

Effective from the 1 day of December 2018

TLC TECHNOLOGIES LIMITED

trading as SURESITTER

(the "Company")

**MINDER
TERMS AND CONDITIONS**



Clerkin Lynch
Solicitors
30 Molesworth Street
Dublin 2

1. DEFINITIONS AND CONSTRUCTION

1.1 Definitions

In these Terms, unless the context otherwise requires, the following words and expressions shall have the following meanings:

“Application” means the SureSitter application developed by the Company;

“Company” means TLC Technologies Limited trading as SureSitter a private company limited by shares and incorporated in Ireland having Registered Number 607011, whose Registered Office is at 64 Oaklands Park, Sandymount, Dublin 4;

“Parent” means a person who completes SureSitter’s account registration process (sign up or similar) including any person acting under a person’s username and password and who is using the Platform for the primary purpose of hiring a Minder;

“Data” has the meaning ascribed to it under the Data Protection Acts;

“Data Protection Acts” means the Data Protection Act 1988 and the Data (Protection) Amendment Act 2003 and the EU General Data Protection Regulations 2018;

“Listing” means a listing on the Platform which has the purpose of either providing services offered on the Platform, including babysitting of children, childminding, au pairs and child day care;

“Minder” means a User who creates a Listing via the Platform;

“Personal Data”	has the meaning ascribed to it under the Data Protection Acts;
“Platform”	means the online information service website known as <u>SureSitter.com</u> , which may link to other related Platforms or mobile applications;
“Privacy Policy”	means SureSitter’s privacy policy dated on or about the date of these Terms and Conditions;
“Intellectual Property”	means such trademarks, copyrights, technology rights and similar rights arising from or relating to the Licensed Software or Services, including any such derivative works or any intellectual property rights embodied or incorporated in such derivative works or any part thereof;
“Services”	means the supply of the Application and the Licensed Software and related services by the Company to the Parent which services include but are not limited to the services offered on the Platform, including babysitting of children, childminding, au pairs and child day care;
“SureSitter”	means the Company;
“Terms”	means the terms and conditions set out in this document;
“Third Party Software”	means software owned by or licensed to the Parent by a third party whether or not supplied by the Company;
“Third Party Suppliers”	mean any suppliers of products or services to the Parent who are not part of the Company or employed by the Company;

“User” means a person who completes or is in the process of completing SureSitter’s account registration process (sign up or similar) including any person acting under a person’s username and password.

2. APPLICATION OF THESE TERMS

- 2.1 These Terms govern the Minder’s access to and use of the Platform and any services offered on the Site. This is a legal agreement between the Minder and SureSitter.
- 2.2 No Minder should use the Platform or the Services if they do not agree to be bound by these Terms.
- 2.3 The Platform and the Services are intended solely for persons who are 18 years of age or older. Any access to or use of the Platform or Services by anyone under 18 years of age is expressly prohibited. By accessing or using the Platform, the Minder represents and warrants the Minder is 18 years of age or older.
- 2.4 These Terms shall apply to the use of the Platform and the provision of the Services by the Minder. The Minder agrees that these Terms shall apply and that no other terms, conditions, warranties or representations apply to its relations or commercial arrangements with the Company.
- 2.5 These Terms shall be deemed to have been accepted by the Minder upon the earlier of: -
 - 2.5.1 the Minder clicking the “I Agree” button on the account registration page of the Platform; or
 - 2.5.2 the use by the Minder of the Services from the Company; or
 - 2.5.3 the Minder notifying the Company of its intention to commence or continue with the Services; or
 - 2.5.4 the Minder continuing to use any the Services of the Company; or

2.5.5 the written acceptance by the Minder of these Terms.

