

TERMS AND CONDITIONS:

This Agreement is made on the date in the Contract Letter.

Between:

- The legal guardian of individual(s) receiving tuition/support/therapy whose name and address are specified in the Contract Letter (the "**Client**") and
- The Tutors/LSAs/Mentors/Therapists whose name/s and email address/es are provided to the Client by the Kite TLS Programme Lead via email following agreement by the client of the match (the "**Tutor/LSA/Mentor/Therapist**").

Background:

The Client wishes to engage the Tutor/LSA/Mentor/Therapist to provide Tuition/Support/Therapy Services (as defined below). The Tutor/LSA/Mentor/Therapist has agreed to provide the Tuition/Support/Therapy Services on the terms of this Agreement.

It is agreed as follows:

1. Definitions and interpretation

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

"Agreement" means this agreement (including any schedule or annexure to it and any document in agreed form).

"Block Tuition/Support/Therapy" has the meaning set out at clause 9.7 of this Agreement.

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

"Contract Letter" means the letter / quotes sent to the Client confirming the details and arrangements for the provision of Tuition/Support/Therapy Services.

"Data Protection Laws" means the Data Protection Act 2018, any applicable statutory or regulatory provisions and all European Directives and regulations in force from time to time relating to the protection and transfer of personal data.

"Losses" 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).

"Payment Agent" means any payment agent appointed by the Client and unless otherwise specified and notified to the Tutor/LSA/Mentor/Therapist in writing the payment agent shall be Kite Therapeutic Learning Services Limited trading as Kite TLS.

"Cover Tutor/LSA/Mentor/Therapist" means a suitably qualified and experienced substitute for the Tutor/LSA/Mentor/Therapist appointed under the terms of clause 15.

"Third Party" has the meaning set out in this Agreement.

"Tuition/Support/Therapy Services" means the provision of tuition/support/therapy by a Tutor/LSA/Mentor/Therapist for the direct/indirect benefit of the Client, the specifics of such services will vary

"Tuition/Support/Therapy Session" means a session during which Tuition/Support/Therapy Services are provided.

- 1.2 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.
- 1.3 In this Agreement, unless the context otherwise requires: words in the singular include the plural and vice versa and words in one gender include any other gender.

2. Appointment

The Client appoints the Tutor/LSA/Mentor/Therapist to provide the Tuition/Support/Therapy Services to the Client on the terms and conditions set out in this Agreement.

3. Term

This Agreement shall commence on either the date of this Agreement, or the date on which the Tutor/LSA/Mentor/Therapist first provides the Tuition/Support/Therapy Services and shall continue until terminated in accordance with this Agreement.

4. The Tuition/Support/Therapy Services

The specific Tuition/Support/Therapy Services to be provided to the Client are those set out below and/or as mutually agreed between the Client and the Tutor/LSA/Mentor/Therapist from time to time.

- 4.1 The Tutor/LSA/Mentor/Therapist shall provide Tuition/Support/Therapy Services to the Client and/or a Third Party for the benefit of the Client.
- 4.2 The Tutor/LSA/Mentor/Therapist shall use reasonable efforts to achieve the following deliverables for the Client and/or a Third Party:
 - 4.2.i teaching the subject to the academic level as specified
 - 4.2.ii by the time which the Client wishes the Third Party to achieve their

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academic/therapy goals

- 4.3 On the understanding that the Tutor/LSA/Mentor/Therapist is an independent professional who will determine the way in which the above deliverables are achieved.
- 4.4 If the Client is concerned that the Tutor/LSA/Mentor/Therapist is not going to meet a deliverable set out at clause 4.2 above, then the Client should communicate this concern to the Tutor/LSA/Mentor/Therapist in good time (at least 4 Tuition/Support/Therapy Sessions before any deadline set). Whilst this will help ensure that the Tutor/LSA/Mentor/Therapist has a reasonable amount of time to talk to the Third Party or Client to try to identify the problem hindering the deliverable, the reliance on the Third Party often means that the Tutor/LSA/Mentor/Therapist cannot guarantee a specific outcome (e.g. that teaching a Maths syllabus will guarantee any pupil a grade 9 at GCSE).

