

**This document contains the following documents**

- **Software as a Service Agreement (SaaS) between Elearningforce International ApS and you as the Customer**
- **Service Level Goals (Schedule 1)**

**When you accept this Software as a Service Agreement and our Privacy Policy on the EFI website [www.elearningforce.com](http://www.elearningforce.com) you agree to the terms in all of the documents listed above.**

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## **Elearningforce International ApS**

### **Software as a Service Agreement**

This Software as a Service Agreement ("**SAAS**") is a legal agreement entered into between the parties, Elearningforce International ApS, a corporation duly organised and existing under the laws of Denmark, having its registered offices at Europaplads 16, 4., 8000 Aarhus and registered under CVR-no. 32139728 ("**EFI**") and its customer ("**Customer**").

The SAAS is accepted by the Customer and shall form the agreement between the parties.

The service is business to business.

This SAAS replaces all previous agreements between EFI and the Customer regarding EFI's LMS 365 Cloud software, including selected add-ons and plug-ins (the "**Service**").

## **1. LICENCE GRANTED**

### **1.1 Rights Reserved by EFI**

EFI owns all title and intellectual property rights in and to the Service. EFI reserves all rights not expressly granted to the Customer under this SAAS.

### **1.2 Customer's Right of Use**

1.2.1 Subject to the Customer's fulfilment of the Customer's obligations under the SAAS, including, without limitation, payment of any and all applicable subscription fee, EFI hereby grants the Customer, subject to the restrictions in Clause 2 below, a personal, non-exclusive, non-transferable right to use the Service according to the terms in this SAAS.

1.3 The Customer's right to use the Service will take effect on the date of the acceptance of this SAAS by the Customer and runs until terminated in accordance with the terms in this SAAS.

- 1.3.1 The Customer may grant access to the Service for the number of users agreed between Customer and EFI. The Customer is responsible for the administration of users registered under the Customer and for the users' use of the Service. If the number of users exceed the number of users comprised by the Services to the Customer, EFI is entitled to require that the Customer pays for such number of users for the remainder of the contract period.
- 1.3.2 The Customer shall ensure that the Service is not used in a manner which could in any way harm EFI's name, reputation, or goodwill, or which violates applicable laws or regulations.

## **2. RESTRICTIONS**

### **2.1 No Assignment, Selling, Sub-licensing, Rental, Lending or Leasing**

The Customer may not assign, sell, sub-license, rent, lease or lend the Service.

### **2.2 No Copying**

The Customer is not allowed to make any copies of the Service, except to the extent expressly permitted by applicable law. Similarly, the Customer may not publish, distribute or otherwise make the Service publicly available for others to copy.

### **2.3 Limitations on Reverse Engineering, De-compilation, and Disassembly**

The Customer may adjust the Service in order to comply with Customer's needs and may integrate the Service into Customer's IT environment, but may not otherwise i) amend, update, improve or modify the Service or any part hereof, ii) implement the Service or any part hereof in other software, platforms or solutions), iii) create derivative works based on the Service, iv) amend, change, modify or further develop the Service in any manner, v) make or perform any form of reverse engineering, decompilation or disassembly of the Service, vi) make any steps with the same purpose as comprised by i) – v) or vii) allow any third parties to perform any steps comprised by clause i) – vi).

### **2.4 Support, Upgrade, Maintenance, etc.**

EFI shall not deliver technical support, assistance, maintenance and similar support relating to the Customer's own IT environment (first level support). Customer shall purchase such service from EFI or EFI's authorized partner (**Partner**).

EFI will deliver technical support, assistance, maintenance and similar support on the Program relating to technical issues outside the Customer's own IT environment (second and third level support).

### **3. PRICE AND TERMS OF PAYMENT**

- 3.1 Pricing and Payment Terms will be agreed directly between Partner and the Customer or in the event of direct sales from EFI to Customer, by EFI. In the latter event the prices and payment terms available at all times at [www.elearningforce.com](http://www.elearningforce.com) shall apply.

### **4. EXPIRY AND TERMINATION**

#### **4.1 Subscription period**

- 4.1.1 Customer shall be bound by this SAAS for the subscription period agreed between EFI and the Customer, and the Customer may not terminate the SAAS in this period ("Binding Period). The Customer may add users or upgrade the Service during the Binding Period, but may not downgrade the Service during the Binding Period.

- 4.1.2 Unless terminated with a written notice of at least 60 days to the expiry of the Binding Period, a new Binding Period shall automatically commence, and Customer may not terminate the SAAS in this new Binding Period.

#### **4.2 Breach**

- 4.2.1 In the event that the Customer is in breach of any term, condition or provision of the SAAS or in case of the Customer's insolvency or bankruptcy, EFI may, at its discretion, terminate this SAAS or suspend or downgrade the Service without any notice.

