

Terms and Conditions

1. Introduction

1.1. These General Terms and Conditions (“General Terms”) govern the supply of all services and deliverables by Essington Information Technology Services Ltd, a company registered in England and Wales under company number 06912775 with its registered office at the address shown on our invoices (“EITS”, “we”, “us” or “our”), to the customer named on the relevant order, statement of work, quotation or invoice (“the Customer”, “you” or “your”).

1.2. These General Terms apply to all engagements between us. They form the umbrella contract under which we supply services. Where we supply a specific service (including but not limited to managed Moodle hosting under eLMS, software development, infrastructure consultancy, or managed IT support), additional service-specific terms, service definitions, statements of work or order forms may also apply.

1.3. In the event of conflict between these General Terms and a service-specific document, the order of precedence is: (a) the signed statement of work or order form; (b) the applicable service-specific terms; (c) these General Terms.

1.4 These General Terms apply only to engagements where the Customer is a business, organisation, sole trader or other non-consumer. We do not supply services to consumers under these terms.

2. Definitions

In these General Terms, the following words have the following meanings:

- “Business Day” means any day other than a Saturday, Sunday or bank or public holiday in England.
- “Customer Data” means any data, content or information (including personal data) supplied to us by or on behalf of the Customer, or generated by the Customer’s use of the Services.
- “Deliverables” means any output, document, code, configuration or other materials produced by us specifically for the Customer under an engagement.
- “Fees” means the charges payable for the Services as set out in the applicable quotation, statement of work or order form.
- “Intellectual Property Rights” or “IPR” means patents, copyright, design rights, database rights, trade marks, know-how, trade secrets, and all other intellectual property rights, whether registered or unregistered, in each case for their full term and including all rights to apply for the same.
- “Pre-existing Materials” means any materials, tools, libraries, frameworks, code, methodologies or know-how created or owned by us prior to or independently of an engagement, including any general improvements or extensions made during an engagement.
- “Services” means the services to be supplied by us as described in the applicable quotation, statement of work, order form or service-specific terms.

3. Fees, Expenses and Payment

3.1 Fees

Fees are as set out in the relevant quotation, statement of work or order form, or where none is in place, at our then-current standard rates. Unless stated otherwise, all Fees are exclusive of VAT, which will be added at the prevailing rate.

3.2 Standard Day Rate

Where Services are charged at a daily rate:

- A “day” means 7.5 working hours, inclusive of travelling time and compulsory rest breaks (two 15-minute breaks and a 30-minute lunch break);
- Work performed in excess of 7.5 hours in a day is overtime and will be charged at £100 per hour;
- Overtime will be pre-approved in writing with the Customer (which includes email) before being incurred wherever reasonably practicable.

3.3 Expenses

Unless expressly included in the quoted Fees, the Customer will reimburse us for reasonable out-of-pocket expenses properly incurred in performing the Services, including travel, accommodation, subsistence, congestion charges and tolls. Car mileage is charged at HMRC's approved mileage rate (currently 45p per mile for the first 10,000 miles in a tax year). Expenses will be invoiced separately and supported by receipts on request.

3.4 Invoicing and payment terms

Unless the relevant statement of work or order form states otherwise, our invoices are payable within thirty (30) days of the invoice date. For one-off purchases of goods or short-form engagements, payment may be required at the point of order. Payment must be made in pounds sterling by BACS, bank transfer or such other electronic means as we accept.

3.5 Disputed invoices

If the Customer disputes an invoice in good faith, it must notify us in writing within ten (10) Business Days of the invoice date, identifying the disputed amount and the reason. The undisputed balance must still be paid by the due date. The parties will work in good faith to resolve the dispute promptly.

3.6 Late payment

Without limiting any other right or remedy, if the Customer fails to pay any undisputed sum by the due date:

- Statutory interest and compensation will apply in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, including interest at 8% above the Bank of England base rate, the fixed sum compensation set out in that Act, and our reasonable costs of recovering the debt;
- We may suspend further performance of the Services on giving the Customer at least five (5) Business Days' written notice, until all overdue amounts (including interest and compensation) are paid in full; and
- We may exercise any other remedy available to us at law or under these General Terms.

