

# KiddiVouchers

## Terms and Conditions

By offering a KiddiVouchers childcare voucher scheme to your employees, you agree to abide by our Terms and Conditions.

### **1. Definitions and interpretation**

- 1.1 “You” and “your” means the employer entering into this agreement in order to provide its employees with access to childcare vouchers.
- 1.2 “We”, “us” and “our” means KiddiVouchers Ltd.
- 1.3 “Employee” means an employee of the employer.
- 1.4 “Scheme” means the salary sacrifice childcare voucher scheme.
- 1.5 “Scheme member” means an employee who has joined the scheme.
- 1.6 “Vouchers” means the childcare vouchers issued to a scheme member either in paper or electronic form.
- 1.7 The headings to clauses are for convenience only and shall not affect the construction or interpretation of these Terms.

### **2. Your scheme rules**

- 2.1 Unless otherwise agreed in writing, your scheme will operate in accordance with our standard scheme rules.
- 2.2 It is your responsibility to ensure that the scheme rules accurately reflect your policies, particularly with regards to non-statutory pension and maternity benefits. If you require changes to our standard rules, then the changes must be requested in writing. We will then consider the requested changes in accordance with the appropriate legislation and guidance. We reserve the right to refuse a requested change, if we believe that the change would contravene the guidance or would significantly increase the administration of the scheme.
- 2.3 Unless you inform us otherwise in writing, we will assume that all contractual benefits are based on full pre-sacrifice pay. Without limitation, this will apply to any contractual pension, life assurance and maternity benefits.

### **3. Making the scheme available to employees**

- 3.1 You are responsible for ensuring that the scheme is generally available to all your employees. You should ensure that employees or groups of employees are not excluded from joining the scheme on the grounds of their gender, seniority, position, level of pay or length of service.
- 3.2 On request, we will provide you with appropriate marketing material to help you publicise the scheme to your employees.
- 3.3 To comply with HMRC rules, you must publicise the scheme at least once a year and retain evidence of your marketing activity.

### **4. HMRC approval for the scheme**

- 4.1 We will operate the scheme in accordance with our understanding of governing legislation and HMRC guidance relating to childcare vouchers. Any guidance provided by us in relation to governing legislation and HMRC guidance does not constitute legal advice and must not be relied upon as such.
- 4.2 We will inform you of any material change to the appropriate regulations and/or guidance within 90 days of becoming aware of any changes.
- 4.3 You are responsible for notifying HMRC that you are implementing a salary sacrifice childcare voucher scheme and for seeking HMRC’s approval of your scheme. We will provide you with the relevant documentation for this purpose.

- 4.4 You must inform us immediately if HMRC raise any queries in respect of your scheme. We will provide you with such reasonable assistance as you may require in responding to such queries.
- 4.5 You will be liable for any taxes, fines or penalties levied by HMRC as a result of your failure to seek, or to obtain, HMRC approval for the scheme.

## **5. Salary sacrifice agreements**

- 5.1 A salary sacrifice agreement serves as a legally binding variation to an employee's contract of employment with their employer. Once entered into by a scheme member, subject to satisfying National Minimum Wage regulations, any other applicable legislation and the rules of the scheme as detailed in your scheme rules booklet, you are obliged to reduce the scheme member's gross pay by the amount of childcare vouchers requested, for the duration of the salary sacrifice agreement. In return for this reduction in pay, the scheme member becomes entitled to an equal amount of childcare vouchers as a non-cash benefit.
- 5.2 Unless otherwise agreed, when an employee registers with us and orders childcare vouchers, we will issue a salary sacrifice agreement to them electronically on your behalf.
- 5.3 The salary sacrifice agreements supersede any other contract or variation which exists between you and the scheme member in respect of childcare vouchers.
- 5.4 Each scheme member is asked to confirm their acceptance of the salary sacrifice agreement either verbally or electronically via their online KiddiVouchers account or by signing the agreement and returning it to us. You agree that our acceptance of the salary sacrifice agreement, either by electronic, physical or verbal means, constitutes a valid voucher order.
- 5.5 You agree that once a scheme member signs or otherwise accepts a salary sacrifice agreement, they will only be permitted to leave the scheme or to change their voucher order:
- i) At the end of the period covered by the salary sacrifice agreement, or
  - ii) If they have experienced a lifestyle change as defined in your scheme rules.
- 5.6 If a scheme member wishes to cancel or change their voucher order due to a lifestyle change, they may be required to provide us with reasonable evidence of the change.
- 5.7 Whilst we will provide guidance to your employees on the consequences of entering into a salary sacrifice agreement, particularly with reference to tax credits and statutory benefits, it remains each employee's responsibility to ensure that they understand the guidance and make decisions accordingly.
- 5.8 In cases where we collate signed agreements on your behalf, you may request copies of the signed agreements. Copies of the agreements will be provided within 30 days of such a request.

