



Platform Terms of Use

(Version: 1.1)

1. Introduction

You wish us to provide platform services to you. This order contains the terms between us and you relating to the provision of platform services. We have developed or obtained the rights to provide the solution. We make the solution available in an application service provider environment through which we provide platform services (including the hosting, maintenance and support of the solution). The provision of the platform services enables you (or your authorised users) to access the solution and make use of the solution services. You wish to make use of the platform services.

2. Definitions

In this order:

administrator means an authorised user that you employ who is authorised to provide, manage and administer certain services;

application means any application that we may have developed for you under a separate order;

authorised user means you or a user in your employ where you are a juristic person, who has been assigned credentials;

client software means any software set out in this order, in object code form, which is loaded onto any hardware device that is required to access the solution;

consumables means any consumable items we use to fulfil our obligations under the agreement including stationery and storage media;

credentials means a unique username and password that has been assigned to an authorised user;

critical bug means any bug, problem, error or difficulty experienced with the operation of the thing being supported and maintained that threatens your ability to generate revenue, and includes a web application being down or the system not being accessible;

enhancement means any minor change to the software as a service that:

- does not require any extensive business requirements analysis, functional specification or wire framing; and
- has a total development time of not more than two business days;

HTML Application (HTA) means a Microsoft Windows program whose source code consists of HTML, Dynamic HTML, and one or more scripting languages;

non-critical bug means any bug, problem, error, or difficulty experienced with the operation of the thing being supported and maintained that does not threaten your ability to generate revenue;

platform means the EDGE Learning Media educational platform, which enables the provision of the solution services by us through the mechanism of the solution and includes:

- any one or more modules; and
- means all upgrades and updates;
- means any related platform documentation;

platform documentation means any instructional or supplementary materials related to the platform that are provided by us to you pursuant to this order, but only to the extent that we, in our sole discretion, make the materials generally available for distribution to our clients generally;

platform services means the solution services, the hosting services, and the support services as set out in this order;

project means any scoped project to make changes to the software as a service;

software as a service means the ability we provide to you to use our software running through the Internet as a service;

solution means the system, made up of the platform or application, located at the website, and through which you can access the solution services;

solution services means the services we provide or make available to you through the mechanism of the solution and you accessing and using the platform;

third party software means all third party software owned by a third party but legally licensed to us for use in providing the services;

use parameters means the parameters of use of the solution;

updates means any updates, patches, corrections, by-passes or revisions to the software as a service, excluding upgrades, which add no functionality to the system that are provided to you under this order;

website means the website at the domain as may be designated by us in writing from time to time that provides you with access to the software as a service.

3. Duration

3.1 **Duration.** The order will commence on the effective date as outlined in the proposal or commercial terms and will continue until the termination date as outlined in the proposal or commercial terms or indefinitely if you place an order with us online. It will be automatically renewed for subsequent periods of 12 months, subject to the right of either party to terminate this order at the end of any period on 90 calendar days prior written notice to the other party.

3.2 **Termination sum.** On termination of this order during the initial period by you for any reason other than due to a breach or default by us,

you will pay us, as a genuine pre-estimate of damages, a termination sum equal to the total fees set out in this order that would have been due and payable to us had this order not terminated.

4. Solution services

4.1 Service description.

- **Solution services.** The solution will provide the services or enable you to use the functions that are available through the solution from time to time as described in the functional specifications signed in writing by the parties.
- **Access.** We will provide you with access to the solution via the website or application. Only authorised users may access the solution. You are responsible for ensuring that authorised users who are no longer authorised to use the solution do not use the solution. You and the authorised users will at all times be responsible for the confidentiality and safekeeping of the user ID and password. We will not be liable for any loss or damage attributable to you by the authorised user's failure to maintain the confidentiality of the user ID and password.
- **Data repositories and back-up storage.** Data, which is stored in the data repositories available online through the solution services will be maintained by us for a period of the then current month and for one month thereafter in production.
- **Disaster recovery.** We will determine and maintain a disaster recovery facility and a disaster recovery plan that will be made available to you upon request. In the event of a disaster, we will implement the disaster recovery plan.

