

**Early Childhood Care and Education (ECCE) Programme  
General Conditions of the ECCE Funding Agreement  
Programme Call 2022/2023**

**1. Interpretation**

- 1.1 “Additional Assistance” support provides additional funding to pre-schools who have a child requiring extra support. ELC Services can use this funding either to reduce the child-to-adult ratio in the pre-school room or to fund an extra staff member as a shared resource with other children in the ECCE setting.
- 1.2 “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 1.1 above) 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 the Scheme Administrator and/or the Minister.
- 1.3 “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 2022/2023 available at [www.pobal.ie](http://www.pobal.ie).
- 1.4 “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](http://www.aim.gov.ie).
- 1.5 “AIM Rules 2022/2023” means the rules document pertaining to all aspects of the administration and operation of AIM available at <https://aim.gov.ie/aim-supports/aim-policy-and-rules/>.
- 1.6 “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.
- 1.7 “Approved Provider” means a Tusla registered provider of an Early Learning and Care Service (ELC) or a combined ELC and School Age Childcare (SAC) Service in accordance with the ECCE Programme who has entered into this Agreement with the Minister.
- 1.8 “Better Start” refers to the Better Start National Early Years Quality Development Service hosted by the Scheme Administrator.
- 1.9 “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.
- 1.10 “CAR” means the Compliance Audit and Risk unit in Pobal.
- 1.11 “CCC” means the City/County Childcare Committee. The CCCs are funded by the DCEDIY to act as the local agent in the delivery of ELC and SAC.

- 1.12 “Data Protection Laws” 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.
- 1.13 “*DCEDIY Rules for ECCE Programme 2022/2023*” means the rules document pertaining to all aspects of the administration and operation of the ECCE Programme.
- 1.14 “Early Years Platform (EYP)” is an all service system that service providers can use to manage the administration of their facility or facilities, including organisation details, funding agreements, registrations and funding related to all DCEDIY schemes. The platform can also be used to submit queries and receive responses and information from the Early Years Provider Centre.
- 1.15 “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 2022/2023. Administration of the ECCE Programme shall be the responsibility of the Scheme Administrator and/or the Minister.
- 1.16 “ECCE Programme” means the Early Childhood Care and Education programme.
- 1.17 “Educator” means an Early Year’s qualified staff member with a minimum level 5 on the National Framework of Qualifications (NFQ).
- 1.18 “Department” means the Department of Children, Equality, Disability, Integration and Youth.
- 1.19 “Minister” means the Minister for Children, Equality, Disability, Integration and Youth.
- 1.20 “NCS” means the National Childcare Scheme.
- 1.21 “Lead Educator” means an Early Year’s qualified staff member with a minimum level 6 on the National Framework of Qualifications (NFQ).
- 1.22 “Scheme Administrator” means Pobal who functions as the agent of the Minister and acts on the Minister’s behalf in relation to their agreed roles.
- 1.23 “Ratio” has the meaning set out in the Child Care Act 1991 (Early Years Services) Regulations 2016.
- 1.24 “Tusla” refers to the Child and Family Agency.
- 1.25 “Term” shall cover the period 22<sup>nd</sup> of August 2022 to no later than 30<sup>th</sup> June 2023 or, where appropriate, subject to Appendix 1 sub-clause 14(ii) of this Agreement, 22<sup>nd</sup> August 2022 to 14<sup>th</sup> July 2023 of ELC Service provision agreed between the Approved Provider and the Minister.
- 1.26 “Working Day” means a day which is not a Saturday, Sunday or public holiday.

## 2. Pre-Payment Conditions

2.1 Payment of ECCE Funding or any instalment of ECCE Funding shall be subject to the Approved Provider:

- (a) Designating a named bank account to be used in connection with the operation of the Service and making any necessary arrangements to enable payment of ECCE Programme Funding or any instalment to be transferred to such by electronic transfer.
- (b) Being verified as compliant with all taxation laws by the Scheme Administrator and/or the Minister in advance of any due payment date.

