

# goFLUENT Terms and Conditions

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goFLUENT's products and services are provided by goFLUENT Group SA and its subsidiaries ("goFLUENT"). These Terms and Conditions ("Terms") govern your use of goFLUENT's website gofluent.com, apps, and other products and services ("Services"). As some of our Services may be software that is downloaded to your computer, phone, tablet, or other device, you agree that we may automatically update such software, and that these Terms will apply to

such updates. Please read these Terms carefully, and [contact us](#) if you have any questions. By using our Services, you agree to be bound by these Terms, including the policies referenced in these Terms.

## Glossary

*goFLUENT* is a company goFLUENT Group SA, located in Route de Pré-Bois 20, 1215 Geneva, Switzerland and its subsidiaries

*Language Academy* is a web-based platform developed and maintained by goFLUENT for the provision of online language training which is located at <https://portal.gofluent.com/app/dashboard>

Assessment Portal is a web-based platform developed and maintained by goFLUENT for the provision of online language assessment which is located at <https://portal.gofluent.com/assessment/>

Client Admin Center is a web-based platform developed and maintained by goFLUENT to allow the Customer to monitor the usage of the Services within the different Customer's organizations which is located at <https://portal.gofluent.com/admin/>

Conversation Classes means a 40 minutes open group lesson with a goFLUENT Trainer accessible from the Language Academy at the available schedule published on the Language Academy by fluency level and timezone.

Portals means goFLUENT Language Academy, Assessment Portal and Client Admin Center.

*Services* are learning and assessment services aimed to improve and evaluate foreign language proficiency of Learners and Candidates, which are provided via the Language Academy, Assessment Portal, virtual conference tools, email and Mobile app.

*Content* or *Portals content* are online learning and assessment resources available on the Portals and the Mobile app.

*Learner* is an authorized end user, who is an Employee of a goFLUENT's direct Customer or indirect Customer (subscribed via a Reseller) or other person affiliated with a Customer or nominated by a Customer who is permitted to have access to the Language Academy on the terms of the Service Agreement and the hereby Terms and Conditions.

Candidate is an authorized end user, who is an Employee of a goFLUENT's direct Customer or indirect Customer (subscribed via a Reseller) or other person affiliated with a Customer or nominated by a Customer who is permitted to have access to the Assessment Portal on the terms of the Service Agreement and the hereby Terms and Conditions.

*Customer* is a company that receives Services from goFLUENT.

*Reseller* is a company or an individual, who under agreement with goFLUENT, represents goFLUENT and its Services.

*Service Agreement* is a contract between goFLUENT and Customer, according to which goFLUENT provides its Services to Customer and its Learners and/or Candidates upon the payment of such Services.

*Learning Consultants* is a department of goFLUENT responsible for supporting Learners and/or Candidates during the provision of Services.

*Trainers* - persons, who are involved in provision of language learning services to goFLUENT Customers and Learners.

*Subscription period* is a period of time between the start and the expiration date of the Services availability for Learners and Candidates.

*Mobile app* - goFLUENT mobile application or a Customer-dedicated mobile application developed by goFLUENT for Apple and Android mobile devices.

*Portals availability* - the Customer's, Learner's or Candidate's ability to access and use all the functionalities of the Portals.

*Downtime* - any period of non-scheduled Portals or Service unavailability calculated from the time of notifications of a fault by the Customer, Learner or Candidate to goFLUENT.

*Permanent Fix* - a permanent resolution of the support issue.

*Response Time* - the times as set out in section Service Level Agreement below when goFLUENT responds to a support issue raised by a Customer, a Learner or a Candidate and which, for the avoidance of doubt, are calculated from the notification submitted by the Customer, Learner or a Candidate during the Support Hours.

*Resolution Time* - the times as set out in section Service Level Agreement below by which a Workaround or a Permanent Fix is provided in respect of the Support Issue and which for the avoidance of doubt is calculated from notification of the Support Issue by the Customer, the Learner or a Candidate during the Support Hours.

*Service Failure* - in respect of the Support Issue, failure by goFLUENT to comply with the Resolution Time pursuant to section Service Level Agreement below, or where the goFLUENT fails to achieve the Portals Availability of 99.9% pursuant to section Service Level Agreement below.

