

DATED

CONCESSION MANAGEMENT AGREEMENT

**EARLY YEARS PROVISION AT BROTOWE FAMILY HUB (CPU5378 –
LOT 2)**

NOTTINGHAM CITY COUNCIL

(“CONTRACTING AUTHORITY”)

and

LILY & CO LIMITED

(“CONCESSIONAIRE”)

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THIS AGREEMENT is dated

PARTIES

- (1) **NOTTINGHAM CITY COUNCIL** whose address for the purposes of this Contract is Loxley House, Station Street, Nottingham, NG2 3NG ("**the Contracting Authority**") and
- (2) **LILY & CO LIMITED** a company incorporated in England and Wales (company number 08123348) whose registered office is at 5 Toll Bar Avenue, Nottingham, NG13 0BB ("**the Concessionaire**").

BACKGROUND

- (A) The Contracting Authority wishes to appoint an operator to provide OFSTED registered childcare day services delivered from Contracting Authority Family Hubs, as a Concession opportunity, to be carried out within an Admissions Policy, delivering only to children living within Nottingham City (unless a Nottingham City Child In Care living elsewhere) with priority to children eligible for Early Years Entitlement Funding and/or a Child in Need.
- (B) On the 14 April 2025 the Contracting Authority advertised by notice on the UK Central Digital Platform (reference 2025/S 000-015036), inviting prospective suppliers to submit tender proposals for the Concession opportunity, in a competitive tendering (open) procedure.
- (C) The Concessionaire's Tender response to the advertisement was assessed by the Contracting Authority as the most advantageous tender and the Contracting Authority selected the Concessionaire to provide the services, and the Concessionaire is willing and able to provide such services.
- (D) To facilitate delivery of the services, the Contracting Authority has agreed to grant the Lease to the Concessionaire and the Concessionaire has agreed to take the Lease subject to the Lease Terms.
- (E) The Concessionaire understands and accepts that this Agreement shall operate as a concession contract as the supply of the services for shall be for pecuniary interest where at least part of the consideration is the right of the Concessionaire to exploit the services, where the Concessionaire is exposed to a real operating risk and that risk shall be borne by the Concessionaire.
- (F) Accordingly, the parties have agreed to enter into this Agreement for the provision of the Services (as defined below) on the terms and conditions of this Agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Achieved KPIs: in respect of any Service in any measurement period, the standard of performance actually achieved by the Concessionaire in the

provision of that Service in the measurement period in question (calculated and expressed in the same way as the KPI for that Service is calculated and expressed in Schedule 2).

Admissions Policy: means the mutually agreed admissions criteria and waiting list system and policies.

Asset Valuation Report: means an asset valuation report confirming the Market Value of the relevant Capital Asset items which is certified by a suitably qualified and experienced independent valuer.

Authorised Representatives: the persons respectively designated as such by the Contracting Authority and the Concessionaire, the first such persons being set out in Schedule 5.

Best Industry Practice: the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the KPIs, the Term, the pricing structure and any other relevant factors.

Capital Assets: any items of equipment purchased by the Concessionaire to Fit Out the Premises either during the Fitting Out Period or at any time during the Concession Period (or any Extension Period).

Capital Investment: the total amount of money invested by the Concessionaire to acquire the Capital Assets.

Catastrophic Failure:

- (a) any action by the Concessionaire, whether in relation to the Services and this Agreement or otherwise, which in the reasonable opinion of the Contracting Authority's Authorised Representative has or may cause significant harm to the reputation of the Contracting Authority; and
- (b) any action by the Concessionaire, which results in the termination of the Provider Agreement

Child in Care – any child who is being accommodated by the local authority under section 20, 31, 38 or 44 of the Children Act 1989

Child in Need: means a child (a) unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for them of services by a local authority under Part III of the Children Act 1989; (b) whose health or development is likely to be significantly impaired, or further impaired, without the provision for them of such services; or (c) who is disabled.

Commencement Date: 1 September 2025

Commercially Sensitive Information: the information listed in Schedule 9 comprising the information of a commercially sensitive nature relating to the

pricing of the Services, the Concessionaire intellectual property rights or the Concessionaire business operations which the Concessionaire has indicated to the Contracting Authority that, if disclosed by the Contracting Authority, would cause the Concessionaire significant commercial disadvantage or material financial loss.

Concession: means the arrangement whereby the Concessionaire is permitted to manage and deliver the Services at the Family Hub Premises in accordance with all those tasks, activities or actions set out in the Specification and the terms and conditions of the is Agreement and the Lease, where at least part of the consideration is the right of the Concessionaire to exploit the services for pecuniary interest, where the Concessionaire is exposed to a real operating risk and that risk shall be borne by the Concessionaire.

Concession Fees: the sums which shall become due and payable by the Concessionaire to the Contracting Authority in respect of the Services in accordance with the provisions of this agreement as are set out in Schedule 4.

Concessionaire Personnel: all employees, staff, other workers, agents and consultants of the Concessionaire and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

Concessionaire Tender: the tender response submitted by the Concessionaire and other associated / supporting documentation set out in 0, identified at the most advantageous tender as it that it is satisfies the Contracting Authority's requirements and best satisfies the award criteria by reference to the assessment methodology and relative importance of the criterion set in the competitive tender.

Confidential Information: means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this agreement, including but not limited to:

- (c) any information that would be regarded as confidential by a reasonable businessperson relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
- (d) any information developed by the parties in the course of carrying out this agreement.
- (e) any Commercially Sensitive Information.

Connected Person has the meaning given in paragraph 45, Part 3, Schedule 6 of Procurement Act 2023.

Consistent Failure: shall have the meaning given in 0 of Schedule 2.

Consumer Prices Index: the Consumer Prices Index as published by the Office for National Statistics from time to time, or failing such publication, such other index as the parties may agree most closely resembles such index.

Contracting Authority Assets: any materials, plant or equipment owned or held by the Contracting Authority and provided by the Contracting Authority to the Concessionaire for use in providing the Services as identified in Schedule 10 but which do not form part of the Capital Assets.

Contract Year: a 12-month period starting on the Commencement Date and on each anniversary of the Commencement Date.

Controller: as defined in the Data Protection Legislation.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory Contracting Authority and applicable to a party.

Data Subject: as defined in the Data Protection Legislation.

Debarment List: the list of suppliers referred to in section 62 of the Procurement Act 2023.

Dispute Resolution Procedure: the procedure set out in clause 17.

Domestic law: the law of the United Kingdom or a part of the United Kingdom.

Early Years Entitlement Funding: Government funding provided to eligible children to receive free early education and childcare as described in the Education and Skills Funding Agency: Early years entitlements: local authority funding operational guide 2025-26 (or replacement future guidance) and detailed in the Nottingham City 2025/26 Provider Agreement (or any subsequent Provider Agreement issued by Nottingham City) in appendix 1 of the service specification schedule 1.

EIRs: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Equipment: means and equipment used by the Concessionaire in the provision of the service.

Exit Management Plan: the plan set out in Schedule 7.

Family Hub: a centre that provides integrated family support services for families with children and young people, bringing together various services, including health, education, and social care to address a range of needs and promote stronger family relationships.

Family Hub Premises: the buildings and premises shown edged red on the plan attached and specified in the Lease as set out in Schedule 11, or as otherwise agreed between the parties in accordance with the Variation Control Procedure.

Fit Out: means the fitting out of the Family Hub Premises by the Concessionaire in accordance with the Implementation Plan to install Capital Assets and associated fixtures and fittings in order to deliver the Services.

FOIA: the Freedom of Information Act 2000 together with any guidance or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure: any circumstance not within a party's reasonable control including:

- acts of God, flood, drought, earthquake or other natural disaster;
- epidemic or pandemic;
- terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- nuclear, chemical or biological contamination or sonic boom;
- any law or action taken by a government or public Contracting Authority, including imposing an export or import restriction, quota or prohibition;
- collapse of buildings, fire, explosion or accident; and
- any labour or trade disputes, strikes, industrial action or lockouts (other than that by the staff of the party seeking to rely on the Force Majeure or those of its subcontractors)].

General Variation in Law: a Variation in Law where the Variation is of a general legislative nature, or which generally affects or relates to the supply of services which are the same as, or similar to, the Services.

GHG emissions: emissions of the greenhouse gases listed at Annex A of the 1998 Kyoto Protocol to the United Nations Framework Convention on Climate Variation, as may be amended from time to time including carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), nitrogen trifluoride (NF₃), hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride (SF₆), each expressed as a total in units of carbon dioxide equivalent.

Good Industry Practice: means the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to the Contract

Health and Safety Policy: the health and safety policy of the Contracting Authority being one of the Mandatory Policies.

Implementation Plan: means the implementation and mobilisation plan set out in the

Information: has, for the purposes of clause 22, the meaning given under section 84 of FOIA.

Initial Term: means the duration of the agreement starting at 00.01 on the Service Commencement Date and ending at 23.59 on the day before the fifth anniversary of the Service Commencement Date.

