



Agreement for the supply of tuition services by a self-employed sole trader

Fortis Education and [Tutor]

Dated [2024]

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This Agreement is made on

2024

Between:

- (1) **Fortis Education** a company incorporated in England and Wales (Company number: 14767063) based in London, having its registered office at The Mill Pury Hill Business Park, Towcester, Northamptonshire, NN12 7LS (the "**Company**"); and
- (2) **Any Tutor accepting introductions of tuition clients from Fortis Education**

Background:

- (A) The Tutor provides tuition services on an independent self-employed basis.
- (B) The Company is a principal contractual intermediary specialising in sourcing tuition businesses which can provide tuition to school and university age students.
- (C) The Company's Client has a requirement for tuition services. The Tutor is one such business and has agreed to provide such expertise.
- (D) The Tutor represents that he/she supplies Tuition Services on an independent self-employed basis and that the Tuition Services do not involve the Tutor working for and/or under the supervision, direction or control of any person.

It is agreed as follows:

1. Definitions and interpretation

1.1 In this Agreement, unless the context otherwise requires, the following definitions shall apply:

"Agency Tax Legislation" means s44-47 and s688 of ITEPA and Regulations 2 and 5 of the Social Security (Categorisation of Earners) Regulations 1978.

"Agreement" means this agreement between the Company and the Tutor comprising the terms set out in this document and each Assignment agreed subject to these terms.

"Applicable Laws" means any and all laws, statutes acts, regulations, codes, judgments, orders, directives or determinations applicable to the provision of the Tuition Services (including any and all updates or amendments from time to time).

"Assignment" means the Tuition Services either a single lesson or as a course of Hourly Tuition and/or Home School Tuition booked by the Client as set out and agreed in the Assignment Details.

"Assignment Details" means the details of an Assignment (relating to the types of information listed in Schedule 1 to this Agreement) including any document and/or email or subsequent correspondence between the Company and the Tutor which sets out, confirms or clarifies the details of an Assignment.

"Business Day" means any day (other than Saturday or Sunday) on which clearing banks are open for business in London.

"Client" means the person (being an individual who represents a family or any business entity), named in the Assignment Details for whom, or at whose Location, the Tuition Services are performed under this Agreement.

"Client's Group" (where the Client is a body corporate) means the Client, any body corporate of which the Client is a subsidiary (as defined in section 1159 of the Companies Act 2006), any other subsidiary of such body corporate and any subsidiary of the Client.

"Company Background IPR" means Intellectual Property Rights owned by or licensed to the Company prior to the relevant Start Date including any information the Company provides to the Company and/or the Tutor for the purposes of performing its obligations under this Agreement.

"Company's Group" means the Company, any body corporate of which the Company is a subsidiary (as defined in section 1159 of the Companies Act 2006), any other subsidiary of such body corporate and any subsidiary of the Company.



"Conduct Regulations" means the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

"Credentials Documents" means any written information provided by the Tutor to the Company about the self-employment, tax status, experience, training, qualifications, authorisations and general suitability of the Tutor for performing the Tuition Services.

"Data Protection Laws" means any applicable laws and regulations in any relevant jurisdiction relating to the use or processing of personal data including: (i) EU Regulation 2016/679 as it forms part of the law of England and Wales by virtue of section 3 of the European Union (Withdrawal) Act 2018 (the **"UK GDPR"**); (ii) the Data Protection Act 2018 (**"DPA"**); and (iii) the Privacy and Electronic Communications (EC Directive) Regulations 2003..

"Fee" means the hourly/daily/weekly charge for the Tuition Services as set out in the relevant Assignment Details.

"Force Majeure" means an event which is beyond the reasonable control of the party affected and which has the effect that that party is prevented from performing its obligations under this Agreement including, but not limited to: acts of God, expropriation or confiscation of facilities, any form of Government intervention or action, war, hostilities, rebellion, terrorist activity, local or national emergency, sabotage or riots, and floods, fires, explosions or other catastrophe, global or national epidemics, pandemics, outbreak or other crisis. Force Majeure does not include:

- (a) failure to adequately test any equipment supplied by a third party or other service component prior to installation, or any consequence of any such failure or;
- (b) strikes or other industrial action; or
- (c) failure to secure materials or resources.

"Good Industry Practice" means the exercise of the skill, diligence, prudence, foresight and judgement which would reasonably be expected from a suitably skilled and experienced person engaged in the Tuition Services or the same or similar type of services as the Tuition Services.

"Home School Tuition" means Tuition Services in the form of a Session or series of Sessions for the Client at one or more Locations where the Tutor is required to remain available at the Tuition Location between Sessions. For the avoidance of doubt, unless expressly stated otherwise in the Assignment Details, it shall be assumed that there is no obligation for the Tutor to remain available between Sessions and the provisions for Hourly Tuition rather than Home School Tuition shall apply.

"Hourly Tuition" means Tuition Services in the form of Sessions taught on an hourly basis at the Location where there is no agreement and/or expectation that the Tutor will need to remain available between two or more such Sessions.