4.2 Customer responsibilities.

- You will not provide access to any person other than an authorised user and comply with all statutory or regulatory restrictions, which may be applicable to you in utilising the solution or any information or data in relation to us.
- You may write a computer program that interfaces with the solution. We may change or republish APIs for the solution from time to time. It is your responsibility to ensure that any decisions you make are compatible with the APIs then in use. We may change or remove features or functionality of the API at any time.
- You are responsible and we are not liable if a third party service provider to us suspends our service due to your use of the solution.

4.3 Specific exclusions.

- **Access.** We will not be responsible or liable for providing or procuring access from your authorised users or client software to the solution, including:
 - Internet access, telecommunications, security, satellite or other infrastructure required to access the solution; and
 - any interface of ours or yours or integration with any existing solution of ours or yours. Where any interface or integration is identified, the interface or integration or any related services will be considered other services and will be dealt with under a separate order; and
 - software enhancements or modifications, other than limited changes to screens and menus to include your branding.
- **Customer data.** The solution services do not include any services in connection with the compilation, creation, conversion or migration of your data, or your test data.
- **Failure to provide information.** Any delay or failure by you to provide any information, details or equipment as required in the order to enable us to provide the solution services may result in additional charges.

5. Hosting services

5.1 Service description.

- **Platform.** The hosting, maintaining and administration of the platform by us on a server that is controlled by us or on our behalf.
- **Management of the solution.** The management of the solution by us.
- **Updates.** We undertake promptly to install and implement any updates.
- **Upgrades.** We will configure, install and implement any upgrades that are compatible with the solution within a reasonable time after they are made generally available to our other customers to allow for acceptance testing with your application.
- **Data repositories and back-up storage.** Data that is stored in the data repositories available online through the solution will be backed up by us. At your request and your additional cost, we agree to provide you with copies of the data processed by the solution that relates to you in a non-rewritable format.
- **Disaster recovery.** We agree to maintain a disaster recovery plan that will be made available to you upon request. In the event of a disaster, we will implement the disaster recovery plan.
- **Reporting.** We will provide you with monthly uptime reports.

5.2 Exclusions and limitations.

- **Testing environment.** We will provide access to a testing environment established and maintained by us for an additional fee to be agreed between the parties in writing. The hosting services will not apply to the testing environment.
- **Bandwidth.** We will stipulate any limit on bandwidth from time to time.
- **Storage space.** We may stipulate a limit on storage space from time to time.

6. Accounts and security

6.1 **Credentials.** You will be required to select your credentials when registering which will enable you to sign into your account on our website. If you are a juristic person, you will have to designate specific authorised users and an administrator. Only you may use your credentials. We do not permit multiple people to share credentials.

6.2 **Choice of password.** You must choose a password. We may prescribe requirements for this password on our website, including that it must be of at least a certain length and must contain at least one of certain types of characters. Please do not use derivatives of your username and common character sequences such as "123456". Also don't use personal details such as your spouse's name, car registration number, ID number, passport number and birthday, unless accompanied by additional unrelated characters.

6.3 **Access.** Only authorised users may access the software as a service by using their credentials.

6.4 **Authorised user obligations.** Each authorised user agrees:

- to keep their credentials secure;
- not to disclose their credentials to any other person;
- not to provide access to any other person;
- to secure all data under their control;
- not to interfere with the functionality or proper working of the website;

- not to introduce any viruses, worm, logic bomb, trojan, wares, potentially unwanted program (PUP) or other malicious software into the website; and
- not use the service for direct marketing, spamming, unsolicited communications, or other advertising or marketing activities prohibited by applicable law.

6.5 **Administrator obligations.** The administrator agrees:

- not to use bots or other automated methods to register authorised user accounts;
- to only create one account per email address per authorised user;
- to make a list of all authorised users available to us on request;
- to immediately notify us in writing of any lost credentials by an authorised user;
- to ensure that authorised users who are no longer authorised to use the service do not use the service;
- to notify us of any known breach of our privacy policy;
- to take reasonable measures to ensure that authorised users do not introduce any viruses, worm, logic bomb, trojan, wares, potentially unwanted program (PUP) or other malicious software into the service.

