

EYSFF PAYMENT TERMS AND CONDITIONS 2018-2021

Relating to provision of Free Early Education Entitlement (FEEE) places to 2, 3 & 4 year olds

Between the London Borough of Waltham Forest

And

[INSERT NAME OF PROVIDER]

PROVIDER DETAILS INSERTED HERE INCLUDING ANY TRADING NAME, ADDRESS, OFSTED
REG.NO., COMPANY NO.

This Agreement is dated the _____ day of _____ 2020

PARTIES

(A) The Mayor and Burgesses of the London Borough of Waltham Forest, Walthamstow Town Hall, Forest Road, London E17 4JF (the “**Council**”) and

(B) [Name of Provider] of [Address] whose Ofsted registration number is [insert Ofsted Registration Number] (the “**Provider**”)

OR

[Name of Provider] registered as a company in England under Company Registration Number [Company Registration Number] whose registered office is at [Registered office address] and whose Ofsted registration number is [insert Ofsted Registration Number] (the “**Provider**”)

OR

[Name of Provider] registered as a charity under Charity Registration Number [Charity registration number] whose registered address is at [Registered Address] and whose Ofsted registration number is [insert Ofsted Registration Number] (the “**Provider**”)

OR

[Name of Provider] registered as a company in England under Company Registration Number [Company Registration Number] and registered as a charity under Charity registration Number [Charity Registration Number] whose registered office is at [Registered Office Address] and whose Ofsted registration number is [insert Ofsted Registration Number] (the “**Provider**”)

(each being referred to as a “Party” and together as the “Parties”)

BACKGROUND

- (A) The Council is an Early Education and Childcare Local Authority and has a statutory duty pursuant to section 2 of the Childcare Act 2016 and sections 6, 7, 7A, 9A, 12 and 13 of the Childcare Act 2006 to secure adequate places for the provision of early education and childcare services.
- (B) The Provider has agreed to provide the Service from the Premises as set out in this Agreement and the Guidance.
- (C) The Council has agreed to make EYSFF Payments to the Provider in accordance with this Agreement and the Guidance in respect of the provision of the Service from the Premises.

IT IS AGREED AS FOLLOWS: -

SECTION A - PROVIDER CONDITIONS / CONTRACT STANDARDS

In promoting the FEEE, the Council bases its conditions on the key principles set out in the “Early Education and Childcare Statutory Guidance for Local Authorities, February 2018” and the Model Agreement – Early Years Provision Free of Charge and Free Childcare issued by the Department of Education (DfE) in March 2017.

1. DEFINITIONS

1.1 In these Terms and Conditions unless the context otherwise requires the following words and expressions shall have the following meanings:

“Act(s)”	means the Childcare Act 2006 and the Childcare Act 2016 as amended from time to time;
“Agreement”	means this agreement including all Schedules hereto and all documents referred to therein;
“Bribery Act”	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;
“Child / Children”	means a child/children from the age of 2 to 5 as further specified in Schedule 1 of this Agreement;
“Childcare”	has the meaning given by the Act;
“Commencement Date”	means *insert contract start date*
“Contract Term”	means the period starting on the Commencement Date and ending on 31 March 2021;
“DAF”	means the Disability Access Fund for three- and four-year olds who are taking up their free entitlement and are in receipt of Disability Living Allowance
“Disability Living Allowance”	means a social security benefit paid to eligible claimants who have personal care and/or mobility needs as a result of a mental or physical disability
DBS	means the Disclosure and Barring Service
Early Education and Childcare Guidance	means the Early Education and Childcare Statutory Guidance for Local Authorities, published by the Department for Education in February 2018, as amended from time to time, the current version of which is set out at

	Schedule 4
“Early Years Provider”	as defined in the Act, is a person who provides early years provision;
“Early Years Provision”	means the provision of Childcare for a young child;
“EYPP”	means the Early Years Pupil Premium as defined by the Department for Education
“EIR”	means the Environmental Information Regulations, 2004 as amended from time to time;
“EYFS”	means the Early Years Foundation Stage;
“EYFS Guidance”	means the Early Years Foundation Stage Statutory Framework 2017 issued by the Department for Education, as amended from time to time, the current version of which is set out at Schedule 1 herein;
“EYSFF Payment”	means payments made to the Provider under the Early Years Single Funding Formula as detailed in the FEEE Financial Guidance;
“FEEE”	means the Free Early Education Entitlement to free early education and childcare to eligible 2, 3 & 4 year olds as defined by the Department for Education;
“FEEE Financial Guidance”	means the annual FEEE Financial Guidance issued by the Council, as amended from time to time, the current version of which is set out at Schedule 2;
“Grace Period”	means the period of time, as set out in Schedules 2 and 4, during which the Council will continue to fund a place for a child whose parents cease to meet the eligibility criteria
“Guidance”	means the EYFS Guidance, the FEEE, the Early Education and Childcare Guidance, the Ofsted Framework and the statutory guidance for local authorities as amended from time to time.
“Intellectual Property (IP)”	means any and all patents, trademarks, service marks, domain names, registered designs, utility models, applications for and the right to make applications for any of such rights, inventions, Know-How (as defined below), unregistered trademarks and service marks, trade and business names, including rights in any get-up or trade dress, copyrights, (including rights in

	<p>computer software and in websites) unregistered design rights and other rights in designs and rights in databases, subsisting anywhere in the world; the right for the maker of a database to prevent extraction or reutilisation or both of the whole or a substantial part of the content of that database; rights under licences, consents, orders, statutes or otherwise in respect of any rights of the nature specified in this definition "Intellectual Property"; and rights of the same or similar effect or nature as or to those above in each case in any jurisdiction;</p>
"Intellectual Property Rights (IPR)"	<p>means all patents, copyrights and design rights (whether registered or not) and all applications for any of the foregoing and all rights of confidence and Know-How however arising for their full term and any renewals and extensions;</p>
"Know-How"	<p>means information, data, know-how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research, design, development, manufacture, use or sale;</p>
LADO	<p>Means the person appointed by the Council to act as the Local Authority Designated Officer from time to time;</p>
"Legal Requirements"	<p>means any applicable statute, enactment, order, directive, regulation or other instrument or judgment of a court having the force of law for the time being in force governing or relating to the provision of the Service including but not limited to statutory guidance on EYFS, relevant financial regulations, Ofsted guidance, health and safety legislation, building regulations and planning, Department for Education regulations or guidance, relevant tax provisions, special education needs (SEN) codes of practice, safeguarding children and children's welfare laws and codes, employment law, human rights and/or equality laws, food safety laws, data protection law and all other such orders,</p>

	directives or regulations as may be passed into law from time to time or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof;
“Ofsted”	means the Office for Standards in Education;
“Ofsted Framework”	means the Ofsted Framework for the regulation and inspection of provision on the Early Years Register as amended from time to time, the current version of which is set out at Schedule 3;
“Parent”	has the meaning given by the Act;
“Premises”	means the premises from which the Provider is registered by Ofsted to deliver the Service;
“Prohibited Act”	<p>means</p> <ul style="list-style-type: none"> a) offering, giving or agreeing to give [to any member or officer of the Council any gift or consideration of any kind as an inducement or reward for: <ul style="list-style-type: none"> i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Council; or ii) showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Council; b) entering into this Agreement or any other contract with the Council where a commission has been paid or has been agreed to be paid by the Provider or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council; c) committing any offence: <ul style="list-style-type: none"> i) under the Bribery Act; ii) under legislation creating offences in respect of fraudulent acts; or iii) at common law in respect of

