

**Early Childhood Care and Education (ECCE) Programme
General Conditions of the ECCE Funding Agreement
Programme Call 2021/2022**

1. Interpretation.

- 1.1. "ECCE Programme" means the Early Childhood Care and Education programme
- 1.2. "The Agreement" means this ECCE Funding Agreement which includes Appendix 1 (General Terms and Conditions governing participation in the ECCE Programme), Appendix 2 (General Terms and Conditions governing participation in the Access and Inclusion Model (AIM)), Appendix 3 (Framework Agreement for the Sharing of Personal Data) and DCEDIY Rules for ECCE Programme 2021/2022 available at www.pobal.ie
- 1.3. "Annual Accounts" for the purposes of this Agreement means annual reports and accounts where the Approved Provider is obliged to prepare and return annual accounts to the Companies Registration Office (CRO). Where the Approved Provider is not required to prepare and return annual reports and accounts to the CRO, annual accounts means suitable financial statements that are an accurate record of income and expenditure, in compliance with the requirements set out by the Minister
- 1.4. "The Approved Provider" means a provider of an Early Learning and Care Service (ELC) in accordance with the ECCE Programme who has entered into this Agreement with the Minister for Children, Equality, Disability, Integration and Youth for the provision of the ECCE Programme.
- 1.5. "*DCEDIY Rules for ECCE Programme 2021/2022*" means the rules document pertaining to all aspects of the administration and operation of the ECCE Programme
- 1.6. "the Minister" means the Minister for Children, Equality, Disability, Integration and Youth
- 1.7. "The Department" means the Department of Children, Equality, Disability, Integration and Youth
- 1.8. "ECCE Funding" means the payment(s) made by the Minister to the Approved Provider for the provision of the ECCE Programme as set out in Appendix 1 of this Agreement and in the DCEDIY Rules for the ECCE Programme 2021/2022. Administration of the ECCE Programme shall be the responsibility of Pobal and/or the Minister.
- 1.9. "Pobal" refers to the company limited by guarantee of this name, which is also a registered charity. Pobal functions as the agent of the Minister for Children, Equality, Disability, Integration and Youth and acts on the Minister's behalf in relation to their agreed roles
- 1.10. "Capitation rate" means the amount(s) of money payable by the Minister to the Approved Provider in respect of the provision of the ECCE Programme to an individual registered child
- 1.11. "AIM" means the Access and Inclusion Model which supports children with a disability to access and meaningfully participate in the ECCE Programme. (See Appendix 2: General Terms and Conditions Governing Participation in the Access and Inclusion Model (AIM)) available at www.aim.gov.ie
- 1.12. "AIM Rules 2021/2022" means the rules document pertaining to all aspects of the administration and operation of AIM available at www.aim.pobal.ie
- 1.13. "Additional Capitation" means the additional payment(s) made by the Minister to the Approved Provider for the provision of the additional assistance (defined in sub-clause 1.14 below) or for the reduction in the

adult to child ratio in the ELC Service as set out in Appendix 1 of this Agreement. Administration of AIM shall be the responsibility of Pobal and/or the Minister

- 1.14. "Additional Assistance" may be provided by a person recruited by the ELC Service or by an existing staff member using the additional capitation being paid under AIM Level 7 to ensure that a child or children can access and meaningfully participate in the ECCE Programme
- 1.15. "Ratio" has the meaning set out in the Child Care Act 1991 (Early Years Services) Regulations 2016.
- 1.16. "Inclusion Co-ordinator" means a staff member of the ELC Service who has graduated from the Leadership for Inclusion in the Early Years higher education programme and who has agreed to take on the roles and responsibilities of the Inclusion Co-ordinator
- 1.17. "PSP" means the Programme Support Payment
- 1.18. "NCS" means the National Childcare Scheme
- 1.19. "CCC" means the City and County Childcare Committee
- 1.20. "Data Protection Law" means all applicable national and EU data protection laws, regulations and guidelines, including but not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the "General Data Protection Regulation" or "GDPR"), the Data Protection Acts 1988 to 2018 and any guidelines and codes of practice issued by the Office of the Data Protection Commission or other supervisory authority for data protection in Ireland
- 1.21. "CAR" means the Compliance Audit and Risk unit in Pobal
- 1.22. "ELC Service" means an Early Learning and Care Service.
- 1.23. "SAC Service" means School Age Childcare Service
- 1.24. "PIP" means Programmes Implementation Platform; the online interactive system for the administration of the CCSP Saver Programme.
- 1.25. "Early Years Platform, or 'The Hive'" means the new IT system maintained by the Scheme Administrator which provides ECCE Programme Assistance.
- 1.26. "Better Start" refers to the Better Start National Early Years Quality Development Service hosted by Pobal
- 1.27. "Tusla" refers to the Child and Family Agency

"Term" shall cover the period 23rd of August 2021 to no later than 1st July 2022 or, where appropriate, subject to sub-clause 5.1(b) of this Agreement, 23rd August 2021 to 15th July 2022 of ELC Service provision agreed between the Approved Provider and the Minister

2. Pre-Payment Conditions.

- 2.1 Payment of ECCE Funding or any instalment of ECCE Funding shall be subject to the Approved Provider:
 - (a) Signing this Agreement electronically thereby confirming that all terms and conditions have been read and accepted
 - (b) Continuing to comply at all times with the terms and conditions of this Agreement
 - (c) Having current and service appropriate registration/s with the Child and Family Agency (Tusla)

- (d) Retaining a current Tusla Registration Certificate/s on the premises appropriate to the childcare offers of the Early Learning and Care (ELC) and/or School Age Childcare (SAC) Service Provider;
- (e) Having a satisfactory level of compliance with Regulations made under the Child Care Act 2019;
- (f) Complying with all reporting requirements of Pobal;
- (g) Complying at all times with the rules of ECCE as described in the *DCEDIY Rules for ECCE Programme 2021/2022* document;
- (h) Where applicable, complying at all times with the rules of AIM as described in the AIM Rules 2021/2022 document;
- (i) Designating a named bank account to be used in connection with the operation of the ELC Service and making any necessary arrangements to enable payment of ECCE Programme Funding or any instalment to be transferred to such by electronic transfer;
- (j) Being verified as compliant with all National and EU taxation laws by Pobal and/or the Minister in advance of any due payment date;
- (k) Providing information to the satisfaction of the Minister on the internal procedures for expenditure and financial control in relation to ECCE Funding Agreement pursuant to clause 7 below; and
- (l) Verifying compliance with the conditions set out in sub-clause 4.4 below by uploading to the Hive a fees list and service calendar two weeks prior to the new programme year i.e. the fees list(s) and service Calendar(s) must be uploaded no later than 6th August 2021 for the 2021/2022 programme year. Both will be subject to review by the Minister and/or the City/County Childcare Committees (CCCs).