6.6 **Your instructions.** Each authorised user is responsible and liable for activities that occur under their account. You authorise us to act on any instruction given by an authorised user, even if it transpires that someone else has defrauded both of us, unless you have notified us in writing prior to you acting on a fraudulent instruction. We are not liable for any loss or damage suffered by you attributable to an authorised user's failure to maintain the confidentiality of their credentials.

6.7 **Monitoring security.** We reserve the right to take whatever action we deem necessary to preserve the security and reliable operation of our software as a service and you undertake that you will not do or permit anything to be done which will compromise our security. If:

- we are unable to verify any information you provide to us; or
- we reasonably believe that your activities pose a significant credit or fraud risk to us or our other customers, or may cause financial loss or legal liability for us, our other customers, or you

then we shall be entitled to suspend or terminate your use of the website.

7. Support

7.1 **Help desk.** We will provide a help desk during business hours [insert specific hours] for service requests.

7.2 **Initial requests.** You must record and diagnose initial service requests reported to you. You will resolve user errors and handle information requests.

7.3 **Research.** You will, before logging a service request with us, thoroughly research any problem encountered and will make sure that all the details relating to the problem are available to disclose to our help desk.

7.4 **Designated personnel.** Only your designated personnel may make support requests to the help desk.

7.5 **Service request.** Your support resource will place a service request on our help desk, stating the necessary information. The service request will be made in writing, either via email or a telephone call that is confirmed in writing.

7.6 **Evaluate.** Upon receipt of the service request, our help desk will evaluate the service request and communicate its appraisal to you. If a service request does not fall within the scope of the services, then the request will be added to your wish list and dealt with in a separate order.

7.7 **Resolution.** Once a service request has been resolved, our help desk will inform your support resource. Your support resource will within a reasonable period thereafter (having regard to when the problem would reasonably be detected by you again) inform us through our help desk whether the correction was satisfactory to you or not. If no notice is received then the problem will be deemed to have been corrected to your satisfaction.

8. Service levels

8.1 **Definitions.** For the purposes of this clause:

- **response time** means the time elapsed from receiving the service request, to identify the problem or in the case of third party fault the specific cause or likely cause. It does not include the time to fix the problem as this will depend on the cause of the problem itself, which may be simple or complex; and
- **time to fix** means the time taken to fix the problem or provide the service requested, which excludes time that elapses while we wait for a response from you.

8.2 We will use all reasonable efforts to make the platform available 24 hours per day, seven days per week and 365 days of each year, as specified in this order.

8.3 From time to time, it may be necessary for us to schedule routine maintenance of the platform. Therefore a monthly system downtime of seven hours to perform routine maintenance is reserved for each server. We will use all reasonable efforts to minimise the impact of scheduled routine maintenance on the software as a service (including typically performing the scheduled routine maintenance from midnight Sunday through to Monday morning). If the scheduled maintenance is to endure for a period longer than 120 minutes then we will provide you with prior notice. We may perform emergency maintenance when necessary.

8.4 **Categories of service request.**

Cat.	Description	Response time	Time to fix
Level 1	It is inoperable and it threatens your ability to generate revenue. You are losing money and there is no workaround. Includes a critical bug.	2 business hours	1 business days
Level 2	Performance (throughput or response) is substantially degraded under reasonable loads, such that there is a severe impact on its use and it threatens your ability to generate revenue. It is usable but materially incomplete - one or more mainline functions or commands are inoperable or incomplete and it threatens your ability to generate revenue. You are losing money, but there is a workaround.	8 business hours	3 business days

Level 3	It is usable or it does not threaten your ability to generate revenue, but there is a functional deficiency that does not fall within Level 1 or Level 2. Includes an update, support, and non-critical Bugs.	24 business hours	5 business days
Level 4	Enhancements.	Next meeting	Next scheduled release

The parties may amend any service level in writing from time to time.

8.5 **Customer Responsibilities.**

- To submit service requests to our help desk the following information is required and must be provided:
- your identification;
- your (and authorised user's if necessary) contact name and contact numbers;
- time of original failure;
- summary of current solution operational status;
- detailed description of the nature and symptoms of the fault;
- detailed description of preceding fault isolation activities; and
- to submit service requests singly, so that individual calls can be given unique service request identifiers for tracking.
- To inform our help desk of any significant solution events that could affect problem resolution. For example, any changes to the equipment or client software.

