

## TERMS AND CONDITIONS

### 1 Introductory

1.1 In these terms and conditions:

1.1.1 "Waterfront" means the Board of Management of Edinburgh's Telford College, 350 West Granton Road Edinburgh EH5 1QE trading as Waterfront Nurseries;

1.1.2 "child" means the child named on the Nursery Registration Form;

1.1.3 "parent/guardian" means the person or persons signing the Nursery 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);

1.1.4 "nursery" means the nursery operated by Waterfront within Edinburgh's Telford College campus at 350 West Granton Road Edinburgh EH5 1QE;

1.1.5 "Nursery Registration Form" means Waterfront's form with that title as completed by the parent/guardian;

1.1.6 "Fee Sheet" means the document describing the fees payable by the parent/guardian to Waterfront relating to the nursery as issued by Waterfront to the parent/guardian; and

1.1.7 "Settle-in Details" means the document to be completed by the parent/guardian prior to child's starting date providing various details about the nursery arrangements for the child.

1.2 These terms and conditions form part of the contract between Waterfront 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 Nursery Registration Form, the Settle-in Details and the Fee Sheet.

### 2 The Nursery Place

2.1 Waterfront will use its reasonable endeavours to accept the child into the nursery on the Preferred Start Date as detailed on the Nursery Registration Form. If the child cannot be accepted into the nursery on the Preferred Start Date, Waterfront will notify the parent/guardian of the actual start date, as far in as advance of the Preferred Start Date as possible. The actual start date will not be before the Preferred Start Date.

- 2.2 If the actual start date is more than 28 days after the Preferred Start Date the parent/guardian will have the right to terminate the contract as set out in clause 8.4.
- 2.3 Following the actual start date, Waterfront will accept the child into the nursery during each session as detailed on the Nursery Registration Form.
- 2.4 The nursery year runs from August 1st to July 31st. The nursery closes for ten working days each year, as published by Waterfront annually in advance. The child will not be accepted into the nursery on the published closure days. The parent/guardian will pick up the child from nursery no later than the relevant session-end time detailed on the Nursery Registration Form. The parent/guardian will pay the late pick-up fees detailed on the Fee Sheet if it fails so to do.
- 2.5 Waterfront 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 Nursery Registration Form is true and complete, and that the information to be supplied on the Settle-in Details will be true and complete.
- 3.2 Should any information provided by the parent/guardian on the Nursery Registration Form or the Settle-in Details change at any time, the parent/guardian will immediately provide Waterfront with the up to date information in writing.

### **4 Deposit**

- 4.1 The deposit referred to on the Fee Sheet will be paid by the parent/guardian to Waterfront on the signature by the parent/guardian of the contract. That deposit will only be returnable as set out in these terms and conditions. The deposit is not deductible from other fees payable to Waterfront. The parent/guardian will not be entitled to any interest on the deposit, whether or not it is returned.

### **5 Payment of Nursery Fees**

- 5.1 On the first day of each calendar month (each a “due date”) the nursery fees as detailed on the Fee Sheet for the child’s scheduled attendance at the nursery for that month will be paid in advance by the parent/guardian to Waterfront. For the period from the signature by the parent/guardian of the contract to the last day of that calendar month, such nursery fees will be paid by the parent/guardian to Waterfront at the time of that signature (and that will be the due date).

- 5.2 At the start of each calendar month, Waterfront will produce an invoice to the parent/guardian for the 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 additional sessions, the cost of any outings or special classes or sessions, and any late pickup charges. The due date for each invoice will be the date falling 7 days after its date.
- 5.3 Without prejudice to any other right or remedy that Waterfront may have, if any amounts due to Waterfront fail to be paid within 5 days of their due date, Waterfront may charge interest on such sum from the due date for payment at the annual rate of 3% 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.
- 5.4 If any fees or charges (including late payment charges) are outstanding for more than 14 days from the relevant due date then Waterfront may terminate the contract in accordance with clause 8.5.
- 5.5 Waterfront reserves the right to increase the nursery 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.
- 5.6 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 Waterfront to repay fees paid in advance to the parent/guardian where such circumstances arise.

## **6 Policies**

- 6.1 The policies of Waterfront from time to time in relation to the nursery will be available in the parents' room at the nursery, and copies of such policies will be provided to the parent/guardian on the reasonable request of the parent/guardian.
- 6.2 Waterfront and the parent/guardian will each, in so far as relevant to them, comply with these policies.

