



# TERMS

## Terms of Service for The Engine Shed (UK) Ltd, v2.0 June 2018

This document sets out the terms and conditions between The Engine Shed (UK) Limited, a company incorporated in England and Wales (Registered Number 6823162) whose registered office is at 20b Hillgate Place London SW12 9ER ("TES") and the Customer (as defined below) in relation to the provision of web-based services and/or website hosting services. It applies in place of any earlier agreement or understanding between the parties.

### 1. Definitions

In these terms, unless the context otherwise requires, the following expressions have the following meanings:

**"Affiliate"** means a company that controls alone or with others, or is controlled by or under common control with TES where control means ownership or control of at least fifty per cent (50%) of the issued voting stock;

**"Agreement"** means together these Terms, the Order and the SLA;

**"Confidential Information"** means all information received by one party from the other which is expressly marked as confidential or which is manifestly confidential or which is confirmed in writing by the discloser to be confidential within 7 days of its disclosure;

**"Controller"** has the meaning given to it in Article 4(7) of the GDPR: any natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data

**"Customer"** means the person or company to whom the Services are supplied;

**"Customer's Equipment"** means Customer's own computer system including software and communications lines, (which includes any public lines required by the Customer to access the Services);

**"Customer's Material"** means any and all data and/or materials supplied by Customer to TES in connection with the Services;

**"Customer's Personal Data"** means personal data as defined in Section 1(1) of the Data Protection Act 1998 forming part of Customer's Material;

**"Data Protection Laws"** means European (EU) Data Protection Laws and, to the extent applicable, the data protection or privacy laws of any other country, all as amended, replaced or superseded from time to time.

**"Data Subject"** means the individuals whose Personal Data is processed by TES on behalf of the Client pursuant to the terms of this Agreement.

**"Effective Date"** means the date that TES accepts the Customer's Order for Services as indicated on such order;

**"EU Data Protection Laws"** means EU Directive 95/46/EC, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR.

**"Fees"** means TES's charges for the Services;

**"Former Users"** means a person who has ceased: (i) to be a Customer or (ii) to be an employee of a Customer; or (iii) to perform the same role or function for their Customer employer such that their access to the Service is no longer necessary;

**"GDPR"** means Regulation (EU) 2016/679, the European General Data Protection Regulation, together with any additional implementing legislation, rules or regulations issued by applicable supervisory authorities.

**"Intellectual Property Rights"** means, without limitation, all present and future rights title and interest (as the same may be extended or amended) throughout the world in all forms of intellectual property including all, trade marks, service marks, trade and business names, domain names, goodwill, registered and unregistered designs, patents, copyrights, database rights, topography rights and rights in knowhow and trade secrets, whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing together with the right to bring legal proceedings to enforce any such rights and all rights of registration, extension and renewal thereof and any improvements to or modifications of any of the foregoing;

**"Minimum Period"** means the period of the contract as specified in the signed order, taken from the Effective Date;

**"Notified Purposes"** means the specified and lawful purposes for which the Customer has notified under the Data Protection Act 1998 in respect of the Customer's Personal Data;

**"Order"** means an order for the Services placed by a prospective Customer and accepted by TES whether made on paper or by such electronic means as TES may require;

**"Personal Data"** has the meaning given in Article 4(1) of the GDPR: any information relating to an identified or identifiable natural person who is a resident of the European Economic Area ("EEA") or is otherwise subject to the GDPR.

**"Personal Data Breach"** has the meaning given in Article 4(12) of the GDPR: a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed.

**"Processor"** has the meaning given to it in Article 4(8) of the GDPR: a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller.

**"Processing"** has the meaning given to it in Article 4(2) of the GDPR: any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

**"Prohibited Activities"** means: (i) monitoring or merely observing the availability of the System, its performance or functionality; (ii) any other System benchmarking activity; (iii) offering or intending to offer services that do or are intended to compete with the Services; (iv) obtaining, or attempting to obtain access to or use of the System or Service by rearranging, tampering with, or making connection with any facilities of TES, or by any trick, scheme, false representation or false credit device, or by or through any other fraudulent means or devices used for such purposes, with intent to avoid payment, in whole or in part, of Fees that would otherwise be payable; (v) attempting to, or actually obtaining, accessing, altering, or destroying the data files, programs, procedures and/or information of TES or of a Customer; (vi) accessing or using the System or Services in such a manner as to interfere unreasonably with the enjoyment by other Customers and/or Users of the System and/or Services.

