

## **ELEARNINGFORCE International ApS**

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

**These terms and conditions govern your access to LMS365 with all services provided and is an agreement between ELEARNINGFORCE International ApS and you as the customer. The agreement consists of the following documents: ("SAAS Agreement"):**

- **This Software as a Service Agreement between ELEARNINGFORCE International ApS and the Customer**
- **Service Level Goals ("SLA") Schedule 1**
- **Data Processing Agreement for Personal Data processing with LMS365 ("DPA") Schedule 2**

**To subscribe for LMS365, you must contact ELEARNINGFORCE International ApS for a quote ("Quote") based on your user license needs. The SAAS Agreement is an integrated part of the Quote, and when accepting the Quote, you will also accept the SAAS Agreement and its terms and conditions. Your standard terms and conditions, or other deviations from the SAAS Agreement, shall not apply, even if attached to the Quote upon your acceptance.**

**If you register for a Free Trial License of LMS365, the SAAS Agreement will also govern that Free Trial License.**

**THE SAAS AGREEMENT AND ITS TERMS TAKE EFFECT WHEN YOU HAVE ACCEPTED A QUOTE FROM ELEARNINGFORCE INTERNATIONAL APS OR START USING THE SERVICE, WHICHEVER OCCURS FIRST.**

**Your explicit signature on the DPA, Schedule 2 is required. LMS365 is a generic product and the DPA sets forth the obligations for data processing activities performed with LMS365. ELEARNINGFORCE International ApS makes the commitments stated in this DPA to all customers with licenses to LMS365, and you agree that the DPA governs the processing and security of all personal data which is stored and processed through LMS365. If you as data controller require any further action to protect personal data, you must contact ELEARNINGFORCE International ApS to agree on additional actions. All such actions must be agreed upon in writing as a supplement to the DPA before ELEARNINGFORCE International ApS can submit and adhere to such actions.**

**Please read through the SAAS Agreement and add your signature to the DPA. You represent to us that you are lawfully able to enter into this SAAS Agreement, and if you are entering into this SAAS Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to the SAAS Agreement, and the term "You" shall refer to such entity. If you do not have such authority, or if you do not agree with the terms and conditions, you must not accept this SAAS Agreement, and you may not use LMS365.**

**When you renew or purchase a new Subscription for licenses to LMS365, the then-current SAAS Agreement apply.**

**This SAAS Agreement and its terms replace all previous terms and conditions for license to LMS365, and shall apply to all purchases or renewals of Subscriptions as of [March 1, 2022].**

**This SAAS Agreement was last updated on [February 28, 2022].  
You will find previous versions and amendments [[here](#)]**

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## Terms and Conditions

The SAAS Agreement is a legally binding agreement between EARNINGFORCE International ApS, a corporation duly organised and existing under the laws of Denmark, having its registered offices at Mariane Thomsens Gade 4B, 5<sup>th</sup> floor, 8000 Aarhus and registered under CVR-no. 32139728 ("**EFI**") and you as the customer ("**Customer**") for the EFI Cloud software "LMS365".

The Service is provided business to business.

The SaaS Agreement is accepted by the Customer and replaces all previous agreements between EFI and the Customer regarding the Service and Customer Care.

### 1. DEFINITIONS

1.1 In the SAAS Agreement the following capitalized terms have the respective meanings set forth below; terms in the plural shall also include the singular and vice versa.

"**Customer Care**" means the services offered by EFI Helpdesk for support of the LMS365 ("Support Services") as defined in Schedule 1, Service Level Goals.

"**Free Trial License**" means an access right, free of charge, which, further to the restriction for a License, is limited in scope and time to access the Service on trial basis.

"**License**" means a right to access the Service and set up a learning portal (tenant) with a customized content for learning.

"**LMS365**" means the EFI Cloud software offered as LMS365.

"**Party**" means EFI or the Customer individually, and collectively the "Parties".

"**Quote**" means the offer from EFI to the Customer for a particular number of Users and the scope of the Service and Support Services which includes the Subscription Fee and Subscription Period.

"**SAAS Agreement**" means this agreement with its Schedules.

"**Service**" means access to use LMS365, including selected add-ons and plug-ins as purchased by the Customer, which is offered as a software operated through an internet-based interface (Software as a Service).

"**Subscription**" means the method applied for the Customer's purchase of EFI offerings under the SAAS Agreement for a Subscription Period against payment of a Subscription Fee; a Subscription may include one or several Licenses and several User Licenses.

**"Subscription Fee"** means the Customer's payment for using the EFIs offerings under the SAAS Agreement.

**"Subscription Period"** means the binding period for the Customer's purchase of EFI offerings under the SAAS Agreement

**"Third-Party Solutions"** means third party software which is not integrated into the Service including, but not limited to, software solutions promoted by EFI for payment services, or third party platform services applied for usage of the Service.

**"User"** means a person accessing and using LMS365.

**"User Guide"** means EFI's applicable user guide to the Service as published by EFI on its website.

**"User License"** means a right to access the Customer's learning portal with the Service and which the Customer must purchase for each User.

