



Early Learning and Childcare Contract

between

ABERDEENSHIRE COUNCIL

and

[Provider]

Relative to: [Setting NAME]

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Early Learning and Childcare Contract between

ABERDEENSHIRE COUNCIL a local authority constituted under the Local Government etc (Scotland) Act 1994, with principal place of business at WOODHILL HOUSE, WESTBURN ROAD, ABERDEEN, AB16 5GB (the “**Council**”)

Funded Provider (the “**Provider**”)

Service Provider Name:

Registered Company Name (if applicable):

Registered Company Number (if applicable):

Address of Registered Company Office/ Place of Business:

Care Inspectorate Provider Registration Number:

If entered in the Office of the Scottish Charity Regulator (OSCR) [or equivalent] register, please state

- Charity Register (e.g. OSCR):
- Charity Number:
- Charity Name (as entered on Register):
- Any other name Charity is commonly known as:

Service Name (the “**Setting**”):

Service Address:

Service Telephone Number:

Care Inspectorate Service Registration Number:

Preamble

WHEREAS

- (A) The Provider offers ELC services of the required standard to Children and is registered with the Regulatory Bodies as required by Law and Guidance;
- (B) The Council wishes to contract with the Provider to ensure payment of the agreed funded hours of ELC services at the Setting operated by the Provider in respect of funded placements; and

(C) The Council has concluded this Contract with the Provider relative to the provision of Early Learning and Childcare (“ELC”) services at the Setting;

NOW THEREFORE the Council and the Provider DO HEREBY AGREE as follows: -

1. Definitions and Interpretation

1.1. Throughout this Contract, except where the context otherwise requires,

1.1.1. The interpretations, identified and defined terms set out in Schedule Part 1 (Identified and Defined Terms) shall apply;

1.1.2. The parties shall exercise their powers, obligations or discretions in terms of the Contract in a reasonable manner and in accordance with their statutory and regulatory obligations.

2. Duration of Contract

2.1. This Contract shall take effect on **17 August 2020** (the “Commencement Date”).

2.2. Unless terminated at an earlier date by operation of Law or in accordance with Condition 37 (Termination of Contract) or if the Council elects to extend the Contract in accordance with Condition 2.3, this Contract shall end on **21 August 2023**.

2.3. The Council may, at its sole discretion, elect to extend the Contract beyond the end date specified in Condition 2.2 by up to 2 (two) separate 1 (one) year periods. Where the Council intends to exercise the option to extend the Contract it will notify the Provider no later than six months before the end date specified in Condition 2.2.

3. Services and Extent

3.1. The Provider will deliver the Service in the Setting: -

(a) in accordance with this Contract, including the Service Specification, set out in Schedule Part 2 (Service Specification);

(b) with appropriately experienced, qualified and trained Staff; and

(c) in accordance with all applicable Law as detailed in Condition 4.1.

3.2. Under the terms of this Contract, the Provider makes a standing offer to provide the Service in respect of Funded Placements for pre-school Children, in exchange for payment of the Price.

3.3. The Child’s Parents/Carers, wherever possible, will determine whether the Provider should provide or continue to provide the Service to the Child, in line with the Council’s ELC Child Admissions Policy.

3.4. The Council is under no obligation to enter into a Funded Placement with the Provider by virtue of the Contract and does not guarantee any continuity of business or any level of business under the Contract.

3.5. The Council may amend this Contract in accordance with Condition 29 (Variation), including but not limited to, such amendment as may be required to comply with a change of Law or guidance from Scottish Ministers concerning the requirements for Early Learning and Childcare Services.

3.6. Funded Placements entered into under this Contract, shall be subject to these Conditions.

3.7. The Provider is an independent organisation and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between

it and the Council, and accordingly neither party shall be authorised to act in the name of, or on behalf of or otherwise bind the other party, save as expressly permitted by the terms of the Contract.

4. Compliance

4.1. Law

The Supplier undertakes, warrants and represents on an ongoing basis that it will perform and procure the performance of its obligations under this Contract in compliance with all applicable Laws and the requirements of the Council and that it has, and will continue to hold, all consents and regulatory approvals necessary to provide the Services. During the term of Contract, the Provider shall produce such evidence as the Council may reasonably request to demonstrate its compliance with this Condition.

4.2. National Standard for Early Learning and Childcare Providers

4.2.1. The Provider shall meet all of the National Standard criteria for the Period of Contract, as outlined in Schedule Part 3 (National Standard Criteria per Lot).

4.2.2. Where a Provider fails to demonstrate that they meet any of the National Standard criteria or sub-criteria, then, without prejudice to any other remedies available to the Council at Law or under this Contract, the Council may elect to place the Provider into a Service Improvement Period as outlined in Condition 10 (Service Improvement Period).

4.3. Capacity and Eligibility to Contract

4.3.1. The Provider warrants that there are no restrictions of any kind which in any way affects its capacity to contract. If any such restrictions exist or arise, the Council shall have the option to terminate the Contract. The Provider shall indemnify the Council in full for any resulting loss.

4.3.2. Without prejudice to the immediately preceding Condition, the Provider confirms that, to the best of its knowledge at the date of its Application:

(a) it has not been convicted of any of the offences detailed in Regulation 58(1) of the Public Contracts (Scotland) Regulations 2015 (the “**2015 Regulations**”);

(b) none of the grounds detailed in Regulations 58(3) or 58(8) of the 2015 Regulations apply to it, and

(c) it has not committed any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or Sections 137 and 146 of the Trade Union and Labour Relations (Consolidation) Act 1992 or the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting activities,

and undertakes to advise the Council if, at any time, subsequently during the Period of the Contract, it is investigated, prosecuted or convicted in relation to the breach or alleged breach of the grounds listed in Condition 4.3.2(a), 4.3.2(b) and 4.3.2 (c).

4.3.3. In the event of the Provider having breached any of the terms of this Condition 4.3 or having committed the offences listed within it, either prior to commencement of the Contract, without disclosing the same to the Council or in the event that a court or an employment tribunal make a finding that the Supplier has committed such offences subsequent to the Commencement Date, the Council shall be entitled to terminate the Contract and the Provider shall indemnify the Council in full for any resulting loss.

4.4. Failure to comply with requirements of the Application process

Where the Council determines that the Provider as an Applicant has failed to comply with one or more requirements contained within the Application process, the Council shall be entitled at any time to treat such failure as Material Breach and terminate the Contract in accordance with Condition 37 (Termination of Contract).

5. Role and Responsibility of Local Authority and Provider

5.1. The Provider recognises that the Council has a responsibility to have regard to the method by which the Services are made available across the local authority area to ensure that they are flexible to allow Parents/Carers an appropriate degree of choice when deciding how to access the Service.

5.2. The Provider agrees to work flexibly and co-operate with the Council in delivery of the Service and to assist the Council in discharging the duty referred to in condition 5.1.

5.3. In implementing their rights and obligations under this Contract, both the Provider and the Council will take cognisance of the Early Learning and Childcare Expansion - Partnership Working principles (including as the principles may be revised or replaced from time to time) produced by the Convention of Scottish Local Authorities (COSLA) in consultation with other stakeholders. The principles are set out in Schedule Part 4 (COSLA Partnership Working Principles).

6. Protecting Children and Ensuring their Wellbeing

6.1. Throughout the duration of the Contract the Provider will comply with Law and Guidance including in relation to protecting Children and ensuring their well-being. Without prejudice to the foregoing generality, this includes: -

6.1.1. the Protection of Children (Scotland) Act 2003 (as amended and re-enacted from time to time), together with any secondary legislation and Guidance made thereunder;

6.1.2. any national or local policy or Guidance in relation to Getting it Right for Every Child (GIRFEC);

6.1.3. any national guidelines in relation to child protection and to work in accordance with any associated interagency guidelines that are in place from time to time;

6.1.4. all Staff providing the Service will undertake annual training in child protection matters in line with the Council requirements, and this training will be available from the Council on request; and

6.1.5. Managers and Staff with a leadership role must undertake leadership in child protection training and renew this training every three years.

- 6.2.** The Provider shall have in place, implement and regularly review policies and procedures designed for the protection of children and for responding to actual or suspected abuse, neglect or exploitation.
- 6.3.** The Provider shall ensure that information on its own policies and procedures for the protection of children is made available to the Council, Staff, volunteer parents and Parents/Carers and that all Staff are trained in these policies and procedures.
- 6.4.** Without prejudice to the generality of this Condition 6, the Provider shall have a policy and procedure for recording and reporting details of any allegation or suspicion of financial, physical, sexual or any other form of harm to a Child. Subject to the Data Protection Legislation, the Provider shall immediately notify the Council's Representative of any such reports. For the avoidance of any doubt, disclosure of such reports shall not be regarded as a breach of confidentiality in terms of Condition 26 (Confidentiality).
- 6.5.** The Provider shall produce written guidelines for the protection of children which shall be followed by all Staff in reporting and recording, any abuse or suspected abuse of children in the care of the Provider.
- 6.6.** The Provider shall ensure that Staff shall be obliged to adhere to the guidelines in the preceding condition (6.5), which shall emphasise that all those who express concern shall be treated seriously and shall receive a positive response from management at all levels.
- 6.7.** The guidelines referred to in condition 6.5 shall comply with any Guidance issued in this respect including Guidance issued by the Council.
- 6.8.** The Provider shall ensure that immediate action is taken in response to individual concerns of, Staff, the Parents/Carers in relation to child protection. Any such action shall follow the timescales identified within the child protection policy and procedures.
- 6.9.** The Provider shall ensure that no Child is given corporal punishment by any person employed by or connected in any way with the Provider;
- 6.10.** The Provider shall ensure that where there has been abuse, neglect, harm or exploitation, an action plan including risk assessment in relation to care/support is incorporated into the Care Plan as necessary and appropriate. Where relevant the Provider shall use appropriate independent advocacy, counselling or support services. The action plan shall be regularly monitored.
- 6.11.** Without prejudice to other rights and remedies the Council may have for Material Breach of the Contract available to them under condition 37.5 of the Contract or at common law or under statute, the Council reserves the right, in consultation with the Provider and other statutory bodies, to decide appropriate action where there are concerns about the safety and welfare of children and such decisions shall be communicated to the Provider.

7. Care Inspectorate Registration and Inspections

- 7.1.** It is a material condition of this Contract and any Funded Placement awarded under it that the Provider and Setting shall be registered with the Care Inspectorate and any other relevant Regulatory Authority by the Commencement Date and shall remain so throughout the Period of Contract. The Provider and Setting shall exhibit evidence of Registration to the Council prior to the Commencement Date (or date of admission) and at any time during the Contract on receipt of a written request from the Council.

- 7.2.** In the event that a Regulatory Authority imposes conditions, varies categories of Registration of the Service, serves notice to cancel Registration, serves a summary application to the Sheriff for an Order cancelling Registration, or cancels Registration, or where the Care Inspectorate rates any aspect of the Service at below level 4 grade in any category, the Provider shall immediately notify the Council either (a) in writing (by letter or e-mail) or (b) by telephone, in the first instance to be followed by written confirmation within 24 hours. Furthermore, the Provider shall provide to the Council a copy of all relevant documentation received by the Provider from the Regulatory Authority within three (3) Working Days of receipt by the Provider. In the case of variation or extension of categories for which the Provider is Registered, the Council shall not be obliged to nominate under this Contract any Child whose needs fall within the varied or extended categories for which the Provider is Registered.
- 7.3.** In addition, the Provider shall inform the Council within the timescale referred to in Condition 7.2 of any material variations of Registration made with or by the Care Inspectorate;
- 7.4.** Changes to Registration may be grounds for termination of the Contract in accordance with Condition 37 (Termination).
- 7.5.** In order that the Council may monitor the operation of the Service and any Funded Placement awarded to the Provider under this Contract the Provider shall provide to the Council all inspection reports or any other documents making recommendations by or setting out requirements from the Regulatory Authority relating to the Setting, within seven calendar days of receipt by the Provider. For the avoidance of doubt, this condition 7.5 shall only relate to reports which are made available to the Provider.

8. Notices

- 8.1.** Any notice given under this Contract shall be made in writing and shall be deemed to have been duly given if sent by letter (sent by hand, post or by the first class signed for post or special delivery service), or by electronic mail where an email address is provided, for the attention of the Council Representative or Provider Representative (as the case may be), to the address shown in Schedule Part 12 or the last address notified by that Party.
- 8.2.** Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the Provider or the Council acknowledges receipt of such letters or items of electronic mail.
- 8.3.** The Provider shall advise the Council as soon as practicable and, in any event, no later than seven (7) days after any change of address, by sending a notice in accordance with this condition.
- 8.4.** Each party may change its representative as nominated in accordance with Schedule 12, by sending a notice in accordance with this condition.

9. Inspections, Information and Monitoring

- 9.1.** The Provider will:

- 9.2.2.** The Council reasonably considers that a breach or series of breaches by the Provider (or by anyone else used by the Provider in the provision of the Service) of any obligation under this Contract may create an immediate or serious risk of harm to a Child or may result in a material interruption or diminution of quality or quantity in the provision of the Service or any part of it; or
 - 9.2.3.** The Council reasonably considers that an Enhanced Monitoring Period is necessary in order to reduce or minimise an immediate or serious risk of harm to a Child or to avoid material interruption or diminution of quality or quantity in the provision of the Service or any part of it; or
 - 9.2.4.** The Council has concerns regarding the quality of Service provision following its review of one of the documents outlined in conditions 9.1.1 to 9.1.10; or
 - 9.2.5.** Circumstances have arisen which constitute an emergency affecting the provision of the Service or any part of it.
- 9.3.** Once a decision is taken to apply an Enhanced Monitoring Period, the Council will: -
- 9.3.1.** Intimate the application of an Enhanced Monitoring Period to the Provider by issuing an Enhanced Monitoring Period Notice (“EMP Notice”) which will confirm the reason for the EMP Notice and will detail what improvement must be made within the period of the EMP Notice.
 - 9.3.2.** The Enhanced Monitoring Period will take effect from the date stated in the EMP Notice and will last until the date stated in the EMP notice, which should be no later than 12 months from the commencement date.
- 9.4.** Consequences of Enhanced Monitoring Period
- During the Enhanced Monitoring Period:
- 9.4.1.** The Council may provide support for the Provider to assist it making improvements to the quality of the Services but the Provider, at all times, retains responsibility for compliance with the terms of this Contract and making improvements to the Services where they do not meet the requirements of the Contract. The level and nature of any support offered by the Council shall be determined solely by the Council;
 - 9.4.2.** The parties shall co-operate fully with the intention of ensuring there is no interruption in the availability of the Service or any part of it to Children in the affected Setting. This includes co-operating with the Council and/or any alternative or successor provider of the Service to avoid any inconvenience or any risk to the health and safety or wellbeing of Children, their Parents/Carers, the Staff or members of the public and the Council shall be entitled to mandate that the Provider adopt measures set out in its Business Continuity Plan as detailed in Condition 15 (Business Continuity including Setting environment);
 - 9.4.3.** At the reasonable request of the Council and at the cost of the Provider, the Provider shall promptly render all reasonable assistance and provide all information necessary to affect an orderly assumption of the Service or part thereof by an alternative or successor provider.

- 9.4.4.** If requested to do so by the Council, the Provider shall notify all Parents/Carers of Children receiving the Service, that the Provider is subject to an Enhanced Monitoring Period.

Expiry of the Enhanced Monitoring Period:

- 9.4.5.** If the Enhanced Monitoring Period lapses without, in the Council's reasonable opinion, sufficient improvement being made by the Provider to reduce or remove the risk of service failure, the Council reserves the right to terminate the Contract with the Provider, and any Funded Placements awarded thereunder as outlined in condition 37 (Termination of Contract).

Other remedies available:

- 9.4.6.** Nothing in this condition 9 (Inspections, Information and Monitoring), restricts or removes any further or other remedies available to the Council in relation to this Contract.

10. Service Improvement Period

- 10.1.** Without prejudice to the other remedies available to it at Law or under this Contract, the Council may exercise its right to apply a Service Improvement Period to the Provider in respect of the Settings where: -

10.1.1. Relative to the National Standard:

- 10.1.1.1.** A Provider fails to meet or provide evidence to the Council's reasonable satisfaction that it meets any National Standard criteria;
- 10.1.1.2.** Information provided by the Provider and reviewed by the Council as part of contract monitoring does not give sufficient reassurances that one (or more) National Standard criteria is being met;
- 10.1.1.3.** The Council becomes aware of a complaint or other information and, following review of said complaint or other information by the Council, considers that one (or more) National Standard criteria is not being met;

10.2. Once a decision is taken to apply a Service Improvement Period, the Council will: -

- 10.2.1.** Intimate the application of a Service Improvement Period to the Provider by issuing a Service Improvement Period Notice ("SIP Notice") which will confirm the reason for the SIP Notice and will detail what improvement must be made within the period of the SIP Notice.

