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# Basis of Engagement Documents

## The Engagement Documents apply to the exclusion of any other terms you seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. In the event of a conflict between our attached letter of engagement and these Conditions, that letter of engagement shall prevail.

# Supply of Services

## Any performance dates specified in the Engagement Documents are estimates only and time shall not be of the essence for performance of the Services.

## We reserve the right to amend the Services to the extent it considers necessary to enable compliance with any applicable law or regulatory requirement.

## We warrant to you that the Services will be provided using reasonable care and skill.

# Client’s obligations

## You shall:

### co-operate with us in all matters relating to the Services;

### provide us, our employees, agents and consultants, with access to any premises at which you request the Services to be performed in such manner as we reasonably require;

### promptly provide us with such information and materials as we may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects; and

### obtain and maintain all necessary licences, permissions and consents which may be required for the Services before they start.

# Charges and payment

## Each invoice we submit shall be due for payment immediately upon presentation. You shall pay each invoice submitted by us:

### within 30 days of the date of the invoice; and

### in full and in cleared funds to a bank account nominated in writing by us, and

### time for payment shall be of the essence.

## If you fail to make a payment due to us under the Engagement Documents by the due date, then, without limiting our remedies under clause 7, you 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 4.2 will accrue each day at 3% a year above the Bank of England’s base rate from time to time, but at 3% a year for any period when that base rate is below 0%.

## We shall submit invoices at such intervals as we may determine and may require payment in advance for all or any sessions with the Pupil which we have agreed to provide. Each invoice we submit shall be due for payment immediately upon presentation.

## If you fail to provide sufficient information (as we may determine) regarding the payer of our invoices, for compliance reasons (including in relation to the Proceeds of Crime Act 2002) we may return funds back to the payer in which eventuality you agree to make direct payment to us immediately.

## Where we procure the services of third parties, such as experts and educational psychologists, at your request during an Engagement you agree that we will be doing so acting as your agent for the procurement of those services. The agreement for the provision of such services will generally be with you directly but, whether or not this is the case, we will not be (and you will not hold us to be) responsible for any negligent advice given by, or other act, omission or default by, any such advisers and your sole right and cause of action will be directly against that third party and you will not have any cause of action against us. You will be directly responsible to such third party advisers for payment of their fees, costs and expenses, together with any sales taxes, in all circumstances, including when you receive invoices from those advisers or from us (where any of their those fees, costs, expenses and sales taxes) are included as disbursements on any invoice from us.

# Intellectual property rights (IPR)

## All IPR in or arising out of or in connection with the Services including the Deliverables (other than IPR in any materials provided by you) shall be owned by us. We grant to you a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and use the Deliverables for the purpose in connection with the purpose for which you engaged us to provide the Services (but subject always to your obligations of confidentiality hereunder).

## You grant to us, or shall procure the direct grant to us of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify any materials provided by you for the purpose of providing the Services and our legitimate business interests (but subject always to our obligations of confidentiality hereunder).

## We shall not sub-license, assign or otherwise transfer the rights granted in clause 5.2.

## You further grant to us a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by you for the term of the Engagement Documents for the purpose of providing the Services to you.

# Limitation of liability

## We have obtained insurance cover in respect of our own legal liability for individual claims. The limits and exclusions in this clause reflect the insurance cover we have arranged and you are responsible for making its own arrangements for the insurance of any excess loss.

## References to liability in this clause 6 includes every kind of liability arising under or in connection with the Engagement Documents including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

## Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

## Nothing in this clause 6 shall limit your payment obligations under the Engagement Documents.

## Nothing in the Engagement Documents limits any liability which cannot legally be limited, including liability for:

### death or personal injury caused by negligence;

### fraud or fraudulent misrepresentation; or

### breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

## Subject to clause 6.3 (*No limitation in respect of deliberate default*), and clause 6.5 (*Liabilities which cannot legally be limited*), you agree that our total liability to you:

### for loss arising from our failure to comply with its data processing obligations under the Engagement Documents shall not exceed £1,000; and

### for all other claims, loss or damage (including interest, for negligence or otherwise) in connection with the Engagement Documents, the Engagement, the Deliverables and the Services shall not exceed the total amount of the Charges paid to us hereunder.

## Subject to clause 6.3 (*No limitation in respect of deliberate default*), clause 6.4 (*No limitation of your payment obligations*) and clause 6.5 (*Liabilities which cannot legally be limited*), this clause 6.7 sets out the types of loss that are wholly excluded:

### loss of profits;

### wasted expenditure and loss thereof;

### loss of sales or business;

### loss of agreements or Engagement Documents;

### loss of anticipated savings or benefits;

### loss of use or corruption of software, data or information;

### loss of or damage to goodwill; and

### indirect or consequential loss.

## The terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Engagement Documents.

## Unless you notify us that you intend to make a claim in respect of an event within the notice period, we shall have no liability for that event. The notice period for an event shall start on the day on which you became, or ought reasonably to have become, aware of the event having occurred and shall expire 24 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

## If we are liable to you under the Engagement Documents and another person would be liable to you in respect of the same loss (were it not for your contractual arrangements with them), then (i) the compensation payable by us to you in respect of that loss will be reduced; (ii) the reduction will take into account the extent of the responsibility of that other person for the loss; and (iii) in determining the extent of the responsibility of that other person for the loss, no account will be taken of (a) any limit or exclusion placed on the amount that person will pay or (b) any shortfall in recovery from that person (for whatever reason).

