

## Terms and Conditions

### Introduction

Childcare Business Solutions aims to provide you with a professional service of the highest calibre, combining technical excellence with commercial awareness and a practical constructive approach. To help achieve this, it is important that we share an understanding of the basis of which our services are provided. That is why, whenever we work with you, these terms and conditions will apply unless otherwise agreed in writing by James Horsford the Managing Director.

### The team

Childcare Business Solutions team is made up of a range of professionals both directly employed by us and contracted to us to undertake work on our client's behalf as required. The allocation of tasks will be discussed with you throughout the contract period.

### Legal status

Childcare Business Solutions is a registered Ltd company number 6058579. We engage in activities that constitute regulated activities these activities are provided by a registered accountant with ICAEW and registered solicitor with the Law Society.

### Accounts section

Unless otherwise agreed in writing by James Horsford Managing Director of Childcare Business Solutions all accounts must be settled in one of the following manners:

- For single items of work outside of a fixed package of services e.g. A Financial and Business Health Check all accounts must be paid via cheque or cash within 21 days of receiving the service.
- For package service users Childcare Business Solutions provides two payment options:
  - Monthly payment via cheque prior to the commencement of services in any month of the contract period.
  - A standing order dated for payment at the end of each month for the whole contract period.

If you have any query on a bill, please raise it with James Horsford Managing Director of Childcare Business Solutions as soon as possible.

We may at our discretion charge interest on an overdue account from the date on which the bill was issued to the date of payment at the rate of statutory interest from time to time set under the Late Payment of Commercial Debts (Interest) Act 1998. In addition we may exercise a lien [restriction] over your services but we would notify you if we intended to do this.

Our bills will be addressed to you and you will be liable to us for our fees and expenses. This will be the case even if our bill acknowledges that another person may pay it on your behalf.

### Change of contract

The following provisions apply to recurring charges (that is monthly charges for ongoing provision of services and excluding once-only charges).

- The charges are subject to variation in line with any changes to the transaction volumes as set out in this agreement.
- The charges are payable for the minimal terms.

### Provision of services

Childcare Business Solutions working with the client will undertake the creation of an individual timeline action plan as appropriate to the services required. This action plan will form part of the contract between Childcare Business Solutions and the client as such we will use all reasonable endeavours to supply the services ready for acceptance by the dates set out in the action plan (or, in the absence of any dates, at a mutually convenient time).

Notwithstanding the above statement time will be of the essence in relationship to Childcare Business Solutions obligations to ensure all services, including payroll, are provided on the correct date. These are subject to the client providing the necessary input data as requested by Childcare Business Solutions or its partner organisations on time in the agreed format.

The client will not be entitled to exercise its right to terminate this agreement by reason of failure by Childcare Business Solutions to fulfil its services on the agreed date unless and until Childcare Business Solutions fails to provide the services on the correct date for at least 3 occasions in any 12 month period.

### Confidential information

We will keep information about your business and affairs confidential and will not discuss it to any other person except (a) with your consent (b) where disclosure is required or permitted by law (c) to any body which regulate us [such as the Law Society] (d) to the extent that such information enters, or has entered, the public domain or (e) [in confidence only] to our professional indemnity insurers, brokers, auditors or professional advisers.

You agree that we will not (and nobody working for us will) be required to disclose to you, or use on your behalf or for your benefit, any documents or information in our possession and in respect of which we owe a duty of confidentiality to another client, a former client or any other person. Without contradiction you agree the fact that we hold information; whether generally or specifically, about your business and affairs will not at any time prevent use from acting for another client in relation to a matter to which that information might be relevant.

### **Data protection**

The client's data shall remain the client's exclusive property. Upon request, a copy of the client's data will be delivered to the client (in a machine readable format if it exists in such form) upon expiration or termination of this agreement. The client data controller will comply with the data protection act 1998. Consistent with the requirements of the 7 the principle Childcare Business Solutions shall:

- Act only on instruction from the client in respect of any personal data (as defined by the act) processed by Childcare Business Solutions.
- Have technical and organisational measures in place against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data held or processed by Childcare Business Solutions, appropriate to the harm that might result from such unauthorised access.
- Take all reasonable steps to ensure the reliability of any of its staff that have access to personal data processed in connection with this agreement.
- Childcare Business Solutions will not transmit the personal data provided by the client to a country or territory outside of the European Economic Area without ensuring the personal data is afforded adequate protection within the meaning of the act.

