

**National Childcare Scheme**  
**Agreement made under section 8 of the Childcare Support Act 2018 (the**  
**“Agreement”)**

**1. Interpretation**

- 1.1. “2016 Regulations” means the Child Care Act 1991 (Early Years Services) Regulations 2016 and all further Regulations made under the Childcare Act 1991;
- 1.2. “Act” means the Childcare Support Act 2018;
- 1.3. “Agreement” means this Agreement between the Minister and Approved Provider for the Scheme, and includes Appendix 1 (Participation in the National Childcare Scheme) Appendix 2 (Framework for Sharing of Personal Data), Appendix 3 (Template tool for recording attendance);
- 1.4. “Approved Provider” means a Tusla registered Early Years Service and/or School Age Childcare (SAC) provider who has entered into this Agreement with the Minister under section 8 of the Act;
- 1.5. “Authorised Officer” means a person appointed by the Scheme Administrator, with the consent of the Minister, under section 18 of the Act;
- 1.6. “CCC” means the City/County Childcare Committee. The CCC’s are funded by the DCEDIY to act as the local agent in the delivery of ELC and SAC.
- 1.7. “Childcare Identifier Code Key (CHICK)” means the unique reference number that the Scheme Administrator shall provide in respect of each child who qualifies for a Subsidy;
- 1.8. “Co-payment” means the sum of money due to be paid to an Approved Provider by a Qualifying Applicant for the provision of childcare services to a child after deduction of the Subsidy from the fee agreed between the Qualifying Applicant and the Approved Provider for those services, having regard to the published fees on the HIVE;
- 1.9. “Data Protection Laws” means all applicable 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;
- 1.10. “Decision 2012/21/EU” means the EU Commission Decision of 21 December 2011 on the Application of Article 106(2) of the Treaty on the Functioning of the European Union to State Aid in the Form of Public Service Compensation Granted to Certain Undertakings Entrusted with the Operation of Services of General Economic Interest, 2012/21/EU;
- 1.11. “Early Years Platform (EYP)” is the system that hosts all DCEDIY childcare schemes allowing service providers to manage the administration of their facility or facilities, including organisation details, funding agreements, registrations and funding related to all DCEDIY childcare funding programmes. It contains the NCS applicant portal and the Service Provider portal titled “EY HIVE” among other systems. The

platform can also be used to submit queries and receive responses and information from the Early Years Provider Centre.

- 1.12. "Eligible Child or Children" means a child of a Qualifying Applicant or children of qualifying applicants attending the early learning and care service and in respect of whom a Subsidy is payable;
- 1.13. "The Minister" means the Minister for Children, Equality, Disability, Integration and Youth;
- 1.14. "Partner Service" means an ELC and/or SAC service who has entered into the Core Funding Partner Service Funding Agreement with the Minister and is registered with Tusla, the Child and Family Agency as a prescribed early years service or school age childcare service.
- 1.15. "Policy Guidelines" means the guidelines issued by the Scheme Administrator under section 4(3) of the Act;
- 1.16. "Qualifying Applicant" means a person who has been approved for a Subsidy under the Scheme and is enrolling or seeking to enrol an Eligible Child in the early learning and care service;
- 1.17. "Regulations" means regulations made under the Act and Regulations made under the Childcare Act 1991 ;
- 1.18. "Scheme" means the Affordable Childcare Scheme established under the Act and known as the National Childcare Scheme;
- 1.19. "Scheme Administrator" means Pobal, the body appointed under section 3 of the Act to administer the Scheme;
- 1.20. "Sponsor" means a public body as specified in Schedule 2 of the Act that has entered into an agreement under section 14 of the Act for a specified purpose as set out in Schedule 2 of the Act;
- 1.21. "Sponsored Child" means a child who benefits from childcare services under the terms of an agreement made under section 14 of the Act;
- 1.22. "Subsidy" means the financial support as defined in the Act, paid by the Scheme Administrator to an Approved Provider on behalf of a Qualifying Applicant as financial support for childcare services for a child, and may refer to either a universal subsidy, an income-related subsidy or a sponsored subsidy paid under the terms of an agreement made under section 14 of the Act;
- 1.23. "Working Day" means a day which is not a Saturday, Sunday or public holiday.

