

FEEE PAYMENT TERMS AND CONDITIONS 2024-2027

Relating to provision of Free Early Education Entitlement (FEEE) places to 9 months old to 4 year olds

Between the London Borough of Waltham Forest

And

[INSERT NAME OF PROVIDER]

PROVIDER DETAILS INSERTED HERE INCLUDING THE **REGISTERED INDIVIDUAL/ORGANISATION
NAME [IF DIFFERENT FROM THE NAME OF THE PROVIDER]**, PREMISES ADDRESS, **OFSTED
REG.NO (THE URN)**, SCHOOLS DfE URN, COMPANY NO., CHARITY COMMISSION NO

This Agreement is dated the _____ day of _____ 2024

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/Registered Individual] of [Address] whose Ofsted registration number (also known as the Unique Reference Number or URN) is [insert Ofsted Registration Number] and whose Premises address is [] (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 Premises address is [] and whose Ofsted registration number (also known as the Unique Reference Number or URN) is [insert Ofsted Registration Number] [and whose Registered Organisation name is] (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 Premises address is [] and whose Ofsted registration number (also known as the Unique Reference Number or URN) is [insert Ofsted Registration Number] [and whose Registered Organisation name is] (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 Premises address is [] and whose Ofsted registration number is (also known as the Unique Reference Number or URN) [insert Ofsted Registration Number] [and whose Registered Organisation name is] (the “**Provider**”)

OR

[Name of School] of [Address] whose DfE registration number (also known as the Unique Reference Number or URN) is [insert Ofsted Registration Number] and whose Premises address is [] [and whose Registered Organisation Name is] (the “**Provider**”)

OR

[Name of Academy] registered as a company in England under Company Registration Number [Company Registration Number] and/or registered as a charity under Charity registration Number [Charity Registration Number] whose registered office is at [Registered Office Address] and whose DfE registration number (also known as the Unique Reference Number or URN) is [insert DfE Registration Number] and whose Premises address is [] [and whose Registered Organisation Name is] (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, January 2024 and the Model Agreement – Free Early Years Provision and Childcare, January 2024 issued by the Department of Education (DfE)

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/Contract”	means this agreement/contract 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 9 months old to 4 years old as further specified in Schedule 1 of this Agreement;
“Childcare”	has the meaning given by the Act;
“Commencement Date”	means 1 September 2024 ;
“Contract Term”	means the period starting on the Commencement Date and ending on 31 March 2027 unless extended for a further period between three (3) to six (6) months by

	the Council;
“DAF”	means the Disability Access Fund for those eligible 9 months old to four-year olds who are taking up their free entitlement and are in receipt of Disability Living Allowance;
“Data Protection Legislation”	means the Data Protection Act 2018, the United Kingdom General Data Protection Regulation (Retained Regulation (EU) 2016/679), Law Enforcement Directive (Directive (EU) 2016/680) (the ‘LED’), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;
“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 on the provision of early education and childcare published by the Department for Education in January 2024, 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 published in December

	2023 and 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 9months old to 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 and Providers as amended from time to time;
“Information Commissioner”	means the United Kingdom’s independent data protection authority established under Part 5 of the Data Protection Act 2018;
“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 by the Council 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 (including premises statutory compliance such as but not restricted to gas, electrical, water, fire safety and the management of asbestos), building and planning regulations or requirements, 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 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 fraudulent acts in relation to this Agreement or any other contract with the Council or Crown; or d) defrauding or attempting to defraud or conspiring to defraud the Council OR

	Crown;
“Provider”	Means: <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	means the name under which the Provider is registered with Ofsted for the provision of the Services and associated with the trading name;
“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;
“Request for Information”	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”.
Schedules	means Schedule 1, Schedule 2, Schedule 3, Schedule 4, Schedule 5, Schedule 6, and Schedule 7;
Schedule 1	means the first schedule to this Agreement containing the Statutory Framework for the early years foundation stage;
Schedule2	means the second schedule to this Agreement containing the FEEE Financial Guidance;
Schedule 3	means the third schedule to this Agreement containing the Childminders and childcare providers: register with Ofsted Guidance for childminders, nannies, nurseries and people providing other childcare on when/if you need to register with Ofsted, the process, fees and requirements published 30th October 2018;

Schedule 4	means the fourth schedule to this Agreement containing Early education and childcare: Statutory guidance for local authorities on the provision of early education and childcare;
Schedule 5	means the fifth schedule to this Agreement containing the General Data Protection Regulations;
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 London Borough of Waltham Forest (LBWF) 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 9 months old to 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 must:

- 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 30 of this Agreement;
 - 3.2.3 provide the Service in accordance with all statutory requirements in relation to current health and safety, safeguarding, special education needs and inclusion as contained in Schedule 1 (Early Years Foundation Stage (EYFS) Statutory Framework), Schedule 2 (LBWF's Free Early Education Entitlement (FEEE) Financial Guidance) and Schedule 3 (Childminders and Childcare Providers: Register with Ofsted) and the Legal Requirements and the Guidance;
 - 3.2.4 deliver the free entitlements consistently to all Parents whether in receipt of fifteen (15) or thirty (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; and
 - 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 (Statutory Guidance for Providers Regarding Safeguarding) 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 (Childminders and Childcare Providers: Register with Ofsted).
- 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 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 (SEND Code of Practice: 0 to 25 years).
- 3.8 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 (Statutory Guidance for Providers Regarding Safeguarding), 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 (Statutory Guidance for Providers Regarding Safeguarding).
- 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 notified in writing (within one working day of becoming aware) 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 Schedule 1 (Early Years Foundation Stage (EYFS) Statutory Framework) and Schedule 7 (Statutory Guidance for Providers Regarding Safeguarding) 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.
- 4.8 The Provider shall ensure that the LADO is notified in writing of any allegations made against any member of staff or volunteer within one (1) working day of the alleged incident.

Staff

4.9 The Provider shall ensure that any person working directly with Children undergoes regular enhanced criminal record checks with the DBS.

4.10 The Provider shall ensure that it employs staff of appropriate levels of experience and expertise as specified in Schedule 1 (Early Years Foundation Stage (EYFS) Statutory Framework) to perform the service.

4.11 The Provider shall only employ staff who:

4.11.1 Fulfil any minimum training and qualification requirements as set out in Schedule 1 (Early Years Foundation Stage (EYFS) Statutory Framework) and Schedule 3 (Childminders and Childcare Providers: Register with Ofsted) and 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; and

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 (Data Protection Clauses) and deleted when there is no longer a good reason to keep the data.

5.2 The Provider shall offer places to eligible children from 9months old to 4years old who are eligible under the working family criteria and children aged three to four year olds who are eligible for the universal entitlement. This should be offered in line with the Provider's admission policies.

5.3 The Provider must, alongside the thirty (30) hours eligibility code, which is the child's unique 11-digit number, and original copies of documentation (in pursuant of Clause 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 thirty (30) hours eligibility code.

5.4 Once a Provider has received written consent from the Parent, they shall verify the thirty (30) hours eligibility code with the Council.

5.5 The Council may confirm the validity of the thirty (30) hours eligibility codes to allow Providers to offer thirty (30) hours places for eligible 9 months old and above. The Council will provide a validity checking service to providers to enable them to verify the thirty (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 thirty (30) hours free childcare at six (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 (LBWF's Free Early Education Entitlement (FEEE) Financial Guidance).

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.

5.8 The Council must ensure that a child has a free place no later than the beginning of the term following the child and parent meeting the eligibility criteria for the free entitlement.

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 (Free of Charge for Working Parents) (England) Regulations 2022, 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 (Early Education and Childcare).

7. FLEXIBILITY

7.1 The Provider agrees to offer the FEEE provision for up to thirty (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 outlined in Clauses 7.2 to 7.5 below.

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 five hundred and seventy (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 (LBWF's Free Early Education Entitlement (FEEE) Financial Guidance).

8. PARTNERSHIP WORKING

8.1 The Council will support partnership on five (5) levels between:

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

- Ofsted and the Local Authority <https://www.gov.uk/government/publications/protocols-between-ofsted-and-other-organisations-in-relation-to-childcare/protocol-between-ofsted-and-local-authorities-on-sharing-information-about-childcare-providers#annex>

8.2 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.

8.3 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.org/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.

8.4 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 Schedule 6 (SEND Code of Practice: 0 to 25 years).

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 HUMAN RIGHTS

- 11.1 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).
- 11.2 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.

12. QUALITY

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

- 12.1.1 implement and meet all the statutory welfare, learning and development and legal requirements of Schedule 1 (Early Years Foundation Stage (EYFS) Statutory Framework);
- 12.1.2 implement updated policy requirements as required by Ofsted to ensure compliance with Ofsted's registration requirements as contained in Schedule 3 (Childminders and Childcare Providers: Register with Ofsted).

12.2 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.

12.3 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.

12.4 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.

13. BUSINESS PLANNING

13.1 The Provider shall provide to the Council the documentation set out in Schedule 2 (LBWF's Free Early Education Entitlement (FEEE) Financial Guidance) and required by the Council to support payment and delivery of free entitlements.

