

**Early Education and Childcare  
Provider Directory and Funding Agreement  
01 April 2020 - 31 March 2025**

**Between**

**The Mayor and Burgess of the London Borough of Havering**

**And**

**[INSERT 1. OFSTED REGISTER PROVIDER NAME AND  
INSERT 2. EY NUMBER]**

## **CONTENTS**

1. TERM	4
2. LEGISLATION AND INTERPRETATION	4
3. AGREED TERMS AND DEFINITIONS	5
4. KEY RESPONSIBILITIES	7
5. SAFEGUARDING	9
6. ELIGIBILITY	9
7. THE GRACE PERIOD	11
8. FLEXIBILITY	11
9. PARTNERSHIP WORKING	12
10. SPECIAL EDUCATIONAL NEEDS AND DISABILITIES)	13
11. SOCIAL MOBILITY AND DISADVANTAGE	13
12. QUALITY	14
13. BUSINESS PLANNING	14
14. CHARGING	16
15. FUNDING	17
16. COMPLIANCE	19
17. TERMINATION AND WITHDRAWAL OF FUNDING	20
18. APPEALS PROCESS	21
19. COMPLAINTS PROCESS	22
20. SUPPLEMENTARY PROVISIONS	22
21. VARIATION	23
22. GOVERNING LAW AND JURISDICTION	23
APPENDIX 1 SUPPLEMENTARY PROVISIONS CLAUSES	24
LIST OF RELEVANT DOCUMENTS	33
PROVIDER DECLARATION	34

This Early Education and Childcare Directory and Funding Agreement has been prepared in line with the Department for Education Model Agreement 2018 and Department for Education Statutory Guidance which should be read alongside this Agreement.

This Agreement is made between London Borough of Havering (“the Council”) and the Provider named at the front of this Agreement.

The Agreement aims to ensure that public funding is used for the purpose it is intended, processes are fair and transparent, and providers and the Council comply with relevant legislation.

The Agreement applies to all Ofsted (Office for Standards in Education, Children's Services and Skills) registered Providers of early education and childcare for funded two, 3 and 4 year olds in London Borough of Havering on the Havering Directory of Providers.

## **PARTIES**

- (1) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF HAVERING** of Havering of Town Hall, Main Road, Romford, Essex RM1 3BB (“the **Council**” which expression shall include its successors in title and permitted assignees); and
- (2) [. **NAME OF PROVIDER**] Company Number [        ], situated at [ADDRESS] (“the **Provider**”)

## **BACKGROUND**

- (A) In accordance with Section 7 of the Childcare Act 2006 the Council has agreed to make payment to the Provider to enable it provide Early Education Entitlement for children between the ages of two and 4 years old.
- (B) The funding is provided under the framework of the Statutory Guidance for local authorities on the delivery of “early education and childcare for local authorities” (“the Statutory Guidance”) and any further guidance issued from time to time.
- (C) The Council is required to keep an up to date Directory for all providers providing childcare within the London Borough of Havering who are eligible to claim funding for the provision of free Early Education and Childcare places, that is, deliver funded early education through early years providers who deliver the full early years foundation stage (EYFS) and are either registered with Ofsted as early years providers, or are schools taking children aged three and over and therefore exempt from registration with Ofsted as early years providers.
- (D) The Council has agreed to pay the Dedicated Schools Grant “the Grant” to the Provider to assist it in carrying out the delivery of the commission early education and childcare funded places.
- (E) This Early Education and Childcare Directory and Funding Agreement sets out the terms and conditions on which the Grant is made by the Council to the Provider.
- (F) These terms and conditions are intended to ensure that the Grant is used for the purpose for which it is awarded.

- (G) These Early Education and Childcare Funding Terms and Conditions govern the terms on which The London Borough of Havering will provide funding to Early Education and Childcare Providers.
- (H) For each of the registered provisions that they wish to deliver early education and childcare places, the Provider must complete a separate Provider Declaration form and confirm they comply with the conditions of funding outlined in this Early Education and Childcare Directory and Funding Agreement for delivery of the early education and childcare places at that provision.

**IT IS AGREED as follows:**

**1. TERM**

- 1.1 This Agreement shall commence on the 1<sup>st</sup> day of April 2020 and shall expire on the 31<sup>st</sup> day of March 2025 unless terminated in accordance with the terms and conditions of this Agreement. as set out in the Termination section.

**2. LEGISLATION AND INTERPRETATION**

- 2.1 This Agreement must be read in conjunction with the Early Years Foundation Stage Statutory Framework, Provider Guide, forms published during the agreement period and any other guide or documentation relating to early years education and childcare provision which is provided to the Provider during the term of this Agreement.

- 2.2 An “Approved Provider”, known as the “Provider” is one of the following:

- An early years provider or childminder registered on the Ofsted Early Years Register
- A day care setting which is registered with Ofsted or, if based in a Local Authority primary school, has an Ofsted registration jointly with the school.
- Independent Schools, Free Schools and Academies approved by the Department for Education (DfE).
- A childminder agency which is registered with Ofsted

- 2.3 This document is for Providers delivering the provisions of the:

- 15 hour entitlement for the most disadvantaged two year olds (the two year old offer)
- 15 hour entitlement for parents of three and four year olds (the universal offer)
- 30 hours entitlement for working parents of three and four year olds (the extended entitlement)

- 2.4 The following frameworks and legislation which are available on the Havering Education Service, Early Years Resource Page via [www.HES.org.uk](http://www.HES.org.uk) , underpin this agreement and the Council and the Provider shall comply with such frameworks and legislation and all other relevant legislation:

- Early Education and Childcare, Statutory Guidance for Local Authorities 2018
- Childcare Act 2006
- Childcare Act 2016
- Equality Act 2010
- School Admissions Code 2014
- Statutory framework for the early years foundation stage 2017

- 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 2018

### 3. **AGREED TERMS AND DEFINITIONS**

3.1 The following terms shall have the following meaning in this Agreement:

**Academy:** means Academy Schools with Nurseries in the London Borough of Havering

**Agreement:** means this Grant agreement comprising the Agreement, attached schedules and any other documents listed within this Agreement as applying to this Agreement.