	<p>fraudulent acts in relation to this Agreement or any other contract with the Council or Crown; or</p> <p>d) defrauding or attempting to defraud or conspiring to defraud the Council OR Crown.</p>
“Provider”	<p>Means:</p> <ul style="list-style-type: none"> - an Early Years Provider other than a childminder registered on the Ofsted Early Years Register; - a childminder registered on the Ofsted Early Years Register; - a childminder registered with a childminder agency that is registered with Ofsted; or - schools taking children of an age which are exempt from registration with Ofsted as an early years Provider.
Registered Individual/Organisation	<p>means the name under which the Provider is registered with Ofsted for the provision of the Services and associated with the trading name.</p>
“Regulations”	<p>means the Children and Young Persons, England Local Authority (Discharge of Duty to Secure Early Years Provision Free of Charge) Regulations 2014 as amended from time to time;</p>
“Request for Information”	<p>means a request for information or an apparent request for information under the Code of Practice on Access to Government Information, FOIA or the EIRs”.</p>
Schedules	<p>means Schedule 1, Schedule 2, Schedule 3, Schedule 4, Schedule 5, Schedule 6 and Schedule 7</p>
Schedule 1	<p>means the first schedule to this Agreement containing the Statutory Framework for the early years foundation stage</p>
Schedule 2	<p>means the second schedule to this Agreement containing the FEEE Financial Guidance</p>
Schedule 3	<p>means the third schedule to this Agreement containing the Early Years and childcare</p>

	registration handbook
Schedule 4	means the fourth schedule to this Agreement containing the Early education and childcare: Statutory guidance for local authorities
Schedule 5	means the fifth schedule to this Agreement containing the General Data Protection Regulations 20
Schedule 6	means the sixth schedule to this Agreement containing the special educational needs and disability code of practice
Schedule 7	means the seventh schedule to this Agreement containing the statutory guidance for Providers regarding safeguarding and the Council's New Model Early Years Safeguarding policy
"SEND"	means special educational needs and disabilities
"SEND Inclusion Fund"	means the fund to support early years providers in meeting the needs of individual children with SEND
"Service"	means the provision of Childcare for 2, 3 and 4 year olds as set out in Schedule 1 and Schedule 4 of this Agreement;
"Top-up Fees"	means the difference between what a Provider would normally charge and the funding they receive from the Council to deliver the FEEE provision;
"Working Day(s)"	means any day except for Saturday, Sunday and a public holiday in England.

1.2 The interpretation and construction of this Agreement shall be subject to the following provisions:

- 1.2.1 the terms and expressions in Clause 1.1 above shall have the meanings ascribed to them;
- 1.2.2 references to Clauses and Schedules are to the clauses and schedules of this Agreement unless otherwise stated;
- 1.2.3 references to the singular include the plural and vice versa and references to a gender includes both genders;
- 1.2.4 the headings are for convenience only and shall not affect the meaning of this Agreement;
- 1.2.5 the Schedules are an integral part of this Agreement and shall be interpreted accordingly. In the event and only to the extent that there is any conflict between the Clauses and the Schedules, the Schedules shall prevail;

1.2.6 references to statutory provisions include all prior and subsequent enactments, amendments and substitutions relating to that provision and to any regulation made under it

1.2.7 these terms and conditions shall not apply to provision of the Service by childminding agencies.

2. KEY LOCAL AUTHORITY RESPONSIBILITIES

2.1 The Council Shall:

2.1.1 secure a free entitlement place for every eligible child in their area.

2.1.2 The Council shall work in partnership with Providers to agree how to deliver free entitlement places.

2.1.3 The Council shall be clear about their role and the support on offer locally to meet the needs of children with special educational needs and/or disabilities (SEND) as well as their expectations of Providers.

2.1.4 The Council shall contribute to the safeguarding and promote the welfare of children and young people in their area.

3. KEY PROVIDER RESPONSIBILITIES

The Provider agrees as follows:

3.1 To use the EYSFF Payment only for the delivery of the Service and in accordance with the terms and conditions set out in this Agreement. The EYSFF payment shall not be used for any other purpose without the prior written agreement of the Council.

3.2 In consideration of the payment of EYSFF to the Provider by the Council, the Provider shall from the Commencement Date:

3.2.1 comply with all relevant Legal Requirements

3.2.2 comply with all relevant insurance requirements including those which are set out in clause 23 of this Agreement.

3.2.3 provide the Service in accordance with all statutory requirements in relation to health and safety, safeguarding, special education needs and inclusion as contained in Schedules 1, 2 and 3 and the Legal Requirements and the Guidance.

3.2.4 deliver the free entitlements consistently to all Parents whether in receipt of 15 or 30 hours per week and regardless of whether they opt to pay for optional services or consumables.

3.2.5 be clear and communicate to Parents details about the days and times that they offer free places along with their services and charges.

- 3.2.6 Ensure that children accessing the free entitlements should receive the same quality of and access to, provision.
- 3.2.7 follow the EYFS and have clear safeguarding policies and procedures in place which are in line with the Council's guidance as set out in Schedule 7 for recognising, responding, reporting and recording suspected or actual abuse.
- 3.3 To deliver the Service in accordance with all funding requirements imposed by the Council and as specified in the Schedules.
- 3.4 Not to deliver the Service unless they are registered by Ofsted and to comply with Ofsted's registration conditions as contained in Schedule 3.
- 3.5 To provide the entitlement completely free of charge at the point of delivery.
- 3.6 Not to charge 'Top up Fees' in relation to any free hours and to take immediate and appropriate action where this practice is identified.
- 3.7 To provide the entitlement consistently to all Parents, whether their child(ren) is/are in receipt of 15 or 30 hours and regardless of whether they opt to pay.
- 3.8 Have arrangements in place to support children with special educational needs and/or disabilities (SEND). These arrangements shall include a clear approach to identifying and responding to SEND in line with Schedule 6.
- 3.9 Utilise the SEND inclusion fund and Disability Access Fund to deliver effective support, whilst making information available about their SEND offer to Parents.

4. SAFEGUARDING

- 4.1 The Provider shall ensure that all potential staff or persons performing any of the Service during the Contract Term, who will or may in the course of their employment or engagement have access to children or other vulnerable persons:
 - 4.1.1 are questioned concerning their convictions; and
 - 4.1.2 obtain enhanced disclosures from the DBS in accordance with the Safeguarding Vulnerable Groups Act 2006 and the safeguarding requirements as set out in Schedule 7, before the Provider engages the potential staff or persons in the provision of the Service to the Council. The Provider shall also take all necessary steps to procure that the potential staff obtain enhanced disclosures from the DBS including, without limitation, the Provider being registered with the DBS.
- 4.2 The Provider shall identify and appoint a lead practitioner who shall be responsible for safeguarding.

- 4.3 The Provider shall ensure that all of its staff receive appropriate and up to date training in identifying signs of abuse and neglect, in line with the Council's Guidance for recognising, responding, reporting and recording suspected or actual abuse.
- 4.4 The Provider shall, at all times during its provision of the Service have regard to the safeguarding requirements as set out in Schedule 7.
- 4.5 The Provider shall forward to the LADO the results of the checks referred to in clauses 4.1.1 and 4.1.2 where there is a conviction or other issue of concern to the Provider and shall ensure that no person who discloses any Convictions upon being questioned about their Convictions in accordance with Clause 4.1.1, or who is found to have any Convictions following receipt of enhanced disclosures from the DBS in accordance with Clause 4.1.2, or who fails to obtain enhanced disclosures from the DBS upon request by the Provider in accordance with Clause 4.1.2 is employed without the Council's prior written consent.
- 4.6 The Provider shall ensure that the LADO is kept advised at all times of any member of staff who, subsequent to his/her commencement of employment as a member of the Provider's staff receives a Conviction or whose previous Convictions become known to the Provider.
- 4.7 Further to Clauses 4.5 and 4.6, if the Provider fails to comply with Schedules 1 and 7 in hiring, employing or engaging staff (including any volunteers) and fails to rectify this breach within the period of time specified by the Council then the Council will be entitled to terminate this Agreement.

Staff

- 4.8 The Provider shall ensure that any person working directly with Children undergoes regular enhanced criminal record checks with the DBS
- 4.9 The Provider shall ensure that it employs staff of appropriate levels of experience and expertise as specified in Schedule 1 to perform the service.
- 4.10 The Provider shall only employ staff who:
- 4.10.1 Fulfil any minimum training and qualification requirements as set out in Schedule 1 and 3 and also all training and qualification requirements that may be deemed necessary.

