

# **Grant Agreement for**

## **Early years provision free of charge and free childcare**

**August 2017**

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**THIS DEED** is dated

2017

**PARTIES**

(1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BROMLEY** whose principal address is at Civic Centre Stockwell Close Bromley Kent BR1 3UH (the **Council** ).

(2) [insert provider name] and [address] and [company number ]

**OFSTED REGISTERED NAME:**

**OFSTED REGISTRATION NUMBER:**

**ADDRESS OF SETTING:**

**POSTCODE:**

(the **Provider**)

**BACKGROUND**

(A) Section 7 and 7A of the Childcare Act 2006 places a duty on local authorities in England to secure free early years provision for each young child in their area who is under compulsory school age and complies with the age requirements in the said Act.

(B) Section 2 of the Childcare Act 2016 places a duty to secure 30 hours free childcare for working parents.

(C) This Agreement applies to the 15 hour entitlement for the most disadvantaged two-year-olds, the 15 hour entitlement for parents of three- and four-year-olds (the universal entitlement) and the 30 hours entitlement for working parents of three- and four-year-olds (the extended entitlement).

(D) The Provider is registered to provide Services at its Setting and deliver free entitlement whether for 15 or 30 hours.

(D) The Council has agreed to pay the Grant to the Provider to fund the free entitlement for 15 or 30 hours as the case may be for eligible parents.

(E) This Agreement is based on the Model Agreement dated March 2017 issued by the Department for Education to set out the terms and conditions under which the Grant is made.

# 1. Definitions and Interpretation

1.1 In this Agreement the following terms shall have the following meanings:

**EYFS:** means the Early Years Foundation Stage (EYFS) statutory framework

**EYPP:** means the Early Years Pupil Premium (EYPP) funding

**Grant:** means the sum to be paid to the Provider in accordance with this Agreement to fund the provision of Services in relation to the 15 hour entitlement for the most disadvantaged two-year-olds, the 15 hour entitlement for parents of three- and four-year-olds (the universal entitlement) and the 30 hours entitlement for working parents of three- and four-year-olds (the extended entitlement).

**FE Handbook:** means the Council's 'Handbook for the Funding of Free Entitlement for 2, 3 & 4 year-olds published in August 2017 available through the following link : [www.bromley.gov.uk/EarlyYearsHandbook](http://www.bromley.gov.uk/EarlyYearsHandbook) as may be amended from time to time.

**Intellectual Property Rights:** means all patents, copyrights and design rights (whether registered or not) and all applications for any of the foregoing and all rights of confidence and Know-How however arising for their full term and any renewals and extensions.

**Know-How:** means information, data, know-how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research, design, development, manufacture, use or sale.

**Relevant Legislation:** means

- Early Education and childcare, Statutory guidance for Local Authorities 2017
- Childcare Act 2006
- Childcare Act 2016
- Equality Act 2010
- School admissions code 2014
- Statutory framework for the early years foundation stage 2014
- Local Authority, (Duty to Secure Early Years Provision Free of Charge) Regulations 2014
- The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016
- Special educational needs and disability code of practice: 0 to 25 years 2015
- Data Protection Act 1998

- Any other applicable legislation

**Service:** means:  
(1) the provision of free early years' education for children who are eligible during the Grant period as more particularly described in the Childcare Act 2006 section 7 and 7A, Section 2 of the Childcare Act 2016, Early Education and childcare, Statutory guidance for Local Authorities 2017 and the FE Handbook  
(2) the provision, where relevant, of early education attracting the Early Years Pupil Premium (EYPP) more particularly described in the Statutory Guidance. This is an additional sum of money paid to childcare providers for children of families in receipt of certain benefits and which is used to enhance the quality of their early years experience by improving the teaching and learning and facilities and resources, with the aim of impacting positively on a child's progress and development.

**Setting:** means the place at which the Provider offers the Services.

- 1.2 Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings.
- 1.3 Any reference to masculine includes feminine and neuter.
- 1.4 Any reference to singular includes plural and vice versa.
- 1.5 A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.
- 1.6 Terms and expressions contained in this Contract which are capitalised but which do not have an interpretation in the above definitions shall be interpreted in accordance with the common interpretation or fall under within the Services market sector where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning.
- 1.7 In the event and to the extent only of any conflict or inconsistency in the provisions of the clauses of the Contract and other documents annexed to the Contract the clauses of the Contract shall prevail.
- 1.8 The Contents pages and headings to the clauses, appendices to and schedules of this Contract are for convenience only and will not affect its construction or interpretation.