## **7 Behaviour of the child**

- 7.1 If, in the reasonable opinion of Waterfront, it is considered that the continued presence of the child is detrimental to the health, safety or wellbeing of the child, or other children at the nursery, or the teachers or other staff employed or engaged at the nursery then:

- 7.1.1 Waterfront may require the parent/guardian to immediately collect the child from the nursery;
  - 7.1.2 Waterfront will discuss its concerns with the parent/guardian;
  - 7.1.3 Waterfront may refuse to accept the child into the nursery for a reasonable period (a “re-adjustment phase”) to be specified by Waterfront.
  - 7.1.4 If following a re-adjustment phase the child is re-introduced into the nursery and in the reasonable opinion of Waterfront it is again considered that the continued presence of the child is detrimental to the health, safety or wellbeing of the child, or other children at the nursery, or the teachers or other staff employed or engaged at the nursery then Waterfront may in addition to its rights above terminate the contract in accordance with clause 8.6, if it considers, acting reasonably, that a further re-adjustment phase is inappropriate.
- 7.2 Notwithstanding clause 5.5, during any re-adjustment phase, no nursery fees will be payable by the parent/guardian, and any nursery fees paid in advance will be refunded pro rata by Waterfront.

## **8 Termination**

- 8.1 Unless otherwise agreed between Waterfront and the parent/guardian, the contract will terminate on the “Finish Date” as detailed on the Nursery Registration Form. Following such a termination the deposit will be repaid by Waterfront to the parent/guardian, but the deposit may not be set-off by the parent/guardian against the nursery fees relating to the final month.
- 8.2 Either party may terminate the contract by the service of not less than one calendar months’ notice in writing to the other. During that period of notice Waterfront 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. Following such a termination the deposit will be repaid by Waterfront to the parent/guardian, but the deposit may not be set-off by the parent/guardian against the nursery fees relating to the final month.
- 8.3 If the parent/guardian withdraws the child from the nursery (without giving at least one calendar months’ notice in writing to Waterfront) for any reason then, after no fewer than 28 days of continuous absence, Waterfront may terminate the contract by written notice to the parent/guardian. The deposit will not be refundable on such a termination and no nursery fees paid in advance will be refundable. Any outstanding monies will be payable in addition to the deposit, in accordance with clause 5.5.

- 8.4 If the parent/guardian has the right to terminate the contract in accordance with clause 2.2 (start date) it may do so by written notice to Waterfront. Following such a termination the deposit will be repaid by Waterfront to the parent/guardian, and any nursery fees paid in advance will be refunded by Waterfront.
- 8.5 If Waterfront has the right to terminate the contract in accordance with clause 5.3 (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. The deposit will not be refundable on such a termination and the outstanding monies will be payable in addition to it.
- 8.6 If Waterfront 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 the deposit will be repaid by Waterfront to the parent/guardian and any nursery fees paid in advance will be refunded pro rata by Waterfront.
- 8.7 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 Waterfront any person or persons who is or has been employed by Waterfront in connection with the nursery, unless in the latter case that person has ceased to be employed by Waterfront for a period of more than 6 months.
- 9.2 The parent/guardian shall indemnify Waterfront fully in respect of all and any costs, claims, damages and expenses incurred by or made against Waterfront as a result of any breach of clause 9.1, including the costs and expenses reasonably and properly incurred by Waterfront 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 Waterfront management time in interviewing candidates.

## **10 Limitations on Liability**

- 10.1 If Waterfront is affected by an event beyond its reasonable control (such as, without limitation, fire or flood) which prevents it from performing its obligations under the contract it will notify the parent/guardian, but Waterfront will not be liable for any failure or delay directly caused by that event. During any period where due to such an event the child cannot be accepted into the nursery, no nursery fees will be payable by the parent/guardian, and any fees paid in advance will be refunded pro rata by Waterfront.

- 10.2 Waterfront shall not be liable to the parent/guardian for the loss of or damage to any property left with or worn by the child, save in the case of Waterfront's negligence, in which case Waterfront's liability shall be limited, in so far as permitted by law, to £50 in aggregate per event.

## **11 General**

- 11.1 The parent/guardian may not assign or otherwise transfer the contract.
- 11.2 Other than as expressly provided for herein, no variation of the contract will be valid unless it is in writing and made between a duly authorised representative of Waterfront and the parent/guardian.
- 11.3 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.
- 11.4 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.
- 11.5 All notices under the contract served must be in writing 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".
- 11.6 If there are two persons named as parent/guardian on the Nursery Registration Form:-
- 11.6.1 a notice served by Waterfront shall be valid if served on either or both of them;  
and
- 11.6.2 a contract variation shall be valid if agreed between Waterfront and either or both of them.
- 11.7 The headings in these terms and conditions are inserted only for convenience and shall not affect their construction.
- 11.8 Where the contract expressly provides that nursery 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.
- 11.9 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.
- 11.10 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.