"Intellectual Property Rights" or **"IPR"** means any patent, copyright (including copyright in software), decryption right, trade mark, service mark or trade name, right in software, right in design, utility model, right in databases (including the right to prevent the extraction or reutilisation of information from a database), topography right, image right, moral right, right in an invention, right relating to passing off, domain name and all similar or equivalent rights in each case whether registered or not and including all applications (or rights to apply) for, or renewal or extension of, such rights which exist now or which will exist in the future in any country in the world.

"Introduce" means the passing to a person of information which identifies or relates to a person who may provide services as a tutor.

"ITEPA" means the Income Tax (Earnings and Pensions) Act 2003.

"Location" means the location where the Tuition Services are to be performed and if they are to be delivered face to face or online as set out in the Assignment Details.

"Loss" means any demand, contribution, claim, action, proceeding, liability, loss, damage, costs, expenses, tax, national insurance contributions (to the extent permitted by law) and



charges and any related penalties, fines or interest whatsoever whether founded in statute, contract, tort or otherwise made or brought against or incurred (including without limitation all losses, liabilities and costs incurred as a result of defending or settling any claims.

"Off Payroll IR35 Legislation" means the legislation known as the Off-Payroll Working Legislation, including under ITEPA Part 2 Chapter 8 (Application of Provisions to Workers Under Arrangements Made by Intermediaries) and, (Application of Provisions to Workers' Services Provided Through Intermediaries to Small Clients) or, as applicable, Part 2 Chapter 10 (Workers' Services Provided to Public Sector) and, (Workers' Services Provided Through Intermediaries to Public Authorities or Medium or Large Clients); s688AA of ITEPA; and any regulations that may be implemented in accordance with the Off Payroll Working Legislation.

"Reporting Regulations" means s.84(e)-(h) of the Income Tax (Pay As You Earn) Regulations 2003.

"Tuition Services" means the Session or series of Sessions to be delivered by the Tutor for the Client as detailed in the relevant Assignment Details comprising Hourly Tuition or Home School Tuition.

"Tutor Background IPR" means IPR owned by or licensed to the Tutor prior to the Start Date.

"Work Results" means any item of work carried out and delivered pursuant to this Agreement as part of or arising out of the Tuition Services.

- 1.2 Each term starting with a capital letter and not defined in clause 1.1 or elsewhere in this Agreement is as defined in the Assignment Details.
- 1.3 Any reference, express or implied, to an enactment includes a reference to that enactment as from time to time amended, modified, extended, re-enacted, replaced or applied by or under any other enactment (whether before or after the date of this Agreement) and all subordinate legislation made (before or after this Agreement) under it from time to time.
- 1.4 Where the context permits, words denoting:
 - (a) persons shall include bodies corporate and unincorporated associations of persons;
 - (b) the singular includes the plural and vice versa; and
 - (c) one gender shall include any gender.
- 1.5 The Tutor acknowledges and agrees that the terms of this Agreement together with the Assignment Details shall apply on or before the Start Date and for the term of any and each Assignment. In the event of any conflict or inconsistency between any Assignment Details and the terms in this main agreement the terms of the Assignment Details shall take precedence.
- 1.6 No contractual relationship shall exist between the Company and the Tutor between Assignments
- 1.7 For the purposes of the Conduct Regulations the Company shall operate as an "employment business" in relation to the Tutor (except where any permanent placement results from the Company's introduction(s) to their client in which case the Company shall act as an employment agency). The Conduct Regulations only apply to work-finding services by an employment business where the worker works for and under the control of a hirer. The Tutor will not work under the control of any person and as such the services of the Company are not work-finding services for the purposes of the Conduct Regulations where the Tutor is self-employed. Nevertheless to the extent that the Regulations may be deemed to apply, which the Company does not accept, the Company shall operate as an employment business in relation to the Tutor (except where any permanent placement results from the Company's introduction(s) to their client in which case the Company shall act as an employment agency).

2. Tutor's Obligations

- 2.1 The Tutor shall:
 - (a) throughout the term of the Assignment supply the Tuition Services in accordance with Good Industry Practice at all times taking responsibility for the way in which the Tuition Services are performed;