## **2. Duration**

- 2.1 This Agreement shall commence on 1<sup>st</sup> September 2017 and end on 31<sup>st</sup> August 2020 unless terminated earlier in accordance with the early termination provisions in this Agreement.

## **3. Key local authority responsibilities**

- 3.1 The Council must secure a free entitlement place for every eligible child in its area.
- 3.2 The Council should work in partnership with the providers to agree how to deliver free entitlement places.
- 3.3 The Council should be clear about its role and the support on offer locally to meet the needs of children with special educational needs and/or disabilities (SEND) as well as their expectations of providers.
- 3.4 The Council must contribute to the safeguarding and promote the welfare of children and young people in their area.
- 3.5 The Council shall pay the Grant to the Provider to deliver Services in respect of eligible two-, three- and four-year-olds.
- 3.6 The Council shall make prompt payments of the Grant due provided a completed claim form is received by the deadline date.
- 3.7 The procedure for submitting claim forms for the Grant and payment is set out in the FE Handbook.

## **4. Key provider responsibilities**

- 4.1. The Provider must comply with all Relevant Legislation in the provision of Services.
- 4.2. The Provider should deliver the free entitlements consistently to all parents, whether in receipt of 15 or 30 hours and regardless of whether they opt to pay for optional services or consumables. This means that the Provider should be clear and communicate to parents details about the days and times that they offer free places, along with their services and charges. Those children accessing the free entitlements should receive the same quality and access to provision.
- 4.3. The Provider must follow the EYFS and have clear safeguarding policies and procedures in place that link to the Council's guidance for recognising, responding, reporting and recording suspected or actual abuse.
- 4.4. The Provider must have arrangements in place to support children with special educational needs and/or disabilities (SEND). These arrangements should include a clear approach to identifying and responding to SEND. The Provider should utilise the SEN inclusion fund and Disability Access Fund to deliver effective support, whilst making information available about their SEND offer to parents.
- 4.5. The Provider must comply with the process, procedures and requirements more particularly set out in the FE Handbook.

- 4.6. The Provider will ensure that all information it provides to the Council is, to the best of its knowledge and belief, true and accurate and understands that the Council's policy is to inform and co-operate with the relevant prosecuting authorities in all cases where there is evidence of fraud or dishonesty.

## **5. Safeguarding**

- 5.1 The Council has overarching responsibility for safeguarding and promoting the welfare of all children and young people in their area. It has a number of statutory functions under the 1989 and 2004 Children Acts which make this clear, and the 'Working together to safeguard children' 2015 guidance<sup>1</sup> sets these out in detail.
- 5.2 The Provider must follow the EYFS and have clear safeguarding policies and procedures in place that are in line with local guidance and procedures for responding to and reporting suspected or actual abuse and neglect. A lead practitioner must take responsibility for safeguarding and all staff must have training to identify signs of abuse and neglect. The Provider must have regard to 'Working together to safeguard children' 2015 guidance.

## **6. Eligibility**

- 6.1 The Provider should check original copies of documentation to confirm a child has reached the eligible age on initial registration for all free entitlements. The Provider can retain paper or digital copies of documentation to enable the local authority to carry out audits and fraud investigations. Where a Provider retains a copy of documentation this must be stored securely and deleted when there is no longer a good reason to keep the data. Please refer to the data privacy guidance set out in the FE Handbook.
- 6.1 The Provider should offer places to eligible two-year-olds on the understanding that the child remains eligible until they become eligible for the universal entitlement for three- and four-year-olds.
- 6.2 The Council must ensure that a child has a free entitlement place no later than the beginning of the term following the child's third birthday and the parent meeting the eligibility criteria for the free entitlements.
- 6.3 Alongside the 30 hours eligibility code, which is the child's unique 11-digit number, and original copies of documentation, a Provider must acquire written consent from, or on behalf of, the parent to be able to receive confirmation and future notifications from the Council of the validity of the parent's 30 hours eligibility code.
- 6.4 Once a Provider has received written consent from the parent, they should verify the 30 hours eligibility code with the OEFE checker.

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<sup>1</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/592101/Working\\_Together\\_to\\_Safeguard\\_Children\\_20170213.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/592101/Working_Together_to_Safeguard_Children_20170213.pdf)

- 6.5 The Council will confirm the validity of 30 hours eligibility codes to allow the Providers to offer 30 hours places for eligible three- and four-year-olds. The Council will provide a validity checking service to providers to enable them to verify the 30 hours eligibility code. The Eligibility Checking Service (ECS) allows all local authorities to make instant checks for code validity.
- 6.6 Thereafter, the Council should complete audit checks to review the validity of eligibility codes for children who qualify for 30 hours free childcare at 6 fixed points in the year, both at half-term and at the end of term across the year (in line with the dates as listed at table A below). It is the Council's responsibility to notify the Provider where a parent has fallen out of eligibility and inform them of the grace period end date.
- 6.7 Detailed guidance on eligibility is set out in the FE Handbook.

**Table A:**

<b>Date Parent receives ineligible decision on reconfirmation:</b>	<b>Council audit date:</b>	<b>Grace Period End date:</b>
1 January – 10 February	11 February	31 March
11 February – 31 March	1 April	31 August
1 April – 26 May	27 May	31 August
27 May – 31 August	1 September	31 December
1 September – 21 October	22 October	31 December
22 October – 31 December	1 January	31 March

## **7. The Grace Period**

- 7.1 A child will enter the grace period when the child's parents cease to meet the eligibility criteria set out in the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016, as determined by HMRC or a First Tier Tribunal in the case of an appeal.
- 7.2 The Council will be able to access information about whether a child has ceased to meet the eligibility criteria and entered the grace period via the Eligibility Checking Service. The grace period end date will automatically be applied to eligibility codes.
- 7.3 The Council should continue to fund a place for a child who enters the grace period as set out in the Early Education and Childcare Statutory guidance for Local Authorities 2017.
- 7.4 Detailed guidance on the grace period process is set out in the FE Handbook.

## 8. Flexibility

- 8.1 The Provider must offer the provision within the national parameters on flexibility as set out in Section A2 of Early Education and Childcare Statutory guidance for Local Authorities.
- 8.2 The Provider should work with the Council and share information about the times and periods at which they are able to offer free entitlements to support the Council to secure sufficient stretched and flexible places to meet parental demand in the local authority. The Provider should also make information about their offer and admissions criteria available to parents at the point the child first accesses provision at their setting.
- 8.3 Children will be allowed to access free places at a concurrent maximum of three sites in a single term. The Council's process for a child receiving free entitlement at multiple providers is set out in the FE Handbook.

## 9. Partnership working

- 9.1 Partnerships should be supported by local authorities on four levels between:
  - a) Local authorities and providers
  - b) Providers working with other providers, including childminders, schools and organisations
  - c) Providers and parents
  - d) Local authorities and parents
- 9.2 The Council should promote partnership working between different types of providers, including childminders, across all sectors and encourage more providers to offer flexible provision, alongside other providers.
- 9.3 The Provider should work in partnership with parents, carers and other providers to improve provision and outcomes for children in their setting. An interactive toolkit<sup>2</sup> has been developed to help providers set up or join a partnership, maximise the benefits of working together and tackle the challenges joint working can bring.
- 9.4 The Provider should discuss and work closely with parents to agree how a child's overall care will work in practice when their free entitlement is split across different providers, such as at a maintained setting and childminder, to ensure a smooth transition for the child.

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<sup>2</sup> <http://www.familyandchildcaretrust.org/dfes-30-hour-mixed-model-partnership-toolkit>

## 10. Special educational needs and disabilities

- 10.1 The Council must strategically plan support for children with special educational needs and/or disabilities (SEND) to meet the needs of all children in its local area as per the Special Educational Needs and Disability code of practice: 0 to 25 years<sup>3</sup> (January 2015).
- 10.2 The Provider must ensure owners and all staff members are aware of their duties in relation to the SEND Code of Practice and the Equality Act 2010.
- 10.3 The Council must be clear and transparent about the support on offer in their area, through their Local Offer, so parents and providers can access that support.
- 10.4 The Provider should be clear and transparent about the SEND support on offer at their setting and make information available about their offer to support parents to choose the right setting for their child with SEND.
- 10.5 Detailed guidance on the special educational needs is set out in the FE Handbook.