10.2.2. The Service Improvement Period will take effect from the commencement date stated in the SIP Notice and will last until the date stated in the SIP notice, which should be no later than 12 months from the said commencement date unless;

- 10.2.2.1.** where the improvement is related to Care Inspectorate quality evaluations, until publication of the next inspection report.

10.3. Consequences of Service Improvement Period

During the Service Improvement Period:

- 10.3.1.** The Council may provide appropriate enhanced improvement support for the Provider to assist the Provider to make sufficient improvements however the Provider is, at all times, responsible for making any improvements to meet the National Standard. Any enhanced improvement support offered will be at the sole discretion of the Council;
- 10.3.2.** The parties shall co-operate fully with the intention of ensuring there is no interruption in the availability of the Service or any part of it to Children in the affected Setting. This includes co-operating with the Council and/or any alternative or successor provider of the Service to avoid any inconvenience or any risk to the health and safety and/or wellbeing of Children, their Parents/Carers, the Staff or members of the public and for these purposes the Provider may be required to follow elements of its Business Continuity Plan as detailed in Condition 15 (Business Continuity including Setting environment) with such necessary changes as may be agreed with the Council given the circumstances;
- 10.3.3.** At the reasonable request of the Council and at the cost of the Provider, the Provider shall promptly render all reasonable assistance and provide all information necessary to affect an orderly assumption of the Service or part thereof by an alternative or successor provider.
- 10.3.4.** If requested to do so by the Council, the Provider shall notify all Parents/Carers of Children receiving the Service, that the Provider is subject to a Service Improvement Period.

Expiry of the Service Improvement Period:

- 10.3.5.** If the Service Improvement Period lapses without the necessary improvement being met the Council reserves the right to terminate the Contract with the Provider, and any Funded Placements awarded thereunder as outlined in condition 37 (Termination of Contract).

Other remedies available:

- 10.3.6.** Nothing in this condition 10 (Service Improvement Period), restricts or removes any further or other remedies available to the Council in relation to this Contract.

11. Providers awarded on a Probationary Basis

- 11.1.** Where a Provider has applied and been awarded a Contract on a Probationary Basis, the Council reserves the right to seek additional evidence to assure itself that the National Standard is being met, as and when required during the Probationary Period.
- 11.2.** Upon publication of the Provider's first Care Inspectorate report for the Setting, and the Care Inspectorate grades being below that required as part of the National Standard, the Council may, at its discretion terminate the Contract for that Setting and any Funded Placements made thereunder in accordance with Condition 37.11.20.

12. Child Admissions Process (including Deferred Entry)

- 12.1.** The Provider must:

- 12.1.1.** Adhere to the Council's ELC Child Admissions Policy (Schedule Part 5), as amended or replaced from time to time, for prioritising children for consideration for 1140 hours of early learning and childcare entitlement;
- 12.1.2.** Attend local Admissions Panels in accordance with the Council's ELC Child Admissions Policy as required;
- 12.1.3.** Adhere to any stipulation imposed by the Council in relation to funding of ELC for children who have elected for Deferred Entry in accordance with the Deferred Entry Guidance (Part 9 of the Schedule).

13. Price and Payment (including use of Early Years MIS)

13.1. Price and Payment Terms

- 13.1.1.** The Price and payment terms that will apply to this Contract are set out in Schedule Part 6 (Price and Payment Terms).
- 13.1.2.** The Price will cover the cost of the Services and shall be used exclusively to deliver the Services.
- 13.1.3.** The Price payable in respect of Funded Placements to the Provider will be calculated by multiplying the number of agreed hours of attendance by the applicable Price per hour, and any Meal(s) provided in the agreed hours of attendance.
- 13.1.4.** The agreed Price shall include for all costs and no other payments will be applicable or accepted for the provision of the Service for any Funded Placements awarded to the Provider.
- 13.1.5.** The Provider shall provide such information as may be requested by the Council to satisfy the Council that the Provider is adhering to the conditions which relate to payment of the Price and Parents/Carers charges as outlined in this Condition 13 and Schedule Part 6 (and in line with National Standard criteria 9 – Payment Processes). This shall include but is not limited to copies of:
 - 13.1.5.1.** the signed contract between the Provider and parents/carers; and
 - 13.1.5.2.** the birth certificate,

in respect of any Child for which the Provider claims payment of the Price for their attendance at the Setting.

13.1.6. Inflationary and real Living Wage increases

- 13.1.7.** In accordance with the Funding Follows the Child and National Standard for ELC providers and Guidance for setting sustainable rates from August 2020, inflationary and real Living Wage increases will be reviewed during the Period of Contract.
- 13.1.8.** The extent to which any inflationary and real Living Wage changes are reflected in the Price for future years of the Contract is subject to funding agreed between Scottish Government and local government for ELC hours. The current multi-year funding agreement between Scottish Government and COSLA for the provision of ELC is confirmed until 2021-22.

13.2. Parents/Carers Charges and additional services

13.2.1. The Provider will not make any charge to or seek payment from the Child or their Parents/Carers in respect of the Services. This includes the following:

- 13.2.1.1.** No upfront payments, including a deposit or any other payment, in respect of the Funded Hours;
 - 13.2.1.2.** No top-up fees may be charged to Parents/Carers relating to the Funded Hours; and
 - 13.2.1.3.** Parents/Carers must not be required to purchase additional hours beyond the Funded Hours in order to access their child's funded entitlement at the setting.
- 13.2.2.** Any additional charges to Parents/Carers relating to the Funded Hours should be optional, and limited to, for example, snacks, costs of outings or extracurricular activities such as music classes. It is expected that such charges, where required, are charged for at a rate that reflects the cost of delivery and are detailed in Schedule Part 6.
- 13.2.3.** The Provider shall ensure that the Price is used only in respect of its delivery of Funded Placements in accordance with section 33(1) of the Standards in Scotland's Schools Act 2000 and not for any other purpose, including but not limited to, additional childcare services (such as "wraparound care").
- 13.2.4.** Where Parents/Carers are paying for additional childcare services from the Provider, including but not limited to wraparound care, the Provider shall ensure that the applicable cost of the Funded Placement for the Child to which this Contract relates is free to the Parents/Carers of the Child concerned and not incorporated with, or paid under deduction of the Price paid to the Provider by the Council in respect of Funded Placements. The Provider shall make available to all or any Parents/Carers, details of the process that will be used to calculate the element contracted under this Contract.
- 13.2.5.** Any fees or charges not associated with the Funded Placement will be set at the discretion of the Provider. Where Parents/Carers choose to purchase further hours in addition to the Funded Placement, the associated fees and hours must be transparent and clearly set out in any parental communication and invoices.

13.3. Sustainable Rate Process

- 13.3.1.** The Council may, from time to time, request information from the Provider in relation to conducting a sustainable rate setting process in accordance with [Funding follows the child and the national standard for early learning and childcare providers: guidance for setting sustainable rates from August 2020](#) subject to Condition 13.2 (Inflationary and real Living Wage increases).
- 13.3.2.** The Provider must provide information to the Council, if they wish to take part in the sustainable rate setting process.
- 13.3.3.** In relation to the sustainable rate setting process, the Council will take into consideration statutory and non-statutory Guidance including as published by Scottish Government and COSLA (in particular [Funding follows the child and the national standard for early learning and childcare providers: guidance for setting sustainable rates from August 2020](#)).

13.3.4. The Council may, as a result of the sustainable rate setting process, elect to amend the Price during the Period of Contract and shall be the sole judge of whether the Price is amended and is under no obligation to implement any Price amendment at any stage. However, the process for setting the Price will be conducted in line with Funding follows the child and the national standard for early learning and childcare providers: guidance for setting sustainable rates from August 2020, and the Principles for Partnership working as set out in Schedule Part 4.

13.4. Early Years MIS requirements (where applicable)

13.4.1. The Council may use the Early Years MIS system in order to calculate the Price due to the Provider for each Funded Placement provided.

13.4.2. Where Early Years MIS is used, the Council and the Provider shall enter into an agreement setting out the Parties' respective roles and responsibilities in relation to the use of the system and the relevant security protocols and procedures in such form as the Council may specify.

13.4.3. Without prejudice to the generality of Condition 13.5.2, where the Early Years MIS is used the Council will provide adequate training and support to ensure the Provider can update the Early Years MIS in line with the Council's requirements.

13.4.4. All Staff must adhere to the Early Years MIS User Agreement when using the system, and the Provider must notify the Council as soon as practicable, of any circumstances which require a change to the access rights assigned to its Staff.

13.4.5. The Provider shall provide accurate and up-to-date information about the Funded Placements via the Early Years MIS and the Provider hereby warrants and represents that the information so provided is true and accurate and may be relied upon by the Council in connection with this Contract, including for the purposes of calculating payment as detailed in Condition 13.5.1 above.

13.4.6. The Council will take no responsibility for verifying the accuracy of the information the Provider inputs into the Early Years MIS system, and the Provider shall indemnify the Council in respect of any costs occasioned by any discrepancies, errors or omissions arising from any inaccuracies.

14. Workforce including Fair Work Practices and Living Wage

14.1. Fair Work Practices

14.1.1. By entering the Contract with the Council, in accordance with Criteria 8 of the National Standard and the supporting guidance on [Transition Options](#), the Provider will commit to adopting and demonstrating Fair Work practices in the Setting to all childcare workers delivering the funded entitlement. In committing to Fair Work practices, settings must take into account:

14.1.1.1. a fair and equal pay policy across the Setting, (including a commitment to supporting the real Living Wage);

14.1.1.2. the Provider and its managers/lead practitioners (including childminders who employ staff) have clear managerial responsibilities to nurture talent and help individuals fulfil their potential;

- 14.1.1.3.** promoting equality of opportunity and developing a workforce which reflects the population of Scotland in terms of characteristics such as age, gender, religion or belief, race, sexual orientation and disability;
- 14.1.1.4.** security of employment and hours of work, avoiding exploitative employment practices such as unfair zero hours contracts, or pregnancy and maternity discrimination;
- 14.1.1.5.** consideration of patterns of working (including, for example, part-time working and/or term-time working) and support for family friendly working and wider work life balance; and
- 14.1.1.6.** support of progressive workforce engagement, including trade union membership or alternative arrangements, to give staff an effective voice, for example, through regular staff meetings, where possible.

14.2. Payment of the real Living Wage

- 14.2.1.** The real Living Wage rate is based on the cost of living and is calculated by the Resolution Foundation and overseen by the Living Wage Commission, with each year's rate usually announced in November each year and the Provider shall have regard to said rates when paying all childcare workers delivering the funded entitlement.
- 14.2.2.** The Provider (including childminders where workers are regularly employed by them to provide direct care to Children) acknowledges that when they enter into a Contract to deliver Funded Placements and accepts the Price for delivering these hours, that an element of the Price reflects the expectation that there is payment of at least the real Living Wage to all Individuals delivering the funded hours.
- 14.2.3.** The Council may conduct monitoring and quality scrutiny activity and may take such action as it sees fit, including placing the Provider in a Service Improvement Period, where the Council's monitoring and scrutiny activity indicates that the Provider is not complying with its obligations to deliver the Services in accordance with the fair working practice objectives set out in this Condition 14.

15. Business Continuity including Setting environment

15.1. Business Continuity

- 15.1.1.** The Provider shall develop, implement, maintain and hold responsibility for, processes and procedures in relation to business continuity. The Provider shall maintain a business continuity plan which takes account of the support reasonably expected to be available from the Council and Regulatory Authorities including but not limited to, the civil and emergency planning provisions within the Council area. The Provider shall provide a copy of its business continuity plan to the Council on request.
- 15.1.2.** Where agreed between the Provider and the Council, the plan shall include for any specific contingencies requested by the Council.
- 15.1.3.** The business continuity plan should be revised on an annual basis as a minimum.
- 15.1.4.** The Provider shall notify the Council as soon as reasonably practicable if it activates its business continuity plan at any time.

15.1.5. Where either Party becomes aware of anything which may lead to a serious risk to the health or safety of any children or Child, they will alert the other Party as soon as reasonably practicable, and always within 48 hours. The Council will then meet with the Provider to discuss the issue and agree any actions that are required to mitigate the risks, which may include support to the Provider from the Council under its own business continuity plans.

15.2. Setting environment(s)

15.2.1. The Provider shall ensure that the Setting environment(s) are safe and suitable for provision of the Service at all times.

15.2.2. For the avoidance of doubt, the Setting environment(s) includes any outdoor space or area, indoor areas, buildings, and grounds.

16. Support Package

16.1. In line with the [Operating Guidance](#), the Council may at its discretion provide additional support to the Provider in its delivery of the Services.

16.2. Any support offered by the Council will be determined by the Council taking account of the type of provision, location of the Provider and needs of the Children.

16.3. Nothing in this Condition 16 removes the obligations on the Provider to deliver the Services and ensure the quality of provision in the Setting during the Period of Contract.

17. Cross Boundary Placements

17.1. Any Child from a Scottish local authority other than the Council (“Named Council”) may receive a Funded Placement with the Provider as part of this Contract subject to the terms of any cross-boundary placement agreed between the Council and a Named Council.

17.2. In instances where a Provider receives a Funded Placement request for a Child from a Named Council, the Provider will update the Early Years MIS system (where that is used by the Council) as soon as practicably possible with all required information.

17.3. The Provider will work with the Council to provide any further information as and when required to both the Council and Named Councils in relation to any cross-boundary placements agreed between them.

18. Staffing & Criminal Record Checks

Staffing

18.1. The Provider will comply with its statutory obligations concerning the employment of Staff and ensure it has a sufficient number of suitably trained, qualified and competent Staff in accordance with Law and Guidance.

18.2. The Provider will ensure that all Staff who are required to be Registered, are Registered with the appropriate Regulatory Authority, hold and maintain the required Registration, including without limitation, the Scottish Social Services Council (SSSC) and, the General Teaching Council Scotland (GTCS) for Teachers.

18.3. The Provider will comply with the SSSC Code of Practice and, if applicable, the Code of Practice and Professionalism of the GTCS (as amended or replaced) and take all reasonable steps to secure the compliance by all Staff with any relevant codes of practice and Guidance issued by the relevant Regulatory Authorities.

18.4. Volunteers may be used in the provision of the Service as identified in the Service Specification where they meet the standards of fitness as set out in Regulation 9 of the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 but not as a substitute for Staff including where defined by the Care Inspectorate's minimum staffing requirements for the provision of the Service.

18.5. The Provider will ensure that: -

18.5.1. Staff deployed in the provision of the Service are instructed in relation to all relevant provisions of the Contract;

18.5.2. It has in place and implements all the policies and procedures required to satisfy the Care Inspectorate's requirements in relation to the employment and management of Staff and the requirements of the Contract including those as set out within the Service Specification; and

18.5.3. Staff are familiar with the Provider's policies and procedures via ongoing supervision and training.

18.6. Criminal Checks

18.6.1. Where the Contract requires any Individual to undertake "Regulated Work", the Provider shall, for the Period of Contract, comply with all of the relevant requirements, including the establishment of and adherence to effective procedures, of the PVG Act.

18.6.2. For the supply of the Services which fall outside of the scope of Regulated Work under the PVG Act, the Provider shall obtain the appropriate level of Disclosure directly from Disclosure Scotland for the Individual.

18.6.3. The appropriate level of Disclosure shall be determined by reference to Part V of the Police Act 1997 and, for the avoidance of doubt, by reference to any regulations made under that Act and Guidance issued by Disclosure Scotland.

18.6.4. The Provider shall ensure that the contents of the Scheme Records or Short Scheme Records, Disclosures, Basic Disclosures and the contents of the Overseas Criminal Record Checks are used as part of the process to make recruitment and ongoing employment decisions in respect of Individual and where any of the aforesaid disclose that an Individual has convictions, cautions or any other relevant information, the Provider shall procure that a risk assessment is conducted in respect of the Individual's proposed or continued provision of the Services and that such risk assessment is applied in making appropriate arrangements to safeguard and protect the interests of all Protected Persons. The Provider will adhere to all relevant Guidance in respect of recruitment, including "Scotland Works for You" Guidance on evaluating the meaning of a person's criminal record to a job or opportunity they have applied for (which can be found at mygov.scot).