## **6. Overriding voucher orders**

- 6.1 You must notify us of an override to a scheme member's voucher order if:
- i) The voucher amount would cause the scheme member's pay to fall below the National Minimum Wage, or
  - ii) The scheme member has left your employment.
- 6.2 Scheme members are not permitted to sacrifice statutory payments. If a scheme member's voucher order would cause them to sacrifice a statutory payment, you may either:
- i) Elect to fund the scheme member's vouchers without requiring a corresponding reduction in their pay, or
  - ii) Override their voucher order, having taken appropriate legal advice in respect of this action.
- 6.3 Failure by you to notify us of an override in the cases detailed in 6.1 or 6.2 may lead to you being required to fund any vouchers which have been issued to and spent by the scheme member, and being liable for any consequences arising out of failure to comply with applicable legislation.

- 6.4 You may notify us of an override to a scheme member's voucher order if the voucher amount would cause the scheme member's pay to fall below the Lower Earnings Limit ("LEL"). If you decide not to override a voucher order in this situation, you are responsible for advising the scheme member that they will lose the right to some statutory benefits.
- 6.5 Unless the scheme member has experienced a lifestyle change as defined in your scheme rules, or their salary sacrifice agreement has expired, you may not override a salary sacrifice agreement in the event of a scheme member making an error in their voucher order, except at our discretion.
- 6.6 If you need to override a scheme member's voucher order, you must notify us in writing or by email at least one working day before vouchers are due to be released to the scheme member. We will only consider such notification to have been made once we have confirmed it by email.
- 6.7 If you fail to notify us of an amendment to a voucher order or fail to obtain confirmation of the override from us in sufficient time and the vouchers are subsequently issued and spent by the scheme member, then you are liable for the loss of the vouchers.

## **7. Invoicing procedures**

- 7.1 In order for us to provide correct invoices in a timely manner, you agree to provide:
- i) Complete and accurate details of the payroll processes, including paydates and payroll processing cut-off dates.
  - ii) Correct contact details (ie full name, telephone number and email address) of relevant personnel with responsibility for administering the payroll and HR aspects of the scheme.
- 7.2 Unless otherwise agreed in writing, invoices will be issued on a monthly basis for monthly paid employees and on a four-weekly basis for weekly, fortnightly and four-weekly paid employees.
- 7.3 Invoices and statements detailing the voucher orders are issued electronically, to the contact(s) provided by you, 20 days before the relevant paydate or on such other dates as agreed in writing.
- 7.4 You will be responsible for any delay to the scheme members' vouchers, if invoices and statements are undelivered or delivered late as a result of:
- i) You failing to provide correct email addresses, or
  - ii) Any issues with your software, computer systems, email or security systems (including spam filters).
- 7.5 Invoices and statements will normally be issued unencrypted, although encrypted and password protected files are available upon request. If you ask us to provide encrypted files then we will not be liable for the cost of any encryption software required by you, or for any harm done to your hardware or software as a result of installing such software.
- 7.6 Each invoice will display the last date by which we must receive cleared payment. Vouchers will not be released to scheme members until we have received cleared payment.
- 7.7 If an invoice remains unpaid for 30 days or longer, no further invoices will be issued until such time as all outstanding invoices are settled in full. In addition, a late payment fee and/or reactivation fee may be applied.