**"Services"** means such of the services listed in the Order as are selected by the Customer to be supplied by TES pursuant to the Agreement;

**"SLA"** means the version of the Service Level Agreement current as at the Effective Date located at the foot of this document.

**"Subprocessor"** has the meaning given to it in Article 4(8) of the GDPR: any natural or legal person, public authority, agency or other body which processes personal data on behalf of the Processor (including any affiliate of the Processor).

**"System"** means the hardware and software used by TES to provide the Services;

**"Terms"** means the version of these terms and conditions prevailing at the Effective Date;

**"Third Party Property"** means any part of the Customer Material owned or controlled by a third-party;

**"Transfer"** means to disclose or otherwise make Personal Data available to a third party (including to any affiliate or Subprocessor) either by physical movement of the Personal Data to such third party or by enabling access to the Personal Data by other means.

**"User"** means any person who is a Customer or who is an employee of a Customer and who is authorised by TES to access the System in order to use the Services;

**"User Licence"** means a permission from TES to access the System in order to enjoy the Services.

### 2. Supply of the Services

2.1. TES shall supply the Services in accordance with the Agreement.

2.2. The System must not be accessed and/or used by: (i) third parties who are not Customers or Users; (ii) Customers and/or Users for any purpose other than to receive the Services. Customers, Users and all third parties are expressly prohibited from performing any of the Prohibited Activities whilst or for the purposes of accessing and/or using the System and/or receiving the Services or otherwise.

2.3. The Customer shall not licence, sublicense, sell, resell, transfer, assign (except as provided in Clause 2.4 below), distribute or otherwise make the Service available to any third party.

2.4. User licences must not be shared or used by more than one person, but may be assigned from time to time from Former Users to individuals replacing them in their employee role.

2.5. TES reserves the right to control and/or direct access to and use of the System and Services by any and all means including technical measures with all of which Customers and Users shall comply. TES may make operational changes to the Services that it deems necessary without prior notice provided they do not diminish the nature of the Service.

2.6. TES has obtained and shall use its best endeavours to ensure that it retains all necessary consents, licences or certifications required for the provision of the Services.

2.7. TES shall use its reasonable endeavours to provide the Service in accordance with the applicable SLA.

2.8. TES shall have the right to suspend access to the System and/or Services by any and all User Licences and may, either on its own reasonable judgement, or on request by the Customer, promptly suspend availability of the Services online to some or all Customers and/or Users whilst they are not current in the payment of Fees due. 2.9. TES shall maintain reasonable safeguards against the destruction, loss or unauthorised alteration of the Customer's Material, and shall maintain reasonable security procedures to restrict the destruction, corruption or unauthorised access to the Customer's Material, including back up material.

2.10 The Services include up to four gigabytes of online storage and associated backup. TES shall use reasonable endeavours to notify the Customer when 90% of this allocation is exceeded. Additional storage over this allocation may be purchased subject to the prior payment of Fees charged at TES's then prevailing applicable rate.

2.11 Subject to applicable laws, regulations and policies, TES shall retain Customer Personal Data for an indefinite period for a nominal fee subject to Customer being current at all material



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times in the payment of all fees due and owing to TES. Customer hereby indemnifies and shall hold TES harmless from and against any and all claims, orders, fines and penalties caused by TES's full and proper compliance with Customer's instructions in respect of Customer Personal Data. If requested by Customer to do so within 30 days of termination or expiry of the Service, TES shall promptly return Customer Materials including Customer's Personal Data and backups unless and until any Fees remain unpaid thirty days or more after becoming due. In the absence of such request, or in the case of fees being due but unpaid for more than 90 days, TES shall be entitled to destroy the same at any time thereafter without notice.

### 3. Conditions of use of the Services by the Customer

3.1. The Customer will be responsible for ensuring Customer's Equipment is appropriate to enable its full access and use of the System and Services and for obtaining and maintaining the Customer's Equipment. TES shall have no responsibility for or liability with respect to the Customer's Equipment.

