

Standard Terms of Business

Scheduled Training Services – Eviture (Ireland) Ltd

Please read these terms carefully before you submit your order to us. These terms tell you who we are, how we will provide Courses to you, how you and we may change or end the contract, what to do if there is a problem and other important information.

1. Interpretation

Additional Fees means any fees payable to either us or the relevant professional body for certificates, computer-based e-assessments, examination entry fees and e-projects, tests and assessments, any updates to the Course, and any registration and membership fees.

Cancellation Period means a period of 14 days starting on the day the Contract is entered.

Consumer means a physical person who is paying for a Course for own personal attendance.

Course means courses, exams, associated services or digital content combined with any study materials and associated services.

Data Protection Legislation means all applicable laws and regulations regarding the processing of Personal Data and privacy in Ireland, including the Data Protection Act 2018, General Data Protection Regulation 2016 (GDPR) and the Privacy and Electronic Communications (EC Directive) Regulations 2003. The following terms used in this document have the same meaning as those used in Data Protection Legislation: Data Controller, Data Processor, Data Protection Impact Assessment (DPIA), Data Subject, Data Subject Access Request, Personal Data, Personal Data Breach, Process, and Processing.

Eviture is the brand under which member firms of the Eviture Group operate and provide services. Eviture is a registered trademark.

Information means information including Personal Data.

Start Date means the date on which the Course you have enrolled on commences.

We, including related wording such as *us* and *our*, mean Eviture (Ireland) Ltd, a company limited by shares by the Companies Act 2014 with registered number 603182 and registered office address at Kandoy House, 2 Fairview Strand, Stella Gardens, Dublin 3, D03 R8P3, Ireland. Our VAT number is IE3474689VH. Member firms of the Eviture Group act as agents for us in the collection of payments, and the supply of tangible items.

You, including related wording such as *your* and *yours*, mean the parties to the Contract other than us.

Words with a specific meaning in a technical context shall not have the same meaning here unless otherwise stated.

2. Applicability



These Standard Terms of Business (the “Terms”) apply to all client businesses for scheduled classroom and online Training Services.

3. Warranties and representations

3.1 Each party warrants represents and undertakes to the other that:

3.1.1 it has full capacity and authority and all necessary consents, licences, and permissions (statutory, regulatory, contractual, or otherwise), including where its procedures so require, the consent of its parent company, to enter and perform its obligations under these Terms, and

3.1.2 their performance of their obligations under the Contract shall not conflict with, limit or be contrary to any other agreement.

3.2 Each party warrants, represents and undertakes to work together in good faith and fair dealing, and a spirit of trust and cooperation.

3.3 The fact that any provision within these Terms is expressed as a warranty shall not preclude any right of termination either party may have in respect of breach of that provision by the other.

4. Enrolment

4.1 You may enrol for a course online, by email or by telephone. By enrolling you are formally accepting these Terms and your enrolment on the Course and Start Date as set out in your confirmation of enrolment.

4.2 Your enrolment may only be accepted when we have received payment in full for the Course fee and any Additional Fees.

4.3 Our acceptance of your enrolment will take place when we have issued you with confirmation of your enrolment at which point a Contract will come into existence between you and us.

4.4 Any provisions relating to the payment of fees or refunds do not apply to you if we are providing you with sample resources and demos free of charge.

5. Changes

5.1 You may request to make a change to a Course that you have applied for. If a change is possible there may be changes to the price of the Course, the timing of supply or anything else which would be necessary because of your requested change. An administrative fee of €100 may be payable.

5.2 We may change the Course and these Terms:

5.2.1 to reflect changes in relevant laws and regulatory requirements,

5.2.2 to implement minor technical adjustments and improvements, which will not affect the delivery of a Course,

5.2.3 to ensure consistency with professional education sector practice and guidance, and

5.2.4 to accommodate minor or temporary changes to dates and locations, which do not impact the overall provision of the Course.



