

INDEPENDENT TUTOR AGREEMENT

This is a legal agreement ("Agreement") between you, the Independent Tutor ("Tutor"), and Magic of Phonics, LLC ("Magic of Phonics"). The parties expressly agree to transact and enter into this Agreement by electronic means within the meaning of the Uniform Electronic Transactions Act ("UETA").

1. Tutor Status. Neither this Agreement, the Terms of Use, nor use of the Site creates an independent contractor, employee/employer, partnership, joint venture, or franchiser-franchisee relationship between Tutor and Magic of Phonics. It is the parties' intention that the Tutor will be an Independent Tutor and not Magic of Phonics' employee for all purposes, including, without limitation, the application of the Fair Labor Standards Act minimum wage and overtime provisions, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, any state income tax law, or any local income tax law, any state workers' compensation laws, and any state unemployment insurance law.

2. Description of Work. The Tutor will be responsible for providing tutoring instruction ("Sessions"). The Tutor will retain absolute discretion as to the manner and means of carrying out Tutor's tutoring services. Tutor shall determine Tutor's own cancellation policy.

3. Non-exclusivity. Tutor and Magic of Phonics acknowledge that this Agreement is nonexclusive and the Tutor is free to engage in and simultaneously perform any employment or other services during the pendency of this Agreement. Nothing herein precludes Tutor from advertising or providing Tutor's services to the general public.

4. Hours. Tutor shall set Tutor's own hours and schedule Tutor's own Sessions. Tutor shall generally render services as needed to perform Tutor's duties hereunder as set forth in the Description of Work.

5. Commission. Tutor determines and adjusts Tutor's own hourly Session rate. Tutor shall receive that rate less a percentage paid to Magic of Phonics for its services. The percentage is based on the total number of Session hours Tutor has tutored to students that have hired Tutor through Magic of Phonics ("Magic of Phonics student") as set forth in the [Tutor Payment Policies](#).

Tutor shall be paid through the Magic of Phonics payment processing system for any services rendered to Magic of Phonics students. Under no circumstances is Tutor to attempt to seek or receive compensation directly from Magic of Phonics students. Prior to commencing Sessions or meeting with Magic of Phonics students for any purpose, Tutor must verify with Magic of Phonics that the student has submitted appropriate billing information. Magic of Phonics is not responsible for payments for Sessions given before a student has appropriate billing information on file. For student billing purposes, Tutor will report the length of each session completed through the Tutor's administrative page on Magic of Phonics' website (<http://www.MagicofPhonics.com>). If requested by the student and for their use, the Tutor will

enter a summary of service performed. Subject to the review by the student of the session times submitted, Tutor shall be paid in accordance with Magic of Phonics' [Tutor Payment Policies](#).

6. Payment System. Tutor agrees to abide by Magic of Phonics' [Tutor Payment Policies](#). Tutor also agrees not to subvert the payment system or to divert funds ordinarily payable to Tutor through Magic of Phonics.

7. Expenses. Tutor is solely responsible for all costs and expenses related to the services provided hereunder including, but not limited to, expenses associated with preparing for and administering Sessions, educational materials and transportation. Magic of Phonics will not be liable to Tutor for any expenses incurred in the rendition of services.

8. Supplies. Tutor will provide Tutor's own supplies and equipment required to complete the tasks for which he was retained.

9. Taxes. Tutor is responsible for all federal, state, and/or local tax purposes. Neither federal, nor state, nor local income tax, nor payroll tax of any kind shall be withheld by Magic of Phonics on behalf of Tutor. Tutor understands that it is Tutor's responsibility to pay any applicable taxes.

10. Benefits. Tutor acknowledges that Tutor is engaged in an independent business and is not eligible to participate in any pension, health, or other fringe benefits plan of Magic of Phonics.

11. Insurance. No Workers' Compensation Insurance shall be obtained by Magic of Phonics for Tutor. Tutor understands that it is Tutor's responsibility to comply with the Workers' Compensation Law.

12. Confidentiality. Tutor acknowledges that, during the performance of services, Tutor will have access to information relating to student's identity, address, contact information, and other personal information or requests for services ("Confidential Information"). Tutor agrees that Tutor owes a duty to Magic of Phonics and such third parties, during the term of this Agreement and thereafter, to hold all such Confidential Information in the strictest confidence and not to disclose it to any person, firm or corporation or to use it except as necessary in carrying out the services consistent with this Agreement.