#### **4.3 Consequences of termination**

- 4.3.1 Upon termination of the SAAS, for whatever reason, the Customer shall discontinue any and all use of the Service immediately.

### **5. THE CUSTOMER'S DATA**

- 5.1 The Parties agree that the data uploaded in connection with the Service by the Customer belongs to the Customer, who accordingly may freely dispose of the data while using the Service.

- 5.2 EFI reserves the right to delete Customer's data 90 days after termination of the SAAS, regardless of the reason for termination, and EFI is under no obligation to store Customer data after this time.

- 5.3 After termination of the SAAS, EFI is entitled to retain the Customer's data in anonymous form for statistical and analytical uses only.

- 5.4 EFI may, in exceptional cases where EFI deems this justifiable and reasonable, for example to avoid loss of value, provide third parties and public authorities with access to Customer's data, in connection with a legal obligation, governmental requirements, bankruptcy, death, or the like.

5.5 EFI has the right to assign its obligations under this SAAS to a Partner.

5.6 The Customer's data is processed in accordance with the a data processing agreement as available at all times at [www.elearningforce.com](http://www.elearningforce.com).

## **6. OPERATING STABILITY**

6.1 EFI's obligated for operating stability is as set out in [Schedule 1](#).

6.2 EFI strives for the best operational stability possible, but is not responsible for breakdowns or malfunctions, including operational malfunctions caused by factors beyond EFI's control, unless accepted in Schedule 1.

## **7. CHANGES**

7.1 EFI is entitled to continuously make updates and improvements on the Service. EFI is also entitled to change the composition and structure of the Service and services provided. Such updates, improvements, and changes may occur with or without notice and may affect the services provided, including information and data uploaded to or submitted by the Service.

## **8. INTELLECTUAL PROPERTY RIGHTS**

8.1 The Service and information submitted from the Service are protected by copyright and other intellectual property rights and are owned by or are licensed to EFI. Individually created software also belongs to EFI, unless otherwise agreed in writing. The Customer shall notify EFI of any current or potential violation of EFI's intellectual property rights or unauthorized use of the Service of which the Customer becomes aware.

8.2 This SAAS does not in any way transfer any intellectual property rights related to the Services to the Customer.

8.3 The Customer gives EFI and its suppliers an authorization and global license to the material and all data uploaded by the Customer sufficient for EFI to properly manage and operate the Service, fulfill its obligations, and promote relevant products to the Customer.

8.4 The Customer guarantees that the material and data being uploaded does not infringe on any third-party rights and does not contain material that may be offensive or violates applicable laws or regulations.

## **9. TRANSFER**

9.1 EFI has the right to assign its rights and obligations in part or in whole under the SAAS to a third party.

- 9.2 The Customer agrees that EFI is entitled to use subcontractors in relation to all aspects of this SAAS, including for the completion and operation of the Service, and for storing Customer data.

## **10. EXCLUSIONS AND LIMITATIONS OF LIABILITY**

- 10.1 **In no event will EFI be liable to the Customer or any other person or entity for any direct or indirect damages of any kind, including, without limitation, for lost profits, lost savings, lost data or other special, indirect, punitive, consequential, or incidental damages arising out of or relating to the use of the Service or to any service provided or undertaken by EFI under this SAAS, even if EFI has been advised of the possibility of such loss or damage. The foregoing exclusion of liability applies to all causes of action, including breach of contract, breach of warranty, strict liability, negligence and other torts.**

- 10.2 **In no event will EFI be liable to the Customer or any other person or entity for any damages, direct or indirect, of any kind due to system instability or failure.**

- 10.3 **EFI is not responsible for any third-party solutions that are available and/or integrated with the Service, including currency feeds/calculators. EFI cannot be held liable for the accuracy, completeness, quality, or reliability of the information nor the results obtained through these third-party solutions. Similarly, EFI cannot be held liable for the availability, security, or functionality of any third-party solutions, including possible damages and/or loss caused by third party solutions. The burden is upon the Customer to prove that a loss suffered by the Customer cannot be attributed to third party solutions.**

- 10.4 **The maximum aggregate liability of EFI upon any claims whatsoever, arising out of the services provided by EFI or the Service under this SAAS will in any event be absolutely limited to the direct damages actually incurred by the Customer and furthermore be limited to the amount of fees relating to the Services paid by the Customer 12 months prior to the event giving rise to liability.**

- 10.5 **EFI shall be under no liability to the Customer in respect of loss arising by reason of force majeure, namely, circumstances beyond the control of EFI, including but not limited to acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion, including acts of local government and parliamentary authority and labour disputes of whatever nature and for whatever cause arising including (but without prejudice to the generality of the foregoing) work to rule, overtime bars, strikes and lock-outs.**

## **11. THIRD PARTY RIGHTS**

- 11.1 EFI cannot and does not grant to the Customer any licence to any third-party patent or to any other intellectual property rights held by a third party. The Customer must, at the Customer's own expense, license and maintain any such licences from third parties, and EFI cannot be held liable if a third party raises a claim for infringement of such third party's patent rights or other intellectual property rights.

