**Welsh Government Childcare Offer**

**Childcare Provider Protocol**

**Terms and Conditions**

These terms and conditions must be read in conjunction with the Childcare Provider Protocol Agreement and set out the expectations of all childcare settings registered to deliver the Welsh Government Childcare Offer.

1. **Services**

1.1 Blaenau Gwent County Borough Council is authorised by Welsh Government to administer the Childcare Offer in Blaenau Gwent.

1.2 Blaenau Gwent County Borough Council will promote the scheme, issue applications and assess applications received from parents/carers for eligibility. Parents/carers will be notified of their eligibility in writing and supplied with a unique reference number.

1.3 Parents will be provided with links to details of all local childcare settings with those registered to provide the Childcare Offer indicated. Parents will contact settings directly to book childcare required. Only settings registered to provide the offer will be approved/funded by Blaenau Gwent County Borough Council.

1.4 Childcare settings must inform the Early Years Childcare and Play Team of childcare booked using forms provided.

1.5 Settings must enter into their usual contractual arrangements with parents for the provision of childcare and other services (meals/transport).

1.6 Blaenau Gwent County Borough Council cannot guarantee placements under this protocol agreement.

**2)** **Payment Arrangements**

2.1 Childcare settings will be paid £4.50 per hour for the provision of childcare to 3 and 4 year olds that are confirmed as eligible for the offer, up to a maximum of 17.5 hours during term time and up to 30 hours for 9 weeks of the school holidays.

2.2 Settings may make additional charges for meals and snacks provided and can charge 75p per snack and £2 per meal up to a maximum of £7.50 per day to cover 3 meals and 2 snacks.

2.3 Settings may make additional charges for transport. Any mileage claimed should reflect HMRC rates, currently 45p per mile.

2.4 Settings cannot charge parents an additional hourly rate to top up their fees but may charge parents for additional hours used at their usual fee rate.

2.5 Settings will be paid one month in advance on the basis of bookings received for that month and will be issued with a claim form that must be completed fully and submitted within prescribed timescales.

2.6 Blaenau Gwent County Borough Council reserves the right to set off any amount owed to it by a setting, where an overpayment has been made, against any amount due to the provider under this agreement.

2.6 Parents/carers who become ineligible due to change in circumstances will be allowed an eight week temporary exemption period (TEP) where childcare will continue to be funded. If childcare is provided after the TEP ends the parent/carer will become responsible for meeting all fees.

2.7 Additional funding will be available to support children with Additional Needs and will be agreed and advised by a separate protocol.

2.8 Retainers or other fees will not be paid by Blaenau Gwent County Borough Council but settings can charge parents/carers if that is part of their usual terms and conditions.

2.9 Settings must take all reasonable steps to prevent the risk of fraud to Blaenau Gwent County Borough Council. Where fraud is suspected, settings must immediately notify the Early Years Childcare and Play Team.

**3) Commencement and Duration**

3.1 The Protocol Agreement and Terms and Conditions shall commence on 1st September 2017 and will be reviewed on an annual basis as a minimum, or as necessary in light of emerging guidance.

**4) Access to Authorised Officer**

4.1 The Setting shall at all times during the Agreement Period allow the Authorised Officer and/ or their representative’s access to documents, records and procedures relevant to the satisfactory provision of the Service.

**5) Legislation and Guidance**

5.1 The Setting shall comply at all times with the relevant legislation and guidance that pertain to the safe operation of the Service and (without affecting the generality of the foregoing) in particular:-

a) National Minimum Standards for Regulated Childcare for children up to the age of 12 years

b) Childcare Act 2006

c) Children Act 1989

d) Children Act 2004

e) Social Services and Well Being Act 2014

f) Data Protection Act 1998

g) Health and Safety at Work Act 1974

h) United Convention of the Rights of the Child 1991

i) The All-Wales Child Protection Procedures

5.2 In relation to health and safety matters the Setting shall produce when required by the Council, satisfactory records of instruction and training of its staff and its written procedures showing compliance with the relevant legislation.

**6) Discrimination**

6.1 The Setting shall not unlawfully discriminate either directly or indirectly (or by way of victimisation or harassment) on such grounds as race, colour, ethnicity or national origin, disability, sex or sexual orientation, religion or belief, gender or age. Without prejudice to the generality of the foregoing, the Setting shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Equal Pay Acts 1970 and 1983, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Equality Act 2006, the Employment Equality (Religion or Belief) Regulations 2003, the Human Rights Act 1998 or other relevant legislation.

6.2 The Setting shall, in performing its obligations under this Agreement, comply with the provisions of Section 71(1) of the Race Relations Act 1976, as if it were a body within the meaning of Schedule 1A to the Race Relations Act 1976

6.3 Where in connection with this Agreement the Setting (including its agents and employee’s agents) is required to carry out work or provide services on the Council’s premises or alongside the Council’s employees on any other premises, it shall comply with the Council’s own employment policy and codes of practice relating to racial discrimination and equal opportunities.

6.4 The Setting shall notify the Council forthwith in writing as soon as it is aware of any investigation of or proceedings brought against the Setting under the enactments mentioned in clause 6.1.

6.5 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Setting’s performance of its obligations under this Agreement, being in contravention of the enactments mentioned in clause 6.1, the Setting shall free of charge:

6.5.1 Provide any information requested in the timescale allotted;

6.5.2 Attend any meetings as required and permit any of its staff to attend.

6.5.3 Promptly allow access to and investigation of any documents or data deemed to be relevant;

6.5.4 Allow itself and any of its staff to appear as witness in any ensuing proceedings; and

6.5.5 Cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

6.6 The Setting shall at all times act in a way which is compatible with the Rights of Children and Young Persons (Wales) Measure. This will ensure that everybody working within the Setting knows about and understands the UN Convention on the Rights of the Child.

