

ECITA: TERMS AND CONDITIONS OF MEMBERSHIP

1. Interpretation

1.1 Definitions:

Charges	the charges payable by the Member for the Membership, set out beside the relevant Membership level in the Schedule;
Conditions	these terms and conditions as amended from time to time in accordance with clause 3.3 or clause 10.5;
Contract	the contract between ECITA and the Member for the supply of Membership to the Member in accordance with these Conditions;
Control	the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company;
Deliverables	all documents, products and materials provided by ECITA as part of or in relation to the Services;
ECITA	ECITA (EU) Ltd, a company registered in England and Wales with company number 07737954;
Intellectual Property Rights	patents, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered, whether subsisting now or in the future in any part of the world;
Member	the person who purchases the Membership from ECITA;
Membership	the membership level set out in the Schedule and applicable to the Member;
Services	the services provided by ECITA as part of or in relation to the Membership, set out beside the relevant Membership level in the Schedule;
Start Date	has the meaning set out in clause 2.2;
Tobacco	leaf tobacco or other natural processed or unprocessed parts of tobacco plants including expanded and reconstituted tobacco;
Tobacco Industry	manufacturers, wholesale distributors and importers of Tobacco Products (irrespective of the proportion of business devoted to Tobacco Products);

Tobacco Products products entirely or partly made of, or used for the consumption of, Tobacco, but excluding Vaping Products;

Vaping Products devices, and products which are used within such devices, designed to produce vapour for inhalation, and which do not contain, and are not used for consuming, Tobacco but which may or may not contain nicotine, including electronic cigarettes, e-shisha products, e-liquids, mixing kits, mods and batteries.

1.2 Any phrase introduced by the terms **including, include** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding them.

1.3 A reference to writing or written includes email.

1.4 Unless the context requires otherwise, words in the singular include the plural and vice versa.

1.5 The Schedule forms part of these Conditions and shall have effect as if set out in full in the body of these Conditions. Any reference to these Conditions includes the Schedule.

2. **Basis of contract**

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Member seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Contract shall come into existence when ECITA issues written acceptance of the Member's order for Membership (**Start Date**).

3. **Membership services**

3.1 Beginning on the Start Date and continuing until the termination of the Contract, ECITA shall provide the Membership, together with the corresponding Services, to the Member in accordance with these Conditions.

3.2 Any date(s) provided by ECITA for the performance of any Services shall be estimates only and time shall not be of the essence.

3.3 ECITA shall have the right to make changes to the terms of the Membership (including the Services or the Charges):

(a) immediately upon written notice to the Member where it is necessary to do so in order to comply with any applicable law or safety requirement; or

(b) upon not less than one month's prior written notice to the Member, such changes to take effect from the beginning of the Extended Term (as defined in clause 9.1 below) following the expiry of such notice.

3.4 ECITA warrants to the Member that the Services will be provided using reasonable care and skill.

3.5 Certain of the Services relate to goods and/or services offered by third parties. The Member acknowledges and agrees that ECITA is not responsible for, and shall have

no liability whatsoever for, the acts or omissions of any such third parties or for the goods or services provided by them.

4. **Member's obligations**

4.1 The Member shall cooperate with ECITA and provide ECITA with such information as ECITA may reasonably require in order to supply the Membership, and shall ensure that such information is accurate and remains up to date in all material respects. This shall include a declaration of the Member's annual turnover for the purpose of identifying the Membership level applicable to the Member.

4.2 The Member shall conduct its business in compliance with all applicable laws and regulations in force from time to time and in accordance with good industry practice.

4.3 For the purpose of clause 4.2, **good industry practice** shall be deemed to include:

- (a) treating fellow Members with respect at all times in all correspondences, forum posts and meetings of any kind. Abuse will not be tolerated and will be regarded as a material breach of these Conditions;
- (b) maintaining high standards of business practice and inter-business dealings with other Members to ensure the ongoing credibility and reputation of the ECITA and the independent Electronic Cigarette Industry; and
- (c) avoiding the publication of any negative comment, marketing claim or other statement about any fellow Member;

provided that nothing in this clause 4.3 shall limit the Member's individual business rights to operate competitively or to comply with any applicable law or regulation.

