

KITE TERMS AND CONDITIONS

Last updated: 05 August 2021



PART A – INTRODUCTION

1. Definitions

1.1 Candidate has the meaning set out in paragraph 2.5;

1.2 Candidate Representative has the meaning set out in paragraph 2.5;

1.3 Contract means the contract in place between Kaplan and a Candidate pursuant to paragraph 3.4 or between the Kaplan and a Candidate Representative pursuant to paragraph 5.5 in respect the booking of a KITE assessment.

1.4 Improper Conduct means any disruptive activity carried out by a candidate before, during or after any KITE assessment (whether or not done intentionally);

1.5 KITE Team means the KITE Team as described at paragraph 2.4;

1.6 Kaplan has the meaning set out in paragraph 2.2; and

1.7 Malpractice refers to any activity carried out by a Candidate (whether or not done intentionally) which could result in either the Candidate or another Candidate obtaining an unfair and/or undue advantage in connection with the KITE assessment.

2 Information about KITE

2.1 The Kaplan International Tools for English (“**KITE**”) is an English language proficiency assessment system designed to measure English language ability and track learning progress over time (“**KITE Platform**”). These Terms and Conditions apply to all assessments taken on the KITE Platform.

2.2 The KITE assessments are provided by Kaplan International Colleges UK Limited, a company registered in England and Wales (registration number 05268303) whose registered office is at Palace House, 3 Cathedral Street, London SE1 9DE United Kingdom (“**Kaplan**”).

2.3 Kaplan subcontract to Verificent Technologies Inc. who provide Proctortrack an automated online remote proctoring solution to verify the identity of Candidates undertaking the KITE assessment and conduct remote invigilation to ensure test integrity. Verificent Technologies Inc. is a company registered in Delaware, USA with its registered office at 1250 Broadway, 26th Floor, New York, NY 10001 USA (“**Verificent**”).

2.4 The KITE Team is responsible for organising and managing the KITE assessments, including the booking process and general queries in relation to assessments, reasonable adjustments, appeals and complaints.

2.5 Bookings of the KITE assessments may be made by an individual intending to sit an assessment (a “**Candidate**”) or by a training provider, employer, agent or other person or entity booking on behalf of a Candidate or Candidates (a “**Candidate Representative**”).

2.6 If you are a Candidate, please ensure that you read the following sections of these Terms and Conditions: Part A – Introduction, Part B – Terms and conditions which apply to Candidates, Part D – Fees and Cancellation and Part E – General Terms. If you are a Candidate Representative, please ensure that you read these Terms and Conditions in full.

PART B - TERMS AND CONDITIONS WHICH APPLY TO CANDIDATES

3 Booking a KITE assessment

3.1 If you are booking an assessment as a Candidate, the terms and conditions set out in this Part B apply.

3.2 A Candidate may book a KITE assessment by submitting an online registration form (“**Registration Form**”) on either (i) the KITE website (www.takekite.com); (ii) a university website with a link to the Registration Form; or (iii) by contacting the KITE Team kite@kaplan.com who will email a link to the Registration Form. A Candidate Representative may complete and submit the Registration Form on behalf of the Candidate.

3.3 Once the Candidate or Candidate Representative has submitted the Registration Form, the KITE Team will send the Candidate an email with a link to the payment portal where the Candidate can pay for the KITE assessment, and a copy of these Terms and Conditions and the KITE Privacy Policy.

3.4 By submitting the Registration Form and paying for the KITE assessment, the Candidate is agreeing to these Terms and Conditions. When the Candidate receives the payment confirmation email, a contract based on these Terms and Conditions comes into existence between the Candidate and Kaplan.

3.5 After Kaplan receives payment from the Candidate for the KITE assessment, an email will be sent to the Candidate to confirm that the KITE assessment has been booked, along with the Candidate’s login details for the KITE assessment. A copy of these Terms and Conditions will be included in the booking confirmation email.

4 Data protection

4.1 Kaplan is the “data controller” responsible for the safe and appropriate use of the data provided by the Candidate.

4.2 Kaplan collects and processes the Candidate’s personal data submitted in connection with the KITE assessment so that Kaplan can process the Candidate’s application, payment and provide examination and assessment services.

4.3 A Candidate has certain data subject rights, such as the right to rectification, right to erasure, right to object or to restrict processing and the right of access. For a full explanation of how Kaplan handles a Candidate’s personal data and how a Candidate can exercise data subject rights please see the [Privacy Notice](#).

