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# **Standard Terms of Use Relating to the Introductory and Other Services of Merlin Tuition Limited**

Dated

2023

## Terms of Use

The following terms and conditions ("**Terms**") apply to your use of the Tutoring Company introductory and other services relating to tutoring services (the "**Tutoring Company Service**" including any website available via an online platform ("**Platform**") which is owned and maintained by Merlin Tuition Limited ("**Tutoring Company**"; "**we**" or "**us**"), and the actual and prospective tutors ("**Tutors**") and actual and prospective users of tutors ("**Clients**") have to use a third party to facilitate payments to the Tutors by the users of Clients.

Users (Tutors and/or Clients) are referred to in these Terms as "**you**"/"**your**". Please read these Terms carefully. By using the Tutoring Company Service you agree that you have read, understood and agree to these Terms (each as amended from time to time). If you do not agree to these Terms you must not use the Tutoring Company Platform or use the Tutoring Company Service.

### 1. Introduction

- 1.1 Tutoring Company is a limited company registered in England and Wales (Company No. 13085316) whose registered office is 24 Southfield, Polegate, England, BN26 5LX.
- 1.2 Should you have any questions about these Terms or wish to contact Tutoring Company for any reason whatsoever, please contact Tutoring Company by email at admin@merlintuition.co.uk.

### 2. Description of Tutoring Company Service

- 2.1 The Tutoring Company Service is a service via which Users can post/provide and search/apply for opportunities (usually, but not necessarily always, related to the provision of tuition services). Users will comprise Tutors (including suppliers of such Tutor's services such as personal service companies) and Clients.
- 2.2 The Tutoring Company may provide a service through which Tutors and Clients can connect with each other and where Clients can post assignment opportunities and search for and evaluate assignment candidates, and where Tutor candidates can post individual profiles and search for and evaluate opportunities for tutoring assignments ("**Assignments**"). Tutoring Company may then match the Tutors to Assignments, according to suitability and then provides the Services of these Tutors to the Client (acting as a contractual intermediary between Clients and Tutors or introducer).
- 2.3 Tutoring Company is, when providing the Tutoring Company Service as an introducer such that the Client and Tutor will be introduced to each other for the purposes of a direct supply of tuition by the Tutor to the Client, acting as an employment agency. In relation to this:
  - (a) the Client has the obligation to pay the Tutor for the Tutor services;
  - (b) Tutoring Company may make available to the parties a service via which the Client can pay the Tutor and the Tutor can collect payments from the Client. Such a service shall be optional with no obligation on any party to select it; and
  - (c) additional terms and conditions *Standard Terms and Conditions for Introducing Tutors for Direct Engagement by Clients*, will apply in relation to the Client's relationship with the Tutoring Company where the Tutoring Company introduces a Tutor for any Assignment to the Client.
- 2.4 Acceptance of these Terms imposes on the Tutoring Company no obligation to find work or assignments for Tutors or provide Tutors for Clients.

### 3. Registration

- 3.1 To enjoy the Tutoring Company Service, where it involves an online/website service, you must register an account through the Tutoring Company Platform ("**User Account**") and in doing so and otherwise when using the Tutoring Company Service, you agree to be bound by these Terms, which shall govern your use of the Tutoring Company Service.
- 3.2 You are only eligible to register a User Account and otherwise use the Tutoring Company Service if, and by registering and creating a User Account you confirm that, [you are over 18

years old], you are resident in the United Kingdom, and all information that you use to register is accurate and up to date. It is your responsibility to keep all your information up to date.

- 3.3 On registering with us to use the Tutoring Company Service, you may be issued with a user name and password which must be used in order to access the Tutoring Company Service. The user name and password are personal to you and are not transferable.
- 3.4 In order to use the Tutoring Company Service you must, if requested, populate the member profile being an online or other record of information about you and your capabilities/requirements. You warrant and represent that all information provided on registration and contained in the member profile is, and continues to be, accurate and not misleading.
- 3.5 Any user name and password applicable to you are the methods used by us to identify you and so are very important. You are responsible for all information posted on the Tutoring Company Platform or otherwise provided to us by anyone using your user name and password. Any breach of security of a user name and password should be notified to us immediately.
- 3.6 You may not adapt or circumvent the systems in place in connection with the Tutoring Company Platform, nor access the Tutoring Company Service other than through normal operations.

