
BUILDING CONFIDENT BUSINESS

E3 T&C's

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Version 1.0

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TERMS & CONDITIONS

1. Definitions and interpretation

1.1 Definitions

In this agreement:

Client System means computer hardware and computer software platforms owned and operated by the Client. Examples include HR systems or 3rd party Learning Management Systems.

Client System Specifications means specifications relating to the Client System.

Client Trade Marks means the trademarks and logos owned by the Client or its Related Bodies Corporate.

Commencement Date means the date specified in this document in clause 2.

Confidential Information, in relation to a party (**disclosing party**), means the terms of this agreement and all information of any nature and in any form concerning the operations, dealings, organisation, personnel, business strategies, clients, technology, Intellectual Property Rights, trade secrets or know-how of the disclosing party and/or any client, supplier of the disclosing party, disclosed or made available to the other party (**the receiving party**), and whether disclosed or made available before, on or after the date of this agreement, but does not include information which:

- a) is or becomes part of the public domain other than by breach of this agreement;
- b) was already known to it at the time of disclosure by the disclosing party;
- c) the receiving party acquires from a source other than the disclosing party.

Customised Course(s) means an individual training package delivered entirely online that can be assigned via e3's LearnForce LMS or exported as a single SCORM package.

Charges means the fees and charges specified in this document in clause 4.

e3 Library means the Library Courses.

Hosted License means any course hosted or created on the e3 platform that is not an e3 library course. A license is used when a new Unit ID is created. A Hosted License includes courses created using the self-authoring tool from LAB, courses uploaded via SCORM uploader tool, custom developed courses deployed via the LearnForce LMS. The total Hosted License count includes all courses embodied on the platform regardless of enrolment, assignment rights or if the course has been archived (when functionality is available).

e3Learning System means the computer hardware and computer software platforms owned by e3Learning, as modified from time to time through the performance by e3Learning of its obligations under this agreement.

Initial Term means the period specified in the agreement clause 2.

Intellectual Property Rights includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future;

Library Course(s) has the meaning in clause 15.2 of this agreement.

LearnForce LMS (LearnForce/LEARNFORCE) means a proprietary Learning Management System platform developed, maintained and fully owned by e3Learning.

Learning Management System and LMS means an electronic system that facilitates online training.

Material means:

- a) in relation to e3Learning, the e3Learning System and the Services, and all modifications or additions to the Client Systems or to the e3Learning System made by e3Learning pursuant to this agreement; and
- b) in relation to the Client, the Client Trade Marks, the Client System and all information, documents and other materials in any media whatsoever provided by or on behalf of the Client to e3Learning for the purposes of or otherwise in connection with the provision of the Services.

Personal Information means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent, or can be reasonably ascertained, from the information or opinion.

Personnel means employees, secondees, agents and contractors.

Platform means a web hosted service that is a combination of hardware and software.

Privacy Law means any applicable law, statute, regulation, ordinance, code, standard or requirement of any government, governmental or semi-governmental body which relates to privacy, including the Privacy Act 1988 (Cth) and the Spam Act 2003 (Cth).

Related Body Corporate has the meaning set out in section 50 of the Corporations Act 2001 (Cth).

SCORM stands for "Sharable Content Object Reference Model", a set of technical standards for e-learning software products and refers to the industry standard produced by Advanced Distributed Learning for e-learning interoperability.

Platform Service Levels (PSL) shall mean and refer to the service levels set out in this Agreement, as amended from time to time in accordance with clause 3.2. This agreement is to be read in conjunction with e3Learning Platform Service Levels as outlined here <http://e3learning.com.au/psl/>

Services means the services specified in this proposal.

Term means the term of this agreement as determined in accordance with clause 2.

User means a person authorised by the Client to use the training courses provided by e3Learning and in respect of whom e3Learning provides the Services.

User Data means any data about or relating to a User which:

- a) is provided by the Client to e3Learning in the course of receiving, or for the purpose of performing, the Services;
- b) e3Learning collects or records through the performance of any Services; or
- c) is input into the e3Learning System or processed or generated using the e3Learning System by or on behalf of either party or a User, and which is stored by the e3Learning System.