## **8. Charges and fees**

- 8.1 Invoices in respect of childcare vouchers ordered by scheme members will include:
- i) The total value of vouchers ordered.
  - ii) The administration charge of 2.5%, which is applied to the total value of the vouchers.
  - iii) VAT due on the administration charge. The VAT charged will be based on the rate prevailing as at the invoice date.
- 8.2 It is our normal practice to provide our standard fully-managed service without imposing any charges over and above the administration charge quoted in 8.1. However, in the event of your scheme operating outside our standard procedures, we reserve the right to levy additional charges as follows:

- i) If an invoice and/or statement needs to be amended and reissued, due to an error or omission on your part, an administration charge of £25 (plus VAT) may apply.
- ii) If you require us to collate signed salary sacrifice agreements from scheme members, rather than accepting instructions verbally or electronically, the administration fee in 8.1(ii) will be increased by an additional 0.5% (plus VAT).
- iii) If you require us to establish a separate designated bank account to hold your employees' voucher funds, a management charge of £25 (plus VAT) per month may apply.
- iv) If you require invoices and statements to be issued by post, rather than electronically, the administration fee in 8.1(ii) will be increased by an additional 0.5% (plus VAT).
- v) In the event of your scheme being reactivated following a period of dormancy or suspension due to non-payment of invoices, a reactivation fee of £40 (plus VAT) may apply.
- vi) If you require assistance in marketing your scheme beyond that which we consider to be appropriate for the number of employees covered by your scheme, then reasonable charges may be applied. Any such charges will be agreed in advance of the marketing assistance being provided.
- vii) If you ask us to provide any services in excess of those which we provide as standard then we will agree a reasonable charge in advance.

## **9. Payroll issues**

- 9.1 You are responsible for ensuring that each scheme member's reduced pay remains at or above the National Minimum Wage and, at your discretion, the Lower Earnings Limit.
- 9.2 You are responsible for ensuring the correct amount of PAYE tax and national insurance is paid in respect of each scheme member.
- 9.3 You will keep a record of each scheme member's full pre-sacrifice pay, defined as their pay before any reduction in respect of childcare vouchers.

## **10. Processing the childcare vouchers**

- 10.1 Subject to you paying our invoices on time, we will normally credit electronic childcare vouchers to each scheme member's online KiddiVouchers account by 10am on the voucher due date. However, we reserve the right to credit accounts up to one working day after your voucher due date.
- 10.2 We will process any requests for postal vouchers promptly but we are not responsible for postal delays which are beyond our reasonable control.
- 10.3 All payments to childcare providers will be by BACS or, on request, by cheque.
- 10.4 We will only process payments to childcare providers which are registered or approved with an appropriate regulatory body and which have registered with us. Registering with us involves the childcare provider supplying valid bank details for payment (unless payment by cheque is requested) and providing a current and valid approval certificate. We do not vet or approve any childcare provider or make any comment on the suitability or quality of care provided.
- 10.5 We will maintain a record of the childcare payments made by each scheme member and the eligibility of each childcare provider to receive these payments. You may request a copy of these records. Such requests must be made in writing and copies of the documents will be provided within 30 days of such a request.

## **11. Refunds**

- 11.1 All requests for refunds of unused childcare vouchers must be in writing, and we will then consider each request in accordance with HMRC guidelines. We reserve the right to refuse a request for a refund. For clarity, refunds will not normally be agreed to if a scheme member has simply ordered more vouchers than they have been able to spend, as this would contravene HMRC guidance.

- 11.2 If a scheme member's childcare provider refuses to accept KiddiVouchers childcare vouchers and no payments have been made from the scheme member's account, then the scheme member may leave the scheme and the vouchers will be refunded.
- 11.3 We reserve the right not to refund the administration charges in respect of any vouchers which have been invoiced and paid for.