## **2. Pre-Payment Conditions**

- 2.1. Payment of the Subsidy or any instalment of the Subsidy is subject to the Approved Provider:
  - (a) designating a named bank account to be used in connection with the operation of the Scheme and making any necessary arrangements to enable payment of the Subsidy or any instalment to be transferred to such by electronic transfer; and

(b) being verified as compliant with all taxation laws by the Scheme Administrator in advance of any due payment date.

### **3. The Subsidy**

- 3.1. The Subsidy shall be used to subsidise the cost to the Qualifying Applicant of childcare services provided to eligible children on the basis of the terms and conditions set out in this Agreement.
- 3.2. The Subsidy shall be applied by the Approved Provider in compliance with the terms and conditions of this Agreement and with the Regulations.
- 3.3. The Approved Provider shall use the Subsidy to reduce the fees charged to Qualifying Applicants for the provision of such childcare services to Eligible Children. The Subsidy will be paid in respect of the hours of care per week registered on the Early Years Platform and approved by the Qualifying Applicant, subject to the maximum weekly hours awarded to the Qualifying Applicant. This does not preclude the Approved Provider from providing additional hours of childcare services to those children and charging Qualifying Applicants for those additional hours in line with published fees.
- 3.4. The Approved Provider is to notify the Scheme Administrator of any change or alteration to the constitution/status or any change or alteration to his or her contact details.
- 3.5. The Approved Provider shall comply with all requests and directions of the Scheme Administrator, or representatives or agents of the Scheme Administrator, relating directly or indirectly to Subsidies paid under the Scheme.

### **4. Legal Framework and Statutory Guidance**

- 4.1. The Approved Provider must comply with all relevant legal, regulatory and contractual obligations. References to any statute, enactment, order, regulation or other legislative instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, unless specifically indicated otherwise.
- 4.2. Without prejudice to the generality of the obligation in 4.1, the following frameworks and statutory guidance underpin this Agreement:
  - The Act and Regulations made under the Act
  - Childcare Act 1991 and Regulations made under the Child Care Act 1991
  - Child and Family Agency Act 2013
  - Children First Act 2015
  - Equal Status Acts 2000-2015
  - Data Protection Laws
- 4.3. 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 held by persons delivering the childcare services as required under all Regulations made under the Childcare Act 1991 Ac

- 4.4. 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 Scheme 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.
- 4.5. 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.
- 4.6. 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:
- (i) whether or not the service operated by the Approved Provider is of a standard that adequately meets the stated aims and objectives of the Scheme;
  - (ii) the competency of the Approved Provider, its staff or agents; or
  - (iii) the stability of any structure, soundness of any materials used or the adequacy of its purpose of any building(s) or facility(ies).

## **5. Operation of the Scheme**

- 5.1. The Approved Provider agrees to use the Subsidy provided under the Scheme to reduce fees charged to Qualifying Applicants for childcare services provided to eligible children by:
- (i) agreeing with the Qualifying Applicant the number of childcare hours per week, and the number of weeks of childcare that will be provided to the child;
  - (ii) in the case of a sponsored child, the number of hours of childcare that will be provided to the child will be the number of hours indicated in the referral by the Sponsor within the rules for sponsors; no Co-payment may be charged in respect of a Sponsored Child;
  - (iii) using the CHICK to complete the registration process established by the Scheme Administrator, specifying the number of childcare hours to be subsidised per week, and the number of weeks of childcare that will be provided to the eligible child;
  - (iv) charging the Qualifying Applicant, at a maximum, the difference between the relevant fee from the Approved Provider's published schedule of fees and the amount of the approved Subsidy; and
  - (v) confirming the registration of each eligible child on the Early Years Platform in accordance with the Regulations.
- 5.2. A Qualifying Applicant may choose to avail of fewer childcare hours or weeks than have been awarded under the Scheme, in which circumstances a Subsidy will only be payable in respect of the number of hours and weeks being availed of, as registered on the Early Years Platform and approved by the Qualifying Applicant.