PART C - TERMS AND CONDITIONS WHICH APPLY TO CANDIDATE REPRESENTATIVES

5 Booking an assessment

5.1 If you are booking an assessment on behalf of a Candidate(s) as a Candidate Representative, the terms and conditions set out in this Part C apply.

5.2 A Candidate Representative may book an assessment for a Candidate(s) by submitting a Registration Form on either (i) the KITE website (www.takekite.com); (ii) a university website with a link to the Registration Form; (iii) or by contacting the KITE Team at kite@kaplan.com who will email a link to the Registration Form. If the Candidate Representative is paying for the KITE assessment on behalf of the Candidate, they must make a note in the Registration Form, and if there is no provision within the Registration Form to notify regarding payment, the Candidate Representative must email the KITE Team at kite@kaplan.com.

5.3 Where a Candidate Representative submits a Registration Form on behalf of Candidate(s), the Candidate Representative agrees that it will inform each Candidate (on whose behalf it is booking a KITE assessment) about the requirements of Candidates set out in these Terms and Conditions and the Candidate Representative must provide a copy of these Terms and Conditions to each Candidate (on whose behalf it is booking an assessment) prior to submitting the Registration Form and paying for the KITE assessment where applicable. The Candidate Representative must obtain confirmation from each Candidate that they have read and agree to the terms and conditions which apply to Candidates under these Terms and Conditions. Please refer to paragraph 2.6 which outlines the terms and conditions which applies to Candidates.

5.4 If the Candidate Representative is paying for the KITE assessment on behalf of the Candidate, the point at which the Candidate Representative submits payment for the KITE assessment, both the Candidate Representative and the Candidate(s) (on whose behalf the Candidate Representative has made a booking) are agreeing to these Terms and Conditions. Once the Candidate Representative and the relevant Candidate(s) have received confirmation in writing that the fee for the KITE assessment has been made, a contract based on these Terms and Conditions comes into existence between the Candidate Representative, the Candidate(s) and Kaplan. A separate payment confirmation email will be sent to the Candidate Representative confirming the fee paid by the Candidate Representative for the assessment.

5.5 After Kaplan receives payment from the Candidate Representative for the KITE assessment, an email will be sent to the Candidate Representative and the relevant Candidate(s) to confirm when the KITE assessment has been booked. The booking confirmation email to the Candidate will include the Candidate's login details for the KITE assessment. The booking confirmation email to the Candidate Representative will confirm the number of KITE assessments booked. A copy of these Terms and Conditions will be included in the booking confirmation emails.

6 Data protection

6.1 The parties acknowledge that the Candidate Representative is a "controller" of any Candidate personal data it discloses to Kaplan, and that Kaplan will process the Candidate personal data as a "processor" for the purposes of performing the services under the Contract.

6.2 The Candidate Representative will ensure that it has the correct legal basis to share personal data with Kaplan and that the Candidate receives a copy of, or is made aware of, the Candidate Representative's Privacy Policy. The Candidate Representative will also ensure the Candidate receives a copy of, or is made aware of, Kaplan's [Privacy Policy](#).

PART D - FEES AND CANCELLATION

7 Assessment fees

7.1 The fees payable for the KITE assessment and other charges will be detailed on the website that the Registration Form is located (e.g. the KITE website (www.takekite.com) or the university website as applicable). Fees paid to book an assessment are payable to Kaplan.

7.2 All fees must be paid in Pounds Sterling (£) at the time of the booking. Places on an assessment are secured only when payment has been received in full and all conditions of payment have been complied with.

7.4 In the event a booking is made for a Candidate to re-sit any assessment, the fees payable are those applicable for that assessment will be provided by the KITE Team prior to the time of booking the re-sit. Fees may differ from the amount paid for the original assessment and is at the sole discretion of Kaplan.

7.6 Assessment fees are non-refundable, whether in full or in part, except under the circumstances specified in paragraphs 8, 9 and 11 below. This applies irrespective of whether the Candidate undertakes the KITE assessment.