5. ELIGIBILITY

- 5.1 Pursuant to the Council's duty to ensure that a child has a free entitlement place no later than: the beginning of the term following the child's birthday and subject to the Parent meeting the eligibility criteria for the free entitlements:

- 5.1.1 The Provider shall on initial registration for all free entitlements, check original copies of relevant documentation to confirm a child has reached the eligible age.
- 5.1.2 The Provider shall retain paper or digital copies of documentation to enable the Council to carry out audits and fraud investigations. Where a Provider retains a copy of documentation this must be stored securely in accordance with the data privacy guidance set out in Schedule 5 and deleted when there is no longer a good reason to keep the data.
- 5.2 The Provider shall offer places to eligible two-year-olds on the understanding that the child remains eligible until the child becomes eligible for the universal entitlement for three- and four-year-olds
- 5.3 The Provider must, alongside the 30 hours eligibility code, which is the child's unique 11-digit number, and original copies of documentation (see 5.1.2), acquire written consent from, or on behalf of the Parent that the Parent consents to the Provider receiving confirmation and future notifications from the Council of the validity of the Parent's 30 hours eligibility code.
- 5.4 Once a Provider has received written consent from the Parent, they shall verify the 30 hours eligibility code with the Council.
- 5.5 The Council may confirm the validity of the 30 hours eligibility codes to allow Providers to offer 30 hours places for eligible three- and four-year-olds. The Council will provide a validity checking service to providers to enable them to verify the 30 hours eligibility code. The Eligibility Checking Service (ECS) allows all local authorities to make instant checks for code validity.
- 5.6 Thereafter, the Council will complete audit checks to review the validity of eligibility codes for children who qualify for 30 hours free childcare at 6 fixed points in the year, both at half-term and at the end of term across the year in line with the dates as listed in schedule [2].
- 5.7 The Council shall notify the Provider where a Parent has fallen out of eligibility and inform the Provider of the Grace Period end date.

6. THE GRACE PERIOD

- 6.1 A child will enter the Grace Period when the child's Parents cease to meet the eligibility criteria set out in the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016, as determined by HMRC or a First Tier Tribunal in the case of an appeal.
- 6.2 The Council will be able to access information about whether a child has ceased to meet the eligibility criteria and entered the Grace Period via the Eligibility Checking Service. The Grace Period end date will automatically be applied to eligibility codes.
- 6.3 The Council may continue to fund a place for a child who enters the Grace Period as set out in Schedule 4.

7. FLEXIBILITY

7.1 The Provider agrees to offer the FEEE provision for up to 30 hours per week in a way that best supports the learning of the Child and supports Parents' need for flexibility in compliance with section A2 of Early Education and Childcare Statutory Guidance for Local Authorities and the following guidelines:

7.2 The Provider agrees to consult with Parent(s) about what they want from their FEEE on an ongoing basis and to be as responsive as possible to changing demand.

7.3 The Provider will consider when possible and subject to parental demand delivering a "stretched" offer, that is, offering 570 hours in less hours per week or over more weeks in a year.

7.4 The Provider shall work with the Council and share information about the times and periods at which they are able to offer free entitlements to support the Council to secure sufficient stretched and flexible places to meet parental demand in the local authority's area. The Provider shall also make information about their offer and admissions criteria available to Parents at the point the child first accesses provision at their setting.

7.5 The Provider will comply with the guidance and requirements for sets how a child may receive the FEEE provision at multiple providers in accordance with Schedule 2.

8. PARTNERSHIP WORKING

8.1 The Council will support partnership on four levels between:

- The Council and Providers
- Providers working with other Providers, including childminders, schools and organisations
- Providers and Parents
- The Council and Parents

8.1 The Council will promote partnership working between different types of Providers, including childminders, across all sectors and encourage more Providers to offer flexible provision, alongside other Providers.

8.2 The Provider shall work in partnership with Parents, carers and other providers to improve provision and outcomes for children in their setting. An interactive toolkit at <http://www.familyandchildcaretrust.orh/dfes-30-hour-mixed-model-partnership-toolkit> has been developed to help Providers set up or join a partnership, maximise the benefits of working together and tackle the challenges joint working can bring.

8.3 The Provider shall discuss and work closely with Parents to agree how a child's overall care will work in practice when their free entitlement is split across different Providers, such as at a maintained setting and childminder, to ensure a smooth transition for the child.

9 SPECIAL EDUCATIONAL NEEDS AND DISABILITIES

9.1 The Council will strategically plan support for children with special educational needs and/or disabilities (SEND) in order to meet the needs of all children in their local area in accordance with the Special Educational Needs and Disability Code of Practice: 0 to 25 years (January 2015) as set out in Schedule 6.

9.2 The Council must be clear and transparent about the support on offer in their area, through their Local Offer, so Parents and Providers can access that support.

9.3 The Provider shall:

9.3.1 ensure that owners and all staff members are aware of their duties in relation to the SEND Code of Practice and the Equality Act 2010.

9.3.2 be clear and transparent about the SEND support on offer at their setting and make information available about their offer to support Parents to choose the right setting for their child with SEND.

10 SOCIAL MOBILITY AND DISADVANTAGE

10.1 The Council shall promote equality and inclusion, particularly for disadvantaged families, looked after children and children in need by removing barriers of access to free places and working with Parents to give each child support to fulfil their potential:

10.2 The Provider shall ensure that they have identified the disadvantaged children in their setting as part of the process for checking the eligibility for free early education who may also be eligible for other funding linked to social mobility and disadvantage e.g. Early Years Pupil Premium (EYPP), Disability Access Fund (DAF) and SEND inclusion Fund . The Provider must also use EYPP and any locally available funding streams or support to improve outcomes for this group.

11 QUALITY

11.1 The Provider agrees to support improvements in the quality of provision by agreeing to:

11.1.1 implement and meet all the statutory welfare, learning and development and legal requirements of the EYFS Statutory Framework (Schedule 1);

11.1.2 implement updated policy requirements as required by Ofsted to ensure compliance with Ofsted's registration requirements as contained in Schedule 3

11.2 All Providers, regardless of the age of Children they deliver the Service to must work towards achieving a minimum Ofsted grade of 'good'. Providers shall actively engage with the Council at all times with a view to achieving an Ofsted grade of 'good' or 'outstanding' Providers achieving less than a 'good' Ofsted inspection grade will be required to improve and reach a 'good' standard within the timescales agreed with or stipulated by Ofsted.

11.3 The Providers shall offer all provisions in accordance with the national parameters on quality as set out in Section A3 of Early Education and Childcare Statutory Guidance for Local Authorities and the EYFS Statutory Framework.

11.4 In the event that the Provider is rated less than “Good” by Ofsted or in the event that the Provider is newly registered the Council will provide to the Provider information, advice and training on meeting the requirements of the EYFS, meeting the needs of children with SEND and on effective safeguarding and child protection.

12 BUSINESS PLANNING

12.1 The Provider shall provide to the Council the documentation set out in Schedule 2 and required by the Council to support payment and delivery of free entitlements.

12.2 The Provider shall comply with the timetable set out in Schedule 2 in submitting their documentation

12.3 Any charges made by the Council to the Provider for providing late or incomplete information leading to additional administration in the processing of free entitlements shall be reasonable and proportionate to the inconvenience of costs incurred to the Council as a result of the lateness and the Council will ensure charges are clearly communicated to Providers.

12.4 The Council will carry out audit regimes which are proportionate and which are not unnecessarily burdensome to Providers.

12.5 The Provider shall ensure that they submit timely and accurate information, including but not limited to, headcount data, census data, parental declarations and invoices as per the financial guidelines of the Council. Failure to do so may result in inaccurate, delayed or suspended funding.

12.6 The Provider shall maintain accurate financial and non-financial records relating to the free entitlement places and shall give the Council access on reasonable notice to all financial and non-financial records relating to free entitlement places funded under this Provider agreement, subject to confidentiality restrictions.