3. THE SERVICES

- 3.1 The Company provides services to the Parent which allows the Parent to create profiles on the Platform which can be viewed by Minders.
- 3.2 The Company provides services to the Minder which allows the Minder to create profiles on the Platform which can be viewed by Parents.
- 3.3 The Minder shall use its best skill, care and diligence to provide the Services to the Parent.
- 3.4 The Minder hereby acknowledges that it has entered into these Terms and will provide the Services on the basis that the Services will be provided to the Parent by the Minder remotely without any direct involvement by the Company and without the Company having to attend the Parent's premises.
- 3.5 Where the Minder agrees with the Parent to spend extra time, in excess of what might reasonably be expected in the provision of the Services, the Company shall, whilst providing such additional services to the Parent (including the Services), be permitted to make an additional reasonable charge in respect of this extra time.
- 3.6 For the avoidance of doubt, the Company does not provide for any of the following as part of its Services and accepts no liability in respect of the following:-
 - 3.6.1 the Company does not employ any Minder or any Parent and is therefore not liable under any employment legislation for any claim that either a Parent may have against a Minder or that a Minder may have against a Parent;
 - 3.6.2 the Company does not make any recommendations to Parents in respect of choosing any specific Minders nor does the Company make any recommendations to Minders in respect of choosing any specific Parents;

- 3.6.3 the Company does not edit the profile pages of either the Parent or the Minder nor is it responsible OR LIABLE IN ANY WAY for any false representations made by either the Minder or the Parent on their SureSitter profile page;
- 3.6.4 although the Platform provides that Minders can credit themselves as being Garda vetted, the Company **does not undertake verification of this certification** nor does the Company monitor the continued validity of any Minder's certification. The onus for verifying the validity of the Garda Vetting falls entirely and at all times solely on the Parent;
- 3.6.5 the Company is not a party to any agreements entered into between the Parent and the Minder through the use of the Platform. For the avoidance of doubt, when an introduction is made through the Platform, any future agreements between the Parent and the Minder from that point onwards is created between the Parent and the Minder only (the "**Minder Agreement**") for the provision of childminding services by the Minder to the Parent (the "**Minder Services**"). Accordingly, the Company does not guarantee, nor shall it be liable for any breach of the Minder Agreement or any breach by the Minder or the Parent in terms of the quality or timing of the Minder Services.

4. PAYMENT

- 4.1 The Minder may create a profile on the Platform and will be asked detailed information about themselves. The Minder is not charged a fee for this. The Company will charge the Parent a fee for each job they advertise on the platform. The terms of the fee (the "**Service Fee**") are set out on the Platform and displayed to Parents in the course of creating and posting a job. The Service Fee covers the costs of marketing, payment, processing and Platform administration.
- 4.2 The Minder hereby contractually agrees that the first and all future bookings with a Parent will be booked via the Platform or by the Company's Parent support, and that all communication with other Parents will be made through the Company's internal messaging system. If the Minder makes a booking for the Services with any Parent outside

of the Company, that Minder shall pay an introduction fee of €500 per Parent to the Company.

- 4.3 The Parent may book Services through the Platform. The Company charges a booking fee (determined at the Company's sole discretion) (the "**Booking Fee**") that will be presented to the Parent during the purchase process. Upon submission of a booking, the Company will validate/verify the Parent's credit card. Parents may save their credit and debit card details for future payments on the Platform.
- 4.4 The Minder should respond to all booking requests within 24 hours of receipt.
- 4.5 All of the Company's financial transactions are handled through the Company's payment services provider, Stripe. The Parent can review the Stripe privacy policy at <https://stripe.com/ie>. The Company will share information with Stripe only to the extent necessary for the purposes of processing payment the Parent makes via the Platform, refunding such payments and dealing with complaints and queries relating to such payments and refunds.
- 4.6 Until the Company receives full payment in respect of any overdue invoices for the Services it shall be entitled to refuse to provide the Services until all outstanding sums due to it are paid. The Company shall also be entitled to withdraw entirely its Services from the Parent which may involve removing the Parent's access to the Platform, Application and Services.
- 4.7 The remedies available to the Company under these Terms are additional to its general rights and remedies under statute and by law.
- 4.8 Any rights regarding cancellation and refunds will be at our sole discretion and no such refunds will be given where you have breached these Conditions.

You are informed that you have a period of seven working days starting from the time of your first purchase on the Website to obtain a full refund of your purchase. However, this right is lost should you access and or use the element of the service you purchased. This right only applies to your first payment and not to subsequent auto-renewed subscriptions.

5. USER ACCOUNT SECURITY AND PASSWORD

- 5.1 The Minder is entirely responsible for maintaining the security and confidentiality of all Personal Data (as defined) collected by the Minder as a result of its use of the Platform.
- 5.2 Any personal information submitted by the Minder to the Platform is governed by the Company's Privacy Policy. See link to the privacy policy here **Privacy Policy**.