13. Tutor Documents. Tutor acknowledges that a copy of all documents created or received by Tutor in connection with the administration of services performed hereunder ("Tutor Documents") may be retained by Magic of Phonics and used for its administrative purposes. For purposes of this Agreement, Tutor Documents does not include materials solely associated with the teaching of Sessions including Session plans, notes, outlines, tests and homework and Magic of Phonics acknowledges these materials belong to the Tutor.

14. Indemnity And Hold Harmless Clause. Tutor agrees to indemnify and hold harmless Magic of Phonics, its subsidiaries, affiliates, and their directors, officers, employees and agents, from and against any and all losses, expenses, costs, liabilities and damages (including any legal fee and expenses), any and all injuries, whether direct, consequential or incidental in nature, which result from, are connected with or arise out of the performance by Tutor of work performed in relation to this Agreement, including any act by Tutor inconsistent with Tutor's status as an Independent Tutor.

Tutor understands that Magic of Phonics offers a marketplace for those seeking tutoring services to connect with those seeking to provide tutoring services. Accordingly, Magic of Phonics makes no representations to Tutor about the suitability, character or background of any Magic of Phonics user, nor does Magic of Phonics perform any type of background check of users. It is Tutor's sole duty to exercise Tutor's own judgment, protocols and/or standards when considering whether to engage in tutoring services with each student or client. Tutor understands and agrees that it is tutor's responsibility to conduct any and all background and reference checks regarding other Magic of Phonics users. Tutor is never obligated by Magic of Phonics to pursue any tutoring opportunity.

15. Site Content. Tutor acknowledges that all site content submitted by Tutor will be the property of Magic of Phonics and may be distributed by Magic of Phonics at the company's sole discretion. Such content includes, but is not limited to, articles, lessons, worksheets, quizzes, tutorials, files, testimonials, reviews, video submissions, and blog entries ("Site Content").

16. Term. This Agreement and the respective duties of the parties hereunder shall continue until terminated by either party in accordance with this Agreement.

17. Assignment. Tutor may not assign or transfer this Agreement without the prior written consent of Magic of Phonics.

18. Termination of Relationship. Either party may terminate this Agreement for any reason at any time.

19. Amendment. This Agreement may only be amended or modified by a writing which makes express reference to this Agreement as the subject of such amendment and which is signed by Tutor and, on behalf of Magic of Phonics, by its duly authorized officer. The parties agree that any amendment or modification hereunder may be transacted by electronic means within the meaning of the UETA provided that any such amendments or modifications otherwise comply with the requirements in this paragraph.

20. Severability. If any term, provision, covenant or condition of this Agreement or part thereof, or the application thereof to any person, place or circumstance, shall be held to be invalid, unenforceable or void, the remainder of this Agreement and such term, provision, covenant, or condition shall remain in full force and effect, and any such invalid, unenforceable or void term, provision, covenant or condition shall be deemed, without further action on the part of the parties hereto, modified, amended and limited to the extent necessary to render the same and the remainder of this Agreement valid, enforceable and lawful.

21. Incorporation of Terms of Use. Magic of Phonics [Terms of Use](#) are hereby incorporated into this Agreement.

22. Terms of Arrangement. Magic of Phonics accepts a tutor as user for an indefinite period, subject to the provisions of this Agreement. Tutors have been removed from the website in the past for a material breach of this agreement and for a failure to follow Magic of Phonics' administrative procedures.

23. Governing Law. This Agreement shall be governed by and construed in accordance with the substantive laws, without regard to choice of law rules, of the State of California.

24. Arbitration. Any dispute between the parties related to this Agreement shall be resolved by binding arbitration under the auspices of the American Arbitration Association and the rules promulgated by that body and before a single arbitrator chosen by Magic of Phonics. The arbitration shall be conducted in Thousand Oaks, California, and judgment of the arbitration award may be entered into any court having jurisdiction thereof. Magic of Phonics may seek any interim or preliminary relief from a court of competent jurisdiction in Thousand Oaks, California, necessary to protect its rights pending the completion of arbitration. Each party shall assume its own costs of arbitration.

25. Entire Agreement. This Agreement contains the entire agreement and understanding between the parties hereto in respect to the subject matter hereof and supersedes, cancels and annuls any prior or contemporaneous written or oral agreements, understandings, commitments, and practices between them respecting the subject matter hereof, including all prior agreements, if any, between Magic of Phonics and Tutor, which agreement(s) hereby are terminated and shall be of no further force or effect.

Name:

Signature:

Date:

Contractor

Name: Kevin P. McNamee

Signature:

Date:

Kevin P. McNamee
President, Magic of Phonics, LLC.