

# **EYSFF PAYMENT TERMS AND CONDITIONS 2015-'18**

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

This Agreement is dated the \_\_\_\_\_ day of \_\_\_\_\_ 201

## **PARTIES**

- (A) The Mayor and Burgesses of the London Borough of Waltham Forest, Town Hall, Forest Road, London E17 4JF (the “**Commissioner**”, the “**Council**” and the “**Authority**”); 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 to secure the provision of adequate places for the provision of early education and childcare services
- (B) The Provider has agreed to provide the Service 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, September 2014”.

#### 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”	means the Childcare Act, 2006 as amended from time to time;
“Agreement”	means this agreement including all Schedules hereto 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 1 April, 2015;
“Contract Term”	means the period starting on the Commencement Date and ending on 31 March 2018;
Early Education and Childcare Guidance	means the Early Education and Childcare Statutory Guidance for Local Authorities, published by the Department for Education in September 2014, 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;
“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 2014 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;
“Guidance”	means the EYFS Guidance, the FEEE, the Early Education and Childcare Guidance and the Ofsted Framework
“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 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;
“Intellectual Property Rights (IPR)”	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;
“Know-How”	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;
LADO	Means the person appointed to act as the Local Authority Designated Officer from time to time
“Legal Requirements”	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, directives or regulations as may be passed into law from time to time;
“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 from by Ofsted to deliver the Service;
“Prohibited Act”	means <ul style="list-style-type: none"> <li>a) offering, giving or agreeing to give [to any staff of the Council any gift or consideration of any kind as an inducement or reward for: <ul style="list-style-type: none"> <li>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</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>ii) showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Council;</li> <li>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;</li> <li>c) committing any offence: <ul style="list-style-type: none"> <li>i) under the Bribery Act;</li> <li>ii) under legislation creating offences in respect of fraudulent acts; or</li> <li>iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Council or Crown; or</li> </ul> </li> <li>d) defrauding or attempting to defraud or conspiring to defraud the Council OR Crown.</li> </ul>
<p>“Provider”</p>	<p>means:</p> <ul style="list-style-type: none"> <li>- an Early Years Provider other than a childminder registered on the Ofsted Early Years Register;</li> <li>- a childminder registered on the Ofsted Early Years Register;</li> <li>- a childminder registered with a childminder agency that is registered with Ofsted; or</li> <li>- schools taking children of an age which are exempt from registration with Ofsted</li> </ul>

	as an early years Provider.
“Regulations”	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;
Schedules	Means Schedule 1, Schedule 2, Schedule 3 and Schedule 4
Schedule 1	Means the first schedule to this Agreement containing the EYFS Guidance
Schedule2	Means the second schedule to this Agreement containing the FEEE Financial Guidance
Schedule 3	Means the third schedule to this Agreement containing the Ofsted Framework
Schedule 4	Means the fourth schedule to this Agreement containing the Early Education and Childcare Guidance
“Service”	means the provision of Childcare for 2, 3 and 4 year olds as specified in Schedule 1 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 save 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 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.

1.2.3 references to Clauses and Schedules are to the clauses and schedules of this Agreement unless otherwise stated;

1.2.4 references to the singular include the plural and vice versa and references to a gender includes both genders;

- 1.2.5 the headings are for convenience only and shall not affect the meaning of this Agreement;
- 1.2.6 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;
- 1.2.7 references to statutory provisions include all prior and subsequent enactments, amendments and substitutions relating to that provision and to any regulation made under it
- 1.2.8 these terms and conditions shall not apply to provision of the Service by childminding agencies.

## **2 Conditions for providing FEEE**

The Provider agrees as follows:

- 2.1 To use the EYSFF Payment only for the delivery of the Services and in accordance with the terms and conditions set out in this Agreement. The payment shall not be used for any other purpose without the prior written agreement of the Council.
- 2.2 In consideration of the payment of EYSFF to the Provider by the Council, the Provider shall from the Commencement Date 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.
- 2.3 To deliver the Service in accordance with all funding requirements imposed by the Council and as specified in the Schedules.
- 2.4 To be registered by Ofsted and comply with Ofsted's registration conditions as contained in Schedule 3.
- 2.5 The entitlement shall be provided completely free of charge at the point of delivery. Providers cannot charge 'Top up Fees' in relation to any free hours and should take immediate action where this practice is identified.
- 2.6 There should be no further conditions of access that prevent a child from taking up their free entitlement in order to secure the provision, e.g. requiring parents to purchase uniforms, lunches, etc.).
- 2.7 Where Parent(s) pay for additional hours in addition to the FEEE, invoices issued by the Provider should reflect the free entitlement for the specific billing period and the Parent(s) provided with clear information on the applicable rates and circumstances in which they are payable. Bills for additional hours should also



indicate the FEEE hours accessed and the fees for the additional hours accessed.