- 5.3. The Approved Provider may at his or her discretion charge the Qualifying Applicant a Co-payment that is less than the difference between the relevant fee from the Approved Provider's published schedule of fees and the amount of the approved Subsidy.
- 5.4. The Co-payment shall be made by the Qualifying Applicant 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
- 5.5. It is a matter for the Approved Provider to set his or her own fees. However, the Approved Provider shall notify the Scheme Administrator and Qualifying Applicants of a proposed increase in fees at least 20 Working Days before applying any such increase. Where the approved provider is a Core Funding Partner Service, all clauses in the Fee Management section of the Core Funding Partner Service Funding Agreement have primacy over rules on fee changes in this funding agreement, where requirements differ.
- 5.6. Where a childcare service is being provided to an Eligible Child and where the Qualifying Applicant ceases to pay the Co-payment to the Approved Provider, the Approved Provider may cease to provide a childcare service to that child.
- 5.7. Where childcare services are being provided to an Eligible Child over and above the childcare hours subsidised under the Scheme by agreement between the Approved Provider and the Qualifying Applicant, and the Qualifying Applicant ceases to pay for the additional childcare hours as agreed, the Approved Provider may cease to provide a childcare service to that child.
- 5.8. Where the childcare service ceases to be provided to a child in the circumstances set out in sub-clauses 5.6 or 5.7, or in other exceptional circumstances, any Subsidy 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.
- 5.9. Subject to the Regulations, where the childcare service ceases to be provided to a child because the parent has exercised the right to remove the child from the service for any reason, any Subsidy paid in excess of the Subsidy due in respect of that child by the Scheme Administrator to the Approved Provider for the provision of the childcare service shall be returned to the Scheme Administrator in accordance with Regulations and Policy Guidelines.
- 5.10. The Approved Provider may request the Scheme Administrator to review a decision in accordance with the provisions of the Act, Regulations and contract. If the Approved Provider is not satisfied with the review decision, s/he may appeal that decision to an Appeals Officer in accordance with the Regulations.
- 5.11. The Scheme Administrator may, of its own initiative, carry out a review of any matter prescribed under section 17 of the Act. If such review results in a reduction in the amount of Subsidy to be paid in respect of the eligible child, the Scheme Administrator shall inform the Approved Provider of the change, in accordance with the Act and the Regulations.
- 5.12. This Agreement shall not affect any other agreements which may already be in place between the Approved Provider and the Minister in respect of capital funding.
- 5.13. The Approved Provider shall comply with and implement any new policies, guidelines and/or programme governance protocols in relation to the NCS 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 Early Years Platform. It is the responsibility of the Approved

Provider to access the Early Years Platform on a regular basis, to ensure they are aware of any new changes made to such policies, guidelines, contracts, and/or programme governance protocols.

## **6. Payment Terms**

- 6.1. Subject to the provisions of sub-clause 6.4, payment of the Subsidy will be made by the Scheme Administrator in accordance with the Regulations and with the Policy Guidelines, by such means and in such instalments as it may determine.
- 6.2. Where the Approved Provider receives the Subsidy 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 grant monies for the provision of a service to that child under an agreement in respect of the Early Childhood Care and Education (ECCE) programme or any other childcare programme funded by the Minister.
- 6.3. Where the Approved Provider is in receipt of a Subsidy 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 Subsidy 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 the 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 Scheme Administrator in respect of any breach of this Agreement or any other agreement in respect of the childcare programmes referred to above in sub-clause 6.2), the Scheme Administrator has the right to deduct that sum from the Subsidy then due to the Approved Provider in respect of this Agreement. Notwithstanding any provision, whether express or implied in this Agreement, the Scheme Administrator is entitled to off-set any amount due or owing by it under this Agreement against any and all amounts owed by the Approved Provider to the Scheme Administrator howsoever arising.
- 6.5. All sums due to the Scheme Administrator are recoverable as debts, including debts arising from compliance outcomes, 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.