## 3. Terms and Conditions of Funding

- 3.1 The ECCE Funding shall be used to provide free pre-school to eligible children attending the ELC Service on the basis of the terms and conditions set out in this Agreement and the *DCEDIY Rules for ECCE Programme 2022/2023* document. Where additional capitation has been approved in relation to AIM, this shall 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.
- 3.2 The ECCE Programme shall be operated by the Approved Provider in accordance with the application for the Funding, in compliance with the terms and conditions of this Agreement and the *DCEDIY Rules for ECCE Programme 2022/2023* document. The Approved Provider hereby acknowledges and agrees to comply with the DCEDIY Rules for ECCE Programme Funding 2022/2023.
- 3.3 The Approved Provider shall notify the Scheme Administrator of any change or alteration to the constitution / status or structure or associated contact details of the Approved Provider.
- 3.4 The Approved Provider shall comply with all requests and directions of the Minister, or representatives or agents of the Minister, relating directly or indirectly to the use of the funding paid under the ECCE programme.
- 3.5 The Approved Provider shall complete all contractual requirements and have a funding agreement in place with the Minister two weeks before the service commences the ECCE programme. A date later than the start of the programme year on 22<sup>nd</sup> of August 2022, may be permitted where the Minister deems it appropriate.
- 3.6 Where an Approved Provider is approved by the Department 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 30<sup>th</sup> June 2023.

**Failure to comply with any of the terms of this Agreement may result in the suspension of ECCE Funding and/or DCEDIY Funding or part thereof may be withdrawn and/or a termination of this Funding Agreement.**

## 4. Undertakings and Warranties

- 4.1 The Approved Provider must comply with all relevant legal and regulatory obligations.
- 4.2 Without prejudice to the generality of the obligation in 4.1, the following frameworks and statutory guidance underpin this Agreement:

- “Child Care Act 1991 (Early Years Services) Regulations 2016 (as amended) and the Child Care Act 1991 (Early Years Services) (Registrations of School Age Services) Regulations 2018 (as amended)”,
- planning legislation,
- fire safety legislation,
- employment legislation,
- the Equal Status Acts 2000 to 2015,
- health and safety legislation,
- Data Protection Acts 1988 and 2003,
- Child and Family Agency Act 2013,
- the Children First Act, 2015,
- the Data Protection Act 2018,
- the General Data Protection Regulation (the “GDPR”) 2018.

- 4.3 The Approved Provider must be registered with Tusla under Part 12 of the Child & Family Agency Act 2013 the Child and Family Agency as a prescribed early years’ service. An Approved Provider who provides both early learning and care and school age childcare must have a valid Tusla registration for both service types. This Funding Agreement will be administered via the EYP.
- 4.4 The Approved Provider shall obtain and 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 taxation laws by the Minister and/or the Scheme Administrator, and evidence of the relevant qualifications, as per Appendix 1, held by persons delivering the childcare services as required under the 2016 Regulations.
- 4.5 The Approved Provider shall undertake all reasonable and appropriate checks on individuals employed by or otherwise involved with the Approved Provider in relation directly or indirectly to the operation of the ECCE Programme 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.
- 4.6 The Approved Provider and its employees are not and shall in no circumstances hold themselves out as being the servants or agents of the Minister. The Approved Provider and its employees are not and shall in no circumstances hold themselves 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.
- 4.7 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:
- 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;
  - The competency of the Approved Provider, its staff or agents; or
  - The stability of any structure, soundness of any materials used or the adequacy of its purpose of any buildings or facility.
- 4.8 The Approved Provider shall provide the free 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 from the optional extras list approved by the Minister 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 EYP which will be subject to review by the CCCs on behalf of the Minister.