13.2 The Provider shall comply with the timetable set out in Schedule 2 (LBWF's Free Early Education Entitlement (FEEE) Financial Guidance) in submitting their documentation.

13.3 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.

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

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

13.6 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.

13.7 The Provider shall provide information requested by the Council regarding availability of childcare places, including vacancies and waiting lists in a timely manner to assist the Council in meeting its statutory duty in relation to securing sufficient childcare

places and providing comprehensive and up to date information to parents and prospective parents about childcare and early education

14. CHARGING

14.1 The Provider shall deliver the FEEE in line with the Guidance.

14.2 The Provider may charge for meals and snacks as part of a free entitlement place and may also charge for consumables. The Provider should be mindful of the impact of additional charges on parents, especially the most disadvantaged.

14.3 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.

14.4 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.

14.5 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.

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

14.7 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.

14.8 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 (LBWF's Free Early Education Entitlement (FEEE) Financial Guidance).

14.9 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.

14.10 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.

Parental Contracts

14.11 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.

14.12 Parents are responsible for ensuring that they do not claim more than the fifteen (15) or thirty (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).

15. FUNDING

15.1 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.

15.2 The Council shall pay all providers in accordance with Schedule 2 (LBWF's Free Early Education (FEEE) Financial Guidance).

15.3 The Provider shall provide the Council with headcount returns as specified in Schedule 2 (LBWF's Free Early Education (FEEE) Financial Guidance) 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.

15.4 The Provider shall accurately complete and submit headcount and other necessary data returns by the dates outlined in Schedule 2 (LBWF's Free Early Education (FEEE) Financial Guidance) to support the Council to make payment.

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

15.6 Pursuant to Clause 15.4 above the Council shall fund the provision of the Service to eligible disadvantaged 2 year olds at any provider judged 'good' or 'outstanding' by Ofsted or at any childminder or childcare provider registered with a childminder agency judged 'effective' by Ofsted if a parent wants their child to take up their free place at that provider and the provider is willing to accept the local authority funding and any other local authority requirements.

15.7 Pursuant to Clause 15.4 above the Council shall fund places for children eligible for the universal or working parent entitlements at any provider judged 'requires improvement' or better by Ofsted or at any childminder or childcare provider registered with a childminder agency judged 'effective' by Ofsted if a parent wants their child to take up their free place at that provider and the provider is willing to accept the local authority funding and any other local authority requirements.

15.8 Pursuant to Clause 15.4 above the Council shall fund places for children eligible for a free place at new providers registered with Ofsted until the provider's first full Ofsted inspection judgement is published or at a childminder or childcare provider registered with an agency until the agency's first full Ofsted inspection judgement is published if a parent wants their child to take up their free place at that provider and the provider is willing to accept the local authority funding and any other local authority requirements.

15.9 Further to Clauses 15.2, 15.3 and 15.4 above and in accordance with Schedule 1 (Early Years Foundation Stage (EYFS) Statutory Framework), Schedule 2 (LBWF's Free Early Education Entitlement (FEEE) Financial Guidance), Schedule 3 (Childminders and Childcare Providers: Register with Ofsted), Schedule 4 (Early Education and Childcare), Schedule 5 (Data Protection Clauses), Schedule 6 (SEND Code of Practice: 0 to 25 years) and Schedule 7 (Statutory Guidance for Providers Regarding Safeguarding), the funding requirements which may be imposed on the Provider by the Council are those which ensure that:

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

15.9.2 early education places are provided flexibly in a pattern which meets the needs of Parent(s);

15.9.3 the funding provided is used properly and in accordance with any arrangements made with Providers;

15.9.4 that the provider meets the needs of disabled children and children with special educational needs

15.9.5 effective safeguarding and promotion of welfare of the children for whom the early education service is provided

15.9.6 Providers will actively promote fundamental British values and do not promote views or theories as fact which are contrary to established scientific or historical evidence and explanations;

15.9.7 that the early years provider takes any measures identified in a report from Ofsted to improve the overall effectiveness of the provision and

15.9.8 are necessary for the effective administration of the arrangements.

The list in this Clause 15.9 is not exhaustive and shall be subject to review by government legislation governing the provision of the Service. When complying with this Clause 15.9 the Provider shall have regard to Clauses 18 and 19 of this Agreement which address termination of the Agreement and withdrawal of funding if the Provider fails to comply with this Clause 15.9.

15.10 With regard to Clause 15.9.4 above, the Council shall be entitled to refuse funding to a Provider whom it has reasonable grounds to believe is:

- 15.10.1 not meeting the independent school standard in relation to the spiritual, moral, social and cultural development of pupils; or
- 15.10.2 not actively promoting fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs; or
- 15.10.3 promoting as evidence based views or theories which are contrary to established scientific or historical evidence and explanations or;

15.11 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.

