

SaaS agreement

Parties

1. **Formatura d.o.o.**, a company incorporated in the Republic of Serbia registration number 20877154, Tax Identification No. 107814084 having its registered office at Dr. Agostina Neta br 30/VII/71 Belgrade, Serbia (the "**Provider**"); and
2. "**Customer**" means the person or entity identified as such in Schedule 1 (Hosted Services particulars);

Agreement

1. Definitions

- 1.1 Except to the extent expressly provided otherwise, in this Agreement:

"**Account**" means an account enabling a person to access and use the Hosted Services, including both administrator accounts and user accounts];

"**Agreement**" means this agreement including any Schedules, and any amendments to this Agreement from time to time;

"**Business Day**" means any weekday other than a public holiday in Serbia;

"**Business Hours**" means the hours of 09:00 to 17:00 on a Business Day;

"**Charges**" means the following amounts:

- (a) [the amounts specified in Part 3 of Schedule 1 (Hosted Services particulars);]
- (b) [such amounts as may be agreed in writing by the parties from time to time; and]
- (c) amounts calculated by multiplying the Provider's hourly charging rates by the time spent by the Provider's personnel performing the Support Services, and which are not covered by regular charges described in Part 3 of Schedule 1;

"**Customer Confidential Information**" means any information disclosed by the Customer to the Provider during the Term of this Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked as "confidential" or should have been reasonably understood by the Provider to be confidential;

"**Customer Data**" means all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer;

"**Documentation**" means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Customer;

"**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of the party affected (including [failures of

the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars]);

"Hosted Services" means **eGO! Learning Management System**, as specified in the Hosted Services Specification, which will be made available by the Provider to the Customer as a service via the internet in accordance with this Agreement;

"Hosted Services Defect" means a defect, error or bug in the Platform having an adverse effect on the appearance, operation, functionality or performance of the Hosted Services, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the Customer;
- (b) any use of the Platform or Hosted Services contrary to the Documentation, whether by the Customer or by any person authorised by the Customer;
- (c) a failure of the Customer to perform or observe any of its obligations in this Agreement; and/or
- (d) an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification;

"Hosted Services Specification" means the specification for the Platform and Hosted Services set out in Part 1 of Schedule 1 (Hosted Services particulars);

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents etc.);

"Maintenance Services" means the general maintenance of the Platform and Hosted Services, and the application of Updates and Upgrades;

"Platform" means the platform managed and used by the Provider to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed;

"Schedule" means any schedule attached to the main body of this Agreement;

"Services" means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under this Agreement;

"Support Services" means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, as described in Part 6 of Schedule 1;

"Supported Web Browser" means the current release from time to time of Microsoft Internet Explorer, Mozilla Firefox, Google Chrome or Apple Safari,

or any other web browser that the Provider agrees in writing shall be supported;

"**Update**" means a hotfix, patch or minor version update to any Platform software; and

"**Upgrade**" means a major version upgrade of any Platform software.

2. Credit

2.1 This document was created using a template from SEQ Legal (<http://www.seqlegal.com>).

3. Term

3.1 This Agreement shall come into force upon signing of Schedule 1 by both Parties.

3.2 This Agreement shall continue in force as noted in Schedule 1, subject to termination in accordance with Clause 18.

4. Hosted Services

4.1 [The Provider shall ensure that the Platform will generate an Account for the Customer and provide to the Customer login details for that Account.

4.2 The Provider hereby grants to the Customer a non-exclusive licence to use the Hosted Services by means of a Supported Web Browser for the internal business purposes of the Customer during the Term.

4.3 The licence granted by the Provider to the Customer under Clause 4.2 is subject to the following limitations:

the Hosted Services may only be used by the officers, employees, agents and subcontractors of the Customer;

4.4 Except to the extent expressly permitted in this Agreement or required by law on a non-excludable basis, the licence granted by the Provider to the Customer under Clause 4.2 is subject to the following prohibitions:

- (a) the Customer must not sub-license its right to access and use the Hosted Services;
- (b) the Customer must not permit any unauthorised person to access or use the Hosted Services;
- (c) the Customer must not use the Hosted Services to provide services to third parties;
- (d) the Customer must not republish or redistribute any content or material from the Hosted Services; and
- (e) the Customer must not make any alteration to the Platform, [except as permitted by the Documentation].

4.5 The Customer shall use reasonable endeavours, including reasonable security measures relating to administrator Account access details, to ensure that no unauthorised person may gain access to the Hosted Services using an administrator Account.

4.6 The Provider shall use all reasonable endeavours to maintain the availability of the Hosted Services to the Customer, but does not guarantee 100% availability.

- 4.7 For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not be considered a breach of this Agreement:
- (a) a Force Majeure Event;
 - (b) a fault or failure of the internet or any public telecommunications network;
 - (c) a fault or failure of the Customer's computer systems or networks;
 - (d) any breach by the Customer of this Agreement; or
 - (e) scheduled maintenance carried out in accordance with this Agreement.
- 4.8 The Customer must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.
- 4.9 The Customer must not use the Hosted Services:
- (a) in any way that is unlawful, illegal, fraudulent or harmful; or
 - (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 4.10 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.
- 4.11 The Provider may suspend the provision of the Hosted Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Hosted Services on this basis.

