

Childcare Funding Entitlement Agreement 1st Sept 2024 – 31st March 2025

Please read these Provider Funding Agreement terms and conditions carefully. Failure to comply with these terms and conditions could put the Funding and any future funding at risk and may result in action being taken to recover any Funding already given.

Interpretation:

- “Authorised Officers”** means the person or persons authorised by Enfield Council or such other person or persons as may from time to time be notified to the Provider and who shall be authorised to act on behalf of Enfield Council to complete all of Enfield Council’s obligations under this Provider Funding Agreement and enforce all of Enfield Council’s rights;
- “DPA”** the Data Protection Act 2018;
- “Data Protection Legislation”** means (i) the GDPR, the Law Enforcement Directive (“LED”) and any applicable national implementing laws as amended from time to time; (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable laws about the processing of personal data and privacy;
- “EIR”** the Environmental Information Regulations 2004 and any supplementary, amending or updated legislation in connection with the same;
- “Enfield Council”** means London Borough of Enfield of P.O. Box 50 Civic Centre Silver Street, Enfield, Middlesex, London, EN1 3XA;
- “FE Guide”** means Enfield Council’s Guide on the FE, or any amendments/updates thereof;
- “FOIA”** the Freedom of Information Act 2000 and any supplementary, amended, or updated legislation in connection with the same;

“Funding or FE”	means those funds which shall become payable by Enfield Council to the Provider under the terms and conditions of this Provider Funding Agreement and at Enfield Council’s sole discretion;
“GDPR”	has the meaning given to it in section 3(10A) of the DPA 2018;
“Law”	any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which Enfield Council or the Provider is bound to comply with;
“Material Change”	means any significant change to the operations, business, activities, services and nature of the Provider, for example, a change in the number of children receiving Services from the Provider;
“Provider Funding Agreement”	includes and incorporates these terms and conditions and the FE Guide;
“Request for Information”	means a request submitted to Enfield Council or an apparent request under the Code of Practice on Access to Government Information, in accordance with the provisions of the FOIA and/or the EIR.
“Services”	means the purposes for which the Funding is being awarded as more fully described in the FE Guide;
“Statutory Guidance”	means the ‘Early years entitlements: local authority funding operational guide 2024 to 2025’ as published by the Department of Education, or any amendments/updates thereof and any other guidance documents that the Department of Education has published and/or will publish in relation to the Funding;
“Personal Data”	has the meaning given to it in the GDPR;
“Provider”	means the recipient of the Funding provided by Enfield Council under this Provider Funding Agreement;
“Working Day”	means a day (other than a Saturday or Sunday or public holiday) on which banks are open for domestic business in England;

1 General

1.1 Headings and sub-headings are for ease of reference only and shall not be taken into account in the interpretation or construction of this Provider Funding Agreement.

1.2 All references to clauses and schedules are references to the clauses of and the schedules to this Provider Funding Agreement unless otherwise stated.

1.3 All references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, documents or other instrument as amended, supplemented, substituted, novated or assigned from time to time.

1.4 All references to any Law shall include references to that Law as amended, extended, consolidated or re-enacted from time to time and shall include any orders, regulations, codes of practice, instruments or other sub-ordinate legislation made under the relevant statute or statutory provision.

1.5 words importing one gender shall be construed as importing the other and words importing the singular shall be construed as importing the plural and vice versa.

1.6 The Funding shall be used solely towards financing the Services in accordance with the Provider Funding Agreement. In the event that there are any inconsistencies between the general terms set out below and the FE Guide, the FE Guide shall take precedence.

1.7 The Provider shall comply with all statutory requirements and other Laws and regulations relating to the Services and its development and operation including without limitation all relevant health, safety and employment laws and regulations.

1.8 The Provider shall ensure that it has all necessary consents, (this includes any approval consent, profile check, exemption, licence or permission from any governmental or other authority or any person required by law), or otherwise for the Provider to provide the Services.

1.9 Providers must, upon receiving written notice from Enfield Council, repay any element of this Funding if it is not used for the purpose for which it was intended. The amount repayable must be repaid back to Enfield Council within twenty-eight (28) days within receiving notice.