## **5. Operation of the ECCE Programme**

- 5.1 The Approved Provider agrees to use the capitation provided under this programme to provide a free ELC Service in ECCE for qualifying children in their pre-school room as set out in Appendix 1.
- 5.2 Where applicable, the balance of monies to be paid by the parent/guardian of a child directly to the Approved Provider, and the method of such payment, and the timeframe for making such payment, will be a matter for agreement between the Approved Provider and the person making the payment.
- 5.3 It is a matter for the Approved Provider to set his or her own fees. However, the Approved Provider shall agree fee increases/calendar changes with CCCs prior to informing parents/guardians in writing of a proposed increase in fees/change in calendars at least 20 Working Days before applying any such increase.
- 5.4 Where an Approved Provider ceases to provide the ECCE Programme to a child and has removed the child from the ELC Service for whatever reason, any monies paid by the Scheme Administrator to the Approved Provider for the provision of the childcare service for a period beyond the date of cessation shall be returned to the Scheme Administrator.
- 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, all 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 *2022/23 DCEDIY Rules for ECCE* and AIM.
- 5.6 Where an application for AIM Additional Capitation is approved, this will be paid from the date of the child's attendance on the ECCE Programme, or the date on which the application is approved, whichever is later. Backdating of Additional Capitation payments is not permitted.
- 5.7 The Approved Provider shall 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 the Scheme Administrator and/or the CCCs shall notify the Approved Provider of any such new policies, guidelines and/or programme governance protocols via the EYP.
- 5.8 It is the responsibility of the Approved Provider to access the EYP on a regular basis, to ensure they are aware of any new changes made to such policies, guidelines and/or programme governance protocols.

## **6. Payment Terms**

- 6.1 Subject to the provisions of sub-clause 6.4, payment of the ECCE Funding will be made by the Scheme Administrator 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 the childcare service to a child qualifying under this Agreement, s/he may not simultaneously and in respect of the same time of day receive funding for the provision of a service to that child under NCS and CCSP.
- 6.3 Where the Approved Provider is in receipt of a Capitation under this Agreement, and is also in receipt of grant monies under an agreement in respect of any other childcare programme funded by the Minister, the Capitation payable to the Approved Provider under this Agreement or any other childcare programme funded by the Minister shall be taken into account when making payment of such grant monies.

- 6.4 Whenever under this or any other Agreement in respect of DCEDIY childcare funding programmes, 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 or any other agreement in respect of the DCEDIY childcare programmes), 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 howsoever arising.
- 6.5 All sums due to the Scheme Administrator are recoverable as debts due to the Minister and may, without prejudice to any other remedy, be recovered by the Scheme Administrator as a debt under statute or simple contract debt in any court of competent jurisdiction.
- 6.6 Where the Minister directs that funding to the ECCE Programme generally will cease, all registrations under this Agreement will cease.
- 6.7 Payment of ECCE Funding will be conditional on the requirements of this Agreement and DCEDIY ECCE Programme Rules being fully complied with. The Scheme Administrator may, as an agent acting on behalf of the Minister, 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 2022/23* and/or the AIM Rules 2022/23.

## **7. Access, Reporting Requirements and Retention of Records**

- 7.1 The Approved Provider shall maintain an attendance record of Eligible Children that records the daily hours of attendance and also non-attendance, showing the time of arrival at and the time of departure from the service of each individually identified child **for every day that the child is in attendance** and the person responsible for recording each arrival and departure. Any periods of time outside of the 3 ECCE hours spent in the care of service staff including while they are travelling to/from the service must be recorded.
- 7.2 The Approved Provider shall maintain accurate child registration information on the EYP in accordance with the Regulations.
- 7.3 The Approved Provider shall within its accounting records separately record all monies received from the Scheme Administrator relating directly or indirectly to the operation of the ECCE programme.
- 7.4 The Approved Provider shall ensure that all financial records relating to monies received in relation to the operation of the ECCE Programme, reports, records and other documentation that are required under this clause 7, shall be maintained and made available to the Scheme Administrator on request, for a minimum of 6 years after the termination or expiry of this Agreement for whatsoever reason.
- 7.5 The Approved Provider must 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 shall be provided to the Scheme Administrator 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 ensure that any information relating to the ECCE Programme which is submitted via the EYP at the direction of the Minister or the Scheme Administrator 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.