Failure to comply with the terms of this Agreement may result in a suspension of ECCE Funding and/or a termination of this Funding Agreement and it may result in exclusion from PSP and/or Capital Funding.

3. Terms and Conditions of Funding.

- 3.1 The Minister shall set the terms and conditions under which this Funding Agreement will wind down.
- 3.2 It is a requirement under Part 12 of the Child & Family Agency Act 2013 that all Approved Providers must be registered with Tusla in order to provide an ELC and/or SAC Service and have a satisfactory level of compliance with the childcare regulations as outlined in the Child Care Act 1991 (Early Years Services) Regulations 2016, Child Care Act 1991 (Early Years Services) (Amendments) Regulations 2016 and the Child Care Act 1991 (Early Years Services) (Registrations of School Age Services) Regulations 2018.
- 3.3 Providers who provide both an ELC and an SAC service must be registered with Tusla for both services.
- 3.4 The ECCE Funding shall be used to provide free pre-school to eligible children attending the Early Learning and Care (ELC) Service on the basis of the terms and conditions set out in this Agreement, the *DCEDIY Rules for ECCE Programme 2021/2022* document and Appendix 1.
- 3.5 The ECCE Programme shall be operated by the Approved Provider in accordance with the application for the Funding and in compliance with the terms and conditions of this Agreement and the *DCEDIY Rules for ECCE Programme 2021/2022* document. The Approved Provider hereby acknowledges and agrees to comply with the terms and conditions of this Agreement as set out in Appendix 1.
- 3.6 The Approved Provider shall be a limited company, a company limited by guarantee, a sole trader, a designated activity company, a partnership, or a School Board of Management
- 3.7 The Approved Provider must demonstrate tax compliance by providing their tax reference number, together with their tax clearance access number. By supplying these numbers, the Approved Provider

acknowledges and agrees that Pobal and/or the Minister has the permission of the Approved Provider to verify its tax cleared position online.

- 3.8 The Approved Provider shall notify Pobal of any change or alteration to the constitution / status or structure or associated contact details of the Approved Provider.
- 3.9 The Approved Provider shall ensure that the operation of the ELC Service is fully and properly documented. All reports, records, accounts and other documentation of the Approved Provider relating to the operation of the ELC Service and/or the use by the Approved Provider of the ECCE Funding shall be maintained and made available for inspection on request, for a minimum of 7 years after the termination or expiry of this Agreement for whatsoever reason. In no circumstances shall any financial documentation be destroyed or otherwise disposed of without the prior written consent of the Minister.
- 3.10 The Approved Provider shall comply with all reasonable requests and directions of the Minister, or representatives or agents of the Minister, relating directly or indirectly to the use of the Funding Agreement in connection with the ELC Service.
- 3.11 The Approved Provider shall comply with all requirements of company law and all and any applicable legislation. The Approved Provider warrants that it has the authority to enter into this Agreement and to carry out its obligations and responsibilities under this Agreement.
- 3.12 The Approved Provider is not and shall in no circumstances hold itself out as being the servant or agent of the Minister. The Approved Provider is not and shall in no circumstances hold itself out as being authorised to enter into any contract on behalf of the Minister or in any other way to bind the Minister to the performance, variation, release or discharge of any obligation.
- 3.13 The employees of the Approved Provider are not and shall not hold themselves out to be (and shall not be held out by the Approved Provider as being) servants, employees or agents of the Minister for any purposes whatsoever.
- 3.14 The Approved Provider shall provide an e-mail address, a postal address and a contact telephone number to be used for communications from the Minister in relation to the ECCE Programme.
- 3.15 The Approved Provider shall complete all contractual requirements and have a contract in place with the Minister on or before 23rd August 2021. A later date may be permitted where the Minister deems it appropriate.
- 3.16 The Approved Provider must upload fees lists and service calendars on or before 6th August 2021 to the Hive which demonstrates that the appropriate reductions in childcare fees for qualifying parent/guardian will be applied. These fees lists and service calendars will be subject to review.
- 3.17 The Approved Provider shall submit information relating to the operation of the ECCE Programme via the Hive as directed by the Minister, or by Pobal.
- 3.18 Failure to comply with the terms of this Agreement may result in a suspension of ECCE Programme Funding and/or a termination of this Funding Agreement and may result in exclusion from PSP and/or Capital Funding.

4 Undertakings and Warranties.

- 4.1 The Approved Provider agrees to comply with all relevant legal and regulatory requirements, including, without limitation, regulations made under the Child Care Act 1991 (as amended, including by the Child and Family Agency Act 2013), planning legislation, fire safety legislation, employment legislation, the Equal Status Acts 2000 to 2015, health and safety legislation and Data Protection Acts 1988 and 2003, the Children First Act, 2015, the Data Protection Act 2018 and the General Data Protection Regulation (the “GDPR”) 2018, in the operation of the ELC Service. Failure to comply with these legal and regulatory requirements may result in an immediate suspension of ECCE Funding and/or termination of this Funding Agreement.
- 4.2 The Approved Provider shall undertake all reasonable and appropriate checks on individuals employed by or otherwise involved with the ELC Service in relation directly or indirectly to the operation of the ELC Service to determine their suitability, including any regulatory or statutory requirements regarding Garda vetting, including but not limited to the provisions of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012. The Approved Provider further warrants that the premises and facilities are suitable for use as an Early Learning and Care Service and warrants that all regulations and legislation are complied with, as well as the Children First Act 2015 and the associated *Children First National Guidance for the Protection and Welfare of Children*. The Approved Provider undertakes in the operation of the ELC Service to comply with the principles comprised within the Children First Act 2015 and guidelines including the requirement to develop and make available a Child Safeguarding Statement. Failure to comply with these legal and regulatory requirements may result in an immediate suspension of ECCE Funding and/or termination of this Agreement.
- 4.3 The Approved Provider warrants that it has obtained and will take all necessary steps to maintain in full force and effect all necessary consents, approvals, authorisations, licences and permissions which are required to enable it to comply with its obligations under this Agreement, including but not limited to being verified as compliant with all National and EU taxation laws by the Minister and/or Pobal and evidence of the relevant qualifications, as defined in Appendix 1, held by persons delivering the ELC Service. Breach of this warranty may result in a requirement to repay over-claimed monies, and/or immediate suspension of ECCE Funding and/or termination of this Agreement.
- 4.4 The Approved Provider shall provide the ECCE Programme to eligible children, in return for the ECCE Funding received from the Minister. This does not preclude the Approved Provider from providing chargeable services in addition to the ECCE Programme, provided they are offered on an optional basis. Payment of ECCE Funding shall be subject to the Approved Provider verifying compliance with this condition by the provision of a fees list and service calendar to the Hive which will be subject to review by the City/County Childcare Committees (CCCs) on behalf of the Minister. Breach of this warranty may result in a requirement to repay over-claimed monies already paid, and/or immediate suspension of ECCE Funding and/or termination of this Agreement.
- 4.5 The Approved Provider shall ensure that any information relating to the ECCE Programme which is submitted via the Hive at the direction of the Minister or Pobal is accurate and that all relevant documentation is retained by the Approved Provider to allow the accuracy of the information to be checked by servants or agents of the Minister on request. Breach of this provision may result in a requirement to repay over-claimed monies already paid, and/or an immediate suspension of ECCE Funding and/or termination of this Agreement.
- 4.6 It is an express condition of this Agreement and the Approved Provider so acknowledges and confirms that nothing in this Agreement shall be construed so as to imply or have the effect of the granting by the Minister of any warranty or assurance whatsoever to the Approved Provider or to any third party whomsoever as to:

- 4.7 Whether or not the ELC Service operated by the Approved Provider is of a standard that adequately meets the stated aims and objectives of the ECCE Programme;
- 4.8 The competency of the Approved Provider, its staff or agents; or
- 4.9 The stability of any structure, soundness of any materials used or the adequacy of its purpose of any buildings or facility.
- 4.10 The Approved Provider must comply with all aspects of the document *DCEDIY Rules for ECCE 2021/2022*, available on <https://earlyyearshive.ncs.gov.ie/> and <https://www.gov.ie>. The Approved Provider must also comply with the document 'AIM Rules 2021/2022' and be familiar with the contents of the *Policy on the Operation of the Access and Inclusion Model* and other information available on the AIM website (www.aim.gov.ie). These documents contain comprehensive details relating to the operation of the ECCE Programme and AIM. The Approved Provider is required to comply with all rules and procedures outlined in these documents, which may be updated or amended from time to time as deemed necessary by the Minister. The Minister and/or Pobal and/or the CCCs shall notify the Approved Provider of any changes to such documents via email and/or the Hive. The Approved Provider shall access the Hive on a regular basis, to ensure they are aware of any changes made to such documents. Failure to comply with these conditions may result in a requirement to repay over-claimed monies, and/or immediate suspension of ECCE Funding and/or termination of this Agreement.
- 4.11 The Approved Provider must comply with and implement any new policies, guidelines and/or programme governance protocols in relation to the ECCE Programme as may be issued by the Minister from time to time. The Minister and/or Pobal and/or the CCCs shall notify the Approved Provider of any such new policies, guidelines and/or programme governance protocols via email and/or the Hive. It is the responsibility of the Approved Provider to access the Hive to ensure they are aware of any such new changes made to such policies, guidelines and/or programme governance protocols. Failure to comply with these conditions may result in a requirement to repay over-claimed monies, and/or immediate suspension of ECCE Funding and/or termination of this Agreement.
- 4.12 The Approved Provider agrees to maintain up-to-date child registration information on the Hive in compliance with the 'DCEDIY Rules for ECCE Programme 2021-2022.'

5 Operation of ELC Services.

- 5.1 The Approved Provider agrees to use the capitation provided through this Agreement to provide a free ELC Service in ECCE for qualifying children in their pre-school room which consists of:
- a) 38 weeks of 3 hours per day for 5 days a week (183 days) during the period 23rd August 2021 to 1st July 2022; OR
 - b) Subject to the prior agreement of the Minister, 41 weeks of 3 hours 30 minutes per day for 4 days a week (157 days) during the period 23rd August 2021 to 15 July 2022 (*a small number of exceptions have been allowed in the past where, for good reason, it is not possible for an Approved Provider to operate over 5 days. Approved Providers should note that no further such exceptions are allowed. Where an exception has previously been allowed on this basis, the Approved Provider may be allowed to participate in the programme on the basis of providing the pre-school room for 3 hours 30 minutes per day for 4 days per week. In such cases, an Approved Provider shall provide the ELC Service over 41 weeks (157 days) and references to 38 week services shall be taken as applicable to such Approved Providers.*); OR
 - c) Where an Approved Provider is approved by the Minister for participation in the ECCE Programme with effect from a date later than the commencement of the ECCE Programme year, the Approved

Provider shall provide the ECCE Programme for qualifying children for 3 hours per day for 5 days a week up to 1st July 2022

- 5.2 A minimum number of weeks within each term (to be agreed and communicated by the Department and/or Pobal) must be delivered by the service between the period of the 23rd August 2021 and the 1st July 2022.
- 5.3 Where the ECCE Programme is being provided to a child and the ELC Service is provided on the basis of an agreement between the Approved Provider and the parent/guardian of the child that additional hours of care will also be availed of and paid for, if the parent/guardian ceases to pay for the additional hours of care as agreed, an Approved Provider may cease to provide the ECCE Programme to that child. The Approved Provider undertakes to inform the parent/guardian of this provision prior to children being enrolled in the ELC Service.
- 5.4 Where an Approved Provider ceases to provide ECCE Programme to a child and has removed the child from the Service for whatever reason, any monies paid by the Minister to the Approved Provider must be returned from the date of cessation in accordance with the DCEDIY Rules for ECCE Programme 2021/2022.
- 5.5 Where the ECCE Programme ceases to be provided to a child because the parent/guardian has exercised the right to remove the child from the ELC Service for any reason, monies paid in excess of the monies due in respect of that child by the Minister to the Approved Provider for the provision of ELC shall be returned to the Minister in accordance with *the DCEDIY Rules for ECCE 2021/2022* available on Pobal's website (www.pobal.ie) and also in accordance with the AIM Rules 2021/2022 and other relevant information available on the AIM website (www.aim.gov.ie.)
- 5.6 Where the ELC Service refuses to allow a child to participate on the ECCE Programme until an AIM application for Additional Capitation is granted, monies in respect of this child will not be paid to the service until the child commences on the ECCE Programme.
- 5.7 Where an application for Additional Capitation is approved, this will be paid from the date of the child's enrolment on the ECCE Programme, or the date on which the application is approved, whichever is later. Backdating of Additional Capitation payments is not permitted.

6 Payment Terms.

- 6.1 Subject to the provisions of sub-clause 6.3, payment of ECCE Funding will be made by the Minister and/or Pobal in such instalments as may be determined by the Minister.
- 6.2 Where the Approved Provider receives ECCE Funding as a result of the provision of ELC Service to a child qualifying under this Agreement, it may not simultaneously receive funding for the provision of a service to that child, in respect of the same time of day, under any Agreement in respect of the CCSP Saver Programme, the NCS programme, or any other childcare programme administered by the Minister, with the exception of any funding approved under AIM or PSP.
- 6.3 Whenever under this or any other Agreement in respect of DCEDIY childcare programmes referred to in sub-clause 6.2 above, any sum of money is recoverable from or payable by the Approved Provider (including any overpayment or sum which the Approved Provider is liable to pay to the Minister in respect of any breach of this Agreement, the *DCEDIY Rules for ECCE Programme 2021/2022*, the *AIM Rules 2021/2022* or any other funding Agreement in respect of the childcare programmes referred to above in sub-clause 6.2), the Minister has the right to deduct that sum from the ECCE Funding then due to the

Approved Provider in respect of this Funding Agreement. Notwithstanding any provision, whether expressed or implied in this Agreement, the Minister is entitled to off-set any amount due under this Agreement against any amounts owed by the service provider to the Minister.

