

EUREKLY LIMITED

TERMS OF SERVICE

1 INTRODUCTION

Eurekly Limited (**Eurekly, we, us or our**) provides an online tutoring portal where Members, both Students and Tutors (terms defined below), can collaborate with each other and take advantage of the Services. These Services are accessible at www.eurekly.com and any other websites where Eurekly makes the Services available (collectively, the **Site**).

If you are using the Site or the Services, these terms of service (**Terms**) are between you and Eurekly. In providing certain Payment Services, Eurekly will handle any and all payments in and withdrawals conducted through or in connection with the Site or Services, which shall be subject to the Payment terms of service available at [\[www.eurekly.com/paymentterms\]](http://www.eurekly.com/paymentterms) (**Payment Terms**).

2 ELIGIBILITY

2.1 The Site is not available to (a) any natural persons under the age of 18, (b) any Users previously suspended or removed from the Site by Eurekly and (c) any person whose registration of an Account or use of the Site or Services constitutes a violation of any applicable laws and regulations. By registering an Account or otherwise using the Site or the Services, you represent that (a) you are at least 18 years of age; (b) you have not been previously suspended or removed from the Site by Eurekly; and (c) you are in compliance with all applicable laws and regulations.

2.2 Child Users

If you are a User and are under the age of 18 (**Child User**), you may not register an Account or otherwise use the Site or the Services without the consent and approval of your legal parent or guardian, as applicable (**Parent**). A Child User that begins the registration process for himself/herself without his/her Parent present may have the registration process restricted until Eurekly is satisfied that his/her Parent has approved or assumed responsibility for the Child User's Account. Additionally, a Child User may use the Site or the Services if registered through an educational organisation, where Eurekly is satisfied the Parent of such Child User has consented to such Child User's use of the Site or the Services. A Child User that has registered an Account (whether through such external educational organisations or otherwise) will only be permitted to use the Site and/or the Services for so long as Eurekly is satisfied that such use has been consented to by the Child User's Parent.

2.3 Parents

If you are a person who is the Parent (or is claiming to be the Parent) of a child that seeks to register as a Child User of the Site, you hereby represent and warrant that you are such Child User's legal parent or guardian and you agree to be bound by these Terms (and any other applicable Policies) on behalf of such Child User, including without limitation being liable for all use of the Site or the Services by the Child User. You acknowledge that Eurekly may choose, but is not obligated, to make any inquiries, either directly or through third parties, that Eurekly deems necessary to validate your registration information, including without limitation engaging third parties to provide verification services. Eurekly reserves all rights to take legal actions against anyone who misrepresents personal information or is otherwise untruthful about their identity.

3 DEFINITIONS AND INTERPRETATION

In these Terms:

Account means the account you open with Eurekly when you register to become a Member and use the Services;

Claim means any cause of action, claim, suit, proceeding, demand or action arising out of or in connection with these Terms, the Site or the Services, whether based in contract, tort, negligence or any other theory of liability;

Connection Services has the meaning given to it in clause 6.2;

Content means all content (other than User Content) that Eurekly makes available through the Site, Services, or its related promotional campaigns and official social media channels, including all Content (if any) licensed from a third party;

Credit has the meaning given to it in the Payment Terms;

Integrated Services and **IS Content** have the meanings given to them in clause 7.4(a);

Member means a person or legal entity that registers for an Account;

Payment Services has the meaning given to it in the Payment Terms;

Payment Terms has the meaning given to it in clause 1;

Policies has the meaning given to it in clause 4.1;

Prohibited Content has the meaning given to it in clause 9.4(e)(vi);

Services means any of the Connection Services or Payment Services that are delivered by Eurekly;

Student means a Member that purchases Tutoring Services;

Tutor means a Member that offers or offers and delivers Tutoring Services;

Tutoring Services means all Services delivered by Tutors, including paid lessons, packages and other services rendered where Credits are exchanged;

User means (1) a person who is a Member, using the Site on his or her own behalf, or (2) a person who is using the Site on behalf of a Member that is a company or organisation;

User Content means all content that a User posts, uploads, publishes, submits, transmits, or includes in their Member profile or Eurekly promotional campaign to be made available through the Site or Services, including any IS Content; and

you means, as applicable, (1) a visitor to the Site (who is not a Member or a User), (2) a Member accessing the Site or using the Services on his or her own behalf; or (3) if the Services are used on behalf of a company or organisation, the Member for which the Services are used and the User who accesses the Site on behalf of such Member (subject to clause 4.6).