## 11. Social mobility and disadvantage

- 11.1 The Council should promote equality and inclusion, particularly for disadvantaged families, looked after children and children in need by removing barriers of access to free places and working with parents to give each child support to fulfil their potential.
- 11.2 The Provider should ensure that they have identified the disadvantaged children in their setting as part of the process for checking EYPP eligibility. They will also use EYPP and any locally available funding streams or support to improve outcomes for this group.
- 11.3 Detailed guidance on this issue is set out in the FE Handbook.

## 12. Quality

- 12.1 The Early Years Foundation Stage (EYFS) statutory framework is mandatory for all schools that provide early years provision and Ofsted-registered early years providers in England. The EYFS sets the standards that all early years providers must meet to ensure that children learn and develop well and are kept healthy and safe.
- 12.2 Ofsted are the sole arbiter of quality for all free entitlements and Ofsted and inspectorates of independent schools have regard to the EYFS in carrying out inspections and report on the quality and standards of provision.

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<sup>3</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/398815/SEND\\_Code\\_of\\_Practice\\_January\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398815/SEND_Code_of_Practice_January_2015.pdf)

- 12.3 The Council has a legal duty to provide information, advice and training on meeting the requirements of the EYFS, meeting the needs of children with SEND and on effective safeguarding and child protection for providers who are rated less than 'Good' by Ofsted or newly registered providers.
- 12.4 The Provider must offer services in accordance with the national parameters on quality as set out in Section A3 of Early Education and Childcare Statutory Guidance for Local Authorities 2017 and the EYFS statutory framework.

## **13. Business planning**

- 13.1 The Council should clearly set out the documentation that it needs to receive from the Provider to support payment and delivery of free entitlements and the timetable which the Provider should follow when submitting documentation, this includes setting out the importance of timely and accurate census returns.
- 13.2 The Council should not charge the Provider disproportionate penalties for providing late or incomplete information leading to additional administration in the processing of free entitlements. Any charges should be reasonable and proportionate to the inconvenience or costs incurred to the Council as a result of the lateness and the Council will ensure charges are clearly communicated to providers.
- 13.3 The Council should not carry out audit regimes which are disproportionate or are unnecessarily burdensome to providers.
- 13.4 The Provider should ensure they submit timely and accurate information, including, but not limited to, headcount data, census data, Parent Contracts (available through the following link: [www.bromley.gov.uk/ParentContract](http://www.bromley.gov.uk/ParentContract)) and invoices, as per the financial guidelines of their local authority. Failure to do so may result in inaccurate, delayed or suspended Grant funding.
- 13.5 The Provider should maintain accurate financial and non-financial records relating to free entitlement places and should give the Council access on reasonable notice to all financial and non-financial records relating to free entitlement places funded under the provider agreement, subject to confidentiality restrictions.

## **14. Charging**

- 14.1 The Grant is intended to cover the cost to deliver 15 or 30 hours a week of free, high quality, flexible childcare. It is not intended to cover the cost of meals, consumables, additional hours or additional services.
- 14.2 The Provider can charge for meals and snacks as part of a free entitlement place and they can also charge for consumables such as nappies or sun cream and for services such as trips and yoga. These charges must be voluntary for the parent. Where parents are unable or unwilling to pay for meals and consumables, providers who choose to offer the free entitlements are responsible for setting their own policy on how to respond, with options including waiving or reducing the cost of meals and snacks or allowing parents to supply their own meals.
- 14.3 The Provider should deliver the free entitlements consistently so that all children accessing any of the free entitlements will receive the same quality and access to

provision, regardless of whether they opt to pay for optional hours, services, meals or consumables.

- 14.4 The Council should not intervene where parents choose to purchase additional hours of provision or additional services, providing that this does not affect the parent's ability to take up their child's free place. The provider should be completely transparent about any additional charges.
- 14.5 The Provider should publish its admissions criteria and ensure parents understand which hours/sessions can be taken as free provision. Not all providers will be able to offer fully flexible places, but providers should work with parents to ensure that as far as possible the pattern of hours are convenient for parents' working hours. The Providers admissions criteria is attached in Schedule 1.
- 14.6 The Provider can charge parents a deposit to secure their child's free place but should refund the deposit in full to parents within a reasonable time scale.
- 14.7 The Provider cannot charge parents "top-up" fees (the difference between the Provider's usual fee and the Grant they receive from the Council to deliver free places) or require parents to pay a registration fee as a condition of taking up their child's free place.
- 14.8 The Provider should ensure its invoices and receipts are clear, transparent and itemised, allowing parents to see that they have received their free entitlement completely free of charge and understand fees paid for additional hours. The Provider will also ensure that receipts contain their full details so that they can be identified as coming from a specific provider.