4.4 ECITA operates for the independent Electronic Cigarette Industry and it is ECITA's policy to exclude the tobacco industry from Membership. Accordingly:

- (a) the Member must immediately notify ECITA in writing if it:
 - (i) becomes Controlled by the Tobacco Industry (whether by one or a number of organisations); or
 - (ii) receives from the Tobacco Industry (whether from one or a number of organisations) investment which in aggregate exceeds 10% of the Member's annual turnover; or
 - (iii) is listed on a stock exchange and organisations within the Tobacco Industry collectively obtain ownership of more than 10% of the issued share capital of the Member;
- (b) ECITA may terminate this Contract immediately upon written notice to the Member if any of the events described in clause 4.4(a) occur;
- (c) subject always to clause 4.4(a) and clause 4.4(b), nothing in these Conditions shall prevent or restrict the Member from purchasing from or selling to businesses owned by the Tobacco Industry.

5. Charges and payment

- 5.1 ECITA shall invoice the Member for the Charges plus VAT monthly in advance.
- 5.2 The Member shall pay the Charges in full and cleared funds monthly in advance as follows:
- (a) in respect of the first calendar month (or part thereof) of this Contract:
 - (i) if the Start Date occurs during the first week of the calendar month, the full Charges for that month shall be due on the Start Date; or
 - (ii) if the Start Date occurs during the second week of the calendar month, 50% of the Charges for that month shall be due on the Start Date; or
 - (iii) if the Start Date occurs after the second week of the calendar month, no Charges shall be payable for that month; and
 - (b) in respect of each calendar month thereafter, on the 1st day of that calendar month.
- 5.3 The Charges exclude amounts in respect of UK value added tax (**VAT**), which the Member shall additionally be liable to pay ECITA at the prevailing rate.
- 5.4 Payment shall be made to the bank account nominated in writing by ECITA. Time of payment is of the essence.
- 5.5 If the Member fails to make any payment due to ECITA under the Contract by the due date for payment then, without limiting its rights and remedies:
- (a) the Member shall pay interest on the overdue amount at the rate of 4% per cent per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment;
 - (b) the Member shall pay ECITA an administration fee of £30 in respect of each amount which is not paid by the due date for payment; and
 - (c) ECITA shall have the right to suspend the Membership (and performance of any corresponding Services) until the Member pays the outstanding amount in full and cleared funds together with the interest accrued on it pursuant to clause 5.5(a) and the administration fee due pursuant to clause 5.5(b).
- 5.6 The Member shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).

6. Intellectual property rights

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Membership (including the Intellectual Property Rights in any Deliverables) shall be owned by ECITA.
- 6.2 ECITA grants to the Member for the term of this Contract:
- (a) a royalty-free, non-exclusive licence to use the Deliverables in the ordinary course of the Member's business;
 - (b) a royalty-free, non-exclusive licence to display ECITA's logo set out in the Schedule, and to refer to ECITA, in any of its business documentation to the extent reasonably necessary for the purpose of indicating that the Member is a member of ECITA.
- 6.3 The Member grants to ECITA for the term of this Contract a royalty-free, non-exclusive licence to display the Member's trademarks (including logos, wordmarks, service marks and URLs), and to refer to the Member, on its website and in any documents and advertising produced by and/or on behalf of ECITA, to the extent reasonably necessary for the purpose of indicating that the Member is a member of ECITA.