3.2. The Services are supplied subject to the condition that the Customer and/or Users shall not perform any Prohibited Activities.

3.3. The Customer acknowledges that neither the Internet nor the System is secure and accordingly TES cannot guarantee the privacy, security or integrity of any of the Customer's Material.

3.4. The Customer and Users shall not:

3.4.1. intentionally send or allow others to send any message, e-mail or other communication which is likely to cause annoyance to others not having rights to privacy (such as, for example, Customers or third parties being corporate entities), or which under applicable law, international conventions, codes or regulations:

3.4.1.1. is in breach of those laws, codes or regulations;

3.4.1.2. may incite or facilitate violence, sadism, cruelty or racial hatred prostitution, bestiality, rape or paedophilia;

3.4.1.3. is pornographic, obscene, indecent, abusive, offensive, menacing, misleading, dishonest, or untruthful;

3.4.1.4. infringes any other rights of any third-party including without limitation, in, to or over their person or property, (whether real or intellectual), their privacy (including without limitation, by sending unsolicited e-mails or breaching their rights in to or over their personal data);

3.4.2. create and/or introduce any virus, worm, trojan horse, or other destructive or contaminating program or advise any other party how to nor induce or encourage any third-party to do so;

3.5. The Customer shall apply an up-to-date virus-scanning program to all Customer's Material.

3.6. The Customer shall maintain confidentiality of its login names, passwords and all Confidential Information.

3.7. In the event of a claimed, actual or threatened breach by Customer of its obligations under clauses 3.4 and/or 7.1 TES shall have the right in its absolute discretion and without giving notice to the Customer and without liability for doing so, to suspend availability of the Service and/or remove Customer Materials from the System, pending resolution to its satisfaction of such claimed, actual or threatened breach.

### 4. Indemnity

4.1. The Customer shall indemnify TES against any claims, proceedings, losses, liabilities, damages charges and expenses (including reasonable costs) of whatever nature arising out of or in connection with any claim or action brought or threatened against TES relating to a breach by the Customer (including a breach by its Users) of Clauses 2.2, 2.3, 2.4, 3.4, 6.1, 9 and 10 of the Agreement provided however that TES:

4.1.1. shall not make any admissions without the Customer's

prior written consent;

4.1.2. shall allow the Customer to conduct and/or settle all negotiations and litigation resulting from such claim or action on condition that such settlement does not impose any obligation on or cause any loss or damage to TES; and

4.1.3. shall not take any step (or omit to take any step) which would prejudice the Customer's defence of the claim or action subject to the Customer acting promptly and reasonably in its conduct of any defence and/or settlement.

4.2. TES shall, at the request of the Customer, afford all reasonable assistance with such negotiations or litigation and shall be reimbursed by the Customer for any reasonable legal costs, disbursements and out of pocket expenses incurred in so doing.

### 5. Payment

5.1. The Customer shall pay to TES the Fees set out in the Order.

5.1.1 The Order may set out a full rate of Fees and a discounted rate of payment of Fees for so long as the Fees are paid by direct debit, called the 'Direct Debit Rate', and in the event that the Customer does not pay any instalment of any Fee due under this Agreement or the SLA on the due date by direct debit (for example because the direct debit is refused by the Customer's bank or the Customer has cancelled it) that instalment shall be forthwith due and payable at the full rate.

5.1.2. Notwithstanding that the Fees set out in the Order may be expressed to be payable on a monthly basis, the Customer acknowledges that the total Fees payable during the Minimum Period have been calculated by reference to the cost to TES of setting up the Services, and if during the Minimum Period the Customer is in default of payment of any sum due under this agreement for more than 30 days then the aggregate of all Fees set out in the Order and expressed as payable within the Minimum Period shall become immediately due and payable and shall be recoverable from the Customer as a debt.

5.2 The Customer shall pay to TES any charges payable under clause 6 of the SLA (Fair Use of Support Services) within 30 days of receiving an invoice for them.

5.3. Fees are expressed exclusive of Value Added Tax, which shall be charged and payable in addition to the Fees.

5.4. Any late payment shall be subject to any costs of collection and shall bear interest at a rate calculated daily of 1% per month on the amount owed for the period commencing when it first became due until paid.

