

## Terms and Conditions for the supply of Tuition Services

### 1. Interpretation

#### 1.1 The following definitions and rules of interpretation apply in these Conditions.

#### 1.2 Definitions:

**Agency** means Write-Trak Limited, a company incorporated and registered in England and Wales with company number 03471574 whose registered office address is Lot 12 Fawkham Manor, Manor Lane, Longfield, Kent, DA3 8ND.

**Applicable Law** means any law, statute, rule or regulation that is relevant to the performance of the Tuition Services by the Tutor.

**Business Day** means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Charges** means the charges payable by the Client for the supply of the Tuition Services in accordance with clause 7 (Charges and payment).

**Commencement Date** has the meaning given in clause 3.2.

**Conditions** means these terms and conditions as amended from time to time in accordance with clause 12.5.

**Client** means the local authority, school, college, parent or guardian who purchases Tuition Services from the Tutor on behalf of a Student in accordance with these Conditions.

**Daily Fee** has the meaning given in clause 7.1.1.

**Data Controller:** has the meaning set out in section 1(1) of the Data Protection Act 1998.

**Data Subject:** an individual who is the subject of Personal Data.

**DBS Certificate** means a disclosure and barring service certificate.

**Fees** has the meaning given in clause 7.1.

**National Curriculum** means the national curriculum introduced into England, Wales and Northern Ireland following the Education Reform Act (1988).

**Personal Data** has the meaning set out in section 1(1) of the Data Protection Act 1998 and relates only to personal data, or any part of such personal data, in respect of which the Client is the Data Controller and in relation to which the Tutor is providing Tuition Services under the Contract.

**Policies and Procedures** means the Agency's policies and procedures which are available on request and are subject to change from time to time.

**Processing** and **process** means have the meaning set out section 1(1) of the Data Protection Act 1998.

**Referral Request** means a written request for Tuition Services for the benefit of a Student made by the Client to the Agency.

**Standards** means any statutory or other standards or guidance applicable to the provision of the Tuition Services by the Tutor.

**Student** means a student between the ages of 10 to 16+ on whose behalf the Client purchases Tuition Services.

**Student's Timetable** means the Student's timetable for Tuition Services as created by the Agency.

**Term Time** means the term dates notified by the Agency to the Client from time to time.

**Tuition Contract** means the contract for the supply of Tuition Services from a Tutor to the Client in accordance with these Conditions.

**Tuition Services** means the provision by the Tutor of tuition and/or examination services to a Student in accordance with these Conditions.

**Tutor** means the person who will be providing Tuition Services to the Student in accordance with these conditions, as notified by the Agency to the Client. Where more than one person provides Tuition Services to a Student, **Tutors** refers to all such persons.

**Weekly Fee** has the meaning given in clause 7.1.2.

#### 1.3 Interpretation:

1.4 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision

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- includes all subordinate legislation made under that statute or statutory provision.
- 1.5 Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.6 A reference to writing or written includes fax and email.
- 1.7 Except where these Conditions expressly provide otherwise a reference to a 'party' means the Client or the Tutor (as appropriate) (but not the Agency).
- 2. Write-Trak**
- 2.1 The Agency is a tuition agency and acts in the capacity of agent for the Tutor. The Agency does not provide any Tuition Services itself and accepts no liability for the performance or non-performance of Tuition Services by the Tutor pursuant to these Conditions.
- 2.2 Under a separate agreement between the Agency and the Tutor, the Agency has the authority from the Tutor and on the Tutor's behalf, to:
- 2.2.1 enter into Tuition Contracts;
- 2.2.2 invoice the Client for the Charges payable under clause 7;
- 2.2.3 collect payment of Charges from the Client in accordance with clause 7.7;
- 2.2.4 set the Fees payable by the Client for Tuition Services in accordance with clause 7.5; and
- 2.2.5 enforce the Tutor's rights under the Tuition Contract.
- 3. Basis of contract**
- 3.1 A Referral Request constitutes an offer by the Client to purchase Tuition Services from the Tutor in accordance with these Conditions.
- 3.2 A Referral Request shall only be deemed to be accepted when the Agency issues a written acceptance of the Referral Request on a Tutor's behalf, at which point and on which date the Tuition Contract shall come into existence (**Commencement Date**) and the Agency shall confirm to the Client the name and contact details of the Tutor (or Tutors) who will be providing the Tuition Services.
- 3.3 If there are any changes to the Tutor (or Tutors) who will be providing the Tuition Services to a Student, this will be notified to the Client and reflected in the Student's Timetable.
- 3.4 These Conditions apply to each Tuition Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 3.5 A separate Tuition Contract will be considered to exist in respect of each Student on whose behalf the Client purchases Tuition Services.
- 4. The Tutor**
- 4.1 The Tutor warrants that he or she is has an up to date DBS Certificate and is registered with the DBS update service.
- 5. Supply of Tuition Services**
- 5.1 All Tuition Services will be provided at the Tutor's home address.
- 5.2 The Tutor is responsible for the quality of the Tuition Services and will organise the manner in which the Tuition Services are provided.
- 5.3 The Client acknowledges that the provision of Tuition Services by the Tutor is under the Tutor's exclusive direction and control.
- 5.4 The Tutor shall supply the Tuition Services to the Student using reasonable care and skill and in accordance with:
- 5.4.1 the Student's Timetable;
- 5.4.2 the Policies and Procedures;
- 5.4.3 Applicable Law; and
- 5.4.4 the Standards.
- 5.5 The Tuition Services shall follow the National Curriculum.
- 5.6 The Tutor will provide all necessary equipment and materials necessary for the performance of the Tuition Services.
- 5.7 The Tutor will prepare a full written report on the Student's progress on request by the Agency and the Agency shall provide a copy of such report to