5. Tutor / LSA / Therapist's obligations to ensure the Tuition/Support/Therapy Services are Performed

- 5.1 Without prejudice to the Tutor/LSA/Mentor/Therapist's other obligations under this Agreement, the Tutor/LSA/Mentor/Therapist undertakes that at all times during a Tuition/Support/Therapy Session he/she shall:
 - a) perform the Tuition/Support/Therapy Services to the best of his/her ability with due care, attention and skill and in accordance with good practice in the Special Educational Needs profession;
 - b) act in accordance with all relevant laws, statutes and regulations in the provision of the Tuition/Support/Therapy Services;
 - c) remain compliant with administrative paperwork and documentation that is up to date and accepts that the Tutor/LSA/Mentor/Therapist's failure to keep this documentation valid will result in their immediate suspension from working with the client until they are once again compliant; and
 - d) consider the reasonable requests of the Client, although the Tutor/LSA/Mentor/Therapist as a self-employed professional provider of educational services shall not be subject to direction from supervision by or control by the Client as to the manner in which he performs the Tuition/Support/Therapy Services.
- 5.2 Subject to following the Kite TLS procedures and always to the Cover Tutor/LSA/Mentor/Therapist being acceptable to the Client and compliance with clause 15 of this Agreement the Tutor/LSA/Mentor/Therapist may appoint a Cover Tutor/LSA/Mentor/Therapist to perform the Tuition/Support/Therapy Services on his/her behalf. All cover bookings will be arranged by administration and Programme Leads to avoid confusion. The Cover Tutor/LSA/Mentor/Therapist shall continue to invoice the Client in accordance with clause 9 and shall be responsible for the remuneration of, and all tax and national insurance liabilities for themselves.
- 5.3 As part of Tuition/Support/Therapy Services the Tutor/LSA/Mentor/Therapist undertakes to:
 - a) set termly targets;
 - b) plan for sessions;
 - c) assess progress;

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- and
- d) report on progress via Kite TLS's monitoring system.
- 5.4 All communication / interaction with clients, parents/carers and the Kite TLS Team (including Admin and Accounts) will be carried out in a reasonable, respectful, polite and professional manner. Necessary phone calls should be made Monday to Friday during reasonable office hours and communication outside of these hours should be via email to Kite TLS email addresses and Tutor/LSA/Mentor/Therapist dedicated work email addresses.
- 5.5 The Tutor/LSA/Mentor/Therapist will maintain high standards of ethics and behaviour, at all times observing proper boundaries appropriate to the education profession and their position. In line with this:
- a) no consumption of alcohol or use of tobacco or vaping is acceptable whilst in the company of students or parents/carers, whether during or outside of session times.
 - b) no private arrangements to be made with clients, parents/carers to take students to associates' homes.
- 5.6 The Tutor/LSA/Mentor/Therapist will not engage in any action or communication (whether in person, via social media, or email) which brings the company into disrepute. All complaints, concerns or grievances should be referred to the Kite TLS Directors for resolution.

6. Client's Obligations

- 6.1 Without prejudice to the Client's other obligations under this Agreement, the Client undertakes that:
- a) the Client shall ensure that the location at which the Tuition/Support/Therapy Session takes place is free from any risks to health and safety to the Tutor/LSA/Mentor/Therapist and/or any individuals who attend the Tutoring/Support/Therapy Sessions;
 - b) the Client shall take reasonable steps to communicate any such risks identified to the Tutor/LSA/Mentor/Therapist before the start of the relevant Tuition/Support/Therapy Session;
and
 - c) to the extent that the Client identifies a health and safety risk under clause 6.1 (a) the Client undertakes to take all reasonably practicable steps to mitigate such risks.
 - d) the Client shall ensure that any relevant paperwork associated with a young person's package is completed and returned, as required.
- 6.2 By entering into this Agreement the Client accepts and acknowledges that the Tutor/LSA/Mentor/Therapist is engaged by the Client only to provide tuition/support/therapy. Kite TLS associates have a duty of care (as per the Kite TLS Safeguarding Policy Document) but they are not primarily responsible for the safety, welfare, well-being and care of any individuals during the Tuition/Support/Therapy Session, including Third Parties, for example siblings. In the case of working with learners of all ages in the home, a responsible adult (other than the Tutor/LSA/Mentor/Therapist)

must be present at all times. Kite TLS associates, do not lone work in the home.

