

Terms and Conditions - Childcare Settings

Definitions

“Platform” means You Choose Work Limited, a company registered established in England and Wales whose principal place of business is at 31 Maidstone Road, SK4 3AB.

“Assignment” means the period of time during which the Flexible Worker is supplied by the Platform to work temporarily for and under the supervision and direction of the Childcare Centre for one or multiple Shifts.

“Flexible Worker” means the individual who is Introduced by the Platform to provide services to the Childcare Setting, engaged by the Platform under a contract for services or an employee who is directly employed by the Platform under a contract of employment.

“The Childcare Setting” means the person, firm, company, partnership or other corporate entity to which the Flexible Worker is Introduced.

“Shift” means the duration of time the Flexible Worker is booked to attend the Childcare Setting’s premises on any given day.

“Shift Offer” means the offer of temporary employment for the duration of the Shift(s).

“Induct” or “Induction” refers to the exercise by which the Childcare Settings explains the operating practices and expectations of the Flexible Worker for the duration of the Shift or Assignment, such that the role to be performed by the Flexible Worker is clear.

“Engagement” means the engagement (including the Flexible Workers acceptance of the Childcare Settings offer), employment or use of the Flexible Worker by the Childcare Setting or by any third party to whom the Flexible Worker has been introduced by the Childcare Setting, on a permanent or temporary basis, whether under a contract of service or for services; under an agency, licence, franchise or partnership agreement; or any other engagement; or through a limited company of which the Flexible Worker is an officer, employee or other representative; and “Engage”, “Engages” and “Engaged” shall be construed accordingly.

“WTR” means the Working Time Regulations 1998.

“AWR” means the Agency Workers Regulations 2010;

“AWR Claim” means any complaint or claim to a tribunal or court made by or on behalf of the Flexible Worker against the Childcare Setting and/or the Platform for any breach of the AWR.

“Terms” means these terms of business.

The Contract

These Terms constitute the entire agreement between the Platform and the Childcare Setting for the supply of the Flexible Worker's services by the Platform to the Childcare Setting.

Unless otherwise agreed in writing by the Platform, these Terms prevail over any terms of business or purchase conditions (or similar) put forward by the Childcare Setting. No variation or alteration to these Terms shall be valid unless the details of such variation are agreed between the Platform and the Childcare Setting and are set out in writing. The Platform acts as an employment business for the purposes of the Conduct Regulations when Introducing Flexible Workers for Assignments with the Childcare Setting.

Childcare Setting / Platform Obligations

The Childcare Setting will assist the Platform in fulfilling all regulatory and legal obligations in respect of the Flexible Worker, such as compliance with the Working Time Directive and other such rules and obligations.

The Childcare Setting undertakes that it knows of no reason why it would be detrimental to the interests of the Flexible Worker for the Flexible Worker to fill the Assignment.

The Childcare Setting agrees to pay the Charges as notified to, via the online platform or otherwise provided, and agreed with the Childcare Setting. The Platform reserves the right to vary the Charges agreed with the Childcare Setting, by giving written notice to the Childcare Setting in order to comply with any additional liability imposed by statute or other legal requirement or entitlement.

The Platform will invoice the Charges to the Childcare Setting upon completion of the shift or on a weekly basis where the shift duration is longer than one week. The Childcare Setting will pay the Charges within 7 days of the date of the invoice. The Childcare Setting shall pay all amounts due under the Contract in full and promptly on the date on which they fall due without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

If the Childcare Setting fails to make any payment due to the Platform under the Contract by the due date for payment, then, without limiting the Platform's other rights and remedies, the Childcare Setting shall pay interest on the overdue amount at the rate of 3% per annum above the Bank of England base rate, which shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgement.

The Platform is responsible for paying the Flexible Worker and where appropriate, for the deduction and payment of National Insurance Contributions, PAYE Income Tax and Pension Contributions as applicable to the Flexible Worker.

The Childcare Setting shall be liable to pay a Transfer Fee of £1250 if the Childcare Setting Engages (whether on a paid or voluntary basis) a Flexible Worker Introduced by the Platform other than via the Platform, or Introduces the Flexible Worker to a third party and such Introduction results in an Engagement of the Flexible Worker by the third party.

