

**1. Parties to the Agreement**

The parties to the Agreement shall be eCom Learning Solutions (eCom) operating from 18b Dickson Street, Dunfermline, Fife KY12 7SL, and the Client whose details appear on an eCom invoice.

**2. Date of Agreement**

Any Agreement between eCom and a Client shall have no effect until an agreement has been signed by both parties or until such time as eCom has made the Client an offer and the Client has accepted the offer.

**3. All annexes, appendices and schedule**

Pertaining to any Agreement between eCom and the Client shall form part of the Agreement.

**4. Other Communications**

Notwithstanding the provisions of Clause 3 above any written communications between eCom and the Client may form part of any Agreement but only in the absence of any other definitive Agreement between eCom and the Client.

**5. Variation**

Any Agreement between eCom and the Client shall only be varied if the variation is agreed to in writing by both parties.

**6. Confidentiality**

Neither party shall reveal to any other party any information of any kind which is considered by eCom, or as the case may be the Client, to be confidential of eCom or the Client unless the written permission of one has been given to the other.

**7. Copyright & IPR**

Background copyright, which shall include all intellectual Property Rights, in respect of any materials, products, inventions, software produced by eCom prior to the performance of this Agreement shall vest in eCom absolutely and may only be reproduced or disseminated with the expressed written permission of eCom where such reproduction or dissemination is required in order for the Client to enjoy the provision of the Agreement between eCom and the Client. If requested eCom will provide the client a list of all background IPR used in conjunction with this contract. It shall be a condition of the contract that eCom will in performance of the project do nothing to infringe any patent, trade mark or registered design, other than those provided by the client. All copyright clearance for using client information must be supplied to eCom Scotland before work commences. All foreground copyright created in performance of this agreement shall remain with the client.

**8. Disclaimer**

Whilst every effort is made to ensure the accuracy of our services, we accept no responsibility for any use made of the information provided and we shall not be liable for any loss suffered thereby.

**9. Insurance and Liability**

Each party shall effect, at no cost to the other, the required insurance cover in order to comply with all prevailing legal requirements insofar as such requirements relate to the provisions of the Agreement between the Companies.

eCom shall not in the performance of this Agreement, be liable for any loss or damage of whatsoever nature or howsoever caused suffered by any individual, any other third party or the Client unless such loss or damage has been caused by or through the negligence of eCom. No consequential losses. Limit of Professional Indemnity - £250,000.

The Client shall not, in the performance of any Agreement between eCom and the Client, be liable for any loss or damage suffered, by any individual, any other third party or eCom of whatsoever nature or howsoever caused unless such loss or damage has been caused by or through the negligence of the Client.

**10. Ownership of Equipment/ software licenses****10.1 Ownership**

Any equipment and/or software purchased or supplied by eCom in the performance of any Agreement for the use of the Client, shall remain the property of eCom until such times as eCom agrees, in writing, to pass the ownership rights onto the Client. Where such equipment/software is, for the purpose of the Agreement, accessed by the client via the Internet, the Client shall keep an inventory of who has access to the equipment/ software. Notwithstanding the provisions of Clause 8 and the Client shall fully compensate eCom for any or loss damage caused to any equipment/software supplied to the client where such loss or damage has been caused through neglect, or any insurable peril including fire, theft, accidental damage or malicious damage.

**10.2 Supply and/or Provision of Equipment /software licenses**

Nothing in sub-clause 10.1 above shall be taken to mean that eCom shall be obliged or shall guarantee to supply and/or provide the customer with equipment / software for use out with eCom 's organisation.

Any software license purchased will be subject to the terms of the License Agreement supplied to client. Each type of software license is restricted in regard to the number of users, functionalities and/or transactions. Each licence is strictly granted for the sole purpose contemplated by the License Agreement and for your own lawful internal business purposes. Unless otherwise stated in writing, the granted license shall not be the subject of any transfer or (sub-)licensing to any third party, in whole or in part, without the written prior approval.

**11. Health and Safety**

Without prejudice to the provisions of Clause 8 the Client or any of the Client's employees or representatives shall, while attending or visiting any of eCom 's premises, comply with the health and safety policies and procedures of eCom including the evacuation procedures.

**12. Material**

Notwithstanding the provisions of Clause 8 eCom takes great care in the preparation and production and shall not therefore be liable for any errors or omissions contained therein, unless such errors or omissions are the result of wilful neglect.

**13. Publicity**

The Client shall in promoting any aspect of this Agreement through the press or any other medium of communication acknowledge the contribution made by of eCom.

**14. Termination**

This Agreement may be terminated before coming to its natural end in any of the following circumstances:

14.1 by eCom giving the Client fourteen days due notice in writing, where in the opinion of eCom the Agreement is no longer viable.

14.2 by the Client giving the eCom three (3) months clear notice in writing.

14.3 by eCom with immediate effect where the Client is in serious material breach of contract or where circumstances which are out with the control of eCom and prevent eCom from performing its obligations under the Agreement.

14.4 by the Client with immediate effect where eCom is a serious material breach of contract or where circumstances out with the client's control prevent the Client from performing its obligations under the Agreement.

**15. Compensation**

The Client shall compensate for any expenses reasonably incurred by eCom in pursuance of the Agreement in the event that the Client decides to withdraw from the Agreement, prior to the date upon which the Agreement is scheduled to commence, or where the Agreement is terminated by the Client in accordance with the provisions of sub clause 14.4. Cancellation fees may apply where leased services provided by 3<sup>rd</sup> party have been agreed.

**16. Price variation**

Estimates are based on eCom Scotland's current costs of production and, unless otherwise agreed, are subject to amendment on or at any time after acceptance to meet any rise or fall in such costs.

**17. Preliminary and Change Control work**

All work carried out, whether experimentally or otherwise, at customer's request, shall be charged.

**18. Force majeure**

eCom Scotland Ltd shall be under no liability if they shall be unable to carry out any provision of the contract for any reason beyond their control, including (without limiting the foregoing) Act of God, legislation, war, fire, flood, drought, failure of power supply, lock-out, strike or other action taken by employees in contemplation or furtherance of a dispute or owing to any inability to procure materials required for the performance of the contract. During the continuance of such a contingency, the customer may, by writing notice to eCom Scotland, elect to terminate the contract and pay for work done and materials used, but subject thereto shall otherwise accept delivery when available.

**19. Law**

These conditions and all other express terms of the contract shall be governed and construed in accordance with the laws of Scotland.

**20. Payment**

All monies due shall be paid by the client on receipt of invoice. Full payment is required prior to release of any completed work or go-live date. eCom shall exercise our statutory right to claim interest, at a rate of 8%, and compensation for debt recovery costs under the Late Payment of Commercial Debts (Scotland) Regulations 2002 if we are not paid on receipt of invoice.