



The following terms and conditions apply to Services provided by Excelsior Solutions Inc (Esi) (the “Services”) which are purchased under the G-Cloud framework via the Digital Marketplace.

Definitions

- 1.1. In these Terms and Conditions, the following definitions apply:
- 1.2. **“Business Day”** means the hours between 09:00 and 18:00 on a day (other than a Saturday, Sunday, or national holiday) where banks in London, United Kingdom, are open for business;
 - 1.3. **“Charges”** means the charges payable by the Client for the supply of Services in accordance with clause 4 below;
 - 1.4. **“Client”** means the department, agency or organisation who purchases Services from ESi. under the G-Cloud Framework;
 - 1.5. **“Contract”** means the contract between ESi. and the Client for the supply of Services in accordance with the G-Cloud Framework and these Terms and Conditions comprising the Client’s written acceptance of ESi.’s proposal, quotation or such other evidence of agreement as the parties may agree in writing, and the Statement of Work;
 - 1.6. **“Deliverables”** means the deliverables (if any) to be provided by ESi. as part of the Services pursuant to the Contract. Full details of the Deliverables are set out in the Statement of Work;
 - 1.7. **“ESi.”** means ESi. Limited, a company incorporated under the laws of England and Wales (Company No. 10177212), whose registered office is at Suite 1, Second Floor, Everdene House, Deansleigh Road, Bournemouth, BH7 7DU, United Kingdom;
 - 1.8. **“Services”** means the services to be provided to the Client by ESi. pursuant to the Contract. Full details of the Services are set out in the Statement of Work;
 - 1.9. **“Statement of Work”** means the description or specification of the Services and any Deliverables provided in writing by ESi. to the Client;
 - 1.10. **“Supplier Tools”** means all concepts, know-how, tools, questionnaires and assessments, modules, courses, frameworks, software, algorithms, databases, content, models, and industry perspectives provided by ESi. which have been developed or enhanced outside of the Services.

Supply of services

- 2.1. ESi. shall supply the Services and any Deliverables to the Client in accordance with the Statement of Work in all material respects.
- 2.2. The working arrangements, including scope of the Services, Deliverables, team composition, and work plan, will be described in a proposal submitted by ESi. to the Client or as otherwise agreed in the completed Order Form.

2.3. ESi. relies on timely cooperation of the Client for the provision of the Services, including making available relevant data, information, and personnel, performing any tasks or responsibilities assigned to the Client (or its other suppliers or consultants) and notifying ESi. promptly of any issues or concerns the Client may have relating to the Services.

2.4. ESi. warrants to the Client that the Services will be provided using all reasonable skill and care.

2.5. The parties will meet at mutually agreed times to discuss the progress of the Services and to exchange feedback.

2.6. During the course of the Services, priorities may shift or unexpected events may occur which may necessitate changes to the Services. In this event, the parties will jointly discuss the anticipated impact on the Services and agree on any appropriate adjustments, including to the scope, Statement of Work, timeframe, and budget.

Client obligations

3.1. The Client shall:

- 3.1.1. ensure that the specification of the Services and Deliverables set out in the Statement of Work is complete and accurate;
- 3.1.2. cooperate with ESi. in all manners relating to the provision of the Services and the delivery of any Deliverables;
- 3.1.3. provide ESi., its employees, agents, consultants, and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by ESi. for the provision of the Services;
- 3.1.4. ensure that any such accommodation or facilities are COVID-secure, as defined by the Health and Safety Executive and current government public health guidance;
- 3.1.5. ensure that all ESi. employees, agents, consultants, and subcontractors, who are required to work at Client's premises and using Client's equipment, are given appropriate health and safety briefing and have access to first aid equipment and personnel;
- 3.1.6. ensure that all incidents involving ESi. employees, agents, consultants, and subcontractors are reported promptly to ESi.;
- 3.1.7. provide ESi. with such information and materials as ESi. may reasonably require to provide the Services and any Deliverables, and ensure that such information is accurate in all material respects;
- 3.1.8. obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- 3.1.9. keep and maintain all materials, equipment, documents and other property of ESi. at Client's premises in safe custody at its own risk, maintain the ESi. materials and assets in good condition until returned to ESi., and not dispose of or use any ESi. materials or assets other than in accordance with ESi.'s written authorisation, and;



3.1.10. provide ESi. with remote access facilities if specified in the Statement of Work.

Charges and payment

4.1. The Client shall compensate ESi. for its professional fees and expenses in connection with the Services, as set forth in the applicable proposal or completed Order Form.

4.2. The Client agrees that it will not, without the prior written permission of ESi., disclose the terms of this agreement or any proposal (including ESi.'s fees, expenses and other commercial terms) to any third parties (including the Client's external procurement and other service providers) save as may be required by law in accordance with Freedom of Information Act requests.

4.3. ESi.'s standard day rates are calculated based on an eight-hour day from 09:00 to 18:00 (with a one-hour break for meals) on Business Days.

4.4. ESi. shall be entitled to charge an overtime rate of 200 per cent of the standard day rate on a pro-rata basis for any time worked by individuals outside the hours referred to in clause 4.3 where requested or approved by the Client.

4.5. ESi. will invoice the Client for agreed fees (and any agreed expenses) in connection with the Services monthly or as otherwise set forth in the applicable proposal or completed Order Form.