6. COMPANY RESPONSIBILITIES

- 6.1 The Company hereby covenants that it shall use its reasonable endeavours to correct, any problems which may occur with the Platform or the Application.
- 6.2 Subject to clause 6.1 above, in the event that any maintenance issues arise or any updates need to be installed, the Company will where possible carry out such work either during the weekend or outside of normal business hours.

7. MINDER RESPONSIBILITIES AND WARRANTIES

As a user of the Service, the Minder hereby accepts the following obligations and hereby agrees to make the following:-

- 7.1 the Minder shall provide the Company with such identification documents or other information as the Company may require in order to set up the Minder's account on the Platform and that it shall consent to the Company carrying out checks on such identification documents and information, including by the use of third parties;
- 7.2 the Minder shall pay the Service Fee as required by these Terms in relation to the Services;
- 7.3 the Minder shall provide accurate and up to date information to the Company to enable the Company to provide the Services including but not limited to

- 7.3.1 details obtained from the Minder’s Facebook account and any other social media account details of which the Minder will provide details of; and
 - 7.3.2 that the Minder or any member of the Minder’s household has ever been convicted of any criminal offence.
- 7.4 the Minder shall provide accurate information to the Company to enable the Company to provide the Services and notify the Company promptly if the Minder is aware that the Platform or Application is defective or inoperable in any material respects;
- 7.5 the Minder shall use its best endeavours to effect and maintain adequate security measures to safeguard the Parent’s Personal Data from access by an unauthorised person and shall comply fully with its obligations under the Data Protection Acts;
- 7.6 the Minder shall not knowingly obstruct the Company from providing the Services and observe and deal with all reasonable requests the Company makes to the Minder to enable the Company to provide the Services;
- 7.7 the Minder shall indemnify and hold harmless the Company from any breach of its obligations under these Terms and any breach, whether knowingly or not, of the Data Protection Acts by the Minder;
- 7.8 the Minder shall save with the prior written consent of the Company not use any trademark belonging to the Company;
- 7.9 the Minder shall not modify, frame, render (or re-render), mirror, truncate, inject, filter or change any content or information contained on the Platform, without the Company’s written consent;
- 7.9 the Minder shall not access or use the Platform for commercial or competitive purposes;
- 7.10 the Minder shall not impersonate another person or entity;
- 7.12 the Minder shall not distribute viruses or other harmful computer code;

- 7.13 the Minder shall not allow any other person or entity to impersonate the Minder to access, use or register with the Platform;
- 7.14 the Minder shall not to use the Platform in a way that is intended to harm, or a reasonable person would understand would likely result in harm, to the user or others;
- 7.15 the Minder shall not update a public profile with erroneous contact information or removing contact information and will respond to messages/inquiries from other SureSitter Parents within a timely manner, (to be determined at the sole discretion of The Company);
- 7.16 the Minder shall not to behave or act in any way that creates a negative experience for a Parent (to be determined at the sole discretion of the Company);
- 7.17 the Minder shall not to behave or act in any way that demonstrates a lack of courtesy or professionalism to any SureSitter staff member or Parent to be determined at the sole discretion of Company;
- 7.18 the Minder shall not circumvent any measures implemented by the Company aimed at preventing any violations of the Terms;
- 7.19 the Minder shall wherever practical, observe and implement any advice provided by the Company in connection with the Services and the Platform.
- 7.20 the Minder shall wherever comply with all applicable laws that apply to the Parent's activity on the Platform including all applicable tax laws and regulations that apply.
- 7.21 the Minder shall maintain the confidentiality of the Minder's own account information and password and for restricting access to such information and to the Minder's computer and accepts responsibility for all activities that occur under the Minder's account or password.
- 7.22 Once the Parent has been in contact with a Minder through the Platform, they shall only book the Minder for Services through the Platform's booking functions and the Minder shall only receive bookings for Services from the Parent through the Platform.

8. TITLE, OWNERSHIP AND DERIVATIVE WORKS

- 8.1 Title to and ownership of the Platform, the Services and the Application and the Intellectual Property in the Platform, the Services and the Application shall at all times remain exclusively with the Company.
- 8.2 All derivative works created or invented based on the provision of the Services or the Application or any Platform or Intellectual Property rights embodied or incorporated in such derivative works or any part thereof, shall be exclusively owned by the Company.
- 8.3 Title to and ownership of promotional materials or promotional items and/or programs produced solely by the Company for the promotion of the Platform the Services or the Application shall be owned by the Company.