- 6.3 The Client will communicate with the Tutor/LSA/Mentor/Therapist and the Kite TLS Team (including Admin and Accounts) in a reasonable, respectful and professional manner, respect their privacy and not make undue demands on their time outside of session time. Necessary phone calls should be made Monday to Friday during reasonable office hours. Communication outside of these hours should be via email to Kite TLS email addresses and Tutor/LSA/Mentor/Therapist dedicated work email addresses.
- 6.4 Clients, Parents/Carers will maintain high standards of ethics and behaviour, at all times observing proper boundaries appropriate to interactions with the education professionals and their position. In line with this, no private arrangements are to be made with clients, parents/carers to take students to associates' homes.
- 6.5 Clients, Parents/Carers will not engage in any action or communication (whether in person, via social media or email) which brings the company or Kite TLS Associates into disrepute. All complaints, concerns or grievances should be referred to the Kite TLS Directors for resolution.

7. Commitment

The Tutor/LSA/Mentor/Therapist shall provide the Tuition/Support/Therapy Services for such hours and days that Kite TLS agrees with the Client as may be necessary for the full and effective performance of the Tuition/Support/Therapy Services and/or the achievement of any Client goals.

8. Facilities and Expenses

- 8.1 The Tutor/LSA/Mentor/Therapist shall be responsible for providing and ensuring s/he has available materials and equipment necessary for the performance of the Tuition/Support/Therapy Services provided the Client has correctly briefed the Tutor/LSA/Mentor/Therapist about the Client.
- 8.2 The Tutor/LSA/Mentor/Therapist may recommend additional exercise books and/or text books / materials for Third Parties in which case purchasing of such materials is the responsibility of the Client. This does not include resources and materials for which funding has already been agreed via quote and Purchase Order with the LA / another agency.

9. Payments and Timesheets

- 9.1 For the Client and the Tutor/LSA/Mentor/Therapist's own record-keeping purposes the Tutor/LSA/Mentor/Therapist will provide a record of /Support/Therapy Services provided to the Client by completing timesheets through the Payment Agent's timesheet system and submit this along with an invoice to Kite TLS by the end of each calendar month. The Client must reject these timesheets within 2 days of submission if the timesheet is not approved and must give valid reasons in writing when doing so. After 2 days the timesheets are automatically approved (if not previously validly rejected), such automatic approval constitutes the Client's acceptance of the hours set out and the

Tuition/Support/Therapy Services provided.

9.2 No payment shall be due to the Tutor/LSA/Mentor/Therapist in respect of:

- a) any Tuition/Support/Therapy Services which have not been carried out due to cancellation by the Tutor/LSA/Mentor/Therapist or
- b) occasionally, no payment may be due to the Tutor/LSA/Mentor/Therapist in the event that the Tutor/LSA/Mentor/Therapist has not been able to carry out the Tuition/Support/Therapy Services because he/she lacked sufficient knowledge or expertise in the specific curriculum topic and exam board syllabus to carry out the Tuition/Support/Therapy Services to the Client's reasonable satisfaction

9.3 The Client shall enter into the billing agreement in accordance with the current billing guidelines issued by HM Revenue & Tuition/Support/Therapy Sessions will continue (unless agreed otherwise) until the Client or Tutor/LSA/Mentor/Therapist agree to terminate the arrangement in accordance with clause 12. Payment for Tuition/Support/Therapy Sessions will be payable regardless of whether the Client or Third Party attends the(se) Tuition/Support/Therapy Session(s) unless and until either party has served proper notice to cancel a session and/or terminate the Tuition/Support/Therapy Session(s) to which the payment relates.