Insolvency Event: where:

- (a) the Concessionaire suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (b) the Concessionaire commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (c) the Concessionaire applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Concessionaire (being a company, limited liability partnership or partnership);
- (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Concessionaire (being a company, partnership or limited liability partnership);
- (f) the holder of a qualifying floating charge over the assets of the Concessionaire (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver; (i) a person becomes entitled to appoint a receiver over the assets of the Concessionaire or a receiver is appointed over the assets of the Contracting Authority;
- (g) a person becomes entitled to appoint a receiver over the assets of the Concessionaire or a receiver is appointed over the assets of the Contracting Authority;
- (h) a creditor or encumbrancer of the Concessionaire attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the [other party's] assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the Concessionaire in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in 1.1(a) to 1.1(h) (inclusive); or
- (j) the Concessionaire suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and [neighbouring and] related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

KPIs: the key performance indicators for all and each part of the Services as specified in 0.

Law: the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Concessionaire is bound to comply.

Lease: means the lease of the Family Hub Premises to granted to the Concessionaire by the Contracting Authority for the purpose of delivering the Services on the Lease Terms.

Lease terms: means the terms and conditions of the lease as set out in Schedule 11

Mandatory Policies: the Contracting Authority's policies and codes listed in 0, as amended by notification to the Concessionaire from time to time.

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents (whether statutory, regulatory, contractual or otherwise) necessary from time to time for the provision of the Services.

Personal Data: as defined in the Data Protection Legislation

Pre-Implementation Period: means the period from the Commencement Date until the Services Commencement Date.

Pre-Implementation Works: means any necessary works to be carried out at the Family Hub Premises by the Contracting Authority to prepare those premises for occupation by the Concessionaire

Processor: as defined in the Data Protection Legislation.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Contracting Authority a financial or other advantage as an inducement or reward for any improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper

performance of a relevant function or activity in connection with this agreement;

- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation or common law concerning fraudulent acts; or
 - (iii) of defrauding, attempting to defraud or conspiring to defraud the Contracting Authority.
- (d) any activity, practice or conduct which would constitute one of the offences listed under 1.1(c) above, if such activity, practice or conduct had been carried out in the UK.

Provider Agreement: means an agreement entered into between the Concessionaire and the Contracting Authority which enables the Concessionaire to receive Early Years Entitlement Funding.

Regulated Activity: in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

Regulated Activity Provider: shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

Relevant Requirements: all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

Relevant Transfer: a relevant transfer for the purposes of TUPE.

Remediation Notice: a written notice given by the Contracting Authority to the Concessionaire pursuant to clause 27 to initiate the Remediation Plan Process.

Remediation Plan: the plan agreed in accordance with clause 27 for the resolution of a Concessionaire default in complying with its obligations under this agreement.

Remediation Plan Process: the process for resolving certain of the Concessionaire defaults as set out in clause 27.

Replacement Services: any services that are identical or substantially similar to any of the Services and which the Contracting Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Contracting Authority internally or by any Replacement Concessionaire

Replacement Concessionaire: any third-party Concessionaire of Replacement Services appointed by the Contracting Authority from time to time.

Representatives: means, in relation to party, its employees, officers, contractors, Sub-Contractors, representatives and advisors.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

Service/s: means the OFSTED registered childcare day services for 0-5 year old children to be delivered by or on behalf of the Concessionaire under this agreement, as more particularly described in the Specification and supporting information from the Concessionaire Tender.

Services Commencement Date: means with effect from 1 September 2025

Service Failure: a shortfall or failure by the Concessionaire to deliver any part of the Services in accordance with any Target KPI.

Service Users: means the child receiving the Services.

Specification: means the specification prepared by the Contracting Authority, as part of the Tender documents and as set out at Schedule 1.

Sub-Contract: any contract or agreement, or proposed contract or agreement, between the Concessionaire and a third party pursuant to which that third party agrees to provide to the Concessionaire the Services or any part of the Services.

Sub-Contractor: a person with whom the Concessionaire enters into a Sub-Contract.

Target KPI: the minimum level of performance for a KPI which is required by the Contracting Authority as set out against the relevant KPI in 0.

Term: the period of the Initial Term as may be varied by:

- (a) any extension pursuant to clause 2 or
- (b) the earlier termination of this agreement in accordance with its terms.

Termination Date: the date of expiry or termination of this agreement.

Termination Notice: any notice to terminate this agreement which is given by either party in accordance with clause 28 (excluding clause 28.2) or clause 29.

Termination Payment Default: is defined in clause 29.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

Variation: any Variation to this agreement including to any of the Services.

Variation Control Note: the written record of a Variation agreed or to be agreed by the parties pursuant to the Variation Control Procedure.

Variation Control Procedure: the procedure for changing this agreement, as set out in Schedule 6.

Variation in Law: any Variation in any Law which impacts on the performance of the Services and which comes into force after the Commencement Date.

Working Day: Monday to Friday, excluding any public holidays in England and Wales.

Working Hours: the period from 9.00am to 5.00pm on any Working Day.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.
- 1.8 Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted and includes all subordinate legislation made under it, in each case from time to time.
- 1.9 A reference to **writing** or **written** excludes fax but not email.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to this agreement or to any other agreement or document is a reference to this agreement or such other agreement or document as varied from time to time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

- 1.14 If there is any conflict or ambiguity between any of the provisions in the main body of this agreement and the schedules, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the agreement;
 - (b) Schedule 1 to this agreement;
 - (c) the remaining schedules to this agreement other than Schedule 3;
 - (d) Schedule 3 to this agreement.

Where there is any conflict or inconsistency between the provisions of this agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Concessionaire has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services and the Concessionaire has notified the Contracting Authority in writing.

2. COMMENCEMENT OF SERVICES AND DURATION

- 2.1 This Agreement commences on the Commencement Date and continues for the Term.
- 2.2 The Concessionaire undertakes that no later than 5 Business Days before the Services Commencement Date, the Concessionaire shall enter into a Lease of the Family Hub Premises for the sole purpose of providing the Services to the Contracting Authority. The Lease shall be subject to the Terms of Lease and, is personal to the Concessionaire and is deemed to create a relationship of landlord and tenant between the parties.
- 2.3 The Lease granted pursuant to clause 2.2 shall immediately be surrendered back the Contracting Authority at the end of the Term, or upon earlier termination of this Agreement.
- 2.4 The Concessionaire undertakes that no later than 5 Business Days before the Services Commencement Date, the Concessionaire will enter into a Provider Agreement.
- 2.5 The Contracting Authority may (entirely at its own discretion), offer to extend the Initial Term of this Agreement by giving the Concessionaire not less than Six months' written notice prior to expiry of the Initial Term ("an Extension Notice"), in respect of the whole (or part) of the Services and on the same terms mutatis mutandis, for a period of up to two (2) years from the day following expiry of the Initial Term ("the Extension Period").
- 2.6 The Contracting Authority is under no obligation to exercise its option to extend, as set out in clause 2.2 and in the absence of serving an Extension Notice, the Contract shall automatically expire at the end of the Initial Term.

- 2.7 The Concessionaire shall notify the Contracting Authority in writing whether it wishes to accept an offer to extend this Agreement, within twenty (20) Business Days of receipt of an Extension Notice, failing which the Agreement shall automatically expire at the end of the Initial Term.
- 2.8 In the event of an offer to extend being accepted by the Concessionaire, the terms of the Agreement shall apply throughout the duration of the Extension Period including continuing payment of the Concession Fees as set out in Schedule 4 or as may be varied in accordance with the Agreement and the Law.
- 2.9 Any acceptance of an offer to extend shall also be subject to the grant of a new lease on the Lease Terms and to the Parties validly excluding the Concessionaires statutory renewal rights pursuant to the LTA 1954 from any re-grant of the Lease.

3. DUE DILIGENCE AND CONCESSIONAIRE WARRANTY

- 3.1 The Concessionaire acknowledges and confirms that:
- (a) the Contracting Authority has delivered or made available to the Concessionaire all of the information and documents that the Concessionaire considers necessary or relevant for the performance of its obligations under this agreement;
 - (b) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Contracting Authority pursuant to clause 3.1(a);
 - (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Contracting Authority before the Commencement Date) of all relevant details relating to the performance of its obligations under this agreement (including without limitation the suitability of Family Hub Premises); and
 - (d) it has entered into this agreement in reliance on its own due diligence.
- 3.2 No representations, warranties or conditions are given or assumed by the Contracting Authority in respect of any information which is provided to the Concessionaire by the Contracting Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 3.3 The Contracting Authority provided no warranty or guarantee in respect of the volume of Service Users and any information that may be provide in the Specification is for indicative purposes only.
- 3.4 The Concessionaire:

- (a) warrants and represents that all information and statements made by the Concessionaire as a part of the procurement process, including without limitation the Concessionaire Tender or response to any request to participate (if applicable), are true, accurate and not misleading, save as may have been specifically disclosed in writing to the Contracting Authority prior to execution of the agreement; and
- (b) warrants and represents that during the Term of the Agreement that it shall abide by the terms of the Provider Agreement; and
- (c) shall promptly notify the Contracting Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Contracting Authority during such due diligence which materially and adversely affects its ability to perform the Services or meet any Target KPIs; and
- (d) shall promptly notify the Contracting Authority in writing if, during the Term:
 - (i) the Concessionaire, the Concessionaire Connected Persons or any Sub-Contractor is placed on the Debarment List;
 - (ii) a mandatory exclusion ground or discretionary exclusion ground applies to the Concessionaire, the Concessionaire Connected Persons or any Sub-Contractor; and]
- (e) shall promptly notify the Contracting Authority in writing within 3 working days of any Variations to the Concessionaire Connected Persons together with information regarding the identity of the new Connected Persons.

3.5 The Concessionaire shall not be entitled to recover any additional costs or charges from the Contracting Authority arising as a result of, nor be relieved from any of its obligations under this agreement on the ground of, any matters or inaccuracies notified to the Contracting Authority by the Concessionaire in accordance with clause 3.4(c) save where such additional costs or adverse effect on performance have been caused by the Concessionaire having been provided with fundamentally misleading information by or on behalf of the Contracting Authority and the Concessionaire could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Concessionaire may to recover such reasonable additional costs from the Contracting Authority or shall be relieved from performance of certain obligations as shall be determined by the Variation Control Procedure.

THE SERVICES

4. SUPPLY AND DELIVERY OF SERVICES

Pre-Implementation Preparation

- 4.1 The Concessionaire shall comply and co-operate with the Contracting Authority's reasonable requests for input and assistance in delivering the Pre-Implementation Works during the Pre-Implementation Period insofar as such Pre-Implementation Works relate to the Services, in particular input in relation to Pre-Implementation Works being carried out at the Family Hub Premises which may impact upon the Fit Out and or delivery of the Services by the Concessionaire.
- 4.2 The Concessionaire acknowledges that during the Pre-Implementation Period the Family Hub Premises will be subject to works carried out by the Contracting Authority's works contractor and accepts and agrees that the Pre-Implementation Works and/or Services Commencement Date may be subject to change, including as to timing, scheduling, phasing and access to the Family Hub Premises.
- 4.3 In the event that the Pre-Implementation Works are delayed, and such delay is likely to impact on the Services Commencement Date, the Contracting Authority shall notify the Concessionaire of the same as soon as reasonably practicable setting out any revised dates for provision of the Services ("Pre-implementation Notice").
- 4.4 The Concessionaire shall acknowledge receipt of any Pre-implementation Notice issued by the Contracting Authority pursuant to clause 4.5 within five (5) Business Days of receipt. In the absence of such acknowledgment the Concessionaire shall be deemed to have received the Pre-Implementation Notice provided it has been served pursuant to clause 40.
- 4.5 In the event of a Pre-implementation Notice being served, the parties shall co-operate and work together in good faith to minimise the impact of such changes to the delivery of the Services. The Concessionaire acknowledges and agrees that any delay or change to the Services Commencement Date arising out of or in connection with the Pre-Implementation Works shall not constitute a material breach of contract by the Contracting Authority or give rise to any claim by the Concessionaire against the Contracting Authority and the Concessionaire shall not be entitled to terminate the Agreement in the event of any such delay or change.

Delivery of Services

- 4.6 The Concessionaire shall provide the Services with effect from the Services Commencement Date for the remaining duration of the Term in accordance with the provisions of this agreement, including without limitation Schedules 1, 2 and Schedule 3 and in accordance delivery in accordance with the Implementation Plan.
- 4.7 In providing the Services, the Concessionaire shall at all times:

- (a) without prejudice to clause 5, provide the Services with reasonable care and skill and at all times in accordance with Best Industry Practice so that the needs of Service Users are met;
- (b) ensure that all goods, Equipment, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;
- (c) observe all health and safety rules and regulations and all other security requirements that apply to the Family Hub Premises in so far as they may applicable under the Agreement
- (d) obtain, maintain and comply with all Necessary Consents at its own cost (unless otherwise agreed in writing with the Contracting Authority).
- (e) allocate sufficient resources to provide the Services in accordance with the terms of this Agreement;
- (f) not do or omit to do anything which may cause the Contracting Authority to lose and licence, funding, authority, consent or permission on which it relied for the purposes of conducting its business
- (g) ensure that any of the Concessionaire Personnel who are engaged in the provision of any of the Services shall, if required by the Contracting Authority, attend such meetings at the premises of the Contracting Authority or elsewhere as may be reasonably required by the Contracting Authority; and
- (h) provide such reasonable co-operation and information in relation to the Services to the Contracting Authority, or such of the Contracting Authority's other suppliers, as the Contracting Authority may reasonably require, for the purposes of enabling any such person to create and maintain any interfaces reasonably required by the Contracting Authority, including but not limited to health care professionals, whether in relation to the Services generally or any Service User.
- (i) ensure it registers the Family Hub Premises with Environmental Health (and any other bodies as may be required by Law) as food premises (within reasonable timescales and as required by Law) and provides evidence of all such registrations to the Contracting Authority within ten (10) Business Days of receipt of confirmation of the same;
- (j) ensure it complies with all rules and Law relating to the charging of VAT in respect of the Services
- (k) ensure it co-operates with the Contracting Authority's fire, security and safety advisors and complies with their reasonable instructions;
- (l) ensure that any and all inspectors appointed by the Contracting Authority, Health & Safety Executive or similar inspector are permitted entry to the Family Hub Premises for the purposes of inspecting

Equipment, practices or material used or proposed to be used by the Concessionaire in or about the provision of the Services or taking and testing any samples;

- (m) ensure that that any reports issued following an inspection as referred to in sub-clause (l) above, shall be made available to the Contracting Authority and the Concessionaire shall undertake any and all works or improvements required by any such report within any time frame set out in therein;

5. KPIs

- 5.1 Where any Service is stated in 0 to be subject to a specific KPI, the Concessionaire shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than the corresponding Target KPI to such specific KPI.
- 5.2 If the existing Services are varied or new Services are added, Target KPIs for the same will be determined by the parties and included within 0.
- 5.3 The Concessionaire shall provide reports summarising the Achieved KPIs as provided for in clause 15.

6. COMPLIANCE AND VARIATION IN LAWS

- 6.1 In performing its obligations under this agreement, the Concessionaire shall at all times comply with:
 - (a) all applicable Law;
 - (b) the Mandatory Policies.

The Concessionaire shall maintain such records as are necessary pursuant to the Laws and Mandatory Policies and shall promptly on request make them available for inspection by any relevant Contracting Authority that is entitled to inspect them and by the Contracting Authority (or its authorised representative).

- 6.2 Without limiting the generality of the obligation under clause 6.1, the Concessionaire shall (and shall procure that the Concessionaire Personnel shall) perform its obligations under this agreement (including those in relation to the Services) in accordance with:
 - (a) all applicable Law regarding health and safety; and
 - (b) the Health and Safety Policy whilst at the Family Hub Premises.

- 6.3 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Family Hub Premises of which it becomes aware and which relate to or arise in connection with the

performance of this agreement. The Concessionaire shall instruct the Concessionaire Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

6.4 Without limiting the general obligation set out in clause 6.1, the Concessionaire shall (and shall procure that the Concessionaire Personnel shall):

- (a) perform its obligations under this agreement (including those in relation to the Services) in accordance with:
 - (i) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (ii) the Contracting Authority's equality and diversity policy as provided to the Concessionaire from time to time; and
 - (iii) any other requirements and instructions which the Contracting Authority reasonably imposes in connection with any equality obligations imposed on the Contracting Authority at any time under applicable equality Law.
- (b) take all necessary steps, and inform the Contracting Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

6.5 The Concessionaire shall monitor and shall keep the Contracting Authority informed in writing of any Variations in the Law which may impact the Services and shall provide the Contracting Authority with timely details of measures it proposes to take and Variations it proposes to make to comply with any such Variations. The Concessionaire shall only implement such Variations in accordance with the Variation Control Procedure.

6.6 The Concessionaire shall neither be relieved of its obligations to supply the Services in accordance with the terms of this agreement nor be entitled to an increase in the Concession Fees as the result of a General Variation in Law.

7. CONCESSIONAIRE ENVIRONMENTAL OBLIGATIONS

7.1 The Concessionaire shall ensure that:

- (a) its operations comply with all applicable environmental Law, including in relation to waste disposal, GHG emissions and the handling of hazardous and toxic materials;
- (b) the goods it manufactures (including the inputs and components that it incorporates into its goods) comply with environmental Law;
- (c) it will only use packaging materials that comply with applicable environmental Law.

- 7.2 The Contracting Authority may audit the Concessionaire compliance with this clause 7 in accordance with clause 25.

8. USE OF FAMILY HUB PREMISES AND ASSETS

- 8.1 The Concessionaire shall ensure that when visiting or using the Family Hub Premises, the Concessionaire Personnel shall:

- (a) keep the Family Hub Premises clean, tidy and properly secure;
- (b) co-operate as far as may be reasonably necessary with the Contracting Authority's employees or Authorised Representative, including with regard to the security of the Family Hub Premises;
- (c) act in such a way as to avoid causing unreasonable or unnecessary disruption to the routine and procedures of the Contracting Authority; and
- (d) comply with all the rules and regulations that the Contracting Authority notifies to the Concessionaire from time to time in writing relating to the use and security of the Children's Centre Premises.

