



**Standard terms and conditions for the supply of tuition
services by self-employed/personal service company
tutors**

**Croy Education Services Ltd, trading as
Tutor Doctor Birmingham and Solihull**

Between:

- (1) **Croy Education Services Ltd (trading at Tutor Doctor Birmingham and Solihull)**, a company incorporated in England and Wales (Company number: 12435953) having its registered office at 52 Cadet Drive, Shirley, Solihull B90 2FD (the "**Company**"); and
- (2) **Client for whom the tuition is arranged** (the "**Client**").

Background:

- (A) The Client has a requirement for tuition services. The Company sources and supplies the services of tutors in order to work on assignments involving tuition services for the Client.
- (B) Such tutors may be employed by the Company or operating on an independent self-employed basis.
- (C) The Company agrees to supply the services of such tutors 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:

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

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

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

"Assignment Details" means the details of an Assignment including any document and/or email or subsequent correspondence between the Company and the Client which sets out, confirms or clarifies the details of an Assignment.

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

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

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

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

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

"Conduct Regulations" means the Conduct of Employment Agencies and Employment Businesses Regulations 2003 as amended and updated from time to time.

"Conversion Fee" means 48 times the hourly Fee (or pro-rated equivalent hourly rate if Fees are based on a period of more or less than an hour).

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

updated, amended or replaced from time to time; and the terms **"Data Subject"**, **"Personal Data"**, **"processing"**, **"processor"** and **"controller"** shall have the meanings set out in the UK GDPR.

"Employed" in relation to a Tutor means a tutor employed (on a casual or zero hour basis or otherwise) by the Company.

"Engagement" means the Client's or any Client Contact or Client Third Party Contact (as each term is defined in clause 6):

- (a) engagement (direct or indirect) by way of employment or contract for services or otherwise of:
 - (i) the Tutor(s); or
 - (ii) the Supplier;
- (b) making of any other arrangement for any of the persons in (a) (i) or (ii) above to provide services for the benefit of the Client or any Client Contact or Client Third Party Contact,

and **"Engages"** shall be construed accordingly.

"Enhanced DBS Certificate" means an enhanced disclosure and barring service check and certificate.

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

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

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

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

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

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

"Inside IR35" means where the circumstances under which the Supplier will provide the Tuition Services under the Assignment Details are such that the requirements set out in sections 49 and 50 of the or s61M (1), s61O or s61P of the Off Payroll IR35 Legislation are satisfied.

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

renewal or extension of, such rights which exist now or which will exist in the future in any country in the world.

"Introduction" means the passing to a person of information which identifies or relates to the Supplier and/or the Tutor(s) and the date of Introduction shall be the date on which such information is passed to such person and **"Introduces"** shall be construed accordingly.

"ITEPA" means the Income Tax (Earnings and Pensions) Act 2003 as amended and updated from time to time.

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

"Loss" means any demand, contribution, claim, action, proceeding, liability, loss, damage, costs, expenses, tax, national insurance contributions (to the extent permitted by law) and charges and any related penalties, fines or interest whatsoever whether founded in statute, contract, tort or otherwise made or brought against or incurred (including without limitation all losses, liabilities and legal costs incurred as a result of any pre-action inquiry or investigation, or defending or settling any assessments and/or claims); the term **"Losses"** shall be construed accordingly.

"NICs Legislation" means the Social Security (Categorisation of Earners) Regulations 1978 and/or the Social Security (Categorisation of Earners) (Northern Ireland) Regulations 1978.

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

"Outside IR35" means where the circumstances under which the Supplier will provide the Tuition Services under the Assignment Details are such that the requirements set out in sections 49 and 50 of the IR35 Legislation are not satisfied.

"PSC Contractor" means a Tutor who controls and directs their own limited company through which they contract and offer their services on an independent business to business basis and references to **"PSC"** shall be construed accordingly.

"SDC" means circumstances where the Tutor operates (for the purposes of sections 44-47 ITEPA) under the supervision, direction or control of any person in the Client's Group as to the manner in which the Tuition Services are provided or is subject to the right of such supervision, direction or control by any such person.

"Session" means any continuous period in which Tuition Services are provided.

"Short Notice Cancellation Fee" has the meaning set out in clause 8.2.

"Sole Trader" means a Tutor with whom the Company directly contracts to provide Tuition Services on a self-employed basis.

"Status Determination Statement" or **"SDS"** means a statement by the Client confirming whether, in its opinion, the circumstances under which the Supplier will provide the Tuition Services:

- (a) fall Inside IR35 or Outside IR35; or
- (b) are or are not subject to SDC.

"Supplier(s)" means (where relevant) the intermediary as set out in the relevant Assignment Details and including entities as defined in sections 49, and 51(1) to (5) or section 61N(9), subsections (9) to (12) of ITEPA and any future updating reference, and including (without limitation) a company commonly known as a personal service company in which the Tutor has a material beneficial interest.

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

"Tuition Services" means the Session or series of Sessions to be delivered by the Tutor for the Client as set out in the relevant Assignment Details.

