



**EARLY LEARNING AND CHILDCARE CONTRACT**

between

**ABERDEEN CITY COUNCIL**

and

**[Provider]**

Relative to: [Setting NAME]

Agreement Reference Number:

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| <b>Early Learning and Childcare Contract between</b>   |  |
|--|--|
| <p>Aberdeen City Council, a local authority constituted under the Local Government etc (Scotland) Act 1994, with principal place of business at Marischal College, Broad Street, Aberdeen AB10 1AB (the "Council")</p> | <p>Funded Provider (the "Provider")</p> <p>Service Provider Name:</p> <p>Registered Company Name:</p> <p>Registered Company Number:</p> <p>Address of Registered Company Office:</p> <p>Care Inspectorate Provider Registration Number:</p> <p>If entered in the Office of the Scottish Charity Regulator (OSCR) [or equivalent] register, please state</p> <ul style="list-style-type: none"> <li>• Charity Register (eg OSCR):</li> <li>• Charity Number:</li> <li>• Charity Name (as entered on Register):</li> <li>• Any other name Charity is commonly known as:</li> </ul> |

|   |
|---|
| <p>Service Name (the "Setting"):</p> <p>Service Address:</p> <p>Service Telephone Number:</p> <p>Care Inspectorate Service Registration Number:</p> |
|---|

## 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 by the Letter of Award 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.
- 1.2. Status and Conduct
  - 1.2.1. At all times during the Period of Contract the Provider shall be 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 the parties, 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.

## 2. Duration of Contract

- 2.1. Commencement Date of the Contract: **17th August 2020** (the “Commencement Date”).
- 2.2. End Date of the Contract: **16<sup>th</sup> August 2024** - unless terminated earlier under the terms of this Contract.
- 2.3. Extension Date of the Contract: NOT USED.

## 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.
- 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 [Funding Follows the Child and National Standard](#).
- 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**

It shall be an essential condition of the Contract that the Provider binds and obliges itself to perform the Contract in accordance with the Law (which includes environmental, social and employment law for the avoidance of doubt) and to provide the Services in accordance with the requirements of the Council. During the Period of Contract the Provider shall produce such evidence as the Council may reasonably require to satisfy the Council that the Provider has complied 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 to the Council's reasonable satisfaction 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 to the Council's reasonable satisfaction, 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:
- (a) it has not been convicted of any of the offences detailed in Regulation 58(1) of the Public Contracts (Scotland) Regulations 2015;
  - (b) none of the grounds detailed in Regulations 58(3) or 58(8) of the Public Contracts (Scotland) Regulations 2015 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 immediately 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 ascertains to its satisfaction 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 at its discretion to terminate the Contract all in terms of 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.** The Council recognises that the Provider retains control over the business model that the Setting offers, including the flexibility offered to Parents/Carers receiving the early learning and childcare entitlement.
- 5.4.** Subject to the terms herein, the Council will not require the Provider to change its business model for Settings delivering the funded entitlement, however the Council and Provider may work together to discuss any proposed changes or improvements to the Service (for example operating hours) that may affect the delivery or quality of the Service. Agreed changes shall be implemented in accordance with the terms of this Contract.
- 5.5.** 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, and any subsequent revisions to these principles, 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 be trained in child protection 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 year.
- 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, Individuals, volunteers and Parents/Carers and that all Individuals and volunteers 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 37.7 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 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 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 same timescale 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: (1) 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; and (2) the Provider shall, upon request by the Council, provide the foregoing information in so far as it relates to other premises owned, managed or controlled by the Provider and not subject to this Contract, or to the Service, within such timescale set by the Council in its request. 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 Nominated Officer, to the address shown in Schedule Part 13 for the Party concerned 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 Nominated Officer and/or address for service of notices, by sending a notice in accordance with this condition.

## **9. Inspections, Information and Monitoring**

**9.1.** The Provider will:

- 9.1.1.** ensure the Setting is open for inspections by or under the direction of the Regulatory Authority and afford those carrying out the inspection all necessary assistance to carry out such inspections;
- 9.1.2.** develop an action plan for improvements (where appropriate) in consultation with the Council's Representative prior to returning such plan to the Care Inspectorate;
- 9.1.3.** provide to the Council, via the Council's Representative within one week of publication, and make available to Parents/Carers on request, a copy of the latest reports pertaining to the latest inspections carried out by the Regulatory Authority together with the Provider's plans for improvement arising out of any requirements or recommendations made a Regulatory Body;
- 9.1.4.** publicly display any reports relative to Care Inspectorate grading or information at all times, as required by Law and Guidance;
- 9.1.5.** publicly display any plans for improvement at all times as required by Law and Guidance;
- 9.1.6.** make the complaints register, referred to at condition 20.2, available to the Care Inspectorate, Education Scotland (HMIE), the Council and/or any other person authorised by Scottish Ministers or Law to view the complaints register;
- 9.1.7.** inform the Council immediately of any financial difficulties that it may be experiencing including (without limitation) when monthly expenditure exceeds monthly income for more than 2 months in a row;
- 9.1.8.** inform the Council by email or telephone within 24 hours of receipt by the Provider of notification of any complaint being investigated by the Care Inspectorate and provide evidence to the Council of compliance by the Provider with any requirements imposed by the Care Inspectorate within the time specified;
- 9.1.9.** inform the Council within three (3) Working Days of any disciplinary action by the Provider and/or from any regulatory body (including Care Inspectorate and SSSC) for any member of staff as a result of a complaint; and
- 9.1.10.** accurately complete the annual Early Learning and Childcare (ELC) Census within the timescales requested by the Scottish Government.

**9.2.** Without prejudice to the other remedies available to it at Law or under this Contract, the Council may exercise its right to apply an Enhanced Monitoring Period to the Provider or any of its Settings where there is an unreasonable risk of service failure. This shall include but is not be limited to, the following:

- 9.2.1.** Relative to Care Inspectorate inspections and registration:
    - 9.2.1.1.** The Setting has had requirements or other restrictions placed on the Care Inspectorate registration held by the Provider and/or as relative to the Setting;
    - 9.2.1.2.** Where there have been other material changes to the Care Inspectorate registration to the Setting or Provider.
  - 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;
  - 9.2.3.** The Council reasonably considers that an Enhanced Monitoring Period is necessary in order to reduce or minimise any potential 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; and
  - 9.2.4.** The Council reasonably considers, through review of one of the documents outlined in conditions 9.1.1 to 9.1.10, that there is a concern of the quality of provision;
  - 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 a 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.** Without prejudice to Condition 8, 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 appropriate support for the Provider to assist the Provider to make sufficient improvements to reduce or remove the risk of service failure however the Provider is, at all times, responsible for making any improvements. Any support offered will be at the sole discretion of 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 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;
  - 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 effect 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 a Enhanced Monitoring Period.

Expiry of the Enhanced Monitoring Period:

- 9.4.5.** If the Enhanced Monitoring Period lapses without sufficient improvement being made 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.** Without prejudice to Condition 8, 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 effect 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.

