

Provider Funding Agreement 2019

You should read these 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 monies already given.

Interpretation:

“Enfield Council”	means London Borough of Enfield of P.O. Box 50 Civic Centre Silver Street, Enfield Middlesex EN1 3XA;
“Statutory Guidance”	means The Early Years Entitlement: Operational Guidance for Local Authorities and Providers on Delivery of Free Early Years Provision for Two, Three and Four-Year Olds, June 2018, or any amendments/updates thereof;
“Data Protection Legislation”	means (i) the GDPR, the DPA 2018 and any applicable national implementing laws as amended from time to time; (ii) the DPA 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
“Funding”	The Funding Entitlement (“FE”) shall mean those funds which shall become payable by Enfield Council to the Provider for the provision of the FE as Enfield Council at its sole discretion may decide upon from time to time and in accordance with the Provider Agreement;
“Provider Agreement”	includes and incorporates these Terms and Conditions and the FE Guide;
“Funding Term”	subject to earlier termination, the Provider Agreement will remain in force in accordance with the FE Guide;
“Services”	means the purposes for which the Funding is being awarded as more fully described in the FE Guide;
“The Provider”	means the setting as identified on page four of these Terms and Conditions;
“FE Guide”	means the Enfield Council’s Guide to the Free Entitlement, or any amendments/updates thereof.

1 General

- 1.1 The Funding shall be used solely towards financing the Services in accordance with the Provider 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.
- 1.2 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.
- 1.3 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.

- 1.4 Providers must repay any unspent element of this Funding if it is not used for the purpose for which it was intended upon receiving notice from Enfield Council. The amount repayable or unspent should be repaid back to Enfield Council within 28 days within receiving notice.
- 1.5 The Provider must notify the School and Early Years' Improvement Services 113 Parsonage Lane Enfield, Middlesex, EN2 0AB, in writing within 10 working days if there is any material change affecting finances, activities or other factors stated in the Provider Agreement.
- 1.6 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 directions of Enfield Council;
 - 2.1.3 expeditiously, with reasonable diligence, in accordance with the Early Years Entitlements Operational Guidance and the FE Guide and in accordance with the principle that time is of the essence with respect the Providers obligations under the Provider Agreement.

3 Obligation of Enfield Council

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

5 Termination

- 5.1 Enfield Council may terminate the Provider 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.

6 Break

- 6.1 Enfield Council or the Provider may cancel the Provider Agreement by giving the other party at least one 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 Agreement is terminated or the Provider to perform the Services up to the date that the Provider Agreement is terminated.

7 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 Agreement, and any other insurances required to comply with the Law for the duration of the 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 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.

8 Indemnity

- 8.1 The Provider acknowledges that Enfield Council's extent of involvement in the Services is restricted to providing funds 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 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 losses and all other 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 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 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 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 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**

- 13.1 The Provider Agreement shall be governed by and construed in accordance with English law.

14 **Variation**

- 14.1 Enfield Council may (acting reasonably) amend the FE Guide at any time, as long as Enfield Council informs the Provider within a reasonable period thereafter of the variation. No variation of the Provider Agreement or of any of the documents referred to in it shall be varied by the Provider unless Enfield Council agrees it in writing.

15 **No Partnership or Agency**

- 15.1 Nothing in the Provider 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 **Confidentiality**

- 16.1 Both 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 Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorise in writing or save to the extent that the disclosure of the same is required by law.
- 16.2 Both parties agree to comply with the provisions of the Freedom of Information Act 2000, and any amendment made thereafter.
- 16.3 The Provider acknowledges that the 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 Agreement.
- 16.4 All decisions regarding disclosure of information following a Request for Information will be made at the sole discretion of the 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, the Council shall not be under any further obligation to consult the Provider prior to disclosure.
- 16.5 The Provider agrees that without prejudice to the generality of clause 16.4, the provisions of this clause 16.5 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; and
- 16.6 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.
- 16.7 Both parties shall ensure that its officers and employees comply with the provisions of this Clause 16.

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

17 Data Protection

The Recipient 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 Agreement.

By ticking **YES** and submitting the Funding Agreement Form (Provider Portal) you are agreeing to the terms and conditions of the following documents:

- Provider Funding Agreement
- Guide to the Free Entitlement
- Early Years Entitlements: Operational Guidance