From time to time, in accordance with the act, the client by audit the technical and organisation measures that Childcare Business Solutions has in place to ensure it complies fully with the act.

### **Electronic communications**

We normally communicate with our clients in a variety of methods including by e-mail, using the Internet. E-mail involves well-published risks, including delays, non-delivery, data corruption, hacking, interception, unauthorised amendment and other tampering and, in some cases, use of e-mail may compromise confidentiality and legal privilege. In addition, e-mail can transmit viruses, worms, Trojan horses and other malicious codes (viruses). Because we cannot guarantee the effectiveness or security of using e-mail we will not be liable if e-mails are delayed, not received, corrupted, used to hack into systems, intercepted, amended without authority or otherwise tampered with or if they are received by persons other than their addresses or if confidentiality privilege is lost. In addition, although we use anti-virus software, we cannot guarantee that all e-mails we send you will be free from infection and so we exclude any liability for viruses we may pass on to you.

Childcare Business Solutions undertakes to minimise the need to send any personnel information via e-mail. If you would prefer us not to use e-mail for any particular matter, please let James Horsford Managing Director of Childcare Business Solutions know in writing.

### **Intellectual property**

The copyright, and any other intellectual property rights, in any original documents and other materials we generate or us with the clients belongs to Childcare Business Solutions. All materials provided to the client are on the strict condition that they are used for the clients own internal business defined within this contract and not for re-sale or re-use in any way by the client.

Upon an intellectual or copyright infringement, Childcare Business Solutions may at its own expenses and option either:

- Procure the right for the client to continue using the relevant documents.
- Modify them so that they become non-infringing.
- Replace them with suitable and comparable non-infringing substitutes.

Without prejudice to the client remedies in respect of any breach by Childcare Business Solutions, Childcare Business Solutions may terminate this agreement on 14 days written notice to the client if Childcare Business Solutions cannot reasonably exercise any of these options within 21 days of the date if received notice of the Intellectual property or Copyright infringement.

### **Publicity**

Unless you have directed us otherwise, we may disclose to others that you are a client, disclosures of this kind will be made principally for the purposes of marketing.

### **Resolving problems**

If you wish to discuss any matter we are handling or have handled for you, please contact James Horsford Director of Childcare Business Solutions for the matter in the first instance. We would expect to resolve any problem to your satisfaction but, in case we do not, you have access to the complaints and redress scheme operated by ICAEW, IBA, ICM and the Law Society.

### **Termination of contract**

Childcare Business Solutions shall provide the services for the minimal term and afterwards until termination of this agreement as set out below by written notice to other party on the following grounds:

- If the other party commits any material breach of the terms of the agreement, and in the case of a breach capable of being remedied, such breach is not remedied with 30 days of a written request to do so (such written request expressly referring to the threat of termination pursuant of this clause).
- If the other party (i) has a receiver or administration receiver appointed over its assets. (ii) passes a resolutions for winding up (otherwise than for the purpose of a bona fide scheme to solvent passes amalgamation or reconstruction) (iii) a court of competent jurisdiction make an order to that effect (iv) becomes subject to an administration order (v) enters into any voluntary arrangement with its creditors; or (vi) ceases or threatens to cease to carry on business; or

If this agreement is terminated before the end of the minimal term by reason of Childcare Business Solutions default, Childcare Business Solutions may, without prejudice to any other rights and remedies, invoice the client for early termination charges. Such termination charges will include:

- All charges due and or owing at the date of termination.
- A charge equal to the charges that would have been payable for the reminder of the minimal term, assuming no change in transaction volumes or other variables, be less a discount for accelerated receipt and costs saved, which the parties agree will be equal to 20%.
- And childcare Business Solutions may require payment of all or part of such early termination charges prior to completing work for the client and may suspend performance of such work and or exercise a lien on clients data pending due payment of the charges.

Termination of this agreement will not affect any accrued rights or liabilities of either party or the continuance in force of any provision that is expressly or by implication intended to come into or continue in force on after termination.

### **Limitation to Liability**

If either party fails to comply with its obligations in this agreement it will be entitled, without prejudice to the other parties rights or remedies in relation to such failure, to a reasonable opportunity to correct any errors and perform its obligations.

Notwithstanding any other provisions of this agreement, nothing shall exclude or limit either party's liability for the following:

- Death or personal injury resulting form that party's negligence.
- That party's fraud or statements made fraudulently by that party or any acts or omissions for which the governing laws prohibits the exclusion or limitation of liability.