"Tutor" means the individual and any substitute pursuant to clause 5 who is registered with the Company to provide Tuition Services and who accepts an Assignment including an individual supplied by a Supplier. Where the Supplier of a Tutor is a personal service company reference to Tutor in this Agreement shall include where the context allows the individual operating via that personal service company;

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

- 1.2 Each term starting with a capital letter and not defined in clause 1.1 or elsewhere in this Agreement is as defined in the Assignment Details.
- 1.3 References to "Supplier" are only relevant if the Company engages the Tuition Services of the Tutor via a contractual intermediary such as a PSC.
- 1.4 Reference to the Client shall, to the extent the context permits, be the person who is benefitting from the tuition services
- 1.5 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 the date of this Agreement) under it from time to time.
- 1.6 Where the context permits, words denoting:
 - (a) persons shall include bodies corporate and unincorporated associations of persons;
 - (b) the singular include the plural and vice versa; and
 - (c) one gender shall include any gender.
- 1.7 These terms and conditions together with the Assignment Details form the Agreement relating to relevant Tuition Services (and shall be deemed to be accepted by the Client) as from the earlier of the date on which the Company first Introduces the services of a Supplier and/or Tutor(s) to the Client for those services or the Client first issuing a request for those services to the Company. In the event of any conflict or inconsistency between any Assignment Details and these terms and conditions the terms of the relevant Assignment Details shall take precedence.
- 1.8 For the purposes of the Conduct Regulations the Company shall operate as an "employment business" in relation to the Tutor (except where any permanent placement results from the Company's introduction(s) to their client in which case the Company shall act as an employment agency). The Conduct Regulations only apply to work-finding services by an employment business where the worker works for and under the control of a hirer. The Tutor will, when operating as a Sole Trader or PSC Contractor, not work under the control of any person and as such the services of the Company are not work-finding services for the purposes of the Conduct Regulations where the Tutor is operating on those bases. Nevertheless to the extent that the Regulations may be deemed to apply, which the Company does not accept when the Tutor is operating as a Sole Trader or PSC Contractor, the Company shall operate as an employment business in relation to the Tutor (except where any permanent placement results from the Company's introduction(s) to their client in which case the Company shall act as an employment agency).
2. **The Company's obligations**
 - 2.1 Subject to the provisions of clause 5 the Company will enter into a contract with the relevant Tutor(s) and/or Supplier (s) for the provision of the Tuition Services on the terms set out in the relevant Assignment Details.
 - 2.2 The Company shall supply the Client (prior to the relevant Start Date) with confirmation of the following:
 - (a) the identity of the Tutor;
 - (b) that the Tutor has the experience, training, qualifications, valid safeguarding and any other authorisation which the Client states that it considers are necessary, or required by law or by any professional body, to perform the Tuition Services; and

- (c) that the Tutor is willing to provide the Tuition Services.
- 2.3 The Company will, by way of its contract with the Tutor(s) or Supplier(s), require the Tutor(s) or Supplier(s) to:
- (a) supply the Tuition Services in accordance with Good Industry Practice;
 - (b) work with the Client to agree the scope of work and to generally work towards helping to deliver the Client's aims and objectives;
 - (c) comply with all relevant Client regulations, policies and protocols as notified by the Client to the Company from time to time, including on health and safety and security insofar as such policies apply to independent contractors;
 - (d) make up any time either at the end of that Session, or before or after another Session if they are late to a Session. For the avoidance of doubt, if the Client is late, there will be no obligation to extend the duration of the Tuition Services and any additional time will be charged in accordance with clause 4;
 - (e) use all reasonable endeavours to provide at least 24 hours' notice if they are incapacitated, unavailable or otherwise unwilling to provide the Tuition Services. The Company shall use its reasonable endeavours to provide a suitable substitute or re-arrange the Assignment.
- 2.4 The Company will require the Tutor to confirm or (where Tuition Services are delivered by a Supplier) the Supplier(s) to confirm that the Tutor:
- (a) has valid and subsisting leave to enter and remain in the United Kingdom for the duration of the relevant Assignment; and
 - (b) is not (in relation to the leave in clause 2.4(a)) subject to any conditions which may preclude or have an adverse effect on the provision of the Tuition Services.
- 2.5 Where the Tutor is required by law or any professional body to have certain qualifications or authorisations to provide Tuition Services the Company will use reasonable endeavours to obtain and offer to provide you copies of such and if the Assignment involves providing services to or caring for or attending children or vulnerable persons the Company will use its reasonable endeavours to provide you with an Enhanced DBS Certificate and obtain and offer to provide copies of two references from persons who are not relatives of the Tutor.
- 2.6 If the Company is unable to obtain and provide any information referenced in clause 2.5 to the Client it shall provide any information it has been able to obtain and explain that it has taken all reasonably practicable steps to obtain and provide the information referenced in clause 2.5; and inform the Client of details of the steps it has taken in order to obtain and provide the information referenced in clause 2.5.
- 2.7 In relation to Tutors who are Employed the Company shall comply with its obligations in relation to all applicable laws in relation to how they are engaged and shall in particular account to the tax authorities in relation to any amounts it may be liable to pay in relation to workplace tax or social security relating to the Employed Tutors.
- 2.8 The Company agrees grant Client a referral reward of two free tuition hours for each referral that results in a new enrolment. A minimum of one payment must be received by Company in order to qualify.
- 3. The Client's obligations**
- 3.1 The Client warrants covenants and undertakes that it has given (or will, prior to the relevant Start Date, give) to the Company sufficient information in order for the Company properly to consider the suitability of the Tutor(s)/Supplier(s) to work on the Assignment in accordance with the Assignment Details, including but not limited to:
- (a) the identity of the Client and, if applicable, the nature of the Client's business;
 - (b) the commencement date on which the Client requires provision of the Tuition Services to commence and, the duration or likely duration of provision of the Tuition Services;
 - (c) details of the position which the Client seeks to fill, including the type of work a Tutor in that position would be required to do;