- 6.4 Payment of ECCE Funding will be conditional on the requirements of this Agreement being fully complied with. Pobal may, as an agent acting on behalf of the Minister, recover financial over claims and/or withhold payment with the Minister's consent where the Approved Provider is found to be in breach of the requirements of this Agreement and/or the associated *DCEDIY Rules for ECCE Programme 2021/2022* and/or the AIM Rules 2021/2022.
- 6.5 Pobal may also withhold payment of ECCE Funding, with the consent of the Minister, in cases where ECCE Funding held by or to be provided to the Approved Provider are found to be at risk of misuse, misappropriation or loss.
- 6.6 PSP payments may be withheld by the Minister in cases where the Approved Provider has been found to have breached any rule/s of the *DCEDIY Rules for ECCE Programme 2021/2022* and/or the terms of this Funding Agreement.
- 6.7 PSP payments may also be withheld by the Minister in cases where the Approved Provider has unauthorised fees charged to parents in their fees lists.

7 Access and Reporting Requirements.

- 7.1 The Approved Provider agrees to maintain up-to-date child registration information on the Hive in compliance with the *DCEDIY Rules for ECCE Programme 2021/2022*, the AIM Rules 2021/2022, and any additional requirements of the Hive.
- 7.2 The Approved Provider shall maintain appropriate records to enable verification by the Department or agents acting on its behalf (including Pobal) that the general terms of this Agreement are complied with. In particular, such records **will include an attendance register which clearly shows the dates, times and durations of attendance for each individually identified child for every day that the child is in attendance.** Records of fee income should be kept up to date and available for verification purposes.
- 7.3 Failure by Approved Providers to maintain accurate attendance records and/or accurate update child registration details, as required in clause 7.2, will result in an immediate suspension of ECCE Funding and/or a requirement to repay over-claimed monies already paid and may result in a termination of this Agreement.
- 7.4 The Approved Provider must retain a written record of the Agreement with the parent/guardian that sets out the number of childcare weeks and the number of childcare hours each week that the Approved Provider has agreed to provide to the eligible child where applicable, the fee for the childcare service that will be provided to the eligible child, having regard to the Approved Provider's published schedule of fees and a commitment to offset the Subsidy in full against the agreed fee. This record must be signed by the parent/guardian.
- 7.5 The Approved Provider shall maintain appropriate annual accounts for each financial year in accordance with the timescales set out by the Companies Registration Office (for limited companies) or by the Revenue Commissioners (for unincorporated entities). Copies of such accounts must be provided to Pobal or the Comptroller an Auditor General (C&AG) on request. Pobal CAR may share information found in the course of a governance, audit or compliance check with the relevant authorities, including, but not limited to, the Office of the Director of Corporate Enforcement, the Charities Regulator, and the Office of the Revenue Commissioners.

- 7.6 The Approved Provider shall within its annual accounts separately record all monies received from Pobal relating directly or indirectly to the operation of the ECCE Programme and ensure that appropriate financial records are maintained.
- 7.7 The Approved Provider shall respect and comply with the statutory role and regulatory and public accountability responsibilities of the Department, its agents and other relevant statutory bodies and at all times co-operate fully with the Department, its agents and all other statutory bodies in this regard.
- 7.8 The Approved Provider shall ensure that all financial records relating to monies received in relation to the operation of the ECCE Programme are available to Pobal on request. All financial records, including attendance records, must be retained for a period of 7 years.

Failure by Approved Providers to maintain accurate attendance records and/or accurately update child registration details, as required in clause 7.2, may result in an immediate suspension of the Funding including associated PSP and may result in exclusion from Capital Funding. There will also be a requirement to repay over-claimed monies already paid and the failure to do so may result in a termination of the ECCE Funding Agreement.

8 Right of Verification and Audits.

- 8.1 The Approved Provider shall permit representatives and agents of the Minister to attend at the premises of the Approved Provider and shall permit access to the Approved Provider's premises and personnel for the purposes of inspection and audits. These shall include, but not be limited to, inspections and audits carried out by the early years (pre-school) inspectorate, Pobal, the inspectorate of the Department of Education and Skills, Better Start Early Years Specialists, and any other applicable verification, audit and/or inspection that may be provided for by law. The Approved Provider shall allow access to relevant financial and other records for this purpose and shall facilitate and co-operate with inspections and audits as required. Failure to comply with this obligation may result in an immediate suspension of ECCE Funding and/or termination of this Agreement.
- 8.2 Relevant records must be available at all times on-site for inspection and the Approved Provider shall allow such records (or copies of such records) to be taken off-site for the purposes of conducting such inspections and audits. The Approved Provider shall permit and facilitate representatives and agents of the Minister to make any copies of records as deemed necessary. Failure to comply with this obligation may result in an immediate suspension of ECCE Funding and/or termination of this Agreement.
- 8.3 Verification, audit and other inspections, including education-focused inspections, may be carried out without prior notice being given to the Approved Provider. Failure to comply with this obligation may result in an immediate suspension of ECCE Funding and/or termination of this Agreement and may result in exclusion from PSP and/or Capital Funding.
- 8.4 Better Start Early Years Specialists may contact the service by phone to discuss and agree what level of support is required in relation to relevant applications made under AIM. Where the Specialist determines that more support may be required, a visit will be arranged and this will be agreed with the Approved Provider in advance of the visit; engagement with the parent/guardian(s) will be part of this process.
- 8.5 If any overpayments to Approved Providers are discovered, the Minister shall be entitled at any time to terminate this Agreement immediately, recover payments or suspend payments under this Agreement.
- 8.6 Notwithstanding any other provision of this Agreement, where, in the course of a verification audit or other inspection, it is identified that the Approved Provider is in breach of the terms of this Agreement

and/or the DCEDIY Rules for ECCE Programme 2021/2022, they shall take all necessary steps to rectify such breaches and shall comply with the instructions of Pobal and the Minister in this regard.

