

# Marketplace Terms - Ecmtutors

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The website [www.ecmtutors.com](http://www.ecmtutors.com) and its related services, products, websites, tools and applications (**Website**) is owned and operated by Ecmtutors Ltd, with company number 14274853 (**Ecmtutors**).

These terms (**Terms**) set out the terms on which we agree to give you access to use the Website. Other terms contained in the privacy policy (**Privacy Policy**) and elsewhere on our Website also form part of our agreement with you.

**Please carefully read these Terms. By using the Website, you agree to be bound by these Terms and our Privacy Policy. If you don't agree to be bound by these Terms, you must not use the Website.** These Terms may be updated by us from time to time, and the updated Terms will apply from the date they are published on the Website. Each time you use our Website you should revisit these Terms.

If you are agreeing to these Terms on behalf of someone or entity, you represent and warrant that that you have the irrevocable authority and agreement of that person or entity to be bound by these Terms.

**IMPORTANT NOTICE: If you are under the age of 18 and intend on signing up to these Terms, you must only do so with your parent and/or legal guardian's consent. Your parent and/or legal guardian should carefully review these Terms before signing up to this Website.**

## YOUR KEY INFORMATION

The *Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013* say that up to 14 days after receiving your goods, in most cases, you can *cancel within 14 days. If you agree the services will start within this time, you may be charged for what you've used.*

The *Consumer Rights Act 2015* says:

- you can ask us to repeat or fix a service if it's not carried out with reasonable care and skill, or get some money back if we can't fix it;
- if a price hasn't been agreed upfront, what you're asked to pay must be reasonable;
- if a time hasn't been agreed upfront, it must be carried out within a reasonable time.

This is a summary of some of your key rights as on 08/09/2022 and is not intended to replace the contract below, which you should read carefully. This summary must not be construed as legal advice, and you should obtain your own independent legal advice.

## 1. DEFINITIONS & INTERPRETATION

### 1.1 Definitions

In these Terms, unless inconsistent with the context or subject matter the following terms have the corresponding definitions:

- Account:** a User's online account to use our Services.
- Applicable Laws:** any applicable laws (including orders, by-laws and regulations) in the jurisdiction in which you, and any User you are interacting with are located or which in any way govern or affect the use of the Services.
- Commission:** the commission payable by Tutors to Ecmtutors in accordance with these Terms.
- Content:** includes any material, text, pictures, sound, graphics, video and other data whether in written form or otherwise uploaded to or stored on the Website

by you, transmitted by the Website at your instigation, or supplied by you to us for uploading to, transmission by or storage on the Website.

- (e) **Free Lesson:** means a 40-minute free lesson available to be booked by a Student with a Tutor (subject to availability and these terms).
- (f) **Free Trial Session:** means a 15-minute trial session with a Tutor,
- (g) **Intellectual Property:** means without limitation our copyright, trademarks, know-how, processes and concepts, including any content that we develop or publish, the look and feel of the Website, the Website itself and any other website or platform developed by Ecmtutors and the source code for those systems and all intellectual property rights related to such, whether registered or unregistered and whether developed before or after the date of these Terms.
- (h) **Lesson:** a Lesson provided by a Tutor as part of their Tutoring Services.
- (i) **Lesson Voucher:** means a purchase made by a Student via the Website for single or multi-package Lessons.
- (j) **Profile:** the listing of a Tutor and their Tutoring Services on the Website (being the page or part of the Website which contains the details of the Tutor and their Tutoring Services to be booked by Students).
- (k) **Loss:** any loss, liability, cost (including legal costs on a solicitor and own client basis), charge, expense, tax or damage of any nature whatsoever, including lost profits, loss of goodwill, loss of business, loss of production and any other special, incidental, exemplary, compensatory or consequential damages, losses or expenses (howsoever arising or caused, including, without limitation, negligence).
- (l) **our, us and we:** Ecmtutors.
- (m) **Services:** any services that we provide to you, including the Website.
- (n) **Student:** any User who uses the Website to search and place an order for Tutoring Services.
- (o) **Tutor:** any User who makes their Tutoring Services available to be booked on the Website.
- (p) **Tutoring Materials:** any materials that Tutor's deliver or provide during the provision of the Tutoring Services including (but not limited to) content, study guides, study structures, information and other materials.
- (q) **Tutoring Services:** any online tutoring services made available for booking by a Tutor on the Website from time to time.
- (r) **User:** any person who uses the Website, and includes a Tutor and Student.
- (s) **you and your:** a User, Student or Tutor (as the case may be).

## 2. USING THE ECMTUTORS WEBSITE

- 2.1 The Website provides an online tutoring marketplace that enables Students to connect, communicate with and discover Tutors who are offering their Tutoring Services on the Website. The Website's purpose is to ultimately give Students and Tutors the ability to connect and run Lessons.
- 2.2 Users of the Website who list their Tutoring Services on their Profile available to be booked and paid for on the Website are referred to as Tutors and specific provisions contained in clause 4 apply to them. Tutors are independent contractors and are not employed by us.
- 2.3 Users who wish to browse and book Lessons with Tutors for their Tutoring Services are referred to as Students and specific provisions contained in clause 6 apply to them.
- 2.4 Although we provide the Website as an online tutoring marketplace, we are not the supplier of any Tutoring Services nor do we provide any Lessons. The actual contract

is directly between the Tutor and the Student and the Tutor and the Student are solely responsible for fulfilment of their obligations under that contract. We merely provide a Service that facilitates the entrance of a contract between the Student and Tutor and enables an online tutoring experience, we are not a party to such contract.

- 2.5 Our Services are available only to, and may only be used by, persons who can form legally binding contracts under Applicable Laws. If you do not qualify, please do not use our Services.
- 2.6 If you are under the age of 18 years old (**Minor**), we require parental/guardian consent, and by agreeing to these terms, you represent and warrant that prior to accepting a parent/ legal guardian has also agreed to these terms on your behalf (and will be the owner of the Account). We may limit your usage of the Services if you are under the age of 18 (for example to restrict some content).
- 2.7 If you are a parent or legal guardian permitting a person under the age of 18 to sign up and use the Website, you agree to:
  - (a) supervise the Minor's use of the Tutoring Services, Services and Website;
  - (b) assume all risks associated with, and liabilities resulting from, the Minor's use of the Tutoring Services, Services and the Website;
  - (c) ensure that the content on the Services and the Website is suitable for the Minor;
  - (d) ensure all information submitted to us by the Minor is accurate;
  - (e) provide the consents, representations and warranties contained in this agreement on the Minor's behalf at clause 4 below.
- 2.8 Subject to you complying with these terms, we will provide our Services to you as set out in these Terms.