*Support Hours* - the hours between 9:00 and 18:00 Monday to Friday, excluding bank holidays or public holidays in a country with goFLUENT Learning Consultant team, which a Learner or a Candidate is assigned to.

*Support Issue* - a failure of the Portals and the Services to perform in accordance with the Service Level Agreement below, or a cessation, interruption or degradation of the usual functionality of the Portals and the Services.

*Workaround* - a temporary resolution in respect of the Support Issue and may include goFLUENT performing the task on an ongoing basis on behalf of the Customer's Learners until a Permanent Fix is provided.

## 1. Who is goFLUENT

goFLUENT accelerates language learning and assessment by delivering hyper-personalized solutions that blend technology, content, and human interaction available globally on any device.

Our mission is to provide everyone an equal voice.

## 2. To what products ToU apply

These Terms apply to all goFLUENT learning and assessment products, the Portals and Services accessible through all domains and subdomains under [gofluent.com](http://gofluent.com) as well as any other dedicated portal set up by goFLUENT for Customers to deliver the Services. These Terms do not apply to [www.gofluent.com](http://www.gofluent.com), which is a public, informational website designed to provide additional information about the Services.

## 3. Updating These Terms

From time to time, we may update these Terms to clarify our practices or to reflect new or different practices (such as when we add new features), and goFLUENT reserves the right in its sole discretion to modify and/or make changes to these Terms at any time. If we make any material change, we will notify you using prominent means such as by email notice sent to the email address specified in your account or by posting a notice through our Services. Modifications will become effective on the day they are posted unless stated otherwise.

Your continued use of our Services after changes become effective shall mean that you accept those changes. Any revised Terms shall supersede all previous Terms.

## 4. Rights We Give to Learners and Candidates

The use of Services is subject to these Terms and the Service Agreement between goFLUENT and Learner's and Candidate's employer/affiliate organization. The Service Agreement specifies the scope, duration and features of the Services available to Learners and Candidates. A Learner and/or a Candidate is eligible to receive only the Services, which are specified in the Service Agreement. Learners and Candidates have a right to use the Services assigned to them for learning and/or assessment purposes.

## 5. Our Role with Respect to the Customer, Learners and Candidates

In most cases, the Portals and related Services are provided to each Learner and/or Candidate pursuant to a written agreement between goFLUENT and a Customer or Reseller of goFLUENT, where the Customer or Reseller in turn makes the Portals and the Services available to individual Learners and/or Candidates authorized by the Customer or Reseller known as a Services Agreement. The applicable Services Agreement will control to the extent any of its provisions conflicts with any of these Terms and Conditions.

Access to the Portals and use of the Services, including the content, features, and any learning tools, are subject to both these Terms and Conditions and the applicable Service Agreement.

## 6. Learner and Candidate responsibilities for Use of the Services

### 6.1. Use of username and passwords

Learners and Candidates are each given a unique username and password that enable access to the Portals. You are solely responsible for the use of your username and password. You may not share, disclose, or transfer your password with or to any third party including your family members. If you believe that the security of your password has been breached, you must promptly notify goFLUENT of the breach. goFLUENT will then cancel that password and issue you a new password. You are responsible for ensuring that all use of the Portals under your username and password complies with these Terms and Conditions, and you agree to indemnify and hold goFLUENT, its Customers, and Resellers, and their affiliates, subsidiaries, directors, agents, and employees, and third parties associated with the Portals and the Services, harmless against any damages, costs, or expenses arising out of your improper use of the Portals and the Services and the use by others of the Portals and the Services under your username and password. goFLUENT and its Customers and Resellers reserve the right to cancel your password, and thereby your access to the Portals, at any time without refund if you fail to comply with these Terms and Conditions or if any of goFLUENT, its Customers, or Resellers, in their sole discretion, deem your conduct in connection with your use of the Portals and the Services to be unacceptable.

### 6.2. Exchange of information with goFLUENT

Learners and Candidates shall not share or exchange any personal identifying information that was not made available to goFLUENT when their account was initially set up, including but not limited to: financial information, banking and credit card details, personal address, sensitive data etc.