9. Term and Termination.

- 9.1. This Agreement shall cover the period 23rd of August 2021 to no later than 1st July 2022 or, where appropriate, subject to sub-clause 5.1(b), 23rd August 2021 to 15th July 2022 of ELC Service provision agreed between the Approved Provider and the Minister which shall constitute “the Term.”
- 9.2. Nothing in this Agreement shall be construed as imposing any obligation on the Minister to provide financial assistance of any nature to the Approved Provider after the Term, except in relation to approvals made under AIM in relation to the following pre-school year. Save as is expressly provided for in this Agreement, the Minister shall have no financial or other obligations to the Approved Provider or to any other party whatsoever.
- 9.3. The Minister shall be entitled at any time during the Term to terminate this Agreement immediately, recover payments or suspend payments under this Agreement, if any one or more of the following events occur:
 - a) The Approved Provider, its employees, agents or any third party acting on behalf of the Approved Provider knowingly makes a false or misleading statement, or fails to disclose information in the course of its application (i) for the ECCE Funding or (ii) for any payment thereof, or in the provision of any information or documentation in relation to its obligations under this Agreement;
 - b) An order is made or an effective resolution is passed for the winding up of the ELC service or business;
 - c) A receiver, examiner or administrator is appointed over any of the property or assets of the Approved Provider;
 - d) The Approved Provider shall commit a breach of any term or condition of this Funding Agreement and, if such breach is capable of remedy, shall not have remedied it within 30 days after written notification thereof has been served on the Approved Provider;
 - e) A distress or execution is levied or served upon any of the property or assets of the Approved Provider and is not paid off within 30 days;
 - f) The Approved Provider shall cease or threaten to cease to operate all or a substantial part of the ELC Service;
 - g) Any other event occurs which the Minister in her/his absolute discretion considers might or does materially adversely affect the ability of the Approved Provider to operate the ELC Service and/or to comply with its obligations under this Agreement;
 - h) The Approved Provider fails to adhere to the ECCE Programme rules as outlined in the *DCEDIY Rules for ECCE Programme 2021/2022* document; or
 - i) The Approved Provider fails to adhere to the AIM Rules as outlined in the AIM Rules 2021/2022 document.
- 9.4. On termination of this Agreement pursuant to clause 9.3, the Approved Provider shall repay to the Minister on demand all, or at the absolute discretion of the Minister a portion of, monies received in respect of the ECCE Funding and, in the event of default on such repayment, such monies shall be recoverable from the Approved Provider as a simple contract debt.
- 9.5. Termination of this Agreement shall not affect any antecedent and accrued rights, obligations or liabilities of either party, nor shall it affect any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

- 9.6. The Approved Provider shall pay all legal and other costs, charges and expenses incurred by the Minister in enforcing or endeavouring to enforce the repayment of any monies and/or compliance by the Approved Provider with its obligations hereunder.
- 9.7. Subject to the provisions of sub-clause 9.3 by either party by serving 8 weeks' written notice to the other party. For greater certainty, neither party shall be entitled to any additional amounts or compensation in the event that this Agreement is terminated in accordance with this sub-clause
- 9.8. The Minister reserves the right to alter the terms and conditions of this Agreement at any time, as deemed necessary by the Minister, in line with public health advice or responding to fiscal policy changes.

10. Insurance and Indemnity.

- 10.1. The Approved Provider shall, for the duration of this Agreement, effect and maintain any necessary employer's liability insurance, public liability insurance adequate and necessary to operate and deliver the ECCE Programme, to operate its business and cover all liabilities of the Approved Provider arising in relation to the ELC Service and pursuant to this Agreement.
- 10.2. The Minister shall have no liability in respect of any actions, proceedings and costs, claims, demands and liabilities whatsoever, arising directly or indirectly, from any act or omission of the Approved Provider, its employees, servants or agents in connection with the ELC Service or any breach of this Agreement and the Approved Provider shall indemnify the Minister in regard to any such actions.

11. Retention of Records

- 11.1. The Freedom of Information Act 2014 applies to this Agreement. The Approved Provider and the Minister will consult about any confidential or commercially sensitive information before making a decision on any Freedom of Information request received.
- 11.2. The Approved Provider acknowledges that the Minister is subject to the requirements of the Freedom of Information Act 2014 and, subject to constraints arising from commercial sensitivity or a duty of confidentiality, shall assist and co-operate with the Minister to enable the Minister to comply with the same.
- 11.3. The Approved Provider agrees to maintain compliance with the Data Protection Acts 1988, 2003 and 2018, the GDPR (see Appendix 3) and other relevant statutory provisions and guidance that may be issued by the Data Protection Commissioner for Ireland from time to time and will comply with all obligations at law.

12 Force Majeure.

- 12.1 A Force Majeure clause is a contract provision that permits either party to suspend or terminate the performance of its obligations when certain circumstances beyond their control arise as outlined in 12.2 below. The Minister is under no obligation to fund 'Force Majeure' days and does so at their own discretion.
- 12.2 If and to the extent that either party (the "Affected Party") is hindered or prevented by circumstances not within its reasonable ability to control, including but not limited to, acts of God, inclement weather, flood, lightning, fire, trade disputes, strikes, lockouts, acts of terrorism, war, military operations, epidemic, pandemics, acts or omissions of third parties for whom the Affected Party is not responsible ("Force

Majeure") from performing any of its obligations under this Agreement, the Affected Party shall be relieved of liability for failure to perform such obligations.

- 12.3 The Affected Party shall notify the other party, through its agents (Pobal), of the estimated extent and duration of such inability to perform its obligations within three days of the onset of the event. Upon the cessation of the event of Force Majeure, the Affected Party shall notify the other party of such cessation.
- 12.4 In the event Force Majeure continues for more than 45 days then either party shall have the right to terminate this Agreement on written notice to the other party.

13. Non-assignment/Sub-contracting.

- 13.1. This Agreement is personal to the Approved Provider who shall not be entitled to assign or transfer the benefit of it, or the obligations arising from it, to any other party.
- 13.2. The Approved Provider shall not be entitled to sub-contract any of its obligations under this Agreement and shall remain primarily responsible for their performance.
- 13.3. The Approved Provider shall be entitled to sub-contract services which are additional to its obligations under this Agreement, including where these are provided as additional optional services within the ELC Service, provided the Approved Provider continues to meet its obligations in respect of the ELC Service under this Agreement.

14. General.

- 14.1. Nothing in this Agreement shall constitute a partnership or joint venture or establish a relationship of agency between the parties.
- 14.2. This Agreement may only be varied by an instrument in writing signed electronically by or on behalf of both parties which signature by the Approved Provider is confirmation of acceptance of the terms and conditions of the Agreement as varied.
- 14.3. A failure or delay by the Minister to exercise any right or remedy under this Agreement shall not in any way be construed as a waiver of the Agreement.
- 14.4. The rights and remedies provided for in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.
- 14.5. In the event that any provision of this Agreement shall be determined to be partially void or unenforceable by virtue of any legislation to which it is subject or by virtue of any other reason whatsoever, it shall be void or unenforceable to that extent only. The validity and enforceability of any of the other provisions of this Agreement shall not be affected.
- 14.6. This Agreement shall be governed by and construed in accordance with the laws of the Republic of Ireland and the Parties hereto expressly and irrevocably submit to the jurisdiction of the Irish Courts.