User for Pricing Purpose means the total number of user accounts on the system of any type whether active or inactive; the client is responsible to disable AND archive users

Virus means any malicious software, code, file, programme, worm, trojan horse or any other malware, spyware or computer software routine which may:

- a) prevent, impair or otherwise adversely affect access to or the operation of the e3Learning System or the Client System; or
- b) adversely affect any user experience of the e3Learning System or the Client System.

1.2 Interpretation

In this agreement:

- a) headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention;
- b) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- c) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- d) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- e) "includes" in any form is not a word of limitation.
- f) a reference to:
- g) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
- h) a party includes its successors and permitted assigns;
- i) a document includes all amendments or supplements to that document;
- j) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this agreement;
- k) this agreement includes all schedules under the investment section and attachments (as applicable).

2. Term

This agreement commences on the day of the signature found on the Signatory page until the end of the term as specified in the investment summary section of this document, unless terminated earlier in accordance with this Agreement.

3. Services

3.1 Supply of Services

e3Learning will:

- a) make available the e3Learning System to the Client and the Users; and
 - i. provide the Services,
 - ii. provide all services, functions and responsibilities not specifically described in this agreement but which are incidental to, or otherwise necessary for e3Learning to provide, the Services under this agreement.
 - iii. on the terms of this agreement.
- b) To enable e3Learning to perform the Services, the Client will:
 - i. undertake any services, activities or responsibilities which are expressly allocated to the Client in this proposal; and
 - ii. provide any personnel, management approvals, facilities or other resources which this proposal states are to be provided by the Client.
- c) Without limiting clause 3.1(b), the Client must inform e3Learning promptly of any actual or proposed changes to the Client Systems which will or might reasonably be expected to impact upon the performance of any of the Services or the operation of the e3Learning System, and will consult with e3Learning as reasonably required in relation to the making of such changes.

3.2 Service requirements

Each party will perform its obligations under this agreement:

- a) in accordance with the Platform Service Levels; and
- b) with due care and skill and in a professional and diligent manner.

e3Learning may amend the Platform Service Levels at any time by giving [30] days' notice to the Client. Notices for maintenance and release notifications are addressed separately under the PSL "Maintenance and Release" section.

3.3 IT Environment Setup

Our courses have been implemented and delivered across a variety of environments. However, the stability of the course content delivered through any desktop, software or user virtualisation system is subject to the configuration and the support of your internal IT resources.

3.4 Course Updates and Technical Specifications – e3 Library courses

e3 adopts a scheduled update process for ready-to-deploy courses. The process is based on a regular review of the course script by a reputable Subject Matter Expert. Frequency of review depends on subject material. The review ensures the content is consistent with relevant Legislation, Regulations or Australian Standards as appropriated.

Upgraded courses will align with the minimum technical specifications at the time of release.

Clients will be informed of upgrade course releases via the monthly e3 newsletter. It is the Client's responsibility to request the replacement of the old courses with the upgraded version via their e3 client-manager. The upgrade process is not automatic as this interrupts archive records and learners currently 'in progress'. e3 therefore accepts no liability (in line with 'liability' clause 11) should Client fail (for any reason) to take advantage of the free upgrade. e3 will update original course (live course) where the change is deemed by e3 to be critical such as a legislative change, that may impact the validity of the content and/or learning outcomes. Original courses will be available to Clients for a maximum of 12 months from the release of the upgraded course version.

3.5 Technical Requirements - Custom Developed Courses and e3 Library Courses

a) Compatible Browsers

A computer with an active internet connection and one of the following browsers installed:

- Google Chrome – latest version
- Safari – latest version
- Internet Explorer – latest version*
- Microsoft Edge – latest version
- Mozilla Firefox – latest version

The browser must also be actively supported by its provider.