If the Flexible Worker and the Childcare Setting wish to enter into a direct and permanent contract of employment the Transfer Fee can be discounted at the discretion of the Platform, provided the Childcare Setting agrees to employ the Flexible Worker via the Platform for a fixed number of hours and period of time, the duration of which is to be determined by the Platform. Please contact the

youchoosework team by emailing info@youchoosework.com if you would like some more information regarding this.

Suitability Checks and Information Provision

The Platform will take all reasonably practicable steps to obtain and offer to provide to the Childcare Setting copies of any relevant qualifications or authorisations of the Flexible Worker and copies of two references obtained for the Flexible Worker and to take such other reasonably practicable steps as are required to confirm that the Flexible Worker is suitable for the Shift(s). However, the Childcare Setting is ultimately responsible for obtaining confirmation of any information required (whether by law or otherwise) and for satisfying itself that the Flexible Worker is suitable for the relevant Shift(s).

The Childcare Setting shall assist the Platform by providing any information required to allow the Platform to comply with its statutory obligations under the Safeguarding Legislation and to allow the Platform to introduce Flexible Workers who it reasonably believes are suitable for the Shift(s). In particular in the event that the Childcare Setting removes a Flexible Worker from a Shift in circumstances which would require the Platform to provide information to the Disclosure and Barring Service (or the equivalent authority) under the Safeguarding Legislation, the Childcare Setting will provide sufficient information to the Platform to allow it to discharge its statutory obligations.

Unsuitability of Flexible Workers

The Childcare Provider undertakes to induct and supervise the Flexible Worker sufficiently to ensure the Childcare Provider's satisfaction with the Flexible Worker's standards of work.

If the Childcare Provider reasonably considers that the services of the Flexible Worker are unsatisfactory, the Childcare Provider may terminate the Shift either by instructing the Flexible Worker to leave the Shift immediately, or by directing the Platform to remove the Flexible Worker. The Platform may, in its absolute discretion, in such circumstances, reduce or cancel the Charges for the time worked by that Flexible Worker, provided that the Childcare Provider has notified the Platform immediately that they have asked the Flexible Worker to leave the Shift or the Shift terminates: within 4 hours of the Flexible Worker commencing the Shift. Failure to comply with these provisions will result in the Charges being charged in full.

The Platform shall notify the Childcare Provider immediately if it receives or otherwise obtains information which gives the Platform reasonable grounds to believe that any Flexible Worker supplied to the Childcare Provider is unsuitable for the Shift and shall be entitled to terminate the Shift forthwith without prior notice and without liability. The Childcare Provider shall remain liable for all Charges incurred prior to the termination of the Shift.

The Childcare Provider is responsible for registering via the web application if the worker has attended the Shift and completed the number of hours proposed as part of the Shift Offer.

Termination of the Contract

The Platform or the Childcare Setting may terminate this Contract at any time without prior notice and without liability. In the case of termination by the Childcare Setting, the Childcare Setting shall be liable for the payment of any Charges due and payable for services performed up to the date of termination and for any cancellation charges set out in the accompanying fee schedule. Upon termination of the Contract, any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

Confidentiality

Each of the Parties undertakes that it, and its employees, officers, or representatives, shall keep strictly confidential all information that is directly or indirectly disclosed (however conveyed) by one Party (the disclosing party) to the other Party (the receiving party) which would appear to a reasonable person to be confidential and which relates to the business and affairs of the disclosing party including in relation to the Platform, all details relating to and/or identifying a Flexible Worker, and only use such information for the purpose of the Contract, and not disclose it to any third party other than as may be required by law, or by an order of a court of competent jurisdiction or any governmental or regulatory authority.

All information relating to a Flexible Worker is confidential and is provided solely for the purpose of this Contract. Such information must not be used for any other purpose nor divulged to any third party. Any disclosure by the Childcare Setting to a third party (including an associated childcare setting or a childcare setting within the company group to which the Childcare Setting belongs) of any details regarding a Flexible Worker which results in an Engagement with that third party within 6 months of the last Shift of the Flexible Worker via the Platform shall render the Childcare Setting liable to pay the relevant Transfer Fee.