Suspension under this clause does not relieve the Customer of its obligation to pay accrued Fees and does not constitute termination.

4. Provision of Services

4.1. We will perform the Services with reasonable skill and care and in accordance with good industry practice.

4.2. Time for performance is not of the essence unless expressly stated in writing in the relevant statement of work or order form.

4.3. The Customer will provide reasonable cooperation, access, information, decisions, materials and equipment necessary for us to perform the Services. Delays attributable to the Customer may result in revised timescales and additional Fees, charged at our then-current standard rates.

4.4. We may use suitably qualified subcontractors and third-party suppliers to perform any part of the Services. We remain responsible for the acts and omissions of our subcontractors as if they were our own.

5. Software and Open Source Services

5.1. Where we supply software services, including without limitation the eLMS managed Moodle hosting platform, efolo, GL Server tooling and other open-source-based software services, these are also subject to the applicable Service Definition published at <https://essingtonits.co.uk/terms> (as updated from time to time) and any specific terms supplied with the service.

5.2. Open-source software (including but not limited to Moodle) is licensed by its authors under its own licence terms. We supply, configure and support such software using reasonable skill and care, but we are not the author or licensor of the underlying software and give no warranties as to its functionality, fitness for any particular purpose, or freedom from defects beyond those that arise from our own work.

5.3. The Customer is responsible for: (a) verifying that any open-source or third-party software is suitable for its purposes; (b) complying with the relevant licence terms; and (c) the security and integrity of any environments not hosted by us.

5.4 Backups

Unless otherwise expressly agreed in writing, we provide backups only in accordance with the applicable Service Definition for the relevant service. The Customer is responsible for:

- Performing and verifying its own backups of any data held on the Customer's premises or on hosting services not provided by us;
- Confirming the integrity and recoverability of those backups on a regular basis.

Where we hold backups in respect of services we supply, we may use them to restore the Customer's data where reasonably required to perform the Services.

5.5 Penetration testing

The Customer must not, and must not permit any third party to, conduct any penetration testing, vulnerability scanning or other security testing against systems provided or hosted by us without our prior written consent.

Where we authorise such testing, the Customer must:

- Notify us via support@essingtonits.co.uk in advance of the proposed test, including scope, methodology, and proposed dates;
- Comply with the date, time, scope and other conditions specified by us;
- Provide us with an unabridged copy of the test report within three (3) Business Days of the test date;
- Ensure that any such test takes place, where possible, within the first six (6) months of any service contract year;
- Pay our reasonable fees for facilitating the test and for remediating any issues identified, at our then-current Technical Support rates.

Unauthorised testing is a material breach of these General Terms and may result in immediate suspension of the affected Services.

5.6 Customer equipment

Where the Services require it, the Customer will provide us with reasonable access to its computer hardware, software and equipment. We may, at the Customer's request and at an agreed fee, supply equipment necessary for an engagement.

6. Intellectual Property

6.1 Pre-existing Materials

All rights in our Pre-existing Materials remain our property (or that of our licensors). Nothing in these General Terms transfers ownership of Pre-existing Materials to the Customer.

6.2 Bespoke Deliverables

Subject to clause 6.3 and to payment in full of all Fees properly due for the relevant engagement, we assign to the Customer with full title guarantee all IPR in Deliverables created specifically for the Customer under that engagement (“Bespoke Deliverables”).

6.3 Licence of Pre-existing Materials

Where a Bespoke Deliverable incorporates any Pre-existing Materials, we grant the Customer a non-exclusive, perpetual, worldwide, royalty-free, non-transferable licence to use those Pre-existing Materials solely to the extent necessary to enable the Customer to use the Bespoke Deliverable for its intended purpose. This licence does not extend to standalone reuse or resale of the Pre-existing Materials.

6.4 Third-party and open-source components

Bespoke Deliverables may incorporate third-party or open-source components, which remain subject to their own licence terms. We will use reasonable endeavours to identify material open-source components in the Deliverables on request.