4 TERMS OF SERVICE

- 4.1 Your use of the Site or Services constitutes your agreement to comply with and be legally bound by these Terms, whether or not you become a User. These Terms govern your access to and use of the Site and Services and all Content and constitute a binding legal agreement between you and Eurekly. In addition, certain areas of the Site (and your access to or use of certain aspects of the Services or Content) may have different terms and conditions, standards, guidelines, or policies posted (collectively **Policies**) or may require you to agree with and accept additional terms and conditions. If there is a conflict between these Terms and terms and conditions posted for a specific area of the Site, Services, or Content, the latter terms and conditions will take precedence with respect to your use of or access to that area of the Site, Services, or Content.
- 4.2 If you do not agree to these Terms, you have no right to obtain information from or otherwise continue using the Site or Services. Failure to use the Site or Services in accordance with these Terms may subject you to civil and criminal penalties.
- 4.3 You understand and agree that Eurekly is not a party to any agreements entered into between Students and Tutors or between Members, nor is Eurekly a tutoring services broker or agent. Eurekly has no control over the conduct of Students, Tutors,

Members and other Users of the Site and Services or any Services rendered between them, and disclaims all liability in this regard to the maximum extent permitted by law.

- 4.4 If you choose to tutor on the Site, you understand and agree that your relationship with Eurekly is limited to being a Member and an independent, third-party contractor, and not an employee, agent, joint venturer or partner of Eurekly for any reason, and you act exclusively on your own behalf and for your own benefit, and not on behalf of or for the benefit of Eurekly. Eurekly does not control, and has no right to control, your listing, your activities associated with your profile or listed services, or any other matters related to any Services that you provide. As a member you agree not to do anything to create a false impression that you are endorsed by, partnering with, or acting on behalf of or for the benefit of Eurekly, including by inappropriately using any Eurekly intellectual property.
- 4.5 You acknowledge and agree that, by accessing or using the Site or Services or by downloading or posting any Content from or on the site, whether through the Services or otherwise, you are indicating that you have read, and that you understand and agree to be bound by these Terms and receive our Services whether or not you have registered with the Site. If you do not agree to these Terms, then you shall immediately cease any access or use of the Site, the Services, or the Content.
- 4.6 If you accept or agree to these Terms on behalf of a company or other legal entity, you represent and warrant that you have the authority to bind that company or other legal entity to these Terms and, in such event, **you** and **your** will refer and apply to that company or other legal entity.

5 MODIFICATION TO TERMS, SITE, SERVICES, SERVICE FEES

Eurekly reserves the right, at its sole discretion, to modify the Site, the Services, these Terms (or any Policies or other documents referred to herein) and the Service Fees, at any time and by notice in accordance with clause 20. By continuing to access or use the Site or Services after we have provided you with notice of a modification, you are indicating that you agree to be bound by the modified Terms or Service Fees (as applicable). If the modified Terms or Service Fees are not acceptable to you, your only recourse is to cease using the Site and Services.

6 HOW THE SITE AND THE SERVICES WORK

- 6.1 The Site and Services can be used as an online venue where Members, Students and Tutors can collaborate with each other and take advantage of Connection Services and Payment Services to arrange for the provision of certain Tutoring Services.
- 6.2 **Connection Services** - In using the Site:

- (a) Members will upload information, conduct searches, connect and engage with each other for the purposes of knowledge sharing and learning;
- (b) Students will conduct searches, connect with, choose, and engage Tutors directly for the provision of certain Tutoring Services; and
- (c) Tutors will advertise their capabilities, respond to inquiries, connect and engage with other Users to provide their Tutoring Services directly to Students.

In providing the Connection Services, Eurekly only provides the venue for Students and Tutors to find and contract with each other.

6.3 Payment Services

In order to enable Students to pay, and Tutors to be paid, for Tutoring Services, Eurekly also provides certain Payment Services in accordance with the Payment Terms.

6.4 Tutoring Services

Tutoring Services are described in more detail in the Tutor Terms (see clause 9). If you are accepted to be a Tutor, you hereby agree to be bound by the Tutor Terms.

- 6.5 Unless explicitly specified otherwise in the Eurekly platform, Eurekly's responsibilities are limited to facilitating the availability of the Site and the Services and you acknowledge and agree that Eurekly has no liability or obligation in relation to the content, quality and/or delivery of any Tutoring Services which may be available on the Site.

7 ACCOUNT REGISTRATION

- 7.1 In order to access certain features of the Site, and to participate in Connection Services and Payment Services, you must register to create an Account and become a Member. You may register to join directly via the Site or as described in clause 7.4.

- 7.2 Your Account and your Account profile page will be created for your use of the Site based upon the personal information you provide to us or that we obtain via Integrated Services as described in clause 7.4. You may not have more than one active Account. You agree to provide accurate, current and complete information during the registration process and to update such information to keep it accurate, current and complete. Eurekly reserves the right to suspend or terminate your Account and your access to the Site and the Services if you create more than one Account, or if any information provided during the registration process or thereafter proves to be inaccurate, fraudulent, not current, incomplete, or otherwise in violation of these Terms.