Childcare Business Solutions shall not be liable for any loss or profit, loss or business, loss of goodwill, loss of savings, claims by third parties, loss of anticipated savings, weather direct, or any indirect loss or consequential loss whatsoever and however caused (even if caused by Childcare Business Solutions negligence and / or breach of contract and even if Childcare Business Solutions was advised that such loss would probably result).

Childcare Business Solutions total liability for any claims, losses, damages or expenses whatsoever and however caused (even if caused by Childcare Business Solutions negligence and / or breach of contract) shall be limited for each event or series of linked events as follows:

- In relation to direct physical damage to the clients tangible property caused solely by negligence of Childcare Business Solutions employees, agents or subcontractors to a maximum sum of £1,000,000.
- In relation to liability outside the scope of the above statement to a maximum sum equal to the total charges (excluding VAT) actually paid by the client to Childcare Business Solutions under this agreement during the 12 month period immediately preceding the date of determination of such liability; or (if the agreement terminated prior to the data of determination of such liability) the total charges (excluding VAT) actually paid by the client to Childcare Business Solutions under this agreement during the 12 month period immediately preceding the date of termination of this agreement.

### **Force Majeure**

Neither party will be liable for any delay or failure in performing its obligations under this agreement if the delay or failure is caused by circumstances beyond its reasonable control (including but not limited to failure by any subcontractor to perform its obligations due to circumstances beyond the reasonable control of the subcontractor). Provided the party in default notifies the other party promptly in writing of the reason for and likely duration that the circumstances persist. This clause shall not apply to any failure or delay by the client in paying the charges.

### **Relationship of parties**

The performance of Childcare Business Solutions of its duties and obligations under this agreement shall be that of an independent contractor and noting contained in this agreement shall create or imply an agency relationship between

Childcare Business Solutions and the client, nor shall this agreement be deemed to constitute a joint venture or partnership between Childcare Business Solutions and the client.

### **Changes to these terms and conditions**

From time to time, we may find it necessary to amend these terms and conditions. We will send you a copy of the latest version of these terms and conditions on request. In addition, the last version can be viewed by you at any time by accessing the client area of our website.

### **Governing law and jurisdiction**

This agreement will be governed by and construed with English law and the parties submit to the exclusive jurisdiction of the English courts.

### **Additional terms and condition relevant to specific services**

#### ***Re provision of free accounts for this financial year.***

- This is subject to signing up for minimal 18-month contract for the relevant package service.
- In terms of financial recording the following information is available:
  - Financial recordings have been kept to a reasonable standard for the 12-month period.
  - All cheque stubs used in the 12-month period are available and have been correctly filled out.
  - All bank statements relevant to the childcare provision are available for the 12-month period.
  - Receipts and or recording documents of all incoming and outgoing financial transactions are available for the 12-month period.

In the instance where the above information is unavailable to reasonable standard an additional minimal charge of £15 per hour be required to bring the accounts up to a reasonable standard. The time required will be agreed per to the commencement of any work with the client involved. *[The term reasonable standard in this instance refers to the professional judgement of a qualified registered accountant contracted by Childcare Business Solutions]*

#### ***Re provision of representation at tribunals***

- Childcare Business Solutions cannot be held liability for any cost incurred as result of the judgement of the tribunal panel.
- Childcare Business Solutions reserves the right to limit this provision to a maximum of 2 hearings per year.
- The client has fully implemented any recommendations made by Childcare Business Solutions concerning employment policies, procedures and practice.
- The client has followed instructions provided by Childcare Business Solutions in the matter going to tribunal before commencement of action to commence tribunal proceeding.
- Where at all possible the Client undertakes with the support of Childcare Business Solutions to reach a prior agreement with the staff member concerned prior to the commencement of the tribunal. In the case of the client and CBS cannot reach an acceptable agreement concerning what is an acceptable agreement between the client and the staff member Childcare Business Solutions reserves the right to withdraw this service with no prejudice to its contractual obligations.
- In the instance of tribunal hearing concerning a previous staff member and / or issue, which started prior to the commencement of a contract with Childcare Business Solutions reserves the right not to provide representation at any employment tribunal.

#### ***Re debt collection support service***

- The value most is in excess of £500 but less than £5000.
- The debt most is over 30 days old since the account holder last incurred any debt.
- Clear records of attendance and agreement to pay most are present.
- Previous written attempts most are available on record concerning the attempts to obtain the outstanding debts.
- In the case of stage three being commenced this will result in additional charges being placed against the bad debt of the account holder however in the result of the account still remaining unpaid the provider will become liable for these additional charges.