**Bribery Act:** means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**DfE:** means the Department for Education.

**Directory:** means the electronic database of Ofsted registered providers maintained by the Council. This information is regularly updated through information received directly from Ofsted and by providers themselves.

**Early Education and Childcare Provider guide:** means the current Havering guidance for providers on the provision of free early education places for two, three and four year olds. Also known as the Provider Guide.

**Early Years Foundation Stage (EYFS):** means the statutory standards and curriculum framework that all early years providers must meet for children from birth to five years.

**Governing Body:** means the governing body of the Provider including its directors or trustees.

**Grant:** means the amount to be paid to the Provider in accordance with this Provider Agreement known as Early Education and Childcare Directory and Funding Agreement.

**Grant Period:** means the period for which the Grant is awarded starting on the Commencement Date of 1 April 2020 and ending on 31 March 2025 or sooner if the Provider is no longer meeting Ofsted Requirements

**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.

**Ofsted:** means the Office for Standards in Education, Children’s Services and Skills.

**Ofsted Judgements Grades:** are:

- Outstanding: A standard equivalent to an Outstanding Inspection Judgement issued by Ofsted following an inspection.
- Good: A standard equivalent to a Good Inspection Judgement issued by Ofsted following an inspection.
- Met: The inspection judgement is that the provider continues to meet the requirements for registration.
- Effective: The childminder agency is effective overall.
- Requires Improvement: A standard equivalent to a Requires Improvement Inspection Judgement issued by Ofsted following an inspection
- Inadequate: A standard equivalent to an inadequate Inspection Judgement issued by Ofsted following an inspection.
- Not Effective: The childminder agency is not effective.
- Not met: the inspection judgement is that the provider does not meet the requirements for registration.

**Prohibited Act:** means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council or its members, a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) an offence:
  - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
  - (ii) under legislation or common law concerning fraudulent acts; or
  - (iii) defrauding, attempting to defraud or conspiring to defraud the Council; or
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

**Provider Guide:** means the Early Education and Childcare Operational Provider Guide which is available on the Havering Education Service, Early Years Resource Page via [www.HES.org.uk](http://www.HES.org.uk)

### Provider Ofsted Grade Table

Providers with the following Ofsted grade are eligible to deliver funded early education and childcare places:

Ofsted Grade	Can deliver early education and childcare places for
Outstanding	Two, three and four year olds
Good	Two, three and four year olds
Awaiting Inspection	Two, three and four year olds
Met	Two, three and four year olds
Effective	Two, three and four year olds
Requires Improvement	Three and four year olds
Not met	Cannot deliver funded places
Not effective	Cannot deliver funded places
Inadequate	Cannot deliver funded places

**The Statutory Guidance:** means the Statutory Guidance for Local Authorities on the Provision for eligible two, three and four year olds – “Early Education and Childcare Statutory Guidance for Local Authorities September 2017” or any guidance which supersedes this.

## 4. KEY RESPONSIBILITIES

### Council Responsibilities

- 4.1 The Council must secure a free entitlement place for every eligible child in their area
- 4.2 The Council should work in partnership with providers to agree how to deliver free entitlement places.
- 4.3 The Council should be clear about their role and the support on offer locally to meet the needs of children with Special Educational Needs and/or Disabilities (SEND) as well as their expectations of providers.
- 4.4 The Council must contribute to the safeguarding and promote the welfare of children and young people in their area.

### Provider Responsibilities

- 4.5 The Provider agrees to use any early education and childcare payment received from the Council for the delivery of the free early education and childcare provision in accordance with the terms and conditions set out in below:
- 4.6 The Provider shall during the Agreement period:
  - Provide childcare

- Provide Early Education places to eligible two, three or four year old children from within the administrative boundary of the London Borough of Havering in accordance with this Agreement. ("Services")
- Claim Early Years Pupil Premium (EYPP) funding for those eligible disadvantaged three and four year old children to improve the education they provide.
- 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. Providers should utilise the SEN inclusion fund and Disability Access Fund to deliver effective support, whilst making information available about their SEND offer to parents.

## **Registering to deliver Early Education and Childcare places**

4.7 Providers wishing to deliver early education and childcare places must:

- Meet the Ofsted requirements for registration before applying to delivery early education and childcare places.
- Be registered with the London Borough of Havering for inclusion on the Family Information Services Directory of registered providers.
- Complete a Provider details form, which is available at [www.hes.org.uk](http://www.hes.org.uk).
- Meet the Council administration requirements for child level data collections; provide data collections to ensure the Council can pay providers in-line with the early education and childcare statutory delivery requirements.

4.8 The Provider must ensure that:

- Early Education places are delivered completely free of charge;
- Early Education places are provided flexibly in a pattern which meets the needs of parents where places are available;
- The Early Education Funding provided is used in accordance with this Agreement.
- The needs of disabled children and children with special educational needs are met
- Children will be kept safe.

4.9 The Provider:

- Must comply with all relevant legislation and insurance requirements
- 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.



- 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.
- 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. Providers should utilise the SEN inclusion fund and Disability Access Fund to deliver effective support, whilst making information available about their SEND offer to parents.
- Should demonstrate how they are developing children's understanding of the importance of being physically healthy, eating a balanced diet and maintaining a healthy lifestyle

## 5. **SAFEGUARDING**

- 5.1 The Council has overarching responsibility for safeguarding and promoting the welfare of all children and young people in their area. They have a number of statutory functions under the 1989 and 2004 Children Acts which make this clear, and the 'Working Together to Safeguard Children' 2018 guidance 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 Designated Safeguarding Lead must be appointed to take responsibility for safeguarding and to ensure that all staff have appropriate training to identify signs of abuse and neglect. Each provider will be asked to complete a Safeguarding audit to be returned to the Council. The Provider must have regard to 'Working Together to Safeguard Children' 2018 guidance.
- 5.3 The Provider must display the contact details for the Local Authority Designated Officer (LADO) on the premises at all times and keep the contact details updated when amended by the Local Authority.
- 5.4 The provider must have a robust system in place to demonstrate their commitment to safer recruitment practices

## 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 Council 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 Annex A: Parent declaration, part 6.
- 6.2 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.
- 6.3 The Council must ensure that a child has a free entitlement place no later than the beginning of the term following the child and the parent meeting the eligibility criteria for the free entitlements.