2.8 The Provider shall supply:

2.8.1 EYFS places (equivalent to 570 hours per annum) entirely free to eligible 2, 3 and 4 year old Children as detailed in Schedule 1 and in a way which allows the Council meet its statutory requirements with regard to delivery of FEEE for 2, 3 and 4 year olds and securing Childcare sufficiency.

2.8.2 reports or other relevant information or verification as may be reasonably requested by the Council from time to time in particular, though without limitation, to satisfy the Council that the payments made to the Provider under the Council's FEEE Financial Guidance are being wholly and exclusively used for the delivery of the EYFS as detailed in the EYFS Guidance.

2.9 Where the full entitlement Service as specified in clause 2.8.1 cannot be delivered by the Provider, consider partnership arrangements with other local Providers to deliver the full 570 hours per annum.

2.10 To work with Parent(s) to try and accommodate flexibility requests provided the requests are feasible and sustainable for the Provider.

2.11 To inform Parents of the likely implications where the Provider is not open for 15 hours a week or the full 38 weeks a year and therefore unable to deliver the full minimum free entitlement. The Council reserves the right to withdraw funding from Providers who deliver fewer hours than the statutory 15 hours per week free entitlement without good reason.

### 3 Flexibility

3.1 The Provider agrees to offer the FEEE provision for up to 15hours per week in a way that best supports the learning of the Child and supports Parents' need for flexibility in compliance with the following guidelines:

- **Patterns:** The full 15 hours provision can be accessed in patterns of 5 hours per day over 3 days of the week or 3 hours per day over 5 days of the week;
- **Session Length:** Not less than 2.5 hours and not longer than 10 hours;
- **Providers:** The Service can be split between no more than 2 providers simultaneously;
- **Sectors:** The provision can be split between private, voluntary, independent schools and maintained settings;
- **Hours:** hours can be spread over more than 38 weeks if less than 15 hours a week are taken. Weekly and termly limits may apply.
- **Lunch:** Lunch may be provided by the Provider as long as this is in line with the provisions of the EYFS Guidance (Schedule 1);
- **Time:** The provision cannot be taken before 7am or after 7pm.

- 3.2 The Provider agrees to consult with Parent(s) about what they want from their FEEE on an ongoing basis and being as responsive as possible to changing demand.
- 3.3 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.

#### **4 Quality**

- 4.1 The Provider agrees to support improvements in the quality of provision by agreeing to:
  - 4.1.1 implement and meet all the statutory welfare, learning and development and legal requirements of the EYFS Statutory Framework (Schedule 1);
  - 4.1.2 implement updated policy requirements as required by Ofsted to ensure compliance with Ofsted’s registration requirements as contained in Schedule 3.
- 4.2 All Providers regardless of the age of Children they deliver the Service to are expected to 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.

#### **5 Assessment**

- 5.1 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.
- 5.2 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.
- 5.3 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.

#### **6 Staff**

- 6.1 The Provider shall ensure that any person working directly with Children undergoes regular enhanced criminal record checks with the DBS.
- 6.2 The Provider shall ensure that it employs staff of appropriate levels of experience and expertise as specified in Schedule 1 to perform the Service.
- 6.3 The Provider shall only employ staff who:

6.3.1 fulfil any minimum training and qualification requirements of the Council as set out in Schedules 1 and 3 and also all training and qualification requirements that may be deemed necessary.

6.3.2 are medically and physically fit in so far as the requirements of the work are concerned.

### **Safeguarding**

6.4 The Provider shall ensure that all potential staff or persons performing any of the Services during the Term, in who will or may in the course of their employment or engagement have access to children or other vulnerable persons:

6.4.1 are questioned concerning their Convictions; and

6.4.2 obtain enhanced disclosures from the DBS in accordance with the Safeguarding Vulnerable Groups Act 2006, before the Provider engages the potential staff or persons in the provision of the Services 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.