- (d) details of the Location at which and the hours during which the Tutor would be required to work and any risks to health or safety known to the Client and what steps the Client has taken to prevent or control such risks;
- (e) details of any expenses payable by or to the Tutor;
- (f) details of the Assignment and Tuition Services required;
- (g) full details of the subject areas and academic courses for which the Tutor is required and, in particular, any special skills required of the Tutor; and
- (h) any special experience, training, qualifications and any authorisations which the Client considers are necessary, or which are required by law or by any professional body for a Tutor to possess in order to provide the Tuition Services.

3.2 The Client shall:

- (a) allow the Tutor(s) and the Supplier(s) to determine how the Tuition Services should be performed;
- (b) not request a Tutor to undertake work outside the scope of the Assignment except as agreed in writing with the Company. For the avoidance of doubt, any proposed changes to the length or frequency of the Tuition Services must be notified to the Company;
- (c) give the Company full information about pay rates and benefits of internally employed staff of the Client with roles comparable to that of the Tutor so as to allow compliance with the Agency Workers Regulations 2010, and if the Tutor brings, or threatens to bring, any claim under the Agency Workers Regulations 2010 take such action and give such information and assistance as the Company may request, and within any timeframe requested by the Company and at its own cost, to avoid, dispute, resist, mitigate, compromise or defend any such claim and to appeal against any judgment given in respect thereof;
- (d) conduct a risk assessment study of the Client site, equipment and working conditions prior to any Tutor or Supplier commencing Tuition Services and provide details of this to the Company upon request;
- (e) notify the Company immediately if it is dissatisfied with the performance by the Supplier(s) or Tutor(s) of the Tuition Services (in which case the provisions of clause 5 shall apply), and, for the avoidance of doubt, the Client has no authority to discipline any Tutor(s) or to terminate (other than by termination of the Assignment pursuant to this Agreement) the provision of the Tuition Services via any Supplier(s) or Tutor(s);
- (f) (without limitation to the above) not commit any act or omission constituting unlawful discrimination or harassment of any Tutor(s) in connection with the performance of the Tuition Services;
- (g) notify the Company via email as soon as reasonably practicable of any proposed alteration, adjustment or extension to the Assignment. The Company shall provide a written response via email and shall not unreasonably withhold its consent to a change or extension requested by the Client. In response to a request, (if applicable) the Company will advise the Client whether the change is practicable and, if so, any related changes it would wish to make to the Fee. Pending agreement to implement changes, the Company shall be entitled to treat any out of scope services as additional consultancy services, chargeable on a time spent basis in accordance with the Fees set out in the relevant Assignment Details; and
- (h) not introduce a Tutor to a third party other than via the Company.

3.3 In relation to any Assignment performed by a Tutor who is operating as a Sole Trader or PSC Contractor the Client warrants, covenants and undertakes that it does not have the right to and shall not (and no other person shall have the right to and no other person shall) subject the Tutor to any supervision, direction or control ("SDC") in relation to how to deliver the Tuition Services and that there shall be no framework of control.

3.4 For the avoidance of doubt, supplies of consultancy services made by PSC Contractors under this Agreement are intended to be made by independent Tutors providing their services in a way which the parties reasonably expect will be assessed as falling Outside IR35. The Client

warrants, covenants and undertakes that it is not a large or medium-sized company as defined by the Companies Act 2006.

