

## Employer Terms and Conditions.

### 1. Parties

- 1.1 The Employer is specified in their online account.
- 1.2 Early Years Vouchers, which is a trading name of Enjoy Benefits Ltd.

### 2. Recitals

- 2.1 Early Years Vouchers provides a childcare Voucher Scheme and management thereof.
- 2.2 The Employer wishes to use Early Years Vouchers to provide a childcare Voucher Scheme for use by its employees.

### 3. Definitions

The following words and expressions shall have the following meanings

- 3.1 **Childcare Provider** – means any person registered, approved or voluntarily approved to provide childcare in return for a fee, as specified by HMRC.
- 3.2 **Employer** means the legal entity undertaking to offer the Voucher Scheme to its Employees.
- 3.3 The **Effective Date** is the date of initial registration of the Employer as defined in their online account.
- 3.4 **Employee** means an Employee of the Employer as listed in Payroll summaries and Invoices and approved by the Employer.
- 3.5 **Salary Sacrifice** is an amendment to employment terms agreed by the Employee and is used to agree gross salary reductions to an Employee's salary.
- 3.6 **Services** -means the services provided and undertaken by Early Years Vouchers in connection and management of the Voucher Scheme.
- 3.7 **Voucher Scheme** means the provision by Early Years Vouchers of a method for qualifying Employees to pay in full or part for childcare fees from a qualifying Childcare Provider.
- 3.8 **Voucher** means the paper, email or electronic form of distribution allowing the Employee a method of presenting a non-cash form to pay for all or part of their childcare fees to a qualifying Childcare Provider.
- 3.9 **Website** refers to the online facilities owned and operated by Early Years Vouchers and Enjoy Benefits Ltd and addressed as <http://www.childcare-vouchers.net> and <http://www.enjoybenefits.co.uk>, and are subject to the published privacy statement at said addresses.
- 3.10 **Account Funding** is a method of accruing funds in the Employee's Online Account for later use by the Employee to pay for qualifying childcare from the Childcare Provider.
- 3.11 **Payroll** summary is a list of Employees requiring either Vouchers and/or Account Funding for approval by the Employer.
- 3.12 **Invoice** is the provision of a document to the Employer detailing the requests contained on the Payroll summary once those requests are approved. It contains all charges pertaining to the use of the Voucher Scheme and Employees requests.
- 3.13 **Online Account** is the provision of an interface on the Website for users to administer their accounts and retrieve information as required.
- 3.14 **HMRC** is defined as the non-ministerial department of the UK Government responsible for the collection of taxes, the payment of some forms of state support and the administration of other regulatory regimes, including Childcare Voucher Schemes.
- 3.15 **Cleared Payment** is defined as a payment received by Early Years Vouchers that cannot be reversed or reclaimed by the Employer or the Employers bank or bankers.
- 3.16 **Service Charge** is defined as the fee charged to the Employer by Early Years Vouchers for using the Voucher Scheme.

### 4. Employer Responsibilities

- 4.1 The Employer agrees to join the Voucher Scheme and agrees to purchase Vouchers from and/or provide Account Funding to Early Years Vouchers, for Employee use and agrees to abide by the terms as set out in this Agreement. The Employer agrees to use the online and telephone systems provided for support in connection with using the Voucher Scheme as per the instructions within the Employer online account. The Employer can use other childcare Voucher Schemes as it sees fit.
- 4.2 The Employer agrees that Vouchers and/or Account Funding are paid for at time of order, or by an agreed date as defined in the Online Account, by BACS, cheque by first class post, or Direct Debit and until Cleared Payment is received by Early Years Vouchers, shall not be issued or credited (as the case shall be) to the Employee's online account . The Voucher and/or Account Funding are not subject to VAT.
- 4.3 There is no current requirement to inform HMRC that the Employer is using a Childcare Voucher Scheme (as at 10-2-2013) but should it subsequently be required that the Employer inform and gain approval for the Voucher Scheme then the Employer will do so in a timely manner.
- 4.4 The Employer agrees to amend the Employee's salary by a recognised method. Use of a Salary Sacrifice mechanism to amend the Employees' salary needs to be effective as defined by HMRC. The Employer could use the salary amendment letter suggested by Early Years Vouchers, or use one of their own. Salary Sacrifices and their implementation are primarily a matter of contract law. Early Years Vouchers recommends that a copy of the Salary Sacrifice letter is kept in the Employee employment file and uploaded into the Employee record from within the Employer Online Account.
- 4.5 The Employer agrees to make the Voucher Scheme open to all qualifying Employees and to publish the policy internally regarding the Voucher Scheme and have this policy available for inspection by HMRC on request. It is suggested that this policy includes the way all benefits are treated during periods of absence or leave, such as maternity or paternity leave, with reference to relevant legislation.
- 4.6 The Employer agrees that a copy of each Childcare Provider's registration or approval certificate shall be kept with Early Years Vouchers who would make it available for inspection on demand by HMRC.