- 6.4 Alongside the 30 hours eligibility code, which is the child’s unique 11-digit number, and original copies of documentation (see 4.15), 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.
- 6.5 Once a Provider has received written consent from the parent, they should verify the 30 hours eligibility code with the Council.
- 6.6 The Council will confirm the validity of 30 hours eligibility codes to allow 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.
- 6.7 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 a Provider where a parent has fallen out of eligibility and inform them of the grace period end date.

Table A:

Date Parent receives ineligible decision on reconfirmation:	LA audit date:	Grace Period End date:
1 Jan – 10 Feb	11 February	31 March
11 Feb – 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

- 6.8 Two and three year olds become eligible for early years funding the term after the second or third birthday. Four year old children are automatically eligible for a free place. Please refer to Table 1

**Table 1**

<b>Child born between</b>	<b>Will become eligible for a free place</b>
1st April to 31st August	The start of term or the 1st September (Autumn Term)
1st September to 31st December	The start of term or the 1 <sup>st</sup> January (Spring Term)
1st January to 31st March	The start of term or the 1st April (Summer Term)

- 6.9 Admission to reception commences from the September following the child’s fourth birthday. Parents can request a deferred entry to school until later in the school year or

until the child reaches compulsory schools age (the term after the fifth birthday). It is the Provider’s responsibility to check a child’s eligibility for early years and childcare funding whilst the Provider continues to provide that child with an early years and childcare place and to inform that child’s parents if the funding is no longer available.

- 6.10 The Council must ensure that a child has a free entitlement place no later than the beginning of the term following the child and the parent meeting the eligibility criteria for the free entitlements.
- 6.11 Providers should refer to the Provider Guide for the eligibility criteria and relevant application processes for all early education and childcare offers.

**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 Local Authorities 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 9 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 The local authority will ensure regular checks of children’s grace periods are made and shared with providers via an online system or by direct provider update via secure Egress email.

**Table A:**

<b>Date parent receives ineligible decision on reconfirmation:</b>	<b>LA 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

**8. FLEXIBILITY**

**The early education and childcare framework for delivery**

- 8.1 Early education and childcare sessions must meet the requirements of section A2 of the Early Education and Childcare Statutory Guidance for local authorities ensuring:
  - No session is longer than 10 hours
  - No minimum session length is stated (subject to the requirements of registration on the Ofsted Early Years Register)
  - No session before 6:00am or after 8.00pm

- Funding may be taken at a maximum of two sites in a single day

## 8.2 Types of early education and childcare offers:

- Universal offer – up to 570 hours; this can be taken as a single term time offer or a stretched offer or a mixed offer at more than one provider
- Extended offer – up to 1,140 hours; this can be taken as a single term time offer, or stretched offer or a mixed offer at more than one provider

8.3 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. The Provider should make information about their early education and childcare offers and admissions criteria available to parents at the point that they make an enquiry for funding.

8.4 Where a parent makes a claim to use their free entitlement at more than one provision, the Council will ensure that no over claim of funding is made by the parent. Where a claim for more funding than the parent is entitled to is made, the Council will seek to gain agreement for how the funding is split from the providers concerned in the first instance. Providers should refer back to their parental agreements to ensure that the correct funding allocation was made.

8.5 Where a funding dispute remains, the parent shall be offered the choice as to allocation of overall funding between providers. Should the Council not be able to confirm with the parent how they want the funding to be split within a reasonable timeframe, the Council will decide at its discretion the allocation of funding between the providers. Each provider will be notified of the funding allocation outcome. Any shortfall between provision and funding will become a private matter between the parent and the Provider concerned.

## 9. **PARTNERSHIP WORKING**

9.1 The Council supports partnership working between:

- i. Council and providers
- ii. Providers working with other providers, including childminders, schools and organisations
- iii. Providers and parents
- iv. Local Authorities and parents
- v. Council and Early Years Provider Reference Group

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>1</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>1</sup> <http://www.familyandchildcaretrust.org/dfes-30-hour-mixed-model-partnership-toolkit>

- 9.5 The Early Years Provider Reference Group (EYPRG) is a formally constituted sub-group of the Havering Schools Funding Forum. Schools Forums were established under section 47A of the Schools Standards and Framework Act (as amended by the Education Act 2002). All Local Authorities (LAs) are required to establish a Schools Forum. The Schools Forum acts as a consultative body advising LAs on matters relating to the funding arrangements for schools and other non-school based pupil provision.
- 9.6 Providers who meet the national or local requirements for recognised quality marks will be made visible on the Council's Family Information Services Directory.

## 10. **SPECIAL EDUCATIONAL NEEDS AND DISABILITIES)**

- 10.1 The Council must strategically plan support for children with special educational needs and/or disabilities (SEND) in their local area as per the Special Educational Needs and Disability code of practice: 0-25 years (January 2015) SEND code of practice). The Council promotes an inclusive approach to its work. Each provider is allocated an Area Special Educational Needs Coordinator (SENCo) to support the provider to effectively meet the individual needs of a child with SEND.
- 10.2 Providers should plan support for children with SEND as per the SEND code of practice. This includes a written policy for Special Educational Needs and to make 'reasonable adjustments' in preparation for children who have a disability; and that a provider must not directly discriminate by treating a child with disabilities 'less favourably'.
- 10.3 The Provider must ensure managers and all staff members are aware of their duties in relation to the SEND Code of Practice and the Equality Act 2010.
- 10.4 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.
- 10.5 The Provider should be clear and transparent about the SEND support on offer at their setting and make available and publish details of their offer of support for children with SEND, including on their own websites to support parents to choose the right setting for their child with SEND.
- 10.6 The Havering Local Offer provides, in one place, information advice and guidance about services available for children and young people in Havering who have SEND. The Local Offer is published on the Family Information Services Directory (FSD) at [www.havering.gov.uk/fsd](http://www.havering.gov.uk/fsd)

## 11. **SOCIAL MOBILITY AND DISADVANTAGE**

- 11.1 The Council promotes 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 Early Years Pupil Premium (EYPP) eligibility. They will also use EYPP and any locally available funding streams or support to improve outcomes for this group.