## **15. Funding**

- 15.1 The Council should pay Grants to all providers, particularly childminders, monthly by September 2018 unless a provider requests and the Council agrees to continue an existing alternative sustainable method of payment.
- 15.2 The Provider should accurately complete and submit headcount and other necessary data returns by the agreed date to support the local authority to make payment.
- 15.3 Detailed guidance on Grant payment process and timetable is set out in the FE Handbook.

## **16. Compliance**

- 16.1 The Council can carry out checks and/or audits on the Provider to ensure compliance with the requirements of delivering the free entitlements.
- 16.2 Detailed guidance on this issue is set out in the FE Handbook.

## **17. Withholding, suspending and repayment of Grant**

- 17.1 The Council's intention is that the Grant will be paid to the Provider in full. However, without prejudice to the Council's other rights and remedies, the Council

may at its discretion withhold or suspend payment of the Grant and/or require repayment of all or part of the Grant if:

- (a) the Provider uses the Grant for purposes other than those for which it has been awarded;
- (b) the Provider is, in the reasonable opinion of the Council, delivering the Service in a negligent manner;
- (c) the Provider provides the Council with any materially misleading or inaccurate information.

## **18. Termination**

### **Termination upon breach**

18.1 The Council may with immediate effect terminate this Agreement (in whole or in part) and withdraw the Grant in the following circumstances :

- a) suspension of the Provider's registration by Ofsted or in the event that the Provider is rated as Inadequate by Ofsted for a second time and fails to co-operate with the Council to improve their service;
- b) the Provider is in breach of statutory requirements or in breach of safeguarding requirements;
- c) the Provider fails to comply with the conditions in the FE Handbook, this Agreement or the "Early education and childcare Statutory guidance for local authorities March 2017";
- d) the Provider is guilty of a corrupt or illegal practice, or bribery or corruption of a member or officer of a public body, contrary to the Bribery Act 2010 and Section 117(2) of the Local Government Act 1972 during the life of the Agreement;
- e) the Provider is deemed by the EYQF to be failing to meet their responsibilities in respect of Fundamental British Values as defined in the FE Handbook.

### **Termination on insolvency and change of control**

18.2 The Council may with immediate effect terminate this Agreement (in whole or in part) and withdraw the Grant in the following circumstances;

- a) if the Provider becomes insolvent, bankrupt, shall have a receiving order, administration order or an interim order made against it or otherwise ceases to be capable of providing the Service;
- b) the Provider is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
- c) the Provider being a charity, the Charity Commission winds the charity up.

18.3 The Council's termination and withdrawal of funding process is set out in the FE Handbook available through the following link:  
[www.bromley.gov.uk/EarlyYearsHandbook](http://www.bromley.gov.uk/EarlyYearsHandbook):

### **General termination**

18.4 The Council may terminate this Agreement and withdraw the Grant by giving written notice in the event:

- a) the Provider is in material breach of any term of this Agreement and fails to remedy the breach after being given written notice to do so.
- b) cessation of funding by the government for free years childcare entitlement

**Suspension of Grant due to Ofsted rating**

18.5 The FE Handbook sets out circumstances when the Council may suspend funding and deny approval to offer free entitlement in the event of an unfavourable Ofsted rating.

## **19. Appeals process**

19.1 A Provider may be denied approval to offer the free entitlements or have their funding withdrawn as set out above. The Provider can appeal against that decision.