4.7 The Employer agrees to make the Employee aware that he must inform the Employer of any status changes with respect to the Childcare Provider as this could affect the validity of the Voucher Scheme.

4.8 The Employer agrees to ensure that the Employee does not drop below the minimum wage threshold by using the Voucher Scheme.

4.9 The Employer agrees to inform the Employee of the consequences of entering into a Salary Sacrifice or salary addition arrangement, specifically with regard to National Insurance contributions and issues that are gross pay reliant, such as Tax Credits, bonuses etc

4.10 The Employer agrees to meet all criteria regarding Pension contributions, specifically with regard to any current HMRC guidelines regarding the contribution calculations. The Employer also agrees to contact the Pension provider, if needed, to ascertain the Pension provider's policy regarding qualifying earnings and to ask the Pension provider to include the Voucher and/or the Account Funding element in those calculations on behalf of the Employees.

4.11 The Employer agrees to meet the Service Charge as specified at time of Invoice issue and this charge is subject to VAT at the applicable rate at time of Invoice, and can be subject to change at 1 weeks notice at the discretion of Early Years Vouchers.

4.12 The Employer agrees to conform to any employment legislation that may affect the Employees' rights that are not covered by the specific regulations governing the operation of childcare Voucher Schemes, such as legislation regarding benefit schemes and discrimination.

4.13 The Employer agrees to keep their Online Account access details secure and not divulge these details to any third party, unless required to by law or regulation. Should the Employer divulge these details knowingly or inadvertently in breach of the preceding sentence and has not already notified Early Years Vouchers of such disclosure in business hours so that Early Years Vouchers may change such access details, Early Years Vouchers will not be liable for any losses incurred if unauthorised access is gained to the Online Account.

4.14 The Employer agrees that Early Years Vouchers will not be liable for any costs and expenses incurred for misuse of the Vouchers and/or incorrect use of the Voucher Scheme by the Employer.

4.15 The Employer agrees to be liable for costs or expenses arising from loss or damage to the Vouchers whilst in their actual possession, including but not limited to physical and digital possession.

4.16 The Employer agrees to ensure that it is able to receive emails from the Voucher service email systems and associated support mechanisms.

4.17 Without prejudice to any other right or remedy it may have the Employer cannot reserve the right to set off any amount at any time due to it by Early Years Vouchers against any amount payable by the Employer to Early Years Vouchers under this Agreement.

4.18 The Employer agrees to operate a mechanism to carry out the basic earnings assessment of Employees as required by HMRC.

## **5. Early Years Vouchers responsibilities**

5.1 Early Years Vouchers agrees to abide by the terms and conditions of this Agreement

5.2 Early Years Vouchers agrees to provide all Services in connection with the Voucher Scheme with reasonable care and skill and in accordance with generally recognised commercial practices and standards.

5.3 Early Years Vouchers agrees to provide the Service in accordance to all applicable legislation relating to the Voucher Scheme and to promptly provide Employers, Employees and Childcare Providers with any change to that legislation, once aware of that change.

5.4 Early Years Vouchers agrees apply the Service Charge at the agreed rate with the Employer.

5.5 Early Years Vouchers agrees to make no charge for any Service supplied where the supply is deemed as a consequence of incorrect operation of the Service or Online Account by Early Years Vouchers

5.6 Early Years Vouchers agrees to provide Employers, Employees and Childcare Providers access to online and telephony systems described in this Agreement (including without limitation the Website) and to make every effort to ensure uninterrupted access to, and the security of these Services under all reasonable circumstances but will not be responsible for access lost due to factors outside of the reasonable control of Early Years Vouchers. Should terminal failure of the Early Years Vouchers server occur the service will be restored within 48 hrs. Early Years Vouchers agree to have reasonable backup of all Services to allow quick restoration of any lost Service and to take all reasonable steps to ensure this is improved on an ongoing basis.

5.7 Early Years Vouchers will make for provision for all Employees to be informed within their secure Online Account of the dates required for Voucher and/or Account Funding requests to be made and the date they will be valid from.

5.8 Early Years Vouchers will ensure that the Vouchers and Funding Account statements are emailed to the email address specified in the Online Account but are not responsible for Employees not receiving the Vouchers and/or Account Funding due to software issues on the Employee's or Employer's computer, email or security systems. Early Years Vouchers will provide technical help within its expertise to solve any email reception problems.

5.9 Early Years Vouchers will ensure that Invoices for approved Vouchers and/or Account Funding are emailed to the Employer when requests are authorised but are not responsible for the Employer not receiving the Invoices due to software issues on the Employer's computer, email or security systems. Early Years Vouchers will provide technical help within its expertise to solve any email reception problems.