7.3 You are responsible for safeguarding your password. You agree that you will not disclose your password to any third party and that you will take sole responsibility for any activities or actions under your Account, whether or not you have authorised such activities or actions. You will immediately notify Eurekly of any unauthorised use of your Account.

7.4 **Integrated Services**

- (a) Eurekly may permit you to register for the Site through, or otherwise associate your Account with, certain third party social networking or integrated services, such as Facebook and Google (each an **Integrated Service**). You may associate your Account with an Integrated Service by either: (i) providing your Integrated Service login information to Eurekly through the Site or the Services; or (ii) allowing Eurekly to access your Integrated Service, as permitted under the applicable terms and conditions that govern your use of such Integrated Service. You represent that you are entitled to disclose your login information for such Integrated Service to Eurekly and/or grant Eurekly access to your Integrated Service (including, but not limited to, for use for the purposes described herein) without you breaching any of the terms and conditions that govern your use of the applicable Integrated Service and without obligating Eurekly to pay any fees or making Eurekly subject to any usage limitations imposed by such Integrated Service provider. By granting Eurekly access to any Integrated Service, you understand that Eurekly will access, make available and store (if applicable) any Content that you have provided to and stored in your Third-Party Account (**IS Content**) so that it is available on and through the Site and Services via your Account and Account profile page. All IS Content, if any, will be considered to be User Content for the purposes of these Terms.
- (b) Depending on the Integrated Services you choose and subject to the privacy settings that you have set in such Integrated Services, personally identifiable information that you post to your Integrated Services account will be available on and through your Account on the Site and the Services. Please note that if an Integrated Service becomes unavailable or Eurekly's access to such Integrated Service is terminated by the Integrated Service provider, then IS Content will no longer be available on and through the Site and the Services. You may disable the connection between your Account and your Integrated Service account at any time.
- (c) You acknowledge and agree that (1) your relationship with the Integrated Service providers is governed solely by your agreement(s) with them, (2) Eurekly makes no effort to review any IS Content for any purpose, including but not limited to for accuracy, legality or non-infringement and Eurekly is not responsible for any IS Content and (3) Eurekly does not control the practices of Integrated Services, and you are advised to read the privacy policy and terms

and conditions of any Integrated Service that you use to understand their practices.

8 GENERAL MEMBER TERMS

8.1 Our Services are available only to legal entities and individuals who can form legally binding contracts. To register for an Account with Eurekly and become a Member, you must accept all of the terms and conditions contained or referred to in these Terms.

8.2 It is the sole responsibility of each registered Member that all personal details, including contact email addresses are up to date and accurate at all times. By accepting these terms and conditions all Members hereby release Eurekly from any Claims which arise or may arise due to inaccurate personal information being held on the Site. All Members are solely responsible for the content and accuracy of any information published by them on the Site.

8.3 Termination

(a) Termination by Eurekly

Eurekly, in its sole discretion, for any or no reason, and without penalty, reserves the right to refuse membership to any person or to suspend or terminate any account (or any part thereof) you may have with Eurekly or your use of the Site and remove and discard all or any part of your Account, profile, and User Content, at any time. Eurekly may also in its sole discretion and at any time discontinue providing access to the Website, or any part thereof, with or without notice. You agree that any termination of your access to the Site or any Account you may have, or portion thereof, may be affected without prior notice, and you agree that Eurekly will not be liable to you or any third party for any such termination. Any suspected fraudulent, abusive or illegal activity may be referred to appropriate law enforcement authorities. These remedies are in addition to any other remedies Eurekly may have at law or in equity. As discussed herein, Eurekly does not permit copyright, trademarks, or other intellectual property infringing activities on the Site, and will terminate access to the Site, and remove all User Content or other content submitted, by any users who are found to be repeat infringers. No refunds, payments or compensation of any kind will be paid to Members whose registration has been terminated whether due to breach of these Terms or otherwise.

(b) Termination by you

Your only remedy with respect to any dissatisfaction with (i) the Site, (ii) any provision of these Terms or any documents referred to herein, (iii) any policy or practice of Eurekly in operating the Site or (v) any content or information transmitted through the Site, is to terminate your account by deleting your

login account with the Site and discontinuing use of any and all parts of the Site.

9 TUTOR TERMS

9.1 The terms set out in this clause 9 (**Tutor Terms**) apply to any Member who is approved to be a Tutor on the Site. If you do not accept these Tutor Terms in full, you are not authorised to tutor on the Site and you are not eligible to receive any benefits from Eurekly for any Tutoring Services you provide.

9.2 If you choose to tutor on the Site, you understand and agree that your relationship with Eurekly is limited to being a Member and an independent, third-party contractor, and not an employee, agent, joint venturer or partner of Eurekly for any reason, and you act exclusively on your own behalf and for your own benefit, and not on behalf of or for the benefit of Eurekly. Eurekly does not control, and has no right to control, your listing, your activities associated with your profile or listed services, or any other matters related to any Services that you provide. As a member you agree not to do anything to create a false impression that you are endorsed by, partnering with, or acting on behalf of or for the benefit of Eurekly, including by inappropriately using any Eurekly intellectual property.

9.3 Tutor Registration and Service Listing

(a) Approval for Tutoring Services

(i) In order to become a Tutor, you must first submit a complete Tutor Application. Completed Tutor Applications are evaluated by Eurekly for approval. If your Tutor Application is approved, you will have the ability to create and manage a Tutor Profile on our Site and, as a Tutor, you can begin providing Tutoring Services. Please note if you are both a Tutor and a Student, you will need to maintain a separate Member profile for each.

(ii) Eurekly may, to the extent permitted by applicable laws, obtain reports from public records of criminal convictions or sex offender registrations of Tutors and/or obtain such other background or registered sex offender checks as we may determine in our sole discretion. If you are a Tutor, you agree and authorise us to use your personal information, such as your full name and date of birth, to obtain such reports.

(b) Tutoring Services Description

In order to provide lessons, Tutors must create a description of their Tutoring Services on the Site. When creating the description of your Tutoring Services, you agree to the following guidelines:

- Write a specific, detailed service description with clear scope, deliverables and lessons.
- Set expectations that you can meet or exceed.
- Not create services that are made with the intent to commit fraud, or provide services other than the ones outlined in the description. This includes offering your Services in exchange for positive feedback or for no cost.

9.4 **Providing Tutoring Services**

(a) **Guidelines for providing your Tutoring Services**

Once you have received a request for Tutoring Services, you agree to the following guidelines:

- (i) Use the Eureka platform to manage Student requests.
- (ii) Respond promptly, within one business day, to all lesson-related communication, whether from the Student or from Eureka.
- (iii) Maintain a record of all communications via the Site between you and the Student. Important details include information on the scope, deliverables, time frames, price, feedback, revisions, schedule changes, vacation, availability, delays, acceptance of deliverables, and completion of lessons.
- (iv) Inform the Student of your availability and response time.
- (v) Inform the Student if you will be unavailable for more than one business day.

(b) **Guidelines if you will be unable to provide your Tutoring Service**

- (i) Immediately inform the Student offering an explanation and proposing a revised date.
- (ii) Immediately alert Eureka Customer Service so that Eureka is aware of the situation and can offer assistance to the Student.

(c) **Guidelines for after you have provided your Tutoring Service**

(i) Use the Eurekly Payment Service to handle all financial matters related to your Tutoring Service.

(ii) Provide helpful, objective, balanced feedback for the Student.

(d) **Student Complaints and Refunds**

(i) Any Student who is dissatisfied with your Tutoring Service is required to contact you directly through the Site or Application regarding any issues or complaints. You should try to resolve any issue or complaint directly with the Student first.

(ii) If the issue or complaint cannot be resolved, between the Tutor and the Student, Eurekly will use all user communications and user logs as evidence to make a determination on how to adjudicate the dispute. Eurekly shall have the right, in our sole discretion:

(A) To transfer Credits, offer a refund, or reverse a transaction.

(B) To designate who shall bear the expenses resulting from any such actions.

(e) **Additional Guidelines for Tutoring Services**

All Tutors hereby agree to:

(i) maintain the privacy of Students, including not soliciting any personally identifiable information (such as birth date, age, government issued number, phone number, or home address);

(ii) maintain the privacy of your personal details, including personal financial information regarding your Tutor Wallet;

(iii) maintain personal records for all invoices and payments;

(iv) cooperate with Eurekly in anti-fraud actions and in the resolution of any disagreements with Students;

(v) report any conduct violations, including misuse of ratings and feedback; and

(vi) not use any Content which is prohibited at law or which otherwise violates these Terms or the intellectual property or other rights of any third party (**Prohibited Content**).

9.5 Breach of Guidelines

- (a) You are expected to perform in a manner that results in a consistently high level of Student satisfaction. You are in breach of these Tutor Terms if you:
 - (i) Fail to deliver any Tutoring Service for which payment was accepted.
 - (ii) Fail to take reasonable efforts to resolve a dispute with a Student.
 - (iii) Create unacceptable levels of Student dissatisfaction
 - (iv) Violate these Terms or any Policies.
- (b) Eurekly reserves the following rights to take any of the following actions at any time and at our sole discretion:
 - (i) Cancel your listed Tutoring Service
 - (ii) Limit your Account privileges
 - (iii) Suspend or terminate your Account
 - (iv) Adjust your Tutor Wallet balance and withhold all payments
 - (v) Contact law enforcement or seek legal remedies

9.6 Licence Grants

(a) Grant to Students

You hereby agree that any User who purchases your Tutoring Services will be granted a right to use the Content in your Tutoring Services solely for personal, non-commercial educational purposes. You acknowledge that all of the Content you submit to the Site is subject to the representations, warranties, license grants and other provisions contained in these Terms.

(b) Grant to Eurekly

You hereby grant to Eurekly to use your Content and information about your Tutoring Services in marketing, advertising and promotion of our Site or Application in any medium. You also give Eurekly permission to use your name as part of marketing, advertising or promotion.

(c) Grant in relation to Brands

We encourage you to highlight your Tutoring Services by using your own trademarks, service marks or brands (**Brands**) on our Site. You hereby grant us a licence to display your Brands and to make modifications to the appearance

of the Brands as may be reasonably necessary, provided always that you retain ownership and all rights to any Logo that you submit. Logos may not contain any Prohibited Content. We reserve the right to remove your Logos from the Site at any time in our sole discretion.

10 USER CONTENT AND PROHIBITED CONDUCT

10.1 User Content

Eurekly may permit the posting and/or publishing by you and other users of notes, questions, comments, ratings, reviews, images, videos and other audio-visual materials and communications on the Site (collectively, **User Content**). You understand that whether or not such User Content is published, Eurekly does not guarantee any confidentiality with respect to any submissions.

10.2 User Content on, through, by means of or to promote or market the Site and the Services. Eurekly does not claim any ownership rights in any such User Content and nothing in these Terms will be deemed to restrict any rights that you may have to use and exploit any such User Content.

10.3 Licence Grant to Eurekly

By posting, submitting or distributing User Content on or through the Site, the Services, or through promotional campaigns, you hereby grant to Eurekly a worldwide, non-exclusive, transferable, assignable, fully paid-up, royalty-free, perpetual, irrevocable right and licence (with the right to sublicense) to use, view, copy, host, display, perform, transmit, stream, broadcast, reproduce, distribute, adapt, modify, prepare derivative works of, make, have made, sell, offer for sale, transfer, import, export and otherwise exploit your User Content, in whole or in part, in any media formats and through any media channels (whether now known or hereafter developed).

10.4 Licence grant to other Users

By posting, submitting or distributing User Content through the Site, you hereby grant to each user of the Site a non-exclusive licence to access and use your User Content in any manner permitted or made available by Eurekly on or through the Site.

10.5 User Content Representations and Warranties

You are solely responsible for your User Content and the consequences of posting, creating, or publishing them. You represent and warrant that you are the creator and owner of or have the necessary licences, rights, consents, and permissions to use and to authorise Eurekly and the Users to use and distribute your User Content as

necessary to exercise the licences granted by you in these Terms and in the manner contemplated by Eurekly and these Terms.

10.6 Access to your User Content

Eurekly may permit users to share their User Content with a select group of other users, or make their User Content public for all (even non-Site users) to view. You acknowledge and agree that, although Eurekly may provide certain features intended to allow you to restrict some User Content you create from others, Eurekly does not guarantee that such User Content will never be accessible by others. In the event of unauthorised access, Eurekly will use reasonable efforts to notify you pursuant to clause 20 below. Eurekly hereby disclaims any and all liability with respect to any unauthorised access to any restricted User Content.

10.7 User Content Disclaimer

You understand that when using the Site you will be exposed to User Content from a variety of sources, and that Eurekly is not responsible for the accuracy, usefulness, or intellectual property rights of or relating to such User Content. You further understand and acknowledge that you may be exposed to User Content that is inaccurate, offensive, indecent or objectionable, and you agree to waive, and hereby do waive, any legal or equitable rights or remedies you have or may have against Eurekly with respect thereto. Eurekly does not endorse any User Content or any opinion, recommendation or advice expressed therein, and Eurekly expressly disclaims any and all liability in connection with User Content.

10.8 Prohibited Conduct

You agree not to:

- (a) post, upload, or distribute any User Content that is:
 - (i) defamatory, libellous, or inaccurate;
 - (ii) unlawful or that a reasonable person could deem to be objectionable, offensive, indecent, pornographic, harassing, threatening, embarrassing, distressing, vulgar, hateful, racially or ethnically offensive, or otherwise inappropriate;
- (b) impersonate any person or entity, falsely claim an affiliation with any person or entity, or access the accounts of others without permission, or perform any other fraudulent activity;
- (c) delete the copyright or other proprietary rights notices on the Site or on any Content;