- 5.3 We may cancel a Course event because of an insufficient number of attendees, unavailability of classrooms, unavailability of instructors or for other reasons. We will notify you of such circumstances as soon as we become aware of them. We will offer you to attend the next event of the same Course, attend another Course subject to your payment of any higher cost, or terminate the Contract.
- 5.4 In addition, we may make the following changes to these terms or the Course, but if we do so we will notify you in advance and you may then contact us to terminate the Contract and receive a refund, subject to section 12, before the changes take effect:
- 5.4.1 To increase Course fees to proportionately reflect the costs associated with establishing and providing the Course.
 - 5.4.2 To correct errors.
 - 5.4.3 By adding or removing optional modules.
 - 5.4.4 If a third party such as a government body, an awarding body, a professional institute or a third-party licensor which governs a Course imposes the changes on us, such as amending a policy or procedure, changing the syllabus or method of assessment.
- 5.5 We may update or require you to update digital content. We may from time to time make modifications, enhancements, or issue clarifications (for example, to clarify ambiguous drafting) to audio-visual, interactive or written courses, and our system requirements. Access to such changes will be free of charge to the extent that such changes relate to the Course you are enrolled for at the applicable time, during the period for which the digital content is available for your Course. The updated digital content shall always match the description of it that we provided to you before you enrolled.

6. Provision of the Course

- 6.1 We will give you access to digital content after we have received payment in full for the Course.
- 6.2 From time to time, certain courses and/or study materials may be superseded by new legislation, new syllabi, or the issue of new regulations. If this arises then we may produce courses covering the new material. For the avoidance of doubt, the purchase of a current Course does not as part of the original purchase price entitle access to future revised courses and further amounts may be due.
- 6.3 During the enrolment process, we will let you know when we will provide the Course to you. For study materials, we will deliver them to you in the timescale indicated.
- 6.4 The time allotted for each session of the Course may vary depending on the number of attendees and the pre-existing level of knowledge of the attendees.
- 6.5 If provision of the Courses is delayed by an event outside our control, then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. We will not be liable for delays caused by the event, but if there is a risk of substantial delay you may contact us to terminate the Contract and receive a refund, subject to section 12, for any part of the Course you have paid for but not received.
- 6.6 We may have to suspend the provision of a Course, for example to
- 6.6.1 deal with technical problems or make technical changes,



6.6.2 make changes to a Course, and

6.6.3 complete any disciplinary procedure.

6.7 We will contact you in advance to tell you we will be suspending the provision of a Course unless the problem is urgent or an emergency. You may contact us to terminate the Contract for a Course if we suspend it or tell you we are going to suspend the Course and we will refund, subject to section 12, any sums you have paid in advance for part of the Course that you have paid for but not received.

6.8 Payment for a Course must be received by us no later than one day before the start of the Course.

6.9 All intellectual property rights (including copyright) in a Course or other learning materials belong to us, to another member firm of the Eviture Group, or to any third party from which intellectual property rights are licensed.

6.10 We will allow you to use the applicable study materials, whether in physical or digital form, in a personal capacity for the purposes of studying on the Course. That permission will end when this Contract ends. You agree that you will only use any study materials for study purposes and that you will not copy, make available, transmit, reproduce, sell, license, distribute, publish, broadcast, or otherwise circulate the materials.

6.11 It is your responsibility to register and/or become a member of the relevant professional body for your Course where applicable.

7. Technology

7.1 It is your responsibility to ensure that you have access to the computer equipment, software and internet access required to attend an online course in accordance with our system requirements, which is updated regularly.

7.2 Computer equipment, software and internet access costs are not included in our Course fees and are your responsibility.

7.3 Digital content is available for a limited period only and that period will vary depending on the Course.

8. Loss or damage

8.1 We will not be liable for damage which was caused by failing to correctly follow installation instructions or to have in place the minimum system requirements advised by us. It is your responsibility to use antivirus and malware-protection software.

8.2 If you use the Courses for any commercial, business or re-sale purpose we will have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

9. Transfers

9.1 We may transfer our rights and obligations under these terms to another organisation. We will always tell you in writing if this happens and we will ensure that the transfer does not affect your rights under this Contract.

9.2 If you are a Consumer, you may transfer the Course to somebody else of your choice, giving us sufficient notice before the Start Date and subject to our acceptance of the enrolment of the new attendee. An administrative fee of €100 may be payable.



9.3 If you are not a Consumer, the party paying for the Course may transfer the Course to somebody else within the same organisation, giving us sufficient notice before the Start Date and subject to our acceptance of the enrolment of the new attendee. An administrative fee of €100 may be payable.