- 7.7 The Approved Provider shall retain a written record (Service Fees Information Letter and Parental Declaration) of the Agreement with the parent/guardian that sets out the number of childcare weeks and the level of service each week that the Approved Provider has agreed to provide to the eligible child, the fee for the childcare service that will be provided to the eligible child, having regard to the Approved Provider's published Fees List and a commitment to offset the ECCE Capitation in full against the agreed fee. This record shall be signed by the parent/guardian and available for verification purposes by any agents of the Minister.
- 7.8 The Approved Provider shall respect and comply with the statutory role and regulatory 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.

## **8. Right of Verification and Audits**

- 8.1 The Approved Provider shall permit representatives and agents of the Minister to attend at and permit access to the Approved Provider's premises and/or 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 Inspectorate, the Scheme Administrator, the Inspectorate of the Department of Education, Better Start Early Years Specialists, and any other applicable verification, audit and/or inspection that may be provided for. The Approved Provider shall permit access to relevant financial and other records (including attendance records) for this purpose and shall facilitate and co-operate with inspections and audits as required.
- 8.2 Verification, audit and other inspections, including education-focused inspections, may be carried out without prior notice being given to the Approved Provider.
- 8.3 Relevant records must be available at all times on-site for inspection and the Approved Provider shall permit 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 copies of records as deemed necessary.
- 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 The outcome of any such inspection by the Scheme Administrator will be issued via a notification to the Approved Provider advising them that the findings from the inspection are available on the EYP.

## **9. Term and Termination**

- 9.1 This Agreement shall cover the period 22<sup>nd</sup> of August 2022 to no later than 30<sup>th</sup> June 2023 or, where appropriate, subject to Appendix 1 sub-clause 14(ii), 22<sup>nd</sup> August 2022 to 14<sup>th</sup> July 2023 of ELC Service provision agreed between the Approved Provider and the Minister-which shall constitute "the Term."

The Approved Provider electronically confirms and accepts the terms and conditions of this Agreement.

- 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. Except for what 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, if any one or more of the following events occur:
- (i) The Approved Provider is removed from the register of prescribed early year's services maintained by Tusla, the Child and Family Agency;
  - (ii) 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 relation to its obligations under this Agreement;
  - (iii) If an order is made or an effective resolution is passed for the winding up of the Approved Provider;
  - (iv) A receiver, examiner or administrator is appointed over any of the property or assets of the Approved Provider;
  - (v) If the Approved Provider shall commit a breach of any term or condition of this 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;
  - (vi) If 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;
  - (vii) If the Approved Provider shall cease or threaten to cease to operate all or a substantial part of the service; or
  - (viii) If any other event occurs which the Minister in their absolute discretion considers it may or does materially affect in an adverse way the ability of the Approved Provider to operate the ELC Service and/or to comply with its obligations under this Agreement.
- 9.4 On termination of this Agreement, 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 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.
- 9.6 Except as provided by the provisions of sub-clause 9.3 this Agreement may be terminated by either party serving 4 weeks' written notice to the other party.
- 9.7 Termination of this Agreement shall not affect any pre-existing 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.
- 9.8 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 or a combined ELC and SAC Service 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 a combined ELC and SAC Service or any breach of this Agreement and the Approved Provider shall indemnify the Minister in regard to any such actions.

## **11. Force Majeure**

- 11.1 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, 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.
- 11.2 The Affected Party shall notify the other party, 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.
- 11.3 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.
- 11.4 Force Majeure cannot be paid in conjunction with any insurance or compensation received by the approved provider from a third party for the same purpose.

## **12. Non-assignment/Sub-contracting**

- 12.1 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.
- 12.2 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.
- 12.3 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 ECCE Programme under this Agreement.

## **13. Data Protection**

- 13.1 The Approved Provider agrees to maintain compliance with Data Protection Laws. Each Party remains responsible for their obligations as a Data Controller under the Data Protection Laws and agrees to meet their responsibilities in the manner set out in the Framework Agreement for the Sharing of Personal Data in Appendix 3 of this Agreement.