### 3. **YOUR ACCOUNT**

- 3.1 In order to use most of the functionality of the Website, you will need to register with us and set up an Account with your email address, a password and other personal information. You are solely responsible for maintaining the confidentiality of your login details and you are liable for all activities (such as purchases) that happen under your Account, even if you do not authorise such activities.
- 3.2 If we enable you to connect to the Website with a third-party service (e.g. Facebook or Google+), you hereby grant us permission to access, store, and use your information from that service as permitted by that service and as may be described in our Privacy Policy. Please contact us immediately if you believe your Account has been compromised or misused in any way.

### 4. **PARENTAL/ LEGAL GUARDIAN CONSENT**

This clause applies if you are signing up to these terms on behalf of your child or someone under the age of 18 (**Minor**).

#### 4.1 **Assumption of Responsibility**

- (a) Parents and legal guardians assume the responsibility for Minors participating in the Services or Tutoring Services (whether as a Student or Tutor) and must consent to Minors participating in the Services or Tutoring Services.

#### 4.2 **Any obligation or responsibility under this agreement that is expressed to be assumed by the Minor, will also be assumed by the parent/legal guardian as a guarantor. Acknowledgement**

In agreeing to allow any Minor to take part in the Services or Tutoring Services (whether as a Student or Tutor), you as a parent / legal guardian acknowledge and agree to:

- (a) release and discharge Ecmtutors from all claims arising from, or in connection with, your child and the Services or Tutoring Services; and
- (b) indemnify, keep indemnified and hold harmless Ecmtutors, to the extent permitted by law in respect of any claim as a result of or in connection with the Services or Tutoring Services.

#### 4.3 **Consent**

You have read and consent for your child to participate in the Services and/or Tutoring Services and agree to be bound by these terms.

#### 4.4 **Indemnity**

In the event this contract is unenforceable against the Minor, you agree to indemnify Ecmtutors for any loss or damage suffered by, or claim made against, Ecmtutors.

### 5. **LESSONS AND LESSON VOUCHERS**

#### 5.1 **Lessons**

- (a) Through the Website, different types of Lessons are available for purchase, which may include from time to time:
  - (i) single one-off Lessons; and
  - (ii) multi-Lesson packages.
- (b) To book Lessons, Students need to purchase a Lesson Voucher.

#### 5.2 **Lesson Vouchers**

- (a) Lesson Vouchers must be purchased via the Website. The price of Lesson Vouchers are as set out on the Website from time to time.
- (b) The following conditions apply to Lesson Vouchers:
  - (i) the Lesson Voucher can only be used with the Tutor confirmed in the booking; and
  - (ii) the Lesson Voucher must be applied to Lessons within 365 days of purchase.
- (c) Lesson Vouchers should not be purchased without prior contact with the Tutor providing the Tutoring Services. This contact is arranged through the Free Trial Session booking via our Website, and as set out in clause 7.

### 6. **TUTORS**

#### 6.1 **Categories of Tutor**

- (a) As part of the Website, there are different categories of Tutors, including:
  - A. Tutor (a free tutoring service provided by Tutors);
  - B. Senior Tutor (a tutoring service provided for a fee as set out on the Website);
  - C. Professional Teacher (a tutoring service provided by a qualified teacher for a fee as set out on the Website).
- (b) The requirements for each category of Tutor are as listed on our Website from time to time.
- (c) If you are accepted to join the Website as a Professional Teacher, you acknowledge and agree that you:
  - (i) do not have a criminal record

- (ii) have the relevant 'working with children' checks for your base location; and
  - (iii) have Qualified Teacher Status (QTS) or local equivalent.
- (d) For the avoidance of doubt, each will continue to be referred to as a **“Tutor”** in these Terms.

## 6.2 Applying to be a Tutor

Tutors must submit an application form to us to join the Website and list their Tutoring Services available to be booked by Students on their Profile. We may in our sole discretion accept or reject any application, without any obligation to provide reasons. Tutors may be subject to an initial and ongoing identification and background check. By submitting your application form you agree to us carrying out such background checks.

## 6.3 Tutor Profiles and Tutoring Services on the Website

- (a) Once you have been accepted as a Tutor on the Website, you will be able to setup your Profile and list your Tutoring Services on the Website. You will be able to control your availabilities and the information on your Profile. Without limitation to the other terms contained here, if you submit an application to us and/or list your Tutoring Services on the Website, you represent and warrant at all times that:
- (i) the listing and provision of the Tutoring Services and the information contained on your Profile:
    - A. is not in breach of these Terms;
    - B. is not in breach of any Applicable Laws;
    - C. contains no inappropriate language or imagery including without limitation the following:
      - I. sexually explicit content (including content that features minors or sexually exploits minors);
      - II. harmful or dangerous content including content that aims to encourage dangerous or illegal activities;
      - III. hateful content including hate speech;
      - IV. violent or graphic content including anything that may shock or disgust viewers;
      - V. harassment, threats and cyberbullying;
      - VI. defamatory, offensive or illegal content;
      - VII. any other content we consider inappropriate at our discretion;
    - D. contains no discriminatory, sexist or racist content;
    - E. does not contain a duplicate of another previously posted Profile;
    - F. does not contain any external links, other than any links to Tutoring Materials;
    - G. contains adequate descriptive data;
    - H. contains no inappropriate language or imagery; and
    - I. contains no discriminatory content;
  - (ii) all information provided to us, or in your Profile (including information about the Tutoring Services and any qualifications) or otherwise

published on the Website is true and correct in all respects, is maintained accurate and up to date and you have not engaged in misleading or fraudulent conduct;

- (iii) you will not use the Website for business other than providing the Tutoring Services;
  - (iv) you will not frame or embed the Website or otherwise circumvent any security access to the Website (such as to allow others access without an Account);
  - (v) you will not impersonate another person or gain unauthorised access to another User's Account;
  - (vi) if you are a Professional Teacher, you have the required qualifications and credentials (including knowledge and experience) to teach and offer the Tutoring Services that you offer through the Website;
  - (vii) you will ensure a high standard and quality of service during the provision of the Tutoring Services;
  - (viii) you have the legal right, title, licence or interest to sell and/or provide the Tutoring Services on the Website and that the sale and/or provision of the Tutoring Services on the Website will not infringe any third party's intellectual property rights or cause any liability for us or another User whatsoever.
- (b) Tutors are only allowed to have one Account and are strictly prohibited from having two or more Profiles.
  - (c) You are solely responsible for the accuracy and content of the Tutoring Materials and information provided with respect to those Tutoring Services.
  - (d) You must ensure that your availability is kept up to date on your Profile. If a Student books your Tutoring Services at an available time slot and you confirm the booking, you must then provide the Tutoring Services for that timeslot and are not permitted to cancel except where permitted under these Terms.
  - (e) If a Student books a Lesson with you, you must respond to the Student within 24 hours of receipt of the booking request. If you fail to respond to any Student's email more than 3 times, we will automatically remove you from the Website.
  - (f) You acknowledge and agree that it is your responsibility to coordinate with the Student:
    - (i) the booking of Lessons; and
    - (ii) The digital format of the Lessons, such as Zoom.
  - (g) If a Student books a Free Trial Session or Free Lesson with you in accordance with clause 7, you acknowledge and agree that you will provide the Tutoring Services for the relevant Free Trial Session or Free Lesson for no charge. Whilst we expect that by agreeing to these terms, each Tutor will provide Free Trial Sessions to Students, if you do not wish to provide Free Lessons you may turn this option off in the Latepoint section of the site.
  - (h) By agreeing to these terms, you provide Ecmtutors with your express consent to use, list and promote your Ecmtutors Profile on any of Ecmtutors social media accounts. If you do not wish for Ecmtutors to list your Profile on Ecmtutors social media accounts, please provide written notice to us via [jackd@ecmtutors.com](mailto:jackd@ecmtutors.com).
  - (i) You acknowledge and agree that:
    - (i) you are required by the *Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013* (**the Regulations**) to give