15.12 Where a Provider is found to be in breach of the provisions of Clause 15.9 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.

15.13 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.

15.14 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.

15.15 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.

15.16 Where the Service is taken up by the Parent(s) with two (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

- 15.17 Subject to Clause 15, the Council shall make the EYSFF Payment to the Provider in accordance with Schedule 2 (LBWF's Free Early Education Entitlement (FEEE) Financial Guidance).
- 15.18 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 Schedule 1 (Early Years Foundation Stage (EYFS) Statutory Framework, Schedule 2 (LBWF's Free Early Education Entitlement (FEEE) Financial guidance), Schedule 3 (Childminders and Childcare Providers: Register with Ofsted) and Schedule 4 (Early Education and Childcare) and the Legal Requirements listed herein.
- 15.19 The payment of the EYSFF Funding to the Provider by the Council is conditional upon the following:
- 15.19.1 compliance with the rules in Schedule 1 (Early Years Foundation Stage (EYFS) Statutory Framework) and the Legal Requirements as amended from time to time;
 - 15.19.2 submission of the financial monitoring and claim forms in accordance with Schedule 2 (LBWF's Free Early Education Entitlement (FEEE) Financial Guidance);
 - 15.19.3 compliance with the requirements of this Agreement; and
 - 15.19.4 compliance with any other condition the Council may reasonably impose from time to time in line with the Guidance.
- 15.20 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.
- 15.21 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.
- 15.22 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.

15.23 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.

15.24 Further to Clause 15.23 above, the Council shall be entitled in its discretion to:

- 15.24.1 request the immediate return of such sums; or
- 15.24.2 withhold an amount equal to such sums from any future payment of EYSFF payments; or
- 15.24.3 deduct from any future EYSFF Payment an amount equal to such sums.

Use of EYSFF Payment

15.25 The EYSFF Payment shall be used by the Provider to offset expenditure incurred in delivering the Service in accordance with Schedule 2 (LBWF's Early Education Entitlement (FEEE) Financial Guidance) and reviewed from year to year. The Provider shall not use the EYSFF Payment to:

- 15.25.1 make any payment to members of its governing body, where it is a maintained school or trustees where it is a charity;
- 15.25.2 purchase buildings or land; or
- 15.25.3 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.

15.26 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 (LBWF's Free Early Education Entitlement (FEEE) Financial Guidance).

16 BRIBERY/CORRUPTION

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

- 16.1.1 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
- 16.1.2 Which is an offence under the Bribery Act 2010; or
- 16.1.3 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.

16.2 The Provider shall take all reasonable steps to secure the observance of Clause 16.1 by all servants, employees or agents of the Provider and all suppliers and sub-contractors engaged in the provision of the Service.

17. COMPLIANCE

Monitoring and Record Keeping

17.1 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:

17.1.1 ensure that it is duly registered on Ofsted's Early Years Register and provide proof of this to the Council;

17.1.2 comply with any action plan agreed as part of any contract compliance review meeting in accordance with the Legal Requirements and Guidance;

17.1.3 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;

17.1.4 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;

17.1.5 ensure that appropriate members of staff attend briefing sessions setting out any changes in monitoring / record keeping requirements;

17.1.6 maintain records for a period of at least seven (7) years from the production thereof; and

17.1.7 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.

17.2 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

- 17.3 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.
- 17.4 The Provider shall provide the Council with any Health and Safety documentation and certification as and when required by the Council and shall allow an annual Health and Safety review to be undertaken.
- 17.5 The Provider shall provide the Council with any Safeguarding documentation and certification as and when required by the Council and shall allow an annual Safeguarding review to be undertaken.
- 17.6 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.
- 17.7 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 (Early Years Foundation Stage (EYFS) Statutory Framework).
- 17.8 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.
- 17.9 The Provider shall ensure they submit timely and accurate information, including but not limited to census data, data and information requests required by the Council on behalf of the DfE, parental declarations and invoices, as per the financial guidelines of the Council.
- 17.10 Where the Council has requested information the Provider shall make this information available within ten (10) days.

Accounts and Records

- 17.11 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 (LBWF's Free Early Education Entitlement (FEEE) Financial Guidance).
- 17.12 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.

17.13 Where requested by the Council, the Provider shall provide the Council with a copy of its annual accounts within six (6) 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.

17.14 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.