1.10 The Provider must notify the Enfield Council in writing within ten (10) Working Days if there is any Material Change affecting finances, activities or other factors stated in the Provider Funding Agreement.

1.11 The Provider shall ensure that any publicity relating to the Services will be accurate in its content.

2 Obligations of The Provider

2.1 The Provider shall secure the delivery of the Services and ensure that at all times, the Services are delivered:

2.1.1 in accordance with these terms and conditions;

2.1.2 in accordance with the reasonable written directions of Enfield Council;

2.1.3 expeditiously, with reasonable diligence, in accordance with the Statutory Guidance and the FE Guide and in accordance with the principle that 'time is of the essence' with respect to the Providers' obligations under the Provider Funding Agreement.

3 Obligation of Enfield Council

3.1 In consideration of the Provider providing the Services under the Provider Funding Agreement, Enfield Council shall pay to the Provider the Funding in accordance with the terms of the Provider Funding Agreement.

4 Withholding or Repayment of Funding

4.1 Without prejudice to Enfield Council's other rights and remedies, Enfield Council may at its discretion reduce, suspend and or withhold the payment of the Funding or require repayment of the Funding in full (or in Enfield Council's absolute discretion in part), on demand, in accordance with the FE Guide.

4.2 The Provider shall promptly repay to Enfield Council any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where the Funding has been paid in error before all conditions attaching to the Provider Funding Agreement have been complied with by the Provider.

5 Termination

5.1 Enfield Council may terminate the Provider Funding Agreement and any Funding payments immediately on giving the Provider written notice should it be required to do so by financial restraints or for any other reason.

5.2 If the Provider commits any breach of this Provider Funding Agreement, then:

5.2.1 In the case of a breach which is capable of being remedied, the Provider shall, at its own expense, remedy the breach within seven (7) days of receiving notice from the Authorised Officer and shall compensate Enfield Council in respect of any loss which may have arisen as a result of the breach; and

5.2.2 in the case of a breach which is not capable of being remedied or in the case where the Provider has failed to remedy a breach in accordance with Clause 5.2.1 above, Enfield Council may terminate this Provider Funding Agreement

forthwith by serving written notice on the Provider that the Provider Funding Agreement has been so terminated.

5.3 Upon termination or expiration of this Provider Funding Agreement, the Provider shall return to Enfield Council forthwith all documentation and any other property, equipment or information belonging to Enfield Council and any part of the Funding which relate to any part of the Service which will not then be carried out by the Provider.

6 Break

6.1 Enfield Council or the Provider may cancel the Provider Funding Agreement by giving the other party at least one (1) school term's prior notice in writing and such cancellation shall not affect Enfield Council's obligation to pay for the Services duly performed up to the date that the Provider Funding Agreement is terminated or the Provider to perform the Services up to the date that the Provider Funding Agreement is terminated.

7 Insurances, Records and Compliance

7.1 The Provider shall take out and maintain with a reputable insurance underwriter or companies a policy or policies of insurance which are adequate to cover its liability under this Provider Funding Agreement, and any other insurances required to comply with the Law for the duration of the Provider Funding Agreement. These insurances must be effective in each case not later than the date on which the relevant risk commences. Payment will not be to the Provider unless this Clause 7 is complied with.

7.2 The Provider shall ensure that they maintain full and proper insurance policies relevant to the Provider's activities and shall when requested by Enfield Council provide full evidence of such insurance on demand, in accordance with the FE Guide.

7.3 The Provider shall maintain a record of all expenditure incurred in relation to the Service and shall retain all invoices, receipts, accounting records, other relevant financial information for a period of at least six (6) years after the expiration or termination of the Provider Funding Agreement, or until the resolution of any dispute between Enfield Council and the Provider. The Provider shall provide the Authorised Officer with copies or originals of all such documents forthwith upon his/her written request.

8 Indemnity

8.1 The Provider acknowledges that Enfield Council's extent of involvement in the Services is restricted to providing the Funding to assist the Provider to put the Services into practice. The Provider shall be solely liable for its personnel, the lawful performance of the Services and (without limitation) all third-party claims, demands, damage and proceedings which may arise.