*Microsoft Internet Explorer 11 is the last version of Internet Explorer

b) Minimum Browser Settings

- JavaScript enabled
- Cookies enabled
- For Internet Explorer users, compatibility mode disabled

c) Optional Plug-ins / Software

- A compatible PDF viewer – for the delivery of course certificates, resources and hosted files.
- Some web browsers may require Adobe Flash to deliver these features. Adobe Flash may be required for viewing courseware.

d) Mobile Device Compatibility

While our standard course format may run on devices with smaller screen sizes such as mobile phones, our courses are designed and optimised for desktop, laptop and most tablet devices such as the more recent Microsoft Surface/Apple iPad/Samsung Galaxy generations. Unless specifically agreed in writing, courses are not designed to be responsive on mobile

device browsers. The suitability and support of specific devices are subject to each client's individual assessment.

e) Virtual Environments

Compatibility of courseware through any desktop, software or user virtualisation system is subject to the configuration and the support of the Client's internal IT resources.

f) SCORM Content

Compatibility of a course provided as a self-contained SCORM package will be assessed against <https://cloud.scorm.com> as suitable without error. Unresolved compatibility issues can be escalated to e3's third-party SCORM partner at the Client's cost. Additional Browser Settings: Enabling browser pop-ups may be required for viewing SCORM content.

g) Conflicting System Requirements

For custom courseware developed by e3Learning and hosted on the LearnForce Learning Management System (LMS), the system requirements identified for the LearnForce LMS in the Platform Service Levels <https://www.e3learning.com.au/psl/> will take precedence over the courseware-specific system requirements stated above if they are different.

Custom courseware that is developed by e3Learning but hosted on a third party LMS is subject to the system requirements of that third-party LMS.

3.6 Personnel

e3Learning will provide the Services using personnel possessing the skills, qualifications and experience reasonably necessary to do so.

4. Charges

- a) The Client must pay e3Learning the Charges and comply with the payment terms and conditions in this Agreement. The Charges are exclusive of all taxes, which if applicable will be borne by the Client.
- b) e3Learning must invoice the Client in accordance with the terms and conditions in this Agreement, showing the calculation of the Charges to which it relates.
- c) The Client must pay each invoice received from e3Learning within 14 days from the 1st of the month following receipt of invoice.

5. Warranties

- a) e3Learning warrants and represents that:
 - i. it is entitled to enter into this agreement and the entry into this agreement does not cause it to be in breach of any applicable law or any agreement with a third party;
 - ii. it will perform its obligations under this agreement in accordance with all applicable laws and with reasonable care and skill;
 - iii. the e3Learning personnel providing the Services possess and will use the specific skills, qualifications and experience required for the Services;

- iv. it will use its best endeavours to ensure that the e3Learning System contains no malicious code and/or Viruses; and
 - v. none of e3Learning's Material, nor the use in accordance with this agreement or possession of e3Learning's Material by the Client, will infringe any third party's rights.
- b) The Client warrants and represents that:
- i. it is entitled to enter into this agreement and the entry into this agreement does not cause it to be in breach of any applicable law or any agreement with a third party;
 - ii. it will perform its obligations under this agreement in accordance with all applicable laws and with reasonable care and skill;
 - iii. none of the Client's Material, nor the use in accordance with this agreement or possession of the Client's Material by e3Learning or any permitted sub licensee, will infringe any third party's rights;
 - iv. the Client System will comply with the Client System Specifications in all material respects; and
 - v. it will use its best endeavours to ensure that the Client System contains no malicious code.

6. Data and Intellectual Property Rights

6.1 Material

Each party acknowledges and agrees that all Intellectual Property Rights in each party's Material will remain with that party and its licensors and will not pass to the other party.

6.2 Data

- a) e3Learning will provide the Client with access to User Data on request from time to time during the Term, as soon as reasonably practicable after such access is requested by providing a copy of the User Data, in the form in which it is held by e3Learning, to Client.
- b) The Client grants to e3Learning a non-exclusive, paid-up, perpetual, irrevocable and transferable licence (with a right to sublicense) to exercise all Intellectual Property Rights in the User Data:
 - i. for the purposes of or in connection with the performance of e3Learning's obligations under this agreement; and
 - ii. in anonymised form for the purposes of statistical analysis and providing consulting services to the Client and third parties.

