

**SUPPLYING STAFF SERVICES WHERE STAFF TO BE EMPLOYED BY THANK EVANS CHILDCARE  
AGENCY LTD  
CLIENT TERMS OF BUSINESS**

**1. DEFINITIONS**

1.1. In these Terms of Business the following definitions apply:

**“Assignment”** means the period during which the Worker is supplied to render services to the Client;

**“Client”** means the person, firm or corporate body together with any subsidiary or associated company, as defined by the Companies Act 2006, to whom the Worker is supplied or introduced;

**“the Employment Business”** means **THANK EVANS CHILDCARE AGENCY LIMITED**, a company incorporated under the Companies Acts in Scotland having its registered office at 58 Queens Road, Aberdeen, Aberdeenshire AB15 4YE, and having Company Number SC315619

**“Engagement”** means the engagement, employment or use of the Worker directly by the Client or any third party to whom the Client has introduced the Worker, or through any other employment business on a permanent or temporary basis, whether under a contract of service or for services; an agency, license, franchise or partnership arrangement; or any other engagement; directly or through a limited company of which the Worker is an officer or employee, and “Engages” and “Engaged” shall be construed accordingly ;

**“Fees Table”** means the table of fees given to the Client by the Employment Business prior to the commencement of the contract between them.

**“Worker”** means the individual who is introduced by the Employment Business to render services to the Client.

**“Transfer Fee”** means the fee payable in accordance with clause 7 below and Regulation 10 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

**“Introduction Fee”** means the fee payable in accordance with clause 7.2 below and Regulation 10 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

<b>“Introduction”</b>	means (i) the Client’s interview of a Worker in person or by telephone, following the Client’s instruction to the Employment Business to supply a Worker; or (ii) the passing to the Client of a curriculum vitae or information which identifies the Worker; and which leads to an Engagement of that Worker.
<b>“Remuneration”</b>	includes base salary or fees, guaranteed and/or anticipated bonus and commission earnings, allowances, inducement payments, the benefit of a company car and all other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by the Worker for services rendered to or on behalf of the Client or any third party and shall include, where a company car is provided, a notional amount of £30.00 per week.
<b>“Holiday Allowance”</b>	means, in respect of a Regular Contract, a maximum of 4 weeks per Year during which the Employment Business may not charge fees should the service not be required
<b>“Year”</b>	means any year commencing on 1 <sup>st</sup> April and finishing on the following 31 <sup>st</sup> March
<b>“Registration Form”</b>	means the handwritten form completed by the Client and submitted by it to the Employment Business
<b>“Regular Contract”</b>	means any Assignment that requires Workers at either the same times or for similar hours every week; but does not mean any Assignment requiring ad-hoc, occasional, emergency service or provision under a Term-time only Contract.
<b>“Term-time only Contract”</b>	means any Assignment that requires Workers at either the same times or for similar hours every week during school terms only
<b>“Written Notice”</b>	means either a letter, signed and dated, from the Client, or an email from the Client

1.2. Unless the context otherwise requires, references to the singular include the plural.

1.3. The headings contained in these Terms are for convenience only and do not affect their interpretation.

## 2. THE CONTRACT

- 2.1. These Terms constitute the contract between the Employment Business and the Client for the supply by the Employment Business of the Worker's services to the Client and they are deemed to be accepted by the Client by virtue of its request for, interview with, or Engagement of the Worker, or the passing of any information about the Worker by the Client to any third party following an Introduction.
- 2.2. These Terms, any Registration Form (and any subsequent variation thereof) and any Fees Table (as the same may be amended from time to time) contain the entire agreement between the parties and unless otherwise agreed in writing by Susan Evans of the Employment Business, these Terms prevail over any terms of business or purchase conditions put forward by the Client.
- 2.3. The Employment Business shall send a printed Registration Form, to the Client within the first month of the Assignment and thereafter, as applicable, every time a major change is made to its terms, and the Client must return the same, duly signed and dated within 2 weeks of its receipt thereof. In the event of any failure to do so on the part of the Client, the Employment Business may suspend the Assignment, pending the return of the Registration Form.
- 2.4. No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between the Employment Business and the Client and are set out in writing and a copy of the varied terms is given to the Client stating the date on or after which such varied terms shall apply.

