

## **Interim Funding Partner Service Funding Agreement**

### **1. Interpretation.**

- 1.1. “2016 Regulations” means the Child Care Act 1991 (Early Years Services) Regulations 2016.
- 1.2. “2018 Regulations” means the Child Care Act 1991 (Early Years Services) (Registration of School Age Services) Regulations 2018.
- 1.3. “Circular 13/2014” means Department of Public Expenditure and Reform Circular 13/2014 entitled Management of and Accountability for Grants from Exchequer Funds (including any interpretations or clarifications of such requirements issued by the Department of Finance, Department of Public Expenditure and Reform, the Department of Children, Equality, Disability, Integration and Youth and/or the Executive).
- 1.4. “Core Funding Partner Service Funding Agreement” means the funding agreement available to Partner Services accepted by completion of the Core Funding application process through the Hive. For the avoidance of doubt the Core Funding Partner Service Funding Agreement comes into effect in line with the terms of that agreement including the pre-condition that Employment Regulation Orders are in effect to cover all roles across the sector as defined in the Early Years’ Service Joint Labour Committee Establishment Order.
- 1.5. “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.
- 1.6. “Early Years Platform” or “The Hive” means the IT system maintained by the Scheme Administrator and on which the Scheme is administered.
- 1.7. “Early Years’ Service Joint Labour Committee Establishment Order” means Statutory Instrument S.I. No. 292/2021 which establishes the Early Years’ Service Joint Labour Committee, outlining the details of the sector and the workers in the sector to whom the order applies.
- 1.8. “ECCE” means the Early Childhood Care and Education Programme (ECCE) programme, a universal two-year pre-school programme available to all children within the eligible age range funded by the Department.
- 1.9. “Eligible Paid Experience” means paid experience working in an Early Learning and Care service or a School-Age Childcare service provided that:
  - (a) the year, refers to, at least, a full academic year or nine months of work within each calendar year, either full or part-time but at least 15 hours per week;
  - (b) the experience can be gained through a range of work activities but must involve work with pre-school or primary school aged children;

The experience is cumulative, and so can be gained at any time; it does not have to be gained after an individual becomes a graduate; and the work experience can be achieved

- in a setting inside or outside of Ireland, or both. Practice placements undertaken during education and training cannot be counted as part of the experience.
- 1.10. "Employment Regulation Order (ERO)" sets minimum rates of pay and conditions for workers in a specified sector. An ERO is drawn up by a Joint Labour Committee set up through an Establishment Order.
  - 1.11. "Fee Policy" means the list of fees charged for individuated Service Types and the conditions that apply in implementing the list of fees. The Fee Policy will state all of the service offers; care types, hours of care, applicable age ranges, etc. and the associated fees for each (before the application of NCS subsidies and before and after the deduction of ECCE subsidies). It will also describe any additional services in addition to basic fees and the cost of that additional service.
  - 1.12. "Grant" means the financial support paid by the Scheme Administrator to a Partner Service under this Interim Funding Agreement.
  - 1.13. "Interim Funding Agreement" means this Agreement between the Minister and Partner Service for the interim funding.
  - 1.14. "Lead Educator" means an Early Years Educator who leads practice with a group of children (previously referred to as "room leader") in a Partner Service.
  - 1.15. "National Childcare Scheme (NCS)" means the affordable childcare scheme established under the Childcare Support Act 2018 and known as the National Childcare Scheme.
  - 1.16. "Partner Service" means an Early Learning and Care (ELC) and/or School Age Childcare (SAC) service who has entered into this Interim 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 excluding services which are registered as a Pre-school Service in a Drop-in Centre. A Partner Service who provides both ELC and SAC must have a valid Tusla registration for both Service Types. A Partner Service cannot be School Age Childcare drop-in services.
  - 1.17. "Scheme" means Interim Funding Scheme provided for under this Interim Funding Agreement.
  - 1.18. "Scheme Administrator" means Pobal, the body appointed to administer the Interim Funding Scheme.
  - 1.19. "Service Type" means a type of ELC/SAC provision offered to parents defined within a Fee Policy and includes within its definition the nature of the service, the typical daily start and finish time and, the number of hours of service provided per week.
  - 1.20. "The Department" means the Department of Children, Equality, Disability, Integration and Youth.
  - 1.21. "The Minister" means the Minister for Children, Equality, Disability, Integration and Youth.
  - 1.22. "Transition Fund" is the temporary, once-off funding scheme available to the ELC and SAC sector from May 2022 to August 2022 as they exited from Covid-19 financial supports and ahead of the introduction of Core Funding.