6.3 e3Learning System

- a) e3Learning grants the Client a non-exclusive, paid-up, non-transferable licence for the Term to use the e3Learning System (to the extent made accessible by e3Learning through the performance of the Services) as reasonably necessary for the Client to receive the Services.
- b) The licence granted to the Client to use the e3Learning System is subject to, and the Client must comply with, the following conditions.

- i. The Client must not sublicense or otherwise authorise any third party to use the e3Learning System for any purposes whatsoever, save that Client may authorise Users to make use of the e3Learning System on the terms published by e3Learning from time to time in relation to the use of the e3Learning System.
- ii. The Client must not use, copy, modify or otherwise exploit the e3Learning System except for the purpose of receiving and to the extent necessary to receive the Services under this agreement.
- iii. The Client must not decompile, reverse engineer or otherwise attempt to derive the algorithms by which the e3Learning System operates or translate, disassemble, reproduce, adapt or create derivative works based on the e3Learning System.

6.4 Intellectual Property - Custom Developed Courses

The Client retains ownership of its Intellectual Property Rights in any written content, images or video supplied to e3.

e3 retains ownership of its Intellectual Property Rights in all images, illustrations, audio, code and processes used to develop the online courseware.

e3Learning grants the Client a non-exclusive, paid-up, non-transferable licence for the Term to use developed content for internal and promotional purposes.

6.5 Client Trade Marks

The Client grants to e3Learning a non-exclusive, royalty free licence for the Term to reproduce and display the Client Trade Marks, for the purpose of providing the Services. e3Learning must in reproducing or displaying the Client Trade Marks comply with any standards and guidelines requested by the Client.

6.6 Client System and Materials

- a) The Client grants e3Learning a non-exclusive, paid-up, non-transferable licence for the Term to use the Client System as reasonably necessary for e3Learning to perform its obligations under this agreement.
- b) The licence granted to e3Learning to use the Client System is subject to, and e3Learning must comply with, the following conditions.
 - i. e3Learning must not sublicense or otherwise authorise any third party to use the Client System for any purposes whatsoever, save third party contractors engaged in the performance of e3Learning's obligations under this agreement and for the purpose of performing those obligations.
 - ii. e3Learning must not use, copy, modify or otherwise exploit the Client System except to the extent necessary to perform its obligations under this agreement.
 - iii. e3Learning must not decompile, reverse engineer or otherwise attempt to derive the algorithms by which the Client System operates or translate, disassemble,

reproduce, adapt or create derivative works based on the Client System except to the extent necessary to perform its obligations under this agreement.

- c) The Client grants e3Learning a non-exclusive, paid-up, non-transferable licence for the Term to use all Client Materials (other than the Client System) as reasonably necessary for e3Learning to perform its obligations under this agreement. This licence includes the right for e3Learning to sublicense such rights to any third party contractors engaged in the performance of e3Learning's obligations under this agreement, and for the purpose of performing those obligations.

6.7 Infringement by third parties

Each party must report promptly in writing to the other party any known or suspected infringement of any of the Intellectual Property Rights in the other party's Material by a third party of which it becomes aware, and will supply the other party with all available supporting evidence and reasonable assistance requested by the other party. The other party will reimburse the first party for reasonable expenses it incurs in supplying evidence and assistance to the other party in accordance with this clause. The other party will decide whether or not to commence infringement or other appropriate proceedings. The first party does not have the independent right to commence such proceedings.