### **3. CHARGES**

- 3.1 The Client agrees to pay the hourly charges, registration fees and any other applicable fees of the Employment Business as the same shall be notified to and agreed with the Client. The hourly charges are calculated according to the number of hours worked weekly by the Worker (rounded up to the nearest quarter hour) and comprise the Worker's pay and the Employment Business's commission, employer's National Insurance contributions and any travel, hotel or other expenses as may have been agreed with the Client or, if there is no such agreement, such expenses as are reasonable. The Employment Business is a VAT exempt company and therefore there is no VAT chargeable on the fees.
- 3.2 The Employment Business will invoice the hourly charges to the Client monthly, and the Client will pay the Employment Business the invoiced amount within 7 days of the date of the invoice. The Employment Business shall be entitled to charge a weekly fee in respect of any amounts that are overdue, at a rate of 5% of the amount outstanding until the date of payment or £10.00, whichever is the greater.
- 3.3 Any Client with a Regular Contract which commenced not less than 13 weeks prior to the first date notified as hereinafter stated, has a Holiday Allowance. Where such Regular Contract commences after the start of a Year or finishes before the end of a Year, the Holiday Allowance will be reduced pro rata. The Holiday Allowance will be applied, provided the payments due under these Terms are up to date and provided that at least 2 week's prior Written Notice is received by the Employment Business. Unused Holiday Allowance cannot be carried over into a subsequent Year. Should an Assignment end before the Holiday Allowance to which the Client is entitled has been used, the Employment Business will make no refund to the Client.

- 3.4 The registration fees are non-refundable.
- 3.5 The Employment Business recognises the Aberdeen City public holidays only and on these days its hourly rate will be 1.5 times the hourly fees set out in Clause 3.1, other than on Christmas Day, Boxing Day, New Year's Day and 2<sup>nd</sup> January, when the hourly rate will be twice the hourly fees set out in Clause 3.1. Should the Client not require the services of the Worker on these days, the Employment Business will make no charge, providing the Employment Business receives not less than 2 weeks prior Written Notice to that effect. Should the Client want the Worker to work on Christmas Day, Boxing Day, New Year's Day or 2<sup>nd</sup> January, the Client must give to the Employment Business not less than 4 weeks' prior Written Notice. No Worker will be supplied on and no charge will be made for any Aberdeen City public holiday providing 2 weeks' prior Written Notice is received by the Employment Business.
- 3.6 The Employment Business may charge a fee of 25% of the amount normally charged in a week to the Client, or the equivalent of 3 hours' fees, whichever is the greater, for any agreed Assignment cancelled or rearranged by the Client with less than 48 hours' Written Notice. The Employment Business may charge fully for rearranged or cancelled Assignment, where no prior Written Notice is provided to the Employment Business.
- 3.7
- a) The hours of work agreed at the start of the Assignment will be the minimum contract hours and will be confirmed by the Employment Business to the Client in writing. The Employment Business may charge these minimum contract hours as a base rate, should fewer hours be used during any week of the Assignment (except where the Worker is on sick leave or the Client is using previously agreed Holiday Allowance).
  - b) Where an Assignment is a Term-time only Contract the Client must confirm to the Employment Business known school holiday dates in writing prior to the start of the Assignment and update them at the start of each subsequent school year. In service training (inset) days will not be treated as holidays
  - c) When the Client requires to alter the hours and days agreed at the start of a Regular or Term-time only Contract, whether occasionally or temporarily, the Client must provide the Employment Business with not less than 48 hours' notice, which failing, the Employment Business may charge at its higher rate.
  - d) No Holiday Allowance is applicable to Term-time only Contracts.
- 3.8 Should the Client want the Employment Business to advertise in newspaper/s or through any other medium, the Client will pay to the Employment Business all costs incurred in connection therewith.
9. The Client will reimburse the Employment Business with all reasonable travel and parking costs incurred by any applicant attending any interview with the Client.
10. The Client will pay the Employment Business an administration fee of £5 for any amendments to these Terms sought by it and agreed with the Employment Business.

11. In the event of extreme weather conditions. Workers are expected to make the effort to attend work. In such circumstances where the Client does not require the Worker to attend the Client must contact the Worker to advise. The Employment Business will charge cancellation fees.

