

## **PART B - Blue Pear Day Nursery Limited – Terms and Conditions**

### **1. Definitions**

1.1 The definitions below apply in these terms and conditions.

<b>“Child”</b>	the child who is named in Part A;
<b>“You”</b>	the person, firm or company who purchases services from us;
<b>“Services”</b>	the services of a day-care nursery during the days or half days (sessions) as indicated in Part A (excluding bank and public holidays) together with any other services which we provide, or agree to provide, to you;
<b>“Us”</b>	the nursery named in Part A.
<b>“The nursery”</b>	Blue Pear Day Nursery Limited.

1.2 A reference to **writing** or **written** includes email or signed formal letter.

1.3 Any requirement in this contract for either party not to do something includes an obligation on that party not to allow that thing to be done.

### **2. Offer of space & notice period**

2.1 No application will be considered without prior payment of a £25 registration fee. (Children accessing free sessions only, do not have to pay this). The registration fee is non-refundable. A minimum of three sessions per week or 1.5 days must be booked (this does not apply to free early education places only). If we cannot offer a space immediately, your child's name will be added to our waiting list.

2.2 If your child is offered a space you must pay a deposit, which you will be advised of at the time of application. Your child will not have a guaranteed space if we do not receive the deposit within 14 days of being requested. If you decide not to take up the space reserved for your child the deposit will not be refunded. The deposit amount can be used against fees (at the Nursery's discretion) or refunded to you when your child leaves as long as we are given a month's notice of the leaving date, and your child has attended the nursery for a minimum period of six months.

2.3 The contract shall last until it is terminated by either you or us giving to the other, in writing, at least one full calendar month's notice (i.e. notice received on the 1st of a month could end the contract on the last day of the month, but notice received on the 2nd of a month, would only be able to end the contract on the last day of the following month).

2.4 You are liable for the fees during the notice period. If you fail to give proper notice, you may lose your deposit. Your child's place at the nursery may be suspended (meaning the Child is temporarily not able to attend the nursery) in the circumstances set out in our Critical Incident Policy or in the circumstances set out in clause 19. If the Services are suspended for a period of more than one month, either of us may terminate the contract by giving the other one month's written notice.

### **3. Duration of the contract**

3.1 The contract shall last until it is terminated by either you or us giving to the other, in writing, at least one [full calendar] months' notice (i.e. notice received on the 1st of a month could end the contract on the last day of the month, but notice received on the 2nd of a month, would only be able to end the contract on the last day of the following month). However, the contract can, in some circumstances be terminated immediately under clause 19.

3.2 You are liable for the fee during the notice period. If you fail to give proper notice, you may lose your deposit and/or registration fee.

### **4. Our Obligations**

4.1 We will use all reasonable efforts to provide the services to you, in accordance in all material respects with these terms and conditions.

4.2 We welcome staff and children from many different backgrounds and ethnic groups. Human rights and freedoms are respected and we will do all that is reasonable to ensure that our culture, policies and procedures are made accessible to children who have disabilities and to comply with their social and moral obligations under the Special Educational Needs and Disability Act 2001 or Equality Act 2010 in order to accommodate the needs of children, applicants and members of staff who have disabilities for which, after reasonable adjustments, we can cater adequately.

4.3 If we determine, in our sole discretion (after appropriate and reasonable analysis) that reasonable adjustments cannot be made for a child and as such we cannot continue to adequately provide for that child (or admit them as the case may be) then we shall be permitted to request that you to withdraw the child without being charged fees in lieu of notice.

### **5. Your Obligations**

5.1 Co-operate with us and provide to us such information as we may reasonably require about the child

5.2 Inform us of; any known medical condition, disability, special educational need, health problem, allergy, or diagnosed dietary requirement of the child and of any prescribed medication

- Any lack of any vaccination which the child would ordinarily have by their age
- Any family circumstances or court orders affecting the child
- Any concerns about the child's safety
- Your contact details, and those of your authorised persons who may collect the child.
- You must (a) ensure that these details are accurate and (b) keep these details up-to-date,

by promptly informing us in writing whenever they change.

5.3 As regards arrivals and departure of a child, please refer to the nursery's Arrivals and Departures Policy. Please ask for a copy of it if necessary. If our performance of our obligations under the contract is prevented or delayed by anything you do (or fail to do), we shall not be liable. You shall not employ (or attempt to employ) any member of our staff without our consent, until six months from the end of this contract.

5.4 You agree not to connect with any member of our staff team on social media whilst that staff member is in employment with the nursery.

5.6 If our performance of our obligations under the contract is prevented or delayed by anything you do (or fail to do), we shall not be liable.