## **12. Application Forms**

### **12.1. Deferred Entry**

- 12.1.1.** In the case of deferred entry to primary school, a child whose fifth birthday falls in January or February will continue to be an eligible pre-school child during the deferred year and therefore entitled to the mandatory amount of EL&C during the deferred year.
- 12.1.2.** A child whose fifth birthday falls in the period beginning on 1 August and ending on 31 December, and whose parents opt to defer entry to primary school to the following school year, is not an eligible pre-school child and is therefore not entitled to EL&C for the deferred year. Whether or not the Council will secure the availability of (and fund) EL&C in such cases is at the discretion of the Council. Parents requesting a Council EL&C placement or a funded EL&C placement elsewhere for such a child in such circumstances must first obtain the support of the provider currently being attended by the child in order to progress a “Pre-School – Deferred Entry Request” (Schedule Part 5).
- 12.1.3.** Deferred Entry Requests in terms of Clause 12.1.2 above shall be submitted to, and considered by, the Council’s Deferred Entry Panel (established by the Council’s Service Manager (Early Years)) which will meet in February of each year.
- 12.1.4.** Children who turn five before the start of the school year in August are normally required to start primary school that August but, in exceptional cases, they may be offered a funded EL&C place for an additional year if the Deferred Entry Panel believes that this is in the child’s best interests.

### **12.2. Application Form**

- 12.2.1.** The Provider must complete the Application Form set out in Schedule Part 6 (the “Application Form”) in respect of each child in respect of whom funding from the Council for EL&C (“Funding”) is claimed.
- 12.2.2.** An Application Form must be completed annually by the Provider in respect of each such child, regardless of whether or not that child attended the Provider Establishment during the previous school year.
- 12.2.3.** In completing any Application Form, the Provider shall:
  - identify the hours during which the child shall attend the Provider Establishment
  - attach evidence of the child’s name and date of birth (e.g. copy birth certificate or passport); and
  - specify the date on which the child commenced his/her placement at the Provider Establishment.

### **12.3. The Provider shall also:**

- ensure that parents fully complete Part A of the Application Form;
- sign Part B of the Application Form only after Part A has been completed;
- ensure that the completed Application Form is submitted to the Council; and
- ensure that it only submits to the Council Application Forms in respect of Eligible children.

## **13. Price and Payment**

### **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 7 (Price and Payment Terms).
- 13.1.2.** The Price will cover the cost of the Services delivered under this contract.
- 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 7 (and in line with National Standard criteria 9 – Payment Processes).

### **13.2. Inflationary and real Living Wage increases**

- 13.2.1.** In line with [Funding Follows the Child and National Standard](#) for early learning and childcare providers and [Guidance for setting sustainable rates from August 2020](#), inflationary and real Living Wage increases will be reviewed annually, to understand their impact on costs for Providers.
- 13.2.2.** 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 the overall level of funding agreed between Scottish Government and local government for the expanded ELC hours. The current multi-year funding agreement between Scottish Government and COSLA for the provision of ELC is confirmed until 2021-22.

### **13.3. Parents/Carers Charges and additional services**

- 13.3.1.** 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:
  - 13.3.1.1.** No upfront payments, including a deposit or any other payment, in respect of the Funded Hours;
  - 13.3.1.2.** No top-up fees may be charged to Parents/Carers relating to the Funded Hours; and
  - 13.3.1.3.** 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.
- 13.3.2.** 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.
- 13.3.3.** 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”).

- 13.3.4.** 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.
  - 13.3.5.** 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.
- 13.4. Sustainable Rate Process**
- 13.4.1.** 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).
  - 13.4.2.** The Provider must provide information to the Council, if they wish to take part in the sustainable rate setting process.
  - 13.4.3.** 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](#)).
  - 13.4.4.** 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](#).

## **14. Workforce including Fair Work Practices and Living Wage**

### **14.1. Fair Work Practices**

- 14.1.1.** Fair Work Practices are particularly relevant where the quality of the service being delivered is directly affected by the workforce engaged in the contract. Funding Follows the Child acknowledges that fair work practices, including payment of the real Living Wage is a key indicator of quality within Settings. The Scottish Government considers the payment of the real Living Wage to be a significant indicator of a provider’s commitment to Fair Work practices and that payment of the real Living



Wage is one of the clearest ways to demonstrate that it takes a positive approach to its workforce.

- 14.1.2.** Criteria 8 of the National Standard is clear that the Provider, by entering the Contract with the Council, in accordance with the supporting guidance on [Transition Options](#), to deliver the funded entitlement, will commit to adopting and demonstrating Fair Work practices in their setting to all childcare workers delivering the funded entitlement. In committing to Fair Work practices, settings must take into account:
  - 14.1.2.1.** a fair and equal pay policy across the Setting, (including a commitment to supporting the real Living Wage);
  - 14.1.2.2.** 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;
  - 14.1.2.3.** 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;
  - 14.1.2.4.** security of employment and hours of work, avoiding exploitative employment practices such as unfair zero hours contracts, or pregnancy and maternity discrimination;
  - 14.1.2.5.** 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
  - 14.1.2.6.** 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. These figures are calculated annually and are usually announced in November each year, and it is expected that Providers will reflect the new rate by 1 April in the following year.
  - 14.2.2.** The Scottish Government considers the payment of the real Living Wage to be a significant indicator of how a Provider of early learning and childcare funded provision is committed to Fair Work practices, as set out in Criteria 8 of the National Standard.
  - 14.2.3.** To support this, the Scottish Government and COSLA agreed a multi-year funding package which includes funding to enable the payment of sustainable rates to funded providers delivering the funded entitlement – including funding to enable payment of at least the real Living Wage to all childcare workers delivering the funded entitlement. The sustainable rate setting process has been developed 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](#).
  - 14.2.4.** 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.

## **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 in the event that 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, at all times, must ensure that the Setting environment(s) are safe and suitable for provision of the Service.
- 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 will, in addition to the Price, provide a range of benefits to the Provider.
- 16.2.** Benefits may include (but are not limited to) training programme resources, support for workforce planning, marketing and recruitment support, funding for staff to undertake relevant qualifications, grant funding for specific resources, building support and regular contact through local authority ELC meetings.
- 16.3.** The benefits will be determined by the Council taking account of the type of provision, location of the Provider and needs of the Children. The Council will work with Providers, in the spirit of partnership and co-operation, to determine the appropriate support package for local provision.
- 16.4.** The Council will retain sole responsibility for ensuring an appropriate support package is available during the Contract.
- 16.5.** The Provider will, at all times, retain responsibility for their own provision, and the quality of provision in the Setting during the 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**

- 18.1.** The Provider will fulfil its statutory obligations concerning the employment of Staff and at all times ensure it has a sufficient number of suitably trained, qualified and competent Staff in accordance with the 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, for example 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 (including as they may be, from time to time, revised 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 of 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**

For the purposes of this Condition 18.6 (Criminal Checks) the term “Individual” means any person that is involved in, or is being considered for involvement in the provision of the Services, and includes any Staff (as after defined) and the Provider where he/she is a natural person.

- 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](http://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:
    - (a) be a Registered Person and countersign and submit the aforesaid applications to Disclosure Scotland itself; or
    - (b) 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 relevant Interagency Policy and 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 9 (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 9 (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 against 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.

In respect of the use of Child in this condition 22 for the purpose of notification of Significant Events the terms are widened to include all children currently at or using the Setting not just a Child 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 an Individual, Child or any 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 of 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 the 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 co-operate 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 under this Contract outlining in detail how Child information will be collected, processed, stored and shared as part of the Service, and that substantially in the terms of Schedule Part 11 (Information Sharing Protocol),
- 25.1.9.2.** Not used.
- 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 only in accordance with instructions in accordance with the requirements of the Information Sharing Protocol 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 (including any other data processor, such as cloud computing suppliers, or contractors) 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 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 is provided to all members of Staff, and all Sub-Contractors in respect of personal data; and
- 25.1.9.8.** in accordance with the Information Sharing Protocol and that Staff and all Sub-Contractors process and hold information in a safe and secure manner in respect of any Child Information 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.
- 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 give consideration to the nature and impact of the changes required when making this instruction.
- 25.1.10.6.** The Provider must notify the Council of any actual or perceived risk to Personal Data held by them in connection with the provision of the Service. They must immediately notify the Council where there has been a loss of such Personal Data. 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 37.7.
- 25.1.10.9.** The Provider and the Council shall formally enter into the Information Sharing Protocol, in the format shown in these Schedule Part 11 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, 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 to 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 29.4.1 inclusive, the Council shall be entitled to terminate the Contract and any Funded Placements awarded thereunder, under condition 37.7 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.** The Provider shall submit the details of any change in their constitution 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, insofar as the aforementioned regulations apply to this Contract.
- 29.1.5.** Where a Provider wants to apply for a Contract for additional settings it may do so at the next available opportunity.

## **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 )

#### **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 Chief Officer of Integrated Children's and Family Services and the equivalent director of the Provider. Any instance involving any other type of issue to the Council's Director of Resources or a nominee at that level 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 by serving written notice.

- 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 accommodated to the fullest extent 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 relevant representative for both Parties (“the Nominated Officers”) 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 Nominated Officers fail to resolve the matter within the said fourteen (14) days, a meeting of all Parties shall be convened involving senior staff with line management responsibility for Nominated Officers in order to reach a solution or decide on an agreed Action Plan and time-scales for rectification of the breach.
- 37.5.** Failure to resolve such dispute by way of mutual agreement as per condition 37.4, then either Party may refer such dispute to an adjudicator for adjudication provided that if the Parties are unable to agree on a person to act as adjudicator then the adjudicator will be nominated at the request of either Party by the Chair or Vice Chair for the time being of Social Work Scotland.
- 37.6.** The decision of an adjudicator properly appointed in accordance with this contract will be binding on the Parties unless the Council and the Service Provider agree otherwise.

### **Material Breach**

- 37.7.** 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).
- 37.8.** 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).
- 37.9.** If the Registration Body 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 Registration Body about the cancellation or the period for making such representations has elapsed or the summary application to the Sheriff is being opposed.
- 37.10.** 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.
- 37.11.** In the circumstances described at condition 37.7 – 37.9, 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.
- 37.12.** The following are Material Breaches of the Contract by the Council:

- 37.12.1.** failing to make payment, within a reasonable timescale, in accordance with condition 13 (Price and Payment) and Schedule Part 7 (Price and Payment Terms);
  - 37.12.2.** offering any improper inducements or exerting unreasonable pressure upon potential or existing Parents/Carers or Child's Representative, or others with an interest;
  - 37.12.3.** 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.
- 37.13.** 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:
- 37.13.1.** 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 ;
  - 37.13.2.** operation of the Service without insurance cover as required under condition 19 above;
  - 37.13.3.** non-compliance with the requirements of the equalities legislation including without limitation the Equality Act 2010;
  - 37.13.4.** deliberate misuse of drugs and/or medicines by any Individual when delivering any aspect of the Service to any child whether that child is a Funded Placement or not;
  - 37.13.5.** abuse or neglect of any child or Child;
  - 37.13.6.** 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;
  - 37.13.7.** 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;
  - 37.13.8.** 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 sequestrated; 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;
  - 37.13.9.** offering any improper inducements or exerting unreasonable pressure upon potential or existing Child's Representatives, or others with an interest;
  - 37.13.10.** 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;

- 37.13.11.** committing any offence under the Prevention of Corruption Acts 1889 – 1916 and/or the Bribery Act 2010;
  - 37.13.12.** giving any fee or reward to any elected member or officer of the Council in order to secure an unfair gain or advantage;
  - 37.13.13.** being convicted of an offence under the provisions of Part 5 of the Public Services Reform (Scotland) Act 2010;
  - 37.13.14.** failing to supply information required by the Council as set out in Condition 15 (Business Continuity including Setting environment);
  - 37.13.15.** 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;
  - 37.13.16.** 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;
  - 37.13.17.** 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);
  - 37.13.18.** failure to comply with the Data Protection Legislation, the requirements of condition 25 or the Information Sharing Protocol;
  - 37.13.19.** 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;
  - 37.13.20.** 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
  - 37.13.21.** Failure to comply with the requirements of Condition 4 (Compliance).
- 37.14.** 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 Registration Body 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 Placements awarded to the Provider thereunder without notice, irrespective as to whether or not the Provider has made representations to the Registration Body about the cancellation or the period for making such representations has elapsed or the summary application to the Sheriff is being opposed.
- 37.15.** The Council shall advise the Registration Body of any material or persistent breach of the Contract by the Provider.

**37.16.** 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**

**37.17.** The Provider shall give the Council thirteen (13) weeks' written notice of its intention to;

**37.17.1.** Close the Setting;

**37.17.2.** Sell the Setting;

**37.17.3.** Substantially reconfigure the Service provision at one of more Setting;

**37.17.4.** Significantly change the facilities or amenities of the Setting; or

**37.17.5.** Move the provision of the Service to premises at a different location.

**37.18.** In the event that notice is served under condition 37.17 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.

**37.19.** 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.

**37.20.** 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.

**37.21.** 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 arising from statutory action by the relevant 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.

**37.22.** Right to Terminate

**37.22.1.** 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.

**37.22.2.** Notwithstanding the right to terminate in condition 37.22.1 above, where a party decides to give notice in respect of condition 37.22.1 they shall remain liable for any indemnities and liabilities extant and any costs associated with the termination.

**37.23.** General Provisions

**37.23.1.** During any period of notice referred to in condition 37.17 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.



- 37.23.2.** Neither Party shall be entitled to withhold performance of their obligations under the Contract and any Funded Placement hereunder during any period of notice.
- 37.23.3.** 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 as the case may be 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.
- 37.23.4.** 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.
- 37.23.5.** Notwithstanding the requirement in respect of assignation/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.
- 37.24.** Termination of the Contract under Regulation 73
- 37.24.1.** 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: -
- 37.24.1.1.** 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);
  - 37.24.1.2.** 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
  - 37.24.1.3.** 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.
- 37.24.2.** The Council shall give notice of termination to the Provider in writing and termination shall take effect as follows:
- 37.24.2.1.** 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;
  - 37.24.2.2.** 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
  - 37.24.2.3.** Where the Council has terminated the Contract and any Funded Placements awarded thereunder under Conditions 37.24.2.1 and 37.24.2.2 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 40 preceding pages, together with the Schedule in 13 parts, are annexed and executed as relative hereto by each party's authorised signatory as follows:

Signed:

.....

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

.....

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

.....

Dated this .....day of.....2020

Witness Signature .....

Witness (Full Name) .....

Witness (Address)

.....

.....

.....

.....

Place of Signature .....

Signed:

.....

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

.....

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

.....

Director

Dated this .....day of.....2020

Witness Signature .....

Witness (Full Name) .....

Witness (Address)

.....

.....

.....

.....

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: Identified / Defined Terms and Interpretation**

**Defined Terms**

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

| <b>Term</b>            | <b>Definition</b>  |
|------------------------|--|
| 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.  |
| Child                  | 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.<br><br>It may also include children that the Council chooses to place under their discretionary powers. |
| 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.   |

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| 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 in so far as confirmed in the Letter of Award.  |
| 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                     | Aberdeen City Council, a local authority constituted under the Local Government etc (Scotland) Act 1994, with principal place of business at Marishal College, Broad Street, AB10 1AB.  |
| 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 13.  |
| 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)  |

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|   | (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.   |
| 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. |
| 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.   |
| 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 used by the Council which shall be in force during the Period of Contract or any future system which replaces it.   |
| 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.   |
| 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.  |

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| Enhanced Monitoring Period         | means the period that is activated when a Provider/Setting is not meeting one or more of the criteria as described in Condition 9 (Inspections, Information and Monitoring) during which the Provider/Setting is given an opportunity to improve the quality of their provision 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:<br>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<br>b. any applicable guidance relative to the Law which the Council and/or the Provider has a duty to have regard to,<br>c. Care Standards<br>d. Guidance issued by the Council in respect of Early Learning and Childcare,<br>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<br>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.  |
| 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 11 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:<br>a) Any applicable common law, statute or proclamation or any delegated or subordinate legislation or regulation, including for the avoidance of doubt obligations relating to the payment of taxes and social security contributions;<br>b) All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties, and all such remedies and procedures from time to time provided for by or under the Treaties, as in accordance with the Treaties are without further enactment to be given legal effect or used in the United Kingdom unless and until any such right, power, liability, obligation, restriction, remedy or procedure is repealed or otherwise re-enacted or replaced by the exercise of powers by or on behalf of the Parliament of the United Kingdom.<br>c) Good ELC practice, codes of conducts and standards.<br>d) Guidance; and |

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|                                 | e) Any other directives or requirement of any regulatory body with which the Provider is bound to comply.  |
| Letter of Award                 | Means the letter issued by the Council to the successful Applicant accepting their offer to deliver the Service.   |
| 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 37.2 to 37.6.   |
| Nominated Officers              | means the officers of the Council and the Provider as detailed in Schedule Part 13.  |
| Material Breach                 | means a breach serious enough to destroy the value of the Contract and/or the arrangement in respect of Commissioned places and to give a basis for an action for breach of contract and thus this definition includes those breaches detailed in Conditions 37.7 to 37.16.  |
| 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   |

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| 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 set amount of time (as outlined in the Letter of Acceptance) 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. This may be, for example, where the Setting has not received their first Care Inspectorate inspection following their 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.  |
| 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 |



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|                            | Government, Education Scotland, the Care Inspectorate, SSSC and any other organisation which succeeds any of them.   |
| 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 10 (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 Event          | means the matters defined in condition 22.   |
| 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, if the Setting or Provider regularly uses volunteers in the delivery of the Service, volunteers.  |
| 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;   |

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|-----------------|---|
| 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 Monday to Friday inclusive 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**

### **PROVISION OF EARLY LEARNING AND CHILDCARE SERVICES**

#### **1. Introduction**

- 1.1 In terms of section 1(1) of the Education (Scotland) Act 1980 and section 47 of the 2014 Act, the Council must secure that the “mandatory amount” of EL&C is made available for each eligible pre-school child belonging to its area. The Children and Young People (Scotland) Act 2014 and linked Statutory Guidance has set out the increased entitlement to 1140 hours for eligible children and places a duty on the Council to offer increased flexibility to parents as to where and how their child can access their Early Learning and Childcare entitlement.
- 1.2 The Council has therefore identified a requirement to establish a Flexible Framework Agreement with suitably qualified and competent early learning and childcare Service Providers to ensure security of required places, in order to fulfil its duty. On successful completion of this application process, all Providers that meet the criteria set out within the National Standards and agree to the terms and conditions of this contract (including sustainable rates) will be accepted onto the flexible framework.

#### **2. Outcomes**

Every child and young person in Aberdeen City 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 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.

#### **3. Eligibility**

- 3.1 The Children and Young People (Scotland) Act 2014 places a duty on the Council to secure and provide a minimum of 1140 hours of early learning and childcare from August 2020 for all 3-4 year olds. This duty now extends to include 2 year olds who are, or have been at any time since turning 2;

- Looked after or subject to a kinship care order,
- Are from a workless household,
- From August 2015; for those who would qualify for free school meals.
- Parents/carers in receipt of the following:-
- Income support
- Income based Job Seekers Allowance
- Incapacity or Severe Disablement Allowance

- Child Tax Credit where household income is £16,105 or less
- Child Tax Credit and Working Tax Credit where household income is £6420 or less
- Universal Credit
- State Pension Credit
- Any income related element of Employment and Support Allowance
- Support under part V1 of the immigration and Asylum Act 1999

#### 4. **Service Delivery**

4.1 The EL&C to be provided by the Provider in terms of this Agreement must be by way of hours-

- (a) which are provided during at least 38 (thirty-eight) weeks of the calendar year, and
- (b) up to a maximum of 10 (ten) hours per day

4.2 It is acceptable during the induction period for a child to attend the Provider Establishment for fewer than the agreed number of hours per week (as detailed on the Funding Application Form), if that is in the best interests of the child concerned, on the understanding that the number of hours delivered increases to the number of hours stated on the child's Funding Application Form before 6 weeks elapses.

4.3 If a parent requests an alternative configuration of hours or sessions to suit a child's educational needs, the Provider must submit a proposal in writing to the Council's Early Years Team and obtain the written approval of said Team before the alternative pattern of provision commences. The Provider is expected to deliver the EL&C in a flexible way to meet the needs of parents.

#### 5. **Blended Offer**

5.1 In accordance with Funding Follows the Child, Parents and/or Carers may choose to place their Child in more than one Setting for the purposes of the Funded Placement. In these circumstances, Providers must work together to ensure a blended approach to the delivery of the Services.

#### 6. **Meals**

6.1 Every Child in receipt of a Funded Placement will be entitled to receive a Meal free of charge from the Provider for every 4 hours that they attend the Setting for the purpose of receiving their Funded Hours.

6.2 Meals can be provided as breakfast, lunch or an early evening meal. They can be prepared by the funded Service Provider or purchased from an external provider.

6.3 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.

## **7. 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:

### **7.1. Attendance and Presence Recording**

- The Provider shall record the presence or absence at every session of each Child for whom Early Learning and Childcare 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.

### **7.2. 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 Aberdeen City 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.

### **7.3. 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:

- Aberdeen City Child Protection Partnership policy and guidelines, [www.childprotectionpartnership.org.uk/](http://www.childprotectionpartnership.org.uk/)
- The Scottish Government guidance "Getting It Right for Every Child".
- Getting it Right for Every Child in Aberdeen City, <https://www.aberdeengettingitright.org.uk/>

### **7.4 Other Information**

- The Council shall annually give the Provider an "Information for Parents" leaflet (in the form of Schedule Part 8, Information for Parents) which will contain advice on how to complete the Application Form. This leaflet must be given by the Provider to all parents with whom the Provider is to complete an Application Form.
- The Provider is expected to keep Aberdeen City Council's Family Information Service informed of the Provider's current vacancies.

- 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.

### **7.5 Meetings**

- The Provider is expected to 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.

## **8. 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 Locality Leads 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.

## **9. Links to legislation**

9.1 Service Providers must ensure they comply with the following legislation and guidance at all times;

- Regulation of Care (Scotland) Act 2001
- Regulation of Care (Requirements as to Care Services) Regulations 2002
- The Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011
- Health and Social Care Standards 2017
- Educational (Additional Support for Learning) Act 2004 as amended
- Curriculum for Excellence
- 'Setting the Table' Nutritional Guidance for Early Years
- South Ayrshire's Equality at Work Policy 2013
- How Good is our Early Learning and Childcare
- National Improvement Framework (Education Scotland)
- Building the Ambition-National Practice Guidance on Early Learning and Childcare

- Children and Young People (Scotland) Act 2016
- Equality Act 2010

9.2 Service Providers are responsible for accommodating any future changes in Government legislation.

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**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 – Nursery Services (Private, Public and Third Sector Settings):**

**Criteria 1: Staffing, Leadership and Management**

- 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.

**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 delivering the funded entitlement and commit to adopting and demonstrating Fair Work practices in their setting. In committing to Fair Work practices, settings must take into account:

- a fair and equal pay policy across their setting, (including a commitment to supporting the real Living Wage);
- ELC managers/lead practitioners/employers (in the case of childminders who employ staff) have clear managerial responsibilities to nurture talent and help individuals fulfil their potential;
- 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;
- security of employment and hours of work, avoiding exploitative employment practices such as unfair zero hours contracts, or pregnancy and maternity discrimination;
- 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
- support progressive workforce engagement, including trade union membership or alternative arrangements, to give staff an effective voice, for example, through regular staff meetings, where possible.

#### **Criteria 9: Payment Processes**

Settings delivering the funded entitlement must ensure that access to the funded hours are free at the point of access to the child and that parents and carers are not subject to any fees in relation to the funded hours. The setting must ensure that:

- parents and carers are not asked to make any upfront payment, including a deposit or any other payment, in respect of the funded hours, therefore ensuring that the child's funded entitlement is free at the point of access;
- no top-up fees are charged to parents and carers relating to the funded hours; o parents and carers are not required to purchase additional hours beyond the funded hours in order to access their child's funded entitlement at the setting;
- additional charges to parents and carers relating to the funded hours should be optional, and limited to, for example, snacks and costs of outings or extracurricular activities such as music classes; and
- where parents and carers choose to purchase further hours in addition to the funded hours, the associated fees and hours must be transparent and clearly set out in any parental communication and invoices.

#### **Criteria 10: Food**

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. There should be consultation with parents and carers about how other dietary preferences might be accommodated.

## **National Standard Criteria that apply to Lot 2 - Childminding Services:**

### **Criteria 1: Staffing, Leadership and Management**

- 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: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 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 delivering the funded entitlement and commit to adopting and demonstrating Fair Work practices in their setting. In committing to Fair Work practices, settings must take into account:

- a fair and equal pay policy across their setting, (including a commitment to supporting the real Living Wage);
- ELC managers/lead practitioners/employers (in the case of childminders who employ staff) have clear managerial responsibilities to nurture talent and help individuals fulfil their potential;
- 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;
- security of employment and hours of work, avoiding exploitative employment practices such as unfair zero hours contracts, or pregnancy and maternity discrimination;
- 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
- support progressive workforce engagement, including trade union membership or alternative arrangements, to give staff an effective voice, for example, through regular staff meetings, where possible.

### **Criteria 9: Payment Processes**

Settings delivering the funded entitlement must ensure that access to the funded hours are free at the point of access to the child and that parents and carers are not subject to any fees in relation to the funded hours. The setting must ensure that:

- parents and carers are not asked to make any upfront payment, including a deposit or any other payment, in respect of the funded hours, therefore ensuring that the child's funded entitlement is free at the point of access;
- no top-up fees are charged to parents and carers relating to the funded hours; o parents and carers are not required to purchase additional hours beyond the funded hours in order to access their child's funded entitlement at the setting;
- additional charges to parents and carers relating to the funded hours should be optional, and limited to, for example, snacks and costs of outings or extracurricular activities such as music classes; and
- where parents and carers choose to purchase further hours in addition to the funded hours, the associated fees and hours must be transparent and clearly set out in any parental communication and invoices.

### **Criteria 10: Food**

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. There should be consultation with parents and carers about how other dietary preferences might be accommodated.

**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: Deferred Entry Request Form**

**EARLY LEARNING AND CHILDCARE – DEFERRED ENTRY REQUEST**

|   |                          |
|---|--------------------------|
| Funding Year e.g. 2020-21   |                          |
| Child's name  |                          |
| Child's date of birth   |                          |
| Parent/Guardian's name  |                          |
| Child's address   |                          |
|   |                          |
|   | Post Code                |
| Early Learning and Childcare Centre                                 | Currently attended       |
|   | Requested                |
| Person supporting the request                                       |                          |
| *Please Print Name  |                          |
| Signature   |                          |
| Copy of this request form given to parents (please tick to confirm) | <input type="checkbox"/> |

|   |
|---|
| Please state the reasons for your application to defer: |
|   |
|   |
|   |
|   |
|   |
|   |
|   |

Please state clearly why this child would benefit from an additional year of early learning and childcare:

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|  |

Please refer to potential problems/difficulties this child might have in coping with Primary One:

|  |
|--|
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Parental comments:

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**Return to:  
Early Learning and Childcare Team  
Aberdeen City Council  
2<sup>nd</sup> Floor North  
Marischal College  
Broad Street  
Aberdeen  
AB10 1AB**

## **Deferred Entry to Primary School**

### **1. What is deferred entry to primary school?**

Children who are 5 years old on or before the last day of February usually start primary school the previous August. However, it is beneficial for some children to have an additional year at pre-school to allow them time to mature and develop skills to become independent, confident learners ready for primary one.

### **2. If I choose to defer entry to primary one, am I entitled to a nursery place during the deferred year?**

Children whose 5<sup>th</sup> birthdays are in January or February are entitled to a nursery place during that school year.

Children whose 5<sup>th</sup> birthdays fall on or between the day after the date of commencement of the school year immediately preceding their 5<sup>th</sup> birthday and 31 December may access a nursery place during that school year at the discretion of the Local Authority.

### **3. When do I need to decide?**

The decision should be taken during the school year immediately preceding the school year during which the child would normally start school.

### **4. How do I decide?**

Your child needs to be confident and independent before they start school. It may help to think seriously about whether your child can do the following:

#### **Can your child –**

- Separate easily from parent/carer.
- Get dressed and undressed by him/herself.
- Take off and put on his/her shoes.
- Go to the toilet independently and wash his/her own hands.
- Share his/her toys and take turns.
- Tidy toys away.
- Sit in a group and listen to instructions.
- Express their own needs and talk about experiences.
- Feel confident and cope with new situations.

#### **Who can help me make this decision?**

- Members of the pre-school staff who are familiar with your child
- or
- the Head Teacher of the primary school you wish your child to attend.

#### **What should I do if I wish a pre-school place for my child in his/her deferred year?**

- Complete an application form for a pre-school (early learning and childcare) place at the centre of your choice.



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

Schedule Part 6: Application Form

**ABERDEEN CITY COUNCIL  
APPLICATION FOR EARLY LEARNING AND CHILDCARE FUNDING 2020/2021  
ELC EXPANSION**

**PART A - TO BE COMPLETED BY PARENT OR GUARDIAN**

|                         |  |                |  |
|-------------------------|--|----------------|--|
| Child's First Name(s)   |  |                |  |
| Child's Surname         |  |                |  |
| Child's Date of Birth   |  | Child's Gender |  |
| Name of Parent/Guardian |  |                |  |
| Address                 |  |                |  |
|                         |  |                |  |
| Post Code               |  | Tel No         |  |
| Email address           |  |                |  |

- I enclose a copy of the above child's birth certificate, child benefit payment book or passport, as evidence of my child's date of birth. *(This will be used to confirm eligibility for early learning and childcare (EL&C) funding. No information will be extracted from the document and the document will be destroyed once the application has been processed).*
- I have read Aberdeen City Council's "Information for Parents applying for Council-funded Early Learning and Childcare places in session 2020/2021" leaflet and understand the conditions relating to the funding.
- My EL&C provider has advised me how and when I shall receive the benefit of the funding.
- My child another Funded Provider (incl. childminders). Please provide details below.**

**Setting Name .....**

|    | Monday | Tuesday | Wednesday | Thursday | Friday |
|----|--------|---------|-----------|----------|--------|
| AM |        |         |           |          |        |
| PM |        |         |           |          |        |

Weeks per year attended (please circle):        38            46            50

Signature of Parent/Guardian: .....Date: .....

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**PART B - TO BE COMPLETED BY THE EARLY LEARNING AND CHILDCARE PROVIDER**

|                  |  |              |  |
|------------------|--|--------------|--|
| Name of Provider |  |              |  |
| Address          |  |              |  |
|                  |  |              |  |
| Post Code        |  | Telephone No |  |

I confirm that the above child has been enrolled for a place at this centre for the funding year commencing September 2020 and will receive an EL&C place as defined in the EL&C Funding Agreement between me/us as provider and the Council.

| <b>Hours attended weekly (intended)</b> |         | Monday | Tuesday | Wednesday | Thursday | Friday |
|---|---------|--------|---------|-----------|----------|--------|
| AM                                      | Start:  |        |         |           |          |        |
|   | Finish: |        |         |           |          |        |
| PM                                      | Start:  |        |         |           |          |        |
|   | Finish: |        |         |           |          |        |

**Total Hours per week** for which funding is claimed:

Date from which funding is claimed:

If you are already in receipt of funding in respect of the above child and this application is to request funding for an increase in hours attended per week, please tick here

If the child attends your setting over a meal period please enter the number of lunches taken per week - please note that the child must attend for over 4 hours to qualify.

|   |     |    |
|---|-----|----|
| A Support Plan is in place for this child | Yes | No |
|---|-----|----|

Signature of Provider (or authorised officer of Provider) .....

Date.....

**Please return this form to:**

**Early Learning and Childcare Team, Aberdeen City Council, 2<sup>nd</sup> Floor North,  
Marischal College, Broad Street, Aberdeen, AB10 1AB**

### **Early Learning and Childcare Funding Privacy Notice**

Why are we asking for your information?

Aberdeen City Council collects and records information about you and your child on this application form in order to provide funding in relation to the entitlement to Early Learning and Childcare. We will keep this information for 7 financial years from the date of application.

Aberdeen City Council shares information contained in this application with your chosen Early Learning and Childcare provider for the purpose of funding your child's allocated place.

### **Your Data, Your Rights**

You've got legal rights about the way the Council handles and uses your data, which include the right to ask for a copy of it, and to ask us to stop doing something with your data. Please contact the Council's Data Protection Officer by email

[DataProtectionOfficer@aberdeencity.gov.uk](mailto:DataProtectionOfficer@aberdeencity.gov.uk) or in writing at: Data Protection Officer, Aberdeen City Council, Business Hub 6, Level 1 South, Marischal College, Aberdeen, AB10 1AB.

More information about all of the rights you have is available on our website at:

<https://www.aberdeencity.gov.uk/your-data>.

You also have the right to make a complaint to the Information Commissioner's Office, ([www.ico.org.uk](http://www.ico.org.uk)). They are the body responsible for making sure organisations like the Council handle your data lawfully.

### **Legal Basis for Processing**

Aberdeen City Council is the Data Controller for this information about you. Wherever the Council processes personal data, we need to make sure we have a legal basis for doing so in data protection law. The Council understands our legal basis for processing personal data in as Article 6(1)(e) of the General Data Protection Regulation. This is because providing funding in relation to the entitlement to Early Learning and Childcare is part of our public task under the Children and Young People (Scotland) Act 2014. In carrying out this task, the Council is also likely to process special categories of personal data. The Council understands our legal basis for doing so as Article 9(2)(g) of the General Data Protection Regulation, because processing is necessary for reasons of substantial public interest.

## PART C – Personal Information

The Scottish Government has asked Local Authorities to collect the following information for all children in receipt of EL&C funding. Please highlight as applicable.

| Childs Ethnicity                      | Please indicate your child's ethnicity from the list below  |   |
|---------------------------------------|---|---|
| White – Scottish                      | Asian –<br>Indian/British/Scottish  | Caribbean or Black –<br>Caribbean/British |
| White – Polish                        | Asian –<br>Chinese/British/Scottish   | Caribbean or Black – Other                |
| White – Other                         | Asian –<br>Pakistani/British/Scottish   | Mixed or Multiple ethnic<br>groups        |
| White –<br>Gypsy/Traveller            | Asian – Other   | Other - Arab                              |
| White – Other British                 | Asian –<br>Bangladeshi/British/Scottish   | Not Disclosed                             |
| African –<br>African/Scottish/British |   | Not Known                                 |
| African - Other                       |   | Other                                     |
|                                       |   |   |
| <b>Childs Home<br/>Language</b>       | Please see attached sheet to indicate the language your child speaks at home. Please tick the appropriate box |   |

| Is this child Looked After by the Local Authority | Yes / No |
|---|----------|
|   |          |

| Student Need                       | Please indicate if the child has any of the following |                                    |
|------------------------------------|---|------------------------------------|
| Learning disability                | Dyslexia  | Other Specific Learning Difficulty |
| Other Moderate Learning Difficulty | Visual Impairment                                     | Hearing Impairment                 |
| Deafblind                          | Physical or Motor Impairment                          | Language or Speech Impairment      |
| Autistic Spectrum Disorder         | Social, emotional and behavioural                     | Physical health problem            |
| Mental health problem              | Interrupted Learning                                  | English as an additional language  |
| Looked after                       | More able pupil                                       | Communication support needs        |
| Young carer                        | Bereavement   | Substance misuse                   |
| Family issues                      | Risk of exclusion                                     | Not disclosed/declared             |
| Other                              |   |                                    |

| Support Need Type | Please indicate how the need has been identified |                                  |
|-------------------|--|----------------------------------|
| IEP               | Assessed Disabled                                | Declared Disabled                |
| Other Need Type   | Childs Plan                                      | Education: Additional specialist |

|  |  |                 |
|--|--|-----------------|
| <b>Support Need –<br/>Nature of support<br/>provided</b>       | <b>Please indicate the support that the child receives</b> |                 |
| Education:<br>Additional Specialist<br>non-teaching<br>support | Social Work Services                                       | Health Services |
| Voluntary  | Other  | Date Provided   |

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### **We're changing how we collect information on funded Early Learning and Childcare in Scotland**

Each year the Early Learning and Childcare (ELC) census collects information about children receiving funded ELC across Scotland. Scottish Government are currently trying to improve this data collection as we realise that the current ELC census doesn't provide the information required to manage this sector. It also places a burden on ELC funded centres and local authorities, with little benefit to them.

The **ELC Data Transformation Project** is a **new** development, which is building on the existing census to make vital information available to measure the Scottish Government's commitment to providing high quality funded ELC. The data collected will be used to inform future planning for provision and the ELC workforce, as well as to better support children and families. There will be a number of **data trials** to test changes to the process before the new census is fully established.

#### **What data will be collected on your child?**

The information that will be collected on your child has been chosen to help us understand how families are using funded ELC and to help ensure that funded ELC is accessible to all. The following will be collected:

- Gender
- Date of birth
- Home postcode
- Ethnicity
- Home language
- Stage (e.g. 3 years old)
- Disability status
- Additional support needs
- Support plans
- If Gaelic medium education
- Eligibility reason for 2 year olds
- Funded ELC provision (hours, days, weeks)

The data will be provided by the local authority (parents do not need to do anything). Information such as name or medical information will **not** be shared.

Information will be transferred from local authorities to the Scottish Government using **secure** data transfer systems, and access to data will be restricted.

#### **Where can I get further information?**

Further information regarding the project, data security, your rights and how the data is processed can be found on the [ELC Data Transformation Project webpage](http://www.gov.scot/Topics/Statistics/Browse/Children/ELCData/ELCDTP):  
<http://www.gov.scot/Topics/Statistics/Browse/Children/ELCData/ELCDTP>

Any questions or concerns can be sent to:  
[ELCDataTransformation@gov.scot](mailto:ELCDataTransformation@gov.scot).

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

**Schedule Part 7: Price and Payment Terms**

**1. Price - Lot 1: Nursery Services (Private, Public and Third Sector Settings):**

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. **£5.45 (Five Pounds Forty-Five Pence)** per hour of Early Learning and Childcare, per pre-school Child in their Deferred, Pre-School or Ante Pre-School Year (but excluding Eligible 2 Year Olds);
- 1.1.2. **£6.05 (Six Pounds Five Pence)** per hour of Early Learning and Childcare per Eligible 2 Year Old (but excluding pre-school Children in their Deferred, Pre-School or Ante Pre-School Year); and
- 1.1.3. **£2.75 (Two Pounds Seventy-Five Pence)** for the provision of a Meal, per 4-hour session.

**2. Price - Lot 2: Childminding Services:**

2.1. 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:-

- 2.1.1. **£5.35 (Five Pounds Thirty-Five Pence)** per hour of Early Learning and Childcare, per pre-school Child in their Deferred, Pre-School or Ante Pre-School Year (but excluding Eligible 2 Year Olds);
- 2.1.2. **£5.65 (Five Pounds Sixty-Five Pence)** per hour of Early Learning and Childcare per Eligible 2 Year Old (but excluding pre-school Children in their Deferred, Pre-School or Ante Pre-School Year); and
- 2.1.3. **£2.75 (Two Pounds Seventy-Five Pence)** for the provision of a Meal, per 4-hour session.

- 3. The Price payable by the Council to the Provider per 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.
- 4. For the avoidance of doubt, the Price does not include payment for milk for Children attending Funded Placements, these will be subject to a separate agreement.
- 5. The Council may, at its sole discretion, offer additional support to the Provider in respect of additional support needs, in terms of the Education (Additional Support for Learning) (Scotland) Act 2004.



## 6. Payment Terms

- 6.1. The Provider should ensure that funding from the Council for any Child seeking funding for a Funded Placement is requested 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 condition 12, Application Forms. 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 may 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.
- 6.2. For the purposes of allocating Funding, the school year has been broken down into weeks as follows:

### **Payment 1 Funding Period - 31st August to 18th December 2020**

|         |                                  |
|---------|----------------------------------|
| Week 1  | 31st August to 4th September     |
| Week 2  | 7th September to 11th September  |
| Week 3  | 14th September to 18th September |
| Week 4  | 21st September to 25th September |
| Week 5  | 28th September to 2nd October    |
| Week 6  | 5th October to 9th October       |
| Week 7  | 12th October to 16th October     |
| Week 8  | 19th October to 23rd October     |
| Week 9  | 26th October to 30th October     |
| Week 10 | 2nd November to 6th November     |
| Week 11 | 9th November to 13th November    |
| Week 12 | 16th November to 20th November   |
| Week 13 | 23rd November to 27th November   |
| Week 14 | 30th November to 4th December    |
| Week 15 | 7th December to 11th December    |
| Week 16 | 14th December to 18th December   |

### **Payment 2 Funding Period - 4th January to 26th March 2021**

|         |                                |
|---------|--------------------------------|
| Week 1  | 4th January to 8th January     |
| Week 2  | 11th January to 15th January   |
| Week 3  | 18th January to 22nd January   |
| Week 4  | 25th January to 29th January   |
| Week 5  | 1st February to 5th February   |
| Week 6  | 8th February to 12th February  |
| Week 7  | 15th February to 19th February |
| Week 8  | 22nd February to 26th February |
| Week 9  | 1st March to 5th March         |
| Week 10 | 8th March to 12th March        |
| Week 11 | 15th March to 19th March       |
| Week 12 | 22nd March to 26th March       |

### **Payment 3 Funding Period 29th March to 25th June**

|         |                          |  |
|---------|--------------------------|--|
| Week 1  | 29th March to 2nd April  |  |
| Week 2  | 5th April to 9th April   |  |
| Week 3  | 12th April to 16th April |  |
| Week 4  | 19th April to 23rd April |  |
| Week 5  | 26th April to 30th April |  |
| Week 6  | 3rd May to 7th May       |  |
| Week 7  | 10th May to 14th May     |  |
| Week 8  | 17th May to 21st May     |  |
| Week 9  | 24th May to 28th May     |  |
| Week 10 | 31st May to 4th June     | <b>End date for 38 week placements</b> |
| Week 11 | 7th June to 11th June    |  |
| Week 12 | 14th June to 18th June   |  |
| Week 13 | 21st June to 25th June   |  |

### **Payment 4 Funding Period - 28th June to 27th August 2020**

|        |                            |
|--------|----------------------------|
| Week 1 | 28th June to 2nd July      |
| Week 2 | 5th July to 9th July       |
| Week 3 | 12th July to 16th July     |
| Week 4 | 19th July to 23rd July     |
| Week 5 | 26th July to 30th July     |
| Week 6 | 2nd August to 6th August   |
| Week 7 | 9th August to 13th August  |
| Week 8 | 16th August to 20th August |
| Week 9 | 23rd August to 27th August |

- 6.3. Where provision at the Provider Establishment of EL&C to a child begins during a term, the Provider will be entitled to a proportion of the Funding based on the number of weeks the child attends the Provider Establishment, according to 6.2.
- 6.4. If a child changes provider during a term, the Council will ensure that funding follows the child and will make arrangements for the appropriate proportion of the Funding to be paid over from the old provider to the new provider. Where a child in respect of whom Funding is being paid ceases to attend the Provider Establishment, the Provider shall so notify the Council within 3 working days by email or phone. The Provider shall then submit a "Leaver's Form" (the Schedule Part 10) within 14 days of the child ceasing to attend. The Provider will, as soon as practicable, make a refund of Funding to the Council based on the number of weeks during which the child has attended the Provider Establishment.
- 6.5. If the child is attending more than one ELC establishment, the Provider will only be paid for the hours of ELC Services delivered by the Provider.
- 6.6. The Provider will advise parents of the method and timing of the payments that will be made to pass on to them the benefit of the Funding.