Data Protection

Each Party shall comply with all the obligations imposed on a controller under the Data Protection Legislation.

Liability

Whilst reasonable efforts are made by the Platform to ensure the Flexible Worker is suitable for the temporary position, no liability is accepted by the Platform for any loss, expense, damage or delay arising from any failure to provide any Flexible Worker for all or part of the Assignment or from the negligence, dishonesty, misconduct or lack of skill of the Flexible Worker or if the Flexible Worker terminates the Assignment for any reason. For the avoidance of doubt, the Platform does not exclude liability for death or personal injury arising from its own negligence or for any other loss which it is not permitted to exclude under law.

Flexible Workers supplied by the Platform pursuant to these Terms are either engaged by the Platform under contracts for services or employed under contracts of employment. Regardless of the contractual relationship between the Platform and the Flexible Worker, for the purposes of an Assignment the Flexible Worker shall be deemed to be under the supervision and direction of the Childcare Setting from the time they report to take up duties and for the duration of the Assignment. The Childcare Setting agrees to be responsible for all acts, errors or omissions of the Flexible Worker, whether wilful, negligent or otherwise as though the Flexible Worker was on the payroll of the Childcare Setting.

The Childcare Setting shall also comply in all respects with all statutory provisions as are in force from time to time including the WTR, all Health and Safety At Work legislation and legislation and guidance relating to Covid-19 and/or any similar epidemic or pandemic and all legal requirements to which the Childcare Setting is ordinarily subject in respect of the Childcare Setting's own staff, including in particular the provision of adequate Employer's and Public Liability Insurance cover for the Flexible Worker during all Assignments. The Childcare Setting agrees that it will only use the Flexible Worker in a position in the setting that is in line with Ofsted regulations and requirements and will not ask the

Flexible Worker to do anything that would contravene those regulations, or any other laws. If the Flexible Worker is asked to do something outside of regulations or laws and the Flexible Worker refuses or leaves, the Childcare Setting is still liable to pay the full Charges for the Assignment for that Flexible Worker.

The Childcare Setting shall indemnify and keep indemnified the Platform against any Losses incurred by the Platform arising out of any Assignment or arising out of any non-compliance with, and/or as a result of any breach of, these Terms by the Childcare Setting.

The Childcare Setting shall inform the Platform in writing of any AWR Claim which comes to the notice of the Childcare Setting as soon possible but no later than 7 calendar days from the day on which any such AWR Claim comes to the notice of the Childcare Setting. If the Flexible Worker brings, or threatens to bring, any AWR Claim, the Childcare Setting undertakes to take such action and give such information and assistance as the Platform may request, and within any timeframe requested by the Platform and at the Childcare Setting's own cost, to avoid, dispute, resist, mitigate, compromise or defend any such AWR Claim and to appeal against any judgment given in respect thereof.

Nothing in the Contract shall limit or exclude either Party's liability for death or personal injury caused by its negligence or for fraud or fraudulent misrepresentation or any other liability which cannot be limited or excluded by law.

Neither Party shall be liable to the other Party, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, or otherwise, for any indirect or consequential loss or damages which may be suffered or incurred by the other Party arising out of or in connection with the Contract.

The Platform's total aggregate liability to the Childcare Setting in respect of all losses arising under or in connection with an Assignment, whether in contract, tort (including negligence), for breach of statutory duty, misrepresentation, or otherwise, shall be limited to the total Charges paid by the Childcare Setting to the Platform in relation to the Shift(s) in respect of which the liability arises.

Each Party acknowledges that it has not relied on, will have no remedies (whether in equity, contract, tort (including negligence), for breach of statutory duty, for misrepresentation (including negligent misstatement), or in any other way) for any warranty, assurance, guarantee or representation which is not expressly set out in the Contract.

General Provisions

Each of the Parties agrees to comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption (including the Bribery Act 2010). The Childcare Setting shall not engage in any activity, practice or conduct which constitutes an offence under the Bribery Act 2010 or which would do if such activity practice or conduct had been carried out in the United Kingdom.

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.