- 11.3 The Provider should ensure that they have identified any disadvantaged children in their provision as part of the admission process for two, three and four year olds and make reference to those children in receipt of the Two Year Old offer (2YO), Disability Access Funding (DAF) , Early Years Pupil Premium (EYPP) and SEN Inclusion Funding
- 11.4 The Provider should carry out a termly review of progress on the learning and development outcomes for children with SEND who have been identified for SEN Inclusion Funding. Reviews should include parent/carers, children and appropriate agencies where possible.

## 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 Each provider will be allocated an Education Officer (based within the Council's Early Years Quality Assurance Team) who will quality assure the provision in terms of learning and development, leadership and management and Safeguarding procedures. The Education Officer will
- visit the Provider for the purposes of Quality Assurance
  - provide information about training/managers' briefings/Safeguarding etc.
  - give updates on new legislation and national or local developments
- 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.
- 12.3 Local authorities have 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 Provision must be offered in accordance with the national parameters on quality as set out in Section A3 of Early Education and Childcare Statutory Guidance for Local authorities and the EYFS statutory framework.
- 12.6 Where a provider has been awarded a nationally or locally recognised quality mark (standardised by Havering), the Local Authority will ensure that this information is made clear to parents and carers via the Family Information Service Directory.

## 13. **BUSINESS PLANNING**

- 13.1 Early education and childcare providers are paid monthly based on the participation of eligible children at the provisions who have signed this agreement. Details of the payment schedule will be published to each provider by Education Finance.
- 13.2 In order to ensure a timely payment process, the Council requires all providers to submit data and documents, where applicable, as per the prescribed submission dates published in the Provider Guide, including but not limited to:

## Budget Calculators

- 13.3 In order to ensure accuracy of the early education and childcare provider monthly payments, early education and childcare providers are required to:
- at least annually, but not more than termly, submit a budget calculator to support the preparation of provider budgets and confirm average monthly early education and childcare payments based on the estimation of hours as confirmed by the Provider for two, three and four year old funding claims.
  - ensure they make on times and accurate data submissions as required by the Council as outlined in the Provider Guide.
- 13.4 Education Finance will confirm the arrangements for submission of the budget calculator and, where applicable, any other requirements for individual providers to submit additional budget calculators during the course of the financial year to account for any change of circumstance for the Provider.
- 13.5 In March prior to the start of each new financial year, the budget calculator will be used to baseline the early education and childcare funding providers will receive and the corresponding monthly payment schedule and indicative payment dates.

## First Census Claims (Compulsory once per term)

- 13.6 Providers are required to submit child level data, at least once per term as applicable, for eligible children as follows:
- 1st claim census of child level funding data for children at the start of term that the provider wishes to make a funding claim for including the data submissions as applicable for.
  - Early Years Pupil Premium (EYPP) and/or the /Disability Access Fund (DAF)

## Second Census Funding Transfer Claims (Compulsory once per term)

- 13.7 Providers are required to submit child level data, at least once per term as applicable, for eligible children as follows:
- 2<sup>nd</sup> claim census of child level census data for children who join the provision, increase hours, decrease hours or leave the provision after the closure of the 1<sup>st</sup> term census claim. Including the data submissions as applicable for late claims for the term.
  - Early Years Pupil Premium (EYPP) and or/the Disability Access Fund (DAF)
- 13.8 Providers must submit queries related to the closure of first and second census claim submissions during the term in which any issue arises as per the published deadlines in the Provider Guide. Providers cannot retrospectively be funded for children missed from first or second census claims and the Council cannot back date payments to previous financial years.
- 13.9 The Provider should accurately complete and submit termly census first and second claim data and other necessary data returns by the agreed date to support the Council to make payment.

13.10 First and second claim census data submissions will be used as a validation tool for the provider data submitted on the budget calculator. Any discrepancies in funded hours will either be made as a credit (payment made to the Provider; this is an underpayment) or raised as an invoice (payment owed to the Council; this is an overpayment) to the Provider during the next available monthly payment run. Where a childminder is only funded for one term and they have been over paid, they will be required to make a payment to the Council; payment details will be sent to the childminder directly in these circumstances.

#### Department for Education Early Years Census (annually)

13.11 Providers are required to submit child and provider level data annually in January (spring term) of each year to allow the Council to make an accurate claim for funding to the Council for early education and childcare funding.

13.12 The January census submission is made up of two parts:

- Child level data
- Establishment level data

The Council will confirm the process for the child and establishment data collection in the autumn term each year to allow them to account for any amendments as required by the DfE.

#### Early Education and Childcare Provider Closures

13.13 Providers who experience unexpected or planned closure (i.e. premises not available, polling days, INSET day etc.) during the early education and childcare funding period must inform:

- Ofsted on every occasion of closure, regardless of the duration, as soon as possible on 0300 123 1231.
- Early Years Admissions on every occasion of closure, regardless of duration as soon as possible on 01708 433954 and by email at [earlyyearsadmissions@haverling.gov.uk](mailto:earlyyearsadmissions@haverling.gov.uk).

13.14 All instances of closure will be treated on a case by case basis for funding. Education Finance will confirm the impact of any closure which occurs during the financial year, further details on the requirements for finance to consider the continuation of funding despite closure will be provided in the Provider Guide.

#### 14. CHARGING

14.1 Government funding 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. Providers should be particularly mindful of the impact of additional charges on the most disadvantaged parents.