13 CHARGING

13.1 The Provider may charge for meals and snacks as part of a free entitlement place and may also charge for consumables. Any such charges must be voluntary for the Parent.

13.2 Where the Provider offers the free entitlement, the Provider shall have and maintain an updated policy on how to respond with options including waiving or reducing the cost of meals and snacks or allow or allowing Parents to supply their own meals.

13.3 The Provider shall deliver the free entitlements consistently so that all children accessing any of the free entitlements receive the same quality and access to provision regardless of whether they opt to pay for optional hours, services, meals or consumables

13.4 The Council will not intervene where Parents choose to purchase additional hours of provision or additional services, providing that this does not affect the Parent's ability to take up their child's free place.

13.5 The Provider must be completely transparent about any additional charges.

13.6 The Provider must publish their admissions criteria and ensure that Parents understand which hours/sessions can be taken as free provision. Not all Providers will be able to offer fully flexible places, but the Provider should work with Parents to ensure that as far as possible the patterns of hours are convenient for Parents' working hours.

13.7 The Provider may charge Parents a deposit to secure their child's free place but should refund the deposit in full to Parents within a reasonable time scale as set out in Schedule 2.

13.8 The Provider shall not charge Parents "top-up" fees (the difference between a Provider's usual fee and the funding they receive from the Council to deliver free places) or require Parents to pay a registration fee as a condition of taking up their child's free place.

13.9 The Provider shall ensure that their invoices and receipts are clear, transparent and itemised, allowing parents to see that they have received their free entitlement completely free of charge and understand fees paid for additional hours. The Provider must also ensure that receipts contain their full details so that they can be identified as coming from the Provider.

Free Meals

13.10 All eligible children who are registered pupils of a maintained school, attend free provision before and after lunch and whose Parent(s) is/are in receipt of specified benefits are entitled to a free school meal daily during attendance and where the Provider is a maintained school, the school must ensure this meal is provided.

14 FUNDING

14.1 In discharging its duties under this Agreement, the Council shall ensure that it complies with any Legal Requirements issued from time to time by the Secretary of State and bring such Legal Requirements to the attention of the Provider.

14.2 The Council shall pay all providers in accordance with Schedule 2.

- 14.3 The Provider shall provide the Council with headcount returns as specified in Schedule 2 and in such formats as the Council may reasonably require. Where the Provider has obtained funding from a third party for its delivery of part of the Service, the Provider shall include the amount of such funding in its financial reports together with details of what that funding has been used for.
- 14.4 The Provider shall accurately complete and submit headcount and other necessary data returns by the dates outlined in Schedule 2 to support the Council to make payment
- 14.5 The Council shall fund the provision of the Service by the Provider at no cost to the Parent(s).
- 14.6 Pursuant to Clause 14.4 above the Council shall fund the provision of the Service to 2 year olds by a Provider preferred by the Parent(s) and judged 'good' or 'outstanding' by Ofsted or where the Council has provided written confirmation to the Provider that the Council shall grant an exemption in line with the Guidance and fund the provision of the Service to 2 year olds by a Provider preferred by the Parent(s) judged less than 'good' or 'outstanding' by Ofsted if the Provider is willing to accept the Council's funding and any other funding requirements that may be imposed upon it by the Council.
- 14.7 The Council shall fund the provision of the Service to 3 and 4 year olds by a Provider preferred by the Parent(s) and adjudged 'not inspected', 'met', 'satisfactory', 'requires improvement', 'good' or 'outstanding' by Ofsted if the Provider is willing to accept the Council's funding and any other funding requirements that may be imposed upon it by the Council.
- 14.8 Further to Clauses 14.2, 14.3 and 14.4 above and in accordance with Schedules 1, 2,3, 4, 5, 6 and 7, the funding requirements which may be imposed on the Provider by the Council are those which ensure that:
- 14.8.1 early education places are delivered completely free of charge to Parents;
 - 14.8.2 early education places are provided flexibly in a pattern which meets the needs of Parent(s);
 - 14.8.3 the funding provided is used properly and in accordance with any arrangements made with Providers;
 - 14.8.4 Providers will actively promote fundamental British values and not promote views or theories as fact which are contrary to established scientific or historical evidence and explanations;

14.8.5 the Provider meets the needs of disabled children and children with special educational needs;

14.8.6 Providers keep children safe; and

14.8.7 Providers judged less than 'good' by Ofsted and in respect of which Ofsted has raised concerns with respect to how the Provider is using its Early Years Pupil Premium to support disadvantaged Children are themselves supported to improve.

The list in this Clause 14.8 is not exhaustive and shall be subject to review by government legislation governing the provision of the Service. When complying with this Clause 14.8 the Provider shall have regard to Clauses 25 and 28 of this Agreement which address termination of the Agreement and withdrawal of funding if the Provider fails to comply with this Clause 14.8.

14.9 With regard to Clause 14.8.4 above, the Council shall be entitled to refuse funding to a Provider whom it has reasonable grounds to believe is:

14.9.1 not meeting the independent school standard in relation to the spiritual, moral, social and cultural development of pupils; or

14.9.2 not actively promoting Fundamental British values; or

14.9.3 promoting as fact views or theories which are contrary to established scientific or historical evidence and explanations or;

14.9.4 where the Provider receives a less than "good" Ofsted inspection outcome.

14.10 The Council shall investigate allegations of breaches of the requirements as provided in this Agreement and where appropriate, withdraw funding where the Provider is found to be in breach.

14.11 Where a Provider is found to be in breach of the provisions of clause 14.8 herein, the Council may require repayment of the whole or any part of the funding provided by the Council under the terms and conditions of this Agreement.

14.12 Throughout the Contract Term, the Council shall use reasonable endeavours to supply the Provider with accurate and timely information, advice and assistance with regard to the current EYFS Guidance and Legal Requirements.

14.13 The Council shall ensure that the Provider delivers the Service in such a way as to facilitate access to the Service and maximise the benefit of the Service to Parent(s), prospective Parent(s) and Children.

14.14 The Council shall use reasonable endeavours to work with Providers who are adjudged by Ofsted as “requires improvement” to support them to implement an action plan to improve the Provider’s Ofsted rating with a view to avoiding the need to transfer Children to other Providers.

14.15 Where the Service is taken up by the Parent(s) with 2 Providers, the Providers will be funded on a pro-rata basis according to the amount of free provision taken with each Provider. If a Child receives more than the FEEE, the Council will allocate the amount of funding based on the number of free hours accessed at each provision. A Parent does not have the right to choose which Provider is funded through FEEE.

Payment of EYSFF Payments

14.16 Subject to clause 14, the Council shall make the EYSFF Payment to the Provider in accordance with in accordance with Schedule 2

14.17 In consideration of the EYSFF payment to the Provider by the Council, the Council shall from the Commencement Date allow the Provider to provide the Service in accordance with all statutory requirements in relation to health and safety, safeguarding, special education needs and inclusion as contained in Schedules 1, 2, 3 and 4 and the Legal Requirements listed herein.

14.18 The payment of the EYSFF Funding to the Provider by the Council is conditional upon the following:

14.18.1 compliance with the rules in Schedule 1 and the Legal Requirements as amended from time to time.

14.18.2 Submission of the financial monitoring and claim forms in accordance with Schedule 2

14.18.3 Compliance with the requirements of this Agreement

14.18.4 compliance with any other condition the Council may reasonably impose from time to time in line with the Guidance.

14.19 The amount of the EYSFF Payment shall not be increased in the event of any overspend by the Provider in its delivery of the Service.

14.20 The EYSFF Payment shall be paid into the main business bank account of the Registered Individual/Organisation. The Provider must satisfy the Council that robust and secure

financial policies, procedures and accounting systems and practices are in place that meet Legal Requirements, Guidance, maintain an appropriate audit trail of all transactions and ensure that EYSFF payments are used solely for the purpose of delivering FEEE places.

14.21 The Provider shall not transfer any part of the EYSFF Payment to bank accounts which are not ordinary business accounts within the clearing bank system, without the prior written consent of the Council.

14.22 The Provider shall promptly repay to the Council any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where EYFS monies have been paid in error before all conditions attaching to the EYSFF Payment have been complied with by the Provider.

14.23 Further to Clause 14.22 above, the Council shall be entitled in its discretion to:

14.23.1 request the immediate return of such sums; or

14.23.2 withhold an amount equal to such sums from any future payment of EYSFF payments; or

14.23.3 deduct from any future EYSFF Payment an amount equal to such sums.

Use of EYSFF Payment

14.24 The EYSFF Payment shall be used by the Provider to offset expenditure incurred in delivering the Service in accordance with Schedule 2 and reviewed from year to year. The Provider shall not use the EYSFF Payment to:

14.24.1 make any payment to members of its governing body, where it is a maintained school or trustees where it is a charity;

14.24.2 purchase buildings or land; or

14.24.3 pay for any expenditure commitments of the Provider entered into before the Commencement Date,

unless this has been approved in writing and in advance by the Council.

14.25 The Provider agrees to repay on demand any of the EYSFF Payment that may have been made incorrectly due to administrative errors or changes in headcount figures. This includes the reclaiming of funding for absent or duplicate children as specified in Schedule 2.

15 COMPLIANCE

Monitoring and Record Keeping

- 15.1 Pursuant to the Council's duty to carry out checks and/or assessments on Providers to ensure compliance with the requirements of delivering the free entitlements the Provider shall:
- 15.1.1 Ensure that it is duly registered on Ofsted's Early Years Register and provide proof of this to the Council.
 - 15.1.2 Comply with any action plan agreed as part of any contract compliance review meeting or "team around the setting" meeting in accordance with the Legal Requirements and Guidance.
 - 15.1.3 supply the Council with any information reasonably required from time to time (including without limitation audited accounts, admission arrangements, information relating to opening hours) and all records must be available for inspection upon reasonable notice from time to time.
 - 15.1.4 keep full and accurate records in relation to the delivery of this Service and permit nominated representatives of the Council access to such records from time to time as may reasonably be requested
 - 15.1.5 ensure that appropriate members of staff attend briefing sessions setting out any changes in monitoring / record keeping requirements.
 - 15.1.6 maintain records for a period of at least seven (7) years from the production thereof.
 - 15.1.7 be aware of the requirements of the Data Protection Act 1998 (as amended) and, when applicable, the General Data Protection Regulation (Regulation (EU) 2016/679) ("GDPR"), and any future such legislation and ensure they adhere to their duty to keep personal data secure and confidential.
- 15.2 The Council may with such persons as it thinks fit, at any time during the Agreement period request a review meeting with the Provider to carry out audit/inspection and assess the Provider's performance in respect of this Agreement and the Department of Education's requirements.

Monitoring and Reporting

- 15.3 The Provider shall closely monitor the delivery and success of the Service throughout the EYSFF Payment Period to ensure that the aims and objectives of the Service are being met and that this Agreement is being adhered to.
- 15.4 The Provider shall provide the Council with any Health and Safety certification as and when required by the Council and shall allow an annual Health and Safety review to be undertaken.
- 15.5 The Provider shall maintain accurate financial and non-financial records relating to free entitlement places and shall on request provide the Council with such further information, explanations and documents as the Council may reasonably require in order for it to

establish that the EYSFF Payment has been used properly in accordance with this Agreement.

15.6 The Provider shall permit any person authorised by the Council such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Provider's fulfilment of the conditions of this Agreement and shall, if so required, provide appropriate oral or written explanations from them in accordance with Schedule 1.

15.7 The Provider shall permit any person authorised by the Council and/or Ofsted for the purpose to visit the Provider once every quarter or as deemed necessary to monitor the delivery of the Service. Where, in its reasonable opinion, the Council and/or Ofsted consider that additional visits are necessary to monitor the Service, it shall be entitled to authorise any person to make such visits on its behalf.

15.8 The Provider shall ensure they submit timely and accurate information, including but not limited to census data, parental declarations and invoices, as per the financial guidelines of the Council.

15.9 Where the Council has requested information the Provider shall make this information available within ten (10) days

Accounts and Records

15.10 The Provider shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the EYSFF Payment monies received by it in accordance with the requirements of Schedule 2.

15.11 The Provider shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the EYSFF Payment for a period of at least seven years following receipt of any EYSFF Payment monies to which they relate. The Council shall have the right to review, at the Council's reasonable request, the Provider's accounts and records that relate to the expenditure of the EYSFF Payment and shall have the right to take copies of such accounts and records.

15.12 Where requested by the Council, the Provider shall provide the Council with a copy of its annual accounts within six months (or such lesser period as the Council may reasonably require) of the end of the relevant financial year in respect of each year in which the EYSFF Payment is paid.

15.13 The Provider shall comply and facilitate the Council's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Council.

16 PARENTAL CONTRACTS

16.1 The Provider shall enter into contracts with Parents which set out the hours and patterns

of access to the FEEE provision and contracts should be amended whenever there are significant or permanent changes to the delivery of the provision.

16.2 Parents are responsible for ensuring that they do not claim more than the 15 or 30 hours they are entitled to per week under the FEEE provision across two different Providers, including maintained and independent schools. Where duplicate payments are claimed by the Parent, the Provider involved will be asked to produce a signed parental declaration form and a copy of attendance registers where the Provider is unable to provide this, the Provider will be responsible for claiming payments from the Parent. Where signed parental declaration forms exist at both settings, the Council will be responsible for recovering the payments from the Parent(s).

17 ASSESSMENT

17.1 The Provider shall conduct regular assessments of each Child's level of achievement, interests and learning styles and compile a Profile or such other information concerning each child, including Children with Special educational needs and disabilities, as is required by the Guidance.

17.2 At the Council's request, the Provider shall supply assessment results to the Council and access to their premises to observe the completion of the Profile as provided in Schedule 1.

17.3 The Provider must ensure that information about a Child's progress within the EYFS is shared with the Child's next setting or school or any linked settings the Child attends, with parental consent so as to ensure continuity in their learning and development.

18 LIMITATION OF LIABILITY

18.1 The Provider shall indemnify the Council from and against all loss or damage or liability, together with any legal costs incurred by the Council resulting from a breach of this Agreement by the Provider, its employees or agents, including:

18.1.1 Any act, neglect or default of the Provider, its employees or agents and

18.1.2 Any claim by a third party based on any facts which if substantiated would constitute a breach of any of the Provider's obligations under these terms and conditions.

18.1.3 The indemnities contained in this clause shall be without prejudice to any other right or remedy which the Council may have whether arising under these terms and conditions or otherwise

19 ACKNOWLEDGEMENT AND PUBLICITY

19.1 The Provider shall acknowledge the EYSFF Payment in its annual report and accounts, including an acknowledgement of the Council as the source of the EYSFF Payment where applicable.

19.2 The Provider shall not publish any material referring to the Service or the Council without the prior written agreement of the Council. The Provider shall acknowledge the support of the Council in any materials that refer to the Service and in any written or spoken public presentations about the Service. Such acknowledgements (where appropriate or as requested by the Council) shall include the

Council's name and logo (or any future name or logo adopted by the Council) using the templates provided by the Council from time to time.

19.3 In using the Council's name and logo, the Provider shall comply with all reasonable branding guidelines issued by the Council from time to time.

19.4 The Provider agrees to participate in and co-operate with promotional activities relating to the Service that may be instigated and/or organised by the Council.

19.5 The Council may acknowledge the Provider's involvement in the Service as appropriate without prior notice.

19.6 The Provider shall comply with all reasonable requests from the Council to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Council in its promotional and fundraising activities relating to the Service.