7. Limitation of liability

- 7.1 Nothing in these Conditions shall limit or exclude ECITA's liability for death or personal injury caused by ECITA's negligence, or the negligence of its employees, agents or subcontractors; for fraud or fraudulent misrepresentation; or for any matter in respect of which it would be unlawful for ECITA to exclude or restrict liability.
- 7.2 Subject to clause 7.1;
- (a) ECITA shall under no circumstances whatever be liable to the Member, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profits (howsoever caused, including direct loss), or for any indirect, special, or consequential loss or damage; and
 - (b) ECITA's total liability to the Member in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Charges actually paid by the Member.
- 7.3 Except as expressly provided for in these Conditions, any condition, warranty or other term concerning the Services which might otherwise be implied into or incorporated within the Contract, whether by statute, common law or otherwise, is expressly excluded.

8. Confidentiality

Each party (the **receiving party**) undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers,

clients or suppliers of the other party, except to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the rights or carrying out the obligations of the receiving party (provided that the confidential information is disclosed subject to obligations equivalent to those imposed by this clause 8) or as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

9. Term and Termination

- 9.1 The Contract shall commence on the Start Date. Unless terminated earlier in accordance with the remainder of this clause 9, the Contract shall continue for a period of 3 months (**Initial Term**) and shall automatically extend for further periods of 3 months (each an **Extended Term**) at the end of the Initial Term and at the end of each Extended Term. The Member may terminate the Contract by giving ECITA not less than 30 days prior written notice to terminate at the end of the Initial Term or the relevant Extended Term (as the case may be).
- 9.2 ECITA may terminate the Contract upon not less than 30 days' prior written notice to the Member, such notice to expire at the end of the calendar month.
- 9.3 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so. A material breach shall include a failure by the Member to pay any sum due from it under this Contract by the due date for payment.
- 9.4 ECITA may terminate the Contract immediately, by written notice to the Member if the Member suspends, or threatens to suspend, the payment of its debts, or (in ECITA's reasonable opinion) becomes unable to pay its debts as they fall due, or if any step is taken in relation to the bankruptcy, administration, liquidation of the Member (other than in relation to a solvent restructuring), or if the Member ceases to carry on all or a substantial part of its business.
- 9.5 On termination of the Contract for any reason:
- (a) the Member shall immediately pay to ECITA all of ECITA's outstanding unpaid Charges, and any interest and administration fees incurred under clause 5.5. The Member acknowledges and agrees that the full amount of the Charges due for the calendar month in which termination occurs shall be payable by the Member and no refund or discount shall be given;
 - (b) the licences granted pursuant to clause 6.2 and clause 6.3 shall terminate;
 - (c) the parties' rights and remedies that have accrued as at termination shall be unaffected; and
 - (d) conditions that expressly or by implication survive termination of the Contract shall continue in full force and effect.

10. **General**

- 10.1 The Contract (incorporating these Conditions) constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them relating to its subject matter.
- 10.2 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other party, or authorise either party to make or enter into any commitments for or on behalf of any other party.
- 10.3 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by any event which hinders, delays or prevents performance of a party's obligations and which is either beyond that party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable.
- 10.4 The Member shall not, without the prior written consent of ECITA, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.
- 10.5 Subject to clause 3.3, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 10.6 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 10.7 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted. Any deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 10.8 No one other than a party to the Contract shall have any right to enforce any of its terms.
- 10.9 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.

SCHEDULE

Membership Levels

Membership Level	Services	Charges (per month)
Entry Level: Turnover up to (and including) £1m per annum	ECITA Membership <i>plus</i> 10% discount on VKC products and services	£250 + VAT
Standard Level: Turnover over £1m per annum	ECITA Membership <i>plus</i> 15% discount on VKC products and services	£450 + VAT

”ECITA Membership” includes:

- Political engagement – raise your concerns to government, via a centralised voice
- Detailed advice on what the notifications for TPD will require, and any future regulatory proposals and implementations affecting the vaping sector
- Discounts on Guides and Toolkits, available from VKC
- Access to a range of approved peripheral suppliers offering products and services at discounted rates to ECITA members (*coming soon*)
- Use of the ECITA logo, plus placement of your linked logo on the ECITA site.

ECITA logo:

