**THE FIFE COUNCIL**

**CONTRACT NO: 10441**

**CONDITIONS OF CONTRACT FOR THE PROVISION OF CHILDCARE EARLY LEARNING & CHILDCARE FOR 2,3 & 4 YEAR OLDS**

**These Conditions may only be varied with the written agreement of the Council. 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.**

# Definitions and Interpretation

* 1. Throughout this Contract, except where the context otherwise requires,
     1. The interpretations, identified and defined terms set out in following table shall apply:

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| **Term** | **Definition** |
| Applicant | means the person or organisation completing the Application. |
| Application | means a completed set of documents providing the information that allows the Council to determine whether the Applicant is suitable to provide ELC services. |
| Basic Disclosure | a criminal conviction certificate as referred to in section 112 of the Police Act 1997 |
| Care Inspectorate | means the Social Care and Social Work Improvement Scotland being the body established under Section 44 of the Public Services Reform (Scotland) Act, 2010, having its headquarters for the time being at Compass House, 11 Riverside Drive, Dundee, DD1 4NY or its successor body. |
| Care Plan | means the document setting out each Child’s individual level of care and support along with the Provider’s practice, timescale and method for meeting the Child’s care and support requirements, as agreed between the Parents/Carers and the Provider. |
| 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 Statement of Requirements 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. 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. |
| Commencement Date | means the date specified on the Letter of Appointment and is the date the Contract shall take effect |
| Contract | means these Conditions, any supplementary conditions (including relative to the Funded Placement), the Application, all specifications including the Statement of Requirements, and such other documents as may be included or, referred to, in the Letter of Appointment. |
| 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 | The Fife Council, a local authority constituted under the Local Government etc (Scotland) Act 1994, with principal place of business at Fife House, North Street, Glenrothes, Fife KY7 5LT. |
| Council Property | means any building or property owned or managed by the Council. |
| Council’s Representative | means any person authorised by the Council to act on its behalf for the purposes of the Contract and in respect of Funded Placements under the Contract including the person appointed by the Council from time to time to assess, oversee and review the Service provided by the Provider, as detailed in Schedule Part 12. |
| Cross-Boundary Placements | means Funded Placements agreed with Named Councils. |
| Data Protection Legislation | means the Law relative to the following, together with any primary or secondary legislation implementing or supplementing it and as the same may be amended, updated or replaced over time: the Data Protection Act 2018, the General Data Protection Regulation (Regulation EU 016/679) (“GDPR”), the Law Enforcement Directive (Directive (EU) 2016/680), the Regulation for Investigatory Powers Act 2000, the Regulation for Investigatory Powers (Scotland) Act 2000, the Telecommunications (Lawful Business Practice)(Interception of Communications) Regulations 2000 (SI2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any Law that, in respect of the United Kingdom, replaces or enacts into domestic law GDPR or any other Law relating to data protection, the processing of personal data and privacy as a consequence of the United Kingdom leaving the European Union including where applicable the Guidance and codes of practice issued by the statutory regulator in the United Kingdom: the Information Commissioner. |
| Deferred Entry | means a Child who is receiving an additional year of Early Learning and Childcare funding when their school start has been deferred for a year. As defined in the Provision of Early Learning and Childcare (Specified Children) (Scotland) Order 2014, January and February born children are entitled to an additional year of funding when their school start is deferred. Using their powers under section 1(1C) of the Education (Scotland) Act 1980, the Council can also choose to fund an additional year of Early Learning and Childcare for August to December born children when their school start is deferred. |
| Default | means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other. |
| Deferred, Pre-School or Ante Pre-School Year | Shall have the meanings ascribed to them in the ELC Admissions Policy |
| 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 Admissions Policy | Means the policy applied by the Council from time to time to determine admissions of Children to ELC provision, the current version of which is more particularly detailed here: <https://online.fifedirect.org.uk/publications/index.cfm?fuseaction=publication.pop&pubid=65491A6B-E82E-5EB1-9715EF8189B40E94> |
| 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. |
| 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. |
| End Date | means 14 August 2022 or the expiry date of any extensions exercised by the Council in terms of clause 2.3. |
| 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: a. any applicable health, education or social care guidance, direction or determination which the Council and/or the Provider has a duty to have regard to, and b. any applicable guidance relative to the Law which the Council and/or the Provider has a duty to have regard to, c. Care Standards d. Guidance issued by the Council in respect of Early Learning and Childcare, e. Guidance issued by the Scottish Government in respect of Early Learning and Childcare including the Children and Young People (Scotland) Act 2014, Early Learning and Childcare Statutory Guidance to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Provider by the Council, Scottish Ministers and any Regulatory Body, Registration or other public bodies. |
| Information Sharing Protocol (ISP) | Means an agreement which may be entered into between the Council and the Provider which sets out the Parties respective roles and responsibilities in relation to the sharing of Personal Data in connection with the provision of the Service. |
| Law | means: a) 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;  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.  c) Good ELC practice, codes of conducts and standards.  d) Guidance; and e) Any other directives or requirement of any regulatory body with which the Provider is bound to comply. |
| Letter of Appointment | means the Council’s letter to the Provider confirming their application has been accepted. |
| 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 37.9 and 37.10. |
| Nominated Officers | means the officers of the Council and the Provider as detailed in Schedule Part 12. |
| 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 37.9 and 37.10. |
| 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. |
| Payment Schedule | means the schedule which will be issued by the Council to the Provider upon approval of its application and thereafter annually confirming the Price and payment periods. |
| Period of Contract | means the duration of the Contract in accordance with Condition 2. |
| Personal Data | shall have the meaning assigned to it by the Data Protection Legislation |
| Price | means the price stated in the Statement of Requirements or as subsequently intimated in the Payment Schedule 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 the Contract for the Probationary Period in order for further information to be gathered and the performance of the Provider to be monitored to establish 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 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 12 (Service Improvement Period) during which the Provider/Setting is given an opportunity to improve the quality of their provision within a specified timescale. |
| 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 24. |
| 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. |
| Statement of Requirements | Means the Statement of Requirements issued with these conditions |
| Sub-contractor | any third party with whom the Provider enters into a contract in respect of the performance of the Services (or any part thereof) by that third party, including a contract for the provision by that third party to the Provider of facilities or services, such as agency staff, necessary for the provision of the Services and any third party with whom that third party enters into such a contract; |
| Treaties | Treaties means (1) those treaties of the European Communities (now the European Union) and its predecessor bodies to which the United Kingdom agreed on its accession to the European Communities on January 1973 and (2) those treaties to which the United Kingdom as a member of the European Union assented (on those particular terms as applied to it) between the date of its accession and the date of its departure from the European Union and “Treaty” shall be interpreted accordingly. |
| Variation | means a variation in the provisions of the Contract made in terms of Condition 29. |
| Working Days | means 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. |

* + 1. 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. Status and Conduct
     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. **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.

# 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.

* 1. The words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”.

# Duration of Contract

* 1. This Contract shall begin at the Commencement Date.
  2. Subject to clause 2.3, the Contract shall terminate as at the End Date unless terminated earlier under the terms of this Contract.
  3. The Council shall be entitled to extend this Contract by up to two separate periods of two years each subject to giving the Provider at least six months notice in writing prior to the relevant End Date.

# Services and Extent

* 1. The Provider will deliver the Service in the Setting:-

(a) in accordance with this Contract, including the Statement of Requirements, set out in the Statement of Requirements;

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

(c) in accordance with all applicable Law further to Condition 4.1 below

* 1. 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.
  2. The Child’s Parents/Carers, wherever possible, will determine whether the Provider should provide or continue to provide the Service to the Child, in line with the Council’s ELC Admissions Policy.
  3. 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.
  4. 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.
  5. Funded Placements entered into under this Contract, shall be subject to these Conditions.

# Compliance

* 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.

* 1. **National Standard for Early Learning and Childcare Providers**
     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 1 .
     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).
  2. **Capacity and Eligibility to Contract**
     1. The Provider confirms to the best of its knowledge 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.
     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);

(b) none of the grounds detailed in Regulations 58(3) or 58(8) 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 , the Data Protection Act 1998 of the Data Protection Legislation by unlawfully processing personal data in connection with any blacklisting activities,

as at the date of submission of its Application and undertakes to advise the Council if, at any time, subsequently during the term of the Contract, conviction of any said offence or the occurrence of any such ground or the committing of any such breach happens.

* + 1. In the event of any breach of this Condition 4.3, by virtue of such conviction, such occurrence or such committing, the Council shall have the option to terminate the Contract and the Provider shall indemnify the Council in full for any resulting loss.
  1. 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).

# Role and Responsibility of Local Authority and Provider

* 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.
  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.
  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.
  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. In implementing their rights and obligations under this Contract, both the Provider and the Council will take cognisance of the Early Learning and Childcare Expansion - Partnership Working principles (including as the principles may be revised or replaced from time to time) produced by the Convention of Scottish Local Authorities (COSLA) in consultation with other stakeholders. The principles are set out in Schedule Part 2 (COSLA Partnership Working Principles).

# Protecting Children and Ensuring their Wellbeing

* 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:-
     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;
     2. any national or local policy or Guidance in relation to Getting it Right for Every Child (GIRFEC);
     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;
     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
     5. Managers and Staff with a leadership role must undertake leadership in child protection training and renew this training every year.
  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.
  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.
  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).
  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. 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.
  7. The guidelines referred to in condition 6.5 shall comply with any Guidance issued in this respect including Guidance issued by the Council.
  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.
  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;
  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.
  11. Without prejudice to other rights and remedies the Council may have for Material Breach of the Contract available to them under condition 37.5 of the Contract or at common law or under statute, the Council reserves the right, in consultation with the Provider and other statutory bodies, to decide appropriate action where there are concerns about the safety and welfare of children and such decisions shall be communicated to the Provider.

# Care Inspectorate Registration and Inspections

* 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.
  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 fax or e-mail) or (b) by telephone, in the first instance to be followed by written confirmation within 24 hours. Furthermore, the Provider shall provide to the Council a copy of all relevant documentation received by the Provider from the Regulatory Authority within three (3) Working Days of receipt by the Provider. In the case of variation or extension of categories for which the Provider is Registered, the Council shall not be obliged to nominate under this Contract any Child whose needs fall within the varied or extended categories for which the Provider is Registered.
  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;
  4. Changes to Registration may be grounds for termination of the Contract in accordance with Condition 37 (Termination).
  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 three working 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.

# Notices

* 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 below for the Party concerned or the last address notified by that Party.

# 8.1.1 Notices served on the Provider must to the Provider’s registered office or principal office.

Notices served on the Council must be sent to:

Education and Children’s Services

Fife Council

4th Floor West

North Street

Fife House

Glenrothes

Fife

KY7 5LT

Email: [earlyyears.manager@fife.gov.uk](mailto:earlyyears.manager@fife.gov.uk)

* 1. 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.
  2. 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.
  3. Each party may change its Nominated Officer and/or address for service of notices, by sending a notice in accordance with this condition.

# Inspections, Information and Monitoring

* 1. The Provider will:
     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;
     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;
     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;
     4. publicly display any reports relative to Care Inspectorate grading or information at all times, as required by Law and Guidance;
     5. publicly display any plans for improvement at all times as required by Law and Guidance;
     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;
     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;
     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. 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
     10. accurately complete the annual Early Learning and Childcare (ELC) Census within the timescales requested by the Scottish Government.
  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:
     1. Relative to Care Inspectorate inspections and registration:
        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;
        2. Where there have been other material changes to the Care Inspectorate registration to the Setting or Provider.
     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;
     3. The Council reasonably considers that an Enhanced Monitoring Period is necessary in order to reduce or minimise an immediate or serious risk of harm to a Child or to avoid material interruption or diminution of quality or quantity in the provision of the Service or any part of it; and
     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;
     5. Circumstances have arisen which constitute an emergency affecting the provision of the Service or any part of it.
  3. Once a decision is taken to apply an Enhanced Monitoring Period, the Council will:-
     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.
     2. The Enhanced Monitoring Period will take effect from the date stated in the EMP Notice and will last until the date stated in the EMP notice, which should be no later than 12 months from the commencement date.
  4. Consequences of Enhanced Monitoring Period

During the Enhanced Monitoring Period:

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

Expiry of the Enhanced Monitoring Period:

* + 1. 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:

* + 1. 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.

# Service Improvement Period

* 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:-
     1. Relative to the National Standard:
        1. A Provider fails to meet or provide evidence to the Council’s reasonable satisfaction that it meets any National Standard criteria;
        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;
        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;
  2. Once a decision is taken to apply a Service Improvement Period, the Council will:-
     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.
     2. The Service Improvement Period will take effect from the commencement date stated in the SIP Notice and will last until the date stated in the SIP notice, which should be no later than 12 months from the said commencement date unless;
        1. where the improvement is related to Care Inspectorate quality evaluations, until publication of the next inspection report.
  3. Consequences of Service Improvement Period

During the Service Improvement Period:

* + 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;
    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;
    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.
    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:

* + 1. 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:

* + 1. 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.

# Providers awarded on a Probationary Basis

* 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.
  2. Upon publication of the Provider’s first Care Inspectorate report for the Setting, and the Care Inspectorate grades being below that required as part of the National Standard, the Council may, at its discretion terminate the Contract for that Setting and any Funded Placements made thereunder] in accordance with condition 37.11.20).;

# Child Admissions Process (including Deferred Entry)

* 1. The Provider must adhere to the Council’s ELC Admissions Policy, as amended or replaced from time to time, for prioritising children for consideration for 1140 hours of early learning and childcare entitlement. This is shown in Schedule Part 5 (ELC Admissions Policy).
  2. The Provider must attend local Admissions Panels in accordance with the Council’s ELC Admissions Policy.

# Price and Payment (including use of Early Years MIS)

* 1. **Price and Payment Terms**
     1. The Price and payment terms that will apply to this Contract are set out in Schedule Part 3 (Price and Payment Terms).
     2. The Price will cover the cost of the Services and shall be used exclusively to deliver the Services.
     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.
     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.
     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 3 (and in line with National Standard criteria 9 – Payment Processes).
  2. Inflationary and real Living Wage increases 
     1. In line with [Funding Follows the Child and National Standard](https://www.gov.scot/publications/funding-follows-child-national-standard-early-learning-childcare-providers-principles-practice/pages/4/) for early learning and childcare providers and [Guidance for setting sustainable rates from August 2020](https://www.gov.scot/publications/funding-follows-child-national-standard-early-learning-childcare-providers-guidance-setting-sustainable-rates-august-2020/pages/1/) inflationary and real Living Wage increases will be reviewed on a regular basis, to understand any changes to these and their impact on costs for Providers.
     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.
  3. **Parents/Carers Charges and additional services**
     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:
        1. No upfront payments, including a deposit or any other payment, in respect of the Funded Hours;
        2. No top-up fees may be charged to Parents/Carers relating to the Funded Hours; and
        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.
     2. Any additional charges to Parents/Carers relating to the Funded Hours should be optional, and limited to, for example, snacks, costs of outings or extracurricular activities such as music classes. It is expected that such charges, where required, are charged for at a rate that reflects the cost of delivery and are detailed in Schedule Part 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”).
     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.
     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.
  4. **Sustainable Rate Process**
     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](https://www.gov.scot/publications/funding-follows-child-national-standard-early-learning-childcare-providers-guidance-setting-sustainable-rates-august-2020/pages/1/) subject to Condition 13.2 (Inflationary and real Living Wage increases).
     2. The Provider must provide information to the Council, if they wish to take part in the sustainable rate setting process.
     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](https://www.gov.scot/publications/funding-follows-child-national-standard-early-learning-childcare-providers-guidance-setting-sustainable-rates-august-2020/pages/1/)).
     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](https://www.gov.scot/publications/funding-follows-child-national-standard-early-learning-childcare-providers-guidance-setting-sustainable-rates-august-2020/pages/1/), and the Principles for Partnership working as set out in Schedule Part 2.
  5. **Early Years MIS requirements (where applicable)**
     1. The Council may use the Early Years MIS system in order to calculate the Price due to the Provider for each Funded Placement provided.
     2. Where Early Years MIS is used, the Council and the Provider shall comply with the Council’s security protocols and procedures, which protocols and procedures shall be intimated to them by the council prior to their use commencing.
     3. Without prejudice to the generality of Condition 13.5.2, where the Early Years MIS is used the Council will provide adequate training and support to ensure the Provider can update the Early Years MIS in line with the Council’s requirements.
     4. All Staff must adhere to the Council’s security protocols and procedures when using the system, and the Provider must notify the Council as soon as practicable, of any circumstances which require a change to the access rights assigned to its Staff.
     5. The Provider shall provide accurate and up-to-date information about the Funded Placements via the Early Years MIS and the Provider hereby warrants and represents that the information so provided is true and accurate and may be relied upon by the Council in connection with this Contract, including for the purposes of calculating payment as detailed in Condition 13.5.1 above.
     6. The Council will take no responsibility for verifying the accuracy of the information the Provider inputs into the Early Years MIS system, and the Provider shall indemnify the Council in respect of any costs occasioned by any discrepancies, errors or omissions arising from any inaccuracies.

# Workforce including Fair Work Practices and Living Wage

* 1. **Fair Work Practices**
     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.
     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](https://www.gov.scot/publications/funding-follows-child-national-standard-early-learning-childcare-providers-transition-options-guidance-contracting/pages/1/), 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:
        1. a fair and equal pay policy across the Setting, (including a commitment to supporting the real Living Wage);
        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;
        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;
        4. security of employment and hours of work, avoiding exploitative employment practices such as unfair zero hours contracts, or pregnancy and maternity discrimination;
        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
        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.
  2. **Payment of the real Living Wage**
     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.
     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.
     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](https://www.gov.scot/publications/funding-follows-child-national-standard-early-learning-childcare-providers-guidance-setting-sustainable-rates-august-2020/pages/1/).
     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.
     5. If the Council carries out monitoring and quality scrutiny activity and finds the real Living Wage has not been paid to all childcare workers delivering the Funded Placements, the Provider may be placed into a Service Improvement Period and may be required to commit to a Fair Work Action Plan as agreed with the Council.

# Business Continuity including Setting environment

* 1. **Business Continuity**
     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.
     2. Where agreed between the Provider and the Council, the plan shall include for any specific contingencies requested by the Council.
     3. The business continuity plan should be revised on an annual basis as a minimum.
     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.
     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.
  2. **Setting environment(s)**
     1. The Provider, at all times, must ensure that the Setting environment(s) are safe and suitable for provision of the Service.
     2. For the avoidance of doubt, the Setting environment(s) includes any outdoor space or area, indoor areas, buildings, and grounds.

# Support Package

* 1. In line with the [Operating Guidance](https://www.gov.scot/publications/funding-follows-child-national-standard-early-learning-childcare-providers-operating-guidance/pages/1/), the Council will, in addition to the Price, provide a range of benefits to the Provider.
  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, buildings support and regular contact through local authority ELC meetings.
  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.
  4. The Council will retain sole responsibility for ensuring an appropriate support package is available during the Contract.
  5. The Provider will, at all times, retain responsibility for their own provision, and the quality of provision in the Setting during the Contract.

# Cross Boundary Placements

* 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.
  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.
  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.

# Staffing & Criminal Record Checks

**Staffing**

* 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.
  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.
  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.
  4. Volunteers may be used in the provision of the Service as identified in the Statement of Requirements 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.
  5. The Provider will ensure that:-
     1. Staff deployed in the provision of the Service are instructed in relation to all relevant provisions of the Contract;
     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 Statement of Requirements; and
     3. Staff are familiar with the Provider’s policies and procedures via ongoing supervision and training.
  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.**

* + 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.
    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.
    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.
    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).
    5. The Provider shall comply with the following in respect of applications for a Scheme Record or a Short Scheme Record:
       1. except in respect of the Individuals referred to in condition 18.6.2 and condition 18.6.4, the Provider shall either:
       2. be a Registered Person and countersign and submit the aforesaid applications to Disclosure Scotland itself; or
       3. use a third party Registered Person (known as an umbrella body) to countersign and submit the aforesaid applications to Disclosure Scotland on its behalf;
       4. In respect of Individuals employed or engaged by a Sub-contractor, the Provider shall procure that the Sub-contractor shall either:
          1. be a Registered Person and countersign and submit the aforesaid applications to Disclosure Scotland itself; or
          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
       5. where the Provider is an Individual, the Provider shall:
          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;
    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.
    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.
    8. Before allowing any Sub-contractor to undertake Regulated Work in connection with provision of the Services, the Provider shall:
       1. obtain the written consent of the Council to the aforesaid sub-contracting of the Services; and
       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.

* + 1. 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.
    2. 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.
    3. 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.
    4. 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).
    5. The Provider shall deliver to the Council on its request from time to time:
       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
       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.
    6. 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.
    7. 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.
    8. The Provider shall ensure that all relevant l 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.
  1. If the Provider fails to disclose any convictions detailed in the Part A - Applicant Information and Contractual Requirements Form or is subsequently convicted of any such offences the Council it shall be a Material Breach in terms of clause 37.

# Indemnity and Insurances

* 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.
  2. Nothing in this Contract or any Funded Placement awarded hereunder shall be construed to limit or exclude either party’s liability for:
     1. death or personal injury caused by its negligence or that of its Staff, or
     2. Fraud or fraudulent misrepresentation by it or its Staff;
     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;
     4. any claim under condition 7 (Care Inspectorate Registration and Inspections);
     5. any claim in respect of any breach of condition 26 (Confidentiality);
     6. any claim in respect of any breach of condition 25.1 (Data Protection); or
     7. or any other matter which, by Law, may not be limited or excluded.
  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.
  4. Subject to conditions 19.1 and 19.2 above, in no event shall either party be liable to the other for any: -
     1. loss of profits;
     2. loss of business;
     3. loss of revenue;
     4. loss of or damage to goodwill; and/or
     5. loss of savings (whether anticipated or otherwise); and/or
     6. any indirect or consequential loss or damage
  5. The Council may, amongst other things, recover as a direct loss: -
     1. any additional operational and/or administrative expenses arising from the Provider's Default;
     2. any wasted expenditure or charges rendered unnecessary and/or incurred by the Council arising from the Provider’s Default; and
     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.
  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.
  7. In addition to the Provider’s specific insurance obligations set out in the Statement of 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.
  8. Without prejudice to the foregoing obligations, the Provider will comply with the stated requirements of the Council as set out in Schedule Part 8 (Insurance Requirements).
  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.
  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.
  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.

# Parental Complaints process

* 1. The Provider will ensure that it has an up-to-date complaints procedure for Parents/Carers which will include:
     1. a statement of how complaints can be made and how they will be dealt with;
     2. the name of the person who should be contacted if there is a complaint;
     3. provision for oral and written complaints;
     4. an appeal procedure; and
     5. the timescale for dealing with complaints.
  2. The Provider will have a register of complaints which must include the following information:
     1. the date and how the complaint was received (e.g. in writing, including by email or other electronic method);
     2. the name of the person making the complaint;
     3. a brief description of the nature of the complaint; and
     4. a note of the action taken as a result of the complaint and date when taken.
  3. The Provider will provide to the Council a copy of the complaints procedure, register and any updates on request.
  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.

# Health and Safety

* 1. The Provider shall perform its obligations under the Contract in accordance with all applicable Law and Guidance regarding health and safety matters.
  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.
  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.
  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.
  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.
  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).

# Notification of Significant Events and Complaints

* 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:

* + 1. sudden death of a Child;
    2. serious injury to a Child;
    3. hospitalisation of a Child;
    4. assault of a Child;
    5. incidents of actual or intended emotional, physical or sexual abuse of a Child;
    6. maladministration of funds or property in respect of any Funded Placements;
    7. incidents of financial exploitation of Parents/Carers of a Child receiving a Funded Placement;
    8. illegal restraint or restrictions on liberty of a Child;
    9. a Child missing from the Setting;
    10. fire in the Setting where the Service is being delivered;
    11. an outbreak of an infectious disease;
    12. significant equipment breakdown which may impact upon the health and safety of people using the service;
    13. allegation of misconduct by the Provider or any persons employed in care services;
    14. absence of managers for more than 28 days;
    15. Fire, flood and loss of utilities such as electricity, water or gas supplies on the premises where the Service is being delivered and
    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).
  1. 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 term is widened to include all children currently at or using the Setting not just a Child entitled to a Funded Placement.

* 1. 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.
  2. 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.
     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:
        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
        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.
  3. 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.

# TUPE

* 1. The Council and the Provider agree that they consider the commencement of the Services does not constitute a “Relevant Transfer” as defined under TUPE. The terms and conditions set out in the Schedule Part 9 of this Agreement shall apply to any “Relevant Transfer” that may arise on termination or expiry of this Agreement.
  2. Without prejudice to the Provider’s obligations under the TUPE, at any time and within twenty (20) Working Days of being requested to do so by the Council, the Provider shall fully and accurately disclose to the Council all Employee Liability Information” as defined by TUPE.
  3. 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.

# Audit & Record Keeping

* 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.

# Protection of Information

* 1. **Data Protection**
     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.

# DATA PROCESSING

# Statement of Personal Data to be processed by the parties under this contract. The data processing activities carried out by the provider under this contract are as follows:

|  |
| --- |
| **Subject matter** |
| For delivery of Early Learning and Childcare to eligible 2 year olds, 3 and 4 year olds and those granted a deferred placement in line with the Fife Council Deferral Policy.  This is to enable early learning and childcare provision to be offered in Fife. |
| **Duration:** |
| For the duration of the contract. |
| **Nature and purpose:** |
| Delivery of Early Learning and Childcare to eligible 2 year olds, 3 and 4 year olds and those granted a deferred placement in line with the Fife Council Deferral Policy. Information processed will relate to children attending a private nursery, playgroup or childminder in order to receive their entitlement of 1140 hours Early Learning and Childcare. |
| **Types of Personal Data** |
| Information relating to children will include personal details such as name, address, date of birth, attendance pattern, information within Personal Learning Journey, birth certificate or passport number, child health information and may include looked after status. |
| **Data subjects** |
| Eligible 2 year old children, 3 and 4 year olds and those granted a deferred placement in line with the Fife Council Deferral Policy accessing their funded entitlement of 1140 hrs ELC. Contact details for parents/carers. |
| **Outputs:** |
| To deliver Early Learning and Childcare to eligible 2 year olds, 3 and 4 year olds and those granted a deferred placement in line with the Fife Council Deferral Policy as per their entitlement. |

* 1. Where either party or any of its sub-contractors (the “**Processing Party**”) processes Personal Data under the Contract on behalf of the other party (the “**Controller Party**”), then, in relation to such Personal Data, the Processing Party shall, and shall take all such steps as are reasonably available to it to procure that its sub-contractors shall ensure:
     1. The processing will be subject to reasonable and appropriate technical and organisational measures in relation to the Controller Party’s Personal Data:

(i) such that the processing will meet the requirements of the Data Protection Legislation and ensure the protection of the rights of Data Subjects; and

(ii) so as to ensure a level of security in respect of the Personal Data processed by it appropriate to the harm which might result from any processing (and having regard to the nature of the Personal Data which is to be protected), in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Personal Data transmitted, stored or otherwise processed;

* + 1. It will only process such Personal Data solely for the purposes of carrying out the Contract and in accordance with documented instructions from the Controller Party and for no other purpose or manner except with the express written consent of the Controller Party;
    2. It obtains the prior written consent of the Controller Party in order to transfer the Personal Data to any sub-contractors for processing and, if written consent is granted, ensure that the subcontractors are made aware of its obligations in terms of this Clause and require that they enter into a similar written contract with the Processing Party;
    3. It notifies the Controller Party immediately and within 48 hours of becoming aware of any breach of the Data Protection Legislation including, but not limited to, an actual, potential or attempted breach and to provide all reasonable assistance to the Controller Party in relation to this matter;
    4. All staff who are involved in processing Personal Data on behalf of the Controller Party receive the appropriate training in Data Protection Legislation and procedures relating thereto and the Processing Party keeps appropriate records of such training received by staff and contents of all courses;
    5. No other agents or employees of the Processing Party are given access to the Controller Party’s Personal Data;
    6. All staff who fall within clause 25.3.5 are informed of the confidential nature of the Controller Party’s Personal Data and comply with the obligations set out in this clause and are bound by appropriate obligations of confidentiality;
    7. None of their personnel publish, disclose or divulge whether directly or indirectly any of the Controller Party’s Personal Data to any third party unless directed to do so in writing by the Controller Party;
    8. They provide a written description of the technical and organisation methods employed by them for processing Personal Data (within the reasonable timescales required by the Controller Party);
    9. They provide reasonable assistance, information and cooperation to the Controller Party in complying with its obligations relating to data security, breach notifications, data protection impact assessments and related prior consultation procedures taking into account the nature of processing and the information available to the Processing Party;
    10. They do not transfer or disclose any of the Controller Party’s Personal Data outside the European Economic Area or to an international organisation without the express prior written consent of the Controller Party, unless required to do so by Union or Member State law to which the Processing Party is subject; in such a case, the Processing Party shall inform the Controller Party of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
    11. They notify the Controller Party within five business days (and assist the Controller Party in relation to these matters) if it receives a request from a Data Subject to have access to that person’s Personal Data or a complaint or other request relating to the Controller Party’s obligations under the Data Protection Legislation;
    12. They immediately inform the Controller Party if, in the Processing Party’s opinion, a documented instruction from the Controller Party infringes the Data Protection Legislation.
  1. Personal Data which the Processing Party processes on behalf of the Controller Party will at all times remain the property of the Controller Party.
  2. The Processing Party shall securely delete or return to the Controller Party, at the Controller Party’s written request, all the Controller Party’s Personal Data in its possession or under its control upon termination of the Contract within such reasonable timescales as may be prescribed by the Controller Party and securely delete existing copies unless the Processing Party is required by law to retain it (and to only retain it for that specific timeframe and for that purpose). All processing by the Processing Party will end except for any processing required by law or which is necessary to bring the contract to an end.
  3. The Controller Party may, subject to giving reasonable prior notice and ensuring the minimal disruption to the Processing Party’s business, undertake an audit of the Processing Party’s data processing facilities, procedures and policies in order to ascertain compliance with the terms of this Clause.
  4. At termination of the contract, the Parties shall co-operate with each other to ensure that the Personal Data is securely returned to the Controller Party within such reasonable timescales as may be prescribed by the Controller Party and securely deleted by the Processing Party unless they are required by law to retain it and then only to retain it for that specific timeframe and for that purpose.
  5. In the event of receiving a request for any information pursuant to the Freedom of Information (Scotland) Act 2002; the Freedom of Information Act 2000 or the Environmental Information (Scotland) Regulations 2004, not to respond to the person making such request but to inform the Council within two (2) working days, and assist the Council with all such requests for information which may be received from any person within such timescales as may be prescribed by the Council.
  6. The Processing Party shall indemnify the Controller Party against all losses, liabilities, damages, costs, expenses, claims and others actions arising directly or indirectly out of a breach of this clause by the Processing Party.

**PART 2 – DATA CONTROLLERS**

# The Parties agree that if they are Controllers or Joint Controllers in relation to Personal Data processed under the Contract (“Contract Data”) they shall determine their respective obligations under the Data Protection Legislation (either independently (as Controllers) or by means of an arrangement between them (as Joint Controllers) and provide such reasonable co-operation and assistance to each other as may be necessary under that arrangement.

# The Parties agree that, as Controllers, or Joint Controllers, they shall each comply with the obligations imposed on a Controller (and Joint Controller where appropriate) by the Data Protection Legislation and, subject to the arrangements agreed in accordance with clause 25.10:

# Each party will be responsible for responding to :

1. a request from the Data Subject received by them to exercise their rights under the Data Protection Legislation in respect of the Contract Data. Each party agrees to provide reasonable assistance to the other party as is necessary for the receiving party to comply with such a request;
2. a Personal Data Breach notified to them in respect of the Contract Data whether actual or suspected; and

(iii) correspondence from the Information Commissioner’s Office in relation to the Contract Data all in line with their own procedures however it is also acknowledged that the parties will provide each other with reasonable assistance in responding to any such correspondence.

* + 1. In the event that either party intends to notify the Information Commissioner’s Office regarding a Personal Data Breach in relation to the Contract Data then the notifying party shall, without undue delay (and in any event within 48 hours where possible), notify the other party about the actual or suspended Personal Data Breach and shall implement any measures necessary to restore the security of compromised Personal Data. The parties will ensure that:

(i) all relevant fair Processing notices have been made available to relevant Data Subjects in relation to the Contract Data in accordance with Data Protection Legislation; and

(ii) such fair Processing notices are sufficient in scope to enable their Personal Data to be Processed by the parties as Controllers or by both parties as Joint Controllers in connection with the Services and in accordance with Data Protection Legislation.

* + 1. Where Contract Data is to be transferred outside the European Economic Area (or, following the withdrawal of the United Kingdom from the European Union, outside the United Kingdom) the party transferring the Contract Data is responsible for implementing such measures that are necessary to ensure that any such transfers have adequate protections in place as set out in the Data Protection Legislation.
    2. Each party shall use appropriate technical and organisational measures to ensure appropriate security of the Contract Data, including protection against unauthorised or unlawful processing of the Contract Data and against accidental loss or destruction of, or damage to, the Contract Data
    3. **Public Access to Information**
       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.
       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.
       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.
       4. The Council’s interpretation of FOISA and EIRs and any exemptions therein will be final and conclusive between the Parties.
       5. The Provider shall and shall procure that its Sub-Contractors shall:
          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;
          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
          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.
       6. The Council:
          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
          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.
       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.
    4. **Sharing Information with Government Regulators**
       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.

# Confidentiality

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

# Assignation & Subcontracting

* 1. The Provider will not assign or subcontract any of its obligations under this Contract without the prior written agreement of the Council.
  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.

# Change of Control

* 1. Any change in the Control of the Provider shall require the approval of the Council. If the Provider does not obtain the approval of the Council in accordance this condition 28.1 to 30.4 inclusive, the Council shall be entitled to terminate the Contract and any Funded Placements awarded thereunder, under condition 37.11.8 by treating the change of Control as a Material Breach of the Contract by the Provider.
  2. Where the Provider proposes a change in its Control with the intention of Service continuation: -
     1. The Provider shall give the Council no less than thirteen (13) weeks’ prior written Notice; AND
     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.
  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.
  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.
  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:-.
     1. At the beginning of each School Year, the Provider shall submit to the Council, minutes of the AGM outlining the transfer from the previous committee to the newly elected committee and the name, address and contact number of each newly elected member of the management committee, AND
     2. The Provider shall also submit the details of their constitution including confirmation of any changes made to it, on an annual basis, during the Contract.

# Variation

* 1. **Variation of Contract**
     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.
     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.
     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.
     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.
     5. Where a Provider wants to apply for a Contract for additional settings it may do so at the next available opportunity.
  2. **Variation of Contract – Service requirements**
     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.
     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.
     3. To consider any proposed Variation, both parties shall have available to them:
        1. the reason for the proposed change;
        2. full details of the proposed change;
        3. the price, if any, of the proposed change; and
        4. details of the likely impact, if any, of the proposed change on other aspects of this Contract.
     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.
     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.
  3. **Variation to the Price**
     1. Variations to the Price only will be dealt with in accordance with the provisions of Condition 13 (Price and Payment (including use of the Early Years MIS).
  4. **Variation to Registration**
     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.

# Step In

* 1. NOT USED

# Dispute Resolution

* 1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either party notifying the other of the dispute and such efforts shall involve the escalation of the dispute in any instance involving a service issue to the Council’s Executive Director Education and Children’s’ services and the equivalent director of the Provider and in any instance involving any other type of issue to the Council’s Director of Finance and Corporate Services and to the Finance Director (or equivalent) of the Provider.
  2. Nothing in this condition 31 shall:
     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;
     2. diminish the parties to the Contract’s responsibilities in respect of contract administration; nor
     3. prevent any party to the Contract applying to a relevant court of competent jurisdiction to seek an appropriate remedy.

# Law of Scotland

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

# Force Majeure

* 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.
  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.
  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.
  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.

# Waiver

* 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.

# Severability of Conditions

* 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.

# Remedies Cumulative

* 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.

# Termination of Contract

* 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**

* 1. 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.
  2. 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.
  3. 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.

**Material Breach**

* 1. 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).
  2. 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.
  3. 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.
  4. 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.
  5. In the circumstances described at condition 37.5 – 37.7, the notice to terminate shall be effective for the end of the period specified in the notice or where this is not specified thirteen (13) weeks after its issue date.
  6. The following are Material Breaches of the Contract by the Council:
     1. failing to make payment, within a reasonable timescale, in accordance with condition 13 (Price and Payment (including use of Early Years MIS)) and Schedule 6;
     2. offering any improper inducements or exerting unreasonable pressure upon potential or existing Parents/Carers or Child’s Representative, or others with an interest;
     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.
  7. 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:
     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 ;
     2. operation of the Service without insurance cover as required under condition 19 above;
     3. non-compliance with the requirements of the equalities legislation including without limitation the Equality Act 2010;
     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;
     5. abuse or neglect of any child or Child;
     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;
     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;
     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;
     9. offering any improper inducements or exerting unreasonable pressure upon potential or existing Child’s Representatives, or others with an interest;
     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;
     11. committing any offence under the Prevention of Corruption Acts 1889 – 1916 and/or the Bribery Act 2010;
     12. giving any fee or reward to any elected member or officer of the Council in order to secure an unfair gain or advantage;
     13. being convicted of an offence under the provisions of Part 5 of the Public Services Reform (Scotland) Act 2010;
     14. failing to supply information required by the Council as set out in Condition 15 (Business Continuity including Setting environment);
     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;
     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;
     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);
     18. failure to comply with the Data Protection Legislation, the requirements of condition 25 or the Information Sharing Protocol;
     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;
     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
     21. Failure to comply with the requirements of Condition 4 (Compliance).
  8. 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.
  9. The Council shall advise the Registration Body of any material or persistent breach of the Contract by the Provider.
  10. 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**