- 1.2 The SAAS Agreement will be interpreted according to the plain meaning of its terms without any presumption that it should be construed in favor of or against either Party. All headlines for each section are intended solely for the Parties' convenience, and none will affect the meaning of any provision. The words "herein", "hereof" and words of similar meaning refer to the SAAS Agreement as a whole. All references to "days" refer to calendar days, unless otherwise expressly set forth in the SAAS Agreement. Any reference to any legislative provision shall be deemed to include any subsequent re-enactment or amending provisions.

## **2. THE SERVICE AND LICENCES**

### **2.1 The Service**

- 2.1.1 EFI makes the Service available to the Customer pursuant to this SAAS Agreement and the Quote for each Subscription Period. The Service is purchased on a Subscription basis and may be accessed only by Users equal to the number of User Licenses purchased under the Quote.
- 2.1.2 The Customer can create a learning portal on the Service with a customized content and the Customer can open its learning portal for all Users invited by the Customer, whether it is employees of the Customer and its affiliated, own customers, or other third parties at the discretion of the Customer.
- 2.1.3 The Service is offered as a standard generic software, and the Subscription is not contingent on the delivery of any future functionality or feature. EFI does not take any responsibility for the Customer's customizing of the Service.
- 2.1.4 EFI will provide updates and upgrades at its discretion, and the downtime shall be minimum considering the contents of the version update. The Customer must subscribe for a Customer Care agreement which defines the support level for the Service.

## 2.2 **Customer's Licenses with Right of Use**

2.2.1 Subject to the Customer's fulfillment of the Customer's obligations under the SAAS Agreement, including, without limitation, payment of any and all applicable Subscription Fees, EFI hereby grants to the Customer, subject to the restrictions in Section 3 below, a non-exclusive, non-transferable License, limited in scope and for the duration of the Subscription Period (or Free Trial License), with a right of use to the Service according to the terms in this SAAS Agreement.

2.2.2 The Customer must have one (1) License for each learning portal (tenant) it creates on the Service. Customer's License and right to use the Service will take effect on the date of the acceptance of the Quote and the SAAS Agreement by the Customer and runs until terminated in accordance with the terms in the SAAS Agreement.

2.2.3 The Subscription is based on the number of Users. The Customer may only grant access to the Service to the number of Users agreed between Customer and EFI. The Customer may from time to time reassign User Licenses to new Users, however, the Customer may not allow individual Users to share a single User License. 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 exceeds the number of Users comprised by the Service to the Customer, EFI is entitled to require that the Customer pay for such number of Users for the remainder of the Subscription Period.

2.2.4 The Customer is responsible for all activities that occur in its learning portal created on the Service. The Customer shall (a) ensure that the Service is used only in accordance with the User Guide and this SAAS Agreement, (b) prevent unauthorized access or use, and (c) prevent the Company and/or its Users from using the Service in a manner which could in any way harm EFI's name, reputation, or goodwill, or which violates applicable laws or regulations.

### 2.2.5 Free Trial Licenses

2.2.5.1 Free Trial Licenses may be applied for the earlier of (a) the end of the free trial period offered with the Free Trial License, or (b) the start date for any paid Subscription of a License. The Free Trial License is accessible only for the maximum number of User for which free User Licenses are offered. Acceptance of additional terms and conditions in addition to this SAAS Agreement may be required to obtain a Free Trial License.

2.2.5.2 THE FREE TRIAL LICENSE IS OFFERED "AS IS" WITHOUT ANY QUALIFICATIONS, WARRANTIES, OR SUPPORT SERVICES, AND EFI DISCLAIMS ANY ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. EFI EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. EFI DOES NOT WARRANT THAT THE COMPANY PLATFORM IS ERROR-FREE OR THAT OPERATION OF THE COMPANY PLATFORM WILL BE SECURE OR UNINTERRUPTED. THE FREE TRIAL LICENSE SHALL EXCLUDE ALL CUSTOMER RIGHTS OF REMEDIES, INCLUDING THE REMEDIES STATED

IN SECTION 10. THE LIABILITIES OF EFI SHALL BE LIMITED AS STATED IN SECTION 12. NOTWITHSTANDING SECTION 12.3, FOR ANY FREE TRIAL LICENSE, THE LIABILITY OF EFI SHALL NOT EXCEED USD \$100.00.

- 2.2.5.3 If the Customer does not purchase a Subscription before the end of the free trial period, any data entered into a Customer created learning platform in LMS365 will be permanently lost after the trial period has expired.

### **3. RESTRICTIONS**

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

- 3.1.1 The License to the Service is non-transferable, whereas the Customer may not assign, sell, sub-license, rent, lease or lend the License. This prohibition on transfer of Licenses does not limit the Customer's rights to invite Users or change Users according to the subscribed number of User License, cf. Sections 2.1 and 2.2.