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- the Client within a reasonable period of it becoming available.
- 5.8 The Tutor will inform the Agency within a reasonable time if for any reason he or she cannot perform the Tuition Services, either temporarily or permanently. In these circumstances the Agency will use reasonable endeavours to introduce the Client to an alternative Tutor.
- 6. Client's obligations**
- 6.1 The Client shall:
- 6.1.1 ensure that information contained in the Referral Request is complete and accurate;
- 6.1.2 co-operate with the Agency and the Tutor in all matters relating to the supply of the Tuition Services; and
- 6.1.3 provide the Tutor and the Agency with such information as the Tutor may reasonably require in order to supply the Tuition Services, and ensure that such information is complete and accurate in all material respects.
- 7. Charges and payment**
- 7.1 The Charges for the Tuition Services shall be calculated on a time basis in accordance with:
- 7.1.1 the daily fee, as set out in the price list provided by the Agency at the date of the Tuition Contract (**Daily Fee**); or, where applicable
- 7.1.2 the weekly fee, as set out in the price list provided by the Agency at the date of the Tuition Contract (**Weekly Fee**);
- (together the **Fees**)
- 7.2 The Daily Fee is calculated on the basis of a five-hour day from 9.00/9.20am to 2.00/2.30pm, worked on Business Days during Term Time.
- 7.3 The Weekly Fee is calculated on the basis of a five-hour day from 9.00/9.20 am to 2.00/2.30pm, worked on each Business Day of a calendar week during Term Time.
- 7.4 The Agency shall have the right to increase the Fees on an annual basis on or about 1 May of each calendar year. Any increases in the Fees shall be notified to the Client in writing but shall not require the Client's consent.
- 7.5 The Agency shall invoice the Client on behalf of the Tutor for the provision of Tuition Services monthly in arrears.
- 7.6 The Client shall pay each invoice submitted by the Agency:
- 7.6.1 within 30 days of the date of the invoice; and
- 7.6.2 in full and in cleared funds to a bank account nominated in writing by the Agency, and
- time for payment shall be of the essence.
- 7.7 All amounts payable under the Tuition Contract by the Client to the Tutor shall be payable to the Agency on behalf of the Tutor. The Agency shall be entitled to deduct from such amounts commission in such amounts as are agreed between the Agency and the Tutor.
- 7.8 Payment by the Client to the Agency of any amount that is due to the Tutor from the Client under the Contract shall be considered good discharge of such amount from the Client to the Tutor.
- 7.9 All amounts payable by the Client under the Tuition Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made the Client shall, on receipt of a valid VAT invoice, pay such additional amounts in respect of VAT as are chargeable as payment is due for the supply of the Tuition Services.
- 7.10 If the Client fails to make a payment due under the Tuition Contract by the due date, then, without limiting the remedies under clause 10, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.10 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 7.11 All amounts due under the Tuition Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8. Data protection and data processing**
- 8.1 The Client, the Tutor and the Agency acknowledge that for the purposes of the Data Protection Act 1998, the Client is the Data Controller and the Tutor and the Agency are data processors in respect of any Personal Data.