6.5 The Provider shall forward to the LADO the results of the checks referred to in clauses 6.4.1 and 6.4.2 where there is a conviction or other issue of concern and the Provider shall ensure that no person who discloses any Convictions upon being questioned about their Convictions in accordance with Clause 6.4.1, or who is found to have any Convictions following receipt of enhanced disclosures from the DBS in accordance with Clause 6.4.2, or who fails to obtain enhanced disclosures from the DBS upon request by the Provider in accordance with Clause 6.4.2 is employed without the Council's prior written consent.

6.6 The Provider shall ensure that the Council is kept advised at all times of any member of staff who, subsequent to his/her commencement of employment as a member of staff receives a Conviction or whose previous Convictions become known to the Provider.

6.7 Further to Clauses 6.5 and 6.6, the Council reserves the right to refuse approval of staff that they consider to be unsuitable for the provision of the Service. Where staff are not approved by the Council, the Contractor shall employ replacement staff to ensure that the prescribed ratio for the provision of the Service as contained in Schedule 1 is not breached.

### **7 Monitoring / Record Keeping**

7.1 The Provider must ensure that all returns, financial and otherwise required by the Council, Ofsted and DfE are made in an accurate and timely manner.

- 7.2 The Provider shall ensure that it is duly registered on Ofsted's Early Years Register and provide proof of this to the Council.
- 7.3 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.
- 7.4 The Provider should comply with any action plan agreed at a review meeting or "team around the setting" meeting in accordance with the Guidance.
- 7.5 The Provider shall 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.
- 7.6 The Provider shall keep full and accurate records in relation to the delivery of this Service and shall permit nominated representatives of the Council access to such records from time to time as may reasonably be requested.
- 7.7 The Provider should ensure that appropriate members of staff attend briefing sessions setting out any changes in monitoring / record keeping requirements.
- 7.8 The Provider shall maintain records for a period of at least seven (7) years from the production thereof.
- 7.9 Providers must be aware of the requirements of the Data Protection Act 1998 (as amended) and ensure they adhere to their duty to keep personal data secure and confidential.

## **8 Free Meals**

- 8.1 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 and where the Provider is a maintained school, the school must ensure this meal is provided.
- 8.2 The Council will consider and determine whether to fund the cost of lunch when a child who would qualify for Free School Meals in a maintained school takes up their funded entitlement at a private, voluntary or independent provider in accordance with paragraph A4.33 of Schedule 4.

## **9 Equality and Diversity**

The Provider should:

- 9.1 demonstrate that an equal opportunities policy is observed in the setting.
- 9.2 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;

- 9.3 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;
- 9.4 provide appropriate support to enable every Child, including disabled Children, disadvantaged Children and Children with special educational needs achieve their full potential.

## 10 **Parental Contracts**

- 10.1 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.
- 10.2 Parents are responsible for ensuring that they do not claim more than the 15 hours they are entitled to 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).

## **General Conditions**

### 11 **Limitation of Liability**

- 11.1 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:
  - 11.1.1 Any act, neglect or default of the Provider, its employees or agents and
  - 11.1.2 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.
- 11.2 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.

## 12 **INSURANCE**

- 12.1 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).

- 12.2 The Required Insurances referred to above include (but are not limited to):
- 12.2.1 public liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one claim or series of claims arising from the Service; and
  - 12.2.2 employer's liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one claim or series of claims arising from the Service.
- 12.3 The Provider shall (on request) supply to the Council a copy of such insurance policies and evidence that the relevant premiums have been paid.

### 13 **Entire Agreement**

- 13.1 This Agreement constitutes the entire agreement and understanding between the Parties and supersedes any previous agreement between the Parties in relation to the provision of the Service.

### 14 **Bribery/Corruption**

- 14.1 If the Provider in relation to this or any other contract with the Council shall do or have done any act:
- 14.1.1 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
  - 14.1.2 Which is an offence under the Bribery Act 2010; or
  - 14.1.3 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 forthwith with immediate effect and recover from the Provider all losses, costs, damages and expenses incurred as a result of the termination.

### 15 **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.

### 16 **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.

**17 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.

**18 GOVERNING LAW**

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.

**SECTION B - COUNCIL'S OBLIGATIONS**

**19 Funding Arrangements**

19.1 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.

19.2 The Council shall fund the provision of the Service by the Provider at no cost to the Parent(s).

19.3 Pursuant to Clause 19.2 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) and 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.