- 6.7. Where the Provider's total fees in respect of a child will exceed the Funded Hours amount which will be passed on to parents, the Provider must advise the parents that the parents are responsible for paying the difference to the Provider.
- 6.8. The Provider must advise parents that entitlement to the benefit of the Funding is dependent on the child's actual attendance at the Provider Establishment.
- 6.9. Providing always that the Provider complies with the terms of this Agreement, the Council will process payment of the appropriate Funding amounts to the Provider by cheque/BACS each term according to the following timetable:
- |        |   |
|--------|---|
| Term 1 | first week of September                               |
| Term 2 | first week of January                                 |
| Term 3 | first week of April                                   |
| Term 4 | first week of July if the child attends over 50 weeks |
- 6.10. The Council shall provide an alphabetical advice notice to the Provider each term setting out the detail of the Funding allocation in respect of each child.
- 6.11. For the avoidance of any doubt, and notwithstanding anything else stated anywhere in this Agreement, no payment shall be made by the Council to the Provider in respect of any period which precedes the Commencement Date.
- 6.12. For the avoidance of any doubt, and notwithstanding anything else stated anywhere in this Agreement, the Council shall not be liable to make any payment of any kind to the Provider in respect of a child who is not an eligible child unless there is express written agreement between the Council and the Provider that such payment is to be made.
- 6.13. 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 paid to the Council by way of BACS/ cheque. Payment must be made within thirty (30) days of discovery of the overpayment.
- 6.14. 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.
- 6.15. If a child is on holiday for longer than four weeks the Provider must notify the Council via email as soon as it becomes aware of the parent(s)/ guardian(s)/ carer(s) intention to remove the child for the purpose of said holiday. The Council will advise the Provider of any refunds due. ELC Funding can then be claimed once the child resumes receiving Services at the Provider's establishment.

6.16. Payment by the Council of the Price does not imply acceptance by the Council that the Service has been performed satisfactorily.

6.17. 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, 2.1.1, 2.1.2, 2.1.3 or 5 of this Schedule Part 7 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.

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

**Schedule Part 8: Information for Parents**

**Information for Parents applying for Council funded Early Learning and Childcare places in session 2020/2021**

Every 3 & 4 year old in Scotland is entitled to access up to 1140 hours of funded early learning and childcare a year. In addition, children aged 2 years old may also be entitled to funded early learning and childcare based on the eligibility criteria below.

Children are also entitled to a free meal if they attend more than 4 hours per day at a setting and attend over a mealtime.

Aberdeen City Council works with registered Early Learning and Childcare centres or nurseries in the private and voluntary sectors and childminders (“providers”) for the provision of funded early learning and childcare (EL&C) places.

**Eligibility**

If your child is 2 years old and you are unsure about his/her eligibility for a funded place, you should contact us for advice using the contact details below:

Ashgrove Centre, Gillespie Place, Aberdeen, AB25 3BE, Tel: 01224 482293

If entitlement has been confirmed, you will be entitled to funding from the term following your child’s second birthday until they are eligible for a nursery place in their ante pre-school year.

If your child was born between March 2017 and February 2018 they will be entitled to funding as follows:

| Date of Birth             | Entitlement to funding                      |
|---------------------------|---|
| 1 Mar 2017 to 31 Aug 2017 | All three terms (from September 2020)       |
| 1 Sep 2017 to 31 Dec 2017 | Spring and Summer terms (from January 2021) |
| 1 Jan 2018 to 28 Feb 2018 | Summer term only (from April 2021)          |

If your child was born between 1 March 2016 and 29 February 2017 you will qualify for funding for all three terms.

You may be granted funding for an additional year of EL&C if you choose to defer entry to primary school (dates of birth 1 Aug 2015 to 31 Dec 2015). Decisions about deferral should always be made in consultation with the staff at your child’s current provider who will submit requests to the Council for an additional year’s funding. Requests are considered in the February prior to the beginning of the school year in question.

**Hours attended**

Children will not be funded for more than 10 hours in one day. If your child is attending for 38 weeks of the year they can not attend more than 30 hours per week. If attendance is for 46 weeks the maximum weekly funded hours 24 hours 47 minutes.

### **Applications for Funding**

You should complete Part A of the application form (available from your Funded Provider) and return it to your provider along with a copy of your child's birth certificate, child benefit payment book or passport as evidence of your child's date of birth. Your provider should then complete Part B. Personal information on this form will be used only for the purpose of establishing eligibility for EL&C funding and all documents used to evidence date of birth will be destroyed once your application has been processed. Part C asks for information the Scottish Government wishes to collect.

Your child will also be entitled to a free meal for every 4 hours they attend.

### **Curriculum and Quality Assurance**

Providers must deliver the "Curriculum for Excellence". Providers must self-evaluate using the Quality Indicators "How Good is Our Early Learning and Childcare Centre" published by Education Scotland. Education Scotland is responsible for inspecting providers. Parents are entitled to see copies of inspection reports which should be displayed at the provider's premises for at least one month.

The Council provides professional advice, guidance and training to providers.

Parents will receive from the provider an end of year report, summarising their child's progress in the five key curriculum areas.

### **Further Information**

Your provider is required to supply you with information relating to the following:

- details of its premises and equipment, number of staff (and relevant experience and/or qualifications of staff), and educational programmes and activities;
- term dates and the timetable for sessions;
- its admissions policy;
- its system for reporting children's progress to parents;
- a statement that a complaints procedure exists and information on how parents can get further information about it;
- its child protection policy;
- its policy for staff training; and details of the provision made by it for children with additional support needs

This leaflet was prepared by the Early Years Team and is for information purposes only. It does not have any legal or contractual effect. If you have any additional queries regarding EL&C funding, please contact:

**Early Learning and Childcare Team  
Aberdeen City Council  
2<sup>nd</sup> Floor North  
Marischal College  
Broad Street  
Aberdeen  
AB10 1AB**

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

**Schedule Part 9: Insurance Requirements**

**1.1.** Providers must hold these insurance levels at a minimum:

- Employers (Compulsory) Liability Insurance\* - £10million in respect of any one claim and unlimited as to number of claims;
- Public Liability Insurance - £5million in respect of any one claim and unlimited as to number of claims;
- Statutory Third-Party Motor Vehicle Insurance (only where Applicants will use their vehicles when undertaking activities under the Contract).

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

Vehicle Insurance

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

- maintain in force fully comprehensive business vehicle insurance and, where applicable, personal vehicle insurance, providing insurance cover for the vehicular transport of Children in connection with the performance of the Services;
- ensure that any vehicle used for the performance of the Services shall be maintained in safe condition and have a current MOT, whether the vehicle 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 excise license.

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

**Schedule Part 10: Leaver's Form**

**ABERDEEN CITY COUNCIL**

**Leaver's Form**

**To be completed for children in respect of whom Early Learning and Childcare Funding is being received by the Provider**

Child's First Name(s): \_\_\_\_\_

Child's Surname: \_\_\_\_\_

Child's Date of Birth: \_\_\_\_\_

I confirm that the above-named child

ceased to attend this establishment on ...../...../ 20.....

(please insert the last date on which the child physically attended your establishment, irrespective of whatever period of notice may have applied)

**or**

commenced a place at a local authority nursery on...../...../ 20.....

I have enclosed a cheque for £..... made payable to Aberdeen City Council  
**or**

I will arrange for a payment of £..... to be made by BACS to Aberdeen City Council with the reference details as shown below:

Name of Provider: \_\_\_\_\_

Signature of  
Owner/Manager \_\_\_\_\_

Date \_\_\_\_\_

**Please return this form to:**

**Early Learning and Childcare Team**



**Aberdeen City Council  
2<sup>nd</sup> Floor North  
Marischal College  
Broad Street  
Aberdeen  
AB10 1AB**

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**This is the Schedule Part 11 of the foregoing Early Learning and Childcare Contract between the Council and the Provider**

**Schedule Part 11: Information Sharing Protocol**

**(TO FOLLOW)**

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**This is the Schedule Part 12 of the foregoing Early Learning and Childcare Contract between the Council and the Provider**

**Schedule Part 12: NOT USED**

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**This is the Schedule Part 13 of the foregoing Early Learning and Childcare Contract between the Council and the Provider**

**Schedule Part 13: Nominated Officers 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: .....

Address: .....

Address: .....

Address: .....

Telephone no: .....

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.