- 3.5 For the avoidance of doubt, supplies of consultancy services made by Sole Traders under this Agreement are intended to be made by independent Tutors providing their services in a way which the parties reasonably expect will not be subject to SDC, or be subject to the right of SDC by any person or subject to any framework of control. Notwithstanding this understanding and without prejudice to any of the other provisions of this Agreement, if the Client fails to confirm that the Tutor is not subject to SDC or framework of control by anyone and or fails to continue to warrant any of the warranties outlined in clause 3.3, the Company reserves the right to pay the Tutor and/or Supplier subject to PAYE and NICs deductions in accordance with the Agency Tax Legislation until such time as the Client confirms that the Tutor is not subject to SDC or framework of control by anyone.
- 3.6 In relation to any Tuition Services to be performed by a Tutor operating as a Sole Trader or PSC Contractor the Client shall, prior to the Project Start Date [or as soon as possible thereafter and, in any event, no later than 1 week from the Start Date] provide a written SDS to the Company confirming whether, in its reasonable opinion, the circumstances under which the Tutor will provide the Tuition Services fall Inside IR35 or Outside IR35.
- 3.7 The Client hereby acknowledges, confirms and agrees that the Company shall be entitled to rely on the SDS to make a decision as to whether to pay the Tutor and/or Supplier gross or net of PAYE and Class 1 National Insurance Contributions (primary and secondary).
- 3.8 For the avoidance of doubt, supplies of Tuition Services made under this Agreement are (where they are performed by a Tutor operating as a Sole Trader or PSC Contractor) intended to be made by independent consultants providing their services in a way which the parties reasonably expect will be assessed by the Client as falling Outside IR35 and not subject to SDC. Notwithstanding this understanding and without prejudice to any of the other provisions of this Agreement, if the Client fails to provide a SDS prior to the relevant Start Date the Company reserves the right to pay the Supplier(s) on an Inside IR35 basis and/or net of PAYE and NICs basis until such time as the Client shall issue a SDS to the Company confirming that the Supplier(s) is assessed as being Outside IR35 and not subject to SDC.
- 3.9 The Client shall notify the Company without delay whenever it has reason to believe that any of the following apply in relation to Tuition Services performed by a Tutor who is operating as a Sole Trader or PSC Contractor:
 - (a) the circumstances under which the Tutor(s) (in relation to Tuition Services delivered by any PSC Contractor) provides or will provide the Tuition Services under the Assignment has or will change such that the Assignment would go from Outside IR35 to one of Inside IR35 (in relation to Tuition Services delivered by a PSC Contractor);
 - (b) the circumstances under which the Tutor provides or will provide the Tuition Services under the Assignment has changed or will change such that the Tutor will be subject to SDC or the right of SDC or a framework of control;
 - (c) the Assignment involves working as an officer of the Client;
 - (d) the Tuition Services are the same as or substantially the same as those performed by any of the Client's employees; and
 - (e) the Assignment involves the Supplier(s) and/or the Tutor(s) managing Client staff.
- 3.10 The Company shall be entitled to terminate the Assignment by written notice to the Client with immediate effect if:
 - (a) it has reasonable grounds to believe that the circumstances under which the Tuition Services are provided and/or the nature of the Assignment have changed (including any notice under clause 3.6); or
 - (b) (in relation to Tuition Services delivered by a Sole Trader) the Client indicates that the Sole Trader is subject to SDC or framework of control or fails to provide confirmation in accordance with clause **Error! Reference source not found.**
- 3.11 The Client shall in relation to Tuition Services performed by a Tutor who is operating as a Sole Trader or PSC Contractor co-operate with the Company's reasonable requests for information

in the event that HMRC and/or the Supplier(s) and/or the Tutor(s) challenge the IR35 status of the Tutor and/or any payment(s) the Company pays to the Supplier(s) in respect of Tuition Services supplied on the Assignment.

- 3.12 The Client shall indemnify (and keep it indemnified fully on demand) the Company against any and all Losses incurred by the Company by reason of any proceedings, claims or demands by any third party (including specifically, but without limitation, HMRC and any successor, equivalent or related body, pursuant to any of the provisions of ITEPA or the NICs Legislation (and or any supporting or consequential secondary legislation relating thereto)) suffered or incurred by the Company arising out of the Company relying, in good faith, on the warranties in clause 3.3 3.3 (in relation to Tuition Services delivered by Tutors).
- 3.13 Clauses 3.6 to 3.8 inclusive shall not apply in relation to a Tutor who operates as a PSC Contractor and for the purposes of the Off Payroll IR35 Legislation the Client does not in the relevant tax year(s) :
- (a) qualify as medium or large or;
 - (b) have a UK connection.
4. **Payment of Fees**
- 4.1 The Company will be entitled to issue invoices in respect of the Tuition Services supplied during the relevant invoicing period plus its margin and any statutory costs (which are included in the Fee) and for any Short Notice Cancellation Fee.
- 4.2 Unless otherwise agreed in writing, the Company shall be entitled to invoice the Client on the basis of the Invoicing Frequency set out in the Assignment Details and such invoices shall be payable by the Client within 14 days of the invoice date. The charge shall be a multiple of the Fee and the number of hours, days, weeks (as relevant) worked by the Tutor(s).
- 4.3 The Fees payable to the Company from the Client are based upon the Hourly Tuition and/or, where applicable, the Home School Tuition recorded on the timesheets submitted to the Company from the Tutor. The Company shall however be entitled to request an advance payment of the Fees and such advance payment shall be payable by the Client within 14 days of the request which payment shall be held for the account of the Client pending provision of the relevant Tuition Services and shall not be refundable (save that an equivalent payment shall be made by the Company back to the Client to the extent the anticipated Tuition Services to which they relate are never performed due to failure on the part of the Company to provide a Tutor). For the avoidance of doubt, in the calculation of the sums due to the Company in relation to Tuition Services performed by the Tutor(s) any oral or written confirmation that the services have been performed shall be conclusive evidence that the Tuition Services have been performed to the satisfaction of the Client. If the Client disputes the invoiced charges it shall inform the Company within 7 days of receipt of the disputed invoice, and shall co-operate with the Company to establish the Tuition Services provided by the Tutor(s) in the period to which the disputed invoice relates.
- 4.4 The Client acknowledges that the Fees are based on the total cost of supplying the Tuition Services plus the Company's recruitment and support services fee. The Company has relied on the assurance, where the Tuition Services are to be provided by a Tutor operating as a Sole Trader or PSC Contractor, that Tutors are Outside IR35 and/or not subject to SDC or framework of control in agreeing the Fee. Should this change, the cost to the Company of supplying the Tuition Services will increase. The Company reserves the right to increase the Fee to reflect this increase should the Client:
- (a) inform the Company that it is no longer of the view that a Sole Trader is not subject to SDC or framework of control;
 - (b) inform the Company that it is no longer of the view that a PSC Contractor is Outside IR35; or
 - (c) if the Client breaches any warranty in clause 3.3.
- 4.5 The Company reserves the right to increase the Fee to take into account any statutory or other legal change which leads to an increase in a Tutors statutory and/or legal entitlements or otherwise resulting in an increase in the cost of supply for the Company. The Company shall give the Client 10 Business Days written notice of any such increase to Fee.