All communication between Learners and Candidates and goFLUENT must occur exclusively through the goFLUENT Portals.

### 6.3. Fair Usage Policy

With Conversation Classes Services goFLUENT gives an optional opportunity to Learners who wish, from their own initiative, to improve their conversational skills.

Conversation Classes participation should not be set as a Key Performance Indicators (KPI) at a Learner or organization/Customer level nor included into a syllabus learners should follow. In the event the Customer wishes to reinforce the conversation skills of their Learners and make Conversation Classes participation mandatory or part of a syllabus they should purchase Group Lesson Services from goFLUENT.

In line with its Fair Usage Policy, goFLUENT will inform its Customers who are in the top 1% with the highest percentage of Conversation Classes per active user (Learner) usage within a month in order to analyze, in good faith, why the usage is so high. In the event goFLUENT considers that the Customer is not using Conversation Classes in good faith and if the client remains in the highest 1% for 2 months in a row, goFLUENT reserves the right to only offer the Customer's Learners to join as a "Listening Only" mode.

Fair Usage Policy at the Learner level: goFLUENT usage access is personal and cannot be shared with anyone else. If we notice that someone other than the registered Learner is accessing our Conversation Classes goFLUENT reserves the right to terminate the access to Conversation Classes and/or block the access to the account to the Learners.

goFLUENT will also monitor usage at the Learner level and Learners being within the 0,1% highest usage level might be required to only join Conversation Classes as a "Listening Only" mode.

## 7. Prohibited Conduct

When using the Portal and the Services, Learners and/or Candidates may not:

- Reproduce, retransmit, publish, display, distribute, disseminate, sell, license, sublicense, transfer, rent, lease, broadcast, timeshare, loan, disclose, or otherwise make available the Portal, the Portal content, or any part thereof, to any third party;
- Modify, translate, adapt, alter, reverse engineer, or create derivative works based upon the Portal, the Portal content, the Services or any part thereof;
- Post or communicate any material that is unlawful, harmful, threatening, vulgar, indecent, obscene, defamatory, profane, libelous, harassing, abusive, embarrassing, disparaging, tortuous, infringing, fraudulent, deceptive, hateful, sexually explicit, racially or ethnically objectionable, or otherwise objectionable or encouraging of conduct that would constitute a criminal offense or give rise to civil liability;
- Attempt to access any other learner's or Candidate's account;
- Post or communicate any material that violates the privacy or publicity rights of another individual, or post, communicate, or collect information about other individuals, including personal information and images, without their consent;

- Post or communicate any material that would violate any copyright, intellectual property right, or any other right of any entity or individual. Before posting or quoting any content that is owned or protected by a third party under intellectual property laws, a Learner must obtain all necessary consents or permissions from the owner of the protected content;
- Post or transmit materials that contain viruses, malware, or corrupted files, or that may damage the operation of the Portal or engage in any activity that circumvents any security features or otherwise interferes with or disrupts any features of the Portal;
- Advertise, solicit, or offer to sell or buy any goods or services for any business or commercial purpose;
- Conduct or forward surveys, contests, pyramid schemes, chain letters, junk mail, spam, phishing, or unsolicited mass communication distribution;
- Remove any proprietary notices, labels, trademarks, or service marks from the Portal or any part thereof;
- Impersonate or misrepresent your affiliation with any person or entity;
- Violate any applicable laws or regulations, or promote or encourage illegal activity.

## 8. Code of Conduct

Learners, Candidates, goFLUENT Trainers, Assessors, Learning Consultants, Learning Advisors must treat one another with the utmost respect, which means refraining at anytime when using any of the goFLUENT Services from using inappropriate behavior or language, negatively charged comments, discriminatory language and from unreasonable demands or behavior.

We encourage Learners and Candidates to contact our Learning Consultant teams 24/7 or to send an email to [privacy@gofluent.com](mailto:privacy@gofluent.com) to report any behavior that they would consider inappropriate.