If the Customer does not license and maintain such third-party licences as mentioned, and if this somehow results in a third party raising a claim against EFI, the Customer shall indemnify EFI against any such third-party claim.

## **12. WAIVER**

Failure or neglect by EFI to enforce any of the provisions of the SAAS at any time shall not be construed nor shall be deemed to be a waiver of EFI's rights under the SAAS nor in any way affect the validity of the whole or any part of the SAAS nor prejudice EFI's rights to take subsequent action.

## **13. SEVERABILITY**

In the event that any of the provisions of this SAAS shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such provision shall to that extent be severed from the remaining provisions which shall continue to be valid between the Parties fully permitted by law.

## **14. COMPLIANCE WITH LOCAL LAWS**

The Customer shall comply at the Customer's own expense and risk with all relevant and applicable laws including, but not limited to, broadcast laws and regulations in the use of the Service.

## **15. CHANGE OF TERMS**

EFI may modify the terms and conditions pursuant to this SAAS with one (1) month's notice after such changes have been posted on the EFI website. Use of the Service after a change of these terms constitutes acceptance of such changed terms. It is the Customer's obligation to keep up to date on changes to the terms.

## **16. APPLICABLE LAW AND VENUE**

### **16.1 Applicable Law:**

This SAAS shall be governed, construed and enforced in accordance with the laws of Denmark.

### **16.2 Disputes and Venue:**

Any dispute arising out of or relating to this SAAS shall be settled by the Copenhagen City Court. That shall not prevent any referral of the matter to the Danish High Court or to the Danish Maritime and Commercial Court in accordance with the applicable laws.

Notwithstanding the specified agreement on jurisdiction, the Parties shall, if any dispute arises, attempt to settle it by mediation in accordance with the Association of Danish IT Attorneys' ("DITA") Mediation Procedure ([www.danske-it-advokater.dk](http://www.danske-it-advokater.dk)). To initiate the mediation a party shall give notice in writing

to the other party to the dispute requesting mediation. A copy of the request shall be sent to the DITA. The mediator shall be nominated by DITA no later than eight (8) working days after DITA's receipt of the notice. No party may commence any court proceedings in relation to any dispute until the parties have attempted to settle the dispute by mediation. As a minimum, a party shall be obliged to attend the first meeting convened by the mediator. A party shall be entitled to commence court proceedings if any delay of such proceedings may result in the forfeiture of any right, e.g. due to time barring.

- 16.3 **Right to injunctive relief:** Notwithstanding Clause 16.2 above, EFI may seek injunctive or equitable relief in any jurisdiction to enforce its intellectual property rights.

## SAAS SCHEDULE 1: Service Level Goals

This document outlines the obligations for operating stability when providing the SaaS. It also provides service delivery parameters, against which the delivery of SaaS will be evaluated.

### **1. Service uptime commitment**

For the purpose of measuring the quality of service that EFI is delivering to Customer, EFI provides the following commitment: EFI will provide Customer access to the SaaS production application on a twenty-four hour, seven days a week (24x7) basis at a rate of 99.7% ("SaaS Services Uptime Metric").

The SaaS Services Uptime Metric commences on the start of the LMS365 License. "The Go Live Date" is the date at which the customer has activated the license(s).

#### 1.1 Measurement method

On a quarterly basis, the SaaS Services Uptime Metric will be measured using the measurable hours in the quarter (total time minus planned downtime, including maintenance, upgrades, etc.) as the denominator. The numerator is the denominator value minus the time of any outages in the quarter (duration of all outages combined) to give the percentage of available uptime (2,193 actual hours available / 2,200 possible available hours = 99.7 availability). An "outage" is defined as two consecutive monitor failures within a five-minute period, lasting until the condition has cleared.

#### 1.2 Boundaries and exclusions

The SaaS Services Uptime Metric shall not apply to performance issues caused by the following:

- i. Overall Internet congestion, slowdown, or unavailability
- ii. Unavailability of generic Internet services (e.g. DNS servers) due to virus or hacker attacks
- iii. Force majeure events as described in the terms of the license agreement
- iv. Actions or inactions of Customer (unless undertaken at the express direction of EFI) or third parties beyond the control of EFI
- v. As result of Customer equipment or third-party computer hardware, software, or network infrastructure not within the sole control of EFI
- vi. As result of Microsoft Office 365 and / or Windows Azure platforms and / or services being unavailable or degraded
- vii. Scheduled SaaS infrastructure maintenance

In addition to scheduled SaaS infrastructure maintenance, as defined in the Software as a Service data sheet and the terms, upgrades and patches that occur approximately 12 times per year may require downtime in addition to the scheduled maintenance. The downtime will be scheduled in advance and coordinated with Customer.