## **14. Freedom of Information**

- 14.1 In the event of the Minister receiving a request for information related to this Agreement, the Minister shall consult with the Approved Provider in respect of the request. The Approved Provider shall identify any information that is not to be disclosed on grounds of confidentiality or commercial sensitivity and shall state the reasons for this sensitivity. The Minister will consult the Approved Provider about this confidential or commercially sensitive information before making a decision on any request received under the above legislation. The Minister accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.

## **15. General**

- 15.1 Nothing in this Funding Agreement shall constitute a partnership or joint venture or establish a relationship of agency between the parties.
- 15.2 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 (as varied of the Agreement).
- 15.3 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.
- 15.4 The rights and remedies provided for in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.
- 15.5 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.
- 15.6 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. In order to participate in the ECCE Programme the Approved Provider must have access to facilities that enable him or her to conduct business online, and a dedicated EYP user account. The Approved Provider shall administer its functions in relation to the ECCE Programme via the EYP.
2. Administration of the ECCE Programme shall be the responsibility of the Scheme Administrator and/or the Minister.
3. The Approved Provider shall 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 the Scheme Administrator and/or the Minister has the permission of the Approved Provider to verify its tax compliance position online.
4. The Approved Provider must provide an e-mail address to be used for communications from the Minister or the Scheme Administrator in relation to the ELC and/or a combined ELC and SAC. The Minister and the Scheme Administrator reserve the right to communicate important information, including information relating to payments, electronically.
5. The Scheme Administrator will communicate all information relating to this Agreement to Approved Providers through the EYP. The Approved Provider must communicate all information relating to this Agreement through the EYP, or as otherwise directed by the Scheme Administrator.
6. The Approved Provider shall submit information relating to the Scheme via the EYP or by any other means as directed by the Minister or by the Scheme Administrator.
7. The Approved Provider shall provide a contact address. Where the Approved Provider's home address is different to the facility address, both addresses shall 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, shall also be provided.
8. The Approved Provider must adhere to the *DCEDIY Rules for ECCE Programme 2022/2023* document and with the AIM Rules 2022/2023, the '*Policy on the Operation of the Access and Inclusion Model*' and other relevant information.
9. The Approved Provider must submit a service calendar annually to the Scheme Administrator through the EYP, in such form as may be directed, in accordance with the *DCEDIY Rules for ECCE Programme 2022/2023* document. The service calendar must be displayed at all times in an area accessible to parents and also on any online platform maintained by the Approved Provider for the purpose of advertising its service. The Approved Provider agrees to allow the Scheme Administrator to publish their calendar online and in any other form, and to publish this data and use the data in aggregate form for the purpose of reporting on service calendars.
10. The Approved Provider shall submit a fees list to the Hive 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.
11. The Approved Provider must publish a Fees List using a standard template specified by the Scheme Administrator. The Fees List 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, shall be displayed at all times in an area accessible to parents as well as on any online platform maintained by the Approved Provider for the purpose of advertising its service. The schedule must set out the fees charged by the Approved Provider for each level of service available in the service. The Approved Provider shall give 20 Working Days' written notice to qualifying parents/guardians once the CCC has agreed any increases in fees. The Approved Provider agrees to allow the Scheme Administrator to publish their fees online and in any other form, and to publish this data and use the data in aggregate form for the purpose of reporting on fees.