19.4 Pursuant to Clause 19.2 above 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.

19.5 Further to Clauses 19.2, 19.3 and 19.4 above and in accordance with Schedules , the funding requirements which may be imposed on the Provider by the Council are those which ensure that:

19.5.1 early education places are delivered completely free of charge to Parents;

- 19.5.2 early education places are provided flexibly in a pattern which meets the needs of Parent(s);
- 19.5.3 the funding provided is used properly and in accordance with any arrangements made with Providers;
- 19.5.4 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;
- 19.5.5 the Provider meets the needs of disabled children and children with special educational needs;
- 19.5.6 Providers keep children safe; and
- 19.5.7 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 19.5 is not exhaustive and shall be subject to review by government legislation governing the provision of the Service.

- 19.6 With regard to Clause 19.5.4 above, the Council shall be entitled to refuse funding to a Provider whom it has reasonable grounds to believe is:
  - 19.6.1 not meeting the independent school standard in relation to the spiritual, moral, social and cultural development of pupils; or
  - 19.6.2 not actively promoting Fundamental British values; or
  - 19.6.3 promoting as fact views or theories which are contrary to established scientific or historical evidence and explanations.
- 19.7 Further to Clause 19.5 above, 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.
- 19.8 Where a Provider is found to be in breach of the provisions of clause 19.5 herein, the Council may require the repayment of the whole or any part of the funding provided by the Council under the terms and conditions of this Agreement.
- 19.9 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.



- 19.10 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.
- 19.11 The Council shall use reasonable endeavours to work with Providers who are adjudged by Ofsted as “requires improvement” 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.
- 19.12 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 up at 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.

## 20 Payment of EYSFF Payments

- 20.1 Subject to clause 19, the Council shall make the EYSFF Payment to the Provider in accordance with **Error! Reference source not found.**
- 20.2 The payment of the EYSFF Funding to the Provider by the Council is conditional upon the following:
- 20.2.1 compliance with the rules in Schedule 1 and the Legal Requirements as amended from time to time;
  - 20.2.2 submission of the financial monitoring and claim forms in accordance with Schedule 2;
  - 20.2.3 compliance with the requirements of this Agreement;
  - 20.2.4 compliance with any other conditions the Council may reasonably impose from time to time in line with the Guidance.
- 20.3 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.
- 20.4 The EYSFF Payment shall be paid into a separate bank account in the name of the Provider which must be an ordinary business bank account<sup>1</sup>. The Provider must satisfy the Council that proper financial accounting systems and practices are in place that meet the Legal Requirements and the EYFS Guidance and maintain an appropriate audit trail of all transactions.
- 20.5 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.
- 20.6 The Provider shall promptly repay to the Council any money incorrectly paid to it either as a result of an administrative error or otherwise.<sup>2</sup> 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.
- 20.7 Further to Clause 20.6 above, the Council shall be entitled in its discretion to:
- 20.7.1 request the immediate return of such sums; or
  - 20.7.2 withhold an amount equal to such sums from any future payment of EYSFF payments; or

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<sup>1</sup> In the case of business this will usually be the business bank account. In the case of individuals a separate bank account must be set up. EYFSS Payments will not be paid into an individuals personal bank account.

<sup>2</sup> Further information on the circumstances in which such repayments may be required can be found in Schedule 2

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

## 21 Use of EYSFF Payment

21.1 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.

21.2 The EYSFF Payment shall be used by the Provider to offset expenditure incurred in delivering the Service in accordance with **Error! Reference source not found.**Schedule 2 and reviewed from year to year. The Provider shall not use the EYSFF Payment to:

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

21.2.2 purchase buildings or land; or

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

unless this has been approved in writing by the Council.

21.3 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.

## 22 **Accounts and Records**

- 22.1 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.
- 22.2 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.
- 22.3 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.
- 22.4 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.

## **23 Monitoring and Reporting**

- 23.1 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.
- 23.2 The Provider shall provide the Council with headcount returns as specified in Schedule 2 and in such formats as the Council may reasonably require. 23.3 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.
- 23.4 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.
- 23.5 The Provider 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.
- 23.6 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.
- 23.7 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.

## **24 Acknowledgment and Publicity**

- 24.1 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.
- 24.2 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.

- 24.3 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.
- 24.4 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.
- 24.5 The Council may acknowledge the Provider's involvement in the Service as appropriate without prior notice.
- 24.6 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.

## **25 Intellectual Property Rights**

- 25.1 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.
- 25.2 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.