18.6.5. The Provider shall comply with the following in respect of applications for a Scheme Record or a Short Scheme Record:

- 18.6.5.1.** except in respect of the Individuals referred to in condition 18.6.2 and condition 18.6.4, the Provider shall either:
- 18.6.5.1.1. be a Registered Person and countersign and submit the aforesaid applications to Disclosure Scotland itself; or
 - 18.6.5.1.2. use a third-party Registered Person (known as an umbrella body) to countersign and submit the aforesaid applications to Disclosure Scotland on its behalf;
- 18.6.5.2.** In respect of Individuals employed or engaged by a Sub-contractor, the Provider shall procure that the Sub-contractor shall either:
- 18.6.5.2.1. be a Registered Person and countersign and submit the aforesaid applications to Disclosure Scotland itself; or
 - 18.6.5.2.2. use a third-party Registered Person (known as an umbrella body) to countersign and submit the aforesaid applications to Disclosure Scotland on its behalf; and
- 18.6.5.3.** where the Provider is an Individual, the Provider shall:
- 18.6.5.3.1. in respect of her/his own application, permit the Council to use a third-party Registered Person (known as an umbrella body) to countersign and submit the application to Disclosure Scotland on the Council's behalf; and
 - 18.6.5.3.2. comply with the Council's policies and procedures in connection with criminal checks for sole traders providing services to the Council as intimated by the Council to the Provider from time to time.
- 18.6.6.** The Provider shall procure that all Individuals are rechecked (by obtaining a Scheme Record or Short Scheme Record (as appropriate) in respect of the Individual) not less than every three years.
- 18.6.7.** To ensure compliance with the requirements of this Condition 18.6 and subject to the written consent of the subject of the Disclosure, the Provider subject to the Law will share the findings of the Disclosure with the Council on request.
- 18.6.8.** Before allowing any Sub-contractor to undertake Regulated Work in connection with provision of the Services, the Provider shall:
- 18.6.8.1.** obtain the written consent of the Council to the aforesaid sub-contracting of the Services; and
 - 18.6.8.2.** enter into a written agreement with the Sub-contractor which gives effect to the terms set out in this condition 18 such that they apply to the Sub-contractor, and,
- for the avoidance of doubt, the Provider shall remain fully liable for all acts or omissions of any Sub-contractor.
- 18.6.9.** Where an Individual has spent a continuous period of three calendar months or more residing or working out with the United Kingdom within the period of five years prior to the individual commencing delivery of the Services, the Provider shall procure that appropriate Overseas Criminal Record Checks are obtained in respect of such Individuals prior to he/she commencing delivery of the Services.

- 18.6.10.** In the event that the Provider is notified that an Individual used in the provision of the Regulated Work in connection with delivery of the Services is placed under consideration for listing or becomes barred from carrying out Regulated Work, the Provider shall immediately remove that person from the provision of such Regulated Work.
- 18.6.11.** In the event that the Provider offers Regulated Work in connection with delivery of the Services to an Individual who is under consideration for listing or barred from carrying out Regulated Work or fails to remove an Individual from such Regulated Work if they have been notified that they are under consideration for listing or barred from carrying out Regulated Work, this will be deemed a Material Breach of the Provider entitling the Council to terminate this Contract and any Funded Placements awarded hereunder with immediate effect by written notice to the Provider.
- 18.6.12.** The Provider shall record and store information disclosed to it in connection with Disclosures and/or the PVG Scheme as detailed in Law including in the Code of Practice published by the Scottish Government under section 122 of Part V of the Police Act 1997 (as may be amended from time to time).
- 18.6.13.** The Provider shall deliver to the Council on its request from time to time:
- 18.6.13.1.** a written statement from the Provider (duly signed by the Provider) in terms that the Provider warrants to the Council that it has complied with this Condition 18 and
 - 18.6.13.2.** where a Sub-contractor undertakes Regulated Work in connection with delivery of the Services, a written statement from the Sub-contractor (duly signed by the Sub-contractor) confirming compliance with this Condition 18 by the Sub-contractor in respect of any Individuals employed or engaged by it.
- 18.6.14.** If alleged harmful conduct of a child, young person under the age of eighteen and/or vulnerable adult is witnessed by, or reported to, the Provider, and regardless of where the alleged harm has taken place, then the Provider will follow the policy and procedures given in, and have due regard for the principles of, providing the Services in accordance with the Procedure for the Support and Protection of Adults at risk or Harm, and the National Guidance for child protection in Scotland (2014), and any guidance issued by the relevant Scotland child protection Committee.
- 18.6.15.** Should any Individual be suspected of or accused of abuse or any other gross misconduct, the Provider will inform the Council and carry out an investigation in accordance with its own procedures. Where the Council suspects any Individual of abuse or any other gross misconduct (and in such case it shall be in the Council's discretion, acting reasonably, as to what constitutes "gross misconduct"), the Council may also carry out such an investigation. Without prejudice to any other remedies under the terms of this Contract, the Council reserves the right to request that any such Individual be removed from working with Funded Placements for the duration of the aforesaid investigation and any disciplinary process to follow

thereon and the Provider shall ensure that the relevant Individual is so removed from working on receiving such a request.

- 18.6.16.** The Provider shall ensure that all relevant Individuals have undergone adequate training in respect of the PVG Act (the level, content and regularity of such training shall be proportionate to the Individual's role and responsibility with respect to the PVG Act), including, without prejudice to the generality of this Condition 18.6, the duty to make referrals in accordance with sections 2 and 3 of the PVG Act.

19. Indemnity and Insurances

- 19.1.** Except as may otherwise be expressly stated in this Contract, the Council will not be liable to the Provider or to any Parents/Carers or Child's Representative or to any third party for any loss, cost, expense, penalty or damage incurred or suffered including but not limited to damage to, loss or theft of property, arising directly out of or in consequence of or in connection with the delivery or provision of the Service or the operation of this Contract.
- 19.2.** Nothing in this Contract or any Funded Placement awarded hereunder shall be construed to limit or exclude either party's liability for:
- 19.2.1.** death or personal injury caused by its negligence or that of its Staff, or
 - 19.2.2.** Fraud or fraudulent misrepresentation by it or its Staff;
 - 19.2.3.** any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
 - 19.2.4.** any claim under condition 7 (Care Inspectorate Registration and Inspections);
 - 19.2.5.** any claim in respect of any breach of condition 26 (Confidentiality);
 - 19.2.6.** any claim in respect of any breach of condition 25.1 (Data Protection); or
 - 19.2.7.** or any other matter which, by Law, may not be limited or excluded.
- 19.3.** Subject to condition 19.1 and condition 19.4, the Provider shall indemnify and keep the Council indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Service or the performance or non-performance by the Provider of its obligations under the Contract or any Funded Placement awarded thereunder which shall include any claims or actions made on behalf of a Child, Parents/Carers or any employee of the Provider or any third party in respect of the Service and shall also include indemnification in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider. The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Contract.
- 19.4.** Subject to conditions 19.1 and 19.2 above, in no event shall either party be liable to the other for any: -
- 19.4.1.** loss of profits;

- 19.4.2.** loss of business;
 - 19.4.3.** loss of revenue;
 - 19.4.4.** loss of or damage to goodwill; and/or
 - 19.4.5.** loss of savings (whether anticipated or otherwise); and/or
 - 19.4.6.** any indirect or consequential loss or damage
- 19.5.** The Council may, amongst other things, recover as a direct loss: -
- 19.5.1.** any additional operational and/or administrative expenses arising from the Provider's Default;
 - 19.5.2.** any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Provider's Default; and
 - 19.5.3.** the additional cost of procuring replacement services for the remainder of the period following termination of the Contract as a result of a Default by the Provider.
- 19.6.** Nothing in the Contract shall impose any liability on the Council in respect of any liability incurred by the Provider to any other person, but this shall not be taken to exclude or limit any liability of the Council to the Provider that may arise by virtue of either a breach of the Contract or by negligence on the part of the Council, or the Council's employees, servants or agents.
- 19.7.** In addition to the Provider's specific insurance obligations set out in the Schedule Part 7 (Insurance Requirements), the Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider. Such insurance shall be maintained for the Period of Contract and any Funded Placements awarded thereunder and for a minimum of six (6) years following the expiration or earlier termination of the Contract and any Funded Placements awarded thereunder.
- 19.8.** Without prejudice to the foregoing obligations, the Provider will comply with the stated requirements of the Council as set out in Schedule Part 7 (Insurance Requirements).
- 19.9.** The Provider shall give the Council, on request, copies of all insurance policies referred to in this condition 19 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 19.10.** If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of the Contract the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 19.11.** The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Contract. It shall be the responsibility of the Provider to determine the amount of insurance cover that will be adequate to enable the Provider to satisfy any liability referred to in condition 19.3.

20. Parental Complaints process

- 20.1.** The Provider will ensure that it has an up-to-date complaints procedure for Parents/Carers which will include:
 - 20.1.1.** a statement of how complaints can be made and how they will be dealt with;
 - 20.1.2.** the name of the person who should be contacted if there is a complaint;
 - 20.1.3.** provision for oral and written complaints;
 - 20.1.4.** an appeal procedure; and
 - 20.1.5.** the timescale for dealing with complaints.
- 20.2.** The Provider will have a register of complaints which must include the following information:
 - 20.2.1.** the date and how the complaint was received (e.g. in writing, including by email or other electronic method);
 - 20.2.2.** the name of the person making the complaint;
 - 20.2.3.** a brief description of the nature of the complaint; and
 - 20.2.4.** a note of the action taken as a result of the complaint and date when taken.
- 20.3.** The Provider will provide to the Council a copy of the complaints procedure, register and any updates on request.
- 20.4.** The Provider shall inform Parents/Carers that they are also entitled to access the complaints procedure operated by the Council, the Care Inspectorate, and the Ombudsman. The Provider shall co-operate fully with the Council and the other organisations named in this condition. Where the Provider is a listed authority in terms of the Scottish Public Services Ombudsman Act 2002 it shall comply with its obligations under Section 22 of that Act.

21. Health and Safety

- 21.1.** The Provider shall perform its obligations under the Contract in accordance with all applicable Law and Guidance regarding health and safety matters.
- 21.2.** The Provider shall operate health and safety policies and if requested, shall provide the Council with a copy of said policies and its health and safety policy statement.
- 21.3.** While on any building or property owned or managed by the Council (“Council Property”), the Provider shall comply with any health and safety measures implemented by the Council in respect of the Council Property and shall notify the Council immediately of any incident occurring while the Provider is on the Council Property which causes or is likely to cause any person injury or damage to property.
- 21.4.** The Council shall notify the Provider of any health and safety hazards which may exist or arise at the Council Property and which may affect the Provider in the performance of its duties to deliver Funded Places under the Contract.

21.5. All accidents or health and safety issues concerning any Child and/or the Setting in which the Service is delivered must be recorded and reported to the appropriate Regulatory Authority, including the Care Inspectorate, Health and Safety Executive (in accordance with the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995), Environmental Health Officer or Fire Officer.

21.6. The Provider shall advise the Council within 24 hours of any Significant Event (as defined in condition 22.1) which has affected or may impact on the health and safety of any Child as well as reporting these under the procedures set out in Conditions 6 (Protecting Children and Ensuring Their Wellbeing) and 22 (Notification of Significant Events and Complaints).

22. Notification of Significant Events and Complaints

22.1. Significant Events

For the avoidance of doubt, accidents, emergencies and other serious incidents referred to in this condition as a "Significant Event" shall include but not be limited to, the following:

22.1.1. sudden death of a Child;

22.1.2. serious injury to a Child;

22.1.3. hospitalisation of a Child;

22.1.4. assault of a Child;

22.1.5. incidents of actual or intended emotional, physical or sexual abuse of a Child;

22.1.6. maladministration of funds or property in respect of any Funded Placements;

22.1.7. incidents of financial exploitation of Parents/Carers of a Child receiving a Funded Placement;

22.1.8. illegal restraint or restrictions on liberty of a Child;

22.1.9. a Child missing from the Setting;

22.1.10. fire in the Setting where the Service is being delivered;

22.1.11. an outbreak of an infectious disease;

22.1.12. significant equipment breakdown which may impact upon the health and safety of people using the service;

22.1.13. allegation of misconduct by the Provider or any persons employed in care services;

22.1.14. absence of managers for more than 28 days;

22.1.15. Fire, flood and loss of utilities such as electricity, water or gas supplies on the premises where the Service is being delivered and

22.1.16. any allegation or suspicion of financial, physical, sexual or any other form of harm to a Child as set out in Condition 6.4 (Protecting Children and Ensuring their Wellbeing).

22.2. Significant Complaints

For the avoidance of doubt, complaints that require an investigation by a Regulatory Body or that lead to a Funded Placement being transferred to a different Provider, are “Significant Complaints” and all such complaints must be reported to the Council within 5 Working Days.

Reference to “Child” in this condition 22 shall be deemed to be a reference to all children currently at or using the Setting and is not restricted to only children entitled to a Funded Placement.

22.3. The Provider shall consider the impact and likely consequences of all Significant Events and Significant Complaints described in Conditions 22.1 and 22.2, and make appropriate provision for them in the processes and procedures relating to business continuity and the business continuity plan forming part of the Provider's obligations under Condition 15 (Business Continuity including Setting environment) and shall implement the relevant processes and procedures and actions in the business continuity plan immediately following the occurrence of any such event.

22.4. The Provider shall immediately inform (initially by telephone within 3 hours) the Parents/Carers and the Council of any Significant Event relating to the Child where such an incident occurs during the provision of the Service.

22.4.1. The Provider shall also submit a written report in relation to the Significant Event to the Council, in such format as it may specify, as soon as reasonably practicable and always within 5 Working Days. Without prejudice to the generality of the Provider's obligations under this condition, the Provider shall:

22.4.1.1. Notify the Council, Parents/Carers and their next of kin (if not the Child's Representative), of the death of a Child or child as soon as reasonably practicable, and with regard to notifying the Council, no later than the Working Day following the incident; and

22.4.1.2. In the event of hospitalisation of the Child, inform the Council's Representative or any other individual formally identified to them as an appropriate officer by the Council, the Parents/Carers and any other person authorised to be advised in the Child's individual Care Plan of this and the expected duration of the hospitalisation, as soon as reasonably practicable, and with regard to notifying the Council, no later than the Working Day following the Provider becoming aware of such hospitalisation.

22.5. If a situation of danger to the Provider's Staff, Child or any other child should arise, as a result of the actions of a Child, the Provider shall instigate its policies and procedures including risk assessment in relation to this situation. The Provider shall inform the Council of the situation so that the Council can advise and assist the Provider, Child and/or Parents/Carers as is consistent with its statutory duties and responsibilities. This shall include, if the Council considers it appropriate after reviewing the Child's needs, the provision of alternative support arrangements for any Child.

23. TUPE

23.1. The Council and the Provider agree that the commencement of the Services does not constitute a Relevant Transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”).

- 23.2.** In the event that the Council anticipates a Relevant Transfer will occur during the Period of Contract or upon its expiry, without prejudice to the Provider's obligations under the TUPE, the Provider shall fully and accurately disclose to the Council all Employee Liability Information within twenty (20) Working Days of being requested to do so by the Council.
- 23.3.** Where a Relevant Transfer occurs, the Provider shall be liable for and meet the cost of all Re-Transferring Employee Charges arising up to close of business on the day before the Re-Transfer Date and the Replacement Provider shall be liable for Re-Transferring Employee Charges which arise on or after the Re-Transfer Date.
- 23.4.** Subject to its compliance with the Data Protection Legislation, the Council shall be entitled to use the Employee Liability Information for the purposes of re-tendering the Services. The Council may include the Employee Liability Information in any documentation for the re-tender of the Services and may share this information with any prospective Provider of the Services.
- 23.5.** The Provider warrants that any information that it provides to the Customer in accordance with this Condition 23 is complete and accurate in all material respects.

24. Audit & Record Keeping

- 24.1.** The Provider shall keep and maintain until seven (7) years after the date of expiry of the Contract or any Funded Placement awarded thereunder, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Service supplied under it and all payments made by the Council. The Provider shall on request afford the Council or the Council's Representatives such access to those records as may be requested by the Council in connection with the Contract or any Funded Placement awarded thereunder.