- 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 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 their 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 patterns of hours are convenient for parents' working hours.
- 14.6 The Provider can charge parents a deposit to secure their child's free place however, this must be refunded in full to parents within **four** weeks of the child starting at the provision. The deposit cannot be used as part payment towards additional childcare costs.
- 14.7 The Provider cannot charge parents "top-up" fees (the difference between a Provider's usual fee and the funding they receive from the Council to deliver free early education and childcare places), or require parents to pay a registration fee as a condition of taking up their child's early education and childcare funded place.
- 14.8 The Provider should ensure their invoices and receipts are clear, transparent and itemised. This will allow 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. The Council suggests that all providers should identify their Ofsted registration number and the full name of the child on any invoice to avoid miss-use of the invoice and confusion.
- 14.9 The Provider should not show the free entitlement as a monetary subsidy on an invoice or receipt but as free at the point of delivery.
- 14.10 Providers may stipulate a maximum of four weeks' notice for children accessing early education and childcare offers. The Council takes no responsibility for loss of income to a Provider who has failed to verify whether a parent is in breach of contract before providing a childcare place.

## 15. **FUNDING**

### Early Years National Funding Formula:

- 15.1 The Council should pay all providers, particularly childminders, monthly unless a provider requests and the Council agrees to continue an 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 Council to make payment, as per paragraph 13.9 of this Agreement.

15.3 The Early Years National Funding Formula (EYNFF) from central government standardises nationally the distribution of funding for the early education and childcare entitlements to local authorities. The Council follows a prescribed formula as per the DfE regulations to fund providers in the local authority. The local authority agrees the allocation of funding annually via the Early Years Provider Reference Group and obtains ratification via the Schools Funding Forum.

15.4 Funding is allocated as follows:

#### Two year olds:

- All providers will be paid a universal base rate for eligible children, which is inclusive of deprivation cost.

#### Three and Four year olds:

- All providers will be paid a universal base rate for three and four year olds accessing both the universal and extended offer, if the child meets eligible for the extended offer.
- All providers will be paid a supplement rate (e.g. for deprivation; this will vary based on the deprivation area that the child lives in)

The funding rates are published annually in the Provider Guide.

#### Early Years Pupil Premium

15.5 The Early Years Pupil Premium (EYPP) gives providers extra funding to support disadvantaged three and four year olds to narrow the achievement gap.

15.6 Providers will receive this payment alongside their early education and childcare payment via submission at two termly census points. Providers will be eligible for this enhanced payment if their funded children's parents receive and /or meet one of the eligibility criteria as published in the Provider Guide ():

#### Disability Access Funding

15.7 Three and four year olds will be eligible for Disability Access Funding (DAF) if they are in receipt of a current claim for Disability Living Allowance (DLA), and, if they receive early education and childcare funding. An annual lump sum payment of £615 is payable per eligible child. The payment is not transferrable.

15.8 Four year olds in a reception class will not be eligible for this funding.

#### Early Years (SEN) Inclusion Funding

15.9 The Early Years Inclusion Fund is for early years providers to help them support the needs of individual children with lower level or emerging SEN. The fund should be used as a contribution towards providing additional resources and support where a provider is unable to meet the costs from their own funds, and is not necessarily expected to cover full costs.

15.10 Providers must utilise the SEN inclusion fund to support children with SEND to progress towards their planned outcomes identified through the child's SEND plan.

## 16. **COMPLIANCE**

16.1 The Council will carry out checks and/ or audits on providers to ensure compliance with the requirements of delivering the free entitlements.

16.2 The Provider shall keep a satisfactory standard of records, (e.g. supporting documentation, registers of attendance, copy of evidence of child's date of birth (i.e. child's birth or passport) and parental agreements to support its Early Education Funding Claim in order to ensure satisfactory audit trails and retain such supporting documentation for a minimum period of six years plus the current year.

16.3 The Provider must retain a copy of a child's two year old eligibility email supplied to them by the parent and produced, by the Council.

16.4 Where a Provider is claiming Early Years Pupil Premium for a child adopted from care, or a child on a special guardianship order, the provider shall keep a record of the adoption order reference number, or the special guardianship reference number for audit purposes.

16.5 Where a Provider is claiming Disability Access Fund for a child in receipt of Disability Living Allowance, the provider shall keep a record of the adoption order reference number, or the special guardianship reference number for audit purposes.

16.6 The Provider must keep financial accounts of the receipt and use of the Early Education Funding and work within the audit and record keeping arrangements as laid out in the Provider Guide.

16.7 The Provider agrees to:

- Be audited by officers from the Council to ensure Early Education funding is being used to provide the Early Education Entitlement to eligible children;
- Allow access to all financial records, documents and other materials relating to the use of the funding and provide such assistance with their interpretation as shall be required. The Council will provide reasonable notice of any such inspection;
- Make available upon request, a signed copy of the parental agreement entered into with each parent. A copy of which should be retained by the Provider for 6 years plus the current year from the date the parental agreement is entered into.

16.8 The Provider should ensure they submit timely and accurate information, including, but not limited to, headcount data, census data, parental declarations and invoices, as per the financial guidelines of the Council. Failure to do so may result in inaccurate, delayed or suspended funding.

16.9 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.

### Auditing the early education and childcare funding

- 16.10 The Council will conduct periodic reviews of early and late census data collections and provider funding data. This will include, but is not limited to, attendance registers, sample invoices and admissions arrangements, including those related to the Two Year Old Offer, EYPP and DAF claims.
- 16.11 Providers will be required annually to confirm as part of the Council financial audit, that the early education and childcare funding paid to them has been used for the delivery of early education and childcare as per the requirements of the Early Education and childcare Statutory Guidance for Local Authorities 2017. The Council will confirm the process for the annual audit of the early education and childcare funding and corresponding documentation in the Provider Guides and Early Education Finance Guide document.