- (b) have reasonable autonomy in relation to determining the method of performance of the Tuition Services but in doing so shall co-operate with the Client to help ensure that the Tuition Services are generally delivered in line with the Client's objectives;
- (a) throughout the term of the Assignment supply the Tuition Services during the hours from the Start Date until the End Date specified in the relevant Assignment Details unless a shortened period of time has been agreed with the Client and the Company) at the end of which the Assignment will terminate albeit the terms of this Agreement shall continue unless and until the Agreement is terminated in accordance with clause 10;
- (c) use reasonable endeavours to accommodate the lawful and reasonable requests of the Company and/or the Client from time to time in relation to the Tuition Services;
- (d) deliver timesheets and feedback reports (or other record of project progress agreed¹ between the parties) describing what was done in each Session and teaching plan updates (in a form approved by the Company) weekly to the Company. The Tutor acknowledges that failure to deliver and return any timesheets (or other record of work progress agreed by the parties) may (if required by the Company) delay payment to the Tutor while the Company makes enquiries to verify work delivered;
- (e) comply with all health and safety, site and security regulations applicable at the Location to the extent that they apply to the type of work required for the provision of the Tuition Services;
- (f) comply with the Client's IT security policies and protocols;
- (b) comply with all Client's regulations, policies and protocols as notified by the Client and/or the Company from time to time, except where such regulations and policies relate solely to the Client's employees;
- (g) not engage in any conduct detrimental to the interests of the Client or the Company, including, without limitation, any conduct likely to bring the Client or the Company into disrepute;
- (h) use all reasonable endeavours to provide at least [24 hours] notice to the Company of any period during which the Tutor will be incapacitated, unavailable or otherwise unwilling to perform the Tuition Services in accordance with the cancellation provisions in clause 11;
- (i) supply to the Company copies of any relevant qualifications or authorisations that the Tutor is required by law or any professional body to have in order to provide the Tuition Services;
- (j) where necessary, provide at the Tutor's own cost all such equipment and training for the Tutor as is reasonable for the adequate performance of the Tuition Services;²
- (k) at the Client's and/or the Company's request remedy in the Tutor's own time and at the Tutor's own expense any Substandard Outcome of the Tuition Services and where necessary, this shall include re-performing the Tuition Services. **"Substandard Outcome"** shall mean any result, element, stage or product of the Tuition Services that the Client and/or the Company reasonably deems as not meeting the standard required under sub-clause (a) above or and/or any Tuition Service specifications set out in the Assignment Details;
- (l) where any equipment has been provided by the Company or the Client, return such equipment in full working order at the Tutor's own cost by the end of the relevant Assignment;
- (m) indemnify the Company against all Loss incurred by the Company arising out of any negligent, wrongful or fraudulent act or omission of the Tutor;
- (n) [comply with any code of conduct the Company may from time to time notify to the Tutor];

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- (o) not Introduce a third party to the Client to provide tuition services other than via the Company; and
 - (p) make up any time either at the end of a Session, or before or after another Session if they are late to a Session. For the avoidance of doubt, if the Client is late, the Tutor is under no obligation to extend the duration of the Tuition Services.
- 2.2 Any Tuition Services related request that goes beyond or varies what has been agreed in the relevant Assignment Details shall be treated as a variation to the Assignment and the Tutor shall notify the Company via email as soon as reasonably practicable of any proposed alteration, adjustment or extension to the Assignment. The Company shall provide a written response via email and shall not unreasonably withhold its consent to a change or extension requested by the Tutor. In response to a request, (if applicable) the Company will advise the Tutor whether the change is practicable and, if so, any related changes it would wish to make to the Fee;
- 2.3 The Tutor shall bear the cost of any training which it or any substitute may require in order to perform the Tuition Services.
- 2.4 Unless specifically authorised to do so by the Client in writing, the Tutor shall not:
- (a) have any authority to include any expenditure in the name or for the account of the Client; or
 - (b) hold him/herself out as having authority to bind the Client.
- 2.5 Failure to comply with this clause 2 may result in immediate termination of this Agreement.
- 3. Tutor Fees**
- 3.1 The Company acts for the client and will pay Fees to the Tutor on behalf of the Client. Fees payable to the Tutor are based upon the Hourly Tuition and/or where applicable the Home School Tuition recorded and submitted to the Company from the Tutor.
- 3.2 Upon completion of the Tuition Services and subject to performance by the Tutor of any requirements of the Company under clause 2.1(e) the Tutor shall be entitled to request payment and will generate and submit an invoice at the end of each calendar month for the Tuition Services delivered. Such payment shall be calculated in accordance with the applicable Fee set out in the Assignment Details.
- 3.3 The Fee shall be agreed between the Tutor and Company before the relevant Assignment, the . The Tutor may request an increase in the Fee but there is no obligation on the Company to increase the Tutor's Fee.
- 3.4 The Company shall not be obliged to pay any Fees to the Tutor unless a request for payment or an invoice has been properly submitted by the Tutor in accordance with this clause 3.
- 3.5 Subject to the Tutor performing the Tuition Services in accordance with this Agreement, and providing the information requested in clause 2.1(e) the Company will pay the Tutor in accordance with the Payment Terms set out in the Assignment Details.³ The Tutor shall not seek or accept payment from the Client or any representative of the Client direct.
- 3.6 Subject to the terms of this Agreement, the Company undertakes to pay monies due to the Tutor in respect of the Tuition Services carried out by the Tutor under this Agreement whether or not the Company has received a corresponding payment from the Client in respect of such Tuition Services provided that the Company shall be entitled to satisfy itself by other means that the Tuition Services have been performed before making payment.
- 3.7 If there is any dispute regarding whether the Tuition Services have been performed and delivered as claimed by the Tutor, the Company reserves the right to withhold payment of the disputed amount on the invoice until such time as the matter is resolved. The parties agree to use their reasonable endeavours to investigate the matter in dispute and to work together in good faith towards a resolution of the disputed sum as soon as reasonably practicable. Any undisputed sums will be paid in accordance with the terms of clause 3.2.