18 WITHHOLDING, SUSPENDING AND REPAYMENT OF FEEE PAYMENT

18.1 The Council's intention is that the FEEE 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 FEEE Payment and/or require repayment of all or part of the FEEE Payment and/or be entitled to terminate the Agreement in accordance with Clause 19 if:

18.1.1 The provider fails to comply with Clauses 19.3, 19.4, 19.5, 19.6

18.1.2 The Provider fails to comply with Clause 15.9;

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

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

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

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

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

18.1.8 the Provider commits or committed a Prohibited Act;

18.1.9 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;

18.1.10 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);

18.1.11 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

18.1.12 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.

- 18.2 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.
- 18.3 The Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 18.4 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 FEEE Payment monies.

19 TERMINATION

- 19.1 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.
- 19.2 The Council may terminate this Agreement where;
- a. it has funded places for eligible disadvantage 2-year-olds and the Provider has not been judged as 'good' or 'outstanding' by Ofsted or at any childminder or childcare provider registered with a childminder agency and has not been judged as 'effective' by Ofsted and the parent wanted their child to take up their free place with the Provider and the Provider was willing to accept the Council's funding and any other requirements set by the Council.
 - b. it has funded places for children eligible for the universal or working parent entitlements and the Provider has not been judged as 'requires improvement' or better by Ofsted or at any childminder or childcare provider registered with a childminder agency and has not been judged as 'effective' by Ofsted and the parent wanted their child to take up their free place with the Provider and the Provider was willing to accept the Council's funding and any other requirements set by the Council.
- 19.3 The Council may terminate this Agreement if the Provider does not meet the quality standards set out in Clause 19.2. However, the Council may choose to not terminate this Agreement in order to ensure sufficiency of free places. In the event of this Clause 19.2 becoming applicable the Provider agrees and acknowledges that it must comply with the FEEE compliance process again as set out in the following link (or in any subsequently updated link or guidance) <https://thehub-beta.walthamforest.gov.uk/commissionedto deliverFEEE>
- 19.4 The Council has a duty to fund providers with an Ofsted inspection judgement of 'met' until their Ofsted quality inspection judgement is published. The Council shall be entitled to terminate this Agreement and withdraw funding from the Provider if the Provider receives an Ofsted inspection judgement of 'not met'.

- 19.5 As soon as practicable, the Council may secure alternative provision and terminate this Agreement with the Provider (other than a local authority maintained school), when Ofsted publish an inspection judgement of the Provider of 'inadequate' or when Ofsted publish a second consecutive 'ineffective' inspection judgment, the Council will continue to fund the childminder agency's providers if the childminder agency has assessed them as being of acceptable quality and Ofsted has not identified any concerns about the childminder agency's assessment arrangements, and should endeavour to treat all of the childminder agency's other providers in a comparable way to Ofsted-registered providers with equivalent judgments. Subject to this, it is for the Council to determine an appropriate timeframe for withdrawing funding. When the Council withdraws funding, the Council will take into account the continuity of care for children who are already receiving their free hours at the Provider or with an agency registered childminder or childcare provider and Ofsted monitoring information about the Provider or agency. When the Council withdraws funding, from a childminder agency-registered provider, the Council will take into account the parent's wishes. The Council will take appropriate action to improve the quality of provision at a local authority maintained school which has been judged by Ofsted to require significant improvement or has been placed in special measures.
- 19.6 The Council will not fund childminders or childcare providers registered with a childminder agency where the agency has indicated to the Council that the childminder or childcare provider is not of appropriate quality unless it is necessary to do so to ensure sufficiency of accessible places or support parental choice. The Council will consider any information provided by a childminder agency about the childminder or childcare provider registered with them and the childminder's premises.
- 19.7 The Council will terminate the Agreement if the Provider is not actively promoting fundamental British values or if the Provider is promoting as evidence-based, views or theories which are contrary to established scientific or historical evidence and explanations.
- 19.8 The Council shall be entitled to terminate this Agreement and withdraw funding as a result of suspension of registration by Ofsted or childminder agency, or a breach of statutory requirements or safeguarding issues.
- 19.9 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 15.9 and Clause 18.1 of this Agreement.
- 19.10 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.
- 19.11 As per Clause 4.7 if the Provider fails to comply with Schedule 1 (Early Years Foundation Stage (EYFS) Statutory Framework) and Schedule 7 (Statutory Guidance for Providers Regarding Safeguarding) 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.

- 19.12 The Council shall endeavour to give Providers a minimum of three (3) months written notice of termination of their Agreement to enable Parents to make alternative arrangements for their Children.
- 19.13 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.
- 19.14 In all cases where funding is withdrawn, the local authority will give the provider a written explanation of the decision to withdraw funding.
- 19.15 Where the EYSFF Payment Terms and Conditions Agreement is terminated the Provider shall have a right of appeal to the Director of Education. The appeal should be made within twenty-one (21) days of receipt of the written notice and be in the form of a written report outlining the reason(s) for appeal.
- 19.16 If the Provider receives suspension of registration by Ofsted or childminder agency, or a breach of statutory requirements or safeguarding issues. The Council reserves the right to terminate this Agreement and withdraw funding.