### Data submissions

- 16.12 The Council should not charge providers disproportionate penalties for providing late or incomplete information leading to additional administration in the processing of early education and childcare places. Any charges should be reasonable and proportionate to the inconvenience or costs incurred to the Council as a result of the lateness and local authorities will ensure charges are clearly communicated to providers.
- 16.13 Any advance or irregular payments made at the Providers request, if agreed, will be made by the Council at a charge of £80 per transaction per provision that the payment is made for.
- 16.14 Providers are required to make child and provider level data submissions via the appropriately advised Management Information System (MIS). Late data submissions outside of the published deadlines may result in reduced or cancelled payments to the provider.
- 16.15 Providers will be informed in advance if they are required to submit any additional data outside of the current published requests. Any additional data requests will ensure the least possible administrative burden for providers.
- 16.16 The Provider must use associated forms to ensure on time early education and childcare payments can be made. Documentation and data arriving late will result in a delay to the next early education and childcare payment.

## **17. TERMINATION AND WITHDRAWAL OF FUNDING**

- 17.1 The Council may terminate this Agreement forthwith and withdraw funding by serving notice in writing upon the Provider where:

- (a) the Provider's registration with Ofsted is suspended or terminated; or
- (b) the Provider is in breach of any statutory requirement; or
- (c) the Provider is in breach of any safeguarding requirement; or
- (d) the Provider is no longer eligible to provide funded places as set out in the Provider Ofsted Grade Table.

17.2 Where the Council has undertaken an investigation in accordance with procedures outlined in clause 16 (Compliance) above and has identified that the Provider has not adhered to the provisions of this Agreement or complied with legislation and published statutory guidance, the Council may terminate this Agreement forthwith with immediate effect and withdraw funding.

17.3 The Council may terminate this Agreement forthwith and withdraw funding by serving notice in writing upon the Provider as required by regulation 7 (Termination of the arrangements) of the Council, (Duty to Secure Early Years Provision Free of Charge) Regulations 2014 and regulation 37 ([Arrangements between local authorities and early years providers: termination\) of The 15 Childcare \(Early Years Provision Free of Charge\) \(Extended Entitlement\) Regulations 2016.](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298757/Section_7A_9A_regulations_-_PDF.pdf)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/298757/Section\\_7A\\_9A\\_regulations\\_-\\_PDF.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298757/Section_7A_9A_regulations_-_PDF.pdf) 15.4

17.4 The Council may terminate this Agreement and withdraw funding in accordance with the provisions of Supplementary Provision Clause 6 (Improvement Process).

17.5 The Council may terminate this Agreement and withdraw funding in reliance on any other right of termination provided for in the Agreement.

17.6 In the event that the Provider's registration with Ofsted is suspended or terminated, the Council may require the Provider to repay any funding which may have been paid to them which relates to the period after the date the Provider's registration with Ofsted was suspended or terminated. This may require the Provider to repay all of the funding paid to the Provider for the term in which Ofsted registration ceases.

17.7 The Provider may terminate this Agreement by serving written notice of at least 3 months (one term) upon the Council.

## 18. **APPEALS PROCESS**

18.1 A provider may appeal against the withdrawal of funding within 15 working days of the date of the written notification of withdrawal. Any appeal received outside this timeframe will only be considered in exceptional circumstances.

18.2 The Provider's appeal must be received by the Council writing. The Council will acknowledge receipt of the appeal in writing.

### First Stage

18.3 The appeal will be considered in the first instance by the Council's Head of Education Provision and Inclusion and a full response will be made within 20 working days of the date of receipt of the appeal.

## Second Stage

- 18.4 If the original decision to withdraw funding is upheld, the Provider may make a second stage appeal against the decision. This must be made within 15 working days from the date of the written notification of the decision and sent to the Council's Assistant Director, Education. A full response will be made within ten working days and may result in a hearing being held. The decision of the second stage appeal is final
- 18.5 First Stage Appeals should be sent to:  
Head of Education, Provision and Inclusion  
London Borough of Havering  
Mercury House, Mercury Gardens  
Romford RM1 3DW
- 18.6 Second stage appeals should be sent to:  
Assistant Director for Education  
London Borough of Havering  
Mercury House, Mercury Gardens  
Romford RM1 3DW

## 19. **COMPLAINTS PROCESS**

- 19.1 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.
- 19.2 The Council has a duty to investigate any complaints received from parents and providers related to the maladministration of the early education and childcare offers and will act upon them.
- 19.3 For parents who are not able to resolve any concerns directly with their provider in the first instance, or, where the parent is not satisfied that their child has received their free entitlement in accordance with the legislation, they may raise their complaints via the Council's complaint form at: <https://www.havering.gov.uk/complaints>
- 19.4 The Council will seek to resolve complaints at the earliest opportunity. Where possible, every attempt will be made to deal with any issues quickly.
- 19.5 Complaints information is available at [https://www.havering.gov.uk/info/20047/consultations\\_complaints\\_and\\_feedback/208/complaints/2](https://www.havering.gov.uk/info/20047/consultations_complaints_and_feedback/208/complaints/2)
- 19.6 The corporate complaints policy is available at [https://www.havering.gov.uk/downloads/file/562/corporate\\_complaints\\_procedure](https://www.havering.gov.uk/downloads/file/562/corporate_complaints_procedure)

## 20. **SUPPLEMENTARY PROVISIONS**

- 20.1 The Supplementary Provisions Clauses at Appendix 1 of this Agreement shall apply to this Agreement

21. **VARIATION**

21.1 The Council may at its sole discretion vary this Agreement without securing the consent of the Provider where a variation is required to reflect any changes to legislation or government guidance. The parties agree that such variation shall be made by the Council serving written notice of the details of such variation upon the Provider and the variation to the Agreement shall be deemed to take effect upon the date such notice is served.

22. **GOVERNING LAW AND JURISDICTION**

22.1 This Agreement and any appeal or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.

22.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any appeal or claim that arises out of or in connection with this agreement or its subject matter.

## **APPENDIX 1            SUPPLEMENTARY PROVISIONS CLAUSES**

### **1. Insurance**

1.1. The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing the following cover at levels within the industry standard:

1.1.1. public liability insurance;

1.1.2. employer's liability insurance; and

1.1.3. professional indemnity insurance.