### 6. Intellectual Property Rights

6.1. TES hereby grants to the Customer and the Customer hereby accepts a non-exclusive, non-assignable (except as provided in clause 2.4 above), non-sub-licensable, non-perpetual, revocable, limited right to permit its Users access to and use of the System in order to receive the Services for so long as they hold a valid and subsisting User Licence in accordance with the Agreement. The Customer hereby acknowledges that all rights, title and interest including all Intellectual Property Rights in, to and over the System and Services belongs to and shall remain vested in TES throughout the world and that Customer and Users shall not acquire any right title or interest in, to or over the same except for the licence expressly granted by this clause 6. The Customer shall not copy, rent, lend, hire, distribute, modify, sell any part of the System nor offer to do any of the foregoing and except as permitted by applicable law shall not make any backups of any software forming part of the System nor reverse engineer, disassemble, or decompile it.

6.2. All Intellectual Property Rights owned or controlled by TES not expressly granted by the Agreement are hereby reserved to TES.

6.3 TES acknowledges and agrees that the copyright, trademarks, trade names, patents, database rights and all other Intellectual Property Rights of Customer shall remain vested in the Customer and nothing in the Agreement shall operate as an

assignment or sub-licence to TES of such Intellectual Property Rights and that all Intellectual Property Rights of Customer not expressly granted by the Agreement are hereby reserved to Customer.

6.4 TES shall not: (i) copy nor distribute Customer Materials except for the purposes of performing its obligations under its agreement with Customer; (ii) modify Customer Materials except technically for System purposes; (iii) rent, lend, hire nor sell the whole or any part of the Customer Materials at all.

### 7. Warranties

7.1 TES warrants that it has all rights necessary to supply the Service. The Customer warrants that it has obtained all necessary consents, approvals and licences for the use of Third Party Property and that the use of such Third Party Property will not violate any rights of a third party.

7.2 CUSTOMER ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE EXPRESS WARRANTY PROVIDED IN THIS AGREEMENT, THE SYSTEM AND SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. TES DOES NOT MAKE ANY IMPLIED, STATUTORY OR OTHER EXPRESS WARRANTIES, CONDITIONS, OR REPRESENTATIONS WITH RESPECT TO THE SYSTEM OR SERVICES OR OTHERWISE REGARDING THESE TERMS, WHETHER ORAL OR WRITTEN, WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE OR ACCURACY, MERCHANTABILITY, OR NON-INFRINGEMENT, ARE EXPRESSLY EXCLUDED AND DISCLAIMED. TES DOES NOT REPRESENT THAT THE SYSTEM OR SERVICES WILL SATISFY CUSTOMER'S REQUIREMENTS OR THAT EITHER IS WITHOUT DEFECT OR ERRORS.

### 8. Exclusions and Limitations of Liability

8.1. Nothing in the Agreement shall operate so as to exclude the liability of TES for fraud, including fraudulent misrepresentation or for death or personal injury caused by negligence.

8.2 Subject to Clause 8.1, the Customer acknowledges that TES does not operate or exercise control over, and TES accepts no responsibility for, loss or damage to the Customer's Material.

8.3 Subject to Clause 8.1, TES shall pay compensation to the Customer for failure of the Services in accordance with the SLA and such payment shall be Customer's only remedy in respect thereof.

8.4. Subject to Clause 8.1, except as expressly specified in the SLA, to the fullest extent permitted by applicable law TES hereby excludes all liability to Customers, Users and any third parties for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with the supply of Services, or access to or use of the System, any other software or means of communication.

8.5. Subject to Clause 8.1, notwithstanding anything else in the Agreement, TES shall not be liable to the Customer for loss of profits or contracts, loss of goodwill or other special, indirect or consequential loss whether arising from negligence, breach of contract or howsoever caused.

8.6. Subject to Clause 8.1, in the event that any exclusion contained in the Agreement shall be held to be invalid for any reason and TES becomes liable for loss or damage that it may otherwise have been lawful to limit, such liability shall be limited to the fees paid by the Customer in the calendar year in which the liability occurred.