20 EQUALITY AND DIVERSITY

The Provider Should:

20.1 Demonstrate that an equal opportunities policy is observed in the setting.

20.2 Have due regard to the Special Educational Needs and Disability Code of Practice on identification and assessment of special needs, supporting children with special educational needs or disabilities and any other guidance issued by the Secretary of State;

20.3 adopt an inclusive approach which promotes and provides equality of opportunity particularly to the most disadvantaged, looked after Children and Children with a disability or special educational needs thus ensuring that every Child is included and supported;

20.4 provide appropriate support to enable every Child, including disabled Children, disadvantaged Children and Children with special educational needs to achieve their full potential.

21 ANTI DISCRIMINATION

21.1 The Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment.

21.2 The Provider shall take all reasonable steps to secure the observance of clause 30.1 by all servants, employees or agents of the Provider and all suppliers and sub-contractors engaged in the provision of the Service.

22 WARRANTIES

22.1 The Provider warrants, undertakes and agrees that:

22.1.1 it has all necessary resources and expertise to deliver the Service (assuming due receipt of the EYSFF Payment);

22.1.2 it has not committed, nor shall it commit, any Prohibited Act;

22.1.3 it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify the Council immediately of any significant departure from such legislation, codes or recommendations;

22.1.4 it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Service;

22.1.5 it has and shall keep in place adequate procedures for dealing with any conflicts of interest;

22.1.6 it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;

22.1.7 all financial and other information concerning the Provider which has been disclosed to the Council is to the best of its knowledge and belief, true and accurate;

22.1.8 it is not aware of anything in its own affairs, which it has not disclosed to the Council or any of the Council's advisers, which might reasonably have influenced the decision of the Council to make the EYSFF Payment on the terms contained in this Agreement; and

22.1.9 since the date of its last accounts there has been no material change in its financial position or prospects which will have an impact on the delivery of the Service.

23. INSURANCE

23.1 The Provider shall effect and maintain with a reputable insurance company a policy or policies in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss (the Required Insurances).

23.2 The Required Insurances referred to above include (but are not limited to):

23.2.1 public liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims arising from the Service; and

23.2.2 employer's liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one claim or series of claims arising from the Service.

23.2.3 Professional indemnity cover with a limit of indemnity of not less than £250,000 in relation to any one claim or series of claims arising from the Service for schools and early years Providers on non-domestic premises.

23.2.4 Professional indemnity cover with a limit of indemnity of not less than £100,000 in relation to any one claim or series of claims arising from the Service for Providers who provide Early Years Provision at registered Premises which are domestic premises.

24. DURATION

24.1 The Agreement shall take effect on the Commencement Date and continue in existence for the Contract Term unless otherwise terminated in accordance with the provisions of the Agreement.

24.2 Any obligations under this Agreement that remain unfulfilled following the expiry or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

25 TERMINATION

25.1 The Council shall be entitled to terminate this Agreement and withdraw funding upon a breach of statutory requirements or a breach of any of the terms and conditions of the agreement, which is incapable of remedy.

25.2 The Council may terminate this Agreement where the Early Years Provision is for a child who has attained the age of two years and is an eligible child within the meaning of the Regulations and the overall Early Years Provision inspection report rating falls below a grade of 'good' where in the immediately preceding year the Early Years Provision had been awarded a grade of 'good';

So long as;

(a) the Provider is not a childminder who is registered with an Early Years childminder agency and;

(b) the Provider is not a governing body of a maintained school

- 25.3 The Council may terminate this Agreement where the Early Years Provision is for a child who has attained the age of three years and is an eligible child within the meaning of the Regulations and the overall effectiveness of the Early Years Provision falls below a grade of “satisfactory” or “requires improvement” where in the immediately preceding year the Provider had been awarded a grade of “satisfactory” or “requires improvement” or higher, as the case may be.
- 25.4 The Council may terminate this Agreement where the Early Years Provision is by an Early Years Provision childminder who is registered with an Early Years childminder agency and the Early Years Provision is for a child who attained the age of two years and is an eligible child within the meaning of the Regulations and the said Early Years childminder agency is awarded a grade which is below “good” where in the immediately preceding year the Provider had been awarded a grade of ‘good’.
- 25.5 The Council may terminate this Agreement where the Early Years Provision is for a child who has attained the age of three years and is an eligible child within the meaning of the Regulations and the Provider is a childminder who is registered with a childminder agency and the childminder agency is awarded a grade which is below “requires improvement” where in the immediately preceding year the Provider had been awarded a grade of “satisfactory” or “requires improvement” or higher.
- 25.6 The Council may terminate this Agreement where the Provider is a childminder who is registered with an early years childminder agency and the Early Years childminder agency has notified the Council that, in the reasonable opinion of the agency, the Early Years Provision by the said Provider has ceased to be of satisfactory quality.
- 25.7 The Council shall be entitled to terminate this Agreement immediately upon breach of any of the terms and conditions of this Agreement which is incapable of remedy.
- 25.8 For the avoidance of doubt, the Council shall be entitled to terminate this Agreement immediately if the Provider breaches any of the conditions set out in clause 14.8 and clause 28.1 of this Agreement.
- 25.9 The Council shall be entitled to terminate this Agreement by giving reasonable notice in writing if the Provider fails to remedy any breach which is capable of remedy within a reasonable period which the Council may specify in any written notice advising the Provider of the breach.
- 25.10 As per clause 4.7 if the Provider fails to comply with Schedules 1 and 7 in hiring, employing or engaging staff (including any volunteers) and fails to rectify this breach within the period of time specified by the Council then the Council will be entitled to terminate this Agreement
- 25.11 The Council shall endeavour to give Providers a minimum of 3 months written notice of termination of their Agreement to enable Parents to make alternative arrangements for their Children.

25.12 The period of notice to be allowed for remedying a remediable breach and the period of notice required to terminate the Agreement following the Provider's failure to remedy such breach shall be determined by the Council in its absolute discretion having regard to the severity of the breach and the need to enable Parents to make alternative arrangements for their Children.

25.13 In all cases where funding is withdrawn, the local authority will give the provider a written explanation of the decision to withdraw funding.

25.114 Where the EYSFF Payment Terms and Conditions Agreement is terminated the Provider shall have a right of appeal to the Director of Learning & System Leadership. The appeal should be made within 21 days of receipt of the written notice and be in the form of a written report outlining the reason(s) for appeal.

26 COMPLAINTS PROCESS

26.1 The Council shall ensure that they have a complaints procedure in place which is published and accessible for Parents who are not satisfied their child has received their free entitlement in the correct way, as set out in this Agreement and in Early Education and Childcare Statutory guidance for Local Authorities

26.2 The Provider shall ensure that they have a complaints procedure in place which is published and accessible for Parents who are not satisfied their child has received their free entitlement in the correct way, as set out in this Agreement and in Early Education and Childcare Statutory guidance for Local Authorities.

26.3 The Provider shall ensure that the complaints procedure clearly sets out provisions on the procedure for appeal where a Parent is not satisfied with how the Provider has deal with their complaint.

26.4 Where a Parent or Provider is not satisfied with the way in which their complaint has been dealt with by the Council or believes the Council has acted unreasonably, they can make a complaint to the local authority ombudsman. Such complaints will only be considered when the local complaints procedures have been exhausted.

27 APPEALS PROCESS

27.1A Provider may be denied approval to offer the free entitlements or have their funding withdrawn as set out in clause 25 and 28 and Schedule 4.

27.2 Where this Agreement is terminated in accordance with Clause 25, the Provider shall have a right of appeal to the Director of Learning and System Leadership (the title of the Director may be amended from time to time as notified to the Provider.) The appeal should be made within 21 days of receipt of the written notice and be in the form of a written report outlining the reason(s) for appeal

28 WITHHOLDING, SUSPENDING AND REPAYMENT OF EYSFF PAYMENT

28.1 The Council's intention is that the EYSFF Payment will be paid to the Provider in full. However, without prejudice to the Council's other rights and remedies, the Council may at its discretion withhold or suspend payment of the EYSFF Payment and/or require repayment of all or part of the EYSFF Payment and/or be entitled to terminate the Agreement in accordance with Clause 25 if:

28.1.1 The Provider fails to comply with Clause 14.8;

28.1.2 The Provider uses the EYSFF Payment for purposes other than those for which they have been awarded.

28.1.3 The Council considers that the Provider has not made satisfactory progress with the delivery of the Service in accordance with the Regulations.