#### 4. **Use of Tutoring Company Service**

- 4.1 The Tutoring Company Service may only be used by individuals (and suppliers of individuals) seeking assignments as Tutors and by Clients seeking the same.
- 4.2 Your use of the Tutoring Company Service is subject to any other contracts (as mentioned above) that you may have with Tutoring Company. If there is any other conflict or inconsistency between these Terms and the other contract(s) you have with Tutoring Company the terms of your other contracts shall take precedence.
- 4.3 You agree to use any Tutoring Company Platform and the Tutoring Company Service only for lawful purposes and in a way which does not infringe the rights of anyone else or restrict or inhibit anyone else's use of the Tutoring Company Service.
- 4.4 You are permitted to download and print content from any Tutoring Company Platform solely for your personal use. Tutoring Company Platform content must not be copied or reproduced, modified, redistributed, used or otherwise dealt with for any reason without Tutoring Company's express written permission. You are not entitled to use the content of any Tutoring Company Platform for commercial exploitation in any circumstances, save for the purposes of assignments you receive through us.
- 4.5 By using any Tutoring Company Platform and/or the Tutoring Company Service, you agree not to:
  - (a) use the Tutoring Company Platform, the Tutoring Company Service, or any information contained therein in any way that is abusive, threatening, obscene, defamatory, libellous, or racially, sexually, religiously, or otherwise unlawfully discriminatory, objectionable or offensive (including in relation to discrimination laws relating to disability, sex, sexual orientation, race, age, religion or otherwise);
  - (b) use the Tutoring Company Service for any unlawful purpose or for the promotion of illegal activities;
  - (c) attempt to, or harass, abuse or harm another person or group;
  - (d) use another person's User Account without permission;
  - (e) provide false or inaccurate information when registering a User Account, using the Tutoring Company Service or communicating with other users;
  - (f) post any assignment where there is a risk to the health and safety of any Tutor;
  - (g) except where allowed by applicable law, post jobs which require the Tutor to provide information relating to his/her: (i) racial or ethnic origin, (ii) political beliefs, (iii)

- philosophical or religious beliefs, (iv) membership of a trade union, (v) physical or mental health, (vi) sexual life, (vii) the commission of criminal offences or proceedings, or (viii) age;
- (h) attempt to re-register with the Tutoring Company Service if we have terminated your User Account for any reason;
  - (i) interfere or attempt to interfere with the proper functioning of the Tutoring Company Service;
  - (j) make any automated use of the system, or take any action that we deem to impose or to potentially impose an unreasonable or disproportionately large load on our servers or network infrastructure;
  - (k) bypass any measures we take to restrict access to the Tutoring Company Service or use any software, technology, or device to scrape, spider, or crawl the Tutoring Company Service or harvest or manipulate data;
  - (l) use the communication systems provided by or contacts through the Tutoring Company Service for any commercial solicitation purposes; or
  - (m) publish or link to malicious content intended to damage or disrupt another user's browser or computer.