20 APPEALS PROCESS

- 20.1 A Provider may be denied approval to offer the free entitlements or have their funding withdrawn as set out in Clauses 18 and 19 and Schedule 4 (Early Education and Childcare).
- 20.2 Where this Agreement is terminated in accordance with Clause 19, the Provider shall have a right of appeal to the Director of Education (the title of the Director may be amended from time to time as notified to the Provider.) The appeal should be made within twenty-one (21) days of receipt of the written notice and be in the form of a written report outlining the reason(s) for appeal.

21 COMPLAINTS PROCESS

- 21.1 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.
- 21.2 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.
- 21.3 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.
- 21.4 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.

22 DISPUTE RESOLUTION

- 22.1 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.
- 22.2 Where the dispute cannot be resolved by negotiation, the Provider shall have a right of appeal to the Director of Education.

23 OTHER LEGAL DUTIES

- 23.1 The EYFS requirements sit alongside other legal obligations and do not supersede or replace any other legislation which the Provider must still meet. Other duties on the Provider includes;
- i) employment laws;
 - ii) anti-discrimination legislation;
 - iii) health and safety legislation;
 - iv) data collection regulations; and
 - v) duty of care.

Employment Laws

- 23.2 The Provider shall comply with the requirements of Employment laws and the Government requirements regarding people <https://www.gov.uk/browse/employing-people> which may apply to employees and other persons working on the Services.
- 23.3 The Provider shall also comply with employment requirements relating to safeguarding as set out in clauses 4.1 within the safeguarding section.
- 23.4 When considering the nature of their duties and the need to comply with a range of legal requirements and having regard to the amount of control the providers exert on the early years professionals/Childminding Assistant's delivering FEEE places, and the fact in the majority of instances, to maintain statutory staff:child ratios and meet safeguarding requirements, that:
- the Provider will dictate the hours of work and days;
 - there will be a duty placed by the Provider on the early years professional/Childminding Assistant to provide work and an obligation on the early years professional/Childminding Assistant to accept it ; and

- where the Provider is a Childminder, It is not possible for the Childminding Assistant to get a substitute in to cover their work as there are certain statutory checks that must be undertaken (enhanced DBS and barred list checks required by OFSTED).
- The Provider will operate PAYE for their payroll or can use a recruitment/employment agency for staff used by the Provider.

- 23.5 Where a Provider employs an early years worker/ a Childminding Assistant who will be included in the staff:child ratios for children taking up their FEEE place, and for whom the Provider wishes to receive EYSFF Payment under any arrangements other than PAYE or agency staff, details of the employment arrangements for the specific early years worker/ Childminding Assistant will be reviewed on a case by case basis by the Council to establish whether these arrangement comply with employment law and regulations.
- 23.6 The Provider must supply the Council with details of the employment arrangements in place for the specific individual/s. The Provider will then be provided with written confirmation as to whether these arrangements meet employment law and whether the Council will make EYSFF Payments for FEEE places provided by the specified individual/s.
- 23.7 If a Childminder wishes to employ Childminding Assistants to expand the service offered and want to receive EYSFF Payment for the FEEE places that they provide, as well as having the relevant qualifications and experience they will also be responsible for being the employer and will be required to pay the necessary employer contributions (tax and NI) and they will have liability for pensions (auto enrolment), sickness pay, holiday pay, notice pay and any other statutory entitlements that employees receive in the course of their employment.

Use of volunteers

- 23.8 The Council would support the use of volunteers on an occasional basis in line with EYFS Guidance as this is in line with the Council's Volunteering Strategy and enables Provider to enhance the quality of their provision. The use of volunteers can enable the volunteer to gain new skills, can be a stepping stone to employment and can also enhance access to cultural and social activities and combat social isolation.
- 23.9 The Council would not support or fund the ongoing use of volunteers included in staff:child ratios that would care for children taking up their FEEE place who would be funded by the Council via EYSFF payments, as it is highly likely in the Council's view that these arrangements would constitute the individual being considered an employee of the Provider. These volunteering arrangements could also potentially be in conflict with the Councils commitment to tackling modern slavery.

24. ANTI DISCRIMINATION

- 24.1 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.
- 24.2 The Provider shall take all reasonable steps to secure the observance of Clause 16 .1 by all servants, employees or agents of the Provider and all suppliers and sub-contractors engaged in the provision of the Service.