## **2. Interim Funding Agreement Pre-Condition.**

- 2.1 The Interim Funding Agreement will only come into effect where the Employment Regulation Orders to cover all roles across the sector as defined in the Early Years' Service Joint Labour Committee Establishment Order are not in effect by the 1 September 2022 and this provides interim funding until such time as the EROs come into effect or the 30 September 2022, whichever is the sooner.
- 2.2 The Interim Funding Agreement is contingent upon the Partner Service's completion of the Core Funding application process, and acceptance of the Core Funding Partner Service Funding Agreement.

## **3. Pre-Payment Conditions.**

- 3.1. Payment of the Grant or any instalment of the Grant by the Scheme Administrator is subject to the prospective Partner Service:
  - (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 Grant 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.
- 3.2. The Partner Service must provide a point of contact for the management of the Interim Funding Scheme, and notify the Scheme Administrator of any change or alteration to their contact details.
- 3.3 All Partner Services shall be required to have a valid Tusla registration for the Service Type provided. A Partner Service who provides both ELC and SAC must have a valid Tusla registration for both Service Types.
- 3.4 In advance of coming into contract for this scheme, the Partner Service shall be required to have completed the Annual Early Years Sector Profile 2021/2022 in full, including providing accurate income and cost data related to their service.
- 3.5. The Partner Service agrees to:
  - 3.5.1. Contract to the ECCE programme in the 2022/23 programme year and to offer ECCE to all eligible children where it provides such a service to eligible children within the meaning of the 2022/2023 ECCE Funding Agreement and Department's Rules for ECCE Programme 2022/2023.
  - 3.5.2. Contract to the NCS in the 2022/2023 programme year (unless the service is registered with Tusla as a Pre-school Sessional Service only) and to offer the NCS (including income assessed, universal and in particular "sponsor" NCS arrangements) to all children up to the age of 15 where it provides an ELC/SAC service to eligible children within the meaning of the Childcare Support Act 2018, associated regulations and the National Childcare Scheme Policy Guidelines.

## **4. The Funding Agreement and Grant.**

- 4.1. The Grant shall be used to offset the costs to the Partner Service arising from the eligible areas of expenditure as set out in Appendix 1 of this Interim Funding Agreement.
- 4.2. The Grant will apply from September 1<sup>st</sup> 2022 or from the signing of this Interim Funding Agreement, whichever is the later, and will be paid weekly.

- 4.3. The Partner Service shall comply with all requests and directions of the Minister and Scheme Administrator, or representatives or agents of the Minister or Scheme Administrator, relating directly or indirectly to Grant paid under the Scheme.
- 4.4. Failure to comply with the terms of this Interim Funding Agreement may result in the exclusion from the Grant and/or may also result in the suspension of Grant and/or a termination of this Interim Funding Agreement.

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

- 5.1. The Partner Service must comply with all relevant legal and regulatory obligations.
- 5.2. Without prejudice to the generality of the obligation in 5.1, the following frameworks and statutory requirements underpin this Interim Funding Agreement:
  - 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
- 5.3. The Partner Service 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 Interim Funding 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 Service Types as required under the 2016 Regulations and the 2018 Regulations.
- 5.4. The Partner Service shall undertake all reasonable and appropriate checks on individuals employed by or otherwise involved with the Partner Service 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.
- 5.5. A. The Partner Service and its employees are not and shall in no circumstances hold themselves out as being the servants or agents of the Minister.  
B. The Partner Service 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.
- 5.6. It is an express condition of this Interim Funding Agreement and the Partner Service so acknowledges and confirms in its completion of the Core Funding application process through the Hive that nothing in this Interim Funding 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 Partner Service or to any third party whomsoever as to:
  - (i) whether or not the ELC and/or SAC service operated by the Partner Service is of a standard that adequately meets the stated aims and objectives of the Scheme;
  - (ii) the competency of the Partner Service, its staff or agents; or
  - (iii) the stability of any structure, soundness of any materials used or the adequacy of its purpose of any buildings or facility.