- 8.2 The Concessionaire shall ensure that the Concessionaire Personnel shall not:

- (a) obstruct access to the Family Hub Premises, or any part of them; or
- (b) do or permit to be done on the Contracting Authority's Premises anything which is illegal or which may be or become a nuisance, damage, inconvenience or disturbance to the Contracting Authority or the occupiers of or visitors to the Family Hub Premises.

- 8.3 The Concessionaire shall ensure that any Contracting Authority Assets are:

- (a) used with all reasonable care and skill and in accordance any manufacturer guidelines or instructions;
- (b) kept properly secure; and
- (c) not removed from the Family Hub Premises unless expressly permitted under this agreement or agreed in writing with by the Contracting Authority's Authorised Representative.

- 8.4 The Contracting Authority shall maintain and repair the Contracting Authority Assets but where such maintenance or repair arises directly from the act, omission, default or negligence of the Concessionaire Personnel (fair wear and tear excluded) the costs incurred by the Contracting Authority in maintaining and repairing the same shall be recoverable from the Concessionaire as a debt.

- 8.5 The Concessionaire shall notify the Contracting Authority immediately on becoming aware of any damage caused by the Concessionaire Personnel to any Contracting Authority Assets property of the Contracting Authority or other recipient of the Services, or to any of the Family Hub Premises in the course of

providing the Services. The Concessionaire shall be responsible for the reasonable costs of repair or replacement and, without prejudice to its other rights and remedies under this agreement or otherwise, the Contracting Authority shall be entitled to set off such reasonable costs of repair or replacement against any sums owing to the Concessionaire under this agreement.

- 8.6 Subject to reasonable use and payment of the Concession Fee the Concessionaire shall be permitted, to access and consume gas, electricity and water from designated utility points within the Family Hub Premises solely for the purpose of operating the Concession and delivering the Services.
- 8.7 The Concessionaire shall be responsible for providing and ensuring that there is at all times throughout the Term, the provision of external trade waste bin(s) designated for the collection of recyclables and special waste (including kitchen and special waste). The Concessionaire shall be responsible for ensuring trade and food waste is appropriately disposed of in accordance with the Specification, Good Industry Practice and the Law.
- 8.8 Subject to the requirements of clause 33 and the Exit Management Plan, upon expiry or termination of this Contract (whichever first occurs) the Lease shall automatically cease. The Contracting Authority shall on reasonable notice provide the Concessionaire with such access as the Concessionaire reasonably requires to the Family Hub Premises to remove any of the Concessionaire's equipment or property stored on the Family Hub Premises. All such equipment and property shall be promptly removed by the Concessionaire who shall at its own cost make good (as the Contracting Authority directs) any damage to the Family Hub Premises occasioned by such removal.

9. CONTRACTING AUTHORITY ASSETS

- 9.1 From the Fit Out Start Date, the Concessionaire shall take responsibility for the operation, maintenance, repair, and replacement of the Contracting Authority Assets and shall be responsible for the purchase, supply and any installation of any other Equipment, or fixtures and fittings, required to provide the Service (including modification or upgrade of the Contracting Authority Assets) required for the delivery of the Service.
- 9.2 Not Used
- 9.3 The Concessionaire shall be responsible for installing or procuring the installation of the Capital Assets at the Family Hub Premises. The Capital Assets to be installed at the Premises shall be those listed and designated as such in the Concessionaire Tender and any other items agreed between the Parties in writing from time to time.

- 9.4 The Concessionaire shall maintain a register of all Capital Assets purchased ("Capital Assets Register"); a copy of which shall be provided to the Contracting Authority upon request. The Capital Assets Register shall also contain details of Contracting Authority Assets which is in operational use by the Concessionaire.
- 9.5 The Capital Assets Register shall be updated each time a Capital Asset item is purchased (including when an item of Contracting Authority Assets is replaced) and a copy of the updated Capital Assets Register shall be provided to the Contracting Authority.
- 9.6 The Concessionaire shall notify the Contracting Authority in advance in writing of any intention to purchase a Capital Asset or replace an item of Contracting Authority Assets at least one (1) month prior to the proposed date of purchase replacement or disposal or as soon as reasonably practicable if advanced notice is not possible in the event of immediate replacement.
- 9.7 The Concessionaire shall ensure that the Capital Assets and Contracting Authority Assets is used and operated in a manner which conforms to the manufacturer's operating and maintenance instructions.
- 9.8 The Concessionaire shall throughout the Term ensure that all the Contracting Authority Assets and Capital Assets are kept in a clean and hygienic condition and that all routine and responsive repairs and maintenance are carried out.
- 9.9 The Concessionaire shall be responsible for effecting and maintaining insurance to cover the Contracting Authority Assets and Capital Assets stored by the Concessionaire at the Family Hub Premises during the Fit Out period and the Term.
- 9.10 The Capital Assets, Contracting Authority Assets and any other items brought onto the Family Hub Premises by the Concessionaire are the sole responsibility of the Concessionaire. The Contracting Authority will not accept any liability for any loss or damage caused by or to the Capital Assets and/or Contracting Authority Assets and/or other items.
- 9.11 If any Contracting Authority Assets and/or Capital Assets need repairing or replacing during the term, the Concessionaire will repair or replace them at its own cost subject to first securing the Contracting Authority's agreement (such agreement not to be unreasonably withheld or delayed). The Parties acknowledge and agree that the Concessionaire may carry out emergency repairs in respect of any Contracting Authority Assets and/or Capital Assets where it is unable to obtain to seek consent in circumstances where the Concessionaire reasonably considers the Contracting Authority Assets and/or Capital Assets presents an imminent health and safety risk to property or personal injury.

9.12 Upon expiry or termination of this Agreement (whichever occurs first) the parties agree that the following provisions shall apply in respect of the Capital Assets:

- (a) In respect of any Capital Asset items which are immovable, permanent or semi-permanent fixtures fittings and equipment ("Fixed Capital Assets") and subject always to receipt by the Contracting Authority of an Asset Valuation Report, the Contracting Authority shall have the option (but no obligation) of paying to the Concessionaire the market value of those Fixed Capital Assets and upon payment of the same those Fixed Capital Assets shall remain on the Family Hub Premises and shall transfer to the Contracting Authority's ownership; and
- (b) In respect of any Capital Asset items which are moveable non fixed items of equipment ("Moveable Capital Assets") and subject always to receipt by the Contracting Authority of an Asset Valuation Report, the Contracting Authority shall have the option (but no obligation) of paying to the Concessionaire the market value of those Moveable Capital Assets and upon payment of the same those Moveable Capital Assets shall remain on the Family Hub Premises and transfer to the Contracting Authority's ownership.
- (c) the Contracting Authority shall use reasonable endeavours to obtain the Asset Valuation Report 90 days prior to the expiry of the Term or in the case of early termination, 30 days following termination. Contracting Authority shall use reasonable endeavours to make payment in respect of the Fixed Capital Assets and any Moveable Capital Assets which it elects to purchase to the Concessionaire within 60 days of receipt of the Asset Valuation Report.
- (d) the Contracting Authority shall use reasonable endeavours to detail provide to the Concessionaire a list of Moveable Capital Assets that they wish to purchase from the Concessionaire 60 days prior to the expiry of the Term or in the event of early termination within 30 days following termination. The Contracting Authority agrees that the Concessionaire's failure to collect or remove these items will not result in the Contracting Authority claiming failure to give up vacant possession on the Family Hub Premises in accordance with the requirements of the Lease.

9.13 In respect of any Capital Asset items not transferred to the Contracting Authority's ownership in accordance with 9.12 (a) and (b), the Concessionaire shall ensure these are removed from the Family Hub Premises, upon expiry or termination of this Agreement (whichever occurs first) at no cost to the Contracting Authority.

10. CONCESSION FEES, INVOICING AND PAYMENT

- 10.1 The Concessionaire shall pay the Concession Fees to the Contracting Authority in accordance with Schedule 4.
- 10.2 The Concession Fees:
- (a) method of calculation specified in Schedule 4 shall remain fixed during the Term; and
 - (b) are the entire price payable by the Concessionaire to the Contracting Authority in respect of the Concession Opportunity and include, without limitation, any royalties, consents, licence fees, supplies and all consumables used by the Concessionaire, travel costs, accommodation expenses and the cost of Contracting Authority Personnel.
- 10.3 Except as otherwise provided in this agreement, the parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this agreement.
- 10.4 The Contracting Authority shall invoice the Concessionaire for payment of the Concession Fees at the time the Concession Fees are expressed to be payable in accordance with Schedule 4. All invoices shall:
- (a) be directed to the Concessionaires' Authorised Representative;
 - (b) unless an electronic invoice pursuant to Clause 10.5, contain such information as the Concessionaire may inform the Contracting Authority from time to time
- 10.5 The Concessionaire shall accept and process for payment any electronic invoice submitted by the Contracting Authority provided that it is undisputed and in a form that complies with the standard for electronic invoicing (and uses any related syntaxes) approved and issued by the British Standards Institution from time to time.
- 10.6 Where the Contracting Authority submits an invoice to the Concessionaire in accordance with clause 10.4, the Concessionaire shall:
- (a) consider and verify the invoice without undue delay;
 - (b) notify the Contracting Authority promptly if it disputes the invoice or does not consider it to be valid within the meaning of clause 10.7;
 - (c) where the invoice is valid and to the extent that it is not disputed, pay the Contracting Authority any Concession Fees due under the invoice within 30 days of:
 - (i) receipt of the invoice by the Concessionaire; or if later
 - (ii) the due date as stated on the invoice.

