillsoft Corporation**, with a business address of 300 Innovative Way, Unit 201, Nashua, New Hampshire 03062, hereinafter referred to as "Skillsoft". Collectively the County and Skillsoft are hereinafter referred to as the "Parties".

WITNESSETH:

WHEREAS, the Parties hereto previously entered into an agreement the Agreement between Alachua County and Skillsoft Corporation for E-Learning dated September 10, 2019 and,

WHEREAS, Skillsoft has developed an upgraded Learning Management System called Percipio (the "LMS") which provides enhanced capability at no change in cost to County's; and,

WHEREAS, the County desires to implement the LMS to enhance the E-Learning opportunities for County employees; and

WHEREAS, the Parties wish to amend the Agreement to codify the use by the County of the Percipio LMS, to add a clause which defines and allows electronic signatures, and to add a clause which acknowledges the employment eligibility requirements via the U.S. Department of Homeland Security E-Verify System as set forth herein,

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties hereby agree to amend the Agreement as follows:

1. The section titled **License Term** of the Agreement, is amended in its entirety to read:

The term of this Amendment is effective August 1, 2021, after execution by both Parties and continues through the initial term of the Agreement, September 30, 2022, unless earlier terminated as provided herein.

The County has the option of renewing this Agreement for two additional one-year periods, at the same terms and conditions outlined herein, through written amendments executed by both parties as set forth below.

The County's performance and obligation to pay under this Agreement is contingent upon a specific annual appropriation by the Alachua County Board of County Commissioners ("Board"). The

Parties hereto understand that this Agreement is not a commitment of future appropriations. Therefore, the continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes, and that the failure of the Board to do so shall not constitute a breach or default of this Agreement.

2. The section titled **License Fees** of the Agreement, is amended in its entirety to read:
County's total commitment hereunder is set forth below and is calculated as follows (the "Commitment Fee"). In the event there is a license period less than a 12 month term (Stub Period), the 1st annual license fee shall account for the Stub Period and may be prorated based on the length of term. Applicable state and local taxes are not included in the totals below and will be calculated as of the date of the invoice(s) issued hereunder:

YEAR/TERM	ANNUAL LICENSE FEES
Y1 1 October 2019-September 30 2020	All fees previously invoiced and paid
Y2 1 October 2020-September 30 2021	All fees previously invoiced and paid
Y3 1 October 2021-September 30 2022	USD 65,733.00
(Option Year 1) 1 October 2022 – 30 September 2023	USD 68 034.00
(Option Year 2) 1 October 2023 – 30 September 2024	USD 70,335.00
TOTAL	USD 204,102.00

CONTINUATION INTO OPTION YEARS County shall have the right to elect by means of written notification to Skillsoft that this Contract continues for the duration of Year Option Year 1 (1st October 2022 to 30th September 2023). If County does not so elect, this Contract shall terminate at the expiry of Year 3 on 30th September 2022. If County does so elect, County shall then additionally have the right to elect by means of written notification to Skillsoft that this Contract continues for the duration of Option Year 2 (1st October 2023 to 30th September 2024). If County does not so elect, this Contract shall terminate at the expiry of Option Year 1 on 30th September 2023. County shall endeavor to give notice of such election not less than 30 days prior to the commencement of the optional Year for which it is then electing.

3. The table contained in the section titled **Duties of Skillsoft**, is amended in its entirety to read:

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Start Date	End Date	Skillsoft Product	Authorized Audience
1 August 2021	30-Sep-21	Percipio Business Advance	830
1 August 2021	30-Sep-21	Percipio Compliance Legal	830
1st August 2021	30-Sep-21	Skillstudio	4
1 October 2021	30-Sep-22	Percipio Business Advance	830
1 October 2021	30-Sep-22	Percipio Compliance Legal	830
1st October 2021	30-Sep-22	Skillstudio	4

Deployment method – Percipio Compliance Legal – Percipio Compliance

Deployment method – Percipio Business Advance – Percipio

4. The section titled **Skillsoft Product Definitions,** is amended by the addition of the following definitions:

DEFINITIONS. Any term not otherwise defined herein shall have the meaning provided in the Agreement.

Licensed User shall mean an individual employee of County based in the Territory who is authorized by County to access the Skillsoft Products.

Territory shall mean North America, however, if any portion of the Territory is subject to an embargo or other legal restriction imposed on either party, that portion of the Territory shall be deemed excluded from the definition of "Territory".

License Consumption occurs when a member of the Authorized Audience has accessed the Percipio platform (each such person, a "Licensed User"). Further, once a member of the Authorized Audience has accessed the Percipio platform, that member is considered to have consumed a license for the Skillsoft Product(s) that have been assigned to that member for the remainder of the then current annual License Term. Notwithstanding the foregoing, Skillsoft agrees that licenses for terminated employees of County can be exchanged for a new member of the Authorized Audience during an annual term and that usage of the Skillsoft Product(s) by a terminated employee will not count toward County's License Consumption. The foregoing sentence applies only to full time, regular employees and shall not apply to contractors or temporary employees of County.