### 9. Confidentiality

TES and the Customer shall treat as confidential all Confidential Information and shall not use such Confidential Information for any purpose other than the performance of the Agreement nor divulge it to any person (except to such party's own employees and then only to those employees who need to know the same) without the disclosing party's prior written consent provided that the obligation created by this Clause shall not apply to information that is or becomes part of the public domain through



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no act or omission of the receiving party or was in the receiving party's lawful possession prior to the disclosure and had not been obtained by the receiving party either directly or indirectly from the disclosing party or is lawfully disclosed to the receiving party by a third party without restriction on disclosure or is required to be disclosed pursuant to law or the order of a court or governmental authority. Each party shall ensure that its employees are aware of and comply with the provisions of this Clause.

## 10. Data Processing

To the extent that TES acts as a Processor of any Personal Data that the Customer provides to TES, TES agrees as follows:

10.1 The Customer, as Controller, appoints TES as a Processor to process the Personal Data described in the Schedule to this Agreement ("the Schedule") that is the subject of the Agreement. TES shall process the Personal Data in compliance with the GDPR and all applicable Data Protection Laws. TES shall implement appropriate technical and organisational measures to secure that its Processing of Personal Data will meet the requirements of the GDPR and all applicable Data Protection Laws. TES shall maintain the records required by Article 30(2) of the GDPR, and (to the extent they are applicable to TES's activities for the Customer under the Agreement) TES shall make them available to the Customer upon request.

10.2 TES shall process the Personal Data only to the extent, and in such manner as is necessary to perform its obligations under the Agreement and in accordance with the Customer's written instructions, including with regard to any Transfers (the "Permitted Purpose"), unless otherwise required by law (in which case, TES shall provide prior notice to Customer of such legal requirement, if it is lawful to do so). TES shall not process any Personal Data for any other purpose. TES shall inform the Customer if, in its opinion, an instruction infringes the GDPR or other Union or Member State data protection provisions.

10.3 The Schedule sets out information about the details of processing of the Personal Data as required by the GDPR. The Customer may make amendments to the Schedule by written notice to TES from time to time as the Customer reasonably considers necessary to meet those requirements. Nothing in the Schedule (including as amended pursuant to this clause) confers any right or imposes any obligation on any party to this Agreement.

10.4 TES shall only Transfer the Personal Data (or permit the Personal Data to be transferred) to countries outside of the United Kingdom or the European Economic Area, if it has taken such measures as are necessary to ensure the Transfer is in compliance with the applicable Data Protection Laws. The Customer acknowledges and agrees that TES shall not be responsible for any Transfer of Personal Data which occurs when an authorised user accesses the software through a browser from a country or territory outside the United Kingdom or the European Economic Area.

10.5 TES shall not engage any Subprocessor to process any Personal Data without prior specific or general written authorisation of the Customer, which authorisation shall not be unreasonably withheld or delayed. The Customer hereby provides general authorisation to TES to appoint (and permit each Subprocessor appointed in accordance with this clause to appoint) Subprocessors, and to engage any data centres for hosting services, as a Subprocessor of any Personal Data for which TES is deemed a Processor. TES shall inform the Customer of any intended changes concerning the addition or replacement of other Subprocessors and give the Customer the opportunity to object to such changes. TES may continue to use Subprocessors already engaged by TES as of the date of this Agreement, subject to TES meeting the obligations set out in this clause. The data protection obligations in this Agreement shall be imposed upon any Subprocessor. TES shall remain liable for any breach of this Agreement that is caused by an act, error or omission of its Subprocessor.

10.6 TES shall ensure that access to Personal Data is limited to those of its staff, agents and Subprocessors who need access to the Personal Data to meet TES's obligations under this Agreement and that all persons authorised to process the Personal Data are informed of the confidential nature of the Personal Data and have entered into written agreements protecting the confidentiality of such information, to the extent required by the nature of the services provided.

10.7 TES shall implement appropriate technical and organisational measures to protect the Personal Data (i) from accidental or unlawful destruction, and (ii) loss, alteration, unauthorised disclosure of or access to the Personal Data (a "Personal Data Breach"). Such measures shall take into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons.