9.4 In the event that Tuition/Support/Therapy sessions are booked for deliverable hours, but cannot all be accessed immediately by the client, payment will be due to the Tutor/LSA/Mentor/Therapist to secure services where the Tutor/LSA/Mentor/Therapist cannot accept other work whilst the sessions build up to full time. In this event, the Tutor/LSA/Mentor/Therapist will use the time to prepare, set targets, develop materials, engage in necessary training, complete administrative tasks, correspond with Parents/Carers and the wider team around the young person, whilst progressing to full time session delivery.

9.5 If the LA/another agency pays for a set period of Tuition/Support/Therapy in advance of a Tuition/Support/Therapy Session or series of Tuition/Support/Therapy Sessions ("**Block Tuition/Support/Therapy**") then:

- a) clause 9.5 shall not apply but
- b) after the expiry of a period of Block Tuition/Support/Therapy unless a further period of Block Tuition/Support/Therapy is paid for by the LA/another agency then the Client's engagement of and payment for the Tuition/Support/Therapy Sessions will be invoiced in accordance with clauses 9.3 and 9.5 and
- c) the Client's engagement of the Tutor/LSA/Mentor/Therapist shall not end at the expiry of the Block Tuition/Support/Therapy period unless notice to terminate is served in accordance with clause 12;

Whether Block Tuition/Support/Therapy is acceptable or not will be determined at the discretion of the Client and/or the Payment Agent.

10. Intellectual Property

All intellectual property rights and other proprietary rights (including, without limitation, rights in inventions, patents, registered designs, unregistered designs, copyright, technical information or know how or similar rights as well as the right to apply for registered protection for any such rights) created by the Tutor/LSA/Mentor/Therapist (whether alone or with others) in the course of carrying out the Tuition/Support/Therapy Services shall, as between the parties, vest in and remain with the Tutor/LSA/Mentor/Therapist.

11. Other Interests

Nothing in this Agreement shall prevent the Tutor/LSA/Mentor/Therapist from being engaged, concerned or having a financial interest (directly or indirectly) in any capacity in any other business, trade, profession or occupation during the term of this Agreement provided that such activity does not cause a breach of any of the Tutor/LSA/Mentor/Therapist's obligations under this Agreement.

12. Termination

12.1 This Agreement shall continue unless terminated:

- a) on 10 Business Days' written notice by the Client to the Tutor/LSA/Mentor/Therapist
- b) on 15 Business Days' written notice by the Tutor/LSA/Mentor/Therapist to the Client
- c) on written notice with immediate effect if there is a serious or repeated breach of this Agreement by the other party, which is, in the reasonable opinion of that other party, incapable of remedy and/or which is capable of remedy but not remedied within 10 Business Days after receiving an earlier written notice requiring that party to do so
or
- d) by written notice with immediate effect by the Tutor/LSA/Mentor/Therapist and without liability or prejudice to any right for relief if the Tutor/LSA/Mentor/Therapist forms the opinion for any reason that
 - (i) the Client may not meet its obligations to the Tutor/LSA/Mentor/Therapist
or
 - (ii) the Tuition/Support/Therapy Services are not able to be carried out in a safe or productive environment for the Tutor/LSA/Mentor/Therapist or those who should benefit from the Tuition/Support/Therapy Services.

12.2 In the event of any termination under this clause 12.1 the Client shall notify Kite TLS. Either party may give notice (by email or telephone conversation (but not voicemail alone) to the other party) to cancel a Tuition/Support/Therapy Session so long as the date on which the notice is provided (if any) is at least 48 hours before the Tuition/Support/Therapy Session is due to take place. If the Client does not give at least 48 hours' notice the Client shall be deemed to have approved the timesheet for that Tuition/Support/Therapy Session and the session which has been cancelled with insufficient notice will still be billed.

13. Nature of Tuition/Support/Therapy Services

13.1 This Agreement constitutes a contract for the provision of independent Tuition/Support/Therapy Services and is not a contract of employment. The relationship of Tutor/LSA/Mentor/Therapist to the Client is that of an independent contractor.