## This clause 6shall survive termination of the Engagement Documents.

# Termination

## Without affecting any other right or remedy available to it, either party may terminate the Engagement Documents with immediate effect by giving written notice to the other party if:

### the other party commits a material breach of any term of the Engagement Documents and (if such a breach is remediable) fails to remedy that breach within five days of that party being notified in writing to do so;

### 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

### fails to pay any amount due under the Engagement Documents on the due date for payment.

# Consequences of termination

## On termination or expiry of the Engagement Documents, the Engagement shall immediately end as shall our obligation to supply the Services and you shall immediately pay to us all of our outstanding unpaid invoices and interest.

## Termination or expiry of the Engagement Documents shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Engagement Documents which existed at or before the date of termination or expiry.

## Any provision of the Engagement Documents that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Engagement Documents shall remain in full force and effect.

## Nothing in the Engagement Documents is intended to, or shall be deemed to, establish any partnership or joint venture between us and you or constitute either as the agent of the other, or authorise either to make or enter into any commitments for or on behalf of any the other.

# General

## **Force majeure.** Neither party shall be in breach of the Engagement Documents nor liable for delay in performing, or failure to perform, any of its obligations under the Engagement Documents if such delay or failure result from events, circumstances or causes beyond its reasonable control.

## We are not authorised by the Financial Conduct Authority or any other regulatory or supervisory body. We are not accepting a general retainer to advise you in relation anything outside the scope of the Services and will not have any responsibility to update any advice given during this engagement whether by reference to any future changes in facts, circumstances, laws, regulations or otherwise. To the fullest extent permitted by law, we are not, and you shall not hold us, responsible for the safety, welfare, well-being and care if a Pupil or Tutee (as referred to and defined in the Engagement Letter) is a minor.

## **Assignment and other dealings.** Neither party may assign, transfer, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Engagement Documents without the prior written consent of the other party.

## **Confidentiality.**

### Each party undertakes that it shall not at any time during the Engagement Documents, and for a period of three years after termination or expiry of the Engagement Documents, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 9.3(b).

### Each party may disclose the other party’s confidential information:

#### to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party’s obligations under the Engagement Documents. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party’s confidential information comply with this clause 9.3; and

#### as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

### Neither party shall use the other party’s confidential information for any purpose other than as permitted by, or to perform its obligations under, the Engagement Documents.

## **Definitions****.** The following definitions apply in these conditions:

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

## Charges: the charges payable by you to us for the supply of the Services under the Engagement Letter and in accordance with clause 4 (*Charges and payment*).

## Conditions: these terms and conditions as amended from time to time in accordance with clause 9.7.

## Engagement Letter: the letter from Elm Trees Educate LLP to you (and to which these Conditions are attached) dealing with the supply of the Services.

## Engagement Documents: these Terms and Conditions and the Engagement Letter.

## Deliverables: the deliverables (if any) described in the Engagement Documents and any documents produced by us for you in the performance of the Services.

## IPR: patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

## Services: as defined in the Engagement Letter.

## **Interpretation:** The following rules of interpretation apply in these conditions.

### 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 includes all subordinate legislation made under that statute or statutory provision.

### References to clauses are, unless otherwise stated, references to clauses of these Conditions.

### 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.

### A reference to writing or written includes faxes.

## **Entire agreement.**

### The Engagement Documents constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

### Each party acknowledges that in entering into the Engagement Documents 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 Engagement Documents. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Engagement Documents.

### Nothing in this clause shall limit or exclude any liability for fraud.

## **Variation.** Except as set out in these Conditions, no variation of the Engagement Documents shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **Waiver.** A waiver of any right or remedy under the Engagement Documents or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or default. A failure or delay by a party to exercise any right or remedy provided under the Engagement Documents 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 Engagement Documents or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## **Severance** If any provision or part-provision of the Engagement Documents is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Engagement Documents deleted under this clause 9.9 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **Notices.** Any notice or other communication given to a party under or in connection with the Engagement Documents 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. Any notice or other communication shall be deemed to have been received:

### if delivered by hand, 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

### if sent by fax, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 9.10(c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

## 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.

## **Third party rights.** Unless otherwise expressly stated, the Engagement Documents do not give rise to any rights under The Contract (Rights of Third Parties) Act 1999 to enforce any term of the Engagement Documents. The rights of the parties to rescind or vary the Engagement Documents are not subject to the consent of any other person.

## **Data Protection.** We will be the processor of any personal data that may be provided to us in connection with this engagement and you will be the controller of such personal data. You will comply with any applicable data protection laws and regulations in so far as required to provide, or procure the provision of, such personal data to us. No party shall process such personal data except to the extent required to fulfill their obligations and/or exercise their respective rights under the Engagement Documents or as otherwise required by law, court order or regulation including under The Counter-Terrorism and Security Act 2018, The Data Protection Act 2018 and/or The Childcare Act 2006.

## **Governing law.** The Engagement Documents, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation shall be governed by, and construed in accordance with, the law of England and Wales.

## **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 Engagement Documents, their subject matter or formation.