- 3.1.2 Notwithstanding the above, either Party may assign this Agreement without consent to an affiliate or to a successor to all or substantially all of the business or assets to which this SAAS Agreement relates, whether by sale of stock, sale of assets, merger, reorganization or otherwise. Any assignments or transfers in violation of this Section 3.1 are void.

#### **3.2 No Copying**

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

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

- 3.3.1 The Customer may adjust the Service as provided with the functionalities in the Service as offered with the User Guide to comply with Customer's needs and for integration into Customer's IT environment. Apart from such adjustments and integrations, the Customer may not i) amend, improve, modify or further develop the Service or any part hereof, ii) implement the Service or any part thereof into other software, platforms or solutions, iii) create derivative works based on the Service or any features or functions therein, iv) make or perform any form of reverse engineering, decompiling or disassembly of the Service, vi) or other steps to obtain the purposes as comprised by i) – iv), including by allowing third parties to perform steps as comprised by i) – iv).

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

- 3.4.1 EFI delivers Customer Care in accordance with the SLA Schedule 1. The Customer Care is provided as second and third level support to the Service, its functionality, maintenance, updates, and upgrades.

- 3.4.2 EFI Customer Care does not include technical support, assistance, maintenance, and similar support which is caused by or relating to the Customer's own IT environment (first level support). The Customer shall at its own costs and risk provide for first level support from its own IT resources or third party providers, and may purchase such service from EFI or EFI's authorized partner.

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

- 4.1 The Subscription Fee for the License to the Service is according to EFI's current price list and based on the number of User Licenses subscribed for by the Customer. The Subscription Fee for the Customer Care is based on the level of Helpdesk Services which the Customer has signed on to, under the current price list.
- 4.2 The Subscription Fees are pre-paid annually and shall be invoiced on the first day of a Subscription Period and on each subsequent one year anniversary. Paid Subscription Fees are non-refundable.
- 4.3 Payment terms are stated in the Quote. Overdue amounts will be charged at an interest rate of 1% per month or the maximum rate permitted by law, if lower, from the date such payment was due until the date paid.
- 4.4 The Parties may agree on other fees and payment terms if stated in the Quote, a Quote to renew Subscription, or an appendix to the Quote.

#### **5. EXPIRY AND TERMINATION**

##### **5.1 Subscription Period**

- 5.1.1 The Subscription Period is binding upon both EFI and the Customer, meaning the Customer cannot terminate the Service, the Customer Care and this SAAS Agreement during a Subscription Period. Notwithstanding the above, the Customer can terminate the Subscription due to a material breach of EFI, cf. Section 10.5, or if a material change to the terms and conditions of the SAAS Agreement comes into force, cf. Section 14.5, and if the Customer is not in breach of the SAAS Agreement, EFI will refund a pro-rata portion of the Subscription Fees for the remaining un-used period of the Service and Customer Care.
- 5.1.2 The Subscription Fee for the Subscription Period is defined in the Quote. The Customer may add Users or upgrade the Service during the Subscription Period but may not scale down the number of Users during the Subscription Period. For Customer Care, the Customer may upgrade its level of Helpdesk Support Service during a Subscription Period, but the Customer may not scale down to a lower service level.
- 5.1.3 The initial Subscription Period shall be defined in the Quote as accepted by the Customer and shall cover a minimum of 12 months. At the end of the initial term, the Subscription will automatically renew for additional 12-month periods, or longer periods if agreed in a new Quote, unless either party provides the other party with written notice of non-renewal at least 60 days' prior to the end of the then-current

term. The Subscription Fee will be invoiced upon renewal for pre-payment in accordance with Section 4.2. The Subscription may also be scaled down by the Customer with a notice of no less than 60 days before renewal.

## 5.2 **Customer's Breach**

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

## 5.3 **Consequences of Termination**

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

## **6. THE CUSTOMER'S DATA AND CUSTOMER'S WARRANTY**

6.1 Between EFI and the Customer, the Customer shall own all data uploaded by the Customer, including reports, statistics, and other data to the extent generated solely from Customer's data. EFI shall perform its duties as data processor in accordance with the DPA, Schedule 2.

6.2 The Customer shall be responsible for the accuracy, quality and legality of the Customer's data and the means by which the Data is acquired. Customer represents, covenants, and warrants that Customer will use the Service only in compliance with the terms of this Agreement, EFI's standard published policies then in effect, and all applicable laws and regulations. Customer is solely responsible for all data, information, text, content and other materials that are uploaded, posted, delivered, provided or otherwise transmitted or stored by or on behalf of Customer in connection with or relating to the Service, and represents, covenants and warrants that it has all rights necessary to permit EFI to use such data, information, text, content and other materials as set forth herein.

6.3 The Customer may not submit to or use the Service to collect, store or process sensitive personal data, as excluded from processing in Appendix A to the DPA, Schedule 2. All data uploaded shall comply with this Agreement, Section 8.4.

6.4 Subject to the DPA, Schedule 2, EFI reserves the right to maintain and, thereafter, delete Customer's data 90 days after termination of the SAAS Agreement, regardless of the reason for termination, and EFI is under no obligation to store Customer data after this time.