## **6. Operation of the Scheme.**

### **6.1. Fee Management**

- 6.1.1. The Partner Service agrees that the fees charged to parents/guardians (before the application of subsidies) for the duration of this Interim Funding Agreement will not exceed the fees charged to parents/guardians for the same services on September 30<sup>th</sup> 2021 in accordance with the Fee Policy applicable on that date. Where the September 30<sup>th</sup> 2021 fees list is referred to subsequently, this shall be understood as the fees list for any scheme that existed on September 30<sup>th</sup> 2021 or the fees list applicable on that date approved by the CCC for ECCE or CCSP if approval took place after September 30<sup>th</sup>.
- 6.1.2. All clauses in the Fee Management section of this Interim Funding Agreement have primacy over rules on fee changes in contracts and policy rules for the NCS, CCSP and ECCE, where requirements differ.
- 6.1.3. The Partner Service agrees not to increase the fee for any Service Type which was extant on September 30<sup>th</sup> 2021 or introduce an extra charge for any component of that Service Type.
- 6.1.4. The Partner Service may create a new Service Type and agrees that the fee for any new Service Type will be calculated as not more than a proportion of the closest equivalent fee extant on September 30<sup>th</sup> 2021 which, all other things being equal, would apply to the eligible child. The proportion of the fee cannot exceed the relative proportion of the Service Type.<sup>1</sup>
- 6.1.5. The Partner Service agrees that they may create new Additional Service to the Fee Policy where it can be clearly shown that this was not part of Fee Policy extant on September 30<sup>th</sup> 2021<sup>2</sup> and which must be entirely optional to parents.
- 6.1.6. The Partner Service must retain the Fee Policy at 30<sup>th</sup> September 2021 and records of fees charged to parents/guardians for the duration the Interim Funding Agreement. The Partner Service must publish a Fee Policy, using a standard template specified by the Scheme Administrator. The Fee Policy must be displayed at all times in an area accessible to parents as well as on any online platform maintained by the Partner Service for the purpose of advertising its service or providing information to parents. The Fee Policy will be provided as part of the "Parent Statement" (see Appendix 3). The Partner Service agrees to allow the Scheme Administrator to publish their Fee Policy 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.
- 6.1.7. Decisions on whether the Fee Management conditions have been contravened will be determined by the Scheme Administrator.

### **6.2. Calculation of Grant**

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<sup>1</sup> For example, a service who provides five day service type and opens an equivalent four day service type shall apply a maximum fee rate of four-fifths of the five day service type to the four day service type.

<sup>2</sup> In the event that a City/County Childcare Committee approves an amended fee list for ECCE or CCSP covering the September 30<sup>th</sup> 2021 after this date then the approved fee list will take precedence.

6.2.1 Grants paid to Partner Services under the Interim Funding Agreement will be based on a weekly allocation for capacity, plus, where applicable, weekly allocations for administration and graduate employment, as outlined in Appendix 2.

6.2.2 Where a Partner Service did not avail of the Transition Fund, a weekly allocation for capacity will be derived for them on the basis of their capacity on the January 2022 Tusla Register or the closest date available thereafter, and the calculation methodology used for the Transition Fund.

### 6.3 Other conditions of Scheme operation

6.3.1 Where a parent/guardian chooses not to avail of ECCE and/or NCS, the Partner Service will retain and provide proof if requested of having offered the parent/guardian the option to avail of ECCE and/or NCS and a record of their wish not to do so. These records may be requested by the Scheme Administrator or other agent of the Minister. It will be a matter for the Minister and/or Scheme Administrator to decide whether a clear justification exists for the Partner Service not having registered children on ECCE and/or NCS. In the event that the Minister or Scheme Administrator decides that no justification exists then the provider will be required to register eligible children within its service within 15 days or withdraw from the Interim Funding Agreement 15 days after notice of the Minister/Scheme Administrator's decision.

