

These Terms and Conditions shall apply to the provision of services by the Service Provider to its clients.

1. Definitions and Interpretation

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

“Agreement”	means the agreement entered into by the Service Provider and the Client incorporating these Terms and Conditions (or variation thereof agreed upon by both Parties) and the Service Level Agreement which shall govern provision of the Services;
“Business Day”	means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in England;
“Client”	means the party procuring the Services from the Service Provider;
“Confidential Information”	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
“Data Protection Legislation”	means all legislation in force in the UK from time to time relating to data protection and privacy including, but not limited to, the Data Protection Act 2018, EU Regulation 2016/679 General Data Protection Regulation (“GDPR”) and any other directly applicable EU regulation relating to data protection and privacy (for as long as, and to the extent that, EU law has legal effect in the UK) and any successor legislation relating to data protection and privacy;
“Fees”	means any and all sums due under the Agreement from the Client to the Service Provider, as specified in the Service Level Agreement;
“Service Level Agreement”	the service level agreement issued by the Service Provider to the Client which sets out the details of the Services to be provided and the Fees;
“Service Provider”	means Young Giants Ltd of 86-90 Paul Street, London EC2A 4NE; and
“Services”	means the services to be provided by the Service Provider to the Client in accordance with Clause 2 of the Agreement, as fully defined in the Service Level Agreement, and subject to the terms and conditions of the Agreement.

1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:

- 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
- 1.2.3 “these Terms and Conditions” is a reference to these Terms and Conditions as amended or supplemented at the relevant time;
- 1.2.4 a Clause or paragraph is a reference to a Clause of these Terms and Conditions or to a Clause of the Agreement, as appropriate; and
- 1.2.5 a “Party” or the “Parties” refer to the parties to the Agreement.

1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.

1.4 Words imparting the singular number shall include the plural and vice versa.

1.5 References to persons shall include corporations.

2. Provision of the Services

2.1 The Service Provider shall provide the Services to the Client.

2.2 The Service Provider shall act in accordance with all reasonable instructions given to it by the Client provided such instructions are compatible with the specification of Services.

2.3 Once the Service Provider and the Client have agreed that any Services are to be provided pursuant to a Service Level Agreement or

otherwise, the Client shall not be entitled to cancel any Services unless at least 7 days' notice is provided to the Service Provider for term-time agreements and 30 days' notice for school holiday bookings.

3. Client's Obligations

- 3.1 The Client shall use all reasonable endeavours to provide all pertinent information to the Service Provider that is necessary for the Service Provider's provision of the Services.
- 3.2 The Client may, from time to time, issue reasonable instructions to the Service Provider in relation to the Service Provider's provision of the Services. Any such instructions should be compatible with the specification of the Services provided in the Agreement.
- 3.3 In the event that the Service Provider requires the decision, approval, consent or any other communication from the Client in order to continue with the provision of the Services or any part thereof at any time, the Client shall provide the same in a reasonable and timely manner.
- 3.4 If any consents, licences or other permissions are needed from any third parties such as landlords, planning authorities, local authorities or similar, it shall be the Client's responsibility to obtain the same in advance of the provision of the Services (or the relevant part thereof).
- 3.5 If the nature of the Services requires that the Service Provider has access to the Client's location or the service user's location, access to which is lawfully controlled by the Client or the service user, the Client shall ensure that the Service Provider has access to the same at the times to be agreed between the Service Provider and the Client or the service user (as the case may be). In the event that the Service Provider is not able to access the Client or service user's premises in order to provide the Services, the Service Provider is still entitled to charge the Fees.
- 3.6 Any delay in the provision of the Services resulting from the Client's failure or delay in complying with any of the provisions of Clause 3 of the Agreement shall not be the responsibility or fault of the Service Provider.

4. Fees, Payment and Records

- 4.1 The Client shall pay the Fees to the Service Provider in accordance with the provisions of this Agreement and the Service Level Agreement.
- 4.2 Invoices will be issued on completion of the relevant Services to be paid within 21 days of the date of the invoice. 50% of the Fees will be payable monthly in advance and 50% of the Fees will be payable in arrears unless agreed otherwise.
- 4.3 All payments required to be made pursuant to the Agreement by either Party shall be made in Pounds sterling in cleared funds to such bank as the receiving Party may from time to time nominate, without any set-off, withholding or deduction except such amount (if any) of tax as that Party is required to deduct or withhold by law.
- 4.4 Any sums which remain unpaid following the expiry of the period set out in sub-Clause 4.2 of the Agreement shall incur interest on a daily basis at 4% above the base rate of Bank of England from time to time until payment is made in full of any such outstanding sums.

5. Liability and Insurance

- 5.1 The Service Provider and the Client shall ensure that they have in place at all times suitable and valid insurance that shall include public liability insurance and such other insurances that will be required.
- 5.2 The Service Provider's total liability for any loss or damage caused as a result of its negligence or breach of the Agreement shall be limited to the Fee paid in relation to the Services under which a claim is made.
- 5.3 The Service Provider shall not be liable for any loss or damage suffered by the Client that results from the Client's failure to follow any instructions given by the Service Provider or for any delay cause by the Client failing to comply with the terms of this Agreement or the Service Provider's recommendations.
- 5.4 Nothing in these Terms and Conditions nor in the Agreement shall limit or exclude the Service Provider's liability for death or personal injury.
- 5.5 Neither Party shall be liable to the other or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of that Party's obligations if the delay or failure is due to any cause beyond that Party's reasonable control.

