

## TERMS AND CONDITIONS

### 1. Introductory

#### 1.1 In these Terms and Conditions:

- 1.1.1 "Child" means the child named on the Registration Form;
- 1.1.2 "Extra Hours" means up to two additional hours either before or after each session;
- 1.1.3 "Fee Sheet" means the document describing the fees payable by the Parent/Guardian to Happy Days relating to the Nursery as issued by Happy Days to the Parent/Guardian from time to time;
- 1.1.4 "Happy Days" means Happy Days Nursery and Out of School Club, the trading name for Genesis (J & T) Limited, a company registered in Scotland (company number: SC277422) and having its registered office at 127 High Street, Dalkeith, Midlothian EH22 1BE;
- 1.1.5 "Irregular Child" means a Child who is not a Regular Child or a Term Time Child;
- 1.1.6 "Nursery" means the nursery and/or out of school club operated by Happy Days at 127 High Street, Dalkeith, Midlothian EH22 1BE;
- 1.1.7 "Parent/Guardian" means the person or persons signing the Registration Form as parent or guardian of the Child (and where more than one person so signs, means those persons on a joint and several basis);
- 1.1.8 "Registration Form" means Happy Days' Registration Form as completed and signed by the Parent/Guardian;
- 1.1.9 "Regular Child" means a Child who attends throughout each year a schedule of sessions at the Nursery as described in the Registration Form;
- 1.1.10 "Term Time Child" means a Child who attends throughout each year except during the months of July and August in each year a schedule of sessions at the Nursery as described in the Registration Form; and
- 1.1.11 "Week" means Monday to Friday (inclusive) in any one week.

- 1.2 These Terms and Conditions form part of the contract between Happy Days and the Parent/Guardian in relation to the place to be made available to the Child at the Nursery (the "**Contract**"). The Contract comprises these Terms and Conditions, the Registration Form and the Fee Sheet, all as may be amended from time to time by Happy Days.

### 2. The Nursery Place

- 2.1 Happy Days will use its reasonable endeavours to accept the Child into the Nursery on the Anticipated Start Date as detailed on the Registration Form. If the Child cannot be accepted into the Nursery on the Anticipated Start Date, Happy Days will notify the Parent/Guardian of the actual start date, as far in advance of the Anticipated Start Date as possible. The actual start date will not be before the Anticipated Start Date.
- 2.2 Following the actual start date, Happy Days will accept the Child into the Nursery during each session and for any Extra Hours as detailed on the Registration Form. The Parent/Guardian

shall give one month's notice in writing to change any session or Extra Hours detailed on the Registration Form. The Parent/Guardian may request with not less than two weeks' email notice, and Happy Days shall at its sole discretion choose whether to accept, additional sessions or Extra Hours to those detailed on the Registration Form.

- 2.3 Notwithstanding clause 2.2, the Parent/Guardian of an Irregular Child may request with not less than one month's email notice, and Happy Days shall at its sole discretion choose whether to accept, Extra Hours or attendance at a session at the Nursery.
- 2.4 The Nursery year runs from 1 September to 31 August. The Nursery closes during holiday periods and early on certain days each year, as published by Happy Days. The Child will not be accepted into the Nursery on published closure days and must be picked up before published early session-end times. Subject to this clause 2.4, the Parent/Guardian will pick up the Child from the Nursery no later than the relevant session-end time detailed on the Registration Form and/or the Fee Sheet. The Parent/Guardian will pay the Late Fees detailed on the Fee Sheet if he/she fails to do so.
- 2.5 Happy Days may make it a condition of accepting any Child into the Nursery that a minimum number of sessions are booked. The current minimum number of sessions is set out in the Fee Sheet.

### **3. The Forms**

- 3.1 The Parent/Guardian guarantees that the information supplied by the Parent/Guardian on the Registration Form is true and complete.
- 3.2 Should any information provided by the Parent/Guardian on the Registration Form change at any time, the Parent/Guardian will immediately provide Happy Days with the up to date information in writing.

### **4. Registration Fee**

- 4.1 The Registration Fee referred to on the Fee Sheet will be paid by the Parent/Guardian to Happy Days on the signature by the Parent/Guardian of the Registration Form. The Registration Fee is non-refundable and is not deductible from other fees payable to Happy Days.
- 4.2 The Irregular Child Retainer Fee referred to on the Fee Sheet will be payable by the Parent/Guardian to Happy Days for each week after signature of a Registration Form for the Irregular Child during which that Irregular Child does not attend two or more sessions at the Nursery. For the purposes of this clause 4.2 one session shall mean either an AM or PM session as described in the Fee Sheet.

