

THIRD SPACE LEARNING TERMS AND CONDITIONS OF SERVICE

The Services are provided by Virtual Class Limited (trading as Third Space Learning), whose registered company number is 08260115 and registered office address is 4th Floor, Frazer House, 32 – 38 Leman Street, London E1 8EW ("Third Space Learning, we, us and our").

The Services which are provided through www.ThirdSpaceLearning.com ("Website") are subject to the following terms and conditions ("Agreement") which may be updated by us from time to time. By using the Website and its Services, the School agrees to the terms of this Agreement.

This Agreement was last updated on 1st January 2018.

1. Definitions

"Academic Term"	means either the Autumn, Spring or Summer terms of a school year as appropriate;
"Academic Year"	means the Autumn, Spring and Summer terms of a school year commencing in September of a calendar year and finishing in July the following calendar year;
"Commencement Date"	means the date of the first Session under a Programme;
"Confidential Information"	has the meaning set out in clause 10.2;
"Effective Date"	has the meaning set out in clause 12.1;
"Insolvency Event"	means in relation to a corporate entity, any of the following events: <ul style="list-style-type: none">a) a petition is presented applying for an administration order to be made in respect of the other party of petition is presented or notice is given or an order is made or an effective resolution is passed for the liquidation or winding up (or any similar judicial process) of the other party;b) the other party seeks or enters into any composition or arrangement for the benefit of its creditors or convenes a meeting for the purpose of making such arrangement or composition or suffers or permits any distress proceedings or an encumbrancer takes possession or an administrative receiver or a receiver or manager is appointed of all or any part of its assets or undertaking or if it takes or suffers any similar action in consequence of debt of a judgment is entered and is not paid out within seven days; orc) the other party ceases or threatens to cease to carry on its business or substantially the whole of its business or disposes of its undertaking or stops payment or threatens to stop payment of its debts and when they fall due or is deemed to be unable to pay its debts as they fall due within the meaning of section 123 Insolvency Act 1986.
"Intellectual Property Rights"	means patents, patentable rights, copyright, design rights, utility models, trade marks (whether or not any of the above are registered), trade names, rights in domain names, rights in inventions, rights in data, database rights, rights in know-how and confidential information, and all other intellectual and industrial property and similar or analogous rights existing under the laws of any country and all pending applications for and rights to apply for or register the same (present, future and contingent), and including all renewals, extensions, revivals and all accrued rights of action);
"Multiple Term Programme"	means a Programme consisting of Sessions which run for a fixed number of Academic Terms with a fixed start date and end date;

"Programmes"	means a Programme consisting of Sessions which run for a prescribed number of weeks with a fixed start and end date;
"School"	means the school or other educational establishment with whom we have agreed to provide the Service;
"School Hours"	means 8.30am to 5.30pm Monday to Friday during an Academic Term;
"Service"	has the meaning set out in clause 2.1;
"Session(s)"	means any one online classroom session of 45 minutes as part of a Programme;
"Single Term Programme"	means a Programme consisting of Sessions which run for a prescribed number of weeks with a fixed start and end date.
"Teacher(s)"	means teachers or classroom assistants authorised by their School to book Sessions and otherwise access the Service;
"Tutors"	has the meaning set out in clause 2.1;
"Two Term SATS Programme"	means a Programme consisting of Sessions which run for a prescribed number of weeks with a fixed start in the Spring Term of an Academic Year and a fixed end date in the Summer Term of the same Academic Year;
"Users"	has the meaning set out in clause 2.2; and

2. Description of service

- 2.1. We provide an online education tool which can be used by schools to accelerate student progress, development and learning by providing access to online maths assistants ("Tutors") in secure online classrooms ("Service"). Any new features that add to or enhance the Service (including the release of new tools or resources) shall also be subject to this Agreement.
- 2.2. We will make the Service available from the Effective Date to allow teachers and students at the School (collectively, "Users") to gain access to the features of the Service such as Session bookings by Teachers and students attending Sessions.
- 2.3. We will use reasonable efforts to ensure that the Services are available during School Hours during each Academic Term. Third Space Learning cannot guarantee that the Service will be continuously available as the Service may be unavailable from time to time due to either (a) scheduled downtime for Service upgrades and/or maintenance; or (b) any circumstances which are beyond our control such as technical failures or the Internet or technology we do not operate.
- 2.4. If the School breaches any of the provisions of this Agreement, we reserve the right to suspend or terminate the subscription, or access to the Services, as set out in more detail in this Agreement.