9.4 Course attendees must not share any online content with nor make their online passwords available to any third parties including other attendees. We reserve the right to terminate access to any online account in these circumstances or where we detect any suspicious or unusual activity related to an account.

10. Fees

10.1 The Course fees are as stated on our website or as otherwise notified by us.

10.2 The Course fee includes a 3% non-refundable payment gateway surcharge.

10.3 Unless otherwise stated, the Course fees do not include Additional Fees.

10.4 Our fees are exclusive of VAT and other taxes chargeable by us to our clients, which will be added where chargeable.

10.5 Where no fees have been set forth in the Contract, you are obligated to pay us in accordance with our prevailing rates.

10.6 If several discounts potentially apply to a Course, only one such discount may be selected. Discounts offers and schemes are subject to availability and may be withdrawn or changed at any time without notice.

11. Payment

11.1 Our invoices shall be payable on presentation unless otherwise agreed. Invoices are payable in full (including disbursements) without any deduction, discount, withholding, bank fees from your bank or set-off. In particular, Swift payments must be made using a SHA or OUR payment instruction (field 71A).

11.2 We may charge interest and reasonable debt recovery costs at the rate prescribed from time to time by the European Communities (Late Payment in Commercial Transactions) Regulations 2012, or any successor legislation, on any invoices which remain unpaid after the days net or due date for payment stated on the invoice, whichever is the earlier last date for payment..

11.3 Training and education services must be fully paid before enrolment can be accepted.

11.4 Payment must be made in the correct currency and to the account or otherwise for that currency as stated on each invoice or as otherwise expressly notified. Payment made in any other way is not accepted as valid payment.

11.5 If you do not accept that an invoiced fee is fair and reasonable you must notify us within 10 days of receipt and in any case before the due date for payment, failing which you will be deemed to have accepted that payment of the amount stated on the invoice is due.

11.6 Complaints about or objections to any amounts charged shall not suspend your obligation to pay.

12. Refunds



- 12.1 Refunds are made less a 3% payment gateway surcharge on the overall amount.
- 12.2 Refunds made where you terminate the Contract are made less a 10% surcharge for platform and operational overhead.
- 12.3 Refunds are only made to the same account used to make the payment.
- 12.4 A refund can take up to three weeks to be reflected in your account once the refund has been issued.

13. Complaints

- 13.1 We must be notified in writing direct to us and within 7 days following the end of your participation of a Course of any complaints relating to the Course provided.
- 13.2 Complaints relating to the Course shall not suspend your obligation to pay. Under no circumstance shall you be entitled, by a complaint in respect of a certain Course, to offset, defer or refuse payment for other Courses, services or products provided by us to which the complaint does not relate.
- 13.3 If you make a legitimate and timely complaint, we will provide you with the option to attend any Course provided by us, subject to section 9 and the payment of any difference in Course fee.

14. Third-party rights

The Contract is between us and the party paying for the Course. No other person shall have any rights to enforce any of its Terms, except for a party acting as an agent for us.

15. Termination

- 15.1 If you are a Consumer, we will refund, subject to section 12, the full Course fee if you terminate the Contract within the Cancellation Period.
- 15.2 We will refund, subject to section 12, 85% for termination received 60 days before the Start Date.
- 15.3 We will refund, subject to section 12, 50% for termination received between 59 days and 31 days before the Start Date.
- 15.4 We will refund, subject to section 12, 25% for termination received between 30 days before and 15 days before the Start Date.
- 15.5 We will issue no refund for termination received within 14 days before the Start Date.
- 15.6 We will issue no refund for termination received after the attendee has been provided access to the course materials.
- 15.7 We will issue no refunds for termination received after the Start Date.
- 15.8 We may terminate the Contract if:
 - 15.8.1 you are in material breach of the Contract,
 - 15.8.2 we have not received payment by the due date for payment stated on the invoice,



15.8.3 you repeatedly commit breaches of your obligations, or

15.8.4 continuing the provision of the Course is likely to result in a breach of applicable law or regulation, independence being compromised, or a conflict of interest which cannot be resolved by way of appropriate safeguards.