19.2 The appeal process is set out in the FE Handbook.

## **20. Complaints process**

20.1 The Council's complaints procedure for parents who are not able to resolve their concern directly with the provider where the parent is not satisfied that their child has received their free entitlement in accordance with the legislation or as set out in this agreement and in Early Education and Childcare Statutory guidance for Local Authorities is set out in the FE Handbook and on the Council's website available through the following link: [www.bromley.gov.uk/EarlyYearsHandbook](http://www.bromley.gov.uk/EarlyYearsHandbook)

20.2 The Provider should ensure they have a complaints procedure in place that is published and accessible for parents who are not satisfied their child has received their free entitlement in the correct way, as set out in this agreement and in Early Education and Childcare Statutory guidance for Local Authorities.

20.3 If a parent or provider is not satisfied with the way in which their complaint has been dealt with by the local authority or believes the local authority has acted unreasonably, they can make a complaint to the Local Authority Ombudsman. Such complaints will only be considered when the local complaints procedures have been exhausted.

## **21. Monitoring and reporting**

21.1 The delivery and success of the Service shall be monitored by Ofsted.

21.2 The Provider shall provide the Council with a final claim in accordance with the FE Handbook at the end of each term setting out the actual attendance and the number of hours of children eligible for Grant who attended the Provider's group during that term.

21.3 The Provider shall complete the annual census form sent to it by the Council. (This is necessary to calculate the level of the Grant.)

## **22. Acknowledgment and publicity**

22.1 The Provider shall acknowledge the Grant in its annual report and accounts, including an acknowledgement of the Council as the source of the Grant.

22.2 The Provider shall not publish any material referring to the Council without the prior written agreement of the Council. The Provider shall acknowledge the support of the Council in any materials that refer to the Service and in any written or spoken public presentations about the Service. Such acknowledgements (where appropriate or as requested by the Council) shall include the Council's name and logo (or any future name or logo adopted by the Council) using the templates provided by the Council from time to time.

- 22.3 In using the Council's name and logo, the Provider shall comply with all reasonable branding guidelines issued by the Council from time to time.
- 22.4 The Provider agrees to participate in and co-operate with promotional activities relating to the Service that may be instigated and/or organised by the Council.
- 22.5 The Council may acknowledge the Provider's involvement in the Service as appropriate without prior notice.
- 22.6 The Provider shall comply with all reasonable requests from the Council to facilitate visits, provide reports, statistics, and case studies that will assist the Council in its promotional and fundraising activities relating to the Service.
- 22.7 The Council shall publish on its website the Provider's details of its free at point of delivery offer supplied in accordance with clause

## **23. Intellectual property rights**

- 23.1 The Council and the Provider agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, Know-How and any other Intellectual Property Rights whatsoever owned by either the Council or the Provider before the Commencement Date or developed by either party during the Grant Period, shall remain the property of that party.
- 23.2 Where the Council has provided the Provider with any of its Intellectual Property Rights for use in connection with the Service (including without limitation its name and logo), the Provider shall, on termination of this Agreement, cease to use such Intellectual Property Rights immediately and shall either return or destroy such Intellectual Property Rights as requested by the Council.

## **24. Confidentiality**

- 24.1 Subject to this clause 24 (Freedom of Information), each party shall during the term of this Agreement and thereafter keep secret and confidential all Intellectual Property Rights or Know-How or other business, technical or commercial information disclosed to it as a result of the Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other party.
- 24.2 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any Intellectual Property Rights, Know-How or other business, technical or commercial information which:
  - (a) at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving party;
  - (b) is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence; or

(c) is at any time after the date of this Agreement acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party.

## **25. Freedom of information**

25.1 The Provider acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIRs).

25.2 The Provider shall:

(a) provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;

(b) transfer to the Council all requests for information relating to this agreement that it receives as soon as practicable and in any event within 2 working days of receipt;

(c) provide the Council with a copy of all information belonging to the Council requested in the request for information which is in its possession or control in the form that the Council requires within 5 working days (or such other period as the Council may reasonably specify) of the Council's request for such information; and

(d) not respond directly to a request for information unless authorised in writing to do so by the Council.

25.3 The Provider acknowledges that the Council may be required under the FOIA and EIRs to disclose information without consulting or obtaining consent from the Provider. The Council shall take reasonable steps to notify the Provider of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Council shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## **26. Data protection**

26.1 The Provider shall (and shall procure that any of its staff involved in connection with the activities under the Agreement shall) comply with any notification requirements under the Data Protection Act 1998 (DPA) and the General Data Protection Regulation (GDPA) when it comes into force. Both Parties will duly observe all their obligations under the DPA and GDPA, which arise in connection with the Agreement.