3. Terms of use

- 3.1. In order to access the Service, each account must be connected to a User. Users who are signing up to use the Service must provide their full legal name, a valid email address and any other information requested by Third Space Learning in order to complete the sign-up process.
- 3.2. Users are responsible for maintaining the security of their account login information (username and password) provided to them by Third Space Learning. Third Space Learning cannot and will not be liable for any loss or damage from failure to comply with this security obligation and we will assume anyone using the Service who inputs valid login credentials is duly authorised to book, re-schedule and/or cancel Sessions whether they are actually authorised by the School or not. The School must notify us immediately in the event of loss of a username and password.
- 3.3. The School is responsible for ensuring that the Users comply with the terms of this Agreement and that Users do not access or use the Service in breach of this Agreement.

3.4. The School may not and must procure that its Users do not use the Service for any illegal or unauthorised purpose.

3.5. The School agrees to indemnify Third Space Learning against all and any losses, costs and expenses Third Space Learning may incur as a result of any breach by the School or its Users of this clause 3.

4. Programmes

4.1. The School must purchase a Programme from Third Space Learning before the School may start to use the Service. The School may not reschedule Sessions or change the time of any Sessions without the prior written consent of Third Space Learning.

4.2. Third Space Learning will design, based on an initial diagnostic test to identify gaps, a personalised programme for each pupil to ensure targeted support unless the Teacher specifically elects to select lessons for a pupil.

4.3. If the Teacher elects to select lessons, then the Teacher must select appropriate lessons and learning outcomes for each Session on a timely basis in order for Tutors to conduct each Session effectively. If learning outcomes are not selected by the Teacher, the relevant Tutor will choose a topic based on previously taught topics or popular topics.

4.4. The School may choose which Users attend which Session. If no User attends a Session for whatever reason, Third Space Learning shall not be required to reimburse the School part of the Programme fees for the lost Session due to non-attendance by a student.

5. Six Week Guarantee

5.1. Third Space Learning offers a six week guarantee for the first Programme purchased by a School. Third Space Learning will provide a full refund to the School, if the School notifies Third Space Learning in writing that it is dissatisfied with the Service (giving reasons), provided the following criteria have been met:

- a) The School has paid in full the invoice for the Programme raised by Third Space Learning
- b) Information technology set up and guidance provided by Third Space Learning has been followed, completed and tested by the School prior to the Programme start date and throughout the provision of the Service;
- c) Information technology and online quick tip help functions are followed by the School so that each Session is successfully launched and completed. This includes (but shall not be limited to) entering usernames and passwords correctly to gain access to the Service;
- d) All local computers and headsets to be used for each Session are operating properly including all operating systems, network connections and/or ISP connectivity;
- e) Teacher's quick tips are followed to ensure a full and proper learning experience for students and tutors. This includes creating a complete student profile and selection of lessons and learning outcomes on a timely basis to allow Tutors to conduct Sessions effectively;

5.2. Third Space Learning shall not be obliged to refund any fees to the School in the event that any of the criteria set out in clause 5.1 has not been met by the School.

6. Fees, invoicing and payment

6.1. A School purchasing a Single Term Programme has no commitment beyond the length of the Single Term Programme. Access to the Service will automatically be cancelled by Third Space Learning on completion of the Single Term Programme unless the School purchases another Programme.

6.2. A School purchasing a Two Term SATS Programme is committed for the Spring and Summer Terms of an Academic Year from the Commencement Date. A School purchasing a Two Term SATS Programme has no commitment beyond the length of the Two Term SATS Programme. Access to the Service will automatically be cancelled by Third Space Learning on completion of the Two Term SATS Programme unless the School purchases another Programme

6.3. A School purchasing a Multiple Term Programme is committed to the number of Academic Terms purchased (two, three, four or five Academic Terms) from the Commencement Date. A School

purchasing a Multiple Term Programme has no commitment beyond the length of the Multiple Term Programme. Access to the Service will automatically be cancelled by Third Space Learning on completion of the Multiple Term Programme unless the School purchases another Programme.