10.8 Taking into account the nature of the processing, TES shall reasonably and timely assist the Customer, at the Customer's expense and by appropriate technical and organisational measures, to enable the Customer to respond to: (i) any request from a Data Subject to exercise any of its rights under applicable Data Protection Laws (including its rights of access, correction, objection, erasure and data portability, as applicable), and (ii) any other correspondence, enquiry or complaint received from a data subject, regulator or other third party in connection with the processing of Personal Data. In the event that any such request, correspondence, enquiry or complaint is made directly to TES, TES shall promptly inform the Customer, providing details of the same. TES will promptly and thoroughly investigate all allegations of unauthorised access to, use or disclosure of the Personal Data. TES shall provide the Customer, on request and at the Customer's expense, such other assistance as may reasonably be required by the Customer to comply with its own obligations under applicable Data Protection Laws.

10.9 If TES believes or becomes aware that its processing of Personal Data is likely to result in a high risk to the data protection rights and freedoms of Data Subjects, it shall inform the Customer and provide the Customer with reasonable and timely assistance, at the Customer's expense, as the Customer may require in order to conduct a data protection impact assessment and, if necessary, consult with its relevant data protection authority.

10.10 In the case of any accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Personal Data resulting from any act or omission of TES or any of its Subprocessors (a "Personal Data Breach"), TES shall:

(a) notify the Customer without undue delay after knowledge of the Personal Data Breach; and

(b) provide the Customer with sufficient information and cooperation in order for the Customer to fulfil its data breach reporting obligations under (and in accordance with the timescales required by) applicable Data Protection Laws; and

(c) take reasonable commercial measures and actions as are necessary to remedy or mitigate the effects of the Personal Data Breach and shall keep the Customer informed about all developments in connection with the Personal Data Breach.

10.11 Subject to clause 2.11 above, at the Customer's discretion, TES shall delete or return to the Customer all Personal Data (including all copies of the Personal Data) in its possession or control after the end of the provision of services relating to Processing. This requirement shall not apply to the extent that TES is required by applicable law to retain some or all of the Personal Data, in which event TES shall isolate and protect the Personal Data from any further processing except to the extent required by such law.

10.12 At the Customer's reasonable request, and no more than once during any twelve (12) month period (unless required by instruction of a competent data protection authority or as necessary due to a Personal Data Breach), and upon giving at least ten (10) business days' prior written notice, TES shall make available to the Customer such information as may reasonably be necessary to demonstrate compliance with the GDPR's obligations and this Agreement, including copies of any audit reports. TES shall permit the Customer (or its appointed third-party professional auditors), at the Customer's expense, reasonably to audit TES's compliance, and shall make available to the Customer all information, systems and staff reasonably necessary for the Customer (or its third-party auditors) to conduct such audit, including inspections of TES's premises for the purposes of conducting such audit. Any audits or inspections pursuant to this subsection shall be conducted during regular business hours and shall not unreasonably interfere with or disrupt TES's day-to-day operations. The Customer and its appointed auditors shall take all reasonable steps to avoid causing any damages, injury or disruption to TES's premises, equipment, personnel and business in the course of such audit or inspection.

10.13 The Customer shall not disclose (and shall not permit any data subject to disclose) any special categories of Personal Data for processing that are not expressly disclosed in the Schedule attached hereto.

10.14 The Customer warrants that it (a) shall comply with all requirements and obligations of applicable Data Protection Laws; (b) shall have sole responsibility for the accuracy, quality and legality of Personal Data and the means by which the Customer acquired Personal Data; and (c) is entitled to transfer the relevant Personal Data to TES so that TES may lawfully use, process and transfer the Personal Data in accordance with the Agreement on the Customer's behalf.

## 11. Force Majeure

11.1. TES will not be liable to the Customer for any delay in performing, or failure to perform its obligations under the Agreement due to any occurrence, event or cause beyond TES's reasonable control.

## 12. Duration and Termination

12.1. These Terms shall commence on the Effective Date (whether or not the Customer in fact accesses and/or uses the System or receives Services) and shall continue for the Minimum Period, subject to prior termination in accordance with this Clause 12.

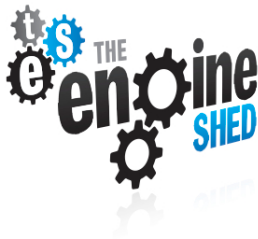
12.2. Following expiry of the Minimum Period this Agreement shall continue provided that thereafter either the Customer or TES may terminate the Agreement without cause on not less than thirty (30) days' written notice.