## **12. Our liability**

- 12.1 We shall bear no liability for any costs or expenses incurred for misuse of the vouchers or incorrect use of the scheme by a scheme member.
- 12.2 We shall bear no liability for any loss of or reduction in statutory benefits or contractual benefits by any scheme member as a result of using childcare vouchers.
- 12.3 We shall bear no liability in respect of any financial loss suffered by you or any employee as a result of legislative change.
- 12.4 We shall bear no liability to you or to any scheme member in respect of any actions of childcare providers.
- 12.5 Our liability to childcare providers shall be limited to the value of any valid childcare vouchers issued by us and received by the childcare provider but not yet redeemed.
- 12.6 We shall bear no liability in respect of banking delays which are beyond our reasonable control.
- 12.7 We shall bear no liability in respect of payments made to an incorrect childcare provider, if the payments are made in good faith in accordance with a scheme member's instructions.
- 12.8 We accept no liability for any incorrect guidance given to an employee if that guidance is based on your scheme rules.
- 12.9 We will not accept any responsibility for claims, demands, losses, costs, legal expenses or liability of any kind whatsoever in connection with any:
- i) Service provided by a childcare provider to a scheme member, or
  - ii) Scheme member failing to pay any part of their childcare provider bill, or
  - iii) Childcare provider failing to correctly allocate a voucher payment to a scheme member, or
  - iv) Childcare provider imposing a charge on a scheme member for using childcare vouchers.

## **13. Termination**

- 13.1 Subject to condition 13.2, either party may terminate this agreement by providing the other party with 30 days' written notice.
- 13.2 We may terminate this agreement with immediate effect in the event of:
- i) A material failure (in whole or in part) by you to perform any obligation.
  - ii) You persistently paying invoices late.
  - iii) You becoming insolvent or ceasing to be capable of paying invoices.
  - iv) A change in your ownership or control which, in our opinion, will have a material impact on the administration of your scheme.
  - v) No employees joining your scheme within 9 months of the launch of the scheme.
  - vi) Your scheme being dormant (ie there have been no voucher orders) for a period of 9 months.
- 13.3 On termination, for any reason, we shall:
- i) Close the scheme and cancel all outstanding voucher orders.
  - ii) Provide you with records of all scheme members and childcare payment history within 30 days of such records being requested in writing.
  - iii) Provide you with such assistance as you may reasonably require in transferring the scheme to another provider.

- 13.4 If you close your scheme or transfer your scheme to another childcare voucher provider, your scheme members may continue to use any outstanding childcare vouchers. However, they will not be permitted to top-up their account balance by other means. We will continue to provide existing scheme members with access to their online account until their account has a zero balance or until they are no longer eligible to spend the vouchers.
- 13.5 If you transfer the scheme to another provider, unused voucher funds will only be transferred to the new provider with the agreement of each scheme member. You will be responsible for obtaining each scheme member's consent. Such transfers of funds will be subject to your approval and the cooperation of the new provider. We reserve the right to levy an administration charge to cover associated costs.
- 13.6 We reserve the right to close any scheme member's KiddiVouchers account and to cancel their voucher order if they are suspected or found to have acted fraudulently in relation to ordering or spending their childcare vouchers.

#### **14. Data protection and Privacy**

- 14.1 We are registered under the Data Protection Act 1998 as a "Data Controller".
- 14.2 We will share your scheme members' details with you for HMRC purposes and we may also use their data to answer reasonable queries from their childcare providers. Employees are made aware during their registration that their data will be shared in this way. We will not share your scheme members' personal data with any other third party.

#### **15. Changes to these Terms and Conditions**

- 15.1 We may amend these terms and conditions by writing to you and providing you with 45 days' notice.

#### **16. Force Majeure**

- 16.1 Neither party shall be liable for any breach of these terms and conditions caused by circumstances beyond their reasonable control, including without limitation:
- i) Act of God, explosion, flood, tempest, fire or accident;
  - ii) War or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - iii) Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority.

#### **17. Third party rights**

- 17.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to these Terms and Conditions 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.

#### **18. Governing Law and Jurisdiction**

- 18.1 These Terms and Conditions shall be governed and construed in accordance with English law and the English courts shall have exclusive jurisdiction to determine any disputes which arise in connection with these Terms.