- 6.4. The School agrees that it will pay to Third Space Learning the fees for the Service. The fees shall become due and payable as set out in clause 6.4. The cost of each Programme shall be set out in our pricing and Programmes document provided to the School independently of this Agreement.
- 6.5. Once the School has notified Third Space Learning of the Programme it would like to purchase, Third Space Learning shall:
- a) for a Single Term Programme invoice the fees in full on or before the Effective Date;
 - b) for a Two Term SATS Programme invoice the fees in full for both Academic Terms on or before the Effective Date save that at the specific request of the School, Third Space Learning shall invoice as follows:
 - i) the fees for the Spring Term on or before the Effective Date; and
 - ii) the fees for the Summer Term before the start of the Summer Term
 - c) for a Multiple Term Programme invoice as follows:
 - i) the fees for the first Academic Term on or before the Effective Date; and
 - ii) the fees for each subsequent Academic Term before the start of that Academic Term.
- 6.6. Each invoice must be paid in full by the School:
- a) thirty (30) days after the date of the invoice if invoiced more than sixty (60) days in advance of the start of the Academic Term in which the first Session will take place; or
 - b) fourteen (14) days after the date of the invoice.
- 6.7. Third Space Learning reserves the right to suspend or terminate the School's access to the Service upon seven (7) days written notice to the School in the event of late or non-payment by the School of Third Space Learning's invoices.
- 6.8. Third Space Learning reserves the right to increase Programme fees at any time. Notice will be given to the School at least thirty (30) days in advance of any price changes. Any price increases during the term of this Agreement shall apply to:
- a) any Single Programme booked by the School after the School is notified of such price increase;
 - b) any Two Term SATS Programme booked by the School after the School is notified of such price increase;
 - c) Multiple Term Programmes booked by the School after the School is notified of such price increase.

the price increase will not affect any invoices to be raised by Third Space Learning for Single Programmes, Two Term SATS Programmes or for Academic Terms a School is already committed to under a Multiple Term Programme already booked at the time the School is notified of such price increase.

7. Warranties

- 7.1. Third Space Learning warrants that:
- a) it has the right to provide the Service under this Agreement and that the provision of the Service in accordance with this Agreement, does not and will not infringe the Intellectual Property Rights or other rights of any third party;
 - b) the Service will operate and function in all material respects as described on the Website;
 - c) the Service will be provided with all due care, skill and diligence and by means of appropriately qualified and skilled personnel.

7.2. Third Space Learning does not warrant that the Service shall be free from all know viruses and will be available all the time or at any particular time. Third Space Learning warrants that it has checked the Service for the most commonly known viruses.

7.3. Except as expressly set out in this Agreement, and subject only to clause 13.3, no implied conditions, warranties or other terms, including any implied term relating to satisfactory quality or fitness for any purpose, will apply to the Service or to anything else supplied or provided by Third Space Learning under this Agreement.

8. Intellectual property rights

8.1. The Intellectual Property Rights in the Service (including the content accessible through the Service) is and will at all times remain Third Space Learning property or that of Third Space Learning's licensors. The School may not, without the prior written consent of Third Space Learning, distribute any content used, accessed and/or obtained via the Service to any third party.

8.2. In the event that the Service infringes any third party rights, Third Space Learning will indemnify the School against any loss or damage and shall defend and/or settle any third party claim that the Services infringe provided always that the School promptly notifies Third Space Learning of any such claim in writing, gives Third Space Learning the sole control of any such action or proceedings and provides Third Space Learning with any such assistance as it may reasonably require to settle and/or defend such action or proceedings. Any award of costs and/or damages shall belong to Third Space Learning and in such an event shall, at its option:

- a) procure the right for the School to continue to use the Service;
- b) make the Service available without infringing so far as Third Space Learning is aware, any third party Intellectual Property Rights; or
- c) immediately terminate this Agreement on written notice to the School, refunding fees paid for Sessions which have not been completed.