12. The Approved Provider shall operate the relevant ELC Service free to parents/guardians in return for the applicable capitation rate where their child only attends the pre-school element of the service. However, the Approved Provider may only charge parents/guardians for optional additions prescribed on the DCEDIY ECCE Optional Extras list.
13. Where an Approved Provider provides a sessional service **only**, an additional 30 minutes per day may be offered as an optional extra, however this additional charge shall be on the fees list and included in the Service Fees Information letter for the parent to sign.
14. Optional additional services **may only be selected from the approved DCEDIY list** and shall not include activities which are considered key parts of the ECCE curriculum e.g. general arts and crafts activities. Appropriate programme-based activities shall be provided to children not participating in an optional activity where this takes place during the required period of pre-school provision.
15. All such optional extras shall be included on the ECCE Fees List for approval by CCCs. All changes/updates shall be first agreed with the CCCs before giving parent/guardians 20 working days written notice of any change.
16. The Approved Provider shall 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](http://www.siolta.ie)), and Aistear, the 'Early Childhood Curriculum Framework' ([www.ncca.ie](http://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 shall facilitate visits and advice from the Early Years Specialists and/or staff of the local CCC in this regard.
17. Participating children can be registered for the ECCE Programme once they have turned 2 years 8 months on or before 31 August 2022 and will be aged not more than 5 years and 6 months on or before 1<sup>st</sup> July 2023 unless an exemption to the upper age limit has been granted by the Minister.
18. Participation in the ECCE Programme is on the following basis:
  - (i) 38 weeks of 3 hours per day for 5 days a week (182 days) during the period 22<sup>nd</sup> August 2022 to 30<sup>th</sup> June 2023; OR
  - (ii) Subject to the prior agreement of the Minister, 41 weeks of 3 hours 30 minutes per day for 4 days a week (156 days) during the period 22<sup>nd</sup> August 2022 to 14<sup>th</sup> July 2023. A small number of services *have been allowed in the past where, it is not possible for an Approved Provider to operate over 5 days.<sup>1</sup> 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 (156 days) and references to 38 week services shall be taken as applicable to such Approved Providers.*; OR

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<sup>1</sup> A small number of services are permitted to run over 41 weeks in exceptional circumstances. These existing arrangements will continue for these registered services only, and are subject to all rules contained herein except that they can deliver the ECCE Programme for 4 days per week for 3.5 hours per day. No other service can avail of the 41 week option. Once a service relinquishes their 41 week option they may not revert to it in the future.

(iii) A minimum number of weeks within each term (to be agreed and communicated by the Department and/or the Scheme Administrator) shall be delivered by the service between the period of the 22nd August 2022 and the 30<sup>th</sup> June 2023.

19. The Approved Provider must retain a written record of the Parental Declaration Form and Service Fees Information letter agreed and signed by the parent/guardian that sets out:

- the number of childcare weeks and the level of service each week that the Approved Provider has agreed to provide to the eligible child,
- the fee for the childcare service that will be provided to the eligible child, having regard to the Approved Provider's published Fees List,
- a commitment to offset the Capitation in full against the agreed fee.

These record must be signed by the Parent/Guardian.

20. The Approved Provider will be paid a capitation for each eligible child enrolled and attending the ELC Service or combined ELC and SAC. The capitation will be of such amount as may be determined by the Minister from time to time. The capitation rate effective from 22<sup>nd</sup> August 2022 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.

21. 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: an AIM Higher Capitation Level is paid at a rate of €42 per day and covers 3 hours of staff time; an AIM Lower Capitation Level is paid at a rate of €28 per day and covers 2 hours of staff time.

22. 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.

23. The Approved Provider shall 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 fulltime 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.

24. 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 shall be repaid in full to the parent/guardian once the child's registration has been approved on the EYP.

25. 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 shall return up to €258 of that deposit to the parent/guardian once the child's ECCE registration has been approved on the EYP, regardless of when that deposit was collected. Failure to return equivalent ECCE deposits to parent/guardian after the EYP registration approval may result in the suspension of ECCE Funding.

26. The maximum deposit a provider may charge is equivalent to four weeks' payment. The full amount of the deposit which equals the amount of DCEDIY subvention held on deposit shall be refunded to the parent/guardian once the child's registration is approved on the EYP.