6.3.2 Publish and distribute to users of the service a "Parent Statement" using a standard template specified by the Scheme Administrator. The Parent Statement must be displayed at all times in an area accessible to parents/guardians as well as on any online platform maintained by the Partner Service for the purpose of advertising its service or providing information to parents. The Parent Statement must be provided to parents/guardians no later than 4 weeks after signing this Interim Funding Agreement, or no later than 4 weeks after their child starting the service, whichever is the later.

6.3.3 Display and make clearly visible and available to parents/guardians any publicity materials provided by the Department/Scheme Administrator in respect of this Scheme including but not limited to printed materials and electronic material.

6.4 The ELC service provided by the Partner Service to 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 Partner Service may be supported in meeting this requirement through the assistance of agents of the Minister. The Partner Service must facilitate visits and advice from agents of the Minister in this regard.

6.5 The SAC service provided by the Partner Service to children over 4 years old and who are attending school must adhere to the principles of the National Quality Guidelines for School Age Childcare Services.

6.6 The Partner Service agrees that they will neither request nor accept any donations, voluntary or otherwise from parents/guardians, in respect of the ELC/SAC services being provided.

6.7 The Partner Service agrees that they will not charge any non-refundable deposits to parents/guardians in the respect of their ELC/SAC service where the parent/guardian takes up the service for which the deposit was paid.

## 7 **Reporting.**

- 7.1.1. As a condition of receiving funding under this Interim Funding Agreement the following reports / documents must be provided by the Partner Service in the format set out by the Scheme Administrator through the Hive:
- 7.1.2. Copy of the Partner Service's Parent Statement in a format to be provided by the Scheme Administrator.
- 7.1.3. Completed Annual Early Years Sector Profile for the 21/22 programme year prior to entering into this Funding Agreement.
- 7.2. Failure to provide any of the reports within this section within the timeframe designated by the Scheme Administrator will result in payment being withheld for this Scheme until these reports are received.
- 7.3. The Partner Service shall comply in full with the provisions of the Department of Public Expenditure and Reform Circular 13/2014 Management of and Accountability for Grants from Exchequer Funds. In particular, the Partner Service shall separately account for public funds received and ensure that appropriate financials records to ensure compliance with the requirements in respect of the Funding set out in the Department of Public Expenditure and Reform Circular 13/2014.
- 7.4. The Partner Service agrees to allow the Minister or Scheme Administrator to publish Partner Service's Parent Statement.  
  
The Partner Service agrees that analysis of all other types of reports may be published on an aggregate and unidentifiable basis by the Department and/or Scheme Administrator.
- 7.5. The Partner Service 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 Partner Service shall ensure that all financial records relating to monies received in relation to the operation of the Scheme are available to the Scheme Administrator or Minister on request. All financial records, and other reports required by this Funding Agreement, must be retained for a period of 6 years.
- 7.7. The Partner Service 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, Minister and the Comptroller and Auditor General (C&AG) on request.
- 7.8. The Partner Service 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 Partner Service to allow the accuracy of the information to be checked by servants or agents of the Scheme Administrator or Minister.
- 7.9. The Partner Service understands and agrees that their participation in the Scheme and the amount awarded to the service under the Scheme, through the calculation of Grant outlined in 6.2, and name of the service, and the address of that service, and committed capacity and occupancy, may be published through the Department's websites and/or that of the Scheme Administrator. The Minister reserves the right to publish the value of payments under the Scheme and name of the service and the address of that service and any other funding received by the Partner Service from the Department for the provision of ELC/SAC.