- (d) assert, or authorise, assist, or encourage any third party to assert, against Eurekly or any of its affiliates or licensors any patent infringement or other intellectual property infringement claim regarding any User Content you have used, submitted, or otherwise made available on or through the Site;
- (e) make unsolicited offers, advertisements, proposals, or send junk mail or spam to other Users (including, but not limited to, unsolicited advertising, promotional materials, or other solicitation material, bulk mailing of commercial advertising, chain mail, informational announcements, charity requests, and petitions for signatures);
- (f) use the Site for any illegal purpose, or in violation of any local, state, national, or international law, including, without limitation, laws governing intellectual property and other proprietary rights, and data protection and privacy;
- (g) defame, harass, abuse, threaten or defraud Users, or collect, or attempt to collect, personal information about Users or third parties without their consent;
- (h) remove, circumvent, disable, damage or otherwise interfere with any:
 - (i) security-related features of the Site or any Content;
 - (ii) features that prevent or restrict use or copying of any content accessible through the Site; or
 - (iii) features that enforce limitations on the use of the Site or any Content;
- (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Site or any part thereof, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation;
- (j) modify, adapt, translate or create derivative works based upon the Site or any part thereof, except and only to the extent expressly permitted by Eurekly herein or to the extent the foregoing restriction is expressly prohibited by applicable law; or
- (k) intentionally interfere with or damage operation of the Site or any User's enjoyment of it, by any means, including without limitation by participation in any denial-of-service type attacks or by uploading or otherwise disseminating viruses, adware, spyware, worms, or other malicious code.

11 PRIVACY

Your privacy is important to Eurekly. Please read Eurekly's privacy policy (which is available at [\[www.eurekly.com/privacy\]](http://www.eurekly.com/privacy) and is hereby incorporated into these Terms) carefully for information relating to Eurekly's collection, use, and disclosure of your personal information.

12 INTELLECTUAL PROPERTY

The Site is owned and operated by Eurekly. The visual interfaces, graphics, design, compilation, information, computer code (including source code or object code), software, services and content and all other elements of the Site (the **Site Materials**) are protected by New Zealand and international copyright, patent, and trademark laws, international conventions, and other applicable laws governing intellectual property and proprietary rights. Except for any User Content provided and owned by Users, all Site Materials, and all trademarks, service marks, and trade names, contained on or available through the Site, are owned by or licensed to Eurekly, and Eurekly reserves all rights therein and thereto not expressly granted by these Terms.

13 SITE LICENSE

Subject to and conditioned on compliance with these Terms, Eurekly grants you a limited license to access and, if you are a Member, to use the Site internally for the purpose of ordering and receiving the Services available and authorised from the Site. You must not sell, reproduce, distribute, modify, display, publicly perform, prepare derivative works based on, repost or otherwise use any content of the Site in any way for any public or commercial purpose without prior written consent of Eurekly or the rights holder, unless such actions have previously been expressly permitted by Eurekly or the rights holder for the content in question. You will not attempt to reverse engineer or attempt to interfere with the operation of any part of the Site unless expressly permitted by law. The Site or any portion of the Site may not be reproduced, duplicated, copied, sold, resold or otherwise exploited for any commercial purpose that is not expressly permitted by Eurekly.

14 CONTENT AND USER CONTENT LICENSE

- 14.1 Subject to your compliance with these Terms, Eurekly hereby grants you a limited, non-exclusive, non-transferable license to (i) access and view any Content solely for your personal and non-commercial purposes and (ii) access and view any User Content to which you are permitted access, solely for your personal and non-commercial purposes. You have no right to sublicense the license rights granted in this section.
- 14.2 You will not use, copy, adapt, modify, prepare derivative works based upon, distribute, license, sell, transfer, publicly display, publicly perform, transmit, broadcast or otherwise exploit the Site, Services or Content, except as expressly permitted in these

Terms. No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by Eurekly or its licensors, except for the licenses and rights expressly granted in these Terms.

15 LINKS

The Site and the Services may contain links to third-party websites or resources. You acknowledge and agree that Eurekly is not responsible or liable for: (i) the availability or accuracy of such websites or resources; or (ii) the content, products, or services on or available from such websites or resources. Links to such websites or resources do not imply any endorsement by Eurekly of such websites or resources or the content, products, or services available from such websites or resources. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites or resources or the Content, products or services on or available from such websites or resources.