## **26 Confidentiality**

- 26.1 Subject to clause 27 (Freedom of Information), each party shall during the term of this Agreement 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.
- 26.2 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:
  - 26.2.1 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;
  - 26.2.2 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

26.2.3 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.

## 27 Freedom of Information

27.1 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.

27.2 The Provider shall:

27.2.1 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;

27.2.2 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

27.2.3 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.

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

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

27.3.2 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.

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

27.5 The 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 0 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.

27.6 The 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.

## 28 **Data Protection**

The Provider shall (and shall ensure that any of its staff involved in connection with the activities under the Agreement shall) comply with any notification requirements under the Data Protection Act 1998 (DPA) and both Parties will duly observe all their obligations under the DPA, which arise in connection with the Agreement.

## 29 **Withholding, Suspending and Repayment Of EYSFF Payment**

29.1 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 if:

29.1.1 the Provider uses the EYSFF Payment for purposes other than those for which they have been awarded;

29.1.2 the Council considers that the Provider has not made satisfactory progress with the delivery of the Service in accordance with the Regulations;

29.1.3 the Provider is, in the reasonable opinion of the Council, delivering the Service in a negligent manner;

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

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

29.1.6 the Provider commits or committed a Prohibited Act;

29.1.7 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;

29.1.8 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);

29.1.9 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

29.1.10 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.

29.2 Wherever under the 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.

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

29.4 Should the Provider be 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 will 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.

## 30 **Anti-Discrimination**

30.1 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.

30.2 The Provider shall take all reasonable steps to secure the observance of clause 0 by all servants, employees or agents of the Provider and all suppliers and sub-contractors engaged in the provision of the Service.

## 31 HUMAN RIGHTS

- 31.1 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).
- 31.2 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.

## 32 Limitation of Liability

- 32.1 The Council accepts no liability for any consequences, whether direct or indirect, that may come about from the Provider running the Service, the use of the EYSFF Payment or from withdrawal of the EYSFF Payment. The Provider shall indemnify and hold harmless the Council, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Provider in relation to the Service, the non-fulfilment of obligations of the Provider under this Agreement or its obligations to third parties.
- 32.2 Subject to clause 0, the Council's liability under this Agreement is limited to the payment of the EYSFF Payment.

## 33 WARRANTIES

- 33.1 The Provider warrants, undertakes and agrees that:
- 33.1.1 it has all necessary resources and expertise to deliver the Service (assuming due receipt of the EYSFF Payment);
- 33.1.2 it has not committed, nor shall it commit, any Prohibited Act;
- 33.1.3 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;
- 33.1.4 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;

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

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

33.1.7 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;

33.1.8 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

33.1.9 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.

#### **34 Duration**

34.1 This 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.

34.2 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.

#### **35 TERMINATION**

35.1 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 and as contained in Schedules.

35.2 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 such reasonable period as the Council may specify in any written notice advising the Provider of the breach. The period of notice to be allowed for remedying a remediable breach and the period of notice required to terminate this Agreement following the Provider's failure to remedy such breach shall be determined by the Council in its absolute discretion having regard to the seriousness of the breach and the need to enable Parents to make alternative arrangements for their Children.

35.3 Each Party shall be entitled to terminate this Agreement by giving at least three months written notice to the other Party to enable Parents make alternative arrangements for their Children.

- 35.4 Where this Agreement is terminated in accordance with Clause 35.3, the Provider shall have a right of appeal to the Divisional Director for Education Improvement. 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
- 35.5 The Provider should inform Ofsted and the Council whenever there is a material change in their particulars, such as a change of ownership or premises, particularly where the Provider's ability to continue to deliver the FEEE Service may be affected by such material change.
- 35.6 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

### 36 **Assignment**

The 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.

### 37 **Waiver**

No failure or delay by either party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

### 38 **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.

## 39 **Dispute Resolution**

- 39.1 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 will use 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.
- 39.2 Where the dispute cannot be resolved by negotiation, the Provider shall have a right of appeal to the Divisional Director for Education Improvement.

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, 2014.'**

## **Schedule 2**

**'LBWF's Free Early Education Entitlement (FEEE) Financial Guidance for 2, 3 & 4 year olds, 1<sup>st</sup> April 2015 – 31<sup>st</sup> March 2016'**



### **Schedule 3**

**Ofsted's 'Framework for the regulation and inspection of provision on the Early Years Register, October 2014'**

**Schedule 4:**

DfE's 'Early education and childcare: Statutory guidance for local authorities, September 2014'