## **8. Payment Terms.**

- 8.1. Where the Partner Service is in receipt of a Grant under this Interim Funding Agreement, and is also in receipt of grant monies under an agreement in respect of any other programme funded by the Minister, the Grant payable to the Partner Service under this Interim Funding Agreement or any other childcare programme funded by the Minister shall be taken into account when making payment of such grant monies.
- 8.2. The Partner Service shall not receive payment under this Interim Funding Agreement and the Core Funding Partner Service Funding Agreement in respect of the same period. Any monies paid under this Funding Agreement will be offset against payments under the Core Funding Partner Service Funding Agreement in such circumstances.
- 8.3 Whenever under this or any other agreement, including the Core Funding Partner Service Funding Agreement, in respect of the programmes or provision funded by the Department to the Partner Service any sum of money is recoverable from or payable by the Partner Service including any overpayment or sum which the Partner Service is liable to pay to the Scheme Administrator in respect of any breach of this Funding Agreement or any other agreement in respect of the programmes funded by this Department, including the Core Partner Service Funding Agreement:
- A. The Scheme Administrator has the right to deduct that sum from the Grant then due to the Partner Service in respect of this Interim Funding Agreement.
  - B. Notwithstanding any provision, whether express or implied in this Interim Funding Agreement, the Scheme Administrator is entitled to off-set any amount due or owing by it under this Interim Funding Agreement against any and all amounts owed by the Partner Service to the Scheme Administrator howsoever arising.
- 8.4 Where a finding is made under this Interim Funding Agreement, the NCS Policy Guidelines, the Department's Rules for the ECCE Programme 2022/2023, or the Rules for the Community Childcare Subvention Plus (CCSP) Saver Programme, or associated Interim Funding Agreements, which would result in the full or partial termination of funding under one or more of these agreements, then the amount to be recouped by the Minister will be as set out in Appendix 4.
- 8.5 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.
- 8.6 The Partner Service may request the Scheme Administrator to review a decision with regard to an award, application of fee management, or a decision with regard to issue of payment. The review request will clearly identify the basis for the review request, including supporting documentation, with a clear statement of where the Partner Service considers that the incorrect decision has been made.
- 8.7 The Partner Service shall comply with and implement any new policies, guidelines and/or programme governance protocols in relation to the Scheme as may be issued by the Minister from time to time. The Minister and/or the Scheme Administrator and/or the City/ County Childcare Committees shall notify the Partner Service of any such new policies, guidelines and/or programme governance protocols via the Early Years Platform. It is the responsibility of the Partner Service to access the Early Years Platform on a regular basis, to ensure they are aware of any new changes made to such policies, guidelines and/or programme governance protocols.

## **9. Right of Verification.**



- 9.1. The Partner Service shall maintain appropriate records to enable verification by the Department or agents acting on its behalf that the general terms of this Interim Funding Agreement are complied with. In particular, such records will include a staffing register which clearly shows the dates, times and durations of each staff member working in each session. Records of fee income should be kept up to date and available for verification purposes.
- 9.2. The Partner Service shall permit the Scheme Administrator to attend at the premises of the Partner Service and shall permit access to the Partner Service's premises and personnel for the purposes of inspection. The Partner Service shall permit access to relevant financial and other records (including staff and fee records) for this purpose and shall facilitate and co-operate with inspections as required.
- 9.3. Verification and other inspections may be carried out without prior notice being given to the Partner Service.
- 9.4. Relevant records must be available at all times on-site for inspection and the Partner Service shall share such records or permit such records to be taken off-site if necessary for the purposes of carrying out such inspections. The Partner Service shall permit and facilitate representatives and agents of the Minister to make copies of records as deemed necessary.
- 9.5. The report of any such inspection, including the outcome of the inspection ("the decision"), shall be made available to the Partner Service.

## **10. Term and Termination.**

- 10.1. This Interim Funding Agreement shall commence on the date of acceptance by the Partner Service, or on 1 September 2022 ("Effective Date"), whichever is the later date, and will expire on the date the Employment Regulation Orders to cover all roles across the sector as defined in the Early Years' Service Joint Labour Committee Establishment Order comes into effect or on 30 September 2022, whichever is the sooner ("the Term") unless otherwise terminated by the Minister.
- 10.2. The Minister shall be entitled at any time during the Term to terminate this Interim Funding Agreement immediately if any one or more of the following events occur:
  - (i) the Partner Service is removed from either the register of prescribed Early Years services or the register of School Age Childcare services maintained by Tusla, the Child and Family Agency;
  - (ii) the Partner Service, its employees, agents or any third party acting on behalf of the Partner Service knowingly makes a false or misleading statement, or fails to disclose information in relation to its obligations under this Interim Funding Agreement;
  - (iii) If an order is made or an effective resolution is passed for the winding up of the Partner Service;
  - (iv) If a receiver, examiner or administrator is appointed over any of the property or assets of the Partner Service;
  - (v) If the Partner Service shall commit a breach of any term or condition of this Interim Funding Agreement and, if such breach is capable of remedy, shall not have remedied

it within 15 days after written notification thereof has been served on the Partner Service;