- 4.6 The Company shall be entitled to terminate the Assignment by written notice to the Client with immediate effect if the Client does not agree to any Fee increase set out in clauses 4.4 or 4.5 above.
- 4.7 Unless otherwise agreed in writing by a director of the Company, the Company will not be obliged to make any rebates or refunds of Fees or other sums payable to the Company by the Client.
- 4.8 All amounts due under this Agreement shall be paid in full without any deduction or withholding other than as required by law. The Client shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part.
- 4.9 Unless otherwise agreed by the Company, all payments due to it under this Agreement shall be paid by direct bank transfer to the Company's bank account.
- 4.10 The Company shall apply and charge the Client interest at a rate of 1% per annum above the base rate from time to time of the Bank of England on any overdue amount from the due date until the date of payment in accordance with the Late Payment of Commercial Debt (Interest) Act 1998.
- 4.11 All amounts payable under this Agreement (including, for the avoidance of doubt, those under clause 6) are exclusive of value added tax and any other like taxes applicable to a Location(s), which shall be payable by the Client.

5. **Substitution of Tutor(s)**

- 5.1 The Client acknowledges and agrees that the Supplier (where the Tutor is providing Tuition Services via a PSC) or the Tutor (where the Tutor is a Sole Trader) shall be entitled from time to time to delegate the performance of the Tuition Services to or otherwise use the services of, a suitably qualified, skilled and experienced substitute tutor provided that the Client shall be entitled to refuse to accept a substitute, if in its reasonable opinion such individual is not suitable, due to lack of skills experience and qualifications. The Company will remain liable for the services completed by substitute personnel and will bear any costs.
- 5.2 The Company will provide full particulars of any substitute to the Client prior to the substitute working on an Assignment.
- 5.3 Where the Tutor is Employed he/she shall not be entitled to delegate performance of the Tuition Services.
- 5.4 If within 24 hours of the relevant Start Date the Supplier (where the Tutor is providing Tuition Services via a PSC) or the Tutor (where the Tutor is a Sole Trader) fails in the reasonable opinion of the Client to perform the relevant Tuition Services satisfactorily, the Client shall notify the Company in writing to that effect and the Company will use its reasonable endeavours to procure that a suitable substitute Supplier or Tutor is available to perform the Tuition Services as soon as possible. If no such substitute is available within 10 Business Days or such other period as the parties may agree after receipt by the Company of the Client's written notification of unsatisfactory performance, then the Client may terminate the relevant Assignment by written notice in accordance with clause 7.

6. **Protection of the Company's business interests**

- 6.1 For the purposes of this clause 6:
 - (a) a "**Deemed Introduction**" will occur where any member of the Client's Group or any client of the Client with whom the Tutor had material contact during the Assignment (a "**Client Contact**"), or any third party (including any client of the Client or any employment business or other person) to whom the Client introduces that individual (a "**Client Third Party Contact**"), directly or indirectly (other than through the Company):
 - (i) Engages that Tutor or other individual to carry out the Tuition Services or services similar to or related to the Tuition Services; or
 - (ii) Engages any Tutor or other individual Introduced to the Client with a view to them working on an Assignment; or