- 3.8 The Company shall not be obliged to pay any Fees to the Tutor in respect of Tuition Services performed by a Tutor for the benefit of a Client that go beyond or vary what has been agreed in the relevant Assignment Details without the agreement of the Company for such additional Tuition Services.
- 3.9 Without prejudice to any of the other provisions of this Agreement, if the Client fails, when asked, to confirm that the Tutor is not subject to supervision, direction or control by anyone, the Company reserves the right to pay the Tutor subject to PAYE and National Insurance deductions as if the Agency Tax Legislation applies until such time as the Client confirms that the Tutor is not subject to supervision, direction or control by anyone.
- 3.10 The Assignment is agreed on the basis that the Tuition Services will be delivered and completed within the timescales set out in the Assignment Details. The Tutor shall seek an extension to the Assignment if more time is required to complete the Tuition Services. The Tutor shall not be entitled to charge or invoice for any time incurred working on the Tuition Services beyond the end of the time period set out in the relevant Assignment Details without the written approval of the Company.
- 3.11 The Company shall be entitled to set off, withhold or deduct against any sum it may be liable to pay the Tutor if:
- (a) the Client and/or the Company has suffered any Loss for which the Tutor is liable; or
 - (b) the Client and/or Company becomes liable to pay or deduct an amount in respect of income tax and/or national insurance relating to Fees payable under this Agreement (in accordance with clause 4.9);
 - (c) the Company has made a payment to the Tutor which, for whatever reason, is not properly due to the Tutor;
 - (d) the Tutor becomes liable to pay the Company any sum in connection with this Agreement.
 - (e) Unless otherwise agreed in the relevant Assignment Details, the Fee shall be inclusive of all expenses and the Tutor shall not be entitled to claim from the Company or the Client any expenses incurred in connection with the performance of the Tuition Services.
- 3.12 All amounts payable under this Agreement are exclusive of VAT which, if applicable, shall be payable by the Company at the prevailing rate on production by the Tutor of the Tutor's VAT certificate.
- 3.13 All payment arrangements between the Client and the Tutor shall be handled by the company. The tutor shall not approach the Client direct, with regard to payment matters, nor should the Client approach the Tutor direct in relation to payment matters.
- 3.14 The Client and Tutor agree that if payment is made direct between them, any outstanding payments will be withheld from the Tutor by the Company and full monies owing to the Company will be pursued from both the Client and the Tutor. The Tutor and the Client will be severally liable for any costs incurred by the Company in this regard.
- 3.15 The Tutor acknowledges that they are responsible for payment of all taxes, national insurance and social security contributions due in respect of payments to be made under this Agreement and that they shall fully indemnify and hold the Client and the Company harmless in this regard.
- 3.16 The Tutor acknowledges that they are in no way covered by the Client or Company in any matter(s) of insurance and will take out, should s/he deem appropriate, his/her own insurance policy in respect of personal and/or third party claims including but not limited to accidents in the workplace and, in the case of residential Tuition; delays, cancellations, missed connections, overbooking and loss of baggage.

4. Tutor's status and liability

- 4.1 The Tutor warrants covenants and undertakes that he/she operates as a self-employed trader on a business to business basis such that the supply made under this Agreement is one of



professional consultancy services and that he/she is not subject to (or to the right of) supervision, direction or control of any person as to the manner in which he/she performs the Tuition Services. Accordingly, the Tutor agrees that he/she does not intend or regard the supply of Tuition Services made under this Agreement to fall within the scope of the Agency Tax Legislation and/or the Off Payroll IR35 Legislation. The Tutor shall notify the Company of any change in the nature of the Tuition Services from that represented by the Tutor to the Company and as intended by the parties as at the Start Date. The Tutor shall indemnify the Company (and/or, as the case may be, the Client) against any Loss arising from failure to notify the Company of any change in the nature of the Tuition Services from that represented by the Tutor to the Company and/or any supervision, direction or control by any person as to the manner in which he/she performs the Tuition Services .

- 4.2 The Tutor shall, subject to working towards meeting the Client's objectives and time scales, determine generally how and when the Tuition Services shall be performed. The parties acknowledge and agree that the:
- (a) Tuition Services do not and will not involve managing the Client's staff or covering for employed staff of the Client;
 - (b) Tuition Services do not and will not involve representing the Client or direct contact with the Client's customers in any material respect for the purposes of commercial negotiation of the like;
 - (c) supply of Tuition Services made under this Agreement does not fall within the scope of the Agency Workers Regulations 2010, the Conduct Regulations, the Agency Workers Tax Legislation or the Off Payroll IR35 Legislation.
- 4.3 The parties acknowledge that the Tutor is not the employee, worker, agency worker, agent, partner or servant of the Client or the Company and accordingly:
- (a) this Agreement is not an exclusive arrangement (subject to clauses 2.1(i) and 9) and nothing in this Agreement shall prevent the Tutor from engaging in other Tuition Services for any third party provided that does not involve any conflict of interest;
 - (b) neither the Company nor the Client are obliged to offer work to the Tutor, nor is the Tutor obliged to accept or undertake work for the Client or the Company, to work beyond the termination or expiry of the Assignment;
 - (c) the Tutor shall comply with all legal and fiscal obligations of the country in which the Tuition Services are performed including but not limited to obligations in sub-clause (d) below;
 - (d) the Tutor shall account on a timely basis to the appropriate authorities for all tax (including VAT), National Insurance contributions and social security levies (if any) (or any overseas equivalents of the same) payable in respect of sums paid to the Tutor in connection with this Agreement;
 - (e) the Tutor hereby warrants, covenants and undertakes that he/she has valid and subsisting leave to enter and remain in the United Kingdom for the duration of the Assignment, and;
 - (i) is not (in relation to such leave) subject to any conditions which may preclude or have an adverse effect on the provision of the Tuition Services;
 - (ii) shall notify the Company without delay his/her right to work and remain in the UK lapses or is withdrawn for any reason;
 - (f) he/she shall, in respect of any substitute Tutor he/she assigns to the Tuition Services pursuant to clause 12.2, carry out all pre-engagement checks as required by law and shall provide the same warranty as set out in sub-clause (e) above in respect of any such substitute;
- 4.4 The Tutor hereby takes full responsibility and accountability and liability for his/her actions and/or omissions and for the actions and/or omissions any substitute or subcontractor.
- 4.5 The Tutor warrants, covenants and undertakes that:
- (c) he/she works for Fortis on a self-employed, sole trader basis;