28.1.4 The Provider is, in the reasonable opinion of the Council, delivering the Service in a negligent manner.

28.1.5 the Provider obtains duplicate funding from a third party for the Service;

28.1.6 the Provider provides the Council with any materially misleading or inaccurate information;

28.1.7 the Provider commits or committed a Prohibited Act;

28.1.8 any member of the governing body, employee or volunteer of the Provider has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Service or (b) taken any actions which, in the reasonable opinion of the Council, bring or are likely to bring the Council's name or reputation into disrepute;

28.1.9 the Provider ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);

28.1.10 the Provider becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due; or

28.1.11 the Provider fails to comply with any of the terms and conditions set out in this Agreement and fails to rectify any such failure within the prescribed period of receiving written notice detailing the failure.

28.2 Wherever under this Agreement any sum of money is recoverable from or payable by the Provider (including any sum that the Provider is liable to pay to the Council in respect of any

breach of the Agreement), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under the Agreement or under any other agreement or contract with the Council.

28.3 The Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

28.4 In the event that the Provider is subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Service or compliance with this Agreement it shall notify the Council as soon as possible so that, if possible, and without creating any legal obligation, the Council will have an opportunity to provide assistance in resolving the problem or to take action to protect the Council and the EYSFF Payment monies.

29 HUMAN RIGHTS

29.1 The Provider shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement as if the Provider were a public body (as defined in the Human Rights Act 1998).

29.2 The Provider shall undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.

30 BRIBERY/CORRUPTION

30.1 If the Provider in relation to this or any other contract with the Council shall do or have done any act:

30.1.1 which amounts to an inducement or reward to any person for doing or omitting to do any act relating to the obtaining of the agreement; or

30.1.2 Which is an offence under the Bribery Act 2010; or

30.1.3 Which amounts to the giving of a fee or award, the receipt of which is an offence under Section 117 of the Local Government Act, 1972

the Council shall be entitled to terminate this Agreement with immediate effect and recover from the Provider all losses, costs, damages and expenses incurred by the Council as a result of the termination.

30.2 The Provider shall take all reasonable steps to secure the observance of clause 30.1 by all servants, employees or agents of the Provider and all suppliers and sub-contractors engaged in the provision of the Service.

31 INTELLECTUAL PROPERTY RIGHTS

31.1 The Council and the Provider agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, Know-How and any other IPR whatsoever owned by either the Council or the Provider before the Commencement Date or developed by either party during the period of this Agreement, shall remain the property of that party.

31.2 Where the Council has provided the Provider with any of its Intellectual Property Rights for use in connection with the Service (including without limitation its name and logo), the Provider shall, on termination of this Agreement, cease to use such Intellectual Property Rights immediately and shall either return or destroy such Intellectual Property Rights as requested by the Council.

32 DATA PROTECTION

32.1 Both the Provider and the Council shall (and shall ensure that any of its staff involved in connection with the activities under the Agreement shall) ensure that any information supplied to the Council shall comply with the requirements of all legislation in force from time to time including, without limitation, the Data Protection Act 1998, (as replaced, modified or re-enacted from time to time) ("DPA") and, when applicable, the General Data Protection Regulation (Regulation (EU) 2016/679) ("GDPR"), and any future such legislation.

32.2 The Provider shall Comply with the provisions set out in Schedule 5.

33 CONFIDENTIALITY

33.1 Subject to Clause 34 (Freedom of Information), each party shall during the Contract Term and thereafter keep secret and confidential all IPR or know-how or other business, technical or commercial information disclosed to it as a result of the Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other party.

33.2 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any Intellectual Property Rights, Know-How or other business, technical or commercial information which:

33.2.1 at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving party;

33.2.2 is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence; or

33.2.3 is at any time after the date of this Agreement acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party.

34 FREEDOM OF INFORMATION

34.1 The Provider acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations (EIR) 2004 and shall assist and co-operate with the Council (at the Provider's expense) to enable the Council to comply with these information disclosure requirements.

34.2 The Provider shall:

34.2.1 transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;

34.2.2 provide the Council with a copy of all information in its possession or power in the form that the Council requires within five working days (or such other period as the Council may specify) of the Council requesting that information; and

34.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a request for information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.

34.3 The Council shall be responsible for determining at its absolute discretion whether the information:

34.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the EIR;

34.3.2 is to be disclosed in response to a request for information, and in no event shall the Provider respond directly to a request for information unless expressly authorised to do so by the Council.

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

34.5The Provider acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the EIR to disclose information:

- (a) without consulting with the Provider; or
- (b) following consultation with the Provider and having taken its views into account,

provided always that where clause 35.5(b) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advance notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.

34.6The Provider shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

35 NO PARTNERSHIP OR AGENCY

This Agreement shall not create any partnership or joint venture between the Council and the Provider, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

36 JOINT AND SEVERAL LIABILITY

Where the Provider is neither a company nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign this Agreement on behalf of the Provider shall be jointly and severally liable for the Provider's obligations and liabilities arising under this Agreement.

37 CONTRACTS (Rights of Third Parties) ACT 1999

This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

38 ASSIGNMENT

38.1The Provider may not, without the prior written consent of the Council, assign, transfer, sub-contract or in any other way make over to any third party the benefit and/or the burden of this Agreement or, except as contemplated as part of the Service, transfer or pay to any other person any part of the EYSFF Payment.

38.2The Provider must inform Ofsted and the Council whenever there is a material change in their particulars, such as a change of Managing Directors and/or Trustees, ownership or

premises, particularly where the Provider's ability to continue to deliver the FEEE Service may be affected by such material change.

38.3 The Provider shall send the Council copies of any statutory notice served in respect of the Provider's premises or services which may materially or significantly affect the delivery of the Service

38.4 The Provider must;

38.4.1 Provide the Council with written notice in advance of any intended sale, transfer and/or lease assignment of its business and/or premises as soon as reasonably practicable and at the very latest prior to the sale, transfer and/or lease assignment;

38.4.2 Provide the Council with copies of any transfer, sale or lease assignment documents that it proposes to enter into with any legal entity or individual

38.4.3 At the request of the Council amend any such documentation referred to in sub clause 38.4.2 accordingly if the said documentation breaches any of the provisions of this Agreement and its Schedules or the Legal Requirements or the Regulations and will ensure that any transfer, sale or lease assignment document obliges the other party to the agreements to also abide by this clause 38.4.3.

38.4.4 Within fourteen (14) days of the sale, transfer or lease assignment being completed notify the Council that the transfer of its business and/or premises has taken place.

39 VARIATION

The Council may unilaterally vary this Agreement without the consent of the Provider in order to effect any new or amended legislation or departmental guidance pertaining to the provision of the Services. The Council will give the Provider reasonable notice of any such variations to the Agreement in line with the Notice provisions of this Agreement.

40 COUNTERPART

This Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument. No counterpart shall be effective until each Party has executed at least one counterpart.

41 WAIVER

A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any

other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

42 SEVERABILITY

If any provision of this contract is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and where possible the remainder of the provisions of this Contract shall continue in full force and effect as if this Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

43 NOTICES

All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, e-mailed, or mailed (first class postage prepaid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered or if e-mailed all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any working day they shall be deemed received on the next working day) and if mailed all such communications shall be deemed to have been given and received on the second working day following such mailing.

44 DISPUTE RESOLUTION

44.1 In the event of any complaint or dispute (which does not relate to the Council's right to withhold funds or terminate) arising between the Parties in relation to this Agreement the Parties shall use their best endeavours to settle the dispute by negotiation. Discussions will take place in good faith between representatives of the Provider and the Council to resolve the dispute.

44.2 Where the dispute cannot be resolved by negotiation, the Provider shall have a right of appeal to the Director of Learning & Systems Leadership.