13.2 The Tutor/LSA/Mentor/Therapist shall not:

- a) hold himself out to be an officer, employee, worker, agent or partner of the Client or its Payment Agent;
- b) have authority to incur any expenditure in the name of or for the account of the Client or its Payment Agent or otherwise hold himself out as having authority to bind the Client or its Payment Agent in any way, except as authorised by the Client or its Payment Agent in advance.

14. Indemnity

14.1 Save as expressly provided for in this Agreement neither the Client nor its Payment Agent shall bear any responsibility for, and shall not be liable for any expenses, national insurance, pension contributions, tax of whatever kind or for any sums paid or which may be paid or payable to the Tutor/LSA/Mentor/Therapist in connection with the provision of the Tuition/Support/Therapy Services. The Tutor/LSA/Mentor/Therapist shall on demand provide details of the tax reference under which his income is dealt with by HM Revenue & Customs to the Client.

14.2 The Tutor/LSA/Mentor/Therapist hereby indemnifies and agrees to keep indemnified the Client and/or Payment Agent against any and all losses incurred by the Client or Payment Agent in respect of or in connection with:

- a) any income tax, National Insurance or social security contributions which may arise in connection with this Agreement and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Tuition/Support/Therapy Services, where such recovery is not prohibited by law;
- b) the performance of the Tuition/Support/Therapy Services;
- c) any challenge by HM Revenue & Customs as to the employment status of the Tutor/LSA/Mentor/Therapist;
- d) any claim based on employment and/or worker status brought by the Tutor/LSA/Mentor/Therapist and/or any Cover Tutor/LSA/Mentor/Therapist, including but not limited to any claim for unfair dismissal, redundancy pay, or breach of the Working Time Regulations 1998 and The Working Time (Amendment) Regulations 2003.

The Client and/or its Payment Agent may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Tutor/LSA/Mentor/Therapist.

15. Procurement

The Tutor/LSA/Mentor/Therapist shall procure that any Cover Tutor/LSA/Mentor/Therapist

providing the Tuition/Support/Therapy Services shall, prior to the provision of any Tuition/Support/Therapy Services, agree to comply with the obligations of the Tutor/LSA/Mentor/Therapist in this Agreement as if the Cover Tutor/LSA/Mentor/Therapist was a party to this Agreement save that any reference to Tutor/LSA/Mentor/Therapist shall be replaced by reference to Cover Tutor/LSA/Mentor/Therapist. For the avoidance of doubt, any Cover Tutor/LSA/Mentor/Therapist must comply with the Kite TLS safer recruitment, vetting and child protection policy and procedure.

16. Data Protection

- 16.1** The Client and the Tutor/LSA/Mentor/Therapist accept and acknowledge that it is likely that in carrying out a Tuition/Support/Therapy Session and/or preparing to carry out a Tuition/Support/Therapy Session the Client, the Client's Payment Agent and the Tutor/LSA/Mentor/Therapist will process each other's personal data (including, where necessary, sensitive personal data).
- 16.2** The Client and the Tutor/LSA/Mentor/Therapist accept and acknowledge that it is also likely that the Client, the Payment Agent or the Tutor/LSA/Mentor/Therapist will process the personal data of third parties (such as the Client's child or children and/or any other third parties) attending a Tuition/Support/Therapy Session or indicated as being due to attend a Tuition/Support/Therapy Session ("**Third Parties**"). The Client warrants that:
- a) it is the legal guardian of all Third Parties; and
 - b) its consent to processing personal data (including sensitive personal data) as set out in this Clause 16 also extends to cover any Third Parties.
- 16.3** The Tutor/LSA/Mentor/Therapist and the Client consent to the processing of any personal data both inside and, where necessary, outside the European Economic Area for the purposes of:
- a) fulfilling any of their obligations under this Agreement;
 - b) payment of any fees under this Agreement (whether by the Client and/or its Payment Agent);
 - c) compliance with applicable procedures, laws and regulations; and
 - d) any other reasonable purposes in connection with the Client and the Tutor/LSA/Mentor/Therapist's engagement, about which the Tutor/LSA/Mentor/Therapist or Client shall be notified from time to time.
- 16.4** The Client and the Tutor/LSA/Mentor/Therapist acknowledge and accept that in order to fulfil their obligations under this Agreement, it may be necessary to pass their personal data (or sensitive personal data, as appropriate) to regulatory bodies, government agencies and other third parties as required by law or for administration purposes.
- 16.5** The Tutor/LSA/Mentor/Therapist acknowledges and accepts that the Client and/or its Payment Agent may request access to / copies of electronic correspondence (including any email, voice messages and/or text messages) that the Tutor/LSA/Mentor/Therapist receives via the relevant person's telecommunications and computer systems, in order to ensure the integrity of its information technology, or to prevent or detect criminal behaviour, or behaviour which contravenes other legislation.