8.3. The indemnity in clause 8.2 above, shall not apply to any infringement resulting from:

- a) use of the Service by the School which does not comply with the uses permitted under this Agreement;
- b) any modification or change to the Service carried out by Third Space Learning at the School's request; or
- c) the combination of the Service with any third party product and/or service or modification undertaken by the School without the prior written consent of Third Space Learning.

9. Data security

9.1. Third Space Learning takes the security of its Services extremely seriously and has put in place and will maintain appropriate technical and organisational measures against unauthorised, accidental or unlawful access to the Service in accordance with the terms of our Privacy Policy.

10. Confidentiality

10.1. Third Space Learning will at all times be committed to ensuring the confidentiality of information. Any information submitted by the School will only be used by Third Space Learning in accordance with the School's instructions or the provisions of this Agreement.

10.2. Each party agrees and undertakes that during the term of this Agreement and thereafter it will keep confidential, and will not use for its own purposes, any information of a confidential nature (including, without limitation trade secrets and information of a commercial value) which may become known to that party from the other party ("Confidential Information") nor without the prior written consent of the other party disclose to any third party any Confidential Information unless the Confidential Information:

- a) is in the public domain at the Effective Date of this Agreement;
- b) is already known to that party at the time of disclosure;

- c) becomes public knowledge other than by breach of this Agreement; or
 - d) subsequently comes lawfully into the possession of that party from a third party who is under no obligation of confidentiality.
- 10.3. To the extent necessary to give effect to this Agreement, each party may disclose the Confidential Information to those employees and sub-contractors as may be reasonably necessary to perform its obligations under this Agreement, provided that before any such disclosure each party shall make those employees and sub-contractor aware of its obligations of confidentiality under this Agreement and shall at all times procure compliance by those employees and sub-contractors with this clause 10.3.
- 11. Free Trial**
- 11.1. If the School is offered and signs up for a free trial period to our Service, we will make the Service available to the School on such a basis (that is, non-paid for access) until the earlier of either:
 - a) the expiry of the free trial period for which the School has subscribed; or
 - b) the commencement date of any paid for Service requested by the School.
- 11.2. The School's access to the Service will be suspended/terminated immediately on expiry of the free trial period for which it has subscribed. Where the School wishes to continue using the Service, it must contact Third Space Learning prior to the expiry of the free trial period to guarantee uninterrupted and continuous access to, and use of, the Service.
- 12. Term and termination**
- 12.1. This Agreement shall commence on the date upon which the School first accesses the Service (the "Effective Date") and shall continue in full force and effect unless and until terminated in accordance with the provisions of this clause 12.
- 12.2. Either party may terminate this Agreement without cause with thirty (30) days' prior written notice to the other subject to:
 - a) Any booked and invoiced Single Term Programme will not be affected in the event that either party terminates this Agreement under this clause 12.2 and no refunds will be given for Single Term Programmes which the School wants to cancel;
 - b) Any booked Two Term SATS Programme or Multiple Term Programme will not be affected in the event that either party terminates this Agreement under this clause 12.2 and the School will remain liable to pay for Academic Terms still to be invoiced for the remainder of the Programme and no refunds will be given for invoices already raised;
- 12.3. Without prejudice to any other rights to which it may be entitled:
 - a) either party may terminate this Agreement with immediate effect if the other party commits any material breach of any of the terms herein and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of that party being notified under this sub-clause 12.3(a) of the breach;
 - b) either party may terminate this Agreement with immediate effect if the other suffers an Insolvency Event; or
 - c) in the case of a force majeure event as specified under clause 14, either party may terminate this Agreement with immediate effect pursuant to that clause.
- 12.4. Third Space Learning may, as an alternative to sub-clause 12.3(a) above, cancel the School's access to the Service with immediate effect if the School is in material breach of any obligation in this Agreement.
- 12.5. Third Space Learning reserves the right to terminate or suspend any or all of its user accounts at will. Discretion will be used, and action may be taken if needed to ensure server integrity for other users.
- 13. Liability**