a Student a 14-day cooling off period (as set out in clauses 6.6 and 6.7; and

- (ii) it is your responsibility to meet your obligations under the Regulations and any applicable consumer laws or consumer regulations;
- (iii) you indemnify Ecmtutors for any loss suffered by or claim made against Ecmtutors by a Student for breach of a consumer law.

#### 6.4 **Status**

Nothing in these terms shall be interpreted as meaning that any Tutor is an employee of Ecmtutors and the Tutor acknowledges that all Tutoring Services provided to Students are as an independent contractor and are therefore excluded from any benefits or rights attributed to employees including, but not limited to, entitlement to paid holiday or leave from Ecmtutors.

#### 6.5 **Lesson bookings**

- (a) Prior to a Student booking a Lesson with you, we recommend that the Student books a Free Trial Session in accordance with clause 7.1, in order for the Student to determine if you will be a suitable tutor for them. You acknowledge and agree that you will provide the Free Trial Session at no charge.
- (b) Once a Student has booked a Lesson with you, you acknowledge and agree that it is your responsibility to check that the Student has purchased a Lesson Voucher.
- (c) For the avoidance of doubt, if a Student has purchased a Lesson Voucher for 8 Lessons, and you undertake any further Lessons outside the booking (i.e. you teach a ninth lesson), you will not be paid for those subsequent Lessons (unless a further Lesson Voucher is purchased).

#### 6.6 **Content removal**

- (a) We reserve the continuing right to reject, revise, or discontinue any content or information you share on the Services, at any time and for any reason in our sole discretion.
- (b) Without limitation to this clause, we reserve the right to not publish a Profile or suspend a published Profile or remove any Tutoring Services or Tutoring Materials where we believe in our sole discretion that:
  - (i) the Profile, Tutoring Services or Tutoring Materials may contravene Applicable Laws or these Terms;
  - (ii) the Profile, Tutoring Services or Tutoring Materials are not suitable for our Website; or
  - (iii) any other reason which we consider appropriate.

Where we do so, we do so without liability to you.

#### 6.7 **Payment Process**

- (a) If a Student purchases a Lesson Voucher for your Tutoring Services through the Website then they will pay the price specified for the Lesson Voucher on your Profile to us on your behalf. We will then release the purchase price for those Tutoring Services to you (less our Commission as detailed below) fortnightly in arrears (on Sundays) for each Lesson provided by you during that fortnight. Students may purchase individual Lesson packs or bundled Lessons. For the avoidance of doubt payment will only be released to you for a Lesson after that Lesson has been taught (regardless of whether Students purchase individual Lessons or bundled Lesson packages).

- (b) Payments will be processed by a third party payment system, and as such may be subject to processing fees (which will be deducted from the price paid to you).
- (c) Payments will be made to your nominated bank account.
- (d) All Tutors are fully responsible for compliance with any applicable local laws and regulations in regard to the Tutoring Services including the payment and reporting of any applicable income taxes and VAT. For the avoidance of doubt, Ecmtutors is not responsible for Tutor's tax payments or any other financial obligation and cannot provide the Tutors with any advice in this regard.

## 6.8 **Commission**

- (a) In consideration of us providing the Services to you and enabling you to offer your Lessons for sale on the Website, you agree to pay to us the Commission of 20% (as stated on our Website or as otherwise advised by us to you at the time the Lesson Voucher is sold) in respect of all Lessons. The Commission is subject to change at any time. We encourage Users to regularly review the Website to confirm the Commission payable. The Commission will become immediately due and payable to us upon a Student purchasing your Tutoring Services. Unless otherwise indicated, the Commission is exclusive of VAT, In relation to any VAT payable for a taxable supply by us, you must pay the VAT subject to us providing a tax invoice to you.
- (b) You authorise us to retain our Commission from the purchase price paid by a Student for all Tutoring Services. We will then transfer you the balance of the purchase price for the relevant Tutoring Services into your nominated bank account at the time specified on our Website or otherwise advised by us. You are solely responsible for any currency conversion fees, bank fees or other administrative charges incurred.

## 7. **STUDENTS**

### 7.1 **General**

Students can access the Website to view Tutor's Profiles and book Tutoring Services offered by Tutors. If you are booking Tutoring Services or otherwise viewing Tutor's Profiles on the Website then the terms of this clause will apply to you.

### 7.2 **Booking Tutoring Services on the Website**

- (a) Prior to purchasing a Lesson Voucher for Tutoring Services, you must contact the relevant tutor through the Free Trial Session (as set out in clause 7), in order to determine if the Tutor is suitable to your needs. This contact is arranged through the Free Trial Session booking process on our Website.
- (b) To book Lessons on the Website, you must purchase a Lesson Voucher. This does not apply to Free Trial Sessions or Free Lessons as set out in clause 7.
- (c) If you book Lessons without a valid Lesson Voucher, the Tutor will not provide you with the Tutoring Services until you have purchased a valid Lesson Voucher. This does not apply to Free Trial Sessions or Free Lessons as set out in clause 7.
- (d) Once you have booked the Lessons(s) with a Lesson Voucher through the Website, the Tutor should respond to your booking request within 24 hours. If they fail to do so, please contact us at [jackd@ecmtutors.com](mailto:jackd@ecmtutors.com).
- (e) You acknowledge and agree that it is your responsibility to coordinate with the Tutor:
  - (i) booking Lessons; and
  - (ii) the digital format of Lessons, such as by Zoom.

- (f) Students should make their own enquiries and due diligence as to any Tutors and Tutoring Services advertised on the Website. It is the Student's sole responsibility to choose the correct Tutor for their needs.
- (g) Any booking placed by a Student may be subject to any other terms stated on our Website, including our cancellation terms (see clause 10 below). By placing an order, you agree to those other terms stated on our Website.
- (h) All Lessons purchased in a package must be booked within 365 days of purchase.