By accessing and using goFLUENT Services, you acknowledge and agree to conduct yourself in a manner consistent with the principles of respectful treatment outlined above. If a Learner or a Candidate is reported to have violated this section an investigation may be carried out. Failure to comply with these standards may result in the suspension of the Learner or Candidate access to goFLUENT Services and a report of this incident may be shared with the Customer who signed the contract

## 9. Consent

If you are a Customer or a Reseller, which provides access to the Portals and the Services to Learners and/or Candidates, you confirm to obtain or have obtained any and all consents required by law, including, but not limited to:

- consent to transfer personal data (personally identifiable information) of your Learners and/or Candidates, and your representatives, for processing in the European Economic Area (the EEA) and to goFLUENT subsidiaries located outside of the EEA for the purposes of providing access to the Portals and delivering the Services;
- consent to compile reports as to access to the Portals and usage of the Services by your Learners and/or Candidates and provide such reports to you;

- any other consents that may be required in order for goFLUENT to provide the Services to you and your Learners and/or Candidates. You promise to obtain necessary consents from all relevant bodies including Work Councils, from your Learners, Candidates, from the parents or legal guardians of your Learners (where necessary), and from other applicable individuals.

If you are a Learners and/or Candidates, who has access to the Services, you confirm to give or have given consent to a company you are affiliated with (a goFLUENT's Customer or a goFLUENT's Reseller) to process your personal data (personally identifiable information), including a consent to transfer your personal data to the EEA and to goFLUENT subsidiaries located outside of the EEA for the purposes of providing access to the Portals and delivering the Services to you; consent to compile reports with your personal data about your access to the Portals and usage of the Services; any other consents that may be required for goFLUENT to provide access to the Portals and deliver the Services to you.

## 10. Ownership and Use of material

The Portals are owned by and operated by goFLUENT. Unless otherwise noted, all features and content on or relating to the Services, including without limitation information and other materials, trademarks, trade dress, logos, illustrations, product layout and design, icons, images, artwork, graphics, photography, text, data, audio sound, software, and infrastructure, as well as the selection, assembly, and arrangement thereof, are owned by goFLUENT or are licensed from third parties by goFLUENT.

The Portals, in whole and in part, and all Portals content are protected by copyright, trademark, service mark, trade name, and other proprietary rights, and all such rights are reserved. No Customer, Reseller, Learner or Candidate may access or use the Portals, or any portion thereof, for any purpose other than to view the Portals content and make use of the Services provided on the Portals in accordance with the Services Agreements and the Terms. goFLUENT does not own any content posted or submitted to or communicated via the Portals by a Learner or a Candidate. The Customer, Reseller, the Learner or the Candidate, as applicable, is solely responsible for all Learner-generated content and communications on the Portals. Unless otherwise provided in a Services Agreement with respect to authorized Learners and/or Candidates of a Customer or Reseller, each Learner and/or Candidate hereby grants goFLUENT an irrevocable, perpetual, royalty-free, non-exclusive license to use (and to authorize others to use) the Learner and Candidate generated content created by the Learner or the Candidate for any purpose relating to goFLUENT's learning solutions business.

## 11. Intellectual Property Rights

The Services, the Portals and the content are protected by Swiss and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws.

No right, title or interest in or to the Portals, the content, the Services or any portion thereof, is transferred to any Customer, Reseller, Learner or Candidate, and all rights not expressly granted herein, are reserved by goFLUENT.

The goFLUENT name, the company logo, and all related names, logos, product and service names, designs and slogans, are trademarks of goFLUENT or its affiliates or licensors. Learners and/or Candidates may not use such marks without the prior written permission of goFLUENT. All other names, logos, product and service names, designs and slogans on the Services are the trademarks of their respective owners.

## 12. Links to Third Party Websites

The Portal may contain links to other websites that are not operated by or related to goFLUENT. goFLUENT is not responsible for the content, accuracy or opinions expressed in such third party websites, and does not investigate, monitor, or check these websites for accuracy or completeness. The inclusion of any linked website on the Portal does not imply approval or endorsement of the linked website by goFLUENT. A Learner that leaves the Portal to access these third-party sites does so at its own risk.

## 13. Service Level Agreement (SLA)

The following SLA terms are defined to clarify what services are available from goFLUENT and how the Learners and Candidates may expect to be supported.