15.9 Following termination, we shall owe no contractual or tortious duty to you for future actions that we would otherwise have been obliged to take under the Contract. We shall remain entitled to recover payment of our reasonable fees and expenses incurred up to the date of termination together with interest and recovery costs in respect of any late payment.

15.10 Termination or expiry of the Contract shall be without prejudice to any rights, remedies, or obligations of either party accrued under the Contract before termination.

16. Limitation of liability

16.1 Under no circumstances will we be liable for loss of profit, loss of revenue or opportunity, corruption of data, anticipated savings, damage to goodwill, wasted management or staff time, or any punitive or exemplary damages, whether or not the likelihood of such could have been reasonably contemplated.

16.2 Under no circumstances will we be liable if you act on advice previously given by us without first confirming with us that the advice is still valid considering any change in the law, public policy, or your circumstances.

16.3 Under no circumstances will we be liable for losses arising from changes in the law or the interpretation thereof, practice, or public policy that are first published after the date on which the advice is given to the fullest extent permitted by applicable law.

16.4 Any action (including any proceeding in a court of law) in connection with the Contract or the Course must be brought within 14 days from the earlier of the date on which you became aware, or ought to have become aware, of the facts giving rise to the action and, in any event, within 14 days of the date of the act or omission that is alleged to have given rise to the action.

16.5 You agree that you will not bring any claim in connection with the Course we provide to you against any of our partners, shareholders, directors, or employees personally.

17. Data Protection

17.1 We will process Information to provide the Course, the efficient administration of our client relationships, prudent record keeping and ensure that we comply with our legal and regulatory obligations.

17.2 We may record the Course, in whole or in part, for internal review and quality purposes. Recordings will not be shared.

17.3 We may use the Information to inform you about similar Courses that we provide.

17.4 We may share your personal information:

17.4.1 If somebody else than yourself pays for the Course, we may share your data, Course attendance and test results with your employer or any other party paying for the Course.

17.4.2 With any relevant professional body for your Course.



- 17.4.3 With other companies or organisations that we have hired to perform services on our behalf including, without limitation, training services, carrying out market research, facilitating some aspects of our site and services, managing our database, contacting you, sending e-mail and fulfilling your requests. These other companies may be supplied with or have access to your personal data solely for the purpose of providing these services to us or on our behalf. We are the data controller and will remain accountable for the personal information.
- 17.4.4 With other member firms of the Eviture Group that provide services we think might interest you.
- 17.4.5 With a third party in connection with a change in or corporate structure such as, but not limited to, merger, consolidation, sale, liquidation, or transfer of substantial assets.
- 17.5 We may disclose personal information, as permitted or required by law, and to: (i) respond to inquiries or requests from governmental or public authorities; (ii) protect our rights, privacy, safety or property; (iii) permit us to pursue available remedies or limit damages that we may sustain; and (iv) enforce our agreements, including without limitation our enrolment terms and conditions.
- 17.6 We have implemented appropriate technical and organisational measures to protect Personal Data and to comply with Data Protection Legislation. Even with such measures in place, accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data cannot always be prevented. We will inform you of any Personal Data Breach concerning the information you have provided to us, without undue delay and in any case within 24 hours of our becoming aware of it and will assist you with dealing with any Personal Data Breach that is our responsibility.
- 17.7 Upon request, we will provide you with reasonable assistance to help you respond to any Data Subject exercising their rights under Data Protection Legislation. This includes you responding to Data Subject Access Requests. If we receive any direct communication from a Data Subject seeking to exercise their rights, we will inform you without undue delay.
- 17.8 We will provide all reasonable assistance if you undertake a DPIA and we will provide all evidence reasonably necessary to demonstrate our compliance with Data Protection Legislation. We will allow for and contribute to reasonable audits you conduct of our Processing of Personal Data concerning the Services, including upon reasonable written notice, allowing inspections by you or a third party on your behalf (subject to them providing confidentiality undertakings to our reasonable satisfaction).
- 17.9 Where we act solely as a Data Processor we and our people shall do so according to your written instruction. If we believe such instruction infringes Data Protection Legislation or other applicable law, we shall immediately inform you.
- 17.10 To support our business operation, we have the right to use Cloud services.
- 17.11 The email address for our Data Protection Officer is dpo@eviture.com.