8 Cancellation within 14 days of payment: the “cooling off” period

8.1 Candidates and Candidate Representatives have fourteen (14) days after the date of the payment confirmation email to cancel the relevant booking and receive a full refund. If a Candidate has taken the KITE assessment during the cooling off period, the Candidate may not claim a full refund as the services have already been provided. In order to exercise the cancellation right, Candidates or Candidate Representatives can either:

(a) use the Model Cancellation Form (a copy of which is attached to these Terms and Conditions at the Schedule 1 below); or

(b) contact the KITE Team in writing using the contact details found at paragraph 18.1, and providing the following information:

(i) booking reference (if the booking for the KITE assessment has been made);

(ii) the name and email address of the Candidate Representative or Candidate who made the booking (and if the booking was made by a Candidate Representative, the names of the Candidate(s) whose booking is being cancelled); and

(iii) setting out that the Candidate Representative or Candidate is exercising its right to cancel **during** the 14 day "cooling-off period".

For the avoidance of doubt, bookings made by Candidates may only be cancelled by Candidates and bookings made by Candidate Representatives may be cancelled by Candidate Representatives or Candidates.

8.2 Where a Candidate or Candidate Representative is exercising its "cooling off" right to cancel under paragraph 8.1 above, Kaplan will make the refund within fourteen (14) days of Candidate or Candidate Representative informing Kaplan in accordance with paragraph 8.1 above. Refunds will be made to the original payor using the same means of payment as initially used to pay Kaplan (unless this is not possible, in which case Kaplan will use a suitable alternate means).

9 Other cancellation rights and cancellation charges: after the “cooling off” period

9.1 Candidates or Candidate Representatives who wish to cancel an assessment booking after the end of the 14 day "cooling-off period" referred to in paragraph 8 above, may do so by using the Model Cancellation Form (a copy of which is attached to these Terms and Conditions at the Schedule 1) or by notifying the KITE Team in writing using details at paragraph 16.1, including:

(a) booking reference (if the booking for the KITE assessment has been made);

(b) the name and email address of the Candidate Representative or Candidate who made the booking (and if the booking was made by a Candidate Representative, the names of the Candidates whose booking is being cancelled); and

(c) setting out that the Candidate Representative or Candidate is exercising its right to cancel **after** the 14 day "cooling-off period".

For the avoidance of doubt, if the Candidate has taken the KITE assessment, the Candidate may not claim a refund as the services have already been provided. Bookings made by Candidates may only be cancelled by Candidates and bookings made by Candidate Representatives may be cancelled by Candidate

Representatives or Candidates. In the event that a Candidate cancels a booking made by a Candidate Representative, the Candidate Representative is liable for the cancellation charges set out in paragraph 9.8.

9.2 If the cancellation is made in accordance with paragraph 9.1 above, a refund of the fees paid less the cancellation charges set out in paragraph 9.8, will be issued to the Candidate or Candidate Representative within fourteen (14) days less. Refunds will be made to the original payor using the same means of payment as initially used to pay Kaplan (unless this is not possible, in which case Kaplan will use a suitable alternate means).

9.6 In the event that Kaplan cancels the Contract for any reason (except as specified in paragraph 14.1), through no fault of the Candidate or Candidate Representative, the Candidate or Candidate Representative (whoever made the booking and payment) shall be entitled to receive a full refund of the assessment fees paid by the Candidate or Candidate Representative (as relevant).

9.7 The cancellation charges set out in paragraph 9.8 will not apply where a cancellation has been made in light of mitigating circumstance and dealt with in accordance with the procedure set out in paragraph 13 (Mitigating circumstances and non-attendance on medical grounds).

9.8 Cancellation Charges. Where the Candidate or Candidate Representative as applicable, cancel the booking after the end of the 14 day “cooling-off period”, a cancellation charge of £10 will apply.

PART E - GENERAL TERMS

10 Reasonable adjustments

10.1 If a Candidate believes that they are entitled to any reasonable adjustments in connection with a KITE assessment, the Candidate must contact the KITE Team by email at kite@kaplan.com together with the Candidate’s name, email address, booking reference (if the booking for the KITE assessment has been made) and supporting evidence no less than five (5) business days prior to the relevant assessment.

10.2 The application for reasonable adjustments must include relevant information which is sufficiently detailed to identify:

- (a) the nature of the disability or condition;
- (b) the effect of the disability or condition on the Candidate’s ability to perform the KITE assessment; and
- (c) requested reasonable adjustments for the Candidate and how these adjustments will address the Candidate’s needs.

10.3 The KITE Team will only accept applications for reasonable adjustments from Candidates directly and will not discuss such applications with Candidate Representatives. Where a booking has been made by a Candidate Representative on behalf of a Candidate, the relevant Candidate will have to submit the application for reasonable adjustment to the KITE Team.