### Portal Availability

goFLUENT provides a very robust service and a seamless experience for our Learners and Candidates. The Monthly Uptime Percentage (Availability of the Portal) is 99.9% based on 24 hours x 30 days, excluding planned or scheduled downtime. It is calculated by subtracting from 100% the percentage of minutes during the calendar month in which the Portal was stated as "Not responding" or "Unavailable".

If any interruption of the Availability occurs goFLUENT shall investigate and log the event and shall take all reasonable steps in accordance with the Response and Resolution Times to provide a Permanent Fix or a Workaround with a view to preventing a recurrence of the cause.

Planned or scheduled downtime does not constitute Downtime.

goFLUENT will use commercially reasonable efforts to enable the Portal and the Services to be accessible, except for scheduled maintenance and required repairs, and except for any interruption due to causes beyond the reasonable control of, or not reasonably foreseeable by goFLUENT, including, but not limited to, any Force Majeure Event. The foregoing undertaking shall not apply to the extent of any non-conformance caused by use of the Portal and the Services contrary to the goFLUENT's instructions, or modification or alteration of the Services by any party other than goFLUENT. If the Portal and the Services are in non-conformance with the foregoing undertaking, goFLUENT will, at its expense, use all reasonable commercial endeavors to correct any such non-conformance promptly, or provide Learner and Candidate with an alternative means of accomplishing the desired performance.

Learners and Candidates recognize that the traffic of data through the Internet may cause delays during the download of information from the Portal and accordingly, it shall not hold goFLUENT liable for delays that are ordinary in the course of Internet use. Learner and Candidate further acknowledges and accepts that the Portal will not be available on a continual twenty-four hour basis due to such delays, or delays caused by the goFLUENT's upgrading, modification, or standard maintenance of the Portal.

## Priority information

Below are the priorities that we allocate to reported Support Issues and the rationale for the allocation. If you are unsure what level of priority your call has been allocated at, please ask a member of the goFLUENT Learning Consultant team.

Priority 1 (Critical)	Support Issues which render the Portal or the Services unusable (Major Incident). Assigned immediately and resolved within 1 Business Day.
Priority 2 (Urgent)	Support Issues which render key areas of the Portal, its content or the Services unusable. Assigned within 2 hours and resolved within 2 Business Days.
Priority 3 (High)	Support Issues which do not render the Portal or the Services unusable but significantly impacts on the Learner's or Candidate's ability to perform a required action. Assigned within 8 hours and resolved within 5 Business Days.
Priority 4 (Medium)	Support Issues which do not render the Portal, its content or the Services unusable but have some impact on access, usability and accuracy of the Portal and the Services. Assigned within 3 Business Days and resolved within 4 calendar weeks (in a scheduled maintenance release in the case of platform issues).
Priority 5 (Low)	Support Issues which have no significant impact on access and usability of the Portal and the Services. Assigned within 5 Business Days and resolved within 8 calendar weeks (in a scheduled maintenance release in the case of the Portal issues).

All Permanent Fixes are subject to investigation, implementation and testing, and may require up to 4 weeks for such Permanent Fixes to be released, subject to your agreement.

## Scope of Support Service Provided

During Learner's and Candidate's subscription period goFLUENT shall:

1. Provide maintenance and support services as described,
2. Maintain procedures for reporting, management and escalation of Support Issues,
3. Ensure the resolution of Support Issues whether through a Permanent Fix or a Workaround in accordance with the Response Time and Resolution Time.

goFLUENT shall provide the maintenance and support services by means of telephone and email support to Learners and Candidates for the following:

- Diagnosing the root cause of a Support Issue;
- Advice and support on the set up, accessibility and use of the Portal and the Services;
- Provision of a Permanent Fix or a Workaround in respect of all Support Issues raised by the Learner or Candidate in respect of the Portal and the Services, save for the exception set out below.

Exceptions to the maintenance and support services include the following:

- Responsibility for any Learner and Candidate hardware or software with which the Portal the Services are used;
- Requests which would require the modification or extraction of data directly from the the Portal database;
- Amendments to functionality as a result of changing customer requirements or redefinition of requirements after the Final Acceptance Date.