## **27. Anti-discrimination**

27.1 The Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment.

27.2 The Provider shall take all reasonable steps to secure the observance of *clause 27.1* by all servants, employees or agents of the Provider and all suppliers and sub-contractors engaged on the Service.

## **28. Human rights**

28.1 The Provider shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement as if the Provider were a public body (as defined in the Human Rights Act 1998).

28.2 The Provider shall undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998.

## **29. Limitation of liability**

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

29.2 Subject to *clause 29.1*, the Council's liability under this Agreement is limited to the payment of the Grant.

## **30. Warranties**

30.1 The Provider warrants, undertakes and agrees that:

(a) it has all necessary resources and expertise to deliver the Service (assuming due receipt of the Grant);

(b) it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify the Council immediately of any significant departure from such legislation, codes or recommendations;

(c) it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Service;

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

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

(f) all financial and other information concerning the Provider which has been disclosed to the Council is to the best of its knowledge and belief, true and accurate;

(g) it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Grant;

(h) it is not aware of anything in its own affairs, which it has not disclosed to the Council or any of the Council's advisers, which might reasonably have influenced the decision of the Council to make the Grant on the terms contained in this Agreement; and

(i) since the date of its last accounts there has been no material change in its financial position or prospects.

## 31. Insurance

31.1 The Provider shall effect and maintain with a reputable insurance company a policy or policies in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss (the **Required Insurances**).

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

(a) public liability insurance with a limit of indemnity of not less than five million pounds (**£5,000,000**) in relation to any one claim or series of claims arising from the Service; and

(b) employer's liability insurance with a limit of indemnity of not less than ten million pounds (**£5,000,000**) in relation to any one claim or series of claims arising from the Service; and

(c) professional indemnity insurance with a limit of indemnity of not less than twenty-five thousand pounds (**£25,000**) in relation to any one claim or series of claims arising from the Service.

31.3 The Provider shall (on request) supply to the Council a copy of such insurance policies and evidence that the relevant premiums have been paid.

## 32. Assignment

32.1 The Provider may not, without the prior written consent of the Council, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this Agreement or, except as contemplated as part of the Service, transfer or pay to any other person any part of the Grant.

## 33. Waiver

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

## **34. Variations**

- 34.1 The Council shall be entitled to unilaterally vary any provision of this Agreement in the event of a change in legislation or statutory guidance.
- 34.2 The parties may by written agreement vary any other provision of this Agreement.

## **35. Notices**

- 35.1 All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered or mailed (first class postage prepaid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5:00 p.m. on any working day they shall be deemed received on the next working day) and if mailed all such communications shall be deemed to have been given and received on the second working day following such mailing.

## **36. Dispute resolution**

- 36.1 In the event of any complaint or dispute (which does not relate to the Council's right to withhold funds or terminate) arising between the parties to this Agreement in relation to this Agreement the Parties shall attempt to resolve the dispute by agreement within 28 days, or such other period as may be mutually agreed by the Council and the Provider.
- 36.2 In the absence of agreement under clause 36.1 the parties may seek to resolve the matter through mediation under the CEDR Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by both parties). Unless otherwise agreed, the parties shall bear the costs and expenses of the mediation equally.

## **37. No partnership or agency**

- 37.1 This Agreement shall not create any partnership or joint venture between the Council and the Provider, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

## **38. Joint and several liability**

- 38.1 Where the Provider is not a company nor an incorporated entity with a distinct legal personality of its own, the individuals who enter into and sign this Agreement on behalf of the Provider shall be jointly and severally liable for the Provider's obligations and liabilities arising under this Agreement.

## **39. Contracts (rights of third parties) Act 1999**

- 39.1 This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

## **40. Governing law**

40.1 This Agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

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

**SCHEDULE 1**  
The providers Admissions Criteria





Signed on behalf of the **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BROMLEY**

SIGNATURE of Authorised Signatory .....

NAME of Authorised Signatory *Carol Arnfield*  
Head of Service | Early Years, School Standards  
and Adult Education

Signed on behalf of the **Early Years Provider**

Signature of Finance Manager/Partner/Owner/Childminder\*

X.....

NAME of Finance Manager/Partner/Owner/Childminder\*

X.....

\*delete as appropriate