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Percipio shall mean a method for the delivery of and access to the Skillsoft Products whereby Skillsoft shall host the Skillsoft Products on Skillsoft servers and County may obtain access to the Skillsoft Products. County may not customize Percipio. Skillsoft shall provide installation of any maintenance releases and/or new version releases to the Percipio platform at no extra charge to County. The timing of such installations will be at Skillsoft's discretion. Skillsoft shall maintain backups of County data for a period of not more than ninety (90) days. Skillsoft will provide storage for custom content, at no additional cost, as follows: 200 gigabytes of storage space (**Initial Storage Allowance**). County shall be responsible for monitoring its use of the storage and if County exceeds the Initial Storage Allowance, County will be charged at the price per gigabyte of $70.00.

Percipio Compliance means an interface located on Percipio by which County shall access all licensed compliance products hosted on Skillsoft's Online Training Academy platform.

Percipio Compliance Legal is a package of Course Objects in the area of legal compliance, including but not limited to the Global Code of Conduct course, subject to the Authorized Audience level, in accordance with the terms and conditions set forth herein. County acknowledges that for County to enable full use of the Global Code of Conduct course, customizations are required. In the event that County elects to have Skillsoft perform such customizations a mutually agreeable Statement of Work setting forth the work to performed and the applicable fees shall be executed between the parties.

SkillStudio shall mean the services as defined in the Exhibit attached hereto.

Percipio Business Advance is a package of selected assets in the area of business, productivity and collaboration, and digital transformation. Skillsoft reserves the right to modify, restrict, or update any content contained in the Percipio Business Advance throughout the term of this Order Form.

5. A section titled, **Electronic Signatures**, is added as follows:

Electronic Signatures. The Parties agree that an electronic version of this Agreement shall have the same legal effect and enforceability as a paper version. The Parties further agree that this Agreement, regardless of whether in electronic or paper form, may be executed by use of electronic signatures. Electronic signatures shall have the same legal effect and enforceability as manually written signatures. The County shall determine the means and methods by which electronic signatures may be used to execute this Agreement and shall provide the Contractor with instructions on how to use said method. Delivery of this Agreement or any other document contemplated hereby bearing an manually written or electronic signature by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

6. A section titled, **U.S. Department of Homeland Security E-Verify System,** is added as follows:
U.S. Department of Homeland Security E-verify System

The Contractor/Professional shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor/Professional during the term of the Agreement. The E-verify system is located at https://www.uscis.gov/e-verify.

The Contractor/Professional shall expressly require any subcontractors performing work or providing services pursuant to the County's Agreement to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of the Agreement. The E-verify system is located at https://www.uscis.gov/e-verify.

7. Exhibit B of the Agreement, Skillsoft License Terms, is hereby deleted in its entirety and replaced by a new Exhibit B attached to this Amendment.

8. This First Amendment shall take effect August 1, 2021, after the date of execution by the Parties.

SAVE and EXCEPT as expressly amended herein, all other terms and provisions of the original Agreement between the Parties shall be and remain in full force and effect. In the event of any conflict between this Second Amendment and the First Amendment, the terms of this Second Amendment shall prevail.

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IN WITNESS WHEREOF, the Parties have caused this First_Amendment to Agreement to be executed for the uses and purposes therein expressed on the day and year first above-written.

ALACHUA COUNTY, FLORIDA

By: _____
Ken Cornell, Chair
Board of County Commissioners
Date: July 13, 2021

ATTEST: _____
J.K. "Jess" Irby, Esq. Clerk

(SEAL)

DocuSigned by:
APPROVED AS TO FORM
Courtney L. Wilson
65EDF C0B01BB418...
Alachua County Attorney's Office

SKILLSOFT

By: _____
Print: Michael Manix
Title: Director of Revenue
Date: Jul 6, 2021

IF THE CONTRACTOR IS NOT A NATURAL PERSON, PLEASE PROVIDE A CERTIFICATE OF INCUMBENCY AND AUTHORITY, OR A CORPORATE RESOLUTION, LISTING THOSE AUTHORIZED TO EXECUTE AGREEMENTS ON BEHALF OF YOUR ORGANIZATION. IF ARE A NATURAL PERSON, THEN YOUR SIGNATURE MUST BE NOTARIZED.

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Exhibit B: SKILLSTUDIO LICENSE TERMS

SKILLSTUDIO DEFINITIONS:

'SkillStudio' is hereby defined as the proprietary Skillsoft tool used to customize Skillsoft Courses and/or County's proprietary courses that were produced using SkillStudio.

'Course Player' shall mean the software program developed and owned by Skillsoft that can be deployed via a web browser or can be downloaded to a user personal computer where courses can be played in 'off-line' mode when the PC is not connected to the network and which (i) launches and presents the courses to the user; (ii) enables the toolbar features of the courses to function; (iii) controls an enables the template files of a course display in sequence; and (iv) controls and responds to all user interactions within a course.

'Course Source Code' shall be the source code materials that belong to Skillsoft that make up the Skillsoft Course(s) that is/are herein licensed to County to create Customized Course(s) using SkillStudio. The Course Source Code provided hereunder shall be further defined in writing.