### 7.3 Tutoring Services

- (a) Each Lesson you book to attend as part of the Tutoring Services will take place at the time as booked on the Website. All Lesson bookings are subject to availability and confirmation. By booking a Lesson you agree to attend such Lesson at the time booked.
- (b) Tutoring Services are completely controlled by the Tutor, and not us.

### 7.4 Student obligations

In attending the Tutoring Services, you must:

- (a) attend all Lessons on time and refrain from multi-tasking during such Lessons. You should give your full attention during these Lessons;
- (b) keep us informed of any medical, health or personal circumstances that may interfere with the Tutoring Services;
- (c) be respectful to the Tutor;
- (d) not share the online tutoring details, including any passwords;
- (e) not contact anyone who has not asked to be contacted;
- (f) not attempt to sell products to anyone;
- (g) not attempt to collect personal information about other users for commercial or unlawful purposes;
- (h) not infringe on others privacy or intellectual property rights;
- (i) not misbehave or conduct yourself in a "trolling" manner;
- (j) not contribute or post anything that:
  - (i) is unlawful, fraudulent, misleading, deceitful, threatening, abusive, libellous, defamatory, obscene, pornographic, indecent, lewd, harassing, threatening, abusive, offensive, inflammatory or otherwise objectionable;
  - (ii) harasses, degrades, intimidates or is hateful to an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age or disability;
  - (iii) includes personal or identifying information about another person without that person's consent;
  - (iv) constitutes promotion or advertisement for groups, events or activities organised through competing social clubs, activity sites and internet platforms, except as otherwise expressly permitted by us;
  - (v) impersonates any person or entity;
  - (vi) is about companies without authorisation to do so;
  - (vii) is an advertisement, solicitation, chain letter, pyramid scheme, investment opportunity or other unsolicited commercial communication (except as otherwise expressly permitted by us); or
  - (viii) contains software viruses, worms or any other harmful code.

## 7.5 Price and Payment

- (a) The purchase price for Lesson Vouchers is as displayed on the Website at the time you purchase the Lesson Voucher. Prices and other details are subject to change without notice. Students can choose to purchase Lesson Vouchers per Lesson or as Lesson packages as stated on the Website. Full payment of Lesson Vouchers must be made prior to the Lesson taking place.
- (b) Unless otherwise indicated, amounts stated on the Website do not include VAT. In relation to any VAT payable for a taxable supply by us, you must pay the VAT subject to us providing a tax invoice to you.
- (c) From time to time we may provide you with a promotional code or special discount pricing for use when booking. It is your responsibility to ensure that the code or discount pricing is valid, and that for the promotional code, you enter the code for use at the correct time. The code and any discount pricing cannot be applied after you have submitted your booking. Separate terms may apply to the use of the code and any discount pricing and will be as set out on the Website or advised by us.
- (d) You must provide payment via a method accepted by the Website at the time you place your order for Lesson Vouchers.
- (e) We receive the purchase price for the Lesson Vouchers on the Tutor's behalf as their agent and we remit that purchase price to them.
- (f) You authorise us, directly or through third parties, to make any inquiries we consider necessary to help verify or check your identity or prevent fraud.

## 7.6 Right to cancel

- (a) You have the right to cancel your contract with the Tutor within 14 days of booking a Lesson Voucher without giving any reason. This cancellation period will expire after 14 days from the day the Lesson Voucher is booked. However, you do not have the right to cancel if you requested for the Tutor to start providing the services during the cancellation period and the services are fully performed (ie the work is completed) during this period. This is further explained in clause 6.6(e) below.
- (b) To exercise the right to cancel, you must inform the Tutor of your decision to cancel this contract by a clear statement to the Tutor, for example by emailing the Tutor using the contact details available on our website.
- (c) To meet the cancellation deadline, it is sufficient for you to send your communication concerning your exercise of the right to cancel before the cancellation period has expired.
- (d) This does not affect the rights you have if your services are faulty. A summary of these rights is provided at the top of this page. See also clause 7.8 below.

## 7.7 Effects of cancellation

- (a) If you cancel the contract with the Tutor, we will reimburse to you all payments received from you, unless you requested for the Tutor to start providing the services during the cancellation period, in which case you must pay us:
  - (i) for the services the Tutor provided up to the time you told the Tutor that you want to cancel this contract, which will be an amount in proportion to the services performed up to that point in comparison with the full price under this contract; or
  - (ii) the full price under this contract, if you lost your right to cancel this contract because the services were fully performed (i.e. the work was completed) during the cancellation period.

- (b) We will make the reimbursement without undue delay, and not later than 14 days after the day on which we are informed about your decision to cancel this contract.
- (c) We will make the reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event, you will not incur any fees as a result of the reimbursement.

## 7.8 Faulty Services

- (a) Your legal rights under the *Consumer Rights Act 2015* (also known as 'statutory rights') are set out at the top of this page. They are a summary of some of your key rights. For more detailed information on your rights and what you should expect from us, please:
  - (i) contact us using the contact details at the top of this page; or
  - (ii) visit the Citizens Advice website [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk) or call 0808 223 1133.
- (b) Nothing in this contract affects your legal rights under the *Consumer Rights Act 2015* (also known as 'statutory rights'). You may also have other rights in law.
- (c) If the services we have provided to you are faulty, please contact us using the contact details at the top of this page.

## 7.9 Disclaimer

- (a) You acknowledge and agree that Ecmtutors is not responsible or liable for any breach by the Tutor under any applicable consumer law or consumer regulation.
- (b) To the maximum extent permitted by applicable law, Ecmtutors limits all liability for any breach by the Tutor under any applicable consumer law or consumer regulation.

## 8. TRIALS AND FREE LESSONS

### 8.1 Trials

- (a) Each Student who books Tutoring Services with a Tutor may book a 15 minute trial session with that Tutor (**Free Trial Session**). After the Free Trial Session, if the Student elects to proceed with the Tutoring Services with that Tutor, then the Student must purchase a Lesson Voucher via the Website.
- (b) For the avoidance of doubt, a Student can book 1 Free Trial Session with each Tutor only.
- (c) To book a Free Trial Session, the Student must visit the Website and select the Tutor from the Free Lessons section of the website.
- (d) If a Tutor receives a booking request for a Free Trial Session, the Tutor must respond within 24 hours to the booking request.

### 8.2 Free Lessons

- (a) Subject to availability, a Student may book up to 5 free Lessons (**Free Lessons**). The Free Lessons can be used with any Tutor. For the avoidance of doubt, a Student may book up to 5 free Lessons in total, not with each Tutor.
- (b) The duration of a Free Lesson is 40 minutes.
- (c) To book a Free Lesson, the Student must simply visit the Website and select the Tutoring Services from a Tutor's profile you wish to book and follow the prompts on the Website.
- (d) If a Tutor receives a booking request for a Free Lesson, the Tutor must respond within 24 hours to the booking request.