## **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, showing the time of arrival at and the time of departure from the service of each child, recording non-attendance by Eligible Children and the person responsible for recording each arrival and departure, additional information on attendance is available in Appendix 3 of this Agreement.
- 7.2. Where the Approved Provider provides transport services to or from their premises to a school attended by an Eligible Child, the Approved Provider shall maintain a record of the time the Eligible Child is in the care of the Approved Provider for the purpose of transport to or from school.
- 7.3. The Approved Provider shall maintain accurate child registration information on the Early Years Platform in accordance with the Regulations.

- 7.4. The Approved Provider shall complete a reporting return on the Early Years Platform every week, in accordance with the timelines set by the Scheme Administrator. Subject to the Regulations, failure to complete the return within the required timeframe will result in suspension of Subsidy payments until such time as the return has been completed.
- 7.5. 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 Scheme.
- 7.6. The Approved Provider shall ensure that all financial records relating to monies received in relation to the operation of the Scheme are available to the Scheme Administrator on request. All financial records, including attendance records, must be retained for a period of 6 years after the end of the year to which they relate.
- 7.7. The Approved Provider shall maintain appropriate financial 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 the Scheme Administrator on request.
- 7.8. The Approved Provider shall, through the Early Years Platform, make an annual financial declaration to the Scheme Administrator in accordance with the Regulations.
- 7.9. The Approved Provider shall ensure that any information relating to the Scheme which is submitted via the Early Years Platform or in any other form as directed by the Scheme Administrator is accurate, and that all required documentation is retained by the Approved Provider to allow the accuracy of the information to be checked by servants or agents of the Scheme Administrator.
- 7.10. Reports, records, including attendance records, accounts and other documentation of the Approved Provider that are required under this clause 7 shall be maintained and made available for inspection on request, for a minimum of 6 years after the termination or expiry of this Agreement for whatsoever reason.

## **8. Right of Verification – Compliance Visits/Checks and Audits**

- 8.1. The Approved Provider shall permit authorised officers of the Scheme Administrator 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, as provided for in the Act. 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 as required.
- 8.2. Verification and other 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 if necessary for the purposes of carrying out such inspections, compliance checks 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. The report of any such inspection, including the outcome of the inspection ("the decision"), shall be made available as soon as possible to the Approved Provider on the Early Years Platform Providers' Portal.

- 8.5 An approved provider will receive a sanction (as described below) for persistent non-rectification of non-compliant outcome(s) following a compliance inspection (any programme) and/or failing to engage with the supports provided.

If an approved provider fails to rectify non-compliant outcomes within the given rectification period then, depending on the outcome(s), the approved provider may be referred onto the Compliance Framework. The Framework, consisting of an initial Supports Level, Level 1 and Level 2, which will provide supports to assist the service in rectifying the non-compliant outcome(s). However, repeated failure to rectify the non-compliant outcome(s), as set out on the Framework, and/or engage with supports offered may result in a sanction.

This sanction, if reached, constitutes 6% of an approved provider's annual Core Funding allocation. The sanction is solely calculated using an approved provider's Core Funding allocation and does not take into account other funding streams. The sanction is calculated using the approved provider's Core Funding allocation pertaining to the programme year the non-compliant outcome was issued, not the year the sanction is applied. 80% of the sanction is payable when an approved provider is initially placed on Level 2 of the Framework with the remaining 20% payable if a service fails to rectify at the end of Level 2.