25. Protection of Information

25.1. Data Protection

- 25.1.1.** The expressions "personal data", "data controller", "data processor", "data subjects", "processing" and "process" as used in this condition 25.1, shall have the meanings assigned to them in Data Protection Legislation.
- 25.1.2.** Each party hereby undertakes to the other that it shall comply with the obligations of a "controller" under the Data Protection Legislation and undertakes that it will only process personal data as is necessary to perform its obligations under this Contract and any Funded Placements awarded hereunder in accordance with the applicable Data Protection Legislation.
- 25.1.3.** The Provider undertakes to comply with the provisions of Data Protection Legislation and agrees to implement appropriate technical and organisational measures to ensure an appropriate level of security is adopted to mitigate the risks associated with its processing of personal data, including against unauthorised or unlawful processing, accidental or unlawful destruction, loss, alteration, unauthorised disclosure or damage or access to such personal data.
- 25.1.4.** The Provider shall notify the Council no later than 24 hours after becoming aware, of a breach or suspected breach of either the Data Protection Legislation or its

obligations under this condition 25 or of any other unlawful processing of personal data. Such notification shall specify: -

- 25.1.4.1.** the nature of the breach (or suspected breach) of its obligations under this condition 25.1.4.1 and/or Data Protection Legislation;
 - 25.1.4.2.** the date and time of occurrence of the breach, or suspected breach;
 - 25.1.4.3.** the extent of the personal data and data subjects affected or potentially affected; and
 - 25.1.4.4.** any other information the Council shall require in order to discharge its responsibilities under Data Protection Legislation.
- 25.1.5.** The Provider shall thereafter, at its own expense, (i) provide the Council with such information as it reasonably requires in connection with the breach or suspected breach (ii) take such steps as the Council reasonably requires it to take to mitigate the detrimental effects of the breach or suspected breach and (iii) otherwise cooperate with the Council in investigating and dealing with the breach or suspected breach and its consequences.
- 25.1.6.** The Provider will indemnify and keep the Council indemnified from and against all costs, claims, demands, damages, expenses, losses and liabilities which may be incurred directly or indirectly in connection with a breach of the provisions of this condition 25.1 including, but not limited to, the imposition of any monetary penalty by the Information Commissioner.
- 25.1.7.** The Provider shall ensure that suitable training on the requirements for secure and safe handling of personal data is provided to its Staff, Volunteers and Sub-Contractors and also to anyone they involve in the provision of Service under this Contract and any Funded Placement awarded thereunder.
- 25.1.8.** Neither the Council nor the Provider shall be required to pass personal data, including but not limited to Child Information, to the other Party, member of Staff or any other person, if the same would cause that Party to breach the terms of Data Protection Legislation. Should a Party refuse to pass Child Information to the other Party in accordance with this condition 25.1.8, that Party must supply detailed reasons in terms of Data Protection Legislation outlining the reasons why that Party considers such disclosure would breach the terms of Data Protection Legislation. Where the cause of the potential breach of Data Protection Legislation (and any other relevant Laws) is due to lack of necessary consent from the data subject to disclose the Child Information, that Party shall undertake to use its best endeavours to obtain the necessary consents required.
- 25.1.9.** The Council and The Provider hereby respectively warrant:
- 25.1.9.1.** that they will enter to into an agreement to govern the sharing of Child Information and any other personal data under this Contract outlining in detail how Child information and any other personal data will be collected, processed, stored and shared as part of the Service, and that substantially in the terms of Schedule Part 8 (Information Sharing Protocol);

- 25.1.9.2.** that where the Early Years MIS is to be used by the Provider in connection with the Services, they will enter into an agreement in such form as the Council may specify.
- 25.1.9.3.** that processing personal data, including but not limited to the Child Information, will be subject to technical and organisational measures referred to in condition 25.1.3 and all Child information will be kept securely in accordance with the Information Sharing Protocol;
- 25.1.9.4.** that they will process the Child Information and any other personal data only in accordance with instructions in accordance with the requirements of the Information Sharing Protocol, the Early Years MIS User Agreement (where relevant) or as required by Law;
- 25.1.9.5.** that they will not transfer personal data, including but not limited to the Child Information, to any Sub-Contractor or third party without seeking the other Party's prior written approval, unless otherwise allowed by the Data Protection Legislation, Law or Guidance.
- 25.1.9.6.** that they will not cause or permit the Child Information or any other personal data to be transferred outside of the European Economic Area without the prior written approval of the other Party.
- 25.1.9.7.** that appropriate guidance on data protection is provided to all members of Staff, and all Sub-Contractors in respect of the Child Information and any other personal data; and
- 25.1.9.8.** in accordance with the Information Sharing Protocol and where relevant the Early Years MIS User Agreement, that Staff and all Sub-Contractors process and hold information in a safe and secure manner in respect of any Child Information or any other personal data disclosed to them in providing Service to each Child under this Contract or any Funded Placement awarded under it.

25.1.10. Data Security and Recording

- 25.1.10.1.** The Provider shall have a clear written policy and guidance for Staff on requirements for recording data and data security in accordance with this condition 25 (Data Protection) and condition 26 (Confidentiality) and shall ensure that this is adhered to and reported to the Council when and as required in accordance with the requirements of the Information Sharing Protocol. The policy shall include requirements for Staff to ensure that confidential information is held securely and transmitted in accordance with the requirements as stated in the Information Sharing Protocol, and the Early Years MIS User Agreement (where relevant).
- 25.1.10.2.** The Provider shall co-operate with the Council to ensure the Council can meet its obligations in relation to records management under the Public Records (Scotland) Act 2011 including any recommendations and Guidance issued by the Keeper of the Records of Scotland.

- 25.1.10.3.** The Council reserves the right to audit, at any time, the suitability of the technical and organisational measures and security measures put in place by the Provider in order to comply with this condition 25 (Data Protection).
- 25.1.10.4.** The Council reserves the right to seek and require changes to said technical and organisational measures and security requirements applied by the Provider where the Council considers that the Provider's practice is no longer compliant with the Data Protection Legislation, any Law or Information Commissioner's Office (ICO) Guidance or where the Council policy has changed.
- 25.1.10.5.** Any changes sought by the Council in terms of condition 25.1.10.4 shall be carried out by the Provider promptly in accordance with the timescale required by the Council. In seeking changes, the Council will consider the nature and impact of the changes required when giving this instruction.
- 25.1.10.6.** The Provider must notify the Council of any actual or perceived risk to personal data held by them, including the Child Information, in connection with the provision of the Services. They must immediately notify the Council where there has been a loss or destruction of personal data or the Child Information. In that instance they must contact the Authorised Officer immediately (and within no less than twenty four (24) hours) of identifying the loss and provide details of the nature of the loss including the amount of information, when the loss was established and to assist in providing any other information required by the Authorised Officer to assist in the investigation all in accordance with the Information Sharing Protocol.
- 25.1.10.7.** The Provider will comply with any reasonable requests by the Council to assist and provide information in respect of any investigation into the loss of data.
- 25.1.10.8.** Failure by the Provider to comply with the requirements in condition 25 may be treated by the Council as a Material Breach of Contract by the Provider under Condition 37.5.
- 25.1.10.9.** The Provider and the Council shall formally enter into the Information Sharing Protocol, in the format provided within the Schedule Part 8 as evidence towards compliance in respect of their respective obligations under condition 25 (Data Protection).

25.1.11. Subject Access request

25.1.11.1. In the context of the Service provided for any Funded Placements awarded under this Contract, and in respect of personal data held by the Provider in connection with the provision of the Service, including the Child Information, the Provider shall notify the Council within five (5) Working Days if it receives:

- 25.1.11.1.1. Request (or purported request) from a data subject or their representative to have access to their personal data;
- 25.1.11.1.2. a complaint or request relating to either Party's obligations under the Data Protection Legislation;

25.1.11.1.3. any communication from the Information Commissioner or any other regulatory authority in connection with personal data processed under this Contract;

25.1.11.1.4. a request from any third party for the disclosure of personal data where compliance with such request is required or purported to be required by Law; and

25.1.11.1.5. a request to rectify, block or erase any personal data.

25.1.12. Public Access to Information

25.1.12.1. No term of this Contract or any Funded Placements awarded thereunder, whether expressed or implied, shall preclude the Council from making public, if required under the Freedom of Information (Scotland) Act 2002 (referred to in this condition as "FOISA") or the Environmental Information (Scotland) Regulations 2004 (referred to in this condition as "EIRs") or both any information held relating to the Contract or any Funded Placement awarded thereunder.

25.1.12.2. The Provider acknowledges that the Council is subject to the requirements of the FOISA and the EIRs and shall assist and cooperate with the Council to the extent reasonably necessary to enable the Council to comply with its information disclosure obligations under FOISA and EIRs. Further, the Council may share any information with any other relevant government regulators or law enforcement agencies.

25.1.12.3. Under FOISA and EIRs anyone has a right to access any information held by the Council unless an exemption applies. Receipt of any material marked "confidential" or equivalent should not be taken to mean that the Council accepts any duty of confidence.

25.1.12.4. The Council's interpretation of FOISA and EIRs and any exemptions therein will be final and conclusive between the Parties.

25.1.12.5. The Provider shall and shall procure that its Sub-Contractors shall:

25.1.12.5.1. transfer to the Authorised Officer any request for information related to the Contract or any Funded Placement awarded thereunder that it receives as soon as practicable and in any event within three (3) Working Days of receiving a request for information;

25.1.12.5.2. provide the Authorised Officer with a copy of all information in its possession, or power in the form that the Council requires within five (5) Working Days (or such other period as the Council may specify) of the Council's request; and

25.1.12.5.3. provide all necessary assistance as reasonably requested by the Authorised Officer to enable the Council to respond to the request for information within the time for compliance set out in section 10 of FOISA or regulation 5 of EIRs.

25.1.12.6. The Council:

25.1.12.6.1. shall consult with the Provider to inform the Council's decisions regarding any exemptions as they may relate to any Commercially Sensitive Information; and

25.1.12.6.2. may consult with the Provider to inform the Council's decisions regarding other exemptions, but the Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any Funded Placement awarded thereunder or any other agreement whether the Commercially Sensitive Information and / or any other information is exempt from disclosure in accordance with the provisions of FOISA or EIRs.

25.1.12.7. In no event shall the Provider respond directly to a request for information unless expressly authorised to do so by the Authorised Officer in writing.

25.1.13. Sharing Information with Government Regulators

25.1.13.1. Subject to its compliance with the provisions of Law and Guidance including Data Protection Legislation, the Council may share any information contained in or relating to the Contract or any Funded Placement awarded thereunder with any other relevant government regulators or law enforcement agencies.

26. Confidentiality

26.1. The Provider and its Staff shall regard as strictly confidential and as such shall not disclose to any unauthorised person either at any time during or after the duration of this Contract or any Funded Placement awarded thereunder, any information obtained in relation the Council or any Funded Placement and shall not use any such information except as specifically required for the purposes of performing its obligations under this Contract or any Funded Placement awarded thereunder.

26.2. Subject always to any legislation or rule of Law or where disclosure is prevented where information is the subject of any pending civil or criminal investigation or inquiry, the Provider shall be entitled to disclose information relating to a Funded Placement to the Parents/Carers or Child's Representative of that Child or other interested person where the appropriate legal rights exists, in respect of the Child.

26.3. The Provider shall have a policy on confidentiality. It is the Provider's responsibility to ensure that its Staff and Volunteers observe the principles of confidentiality referred to in conditions 26.1 and 26.2 above and give an undertaking not to disclose any information which they may receive in the course of delivering the Contract or any Funded Placement awarded thereunder.

26.4. The Provider shall at all times, ensure that its Staff observe the principle of confidentiality in terms of condition 26.1 above and shall indemnify the Council against any claims made by any Parents/Carers of a Child or any third party as a result of either the Provider or its Staff and Volunteers failing to maintain confidentiality in terms of this Contract or any Funded Placement awarded thereunder.

26.5. Subject to any Law or other statutory obligation requiring the Council to disclose information, including but not restricted to, the Freedom of Information (Scotland) Act 2002, or order from a court of competent jurisdiction, the Council shall also maintain the

obligations of confidentiality in relation to any Child, their Parents/Carers or Child's Representative and the Provider in accordance with the terms of this Contract or any Funded Placement awarded thereunder.

- 26.6.** The obligations of confidentiality contained in this condition 26 shall survive the expiry or termination of this Contract or any Funded Placement awarded thereunder.

27. Assignment & Subcontracting

- 27.1.** The Provider will not assign or subcontract any of its obligations under this Contract without the prior written agreement of the Council.
- 27.2.** Where the Council agrees to assign the obligations to a different Provider, the incoming Provider must meet the standards and criteria for qualitative selection established in the original Contract opportunity and provide all information and National Standard evidence that is requested by the Council.

28. Change of Control

- 28.1.** Any change in the Control of the Provider shall require the approval of the Council. If the Provider does not obtain the approval of the Council in accordance this condition 28.1 to 30.4 inclusive, the Council shall be entitled to terminate the Contract and any Funded Placements awarded thereunder, under condition 37.11.8 by treating the change of Control as a Material Breach of the Contract by the Provider.
- 28.2.** Where the Provider proposes a change in its Control with the intention of Service continuation: -
- 28.2.1.** The Provider shall give the Council no less than thirteen (13) weeks' prior written Notice; and
- 28.2.2.** The Council may consent to the change of Control if it is satisfied in its reasonable discretion that for the remainder of the term of the Contract and any Funded Placement awarded to the Provider hereunder the Provider shall continue to provide the Service in accordance with the Conditions of Contract to the reasonable satisfaction of the Council.
- 28.3.** Where a change in Control is anticipated, the Provider shall provide the Council with such information as it reasonably determines necessary to consider the request, in writing, a minimum of thirteen (13) weeks prior to the proposed implementation of the change.
- 28.4.** If the Council has overpaid the Provider in respect of the Service, and/or any other debt is due to the Council by the Provider, agreement must be reached about how any sums due will be repaid before consent will be granted to a change of Control.
- 28.5.** A Provider in the voluntary sector shall inform the Council of any changes of managers or of committee office bearers or other members of the management committee within the Provider's organisation within fourteen days of such change having taken place, and: -
- 28.5.1.** At the beginning of each School Year, the Provider shall submit to the Council, minutes of the AGM outlining the transfer from the previous committee to the newly elected committee and the name, address and contact number of each newly elected member of the management committee, AND

28.5.2. The Provider shall also submit the details of their constitution including confirmation of any changes made to it, on an annual basis, during the Contract.

29. Variation

29.1. Variation of Contract

29.1.1. The Conditions of Contract which apply to this Contract and any Funded Placement awarded hereunder may only be varied with the prior written agreement of the Council and the Provider.

29.1.2. No terms or conditions put forward at any time by the Provider shall form any part of the Contract unless specifically agreed in writing by the Council.

29.1.3. Any condition entered by a Provider or incorporated on any invoice or other communication submitted to the Council which is at variance in any respect with the Conditions of Contract shall not be binding on the Council unless such condition has been accepted expressly in writing by the Council.

29.1.4. No change shall be made to the Contract unless the change complies with the requirements of the Public Contracts (Scotland) Regulations 2015.

29.2. Variation of Contract – Service requirements

29.2.1. Either party (the “**proposing party**”) shall be entitled to propose any Variation to the Contract. Any such Variations could include but shall not be restricted to changes regarding the model of delivery or provision of the Service. For the purpose of this condition 29.2.1, the proposing party should identify whether the Variation concerns the Contract as a whole, or an individual Funded Placement awarded thereunder and any agreed Variation arising from said request shall accordingly be applied to either the Contract as a whole or to an individual Funded Placement as the case may be.

29.2.2. The proposing party shall notify the other party in writing of its proposed Variation. If the proposing party is the Council, the Provider shall confirm in writing within two (2) weeks of receipt of the proposed Variation, the effect the variation shall have on the Contract and any Funded Placement.

29.2.3. To consider any proposed Variation, both parties shall have available to them:

29.2.3.1. the reason for the proposed change;

29.2.3.2. full details of the proposed change;

29.2.3.3. the price, if any, of the proposed change; and

29.2.3.4. details of the likely impact, if any, of the proposed change on other aspects of this Contract.

29.2.4. The other Party shall respond to the proposed Variation in writing and, if appropriate, representatives of both parties shall meet to discuss the proposed Variation.

29.2.5. Any proposed Variation by either Party shall constitute an amendment to this Contract only once it has been agreed in writing by both parties. Until such time, the proposed Variation shall be neither binding nor implemented. Any work undertaken by the

Provider, its Staff or agents in connection with any proposed Variation to this Contract, shall be undertaken entirely at the expense and liability of the Provider.

29.3. Variation to the Price

29.3.1. Variations to the Price only will be dealt with in accordance with the provisions of Condition 13 (Price and Payment (including use of the Early Years MIS).

29.4. Variation to Registration

29.4.1. In the event of a change to the Registration of the Provider or a Setting, the Council may, but shall not be bound to, agree a Variation to the Contract to reflect the change, subject to the continued adherence to the Conditions of the Contract by the Provider and the Setting, to the satisfaction of the Council.

30. NOT USED

31. Dispute Resolution

31.1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either party notifying the other of the dispute and such efforts shall involve the escalation of the dispute in any instance involving a service issue to the Council's Director of Education and the equivalent director of the Provider and in any instance involving any other type of issue to the Council's Director of Finance and Corporate Services and to the Finance Director (or equivalent) of the Provider.

31.2. Nothing in this condition 31 shall:

31.2.1. prevent the parties to the Contract from complying with, observing and performing all their obligations in respect of the Contract regardless of the nature of any dispute between them arising out of or in connection with the Contract and notwithstanding the referral of any such matter or dispute for resolution under this condition;

31.2.2. diminish the parties to the Contract's responsibilities in respect of contract administration; nor

31.2.3. prevent any party to the Contract applying to a relevant court of competent jurisdiction to seek an appropriate remedy.

32. Law of Scotland

32.1. This Contract will be governed by the Law of Scotland and subject to the exclusive jurisdiction of the Scottish Courts.

33. Force Majeure

33.1. If either Party to this Contract cannot perform any of its obligations when they are due to be performed because of Force Majeure, and if such Party gives written Notice to the other Party specifying the circumstances constituting Force Majeure together with such evidence as it reasonably can give and specifying the period for which it is estimated that these circumstances will continue, then the Party in question will be excused the performance or the practical performance as the case may be of the contractual obligations which are

affected by Force Majeure from the date on which it became unable to perform and for so long as Force Majeure continues, subject to the provisions of condition 33.2 below.