(the **Required Insurances**). The cover shall be 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. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.

1.2. The Provider shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

1.3. If, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

1.4. The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Agreement.

### **2. Freedom of Information**

2.1. The Provider acknowledges that the Council is subject to the requirements of the FOIA and the EIRs and shall assist and co-operate with the Council (at the Provider's expense) to enable the Council to comply with these information disclosure requirements.

2.2. The Provider shall:

2.2.1. transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two Working Days of receiving a Request for



Information;

2.2.2. provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that Information; and

2.2.3. provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIRs.

2.3. The Council shall be responsible for determining at its absolute discretion whether the information supplied by the Provider is:

2.3.1. exempt from disclosure in accordance with the provisions of the FOIA or the EIRs; and/or

2.3.2. is to be disclosed in response to a Request for Information.

2.4. In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.

2.5. The Provider acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the EIRs to disclose Information:

2.5.1. without consulting with the Provider; or

2.5.2. following consultation with the Provider and having taken its views into account;

provided always that the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.

2.5.3. The Provider shall ensure that all Information produced in the course of the agreement or relating to the agreement is retained for disclosure and shall permit

the Council to inspect such records as requested from time to time.

### **3. Confidentiality**

3.1. Subject to this clause the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.

3.2. This clause shall not apply to any disclosure of information:

3.2.1. required by any judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the FOIA or the Environment Information Regulations;

3.2.2. that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;

3.2.3. where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of this clause;

3.2.4. by the Council of any document to which it is a party and which the parties to this Agreement have agreed contains no commercially sensitive information;

3.2.5. which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;

3.2.6. by the Council to any other department, office or agency of the Government;  
and

3.2.7. by the Council relating to this agreement and in respect of which the Provider has given its prior written consent to disclosure.

3.3. A party may disclose the other party's Confidential information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the party's obligations under this agreement, provided that:

3.3.1. it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and

3.3.2. it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this agreement,

3.3.3. and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this Supplementary Provisions clause 3

3.4. On or before the Termination Date the Provider shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Council's' employees, rate-payers or service users, are delivered up to the Council or securely destroyed.

#### **4. Data Protection**

4.1. The Provider shall (and shall procure that any of its Provider's Personnel involved in the provision of the agreement shall) comply with any notification requirements under the Data Protection Act 2018 (DPA) and both Parties shall duly observe all their obligations under the DPA, which arise in connection with the Agreement.

4.2. Notwithstanding the general obligation in clause 4.1, where the Provider is processing Personal Data as a Data Processor for the Council, the Provider shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

4.2.1. provide the Council with such information as the Council may reasonably require to satisfy itself that the Provider is complying with its obligations under the DPA;

4.3. promptly notify the Council of any breach of the security measures required to be put in place pursuant to clause 4.1; and ensure it does not knowingly or negligently do or

omit to do anything which places the Council in breach of the Council's obligations under the DPA.

4.4. The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

## **5. Prevention of Bribery**

5.1. The Provider represents and warrants that neither it, nor to the best of its knowledge any of the Provider's personnel, have at any time prior to the Commencement Date:

5.1.1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

5.1.2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

5.2. The Provider shall not during the term of this Agreement:

5.2.1. commit a prohibited Act: and/or

5.2.2. do or suffer anything to be done which would cause the Council or any of the Council's employees, consultants, contractors, subcontractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

5.3. The Provider shall if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

5.4. The Provider shall during the term of this Agreement:

5.4.1. establish, maintain and enforce, and require that its sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure

compliance with the Bribery Act and prevent the occurrence of a Prohibited Act;  
and

5.4.2. keep appropriate records of its compliance with its obligations under this section headed “Prevention of Bribery” (section) and make such records available to the Council on request.

5.5. The Provider shall immediately notify the Council in writing if it suspects or becomes aware of any breach of this section or has reason to believe that it has or any of the Provider’s personnel have:

5.5.1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act: and/or

5.5.2. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this agreement or otherwise suspects that any person or Party directly or indirectly connected with this agreement had committed or attempted to commit a Prohibited Act.

5.6. If the Provider makes a notification to the Council pursuant to this clause, the Provider must respond promptly to the Council’s enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation in accordance with the terms of this agreement. This obligation shall survive termination of this Agreement.

5.7. If the Provider is in breach of this clause, the Council may by notice in writing:

5.7.1. require the Provider to remove from performance of this Agreement any Provider’s personnel whose acts or omissions have caused the breach: or

5.7.2. terminate this Agreement by written notice with immediate effect

5.8. Any notice served under this section must specify:

5.8.1. the nature of the Prohibited Act;

5.8.2. the identity of the party whom the Council believes has committed the Prohibited Act;

5.8.3. the date on which this Agreement will terminate; and

5.8.4. the action that the Council has elected to take.

5.9. Any termination under this section will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

## **6. Improvement Process**

6.1. Subject to the clause 6.3 below, in the event that the Provider fails to:

6.1.1. comply with any of the provisions set out in this Agreement; or

6.1.2. observe any obligation under this Agreement; or

6.1.3. comply with legislation or guidance including statutory guidance; or

6.1.4. provide information reasonably requested by the Local Authority within a reasonable timescale to support its monitoring of this Agreement, or in ensuring proper use of public funds,

then without prejudice to any other right (including that of immediate termination) it may have within this Agreement, the Local Authority may choose to issue an improvement notice to the Provider

6.2. The improvement notice shall specify the breach, what must be done to remedy the breach and the timescale within which the breach must be remedied. If the breach is not remedied within the timescale specified, this may result in a termination of this Agreement with the Provider on giving 14 days written notice to them of the timescale of cancellation of funding. The Provider in such instances shall repay to the Local Authority all the funding paid to the Provider for the period after the improvement notice was issued.