- 8.6. An Approved Provider who is aggrieved by the outcome of an inspection may appeal the decision in writing within the timeframe as set out legislation, submitting supporting documentation if appropriate, in accordance with the Regulations.
- 8.7. The Approved Provider shall permit access to the Approved Provider's premises and personnel for the purposes of inspections/compliance visits relating to other aspects of the early learning and care service. These shall include but not be limited to inspections carried out by the Tusla Early Years Inspectorate and the inspectorate of the Department of Education, and any other applicable verification or inspection/compliance visit that may be provided for by law.
- 8.8 Failure to comply with any of the terms of this Agreement may result in the suspension of NCS Funding and/or a termination of this Funding Agreement. Core funding or part thereof may also be withdrawn from Partner Services under the conditions set out in the Core Funding Partner Service Funding Agreement.

## **9. Term and Termination**

- 9.1. This Agreement shall commence on the date it is signed by the Approved Provider, or on 19<sup>th</sup> August 2024 ("Effective Date"), whichever is the later date, and will expire on 17<sup>th</sup> August 2025 (Term) unless otherwise terminated by the Minister.

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. 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 if any one or more of the following events occur:



- (i) the Approved Provider is removed from or otherwise ceases to be on the register of prescribed early years services maintained by Tusla, the Child and Family Agency;
  - (ii) The Approved is Provider is prohibited from operating an Early Years Service by Tusla for any period of time;
  - (iii) 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;
  - (iv) If an order is made or an effective resolution is passed for the winding up of the Approved Provider;
  - (v) If a receiver, examiner or administrator is appointed over any of the property or assets of the Approved Provider;
  - (vi) 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;
  - (vii) 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;
  - (viii) If the Approved Provider shall cease or threaten to cease to operate all or a substantial part of the service; or
  - (ix) If any other event occurs which the Minister in their absolute discretion considers might or does materially adversely affect the ability of the Approved Provider to operate the 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 Scheme Administrator on demand all, or, at the absolute discretion of the Scheme Administrator, a portion of, sums received in respect of the Subsidy and in the event of default on such repayment, such sums 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 by serving 3 months written notice to the other party.

## **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 and public liability insurance adequate and necessary to operate and deliver the service, to operate its business and cover all liabilities of the Approved Provider arising in relation to the early learning and care service and/or ELC and School Age 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 early

learning and care 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 submit a force majeure claim to the Scheme Administrator within 5 days of the onset of the event. Upon the cessation of the event of force majeure, the Affected Party shall notify the Scheme Administrator 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.
- 11.5 A condition of Force majeure is that staff wages are paid for the duration of the Force Majeure incident.

## **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, provided the Approved Provider continues to meet its obligations in respect of the Scheme 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 2 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 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 by or on behalf of both parties, or electronically if so requested by the Minister, by acceptance by the Approved Provider 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 is an Act of Entrustment in accordance with the provisions of Decision 2012/21/EU.
- 15.7. This Agreement shall be governed by and construed in accordance with the laws of Ireland and the parties hereto expressly and irrevocably submit to the jurisdiction of the Irish Courts.

## APPENDIX 1

### Participation in the National Childcare Scheme (the Scheme)

1. In order to participate in the Scheme, the Approved Provider must have access to facilities that enable him or her to conduct business online, and a dedicated Early Years Platform user account. The Approved Provider shall administer its functions in relation to the Scheme via the Early Years Platform.
2. The Approved Provider must be registered with Tusla, the Child and Family Agency as a prescribed early years service and have an agreed contract under section 8 of the Act with the Minister for Children, Equality, Disability, Integration and Youth. 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 contract (the Agreement) will be administered via the Early Years Platform.
3. Administration of the Scheme shall be the responsibility of the Scheme Administrator.
4. 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 the Scheme Administrator has the permission of the Approved Provider to verify its tax compliance position online prior to entering into contract and prior to the payment of any Subsidies.
5. The Scheme Administrator will communicate all information relating to this Agreement to Approved Providers through the Early Years Platform or as otherwise directed by the Scheme Administrator/The Department. The Approved Provider must communicate all information relating to this Agreement through the Early Years Platform, or as otherwise directed by the Scheme Administrator.
6. The Approved Provider shall submit information relating to the Scheme via the Early Years Platform or by any other means as directed by the Minister or by the Scheme Administrator.
7. The Approved Provider must adhere to the procedures set out in the Regulations and the Policy Guidelines when registering a child on the Scheme, and when confirming registrations on the Early Years Platform.
8. The Approved Provider must submit a service calendar annually to the Scheme Administrator through the Early Years Platform, in such form as may be directed, in accordance with the Regulations. 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.
9. The Approved Provider must publish a fees list, using a standard template specified by the Scheme Administrator, in accordance with the Regulations. The fees list must 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 fees list must set out the fees charged by the Approved Provider for each level of service available in the service. Where the Approved Provider amends his or her fees, the revised fees list must be submitted to the Scheme Administrator without delay. The Approved Provider must give 20 Working Days' notice to Qualifying Applicants and to the Scheme Administrator of 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.