## Reporting Support Issues

Learners and Candidates may report a Support Issue through the goFLUENT Learning Consultants either via telephone or email address. Learners and Candidates may find the Learning Consultants contact details on the dedicated [Contact](#) page of the Portal.

## Special Notice of Scope of Service

Provision of translation and interpretation services is not included in the scope of Services provided by goFLUENT and Trainers. In no case a Learner, a Candidate or a customer can transmit a document to be translated by goFLUENT.

## 14. Mobile App Terms

By downloading or using either the goFLUENT mobile application or a Customer-dedicated mobile application developed by goFLUENT you confirm your acceptance of the following Mobile App Terms of use in addition to the Terms and Conditions. If you do not agree to these Mobile App Terms, you must immediately uninstall the Mobile App and discontinue its use. These App Terms should be read alongside our Services Privacy Policy.

goFLUENT hereby grants you a non-exclusive, non-transferable, revocable license to use the Mobile App for your personal, non-commercial use and only on an Apple or Android mobile device. You acknowledge that where you use services provided by Apple or Google (or any other third parties) in connection with your use of the Mobile App, you will be subject to Apple's, Google's (or the applicable third party's) terms and conditions and privacy policy and you should ensure that you have read such terms.

In the event of your breach of these Mobile App Terms goFLUENT will be entitled to terminate the User License immediately.

Use of the Mobile App is permitted only with your unique username and password that enable your access to the Portal. Your use of the Mobile App is limited in time and corresponds to your subscription period.

You acknowledge that your agreement with your mobile network provider will apply to your use of the Mobile App. You acknowledge that you may be charged by the Mobile Provider for data services while using certain features of the Mobile App or any such third party charges as may arise and you accept responsibility for such charges.

goFLUENT reserves the right to make changes to the Mobile App including the content, features, and any learning tools provided through the Mobile App without prior notice.

The information that the Mobile App collects may be stored locally on your mobile device and may be transmitted to our servers. The transmission of information over wireless and wired networks is not inherently secure. goFLUENT uses many tools to help protect your personal information against unauthorized access and disclosure. However, we do not guarantee that your personal information or private communications will always remain private when using the Mobile App.

## 15. Confidentiality

You agree to maintain the confidentiality of the goFLUENT's Confidential Information. For the purposes of these Terms and Conditions, the term "Confidential Information" means all portions of the Services, goFLUENT Portal and Mobile App.

## 16. Modifying and Terminating our Services

We are constantly changing and improving our Services. We may add or remove functions, features, or requirements, and we may suspend or stop our Services altogether. Accordingly, goFLUENT may terminate your use of any Service for any reason. In case of termination of your use of any Service goFLUENT is responsible to operate according to conditions of Service Agreement between goFLUENT and a Customer.

You agree to abide by any rules or regulations that goFLUENT publishes with respect to conduct of Learners and Candidates and other users of the Service, which rules and regulations are hereby incorporated into these Terms and Conditions by this reference. goFLUENT reserves the right to deny a Learner or Candidate access to goFLUENT Portal, Services and the Mobile app if, in the goFLUENT's sole discretion, Learner or Candidate has failed to abide by these Terms and Conditions or appear likely to do so.

In the event of termination or expiration of these Terms, the following sections of these Terms shall survive: all provisions regarding ownership of intellectual property, indemnification, disclaimer of warranties and limitations of liability, the provisions of this section which, by their nature apply after termination, and the General provisions below. All licenses granted under these Terms terminate immediately at the end of your subscription period, unless you renew or have renewed your subscription and paid any applicable subscription fees. You agree that upon the termination of these Terms, we may delete all information related to you

on the Services and may bar your access to the Portal and use of the Services. Upon the termination of these Terms you will immediately destroy any downloaded or printed goFLUENT Content.