### **OFSTED Grade Changes**

6.3. Following notification to the Local Authority via the OFSTED Feed download of confirmation of a new OFSTED grade after an inspection, the Local Authority will review the grade and determine whether or not the provider can continue to be funded to deliver early education and childcare offers. The outcome received will determine next steps as follows:

### Good or Outstanding Grade

6.3.1. Providers with a good or outstanding grade will continue to be funded to deliver the early education and childcare to eligible two year olds (up to 15 hours), the universal three and four year old offer (up to 15 hours) and extended three and four year old offer for working families (up to 30 hours childcare).

### Requires Improvement Grade

6.3.2. Providers with a Requires Improvement grade will not be funded to deliver early education and childcare to two year olds, but continue to deliver the universal and extended entitlement working families for three and four year olds. Subject to Supplementary clause 6.3.3 below, The Council will suspend funding provided under this agreement in relation to early education and childcare to two year old provision and will follow the process set out at supplementary clauses 6.3 and 6.4 below (Notice to Improve Process).

6.3.3. Existing children may continue to be funded at Local Authority discretion, this will be confirmed in writing if funding will be allocated, however no new children including siblings, will be funded.

### Inadequate Grade

6.3.4. Providers with an inadequate grade will not be funded to deliver the early education and childcare to two, three or four year olds. The Council will suspend all funding provided under this agreement and will follow the Notice to Improve Process.

### Notice to Improve Process

6.3.5. A Notice to Improve (NTI) will be issued to the Provider with details of:

- 6.3.5.1. the breach against the Directory and Funding Agreement and Statutory Guidance;
- 6.3.5.2. whether (and which) existing children will continue to be funded;
- 6.3.5.3. the required improvement actions for the provider;
- 6.3.5.4. if relevant, how successful achievement of the action will be measured;
- 6.3.5.5. the date by which each action to improve must have been carried out and/ or achieved.

6.3.6. The Provider acknowledges and notes that if the Provider has met the criteria for funding to be suspended as a result of receiving a Requires Improvement or an Inadequate Ofsted grade, the Council will:

- 6.3.6.1. write to the parents of all relevant funded children advising them of the inadequate grade received by the Provider and next steps for funding

allocation; and

6.3.6.2. will offer the relevant parents brokered support to change provider if they wish.

Sample letters sent to providers and parents when a NTI is issued are available on the Early Years Resources Page available at [www.HES.org.uk](http://www.HES.org.uk).

6.4. Following Ofsted re-inspection of the Provider, if the Provider achieves a grade of Requires Improvement (3 years and above), Good or Outstanding, suspension of funding will be reinstated as applicable to the funding delivery parameters. (For the avoidance of doubt, if the Council had not upon suspension of funding agreed to continue funding a previously funded child during the period of suspension but that child has remained at the provision during the suspension period, funding for that child will not be backdated in the event of such funding re-instatement to the Provider.)

## **7. Waiver**

7.1. No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Council to the Provider in respect of the Agreement or any omission on the part of the Council to communicate such prior acceptance or approval shall not relieve the Provider of its obligations under this Agreement.



## LIST OF RELEVANT DOCUMENTS

All documents below are available on the Havering Education Service – Early Years Resource Page [www.HES.org.uk](http://www.HES.org.uk)

1. EARLY EDUCATION AND CHILDCARE OPERATIONAL PROVIDER GUIDE 1 APRIL 2020 - 31 MARCH 2021
2. EARLY EDUCATION AND CHILDCARE, STATUTORY GUIDANCE FOR LOCAL AUTHORITIES 2017
3. CHILDCARE ACT 2006
4. CHILDCARE ACT 2016
5. EQUALITY ACT 2010
6. SCHOOL ADMISSIONS CODE 2014
7. STATUTORY FRAMEWORK FOR THE EARLY YEARS FOUNDATION STAGE 2017
8. LOCAL AUTHORITY, (DUTY TO SECURE EARLY YEARS PROVISION FREE OF CHARGE) REGULATIONS 2014
9. THE CHILDCARE (EARLY YEARS PROVISION FREE OF CHARGE) (EXTENDED ENTITLEMENT) REGULATIONS 2016
10. SPECIAL EDUCATIONAL NEEDS AND DISABILITY CODE OF PRACTICE: 0 TO 25 YEARS 2015
11. DATA PROTECTION ACT 1998
12. WORKING TOGETHER TO SAFEGUARD CHILDREN' GUIDANCE 2018
13. NEW CHILD REGISTRATION AND PARENTAL DECLARATION
14. GUIDANCE EARLY YEARS PARENT GUIDE
15. PROVIDER DETAILS FORM

## PROVIDER DECLARATION

### Early Education and Childcare - Provider Directory and Funding Agreement Declaration

**01 April 2020 to 31 March 2025**

The Provider in signing this Early Education and Childcare Directory and Funding Agreement agrees to comply with the terms and conditions set out in this Early Years and Childcare, Provider Directory and Funding Agreement and in addition confirm that the named Provision conforms to all the requirements set out in this Early Education and Childcare Provider Directory and Funding Agreement and that this Provision will, whilst registered, ensure all elements are met.

**Please complete using black ink and PRINT clearly**

I am the person who has legal responsibility and authority to sign this Early Education and Childcare Directory and Funding Agreement for and on behalf of the Provider.

<b>Name of Provision</b>	
<b>Ofsted/DfE registration Number</b>	
<b>Name:</b>	
<b>Position:</b>	
<b>Provider Address</b>	
<b>Email Address</b>	
<b>Signature:</b>	
<b>Date:</b>	

Providers may wish to send this document back by registered or recorded post, but this will be at the expense of the provider and cannot be claimed back as a cost to the Council. Please return this signed original document and any other requested documentation to:

London Borough of Havering  
Education Provision and Commissioning  
9<sup>th</sup> Floor Mercury House  
Mercury Gardens  
Romford  
Essex RM1 3DW

Once signed by the Council representative, the original form will be returned to the provider by first class post and a scanned copy by email using the details provided on this form.

### COUNCIL REPRESENTATIVE

<b>Name (Please PRINT)</b>	
<b>Position/Job role:</b>	
<b>Signature</b>	
<b>Date:</b>	

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