- (d) all invoices shall be raised in the Tutor's name and payable directly to a registered bank account held in the Tutor's name in the country in which the Company and the Tutor have agreed the Tuition Services should be performed; and
 - (e) the Tutor shall not supply or purport to supply his/her services to the Company via a personal services company or any other relevant intermediary such that the Off Payroll IR35 Legislation would need to be considered.
 - (a) (where required by the Company) he/she shall throughout the Assignment be covered by the appropriate business insurances held in the name of the Tutor and supply the Company with evidence of such cover on request, including professional indemnity insurance for a minimum amount of cover of £1 million on a single event or series of related events in a single calendar year and public liability insurance for a minimum amount of cover of £1 million on a single event or series of related events in a single calendar year or any other insurance the Tutor sees fit.
- 4.6 The Tutor shall promptly supply to the Company with all such information the Company may require to comply with the Reporting Regulations.
- 4.7 The Tutor warrants covenants and undertakes that the confirmation and documentary evidence supplied for the purposes described above shall be full and accurate and it agrees that a nil response shall constitute confirmation that there are no workers to whom the Agency Tax Legislation shall apply and it shall indemnify the Company in respect of any loss it suffers as a result of any documentation or evidence not being full, accurate or supplied in good time.
- 4.8 The Tutor shall indemnify the Company from and against any Loss which the Company may suffer or incur as a result of the failure of the Tutor to comply with any of the representations, warranties and/or undertakings in this clause 4 including, without limitation, any Losses suffered or incurred as a result of:
- (a) the Tutor claiming to be; and/or
 - (b) an official, public body or regulatory authority for any purpose regarding the Tutor as,
- an employee or worker of the Company or otherwise entitled to any rights or benefits that employees and/or workers enjoy.
- 4.9 The Company shall be entitled to withhold from any payment due to the Tutor under this Agreement any sum(s) that it may in its reasonable opinion be or become liable to pay or deduct in respect of income tax and/or national insurance relating to Fees payable under this Agreement.
- 4.10 If either the Company or the Tutor receives any assessment, notice or communication from HMRC or any other regulatory body querying the Tutor's tax status in relation to the Tuition Services, the party who has received the notice or communication shall immediately notify the other party and if appropriate, (to be decided in the Company' sole discretion) the parties shall work together in good faith to resolve the issue (which shall not constitute any admittance of liability for any reason by the Company). The Tutor shall indemnify the Company for all Losses incurred by the Company arising out of and/or as a result of such enquiry and/or investigation.
- 4.11 The Tutor shall be liable for and shall indemnify the Company from and against any Loss arising out of or in connection with any breach by the Tutor of the terms of this Agreement including any negligent or reckless act, omission or default in the provision of the Tuition Services.
- 4.12 The Company will be entitled to terminate this Agreement (without payment of compensation) on notice with immediate effect if HMRC brings an assessment against the Tutor, the Company and/or the Client as a result of breach of the Agency Tax Legislation, or any of the other tax related provisions of this Agreement.

5. Confidentiality

- 5.1 The Tutor shall:
- (a) keep confidential all information relating to the Client's and the Company's business and affairs (including, for the avoidance of doubt, Fee Rates, trade secrets, technical or commercial information of the Client which it may obtain during the course of any



Assignment or throughout the term of this Agreement) ("**Confidential Information**") which may become known to it in connection with the supply of the Tuition Services or this Agreement;

- (b) not use any Confidential Information except for the purposes of performing the Tuition Services;
- (c) without delay enter into any and all assignments of intellectual property rights (relating to the Work Results) or confidentiality undertakings that the Client or the Company may require the Tutor to enter into;
- (d) not without the Client's or the Company's express written permission remove from the Client's or the Company's premises any material containing any Confidential Information; and
- (e) on request, return to the Client or the Company (or any other entity as the Client or the Company may direct) all material in its or the Tutor's possession or control and belonging to the Client or the Company.