4.6. All invoices are due and payable immediately on presentation. Should any invoice remain unpaid for more than 30 days after presentation, interest will accrue on the outstanding amount at the rate of 8% plus the Bank of England base rate for business to business transactions, calculated daily from the 31st day after presentation until the date on which payment is received.

4.7. Any quotation provided by ESi. is, unless otherwise stated, valid for a period of 20 Business Days from date of issue.

Confidentiality

5.1. The parties agree that they will, except as permitted under the Contract, maintain as confidential, and not make any unauthorised use of, any private or confidential information about the other party including, but not limited to, its business, business plans or its private or financial affairs.

5.2. The provisions of clause 5.1 above shall not apply to any information in the public domain, except where it has entered the public domain as a result of a breach of the Contract, or;

5.3. Information obtained by a third party who is free to divulge the same without any obligation of confidentiality, or;

5.4. Information required to be disclosed by law or in order for a party to the Contract to meet its contractual obligations, or;

5.5. Any disclosure by the Client or ESi. to its professional advisors, any regulatory authority, or statutory auditors, or;



5.6. Any disclosure required by an order of any court of competent jurisdiction, or in pursuance of any procedure for disclosure of documents in any proceedings before any such court, or pursuant to any law in any country.

Intellectual Property

6.1. Upon payment in full of ESi.'s fees, the Client will own all reports and other Deliverables prepared for and furnished to the Client by ESi. in connection with the Service, save that ESi. retains ownership of all concepts, knowhow, tools, questionnaires and assessments, modules, courses, frameworks, software, algorithms, databases, content, models, and industry perspectives developed or enhanced outside of or in connection with the Services (the "Supplier Tools"), it being understood that none of the Supplier Tools will contain any Client confidential information.

6.2. To the extent the Deliverables include any embedded Supplier Tools, ESi. hereby grants the Client a nonexclusive, non-transferable, non-sublicensable, worldwide, royalty-free license to use and copy the Supplier Tools solely as part of the Deliverables and for its internal use only subject to the limitations at Section 7 on disclosure of ESi. materials and publicity.

6.3. The Client agrees that, without ESi.'s prior written permission, it will not, or permit any third party to;

6.3.1. access, copy or reverse engineer any of the Supplier Tools or Deliverables, or;

6.3.2. remove or circumvent security or technological safeguards, including notices, digital protection mechanisms, metadata, watermarks, or disclaimers provided with any Supplier Tools or Deliverables.

Disclosure

7.1. The work performed by ESi. for the Client is confidential and for the Client's internal use only.

7.2. ESi. will not disclose the Deliverables to any third parties without the Client's prior written permission.

7.3. Similarly, the Client agrees that it will not disclose any materials or information that ESi. furnishes to the Client, including the Deliverables, to any third parties without ESi.'s prior written permission unless it has a legal obligation to do so (and in which case it shall give ESi. advance notice prior to disclosing such materials or information).

7.4. Each party further agrees not to use the other party's name or trademarks in any communication with any third party without the other party's prior written permission unless it has a legal obligation to do so.

Liability

- 8.1. The following provisions set out the entire financial liability of ESi. (including any liability for acts of omissions of its employees, agents and subcontractors) to the Client in respect of: (a) any breach of the Contract; (b) any use made by the Client of the results of the Services and/or any Deliverables; and (c) any representation, statement or tortious act or omission (including negligence) arising in connection with the Contract.
- 8.2. ESi. shall not be liable, whether in Contract, tort (including for negligence or breach of statutory duty), misrepresentation or otherwise for: (a) loss of profits; (b) loss of business; (c) depletion of goodwill or similar losses; (d) loss of anticipated savings; (e) loss of goods; (f) loss of contract; (g) loss of use; (h) loss or corruption of data or information; or (i) any special, indirect or consequential loss or damage.
- 8.3. ESi.'s total aggregate liability under the Contract arising in connection with the performance or contemplated performance of the Contract, whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation, restitution or otherwise, shall be limited to the total Charges paid by the Client to ESi. under the Contract.
- 8.4. Nothing in the Contract limits or excludes ESi.'s liability: (a) for death or personal injury caused by ESi.'s negligence; (b) for fraud or fraudulent misrepresentation; or (c) for any other liability that cannot lawfully be excluded or limited.

Term and termination

- 9.1. The Contract may be terminated before expiry:
- 9.1.1. by either party upon notice in writing to the other in the event that the other party is in material breach of its obligations under the Contract and, in the case of a breach which is not persistent and can be remedied, that party has not remedied such breach within 10 Business Days of receipt of a written notice specifying the breach and requiring its remedy, or;
 - 9.1.2. by either party upon notice in writing in the event that the other goes into compulsory or voluntary liquidation (except for the purposes of solvent reconstruction or amalgamation) or a receiver, administrative receiver or administrator is appointed in respect of the whole or any part of its assets or in the event that it makes an assignment for the benefit of or composition with its creditors generally or engages in or suffers any similar procedure in any jurisdiction.
- 9.2. Termination of the Contract shall be without prejudice to any accrued rights of action of either party, including any Charges that have accrued but remain unpaid as at the effective date of termination.



9.3. Clauses and sections which by their nature need to survive termination of the Contract shall be deemed to survive this agreement after termination.