- 10.7 For the purposes of clause 10.6:
- (a) an invoice is valid if either:
 - (i) it is an electronic invoice in the form required by clause 10.5; or
 - (ii) it contains the information required under clause 10.4(b), which includes the name of the invoicing party, a description of the services supplied, the Concession Fees requested and a unique identification number;
 - (b) an invoice from the Contracting Authority shall be regarded by the Concessionaire as not disputed where the Concessionaire fails to verify it without undue delay and in any event within [seven] days of receipt from the Contracting Authority.
- 10.8 Where the Concessionaire enters into a Sub-Contract, the Concessionaire shall include in that Sub-Contract:
- (a) provisions having the same effect as clause 10.6, clause 10.7(a)(ii) and clause 10.7(b) of this agreement; and
 - (b) a provision requiring the counterparty to that Sub-Contract to include in any subcontract which it awards provisions having the same effect as clause 10.6, clause 10.7(a)(ii) and clause 10.7(b) and clause 10.8 of this agreement.
- 10.9 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 17. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until 30 days after resolution of the dispute between the parties.
- 10.10 Subject to clause 10.9, interest shall be payable, on the late payment of any undisputed Concession Fees properly invoiced under this agreement, in accordance with clause 11. The Concessionaire shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this agreement under clause 29.3 for failure to pay undisputed charges.
- 10.11 The Concession Fees are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Concessionaire following delivery of a valid VAT invoice. The Contracting Authority shall indemnify the Concessionaire against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Concessionaire at any time in respect of the Contracting Authority's failure to account for, or to pay, any VAT relating to payments made to the Contracting Authority under this agreement.

- 10.12 The Contracting Authority shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Concessionaire pursuant to this agreement. Such records shall be retained for inspection by the Concessionaire for six years from the end of the Contract Year to which the records relate.
- 10.13 The Contracting Authority may at any time, set off any liability of the Concessionaire to the Contracting Authority, against any liability of the Contracting Authority to the Concessionaire, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. Any exercise by the Contracting Authority of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.

11. INTEREST

- 11.1 Each party shall pay interest on any sum due under this agreement, calculated as follows:
- (a) Rate. 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
 - (b) Period. From when the overdue sum became due, until it is paid.

12. CONCESSIONAIRE PERSONNEL

- 12.1 At all times, the Concessionaire shall ensure that:
- (a) each of the Concessionaire Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - (b) there is an adequate number of Concessionaire s Personnel to provide the Services properly;
 - (c) only those people who are authorised by the Concessionaire (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
 - (d) all of the Concessionaire Personnel comply with the Mandatory Policies.
- 12.2 The Contracting Authority may refuse to grant access to, and remove, any of the Concessionaire Personnel who do not comply with any of the Mandatory Policies, or if they otherwise present a security threat.
- 12.3 The Concessionaire shall replace any of the Concessionaire Personnel whom the Contracting Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Concessionaire Personnel for any reason, the Concessionaire shall ensure

such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

- 12.4 The Concessionaire shall maintain up-to-date personnel records on the Concessionaire Personnel engaged in the provision of the Services and shall provide information to the Contracting Authority as the Contracting Authority reasonably requests on the Concessionaire Personnel. The Concessionaire shall ensure that the Concessionaire Personnel cannot be individually identified from the information so provided.
- 12.5 The Concessionaire shall use its reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.

13. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

- 13.1 The parties acknowledge that the Concessionaire is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 13.2 The Concessionaire shall:
- (a) ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS);
 - (b) monitor the level and validity of the checks under this clause 13.2 for each member of staff; and
 - (c) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.
- 13.3 The Concessionaire warrants that at all times for the purposes of this agreement it has no reason to believe that any person who is or will be employed or engaged by the Concessionaire in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder.
- 13.4 The Concessionaire shall immediately notify the Contracting Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 13 have been met.
- 13.5 The Concessionaire shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out

the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to children.

14. TUPE

The parties agree that the provisions of Schedule 10 shall apply to any Relevant Transfer of staff under this agreement.

CONTRACT MANAGEMENT

15. REVIEW AND MONITORING

- 15.1 Each party shall nominate an Authorised Representative who will have authority to act on its behalf in respect of all matters relating to the performance of this agreement. The first Authorised Representatives are listed in Schedule 5. The Authorised Representatives will co-ordinate and manage the provision of the Services and work with each other to address any problems that arise in connection with the Services (including by signing Variation Control Notes).
- 15.2 Each party shall use all reasonable endeavours to ensure that the same person acts as its Authorised Representative throughout the Term, but may, following reasonable notice to the other party, replace that person from time to time where reasonably necessary in the interests of its business.
- 15.3 A review meeting to assess the Concessionaire performance of its obligations under this agreement shall be held at annual intervals throughout the Term. Each meeting shall be attended by senior representatives of each party, together with the Authorised Representatives. Such meetings shall be minuted by the Contracting Authority's Authorised Representative and copies of those minutes shall be circulated to and approved by both parties.
- 15.4 Without prejudice to any other reports required under this agreement, in advance of each meeting to be held in accordance with clause 15.3:
 - (a) the Concessionaire shall provide the Contracting Authority with annual written report detailing its performance against each of the KPIs and identifying any issues regarding the performance of the agreement for discussion at the meeting; and
 - (b) the Contracting Authority shall notify the Concessionaire of any concerns it has regarding the performance of the agreement for discussion at the meeting.
- 15.5 At the meeting, the parties shall agree a plan to address any problems identified in the performance of the agreement. In the event of any problem being unresolved, or a failure to agree on the plan, the procedures set out in clause

27 shall apply. Progress in implementing the plan shall be included in the agenda for the next meeting.

- 15.6 The Contracting Authority may increase the extent to which it monitors the performance of the Services if the Concessionaire fails to meet the Target KPIs or fails to fulfil its other obligations under this agreement. The Contracting Authority shall give the Concessionaire prior notification of its intention to increase the level of its monitoring. The Concessionaire shall bear its own costs in complying with such enhanced monitoring as is conducted by the Contracting Authority pursuant to this clause 15.6
- 15.7 The Concessionaire shall submit any other management reports to the Contracting Authority in the form and at the interval specified in 0, or as specified elsewhere in this agreement.

16. VARIATION CONTROL,

- 16.1 Any requirement for a Variation shall be subject to the Variation Control Procedure.
- 16.2 The Concessionaire shall throughout the Term seek ways to derive efficiencies with respect to delivery of the Services and use all reasonable endeavours to ensure that the Contracting Authority receives the benefit of any such efficiencies.
- 16.3 Where the Concessionaire identifies a potential efficiency:
- (a) it shall promptly inform the Contracting Authority and shall advise the Contracting Authority whether, in the Concessionaire professional opinion, the implementation of any Variation necessary to enable the Contracting Authority to enjoy that benefit is desirable (in view of quality, reliability and other relevant factors as well as price); and
 - (b) if the Contracting Authority concludes that the implementation of the necessary Variation is desirable, the Concessionaire shall implement the Variation.
- 16.4 Where the achievement of the benefit by the Contracting Authority would necessitate the making of a Variation Control Note, the Variation Control Procedure shall apply but the Concessionaire shall not be entitled to object to the proposed Variation. Any benefits arising from any such Variation as is referred to in this clause 16 (including any consequent reductions in the Concession Fees) shall accrue solely to the Contracting Authority.

17. DISPUTE RESOLUTION

- 17.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then, except as expressly

provided in this agreement, the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
- (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 Working Days of service of the Dispute Notice, the Dispute shall be referred to the Contracting Authority's Director of Children and Integrated Services and the Concessionaire Director who shall attempt in good faith to resolve it;
- (c) if the Contracting Authority's Director of Children and Integrated Services and the Concessionaire Director are for any reason unable to resolve the Dispute within 30 Working Days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 30 Working Days of referral of the Dispute Notice, the mediator will be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR.
- (d) if there is any point on the logistical arrangements of the mediation, other than nomination of the mediator, upon which the parties cannot agree within 20 Working Days from the date of the ADR notice, where appropriate, in conjunction with the mediation, CEDR will be requested to decide that point for the parties having consulted with them; and
- (e) Unless otherwise agreed between the parties, the mediation will start not later than 20 days after the date of the ADR notice.

17.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings.

17.3 If for any reason the Dispute is not resolved within 90 Working Days of commencement of the mediation, the Dispute shall be referred to and finally resolved by the courts of England and Wales in accordance with clause 45.

18. SUB-CONTRACTING

18.1 Notwithstanding clause 39, the Concessionaire can only enter into subcontracting arrangements in accordance with this clause 18.