- (vi) If a distress or execution is levied or served upon any of the property or assets of the Partner Service and is not paid off within 15 days;
  - (vii) If the Partner Service 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 might or does materially adversely affect the ability of the Partner Service to operate the service and/or to comply with its obligations under this Interim Funding Agreement.
  - (ix) If the Partner Service fails to remedy a breach with regard to fee management within 15 days after written notification thereof has been served on the Partner Service, which will include refund of any excess charge to families using the service for the period through which the breach occurred.
- 10.3. On termination of this Interim Funding Agreement, the Partner Service 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 Scheme and in the event of default on such repayment, such sums shall be recoverable from the Partner Service as a simple contract debt.
- 10.4. The Partner Service 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 Partner Service with its obligations hereunder.
- 10.5. Except as provided by the provisions of sub-clause 10.2, this Interim Funding Agreement may be terminated by either party by serving 15 days written notice to the other party.

## **11. Insurance and Indemnity.**

- 11.1. The Partner Service shall for the duration of this Interim Funding 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 Partner Service arising in relation to the Partner Service pursuant to this Interim Funding Agreement.
- 11.2. The Minister shall have no liability in respect of any actions, losses, proceedings and costs, claims, demands, damages, expenses and/or liabilities whatsoever, arising directly or indirectly, as a result of any negligence, act or omission, any breach of this Interim Funding Agreement, breach of Statutory duty, Insolvency, recklessness, bad faith or wilful default, of the Partner Service, its employees, servants or agents in connection with the early learning and care service or any breach of this Interim Funding Agreement and the Partner Service shall indemnify the Minister in regard to any such actions.

## **12. Force Majeure.**

- 12.1. 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 Interim Funding Agreement, the Affected Party shall be relieved of liability for failure to perform such obligations. The Minister is under no obligation to fund a 'Force Majeure' event and does so at their own discretion.

- 12.2. The Affected Party shall promptly notify the other party of the estimated extent and duration of such inability to perform its obligations and upon the cessation of the Force Majeure event the Affected Party shall notify the other party of such cessation.
- 12.3. In the event that a Force Majeure event continues for more than 15 days either party shall have the right to immediately terminate this Interim Funding Agreement on written notice to the other party.
- 12.4. Scheme payments during Force Majeure cannot be paid in conjunction with any insurance or compensation received by the Partner Service from a third party for the same purpose.

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

- 13.1. This Interim Funding Agreement is personal to the Partner Service who shall not be entitled to assign or transfer the benefit of it, or the obligations arising from it, to any other party. For the avoidance of doubt this clause will not apply to any change in structure to the Partner Service.
- 13.2. The Partner Service shall not be entitled to sub-contract any of its obligations under this Interim Funding Agreement and shall remain primarily responsible for their performance.
- 13.3. The Partner Service shall be entitled to sub-contract services which are additional to its obligations under this Interim Funding Agreement, provided the Partner Service continues to meet its obligations in respect of the Scheme under this Interim Funding Agreement.

### **14. Data Protection.**

- 14.1. A. The Partner Service agrees to maintain compliance with Data Protection Laws.  
  
B. 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 5 of this Interim Funding Agreement.

### **15. Freedom of Information.**

- 15.1. The Freedom of Information Act 2014 applies to this Interim Funding Agreement.
- 15.2. The Partner Service acknowledges that the Minister is subject to the requirements of the Freedom of Information Act 2014 and, subject to constraints arising from commercial sensitivity or a duty of confidentiality, shall assist and co-operate with the Minister to enable the Minister to comply with the same.