9. LIMITATION ON COMPANY'S LIABILITY

- 9.1 The Company's personnel are not authorised to make representations concerning the Services to the Minder outside these Terms unless this is confirmed by the Company in writing and the Minder acknowledges this by entering into a contract with the Company. The Minder shall not rely on any such representations which are not confirmed by the Company in writing. By accepting these Terms, the Minder irrevocably waives any right to claim damages from the Company or to rescind these Terms as a result of any representation whether or not contained in these Terms.
- 9.2 The Company shall not be liable for any losses which arise out of the Minder's network availability, its own hardware or software or any services provided to the Minder by any Third Party Suppliers.
- 9.3 The Company shall not be obliged to provide insurance cover against hardware or software failure.
- 9.4 The Company shall not be liable for any Minder Services provided by the Minder to the Parent.
- 9.5 The Minder bears sole responsibility for any content on the Application and Platform. The

Company shall not be liable in relation to the content of the Application and Platform, including without limitation any defamatory statements or any statements in breach of the Data Protection Acts and the Minder shall indemnify the Company in respect of any loss the Company suffers as a result of such breaches.

9.6 The Minder bears sole responsibility for compliance with the Data Protection Acts. The Company shall not be liable for any direct breach under the Data Protection Acts in respect of any Personal Data stored on the Platform or Application by the Minder.

9.7 The Company shall not in any circumstances be liable for any indirect, special or consequential loss or damage whatsoever and howsoever incurred or suffered by the Minder.

10. NO WARRANTIES

10.1 The Company makes no warranties or representations to the Minder that any services provided to the Company by Third Party Suppliers, through telecommunication systems, computer systems or otherwise, will be un-interrupted or error free and the Company shall not be liable to the Minder for any direct, indirect special or consequential losses arising to the Minder as a result.

10.2 The Company does not make any representations, guaranties or warranties regarding the liability, availability, timelines, quality, suitability, truth, accuracy or completeness of the Platform and the Services associated with the Platform, or the results that the Minder may obtain accessing or using the Platform and/or the Services or material associated therewith. Without limitation to the generality of the foregoing, the Company and its Third Party Providers do not represent or warrant that:

10.2.1 the operation or use of the Platform or Services will be timely, secure, uninterrupted or error-free;

10.2.2 the quality of any services, information or any products that the Parent's purchases, or otherwise obtains through the Platform will meet the Parent's requirements; or

10.2.3 the Services offered via the Platform available are free of viruses or other harmful components;

10.3 The Minder hereby acknowledges that neither the Company nor its Third Party Providers control the transfer of data over communications facilities, including the internet, and that the Platform and services and/or materials associated therewith may be subject to limitations, delays and other problems inherent in the use of such facilities.

11. INDEMNITY

11.1 The Minder agrees to fully indemnify, keep indemnified, defend (at the Company's request), and hold the Company, its parent, subsidiaries, affiliates, officers and employees, harmless from any claims, demands, losses, expenses (including but not limited to legal expenses) or liability incurred or sustained by the Company or any of its employees and agents, directly or indirectly, or made or brought by any third party due to or arising out of the following:

11.1.1 the provision of the Services to the Parents;

11.1.3 the Minder's fraudulent behaviour, wilful misconduct or negligence;

11.1.4 the violation of the Terms or any provision therein by the Minder;

11.1.5 the violation of any Intellectual Property rights of any person or entity;

11.1.6 the use or misuse by the Minder or third parties of the Minder's passwords or accounts;

11.1.7 any breach of the Data Protection Acts by the Minder;

11.1.8 any content material or required mode of operation supplied or specified by the Minder for inclusion in the Services.

11.2 Without prejudice to the generality of the indemnity set out in Clause 11.1, the Minder shall fully indemnify the Company in respect of any breach of licence, copyright, patent,

trademark or any other applicable law or regulation caused by the Minder's use of any Intellectual Property.

11.3 The Company and its affiliates, directors, officers, employees, agents and Third Party Providers shall have no indemnification obligation or other liability for any claim of infringement arising from the following:-

11.3.1 Use of the Platform and/or the Minder's services procured through or content associated with the Platform other than in accordance with these Terms;

11.3.2 the combination of the Platform and/or the Minder's services or content associated with the Platform with any other products, services or materials; or

11.3.3 any third party products, services or materials.