6.5 The Customer grants to EFI a worldwide, non-exclusive, royalty-free, non-sublicensable (except to EFI's contractors and consultants performing services on behalf of EFI) right and license to copy, use, display, modify, distribute, create derivative works of, store, aggregate, or compile Customer's data for purposes of delivering the Service and the Customer Care, and subject to the DPA, Schedule 2. The Customer also grants to EFI a worldwide, perpetual, irrevocable, non-exclusive, royalty-free license to use the Customer's data to create aggregated and anonymous data, including reports, statistics or analyses



created for the purpose of improving the functionalities, performance, and services offered in the Service. Customer hereby grants to EFI a royalty-free, worldwide irrevocable, perpetual, sublicensable and transferable license to copy, display, modify, distribute, create derivative works of, use and incorporate into the Service any suggestions, recommendations, or other feedback provided by the Customer to EFI with respect to the Service.

6.6 EFI and its employees and/or agents shall be entitled to access Customer's learning portal on the Service when required to provide basic support services and Customer Care to the Customer.

6.7 CONFIDENTIALITY

EFI shall treat the Customer's content confidential as the Customer's Confidential Information and, for personal data, comply with the confidentiality provisions in the DPA, Schedule 2. EFI may afford its employees and/or agents, who are bound by confidentiality provisions, access to the extent required by them for the performance of EFI's duties under the Agreement. The Confidential Information shall not include any information which (a) is in or enters the public domain other than by a breach of this Agreement; (b) was known to EFI prior to the disclosure; (c) is legally transmitted or disclosed by a third party who owes no obligation of confidentiality to the Customer. EFI shall have the right to access and to disclose the data on the Customer's learning portal to the extent such disclosure is required under statutory requirements or orders from the courts or public authorities; EFI shall give notice to the Customer before disclosing the information unless prohibited under applicable regulation or the court order.

**1. CHANGES**

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

**2. INTELLECTUAL PROPERTY RIGHTS**

2.1 EFI reserves all right, title and interest in and to the Service and the User Guide, and all associated intellectual property rights, including full copyright in and to the Service and the User Guide, except for third party components. Customized created software also belongs to EFI, unless otherwise agreed in writing.

2.2 Except for the limited license rights expressly granted under this SAAS Agreement, the Customer is not granted any other rights in the Service and the User Guide. 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.

2.3 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.

- 2.4 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.

### **3. SUB-SUPPLIERS**

- 3.1 EFI has the right to use or assign its obligations under this SAAS Agreement to a sub-supplier, including for the completion and operation of the Service, and for storing Customer's data. For adding new sub-suppliers which may process personal data, the DPA Schedule 2 shall apply including Appendix B thereto listing the Authorized sub-processors.

### **4. EFI WARRANTIES, DISCLAIMERS, AND CUSTOMER'S EXCLUSIVE REMEDIES**

- 4.1 EFI warrants that the Service will perform materially in accordance with the applicable User Guides under normal use and circumstances. The functionality of the Service will not materially decrease during a Subscription Period. EFI warrants that the Service uptime is in accordance with good industry practice for hosting a professional internet-based software as a service.
- 4.2 EXCEPT AS EXPRESSLY PROVIDED HEREIN, EFI DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), STATUTORY OR OTHERWISE, AND EFI SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE AND NON-INFRINGEMENT TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. LMS365 IS PROVIDED UNDER A FREE TRIAL AT NO CHARGE AND IS PROVIDED ON AN "AS IS" BASIS, EXCLUSIVE OF ANY WARRANTY OR AVAILABILITY COMMITMENT WHATSOEVER. EFI DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.
- 4.3 EFI DOES NOT WARRANT THE SERVICE AGAINST BREAKDOWNS, ERRORS, MALFUNCTIONS, INTERRUPTIONS OR INCIDENTS OF CYBER ATTACK. EFI's performance obligations to maintain operating stability is set out in the SLA, Schedule 1.
- 4.4 EFI shall remedy errors and defaults in the Service, and such remedy shall be performed with undue delay. If the error is immaterial, the error may be remedied with the next version update. A default or error in the Service shall be deemed material only if it has effect on the functionality of the Service as a whole or if it prevents the operation of the Service.
- 4.5 Customers sole and exclusive remedy and EFI's entire liability shall be as follows (i) for defaults in uptime availability, EFI shall repair and the Customer shall obtain services credits in accordance with the SLA, Schedule 1, or the Customer may terminate the SAAS Agreement in case of failure to achieve the availability percentage for six (6) consecutive calendar months after providing notice in accordance with the SLA, Schedule 1, (ii) for a material default in the Service, EFI shall correct the default to the features and functionality in the Service so that it materially performs in accordance with the applicable User Guide and, if EFI is unable to provide such Service within a commercially reasonable time following receipt of written notice of breach, the Customer shall be entitled to terminate the SAAS Agreement

and receive a refund of any prepaid, unused fees applicable to the remaining portion of the Subscription Period following the effective date of termination, and (iii) for a breach of Customer Care, EFI shall re-perform the Customer Care.