6. Force Majeure

- 6.1 No Party to the Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, pandemic, epidemic, quarantine, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.
- 6.2 In the event that a Party to the Agreement cannot perform their obligations hereunder as a result of force majeure for a period of six months' or more, the other Party may at its discretion terminate the Agreement by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for all Services provided up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of the Agreement.

7. Termination

- 7.1 Either Party may terminate the Agreement by giving to the other not less than 2 months' written notice, to expire on or at any time.

7.2 Either Party may immediately terminate the Agreement by giving written notice to the other Party if:

7.2.1 any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within 30 days of the due date for payment;

7.2.2 the other Party commits any other breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within 20 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied; or

7.2.3 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement).

7.3 The rights to terminate the Agreement shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

7.4 Upon the termination of the Agreement for any reason:

7.4.1 any sum owing by either Party to the other under any of the provisions of the Agreement shall become immediately due and payable; and

7.4.2 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which existed at or before the date of termination.

8. Data Processing

8.1 **Agreed Purposes:** Personal data is to be held by both the Service Provider and Client in relation to the students that the Service Provider provides tuition services for.

8.2 **Controller, data controller, processor, data processor, data subject, personal data, processing and appropriate technical and organisational measures, binding corporate rules** shall have the meanings set out in the Data Protection Legislation in force at the time.

8.3 **Permitted Recipients:** The parties to this agreement, the employees of each party, any third parties engaged to perform obligations in connection with this agreement.

8.4 **Shared Personal Data:** The personal data to be shared between the parties under this agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject:

- Education Data
- Social Care Data where this is pertinent to the provision of the Service Provider
- Health Data where this is pertinent to the provision of the Service Provider
- Location and contact details

8.5 **Shared Personal Data.** The provisions which follow set out the framework for the sharing of personal data between the parties as data controllers. Each party acknowledges that one party (the **Data Discloser**) will regularly disclose to the other party (the **Data Recipient**) Shared Personal Data collected by the Data Discloser for the Agreed Purposes. Each party shall:

8.5.1 ensure that it has all necessary consents and notices in place to enable lawful transfer of the Shared Personal Data to the Data Recipient for the Agreed Purposes;

8.5.2 give full information to any data subject whose personal data may be processed under this agreement of the nature of such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Data Recipients, their successors and assigns;

8.5.3 process the Shared Personal Data only for the Agreed Purposes;

8.5.4 not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;

8.5.5 ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less demanding than those imposed by this agreement;

8.5.6 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and

8.5.7 not transfer any personal data received from the Data Discloser outside the EEA unless the transferor:

- complies with the provisions of Article 26 of the GDPR (in the event the transferee is a joint controller); and
- ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; (iii) binding corporate rules are in place, or (iv) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.

- 8.6 Compliance.** Each party shall comply with the Data Protection Legislation and agrees that any material breach of the Data Protection Legislation shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this agreement with immediate effect.
- 8.7 Mutual assistance.** Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:
- 8.7.1 consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
 - 8.7.2 promptly inform the other party about the receipt of any data subject access request or any request from a data subject to erase or rectify Shared Personal Data and provide the other party with reasonable assistance in complying with any such request;
 - 8.7.3 not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party;
 - 8.7.4 assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 8.7.5 notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
 - 8.7.6 at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the Shared Personal Data;
 - 8.7.7 use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
 - 8.7.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 8 and allow for audits by the other party or the other party's designated auditor; and
 - 8.7.9 provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

9. General

- 9.1 No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.
- 9.2 Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Agreement into full force and effect.
- 9.3 Subject to any provisions to the contrary each Party shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the Agreement.
- 9.4 Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Agreement or any other agreement at any time.
- 9.5 The Agreement shall be personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other Party, such consent not to be unreasonably withheld.
- 9.6 The Service Provider shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors.
- 9.7 The times and dates referred to in the Agreement shall be for guidance only and shall not be of the essence of the Agreement and may be varied by mutual agreement between the Parties.
- 9.8 Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Agreement.
- 9.9 No part of the Agreement shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.
- 9.10 The Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.
- 9.11 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 9.12 This Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.
- 9.13 Each Party shall acknowledge that, in entering into the Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

- 9.14 The Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.
- 9.15 In the event that one or more of the provisions of the Agreement and/or of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Agreement and/or these Terms and Conditions. The remainder of the Agreement and/or these Terms and Conditions shall be valid and enforceable.
- 9.16 The Parties shall attempt to resolve any dispute arising out of or relating to the Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.
- 9.17 In the event that the Parties are unable to resolve the dispute as set out in Clause 9.16 above, any dispute arising out of or in connection with the present contract, the Parties agree in the first instance to discuss and consider referring the dispute to the International Chamber of Commerce Mediation Rules.
- 9.18 Nothing in clause 9.16 or 9.17 prevents a Party from issuing proceedings pursuant to clause 9.20 below.
- 9.19 The Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 9.20 Without prejudice to the provisions of Clause 9.16 and 9.17 of the Agreement, any dispute, controversy, proceedings or claim between the Parties relating to the Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.