8.6 **Exclusions.** We will not be responsible or liable for:

- the maintenance of the equipment or client software, operating solution and infrastructure, including operational support and maintenance of third party software;
- providing support directly to authorised users, which will include telephone support directly to users;
- the maintenance of any solution other than the solution;
- the correction of defects caused by the use of the solution by you in an incorrect manner;
- the correction of defects caused by the use of the computer programs and applications not compatible with the solution;
- the training of your staff;
- the correction of errors caused by a defect in the equipment; or
- the diagnosis or correction of errors arising in your solution.

8.7 **Customer data.** The support services do not include any services in connection with the compilation, creation, conversion or migration of your data or your test data.

9. Excluded services

9.1 **Consumables excluded.** All consumables are excluded from the services and will be for your account.

9.2 **Projects not covered.** This order does not cover any projects.

9.3 **Additional services.** If you require excluded or additional services, the parties will follow the procedure set out in the customer relationship terms under the heading orders. Any excluded or additional services will be provided under a separate order. These services will be quoted and billed for separately under a separate order.

10. Fees

10.1 **Monthly.** You will pay us the fees as set out in the proposal and commercial terms, or you will pay us as outlined in the invoice.

10.2 **Fee covers solution.** The fee will cover the platform services and not any other software, including any database.

10.3 **Fee increase.** We will be entitled to increase the fee once during each successive period of 12 calendar months calculated from the effective date, subject to 14 calendar days' prior written notice to you and not in excess of twice the Consumer Price Index, all urban consumers and other goods and services as published by the SA Department of Economic Affairs during the previous calendar year.

10.4 **Additional fee.** If, after the effective date, the fee payable by you increases as a result of an increase in the solution services for whatever reason, including you electing to use additional services, you will pay us the additional fee agreed by the parties as being applicable to the solution services.

11. Other charges

We will be entitled to charge you additional charges on a time and materials basis for time that in our reasonable opinion we spend in relation to or on account of any of the following:

- data restoration or re-establishment or other assistance required by you that does not result from inherent errors in the solution;
- unauthorised use of the solution;
- providing the support and maintenance services outside the business hours;
- providing any other services, including services or work required as a result of any of your modifications to the solution in breach of the provisions of this order;
- providing services to you in circumstances where any reasonably skilled and competent solution administrator would have judged your request to have been unnecessary.

12. Restrictions

You will not:

- except as specifically provided in this order, copy, translate, modify, adapt, decompile, disassemble or reverse engineer the platform (not your application);
- merge or combine the whole or any part of the solution with any other software or documentation without our prior written consent for as long as this order is effective;
- grant any third party direct access to the solution, including by way of lease, download, software as a service or as an application, bureau or on-demand software service provider or any other method;
- use the solution to provide a service to any third party similar to the solution services;
- lend or transfer any part of the solution to any third party.

13. Termination of the services

We may immediately terminate this agreement at any time by giving you notice in writing if:

- any software license agreement with a key vendor changes materially, is revoked or terminated; or
- our relationship with one of our key technology goods or service providers terminates or requires a change in the way we provide the software or other technology as part of the services.

14. Effect of termination

14.1 **Data deletion.** On the deactivation or deletion of your account:

- the agreement will terminate;
- your access rights will immediately cease to exist; and
- all your data will be erased;

unless we have agreed to render post termination assistance to you in writing.

15. Other services

If you require any services other than the platform services, then the other services will be provided subject to the terms of a separate order that will be concluded between the parties.

16. Management of platform services

16.1 **Modification of platform services.** Despite anything to the contrary in the agreement, we may modify, amend, enhance, update or provide an appropriate replacement for any of the platform services, or any element, at any time; provided that we will not reduce the functionality, availability or reliability of the platform services.

16.2 **Management of resources.** We will have the right to manage all resources used in providing the platform services that we schedule on a project by project basis.

17. Intellectual Property

17.1 **Our copyright.** We retain all our copyright and intellectual property rights to any of the systems that are used, including the CMS, ELE and HTA. Any enhancements to these systems remain the property of EDGE Learning Media.

17.2 **Your copyright.** Any of your existing copyright protected material captured into our CMS will remain your property.