5.10 Early Years Vouchers agree to redeem Vouchers to their full face value on application by the Childcare Provider, either online or on the free phone redemption line, on the same working day or the following working day where the voucher is within its valid dates. Payment is made by BACS or cheque on that day, BACS payments can take around 3 days to show in the Childcare Provider's bank account and cheques can take up to 15 working days to reach the Childcare provider by post. Early Years Vouchers are not responsible for incorrect banking or postal details supplied and are not responsible for banking or postal delays beyond its reasonable control.

- 5.11 Early Years Vouchers will ensure that lost or stolen Vouchers are reissued free of charge and can only be redeemed by the original Childcare Provider or deposited in the Account Funding for that Employee as stated and there will be no amendments to the Voucher original details and refunds are subject to a ten percent refund charge.
- 5.12 Without prejudice to any of its obligations under this Agreement and subject to the other provisions of this Agreement Early Years Vouchers shall indemnify and keep the Employer and/or each Employee (as the case may be) indemnified on demand from and against any liability, loss, damage, cost, expense, claims or proceedings whatsoever suffered or incurred that was caused by, relates to or arises from the provision of the Services as a consequence of a direct or indirect breach or negligent performance or excessive delay in performance of the Agreement by Early Years Vouchers due to factors within its control.
- 5.13 Early Years Vouchers shall co-operate with all parties, including the Employer, in all matters relating to the Voucher Scheme including but not limited to any enquiries raised by all parties and HMRC. Early Years Vouchers will inform all parties should there be any problems with the Service and will advise all parties concerned, including the Employer, of any HMRC issues raised.
- 5.14 Early Years Vouchers shall have in operation at all times appropriate insurance policies with reputable insurers or underwriters as shall fully protect its assets and cover all liabilities that may be incurred by it in the course of normal business, by its employees and any third party. Statutory insurance requirements have also to be met. Early Years Vouchers will provide details of its insurance provision to any registered party that requests it.
- 5.15 Without prejudice to any of its obligations under this Agreement, Early Years Vouchers shall indemnify and keep the Employer and/or each Employee (as the case may be) indemnified on demand from and against any liability, loss, damage, cost, expense, claims or proceedings whatsoever suffered or incurred arising from: (a) the use of the Website by such indemnified persons; (b) any claim against the Employer by an Employee or Childcare Provider relating to the Voucher Scheme not arising or connected to any default on behalf of the Employer; and (c) any claim against the Employee by a Childcare Provider relating to the Voucher Scheme not arising or connected to any default on behalf of the Employee.
- 5.16 Early Years Vouchers undertakes to hold all Employee Account Funding in a designated Client Trust Account to maintain protection in case of insolvency by Early Years Vouchers, where the Employee Account Funding account has been used within the last 24 months. These funds will remain segregated from the working capital of its business where the account is in use within the last 24 months. Accounts that fall into disuse will be classed as dormant if the account is not used for 24 months and any funds may be forfeited and may be subject to a revalidation fee not to exceed 40%
- 5.17 Without prejudice to any of its obligations under this Agreement, Early Years Vouchers shall indemnify and keep the Employer and/or each Employee (as the case may be) indemnified on demand from and against any liability, loss, damage, cost, expense, claims or proceedings whatsoever suffered or incurred arising from: (a) the use of the Website by such indemnified persons; (b) any claim against the Employer by an Employee or Childcare provider relating to the Voucher Scheme not arising or connected to any default on behalf of the Employer; and (c) any claim against the Employee by a Childcare Provider relating to the Voucher Scheme not arising or connected to any default on behalf of the Employee.

## **6. General clauses**

### **Liability**

The entire liability of any party in respect of any breach of its contractual obligations arising under this Agreement shall be limited to the value of the Vouchers issued and cleared payment received as long as the issue of the Voucher is within the terms and conditions agreed to. No liability will arise from correctly redeemed Vouchers.

Nothing in this Agreement shall limit or exclude any party's liability for (a) fraud, (b) wilful misconduct or default, (c) any matter in respect of which liability cannot lawfully be limited or excluded, (d) in respect of its data protection obligations, or (e) under clauses 5.12 and 5.17.

### **Confidentiality**

Early Years Vouchers shall keep confidential all information, technical and commercial know-how, processes, business plans, initiatives or any other details which are of a confidential nature and have been disclosed to Early Years Vouchers pursuant to this Agreement by registered Employers, their Employees, agents or sub-contractors and any other information concerning the Employer's business and the Services and any information relating to its Employees which Early Years Vouchers may obtain. Early Years Vouchers shall restrict disclosure of such confidential information to Early Years Vouchers and Employees, agents or subcontractors who need to know the same for the purpose of discharging Early Years Vouchers' obligations under this Agreement and of terms of the confidentiality obligations which bind Early Years Vouchers under this Agreement. Such confidentiality obligations shall survive termination of this Agreement.