APPENDIX 1

General Terms and Conditions governing participation in the ECCE Programme

1. The Approved Provider must have access to facilities that enable the Approved Provider to conduct business online and a dedicated EYP Platform (Hive) user account in order to participate in the ECCE Programme and, where relevant, in AIM. The Approved Provider shall provide the ECCE Programme in strict accordance with the ECCE Programme rules outlined in the *DCEDIY Rules for ECCE Programme 2021/2022* document. The Approved Provider shall access Pobal's website (www.pobal.ie) to ensure that they are compliant with the most up-to-date version of the *DCEDIY Rules for ECCE Programme 2021/2022*. The Approved Provider shall also access DCEDIY's Access and Inclusion Model (AIM) website (www.aim.gov.ie) to ensure that they are compliant with the AIM Rules 2021/2022, the '*Policy on the Operation of the Access and Inclusion Model*' and other relevant information.
2. The Approved Provider must have a current ECCE Funding Agreement with the Minister for Children and Youth Affairs and be registered with the Child and Family Agency (Tusla) as an ELC Service and be compliant with Regulations made under Part VIIA of the Child Care Act 1991 (as amended, including by the Child and Family Agency Act 2013).
3. Administration of the ECCE Programme shall be the responsibility of Pobal and/or the Minister
4. The Minister and Pobal reserve the right to communicate important information, including information relating to payments, by way of e-mail. The Approved Provider must communicate all information relating to this Agreement electronically, or as directed by the Minister or Pobal.
5. The Approved Provider must provide a contact address. Where the Approved Provider's home address is different to the facility address, both addresses must be provided (This does not apply where the Approved Provider is a limited company). A contact telephone number, at which the Approved Provider can be contacted during working hours, must also be provided.
6. The Approved Provider must use the ECCE Funding to provide a free pre-school programme in Early Childhood Care and Education, as provided for under the terms and conditions of this Agreement to all qualifying children in return for the ECCE Funding paid to the Approved Provider by the Minister. Where additional capitation has been approved in relation to AIM, this must be used to either buy in additional assistance or to reduce the adult to child ratio in order to ensure that the relevant child(ren) can access and meaningfully participate in the ECCE Programme.
7. Participating children can be registered for the ECCE Programme once they have turned 2 years 8 months on or before 31 August 2021 and will be aged not more than 5 years and 6 months on or before 1st July 2022.
8. The Approved Provider shall have a minimum daily enrolment of 8 children in pre-school room sessions who are eligible for the ECCE Programme. Subject to compliance with all other contractual requirements, exceptions will be considered by the Minister (through the CCCs) in the case of:
 - a) Approved Providers who have a daily enrolment of at least 8 children, but for good reason, only 3 or more are in the ECCE Programme and the remainder are between the ages of 2½ and 6 years;
 - b) Smaller services which are considered appropriate settings for delivery of the pre-school programme, but for good reason, have a daily enrolment of not fewer than 5 ECCE eligible children in pre-school room sessions;

- c) A service that has an ECCE room that is full but has children eligible for ECCE in a room that is also delivering the ECCE pre-school programme to a daily enrolment of not fewer than 5 children between 2½ and 6 years - subject to the requirement that ECCE staff qualification criteria are met; and
 - d) Tusla-registered childminders with a daily enrolment of 5 children between the ages of 2 ½ and 6 years.
9. The Approved Provider must provide an appropriate educational programme for children in their pre-school room which adheres to the principles of Síolta, the National Quality Framework for Early Childhood Education (www.siolta.ie), and Aistear, the 'Early Childhood Curriculum Framework' (www.ncca.ie). The Approved Provider will be supported in meeting this requirement through the assistance of the 'Better Start National Early Years Quality Development Service' and/or their local CCC. The Approved Provider must facilitate visits and advice from the Early Years Specialists and/or staff of the local CCC.
 10. Where a pre-school room caters for not more than 11 children, it must be delivered by a pre-school leader. Where a pre-school room caters for between 12 and 22 children, it must be delivered by a pre-school leader assisted by a childcare worker
 11. The Approved Provider shall ensure that the pre-school leaders in ALL ELC Services participating in the ECCE Programme must, at a minimum, hold a level 6 qualification on the National Framework of Qualifications ("NFQ") in the specialisation of early learning and care or an equivalent nationally-recognised qualification or higher award, as set on the published list *Early Years Recognised Qualifications*, or must otherwise be deemed eligible by the Minister. The published list *Early Years Recognised Qualifications* is available on the Department's website (www.gov.ie). The Approved Provider shall ensure that all staff employed by the Approved Provider working with children in the ELC Service hold, at a minimum, a level 5 qualification on the NFQ in the specialisation of early learning and care or an equivalent nationally-recognised qualification or a higher award, as set on the published list *Early Years Recognised Qualifications*, or must otherwise be deemed eligible by the Minister. In exceptional cases, an exemption may be made under AIM, wherein a child with medically complex needs who is availing of AIM Level 7 requires specialised health supports, for example healthcare assistant or nursing care. An exemption may be granted by Pobal where it is considered that such specialist support is required, and this may detail the qualification requirements or relevant specialist training of the staff member involved.
 12. The Approved Provider will be paid a capitation for each eligible child enrolled and attending the ELC Service. The capitation will be of such amount as may be determined by the Minister from time to time. The capitation rate effective from 23rd August 2021 will be equivalent to €69.00 per week. To allow for the annual ECCE capitation to be paid to a 41 week service, the weekly capitation rate will be €63.95.
 13. A higher capitation (ECCE Higher Capitation), equivalent to €11.25 per week, may be paid to the Approved Provider on application. The Approved Provider must adhere to the conditions for ECCE Higher Capitation as set out in the *DCEDIY Rules for ECCE Programme 2021/2022* in order for the application to be approved. Upon successful application, ECCE Higher Capitation shall be payable to the Approved Provider for the number of children in any designated ECCE room (as per the adult: child ratios and minimum space requirements detailed in the Childcare Act 1991 (Early Years Services) Regulations 2016) where the pre-school leader holds a qualification recognised as meeting the contract requirements for ECCE ("Higher Cap"), as set out on the published list *Early Years Recognised Qualifications* (being a full, major award in Early Childhood Education and Care, which is at a minimum, placed at Level 7 on the NFQ or equivalent, or must otherwise be deemed eligible by the Minister), and have a minimum of 3 years' experience working in early learning and care. To allow for the annual ECCE capitation to be paid to 41 week services deemed eligible for higher capitation the weekly capitation rate will be €10.42 per week.
 14. The Approved Provider will be paid additional capitation under AIM in relation to approvals made for additional assistance in the pre-school room or for the reduction in the adult to child ratio in the pre-school

room to ensure that a child or children can access and meaningfully participate in the ECCE Programme. AIM Level 7 capitation is paid at two rates: a Higher Capitation Level is paid at a rate of €39 per day and covers 3 hours of staff time; a Lower Capitation Level is paid at a rate of €26 per day and covers 2 hours of staff time.

