



# Independent Contractor Agreement

**BETWEEN:**

**Fluency Tutors Recruitment and Training Inc.**

#305 - 1011 Beach Avenue  
Vancouver, BC, Canada  
(the "Company")

**AND:**

**Contractor (Tutor) Name**

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Address, email and Skype ID

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(the "Contractor")

(collectively referred to as the "Parties")

**BACKGROUND:**

- A. The Company is in the business of recruiting ESL tutors for international education institutions or individual students.
- B. The Company has requested the services of the Contractor for the purposes outlined in this Agreement.

**IN CONSIDERATION OF** the matters and obligations set forth in this Agreement, the Company and the Contractor agree as follows:

**1. Engagement and Services**

- 1.1. The term of this Agreement shall begin immediately and shall continue until terminated as described below.
- 1.2. During the term of this contract, the Contractor shall provide ESL tutoring services to the Company's clients (the "Clients"), as directed by the Company and/or the Clients (the "Services"). The Services may be reasonably modified at the Company's discretion to reflect actual work performed, or by agreement between the Parties.
- 1.3. Clients may be based in Canada or internationally. All Services shall be performed electronically via computer and telecommunication. The Contractor shall perform the Services from their home or other location agreed to between the Contractor and the Company. The Company shall not

provide technical support prior to or during online tutoring lessons. It is the responsibility of the Contractor to ensure that all equipment is working properly and to attend online tutoring sessions in advance of the student.

- 1.4. The Contractor is free to provide services to other clients during the term of this Agreement, so long as such activities do not interfere or conflict with the Contractor's obligations under this contract.
- 1.5. The Contractor shall supply any equipment or tools that may be required to provide the Services.

## **2. Compensation**

For Services rendered under this Agreement, the Company shall pay the Contractor an hourly fee (the "Fee"). The amount of the Fee shall depend on which Client the Contractor is providing Services to and may be different for each Client. The Fee shall be agreed to between the Parties prior to the commencement of Services to each Client.

- 2.1. All payments by the Company to the Contractor under this Agreement shall be made in US Dollars (USD), unless otherwise agreed by the Parties.
- 2.2. The Contractor shall invoice the Company at the end of each month for the amounts payable under this Agreement for the Services rendered during that month. Such invoices shall be in the form approved by the Company and provided to the Contractor. The Company will pay such invoices within fifteen (15) days after the end of the month via PayPal. The Contractor shall create a PayPal account and provide the particulars of such account to the Company prior to any invoice being paid.
- 2.3. The Contractor shall be responsible for making any remittances that might be required under the laws of the jurisdictions in which they reside, for example sales tax, income tax, employment insurance, or pension payments. The Company is not responsible for deducting taxes from the Fee or making any such remittances.

## **3. Obligations of the Contractor**

- 3.1. During the term of this Agreement, the Contractor shall:
  - a) provide their best efforts, skills and talents to the operations of the Company and its Clients;
  - b) use judgment, caution, and common sense when dealing with Clients;
  - c) diligently and to the best of their abilities perform the duties and responsibilities assigned to them from time to time;
  - d) deal at all times in good faith with the Company and its employees, contractors, Clients and suppliers; and

- e) act and conduct themselves at all times professionally and in the best interests of the Company.
- 3.2. The Contractor agrees to provide at least four (4) weeks' notice of any planned vacations or unavailability, except in the case of illness or emergency. In the event of illness or emergency, the Contractor shall make every effort to minimize the impact on the Client, including by informing the Client of the illness or emergency and rescheduling any missed tutoring appointments. The Contractor shall not be compensated for missed appointments.
- 3.3. The Contractor shall immediately inform the Company of any disputes or any other complaints, problems, or issues that arise between the Contractor and Clients.