27. All places provided under the ECCE Programme by the Approved Provider shall 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 EYP for five days per week (registration should reflect expected attendance. 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.
28. In the case of children with additional needs, 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 also applies where the service has chosen to reduce ratios. However, the need to inform the CCCs and the Scheme Administrator 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 the EYP for the purposes of compliance visits.
29. The Approved Provider shall submit a fees list to the EYP 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 programme. The Approved Provider shall submit a service calendar to the EYP prior to the signing of the funding agreement but no later than two weeks prior to the new programme year 2022/23.
30. 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 only 3 or more are in the ECCE programme and the remainder are between the ages of 2 years 8 months and 6 years;
  - b) Services which are considered appropriate settings for delivery of the pre-school programme, but in circumstances where the Approved Provider is situated in an under populated area e.g. islands or isolated rural areas or in instances where a new approved provider opens during the programme year with reduced capacity, 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;
  - d) Tusla-registered childminders with a daily enrolment of 5 children between the ages of 2 ½ and 6 years.
31. Where a pre-school room caters for not more than 11 children, it shall be delivered by a Lead Educator. Where a pre-school room caters for between 12 and 22 children, it shall be delivered by a Lead Educator assisted by a suitably qualified Educator.
32. The Approved Provider shall ensure that each ECCE room/session has a Lead Educator holding a minimum level 6 qualification on the 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 shall otherwise be deemed eligible by the Minister. The published list *Early Years Recognised Qualifications* is available on the Department's website ([www.gov.ie](http://www.gov.ie)). The Approved Provider shall ensure that all staff employed by the Approved Provider working with the Lead Educator and 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 shall 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 the Scheme Administrator 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.

33. The Approved Provider must check the attendance record of each eligible child on a weekly basis to determine whether or not the child's registration can be confirmed or whether a departure, absence or under-attendance needs to be updated. Details of the attendance rules are set out in DCEDIY ECCE Rules 2022/23.
34. A parent shall give the Approved Provider four weeks' notice of a child's departure from a service. Where no notice of departure is given by a parent, the Approved Provider may claim up to four weeks capitation in lieu of notice in accordance with the ECCE Rules. In such cases, any new Approved Provider will not be able to register the child until the four weeks has elapsed and the original Approved Provider has ended the registration.
35. 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.
36. The Minister shall set the terms and conditions under which this Funding Agreement will wind down.

## APPENDIX 2

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

The Approved Provider will comply with AIM Programme Rules 2022/2023 (available on the AIM website [www.aim.gov.ie](http://www.aim.gov.ie)).

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 as follows:

- An increase in the rate of capitation payable to the service of €2 (pro-rata), per ECCE- eligible registered child, per week over 38 weeks.

**Or**

- An increase in the rate of ECCE capitation payable to the service of €1.85 (pro-rata), per ECCE-eligible registered child, per week over 41 weeks, where the service is approved to run for 41 weeks per year.

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

AIM Level 2 – The Approved Provider shall be familiar with the contents of the AIM Programme Rules 2022/2023.

AIM Level 3 – The Approved Provider shall 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 shall engage with Better Start Early Years Specialists when applying for targeted AIM supports (with the exception of AIM Level 5).

AIM Level 5 – The Approved Provider shall adhere to the conditions in the AIM Programme Rules 2022/2023 for provision of specialised equipment, appliances and minor alterations under AIM Level 5. The Approved Provider shall engage with the Scheme Administrator and any other body who will provide training in relation to any equipment or appliance granted under the AIM Programme.

AIM Level 6 – The Approved Provider shall engage with Better Start 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, staff hired by the service shall satisfy the qualification requirements of the Early Years Services Regulations 2016, which stipulate that all staff working in preschool services shall have, at minimum, a major award in Early Childhood Care and Education at Level 5 of the National Framework for Qualifications (NFQ) or a qualification deemed by the Minister for Children, Equality, Disability, Integration and Youth to be equivalent. In a minority of cases, an exemption may be granted by the Scheme Administrator 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 the 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  
Date of Birth of Child  
Gender of child  
PPSN of Child  
Name of Parent/Guardian  
PPSN of Parent/Guardian Contact phone number of parent/guardian

Weekly hours of attendance of child where required  
Attendance records for compliance checking

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

#### PERSONAL DATA OF STAFF MEMBER

First and Last Name of Staff member  
Relevant Qualification of Staff member

- 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.

(i) *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; and who the personal data that will be shared with, 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) (i) The Minister is responsible for providing the technical and organisational measures necessary to maintain the security of the Scheme database.  
  
(ii) 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](http://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.