16 ENFORCEMENT OF TERMS

- 16.1 We may suspend or cancel your Member Account if we believe that you have violated or acted inconsistently with the letter or spirit of these Terms, or violated our rights or those of another party. Without limiting Eurekly's other remedies, we will suspend or terminate your Member Account and refuse to provide any Services to you if: (a) you breach any terms and conditions of these Terms and the other written policies and procedures posted on the Site; (b) we are unable to verify or authenticate any information you provide to us; or (c) we believe that your actions may cause legal liability for you, our Users or for Eurekly.
- 16.2 Once suspended or terminated, you may not continue to use the Service under a different Account or re-register under a new Account. This includes usage of any associated Payment Services. In addition, violations of these Terms may be prosecuted to the fullest extent of the law and may result in additional penalties and sanctions. If a User or Member engages in actions or activities which circumvent the Site or otherwise reduces service fees owed Eurekly under these Terms, that User or Member will be liable to Eurekly for the service fees due, and may be subject to additional sanctions including, but not limited to, suspension or termination of Eurekly membership. Eurekly reserves the right to terminate any User or project for any reason, at its sole discretion and to refuse to provide registration and membership to you in the future. When your membership is cancelled, you may no longer have access to data, messages, files and other material you keep on the Site.

17 DISCLAIMERS

17.1 No Warranties

The Services provided by Eurekly or any of our Tutors, the Site and all data, information, software, Content or User Content made available in conjunction with or through the Site, are provided on an “as is,” “as available,” and “with all faults” basis. To the fullest extent permissible pursuant to applicable law, Eurekly disclaims any and all warranties and conditions, whether express or implied (including the implied warranties of merchantability, accuracy, fitness for a particular purpose, title and non-infringement) and whether arising by statute or otherwise in law or from a course of dealing or usage or trade. No advice or information, whether oral or written, obtained by you from Eurekly or through the Site will create any warranty not expressly stated herein.

17.2 Content

Eurekly and its suppliers, licensors, and affiliates (1) do not warrant that the Site or any data, Content, functions, or any other information offered on or through the Site will be uninterrupted, or free of errors, viruses or other harmful components, and do not warrant that any of the foregoing will be corrected or (2) make no representations or warranties, of any kind, either express or implied, as to the quality, identity or reliability of any Tutor, Member, User or third party, or as to the accuracy of the postings made on the Site.

17.3 Harm to your Computer

You understand and agree that your use, access, download, or otherwise obtaining of content, Site Materials, software, or data through the Site is at your own discretion and risk, and that you will be solely responsible for any damage to your property (including your computer system) or loss of data that results therefrom.

17.4 Limitations by Applicable Law

Some jurisdictions do not allow the exclusion of implied warranties, so the above exclusions may not apply to you. You may also have other rights that vary from jurisdiction to jurisdiction.

18 LIMITATION OF LIABILITY AND DAMAGES

18.1 Limitation of Liability

Under no circumstances, including, but not limited to, negligence, will Eurekly or its affiliates, contractors, employees, agents, or third-party partners, licensors, or suppliers be liable for any special, indirect, incidental, consequential, punitive, reliance,

or exemplary damages (including without limitation damages arising from any unsuccessful court action or legal dispute, lost business, lost revenues or profits, loss of data, or any other pecuniary or non-pecuniary loss or damage of any nature whatsoever) arising out of or relating to the terms or your use of (or inability to use) the site, or any other interactions with Eurekly, even if Eurekly or one of its authorised representatives has been advised of the possibility of such damages. Applicable law may not allow the limitation or exclusion of liability or incidental or consequential damages, so the above limitation or exclusion may not apply to you. In such cases, Eurekly's liability will be limited to the fullest extent permitted by applicable law.

18.2 Limitation of Damages

Notwithstanding any other provision of these Terms, in no event will Eurekly's or its affiliates', contractors', employees', agents', or third-party partners', licensors', or suppliers' liability to you for any and all damages, losses and Claims arising out of or relating to the terms or your use of the Site or your interaction with other Users (whether in contract, tort (including negligence), warranty, or otherwise) exceed the greater of: (a) NZ\$100 or (b) the aggregate amount of Service Fees actually collected by us from you for the Services to which the liability relates during the 6 month period immediately preceding the determination of such liability.

19 INDEMNIFICATION

You agree to defend, hold harmless and indemnify Eurekly, its affiliated companies, contractors, employees, agents and its third-party suppliers, licensors, and partners (**Eurekly Indemnitees**) from and against any and all losses, costs, expenses (including legal and other professional advisors' fees and expenses), damages, Claims or other liabilities incurred or suffered by a Eurekly Indemnatee: (a) in connection with your use of the Services including any payment obligations incurred through use of the Services; or (b) resulting from: (i) your use or misuse of the Site, (ii) your decision to supply credit information via the Site, including personal financial information; (iii) your decision to submit postings and accept offers from other Members; (iv) any breach of contract or other claims made by Members with which you conducted business through the Site; (v) your breach of any provision of these Terms (including of any representations, warranties, and covenants made by you herein); (vi) any liability arising from the tax treatment of payments or any portion thereof; (vii) any negligent or intentional wrongdoing by any Member; (viii) any act or omission of yours with respect to the payment of fees to any Tutor; (ix) your dispute of or failure to pay any invoice or any other payment; and/or (x) your obligations as a Tutor or to a Tutor. Eurekly reserves the right, at your expense, to assume the exclusive defence and control of any matter for which you are required to indemnify a Eurekly Indemnatee, and you agree to cooperate with Eurekly's defence of these claims. Eurekly will use reasonable efforts to notify you of any such claim, action, or proceeding upon becoming aware of it.