6.8 Defence of claims

- a) Each party (indemnifying party) will defend and settle, and indemnify and hold harmless the other party from and against any liability for legal costs or damages awarded under any final judgment or amounts payable by the other party under a settlement agreement made in respect of, any action, claim or proceeding brought by a third party against the other party alleging that the other party's use of the indemnifying party's Material infringes the rights (including Intellectual Property Rights) of any person (an IP Claim), provided that the other party:
 - i. notifies the indemnifying party in writing immediately of any such IP Claim;
 - ii. gives the indemnifying party sole control of the defence of the proceedings;
 - iii. cooperates and provides reasonable assistance to the indemnifying party to defend or settle the IP Claim; and
 - iv. does not settle the IP Claim or consent to any judgment being entered without the indemnifying party's prior written consent.
- b) The indemnifying party's obligation under clause 6.9(a) is reduced to the extent that:
 - i. the other party's failure to comply with clauses 6.9(a)(i) to 6.9(a)(iv) prejudices the indemnifying party's defence of the IP Claim;
 - ii. the IP Claim is based on use of the indemnifying party's Material in a manner or for a purpose not authorised by the indemnifying party.

7. Privacy

- a) In performing this agreement, each party must comply with all Privacy Laws in respect of all Personal Information collected, used, disclosed and otherwise handled by them under or in connection with this agreement.
- b) The Client warrants to e3Learning that the Client has (and will maintain during the Term) a privacy policy that complies with the Privacy Laws and permits:
 - i. the Client to disclose Personal Information to e3Learning; and
 - ii. e3Learning to use Personal Information, as contemplated by this agreement ("Compliant Privacy Policy").
- c) Subject to clause 7(b), e3Learning must handle all Personal Information that is disclosed to e3Learning by the Client under this agreement consistent with the Compliant Privacy Policy (as notified in writing by the Client to e3Learning from time to time) and all applicable Privacy Laws.
- d) Without limiting paragraph (c) above, e3Learning must:
 - i. only use Personal Information disclosed to e3Learning by the Client under this agreement to the extent necessary to provide the Services in accordance with this Agreement;
 - ii. not disclose Personal Information supplied to e3Learning by the Client under this agreement to any other person except as expressly contemplated by this agreement, by the Compliant Privacy Policy, with prior written consent of the Client, or as required by Law; and
 - iii. establish, maintain and enforce appropriate policies and procedures, and associated access controls and other technological measures, to ensure that Personal Information disclosed to e3Learning by the Client under this agreement is only accessible to those Supplier Personnel who require such access for the purpose of performing their duties of engagement.

8. Confidentiality

- a) Each party (Recipient) will not, during or after this agreement, disclose the Confidential Information of the other party (Discloser) to any third party except:
 - i. with the Discloser's prior written consent;
 - ii. as required by law; or
 - iii. to its employees, officers, professional advisers or other agents (Agents) on a need to know basis for the purposes of this agreement.
- b) The Recipient will ensure that Agents keep the Confidential Information confidential on the terms provided in this clause.
- c) If the Recipient becomes aware of a suspected or actual breach of this clause by the Recipient or an Agent, the Recipient will immediately notify the

Discloser and take reasonable steps required to prevent or stop the suspected or actual breach.

- d) The Recipient will only use the Discloser's Confidential Information for performing its obligations or exercising its rights under this agreement.
- e) The Recipient will return or destroy (at the Discloser's direction) all Confidential Information when it is no longer required by the Recipient.

9. Contract Management

- a) Each party must appoint a Contract Representative who will be:
 - i. the first point of contact for any issues and Disputes relating to the operation of this Agreement; and
 - ii. authorised to give and receive notices under this Agreement.
- b) The Contract Representative at the Commencement Date are the people described as such in the Signatory Page of this document.
- c) A party may change its Contract Representative at any time by giving notice to the other party. The notice must include the name, address, phone number, facsimile number (if applicable) and email address of the new Contract Representative.
- d) The Contract Representatives will be responsible for:
 - i. Discussion and clarification on questions in relation to the content and /or eLearning course/s;
 - ii. Facilitate timely provision of information as required under this Agreement;
 - iii. Meeting regularly to discuss the operation of this Agreement;

10. Termination

Either party may immediately terminate this agreement by notice in writing to the other party if:

- a) any insolvency event occurs in relation to the other party, if the other party is wound up, dissolved, becomes insolvent or has a liquidator, provisional liquidator, administrator, receiver, manager or receiver and manager appointed; or
- b) the other party:
 - i. commits a material breach of this agreement that is incapable of remedy; or
 - ii. commits a material breach of this agreement but does not remedy the breach within 30 days of receiving written notice of the breach from the other party.