- 33.2.** If the period of Force Majeure is expected to or does exceed thirty (30) days either Party may immediately terminate their participation in this Contract.
- 33.3.** The Parties agree to use their best efforts to ensure that during any period when Force Majeure exists that the needs of the Child are fully accommodated, so far as practicable.
- 33.4.** The payment of the Price for the Services during the period of Force Majeure shall be subject to negotiation with the Council and may be reduced to reflect the reduction in Service for the relevant period.

34. Waiver

- 34.1.** No failure or delay by the Council to enforce any right or remedy to which it is entitled, or to require performance by the Provider of any of the terms of the Contract or any Funded Placement awarded thereunder shall be a waiver of any such right or remedy nor shall it in any way affect the right of the Council to subsequently enforce such provisions.

35. Severability of Conditions

- 35.1.** If any Condition of the Contract applicable to the Contract or any Funded Placement awarded thereunder to any extent becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining Conditions of the Contract or those Conditions for any Funded Placement awarded thereunder shall not in any way be affected.

36. Remedies Cumulative

- 36.1.** Except as otherwise expressly provided by the Contract or any Funded Placement awarded thereunder, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

37. Termination of Contract

- 37.1.** The Provider shall give notice to the Council as soon as reasonably practicable if it finds it is unable to permanently or temporarily meet the Conditions of Contract.

Non-material Breach Provisions

- 37.2.** Where either Party considers the other to be in Non-Material Breach of the Contract or any additional condition attached to any Funded Placement awarded thereunder, the Party not in breach will be required to notify the details of the Non-Material Breach to the other Party who shall use their reasonable endeavours to rectify the breach within fourteen (14) days of notification of the breach.
- 37.3.** If the Party in breach is unable to rectify the breach to the reasonable satisfaction of the other Party within the said fourteen (14) day period the matter shall be referred to the Council Representative and the Provider Representative in accordance with notification procedures under Condition 8 (Notices), who shall meet to try to reach a resolution of the matter within fourteen (14) days of the said referral.

- 37.4.** If the dispute cannot be resolved in accordance with Condition 37.3 within the said fourteen (14) days, a meeting of all Parties shall be convened involving senior staff with line management responsibility for Council Representative and Provider Representative in order to reach a solution or decide on an agreed remediation plan and time-scales for rectification of the breach.

Material Breach

- 37.5.** Without prejudice to the rights and remedies for Material Breach of the Contract otherwise available to them under this Contract or at common law or under statute and without prejudice to the Council's statutory obligations and powers with regard to the safety and well-being of any Child, the Parties shall each have the right, such right being exercised at their absolute discretion to serve written notice in accordance with Condition 8 (Notices), on the other Party to terminate this Contract and any Funded Placement awarded thereunder if the other Party has committed a Material Breach of this Contract which is not capable of remedy, or if capable of remedy, has not been remedied to the reasonable satisfaction of the Party serving the notice within the period specified in any notice served under Condition 8 (Notices).
- 37.6.** If the Care Inspectorate Registration is subject to one or more conditions, then in the event of the Provider failing to comply with one or more conditions in respect of the Registration, the Council will be entitled to terminate this Contract and any Funded Placement awarded thereunder in terms of Condition 7 (Care Inspectorate Registration and Inspections).
- 37.7.** If the Regulatory Authority gives notice to the Provider of a proposal to cancel the Registration or if the Registration Body has made summary application to the Sheriff for an order cancelling the Registration, or if the Registration is cancelled (howsoever arising), then the Council may, but shall not be bound, to terminate this Contract and any Funded Placement awarded hereunder without notice irrespective as to whether or not the Provider has made representations to the Regulatory Authority about the cancellation or the period for making such representations has elapsed or the summary application to the Sheriff is being opposed.
- 37.8.** Where a Party has committed a Material Breach of the Contract that is capable of remedy, the Party who is not in breach may serve a written notice on the Party in breach giving that Party a fixed period in which to remedy the breach. The period given shall be determined at the sole discretion of the Party serving the notice but always subject to a minimum period of two (2) weeks and a maximum of thirteen (13) weeks.
- 37.9.** In the circumstances described at condition 37.5 – 37.7, the notice to terminate shall be effective for the end of the period specified in the notice or where this is not specified thirteen (13) weeks after its issue date.
- 37.10.** The following are Material Breaches of the Contract by the Council:
- 37.10.1.** failing to make payment, within a reasonable timescale, in accordance with condition 13 (Price and Payment (including use of Early Years MIS)) and Schedule 6;
 - 37.10.2.** offering any improper inducements or exerting unreasonable pressure upon potential or existing Parents/Carers or Child's Representative, or others with an interest;

37.10.3. the Council committing a breach of any of its obligations under this Contract which materially and adversely affects the performance of the Contract or provision of the Service or the Council committing a series of breaches of any of its obligations under the Contract or provision of the Service.

37.11. The following are Material Breaches of the Contract by the Provider and the Council reserves the right to treat other actions or omissions by the Provider as Material Breaches where in the Council's opinion facts and circumstances require it:

37.11.1. serious non-compliance with the provisions of the Health and Safety at Work etc. Act 1974, any statutory instrument enacted under it, related Law or Guidance;

37.11.2. operation of the Service without insurance cover as required under condition 19 above;

37.11.3. non-compliance with the requirements of equal treatment legislation including without limitation the Equality Act 2010;

37.11.4. deliberate misuse of drugs and/or medicines by any of the Provider's Staff when delivering any aspect of the Service to any child whether that child is a Funded Placement or not;

37.11.5. abuse or neglect of any child or Child;

37.11.6. non-compliance with the provisions of the Protection of Children (Scotland) Act 2003 as amended and re-enacted from time to time), together with any secondary legislation made thereunder, and to adhere to any Law or Guidance in relation to child protection;

37.11.7. taking or attempting to take dishonest or illegal financial advantage of a Child's Representative in respect of the childcare service including Wraparound Care which is provided to a Child in addition to the payment for the Funded Placement;

37.11.8. the Provider ceasing to carry on the whole of its business; or disposing of all of its assets (other than in terms of this Contract) or becoming the subject of a voluntary arrangement under Section 1 of the Insolvency Act 1986; or having a receiver, liquidator (other than for the purposes of reconstruction or amalgamation), administrator or administrative receiver appointed over all or any material part of its undertaking assets or income; or having a winding up order made in respect of it; or entering into administration; or a resolution for its winding-up being passed by creditors or members; or having a judicial factor appointed; or being apparently insolvent or sequestered; or signing a trust deed for creditors; or entering into a composition with creditors; or entering into a debt arrangement scheme; or being the subject of any process or event similar or analogous to the events specified above in any jurisdiction outside Scotland;

37.11.9. offering any improper inducements or exerting unreasonable pressure upon potential or existing Child's Representatives, or others with an interest;

37.11.10. being convicted of an offence under the provisions of the Regulation of Care (Scotland) Act 2001 or the Public Services Reform (Scotland) Act 2010, in the latter case whether the conviction is recorded against the Provider or against a Person concerned in the management and control of the Provider or both;

- 37.11.11.** committing any offence under the Prevention of Corruption Acts 1889 – 1916 and/or the Bribery Act 2010;
 - 37.11.12.** giving any fee or reward to any elected member or officer of the Council in order to secure an unfair gain or advantage;
 - 37.11.13.** being convicted of an offence under the provisions of Part 5 of the Public Services Reform (Scotland) Act 2010;
 - 37.11.14.** failing to supply information required by the Council as set out in Condition 15 (Business Continuity including Setting environment);
 - 37.11.15.** imposing charges on the Parents/Carers or Child’s Representative that are not permitted by the Contract in respect of any Funded Placement awarded to the Provider under the Contract;
 - 37.11.16.** the Provider committing a breach of any of its obligations under this Contract which materially and adversely affects the performance of the Contract or provision of the Service or the Provider committing a series of breaches of any of its obligations under the Contract, the cumulative effect of which is to materially and adversely affect the performance of the Contract or provision of the Service;
 - 37.11.17.** failure to comply with relevant regulation requirements or failure to achieve, or lose, registered status or the issue of an Improvement Notice by the Care Inspectorate or failure to adhere to the requirements of Condition 7 (Care Inspectorate Registration and Inspections);
 - 37.11.18.** failure to comply with the Data Protection Legislation, the requirements of condition 25 or the Information Sharing Protocol;
 - 37.11.19.** failure to improve the quality of the Service in the appropriate timescales after an inspection by the Care Inspectorate, Education Scotland or a Council review, or failure to take the actions set out in any action plan which has been put in place as a result, to the reasonable satisfaction of the Care Inspectorate, Education Scotland or the Council;
 - 37.11.20.** Failure to hold and maintain throughout the duration of this Contract the minimum quality levels specified in the Contract documents to the satisfaction of the Council; and
 - 37.11.21.** Failure to comply with the requirements of Condition 4 (Compliance).
- 37.12.** Without prejudice to other rights and remedies the Council may have available to them under the Contract for Material Breach or at common law or under statute, if the Regulatory Authority gives notice to the Provider of a proposal to cancel the Registration or if the Regulatory Authority Body has made summary application to the Sheriff for an Order cancelling the Registration, or if the Registration is cancelled (howsoever arising), then the Council may, but shall not be bound, to terminate this Contract and any Funded Placements awarded to the Provider thereunder without notice, irrespective as to whether or not the Provider has made representations to the Regulatory Authority about the cancellation or the period for making such representations has elapsed or the summary application to the Sheriff is being opposed.

- 37.13.** The Council shall advise the Regulatory Authority of any material or persistent breach of the Contract by the Provider.
- 37.14.** Nothing in this condition shall limit the nature and extent of acts considered by a court of law or otherwise to be Material Breaches of this Contract. No granting of time or period of notice under this condition shall be deemed to be a waiver of any right the Party granting time or giving notice may have against the other Party in respect of the other Party's Material Breach of this Contract.

Non-Breach Provisions

- 37.15.** The Provider shall give the Council thirteen (13) weeks' written notice of its intention to;
- 37.15.1.** Close the Setting;
 - 37.15.2.** Sell the Setting;
 - 37.15.3.** Substantially reconfigure the Service provision at one of more Setting;
 - 37.15.4.** Significantly change the facilities or amenities of the Setting; or
 - 37.15.5.** Move the provision of the Service to premises at a different location.
- 37.16.** In the event that notice is served under condition 37.15 the Council may but shall not be bound to terminate the Contract and any Funded Placement awarded to the Provider thereunder at the end of the thirteen (13) weeks' notice period.
- 37.17.** Where the premises or any part thereof is leased by the Provider and the lease is terminated, this Contract and any Funded Placement awarded to the Provider thereunder shall be terminated upon the same date as the lease, except if the Parties otherwise agree. The Provider shall be obliged to give the Council at least thirteen (13) weeks' written notice of the proposed date of termination of the lease unless the Provider provides evidence to the Council that it was not possible using all reasonable endeavours to give such notice.
- 37.18.** In the event of closure of the Setting, the Council and the Provider shall co-operate to implement the Provider's closure plan as agreed with Registration Bodies.
- 37.19.** This Contract and any Funded Placement awarded to the Provider thereunder shall be terminated by the loss or destruction of the Setting or by the enforced vacation of the Setting arising from statutory action by a Regulatory Authority or other statutory authority, unless otherwise agreed in writing by the Council. In the event the Council does not so agree, the Contract and any Funded Placement awarded to the Provider thereunder, shall be terminated under this condition on the date of the said loss or destruction or vacation of the Setting.
- 37.20.** Right to Terminate
- 37.20.1.** If either party wishes to terminate the Contract for any other reason not detailed within these Conditions of Contract during the Period of Contract, they shall give the other party ninety (90) days' notice in accordance with Condition 8 (Notices) and the Contract, shall in all respects cease and terminate.

37.20.2. Notwithstanding the right to terminate in condition 37.20.1 above, where a party decides to give notice in respect of condition 37.20.1, they shall remain liable for any indemnities and liabilities extant and any costs associated with the termination.

37.21. General Provisions

37.21.1. During any period of notice referred to in condition 37.15 above, the Provider and the Council shall co-operate with each other to ensure that any Child Funded Placement requirements continue to be met; and they shall fully co-operate and consult with the Parents/Carers or any identified Child's Representative in making suitable alternative arrangements for the Child in respect of transfer of the relevant information to any new Setting in accordance with the Parent requirements.

37.21.2. Neither Party shall be entitled to withhold performance of their obligations under the Contract and any Funded Placement hereunder during any period of notice.

37.21.3. The termination of this Contract howsoever arising is without prejudice to the rights, duties and liabilities of either Party accrued prior to termination (subject as otherwise expressly provided in this Contract). Those rights shall include the right of the Council or the Provider to claim damages against the other Party arising out of that Party's Material Breach of the Contract. The Conditions of this Contract which either explicitly or implicitly have effect after termination will continue to be enforceable notwithstanding termination.

37.21.4. The Provider agrees that upon expiry or termination for any reason of the Contract it shall not be entitled to make a claim against the Council in relation to costs howsoever incurred by the Provider in securing the award of the Contract or providing the Service under the Contract nor in relation to the loss of expected profits from the provision of the Service under the Contract.

37.21.5. Notwithstanding the requirement in respect of assignment/disposal (at condition 27) and termination of the Contract (at this condition 37), in the absence of prior notice, any material changes to the ownership and control of the Service shall be communicated to the Council within four (4) weeks of the change occurring.

37.22. Termination of the Contract under Regulation 73

37.22.1. In addition to any of its other rights to terminate the Contract, the Council shall have the right to terminate the Contract and any Funded Placement awarded thereunder where: -

37.22.1.1. the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts (Scotland) Regulations 2015 (modification of contracts during their term);

37.22.1.2. the Provider has, at the time of contract award, been in one of the situations referred to in the aforementioned 2015 Regulations, Regulation 58(1) (exclusion grounds), including as a result of the application of Regulation 58(2), and should therefore have been excluded from the procurement procedure; or

37.22.1.3. the Contract should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaties and the Directive that has

been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

37.22.2. The Council shall give notice of termination to the Provider in writing and termination shall take effect as follows:

37.22.2.1. where in the opinion of the Council, the issue giving rise to the exercise of the right to terminate under this condition is sufficiently serious, with immediate effect;

37.22.2.2. in any other case, on the date specified in the notice which shall be no less than thirty (30) days from the date on which the notice was given, and

37.22.2.3. Where the Council has terminated the Contract and any Funded Placements awarded thereunder under Conditions 37.22.2.1 and 37.22.2.2 the Provider shall have no right of compensation except where it is established that the Council has acted or omitted to act negligently, and this shall be the Provider's only remedy.

IN WITNESS WHEREOF these presents typewritten on this and the preceding 42 pages, together with the Schedule in 10 parts, are annexed and executed as relative hereto by each party's authorised signatory as follows:

Signed:

Signed:

.....

.....

subscribed on behalf of the **Council** by:

subscribed on behalf of the **Provider** by:

.....

.....

(print full name of above) a duly authorised signatory and Proper Officer of the **Council**

(print full name of above) a duly authorised signatory of the **Provider**

.....

.....

Director

Dated thisday of.....2020

Dated thisday of.....2020

Witness Signature

Witness Signature

Witness (Full Name)

Witness (Full Name)

Witness (Address)

Witness (Address)

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Place of Signature

Place of Signature

This is the Schedule Part 1 of the foregoing Early Learning and Childcare Contract between the Council and the Provider

Schedule Part 1: Defined Terms and Interpretation

The following terms shall have the meaning assigned to them below: -

Term	Definition
Applicant	means the person or organisation completing the Application.
Application	means a completed set of documents providing the information that allows the Council to determine whether the Applicant is suitable to provide ELC services.
Basic Disclosure	a criminal conviction certificate as referred to in section 112 of the Police Act 1997
Care Inspectorate	means the Social Care and Social Work Improvement Scotland being the body established under Section 44 of the Public Services Reform (Scotland) Act, 2010, having its headquarters for the time being at Compass House, 11 Riverside Drive, Dundee, DD1 4NY or its successor body.
Care Plan	means the document setting out each Child's individual level of care and support along with the Provider's practice, timescale and method for meeting the Child's care and support requirements, as agreed between the Parents/Carers and the Provider.
Census	means the written information supplied by the Provider to the Council stating the number of children in Early Learning and Childcare with the Provider as at August, January and April in each School Year.