2. **Ownership of Intellectual Property Rights**

5.2 All Intellectual Property Rights in any Work Results, and in any materials which are created by or on behalf of the Tutor as a result of the provision of the Tuition Services and which are produced for, on behalf of or at the request of the Client and/or the Company, shall vest in the Client. If by operation of law such Intellectual Property Rights do not automatically vest in the Client at such moment then the Tutor hereby (from such moment) assigns or otherwise shall assign to the Client (including by way of an assignment of future Intellectual Property Rights), in each case at no cost to the Client or the Company, with full title guarantee and free from all charges, liens, licences and other encumbrances all such Intellectual Property Rights together with the right to sue for and obtain full and effective relief (including damages) in respect of any infringement of such Intellectual Property Rights by a third party.

5.3 Where any Work Results and any other materials which are otherwise created by or on behalf of the Tutor as a result of the performance of an Assignment are supplied with or have embedded in them Tutor Background IPR then the Tutor shall retain ownership of such Tutor Background IPR, but hereby grants to the Client a non-exclusive, perpetual (unless agreed otherwise in the relevant Assignment Details), irrevocable, royalty-free licence to use such Tutor Background IPR in any way whatsoever to facilitate and/or enable full use of the Work Results or other materials and, for this purpose, to sub-license such Tutor Background IPR to third parties.

5.4 The Company shall retain ownership of Company Background IPR.

3. **Disputes**

5.5 If any dispute arises between the parties with respect to the performance of the Tuition Services, the conformity of the Tuition Services with the provisions of this Agreement or as otherwise specified under this Agreement the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with [the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties within 14 Business days of notice of the dispute, the mediator will be nominated by CEDR.

4. **Intellectual Property Rights indemnity**

5.6 The Tutor shall indemnify the Company (and, as the case may be, the Client) from all Losses awarded against, or suffered, incurred or paid as a result of or in connection with any alleged or actual infringement of any third party's Intellectual Property Rights or other rights arising out of the receipt, use or supply of the Work Results.

5.7 The Tutor shall at the request of the Company, execute and do all acts and things reasonably necessary to enable the Client (or the Company's nominee) to apply for and obtain protection for the Work Results in any and all countries and to vest title to the Work Results in the Company (or the Company's nominee) absolutely.

5.8 The Tutor warrants, covenants and undertakes that the Work Results:

- (a) are and will be original and are or will be produced exclusively for the Client;



- (b) do not and will not infringe the rights of any third parties anywhere in the world;
- (c) do and will contain nothing which is obscene, defamatory or likely to cause offence.

5.9 The Tutor hereby assigns to the Company (or the Company's nominee) all present and future intellectual property rights in or relating to the Work Results including, without limitation, the right to sue for past infringements.

5.10 The Tutor shall from time to time do all such acts and things and sign all such documents (without cost to the Company or the Client) at the request of the Company as may be necessary to perfect the assignments referred to in clauses 6 and/or 8.4 and shall procure that any substitute shall do the same.

6. Protection of the Company's business

6.1 The Tutor shall, and shall procure that any substitute shall, not alone or jointly with another or others in any capacity and whether or not for his or her or their benefit and whether directly or indirectly either during the term of this Agreement or for a period of 9 calendar months after the date of termination or expiry of this Agreement:

- (a) enter into (or approach with a view to entering into) a similar contract of service contract or for Tuition Services:
 - (i) direct with the Client; or
 - (ii) with any member of the Client's Group; or
 - (iii) with any other person for whom, or with whom, the Tutor had material contact in the course of its, his or her or their supply of the Tuition Services at any time either in the 12 months prior to such termination or expiry or during the term of this Agreement if such term is a period of less than 12 months;
- (b) enter into a contract or other form of agreement with a person other than the Company for the supply of services to the Client or any member of the Clients Group;
- (c) induce (or seek to induce) the Client to engage the Tuition Services of any other person in competition with the Company; or
- (d) induce (or seek to induce) to leave, or cease performing service(s) for any member of the Company's Group or of the Client's Group, any contractor or employee of any member of the Company's Group or of the Client Group with which or with whom the Tutor had material contact in the course of its or their supply of the Tuition Services at any time either in the 6 months prior to such termination or expiry or during the term of this Agreement if such term is a period of less than 6 months.

7. Termination

7.1 This Agreement shall automatically expire at the End Date specified in the Assignment Details save to the extent the parties agree otherwise.

7.2 The Company may terminate this Agreement prior to the relevant End Date without notice.

7.3 The Tutor may terminate this Agreement by written notice of the Notice Period set out in the Assignment Details.

7.4 This Agreement may be terminated prior to the relevant End Date:

- (a) by the Company by written notice with immediate effect if (or, for the purpose of sub-clause (vii) below only, by the same period of notice as the Company receives from the Client, less one day):
 - (i) the Tutor is in breach of any term of this Agreement, which is, in the reasonable opinion of the Company, incapable of being remedied; or, where such breach is in the opinion of the Company capable of being remedied, the Tutor fails to remedy such breach to the Company's satisfaction and at no additional cost to the Company (or the Client) within five Business Days after an earlier notice requiring it to do so;
 - (ii) without prejudice to the generality of the foregoing, the Tutor fails to return completed signed records in accordance with the provisions of clause 2.1(d)