- (e) If a Student has completed all of his or her Free Lessons, the Student may contact Ecmtutors at jackd@ecmtutors.com to request that they be provided with more Free Lessons, which may be approved by Ecmtutors at its absolute discretion.

## **9. ARRANGEMENTS AND COMMUNICATIONS WITH OTHER USERS**

- 9.1 You acknowledge that any arrangement or communication entered into with another User is solely at your own risk. We have no control, influence or involvement in such arrangements. Our responsibilities are limited to facilitating the availability of the Services.
- 9.2 Each User is a third party that is unrelated to us. When you enter into an arrangement for the booking and provision of Tutoring Services, you are entering into a contract directly with another User. We are not a party to any contract between you and that other User and are not responsible for ensuring that that other User fulfills its obligations to you or complies with these Terms or any other terms published by us or any Applicable Laws. Your legal rights in connection with the booking and provision of Tutoring Services or any breach of any obligations by a User are against that relevant User and not us. For the avoidance of doubt, we have no liability or obligation to you if a User breaches any terms of the supply of the Tutoring Services.
- 9.3 Although we may do background and credential checks to ensure a Tutor has suitable qualifications, we do not guarantee or make any representation that any information provided about a Tutor is correct or appropriately qualified. We give no warranty as to the suitability of the Tutor. The Student must satisfy itself as to the suitability of the Tutor, and it is the Student's sole responsibility to research and review the Tutor's information and ensure that the Lesson's and Tutoring Services are appropriate for them.
- 9.4 We do not supply, provide, manage or control the Users on the Website or any Tutoring Services and are not responsible for their advertising or otherwise. The relevant Tutor is solely responsible for the supply of the Tutoring Services to you. We have no control over, and do not ensure, guarantee or provide any warranty or indemnity in respect of the quality, fitness for purpose, legality, accuracy, completeness or otherwise of:
  - (a) any Tutoring Services (including without limitation that such Tutoring Services will be suitable to your specific requirements or any advice or information provided by a Tutor to a Student and the quality or suitability of any Tutoring Services);
  - (b) any representations made or information provided by Users to each other (including without limitation any qualifications or knowledge that a Tutor may share); or
  - (c) the ability of Users to undertake their respective obligations.
- 9.5 Because of the foregoing, in the event that you have a dispute with one or more Users, you release and hold us (and our Related Parties) harmless from actions, claims, demands and Losses of every kind arising out of or in any way connected with such disputes.

## **10. PAYMENTS**

- 10.1 Prices are shown in the currency noted on the Website, or if no currency is stated, in Euros.
- 10.2 We make no representations or warranties as to the currency conversion rates that will apply to any payments you make on the Website and we are not responsible for any Loss suffered by a party in the event of unfavourable currency conversion rate, including where our delay in processing a payment results in an unfavourable currency conversion rate applying to the payment.
- 10.3 We may use third-party payment providers (**Payment Providers**) to collect payment of the purchase price and our Commissions and to process payments to Students and Tutors. The processing of payments by the Payment Provider will be, in addition to

these Terms, subject to the terms, conditions and privacy policy of the Payment Provider and we are not liable for the security or performance of the Payment Provider. We reserve the right to correct, or to instruct our Payment Provider to correct, any errors or mistakes in collecting or making any payment made in connection with these Terms.

- 10.4 You are solely responsible for any payment details (such as bank account and account identification information) that you provide to us. We will not be liable for any Loss that you suffer in connection with the incorrect payment details being provided to us.
- 10.5 Except to the extent expressly set out in these Terms, all amounts paid to us under these Terms are non-refundable to the extent permitted by law.

## **11. MANAGING LESSONS**

- 11.1 The Tutoring Services will be hosted online by the Tutor and will be a one-on-one lesson.
- 11.2 It is the responsibility of the Tutor and Student to coordinate the date, time and schedule for all Lessons. Ecmtutors is not responsible for arranging, coordinating or providing any part of a Lesson.
- 11.3 Students and Tutors are required, and solely responsible for, downloading any software (if necessary), as well as having a stable internet connection for the Lesson. Please note that additional terms may apply for such third party software and you are also responsible for reading and agreeing to those terms (we are not a party to such terms). Any technical issues regarding your computer (or other devices), software, or internet service is not our responsibility.
- 11.4 If a Student shows up late to a Lesson, the Lesson will commence and continue until the allocated Lesson time ends. Although the Lesson may be shorter, this will be deemed a full Lesson, and if it is a Paid Lesson, charged as so.
- 11.5 If the Tutor is late to a Lesson by more than 15 minutes, then the Student can request a reschedule or a cancellation of that Lesson in accordance with the cancellation and rescheduling policy set out under clause 11.
- 11.6 If a Student has technical issues, is unable to connect or fails to attend a Lesson (including a rearranged Lesson), the Tutor will reschedule the Lesson to a mutually suitable time. All changes to Lessons are subject to the Tutor's approval and subject to availability.

## **12. CANCELLATION & RESCHEDULING POLICY**

### **12.1 General terms**

Once an order for Tutoring Services has been placed or confirmed, a Lesson that is part of those Tutoring Services may not be cancelled, rescheduled or varied except in accordance with the terms of this clause, or to the extent otherwise required by law. In the event you are entitled to a refund, variation or reschedule you must apply in accordance with the terms below.

### **12.2 Cancellation & rescheduling by Students**

- (a) Provided that a Student has notified the Tutor at least 24 hours before the relevant Lesson start time, then the Student will be offered the ability to reschedule the Lesson if possible.
- (b) If the Tutor is not able to reschedule a Lesson within a reasonable timeframe, and the Student has paid for that particular lesson, then the Student can elect to get a refund of that particular Lesson.
- (c) If the Tutor is late to a Lesson by more than 15 minutes, then the Student can request a reschedule or a cancellation of that Lesson. If the Student has paid

for that Lesson, the Student can receive a refund for that Lesson at its discretion.

- (d) Any Lessons that are cancelled within 24 hours prior to the relevant Lesson start time may be rescheduled at the sole discretion of the Tutor. For the avoidance of doubt, there is no obligation on the Tutor to reschedule the Lesson and the Student will incur the total cost of the Lesson as a cancellation fee..

### 12.3 Cancellation by Tutors

Tutors shall use their best efforts to attend Lessons, however, from time to time unforeseen events may occur which may cause the Tutors to cancel their Lessons. Where this occurs, Tutors shall have the right to cancel any Lesson prior to the start, provided that they comply with the other terms of these Terms. In the event that the Tutor cancels a Paid Lesson, then the Student will receive a full refund for that Paid Lesson.