- (iii) otherwise makes arrangements so that the Tutor or an Introduced individual provides services which are similar, identical or related to the Tuition Services for either the Client, any member of the Client's Group, a Client Contact or a Client Third Party Contact.
 - (b) **"Extended Hire Period"** means a period of not less than 40 hours of Tuition Services that the Client confirms that they opt to take an Extended Hire Period pursuant to clause 6.4 below. Any such period of hire shall be on terms no less favourable than the terms of the relevant Assignment.
 - (c) **"Restricted Period"** means in a case where there has been no supply of a tutor, the period of 6 months from the date of Introduction of the relevant individual to any of the persons listed in clause 6.1(a) by the Client;
 - (d) **"Relevant Period"** means as defined in the Conduct Regulations 10(5) and (6), being whichever of the following periods ends later:
 - (i) the period of 8 weeks commencing on the day after the day on which the Tutor last worked on an Assignment pursuant to being supplied by the Company; or
 - (ii) the period of 14 weeks commencing on the first day on which the Tutor worked on an Assignment pursuant to the supply of that Tutor by the Company.
- 6.2 If, following an Introduction of an individual which does not lead to a supply of that person under an Assignment, the Client wants an Engagement (other than by way of an Assignment through the Company) to commence within the Restricted Period the Client shall notify the Company and agrees to pay a Conversion Fee equivalent to 48 hours of tuition at the agreed hourly rate unless the Client elects, within 3 Business Days of the date of the Engagement by written notice to the Company to engage the Company to arrange for the individual to provide the required services, under and in accordance with the terms of this Agreement, for a hire period equivalent to the Extended Hire Period.
- 6.3 Subject to clause 6.4 where a Tutor has commenced working on an Assignment and:
- (a) the Client notifies the Company that it wants to Engage the Tutor within the Relevant Period direct or via an arrangement that does not involve the Company; or
 - (b) the Client otherwise Engages a Tutor at any time within the Relevant Period:
- the Client shall pay the Company a Conversion Fee as set out in the Assignment Details unless the Client elects, within 3 Business Days of the date of the Engagement by written notice to the Company to take an Extended Hire Period of the Tutor on terms similar to those contained in this Agreement and no less favourable to the Client than those which applied immediately before the Company received such notice. If the Client chooses an Extended Hire Period but Engages the Tutor before the end of the Extended Hire Period, the Conversion Fee may be charged by the Company reduced proportionately to reflect the amount of the Extended Hire Period paid for by the Client.
- 6.4 If the Client gives the Company written notice of election in accordance with the provisions of clause 6.1 or clause 6.3 and the Company does not supply the relevant services for the duration of the Extended Hire Period and the Company is in no way at fault (including, without limitation, if an Engagement occurs or the Tutor does not agree to provide services via the Company for the Hire Period or the Extended Hire Period (as appropriate)), the Client shall, if an Engagement occurs within the Relevant Period, pay to the Company such proportion of the Conversion Fee as equates to the proportion of the Hire Period or Extended Hire Period (as appropriate) during which the Company does not supply the Tuition Services.
- 6.5 No refund of the Conversion Fee shall be payable if the Engagement terminates.
- 6.6 If there is a Deemed Introduction which results in an Engagement and:
- (a) if that Tutor has at any time provided services to the Client via the Company, within the Relevant Period; or
 - (b) if that Tutor has not so supplied services, within the Restricted Period from the date of such introduction;

the Client shall pay to the Company the Conversion Fee and no refund of the Conversion Fee shall be payable if any such employment or engagement terminates.

7. Termination

7.1 This Agreement shall continue unless terminated:

- (a) by written notice with immediate effect by the Company if:
 - (i) there is any breach of this Agreement by the Client, which is, in the reasonable opinion of the Company:
 - (A) capable of being remedied and the Client fails to remedy the breach within 7 days of receiving written notice from the Company; or
 - (B) incapable of being remedied.
 - (ii) the Client fails to pay any amount which is due to the Company in full and on the date that the payment falls due;
 - (iii) credit insurance in relation to the Client is withdrawn or otherwise flagged as high risk; or
 - (iv) the Client is entitled to terminate this Agreement under clause 5.4 if the Company is unable to find a substitute.
- (b) by 5 Business Days' written notice by the Company if there is any other serious or repeated breach of this Agreement by the Client, which is, in the reasonable opinion of the Company, capable of remedy and which is not remedied within 10 Business Days after an earlier notice requiring it to do so;
- (c) by written notice by the Client without cause, provided it is within 60 calendar days from the start of the Assignment, in which case the closing balance for termination under this clause 7.1(c) will be as follows:
 - (i) Total monies received minus the value of used hours (re-priced to the hourly rate applicable to the actual number of hours used), minus a £50 administrative fee, will be refunded to the Client within 30 days of termination; or
 - (ii) If more hours have been used than total monies received, then the negative balance will be due to Company at the time of cancellation.
- (d) Or; by written notice with immediate effect
 - (i) by either party if that party shall become unable to commence, continue or completely perform its obligations under this Agreement by reason of illness, injury, other incapacity or by reason of Force Majeure affecting that party, which is not within that party's reasonable control; or
 - (ii) by either party if either party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, or admits inability to pay its debts; or
 - (iii) if the Company has reasonable grounds to believe that an application is made to the court, for the appointment of an administrator, a notice of intention to appoint an administrator is given over the Client.