6.5 IPR indemnity

Subject to the limitations in clause 9, we will indemnify the Customer against losses awarded by a competent court arising from a third-party claim that the Customer’s use of the Bespoke Deliverables (in accordance with these General Terms and the relevant statement of work) infringes that third party’s IPR. The indemnity does not apply to claims arising from: (a) the Customer’s combination of the Deliverables with materials not supplied by us; (b) modification of the Deliverables by anyone other than us; (c) use of the Deliverables otherwise than in accordance with our instructions; or (d) any third-party or open-source components.

6.6 Customer Data

As between the parties, all IPR in Customer Data is and remains the property of the Customer. The Customer grants us a non-exclusive licence to host, copy, transmit and process Customer Data to the extent necessary to perform the Services.

7. Data Protection

7.1. In this clause 7, the terms “controller”, “processor”, “data subject”, “personal data”, “processing” and “appropriate technical and organisational measures” have the meanings given in the UK GDPR and the Data Protection Act 2018 (together, “Data Protection Laws”).

7.2. Both parties will comply with their respective obligations under the Data Protection Laws. Where we process personal data on behalf of the Customer in the course of providing the Services, the Customer is the controller and we are the processor.

7.3 Processing details

Unless otherwise specified in a statement of work or service-specific terms:

- Subject matter: the provision of the Services;
- Duration: the term of the relevant engagement, plus any data retention period set out in the applicable service-specific terms;
- Nature and purpose: hosting, storage, support, configuration, development, troubleshooting and other processing necessary to provide the Services;
- Categories of data subjects: as determined by the Customer (typically the Customer’s staff, students, learners, contractors and end users of the Customer’s systems);
- Types of personal data: as determined by the Customer (which may include names, contact details, login credentials, IP addresses, learning records, assessment data and any other personal data the Customer chooses to process via the Services).

7.4 Processor obligations

In our role as processor, we will:

- Process personal data only on the documented instructions of the Customer, including with regard to transfers of personal data to a third country, unless required to do so by applicable law (in which case we will inform the Customer of that legal requirement before processing, unless prohibited from doing so);
- Ensure that persons authorised to process the personal data are subject to appropriate confidentiality obligations;
- Implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, having regard to the state of the art, the costs of implementation, and the nature, scope, context and purposes of processing;
- Taking into account the nature of the processing, assist the Customer by appropriate technical and organisational measures, insofar as this is possible, in fulfilling the Customer’s obligations to respond to requests from data subjects exercising their rights under the Data Protection Laws;
- Assist the Customer in ensuring compliance with its obligations under Articles 32 to 36 of the UK GDPR (security, breach notification, impact assessments and prior consultation), taking into account the nature of the processing and the information available to us;
- At the Customer’s choice, delete or return all personal data to the Customer after the end of the provision of the Services, and delete existing copies unless applicable law requires retention;
- Make available to the Customer all information necessary to demonstrate compliance with the obligations in this clause 7, and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer, subject to reasonable notice (not less than 30 days) and reasonable confidentiality and security requirements.

7.5 Sub-processors

The Customer gives us general authorisation to engage sub-processors to process personal data, subject to our maintaining a list of sub-processors available on request, and our imposing on each sub-processor written obligations that are substantially the same as those in this clause 7. We will inform the Customer of any intended changes concerning the addition or replacement of sub-processors, giving the Customer the opportunity to object on reasonable grounds related to data protection.

7.6 International transfers

We will not transfer personal data outside the UK without ensuring that an appropriate transfer mechanism is in place (for example, an adequacy regulation, the UK International Data Transfer Agreement, or the UK Addendum to the EU Standard Contractual Clauses) and notifying the Customer.

7.7 Security incidents

We will notify the Customer without undue delay (and in any event within 72 hours of becoming aware) of any personal data breach affecting Customer Data, providing such information as we reasonably have available to enable the Customer to comply with its obligations under the Data Protection Laws.

8. Confidentiality

8.1. Each party will keep confidential all information of a confidential nature (whether or not marked confidential) disclosed to it by or on behalf of the other party in connection with the Services (“Confidential Information”).

8.2. Each party may disclose Confidential Information: (a) to its employees, officers, contractors and professional advisers who need to know the information for the purposes of performing or receiving the Services, provided they are bound by equivalent confidentiality obligations; and (b) as required by law, court order or any governmental or regulatory authority.