* 1. The Provider shall give the Council thirteen (13) weeks’ written notice of its intention to;
     1. Close the Setting;
     2. Sell the Setting;
     3. Substantially reconfigure the Service provision at one of more Setting;
     4. Significantly change the facilities or amenities of the Setting; or
     5. Move the provision of the Service to premises at a different location.
  2. In the event that notice is served under condition 37.15 the Council may but shall not be bound to terminate the Contract and any Funded Placement awarded to the Provider thereunder at the end of the thirteen (13) weeks’ notice period.
  3. 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.
  4. 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.
  5. 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.
  6. Right to Terminate
     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.
     2. Notwithstanding the right to terminate in condition 37.20.1 above, where a party decides to give notice in respect of condition 37.20.1 they shall remain liable for any indemnities and liabilities extant and any costs associated with the termination.
  7. General Provisions
     1. During any period of notice referred to in condition 37.15 above, the Provider and the Council shall co-operate with each other to ensure that any Child Funded Placement requirements continue to be met; and they shall fully co-operate and consult with the Parents/Carers or any identified Child’s Representative in making suitable alternative arrangements for the Child in respect of transfer of the relevant information to any new Setting in accordance with the Parent requirements.
     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.
     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.
     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.
     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.
  8. Termination of the Contract under Regulation 73
     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: -
        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);
        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
        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.
     2. The Council shall give notice of termination to the Provider in writing and termination shall take effect as follows:
        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;
        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
        3. Where the Council has terminated the Contract and any Funded Placements awarded thereunder under Conditions 37.22.2.1 and 37.22.2.2 the Provider shall have no right of compensation except where it is established that the Council has acted or omitted to act negligently, and this shall be the Provider’s only remedy.

**This is the Schedule Part 1 of the of the Conditions of Contract for the Provision of Childcare Early Learning & Childcare For 2,3 & 4 Year Olds**

Schedule Part 1: National Standard Criteria

**CRITERIA 1 – Staffing, leadership and management**

Criteria for ALL SETTINGS (EXCLUDING CHILDMINDERS):

• Sub-criteria 1.1 – Care Inspectorate quality evaluations are good or better on themes that relate to quality of staffing, management and leadership.

• Sub-criteria 1.2 – All support workers, practitioners and lead practitioners/managers working in the setting and included in the adult : child ratios must have either obtained the benchmark qualification for their role or, if they are still within their first 5 years of registering with the SSSC, have started to work towards this.

• Sub-criteria 1.3 – Sustainable staffing structures are in place which meet the recommended adult : child ratios.

• Sub-criteria 1.4 – All SSSC registered staff in the setting are achieving a minimum of 12 hours per year of continuous Professional Learning.

• Sub-criteria 1.5 – Staff new to delivering the funded entitlement within the last year are familiar with the content of the most up-to-date version of the national induction resource.

Criteria for CHILDMINDING BUSINESSES:

• Sub-criteria 1.1 – Care Inspectorate quality evaluations are good or better on themes that relate to quality of staffing, management and leadership.

• Sub-criteria 1.2 – From the implementation of the full roll-out of 1140 hours, childminders delivering the funded entitlement must have either obtained the benchmark qualification for ELC practitioners or, if they are still within their first 5 years of delivering the funded hours, be working towards achieving this qualification.

• Sub-criteria 1.3 – The staffing structure in the setting is adequate to meet the recommended adult : 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:

**o** a fair and equal pay policy across their setting, (including a commitment to supporting the real Living Wage);

**o** 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;

**o** 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;

**o** security of employment and hours of work, avoiding exploitative employment practices such as unfair zero hours contracts, or pregnancy and maternity discrimination;

**o** 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

**o** 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:

**o** 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;

**o** 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;

**o** 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

**o** 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 2 of the Conditions of Contract for the Provision of Childcare Early Learning & Childcare For 2,3 & 4 Year Olds**

Schedule Part 2: [COSLA Early Learning and Childcare Expansion-Partnership Working](C://Users/cspinkertone1/Downloads/ELC%20Partnership%20Principles.pdf)

* 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 3 of the Conditions of Contract for the Provision of Childcare Early Learning & Childcare For 2,3 & 4 Year Olds Learning and Childcare Contract between the Council and the Provider**

Schedule Part 3: Payment Terms

* 1. **Price**
  2. For the avoidance of doubt, the Price does not include payment for milk or a healthy snack for Children attending Funded Placements, these will be subject to a separate agreement.
  3. The Council may, at its sole discretion, offer an additional payment to the Provider for the provision of additional services in respect of additional support needs, in terms of the Education (Additional Support for Learning) (Scotland) Act 2004.
  4. **Payment Terms**
  5. It is the responsibility of the Provider to request funding from the Council for any Child seeking funding for a Funded Placement in the appropriate timescale using the relevant forms as detailed in the ELC Admissions Policy. The Council will not consider or accept retrospective requests for payment for any Child for any payment for a service where the Council has not yet agreed a Funded Placement. Payment will be made for any relevant claim once a Funded Placement is approved by the Council.
  6. Payments for a Funded Placement shall be made to the Provider in accordance with the Payment Schedules. Payment will be made subject to continued performance of the Service during the Period of Contract.
  7. Where any subsequent payments are due these will be adjusted to reflect the actual information submitted by the Provider in accordance with the Early Learning and Childcare Admissions Policy.
  8. The method of payment to the Provider will be Banker’s Automated Credit Systems Transfer (BACS).
  9. Payment by the Council of the Price does not imply acceptance by the Council that the Service has been performed satisfactorily.
  10. The Council shall be entitled to recover from the Provider any of the payments made in in respect of services where the Service has not been performed or where the Contract has been terminated in accordance with the Conditions of Contract.