#### **4. Representations and Covenants of the Contractor**

- 4.1. The Contractor represents and warrants that they have the skills and qualifications necessary to provide the Services and fulfil their obligations hereunder and that they have accurately represented such skills and qualifications to the Company.
- 4.2. The Contractor acknowledges that:
- a) the industry in which the Company operates is competitive;
  - b) in the course of the Contractor providing Services for the Company, the Contractor may develop close relationships with the Clients of the Company, and that the goodwill of the Company depends upon the development and maintenance of such relationships; and
  - c) the preservation of the Company's goodwill, and the protection of the Company's relationships with its Clients are proprietary rights the Company is entitled to protect.
- 4.3. During the term of this Agreement and for a period of one (1) year following the termination of this Agreement for any reason, the Contractor shall not solicit any Client of the Company that was a Client of the Company during the course of the Contractor's engagement with the Company, whether or not still a Client of the Company and whether or not knowledge of the Client is considered confidential information, or in any way aid and assist any other person to solicit any such Client, for the purposes of providing services that are competitive to those of the Company.
- 4.4. During the term of this Agreement and for a period of six (6) months following the termination of this Agreement for any reason, the Contractor shall not without prior written consent of the Company accept any offer of employment or any independent contractor position from any Client of the Company that was a Client of the Company during the course of the Contractor's engagement with the Company, whether or not still a Client of the Company and whether or not knowledge of the Client is considered confidential information.
- 4.5. The Contractor shall not provide any ESL tutoring services to, or accept any payment for providing ESL tutoring services from, a Client except as in accordance with this Agreement or upon receiving prior written permission from the Company.

## **5. Obligations and Rights of the Company**

- 5.1. The Company shall provide access to the Contractor to the Company's website fluencytutors.com (the "Website") so that the Contractor can post a tutor profile. If the Contractor is selected for an interview by a Client, the Company shall work with the Contractor and Client to arrange the interview.
- 5.2. The Company may, at its sole discretion or upon request by a Client, change the Clients to whom the Contractor is providing Services or reduce the number of Clients to whom the Contractor is providing Services. The Parties agree that nothing in this Agreement guarantees any minimum number of hours to be worked by the Contractor, or that the Contractor shall work with any Clients at all.
- 5.3. The Company shall endeavor to resolve all disputes between the Contractor and Clients, including by providing negotiation and mediation services. The Parties agree that all such disputes shall first be brought to the Company for resolution. Any disputes that cannot be resolved by the Company shall be dealt with in accordance with section 12 of this Agreement. The Company, however, does not accept any liability for disputes between the Contractor and Clients, or losses suffered due to such disputes.

## **6. Relationship**

- 6.1. In providing the Services under this Agreement it is expressly agreed that the Contractor is acting as an independent contractor and not as an employee, partner, or agent. The Contractor and the Company acknowledge that this Agreement does not create a relationship of employment, partnership, agency or joint venture between them and is exclusively a contract for service.
- 6.2. The Parties further agree and acknowledge that this Agreement does not create a relationship of employment, partnership, agency, joint venture or independent contractor between the Contractor and the Clients.
- 6.3. The Contractor shall be responsible, at their sole cost and expense, for obtaining and maintaining any licenses, insurance, or permits that may be required to perform the Services in the jurisdiction in which the Contractor resides, for example a business license, insurance, or professional certificates or memberships.

## **7. Confidentiality**

- 7.1. The Contractor agrees that it will not, except as required by law, either during the term of this Agreement or after its termination, directly or indirectly, by any means whatsoever, divulge, furnish, provide access to, or use for any purpose other than the purposes of the Company, any Confidential Information. For this purpose, "Confidential Information" means information disclosed to, used by, developed by, or made known to the Contractor in the course of its engagement under this Agreement which is not generally known by the public including, but not limited to, information (printed, electronic or otherwise) pertaining to the Company's past, present, future and contemplated assets, operations, products, manufacturing or production methods, facilities, equipment, marketing methods or strategies, personnel, finances, pricing,

interest rates, sales, customers, industrial designs, inventions, routines, policies, and business procedures.

- 7.2. The Contractor further agrees that it will not, except as required by law, either during the term of this Agreement or after its termination, directly or indirectly, by any means whatsoever, divulge, furnish, provide access to, or use for any purpose other than the purpose of performing this Agreement, any Confidential Information of any Client of the Company.
- 7.3. As part of this Agreement, the Contractor may provide personal information to the Company. The Company shall not disclose any such personal information to a Client or third party without prior consent of the Contractor.

## **8. Termination**

- 8.1. The Company may terminate this Agreement at any time, without further obligation:
  - a) for cause, without any notice; or
  - b) without cause, upon 14 days' written notice.
- 8.2. The Contractor may terminate this Agreement at any time upon 14 days' written notice.
- 8.3. Upon termination of this Agreement, all files, computer disks, information and documents pertaining to the Company's business shall remain the property of the Company, and shall promptly be delivered by the Contractor to the Company, and no copy, duplication or reproduction of any kind whatsoever shall be made of such files, computer disks, information or documents without the express written consent of the Company.