10.4 Kaplan reserves the right to reject an application made in accordance with this paragraph 10, notwithstanding reasonable adjustments, if in the opinion of Kaplan the Student’s disability or condition makes the Student unable or unlikely to complete the KITE assessment successfully.

11 Mitigating circumstances and non-attendance on medical grounds

11.1 Any Candidate wishing to make a claim for mitigating circumstances should notify the KITE Team without undue delay in writing using details at paragraph 16.1, including

- (a) booking reference (if booking for KITE assessment has been made);

(b) the name and email address of the Candidate; and

(c) explanation of medical grounds for non-attendance and appropriate medical evidence.

11.2 Full assessment fees remain payable in respect of a Candidate who is unable to attend an assessment on medical grounds unless they are able to provide appropriate medical evidence. Medical evidence must be provided prior to any refund being made and should be sent to the contact details stated below at paragraph 16.1.

12 Intellectual Property

12.1 The Candidate grants Kaplan an irrevocable, perpetual, non-exclusive, worldwide, royalty-free, sub-licensable right to reproduce, adapt, modify, communicate and publish all content submitted or input by the Candidate on the KITE Platform.

12.2 Subject to paragraph 12.1, Kaplan own all intellectual property rights (including copyright) in the KITE Platform including results from KITE assessments. Kaplan may use generic, aggregated and de-identified data (including but not limited to, any data submitted by the Candidate through the KITE Platform and any data contained in the Candidate's KITE assessment results) for any purpose, including Kaplan's own research purposes or in collaboration with any partners or professionals engaged by Kaplan.

13 Candidate Behaviour and Conduct

13.1 The Candidate acknowledges and agrees that they must not:

(a) use the KITE Platform or any content and or services for any other purpose except as permitted by this Contract;

(b) share the password to the Candidate's user account on the KITE Platform. The Candidate must notify the KITE Team immediately if the Candidate discovers that their user account on the KITE Platform is being used by an unauthorised third party or that the Candidate has shared their password;

(c) remove or tamper with any copyright notices on the KITE Platform;

(d) disassemble, decompile, reverse engineer, or create derivative works or functionally equivalent to software from the KITE Platform;

(e) copy or download, in a systematic manner, any text, graphics, information, designs, data or other content from the KITE Platform, or communicate or otherwise distribute such systematically obtained text, graphics, information, designs, data or other content; or

(f) breach or circumvent or attempt to breach or circumvent the security of the KITE Platform (including by hacking) or engage in any other malicious, illegal or damaging behaviour in relation to KITE Platform;

(g) directly or indirectly, introduce or permit the introduction of any virus, worm, trojan or other malicious code into the KITE Platform, or in any other manner whatsoever corrupt, degrade or disrupt the KITE Platform; and

(h) permit or permit a third party to upload or submit any data or information to or via the KITE Platform (or provide Kaplan with any data or information in connection with the KITE Platform) nor otherwise use the KITE Platform:

(i) to engage in any activity which breaches any law, infringes a third party's intellectual property rights, or in manner which interferes with the rights of any other person;

(ii) to infringe the intellectual property rights (including trademarks and copyright) or Kaplan or any third party;

(iii) in any way that is defamatory, obscene, misleading or deceptive, fraudulent or otherwise illegal; or

(iv) in any way that constitutes misuse, or resale or other commercial use, of the KITE Platform (or any content and/or services provided or made available through the KITE Platform).

13.2 In the event that a Candidate breaches its obligations under paragraph 13.1, Kaplan reserves the right to determine how to respond and Kaplan shall not be responsible for the impact its decision may have on the Candidate's use of the KITE Platform.

13.3 The Candidate agrees to not undertake in any activity which would amount to Malpractice and/or Improper Conduct before, during or after taking any KITE assessment. The following is a non-exhaustive list of Malpractice and/or Improper Conduct:

(a) impersonation or any other deliberate attempt to deceive;

(b) using materials or aids which are not permitted by this Contract or Kaplan;

(c) providing and/or disseminating information about any element of the KITE assessment with a view to assist current or prospective Candidates; or

(d) providing false information and/or making a fraudulent claim at any time.

13.4 Where there is any suspicion or allegation of Malpractice and/or Improper Conduct, Kaplan will mark the KITE assessment as invalid and inform the Candidate.