15. Where an Inclusion Co-ordinator is employed by the pre-school setting, the Approved Provider will be eligible to apply for an increase in the rate of ECCE capitation payable to the service of €2 per week per child registered on the ECCE Programme in that ECCE setting.
16. Participation in the ECCE Programme is on the following basis:
 - a) 38 weeks of 3 hours per day for 5 days a week (183 days) during the period 23rd August 2021 to 1st July 2022; OR
 - b) Subject to the prior agreement of the Minister, 41 weeks of 3 hours 30 minutes per day for 4 days a week (157 days) during the period 23rd August 2021 to 15th July 2022 (*a small number of exceptions have been allowed in the past where, for good reason, it is not possible for an Approved Provider to operate over 5 days. Approved Providers should note that no further such exceptions are allowed. Where an exception has previously been allowed on this basis, the Approved Provider may be allowed to participate in the programme on the basis of providing the pre-school year for 3 hours 30 minutes per day for 4 days per week. In such cases, an Approved Provider shall provide the ELC Service over 41 weeks (157 days) and references to 38 week services shall be taken as applicable to such Approved Providers.*); OR
 - c) Where an Approved Provider is approved by the Minister for participation in the ECCE Programme with effect from a date later than the commencement of the pre-school year, the Approved Provider shall provide an ELC Service for qualifying children for 3 hours per day for 5 days a week up to 1st of July 2022, whichever has been agreed in advance with the Minister.
17. In all cases, the Approved Provider must operate the relevant ELC Service free to parent/guardian in return for the applicable capitation rate, and parent/guardian shall be given access to the ELC Service where their child only attends the pre-school element of the service. However, the Approved Provider may charge parent/guardian for optional additions prescribed on the DCEDIY ECCE Optional Extras list.

In the case of an Approved Provider who **only** provides a sessional service, an additional 30 minutes per day may be offered as an optional addition which can be charged for; and/or

Optional additional services may only be selected from the approved DCEDIY list and shall not include activities which would generally be regarded as a normal part of an ELC Service, e.g. general arts and crafts activities. Appropriate programme-based activities must be provided to children not participating in an optional activity where this takes place during the required period of pre-school provision.

All such optional extras must be included on the ECCE Fees List for approval by CCCs.

18. The Approved Provider must ensure that parent/guardian are informed that their agreement to additional hours or to any optional charge is not compulsory and that agreement is not a condition of initial or continued enrolment (except in the case of full- or part-time services). In the case of additional hours, while not a condition of enrolment, part-time and full-time services may prioritise places for those who wish to avail of extra hours over those availing of ECCE only.
19. Booking deposits to reserve an ECCE place may be taken from parent/guardian provided such booking deposits are no more than four times the weekly capitation applicable to the ELC Service. The deposit must be repaid in full to the parent/guardian once the child's registration has been approved on the Hive. Failure to return ECCE booking deposits to parent/guardian may result in the suspension of ECCE Funding.

20. If a service is holding a legacy deposit that exceeds four times the weekly ECCE capitation amount for a child that has been attending that service prior to their commencement on ECCE, and has not collected a separate ECCE deposit then, depending on the level of ECCE service, the service must return up to €258 of that deposit to the parent/guardian once the child's ECCE registration has been approved on the Hive, regardless of when that deposit was collected. Failure to return equivalent ECCE deposits to parent/guardian after the Hive registration approval may result in the suspension of ECCE Funding.
21. The Approved Provider's fees list, service calendar, and copies of any letters or other communications issued to parent/guardian which relate to the operation of the ELC Service, including information relating to deposits and optional additional charges, must be displayed at all times in an area accessible by parent/guardian. The letter must attest that three hours of ECCE provision is free of charge to parent/guardian.
22. All places provided under the ECCE Programme by the Approved Provider must meet the requirements in terms of length per day, days per week and weeks per year. It is not mandatory that children are registered on the Hive for five days per week (registration should reflect expected attendance) but Approved Providers shall prioritise places for children where parent/guardian indicate a greater level of attendance. However, where a child is enrolled on the ECCE Programme for fewer than 5 days, the Approved Provider will be paid a pro-rata capitation in respect of that child. In the case of medically compromised children, the current provision for suspension of payment under the ECCE contract in relation to absences will not apply to the payment under AIM unless there is an indication that the child will not return to the service. This recognises the flexibility of AIM in the context of a child having frequent longer absences due to medical complexities and the need for the service to retain the additional member of staff employed under Level 7. This also applies where the service has chosen to reduce ratios. However, the need to inform the CCCs and Pobal of absences will be a continued requirement in line with the compliance rules of ECCE and these absences will need to be flagged as exceptions on PIP/EY Platform for the purposes of compliance visits.
23. The Approved Provider shall submit a fees list to the Hive by week ending August 6th 2021 which demonstrates that, where children attend the service outside their ECCE hours, the ECCE hours are available free of charge to parent/guardian. The fees list shall display fees inclusive and exclusive of ECCE hours, including: fees payable with regard to childcare provision outside of ECCE for children taking part in ECCE within full-time or part-time provision; and fees ordinarily payable with regard to a child of the same age attending for the same hours attending full-time or part-time but not participating in the ECCE scheme. The Approved Provider shall submit a service calendar to the Hive by week ending August 6th 2021 as per Programme Rules.
24. The Approved Provider may submit an application for AIM as early as May in advance of the relevant child or children commencing on the ECCE Programme or when the relevant need is first observed after the child has commenced on the ECCE Programme, whichever comes first.

Failure to comply with the terms of this Agreement, Appendix 1 and/or the DCEDIY Rules for ECCE Programme 2021/2022 may result in a suspension of ECCE Funding and/or a termination of this Funding Agreement and may result in exclusion from PSP or Capital Funding.

APPENDIX 2

General Terms and Conditions governing participation in the Access and Inclusion Model (AIM)

The Approved Provider will comply with AIM Rules 2021/2022 (available on the AIM website)

AIM Level 1 - Where a graduate of the LINC programme is employed by the pre-school setting and has taken on the role of an Inclusion Co-ordinator, the Approved Provider will be eligible to apply for an increase in the rate of ECCE capitation payable to the service of €2 per week per child registered on the ECCE Programme in that ECCE setting.

AIM Level 1 - The Approved Provider will engage with the CCC around participation in the Diversity, Equality and Inclusion Charter and Guidelines training.

AIM Level 2 – The Approved Provider must be familiar with the contents of the AIM Rules 2021/2022, *Policy on the Operation of the Access and Inclusion Model* and other information on the AIM website (www.aim.gov.ie).

AIM Level 3 – The Approved Provider must engage, where necessary, with any training provided which has been deemed necessary in order to allow for a child's meaningful participation in the Early Childhood Care and Education (ECCE) Programme.