8. Cancellation

8.1 Without prejudice to the rights to terminate the whole Agreement under clause 7.1, where the any Session is cancelled or terminated by the Client before the expected commencement of the Session, the Client shall pay a Short Notice Cancellation Fee (calculated in accordance with clause 8.2) to be paid to the Company in such manner as may be notified by the Company from time to time.

8.2 Short Notice Cancellation Fee shall be as follows:

- (a) If any Session(s) that is/are for Hourly Tuition is cancelled by the Client with less than 48 hours' notice, the full fee for those Sessions will be charged to, and payable by, the

Client. This will be invoiced to the Client in accordance with clause 4 above, as if the Assignment had taken place.

8.3 The Company shall be entitled to cancel any Assignment by written notice with immediate effect and without liability or prejudice to any right for relief if in good faith if the Company forms the opinion for any reason that (i) the Client may not meet its obligations to the Company, or (ii) the Supplier/Tutor(s) may no longer be willing, or able or suitable to undertake the Tuition Services for the Client.

8.4 The Company shall be entitled to terminate any Assignment by written notice to the Client with immediate effect in accordance with clause 3.10, clause 4.6 and/or clause 9.3.

9. **Acknowledgements and Liability**

9.1 Where the Tuition Services are to be provided by a Tutor operating as a Sole Trader or PSC Contractor nothing in this Agreement shall in any way constitute any Tutor as the employee(s) or worker(s) of the Company or the Client; and the Company confirms that the Tutor is engaged under a contract for services (in respect of which, without limitation, neither the Company nor the Client has SDC as to the way in which the Supplier or the Tutor perform the Tuition Services). Where the Tuition Services are to be provided by a Tutor operating on an Employed basis the Company shall not exercise SDC as to the way in which the Tutor performs the Tuition Services.

9.2 Accordingly, the Company shall not be liable for any Loss relating to the failure of the Tutor to perform the Tuition Services in accordance with this Agreement.

9.3 Where the Tuition Services are to be provided by a Tutor operating as a Sole Trader or PSC Contractor the Client acknowledges that any Tutor offers consultancy services on an independent business to business basis and accordingly neither the Client nor the Company supervises and/or has the right to control the actions of the Supplier(s) or Tutor(s) in the way that it would if an employment or worker relationship existed. If the Client does, or intends to, supervise, direct or control the manner in which the Tuition Services are performed by the Tutor(s), the Client shall immediately notify the Company of that fact. The Company shall be entitled to terminate any Assignment by written notice to the Client with immediate effect if it receives such notice from the Client or otherwise has reasonable grounds to suspect the Tutor no longer works independently.

9.4 The parties acknowledge that the Company is not obliged to put the Supplier and/or the Tutor(s) forward for consideration by the Client for the provision of services and the Supplier and/or the Tutor(s) is not obliged to provide services to the Client beyond the termination or expiry of the relevant Assignment.

9.5 The Client acknowledges that the Company is not in a position to assess and insure against risks in respect of or during or arising out of the period for which the Supplier and/or the Tutor(s) is performing the Tuition Services.

9.6 Subject to clause 9.1 and 9.7, the Company shall not be liable for any Loss in excess of the greater of £100,000 or the fees due by the Client to the Company in respect of any claim or related claims, or any Losses or delay arising from:

- (a) any failure to provide the services of the Supplier(s) and/or Tutor(s) for all or part of the term of this Agreement;
- (b) the negligent, wrongful, dishonest or fraudulent acts or omissions or misrepresentations of the Supplier(s) or the Tutor(s), including, without limitation, any lack of skill of the Supplier(s)/Tutor(s);
- (c) theft of any data or materials or Client Background IPR by the Tutor(s);
- (d) any special, indirect or consequential damages or loss; or
- (e) any loss of profit, business, revenue, goodwill, anticipated savings and/or any claims made under third party contracts, arising out of any failure by the Company to perform its obligations under this Agreement.

9.7 Nothing in this Agreement shall operate to exclude or limit the Company's liability for:

- (a) death or personal injury caused by the Company's negligence;

- (b) its own fraudulent acts or omissions; or
- (c) any other liability which cannot by law be excluded.