## 13. REFUNDS

- (a) Except as expressly set out in these Terms, we have no liability or obligation to you if a User cancels Tutoring Services any time after an agreement is made or if the Tutoring Services are faulty or non-compliant with the details contained in the Profile, these Terms or any other terms or any Applicable Laws. If you have rights to a refund or other remedy in respect of Tutoring Services under Applicable Laws, then your rights are against the relevant User and not us.
- (b) Tutors acknowledge and agree that Students are entitled to a refund in certain circumstances as detailed in these Terms. Tutors will not receive any payments from such transactions where a refund is granted.
- (c) If a Tutor decides to refund a Student, then the refund must go through our payment system, and we reserve the right to retain our Commissions from any amount to be refunded to the Student (to be determined at our sole discretion on a case by case basis). The Tutor acknowledges that any refund is at their expense, and they will be required to refund the full amount to the Student (including the amount of any applicable Stripe fees).
- (d) Where a refund is required to be made to a Student, then we reserve the right to:
  - (i) deduct the amount of the refund from any future amounts owing to the relevant Tutor; or
  - (ii) where no further amounts are to be paid, or the above amount is insufficient to cover the refunded amounts, require the Tutor to make payment to us of the amount to be refunded. Such amount will be a debt immediately due and owing.
- (e) In the event we are required by law to provide a Student with a refund, the Tutor must immediately on request refund to us any payment we have made to the Tutor in respect of that relevant Tutoring Services being refunded.

## 14. PROHIBITED USE

14.1 You must not access or use the Service or Website:

- (a) in a way that violates these Terms;
- (b) for unlawful or dangerous activities or purposes;
- (c) in a way that is fraudulent, inaccurate, false, misleading or deceptive;
- (d) in a way that would infringe any third party's rights (including intellectual or other proprietary rights);
- (e) in a way that is defamatory, trade libellous, unlawfully discriminatory, threatening or harassing;

- (f) to post material that is obscene, abusive or indecent;
- (g) in a way that damages the credibility of the Website or us or that creates liability for us;
- (h) to distribute any virus, trojan horse, worms or other computer programming routines that may or are intended to damage, modify, delete, interfere with, surreptitious intercept, access without authority or expropriate any system, data or personal information or otherwise affect the integrity, operation or security of the Website;
- (i) to distribute or post spam, chain letters or pyramid schemes;
- (j) in a way that uses any robot, spider, scraper, data mining tools, data gathering an extraction tools or other automated means to access our Services;
- (k) bypass measures used to prevent or restrict access to the Website;
- (l) to collect a User's information and harass them; or
- (m) in a way that violates any Applicable Law (including those governing consumer protection, unfair competition, criminal law, antidiscrimination or trade practices law).

**15. NON-CIRCUMVENTION**

15.1 Users are strictly prohibited from directly or indirectly attempting to circumvent payment of our fees and Commission in any way.

15.2 This includes, for example, the following practices which are strictly prohibited:

- (a) contacting another User with an intention to market and sell Tutoring Services (including Lessons) outside of the Website;
- (b) requesting and/or making payment outside the Website;
- (c) posting advertisements and recruitment announcements while using the Website and during online Lessons;
- (d) exchanging contact information with the purpose of finding out about other Tutoring Services outside of the Website;
- (e) communication between Users outside of the Website with respect to Tutoring Services and similar services provided by the Tutor on the Website; and
- (f) if a Tutor supplies Tutoring Services to a Student, the Tutor must not subsequently supply another product or service to the Student (that is a service similar to Tutoring Services) other than where a Tutoring Services is booked through the Website.

15.3 If Ecmtutors reasonably believes that a User is in breach of this clause 13, Ecmtutors may remove the User's Account and access to the Website.

**16. ACCESS AND TERMINATION**

16.1 We reserve the right, at any time and without prior notice to remove or disable:

- (a) access to this Website or any part of it for any reason; and
- (b) any Account or User that we, in our sole discretion, consider to be objectionable for any reason, in violation of these Terms or otherwise harmful to the Website or the interests of other Users,

and we will not be liable to you for any Loss that you incur in the event that we do this.

- 16.2 The termination of your access to the Website is without prejudice to the rights, liabilities and obligations of the parties that arose prior to the termination unless otherwise agreed by us. No refund will be given in the event of termination.
- 16.3 Tutors acknowledge and agree that after their Account has been deleted, Students previously enrolled in any Lessons will continue to have access to any Tutoring Materials relevant to those Lessons.
- 16.4 Should a Tutor choose to delete their account, they may do so by sending a request to [jackd@ecmtutors.com](mailto:jackd@ecmtutors.com). We will use commercially reasonable efforts to make any remaining scheduled payments that are owed to you before deleting your account. You understand that if students have previously enrolled in your courses, your name and that Tutoring Materials will remain accessible to those students after your account is deleted.

## **17. INTELLECTUAL PROPERTY RIGHTS AND DATA**

### **17.1 Intellectual property rights**

You acknowledge and agree that:

- (a) we own all right, title and interest in and to the Intellectual Property and no right, title or interest in any of the Intellectual Property is transferred or granted to you, except so far as expressly stated in these Terms;
- (b) you will not copy, reproduce, alter, modify, create derivative works, or publicly display our Intellectual Property except with our prior written permission or the appropriate third party authorised to grant such permission and when doing so you must adequately acknowledge us and, in the case of websites, include a link from your website to our Website;
- (c) you grant to us a worldwide, perpetual, irrevocable, full paid-up, transferable, sublicensable, non-exclusive licence to use, reproduce, commercialise, modify, adapt and communicate any Content (such as any Tutoring Materials made available through the Website and any reviews and testimonials) in order to provide our Services and to otherwise advertise and market our business and for incidental services;
- (d) you warrant that any Content (such as Tutoring Materials) you provide us or otherwise transmit through the Website will not infringe any intellectual property rights of any third party nor give rise to any liability to make royalty or other payments to any third party;
- (e) we are not liable or responsible for any loss that you may experience in submitting Content (such as Tutoring Materials) to us or for our use of your Content in accordance with the licence granted; and
- (f) you must not falsely express or imply a relationship between you and us.

### **17.2 Access to Tutoring Materials**

- (a) As part of the Tutoring Services, Students may gain access to the Tutoring Materials. While Students may access, browse and print the Tutoring Materials for their own personal and non-commercial use, Students must obtain the relevant Tutor's prior written consent if they would like to use, copy, record or reproduce it.
- (b) Please note that the relevant Tutor will retain ownership of the Tutoring Materials and Students are not permitted to share the Tutoring Materials with others, or to adapt, modify, publish or create derivative works or publicly display any of the Tutoring Materials without the Tutor's prior written consent.