#### **4. INFORMATION TO BE PROVIDED**

- 4.1. When making an Introduction of a Worker to a Client the Employment Business shall inform the Client of the identity of the Worker; and shall confirm that the Worker has the necessary or required experience, training, qualifications and any authorisation required by law or a relevant professional body to work on the Assignment, that the Worker will be employed by the Employment Business under a contract of service, and that the Worker is willing to work on the Assignment.
- 4.2. Such information will be given in paper form or by electronic means by the end of the third business day (such expression excluding Saturdays, Sundays and any public or bank holidays) following the commencement of an Assignment, save where the Worker is being Introduced for an Assignment in the same position as one in which the Worker had previously been supplied and such information has already been given to the Client.

#### **5. TIME SHEETS**

- 5.1 At the end of each month of an Assignment (or at the end of the Assignment, where it is for a period of less than one month) the Client shall sign the Employment Business's time sheet verifying the number of hours worked by the Worker during that month.
- 5.2 Signature of the time sheet by the Client is confirmation of the number of hours worked. If the Client is unable to sign a time sheet produced for authentication by the Worker because the Client disputes the hours claimed, the Client shall inform the Employment Business as soon as is reasonably practicable and shall co-operate fully and in a timely fashion with the Employment Business to enable the Employment Business to establish what hours, if any, were worked by the Worker. Failure to sign the time sheet does not absolve the Client of its obligation to pay the charges in respect of the hours worked.
- 5.3 The Client shall not be entitled to decline to sign a timesheet on the basis that it is dissatisfied with the work performed by the Worker.

#### **6. PAYMENT OF THE WORKER**

- 6.1 The Employment Business will pay the Worker and where appropriate, deduct and pay National Insurance Contributions and PAYE Income Tax applicable to the Worker pursuant to sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003.

#### **7. TRANSFER AND INTRODUCTION FEES**

1. In the event of the Engagement by the Client of a Worker supplied by the Employment Business for an Assignment either directly or pursuant to the Worker being supplied by another employment business, within any of
  - the duration of the Assignment;
  - 14 weeks from the start of the first Assignment (each new assignment where there has been a break of more than 42 days (6 weeks) since the end of a previous Assignment shall also be considered to be the 'first Assignment' for these purposes); or
  - 8 weeks from the day after the last day the Worker worked on the Assignment;

the Client shall, at the Client's option to be intimated within 5 days of a request by the Employment Business for such option to be exercised, either

- a) pay the current hourly charge agreed pursuant to clause 3.1 for each hour the Worker would have been so employed or supplied for a further period of 8 weeks; **or**
- b) pay the **Transfer Fee** which will be the equivalent of two week's gross fees, Transfer Fee would be 10 hours x the current hourly charge. No refund of the Transfer Fee will be paid in the event that the Engagement subsequently terminates.

Where the Client does not so elect before the Worker is Engaged the parties agreed that the Client shall pay the Transfer Fee.

2. In the event that there is an Introduction of a Worker to the Client which does not result in the supply of that Worker by the Employment Business to the Client, but which leads to an Engagement of the Worker by the Client either directly or pursuant to the Worker being supplied by another employment business within 6 months following the date of Introduction, the Client shall, at the Client's option, to be intimated within 5 days of a request by the Employment Business for such option to be exercised, either
  - a) pay a sum equivalent to the fees which the Employment Business would have been entitled to charge for the Worker for 8 weeks at the hourly charge set out in the Fees Table; **or**
  - b) pay the Introduction Fee which will be the equivalent to the fees which the Employment Business would have been entitled to charge for 1 week at the hourly fee set out in the Fees Table.. No refund of the Introduction Fee will be paid in the event that the Engagement subsequently terminates.

Where the client does not so elect before the Worker is Engaged the parties agree that the Introduction Fee shall be due.

- 7.3 In the event that the Engagement of the Worker is for a fixed term of less than 12 months, the fee in clause 7.1(b) or 7.2(b), calculated as a percentage of the Remuneration, will apply pro-rata. If the Engagement is extended beyond the initial fixed term or if the Client re-engages the Worker within 3 months of the termination of the first Engagement the Client shall be liable to pay a further fee based on the additional Remuneration applicable for the period of Engagement following the initial fixed term up to the termination of the second Engagement or the first anniversary of its commencement, whichever is sooner.