8.2 The Provider shall indemnify and hold Enfield Council, its employees, agents, officers or sub-contractors harmless with respect to all third-party losses

and all other third party liabilities, such as, but not limited to, liabilities or losses arising from or incurred by reason of the actions and/or omissions of the Provider in relation to the project, the non-fulfilment of obligations of the Provider under this Provider Funding Agreement or its obligations to third parties.

8.3 Enfield Council accepts no liability for any consequences, whether direct or indirect, that may come about from the Provider running their business, the use of the Funding or from withdrawal of the Funding.

9 Assignment

9.1 The rights and obligations under the Provider Funding Agreement are personal to the Provider and are not assignable.

10 Contract (Rights of Third Parties) Act 1999

10.1 None of the provisions of the Provider Funding Agreement are intended to or will operate to confer any benefit pursuant to the Contract (Rights of Third Parties) Act 1999 on a person who is not named as a party to the Agreement.

11 Force Majeure

11.1 Enfield Council reserves the right to defer the date for performance of, or payment of, the Funding, or terminate any agreement with the Provider, if Enfield Council, or the Provider is prevented from, or delayed in, carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lockouts or other industrial disputes (whether involving the workforce of Enfield Council or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

12 Waiver

12.1 Failure to exercise, or any delay in exercising, any right or remedy provided under this Provider Funding Agreement or by law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy.

13 Governing Law and Jurisdiction

13.1 The Provider Funding Agreement shall be governed by and construed in accordance with the laws of England and Wales.

13.2 Enfield Council and the Provider irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Provider Funding Agreement or its subject matter or formation.

14 Variation

14.1 Enfield Council may (acting reasonably) amend the FE Guide at any time, as long as Enfield Council informs the Provider in writing prior to any variation taking place. No variation of the Provider Funding Agreement or of any of the documents referred to in it shall be varied by the Provider unless Enfield Council agrees it in writing.

14.2 The Authorised Officers shall have power to vary this Provider Funding Agreement in accordance with Clause 14.1 above and to issue instructions, approvals, consents, or notices in accordance with this Provider Funding Agreement and the Provider shall comply therewith.

15 No Partnership or Agency

15.1 Nothing in the Provider Funding Agreement shall be deemed to create a partnership or agency relationship between the Provider and Enfield Council or be deemed to authorise either party to incur liabilities or obligations on behalf of or in the name of the other and for the avoidance of doubt Enfield Council shall not be liable to pay wages, redundancy payments, salary, sickness pay or holiday allowances in respect of the Provider.

16 Freedom of Information

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

16.2 The Provider shall, and shall procure that its sub-providers (if applicable), shall:

16.2.1 Transfer the Request for Information made pursuant to the FOIA and EIRs relating to this Provider Funding Agreement to Enfield Council as soon as practicable after receipt and in any event within seven (7) Working Days of receiving a Request for Information.

16.2.2 Provide Enfield Council with a copy of all information in its possession or power in the form that Enfield Council requires within seven (7) Working Days (or such other period as Enfield Council may specify) of Enfield Council requesting that information; and

16.2.3 Provide all necessary assistance and co-operation as reasonably requested by Enfield Council to enable Enfield 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 EIR.

16.3 Enfield Council shall be responsible for determining at its absolute discretion whether any information:

16.3.1 Is exempt from disclosure in accordance with the provisions of the FOIA or the EIR;

16.3.2 Is to be disclosed in response to a Request for Information and in no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by Enfield Council.

16.4 The Provider acknowledges that Enfield 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 EIR to disclose information:-

16.4.1 Without consulting with the Provider; or

16.4.2 Following consultation with the Provider and having taken its views into account.

16.5 The Provider shall ensure that all information produced in the course of the Provider Funding Agreement or relating to the Provider Funding Agreement is retained for disclosure and shall permit Enfield Council to inspect such records as requested from time to time.

17 Confidentiality

17.1 The Parties will keep undisclosed secret and confidential all intellectual property rights, know-how, other business, technical or commercial information disclosed to it by the other party as a result of this Provider Funding 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 Provider Funding Agreement or save as expressly authorise in writing or save to the extent that the disclosure of the same is required by law.