- 16.6** The Tutor/LSA/Mentor/Therapist and the Client agree to provide all reasonable assistance to the relevant person to ensure compliance with their obligations under this clause 16 and the Data Protection Laws.

17. General

17.1 Entire agreement and conflicts

This Agreement sets out the entire agreement and understanding between the parties in respect of the subject matter of this Agreement.

17.2 Assignment

This Agreement shall not be assignable by the Tutor/LSA/Mentor/Therapist and/or the Client.

17.3 Variation

No purported variation of this Agreement shall be effective unless it is in writing and signed by or on behalf of each of the parties.

17.4 Invalidity

To the extent that any provision of this Agreement is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be part of this Agreement, it shall not affect the enforceability of the remainder of this Agreement nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction. Nothing in this Agreement shall operate to exclude or limit either party's liability for death or personal injury caused by that party's negligence; its own fraudulent acts or omissions; or any other liability which cannot by law be excluded.

17.5 Releases and waivers

The rights, powers and remedies conferred on any party by this Agreement and the remedies available to any party are cumulative and are additional to any right, power or remedy which it may have under general law or otherwise. Any party may, in whole or in part release, compound, compromise, waive or postpone, in its absolute discretion, any liability owed to it or right granted to it in this Agreement by any other party or parties without in any way prejudicing or affecting its rights in respect of that or any other liability or right not so released, compounded, compromised, waived or postponed. No single or partial exercise, or failure or delay in exercising any right, power or remedy by any party shall constitute a waiver by that party of, or impair or preclude any further exercise of that or any right, power or remedy arising under this Agreement or otherwise.

17.6 Exclusion of third party rights

The Contracts (Rights of Third Parties) Act 1999 shall only apply to this Agreement in

relation to the Client's Payment Agent. No persons other than the parties to this Agreement and the Payment Agent shall have any rights under it and it will not be enforceable by any person other than those parties.

17.7 Notices

- a) Any notice to a party under this Agreement shall be in writing and signed by or on behalf of the party giving it and shall, unless delivered to a party personally, be left at, or sent by prepaid first class post to the address of the party as set out on page 1 of this Agreement or as otherwise notified in writing from time to time;
- b) Any such notice shall be deemed to have been served:
 - i) at the time of delivery if delivered personally to a party or to the specified address;
 - ii) on the second working day after posting by first class prepaid post in the case of an address in the United Kingdom and 96 hours after posting for any other address;
- c) A party shall not attempt to prevent or delay the service on it of a notice connected with this Agreement.

17.8 Governing law and jurisdiction

- a) This Agreement shall be governed by and construed in accordance with English law.
- b) Each of the parties irrevocably submits for all purposes in connection with this Agreement to the exclusive jurisdiction of the courts of England.

17.9 Complaints, Concerns or Grievances

Both formal or informal complaints, concerns, or grievances should be referred to the Kite TLS Directors for resolution. Their contact details are Laura Kerbey at laura@kitetls.co.uk or Andrea Haybittle at andrea@kitetls.co.uk. Complaints, concerns, or grievances raised will be investigated, followed up, and kept on record. The process will be completed at the earliest opportunity. Any relevant actions and resolutions will be concluded and shared with all parties involved, by the Kite TLS Directors.

This agreement has been agreed on the date in the Contract Letter.