5. Maintenance Services

- 5.1 The Provider shall provide the Maintenance Services to the Customer [during the Term].
- 5.2 The Provider shall where practicable give to the Customer at least 10 Business Days' prior written notice of scheduled Maintenance Services that are likely to affect the availability of the Hosted Services or are likely to have a material negative impact upon the Hosted Services, without prejudice to the Provider's other notice obligations under this main body of this Agreement.
- 5.3 The Provider shall give to the Customer at least 10 Business Days' prior written notice of the application of an Upgrade to the Platform.
- 5.4 The Provider shall give to the Customer written notice of the application of any security Update to the Platform and [at least 10 Business Days'] prior written notice of the application of any non-security Update to the Platform.
- 5.5 The Provider shall provide the Maintenance Services [with reasonable skill and care expected from a leading service provider in the Provider's industry.

6. Support Services

- 6.1 The Provider shall provide the Support Services to the Customer during the Term and as noted in Part 6 of Schedule 1.

7. Customer Data

- 7.1 The Customer hereby grants to the Provider a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under this Agreement, together with the right to sub-license these rights to its hosting, connectivity and telecommunications service providers to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under the Agreement.
- 7.2 The Customer warrants to the Provider that the use of the Customer Data by the Provider in accordance with this Agreement will not:
- (a) breach the provisions of any law, statute or regulation;
 - (b) infringe the Intellectual Property Rights or other legal rights of any person; or
 - (c) give rise to any cause of action against the Provider,
- in each case in any jurisdiction and under any applicable law.
- 7.3 The Provider shall keep Customer's Data archived on the Platform for at least 6 months after the termination of this Agreement, in case the Customer should decide to reinstate the Agreement.

8. No assignment of Intellectual Property Rights

- 8.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

9. Charges and Payments

- 9.1 The Customer shall pay to the Provider the Services described in Part 1 of Schedule 1 according to the pricing given in Part 3 of Schedule 1.
- 9.2 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider, if those taxes are applicable.
- 9.3 The Provider shall issue relevant invoices to the Customer according to Part 3 of Schedule 1. The Customer is obliged to pay the invoices as described in Part 4 of Schedule 1.

10. Provider's confidentiality obligations

- 10.1 The Provider must:
- (a) keep the Customer Confidential Information strictly confidential;
 - (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent, and then only under conditions of confidentiality approved in writing by the;
 - (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care;
 - (d) act in good faith at all times in relation to the Customer Confidential Information; and

- 10.2 Notwithstanding Clause 12.1, the Provider may disclose the Customer Confidential Information to the Provider's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Customer Confidential Information for the performance of their work and who are bound by a written agreement or professional obligation to protect the confidentiality of the Customer Confidential Information.
- 10.3 This Clause 12 imposes no obligations upon the Provider with respect to Customer Confidential Information that:
- (a) is known to the Provider before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
 - (b) is or becomes publicly known through no act or default of the Provider; or
 - (c) is obtained by the Provider from a third party in circumstances where the Provider has no reason to believe that there has been a breach of an obligation of confidentiality.
- 10.4 The restrictions in this Clause 12 do not apply to the extent that any Customer Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the Provider on any recognised stock exchange.
- 10.5 The provisions of this Clause 12 shall continue in force for a period of 5 years following the termination of this Agreement, at the end of which period they will cease to have effect.

11. Data protection

- 11.1 The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with this Agreement, and that the processing of that Personal Data by the Provider in accordance with this Agreement will not breach any applicable data protection or data privacy laws (including the Data Protection Act 1998).

12. Warranties

- 12.1 The Provider warrants to the Customer that:
- (a) the Provider has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
 - (b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under this Agreement; and
 - (c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.
- 12.2 The Provider warrants to the Customer that:
- (a) the Platform and Hosted Services will conform in all material respects with the Hosted Services Specification;
 - (b) the Hosted Services will be free from Hosted Services Defects;
 - (c) the application of Updates and Upgrades to the Platform by the Provider will not introduce any Hosted Services Defects into the Hosted Services;

- (d) the Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and
 - (e) the Platform will incorporate security features reflecting the requirements of good industry practice.
- 12.3 The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.
- 12.4 The Customer warrants to the Provider that it has the legal right and authority to enter into this Agreement and to perform its obligations under the Agreement.
- 12.5 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into the Agreement or any related contract.

13. Acknowledgements and warranty limitations

- 13.1 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.
- 13.2 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be entirely secure.

14. Limitations and exclusions of liability

- 14.1 Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.
- 16.4 The Provider shall not be liable to the Customer in respect of any loss of profits or anticipated savings, any loss of revenue or income, any loss of business, contracts or opportunities, any special, indirect or consequential loss or damage

15. Force Majeure Event

- 15.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement (other than any obligation to make a payment)], that obligation will be suspended for the duration of the Force Majeure Event.
- 15.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:
- (a) promptly notify the other; and
 - (b) inform the other of the period for which it is estimated that such failure or delay will continue.
- 15.3 A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

16. Termination

16.1 Either party may terminate this Agreement by giving to the other party at least 30 days' written notice of termination.

17. Effects of termination

17.1 The termination of this Agreement shall not affect the accrued rights of either party.

17.2 Within 30 days following the termination of this Agreement for any reason the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of the Agreement without prejudice to the parties' other legal rights.

18. Notices

18.1 Any notice from one party to the other party under this Agreement must be given by one of the following methods:

- (a) delivered personally or sent by courier, in which case the notice shall be deemed to be received upon delivery;
- (b) by email during standard business hours

19. Subcontracting

19.1 The Provider may subcontract any of its obligations under this Agreement;

19.2 The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.

19.3 Notwithstanding any other provision of this Agreement, the Customer acknowledges and agrees that the Provider may subcontract to any reputable third party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

20. General

20.1 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

20.2 Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.

20.3 This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.

20.4 This Agreement shall be governed by and construed in accordance with laws and regulations of the Republic of Serbia.

20.5 The Commercial court in Belgrade, Republic of Serbia shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.