17.2 Both parties agree to comply with the provisions of the FOIA and EIR, and any amendments made thereafter.

17.3 The Provider acknowledges that Enfield Council is subject to the FOIA and EIR and the Provider notes and acknowledges the FOIA, the EIR and the Local Government Transparency Code ("**Codes of Practice**") under section 45 and 46 of the FOIA. The Provider will act in accordance with the FOIA, the EIR and these Codes of Practice (and any other applicable codes of practice or guidance notified to the Provider from time to time) to the extent that they apply to the Provider obligations under this Provider Funding Agreement.

17.4 All decisions regarding disclosure of information following a Request for Information will be made at the sole discretion of Enfield Council. The Provider acknowledges that, even where the Provider has indicated that information is commercially sensitive, Enfield Council may be required to disclose it under the FOIA or EIA, with or without consulting the Provider and although Enfield Council will use reasonable endeavours to consult with the recipient prior to any disclosure,

Enfield Council shall not be under any further obligation to consult the Provider prior to disclosure.

17.5 The Provider agrees that without prejudice to the generality of Clause 17.4, the provisions of this Clause 17.5 are subject to the obligations and commitments of Enfield Council under the FOIA and the codes of Practices issued under section 45 and 46 of the FOIA.

17.6 Where it considers that any information should not be available for disclosure, it will identify and explain the grounds for exemption from disclosure and the time period applicable to that sensitivity.

17.7 Both parties shall ensure that its officers and employees comply with the provisions of this Clause 17.

This Clause 17 shall remain in full force and effect notwithstanding any termination of the Provider Funding Agreement.

18 Dispute Resolution

18.1 In the event that the Provider is not granted Funding under this Provider Funding Agreement, it shall notify Enfield Council, in writing, of its intention to appeal this decision within fourteen (14) Working Days of being notified that they will not receive the Funding. The letter the Provider sends Enfield Council must clearly identify the grounds on which the Provider is appealing and should be mailed to:

School and Early Years Improvement Service,
People Department,
London Borough of Enfield,
Civic Centre, Silver Street, London EN1 3XA

or email: if@enfield.gov.uk

18.2 The Provider will be notified of the date of the appeal within ten (10) Working Days of submitting an appeals request. Enfield Council will invite the Provider to attend the appeal hearing and to submit any written evidence to support the appeal. Details of the procedure and the format of the appeal will be provided ahead of the appeal hearing.

18.3 Evidence to be submitted for the appeals hearing from both the Provider and Enfield Council must be circulated to all parties at least ten (10) Working Days before the appeal hearing. At the appeals hearing, the Provider will be given an opportunity to make its case by submitting evidence to the appeals panel. Minutes will be taken at this panel meeting and a final decision will then be made by the panel members.

18.4 Notification of the decision of the appeals panel will be provided within five (5) Working Days from the appeal hearing.

18.5 If the Provider is dissatisfied with its treatment under the appeals process, and/or the decision of the appeals panel, they may make a complaint to Enfield Council. However, any complaint can only be made after the full appeals procedure with Enfield Council has been exhausted.

18.6 For any other disputes (“**Dispute/s**”) other than those mentioned in Clause 18.1, the Parties shall attempt in good faith to negotiate a settlement to any Dispute/s between them arising out of or in connection with the Provider Funding Agreement within ten (10) Working Days of either Party notifying the other of the dispute.

18.7 If the Dispute/s cannot be resolved within ten (10) Working Days of notification being provided in accordance with Clause 18.6, the Parties shall escalate the Dispute/s to the Head of the relevant service department of Enfield Council and the Provider.

19 Data Protection

19.1 The recipient of Personal Data shall (and shall procure that they) comply with any notification requirements under Data Protection Legislation, and both Parties will duly observe and comply with all their obligations under the requirements of Data Protection Legislation, which arise in connection with the Provider Funding Agreement.

By ticking **YES** on the Provider Portal, you agree to the terms and conditions of the following documents:

- Provider Funding Agreement;
- FE Guide; and
- Statutory Guidance.