10. The Approved Provider must use the Subsidy to reduce the fees charged to Qualifying Applicants for childcare services provided to eligible children, as provided for under clause 6 of this Agreement.
11. The childcare service provided by the Approved Provider to eligible children from birth to 6 years old must adhere to the principles of Síolta, the Quality Framework ([www.siolta.ie](http://www.siolta.ie)), and Aistear, the 'Early Childhood Curriculum Framework' ([www.ncca.ie](http://www.ncca.ie)). The Approved Provider may be supported in meeting this requirement through the assistance of the 'Better Start Quality Development Service' and/or their local City or County Childcare Committee. The Approved Provider must facilitate visits and advice from the Better Start service and/or staff of the local Childcare Committee in this regard.
12. Subject to the Regulations and to the Policy Guidelines, the Approved Provider will be paid a Subsidy for each eligible child enrolled and attending the early learning and care service and registered for the Scheme on the Early Years Platform. The Subsidy rate and the number of childcare weeks approved for each eligible child will have been determined by the Scheme Administrator following consideration of an application.
13. Participation in the National Childcare Scheme is on the following basis:
  - (i) The Approved Provider shall provide childcare services to an eligible child on the basis of the number of childcare weeks, and the number of childcare hours each week agreed with the Qualifying Applicant or, in the case of a Sponsored Child, the number of childcare weeks and childcare hours as agreed with the Sponsor or with the parent of the Sponsored Child;
  - (ii) The Approved Provider must retain a record of the Agreement with the qualifying applicant in accordance with the procedures set out in the Policy Guidelines.
  - (iii) The Approved Provider shall use the CHICK to register the child using the registration process established by the Scheme Administrator.

The Approved Provider shall register the number of childcare hours per week, and the number of weeks of childcare to be provided to the child that are to be subsidised, as agreed between the Approved Provider and the Qualifying Applicant. Subsidies will be paid on the basis of hours or part-hours up to the approved maximum per week, i.e. any part of an hour is rounded up to the nearest hour. For example, if a parent needs 6.5 hours of childcare per day, the provider may register this as 7 hours of care each day. The maximum approved hours per day must not exceed the number of hours that childcare is available per day from the Approved Provider, that is the opening hours of the service.

- (iv) Following completion of the registration process, the scheme Administrator will issue a notification to the Qualifying Applicant indicating the number of childcare hours per week that have been registered by the Approved Provider for the relevant child. The Qualifying Applicant will be required to confirm to the Scheme Administrator that these are the subsidised hours that have been agreed with the Approved Provider. It is the responsibility of the Approved Provider to ensure that the Qualifying Applicant confirms to the Scheme Administrator the subsidised hours that have been agreed with the Approved Provider. On receipt of this confirmation, the Scheme Administrator will approve the payment of the Subsidy

for the weekly childcare hours, and the weeks of childcare, and will notify the Approved Provider and the Qualifying Applicant of the payment.