10. Disputes

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

11. Confidentiality and Intellectual Property

- 11.1 The Company will, by way of contract with the Tutor/Supplier, require that the Tutor/Supplier shall:
- (a) keep confidential, all information relating to Work Results, Intellectual Property Rights in the Work Results and the Client's business and affairs (including, for the avoidance of doubt, Fees) ("**Confidential Information**") which may become known to it/them in connection with the supply of the Tuition Services; and
 - (b) enter into any and all assignments of Intellectual Property Rights (relating to Work Results) or confidentiality undertakings that the Client may reasonably require it or them to enter into.
- 11.2 The Client shall keep all information comprising an Introduction (including, without limitation, Personal Data (as defined in clause 12)) relating to any potential Tutor/Supplier and/or Tutor(s) confidential and undertakes not to use such information for any purpose other than to arrange for the Supplier(s) to supply the Tuition Services.
- 11.3 All Intellectual Property Rights in any deliverables, and in any materials which are created by or on behalf of the Tutor/Supplier as a result of the provision of the Tuition Services and which are produced for, on behalf of or at the request of the Client pursuant to an Assignment shall vest in the Tutor ("**Tutor IPR**").
- 11.4 Where any Work Results and any other materials which are otherwise created by or on behalf of the Tutor/Supplier as a result of the performance of an Assignment are supplied with or have embedded in them Tutor IPR or Tutor Background IPR then the Tutor shall retain ownership of such IPR, but the Company shall use all reasonable endeavours to ensure the Tutor grants to the Client a non-exclusive, perpetual (unless agreed otherwise in the relevant Assignment), irrevocable, royalty-free licence to use such IPR in any way whatsoever to facilitate and/or enable full use of the Work Results or other materials and, for this purpose, to sub-license such IPR to third parties.
- 11.5 The Company shall retain ownership of Company Background IPR.
- 11.6 Any academic work completed by the Client or any student connected with the Client shall remain the property of the Client/student (whichever applies) and neither the Tutor nor the Company shall have by virtue of this Agreement any right to use all or part of any such academic work for any purpose other than the delivery of the Tuition Services unless the Client has agreed otherwise.
- 11.7 Nothing in this Agreement shall be construed as transferring the ownership of any Intellectual Property Rights from any party that currently owns or otherwise has valid title to any such IPR, or creates new IPR in the course of this Agreement, to any other party other than by the separate, explicit and unambiguous agreement between the parties concerned to exercise such a transfer under terms specified by any such separate agreement.
- 11.8 Where any deliverables and any other materials which are otherwise used or created by or on behalf of the Tutor/Supplier as a result of the performance of the Tuition Services are supplied with or have embedded in them Client Background IPR then the Client shall retain ownership of such Client Background IPR.

12. **Anti-Bribery**

- 12.1 The Client shall comply with all applicable laws, statutes, regulations, codes and guidance relating to anti-bribery and anti-corruption ("**Anti-Bribery Laws**"), including without limitation the Bribery Act 2010.

13. **Modern Slavery Act**

- 13.1 The Client shall comply with all applicable laws relating to modern slavery and human trafficking including the Modern Slavery Act 2015 ("**MSA**").

14. **General**

- 14.1 This Agreement together with each Assignment agreed by parties hereunder constitute the entire agreement between the parties and supersede all previous agreements and arrangements (if any) whether written, oral or implied between the Company and the Client relating to the Tuition Services and all such agreements still effective at the date of this Agreement (if any) shall be deemed to have been terminated by mutual consent with effect from the Start Date but without prejudice to any rights which have arisen prior to such termination and so that nothing in this clause 14.1 shall operate to exclude or limit the liability of any party in respect of fraud.
- 14.2 The Client acknowledges that, in entering into this Agreement, it has not relied on any representations by the Company, the Supplier(s) or the Tutor(s) made before the execution of this Agreement or the relevant Assignment other than those expressly set out in this Agreement.
- 14.3 This Agreement is personal to the Client and the Client shall not be entitled to assign or sub-contract its obligations or rights under this Agreement to any third party without the prior written consent of the Company. The Company shall however be entitled to assign this Agreement to any member of the Company's Group and, upon such assignment, without prejudice to the assignor's rights in respect of matters arising prior to such Assignment; all references to the Company shall be deemed to refer to the assignee.
- 14.4 No amendment to this Agreement is (including any change to Assignment scope) shall be effective unless it is in writing and signed on behalf of each party by a person duly authorised by that party. The Company will act in good faith to consider all reasonable changes to Assignment scope that may be requested by the Client.
- 14.5 Any notice required to be given under this Agreement (including the delivery of any work record or invoice) shall be in writing signed by a person duly authorised by the sending party and delivered by hand, e-mail or prepaid first class post to the recipient address specified in this Agreement (or as otherwise notified from time to time to the sender by the recipient for the purposes of this Agreement).
- 14.6 It is agreed that PSC Contractors or Sole Traders shall not work for and under the SDC or framework of control of the Client. As the Client has determined that these PSC Contractors and Sole Traders are independent contractors and not subject to SDC or any framework of control the Agency Workers Regulations 2010 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 do not apply to these arrangements.
- 14.7 This Agreement shall be governed by and construed in all respects in accordance with English law and the Courts of England and Wales shall have exclusive jurisdiction.
- 14.8 None of the provisions of this Agreement is intended to be for the benefit of, or enforceable by third parties (other than permitted assignees of the Company who shall be entitled to enforce the provisions of this Agreement as if original parties to it) and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded.



Signed by _____ on behalf of
Croy Education Services Ltd

Name of signatory: Andy Croy
Position: Director