- 13.1. The Service is a complimentary tool to the curricular activities undertaken at school. Third Space Learning does not guarantee the level of performance or improvement of a student through use of the Service and will not be liable for the failure of a student to attain any particular standard or academic results.
- 13.2. Third Space Learning uses every effort to ensure the quality of the Tutors it uses in the course of providing the Service and uses a vigorous recruitment procedure to vet all Tutors as detailed in our Privacy Policy.
- 13.3. Third Space Learning' liability:
- a) for death or personal injury caused by its negligence;
 - b) for fraud or fraudulent misrepresentation or any other fraudulent act or omission; or
 - c) for any other liability which may not lawfully be excluded or limited; is not excluded or limited by this Agreement, even if any other provision of this Agreement would otherwise suggest that this might be the case.
- 13.4. Third Space Learning shall not be liable for any direct, indirect, incidental, special, consequential or exemplary damages including but not limited to damages for loss of profits, goodwill, use, data or other intangible losses (even if Third Space Learning has been advised of the possibility of such damages), whether such liability arises due to an indemnity, tort, negligence, breach of contract, misrepresentation or for any other reason.
- 13.5. Subject to Clauses 13.3 and 13.4, Third Space Learning's total aggregate liability:
- a) in relation to any pre-booked Sessions (and whether the liability arises because of breach of contract, negligence or for any other reason) shall be limited to the value of the relevant Session Package; and
 - b) without prejudice to the liability cap in clause 13.5(a), Third Space Learning' aggregate global liability under this Agreement shall be limited to a sum no greater than £50,000;
 - c) whether such liability arises due to breach of contract negligence or for any other reason. The foregoing limits on liability shall apply to each event or series of connected events.
- 14. Force majeure**
- 14.1. The obligations of each party under this Agreement shall be suspended during the period and to the extent that such party is prevented or hindered from complying with them by any cause beyond its reasonable control such as an Act of God, flood, fire, earthquake, terrorism, riots, civil disorders, strikes, lockouts or other forms of industrial action on the part of Third Space Learning staff. In the event that the cause continues for more than thirty (30) consecutive days, either party may terminate this Agreement immediately upon written notice to the other party in accordance with Clause 12.3(c).
- 14.2. Third Space Learning shall not have any liability for a failure to provide the Services to the School if such failure to provide the Services is caused by the School's equipment, communication links, general Internet connection and/or the performance of its ISP provider.
- 15. General**
- 15.1. Nothing in this Agreement is intended to confer on a person any right to enforce any provision of this Agreement which that person would not have had but for the Contract (Rights of Third Parties) Act 1999.
- 15.2. The School is not entitled to transfer or assign this Agreement without Third Space Learning' prior written consent. Third Space Learning may assign, sub-contract or sub-let this Agreement or any part thereof.
- 15.3. All disputes between the parties arising out of or relating to this Agreement or the breach, termination or validity thereof shall be referred by either party in writing, first to each party's representative. The representatives shall meet and attempt to resolve the dispute within a period of thirty (30) working days from the date of referral of the dispute to them.

- 15.4. All notices in relation to this Agreement must be in English, in writing, addressed to the other party and sent to the School's address as notified to Third Space Learning from time to time or to hello@thirdspacelearning.com (as applicable) or such other address as either party has notified the other in accordance with this clause. All notices shall be deemed to have been given on receipt as verified by written or automated receipt or electronic log (as applicable). All other notices must be in English, in writing, addressed to the other party's primary contract and sent to their then current portal address or email address.
- 15.5. Subject to clause 13.3, this Agreement set out all terms agreed between the parties and supersedes and extinguishes all previous agreements, representations, misrepresentations, arrangements and understandings between the parties, whether written or oral, relating to its subject matter.
- 15.6. Each party acknowledges that, in entering into this Agreement it has not relied on, and shall have no right or remedy in respect of, any statement, misrepresentation, representation or warranty (whether made negligently or innocently) and whether made by either party, orally or in writing, prior to entering into this Agreement and not expressly set out in this Agreement.
- 16. Governing law and jurisdiction**
- 16.1. This Agreement shall be governed by and construed in accordance with English law and each party hereby irrevocably submits to the exclusive jurisdiction of the English Courts. Notwithstanding the foregoing nothing herein shall preclude either party from seeking injunctions from any court of competent jurisdiction in order to protect its intellectual property rights or confidential information.