## **9. Indemnification**

- 9.1. The Contractor shall indemnify and save harmless the Company and its officers, directors, agents and employees from all claims, losses or damages, and any associated costs, which relate to or arise directly or indirectly out of any acts or omissions of the Contractor in connection with providing Services under this Agreement.

## **10. Disclaimers**

- 10.1. The Contractor agrees that the Company:
  - a) does not warrant that the Contractor will receive work through this Agreement or the Website;
  - b) does not guarantee the accuracy, completeness, validity, or timeliness of information listed on the Website or otherwise provided by any Client or third parties;
  - c) shall not be responsible for any materials posted by Clients or third parties, including, but not limited to, job openings and employment listings.

10.2. Transmission of any content through the Website is at the Contractor's own discretion and sole risk. The Contractor is solely responsible for any loss or damage to it in connection with such actions. The Company is not responsible for any incorrect or inaccurate content in connection with the Website, whether caused by Clients or third parties or by any of the programming associated with or utilized in the Website. The Company is not responsible for the conduct, whether online or offline, of any Client or other user of the Website. The Company assumes no responsibility for any error, omission, interruption, deletion, defect, delay in operation or transmission, communications line failure, theft or destruction or unauthorized access to, or alteration of, user communications.

10.3. The Company does not warrant that:

- a) access to the Website will be uninterrupted, timely, secure, or error-free;
- b) the quality or reliability of the Website will meet the Contractor's expectations;
- c) any information the Contractor provides or the Company collects will not be disclosed to third parties;
- d) third parties will not use the Contractor's confidential information in an unauthorized manner.

10.4. Under no circumstances shall the Company be responsible for any loss or damage, including personal injury or death, resulting from anyone's use of the Website or any conduct or interactions between users of the Website, whether online or offline.

## **11. Limitation of Liability and Release**

11.1. The Contractor agrees that neither the Company nor its affiliates, officers, directors, employees, agents and licensors shall be liable for any damages whatsoever, including direct, indirect, incidental, punitive, special, consequential or exemplary damages, in connection with, or otherwise resulting from, this Agreement or any use of the Website, even if it has been advised of the possibility of such damages.

11.2. The Company expressly disclaims any liability that may arise between the Contractor and any Clients. The Contractor hereby releases and forever discharges the Company and its affiliates, officers, directors, employees, agents and licensors from any and all claims, demands, damages (actual or consequential) of every kind and nature, whether known or unknown, contingent or liquidated, arising from or related to any dispute or interactions with any Client, whether online or in person, whether related to the Agreement and the Website or otherwise.

11.3. The Contractor acknowledges and agrees that the disclaimers of warranties above and these limitations of liability are an agreed upon allocation of risk between the Parties. The Contractor acknowledges and agrees that such provisions are reasonable and fair.

## **12. Dispute Resolution**

- 12.1. All disputes with respect to the interpretation, application or alleged breach of this Agreement that the Parties are unable to resolve informally, may be referred to mediation on notice by one party to the other, with the assistance of a neutral mediator jointly selected by the Parties. If the dispute cannot be settled within thirty (30) days after the mediator has been appointed, or within such other period as agreed to by the Parties in writing, either party may commence a legal action in any British Columbia court.

## **13. Injunctive Relief**

- 13.1. The Contractor acknowledges and agrees that a breach by the Contractor of any of the covenants contained in sections 4 and 7 of this Agreement would result in irreparable harm to the Company that could not adequately be compensated by way of a damage award. The Contractor agrees that in the event of any such breach, in addition to damages and all other remedies available to the Company at law or in equity, the Company shall be entitled as a matter of right to obtain from a court of competent jurisdiction such relief by way of restraining order, injunction, decree or otherwise as may be appropriate to ensure compliance with the provisions of this Agreement.

## **14. Notice**

- 14.1. All notices, requests, demands or circumstances required or permitted by the terms of this Agreement shall be given in writing to the Parties via email.

## **15. General**

- 15.1. This Agreement must not be amended except by written consent of both Parties.
- 15.2. The Contractor may not assign or transfer their rights under this Agreement.
- 15.3. In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect its original intentions and the remainder of the provisions shall remain in full force and effect.
- 15.4. This Agreement constitutes the entire understanding and agreement between the parties and there are no covenants, representations, warranties or agreements other than those contained or specifically preserved under the terms of this Agreement.
- 15.5. This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators and permitted successors and assigns.
- 15.6. This Agreement shall be governed by, and construed under, the laws of the Province of British Columbia.