FORTIS EDUCATION

- (iii) the Company shall become unable to commence, continue or completely perform its obligations under this Agreement by reason of Force Majeure affecting the Company and/or the Client;
- (iv) the Tutor suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, or admits inability to pay its debts;
- (v) the Tutor has in relation to this Agreement committed an act or omission of dishonesty, incompetence or negligence; or is convicted of any indictable criminal offence (other than, where the Tuition Services do not require the Tutor to drive, a road traffic offence for which a penalty of imprisonment is not imposed) ;or the Company receives or obtains information which gives the Company reasonable grounds to believe that the Tutor is unsuitable to provide services for the Client;
- (vi) in accordance with clause 12.2, a substitute contractor is not accepted by the Company, or a substitute is not available;
- (vii) for any reason the Client:
 - (A) terminates its agreement with the Company relating to the Tuition Services; or
 - (B) cancels its requirement for the Tuition Services prior to the Start Date,in relation to the provision of the Tuition Services by the Tutor or requests that the Tutor be removed or replaced and, for the avoidance of doubt, the Company shall incur no liability for Losses in connection with any such termination;
- (viii) the Tutor fails to provide to the Company any information requested by the Company on or prior to the Start Date or otherwise requested by the Company under this Agreement;
- (ix) the Tutor fails any required security checks (as detailed in the Assignment Details);
- (x) the Company has reason to believe that the Client will not meet its payment obligations;
- (xi) the Company has reason to believe that the Tutor is asked to undertake work for which he/she is not suitably qualified;
- (xii) the Tutor is dishonest or commits fraud (in the reasonable belief of the Company and/or the Client);
- (xiii) the Tutor is incapacitated, unable or otherwise unwilling to carry out the Tuition Services in more than two weeks in any month;
- (xiv) the Tutor fails to confirm that they are not subject to (or to the right of) supervision, direction or control in the manner of provision of the Tuition Services; or
- (xv) the Company has reason to believe that the nature of the Tuition Services or the Assignment Details has changed pursuant to clause 4.1.

7.5 Termination or expiry of this Agreement shall be without prejudice to the rights of the Company arising directly or indirectly out of the acts and/or omissions of the Tutor prior to, in connection with or as a result of such termination or expiry.

7.6 On the expiry or termination of this Agreement (howsoever arising), the Tutor shall:

- (a) immediately deliver to the Company (or, as requested by the Company, the Client) all documents, books, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the Assignment and to the business or affairs of the Company and/or the Client and/or its or their business contacts generally, any keys and any other property of the Company and/or the Client, which is in its, his or her possession or under its, his or her control; and



- (b) unless otherwise required by the Company, irretrievably delete any information relating to the Assignment and/or to the business or affairs of the Company and/or the Client and/or its or their business contacts stored on any magnetic or optical disk or memory and all matter derived from such sources which is in its, his or her possession or under its, his or her control.

8. Cancellation

8.1 Without prejudice to the rights to terminate the whole Agreement under clause 10, where any Session is cancelled (meaning not performed, whether or not notice has been given by the Tutor) by the Tutor with less than 24 hours' notice the Tutor shall use all reasonable endeavours to rearrange the Session within [14] Business Days. For the avoidance of doubt, this re-arranged Session shall not be arranged to take place at the time of an already scheduled Session. Should the Tutor fail to provide [24] hours' notice and fail to re-arrange the Session the Company shall be entitled to require the Tutor to provide a 1 Hourly Tuition Session free of charge for the Client.

8.2 Where the Tuition Services are cancelled by the Client with less than:

- (a) [3] Business Days' notice for Hourly Tuition less than [4 hours]; or
- (b) [7] Business Days' notice for Home School Tuition more than [4 hours]

the Tutor shall use all reasonable endeavours to rearrange the Tuition Services within [14] Business Days.

8.3 If through no fault of the Tutor the Tutor and the Client fail to re-arrange the Tuition Services the Tutor shall be entitled to a Short Notice Cancellation Fee for the cancelled Tuition Services to the extent that the Client has paid the same to the Company. For the avoidance of doubt, the Short Notice Cancellation Fee shall only be for the cancelled session.

9. Details and identity of Tutor(s)

9.1 The Tutor warrants:

- (a) the correctness of the information supplied to the Company in any Credentials Documents;
- (b) he/she will at all times throughout the Assignment have the experience, training, qualifications and any authorisation which are required by law or by any professional or regulatory body in order to perform the Tuition Services; and that he/she shall, at the Company's request, provide confirmation of the identity of the Tutor and at least two written references and co-operate in any checks in relation to experience, training, qualifications and authorisations relevant to the performance of the Tuition Services;
- (c) he/she has no criminal convictions which would reasonably affect the Client's decision to allow the Tutor access to the Location(s) or to provide the Tuition Services; and
- (d) he/she is not prevented by any other agreement or arrangement or any restriction from fulfilling in full his/her obligations under this Agreement.

9.2 The Tutor may from time to time, without prejudice to the other provisions of this Agreement, assign a suitably qualified (in terms of experience, qualification and skills) substitute tutor to perform the Tuition Services provided that the Company shall be entitled to refuse to accept a substitute. If a substitute tutor is identified, the Tutor shall use all due diligence to ensure that handover arrangements are made and shall, at his/her own expense, be responsible for the handover to the substitute tutor such that the substitute is able and available to perform the Tuition Services as soon as possible. The Tutor shall be responsible for paying any substitute.