- (v) The Subsidy in respect of a child will be paid with effect from the Monday of the week in which the childcare service provided to the child commences, or the Monday of the week in which the registration process for the child is completed, whichever is the later date.
- (vi) The Qualifying Applicant may choose to avail of additional childcare hours and/or weeks over and above any childcare hours that are subsidised under the Scheme. However, a Subsidy will only be payable in respect of the number of childcare hours per week and the number of weeks of childcare that have been approved by the Scheme Administrator and these are the hours and weeks that shall be registered. The Qualifying Applicant is liable in full for any payment in respect of the additional childcare hours.
- (vii) The Qualifying Applicant may choose to avail of fewer childcare hours and/or weeks than have been awarded by the Scheme Administrator under the Scheme, and these are the hours and weeks that shall be registered. In such circumstances, a Subsidy will only be payable in respect of the number of childcare hours and/or weeks that have been registered.
- (viii) The Approved Provider will charge the Qualifying Applicant, at a maximum, the difference between the total amount that would be payable by a non-Qualifying Applicant for the number of hours and weeks that are to be provided, based on the Approved Provider's published schedule of fees, and the amount of the approved Subsidy. This charge to the Qualifying Applicant is the "Co-payment".
- (ix) No Co-payment may be charged in respect of a Sponsored child.
- (x) The Approved Provider must retain evidence of the Co-payments received from Qualifying Applicants that can be used to confirm that the correct Co-payment is being charged in respect of each subsidised child. The evidence retained must allow the particular child and the period of time to which the payment relates to be identified.
- (xi) The Approved Provider must maintain an attendance record for each eligible child that records the time of arrival and the time of departure on each day of attendance, and the person responsible for recording each arrival and departure, in the format set out in Appendix 3 of this Agreement. (The attendance records for eligible children need not be maintained separately from the attendance records for pre-school children that must be maintained as part of the Approved Provider's compliance with Regulation 24 of the Child Care Act 1991 (Early Years Services) Regulations 2016). The time of a child's arrival at or departure from the service shall be recorded immediately or, if this is not feasible, as soon as possible afterwards.
- (xii) The Approved Provider must, on a weekly basis, confirm on the Early Years Platform the registration details of each child in respect of whom a Subsidy is payable. Confirmation of registrations consists of the recording of the following events:
  - (a) an eligible child has ceased to attend the service;
  - (b) the child has been continuously absent from the service for a period of four consecutive weeks;

- (c) the weekly hours of attendance of the eligible child have, for a period of eight consecutive weeks, been less than the number of hours of subsidy per week that have been approved;
- (d) when the child at (c) has continued to attend for hours which are less than the number of hours of subsidy per week that have been approved for a further consecutive four weeks (12 weeks in total).

The weekly confirmation of registrations must be completed in accordance with the Regulations and the Policy Guidelines.

14. On foot of weekly confirmation of registrations by the Approved Provider, the Scheme Administrator will pay the Subsidy in accordance with the Regulations and with the Policy Guidelines, in weekly instalments in arrears. The Approved Provider must confirm registrations within a set deadline each week. Failure to confirm the registrations within the set deadline will – subject to paragraph 15 of this Appendix - result in the payment for that week being suspended until such time as the confirmation is completed.
15. Where an Approved Provider fails to submit the reporting return by the set deadline, the Scheme Administrator will issue a notification via the Early Years Platform stating that the return was not submitted and that the corresponding weekly payment has not issued. The notification will include a warning that, if the reporting return has not been submitted by the next reporting deadline, payments will continue to be suspended until all reporting returns are up to date. The Approved Provider may request a “grace period” payment in accordance with the Regulations. “Grace period” payments may be requested on no more than two occasions within the contract cycle and may not follow one another consecutively (i.e. once a “grace period” payment has been made, no further payment will issue until all reporting returns are up to date).
16. 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 reported. Authorised officers of the Scheme Administrator will carry out site visits to ensure that the terms and conditions of the Scheme, including the application of the rules relating to attendance monitoring and reporting, are being complied with. Details of the attendance rules are set out in Regulations and in the Policy Guidelines. The steps that may be taken by the Scheme Administrator in cases of non-compliance are set out in the Policy Guidelines.
17. 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 Subsidy in lieu of notice in accordance with the Regulations. 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.
18. In general, a Subsidy in respect of an Eligible Child will be paid to the Approved Provider in respect of the childcare hours and weeks during which the child attends the service and continues to be eligible for the Subsidy.
19. The Scheme Administrator, at the time of the registration of an eligible child will make clear the renewal date of the Subsidy for that child to the Approved Provider. Prior to the renewal date, the Scheme Administrator will notify the Qualifying Applicant of the renewal date, and the Qualifying Applicant must advise the Scheme Administrator whether s/he wishes to renew the Subsidy. If the Subsidy is renewed, the Qualifying Applicant will supply a new CHICK to the Approved Provider so that the child’s registration can be renewed. If the Subsidy is not renewed, the Subsidy payment applicable to the relevant child will cease with effect from the day immediately prior to the renewal date.