AIM Level 4 – The Approved Provider must engage with Early Years Specialists when applying for targeted AIM supports (with the exception of AIM Level 5).

AIM Level 5 – The Approved Provider must adhere to the conditions of the national scheme for provision of specialised equipment, appliances and minor alterations under AIM Level 5.

AIM Level 5 – The Approved Provider must engage with Pobal and any other body who will provide training in relation to any equipment or appliance granted under AIM.

AIM Level 6 – The Approved Provider must engage with Early Years Specialists and any relevant HSE therapists in relation to therapies required by a child in their service.

AIM Level 7 - Where Additional Assistance has been granted under AIM Level 7, the service must adhere to the conditions of the national scheme for the provision of additional capitation particularly in relation to the qualifications / training required. In the vast majority of cases, this staff member will require a Level 5 major award in Early Years Care and Education. In a minority of cases, an exemption may be granted by Pobal where it has been deemed that specialist care is required and is critical to the child's meaningful participation in the ECCE Programme. Such exemptions will primarily be for children with medically complex needs who require specialised health supports.

APPENDIX 3

Framework for Sharing of Personal Data

1. Definitions

- a. **Controller, Processor, Data Subject and Personal Data, Special Categories of Personal Data, Processing** and “appropriate technical and organisational measures” shall have the meaning given to them pursuant to the General Data Protection Regulation (GDPR) 2016/679
- b. **“Shared Personal Data”** is the personal data and special category personal data to be shared between the parties pursuant to the GDPR 2016/679.

2. Purpose and Legal Basis

- a. This Appendix sets out the framework for the sharing of Personal Data when one Controller discloses Personal Data to another Controller. It defines the principles and procedures which the parties will adhere to and the responsibilities the parties owe to each other.
- b. The aim of the data sharing agreement is for the implementation of the Scheme pursuant to the GDPR 2016/679. The Approved Provider is a Data Controller for Personal Data and Special Categories of Personal Data of parent/guardian and children who avail of the ELC Services provided by the Approved Provider and also facilitates the payment of financial support to parent/guardian for children under the Scheme.
- c. The provision of Personal Data by the Minister and the Approved Provider to one another and the processing of Personal Data, whether individually or by means of the Scheme database, is:
 - in the case of the Minister, necessary for compliance with a legal obligation to which the controller is subject (GDPR Article 6(1)(c);
 - in the case of the Approved Provider, necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract (GDPR Article 6(1)(b))
- d. The parties agree to only process Shared Personal Data for the implementation of the Scheme **(Agreed Purpose)**.
- e. The parties shall not process Shared Personal Data in a way that is incompatible with the purposes described in this clause.
- f. Pobal, as scheme administrator appointed by the Minister, is a processor of the personal data.

3. Categories of Personal Data

- a) The following types of Personal Data will be shared between the Parties during the Term of the Agreement:

PERSONAL DATA OF CHILDREN AND PARENT/GUARDIAN

Name of Child
Name of Parent/guardian
Date of Birth of Child
Gender of child
PPSN of Child
Weekly hours of attendance of child where required

Attendance records for compliance checking

Contact phone number of parent/guardian

Exemption requests at the request of parent/guardian which may include details on:

- Medical appointments of child, sibling or parent/guardian
- Medical condition and identity of child's medical specialist OAE
- Family bereavement
- Dates and destination of travel
- Family moving into or out of emergency accommodation
- Child moving into or out of care placement
- Prolonged illness of child or parent/guardian

PERSONAL DATA OF SERVICE PROVIDER

- First and Last Name of system users
- Email address of system users
- Mobile phone number of Primary Authorised User
- Organisation Legal Name, if personal data may be inferred
- Organisation address, if personal data may be inferred
- Tax Registration Number, if this is the same as PPSN
- Service Reference Number

- b) The following types of Special Categories of Personal Data will be shared between the parties during the Term:

Exemption requests at the request of parent/guardian which may include details of:

- Medical appointments of child, sibling or parent/guardian
- Prolonged illness of child or parent/guardian
- Place of birth of a parent/guardian

This will be processed under Article 9(2) (a) with the explicit consent of the parent/guardian

4. Responsibilities of Controllers

- a) Save in so far as this Agreement places a duty on one of the parties to carry out an obligation of a controller under the GDPR on behalf of both controllers, each Party shall, in its capacity of controller, be responsible for fulfilling the obligations placed on controllers by the GDPR in respect of the data provided to and received from the other Party.
- b) The parties shall ensure that the data they provide to or receive from the other Party is processed by them in compliance with the data protection principles set out in Article 5 of GDPR.
- c) The parties have agreed that the following arrangements shall apply in relation to the data subject's rights, including the right to information, with regard to the personal data that is subject to this Agreement and processed by them:

Information to be supplied to data subject

- Each Party shall be responsible for providing the data subject with the information required to be given to the data subject under Articles 13 and 14 of the GDPR.
- The following information shall be given to a data subject:
 - a summary of the essence of this Agreement, such as:
 - identifying the data controller;
 - why the data controller is sharing the personal data;
 - who the personal data that will be shared with; and
 - the extent, if any, to which a restriction on any of the rights of the data subject applies.

d) *Exercise of rights by data subject*

Unless the data subject requires otherwise, where a request or objection is made by a data subject in relation to the personal data processed by one of the Parties that was originally provided to that Party by the other Party, that Party shall forward the request to the other Party and inform the data subject that it has done so and the other Party shall respond to the request.

e) *Notification of breach*

- i) If one of the Parties becomes aware of a personal data breach on the Scheme database, it shall immediately notify the other Party of the breach.
- ii) The data controllers shall comply with their obligations under Data Protection Laws in the event of a personal data breach.
- iii) In the event of a personal data breach the Parties shall carry out a joint risk assessment and decide on the remedial and preventative action that may be required.

5. Security

- a) The Minister is responsible for providing the technical and organizational measures necessary to maintain the security of the Scheme database.

The Approved Provider is responsible for providing the appropriate technical and organizational measures necessary in relation to their use (and that of their employees and agents) of the Scheme database. Further guidance in relation to the appropriate technical and organizational measures necessary are available on the Data Protection Commission's website (www.dataprotection.ie).

- b) Each Party shall ensure that members of their staff who have access to the personal data have an appropriate level of awareness of the security measures in place, that they have appropriate security training, renewed annually, and that they comply with the security measures in relation to the Scheme database.
- c) The Parties agree that they will not process any of the data provided by the other Party except as necessary for the performance of their functions and purposes specified in this Agreement.

6. Data retention and deletion

The parties shall not retain or process Shared personal data for longer than is necessary to carry out the Agreed Purpose. The Minister will retain records for as long as is necessary to fulfil obligations under the National Archives Act.

7. Communication with the Data Protection Commission

The Parties agree that they shall inform one another of any communications that may be required with the Data Protection Commission in respect of the personal data the subject of this Agreement.