## 17. General Provisions

These Terms, the Services Agreement and any applicable policies constitute the entire agreement between the parties with respect to the subject matter hereof, and supersede all previous written or oral agreements between the parties with respect to such subject matter. All rights not expressly granted herein are expressly reserved. These Terms shall inure to our benefit and to the benefit of our agents, licensors, licensees, successors, and assigns. If any provision of these Terms is found to be illegal or unenforceable, these Terms will be deemed curtailed to the extent necessary to make the Terms legal and enforceable and will remain, as modified, in full force and effect. These Terms and all matters or issues collateral thereto will be governed by, construed and enforced in accordance with the laws of Switzerland applicable to contracts executed and performed entirely therein (without regard to any principles of conflict of laws), and jurisdiction for any court action in Switzerland. Any notice or other communication to be given hereunder will be in writing and given by facsimile, postpaid registered or certified mail return receipt requested, or electronic mail. Nothing in these Terms shall be construed as making either party the partner, joint venture, agent, legal representative, employer, contractor or employee of the other. Neither party shall have, or hold itself out to any third party as having, any authority to make any statements, representations or commitments of any kind, or to take any action that shall be binding on the other except as provided for herein or authorized in writing by the party to be bound.

## 18. Disclaimers

EXCEPT AS OTHERWISE SET FORTH IN THE SERVICES AGREEMENT, THE SERVICES, MOBILE APP AND ALL THE PORTAL CONTENT THEREOF ARE PROVIDED ON AN "AS IS" BASIS WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED. goFLUENT, ITS CUSTOMERS, AND RESELLERS, AND THEIR AFFILIATES, SUBSIDIARIES, DIRECTORS, AGENTS, AND EMPLOYEES, AND THIRD PARTIES ASSOCIATED WITH THE SERVICES, TO THE FULLEST EXTENT PERMITTED BY LAW, DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF TITLE, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, AND NON-INFRINGEMENT OF PROPRIETARY OR THIRD PARTY RIGHTS. goFLUENT, ITS CUSTOMERS, AND RESELLERS, AND THEIR AFFILIATES, SUBSIDIARIES, DIRECTORS, AGENTS, AND EMPLOYEES, AND THIRD PARTIES ASSOCIATED WITH THE SERVICES, DO NOT WARRANT THAT THE SERVICES OR PORTAL CONTENT ARE ERROR OR VIRUS FREE, WILL OPERATE WITHOUT INTERRUPTION, OR ARE COMPATIBLE WITH ALL EQUIPMENT AND SOFTWARE CONFIGURATIONS. goFLUENT, ITS CUSTOMERS, AND RESELLERS, AND THEIR AFFILIATES, SUBSIDIARIES, DIRECTORS, AGENTS, AND EMPLOYEES, AND THIRD PARTIES ASSOCIATED WITH THE SERVICES, DO NOT MAKE ANY WARRANTIES REGARDING THE ACCURACY, RELIABILITY, OR QUALITY OF THIRD PARTY CONTENT AND NO LEARNER, CANDIDATE, CUSTOMER, OR RESELLER SHALL HAVE ANY REMEDY AGAINST goFLUENT WITH RESPECT TO THE SAME. YOU ACKNOWLEDGE AND AGREE THAT ANY ACCESS TO OR USE OF THE SERVICES OR THE PORTAL CONTENT IS AT YOUR OWN RISK.

## 19. Limitation of Liability

IN NO EVENT SHALL goFLUENT, ITS CUSTOMERS, AND RESELLERS, OR THEIR AFFILIATES, SUBSIDIARIES, DIRECTORS, AGENTS, AND EMPLOYEES, OR THIRD PARTIES ASSOCIATED WITH THE SERVICES, BE LIABLE TO ANY LEARNER OR CANDIDATE, ANYONE CLAIMING THROUGH ANY LEARNER OR CANDIDATE, OR ANY OTHER CUSTOMER OR RESELLER FOR (1) INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL LOSS OR DAMAGES, OR PERSONAL INJURY OR DEATH, OR (2) ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE OR INABILITY TO USE THE SERVICES OR THE PORTAL CONTENT, LOSS OF TIME, LOSS OF DATA, LOSS OF PROFITS, OR LOSS OF GOODWILL ARISING OUT OF OR IN CONNECTION WITH THE USE OF THE SERVICES, OR THE PERFORMANCE OR NON-PERFORMANCE OF goFLUENT OR THE SERVICES OR THE CONTENT ACCESSIBLE THROUGH THE PORTAL, EVEN IF THE POSSIBILITY OF SUCH DAMAGES IS FORESEEABLE. LEARNERS, CANDIDATES, CUSTOMERS, AND RESELLERS AGREE THAT THE LIABILITY OF goFLUENT, ITS AFFILIATES, SUBSIDIARIES, DIRECTORS, AGENTS, EMPLOYEES, AND THIRD PARTIES ASSOCIATED WITH THE PORTAL IS LIMITED SOLELY TO YOUR DIRECT DAMAGES AND IN NO EVENT SHALL IT EXCEED, IN THE AGGREGATE, FIFTY DOLLARS (\$50).