## 5. **User Content**

- 5.1 You are responsible for any content, messages, reviews, feedback or profiles ("**User Content**") that you submit post or display on the Tutoring Company Platform, or transmit to other users of the Tutoring Company Service. You will not provide inaccurate, misleading, defamatory or false information onto the Tutoring Company Platform or to any other user of the Tutoring Company Service, and all opinions stated as part of User Content must be genuinely held. You represent and warrant to us that you have the right and authority to post all information you post about yourself or others on the Tutoring Company Platform.
- 5.2 By submitting, posting or displaying User Content on the Tutoring Company Platform, you grant Tutoring Company a worldwide, non-exclusive, irrevocable, perpetual, royalty-free license to reproduce, adapt, distribute and publish such User Content through the Tutoring Company Service. Tutoring Company reserves the right to refuse to accept, post, display or transmit any User Content in its sole discretion and shall comply with Data Protection Laws in relation to sensitive and personal information.
- 5.3 Tutoring Company may review and remove any User Content that, in its sole opinion, violates these Terms, violates applicable laws, rules or regulations, is abusive, disruptive, offensive or illegal, or violates the rights of, or harms or threatens the safety of, other users of the Tutoring Company Service. Tutoring Company reserves the right to prevent further access to the Tutoring Company Service for violating the Terms or applicable laws, rules or regulations.
- 5.4 Tutoring Company does not represent or guarantee the truthfulness, accuracy, or reliability of User Content, derivative works from User Content, or any other communications posted by users of the Tutoring Company Service nor does Tutoring Company endorse any opinions expressed by users of the Tutoring Company Service.

## 6. **Assignment requests and contract creation (relating to each Assignment)**

- 6.1 Tutoring Company may make available to Tutors available Assignments (including by posting on any Tutoring Company Platform) from Clients, and Tutors can request these assignments on the Tutoring Company Platform or otherwise as provided for by the Tutoring Company. You are solely responsible for your Assignment requests on the Tutoring Company Platform.
- 6.2 You agree that each Assignment request shall not contain inaccurate, false, or misleading information. Tutoring Company reserves the right to remove any Assignment requests or content from any Tutoring Company Platform or its other records which, in Tutoring Company's opinion, does not comply with these Terms or if any of the content is not in the best interests of Tutoring Company.

6.3

6.4 Contract formation for employment agency Assignments: Where a Tutor has been Introduced to a Client and the Tutor and Client indicate or have indicated via the Tutoring Company Platform or otherwise in such fashion as is from time to time specified by the Tutoring Company that:

- (a) (in the case of the Tutor) the Tutor will undertake the relevant Assignment for the Client with the Tutor making a direct supply to and contract with the Client (with the Tutoring Company acting as an introducer and employment agency and not as a contractual or payment intermediary), and
- (b) (in the case of the Client) the Client will engage the Tutor to supply the services of the Tutor for the Assignment with the Client engaging the Tutor directly (with the Tutoring Company acting as an introducer and employment agency and not as a contractual or payment intermediary).

then you agree that a contract relating to an Assignment will be deemed to have been entered into:

- (c) by you as a Client with Tutoring Company on these terms: *Standard Terms and Conditions for Introducing Tutors for Direct Engagement by Clients*,
- (d) by you as a Client with the Tutor on these terms: *Terms and Conditions between Tutor and Client for Tuition Services*, or such other terms as you may agree with the Tutor
- (e) by you as a Tutor with the Client on these terms: *Terms and Conditions between Tutor and Client for Tuition Services*, or such other terms as you may agree with the Tutor .

6.5 Contract formation for other Assignments where an Introduction has been made and Engagement follows: Where a Tutor has been Introduced to a Client and Client (otherwise than in accordance with clause 6.4) Engages the Tutor you as a Client agree that then you agree that a contract relating to an Assignment will be deemed to have been entered into by you as a Client with Tutoring Company on the these terms: *Standard Terms and Conditions for Introducing Tutors for Direct Engagement by Clients*.

6.6 For the avoidance of doubt where the Tutoring Company acts as an employment agency it shall have no right to control how the Tutoring Services are performed or responsibility for how they are performed.

6.7 An "**Introduction**" for these purposes means "Introduction" means the earlier of the following events:

- (a) the Tutoring Company supplying to the Client, orally or in writing (including via any online platform), any information sufficient to identify a Tutor, or
- (b) the Client interviewing the Tutor in person or otherwise.

6.8 An "**Engagement**" means for these purposes any Engagement under clause 6.4, and any other direct or indirect engagement (temporary or permanent), employment or use of a Tutor by the Client or any third party to whom the Client provides information concerning a Tutor within 12 months of an Introduction, and "**Engage**", and "**Engaged**" shall have corresponding meanings.