25. EQUALITY AND DIVERSITY

25.1 The Provider Should:

- 25.1.1 demonstrate that an equal opportunities policy is observed in the setting;
- 25.1.2 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;
- 25.1.3 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; and
- 25.1.4 provide appropriate support to enable every Child, including disabled Children, disadvantaged Children and Children with special educational needs to achieve their full potential.

26. DATA PROTECTION

- 26.1 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 2018, (as replaced, modified or re-enacted from time to time) (“DPA”), the United Kingdom General Data Protection Regulation (Retained Regulation (EU) 2016/679) (“UK GDPR”) , and any future such legislation.
- 26.2 The Provider shall Comply with the provisions set out in Schedule 5 (Data Protection Clauses).

27. CONFIDENTIALITY

- 27.1 Subject to Clause 28 (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.

27.2 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:

27.2.1 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;

27.2.2 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

27.2.3 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.

28. FREEDOM OF INFORMATION

28.1 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.

28.2 The Provider shall:

28.2.1 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;

28.2.2 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

28.2.3 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.

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

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

28.3.2 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.

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

28.5 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 28.5(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.

28.6 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.

29. INSURANCE

29.1 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).

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

29.2.1 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

29.2.2 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.

29.2.3 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.

29.2.4 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.

30. LIMITATION OF LIABILITY

30.1 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:

30.1.1 any act, neglect or default of the Provider, its employees or agents; and

30.1.2 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; and

30.1.3 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.

31. ACKNOWLEDGEMENT AND PUBLICITY

31.1 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.

31.2 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.

31.3 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.

31.4 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.

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

31.6 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.

32. WARRANTIES

32.1 The Provider warrants, undertakes and agrees that:

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

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

32.1.3 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;

- 32.1.4 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;
- 32.1.5 it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
- 32.1.6 it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
- 32.1.7 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;
- 32.1.8 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
- 32.1.9 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.

33. DURATION

- 33.1 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.
- 33.2 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.

34. INTELLECTUAL PROPERTY RIGHTS

- 34.1 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.
- 34.2 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.

35. NO PARTNERSHIP OR AGENCY

35.1 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

36.1 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

37.1 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

38.1 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.

38.2 The 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; and

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

39.1 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

40.1 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

41.1 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

42.1 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

43.1 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. ENTIRE AGREEMENT

44.1 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.

45. GOVERNING LAW

45.1 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.

45.2 References to legislation will apply to the legislation as amended, without significant changes to the Agreement.

BY SIGNING AND RETURNING THIS AGREEMENT THE PROVIDER AGREES to comply with all the terms of this legally binding contract.

The Parties hereby acknowledge and agree that they have read this Agreement and its Schedules and by signing below agree to be bound by the terms of this Agreement.

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

Signed on behalf of **THE MAYOR AND
BURGESSES OF THE LONDON
BOROUGH OF WALTHAM FOREST**

.....
Authorised Signatory

.....
Name and Title

Company signature:

Signed by []

for and on behalf of [NAME OF PROVIDER]

Director

INSERT name of director/officer name of company or specify other office held

[]

Childminder Signature

.....

Signed by [NAME OF PROVIDER]

.....

[SIGNATURE OF PARTY]

Charity Signature

.....

Signed by [FULL NAME OF CHARITY TRUSTEE SIGNING]

.....

[SIGNATURE OF CHARITY TRUSTEE]

Schools Signature

.....

Signed by [FULL NAME OF CHAIR OF GOVERNORS]

.....

[SIGNATURE OF CHAIR OF GOVERNORS]

SCHEDULE 1

Early Years Foundation Stage (EYFS) Statutory Framework
<https://www.gov.uk/government/publications/early-years-foundation-stage-framework--2>

SCHEDULE 2

LBWF's Free Early Education Entitlement (FEEE) Financial Guidance for Under 2's, 2, 3 & 4 year olds

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

SCHEDULE 3

Childminders and Childcare Providers: Register with Ofsted

<https://www.gov.uk/guidance/childminders-and-childcare-providers-register-with-ofsted>

SCHEDULE 4:

Early Education and Childcare

<https://www.gov.uk/government/publications/early-education-and-childcare--2>

SCHEDULE 5:

Data Protection Clauses

1. The Parties shall comply with any notification requirements under the Data Protection Legislation and both Parties shall duly observe all their obligations under the Data Protection Legislation, which arise in connection with this Agreement.

2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council, is the Data Controller and the Provider is the Data Processor. The only processing that the Provider is authorised to do by the Council is in accordance with this Agreement and may not be determined by the Provider.