- 7.4 If the Client elects to pay the charges set out in clause 7.1(a) or 7.2 (a), but before the end of 8 weeks, it Engages the Worker supplied by the Employment Business either directly or pursuant to the Worker being supplied by another employment business or the Worker chooses not to be so supplied, the Transfer or Introduction Fee calculated in accordance with either 7.1(b) or 7.2(b) will nonetheless be charged.
- 7.5 In the event that a Worker supplied to a Client is introduced by the Client to a third party which results in the Engagement of the Worker by the third party within any of
- the duration of the Assignment;
  - 14 weeks from the start of the first Assignment (each new assignment where there has been a break of more than 42 days (6 weeks) since the end of the previous Assignment shall also be considered to be the 'first Assignment' for these purposes); or
  - 8 weeks from the day after the last day the Worker worked on the Assignment;

the Client shall pay a Transfer Fee equivalent to one week's gross fees. No refund of the Transfer Fee will be paid in the event that the Engagement subsequently terminates.

- 7.6 In the event that there is an Introduction of a Worker to the Client which does not result in the supply of that Worker by the Employment Business to the Client, but the Worker is introduced by the Client to a third party which results in the Engagement of the Worker by the third party within 6 months from the date of Introduction, the Client shall pay an Introduction Fee equivalent to one week's gross. No refund of the Transfer Fee will be paid in the event that the Engagement subsequently terminates.

## **8. LIABILITY**

- 8.1 Whilst every effort is made by the Employment Business to give satisfaction to the Client by ensuring reasonable standards of skills, integrity and reliability from Workers, and, further, to provide them in accordance with the Client's requirements, the Employment Business is not liable for any loss, expense, damage or delay arising from any failure to provide any Worker for all or part of the period required by the Client. For the avoidance of doubt, the Employment Business does not exclude liability for death or personal injury arising from its own negligence.
- 8.2 Workers supplied by the Employment Business are employees of the Employment Business but are deemed also to be under the supervision, direction and control of the Client from the time they report to take up duties for the duration of the Assignment. The Client will comply with all applicable statutes, including, for the avoidance of doubt, the Working Time Regulations, the Health and Safety At Work etc. Act, by-laws, codes of practice and legal requirements to which any employer is ordinarily subject in respect of its staff (excluding the matters specifically mentioned in Clause 6 above). The Employment Business will ensure the provision of adequate Employer's and Public Liability Insurance cover for the Worker during all Assignments, when Workers are provided knowingly through the Employment Business.
- 8.3 The Client shall advise the Employment Business of any special health and safety matters including but not restricted to those set out in Paragraphs 1 and 2 of the Appendix 1 to these Terms, about which the Employment Business is required to inform the Worker and about any requirements imposed by law or by any professional body, which must be satisfied if the Worker is to fill the

Assignment and that whether they are applicable at the start of the Assignment or whether they arise thereafter. The Client will assist the Employment Business in complying with the Employment Business's duties under the Working Time Regulations by supplying any relevant information about the Assignment requested by the Employment Business and the Client will not do anything to cause the Employment Business to be in breach of its obligations under such Regulations. Where the Client requires or may require the services of a Worker for more than 48 hours in any week, the Client must notify the Employment Business of this requirement before the commencement of that week.

- 8.4 The Client shall advise the Employment Business of any major changes within its home situation that could affect the Worker's job description or the Employment Business's emergency procedures including but not restricted to those matters set out in Paragraph 3 of the Appendix to these Terms.
- 8.5 The Client undertakes that it knows of no reason why it would be detrimental to the interests of the Worker for the Worker to fill the Assignment.
- 8.6 The Client shall indemnify and keep indemnified the Employment Business against any costs, claims or liabilities incurred by the Employment Business arising out of any Assignment or arising out of its non-compliance with clauses 8.2 and 8.3 and/or as a result of any breach of these Terms by the Client.

## **9. SPECIAL SITUATIONS**

- 9.1 Where the Worker is required by law, or any professional body to have any qualifications or authorisations to work on the Assignment or the Assignment involves caring for or attending one or more persons under the age of eighteen or any person who by reason of age, infirmity otherwise is in need of care or attention, the Employment Business will take all reasonably practicable steps to obtain:

- copies of any relevant qualifications, authorisations or training of the Worker,
- a Protection for Vulnerable Groups Scheme Membership, and
- at least two written references,

and will take all reasonably practicable steps to confirm that the Worker is suitable for the Assignment. If the Employment Business is unable to do any of the above, it shall inform the Client of the steps it has taken. The references received by the Employment Business will not be made available to the Client..