11. Liability

- a) To the extent permitted by law, e3Learning's liability for failure to comply with any condition, warranty or guarantee implied or applied in this agreement by legislation is limited (at e3Learning's option) to:
 - i. in the case of goods - to the replacement of the goods or the supply of equivalent goods,

the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods or the payment of the cost of having the goods repaired (as determined by e3Learning); and

- ii. in the case of services, to the supplying of the services again or the payment of the cost of having the services supplied again (any one of the following as determined by e3Learning).
- b) To the extent permitted by law, e3Learning excludes all liability (whether in contract, tort (including negligence), statute or otherwise) for any and all consequential loss.
 - c) Nothing in this agreement limits e3Learning's liability to the Client:
 - i. for fraud or wilful misconduct;
 - ii. under clauses 6.7, 10 or 6.9,11; or
 - iii. for breaches of clauses 7 or 8.
 - d) Subject to the other provisions of this clause 11, e3Learning's liability to the Client arising in any manner related to this agreement, for all acts or omissions occurring under or in connection with this agreement, is limited in the aggregate to the total amount of Charges paid by the Client during the previous 12 months.

12. GST

- a) Terms used in this clause 12 have the meaning given to them in the GST Act.
- b) If a party is a member of a GST group, references to GST which the party must pay and to input tax credits to which the party is entitled, include GST which the representative member of the GST group must pay and input tax credits to which the representative member of the group is entitled.
- c) All amounts stated in and payable under this agreement exclude GST unless otherwise indicated. Where GST is payable by an entity in relation to a supply that it makes under or in connection with this agreement, and the consideration for that supply excludes GST, the party providing the consideration will pay an additional amount equal to the GST when any part of the consideration is first payable.
- d) The amount of GST will be calculated at the prevailing GST rate. If the GST rate is varied, the consideration payable for any supply under this agreement will be varied to reflect the change of rate and any reduction in any other tax, duty or statutory charge connected with the rate change.
- e) Where GST applies to any supply made under this agreement, the supplier will deliver to the recipient a valid tax invoice or adjustment note at or before the time payment for the supply is required.
- f) If this agreement requires a party to reimburse or indemnify the other party for any expense, loss or outgoings (Reimbursable Expense) the amount required to be paid by the first party will be the sum of:
 - i. the amount of the Reimbursable Expense net of input tax credits (if any) to which the other

- party is entitled in respect of the Reimbursable Expense; and
- ii. if the other party's recovery of the Reimbursable Expense from the first party is a taxable supply, any GST payable in respect of that supply.

13. General

13.1 Marketing

- 13.1.1. Unless advised to e3Learning, Client permits e3Learning to use their logo (in line with any style guide restrictions) and developed content in any marketing material, and permission to acknowledge Client as an entity who has received a service from e3Learning.
- 13.1.2. Unless advised to e3Learning, Client permits e3Learning to send corporate email communications to the contacts listed in the Signatory page of this Agreement. Client can unsubscribe to any and all emails at any time.
- 13.1.3. Client permits e3Learning to use any part of the provided online solution for demonstration (no actual access provided) purposes with other prospects and clients.

13.2 Governing law

This agreement is governed by and must be construed according to the law applying in South Australia.

13.3 Amendments

This agreement may only be varied by a document signed by or on behalf of each party.

13.4 Waiver

- a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this agreement.
- b) A waiver or consent given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party.
- c) No waiver of a breach of a term of this agreement operates as a waiver of another breach of that term or of a breach of any other term of this agreement.

13.5 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this agreement.

13.6 Relationship

The relationship between the parties created by this agreement is that of independent contractors, and e3Learning is in no way the legal representative or agent of the Client for any purpose and has no right or authority to assume or create, in writing or otherwise, any obligation of any kind expressed or implied in the name of or on behalf of the Client. This agreement and the relationship between the parties do not create a

partnership, joint venture or any form of fiduciary relationship or contract of employment between the parties.