13.5 If a Candidate wishes to submit a complaint regarding Kaplan's decision under paragraph 13.4, the Candidate may email the KITE Team at kite.appeals@kaplan.com by outlining your complaint and providing the following details:

(a) Candidate name;

(b) Contact details;

(c) Booking reference and date of KITE assessment;

(d) The response you would like from Kaplan; and

(e) Any supporting evidence.

13.6 The KITE Team will endeavour to respond to any complaint submitted in accordance with paragraph 13.5 within fourteen (14) days of receiving the complaint from the Candidate. If the KITE Team are unable to respond within fourteen (14) days of receiving the complaint, the Candidate will be contacted.

14 Events beyond the control of Kaplan

14.1 Kaplan will not be liable in cases where Kaplan or the KITE Team are unable to fulfil any services in connection with a KITE assessment due to fire, natural disaster, act of government, terrorist attack, failure of utility service or any other reason which is beyond its reasonable control, save that, the Candidate or Candidate Representative (whoever made the booking and payment) shall be entitled to select an alternate assessment date or opt to receive a full refund of the assessment fees paid by the Candidate or Candidate Representative (as relevant).

14.2 Candidates will be notified of any cancellation by Kaplan in accordance with paragraph 16.1 above, by email.

15 Liability and performance issues

15.1 Kaplan does not exclude or limit in any way its liability to either Candidates or Candidate Representatives where it would be unlawful to do so. This includes liability for death or personal injury caused by Kaplan's negligence or the negligence of its employees, agents or subcontractors or for fraud or fraudulent misrepresentation.

15.2 Subject to paragraphs 15.3 and 15.4, where Kaplan fails to comply with any of these Terms and Conditions, save where paragraph 16.1 applies, Kaplan is responsible for loss or damage the Candidate or Candidate Representative suffers that is a foreseeable result of Kaplan's breach or failure to use reasonable care and skill in providing the services. Kaplan is not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the Contract was made, both Kaplan and the Candidate or Candidate Representative (as the case may be) knew it might happen.

15.3 Subject to paragraph 15.4 and except where paragraph 9.6 above applies, Kaplan's liability under these Terms and Conditions is limited to the amount of fees paid by the Candidate or Candidate Representative (as the case may be) for the relevant assessment and Kaplan is not liable to Candidates or Candidate Representatives for any indirect, special or consequential losses.

15.4 Kaplan excludes liability to the fullest extent permitted by law in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms and Conditions.

16 Miscellaneous

16.1 A Candidate or Candidate Representative may contact the KITE Team regarding general queries in writing to by email to kite@kaplan.com or by post to KITE Team, Kaplan International Colleges UK Limited, Palace House, 3 Cathedral Street, London SE1 9DE United Kingdom.

16.2 If a Candidate wishes to make an appeal concerning the outcome of an assessment or a Candidate or Candidate Representative wish to make a complaint about the services, they should contact the KITE Team at the details specified in paragraph 16.1.

16.3 When the word "in writing" is used in these Terms and Conditions, this includes by email.

16.4 No other person shall have any rights to enforce any of these Terms and Conditions.

16.5 If a court finds part of this Contract illegal, the rest of the contract will continue in force. Each of the paragraphs of these terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.

16.6 If Kaplan delays enforcing this Contract against a Candidate or Candidate Representative, it can still enforce it later.

16.7 These Terms and Conditions are governed by English law and the courts of England and Wales have exclusive jurisdiction in respect of any proceedings.

17 Free KITE Assessment

17.1 Where a Candidate is offered a free KITE assessment, Part A1, Part B – paragraph 4 and Part E of the Terms and Conditions will apply. To cancel a KITE assessment booking, the Candidate can email the KITE Team at kite@kaplan.com with the applicable details specified in the Model Cancellation Form in Schedule 1.

17.2 The free KITE assessment is non-exchangeable, non-transferable, and non-negotiable. No cash alternative or other substitution shall be permitted.

SCHEDULE 1

MODEL CANCELLATION FORM

(Complete and return this form only if you wish to withdraw from the contract)

To the KITE Team c/o kite@kaplan.com or KITE Team, Kaplan International Colleges UK Limited, Palace House, 3 Cathedral Street, London SE1 9DE

I/We [*] hereby give notice that I/We [*] cancel my/our [*] contract for the supply of the following service – KITE assessment on [INSERT DATE & BOOKING REFERENCE],

Ordered on [*,],

Name of Candidate / Candidate Representative,

E-mail Address of Candidate / Candidate Representative

Signature of Candidate / Candidate Representative

Date

[*] Delete as appropriate