Child	<p>means an eligible pre-schoolchild as defined in the Children and Young People (Scotland) Act 2014, Part 6 and, subject to the guidance on Pre-School Education in nurseries issued by the Scottish Ministers under Section 34 of the Standards in Scotland's Schools etc Act 2000, as amended as further defined in the Service Specification and any whose Parents/Carers have placed them with the Provider at the Setting, subject always to the requirements as contained in the Early Learning and Childcare Admission Policy.</p> <p>It may also include children that the Council chooses to place under their discretionary powers.</p>
Child Information	means any personal data disclosed to the Council by the Provider, including special category data, in respect of each Child for whom a Funded Placement is sought and where the Service is delivered under this Contract, and both the Provider and the Council require to keep records on the Child.
Child's Representative	means an appropriate adult nominated to represent the interests of the Child including a parent, carer, grandparent or other individual delegated the right by them.
Commencement Date	means the date this Contract shall take effect the exact date shall be conveyed in the Letter of Award and published in accordance with applicable Law. (For the avoidance of doubt the starting date for each Funded Placement will be different throughout the Period of Contract).
Contract	means these Conditions, any supplementary conditions (including relative to the Funded Placement), the Application, all specifications including the Service Specification, and such other documents that are relevant to the award of the Contract.
Condition	means each condition within this Contract (including any modifications thereof).
Control	means the ability to direct the affairs of another, whether by virtue of the ownership of shares, contract or otherwise.
Council	ABERDEENSHIRE COUNCIL , a local authority constituted under the Local Government etc (Scotland) Act 1994, with principal place of business at WOODHILL HOUSE, WESTBURN ROAD, ABERDEEN, AB16 5GB.
Council Property	means any building or property owned or managed by the Council.
Council's Representative	means any person authorised by the Council to act on its behalf for the purposes of the Contract and in respect of Funded Placements under the Contract including the person appointed by the Council from time to time to assess, oversee and review the Service provided by the Provider, as detailed in Schedule Part 12.
Cross-Boundary Placements	means Funded Placements agreed with Named Councils.

Data Protection Legislation	means the Law relative to the following, together with any primary or secondary legislation implementing or supplementing it and as the same may be amended, updated or replaced over time: the Data Protection Act 2018, the General Data Protection Regulation (Regulation EU 016/679) ("GDPR"), the Law Enforcement Directive (Directive (EU) 2016/680), the Regulation for Investigatory Powers Act 2000, the Regulation for Investigatory Powers (Scotland) Act 2000, the Telecommunications (Lawful Business Practice)(Interception of Communications) Regulations 2000 (SI2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any Law that, in respect of the United Kingdom, replaces or enacts into domestic law GDPR or any other Law relating to data protection, the processing of personal data and privacy as a consequence of the United Kingdom leaving the European Union including where applicable the Guidance and codes of practice issued by the statutory regulator in the United Kingdom: the Information Commissioner.
Deferred Entry	means a Child who is receiving an additional year of Early Learning and Childcare funding when their school start has been deferred for a year. As defined in the Provision of Early Learning and Childcare (Specified Children) (Scotland) Order 2014, January and February born children are entitled to an additional year of funding when their school start is deferred. Using their powers under section 1(1C) of the Education (Scotland) Act 1980, the Council can also choose to fund an additional year of Early Learning and Childcare for August to December born children when their school start is deferred.
Default	means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.
Disclosure	means a criminal record certificate or enhanced criminal record certificate issued by Disclosure Scotland under Part V of the Police Act 1997;
Disclosure Scotland	means an agency of the Scottish Government that discharges the functions of Scottish Ministers under the Police Act 1997 and in particular provides disclosure of conviction information and manages the PVG Scheme on behalf of the Scottish Government, based for the time being at the Scottish Criminal Record Office, Pacific Quay, Glasgow, G51 1EA;
ELC	means early learning and childcare as defined in Part 6 of the Children and Young People (Scotland) Act 2014.
ELC Child Admissions Policy	Means the policy applied by the Council to determine admissions of Children to ELC provision, as more particularly detailed in Schedule Part 5.
Early Learning and Childcare (ELC) Census	means the yearly census administered by Scottish Government that allows data to be collected on funded Early Learning and Childcare entitlement.

Early Years MIS	means the nursery application management system, or any future system which replaces it, which <i>may</i> be used by the Council during the Period of Contract to record the data relating to the provision of the Services.
Early Years MIS User Agreement	Means the agreement to be entered into between the Council and the Provider regulating the roles and responsibilities and security protocols and procedures in relation to the Early Years MIS, which shall be in such form as the Council may specify and agree with the Provider.
Eligible 2-Year-Old	means as defined in legislation (the Children and Young People (Scotland) Act 2014 and Provision of Early Learning and Childcare (Specified Children) (Scotland) Order 2014, as amended.
Employee Liability Information	Has the meaning given to it in Regulation 11 (2) of the Transfer of Undertakings (Protection of Employment) Regulations 2006
Enhanced Monitoring Period	means a period during which the Council can increase its monitoring of the Provider, where it considers the Provider is unable, or may become unable, to deliver the Services in accordance with the terms of the Contract and during which period, the Council will give the Provider/Setting an opportunity to improve their performance of the Services within a specified timescale.
Funded Hours	means any of the hours delivered to a Child under this Contract in respect of a Funded Placement.
Funded Placement	means the provision of up to 1140 hours (or such hours as may be otherwise agreed between the Parties) of the Service per School Year for each Child, in accordance with an award made by the Council under this Contract.
Guidance	means: a. any applicable health, education or social care guidance, direction or determination which the Council and/or the Provider has a duty to have regard to, and b. any applicable guidance relative to the Law which the Council and/or the Provider has a duty to have regard to, c. Care Standards d. Guidance issued by the Council in respect of Early Learning and Childcare, e. Guidance issued by the Scottish Government in respect of Early Learning and Childcare including the Children and Young People (Scotland) Act 2014, Early Learning and Childcare Statutory Guidance, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Provider by the Council, Scottish Ministers and any Regulatory Body, Registration or other public bodies.
Individual	any natural person that is used, or is considered to be used, by the Service Provider to provide the Services (or any part thereof) on either a paid or unpaid or voluntary basis and, for the avoidance of doubt, includes any person recruited (or considered for recruitment) directly by the Service Provider, by an employment or similar agency used by the Service Provider or by a Sub-contractor and also includes the Service Provider where he/she is a natural person.

Information Sharing Protocol (ISP)	Means the agreement to be entered into between the Council and the Provider substantially in the terms of the Information Sharing Protocol detailed in Part 8 of the Schedule, which sets out the Parties respective roles and responsibilities in relation to the sharing of Personal Data in connection with the provision of the Service.
Law	means: a) all applicable laws of Scotland, the United Kingdom and European Union or regulations, regulatory policies, guidelines or industry codes, consents and approvals, sub-ordinate legislation and the common law, including for the avoidance of doubt obligations relating to the payment of taxes and social security contributions; b) Good ELC practice codes of conducts and standards; d) Guidance; and e) Any other directives or requirement of any Regulatory Authority with which the Provider is bound to comply in connection with its performance delivery of the Services.
Living Wage Commission	Means the organisation that oversees the calculation of the real Living Wage rates in the UK.
Named Councils	means local authorities that are named in Condition 17 of the Contract or in the contract notice (where applicable).
Non-Material Breach	means any breach of Contract not of itself entitling a party to terminate the Contract or the provision of Commissioned Places and thus this definition excludes those breaches detailed in conditions 37.10 and 37.11.
Material Breach	means a breach that is serious in the widest sense of having a serious effect on the benefit and delivery of ELC, which can be derived from a substantial portion of this Contract over the Period, including but not limited to, the specific breaches detailed in Conditions 37.10 and 37.11. and in deciding whether any breach is material, no regard shall be had to whether it occurs by accident, mishap, mistake or misunderstanding.
Meal	means a meal given to a Child receiving a Funded Placement. Settings must have a clear and comprehensive policy for the provision of healthy meals and snacks for children. This should be consistent with Setting the Table and the Eatwell Guide and should ensure that individual cultural and dietary needs are met.
Operating Guidance	Means the guidance published by Scottish Government, relative the National Standard and Funding Follows the Child.
Overseas Criminal Records Check	a criminal record certificate in respect of an Individual obtained from the police or judicial authority of the country in which the Individual resided or worked (except for the United Kingdom)
Parents/Carers	means the parent(s), guardian(s) or principal carer(s) having primary responsibility for the Child and who is nominated to represent the interests of the Child.
Party	means a party to the Contract and "Parties" means both the Council and the Provider in the Contract.

Period of Contract	means the duration of the Contract in accordance with Condition 2.
Personal Data	shall have the meaning assigned to it by the Data Protection Legislation
Price	means the price determined in accordance with the Contract payable by the Council to the Provider for the full and proper performance by the Provider of its obligations under the Contract and any Funded Placement thereunder.
Probationary Basis	means the Provider has been awarded a Contract for a provisional period specified by the Council in order for further information to be gathered and the performance of the Provider to be monitored to ensure it meets the National Standard criteria e.g. where the Setting has not received their first Care Inspectorate inspection following Registration.
Protected Persons	means persons falling within the definition of a child or protected adult as set down in Sections 97 and 94 respectively of the PVG Act;
Provider	means the successful Applicant awarded the Contract who by the Contract undertakes to supply or render the Service for the Council, and who will seek Funded Placements and where the Provider is an individual or a partnership, the expression shall include the personal representatives of that individual or of the partners or either of them, as the case may be, and the expression shall also include any person to whom the benefit of the Contract may be assigned by the Provider with the consent of the Council.
Provider Representative	means any person authorised by the Provider to act on its behalf for the purposes of the Contract and in respect of Funded Placements under the Contract including the person appointed by the Provider from time to time to assess, oversee and review the Service provided, as detailed in Schedule Part 12.
PVG Act	means Protection of Vulnerable Groups (Scotland) Act 2007.
Real Living Wage	means the rate of pay for Staff that is calculated based on the cost of living. The rate is calculated by the Resolution Foundation and overseen by the Independent Living Wage Commission. These figures are calculated annually and are usually announced in November each year. Employers who pay the real Living Wage to their Staff can apply for Living Wage Accreditation. The real Living Wage should not be confused with the National Minimum Wage (including the "national living wage" for those aged 25 and over) which is the legal minimum an employer must pay an employee and is set by the UK Government.
Registered Person	means persons registered with Disclosure Scotland under section 120 of the Police Act 1997.
Registration	means Registration granted by the Care Inspectorate in terms of the Public Services Reform (Scotland) Act 2010.
Regulated Work	means regulated work as defined in section 91 PVG Act.
Regulatory Authority	means the body or bodies established and/or charged by statute and/or with regulatory authority for (a) the responsibility of monitoring, supervising and inspecting activities forming part or all of the Service and/or (b) the vetting, approval and

	supervision of persons or premises used to deliver the activities comprising part or all of the Service; where there is more than one body charged with relevant powers and responsibilities with regard to the Service , this definition will apply to one, more than one or all of such bodies, as the context requires. This includes, but is not limited to the Scottish Government, Education Scotland, the Care Inspectorate, SSSC and any other organisation which succeeds any of them.
Relevant Transfer	Has the meaning given to it under Regulation 2(1) of the Transfer of Undertakings (Protection of Employment) Regulations 2006;
Replacement Provider	Means any successor to the Provider in the provision of the Services or services essentially or fundamentally the same as the Services, to the Council.
Re-Transfer Date	shall mean the date or dates on which the contracts of employment of the Re-transferring Employees transfer from the Provider or any sub-contractor of the Provider to the a Replacement Provider pursuant to the TUPE Regulations upon the cessation or partial cessation of provision of the Services by the Provider or any sub-contractor of the Service Provider.
Re-Transferring Employees	shall mean those employees of the Provider or its sub-contractor who transfer from the Provider or its sub-contractor to a Replacement Provider pursuant to the TUPE Regulations upon the cessation or partial cessation of provision of the Services by the Provider or any of its sub-contractors.
Re-Transferring Employee Charges	shall mean all liabilities, costs, expenses and outgoings in relation to each Re-transferring Employee including, but not limited to salaries, wages, bonus (even if not due and payable at that time), accrued holiday pay, National Insurance Contributions, pension contributions, PAYE remittances and payments in respect of any other emoluments.
Scheme Record	means the document defined in section 48 of the PVG Act;
School Year	means the 38-week period of time in one calendar year during which Early Learning and Childcare is typically provided, commencing in August and continuing until June/July in the following year, the applicable dates for each School Year being determined by the Council.
Service	means Early Learning and Childcare provision in accordance with the Children and Young People (Scotland) Act 2014, Part 6 and consisting of education and care, for a Child who is under school age with regard being given to the importance of interactions and other experiences which support learning and development and (1)where the context requires it the provision by the Provider of Early Learning and Childcare for each Child place purchased under this Contract and any work and actions associated with it including, without prejudice to the foregoing, the management and administration of the Service or (2)where context requires it the collective Service provided to all Funded Placements under this Contract and any work and actions associated with it including, without prejudice to the foregoing, the management and administration of the Service.

Service Improvement Period	means the period that is activated when a Provider/Setting is not meeting one or more of the National Standard criteria as described in Condition 12 (Service Improvement Period) during which the Provider/Setting is given an opportunity to improve the quality of their provision within a specified timescale.
Service Specification	means the Service Specification set out Schedule Part 2.
Setting	means the setting designed in the Contract Header, or any alternative setting agreed by the Council (including emergency premises specified in the business continuity plan referred to in Condition 15).
Short Scheme Record	means a short scheme record as defined in section 53 of the PVG Act;
Significant Complaint	Has the meaning given in condition 22.2
Significant Event	Has the meaning given in condition 22.1
Staff	means any person engaged by the Provider in terms of a contract of employment or contract for services between that person and the Provider for the purposes of providing the Service and any agency staff engaged in compliance with this Contract. It also includes, volunteers, if the Setting or Provider regularly uses voluntary staff in the delivery of the Service.
Sub-contractor	any third party with whom the Provider enters into a contract in respect of the performance of the Services (or any part thereof) by that third party, including a contract for the provision by that third party to the Provider of facilities or services, such as agency staff, necessary for the provision of the Services and any third party with whom that third party enters into such a contract;
Treaties	Treaties means (1) those treaties of the European Communities (now the European Union) and its predecessor bodies to which the United Kingdom agreed on its accession to the European Communities on January 1973 and (2) those treaties to which the United Kingdom as a member of the European Union assented (on those particular terms as applied to it) between the date of its accession and the date of its departure from the European Union and "Treaty" shall be interpreted accordingly.
Variation	means a variation in the provisions of the Contract made in terms of Condition 29.
Working Days	means a day other than a Saturday, Sunday or public holiday in Aberdeenshire when banks in Aberdeen are open for business, unless otherwise agreed in advance between the Parties.
Wraparound Care	means the additional care which may be provided to a Child by the Provider at the request of the Child's Parents/Carers but which is not provided in terms of the Contract and does not form part of the Funded Placement and for which Wrap around care is subject to a separate arrangement between Parents/Carers and Provider and the payment for which is not covered by the Price.

Interpretation

1. The masculine includes the feminine, and vice versa.
2. The singular includes the plural, and vice versa.
3. Reference to Law shall be construed as a reference to the Law as amended or re-enacted by any subsequent Law and the reference, for the avoidance of doubt, shall be deemed to include all and any Guidance issued in connection with such Law.
4. Anything including any decision or action that the Council is required or authorised to take or do under the Contract may be taken or done by any person so authorised either generally or specially by the Council.
5. The words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”.

This is the Schedule Part 2 of the foregoing Early Learning and Childcare Contract between the Council and the Provider

Schedule Part 2: Service Specification

1. INTRODUCTION

This Service Specification forms part of the Agreement between the Provider and the Council for the Provision of Early Learning and Childcare Services and the definitions within that Agreement apply to this Part 1 of the Schedule. This Service Specification further defines the Council's expectations relating to the manner in which the Services will be provided under the Agreement.

2. PHILOSOPHY AND OBJECTIVES

Every child and young person in Aberdeenshire is entitled to experience a broad general education. The Provider offers to provide its Early Learning and Childcare services based upon the Early Level Curriculum for Excellence and Health and Social Care Standards and shall both:

- promote improved experiences and outcomes; and
- encourage active learning indoors and outdoors;

The Provider shall be guided by the principles contained in Getting it Right for Every Child. The Provider shall be guided by the principles contained in Getting it Right for Every Child and should be committed to recognising, respecting and promoting children's rights as part of its wider commitment to improving life chances for all children and young people.

The Provider will contribute to Aberdeenshire Council's Integrated Assessment Framework process when appropriate.

3. RESPONSIBILITIES OF THE PROVIDER

The Provider's Service Delivery Obligations and responsibilities are narrated in the Agreement and are further explained and refined in this, the Schedule, Part 2, Service Specification as follows:

I. Attendance and Presence Recording

- The Provider shall record the presence or absence at every Session of each Child for whom Pre-School Education for that Session has been or will be claimed from the Council.
- The Provider shall provide verifying details of attendance and uptake of provision at intervals defined by the Council.