18. Publicity

- 18.1 You are entitled to reference us and describe the Course completed in summary and general form, without revealing any of our confidential information.



- 18.2 We are entitled to reference you and produce, publish, and distribute a representative client list for marketing and promotion purposes (including but not limited to the posting of the same to a public-facing website) containing your name and logotype.
- 18.3 The parties shall not do or omit to do anything or permit to cause anything to be done or omitted to be done, which may damage the reputation of the other.

19. Relationship of the parties

You acknowledge that we are an independent contractor and therefore no employer/employee relationship exists. You are not responsible for payment of compensation, leave, holiday, taxes, or other benefits to our personnel.

20. Business autonomy

Nothing in the Contract or its operation shall constitute an obligation on either party to enter into any business relationship or shall preclude, impair or restrict either party from continuing to engage in its business, otherwise than in breach of the terms of the Contract.

21. Alliance arrangements

We have alliance relationships with third-party product and service vendors. As part of many such relationships, we can resell certain products and services and/or may receive compensation from vendors in the form of fees or other benefits in connection with the marketing, technical and other assistance provided by us. You acknowledge that such relationships may be beneficial to us and assist in our provision of the Course.

22. Use of the Internet

- 22.1 The parties will be able to communicate via electronic mail. The parties recognise the risks associated with electronic mail, including, but not limited to, distortion, delays, and viruses. The parties hereby declare that they will not hold each other liable for any losses incurred by either of them because of the use of electronic mail. Both parties will do or not do all that can reasonably be expected from them to avoid such risks. If either party is in doubt as to the correctness of a mail message they have received, then the contents of the message originating with the sender are decisive.
- 22.2 To the fullest extent permitted by law, we accept no liability, howsoever arising, for non-delivery, inadvertent misdirection or deletion, unauthorised access to or the corruption of such emails. Whilst we use an industry-standard firewall containing virus and malware protection, we cannot guarantee that all communications will be secure or free from infection.

23. Cyber fraud

- 23.1 We take our responsibility to look after your information extremely seriously, which is why we employ security measures to try to avoid falling victim. We keep this risk under review. One way that criminals try to steal money is by intercepting or copying legitimate emails or correspondence passing between a supplier and its clients, to convince the client that its supplier has changed its bank account details. If the client believed such an email, it could transfer money to this fraudulent account.
- 23.2 We rarely change our bank account details, so if you ever receive correspondence saying we have please contact us before transferring any money to the "new" account, as it is likely to be a fraud. We will also try to avoid changing the people who deal with your matter, so if anyone contacts you with a different name than that notified to you by us, please contact us before doing anything further.



24. Force majeure

- 24.1 No party to the Contract shall be held responsible for any failure to fulfil its obligations if such failure has been caused by circumstances beyond its control (including, without limitation relating to Covid-19 or any similar or other epidemic or pandemic, acts of God, acts of government, democratic general elections or referenda, flood, fire, earthquakes, tornadoes, civil unrest, acts of terror, strikes or other labour problems, computer, telecommunications, internet service provider or hosting facility failures or delays involving hardware, software or power systems, malicious code, denial of service attacks, inability to obtain energy etc, each a “Force Majeure Event”), provided that it will resume performance as soon as reasonably practicable. In such circumstances, the time for performance shall be extended by a period equivalent to the period during which the performance of the obligation has been delayed or failed to be performed.
- 24.2 If the period of delay or non-performance continues for 90 days, either party may terminate the Contract by serving 14 days’ notice without thereby incurring any liability to pay compensation to the other party.

25. Subsequent effect

The sections Publicity and Payment shall survive termination of the Agreement.

26. Legislative change

If a change in law occurs or will occur during the term of the Contract which has a material impact on the provision of the Course or the fees, we shall notify you of the likely effects of that change, including whether any change is required to the Course, the fees, or the Contract.