5.7 You shall not employ (or attempt to employ) any member of our staff without our consent, until six months from the end of this contract.

## **6. Charges and Payments**

6.1 Charges/Fees are payable even if the child is absent. This includes sickness and holidays.

6.2 You shall pay the total charges as set out on your monthly invoices from us. If your payment is short on any month, you will be asked to make immediate payment for the additional amount until the full invoice amount is paid.

6.3 We will not charge for bank holidays. All other closures will be charged for.

6.4 VAT is not charged on nursery fees (nursery provision is an exempt supply for VAT purposes)

6.5 The quoted charges are per child, per core day (meaning 10 hours, with 5 hours per session) and include all meals/snacks.

6.6 Extra hours (or parts of an hour) will be charged for (at the ruling rate) and must be booked and paid for at least 24 hours in advance

6.7 The charges must be paid monthly in advance, by the first day of the month. Late payment will incur a £25 fee, and a daily charge of £10 every day in which payment is late.

6.8 All payments must normally be made by standing order (bank transfer) or childcare vouchers. We may agree to payment by cash and/or cheque, but it is your responsibility to obtain a receipt from the nursery manager as proof of payment. No payment shall be deemed to have been made until it is cleared into our bank account. If a cheque bounces, or payment fails, we may charge a reasonable administration fee (currently £25).

Registration fees are non-refundable. The deposit paid will only be refunded if one month's written notice is given to the nursery and the child has attended for a period of six months or longer.

6.9 We may increase our charges. We will give you written notice of any such increase at least one month before the proposed date of increase. Late collection of child charge is £10 per 5 minutes.

6.10 Without restricting any other legal right that we may have, if you fail to pay us on time, we may:

- Make an interest charge of up to 1.5% per cent per month or part month on late payment. Unless otherwise notified to you in writing, interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay us the interest together with the overdue amount. In addition, we will be entitled to recover from you the full amount of our administrative and other costs incurred in recovering any unpaid sum including legal costs and disbursements on an indemnity basis
- Charge you a reasonable administration fee (currently £25)
- Suspend all Services until payment has been made in full, which will include the suspension of the child, or even terminate the contract permanently
- If you owe us any money, and make a claim against us, we may set off what you owe us against what you are claiming from us.

## **7. Reducing/changing sessions**

7.1 Requests for changes to bookings or for extra sessions should always be made in writing or by email.

7.2 Additional sessions can be added if spaces are available.

7.3 48 hours' notice is required for an early drop off between 7:30am and 7:59am and can be pre-booked in advance, a fee will be charged.

7.4 Any fees for additional sessions will be added to the monthly invoice. Please pay for additional sessions in addition to your monthly fees.

7.5 A decrease in attendance requires one month's written notice.

7.7 Late bookings may be refused due to insufficient staffing.

7.8 Please adjust your standing order amount if your child's regular booking/sessions changes.

## **8. Free nursery education**

8.1 If you wish to take up your free nursery education, you are required to complete and sign a Parental Declaration, detailing how and when you will take up the free sessions.

8.2 Our charges will not be made in respect of the free sessions, but we are entitled to make a reasonable charge for additional activities, meals or snacks, provided during any free session (this is our supplement fee or S/F).

8.3 If you wish to take up your free nursery education, you will be charged an hourly rate for any hours above the 15 or 30 hours free entitlement. This rate will be published to you before signed agreement to access free hours, and signed contract agreement with the nursery. It is at the nursery's discretion to change the additional hours rate at any time, however you will be notified in advance.

8.4 If you take up a free only place with the nursery you will be charged a supplement fee per week which will be paid in advance monthly. Please note that free hours are term-time only, we are able to stretch funding throughout the year if required.

## **9. Welfare of the Child**

9.1 We will do all that is reasonable to safeguard and promote the child's welfare and to provide care to at least the standard required by law and often to a much higher standard.

9.2 We will respect the Child's human rights and freedoms, which must however, be balanced with the lawful needs and rules of our nursery and rights and freedoms of others.

9.3 You consent to such physical contact as may be lawful accord with good practice, and be appropriate and proper for teaching and instruction and for providing comfort to a child in distress, or to maintain safety and good order, or in connection with the child's health and welfare

9.4 Parents of Children who are not potty trained must provide disposable pull up's nappies for their children if requested.

9.5 Parents of children who take formula milk should provide a container of sealed formula milk as well as a sufficient number of sterilized bottles to last throughout the day. Parents must also provide written instruction along with the container of how and when to make the formula milk for the child. Bringing in and storing made-up formula milk may increase the chance of the child becoming ill and should be avoided.