12. NOTICES

12.1 Any notice or communication under these Terms required to be served on or given to either the Minder or the Company should be either delivered by hand, sent by first class post to the other party at its operating address(es) or to another address previously notified to the sending party, faxed to any fax number previously notified to the sending party, or sent by e-mail to such domain or e-mail address as it has previously notified to the sending party and should be deemed to have been given when actually received or, if sent by first class post, two full days after posting or, if sent by fax, upon receipt of the relevant fax confirmation sheet or, if sent by e-mail, upon receipt of a reply, acknowledgement or read receipt.

13. MINDER OBLIGATIONS

13.1 When the Parent makes an introduction request to the Minder, the Minder is obliged to respond within 24 hours of the request.

14. CONFIDENTIALITY

- 14.1 Each party agrees and undertakes that so long as these Terms are in force and thereafter it shall keep confidential and shall not use for its own purposes, nor without the prior written consent of the other party disclose to any third party, all information of a confidential nature (including, without limitation, information relating to a party's products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities, business affairs and information of commercial value) which may become known to that party from the other party ("**Confidential Information**"), unless the information is public knowledge or already known to that party at the time of disclosure or subsequently becomes public knowledge other than by breach of these Terms or subsequently comes lawfully into the possession of that party from a third party.
- 14.2 To the extent necessary to implement these Terms, each party may disclose Confidential Information to those of its employees as may be reasonably necessary or desirable, provided that before any such disclosure each party shall make those employees aware of its obligations of confidentiality under these Terms and shall at all times procure compliance by those employees with them. Notwithstanding any other provision of this Clause either party may disclose confidential information if required to do so by law.

15. **FORCE MAJEURE**

- 15.1 Save for those relating to payment, the obligations of the Company under these Terms shall be suspended during the period and to the extent that the Company is prevented or hindered from complying therewith by a Force Majeure Event. In these Terms "**Force Majeure Event**" shall mean any event beyond its reasonable control which may include but shall not be limited to: (1) acts of terrorism, insurrection, riots, civil unrest and military action; (2) the exercise of emergency powers by any local, regional or national governmental authority; (3) fire, flood, earthquake, storm and other natural disasters; (4) industrial action, strikes and lock-outs; (5) blockage or embargo; and (6) the failure or delay of supplies of power, fuel, transport, equipment, telecommunications systems, Internet or other goods and/or services (including any third party materials).

15.2 In the event of the Company being hindered or prevented from fulfilling its obligations under these Terms due to a Force Majeure Event, the Company shall give notice of suspension as soon as reasonably possible to the Minder stating the date and extent of such suspension and the cause thereof. The Company shall resume the performance of such obligations as soon as reasonably possible after the removal of the cause and shall so notify the Minder.

16. ENTIRE AGREEMENT

These Terms and any document referred to in these Terms constitutes the entire understanding between the parties with respect to the subject matter of these Terms and supersedes all prior agreements, contracts, negotiations and discussions between the parties relating to it.

17. AMENDMENTS

Save as expressly provided in these Terms, no amendment or variation of these Terms shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.

18. WAIVER

The failure of a party to exercise or enforce any right under these Terms shall not be deemed to be a waiver of that right, nor operate to bar the exercise or enforcement of it at any time or times thereafter.

19. SEVERANCE

191 If any provision of these Terms (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

19.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

20. COMMERCIAL RE-USE PROHIBITED

20.1 The Minder agrees not to license, sub-license, contract, sub-contract, assign, distribute, reproduce, duplicate, copy, sell, resell or exploit for any commercial purposes, any portion of the Platform, the Services or the Application without expressly being authorised to do so by the Company.

21. TERMINATION

The Company may terminate these Terms immediately by notice to the Minder in writing and at its sole discretion.

22. GOVERNING LAW AND JURISDICTION

These Terms are governed by, and shall be construed in accordance with, the laws of Ireland and the Irish Courts shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any dispute, which may arise out of or in connection with these Terms.

These **TERMS** have been entered into on the **DATE** upon which the Minder has complied with the provisions of Clause 2 above.

SIGNED for and on

behalf of **TLC Technologies Limited**