### **5. Calculation of Nursery Fees**

- 5.1 Regular Child fees referred to on the Fee Sheet will be calculated in terms of 51 units (based upon a calendar week) in any year and shall be payable in twelve equal monthly instalments in each year.
- 5.2 Term Time Child fees will be the same as Regular Child fees save insofar as calculated in terms of 44 units (based upon a calendar week) in any year and shall be payable in 10 equal monthly instalments in each year except in the months of July and August in each year. Sessions attended by a Term Time Child during the months of July and August shall be calculated and payable as an Irregular Child in terms of clauses 5.3 and 6.2.
- 5.3 Irregular Child fees referred to on the Fee Sheet will be calculated in accordance with sessions

requested by the Parent/Guardian and accepted by Happy Days, regardless of actual attendance by the Irregular Child at those sessions.

5.4 Extra Hours will be calculated in accordance with the hourly rate set out on the Fee Sheet

## **6. Payment of Nursery Fees**

6.1 On the first day of each calendar month (each a “**Due Date**”) the fees as detailed on the Fee Sheet for the Child’s scheduled attendance at the Nursery for that month plus scheduled additional charges as detailed on the Fee Sheet (or as separately advised in advance) will be paid in advance by the Parent/Guardian to Happy Days. For the period from the signature by the Parent/Guardian of the Registration Form to the last day of that calendar month, such fees will be paid by the Parent/Guardian to Happy Days at the time of that signature (and that will be the due date).

6.2 Notwithstanding clause 6.1, the due date for payment by the Parent/Guardian of Irregular Child fees will be not less than one calendar month before the session for which those fees are due.

6.3 Towards the end of each calendar month, Happy Days will produce an invoice to the Parent/Guardian which shall include as well as the fees and charges set out in clause 6.1 for any additional charges as detailed on the Fee Sheet (or as separately advised in advance) in relation to the Child’s attendance at Nursery in the previous calendar month, including any unscheduled Extra Hours or additional sessions, the cost of any outings or special classes or sessions and any late pickup charges not previously charged. The due date for payment of each invoice issued under this clause 6.3 will be the 1st of each calendar month, or where the 1st of the month is not a business day, the next succeeding business day.

6.4 Without prejudice to any other right or remedy that Happy Days may have, if any amounts due to Happy Days fail to be paid by their due date, Happy Days may charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the Royal Bank of Scotland plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment.

6.5 Notwithstanding clause 6.4, Happy Days reserves the right not to accept the Child into the Nursery with immediate effect in the event all sums due are not paid in accordance with this clause 6.

6.6 If any fees or charges (including late payment charges) are outstanding for more than 14 days in relation to a Child from the relevant due date then Happy Days may terminate the Contract relating to that Child.

6.7 Happy Days reserves the right to increase the fees (or any of them) at any time by giving one month’s written notice of the proposed increase and the revised Fee Sheet to the Parent/Guardian.

6.8 There shall be no pro-rata reduction of fees if during the period of the Contract the Child is (or is to be) withdrawn from the Nursery or absent from the Nursery for any period due to illness or holidays or for any other reason. Accordingly, where such circumstances are envisaged the Parent/Guardian is obliged to make the full monthly payment in advance, and there will be no obligation on Happy Days to repay fees paid in advance to the Parent/Guardian where such circumstances arise or to allow the Parent/Guardian to swap or exchange the sessions that have been paid for with or for other sessions.

## **7. Behaviour of the child**

- 7.1 If, in the reasonable opinion of Happy Days, it is considered that the continued presence of the Child is detrimental to the health, safety or wellbeing of the Child, or to other children at the Nursery, or to the teachers or other staff employed or engaged at the Nursery then:
- 7.1.1 Happy Days may require the Parent/Guardian to immediately collect the Child from the Nursery;
  - 7.1.2 Happy Days will discuss its concerns with the Parent/Guardian;
  - 7.1.3 Happy Days may refuse to accept the Child into the Nursery for a reasonable period (a “**Re-adjustment Phase**”) to be specified by Happy Days.
  - 7.1.4 If following a Re-adjustment Phase the Child is re-introduced into the Nursery and in the reasonable opinion of Happy Days it is again considered that the continued presence of the Child is detrimental to the health, safety or wellbeing of the Child, or to other children at the Nursery, or to the teachers or other staff employed or engaged at the Nursery then Happy Days may in addition to its rights above terminate the Contract in accordance with clause 8.5, if it considers, acting reasonably, that a further re-adjustment phase is inappropriate.
- 7.2 Fees will continue to be payable by the Parent/Guardian to Happy Days during any Re-adjustment Phase.