12.3. The Agreement may be terminated forthwith at any time by either party on giving notice in writing to the other if the other party shall have a receiver or administrative receiver or administrator appointed or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.

12.4. If TES or Customer is in material breach of the Agreement and has failed to rectify such breach (in the case of a breach capable of being remedied) within 14 days of receiving a written notice requiring it to do so then: in the case of a breach by Customer, TES may suspend access to and use of the System and/or delivery of the Services forthwith at any time without giving further notice and until the breach has been rectified; or in the case of a breach by either TES or Customer the other party may terminate the Agreement with immediate written notice.

12.5. Any termination under this Clause shall discharge TES from any liability for further performance of the Agreement.

## 13. Amendments



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13.1. No variation to the provisions of the Agreement shall be of any effect unless made in writing and agreed and signed by or on behalf of TES and the Customer.

## 14. No partnership

14.1. Nothing in these Terms shall create, or be deemed to create, a partnership or joint venture between the parties.

## 15. Assignment and sub-contracting

15.1. Without prejudice to the right of Users to assign User Licences in accordance with Clause 2 above Customer shall not assign or sub-contract the benefit or burden of the Agreement.

15.2 TES may assign and/or sub-contract the whole or any part of the Agreement to an Affiliate.

## 16. Notices

16.1. Any notice required or permitted under these Terms or required by statute, law or regulation shall (unless otherwise provided) be in writing and shall be delivered in person, sent by registered mail as appropriate, properly posted and fully pre-paid in an envelope properly addressed or sent by facsimile or e-mail to the respective addressee at its usual place of business or to such other address, facsimile number or e-mail address as may from time to time be designated by notice hereunder.

16.2. Any such notice shall be considered to have been received on the next working day following: (i) posting by first class post in the UK before last collection at the place where posted subject to not being returned undelivered; (ii) delivery in person; (iii) facsimile or e-mailing subject to proof of satisfactory electronic transmission.

## 17. Interpretation

In the Agreement:

17.1. reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted;

17.2. words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and unincorporated; and (in each case) vice versa;

17.3. any reference to TES or the Customer in the Agreement includes a reference to their successors in title and permitted assigns;

17.4. the headings to the Clauses are for ease of reference only and shall not affect the interpretation or construction of the Agreement.

## 18. Severability

18.1. Notwithstanding that the whole or any part of any provision of the Agreement may prove to be illegal or unenforceable the other provisions of the Agreement and the remainder of the provision in question shall remain in full force and effect.

## 19. Third Parties

19.1. TES and the Customer confirm their intent not to confer any rights on any third parties by virtue of the Agreement and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply.

## 20. Governing Law

20.1. The Agreement shall be governed by and construed in accordance with the laws of England and Wales whose courts shall have exclusive jurisdiction over any and all disputes arising out of or in connection with it.

A signed Order is taken as notice that The Parties agree that having read this Agreement titled Terms of Service for The Engine Shed (UK) Limited, v.0.62 January 2011, they agree to be bound by its terms.

## SCHEDULE: DATA PROCESSING DESCRIPTION

This Schedule forms part of the Agreement and describes the Processing that TES will perform on behalf of the Customer.

### 1. Subject matter and duration of the Processing of Client Personal Data

The subject matter and duration of the Processing of Client Personal Data are set out in the Agreement and this Addendum. TES will Process Personal Data for the duration of the Agreement, unless otherwise agreed upon in writing.

### 2. The nature and purpose of the Processing of Client Personal Data

The objective of Processing Personal Data by TES is the performance of Services pursuant to the Agreement. TES will Process Personal Data as necessary to perform the Services pursuant to the Agreement, and as further instructed by the Customer in its use of the Services.

### 3. The types of Client Personal Data to be Processed

The Customer may submit Personal Data to TES, the extent of which is determined and controlled by the Customer in its sole discretion, and which may include, but is not limited to the following categories of Personal Data:

Name, email address, phone numbers, contact details, company or organisation name, position held, education qualifications, professional data, payment details and category of subscription or membership, event and engagement activities and details, purchase history, and areas of interest.