45 ENTIRE AGREEMENT

45.1 This Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral except that this Clause shall not exclude liability in respect of any fraudulent misrepresentation

46 GOVERNING LAW

46.1 This Agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

EXECUTED as a DEED
by the affixing of the COMMON
SEAL of
THE MAYOR AND
BURGESSES OF THE
LONDON BOROUGH OF
WALTHAM FOREST
in the presence of:

.....
Authorised Signatory

EXECUTED as a DEED
by [NAME OF PROVIDER]
acting by and under the
signatures of:

[ADD NAME OF MANAGING
DIRECTOR/CHAIR OF
TRUSTEES/CHAIR OF
GOVERNORS/SOLE TRADER]

.....

[SIGNATURE OF MANAGING
DIRECTOR/CHAIR OF
TRUSTEES/CHAIR OF
GOVERNORS/SOLE TRADER]

SCHEDULE 1

DfE's 'Statutory Framework for the early years foundation stage: setting the standards for learning, development and care for children from birth to five

https://www.foundationyears.org.uk/files/2017/03/EYFS_STATUTORY_FRAMEWORK_2017.pdf

Published: 3 March 2017

Effective: 3 April 2017

SCHEDULE 2

'LBWF's Free Early Education Entitlement (FEEE) Financial Guidance for 2, 3 & 4 year olds, 1st April 2018 – 31st March 2019' (as amended from time to time):

<https://thehub-beta.walthamforest.gov.uk/early-years-financial-regulations>

SCHEDULE 3

Ofsted's " Early Years and childcare registration handbook

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/650103/EY_and_childcare_reg_handbook.pdf

SCHEDULE 4:

DfE's 'Early education and childcare: Statutory guidance for local authorities, March 2018'

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/682005/Early_education_and_childcare_Statutory_guidance_for-LAs.pdf

SCHEDULE 5:

Data Processing Agreement in accordance with the GDPR

1. Each party shall ensure that any information supplied to the other party shall comply with the requirements of all legislation in force from time to time including, without limitation, the Data Protection Act 1998, (as replaced, modified or re-enacted from time to time) (“DPA”) and, when applicable, the General Data Protection Regulation (Regulation (EU) 2016/679) (“GDPR”), and any future such legislation.
2. Any person who becomes a data processor (the “Data Processor”) on behalf of the Authority shall agree to comply with all relevant legislation in force at the appropriate time, including but not limited to the DPA, GDPR and the Computer Misuse Act 1990, and shall indemnify the Authority for any actions arising from breach of such legislation.
3. The Data Processor shall ensure that all information held by the Data Processor in connection with the provision of the Service and relating to any individual are stored and handled in a secure and confidential manner and entirely in accordance with the Data Processor’s duties under the DPA and/or the GDPR.
4. The Data Processor shall ensure the reliability and training of all its relevant employees to ensure awareness and compliance with applicable obligations under the DPA and/or GDPR. The Data Processor shall further ensure refresher training is provided to the relevant employees as necessary and, in any event, no less than once per year.
5. The Data Processor shall have in place throughout the Contract Term an Information Security Management Procedure and shall ensure that all relevant employees are made aware of and trained in regards to the Procedure.
6. The Data Processor shall within twenty-four (24) hours, notify the Authority of any information security breach and/or any breach of the Data Processor’s obligations pursuant to the DPA and/or the GDPR, together with the steps the Data Processor shall take to rectify the breach and to avoid any future such breaches occurring.

7. To the extent that the Data Processor is required to process (as defined in the DPA and in Articles 28, 29 and 32 of the GDPR) Personal Data (as defined in the DPA and/or the GDPR as applicable) on behalf of the Authority for the purposes of performing its obligations under this Contract the Data Processor shall:
 - a. process such Personal Data only in accordance with instructions from the Authority;
 - b. process such Personal Data only to the extent, and in such manner, as is necessary for the performance of its obligations under this Contract;
 - c. in accordance with Principle 7 of the DPA and Article 32 of the GDPR, implement appropriate technical and organisational security measures to protect the Personal Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed;
 - d. ensure a level of security appropriate to the risk is applied taking into account the harm which might result from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed. The security measures shall include, but not be limited to;
 - i. the pseudonymisation and encryption of the Personal Data;
 - ii. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - iii. the ability to restore the availability and access to the Personal Data in a timely manner in the event of a physical or technical incident;

- iv. a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
 - e. not transfer any Personal Data outside of the European Economic Area without the prior written approval of the Authority;
 - f. return the Personal Data to the Authority on the expiry or earlier termination of this Contract;
 - g. obtain prior written consent from the Authority in order to transfer, copy, share or otherwise disclose in any manner Personal Data, Sensitive Personal Data (as defined in the DPA and/or GDPR as applicable) or information of the Authority arising in respect of this Contract to any other person, including but not limited to any Sub-Contractor or agent of the Data Processor;
 - h. make available to the Authority information processed under this Contract regarding a Data Subject (as defined in the DPA and/or GDPR as applicable) upon request by that Data Subject for a copy of their personal information ("Subject Access Request"). The Data Processor shall comply with the Subject Access Request within the statutory timeframe as identified in the DPA and/or GDPR (as applicable).
- 8. The Data Processor shall immediately notify the Authority if the Data Processor receives:
 - a. a request from any person whose Personal Data it holds to access his Personal Data; or
 - b. a complaint or request relating to the Authority's obligations under the DPA and/or the GDPR.

9. The Data Processor shall assist and co-operate with the Authority in relation to any complaint or request received, including, but not limited to:
 - a. providing full details of the complaint or request;
 - b. complying with the request within the time limits set out in the DPA and/or GDPR (as applicable) and in accordance with the instructions of the Authority; and
 - c. promptly providing the Authority with any Personal Data and other information requested by him.
10. The Data Processor shall have in place systems that comply with the DPA and/or GDPR (as applicable), specifically in terms of data storage, use, handling, disclosure, retention and destruction of the Authority's data. Further the Data Processor shall carry out the processing of the Authority's data strictly in accordance with this Contract and only under the express instructions of the Authority.
11. The Data Processor shall allow the Authority to conduct audits of the Data Processor's information or processes relating to the Data Processor's compliance with its obligations under the DPA and/or GDPR (as applicable).
12. The Data Processor shall ensure and warrants to the Authority that the terms of any sub-contract made in relation to this Contract shall ensure that the Sub-Contractor shall comply with the same obligations as imposed on the Data Processor pursuant to this Clause 8 (Data Protection).
13. The Data Processor shall ensure that it does not knowingly or negligently fail to do something that places the Authority in breach of its obligations under the DPA and/or the GDPR (as applicable). The Data Processor shall indemnify and keep indemnified the Authority against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Data Processor of this Clause 8 (Data Protection) or any more general breach by the Data Processor of its obligations under the DPA and/or the GDPR (as applicable).

SCHEDULE 6:

Special Educational Needs and Disability (SEND) Code of Practice: 0 to 25 years

Statutory guidance for organisations which work with and support children and young people who have special educational needs or disabilities January 2015

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398815/SEND_Code_of_Practice_January_2015.pdf

SCHEDULE 7

Statutory Guidance for Providers Regarding Safeguarding

1. Disclosure and Barring Service (DBS) checks for childcare providers who register with Ofsted published October 2017 (as amended from time to time) and available on the government website at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/651273/Disclosure_and_Barring_Service_DBS_checks_for_childcare_providers_who_register_with_Ofsted.pdf

2. Working together to safeguard children - A guide to inter-agency working to safeguard and promote the welfare of children published March 2015 (as amended from time to time) and available on the government website at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/592101/Working_Together_to_Safeguard_Children_20170213.pdf

3. Keeping children safe in education Statutory guidance for schools and colleges published September 2016 (as amended from time to time) and available on the government website at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/550511/Keeping_children_safe_in_education.pdf

4. The Council's New Model Early Years Safeguarding policy at:

<https://thehub.walthamforest.gov.uk/news/lbwf-new-model-ey-safeguarding-policy>