8.3. Confidential Information does not include information which: (a) is or becomes publicly available other than through a breach of this clause; (b) was lawfully in the receiving party’s possession before disclosure; (c) is lawfully received from a third party without restriction; or (d) is independently developed by the receiving party without reference to the disclosing party’s Confidential Information.

8.4. The obligations in this clause survive termination for a period of three (3) years, save in respect of trade secrets and personal data, where the obligations continue for so long as the information remains a trade secret or, in the case of personal data, as required by the Data Protection Laws.

9. Limitation of Liability

9.1. Nothing in these General Terms limits or excludes either party's liability for:

- Death or personal injury caused by its negligence;
- Fraud or fraudulent misrepresentation;
- Any liability that cannot lawfully be limited or excluded;
- The Customer's obligation to pay Fees properly due.

9.2. Subject to clause 9.1, neither party will be liable to the other, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for:

- Loss of profits;
- Loss of revenue, sales, business or anticipated savings;
- Loss or corruption of data (save where caused by our negligence or breach of clause 7);
- Loss of goodwill or reputation;
- Loss of opportunity;
- Any indirect, special or consequential loss.

9.3. Subject to clauses 9.1 and 9.2, our total aggregate liability arising under or in connection with the Services, whether in contract, tort (including negligence), breach of statutory duty or otherwise, will not exceed the total Fees paid by the Customer in the twelve (12) months immediately preceding the event giving rise to the claim.

9.4. The Customer acknowledges that the limitations and exclusions in this clause 9 are reasonable having regard to the Fees charged and the nature of the Services, and that the Customer has had the opportunity to obtain insurance against any losses not recoverable from us.

10. Insurance

We will maintain in force, with reputable insurers, insurance cover appropriate to the nature and scale of the Services, including professional indemnity insurance and public liability insurance. Evidence of cover, including current sums insured, will be provided on reasonable written request.

1. Compliance with Laws

11.1 General

Each party will comply with all laws applicable to it in connection with the performance of the Services.

11.2 Anti-bribery

Each party will comply with all applicable laws relating to anti-bribery and anti-corruption, including the Bribery Act 2010, and will not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 6 of that Act. Each party will maintain in place its own policies and procedures to ensure compliance.

11.3 Anti-facilitation of tax evasion

Each party will not engage in any practice that would constitute a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017 or a foreign tax evasion facilitation offence under section 46(6) of that Act, and will maintain reasonable prevention procedures.

11.4 Modern slavery

Each party will comply with all applicable anti-slavery and human trafficking laws, including the Modern Slavery Act 2015, and will take reasonable steps to ensure that there is no modern slavery or human trafficking in its supply chains or any part of its business.

12. Non-Solicitation of Staff

During the term of any engagement and for twelve (12) months thereafter, the Customer will not, without our prior written consent, directly or indirectly solicit for employment or engagement (whether as employee, consultant, contractor or otherwise) any employee or contractor of EITS who has been materially involved in performing the Services. This clause does not prevent the Customer from responding to general public recruitment advertising not specifically targeted at our staff or contractors.

13. Publicity and Marketing

We may identify the Customer as a client and use the Customer's name and logo on our website, marketing materials, proposals and tender responses, in a factual and respectful manner. Any case study, testimonial, press release or other promotional content that goes beyond name and logo will require the Customer's prior written approval (which may include email) of the specific content, such approval not to be unreasonably withheld or delayed.

14. Force Majeure

14.1. Neither party will be in breach of these General Terms, nor liable for any delay in performing or failure to perform any of its obligations (other than an obligation to pay money), if the delay or failure results from a Force Majeure Event.

14.2. "Force Majeure Event" means any event beyond the reasonable control of the affected party, including (without limitation) acts of God, strikes, lockouts or other industrial action, civil commotion, riot, invasion, war or threat of war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or pandemic, failure of utilities or telecommunications networks, cyber-attack on third-party infrastructure not under our control, and government action.