3. The Provider shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.

4. The Provider shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment, if necessary, prior to commencing any Processing. Such assistance may, at the discretion of the Council, include;
 - 4.4.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;
 - 4.4.2 an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
 - 4.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 4.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

5. The Provider shall, in relation to any Personal Data Processed in connection with its obligations under this Agreement;
 - 5.5.1 Process that Personal Data only in accordance with this Agreement, unless the Provider is required to do otherwise by Law. If it is so required, the Provider shall promptly notify the Council before Processing the Personal Data unless prohibited by Law;

5.5.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the;

- (a) nature of the data to be protected;
- (b) harm that might result from a Data Loss Event;
- (c) state of technological development; and
- (d) cost of implementing any measures;

5.5.3 ensure that;

- (a) the Provider and any staff do not process Personal Data except in accordance with this Agreement;
- (b) it takes all reasonable steps to ensure the reliability and integrity of any Provider's staff who have access to the Personal Data and ensure that they;
 - i are aware of and comply with the Provider's duties under this Schedule 4 (Data Protection Clauses);
 - ii are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
 - iii are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third-party unless directed in writing to do so by the Council or otherwise permitted by this Agreement; and
 - iv have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (c) do not transfer Personal Data in a third country unless the prior written consent of the Council has been obtained and the following conditions are fulfilled;
 - i the Council or the Provider has provided appropriate safeguards in relation to the transfer;
 - ii the Data Subject has enforceable rights and effective legal remedies;
 - iii the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

- iv the Provider complies with any reasonable instructions notified to it in advance by the Provider with respect to the Processing of the Personal Data;
 - (d) at the written direction of the Council, delete or return Personal Data (any copies of it) to the Council on termination of the Agreement unless the Provider is required by Law to retain the Personal Data.
- 6. Subject to Clause 7 below, the Provider shall notify the Council immediately if it;
 - (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with the Personal Data Processed under this Agreement;
 - (e) receives a request from any third-party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 7. The Provider's obligation to notify under Clause 6 above shall include the provision of further information to the Council in phases, as details become available.
- 8. Taking into account the nature of the Processing, the Provider shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 6 above and insofar as possible within the timescales reasonably required by the Council including by promptly providing;
 - a. the Council with full details and copies of the complain, communication or request;

- b. such assistance as reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales out in the Data Protection Legislation;
 - c. the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - d. assistance as requested by the Council following any Data Loss Event; and
 - e. assistance as requested by the Council with respect to any request from the Information Commissioner's office, or any consultation with the Information Commissioner's office.
9. The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule 5 (Data Protection Clauses). This requirement does not apply where the Provider employs fewer than two hundred and fifty (250) staff, unless;
- a. the Council determines that the Processing is not occasional;
 - b. the Council determines that the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; and
 - c. the Council determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
10. The Provider shall allow for audits of its Personal Data Processing activity by the Council or the Council's designated auditor.

11. The Provider shall designate a Data Protection Officer if required by the Data Protection Legislation.
12. Before allowing any Sub-processor to Process any Personal Data related to this Agreement, the Provider must;
- (a) notify the Council in writing of the intended Sub-processor and Processing;
 - (b) obtain the written consent of the Council;
 - (c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Schedule 5 (Data Protection Clauses) such that they apply to the Sub-processor; and
 - (d) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
13. The Provider shall remain fully liable for all acts or omissions of any Sub-processor.
14. The Council may, at any time on not less than thirty (30) Working Days' notice, revise this Schedule 5 (Data Protection Clauses) by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attached to this Agreement).
15. The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's office. The Council may on not less than thirty (30) Working Days' notice to the Provider amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's officer.
16. The Data Processor shall indemnify and keep fully indemnified the Council against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Provider of this Schedule 5 (Data Protection Clauses) or any more general breach by the Data Processor of its obligations under the Data Protection Legislation.

SCHEDULE 6:

SEND Code of Practice: 0 to 25 years <https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

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 (updated as per legislation) and available on the government website at: <https://www.gov.uk/guidance/criminal-record-checks-for-childminders-and-childcare-workers>
2. Working together to safeguard children 2018 - Statutory guidance on inter-agency working to safeguard and promote the welfare of children (updated as per legislation) <https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>
3. Keeping Children Safe in Education -Statutory guidance for schools and colleges published September 2020 (updated annually) and available on the government website at: <https://www.gov.uk/government/publications/keeping-children-safe-in-education--2>
4. London Borough of Waltham Forest (LBWF) Model Early Years Safeguarding policy <https://thehub-beta.walthamforest.gov.uk/earlyyearpoliciesandprocedures>