9.6 Labelled mother's breast milk will be stored in the fridge/freezer, this should be clearly labelled with full name of child to be given to, date and time expressed and a use by date. An area will be made available for mothers to breast feed their babies or express milk should they need to do so.

9.7 As regards behaviour management techniques and sanctions, please refer to the nursery's Promoting Positive Behaviour Policy. Please ask for a copy of it if necessary.

9.8 The nursery uses emergency procedures for accidents, evacuations, incidents and allergic reactions, please refer to the individual policies and procedures and ask for a copy where required.

9.9 Children may fall asleep in their buggies on outings, I consent for my child to be left sleeping in their buggy when returning to nursery, laid flat and supervised at all times, and checked by staff at 10-minute intervals.

- I consent of my child (under 2 years) to sleep in a cot or bouncer supervised and checked by members of staff at 5- or 10-minute intervals. Please refer to our sleep policy for children under 2.

- During outings we may use reins on younger children for their safety. I consent for my child to wear reins on outings supervised and held by a member of staff.

- I consent for my child to be involved in caring for the pet fish at nursery (toddlers room)

## **10. Health and medical matters**

10.1 If the child becomes ill during the nursery session the Nursery Manager will contact you or the emergency contact indicated on the registration form. You must inform us immediately of any changes to these contact details. If your child requires urgent medical attention while under our care, we will if practicable attempt to contact you and obtain your prior consent. However, should we be unable to contact you we shall be authorised to make the decision on your behalf should consent be required for urgent treatment recommended by a doctor (including anesthetic or operation, or blood transfusion (unless you have previously notified us you object to blood transfusions).

10.2 If the child is suffering from a communicable illness, he/she should not be brought to the nursery until such time as the infection has cleared. A full copy of our infection control policy is available from the Nursery Manager. Please refer to the illness/communicable disease list supplied in your information on minimum periods of exclusion from the nursery.

10.3 You must notify the Nursery Manager as soon as possible if the child is absent from the nursery through sickness.

10.4 If the Child has been sent home from the nursery because of ill health, he/she will not be re-admitted for at least 24 hours. If the Child is prescribed antibiotics, he/she will not be allowed to return to the nursery for 48 hours.

10.5 As regards to medication, and the administration of it to the child, please refer to the nursery's Medication Policy. Please ask for a copy of it if necessary.

10.6 Some children attending the nursery may not be fully vaccinated in accordance with their age for reasons such as parental choice or medical reasons. Please be aware of this when sending your child to nursery.

10.7 Our nursery does not discriminate against children who have not received their immunisations and will not disclose individual details to other parents. However, we will share the risks of infection if children have not had immunisations and ask parents to sign a disclaimer form.

## **11. Food/dietary requirements**

11.1 We will work with you to provide suitable food for your child, if they have a special dietary requirement or any allergies as diagnosed by a doctor or dietician. All reasonable care will be taken to ensure that a child does not come into contact with certain foods with support from parents and external professionals should the need arise.

11.2 Menus will be displayed for inspection, and parents and children will be able to feed into the review of these.

11.3 No packed lunches supplied by parents to us will be heated up by us.

## **12. Reporting of neglect or abuse**

12.1 We have an obligation to report to the relevant authorities any suspicions we have that your Child has suffered neglect or abuse, and we may do so without your consent and/or without informing you.

## **13. Limitation of liability**

31.1 This clause sets out our (and our employees', agents', consultants' and subcontractors') liability to you in respect of the contract (including any breach of it, any statement we make to you about it, our termination of it).

13.2 All terms implied by law are, to the fullest extent permitted by law, excluded or deleted from the contract.

13.3 Nothing in these terms and conditions in any way limits our liability for fraud, or for death or personal injury resulting from negligence.

### **13.4 We shall not be liable for:**

13.4.1.1 Any loss or damage to any toys, equipment or bags, clothing etc. you may bring into our nursery;

13.4.1.2 Loss of any profits, or consequential loss; or any other indirect loss; and

Subject always to clause 13.3, our total liability (in contract, tort including negligence or breach of statutory duty, or otherwise) shall be limited to cumulative price paid by you for the Services over the course of the contract.

## **14. Data protection & GDPR**

14.1 It is a legal requirement on the nursery to hold information on children using the nursery, as well as staff. Basic information is used for registers, invoices and for emergency contacts. However, all records will be stored in a locked cabinet.

14.2 We may take photographs and/or videos of your child for promotional, display, observation or training purposes only. If you do not wish for your child to be included in such photographs or videos, please inform us via the consent form or by writing to the

nursery manager.

- Tapestry observations: You child may be included in group observations on the app 'Tapestry', media can be viewed by the parents of children in the group observation only.