14.3. The affected party will notify the other promptly and use reasonable endeavours to mitigate the effect of the event. If a Force Majeure Event continues for more than sixty (60) consecutive days, either party may terminate the affected engagement on giving written notice.

5. Term and Termination

15.1 Term

Each engagement begins on the date specified in the relevant statement of work or order form (or, where none is specified, on the date the Customer accepts our quotation or otherwise instructs us to proceed) and continues until completed or terminated in accordance with this clause.

15.2 Termination for convenience

Either party may terminate any engagement for convenience on giving the other party not less than thirty (30) days' written notice. On termination, the Customer will pay for all Services properly performed up to the effective date of termination, plus any non-cancellable third-party costs we have committed to in good faith for the engagement.

15.3 Termination for cause

Either party may terminate any engagement immediately on giving written notice to the other if:

- The other party commits a material breach of these General Terms and (where the breach is capable of remedy) fails to remedy that breach within thirty (30) days of being notified in writing to do so;
- The other party becomes insolvent, enters into liquidation (otherwise than for the purposes of a solvent reconstruction), has a receiver, administrator or administrative receiver appointed over all or any part of its assets, enters into any composition with its creditors, or ceases to carry on business; or
- Any analogous event occurs in any jurisdiction.

15.4 Effect of termination

Termination does not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination. Clauses that by their nature are intended to survive termination (including clauses 6, 7, 8, 9, 12, 16 and 17) will continue in force.

15.5 Data on termination

Arrangements for the return or deletion of Customer Data following termination are set out in the applicable service-specific terms or Service Definition. In the absence of such provisions, we will, on the Customer's written request received within thirty (30) days of termination, make Customer Data available for export in a commonly used machine-readable format, after which we may delete Customer Data and need not retain copies (subject to any legal retention requirement).

16. Notices

16.1. Any notice given under these General Terms must be in writing and may be delivered: (a) by hand; (b) by pre-paid first-class post or recorded delivery to the registered office (in the case of a company) or principal place of business (in any other case) of the recipient; or (c) by email to the address most recently notified by the recipient for that purpose.

16.2. A notice is deemed received: (a) if delivered by hand, at the time of delivery; (b) if sent by post, on the second Business Day after posting; (c) if sent by email before 5.00 pm on a Business Day, on the same day, and otherwise on the next Business Day.

16.3. This clause does not apply to the service of any proceedings or other documents in any legal action.

17. General

17.1 Assignment

The Customer may not assign, transfer, charge or otherwise deal with any of its rights or obligations under these General Terms without our prior written consent. We may assign or transfer our rights and obligations in connection with a sale or transfer of all or substantially all of our business or assets.

17.2 Entire agreement

These General Terms, together with any applicable statement of work, order form, service-specific terms and Service Definition, constitute the entire agreement between the parties in relation to their subject matter and supersede all previous agreements, understandings and representations. Each party acknowledges that it has not relied on any representation not expressly set out in those documents. Nothing in this clause limits liability for fraud or fraudulent misrepresentation.

17.3 Variation

No variation of these General Terms is effective unless in writing and signed (or otherwise expressly agreed in writing by an authorised representative of each party). We may update these General Terms from time to time for future engagements; the version in force at the start of an engagement applies to that engagement.

17.4 Waiver

No failure or delay by either party to exercise any right or remedy is a waiver of it. No single or partial exercise of any right or remedy prevents any further exercise of it.

17.5 Severance

If any provision of these General Terms is held to be invalid or unenforceable, that provision will be modified to the minimum extent necessary to make it valid and enforceable, or, if it cannot be so modified, will be deemed deleted, without affecting the validity of the remaining provisions.

17.6 No partnership or agency

Nothing in these General Terms creates a partnership, joint venture or agency relationship between the parties.

17.7 Third-party rights

A person who is not a party to these General Terms has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

17.8 Counterparts and electronic signature

Where signed, these General Terms (or any document incorporating them) may be signed in counterparts and by electronic signature, each of which constitutes an original and which together form one and the same agreement.

17.9 Governing law and jurisdiction

These General Terms and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter are governed by, and construed in accordance with, the law of England and Wales. The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any such dispute or claim.

Learn more about us at
www.EssingtonITS.co.uk