20. By entering into this Agreement, the Approved Provider agrees to the publication of the name, address and contact number of his or her Early Learning and Care (ELC) service and/or School Age Childcare (SAC) provider on the scheme administrator's, or the CCCs' websites for the information of parents wishing to access childcare services.



## APPENDIX 2

### 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 under GDPR.
- b. **“Shared Personal Data”** is the personal data and special category personal data to be shared between the parties pursuant to the Childcare Support Act, 2018 and Regulations made under Section 15 of the Childcare Support Act 2018 (together “the Act”).

#### 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 Childcare Support Act, 2018 (the Act). The Minister is responsible for the implementation of the Scheme under the Act. The Approved Provider is a Data Controller for Personal Data and Special Categories of Personal Data of parents and children who avail of the early learning and care services provided by the Approved Provider and also facilitates the payment of financial support provided by the Minister to parents 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, processing is 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, processing is 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 purposes of the Act, and 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 PARENTS

Name of Child

Date of Birth of Child

Childcare Identifier Code Key incorporating the subsidy rate and maximum hours

Age and education stage of the child

Weekly hours of attendance of child where required

Attendance records for compliance checking

Name of Applicant

Exemption requests at the request of parents which may include details on:

- Medical appointments of child, sibling or parent
- 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

#### 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

#### 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 parents which may include details of:

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

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

### **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 the 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 organisational 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.

### APPENDIX 3 – EXCEL TOOL FOR RECORDING ATTENDANCE RECORDS UNDER THE NATIONAL CHILDCARE SCHEME

The weekly NCS payment is based on an assurance that the child, for whom the subsidy is legally provided, is actively using the early learning and care service and that taxpayer's funding is, therefore, being used for the purpose for which it is legally prescribed. Therefore the accurate recording of a child's attendance is a core obligation for participants in the scheme.

A spreadsheet is available to Approved Providers to assist them in recording and monitoring children's attendance.

Guidance on how to use the spreadsheet to record and monitor attendance, and in relation to the printing and retention of attendance records, is available on the Early Years Platform.

Providers are not required to use this particular excel-based tool but it is hoped that they will find it helpful in meeting their obligations with regard to accurate recording of children's attendance.

Date:		06/09/2021											
Room Leader:		Jane Doe											
Room Name:		Butterfly											
Enter all children attending in this room													
Automatic Calculation													
Summary													
Input each child's attendance times in 24 hour format (hh:mm)													
Monday													
Tuesday													
CHICK	Child's Name	DOB	NCS hours claimed	ECCE hours attended	Non ECCE hours attended	Alerts	Hours Per Programme Type	In	Out	Initials	In	Out	Initials
12345X	Joe Bloggs	01/02/2017	25	6	10	Absent 1 hour or more	Ecce hours	09:00:00	12:00:00	JD	09:00:00	12:00:00	JD
							Non ECCE hours	12:01:00	17:00:00	JD	08:30:00	08:59:00	JD
							Non ECCE hours				12:01:00	16:30:00	JD