## 5. THIRD-PARTY INFRINGEMENT CLAIMS

- 5.1 Except for licenses to third party components which have been integrated into the Service, EFI does not provide the Customer with any licenses or right of use to third party software, copyrights, patents or 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 which are required by the Customer for usage of the Service including, but not limited to, licenses to Microsoft services.
- 5.2 Provided the Customer complies with the procedures in this Section 11.2, EFI shall defend the Customer against claims made against the Customer by a third party alleging that Customer's use of the Service infringes a patent, copyright, or trademark of a third party or misappropriates such party's trade secrets (in this paragraph a "**Claim**"), provided that such infringement is caused solely by the Service as offered by EFI and/or by its use in accordance with this SAAS Agreement and the applicable User Guide. EFI shall have no obligations for any and all Claims where the alleged infringement is arising from modification of the Service or the combination of the Service with any third-party intellectual property, including any interoperations, alterations, or integration of software and hardware which is made to the Service and performed by a party other than EFI. Promptly upon receiving notice of a Claim, the Customer shall give EFI a written notice of the Claim and give EFI sole control of the defence and settlement of the Claim, and the Customer shall provide all reasonable assistance in the defence or settlement of such Claim. EFI shall pay damages, and all reasonable costs, finally awarded against Customer by a court of competent jurisdiction or an arbitrator, or agreed to in a written settlement agreement signed by EFI in connection with such Claims (provided that EFI cannot, without the Customer's prior written approval, make any admissions of fact that expose the Customer to an imposition of damages or other claims). EFI may, at its own expense and option, offer to either i) secure rights of use for the benefit of the Customer, or ii) replace or modify the Service with a non-infringing substitute, or iii) terminate the right to use the Service and refund any prepaid, unused fees to the remaining part of the Subscription Period following the effective date of termination. This Section 11.2 states EFI's entire liability and Customer's exclusive remedy for any claim of intellectual property infringement.
- 5.3 Provided that EFI complies with the procedures in this Section 11.3, the Customer shall defend EFI against any claims made or brought against EFI by a third party alleging infringement or violation of the third party's property, privacy or other rights (in this paragraph a "**Claim**") caused by use of the Customer data, Customer's use of the Service in violation of the SAAS Agreement or arising from Customer's combination, alterations, or integration of the Service with third party products. Promptly upon receiving notice of a Claim, EFI shall give the Customer a written notice of the Claim and give the Customer sole control of the defence and settlement of the Claim, and EFI shall provide all reasonable assistance in the defence or settlement of such Claim. The Customer shall pay damages, and all reasonable costs, finally awarded against EFI by a court of competent jurisdiction or an arbitrator, or agreed to in a written settlement agreement signed by the Customer in connection with such Claims, (provided that the Customer cannot, without EFI's prior written approval, make any admissions of fact

that expose EFI to an imposition of damages or other claims). This Section 11.3 states the Customer's entire liability and EFI's exclusive remedy for any claim of intellectual property infringement.

## 6. LIABILITY, EXCLUSIONS AND LIMITATIONS OF LIABILITY

- 6.1 EFI shall only be liable for loss or damage if it is proven that the loss or damage is foreseeable and due to the fault or negligence of EFI in connection with the Service. The provisions of this Section 12 with its limitations and exclusions are in effect to the maximum extent permitted by applicable law.
- 6.2 EXCEPT FOR LIABILITY ARISING FROM (A) CUSTOMER'S INFRINGEMENT OF EFI'S INTELLECTUAL PROPERTY RIGHTS OR (B) CUSTOMER'S BREACH OF SECTION 3, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY, AND ITS USERS, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, RELIANCE OR PUNITIVE DAMAGES OR LOSS, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, REVENUE, SAVINGS, TIME, DATA OR DAMAGE TO RECORDS OF DATA, OR LOSS AS A CONSEQUENCE OF ANY OTHER KIND OF BUSINESS INTERRUPTION, ARISING OUT OF OR RELATING TO THE USE OF THE SERVICE OR CUSTOMER CARE OR ANY INADEQUATE OR FAULTY PERFORMANCE HEREOF, UNDER ANY THEORY OF RECOVERY, INCLUDING LIABILITY ARISING BY WAY OF INDEMNITY, IN CONTRACT OR IN TORT, PRODUCT LIABILITY OR OTHERWISE, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.
- 6.3 EXCEPT FOR LIABILITY ARISING FROM (A) CUSTOMER'S INFRINGEMENT OF EFI'S INTELLECTUAL PROPERTY RIGHTS, (B) CUSTOMER'S BREACH OF SECTION 3, (C) CUSTOMER'S BREACH OF SECTION 4, OR (D) A PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 11, THE MAXIMUM AGGREGATE LIABILITY OF A PARTY TOWARDS THE OTHER PARTY, UPON ANY CLAIMS WHATSOEVER, ARISING OUT OF THE SERVICE OR CUSTOMER CARE UNDER THIS SAAS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS) REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED BUT IN ANY EVENT BE LIMITED TO THE ANNUAL SUBSCRIPTION FEES FOR THE CURRENT SUBSCRIPTION PERIOD AT THE EVENT GIVING RISE TO THE CLAIM IN RESPECT TO THE SERVICE AND CUSTOMER CARE. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.
- 6.4 EFI assumes product liability only to the extent that the product liability may not be contractually waived, but disclaims product liability on any other basis. The exclusions and limitations stated in Sections 12.2 and 12.3 shall also apply to any product liability.
- 6.5 EFI is not responsible for any Third-Party Solutions even if made available with the Service. 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.
- 6.6 **FORCE MAJEURE:** Neither Party shall be liable to the other Party for delay or non-performance of its obligation or loss or damages if caused by an event which is unforeseeable, beyond the control of the non-performing party, and cannot be remedied by the exercise of commercially reasonable efforts