'County Course' shall mean the derivative work product County developed using the SkillStudio and the County's Source Material.

'County's Source Material' shall mean the County's own source computer based training material or subject matter content that County may use along with the SkillStudio to create its own computer based training course.

'Customized Course' shall mean the derivative work product County creates using the SkillStudio to modify the Skillsoft Courses or Course Source Code.

'Developer' an individual for whom County has rightfully obtained a License to use or access to SkillStudio and who is authorized by County to use or access SkillStudio regardless of whether the individual is actively using SkillStudio at any given time. Developers are limited to County's employees. County bears responsibility for ensuring compliance of its employees with the terms and conditions hereof.

'Error' any failure by SkillStudio to conform substantially to the Documentation provided that County informs Skillsoft of such failure in writing and Skillsoft can reasonably replicate it.

'Product Support' includes the following: (i) email support through Skillsoft Technical Support, (ii) phone support specific to SkillStudio, the Skillsoft Courses and the Course Source Code available through Skillsoft Technical Support and (iii) maintenance releases and all major new releases of SkillStudio, Skillsoft Courses and Course Source Code available upon request by County. Email and phone support are available 24X7X365, and covers the functionality of the tool relating to the operation, features and functions of SkillStudio and troubleshooting of Errors encountered using SkillStudio. Product Support does not cover instructional design or issues regarding hosting services,

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any support needed in these areas will be charged on a time and materials basis at Skillsoft's then-current rates and set forth on a Statement of Work executed by both parties.

'Skillsoft Course(s)' shall mean the on-line computer-based training materials in object code form developed and owned by Skillsoft in those content areas relating to (1) business, professional development, IT and environmental, safety and health which are available in Skillsoft's business skills, E3 or CCA architecture and which include all hard copy, machine-readable materials that comprise the Skillsoft Course licensed by Skillsoft to County pursuant to the Agreement referenced above.

SKILLSTUIDIO LICENSE DETAILS:

In consideration for the annual license and training fees paid hereunder, Skillsoft grants to County a non-exclusive, non-transferable, termed license to use the Course Source Code and SkillStudio by the number of Developers specified in this Order Form in accordance with the following terms and conditions:

County must obtain from Skillsoft a license to use the applicable Skillsoft Course(s) as a prerequisite to using SkillStudio to create a Customized Course(s).

Developers must complete Skillsoft's Basic Blended Learning Training program consisting of a two (2) day training to be delivered virtually (the 'SkillStudio Training') as a prerequisite to obtaining support on the use of SkillStudio. County may only purchase SkillStudio Training (as defined below) for the number of authorized developers. County agrees to pay for SkillStudio Training at the rates set forth in an applicable Order Form. Non-attendance to a scheduled training session may result in an additional fee equal to 35% of the training cost.

County may use SkillStudio along with the Skillsoft Courses or Course Source Code to create Customized Course(s). The Customized Course created by County is to be used internally by the users licensed to the associated Skillsoft Courses under the Agreement and shall not be distributed, re-sold or sublicensed by County to any third-party.

Skillsoft hereby agrees that County may use SkillStudio to develop a County Course provided that County discloses the subject matter of such County Course to Skillsoft prior to creation. County may not use SkillStudio to create a County Course that would compete with a Skillsoft Course; therefore, Skillsoft reserves the right to reject the creation of a County Course that Skillsoft reasonably believes to be competitive with a Skillsoft Course.

The Customized Course and/or County Course created with SkillStudio must contain the Skillsoft watermark on the splash screen of such course. County's right to use the Customized Course(s) shall continue provided that the license to use the Skillsoft Course, Course Source Code and SkillStudio is maintained and renewed by County.

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Skillsoft will provide County with Product Support for SkillStudio and Course Source Code licensed hereunder. Only a Developer that has completed the relevant training may receive Product Support with respect to the Course Source Code and SkillStudio. Skillsoft will make available to County training and education in the installation, operation and use of SkillStudio at the prices set out in the Order Form. Additional training and consulting services may be purchased by County for an additional fee based on Skillsoft's then-current pricing for training and consulting services.

County, at its own expense shall indemnify, defend and hold harmless Skillsoft with respect to any and all claims by way of infringement or otherwise that arise out of compliance with any property, information, software, documentation, or materials, provided to Skillsoft by County or that Skillsoft hosts on any Skillsoft Product(s) as requested by County, provided that (i) County shall be notified promptly in writing by Skillsoft of any notice of any such claim; (ii) County shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, and (iii) Skillsoft shall cooperate reasonably with County in the defense, settlement or compromise of such claim at County's expense.

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Skillsoft Online URL Order Form - ALachua

Final Audit Report 2021-07-06

Created:	2021-07-01
By:	Belinda Naiken-Payne (belinda.naiken-payne@skillsoft.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA-4h9vRr2XGtvfVESxQrti5510kD_YKO3

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Document created by Belinda Naiken-Payne (belinda.naiken-payne@skillsoft.com)
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Document e-signed by Michael Manix (michael.manix@skillsoft.com)
Signature Date: 2021-07-06 - 12:45:05 PM GMT - Time Source: server- IP address: 73.89.162.166

Agreement completed.
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