II. Educational

- The Provider shall implement relevant curriculum guidance provided by the Scottish Government. The Provider must also implement any health initiatives which are initiated by the Scottish Government.
- The Provider shall ensure curriculum practices reflect national and Aberdeenshire Council guidelines and ensure that appropriate procedures are in place for planning, evaluating, reporting, recording and assessment of Early Learning and Childcare.

- The Provider shall have procedures in place for monitoring and evaluating the Services, using “How Good is Our Early Learning and Childcare?”, “Building the Ambition” and any other national self-evaluation guidance provided by the Scottish Government.
- The Provider shall work in partnership with associated primary schools to ensure smooth transitions between settings.

III. Policies

The provider must operate the provision of the Service in accordance with the Council’s and Scottish Government policy and guidelines including but not limited to:

- Aberdeenshire Child Protection Partnership policy and guidelines, www.childprotectionpartnership.org.uk/
- Aberdeenshire’s Early Learning and Childcare Admission Policy;
- Aberdeenshire Council’s Additional Support Needs Policy; and
- The Scottish Government guidance “Getting It Right for Every Child”.
- Getting it Right for Every Child in Aberdeenshire, www.girfec-aberdeenshire.org/

IV. Provision of the Relevant Information

In accordance with its obligations under the Agreement, the Provider will make available and offer information to, any parent, guardian or carer making enquiries regarding an Early Learning and Childcare place within the Service run by the Provider (“the Relevant Information”).

- The Relevant Information includes but is not restricted to:
 - Information relating to applications for places;
 - Information on the Provider’s curricular programmes;
 - Information on Providers term dates and times of sessions;
 - Information on the Provider’s admissions policy; and
 - Information about the extent of provision made for children with additional support needs.

V. Other Information

- The Provider must keep Aberdeenshire Council’s Family Information Service informed of the Provider’s current vacancies.
- The Provider must agree to provide information relating to applications received for Children for the places in accordance with Aberdeenshire Council’s Early Learning and Childcare Admissions policy.
- The Provider shall provide the Council with a current e-mail address for its organisation which is regularly checked and monitored, to which the Council may send emails in connection with the performance of the Services. The Provider shall notify the Council of any change to the email address as soon as possible.
- The Provider must immediately inform the Council of any other change, event or occurrence connected with the Service not already herein referred to and in connection with which the Provider is under an obligation to inform Care Inspectorate in terms of Care Inspectorate guidance.

VI. Meetings

- The Provider must attend or be represented at and participate in meetings with the Council if requested.
- The Provider must be prepared to receive visits from a Council representative.

4. RESPONSIBILITIES OF THE COUNCIL

The Council's responsibilities are as narrated in the Agreement and in this the Schedule, Part 2 Service Specification as follows:

- The Council will provide support and advice from an Early Years Development Worker and Early Years Principal Teacher with the specific remit to work with the Provider.
- The Council will provide support to address quality improvement and development areas identified by any regulatory agency inspections or Council representative visits;
- The Council shall ensure that the Council's continuing professional development training programme for Early Learning and Childcare is available and open to Providers.
- The Council shall ensure that the Provider is included in relevant and appropriate Council meetings.

This is the Schedule Part 3 of the foregoing Early Learning and Childcare Contract between the Council and the Provider

Schedule Part 3: National Standard Criteria

National Standard Criteria that apply to Lot 1 (Private, Voluntary and Independent Settings):

To ensure the delivery of a 'provider neutral approach', the National Standard applies to all providers regardless of whether the funded hours are provided by a setting in the public, private or third sector, including provision offered by childminders. The National Standard is aligned to the guiding principles for the expansion to 1140 hours: quality; flexibility; accessibility; and affordability. It is also underpinned by the regulations in the Public Services Reform (Scotland) Act 2010 which applies to all care services across Scotland, including day-care of children and childminding settings. Whilst the National Standard criteria are relevant for all funded providers, in order to ensure that the assessment criteria are fair and proportionate, there are some variations in this criterion for childminders to recognise the nature of the services they provide.

CRITERIA 1 – Staffing, leadership and management

Criteria for ALL SETTINGS (EXCLUDING CHILDMINDERS):

- Sub-criteria 1.1 – Care Inspectorate quality evaluations are good or better on themes that relate to quality of staffing, management and leadership.
- Sub-criteria 1.2 – All support workers, practitioners and lead practitioners/managers working in the setting and included in the adult : child ratios must have either obtained the benchmark qualification for their role or, if they are still within their first 5 years of registering with the SSSC, have started to work towards this.
- Sub-criteria 1.3 – Sustainable staffing structures are in place which meet the recommended adult: child ratios.
- Sub-criteria 1.4 – All SSSC registered staff in the setting are achieving a minimum of 12 hours per year of Continuous Professional Learning.
- Sub-criteria 1.5 – Staff new to delivering the funded entitlement within the last year are familiar with the content of the most up-to-date version of the national induction resource.

National Standard Criteria that apply to Lot 2 (Childminders):

Criteria for CHILDMINDING BUSINESSES:

- Sub-criteria 1.1 – Care Inspectorate quality evaluations are good or better on themes that relate to quality of staffing, management and leadership.
- Sub-criteria 1.2 – From the implementation of the full roll-out of 1140 hours, childminders delivering the funded entitlement must have either obtained the benchmark qualification for ELC practitioners or, if they are still within their first 5 years of delivering the funded hours, be working towards achieving this qualification.
- Sub-criteria 1.3 – The staffing structure in the setting is adequate to meet the recommended adult to child ratios.
- Sub-criteria 1.4 – All childminders delivering the funded entitlement are achieving a minimum of 12 hours per year of Continuous Professional Learning.
- Sub-criteria 1.5 – All childminders newly registered to deliver ELC within the last year have undertaken appropriate induction.

Criteria for All Settings including Childminders

CRITERIA 2 – Development of children’s cognitive skills, health and wellbeing

- Sub-criteria 2.1 – Care Inspectorate quality evaluations are good or better on the theme relating to quality of care and support.
- Sub-criteria 2.2 – The setting must have a framework to support children’s learning that is informed by national guidance and is appropriate to support individual children’s development and learning focused on active learning through play.

CRITERIA 3 – Physical Environment

- Sub-criteria 3.1 – Care Inspectorate quality evaluations are good or better on the theme relating to quality of environment.
- Sub-criteria 3.2 – Children have daily access to outdoor play and they regularly experience outdoor play in a natural environment as part of their funded ELC offer.

CRITERIA 4 – Self – Evaluation and Improvement

- Sub-criteria 4.1 – The setting uses relevant national self-evaluation frameworks to self-evaluate and systematically identify strengths and areas for improvement.
- Sub-criteria 4.2 – The setting has a clear plan, developed in line with self-evaluation evidence, evidence from Education Scotland and Care Inspectorate scrutiny activities, research and national practice guidance, to continuously improve the quality of provision and outcomes for children and families.

CRITERIA 5 – Parent and carer engagement and involvement in the life of the setting

- Sub-criteria 5.1 – There is open and regular communication with parents and carers about the work of the setting and families are meaningfully involved in influencing change.
- Sub-criteria 5.2 – Parents and carers are supported to engage in their child’s learning and development.

CRITERIA 6 – Inclusion

- Sub-criteria 6.1 – The setting must comply with the duties under the Equality Act 2010.
- Sub-criteria 6.2 – The setting will be willing to provide appropriate support, including making any reasonable changes to the care and learning environment, to ensure that children’s additional support needs do not provide a barrier to them accessing a full range of experiences and meets their individual needs.

CRITERIA 7 – Business Sustainability

- Settings wishing to deliver the funded entitlement must be able to demonstrate that they are financially viable providers.

CRITERIA 8 – Fair Work Practices, including Payment of the Living Wage

- Settings, including childminders where workers are regularly employed to provide direct care to children, who agree to deliver the funded entitlement will, in accordance with the supporting guidance on Transition Options, pay the real Living Wage to all childcare workers

This is the Schedule Part 4 of the foregoing Early Learning and Childcare Contract between the Council and the Provider

Schedule Part 4: COSLA Early Learning and Childcare Expansion-Partnership Working

- Clear guidance in relation to expectations on both sides of the partnership;
- All employers providing the funded entitlement of Early Learning and Childcare will meet the National Standard requirements;
- Regular meetings between the local authority and funded providers with clear actions agreed where appropriate;
- Local authorities and funded providers identify a key contact person for partnership matters. Any changes to this should be communicated in a timely manner;
- Local authorities and funded providers should develop an agreement on the provision of training and sharing good practice to support the delivery of the expansion of ELC in their area;
- There should be transparency in terms of decision making by both local authorities and providers which impact on service delivery;
- There should be recognition of views and needs of all parties, with the needs of children and young people at the very centre of ELC delivery;
- The local democratic processes covering accountability for decisions around ELC provision will be clearly set out;
- Mutual respect for the skills, knowledge and expertise held by all parties.

This is the Schedule Part 5 of the foregoing Early Learning and Childcare Contract between the Council and the Provider

Schedule Part 5: ELC Child Admissions Policy

Early Learning and Childcare Policy for Admissions

Aberdeenshire Council has a statutory duty, under the terms of the Children and Young People (Scotland) Act 2014 to offer 600 hours of Early Learning and Childcare (ELC) to all eligible children. From August 2020, this will increase to 1140 hours of ELC in line with the Government's ELC expansion programme. All children are eligible for a place from the term following their third birthday with the exception of those children born from March 1st who will attend the following August. In addition, some children aged two will also be eligible. To ensure we fulfil this duty we work in accordance with the requirements and guidance identified in local and national documentation and legislation.

Aberdeenshire Council's Early Learning and Childcare provision reflects our value of ensuring the best start in life for children. Aberdeenshire Council recognises that families have a variety of needs and preferences with regard to ELC. We offer places in local authority schools, and in funded providers such as playgroups, private nurseries and childminders that are in partnership with the Council. While we try to meet individual preferences, we cannot guarantee a place at named nurseries. You will always be asked to provide a first, second and third choice of setting.

Curriculum for Excellence, Pre-Birth to 3 and Building the Ambition support the delivery of flexible and active ELC experiences that meet the needs of every child. This experience starts in Early Learning and Childcare settings and continues to the end of Primary 1, and beyond for some children.

Admissions Criteria for Local Authority Nurseries Only

Aged 2 to not yet attending school

Priority One

Two-year old children eligible under Children and Young People (Scotland) Act 2014

Priority Two

Children deferring entry from Primary One and staying at an ELC setting where an additional year of funding has been agreed by Aberdeenshire Council.

Priority Three

3 and 4-year-old children who are resident in Aberdeenshire who have a significant additional support need.

Priority Four

Children who are returning to the same ELC setting, including those who were eligible from aged two.

BY DATE OF BIRTH: -

Priority Five

Four-year olds from the local children's services network

Priority Six

Three-year olds from the local Children's services network who have a sibling already within the ELC setting and/or school.

Priority Seven

Three-year olds from the local children's services network

Priority Eight

Children whose childcare is within the local children's services network

Priority Nine

All other eligible children residing in Aberdeenshire

Priority Ten

Children residing outside Aberdeenshire

It should be noted that Funded Providers are not bound by the above admissions criteria but must ensure their admissions policy complies with all current equal opportunities legislation.

Local Documents

Education and Children's Services, Getting it Right for Aberdeenshire's Children:

www.girfec-aberdeenshire.org

Right support, Right place, Right time

<https://www.aberdeenshire.gov.uk/media/16803/right-support-right-place-right-time-a-guide-for-parents.pdf>

National Documents

A Blueprint for 2020: The Expansion of Early Learning and Childcare in Scotland – consultation analysis

<https://www.gov.scot/publications/blueprint-2020-expansion-early-learning-childcare-scotland-consultation-analysis-report/>

The Scottish Government and COSLA. *The Early Years Framework: Part 1 and 2* (2008). The Scottish Government. Edinburgh.

www.scotland.gov.uk/Publications/2009/01/13095148/0

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This is the Schedule Part 6 of the foregoing Early Learning and Childcare Contract between the Council and the Provider

Schedule Part 6: Payment Terms

1. Price

- 1.1. In exchange for the Provider providing the Services for Funded Placements in accordance with the Contract, and subject to Scottish Government funding for Early Learning and Childcare, the Council will pay the Provider the following Price for the performance of the Services: -
 - 1.1.1. **£5.31 (Five Pounds Thirty-One Pence)** per hour of Early Learning and Childcare, per eligible Child (but excluding Eligible 2 Year Olds);
 - 1.1.2. **£6.00 (Six Pounds)** per hour of Early Learning and Childcare per Eligible 2-Year-Old; and
 - 1.1.3. **£2.50 (Two pounds Fifty Pence)** for the provision of a Meal per Child.
- 1.2. The Price is based on the number of Eligible Children attending the ELC Setting, the hours they attend, and number of lunches claimed.
- 1.3. The Price payable by the Council to the Provider per Fully Loaded Eligible Child will not exceed 1140 Funded Placement hours and the Council is not liable to meet any payment of the Price that exceeds that amount.
- 1.4. For the avoidance of doubt, the Price does not include payment for milk or a healthy snack for Children attending Funded Placements, these will be subject to a separate agreement.
- 1.5. The Council may, at its sole discretion, offer an additional payment to the Provider for the provision of additional services in respect of additional support needs, in terms of the Education (Additional Support for Learning) (Scotland) Act 2004.

2. Payment Terms

- 2.1 It is the responsibility of the Provider to request funding from the Council for any Child seeking funding for a Funded Placement within thirty (30) Working Days of the date of the delivery of the Services to any Child (the "**Submission Period**") using the relevant forms as detailed in the Early Years Admissions Policy. The Council shall have no liability to make payments to the Provider in respect of payment requests received after the expiry of Submission Period. The Council will not consider or accept retrospective requests for payment for any Child for any payment for a service where the Council has not yet agreed a Funded Placement. Payment will be made for any relevant claim only once a Funded Placement is approved by the Council.
- 2.2 Payment for a Funded Placement shall be made in monthly instalments to the Provider. Payment will be made subject to continued performance of the Service during the Period of Contract.
- 2.3 Where any subsequent payments are due these will be adjusted to reflect the actual information submitted by the Provider in accordance with the Early Learning and Childcare Admissions Policy.

- 2.4 The method of payment to the Provider will be Banker's Automated Credit Systems Transfer (BACS) in monthly instalments being paid in arrears throughout the year.
- 2.5 In the event of an overpayment of the Price (including circumstances where monies have been claimed from the Council for an Eligible Child which amounts to more than the total entitlement for said Eligible Child) the sum equal to the amount of the overpayment shall be repayable to the Council and shall be deducted by way of adjustment to the Price paid by the Council in subsequent instalments.
- 2.6 The Council will not reclaim funding where funded entitlement cannot be delivered for short periods, such as individual children being absent due to illness or holidays as notified by the parent(s)/ guardian(s)/ Carer(s). In certain circumstances (e.g. illness) funding may be continued for a child's absence for longer periods of time, where the Provider has the relevant documentary evidence from parent(s)/ guardian(s)/ carer(s). This will be considered at the discretion of the Early Years' Service. Payment in circumstances such as premises being closed as a result of an emergency, loss of services, adverse weather/snow days or other unforeseen circumstances will be considered on a case by case basis. Information should be provided to the Early Years' Service for consideration as soon as the situation is known and in advance of closure where possible.
- 2.7 Payment by the Council of the Price does not imply acceptance by the Council that the Service has been performed satisfactorily.
- 2.8 The Council shall be entitled to recover from the Provider any of the payments made in Conditions 1.1.1, 1.1.2, 1.1.3 or 1.4 of this Schedule Part 6 in respect of services where the Service has not been performed or has not been performed to the Council's satisfaction, acting reasonably, or where the Contract has been terminated in accordance with the Conditions of Contract and such repayment shall be due within 30 days of the Provider's receipt of a written demand for the same from the Council.

This is the Schedule Part 7 of the foregoing Early Learning and Childcare Contract between the Council and the Provider

Schedule Part 7: Insurance Requirements

Employers' Liability and Public Liability Insurance

For the duration of this Agreement and for a minimum of 6 years after its termination or expiry, the Provider shall maintain in force with reputable insurers:

- Employer's liability insurance* in the sum of not less than **TEN MILLION POUNDS (£10,000,000)** in respect of any one incident and unlimited as to numbers of claims; and
- Public liability insurance in the sum of not less than **FIVE MILLION POUNDS (£5,000,000)** in respect of any one incident and unlimited as to numbers of claims.

* where applicable under the Employers' Liability (Compulsory Insurance) Act 1969

Statutory Third-Party Motor Vehicle Insurance

Where vehicles are to be used by the Provider in the performance of the Services under the Agreement, the Provider shall:

- maintain in force as a minimum, third-party motor vehicle insurance in connection with the vehicular transport of Children arising from the performance of the Services;
- ensure that any vehicle used for the performance of the Services:
 - is registered with the DVLA
 - has up to date vehicle tax;
 - has a current MOT certificate
 - is maintained in safe condition and considered roadworthywhether the vehicle in question is owned by the Provider or any other person; and
- ensure that any person appointed to drive a vehicle in the performance the Services shall have a valid vehicle license.