27. Rights and remedies

- 27.1 The rights and remedies provided in the Contract may be waived only in writing in a manner that expressly states that a waiver is intended, and such waiver shall only be operative regarding the specific circumstances referred to.
- 27.2 Unless a right or remedy of either party is expressed to be an exclusive right or remedy, the exercise of it by that party is without prejudice to that party’s other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by either party shall not constitute a waiver of that right or remedy or of any other rights or remedies.
- 27.3 The rights and remedies provided by the Contract are cumulative and, unless otherwise provided in the Contract, are not exclusive of any right or remedies provided at law or in equity or otherwise under the Contract.

28. Severability and conversion

- 28.1 If any provision of the Contract is held to be illegal, invalid, or unenforceable, in whole or in part, under any enactment or rule of law or otherwise, such provision (or part thereof) shall to that extent be deemed to not form part of the Contract but the legality, validity and enforceability of the remainder of the Contract shall not be affected.
- 28.2 If and to the extent that, in all reasonableness and fairness or by its unreasonably onerous nature, any of the provisions of the Contract cannot be invoked, the provision in question will, in any event,



be accorded a meaning corresponding as closely as possible to the original contents and tenor so that this provision can nevertheless be invoked.

29. Assignment

You shall not assign any rights, obligations or claims relating to this Agreement.

30. Notices

- 30.1 Service of documents on us concerning the Contract must be made by email to legal@eviture.se and together with a hard copy of any such documents delivered by hand or sent by pre-paid first-class post to our office address stated in these Terms on the same day as the email is sent.
- 30.2 Service of documents on you concerning the Contract must be made by email to you together with a hard copy of any such documents delivered by hand or sent by pre-paid first-class post on the same day as the email is sent.
- 30.3 You agree that you are liable to compensate us fully including any damages, costs of restoration, defence or otherwise against any action taken against us of whatever kind that has not first been notified by the relevant authority under the provisions of this section 30. For the avoidance of doubt, you are liable for informing any third party about the provisions of this section 30 and to ensure that such third party comply with the provisions of this section 30.
- 30.4 We primarily operate as a virtual organisation and documents not served under the provisions of this section 30 are deemed to not have been served. Documents delivered by hand or by postal mail can take a long time to reach the intended person or persons and you agree to allow for a minimum of 28 days for us to respond following a notice served.
- 30.5 The parties agree that email doesn't imply guaranteed delivery and that an email received by either party's email facilities doesn't imply delivery to the intended recipient. Any email may, without warning, be discarded, held in a queue, held in quarantine, blocked, delivered to an unmonitored mailbox or otherwise instead of being delivered to the intended mailbox.

31. Entire agreement

- 31.1 The Contract constitutes the entire agreement between the parties relating to the Course and all matters to which it refers. It replaces and supersedes any implied terms, previous drafts, agreements, or other communication, whether made orally or in writing.
- 31.2 Each of the parties acknowledges and agrees that in entering the Contract, and any documents referred to in it, they do not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either party in respect of any such statement, representation, warranty, or understanding shall be for breach under the terms of the Contract.

32. Dispute resolution

- 32.1 Should a dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination, or invalidity thereof, the parties shall first attempt to resolve it by discussion between their duly authorised senior management.
- 32.2 If one of the parties objects to the discussion or if the discussion is terminated, the dispute shall be referred to proceedings under the ICC Mediation Rules.



32.3 If one of the parties objects to Mediation or if the Mediation is terminated, the dispute shall be finally resolved as follows:

32.3.1 Where the amount in dispute does not exceed €100,000, the dispute shall be referred to and finally resolved by the courts of Ireland. The amount in dispute includes the claims and any counterclaims made by the parties.

32.3.2 Where the amount in dispute exceeds €100,000, the dispute shall be referred to and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce. Where the amount in dispute does not exceed €1,000,000, the number of arbitrators shall be one. Where the amount in dispute exceeds €1,000,000, the number of arbitrators shall be three. The amount in dispute includes the claims made in the Request for Arbitration and any counterclaims made in the Answer to the Request for Arbitration.

32.3.3 The seat, or legal place, of arbitration, shall be Dublin, Ireland.

32.3.4 The language to be used in the mediation and the arbitration shall be English.

32.4 The governing law of the contract shall be the substantive law of Ireland.

33. Multiple counterparts

The Contract may be executed in any number of counterparts, each of which, when executed, shall be an original, and the counterparts together shall constitute the same instrument, provided that each counterpart is executed by both parties.