## 7. **Optional payment arrangements for employment agency Assignments**

7.1 In relation to Assignments under clause 6.4 or 6.5 above (involving the Tutoring Company acting as an employment agency) you may, at your option, agree with each other that the Tutor shall issue invoices to the Client and the Client shall pay the Tutor via *TutorCruncher.com* which shall act as payment agent (the "**Payment Agent**"). That arrangement may also involve the Client Payment Agent making payments via the Payment Agent to the Tutoring Company of its fees relating to the Engagement. You may elect to do this by <https://tutorcruncher.com/terms/> .

7.2 For the avoidance of doubt the Tutoring Company is not associated with the Payment Agent and will make no arrangements in relation to the payments due to the Tutor and shall not be liable for any failures by the Payment Agent to make payments correctly or other failures of

the Payment Agent. Details of that Payment Agent service are provided for convenience only and may be of use where You want support with the process of making payments/collecting payments.

**8. Tutor checks**

8.1 By registering a User Account to use the Tutoring Company Service as a Tutor you consent to Tutoring Company's use of your information, including the passing of it onto third parties, so that so far as reasonably possible the accuracy of the information can be checked by or for Clients ("**Tutor Checks**"). Tutoring Company will not seek your further consent prior to any person carrying out the Tutor Checks and you acknowledge that certain sensitive information may be included in the Tutor Checks. The information which Tutoring Company will collect is set out below:

<b>Tutor Check</b>	<b>How information is collected from Tutor</b>
Experience and qualifications	Tutor provides details when filling in the online application form.
References	Tutor provides details when filling in the online application form.
Passport / ID/ Work Permit	Tutor brings the original document to the first interview with Tutoring Company and then Tutoring Company uploads the scans onto a secure account.

8.2 Tutoring Company does not guarantee the accuracy to Clients of any information and the Client may request further verification from the Tutor regarding this information or the Tutor Checks.

8.3 Any additional checks the Client requires can be requested via any Tutoring Company Platform or other system that the Tutoring Company may notify to the Client. These will be notified to the Tutor if and when they are requested.

**9. Liability**

9.1 While Tutoring Company reserves the right in its sole discretion to remove User Content, assignment postings, CVs or other material from any Tutoring Company Platform or other filing system it may use from time to time, Tutoring Company does not assume any obligation to do so and to the fullest extent permitted by law, excludes any liability for failing to take any such action.

9.2 You agree that the Tutoring Company Service is provided without warranty and we do not warrant or represent that the Tutoring Company Service (including any Tutoring Company Platform) will meet your requirements or that its operation will be uninterrupted or error free. We do not make any warranty as to the accuracy or reliability of any information obtained through the Tutoring Company Service.

9.3 Any Tutoring Company Platform may contain links to other websites. We accept no responsibility or liability for any material supplied or contained on any third party website which is linked from or to any Tutoring Company Platform, or any use of personal data by such third party or any use by any person of any services provided by any such third party.

9.4 We shall only be liable to you for loss or damage caused directly and reasonably foreseeable by our breach of these Terms and our liability in these circumstances is limited as set out below.

9.5 In no event shall we, persons who act on our behalf, and/or persons we enter into contracts with be liable for any of the following types of loss or damage arising under or in relation to these Terms (whether in contract, tort (including, without limitation, negligence) or otherwise):

- (a) any loss of profits, goodwill, business, contracts, revenue or anticipated savings even if we are advised of the possibility of such loss of profits, goodwill, business, contracts, revenue or anticipated savings;
  - (b) any loss or corruption of data; or
  - (c) any loss or damage whatsoever which does not stem directly from, or which results only as a consequence of, any loss or damage caused by our breach of these Terms.
- 9.6 Notwithstanding the above, our total liability (whether in contract, tort, negligence or otherwise) to you, for any loss or damage shall, be limited to £500.
- 9.7 Nothing in these Terms shall exclude or limit our liability in respect of death or personal injury caused by negligence or fraud (including fraudulent misrepresentation) or any other liability which cannot by law be limited or excluded.