### **Governing Law and Jurisdiction**

This Agreement (and any non-contractual obligations arising out of or in connection with it) will be governed by and construed in accordance with the laws of England and Wales and any dispute arising under or in connection with this Agreement (including non-contractual disputes) will be subject to the exclusive jurisdiction of the courts of England and Wales.

### **Data Protection**

All information held by Early Years Vouchers is held pursuant to all applicable data protection legislation and rules and as such no information is shared with any third party, unless stated in this Agreement. Early Years Vouchers is registered as a data processor under the Data Protection Act 1998 and also acts as an appointed data processor for the Employer under this Agreement. Early Years Vouchers will ensure and take all steps to ensure the appropriate technical and organisational measures are taken to protect the integrity of all data kept by itself, including destruction, accidental loss and damage to such data. Early Years Vouchers will take reasonable steps to ensure the integrity of its employees having access to personal data and ensure that the appropriate level of security is maintained to prevent unauthorised or unlawful access. All data shall be held and used only for consenting parties. Early Years Vouchers agrees to comply with the Data Protection Act and all other applicable legislation relating to data protection from time to time (the "Data Protection Rules"). The Employer can apply at any time for such information regarding Early Years Vouchers compliance with its obligations under the Data Protection Rules.

### **Third Party Rights**

- (a) Subject always to (b) below, the Contract (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person other than the parties to this Agreement shall have any rights under it nor shall it be enforceable under that Act by any person other than the parties to it.
- (b) Childcare Providers and Employees shall have the benefit of this Agreement. The consent of such persons shall not be required for any amendment or termination to this Agreement.

### **Term and Termination**

The Agreement commences on the Effective Date. This Agreement may be terminated by either party at any time giving to the other at least three months notice in writing of termination sent by recorded delivery post and any outstanding fees, costs or charges will need to be met. Notwithstanding the terms of this Agreement, any Vouchers already issued and presented for redemption will be redeemed provided Cleared Payment has been received by Early Years Vouchers. The Agreement may be terminated with immediate effect by either of the parties by notice in writing to the other party in the event of a material breach of this Agreement by the other party and, if the breach is capable of being remedied, such breach has not been remedied by the defaulting party within 30 days of being notified of such breach by the non-defaulting party. The Agreement may also be terminated immediately should the other party become bankrupt or makes a composition or arrangement with its creditors generally or for a composition of debt or for any scheme or arrangement approved in accordance with the Insolvency Act 1988, or has a liquidator, receiver or manager of its business or undertaker duly appointed, or has an administrator or administrative receiver (as defined in the Insolvency Act 1988) appointed. Any outstanding fees, costs or charges will need to be met. Any termination of this Agreement shall be without prejudice to any other rights or remedies the parties may have under this Agreement or at law and shall not affect any accrued rights or liabilities of any party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or after such termination.

### **Disputes**

In the event of a dispute arising out of this Agreement, the parties will attempt to settle it by negotiation or mediation, but this does not exclude the jurisdiction of the English courts. Complaints procedures are as per the published procedures by the CVPA

### **Standard terms of Agreement**

By accepting the above terms and conditions the Agreement is made between Early Years Vouchers and the Employer and Early Years Vouchers will supply the services stated above. No variation to this Agreement is valid unless accepted by all parties. Early Years Vouchers will maintain an up to date version of these terms and conditions on the Website make these readily available in a recognised format. Early Years Vouchers will supply a personalised written version of the electronic form of this agreement for use by the Employer by request. No failure to exercise nor any delay in the exercise, by any party to the Agreement of any right, power, privilege or remedy under this Agreement shall impair, or operate as a waiver of, such right, power, privilege or remedy. No party to the Agreement shall assign or transfer their rights or obligations under this Agreement without the prior written consent of the other party. Support contacts and support levels are as stated in the Employers Online Account. Early Years Vouchers reserves the right to amend, extend or improve the support offered at any time without notice, provided there is no material adverse effect to the Employer and/or the Employees. The Website is subject to change and improvement as Early Years Vouchers see fit, provided there is no material adverse effect to the Employer and/or the Employees. The parties agree to be bound by the terms of this Agreement to the exclusion of any other terms and conditions contained or referred to in any other documentation (including without limitation any terms and conditions published on the Website or on the Employer's Website online account). This Agreement does not provide, offer or suggest the provision of any contracted childcare and the Employee must contract privately with a Childcare Provider for such childcare. The Employer and Early Years Vouchers are not a party to, and make no recommendations of and for, the provision of childcare and its contractual terms above the requirement that the Childcare Provider be registered or approved by the relevant body in that geographical area.

Signed for and on behalf of Enjoy Benefits Ltd trading as Early Years Vouchers Print Amanda Ward