This is the Schedule Part 8 of the foregoing Early Learning and Childcare Contract between the Council and the Provider

Schedule Part 8: Information Sharing Protocol

INFORMATION SHARING PROTOCOL

BETWEEN:

(1) **ABERDEENSHIRE COUNCIL**, a local authority incorporated under the Local Government etc. (Scotland) Act 1994, having its principal offices at Woodhill House, Westburn Road, Aberdeen, AB16 5GB (the “**Council**”); and

(2) [], a [company/ sole trader/ unincorporated association] [incorporated under the Companies Acts (Company Number []) and having its registered office [place of business] at [] (the “**Provider**”).

Together the “**Parties**” and individually, each a “**Party**”

WHEREAS:

(A) An agreement dated [] was entered into between the Council and the Provider for the provision of Early Learning and Childcare Services (the “**Agreement**”); and

(B) The Council and Provider have agreed to enter into this Information Sharing Protocol (the “**ISP**”) in order to set out the basis upon which Personal Data will be collected, processed, stored and shared between them in accordance with terms of the Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

The following definitions and rules of interpretation apply in this ISP.

1.1 Definitions

Defined Term	Meaning
Agreed Purposes	Means the purposes set out in the Schedule Part 1 and “Agreed Purpose” shall mean any one of them;
Council Personal Data	means Personal Data which the Council shares with, transfers or otherwise gives access to, the Provider (or the Provider’s staff) for the relevant Agreed Purpose;
Data Controller	has the meaning given to “controller” under the GDPR;
Data Processor	has the meaning given to “processor” under the GDPR;
Data Protection Legislation or DPA	means (i) the General Data Protection Regulation (Regulation (EU) 2016/679) (the “ GDPR ”), the Law Enforcement Directive (Directive (EU) 2016/680) (unless and until they are no longer directly applicable in the UK) and any applicable national implementing Laws as amended from time to time; (ii) the Data Protection Act 2018 to the extent that it relates to Processing of Personal Data and privacy; and (iii) all applicable Law about the

	Processing of Personal Data and privacy, including the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003);
Data Security Breach	Means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure or, or access to the Shared Personal Data;
Data Subject	has the meaning given in the GDPR;
Data Subject Request	a request made by, or on behalf of, a Data Subject in accordance with their rights under the Data Protection Legislation, to access their Personal Data;
Information Commissioner's Office	means the regulatory authority responsible for the protection of information rights and personal data in the United Kingdom;
Personal Data	has the meaning given in the GDPR;
Process	has the meaning given in the GDPR, and " Processing " or " Processed " shall be construed accordingly;
Privacy Notice	Means a notice notifying a Data Subject, or his/her representative, as to the collection, use and sharing of his /her Personal Data and any other information required in terms of the Data Protection Legislation.
Provider Personal Data	Means any Personal Data which the Provider shares with, transfers or otherwise gives access to, the Council in accordance with the relevant Agreed Purpose.
Retention Period	Means the period for which the Parties agree that they may retain Shared Personal Data received from the other Party, as set out in Part 1 of the Schedule.
Shared Personal Data	Means Council Personal Data and Provider Personal Data.
Schedule	Means the schedule appended to this ISP.

- 1.2 In this ISP words and expressions defined in the Agreement shall have the same meaning in this ISP, except where they have been given a defined meaning in this ISP (in which case the meaning given in this ISP shall apply unless otherwise stated).
- 1.3 The Agreement shall remain effective and unaltered except as amended by this ISP.
- 1.4 In the case of any inconsistency or conflict between this ISP and the Agreement, this ISP shall take precedence but only to the extent of such inconsistency or conflict.
- 1.5 Clause, schedule and paragraph headings shall not affect the interpretation of this ISP.
- 1.6 The Schedule forms part of this ISP and shall have effect as if set out in full in the body of this ISP. Any reference to this ISP includes the Schedule.
- 1.7 Unless the context otherwise, requires, words in the singular shall include the plural and, in the plural, shall include the singular.

- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.9 References to clauses and the Schedule are to the clauses and Schedule of this ISP and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.10 In the case of any ambiguity between any provision contained in the body of this ISP and any provision contained in the Schedule, the provision in the body of this ISP shall take precedence.
- 1.11 A reference to **writing** or **written** includes email.
- 1.12 Unless the context otherwise requires the reference to one gender shall include a reference to the other genders.

2. SHARED PERSONAL DATA AND AGREED PURPOSES

- 2.1 This clause 2 sets out the framework for the sharing of Personal Data between the Parties as Data Controllers. It defines the principles and procedures that the Parties shall adhere to and the responsibilities the Parties owe to each other in support of the Agreed Purposes set out in the Part 1 of the Schedule.
- 2.2 The Parties agree that the types of Personal Data which may be shared between them during the Period of Contract, for the relevant Agreed Purposes and the related categories of Data Subjects, are as set out in Part 1 of the Schedule.
- 2.3 The Council shall take all reasonable steps to ensure that the Council Personal Data is accurate on its transmission to the Provider and the Provider shall take all reasonable steps to ensure that the Provider Personal Data is accurate on its transmission to the Council.
- 2.4 The Parties agree that the Shared Personal Data:
- (a) must be proportionate, and not irrelevant, with regard to the relevant Agreed Purpose; and
 - (b) shall be limited to the Personal Data described in Part 1 of the Schedule.
- 2.5 The Parties agree that, unless as otherwise required by Law, the Provider may only Process Council Personal Data, and the Council may only Process Provider Personal Data:
- (a) to the extent, and in such a manner, as is necessary for the relevant Agreed Purpose; and
 - (b) in a way that is compatible with the relevant Agreed Purpose.

3. COMPLIANCE WITH DATA PROTECTION LEGISLATION

- 3.1 Each Party shall take all necessary steps to ensure that in performing its obligations under this ISP, it complies at all times with the Data Protection Legislation.

4. FAIR AND LAWFUL PROCESSING

- 4.1 Each Party shall ensure that it Processes the Shared Personal Data fairly and lawfully on the relevant legal grounds set out in Part 1 of the Schedule.
- 4.2 Each Party shall ensure that when collecting any Personal Data from a Data Subject which shall become Shared Personal Data, the Data Subject is first provided with an appropriate Privacy Notice.

- 4.3 The Provider shall, in respect of Provider Personal Data, ensure that its Privacy Notices are clear and provide sufficient information to the Data Subjects for them to understand: what of the Provider Personal Data it is sharing with the Council; the circumstances in which it will be shared; the purposes for the data sharing; the fact that the Council will be receiving the Provider Personal Data; and any other information as required in terms of the Data Protection Legislation.
- 4.4 The Council shall, in respect of Council Personal Data, ensure that its Privacy Notices are clear and provide sufficient information to the Data Subjects for them to understand what of the Council Personal Data it is sharing with the Provider, the circumstances in which it will be shared, the purposes for the data sharing, the fact that the Provider will be receiving the Council Personal Data and any other information as required in terms of the Data Protection Legislation.
- 4.5 To the extent that any Shared Personal Data is to be Processed by either Party on the basis of consent, the Party collecting that Shared Personal Data shall ensure that such consent is in a form which complies with the requirements of the Data Protection Legislation.

5. SECURITY AND TRAINING

- 5.1 Each party agrees to implement appropriate technical and organisational measures to ensure a level of security which protects the Shared Personal Data in its possession against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure.
- 5.2 When implementing the appropriate technical and organisational measures referred to in clause 5.1, each Party shall have regard to:
- (a) the nature, scope and context of the proposed Processing of Shared Personal Data;
 - (b) the particular risks arising in connection with the proposed Processing of the Shared Personal Data, in particular the harm which would result from unauthorised or unlawful Processing or accidental loss or destruction of or damage to such Shared Personal Data; and
 - (c) the state of technological development and the cost of implementing such measures.
- 5.3 The Provider shall, on the Council's request in writing, provide a written description to the Council of the technical and organisational methods referred to in clause 5.2 employed by them for Processing Council Personal Data.
- 5.4 The Council shall, on the Provider's request in writing, provide a written description to the Provider of the technical and organisational methods referred to in clause 5.2 employed by them for Processing Provider Personal Data.
- 5.5 It is the responsibility of each Party to ensure that its personnel required to access the Shared Personal Data are informed of the confidential nature of the Shared Personal Data and have undergone adequate training in the care, protection and handling of Personal Data in accordance with the appropriate technical and organisational measures referred to in paragraph clause 5.2 and the Data Protection Legislation (the level, content and regularity of such training shall be proportionate to the person's role, responsibility and frequency with respect to their handling and processing of the Shared Personal Data).

6. DATA SUBJECT'S RIGHTS

- 6.1 Where a Party receives a Data Subject Request relating to Shared Personal Data held by that Party, then that Party shall comply with all applicable Data Protection Legislation in respect of the Data Subject Request.
- 6.2 The Parties agree that the responsibility for complying with a Data Subject Request falls to the Party receiving the Data Subject Request in respect of the Shared Personal Data held by that Party.
- 6.3 Each Party shall have in place effective policies and procedures to ensure compliance with the Data Protection Legislation in the event of a Data Subject Request.
- 6.4 The Parties agree to provide such assistance as is reasonably required to each other to enable them to comply with Data Subject Requests and to respond to any other queries or complaints from Data Subjects.

7. DATA SECURITY BREACHES

- 7.1 Where a Data Security Breach occurs in respect of Shared Personal Data held by a Party that Party shall:
- (a) notify the other Party as soon as possible and, in any event, within twenty-four (24) hours of identification of the Data Security Breach; and
 - (b) be responsible for any required notification of that Data Security Breach to the Information Commissioner's Office.
- 7.2 The notification referred to in clause 7.1 shall as a minimum detail:
- (a) the nature of the Data Security Breach including where possible, the categories and approximate number of Data Subjects concerned, and the categories and approximate number of Personal Data records concerned;
 - (b) the likely consequences of the Data Security Breach; and
 - (c) the measures taken or proposed to be taken by the Party issuing the notice to address the Data Security Breach, including, where appropriate, measures to mitigate its possible adverse effects.
- 7.3 Each Party shall have in place effective policies and procedures to ensure compliance with the Data Protection Legislation in the event of a Data Security Breach.
- 7.4 The Parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Data Security Breach in an expeditious and compliant manner.

8. TRANSFER OF PERSONAL DATA

- 8.1 The Provider shall not disclose or transfer Council Personal Data:
- (a) to any third party (including to its agents, sub-contractors, professional advisers); or
 - (b) outside the European Economic Area,

except with the express written consent of the Council and in accordance with any additional terms which the Council imposes on such disclosure or transfer.

8.2 The Council shall not disclose or transfer Provider Personal Data:

- (a) to any third party (including to its agents, sub-contractors or professional advisers); or
- (b) outside the European Economic Area,

except with the express written consent of the Provider and in accordance with any additional terms which the Provider imposes on such disclosure or transfer.

9. DATA RETENTION

9.1 The Provider shall not Process Council Personal Data for longer than is necessary to carry out the relevant Agreed Purposes, except that it may retain the Council Personal Data in accordance with the relevant Retention Period.

9.2 The Council shall not Process Provider Personal Data for longer than is necessary to carry out the relevant Agreed Purposes, except that it may retain the Council Personal Data in accordance with the relevant Retention Period.

10. REVIEW OF DATA SHARING ARRANGEMENTS

10.1 The Parties shall review the effectiveness of the data sharing provisions in this clause ISP every twelve (12) months, having consideration to the aims and purposes set out in Part 1 of the Schedule.

11. RESOLUTION OF DISPUTES WITH DATA SUBJECTS OR THE INFORMATION COMMISSIONER

11.1 In the event of a dispute or claim brought by a Data Subject or the Information Commissioner concerning the processing of Shared Personal Data against either or both Parties, the Parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.

11.2 In the event that a dispute cannot be resolved by the Parties in accordance with clause 11.1, the Parties shall seek to resolve it in accordance with the dispute resolution procedure provided in the Agreement.

12. LAW AND JURISDICTION

12.1 This ISP shall be governed by and construed in accordance with the law of Scotland. The Parties irrevocably submit to the exclusive jurisdiction of the Scottish Courts in relation to any dispute arising from this ISP. IN WITNESS WHEREOF these presents consisting of this, the preceding pages and the Schedule attached hereto are executed as follows:

Signed:

Signed:

.....

.....

subscribed on behalf of the **Council** by:

subscribed on behalf of the **Provider** by:

.....

.....

(print full name of above) a duly authorised signatory
and Proper Officer of the **Council**

(print full name of above) a duly authorised signatory
of the **Provider**

.....

.....

Director

Dated thisday of.....2020

Dated thisday of.....2020

Witness Signature

Witness Signature

Witness (Full Name)

Witness (Full Name)

Witness (Address)

Witness (Address)

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Place of Signature

Place of Signature

This is the Schedule referred to in the foregoing ISP between the Council and the Provider

Schedule – Part 1

Agreed Purposes, Types of Personal Data and Categories of Data Subject, Legal Grounds for Sharing Personal Data and Retention Periods

Agreed Purpose (No)	Agreed Purpose (description)	Types of Personal Data and Categories of Data Subject	Legal Ground/s for Sharing Personal Data	Retention Period
1	To comply with any legal obligation to which the Council or Provider is subject;	<p>Child/user of services:</p> <ul style="list-style-type: none"> - first name; - middle name(s); - surname; - date of birth; - characteristics (e.g. gender, ethnicity and disability/ additional learning needs) <p>Parent/Guardian of child/user of services:</p> <ul style="list-style-type: none"> - parent/guardian personal email address; - parent/guardian personal address, - whether from workless household or in receipt of qualifying benefits (eligibility for free meals) 	<p>i. processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller (GDPR Art 6. 1 (e)) or,</p> <p>ii. processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data (GDPR Art 6. 1 (f).</p> <p>iii. consent.</p>	4 years
2	To enable effective management and planning of early years services and facilities by receiving comprehensive	As above	As above	As above

	demographic information;			
3	To support the efficient and effective communication of early years services to parents and guardians of children using the services;	As above	As above	As above
4	to verify the eligibility of users of the early years' services;	As above	As above	As above
5	to support any investigations, or matters pertaining to, child safety, wellbeing, safeguarding or the prevention or detection of crime in order to ensure a secure and safe environment for users of early years services.	As above	As above	As above

This is the Schedule Part 9 of the foregoing Early Learning and Childcare Contract between the Council and the Provider

Schedule Part 9: Deferred Entry Guidance

Parents/carers of children wishing to delay the entry of their child into primary school AND access an additional year of funded Early Learning and Childcare should request a delayed entry using a *Delayed Entry Request Form*.

All parents wishing to request a delayed entry to primary one for their child must apply as part of the Early Learning and Childcare admissions process.

- Those children with **January and February birthdays** applying for delayed entry will automatically be granted a deferral. Section A of the Delayed Entry form should be completed.
- Those children with **August to December birthdays** will require further discussion with the headteacher/manager of the setting attended **and essentially with the receiving Headteacher for Primary 1, for decision making process**. Following this, sections A and B of the Delayed Entry Request form should be completed by the parent/carer and Section C by the Headteacher.

N.B. For all delayed entry requests and additional support needs requests the setting must retain a place for that child until the local Delayed Entry/Additional Support Needs Cluster Panel decision has been confirmed.

General principles

A delayed entry to primary one should only be considered for those children who will gain a tangible and direct benefit from additional time within the nursery environment. Delay is not appropriate for those children with the level of needs which are considered likely to remain for a period of time in excess of the delayed year. In these instances, a more thorough review of the child's support needs is required through the MAAP or SAAP process.

Examples of instances where an additional year in nursery may be appropriate could include:

- Those children who have had recent medical procedures completed which will enable them to rapidly progress in an additional year.
- Those children who have missed more than 30% of Early Learning and Childcare sessions available through illness or other factors out with their control
- Those children who have had no access (or equivalent experiences) to Early Learning and Childcare provision prior to entry to primary one, for example those children who have recently arrived in the UK
- Those children who have experienced significant change during their pre-school year. Examples of this could include those children who have had inconsistent care arrangements or placements
- Those children who have a Sept-Dec birthday where supporting evidence is significant and those born very prematurely.

This is the Schedule Part 10 of the foregoing Early Learning and Childcare Contract between the Council and the Provider

Schedule Part 10: Provider Representative and Council Representative

Each of the Parties to this Contract nominate the following to represent them as follows:

The Provider's Representative is as follows:

Name & Designation:

Address:

Address:

Address:

Telephone no:

The Council's Representative is as follows: -

Name & Designation: James Martin, Early Years Service Manager

Address: Woodhill House

Address: Westburn Road

Address: Aberdeen, AB16 5GB

Telephone no: 01467 535310

Each party may change their nominated representative at any time by giving written notice to the other in accordance with Condition 8 (Notices) providing new details using the format contained in this Schedule.