("Force Majeure"). Force Majeure shall include, without limitations acts of God, perils of the sea or air, fire, flood, drought, explosion, terror, sabotage, cybersecurity attacks, events of computer, telecommunications, internet service provider or hosting facility failures or delays involving hardware, software or power systems not within the Party's possession or reasonable control. The Party affected shall be relieved from its obligations (or part thereof) as long as performance is hindered due to Force Majeure, being understood that Force Majeure shall not excuse any obligation of payment of Subscription Fees. The Party affected shall promptly notify the other Party. Either Party may terminate the SAAS Agreement if the event of Force Majeure continues for more than forty-five (45) days.

## **7. APPLICABLE LAW AND VENUE**

7.1 **Applicable Law:** This SAAS Agreement and its Schedules are governed by the laws of the State of New York, USA and shall be construed and enforced in accordance with these laws, without giving effect to its conflicts-of-laws or choice-of-law rules, and that the rule of construction that provides that a document is construed against the maker thereof be inapplicable in the construction of any of the terms of this Agreement.

7.2 **Disputes and Venue:** Any dispute, claim, or controversy arising out of or relating in any way to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined through confidential binding arbitration in New York, New York before one arbitrator. The confidential binding arbitration shall be administered by AAA pursuant to its Commercial Arbitration Rules, and the Parties shall maintain the confidential nature of the arbitration proceeding and the award, including the hearing. Judgment on the award may be entered in any court having jurisdiction. In any action or proceeding to enforce rights under this SAAS Agreement, the prevailing party will be entitled to recover reasonable costs and reasonable attorneys' fees.

7.3 **Right to injunctive relief:** Notwithstanding Section 10 and Sections 12.1 and 12.2, and Section 13.2, each Party acknowledges that due to the nature of the SAAS Agreement, any actual or threatened breach of the SAAS Agreement or unauthorized use of the Service may cause immediate and/or irreparable injury or harm to the other Party and, therefore, a Party shall be entitled to seek injunctive or equitable relief in any jurisdiction to enforce its intellectual property rights.

## **8. GENERAL PROVISIONS**

### **8.1 EXPORT CONTROL AND SANCTIONS:**

The LLM365, and the technology made available, may be subject to export laws and regulations of the United States and/or other jurisdictions. The Customer represents that neither the Customer nor its Users are named on any denied-persons list under any jurisdiction, and the Customer may not permit Users to access or use, or otherwise make available, whether directly or indirectly, the Service into an embargoed, sanctioned, or otherwise restricted country without first complying with all applicable export control laws and regulation.

### **8.2 ANTI-CORRUPTION:**

Each Party shall comply with applicable anti-corruption laws. Neither Party may at any time, directly or indirectly through employees or third parties, pay, offer, give, or promise to pay or give, or authorize the payment of, any monies or any other thing of value to influence the improper performance of the other Party or any individual government officials and employees of state-owned enterprises.

**8.3 NO WAIVER**

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

**8.4 SEVERABILITY**

In the event that any of the provisions of this SAAS Agreement shall be determined by any court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable to any extent, such provision shall be enforced to the fullest extent permissible and otherwise, modified and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of the Agreement shall continue to be valid between the Parties.

**8.5 CHANGE OF TERMS**

EFI may modify the terms and conditions pursuant to this SAAS Agreement with one (1) month's notice after such changes have been posted on the EFI website. The Customer has the right to terminate in writing the SAAS Agreement if the terms are materially changed. Use of the Service after a change of these terms has come into force constitutes acceptance of such changed terms. It is the Customer's obligation to keep up to date on changes to the terms. However, if the terms are materially changed to the detriment of the Customer, EFI must provide a written notice of 30 days sent by email to the Customer's contact person as registered with EFI.

**8.6 INDEPENDENT CONTRACTORS**

EFI and the Customer are independent contractors. The SAAS Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties.