## 10. **Indemnity**

You agree to indemnify, defend and hold harmless Tutoring Company and its officers, subsidiaries, affiliates, successors, assigns, directors, officers, agents, service providers and employees from and against any and all claims, losses, expenses or demands of liability, including reasonable legal fees and costs incurred by Tutoring Company in connection with any claim by a third party (including an intellectual property claim) arising out of: (i) the materials and content you submit, post or transmit through any Tutoring Company Platform or otherwise supply to us, or (ii) your use of any Tutoring Company Platform or the Tutoring Company Service in violation of these Terms or in violation of any applicable law.

## 11. **Term**

- 11.1 Tutoring Company reserves the right, at its sole discretion, to immediately terminate your access to all or part of any Tutoring Company Platform and the Tutoring Company Service, to remove your User Account and/or any User Content posted by or about you, from any Tutoring Company Platform, and/or to terminate your registration with the Tutoring Company Service, with or without notice if Tutoring Company determines that you are not eligible to use the Tutoring Company Services or if you have violated any of these Terms.
- 11.2 Tutoring Company reserves the right, at its reasonable discretion, to apply procedures to detect and prevent breaches of these Terms or to monitor use of the Tutoring Company Service generally. These Terms will remain in full force and effect while you are a user of any Tutoring Company Platform or a registered user of the Tutoring Company Service. Tutoring Company reserves the right to close your User Account and terminate these Terms with you at any time by providing you with thirty 30 days notice if Tutoring Company ceases to provide the Tutoring Company Service in the United Kingdom. Tutoring Company reserves the right to close your User Account and terminate these Terms with you at any time after a significant duration of inactivity. If Tutoring Company terminates your User Account because of a breach by you of these Terms, you agree that you will not seek to register with the Tutoring Company Service again, whether using the same or a different identity to that under which you were originally registered.

## 12. **Changes to these Terms**

These Terms may be amended by us at our discretion from time to time and the latest version will always be available on any Tutoring Company Platform or other communication system we notify to you. Any new version of these Terms shall take effect, and will govern the Tutoring Company Service and your relationship with us: (i) immediately upon the date of posting on any Tutoring Company Platform where the changes to these Terms relate to a new feature/service or non-material changes, which (in either case) do not reduce your rights or increase your liability to us; or (ii) no less than thirty 30 days after the date of posting on any Tutoring Company Platform where the changes to these Terms potentially reduce your rights or potentially increase your liability to us. Please make sure you check for updates to these Terms each time you use the Tutoring Company Service.

**13. Privacy**

13.1 You agree that any and all personal information you provide to us may be collected, stored, processed and used in accordance with our current Privacy Policy which can be found at <https://www.merlintuition.co.uk/about-us-1>.

13.2 The Tutor consents to the Tutoring Company and the Client:

- (a) processing the Tutor's personal data for purposes connected with the provision or otherwise in contemplation of providing the Tutoring Services, such as the collation of reviews on the Tutor, contract administration; and for any purposes connected with the performance of this Agreement; and
- (b) exporting and/or processing the Tutor's personal data in jurisdictions outside the European Economic Area for purposes connected with the performance of this Agreement.

**14. General**

14.1 If any of the terms and conditions in these Terms are found to be illegal, invalid or unenforceable by any court of competent jurisdiction, the rest of these terms and conditions shall remain in full force and effect.

14.2 Only you and Tutoring Company shall be entitled to enforce these Terms. No third party shall be entitled to enforce any of these terms and conditions, whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise.

14.3 These Terms set out the entire agreement between you and us with respect to your use of the Tutoring Company Service and supersedes any and all representations, communications and prior agreements (written or oral) made by you.

14.4 These Terms are governed by the law of England and Wales. In the event of any matter or dispute arising out of or in connection with these Terms, you and we shall submit to the exclusive jurisdiction of the courts of England and Wales.