20 NOTICES

- 20.1 Eureka will communicate with you by email or by posting communications on the Site. You consent to receive communications from us electronically and you agree that these electronic communications satisfy any legal requirement that such communications be in writing. You will be deemed to have received a communication within (1) 12 hours of Eureka sending it to the email address you have provided to Eureka on the Site, or (2) within 7 days of Eureka first posting such communication on the Site. You must keep your email address updated on the Site, and you must regularly check the Site for postings. If you fail to respond to an email message from Eureka regarding violation, dispute or complaint within 2 business days, Eureka will have the right to terminate or suspend your membership or your registration.
- 20.2 All notices to Eureka intended to have a legal effect concerning these Terms must be in writing and delivered either in person or by a means evidenced by a delivery receipt, to the following address:

Eureka Limited
Level 3, 60 Parnell Road, Auckland, New Zealand

Such notices to Eureka are deemed effective upon receipt.

21 GOVERNING LAW AND DISPUTE RESOLUTION

- 21.1 **Governing Law.** These Terms will be governed by and construed in accordance with the laws of New Zealand.
- 21.2 **Arbitration.** For any Claim, other than a Claim for injunctive or other equitable relief, where the total amount sought is less than NZ\$10,000, either Eureka or you may elect at any point in or during a dispute or proceeding to resolve the Claim through binding non-appearance-based arbitration. A party electing arbitration shall initiate it through an established alternative dispute resolution (**ADR**) provider mutually agreed upon by the parties. The ADR provider and the parties must comply with the following rules: (a) the arbitration shall be conducted, at the option of the party seeking relief, by telephone, online, or based solely on written submissions; (b) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and (c) any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.
- 21.3 **Jurisdiction.** You agree that any action at law or in equity arising out of or relating to these Terms, the Site or the Services will be filed only in the courts of New Zealand, and each of you and Eureka hereby consent and submit to the personal and exclusive jurisdiction of such courts for the purposes of litigating any such action, except as provided in clause 21.2 regarding arbitration. Notwithstanding this, Eureka shall still

be allowed to apply for injunctive or other equitable relief to protect or enforce its intellectual property rights in any court of competent jurisdiction.

21.4 **Improperly filed Claims.** All Claims you bring against Eurekly must be resolved in accordance with this clause 21. All Claims filed or brought contrary to this clause 21 shall be considered improperly filed. Should either party file a Claim contrary to this clause 21, the other party may recover legal fees and costs up to NZ\$2,500, provided that such party seeking such fees has notified the other in writing of the improperly filed Claim, and the other has failed to promptly withdraw the Claim.

21.5 **Time limit for Claims.** You and Eurekly agree that any cause of action arising out of or related to these Terms, the Site or the Services must commence within 6 months after the cause of action accrues, failing which such cause of action is permanently barred.

22 GENERAL

22.1 Entire Agreement

Except as they may be supplemented by additional Policies or other guidelines, standards or terms for a specific product, feature, service or offering, these Terms (and any Policies or other documents referred to herein) (1) constitute the entire and exclusive understanding and agreement between Eurekly and you regarding the Site, the Content, the Services and any requests for Tutoring Services, and (2) supersede and replace any and all prior oral or written understandings or agreements between Eurekly and you regarding the Site, the Services and the Content.

22.2 Assignment

You may not assign or transfer these Terms, by operation of law or otherwise, without Eurekly's prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null and of no effect. Eurekly may assign or transfer these Terms, at its sole discretion, without restriction. Subject to the foregoing, these Terms will bind and enure to the benefit of the parties, their successors and permitted assigns.

22.3 Waiver

The failure of Eurekly to exercise or enforce any right or provision of these Terms will not constitute a waiver of such right or provision. Any waiver of any provision of these Terms will be effective only if in writing and signed by a duly authorised representative of Eurekly. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise.

22.4 **Severability**

If for any reason an arbitrator or a court of competent jurisdiction finds any provision of these Terms to be unlawful, void, or for any reason unenforceable, then that provision will be limited or eliminated from these Terms to the minimum extent necessary and will not affect the validity and enforceability of any remaining provisions.

22.5 **Headings**

The heading references herein are for convenience purposes only, do not constitute a part of these Terms, and will not be deemed to limit or affect any of the provisions hereof.

22.6 **Disclosures**

The Site is hosted in New Zealand, and the Services provided hereunder are offered by Eurekly: Level 3, 60 Parnell Road, Parnell, Auckland, New Zealand