#### 1.3 Reporting

EFI will provide a SaaS Services Uptime Metric Report ("Uptime Metric Report") in accordance with this attachment to the Customer upon request.

If Customer does not agree with the Uptime Metric Report, written notice of the dispute must be provided to EFI within ten (10 working days) of receipt of the Uptime Metric Report.

#### 1.4 Software-as-a-Service credits

EFI's exceeding, meeting, or failing to meet the SaaS Services Uptime Metric as measured over any quarter may be reflected in adjustments to the duration of the initial contract year for SaaS pursuant to the following schedule ("Service Credits"):

QUARTERLY SAAS RATING	RATING	SAAS SERVICE CREDIT
<b>Between 99.7% - 100%</b>	Meets goals	
<b>Between 99.0% - 99.6%</b>	Tolerable	Five (5) day extension of term of the SaaS at no cost to Customer
<b>Below 99.0%</b>	Unacceptable	Ten (10) day extension of term of the SaaS at no cost to Customer

SaaS Ratings below 99% for a quarter shall be escalated by both parties to the vice president level (or equivalent), as outlined in this schedule. The SaaS Service Credits shall be cumulative and extend the initial term of the SaaS agreements as set out in the SaaS Legal Quote at no cost to Customer. Therefore, any renewal of SaaS agreement shall be effective after SaaS Service Credits have been fully utilized.

The annual Service Credits are capped at thirty (30) days per annum.

1.5 Technical Support Guarantee.

EFI strives to solve quickly and effectively technical questions that may arise in connection with installing, configuring, using our products as well as other kinds of questions, namely, in connection with downloading, buying, registering, support etc.

EFI aspires to answer customers' questions as soon as possible, namely in a few hours or a single business day, however due to potential complexity of issues EFI cannot guarantee the resolution of such issues in a single business day.

The following services are considered in scope of the LMS365 cloud technical support program:

- Technical support directly linked to EFI products
- Access to the EFI Knowledge base, product documentation, customer forums and customer support site
- Latest versions of LMS365 cloud

The support services implicitly exclude support activities not related to LMS365 break/fix issues.

Issues that are deemed out of scope of the standard technical support will be handled through EFI or the local partner's professional services team after establishing a service contract for delivery of services needed.

1.6 Technical Support Resolution & Response Times:

*Critical: System Unavailable*

Examples of Critical are: Total system failure, large number of users cannot access / use the system. Unable to edit or create any courses but system still functioning

Resolution Time: Immediate, EFI will continue to work on resolution till resolved.

*High: System Available severely impaired*

Examples of High are: Unable to edit or create a single course, unable to create assignments, unable to add / remove learners etc.

Resolution Time: 1 working day

*Medium: System Available and main operation not impaired*

Examples of Medium: Single user unable to see course, Quiz giving error, Learning Path not functioning, Grade not recorded etc.

Resolution Time: 3 working day

*Low: System Fully Operational*

Examples of Low: LMS Admin Users has some questions about "how to do things".

Resolution time: 5 working days

1.7 Product Guarantee

EFI guarantees that its software located on the SharePoint Store and on its own Website is virus free and contains no spy-ware, ad-ware or trojans. Our software will from time to time communicate with our license server in a secure and encrypted method. Otherwise EFI products are provided "AS IS" and we guarantee the software works as per existing user documentation. For full details see our License agreement <http://www.lms365.com/terms>

#### 1.8 Software Support Resolutions Times:

Bugs are fixed within one day to four weeks from the moment they are reported or found. Note: More essential bugs that affect functionality or stability of the program will be fixed prior to cosmetic and other bugs that do not affect programs functionality or stability.

Critical: Immediate start till resolved

High: Start within 5 working days until resolved

Medium: Start within 20 working days until resolved

Low: To be incorporated into future releases

Feature Request: are in general implemented within 6 weeks to 6 months from the moment they are requested or recommended by customer. Note: not all suggestions and feature requests will be implemented.

#### 1.9 Update / Upgrade Policy

- All Updates to the products (Minor & Major) releases are included in the subscription.
- Lifetime of software. Lifetime relates to life span of software, not of a person.

EFI guarantees a minimum 5 years of support and minor upgrades since the release date of the last official major version. However, software's lifetime is in no way limited to 5 years and may last a lot longer.