10. Data Protection

10.1 The parties shall comply with the provisions and obligations imposed on them by the Data Protection Laws at all times when processing personal data in connection with this Agreement.

10.2 The Tutor shall do nothing to place the Client or the Company in breach of Data Protection Laws.



10.3 The Tutor shall comply with the data privacy obligation set out in Schedule 2 and observe the Company's Data Privacy Notice set out in Schedule 2.

11. Anti-Bribery

11.1 The Tutor acknowledges and agrees that the Company will not tolerate bribery in any form in connection with the conduct of its business.

11.2 The Tutor shall:

- (a) comply with all applicable laws, statutes, regulations, codes and guidance relating to anti-bribery and anti-corruption ("**Anti-Bribery Laws**"), including without limitation the Bribery Act 2010;
- (b) not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
- (c) not do, or omit to do, any act that will cause the Company to be in breach of the Anti-Bribery Laws; and
- (d) promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Tutor in connection with the performance of this Agreement.

11.3 The Tutor shall promptly notify the Company if, at any time during the term of this Agreement, his or her circumstances, knowledge or awareness changes such that he/she would not be able to repeat the warranties set out in clause 14.2.

11.4 Breach of this clause 14 shall be deemed a material breach of this Agreement.

11.5 The Tutor shall indemnify the Company against any Losses incurred by the Company as a result of any breach of this clause 14 by the Tutor (including any consequential loss or damage).

12. General

12.1 This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements and arrangements (if any) whether written, oral or implied between the Company and the Tutor relating to the Tuition Services and all such agreements still effective at the date of this Agreement (if any) shall (without prejudice to the rights of the Company arising prior to the Start Date in respect of prior breaches by the Tutor of which the Company is not aware) be deemed to have been terminated by mutual consent with effect from the relevant Start Date but so that nothing in this clause 15.1 shall operate to exclude or limit the liability of any party in respect of fraud.

12.2 The Tutor acknowledges that, in entering this Agreement, he/she has not relied on any representations by the Company, or the Tutor made before the execution of this Agreement other than those expressly set out in this Agreement.

12.3 This Agreement shall not be assigned or subcontracted to any third party save as in accordance with clause 12.2. the Company shall, however, be entitled to assign this Agreement to any member of the Company's Group and, upon such assignment, without prejudice to the assignor's rights in respect of matters arising prior to such assignment; all references to the Company shall be deemed to refer to the assignee.

12.4 This Agreement may be executed in any number of counterparts and by the parties on separate counterparts

12.5 No amendment to this Agreement is effective unless it is in writing and signed by or on behalf of each party by a person duly authorised by that party.

12.6 Any notice required to be given under this Agreement (including the delivery of any work record or invoice) shall be in writing signed by a person duly authorised by the sending party and delivered by hand, sent by facsimile, e-mail or prepaid first class post to the recipient at its fax number or address specified in this Agreement (or as otherwise notified from time to time to the sender by the recipient for the purposes of this Agreement).



- 12.7 If any provision or any part of this Agreement is held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law:
- (a) such provision or part shall to that extent be deemed not to form part of this Agreement but the enforceability of the remainder of this Agreement shall not be affected; and/or
 - (b) if any provision shall be found to be void, but would be valid if some part of the relevant provision were deleted the relevant provision shall apply with such deletions as may be necessary to make it valid and effective.
- 12.8 This Agreement shall be governed by and construed in all respects in accordance with English law and the Courts of England and Wales shall have exclusive jurisdiction.
- 12.9 Save as set out in clause 15.10, none of the provisions of this Agreement are intended to be for the benefit of, or enforceable by third parties (other than permitted assignees) and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.
- 4.1 The Client shall be entitled to rely on and enforce the provisions of clause 8 and the other rights and benefits under this Agreement given by the Tutor in favour of the Client, notwithstanding that the Client is not a party to this Agreement.

Schedule 1

Assignment Details

This Schedule is issued subject to the Company's Agreement for the supply of consultancy tuition services by a self-employed sole trader.

Particulars of Assignment Details

"Start Date" [insert date on which the Assignment will start]

"End Date" means the date the Hourly Tuition and/or Home School Tuition has been fulfilled or such other date as the Company and the Tutor may agree in writing.

"Tutor(s)" [insert details of Tutor's who will work on the Assignment)].

"Tuition Services" [insert the relevant details of number of lessons of Hourly Tuition or Home School Tuition]

"Dates and hours Tuition Services required/Session(s)" [insert dates and hours on which the Tuition Services required].

"Location(s)" at which Tuition Services to be performed (if different from above): [●]

"Fee" [rate of £ [●] per hour, day, week]

"Payment Terms" [insert payment terms for payment to be made from the Company to the Tutor]

"Notice Period" [one month]; such period shall not limit either parties' right to terminate on notice of less than the Notice Period for a reason set out in clause 10 of the main terms and conditions.

Security checks required? Yes [DBS, two written address, proof of address, viewed their passport]

"Short Notice Cancellation Fee" means [Full charge for cancellation within 24 hours, half-charge within 48 hours]

Special Terms

[●] [details to be inserted, if any]

Expenses [[Insert any expenses policy]

1. The Client

Client name:	
Client address:	
Client contact:	
Title:	
Telephone number:	