18.2 To help the Contracting Authority reach a decision on a proposed Sub-Contract, the Contracting Authority may request (and the Concessionaire shall provide)

- (a) a copy of the proposed Sub-Contract;
- (b) any other information that the Contracting Authority may reasonably require about the proposed Sub-Contractor and the impact of the proposed Sub-Contract on this agreement.

For the avoidance of doubt, the Contracting Authority shall not consent to any proposed Sub-Contract if the Sub-Contractor [(or any Connected Person of the Sub-Contractor)] is on the Debarment List [for a mandatory exclusion ground or a related discretionary ground].

18.3 If the Contracting Authority agrees that the Concessionaire may subcontract its obligations, the Concessionaire shall implement an appropriate system of due diligence and audit designed to ensure the Sub-Contractor's compliance with the Mandatory Policies.

18.4 In the event that the Concessionaire enters into any Sub-Contract in connection with this agreement it shall:

- (a) remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own;
- (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and procure that the Sub-Contractor complies with such terms; and
- (c) provide a copy, at no charge to the Contracting Authority, of any such Sub-Contract on receipt of a request for such by the Contracting Authority's Authorised Representative.

18.5 The Contracting Authority may require the Concessionaire to terminate a Sub-Contract where the acts or omission of the relevant Sub-Contractor have given rise to the Contracting Authority's right to terminate pursuant to clause 28.1 or if there is a Variation of control of a Sub-Contractor (within the meaning of section 1124 of the Corporation Tax Act 2010) or the Sub-Contractor suffers an Insolvency Event.

19. INDEMNITIES

19.1 Subject to clause 19.2, the Concessionaire, shall indemnify and keep indemnified the Contracting Authority against all liabilities, costs, expenses, damages and losses incurred by the Contracting Authority arising out of or in connection with:

- (a) the Concessionaire breach or negligent performance or non-performance of this agreement;
 - (b) any claim made against the Contracting Authority arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Concessionaire Personnel; and
 - (c) the enforcement of this agreement.
- 19.2 The indemnity under clause 19.1 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Contracting Authority are directly caused (or directly arise) from the negligence or breach of this agreement by the Contracting Authority.

20. LIMITATION OF LIABILITY

- 20.1 The limits and exclusions in this clause reflect the insurance cover the Concessionaire has been able to arrange and the Contracting Authority is responsible for making its own arrangements for the insurance of any excess liability.
- 20.2 References to liability in this clause 20 include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 20.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 20.4 Nothing in this clause 20 shall limit the Concessionaire's payment obligations under this agreement.
- 20.5 Nothing in this clause 20 shall limit any liability under:
 - (a) Clause 26 (IPR indemnity)
 - (b) the indemnities in Schedule 8 (TUPE)
 - (c) breach of clause 31 (Bribery)
- 20.6 Nothing in this agreement limits any liability for:
 - (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
 - (d) any liability that cannot legally be limited.

- 20.7 Subject to clause 20.3, clause 20.5 and clause 20.6, the Concessionaire total aggregate liability to the Contracting Authority:
- (a) for loss arising from the Concessionaire failure to comply with its data processing obligations under clause 24 shall not exceed £1million (£1,000,000);
 - (b) in respect of physical damage to the Contracting Authority's (or third party's) property caused or arising by reason of any act or omission of the Concessionaire or Concessionaire Personnel, shall not exceed £10,000,000 million for any one event or series of connected events; and
 - (c) in respect of all other claims, losses or damages arising in each Contract Year, shall not exceed the cap.
- 20.8 In clause 20.7(c):
- (a) The cap is 50% of the total Concession Turnover in the Contract Year in which the breaches occurred; and
 - (b) The total Concession Turnover means the total revenue generated by the Concessionaire during the relevant duration of this Agreement. This includes all income from the services provided under the concession, excluding VAT.
- 20.9 Subject to clause 20.1, clause 20.4, clause 20.5 and clause 20.6, the Contracting Authority's total aggregate liability in respect of all claims, losses or damages arising in each Contract Year shall not exceed the cap in clause 20.10.
- 20.10 In clause 20.9:
- (a) The cap is 50% of the total Concession Turnover in the Contract Year in which the breaches occurred.
 - (b) The total Concession Turnover means the total revenue generated by the Concessionaire during the relevant duration of this Agreement. This includes all income from the services provided under the concession, excluding VAT.
- 20.11 Subject to clause 20.1, clause 20.4, clause 20.5 and clause 20.6, clause 20.11(b) identifies the kinds of loss that are not excluded. Subject to that, clause 20.11(a) excludes specified types of loss.
- (a) Types of loss wholly excluded:
 - (i) Loss of profits.
 - (ii) Loss of sales or business.
 - (iii) Loss of agreements or contracts.
 - (iv) Loss of anticipated savings.

- (v) Loss of use or corruption of software, data or information.
- (vi) Loss of or damage to goodwill.
- (vii) Indirect or consequential loss.

(b) Types of loss and specific losses not excluded:

- (i) Sums paid by the Concessionaire to the Contracting Authority pursuant to the agreement in respect of any Services not provided in accordance with the agreement.
- (ii) Wasted expenditure.
- (iii) Additional costs of procuring and implementing replacements for, or alternatives to, Services not provided in accordance with the agreement. These include consultancy costs, additional costs of management time
- (iv) Losses incurred by the Contracting Authority arising out of or in connection with any third-party claim against the Contracting Authority which has been caused by the act or omission of the Concessionaire. For these purposes, third party claims shall include demands, fines, penalties, actions, investigations or proceedings, including those made or commenced by Sub-Contractors, the Concessionaire Personnel, regulators and customers of the Contracting Authority.

20.12 The Concessionaire has given commitments as to compliance of the Services with relevant specifications in clause 4.7 and clause 5. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

20.13 Unless a party notifies the other party that it intends to make a claim in respect of an event within the notice period, the other party shall have no liability for that event. The notice period for an event shall start on the day on which the party wishing to make a claim became, or ought reasonably to have become aware of the event having occurred and shall expire 1 month from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

21. INSURANCE

21.1 The Concessionaire shall at its own cost effect and maintain with reputable insurance companies insurance policies to cover its liabilities under this agreement providing as a minimum the following levels of cover:

- (a) public liability insurance with a limit of indemnity of at least £10,000,000 million in relation to any one claim or series of claims; and

- (b) employer's liability insurance with a limit of at least £5,000,000 million per claim;

(the **Required Insurances**) The cover shall be in respect of all risks which may be incurred by the Concessionaire, arising out of the Concessionaire's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Concessionaire.

- 21.2 The Concessionaire shall give the Contracting Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 21.3 If, for whatever reason, the Concessionaire fails to give effect to and maintain the Required Insurances, the Contracting Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Concessionaire.
- 21.4 The terms of any insurance or the amount of cover shall not relieve the Concessionaire of any liabilities under the agreement.

INFORMATION

22. FREEDOM OF INFORMATION

- 22.1 The Concessionaire acknowledges that the Contracting Authority is subject to the requirements of the FOIA and the EIRs. The Concessionaire shall:
 - (a) provide all necessary assistance and cooperation as reasonably requested by the Contracting Authority to enable the Contracting Authority to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Contracting Authority all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - (c) provide the Contracting Authority with a copy of all Information belonging to the Contracting Authority requested in the Request for Information which is in its possession or control in the form that the Contracting Authority requires within 5 Working Days (or such other period as the Contracting Authority may reasonably specify) of the Contracting Authority's request for such Information; and
 - (d) not respond directly to a Request for Information unless authorised in writing to do so by the Contracting Authority.

- 22.2 The Concessionaire acknowledges that the Contracting Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Concessionaire. The Contracting Authority shall take reasonable steps to notify the Concessionaire of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Contracting Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information or any other information is exempt from disclosure in accordance with the FOIA or the EIRs.
- 22.3 Notwithstanding any other term of this agreement, the Concessionaire consents to the publication of this agreement in its entirety (including variations), subject only to the redaction of information that the Contracting Authority considers is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.
- 22.4 The Contracting Authority shall, prior to publication, consult with the Concessionaire on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion. The Concessionaire shall assist and co-operate with the Contracting Authority to enable the Contracting Authority to publish this agreement.

23. DATA PROCESSING

- 23.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 23 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 23.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Contracting Authority is the Controller and the Concessionaire is both a Controller and, for purposes of the information being passed over to the Council, the Processor. Schedule 12 sets out the scope, nature and purpose of processing by the Concessionaire, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 23.3 Without prejudice to the generality of clause 23.1, the Contracting Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Concessionaire for the duration and purposes of this agreement.