### 17.3 Tutor intellectual property rights

If you are a Tutor you acknowledge and agree that:

- (a) you will retain all right, title and interest in your Tutoring Services and Tutoring Materials and no right, title or interest is transferred to us or any Student except so far as expressly stated in these Terms;
- (b) you warrant that any Tutoring Services and Tutoring Materials listed and/or provided through the Website, and the use of such Tutoring Services and Tutoring Materials by third parties (including Students) will not infringe any intellectual property rights of any third party nor give rise to any liability to make royalty or other payments to any third party;
- (c) you warrant that you have obtained any moral right consents in writing necessary for the Tutoring Services and Tutoring Materials made available on the Website ;and
- (d) PHOTOS

### 18. SECURITY & ACCESS

18.1 You are solely responsible for any information that you transmit to us and the Website. Whilst we use our best endeavours to maintain the security of the Website to, we do not guarantee the security of the Website, our records, or any information you submit to us.

18.2 We do not guarantee that the Website or any file downloaded from the Website will be free of any virus', trojan horses, worms or other computer programming routines that may or are intended to damage. We disclaim all liability for any computer virus or technological problems or other loss that you may suffer as a result of the browsing or downloading of any files from our Website, or from any data breach, compromise or misuse of your data that is provided to us in connection with the Website.

18.3 In order to use the Website, you need to connect to the internet and you are solely responsible for your connection and all fees associated with such connection/access.

### 19. PRIVACY

You agree to be bound by the clauses outlined in Ecmtutor's Privacy Policy, which can be found here: <https://ecmtutors.com/privacy-statement-eu/>

### 20. DATA PROTECTION

- (a) Words and phrases in this clause shall have the meaning given to them by applicable data protection and privacy laws, including the General Data Protection Regulation 2016/679 ("**GDPR**") as amended, and the Data Protection Act 2018 as amended that implements or supplements the GDPR or otherwise applies to data protection and privacy, and any statutory instrument, order, rule or regulation made thereunder, as from time to time amended, extended, re-enacted or consolidated ("**Data Protection Legislation**") and the terms "controller", "processor", "process" and "personal data" shall have the meanings given to those terms in such Data Protection Legislation.
- (b) During and after the delivery of the Services, the User agrees that Ecmtutors will be processing personal data for its own purposes and as such will be a controller under the Data Protection Legislation and this includes (but is not limited to) the following purposes:
  - (i) Ecmtutors providing Services;
  - (ii) Ecmtutors and/or its Personnel and third party partners may use the contact details the User and the User's representatives to send marketing materials or other publications;
  - (iii) Ecmtutors may process personal data concerning its other clients and contacts in other ways for its own business purposes;

- (iv) Ecmtutors may process and transfer personal data as necessary to effect a re-organisation of its business; and
  - (v) Ecmtutors may share personal data with other legal or professional advisers or consultants used by it to provide the User with legal or professional advice.
- (c) During and after the delivery of Services, there may be limited occasions where Ecmtutors may process on the User's behalf as a processor any personal data the User may have provided to Ecmtutors. Ecmtutors will advise the User in writing where Ecmtutors believes Ecmtutors may act as a processor and any such processing shall be in accordance with, and subject to, the User's instructions.
- (d) Before performing the processing, Ecmtutors shall document within the instructions the subject matter and duration of the processing, the nature and purpose of the processing, the types of personal data and categories of data subjects and the other terms prescribed by the Data Protection Legislation. Ecmtutors will ensure that all appropriate technical and organisational measures are taken to protect any personal data supplied by the User to Ecmtutors against unauthorised or unlawful processing, accidental loss, destruction or damage, including when Ecmtutors subcontract any processing (for example, in the case of external storage of data).
- (e) The User's instructions are taken to include the use by Ecmtutors, where appropriate, of independent contractors and third party partners appointed by it for functions such as data and file storage, back-up, destruction, billing, debt collection, legal processing and the like, in accordance with the foregoing.
- (f) By accepting these terms, the User gives positive consent for Ecmtutors to obtain, store and process information about the User as described in the preceding clauses. The User agrees that where necessary the User will have satisfied relevant statutory ground under the Data Protection Legislation in connection with the above-described categories of processing, before providing Ecmtutors with personal data. It is also a term of these terms that any personal data supplied by Ecmtutors to the User about employees/independent contractors of Ecmtutors and/or any third parties may only be used for the express purposes for which that information is provided to the User under this Agreement.
- (g) Each party shall comply with the terms of the Data Protection Legislation.

## 21. THIRD PARTY DATA

- (a) The User warrants, in relation to the personal information and all other data that it provides to Ecmtutors in connection with these terms ("**Third Party Data**"), that:
- (i) the User has all necessary rights in relation to Third Party Data, such that the Services can be performed in respect of that data;
  - (ii) the User is not breaching any Law by providing Ecmtutors with the Third Party Data;
  - (iii) Ecmtutors will not breach any Law by performing the Services in relation to any Third Party Data;
  - (iv) there are no restrictions placed on the use of the Third Party Data (including by any Third Party Terms) and if there are any such restrictions, the User has notified Ecmtutors of this, and Ecmtutors has agreed to perform the Services in respect of that data (being under no obligation to do so); and
  - (v) Ecmtutors will not breach any Third Party Terms by performing the Services in relation to any Third Party Data.

- (b) The User agrees at all times to indemnify and hold harmless Ecmtutors and its officers, employees and agents from and against any loss (including reasonable legal fees and costs) or liability incurred or suffered by any of those parties, where such loss or liability was caused or contributed as a result of or arising out of a breach of a warranty in clause 20(a).

## **22. DISCLAIMER**

22.1 You acknowledge and agree that:

- (a) Ecmtutors does background and credential checks of Tutors, however we do not make any guarantees or recommendations to the quality of services by the suggested Tutors rendered to Students;
- (b) Ecmtutors does not take any steps to confirm the identity of Students. Ecmtutors cannot and does not confirm nor warrant or guarantee each Student's purported identity, biography or location. We encourage you to use the Website to conduct your own enquiries to vet other Students to your satisfaction;
- (c) no information provided by us constitutes legal or financial advice, particularly in respect of your obligations to comply with any Applicable Laws;
- (d) although we provide support, guidance and tools to assist you to achieve results, any decision you make and any consequences that flow from that decision are your sole responsibility;
- (e) nothing on the Website or any of the Tutoring Materials is a promise or guarantee of results or future earnings. We cannot and do not make any guarantees that attendance at the Tutoring Services will get results or give you the ability to pass any subject matter. You acknowledge and understand that because of the nature and extent of the Tutoring Services, the results experienced by each participant may significantly vary;
- (f) any testimonials and examples within any marketing materials are not to be taken as a guarantee that you will achieve the same or similar results;
- (g) we do not guarantee that the Website will be error-free or uninterrupted, or that your use of the Website will provide any specific results;
- (h) we do not guarantee the quality, suitability, reliability, accuracy and usefulness of any Tutor and their Tutoring Services;
- (i) we do not represent or warrant that your use of the Services will meet your particular requirements, whether those requirements are disclosed to us or not.

## **23. LIMITATION OF LIABILITY**

23.1 We provide the Services only and we are not responsible and accept no liability whatsoever in respect of the Tutoring Services that Students receive from a Tutor on the Website. Lessons are held via third-party communication software platforms, including, but not limited to Zoom, Google Meet and Skype. Neither are we responsible for the reliability or quality of those services.