- 9.2 The Employment Business will ensure any car used by the Worker is road worthy at all times, and it will regularly take copies of the insurance documents, Tax discs and MOT/V5s of Workers' cars (and Workers are required by the Employment Business to update the Employment Business should there be any changes to their driving licences). However, the Client must ensuring that any car supplied by the Client, is roadworthy at all time, and the Client shall provide to the Employment Business a letter confirming that before the Client supplies a car for the Worker's use.
- 9.3 The Client will supply relevant and safe child car seats for its children. The client will show the Worker how to fit, fasten, adjust and remove such child car seats correctly.

9.4 Before any Worker can be expected to administer medication to the children in his or her care, the Client must provide the Employment Business with, detailed and accurate written permission. Medication log sheets will be provided by the Employment Business and both the Client and the Worker must record all medication administered so as to avoid overdosing.

## 10. TERMINATION

10.1 The Client undertakes to supervise the Worker sufficiently to ensure the Client's satisfaction with the Worker's standards of care. If the Client reasonably considers that the services of the Worker are unsatisfactory, the Client may terminate the Assignment by directing the Employment Business to remove the Worker. The Employment Business may, in such circumstances, reduce or cancel the charges for the time worked by that Worker, provided that the Assignment terminates: -

- a) within four hours of the Worker commencing the Assignment, where the booking is for more than seven hours; or
- b) within two hours of the Worker commencing the Assignment, where the booking is for seven hours or less;

and also provided that Written Notice of the unsuitability of the Worker is given to the Employment Business within 48 hours of the termination of the Assignment.

10.2 Either the Client, or the Employment Business may terminate an Assignment at any time in accordance with the following notice periods:

Within one month of start of Assignment	no notice required
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Thereafter,

Assignments of up to 30 hours/week	2 weeks prior Written Notice
Assignments in excess of 30 hours/week	4 weeks prior Written Notice

10.3 If the Worker is unable to attend work for any reason, s/he is required by the Employment Business to first contact the Client to inform it and to ask whether a replacement will be required and then the Worker is required to inform the Employment Business. If the Client has not been contacted by the Employment Business within 1 hour of such contact from the Worker, then the Client must contact the Employment Business forthwith.

10.4 The Client shall notify the Employment Business within 15 minutes if the Worker fails to attend work without notice.

10.5 The Employment Business shall notify the Client immediately if it receives or otherwise obtains information which gives it reasonable grounds to believe that a Worker supplied to the Client is unsuitable for the Assignment and shall terminate the Assignment in terms of clause 10.2.

**11. MISCELLANEOUS**

11.1 Any Written Notice to be given under these Terms shall be deemed to be duly given if it is delivered by hand at or sent by Royal Mail Special Delivery post or by recorded. Any such Written Notice shall be deemed to have been received not later than forty eight hours after having been posted or delivered, unless the contrary be proved.

**12. LAW**

12.1 These Terms are governed by the law of Scotland and are subject to the exclusive jurisdiction of the Courts of Scotland.

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Signature .....

Date .....

This is the Appendix to the Client Terms of Business issued by Thank Evans Childcare Agency Limited,

## **Health and Safety**

The following lists are extensive but not exhaustive.

1. Infections and Illnesses about which the Client must inform the Employment Business as soon as suspected within the Client's household;
  - 1.1.Chickenpox, Measles, Mumps, German Measles/Rubella
  - 1.2.Head Lice
  - 1.3.Heavy Colds and Influenza
  - 1.4.Scabies, Impetigo and Cold Sores
  - 1.5.Meningitis
  - 1.6.And any other similarly infectious or potentially hazardous ailment.
  
2. Further Infections and Illnesses about which the Client should notify the Employment Business as soon as evident within the Client's household, for the protection of any Worker, including those not directly associated with the Client, with a reduced immune system, e.g. pregnant women;
  - 2.1.Colds
  - 2.2.Stomach Upsets, Sickness / Vomiting, Diarrhoea
  
3. Changes to the Client's situation about which the Client must inform the Employment Business as soon as is practicably possible.
  - 3.1. House moves and telephone number changes
  - 3.2. New additions to the family or new pets
  - 3.3. The arrival/departure of an Au-pair
  - 3.4. Building work and Extensions
  - 3.5. New Phobias, Allergies or Medications of the children