14.3 Parents, carers, legal guardians, family members and friends must not take images of their child, and their child's friends, participating in nursery activities (or in general) at nursery. Nursery staff will take photographs of the children individually or in groups for use in observation/assessment diaries (learning journeys) and these may be published to parents by the nursery. Any images the nursery takes will not be used inappropriately. This includes the uploading of images to social networking and image sharing websites where care and consideration will be taken to conceal children's identity.

14.4 Any personal data related to You or your Child will be dealt with in accordance with our GDPR privacy notice. A hard copy is available for viewing at our setting if you request so to the manager. There is also a copy available for viewing online at the end of our policies and procedures document.

## **15. Security**

15.1 Parents are welcome to visit the nursery, but we will not admit anyone without prior notification. It is your responsibility to ensure that we are aware of who will be collecting your child.

15.2 No child will be allowed to leave the building with any person who has not been notified as an authorized person to collect the child on your behalf.

15.3 If the registered parent/carer in part A of this contract has made arrangements by telephone, the Nursery will require photo ID, name and password from the permitted to collect your child.

15.4 I acknowledge that CCTV will be used on/inside the premises in line with recent Ofsted regulations and the nursery policy. The reviewing of CCTV footage is for serious investigation purposes only.

## **16. Behavior management**

16.1 Rude, aggressive or abusive behavior against any member of staff, parent or child will not be tolerated. The nursery reserves the right to terminate a child's place immediately if this occurs. Fees will still be charged.

## **17. Personal property and belongings**

17.1 We cannot be held responsible for any loss or damage to you or your child's property. Every effort will be made by the nursery staff to ensure the children's belongings are not lost or damaged. Practical clothing is strongly recommended for children attending the nursery. It is the parent's responsibility to name and clearly label all items of clothing. We suggest that all toys, books or other equipment are left at home.

## **18. Complaints and concerns**

18.1 Please address any complaint or concern to the supervisor in charge, in the first instance, and if the matter is not resolved within a reasonable period, please refer it to the Nursery Manager. Please also refer to our complaints and compliments policy which shall apply to any complaints received by us.

## **19. Termination for breach of contract, or bankruptcy/insolvency**

19.1 Without restricting any other legal rights which the parties may have, either party may terminate the contract without liability to the other immediately on giving written notice to the other if:

- The other party fails to pay any amount due under the contract on the due date for payment and remains in default for 10 days or more or,
- The other party commits a material breach of any of the terms of the contract and (if such a breach is capable of being remedied) fails to remedy that breach within 30 days of that party being notified in writing of the breach or,

19.2 The other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986.

## **20. On termination of the contract for any reason:**

20.1 You shall immediately pay all outstanding unpaid invoices and interest and, in respect of services supplied but for which no invoice has been submitted, we may submit an invoice, which shall be payable immediately on receipt; and

20.2 Any clause in these terms and conditions which implicitly is intended to survive termination shall continue in force.

## **21. Events that are beyond our control**

21.1 If any event beyond our reasonable control (e.g. a fire, flood, E-Coli outbreak, strike, civil action, act of terrorism, war etc.) occurs, for which we have business interruption insurance, we may close the nursery without liability to you and we will not charge you for the fees for the time the nursery is closed. We will keep you informed in such an event.

21.2 If it is, in our reasonable opinion, necessary or in the interests of the child to do so, we may close the nursery even though our business interruption insurance will not cover us for the closure. In these circumstances, we will charge you for the time the nursery is closed. For example, we may close because of severe weather conditions, outbreak of flu, swine flu or other illnesses etc.

## **22. Changes to these terms and conditions**

22.1 We may change these terms and conditions where such a change arises from changes

in regulations or legislation affecting us.

22.2 We may change any other terms in these terms and conditions provided we give you at least one month's written notice of our intention to do so.

### **23. Invalid Clauses**

23.1 If any part of the contract is found by any court or similar authority to be invalid, illegal or unenforceable, that part shall be struck out, but the rest of the contract shall apply.

### **24. Assignment**

24.1 The contract is personal to you. You shall not, without our written consent, transfer to anyone else any of your rights or obligations under the contract.

### **25. No other terms**

25.1 Each party acknowledges that, in entering into the contract, it has not relied on anything said or written that is not written in the contract. This applies unless fraud is established.

### **26. Rights of third parties**

26.1 A person who is not a party to the contract shall not have any rights under or in connection with it.

### **27. Governing law and jurisdiction**

27.1 The contract, and any dispute or claim arising out of it or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by the Law of England. The courts of England shall have exclusive jurisdiction to settle any such dispute or claim.