**8.7 NO THIRD PARTY BENEFICIAL**

The SAAS Agreement is for the benefit of the Customer and EFI and it is not intended to benefit or be enforceable by any third party. The exercise of a Party's rights under these terms and conditions is not subject to the consent of any third party.

**8.8 ENTIRE AGREEMENT**

The SAAS Agreement together with the Quote is the entire agreement between EFI and the Customer regarding the Service. In the event of any conflict or inconsistency between the provisions in the SAAS Agreement and the Quote, the terms of the Quote shall prevail, however, subject to the recital of the SAAS Agreement, that the Customer's standard terms and conditions, or other deviations from the SAAS Agreement, shall not apply even if attached to the Quote.

**ELEARNINGFORCE International ApS**

Our VAT number is 32139728

Last updated: 11 April 2022

## Schedule 1

Helpdesk Services; Service & Requests Requirements; Uptime Availability

### 9. Helpdesk standard process description

Technical support is available 24/7 via our Help Center. Here, customers can find complete product documentation and guides plus answers to frequently asked questions.

From the EFI Help Center, designated LMS administrators of your organization can submit a request through our webform at any time to get assistance from the EFI Support Team <https://helpcenter.elearningforce.com/hc/en-us/requests/new>.

The Help Center can be reached via web <https://helpcenter.elearningforce.com/> or from the LMS365 Admin Center.

The below terminology is used when describing our processing of support requests.

<b>Table 1: Helpdesk and Support terminology</b>	
<b>Business Hours</b>	Defined as the operating hours for the EFI Support team. Currently Monday to Friday between 9:30AM – 9PM CET & 8AM-6PM Eastern Time.
<b>Incident</b>	A support request is referred to as an "incident".
<b>Production Instance</b>	An instance which is tied to an active user subscription is defined as a Production instance.
<b>Taking Charge</b>	The incident is registered, and the ticket is assigned a number.
<b>First Response</b>	The first interaction with the customer (via ticket) aimed at the diagnosis of the problem. The number of business hours until the first reply is calculated by the business hours of the agent assigned to the specific ticket/support request.
<b>ETA (Estimated Time of Arrival)</b>	The estimated time for resolution of the problem. The customer will be updated if ETA materially changes.
<b>Fixed</b>	The issue has been resolved in EFI's reasonable discretion and the customer has been informed about the resolution of the problem.

Support requests are categorized in accordance with the below levels of severity:

<b>Table 2: Severity Descriptions</b>	
<b>Urgent</b>	Critical production issue including system unavailability affecting all users. No workaround is available.
<b>High</b>	Issue is persistent, affects many users and/or impacts core functionality or results in significant performance degradation. No reasonable workaround available.
<b>Normal</b>	Errors in functionality within the application often accompanied by workarounds or affecting some but not all users.
<b>Low</b>	General inquiries on the use of the application or cosmetic errors or incidents which otherwise do not require immediate attention, rare errors that appear during unusual



	conditions or are otherwise unlikely in normal use, or errors which have a sustainable workaround.
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## 10. Helpdesk Service Levels

EFI offers three levels of Helpdesk Services. These are categorized as Basic, Plus, and Premium.

The three Helpdesk Services plans are committed to the following service level targets:

<b>Table 3 – Basic Plan Service Level Targets*</b>		
<i>Ticket Severity</i>	<i>First Reply</i>	<i>Resolution/Mitigation ETA</i>
Urgent	8 business hours	24 business hours or as soon as feasible or practical
High	12 business hours	As soon as feasible or practical
Normal	16 business hours	As soon as feasible or practical
Low	24 business hours	None

<b>Table 4 – Plus Plan Service Level Targets*</b>		
<i>Ticket Severity</i>	<i>First Reply</i>	<i>Resolution/Mitigation ETA</i>
<i>Urgent</i>	<i>4 business hours</i>	<i>4 business hours or as soon as feasible or practical</i>
<i>High</i>	<i>6 business hours</i>	<i>8 business hours or as soon as feasible or practical</i>
<i>Normal</i>	<i>10 business hours</i>	<i>As soon as feasible or practical</i>
<i>Low</i>	<i>16 business hours</i>	<i>None</i>

<b>Table 5 – Premium Plan Service Level Targets*</b>		
<i>Ticket Severity</i>	<i>First Reply</i>	<i>Resolution/Mitigation ETA</i>
<i>Urgent</i>	<i>1.5 business hours</i>	<i>4 business hours or as soon as feasible or practical</i>
<i>High</i>	<i>3 business hours</i>	<i>8 business hours or as soon as feasible or practical</i>
<i>Normal</i>	<i>6 business hours</i>	<i>As soon as feasible or practical</i>
<i>Low</i>	<i>8 business hours</i>	<i>None</i>

\*Notes:

- *Urgent* applies only to issues that are submitted via the EFI Help Center webform, <https://helpcenter.ELEARNING-FORCE.com/hc/en-us/requests/new>, and are confirmed as *Urgent* by EFI.
- This table applies only to production instances and only to requests submitted from the EFI Help Center. For the avoidance of doubt, the LMS365 Live Chat, and tickets generated from this chat, do not apply to these service level targets.