23.4 Without prejudice to the generality of clause 23.1, the Concessionaire shall, in relation to any Personal Data processed in connection with the performance by the Concessionaire of its obligations under this agreement:

- (a) process that Personal Data only on the documented written instructions of the Contracting Authority which are set out in Schedule 12, unless the Concessionaire is required by Domestic Law to otherwise process that Personal Data. Where the Concessionaire is relying on Domestic Law as the basis for processing Personal Data, the Concessionaire shall promptly notify the Contracting Authority of this before performing the processing required by Domestic Law unless the Domestic Law prohibits the Concessionaire from so notifying the Contracting Authority;
- (b) ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Contracting Authority, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- (d) not transfer any Personal Data outside of the UK unless the prior written consent of the Contracting Authority has been obtained and the following conditions are fulfilled:
 - (i) the Contracting Authority or the Concessionaire has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective remedies;
 - (iii) the Concessionaire complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Concessionaire complies with the reasonable instructions notified to it in advance by the Contracting Authority with respect to the processing of the Personal Data;

- (e) notify the Contracting Authority immediately if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data;
 - (ii) a request to rectify, block or erase any Personal Data;
 - (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (f) assist the Contracting Authority in responding to any request from a Data Subject and in ensuring compliance with the Contracting Authority's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (g) notify the Contracting Authority without undue delay on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this Agreement.
- (h) at the written direction of the Contracting Authority, delete or return Personal Data and copies thereof to the [Customer] on termination or expiry of the agreement unless required by Domestic Law to store the Personal Data;
- (i) maintain complete and accurate records and information to demonstrate its compliance with this clause 23 and allow for audits by the Contracting Authority or the Contracting Authority's designated auditor pursuant to clause 25 and immediately inform the Contracting Authority if, in the opinion of the Concessionaire, an instruction infringes the Data Protection Legislation.

23.5 The Concessionaire liability for losses arising from breaches of this clause is as set out in clause 20.7(a).

23.6 Where the Concessionaire wishes to appoint a sub processor to process any Personal Data relating to this agreement, such sub processor shall constitute a Sub-Contractor and the Concessionaire shall:

- (a) notify the Contracting Authority in writing of the intended processing by the Sub-Contractor;
- (b) obtain prior written consent from the Contracting Authority;
- (c) enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 23.

23.7 Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this clause 23 by replacing it with any applicable

controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

24. CONFIDENTIALITY

24.1 The provisions of this clause do not apply to any Confidential Information which:

- (a) is or becomes available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
- (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (c) was, is, or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
- (d) the parties agree in writing is not confidential or may be disclosed;
- (e) which is disclosed by the Contracting Authority on a confidential basis to any central government or regulatory body.

24.2 Each party shall keep the other party's Confidential Information secret and confidential and shall not:

- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this agreement (**Permitted Purpose**); or
- (b) disclose such Confidential information in whole or in part to any third party, except as expressly permitted by this clause 24.

24.3 A party may disclose the other party's Confidential information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this agreement,
- (c) and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 24.3.

24.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law (including under the FOIA or

EIRs), by any governmental or other regulatory Contracting Authority or by a court or other Contracting Authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of the disclosure as possible.

- 24.5 The provisions of this clause 24 shall survive for a period of one year from the Termination Date.

25. AUDIT

- 25.1 During the Term and for a period of one year after the Termination Date, the Concessionaire shall allow the Contracting Authority (acting by itself or through its Representatives) to access any of the Concessionaire Children's Centre Premises, systems, Concessionaire Personnel and relevant records as may reasonably be required to:

- (a) fulfil any legally enforceable request by any regulatory body;
- (b) verify the accuracy of Concession Fees or identify suspected fraud;
- (c) review the integrity, confidentiality and security of any data relating to the Contracting Authority or any service users;
- (d) review the Concessionaire compliance with the Data Protection Legislation and the FOIA, in accordance with clause 23 (Data Protection) and clause 22 (Freedom of Information) and any other legislation applicable to the Services; or
- (e) verify that the Services are being provided and all obligations of the Concessionaire are being performed in accordance with this agreement.

- 25.2 Except where an audit is imposed on the Contracting Authority by a regulatory body or where the Contracting Authority has reasonable grounds for believing that the Concessionaire has not complied with its obligations under this agreement, the Contracting Authority may not conduct an audit under this clause 25 more than once in any calendar year.

- 25.3 The Contracting Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Concessionaire or delay the provision of the Services.

- 25.4 Subject to the Contracting Authority's obligations of confidentiality, the Concessionaire shall on demand provide the Contracting Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

- (a) all information requested by the above persons within the permitted scope of the audit;

- (b) reasonable access to any sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
 - (c) access to the Concessionaire Personnel.
- 25.5 The Contracting Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention or, where possible, a regulatory body's, intention to conduct an audit.
- 25.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure by the Concessionaire to perform its obligations under this agreement in any material manner in which case the Concessionaire shall reimburse the Contracting Authority for all the Contracting Authority's reasonable costs incurred in the course of the audit.
- 25.7 If an audit identifies that:
 - (a) the Concessionaire has failed to perform its obligations under this agreement, the provisions of clause 27 shall apply;
 - (b) the Contracting Authority has overpaid any Concession Fees, the Concessionaire shall pay to the Contracting Authority the amount overpaid within 20 days from the date of receipt of an invoice or notice to do so. The Contracting Authority may deduct the relevant amount from the Concession Fees if the Concessionaire fails to make this payment; and
 - (c) the Contracting Authority has underpaid any Concession Fees, the Contracting Authority shall pay to the Concessionaire the amount of the underpayment within 20 days from the date of receipt of an invoice for such amount.

26. INTELLECTUAL PROPERTY

- 26.1 In the absence of prior written agreement by the Contracting Authority to the contrary, all Intellectual Property Rights created by the Concessionaire or Concessionaire Personnel:
 - (a) in the course of performing the Services; or
 - (b) exclusively for the purpose of performing the Services,
 shall vest in the Contracting Authority on creation.
- 26.2 The Concessionaire shall indemnify the Contracting Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the

availability of the Services, except to the extent that they have been caused by or contributed to by the Contracting Authority's acts or omissions.

TERMINATION

27. REMEDIATION PLAN PROCESS

- 27.1 Subject to clause 27.2, if the Concessionaire is in default in complying with any of its obligations under this agreement and the default is capable of remedy, the Contracting Authority may not terminate this agreement without first operating the Remediation Plan Process. If the Concessionaire commits such a default, the Contracting Authority shall give a Remediation Notice to the Concessionaire which shall specify the default in outline and the actions the Concessionaire needs to take to remedy the default.
- 27.2 The Contracting Authority shall be under no obligation to initiate the Remediation Plan Process if it issues a notice to terminate in the circumstances set out in clause 28.1(a), clause 28.1(d), clause 28.1(e), clause 28.1(f), clause 28.1(g), clause 28 (h), clause 28.1(i) and clause **Error! Reference source not found.** (or a notice of an intention to terminate under clause 28.5).
- 27.3 Within 5 Working Days of receipt of a Remediation Notice, the Concessionaire shall:
- (a) submit a draft Remediation Plan, even if it disputes that it is responsible for the matters which are the subject of the Remediation Notice; or
 - (b) inform the Contracting Authority that it does not intend to submit a Remediation Plan; in which event the Contracting Authority shall be entitled to serve a Termination Notice.
- 27.4 The Contracting Authority shall either approve the draft Remediation Plan within 5 Working Days of its receipt pursuant to clause 27.3(a), or it shall inform the Concessionaire why it cannot accept the draft Remediation Plan. In such circumstances, the Concessionaire shall address all such concerns in a revised Remediation Plan, which it shall submit to the Contracting Authority within 10 Working Days of its receipt of the Contracting Authority's comments. If no such notice is given, the Concessionaire draft Remediation Plan shall be deemed to be agreed.
- 27.5 Once agreed, the Concessionaire shall immediately start work on the actions set out in the Remediation Plan.
- 27.6 If, despite the measures taken under clause 27.4, a Remediation Plan cannot be agreed within 5 Working Days then the Contracting Authority may elect to end the Remediation Plan Process and serve a Termination Notice.

- 27.7 If a Remediation Plan is agreed between the parties, but the Concessionaire fails to implement or successfully complete the Remediation Plan by the required completion date, the Contracting Authority may:
- (a) terminate this agreement by serving a Termination Notice;
 - (b) give the Concessionaire further opportunity to resume full implementation of the Remediation Plan; or
 - (c) refer the matter for resolution under the Dispute Resolution Procedure.
- 27.8 If, despite the measures taken under clause 27.7, the Concessionaire fails to implement the Remediation Plan in accordance with its terms, the Contracting Authority may elect to end the Remediation Plan Process and refer the matter for resolution by the Dispute Resolution Procedure or serve a Termination Notice.
- 27.9 The Contracting Authority shall not be obliged to follow the Remediation Plan Process if there is a repetition of substantially the same default by the Concessionaire had previously been addressed in a Remediation Plan within a period of 3 months following the conclusion of such previous Remediation Plan. In such event, the Contracting Authority may serve a Termination Notice.