### 4. The categories of Data Subject to whom the Client Personal Data relates

The Personal Data to be Processed concern the following categories of data subjects:

The Customer may submit Personal Data to TES, the extent of which is determined and controlled by the Customer in its sole discretion, and which may include, but is not limited to Personal Data relating to the following categories of Data Subjects:

Prospects, subscribers, vendors, employees, and customers

### 5. Special categories of data (if appropriate)

The Personal Data to be Processed concern the following special categories of data (including data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and genetic data, biometric data uniquely identifying a natural person, health data, or data concerning a natural person's sex life or sexual orientation, or data relating to criminal convictions and offenses): NONE, unless the Customer specifies such information here.

### 6. The obligations and rights of the Customer

The obligations and rights of the Customer are set out in the Agreement and this Addendum.

## Service Level Agreement for Pulse Publisher Standard Edition, as supplied by The Engine Shed (UK) Ltd v.1.0 2014

This document is the Service Level Agreement (SLA) referred to in the Terms of Service applicable to the provision of certain services by The Engine Shed (UK) Limited, a company incorporated in England and Wales (Registered Number 6823162) whose registered office is St George's Island, Looe, PL13 2AB (TES) to the Customer (as defined below). This document is to be read together with the Terms of Service. Save where otherwise defined in this Service Level Agreement capitalised words shall have the meaning given to them in the Terms of Service.

### 1. Definitions

**Downtime** means non-availability of service to all users, as measured on a server-side error rate;

**Downtime period** means a period of ten consecutive minutes or more of downtime; downtimes of less than ten minutes, or that take place as part of scheduled maintenance, do not count towards the downtime period, as measured by TES's chosen independent third party and reported via [status.theengineshed.com](http://status.theengineshed.com);

**Billing cycle uptime percentage** means total number of minutes in the billing cycle minus the number of minutes downtime in the billing cycle, divided by the total number of minutes in the billing cycle;

**Scheduled maintenance** means a pre-planned period of downtime outside of the Working Day, notified to the Customer at least twenty four hours in advance by email. Scheduled maintenance does not count towards the downtime period;

**System Infrastructure** means the servers, storage and networking capabilities required to provide the Service;

**TES Support Organisation** means the support services provided by TES for the customer's use, and accessed via <http://support.theengineshed.com/support>, via email to [support@theengineshed.com](mailto:support@theengineshed.com) or via the products built in support request capabilities. TES does not offer telephone support;

**Principal Account Holder** means the Customer's primary nominated contact, if any;

**Working Day** the hours of 9.00 am to 5.00 pm Monday to Friday excluding United Kingdom Bank Holidays and Public Holidays

### 2. System Availability

TES commits to provide a service that meets or exceeds a Billing cycle uptime percentage of 99.9%. In the event that it fails to do so in any one month, a credit for 50% of the monthly subscription for the affected month will be applied to the Customer's account.

### 3. Error Resolution Time

In the event of Customer raising an issue with the TES support organisation, TES shall use reasonable endeavours to acknowledge the issue within 24 hours, and provide resolution or an update within 24 hours thereafter. Resolution is prioritised based on severity of the problem report.

### 4. Fail Over Window for Disaster Recovery

In the event of loss or failure of System Infrastructure at the primary data centre during the working day, TES shall use reasonable endeavours to complete fail over to a secondary data centre within four hours.

### 5. Proactive Notification of Availability

TES shall promptly notify the Principal Account Holder via e-mail of:

- Planned maintenance activities
- Unplanned maintenance activities and downtime
- Planned delivery of new features and capabilities

### 6. Fair Use Of Support Services

The subscription fee for services includes up to eight hours per month of engineering effort in respect of issue resolution via the TES Support Organisation; thereafter the provision of





# TERMS

engineering services is chargeable at a rate of £62.50 + VAT per hour or part thereof, subject to authorisation from the client. Issues arising from defects in TES software are not subject to the fair use quota, and their resolution will not incur charges to the client.

## **7. Data Retention**

TES commits to taking backup copies of Customer data once in every 24 hour period. In the event of System Infrastructure failure, no more than the immediately preceding 24 hours worth of Customer data will be lost.

In the event the Customer decides to terminate the Agreement, return of Customer Materials shall be governed by clause 2.10-2.14 of the Terms of Service.