### **16. General.**

- 16.1. Nothing in this Interim Funding Agreement shall constitute a legal partnership or joint venture or establish a relationship of agency between the parties.
- 16.2. Nothing in this Interim Funding Agreement shall be construed as imposing any obligation on the Minister to provide financial assistance of any nature to the Partner Service, save

- as is expressly provided for in this Interim Funding Agreement the Minister shall have no financial or other obligations to the Partner Service or to any other party whatsoever.
- 16.3. This Interim Funding 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 Partner Service of the terms and conditions (as varied) of the Interim Funding Agreement.
  - 16.4. A failure or delay by the Minister to exercise any right or remedy under this Interim Funding Agreement shall not in any way be construed as a waiver of the Interim Funding Agreement.
  - 16.5. The rights and remedies provided for in this Interim Funding Agreement are cumulative and are not exclusive of any rights or remedies provided by law.
  - 16.6. In the event that any provision of this Interim Funding 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 Interim Funding Agreement shall not be affected.
  - 16.7. This Interim Funding Agreement is an Act of Entrustment in accordance with the provisions of Decision 2012/21/EU.
  - 16.8. This Interim Funding 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 – Approved areas of Expenditure**

- Costs relating to staffing of Partner Services in the provision of Early Learning and Care and/or School Aged Childcare (ELC/SAC), which may include non-contact time in preparation and review of ELC/SAC provision.
- Costs of participation in Continuing Professional Development relating to ELC/SAC including cost of cover for absence due to such participation.
- Costs relating to the administration of the service including the administration of schemes funded by Department.
- Overheads pertaining to running of the ELC/SAC service including rent, rates, utilities and insurance.
- Any other costs which may reasonably be asserted to enhance the quality of ELC/SAC service provision.

#### **Appendix 2 – Interim Funding Calculation**

Grants paid to Partner Services under the Interim Funding Agreement will be based on a weekly allocation for capacity, plus, where applicable, weekly allocations for administration and graduate employment in ELC, as outlined below.

##### **1. Capacity**

The weekly allocation for capacity for a Partner Service will be based on the weekly allocation of the Transition Fund for that service. The following methodology was used to calculate the weekly allocations for services under the Transition Fund from May – August 2022:

- Maximum number of children the service can accommodate (on the January 2022 Tusla register)
- x 83% (to reflect the average normal occupancy level, which considers both vacancies and the extent to which a place is only used part of the week, e.g., 4 days per week)
- x the average overall fee rate (by session type, by county), or the average fee rate within community or private services (by session type, by county), whichever is the higher.
- x 7%

In some cases, where there was not a directly comparable fee rate for the service type, the following approach was used:

- For Childminders in contract for NCS/ECCE/CCSP – calculation used fees as private full day services in their local authority area.
- Combined SAC and EY services – calculation used fees for full day services in their local authority area, private or community depending on the EY/SAC service type.
- Standalone SAC services – for term time weeks, the calculation used relevant part time fees for private or community services in their local authority area; for non-term time weeks, the calculation used average weekly non term time SAC rates by local authority area using Sector Profile data, average applied across all weeks.

## **2. Graduate employment in ELC**

The weekly allocation for graduate employment in ELC will apply where a Partner Service received an ECCE Higher Capitation payment during a snapshot period at the highest week of uptake across the sector in May, 2022. The allocation to support graduate employment in ELC will be calculated as the weekly value for ECCE Higher Capitation received by the Partner Service in the snapshot period.

## **3. Administration**

The weekly allocation for administration will apply where a Partner Service received a Programme Support Payment in programme year 2021/2022. This allocation to support administration will be calculated as the annual value of ECCE PSP in 2021/22 divided by 38, and the annual value of NCS and CCSP PSP in 2021/22 divided by 52.

## **Appendix 3 – Outline of Parent Statement for Partner Services**

Partner Services' Parent Statements will included the following information, to be completed in a template provided by the Scheme Administrator, as outlined in section 6.6.2 of the Funding Agreement.

### **1. Welcome to our Partner Service**

- Notification that the Partner Service is participating in Interim Funding and an overview of the services offered to families.