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- 8.2 The Tutor and the Agency shall process the Personal Data only in accordance with the Client's instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by the Client.
- 8.3 Each party and the Agency warrants that it will process Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.
- 8.4 The Tutor and the Agency warrant that, having regard to the state of technological development and the costs of implementing any measures, they will:
- 8.4.1 take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:
- (a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
- (b) the nature of the data to be protected; and
- 8.4.2 take reasonable steps to ensure compliance with those measures.
- 8.5 Each party and the Agency agrees to indemnify and keep indemnified and defend at its own expense the other party and the Agency against all costs, claims, damages or expenses incurred by the other party or the Agency or for which the other party or the Agency may become liable due to any failure by a party or the Agency or a party or the Agency's employees or agents to comply with any of its obligations under this clause 8.
- 8.6 The Client acknowledges that the Tutor and the Agency are reliant on the Client for direction as to the extent to which the Tutor is entitled to use and process the Personal Data. Consequently, the Tutor and the Agency will not be liable for any claim brought by a Data Subject arising from any action or omission by the Supplier, to the extent that such action or omission resulted directly from the Client's instructions.
- 9. Limitation of liability**
- 9.1 Nothing in the Tuition Contract shall limit or exclude the Tutor's liability or the Agency's liability for:
- 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 9.1.2 fraud or fraudulent misrepresentation; or
- 9.1.3 any other liability which cannot be limited or excluded by applicable law.
- 9.2 Subject to clause 9.1, the Agency shall not be liable to the Client for any loss arising under or in connection with the performance or non-performance of the Tuition Contract by the Tutor.
- 9.3 Subject to clause 9.1, the Tutor shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Tuition Contract for loss of use or corruption of data or information, loss of or damage to goodwill or any other indirect or consequential loss.
- 9.4 Subject to clause 9.1 the Tutor's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Tuition Contract shall be limited to the total Charges paid under the Tuition Contract by the Client for Tuition Services performed by the Tutor in the 12 months preceding the date that the cause of action arose, less any commission retained by the Agency pursuant to clause 7.8.
- 9.5 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 9.6 This clause 9 shall survive termination of the Contract.
- 10. Term and Termination**
- 10.1 The Tuition Contract shall commence on the Commencement Date and shall continue until terminated in accordance with this clause 10.
- 10.2 Without affecting any other right or remedy available to it, either party may terminate a Tuition Contract by giving the other party 7 days' written notice.
- 10.3 Without affecting any other right or remedy available to it, either party may terminate the Tuition Contract with immediate effect by giving written notice to the other party if:
- 10.3.1 the other party commits a material breach of any term of the Tuition Contract and (if such a breach

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	is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;		in force on or after termination of the Tuition Contract shall remain in full force and effect.
10.3.2	the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;	<b>12. General</b>	
		12.1	<b>Force majeure.</b> Neither party shall be in breach of the Tuition Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Tuition Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
10.3.3	the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or	12.2	<b>Assignment and other dealings.</b>
		12.2.1	The Tutor may at any time assign, subcontract, delegate or deal in any other manner with any or all of its rights and obligations under the Contract.
10.3.4	the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Tuition Contract has been placed in jeopardy.	12.2.2	The Client shall not assign or deal in any other manner with any of its rights and obligations under the Contract.
10.4	Without affecting any other right or remedy available to it, the Tutor may terminate the Tuition Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Tuition Contract within 3 Business Days of the due date for payment;	12.3	<b>Confidentiality.</b>
		12.3.1	Each party and the Agency undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, Clients, clients, suppliers or suppliers of the other party or the Agency, except as permitted by clause 12.3.2.
10.5	Without affecting any other right or remedy available to it, the Tutor may suspend the supply of Tuition Services under the Tuition Contract or any other Tuition Contract between the Client and the Tutor if the Client fails to pay any amount due under the Tuition Contract on the due date for payment, the Client becomes subject to any of the events listed in clause 10.3.2 to clause 10.3.4, or the Tutor reasonably believes that the Client is about to become subject to any of them.	12.3.2	Each party and the Agency may disclose the other party's or the Agency's confidential information:
		(a)	to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out its obligations under the Tuition Contract. Each party and the Agency shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.3; and
<b>11. Consequences of termination</b>		(b)	as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
11.1	On termination of the Contract the Client shall immediately pay to the Agency all outstanding unpaid invoices and interest and, in respect of Tuition Services supplied but for which no invoice has been submitted, the Agency shall submit an invoice, which shall be payable by the Client immediately on receipt.	12.3.3	Neither party nor the Agency shall use the other party's or the Agency's confidential information for any purpose other than to perform its obligations under the Tuition Contract.
11.1.1	Termination of the Tuition Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Tuition Contract which existed at or before the date of termination.	12.4	<b>Entire agreement.</b>
11.1.2	Any provision of the Tuition Contract that expressly or by implication is intended to continue	12.4.1	The Tuition Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations

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- and understandings between them, whether written or oral, relating to its subject matter.
- 12.4.2 Each party acknowledges that in entering into the Tuition Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Tuition Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Tuition Contract.
- 12.4.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 12.5 **Variation.** Except as set out in these Conditions, no variation of the Tuition Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 12.6 **Waiver.** A waiver of any right or remedy under the Tuition Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Tuition Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Tuition Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.7 **Severance.** If any provision or part-provision of the Tuition Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 12.8 **Notices.**
- 12.8.1 Any notice or other communication given to a party under or in connection with the Tuition Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to its main email address. All notices from the Client to the Tutor or vice versa must be copied to the Agency.
- 12.8.2 Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by fax or email, at 9.00 am on the next Business Day after transmission.
- 12.8.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 12.9 **Third party rights.**
- 12.9.1 Unless it expressly states otherwise, the Tuition Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 12.9.2 The rights of the parties to rescind or vary the Tuition Contract are not subject to the consent of any other person.
- 12.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 12.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Tuition Contract or its subject matter or formation.