13.7 Assignment

No party may assign its rights under this agreement without the prior consent of the other party.

13.8 Expenses

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

13.9 Entire agreement

To the extent permitted by law, in relation to its subject matter, this agreement:

- a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- b) supersedes any prior written or other agreement of the parties.

13.10 Severance

If any part or any provision of this agreement is held or found to be vague, uncertain, void, invalid or otherwise unenforceable, it will be deemed to be severed to the extent that it is void or to the extent of voidability, invalidly or unenforceability but the remainder of the agreement will remain in full force and effect.

13.11 Survival

The following obligations of the Client under this agreement survive indefinitely (including in the event of any termination or purported termination of this agreement):

- a) Clauses 6, 7, 8 and 11; and
- b) Sub-clauses 13.1, 13.2, 13.7 and 13.8.

14. Digital Protection

The Client must not lodge or upload any material to e3Learning System that is in any way defamatory, libellous, hateful, discriminatory, obscene, pornographic or similarly illegal, immoral or offensive and the Client agrees that it will be solely responsible for any consequences connected with the lodging or uploading of all material.

15. Penetration Test

The Client acknowledge that e3Learning is an ISO 27001:2013 certified Company which complies with Information Security Management System (ISMS) requirements under the Standard.

e3 conduct annual penetration tests as part of its security calendar. As a shared platform, we conduct penetration tests in a controlled environment, this test is always monitored by the e3 infrastructure team to ensure no impact to any Client. As a multi-tenanted platform unauthorised penetration testing is limited to e3 as part of its ISO 27001:2013

The pen tests are conducted with one of two external security providers, and are a central component in our accreditation.

For security and confidential reasons, we do not divulge or share any information or pen test results.

16. Standard Pricing Conditions

16.1 Course Development and Customisation

If during any phase of the development or customisation project, costs are likely to escalate beyond 5%, e3Learning reserve the right to cease development and re-cost based on altered scope. e3Learning's processes and professional project management aim to mitigate the risks of this occurring.

16.2 Payment Terms – Course Development

For Course Development projects, Client will be invoiced as follows:

- a) 60% on acceptance
- b) 30% on provision of course plan
- c) 10% on provision of online course (first version)

All milestone invoices will be issued on the earliest of either of the following outcomes:

- the original delivery date as per the agreed project plan or,
- the actual date of delivery.

17. Payment Terms – Licensing

LearnForce, Hosted platform, e3 Library and any additional Supporting Services are invoiced annually in advance on the date of agreement acceptance. Further license charges are invoiced annually in advance on the anniversary of agreement acceptance date, unless otherwise stated in the Investment section of this Agreement.

Set up and Ad hoc charges (additional support, course customisation, ad hoc customisation and support requests) are invoiced on approval of service quote.

All prices are quoted in \$AUD and exclusive of GST

e3Learning reserves the right to increase any ongoing charge, but by no more than any annual Index on average wages increases (WPI).

17.1 Credit Card Surcharge

If client wishes to pay an invoice by credit card, a surcharge of 2% will apply. For e3Learning online store purchases, no surcharge will apply.

17.2 Course Titles and Usage

Course titles purchased can be used by the number of users as outlined in this agreement.

17.3 SCORM Courses Support

All third-party systems and content must be fully compatible with the SCORM standard for correct functionality as specified in the PSL.

17.4 User Definition and Excess

For pricing purposes, a user is defined as the total number of user accounts on the system of any type whether active or inactive; the client is responsible to disable AND archive users. Should archived users exceed 10% of the total agreed number of users, within each 12-month agreement period, e3 reserves the right to invoice for the excess system usage, pro-rate at the agreed license amount.

For any pricing specifics, please refer to User pricing under the Investment section of this document.

18. Contract Representative and Address for Notices

Each party agrees to appoint the following as first point of contact under this Agreement:

Client Representative:

Name:

Telephone:

Address:

Email:

e3Learning Representative:

Name:

Telephone:

Address:

Email:

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