23.2 To the maximum extent permitted by applicable law, Ecmtutors limits all liability to any person for loss or damage of any kind, however arising whether in contract, tort (including negligence), statute, equity, indemnity or otherwise, arising from or relating in any way to the Website or any products or services provided by Ecmtutors to the greater of (this includes in relation to the transmission of any computer virus):

- (a) £100 (GBP); or
- (b) the total fees paid to us by you in the 6 months preceding the first event giving rise to the relevant liability.

23.3 All express or implied representations and warranties in relation to the Website and the associated services performed by Ecmtutors are, to the maximum extent permitted by applicable law, excluded.

- 23.4 You indemnify Ecmtutors and its employees and agents in respect of all liability for loss, damage or injury which is or may be suffered by any person arising from your or your representatives':
- (a) breach of any of these terms;
  - (b) use of the Website; or
  - (c) use of any goods or services provided by Ecmtutors.
- 23.5 To the maximum extent permitted by law, under no circumstances will Ecmtutors be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue arising under or in connection with this Website, these terms or any products or services provided by Ecmtutors (except to the extent this liability cannot be excluded under law).
- 23.6 Nothing in these terms will exclude or limit a party's liability for fraud or intentional unlawful conduct by a party, or death or personal injury resulting from a party's negligence.
- 23.7 To the extent that the provisions of any applicable law shall impose restrictions on the extent to which liability can be excluded under these terms, including, for the avoidance of doubt, the provisions of sections 3, 6 and 11 of the *Unfair Contract Terms Act 1977* in the UK (and its equivalent in any other jurisdiction) relating to the requirement of reasonableness, the exclusions set out in this clause will be limited in accordance with such restrictions. However, any exclusions of liability that are not affected by such restrictions will remain in full force and effect.

## **24. REVIEWS**

- 24.1 Users may be given an opportunity to review other Users whom they have purchased or sold Tutoring Services on the Website.
- 24.2 Reviews must be honest and accurate, and not contain unlawful or objectionable content, including but not limited to, reviews containing defamatory, libellous, abusive offensive or obscene language.
- 24.3 We reserve the right not to publish reviews, to amend content of reviews at any time and to remove reviews from the Website without notice in our discretion.
- 24.4 We are in no way responsible or liable for the information that is contained in any reviews published and do not make any representation or warranty as to the accuracy or reliability of any information or content that is published in the review. We are under no obligation to remove any review published by or about you, and you agree that we are not liable under any laws (including defamation and misleading and deceptive conduct) simply through the publication of reviews on the Website.

## **25. DISPUTES**

### **25.1 Disputes with us**

- (a) If either you or us claim that a dispute has arisen under or in connection with these Terms, either party must not commence court proceedings arising from or relating to the dispute, other than a claim for urgent interlocutory relief, unless that party has complied with the requirements of this clause.
- (b) A party that requires resolution of a dispute which arises under or in connection with these Terms must give the other party or parties to the dispute written notice containing reasonable details of the dispute and requiring its resolution under this clause.
- (c) Once the dispute notice has been given, each party to the dispute must then use its best efforts to resolve the dispute in good faith. If the dispute is not resolved within a period of 14 days (or such other period as agreed by the parties in writing) after the date of the notice, any party to the dispute may take legal proceedings to resolve the dispute.

## 25.2 Disputes with other Users

- (a) You should direct any complaint relating to another user of the Website (**User**) to that User. You must take all reasonable steps to resolve any dispute with another User with that User.
- (b) If any issue or problem relating to the Tutoring Services remains unresolved after directing a complaint to a relevant User, or if the complaint does not relate to another User, you must report it to us using the contact details set out on our Website. We will assess the complaint and attempt to quickly and satisfactorily resolve it, if the nature of the dispute is such that we can help to resolve it.
- (c) Any costs you incur in relation to a complaint or dispute will be your responsibility.
- (d) We have the option to appoint an independent mediator or arbitrator if needed. The cost of any mediator or arbitrator will be shared equally between each of the parties to the dispute.
- (e) Notwithstanding any other provision of this clause 24, you or Ecmtutors may at any time cancel your Account or discontinue your use of the Website, subject to clause 15.

## 26. GENERAL PROVISIONS

### 26.1 No Waiver

No party to these terms may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

### 26.2 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under these terms without the prior written consent of the other party.

### 26.3 Severability

Any term of these terms which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of these terms is not limited or otherwise affected.

### 26.4 No Merger

On completion or termination of these Terms, the rights and obligations of the parties set out in these Terms will not merge and any provision that has not been fulfilled remains in force.

### 26.5 Survival

Any clause which by its nature is intended to survive termination or expiry of these Terms will survive such termination or expiry.

### 26.6 Further Action

Each party must do all things (including completing and signing all documents) reasonably requested by the other party that are necessary to give full effect to these Terms and the transactions contemplated by these Terms.

### 26.7 Third party rights

These terms do not give rise to any rights under the *Contracts (Rights of Third Parties) Act 1999* to enforce any term of this agreement.

### 26.8 Time of the Essence

Time is of the essence in these Terms in respect of any date or time period and any obligation to pay money.

#### 26.9 **Relationship of the Parties**

- (a) Nothing in these Terms gives a party authority to bind any other party in any way.
- (b) Nothing in these Terms imposes any fiduciary duties on a party in relation to any other party.

#### 26.10 **Remedies Cumulative**

Except as provided in these Terms and permitted by law, the rights, powers and remedies provided in these Terms are cumulative with and not exclusive to the rights, powers or remedies provided by law independently of these Terms.

#### 26.11 **Entire Agreement**

These Terms states all the express terms agreed by the parties about its subject matter. It supersedes all prior agreements, understandings, negotiations and discussions in respect of its subject matter.

#### 26.12 **No Reliance**

No party has relied on any statement, representation, assurance or warranty made or given by any other party, except as expressly set out in these Terms.

#### 26.13 **Governing Law and Jurisdiction**

These terms 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. 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 these terms or its subject matter or formation.

### 27. **INTERPRETATION**

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (c) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) **(person)** a reference to “person” or “you” includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (e) **(party)** a reference to a party includes that party’s executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) **(these terms)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of these terms, and a reference to these terms includes all schedules, exhibits, attachments and annexures to it;
- (g) **(document)** a reference to a document (including these terms) is to that document as varied, novated, ratified or replaced from time to time;
- (h) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (i) **(includes)** the word “includes” and similar words in any form is not a word of limitation; and

- (j) **(adverse interpretation)** no provision of these terms will be interpreted adversely to a party because that party was responsible for the preparation of these terms or that provision;
- (k) **(currency)** a reference to €, or “euro”, is to Euros (EUR), unless otherwise agreed in writing.