



## 1. Parties to the Agreement

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

## 2. Date of Agreement

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

## 3. All annexes, appendices and schedule

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

## 4. Other Communications

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

## 5. Variation

Any Agreement between the Company 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 the Company, or the Client, to be confidential and subject to a Non-disclosure Agreement, 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 the Company prior to the performance of this Agreement shall vest in the Company absolutely and may only be reproduced or disseminated with the expressed written permission of the Company where such reproduction or dissemination is required in order for the Client to enjoy the provision of the Agreement between the Company and the Client. If requested the Company 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 the Company 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 Company 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 Company and the Client.

The Company 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 the Company. No consequential losses. Limit of Professional Indemnity - £250,000.

The Client shall not, in the performance of any Agreement between the Company and the Client, be liable for any loss or damage suffered, by any individual, any other third party or the Company 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 the Company in the performance of any Agreement for the use of the Client, shall remain the property of the Company until such times as the Company agrees, in writing, to pass the ownership rights onto the Client. Where such software is, for the purpose of the Agreement, accessed by the client via the Internet, the Company shall keep an inventory of who has access to the software. Notwithstanding the provisions of Clause 8 and the Client shall fully compensate the Company for any use, loss or damage caused to any 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 the Company shall be obliged or shall guarantee to supply and/or provide the customer with equipment / software for use out with the Company's organisation infrastructure.

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 license 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 the Company's premises, comply with the health and safety policies and procedures of the Company including the evacuation procedures.

## 12. Material

Notwithstanding the provisions of Clause 8 the Company 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 the Company.

## 14. Termination

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

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

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

14.3 by the Company with immediate effect where the Client is in serious material breach of contract, non-payment of monies due more than 30 days, or where circumstances are out with the control of the Company preventing the Company from performing its obligations under the Agreement.

14.4 by the Client with immediate effect where the Company is in serious material breach of contract.

## 15. Compensation

The Client shall compensate for any expenses reasonably incurred by the Company 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 14.2, & 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

The Company 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, pandemic, 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 the Company, 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. Company 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.

\*eCom Learning Solutions is a registered trademark and trading name of eCom Scotland Ltd, and its solely own subsidiary eCom USA Learning Solutions LLC.