**7) Change in Status of Organisation**

7.1 The Setting shall notify the Authorised Officer of any change to the status (in particular in respect of registration and/or change of ownership) of the Setting, in writing, within 7 days of such change.

**8) Confidentiality**

8.1 The setting will have a Confidentiality Policy in place that all staff adhere to. Confidentiality must form part of the induction process for all new members of staff.

8.2 The setting must be registered with the Information Commissions Office.

8.3 The setting has a duty to keep accurate up to date records of the children who attend their setting.

8.4 Systems must be put in place to keep all this information up to date and securely stored.

**9) Freedom of Information**

9.1 The Setting acknowledges that the Council is subject to the requirements of the Code of Practice on Government Information, the Freedom of Information Act 2000 (“FOIA”) and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.

9.2 The Setting shall:

9.2.1 Transfer to the Council all requests for information that it receives as soon as practicable and in any event within 2 working days of receiving a Request for Information;

9.2.2 Provide the Council with a copy of all Information in its possession or power in the form that the Council requires within 5 working days (or such other period as the Council may specify) of the Council's request;

9.2.3 Provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations;

9.2.4 The Council shall be responsible for determining in its absolute discretion whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.

9.4 In no event shall the Setting respond directly to a request for information unless expressly authorised to do so by the Council.

9.5 The Setting acknowledges that the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000, be obliged to disclose Information without consulting or obtaining consent from the Setting, or having taken the Setting’s views into account.

**10) Complaints**

10.1 The Setting will set out clear procedures for dealing with Service Users’ complaints. These procedures must include a written record of all complaints and any action taken. The procedures and records shall be available for inspection by the Authorised Officer or their representatives upon request.

**11) Subcontracting & Assignment**

11.1 The Setting shall not assign or subcontract its responsibilities and rights under this Agreement without the prior written consent of the Council.

**12) Staffing**

12.1 The Setting will provide to the Authorised Officer or their representatives, on request, an organisational chart detailing the staffing and management structure of the setting, including details of the qualifications of key staff members. The Setting shall notify the Authorised Officer of any changes in key management staff, at the earliest opportunity.

12.2 The Setting shall ensure that all relevant checks are completed before a person starts working with children or has regular unsupervised contact with children. The Setting must ensure that all staff and managers, working in the setting, have applied for and obtained an enhanced certificate from the Disclosing and Barring Service, which must then be renewed every three years. The setting must notify the Council of any safeguarding referrals the setting has made to the Police or Social Services regarding a member of staff, student, trainee and/ or volunteer working in the setting.

12.3 The Setting must ensure that all staff and volunteers are appropriately trained, supervised and managed (have regular one to one sessions, performance reviews and access CPD opportunities). All of the aforementioned persons involved within the setting also need to be aware of their data protection responsibilities.

12.4 The Setting must ensure that arrangements are in place to cover staff holidays, sickness, training and other absences, at no additional cost to the Council.

12.5 Settings must ensure all staff complete and renew all mandatory training at required intervals.

**14) Insurance and Indemnity**

14.1 The Setting shall indemnify and keep the Council and the Partners indemnified against the injury to or death of any person or persons, and loss of or damage to any property including property of the Council or Partners, and against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of the provision of the Service or in relation thereto (which for the avoidance of doubt includes any claims based on the Human Rights Act 1998), except and to the extent that it may arise out of the act, default or negligence of the Council or the Partners, their employees or agents not being the Setting or employed by the Setting.

14.2 Without thereby limiting its responsibilities under this Condition, the Setting shall insure, with a reputable insurance company, against all loss of and damage to property and injury to, or death of, persons arising out of or in consequence of the Setting's obligations under the Agreement and against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof.

14.3 Save only in respect of liabilities for death or personal injury resulting from the negligence of the Council or the Partners or their servants, the Council and the Partners shall not be liable for any loss or damage whether caused by the negligence of the Council or its servants or agents or in any other way whatsoever and the Council shall in no circumstances be liable to the Setting for any loss of profit business or production or any similar loss or damage whether direct indirect or consequential howsoever caused.

14.4 The insurance in respect of personal injury or death of any person arising under a contract of service with the Setting and arising out of an incident occurring during the course of such person's employment shall comply with the Employer's Liability (Compulsory Insurance) Act 1969 and the Road Traffic Act 1972 and any statutory orders made thereunder.

14.5 For all claims other than under Condition 14.4 above, the insurance cover shall be five million pounds, or such greater sum as the Setting may choose in respect of any one incident, and the Setting's insurance policy effecting such cover shall have the interest of the Council and the Partners endorsed thereon or shall otherwise expressly by its terms confer its benefits upon the Council and the Partners.

14.6 The Setting’s liability and indemnity to the Council and the Partners arising under these Conditions shall be without prejudice to any other right or remedy available to the Council and the Partners including the ability/right of the Council to enforce any bond or guarantee given to the Council.

**15) Force Majeure**

15.1 Either party to this Contract may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.

15.2 A party cannot claim relief if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

15.3 An Affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person’s obligations under the Contract with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).

15.4 The Affected Party shall immediately give the other party written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.

15.5 As soon as practicable following after the Affected Party’s notification, the affected party shall use all reasonable endeavours to continue to perform, or resume performance of this Contract for the duration of such Force Majeure Event and if the Service Provider is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

15.6 The Affected Party shall notify the other party as soon as practicable after the Force Majeure ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.

**15) Termination of Agreement**

15.1 Settings may terminate the agreement upon giving eight weeks’ notice, in writing, to Blaenau Gwent county Borough Council.

15.2 In the case of serious or persistent breach of the agreement either party has the right to terminate the agreement with immediate effect.