## **8. Termination**

- 8.1 The Contract shall continue in force and effect until otherwise agreed between Happy Days and the Parent/Guardian.
- 8.2 Either party may terminate the Contract by the service of not less than one calendar month's notice in writing to the other. During that period of notice Happy Days will continue to accept the Child into the nursery (subject to the other terms of the Contract) and the Parent/Guardian will pay all fees due by it in accordance with the Contract.
- 8.3 Save where a Child is withdrawn for reasons of illness as set out in clause 6.8, if the Parent/Guardian withdraws the Child from the Nursery (without giving at least one calendar month's notice in writing to Happy Days) for any reason then, after no fewer than 28 days of continuous absence, Happy Days may terminate the Contract by written notice to the Parent/Guardian. No fees paid in advance will be refundable. Any outstanding monies will be payable, in accordance with clause 6.
- 8.4 If Happy Days has the right to terminate the Contract in accordance with clause 6.6 (non-payment) it may do so by giving no less than 14 days' notice in writing, unless prior to the expiry of that notice full payment is received. Outstanding monies will be payable on such a termination.
- 8.5 If Happy Days has the right to terminate the Contract in accordance with clause 7.1.4 (behaviour) it may do so by written notice to the Parent/Guardian. Following such a termination any fees paid in advance will be refunded pro rata by Happy Days.
- 8.6 Upon termination of the Contract, howsoever arising, the Child will cease forthwith to be accepted into the Nursery.

## **9. Non-solicitation of nursery staff**

- 9.1 During the term of the Contract and for the period of six months following its termination (howsoever arising) the Parent/Guardian will not employ or otherwise engage, seek to employ or otherwise engage, entice away or attempt to entice away from the employment of Happy Days any person or persons who is or has been employed by Happy Days in connection with the Nursery, unless in the latter case that person has ceased to be employed by Happy Days for a period of more than 6 months.
- 9.2 The Parent/Guardian shall indemnify Happy Days fully in respect of all and any costs, claims, damages and expenses incurred by or made against Happy Days as a result of any breach of clause 9.1, including the costs and expenses reasonably and properly incurred by Happy Days in replacing any member of staff engaged, employed or enticed away in breach of that clause such as agency fees, advertising costs, and the cost of Happy Days management time in interviewing candidates.

## **10. Limitations on Liability**

- 10.1 If Happy Days is affected by an event beyond its reasonable control (such as, without limitation, adverse weather, illness, mains water failure, heating failure, fire or flood) which prevents it from performing its obligations under the Contract it will where reasonably possible notify the Parent/Guardian, but Happy Days will not be liable for any failure to perform its obligations or any delay caused by that event and will not be liable for any loss suffered by the Parent/Guardian or Child, arising directly or indirectly.
- 10.2 During any period where due to such event described in clause 10.1 a Child who attends two sessions each day every Week cannot be accepted into the Nursery, no fees will be payable by the Parent/Guardian, and any fees paid in advance will be refunded pro rata by Happy Days. During any period where an Irregular Child, or a Child who does not attend two sessions each day every Week cannot be accepted into the Nursery, fees that had already been paid will not be refunded but alternative sessions over a 6 month period following such event will be arranged at the sole discretion of Happy Days.
- 10.3 Happy Days will accept no responsibility for the Child whilst in the care of their Parent/Guardian on Nursery premises.
- 10.4 Happy Days shall not be liable for the loss of or damage to any property left with or worn by the Child.

## **11. General**

- 11.1 From time to time Happy Days may have photographs taken of your Child for promotional purposes. The Parent/Guardian must notify Happy Days in writing if the Parent/Guardian does not wish their Child to be included in such photographs.
- 11.2 Happy Days has a legal obligation to report any instances where it considers that a Child may have been neglected or abused to the relevant authorities and may do so without notifying any Parent/Guardian.
- 11.3 The Parent/Guardian may not assign or otherwise transfer the Contract.
- 11.4 Any delay by a party in exercising a right under the Contract will not constitute or be deemed to be or a waiver of that right.
- 11.5 The Contract constitutes the entire agreement between the parties in respect of its subject matter, and supersedes all previous agreements and understandings in that respect.

- 11.6 All notices under the Contract served must be in writing (unless specified otherwise) and posted to the address of the relevant party as specified in the Contract and, in the case of notices served by the Parent/Guardian, marked for the attention of "the Nursery Manager".
- 11.7 If there are two persons named as Parent/Guardian on the Registration Form:-
- 11.7.1 a notice served by Happy Days shall be valid if served on either or both of them; and
- 11.7.2 a Contract variation shall be valid if agreed between Happy Days and both of them.
- 11.8 The headings in these terms and conditions are inserted only for convenience and shall not affect their construction.
- 11.9 Where the contract expressly provides that fees paid in advance are to be refunded "pro rata", the factors shall be the number of sessions paid for, and the number of those sessions where the Child has not attended or will not attend the Nursery as a result of the event leading to the fees being refundable.
- 11.10 In the event of any provision of the Contract being found by a court with jurisdiction to be void or unenforceable in full or in part, then that provision or part of it shall be removed, but the remainder of the Contract shall remain in full force and effect.
- 11.11 The Contract shall be governed by and construed in accordance with the law of Scotland and the parties submit to the exclusive jurisdiction of the Scottish courts.