YOU ACKNOWLEDGE AND AGREE THAT THE DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH IN THE TERMS REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN YOU AND THE goFLUENT PARTIES, AND THAT THESE LIMITATIONS ARE AN ESSENTIAL BASIS TO goFLUENT'S ABILITY TO MAKE THE SERVICES AVAILABLE TO YOU ON AN ECONOMICALLY FEASIBLE BASIS.

## 20. Indemnification

You agree to indemnify, defend, and hold harmless goFLUENT, our subsidiaries, and their officers, directors, suppliers, partners, and agents from any and all claims, liabilities, expenses, and damages, including reasonable attorneys' fees and costs, made by any third party related to: (a) your use or attempted use of the Services in violation of these Terms; (b) your violation of any law or rights of any third party; or (c) Learner or Candidate Content, including without limitation any claim of infringement or misappropriation of intellectual property or other proprietary rights.

## 21. Privacy Policy

Learners and/or Candidates agree to comply with the goFLUENT Services Privacy Policy. goFLUENT reserves the right to modify the Services Privacy Policy at any time, and to the extent permitted by applicable law, changes to the Policy are effective immediately upon posting on the Portal. Learners and/or Candidates continued use of any portion or all, of the Portals or the Services, following the posting of a revised Policy means that Learner or Candidate accepts and agrees to the changes. In the event of an express conflict between the Terms of Service and the terms of the Services Privacy Policy, the Terms of Service will prevail.

## 22. Our Policy Concerning Children

We recognize the privacy interests of children and encourage parents and guardians to take an active role in their children's online activities and interests. Children under 13 should not use the Services. If we learn that we've collected personal data from a child under those ages, we will take reasonable steps to delete it.

Parents who believe that goFLUENT may have collected personal data from a child under the age of 13 can submit a request that it be removed to [privacy@gofluent.com](mailto:privacy@gofluent.com)

## 23. Force Majeure Event

goFLUENT will not be liable or responsible for any failure to perform, or delay in performance of, any of its obligations that is caused by events outside its reasonable control. A Force Majeure Event includes any act, event, non-happening, omission or accident beyond Company's reasonable control including, but not limited to, restrictions of law, regulations, orders, or other governmental directives, labor disputes, acts of God, third party mechanical or other equipment breakdowns, terrorist attacks, fire, explosions, fiber optic cable cuts, interruption or failure of telecommunications or digital transmission links, Internet failures or delays, storms or other similar events.

## 24. Severability

If any provision of these Terms are held by a court of competent jurisdiction to be contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of these Terms will remain in full force and effect.

## 25. Survival

All provisions relating to proprietary rights, confidentiality, disclaimer of warranty, indemnification, and limitation of liability, shall survive the expiration or earlier termination of these Terms.

## 26. Governing Law

These Terms are governed by the laws of Switzerland without reference to its choice or conflicts of law principles.

## 27. Notice for EU/EEA Learners and Candidates

By using our Services you consent to store your personal data on servers located in the EU/EEA. goFLUENT reserves a right to process your personal data in countries outside EU/EEA, where there are appropriate safeguards in place pursuant to Article 46 of the GDPR.

## 28. Legal Actions and Notices

Notices or questions pertaining to the Terms should be made via email to [legal@gofluent.com](mailto:legal@gofluent.com), or by mail to: goFLUENT Group SA, Attn: Legal Department, Route de Pré-Bois 20, 1215 Geneva, Switzerland.