### 10.1 Service Requirements

The LMS365 (Learning Management System) software, developed by ELEARNINGFORCE International ApS, requires a modern web browser that supports cookies and JavaScript.

LMS365 currently supports the browsers & clients listed in the LMS365 installation guide: <https://helpcenter.elearning-force.com/hc/en-us/articles/4402148077713>. These are subject to change without notice in EFI's sole discretion.

In the event, that the customer cannot meet the technical requirements listed with regard to employed browsers, EFI will be under no obligation to provide the support services described in Schedule A.

## 10.2 Requests Requirements

To receive support services and for EFI to maintain the Service Level agreed, the customer shall cooperate with EFI to resolve support incidents.

The customer shall have adequate technical expertise and knowledge of their configuration of EFI's software and provide relevant information to enable EFI to reproduce, troubleshoot, and resolve the incident or issue identified by the customer.

As a minimum, the following information shall be provided by the customer, whenever possible, to ensure EFI's ability to address support requests:

- Detailed description of the issue with as much detail as can be provided.
- The URL of the platform where the issue is occurring.
- The error message provided and exact steps to reproduce the error.
- The user(s) that are affected by the issue.
- Applicable screenshot or video capture.

Requests lacking this information will not be considered as part of the Service Level agreement.

### General Responsibilities of the customer

The customer will be responsible for:

- Reporting errors promptly.
- Providing sufficient information for EFI to duplicate the error, assess the situation, and undertake any needed or appropriate corrective action.
- Alternatively, following instructions or suggestions from EFI regarding use, maintenance, upgrades, repairs, workarounds, or other related matters.
- Designating a member of its staff to serve as the customer's system administrator to contact EFI with support issues.

EFI's successful response and provision of Helpdesk Services is subject to the customer's assistance and compliance, including:

- At EFI's reasonable request, the customer will provide EFI with reasonable access to the customer's personnel and equipment during normal business hours to discuss and assess any problems or requests for assistance.
- The customer will document and promptly report all errors or malfunctions of the Software Services to EFI.

It is the customer's responsibility to carry out procedures necessary at the customer's facilities for the rectification of errors or malfunctions within a reasonable time after such procedures have been received from EFI.

### Reproducing Errors

EFI must be able to reproduce errors in order to resolve them. The customer agrees to cooperate and work closely with EFI to reproduce errors, including conducting diagnostic or troubleshooting activities as reasonably requested and appropriate. Also, subject to customer's approval on a case-by-case basis, users may be asked to provide remote access to their EFI account and/or desktop for troubleshooting purposes.

### Exclusions

Issues that arise in the following categories are outside of the scope of support offered above, and will have no Service Level Agreement attached:

- Custom Cascading Stylesheets (CSS).
- Support to third party authoring tools.
- Support to third party system or platform integration, where the integration is not developed or managed by EFI.
- Supporting in troubleshooting of E-Learning Content packages built with third party authoring tools.
- Custom built authentication methods between EFI and the customer where such method is built from the customer and not maintained by EFI.

### Additional Charges

If a reported problem is outside the scope of our Helpdesk Services, EFI will notify the customer to that effect and reserves the right, upon the customer's confirmation, to move forward and to charge the customer at EFI's then current standard hourly rates for all associated work.

The customer agrees to pay EFI promptly for this work upon receiving an invoice; provided, however, that EFI shall inform the customer in advance of the possible incurrence of such fees and the customer shall have pre-approved the same.

### 10.3 Uptime Availability

If EFI fails to achieve the availability percentage for two (2) consecutive calendar months, then, as the customer's sole remedy for such failure, the customer will be granted Service Credits.

Service Credits are calculated as a percentage of the total charges paid by the customer to EFI in the region affected by unavailability in accordance with the schedule below.

In the event that the customer elects to terminate this agreement for failure to achieve the Availability Percentage for six (6) consecutive calendar months within the notice period given below, then no refunds shall be issued with respect to such affected months.

Monthly Uptime Percentage	Service Credit Percentage
Less than 99.7% but equal to or greater than 99.0%	10%
Less than 99.0%	30%

EFI will apply Service Credits only against future payments due from the Company. Service Credits will not entitle the customer to a refund or other payment from EFI. Service Credits may not be transferred or applied to any other account. Unless otherwise provided in the EFI Agreement, the customer's sole remedy for any unavailability, non-performance, or other failure by EFI to provide Uptime is the receipt of a Service Credit (if eligible) in accordance with the terms of this SLA.

To receive a Service Credit, the customer must submit a claim by within 30 days after the reported issue via a support claim ticket and email to designated Customer Success team reporting ticket number. If the Monthly Uptime Percentage of such request is confirmed by EFI and is less than the Service Commitment, then EFI will issue the Service Credit to the customer within one billing cycle following the month in which your request is confirmed by EFI. The customer's failure to provide the request and other information as required above will disqualify the customer from receiving a Service Credit.