### **2. ECCE, AIM and NCS**

- The DCEDIY schemes the Partner Service is contracted to deliver.
- An brief overview of these schemes
- Information on where they can get further information and support.

### **3. Fees policies**

- The Partner Service's commitment to operating the Fee Management clauses of this Funding Agreement, including information on no increases from September 2021 Fee

- Policy; obligations to publish and display their Fee Policy; obligations on deposits; prohibition of voluntary donations, etc.
- Provision of the Fee Policy that will apply for September 2022-August 2023, using a template provided by the Scheme Administrator.

#### 4. Quality measures

- Staff qualifications in each of the rooms/sessions

#### Appendix 4 – Recoupment of Interim Funding on foot of non-compliance

This Funding Agreement, the ECCE, CCSP and NCS Funding Agreements and associated documentation provide for funding to be withdrawn under certain conditions. The conditions are set out in

- This Funding Agreement
- Section 15.3 National Childcare Scheme Policy Guidelines
- Section 9.1. of the ECCE rules and procedures
- Section 11.1 of the CCSP Rules and Procedures

For the 22/23 programme year, the payment to be withheld as referenced in the above mentioned documents and where required under this Funding Agreement will be calculated at individual service level as follows:

- 8 days' (1.6 weeks') registrations for ECCE at Standard Capitation plus,
- 1.25 weeks for NCS, plus
- 20 days' (4 weeks') registrations for CCSP for that service;

or

- 50% of the total amount of Interim Funding – whichever is the lesser.

#### Appendix 5 – Framework for Sharing of Personal Data

##### 1. Definitions

- Controller, Processor, Data Subject, Data Breach, Joint Controller and Personal Data, Special Categories of Personal Data, Processing** and “appropriate technical and organisational measures” shall have the meaning given to them under GDPR.
- “**Shared Personal Data**” is the personal data and special category personal data to be shared jointly between the parties.

##### 2. Purpose and Legal Basis

- 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.
- The aim of the data sharing agreement is for the implementation of the Scheme. The Minister is responsible for the implementation of the Scheme. The Partner Service is a Data Controller for Personal Data and Special Categories of Personal Data for the following categories of data subjects:
  - parents/guardians and children who avail of the early learning and care services provided by the Partner Service;
  - staff and personnel of the Partner Service.

- c. The provision of Personal Data by the Minister and the Partner Service 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 Partner Service, 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 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  
 Provider financial information

#### PERSONAL DATA OF STAFF MEMBER

First and last name of staff member, previous surname if applicable  
 Relevant qualification of staff member  
 Staff ID  
 Rates of pay  
 Role in the service  
 Years in the sector

### 4. Responsibilities of Controllers

- a. Save in so far as this Agreement places a duty on one or both of the parties to carry out an obligation of a controller or joint controller under the GDPR, 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, and they shall act as Joint Controllers to fulfil those 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, which consists of:

- the identity and contact details of the data controller(s)
- the purposes for processing personal data, as well as the legal basis for doing so
- the categories of personal data being processed
- the recipients of that data
- details on transfers of personal data outside of the EEA
- the period of retention
- details on data subject rights, including the rights of access, rectification and deletion and the right to lodge a complaint with the Data Protection Commission and seek judicial redress
- the extent, if any, to which a restriction on any of the rights of the data subject applies.

ii) *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.

iii) *Notification of breach*

- a) If one of the Parties becomes aware of a personal data breach on the Scheme database, it shall notify the other Party of the breach within 48 hours.
- b) The data controllers shall comply with their obligations under Data Protection Laws in the event of a personal data breach. The Parties will determine at the time which Party (or if both Parties) shall be responsible for reporting the breach to the Data Protection Commission, and where applicable, to affected data subjects.
- c) 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 Partner Service 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 data protection and 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. Compliance with Other Obligations**

The Partner Service agrees (to the extent necessary) that it will assist the Department with its obligations under Article 26 (Duties of Joint Controllers), Article 30 (Records of Processing Activities), and Article 35 (Data Protection Impact Assessments). This may include providing necessary information, reports, or evidence of compliance.

**8. 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.