TERMINATION

28. TERMINATION

- 28.1 Without affecting any other right or remedy available to it, and subject to clause 8, the Contracting Authority may terminate this agreement with immediate effect or on the date specified in the Termination Notice by giving written notice to the Concessionaire if one or more of the following circumstances occurs or exists:
- (a) if the Concessionaire is in material breach of this agreement, which is irremediable;
 - (b) the parties fail to agree the Remediation Plan in accordance with the Remediation Plan Process;
 - (c) the Concessionaire fails to implement or successfully complete the Remediation Plan in accordance with the Remediation Plan Process;
 - (d) the circumstances referred to in clause 27.9 occur;
 - (e) a Consistent Failure has occurred;
 - (f) if a Catastrophic Failure has occurred;
 - (g) if there is an Insolvency Event;
 - (h) if the Authority elects to terminate pursuant to Clause 31.6
 - (i) if there is a variation of control of the Concessionaire within the meaning of section 1124 of the Corporation Tax Act 2010 to which the

Contracting Authority reasonably objects, provided that the Contracting Authority serves its Termination Notice within 1 month of the date on which the Concessionaire informs the Contracting Authority (by written notice) of the variation of control or on which the Contracting Authority otherwise becomes aware of the variation of control;

- 28.2 For the purposes of the above clause 28.1(a), **material breach** means any breach of the obligations of this Agreement that has a serious effect on the benefit the terminating party would otherwise derive from this Agreement, which the Concessionaire fails to remedy to the satisfaction of the Contracting Authority within 10 Working Days, or such other period as may be specified by the Contracting Authority, after issue of a written notice specifying the material breach and requesting it to be remedied.
- 28.3 The Contracting Authority may give the Concessionaire written notice of its intention to terminate if it considers that a termination ground listed in section 78(2) of the Procurement Act 2023 applies. A notice of an intention to terminate under this clause must:
- (a) set out which termination ground the Contracting Authority considers applies pursuant to section 78(2) of the Procurement Act 2023 together with the Contracting Authority's reasons for deciding to terminate on this basis.
 - (b) invite the Concessionaire to make representations to the Contracting Authority about the existence of the termination ground and the Contracting Authority's decision to terminate.
 - (c) specify the means by which, and the time by which, such representations must be made and:
 - (d) insofar as it states the Contracting Authority's intention to terminate by reference to the status of a Sub-contractor under section 78(2)(b) or (c) of the Procurement Act 2023, specify a time by which the Concessionaire may terminate the Subcontract and, if necessary, appoint an alternative Subcontractor.
- 28.4 On expiry of the time for the Concessionaire to make representations under clause 28.3(c), if, after considering any representations, the Contracting Authority is satisfied that the termination ground applies, it may terminate the agreement with immediate effect by giving final written notice to the Concessionaire.
- 28.5 Either party may, during the continuance of a Force Majeure Event, terminate this agreement if the circumstances in clause 30.6 arise.

29. TERMINATION BY THE CONCESSIONAIRE

- 29.1 Where the Contracting Authority has served an Extension Notice and the Concessionaire has not notified the Contracting Authority in writing of an intention to accept an offer to extend this Agreement, the Agreement shall automatically expire at the end of the Initial Term.
- 29.2 Without affecting any other right or remedy available to it, the Concessionaire may terminate this agreement at any time by giving six months' written notice to the Contracting Authority.
- 29.3 The Concessionaire may terminate this agreement in the event that the Contracting Authority commits a Termination Payment Default by giving 30 days written notice to the Contracting Authority. In the event that the Contracting Authority remedies the Termination Payment Default in the 30-day notice period, the Concessionaire's notice to terminate this agreement shall be deemed to have been withdrawn

30. FORCE MAJEURE

- 30.1 Subject to clause 30.3, a party (**Affected Party**) shall not be liable for any failure or delay in performing any of its obligations under this agreement for so long as, and to the extent that, its performance is directly prevented, hindered or delayed by a Force Majeure.
- 30.2 For so long as the Affected Party's liability in relation to any of its obligations is suspended under clause 30.1, the other party shall not be liable for any failure or delay in performing its corresponding obligations.
- 30.3 Clause 30.1 will only apply if the Affected Party:
- (a) as soon as reasonably practicable after the start of the Force Majeure, notifies the other party in writing of the Force Majeure, the date on which it started, its likely or potential duration, and the effect of the Force Majeure on the Affected Party's ability to perform any of its obligations under this agreement; and
 - (b) took reasonable precautions to prevent or minimise the Force Majeure including implementing and complying with an effective business continuity plan, except where compliance with the business continuity plan is itself affected by the Force Majeure.
 - (c) uses all reasonable endeavours to mitigate the effect of the Force Majeure on the performance of its obligations (including by accepting non-contractual performance by the other party, provided this causes no material commercial detriment to the Affected Party and can achieve the same result as contractual performance would have done in all material respects.

- 30.4 The Affected Party shall keep the other party informed of its endeavours under clause 30.3(c) and their outcome promptly on request.
- 30.5 If the Concessionaire is relieved from providing the Services under this clause, it shall permit and co-operate with any efforts that the Contracting Authority may make to obtain alternative supplies of those Services.
- 30.6 If the Affected Party has not resumed full performance of any obligations suspended under clause 30.1 within 30 days after the start of the Force Majeure, the other party may terminate this agreement by giving not less than 30 days' written notice to the Affected Party, provided that the other party exercises this right within 90 days of its arising.

31. PREVENTION OF BRIBERY

- 31.1 The Concessionaire represents and warrants that neither it, any Concessionaire Personnel:
- (a) has committed a Prohibited Act.
 - (b) to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or
 - (c) has been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 31.2 The Concessionaire shall promptly notify the Contracting Authority if, at any time during the Term, its circumstances, knowledge or awareness Variations such that it would not be able to repeat the warranties set out in *clause* 31.1 at the relevant time.
- 31.3 The Concessionaire shall (and shall procure that its Concessionaire Personnel shall) during the Term:
- (a) not commit a Prohibited Act.
 - (b) not do or omit to do anything to be done that would cause the Contracting Authority or any of the Contracting Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
 - (c) have and maintain in place its own policies and procedures to ensure compliance with the Relevant Requirements and prevent occurrence of a Prohibited Act;

- (d) notify the Contracting Authority (in writing) if it becomes aware of any breach of clause 31.3(a) or clause 31.3(b), or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage [in connection with performance of this agreement].
- 31.4 The Concessionaire shall maintain appropriate and up to date records showing all payments made by the Concessionaire in connection with this agreement and the steps taken to comply with its obligations under clause 31.3.
- 31.5 The Concessionaire shall allow the Contracting Authority and its third party representatives to audit any of the Concessionaire records and any other relevant documentation in accordance with clause 25.
- 31.6 If the Concessionaire is in default under this clause 31 the Contracting Authority may by notice:
 - (a) require the Concessionaire to remove from performance of this agreement any Concessionaire Personnel whose acts or omissions have caused the default; or
 - (b) immediately terminate this agreement.
- 31.7 Any notice served by the Contracting Authority under clause 31.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Contracting Authority believes has committed the Prohibited Act and the action that the Contracting Authority has elected to take (including, where relevant, the date on which this agreement shall terminate).

32. MODERN SLAVERY

- 32.1 The Concessionaire shall:
 - (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force (Anti-slavery Laws) including but not limited to the Modern Slavery Act 2015 ;
 - (b) comply with any Contracting Authority's Anti-Slavery Policy;
 - (c) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct had been carried out in England and Wales;
 - (d) include in its contracts with its Sub-Contractors anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 32; and
 - (e) notify the Contracting Authority (in writing) as soon as it becomes aware of any breach or suspected breach of clause 32.1; and

- (f) prepare and deliver to the Contracting Authority, where requested, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.

32.2 The Concessionaire represents and warrants throughout the Term that:

- (a) its responses to the Contracting Authority's slavery and human trafficking due diligence questionnaire are complete and accurate;
- (b) neither the Concessionaire nor any of its officers, employees or Sub-Contractors:
 - (i) has been convicted of any offence involving slavery and human trafficking anywhere in the world; or
 - (ii) to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking; or
 - (iii) been listed by any government department or agency as being debarred, suspended, or proposed for suspension or debarment from participation in public procurement programmes or otherwise been excluded from a public procurement procedure on grounds relating to forced labour or modern slavery offences or misconduct.

32.3 The Concessionaire shall implement due diligence procedures for its Sub-Contractors or any part of its supply chain performing obligations under this agreement to ensure that there is no slavery or human trafficking taking place.

32.4 The Concessionaire shall:

- (a) maintain a complete set of records to trace the supply chain of all Services provided to the Contracting Authority in connection with this agreement; [and]
- (b) without prejudice to clause 25, if the Contracting Authority reasonably suspects the Concessionaire of breach of clause 32, permit the Contracting Authority and its third party representatives to have access to and take copies of any records and any other information at the Concessionaire Family Hub Premises and to meet with the Concessionaire personnel to audit the Concessionaire compliance with its obligations under this clause 32; and
- (c) implement annual audits of its compliance and its Sub-Contractors' compliance with the Anti-Slavery Policy, either directly or through a third party auditor.

- 32.5 The Concessionaire shall:
- (a) implement a system of training for its employees, and Sub-Contractors to ensure compliance with the Anti-Slavery Policy and Anti-slavery Laws;
 - (b) keep a record of all training offered and completed by its employees, and subcontractors to ensure compliance with the Anti-Slavery Policy and Anti-slavery Laws and shall make a copy of the record available to the Contracting Authority on request.

33. CONSEQUENCES OF TERMINATION OR EXPIRY

- 33.1 On the expiry of the Term or if this agreement is terminated for any reason the provisions of the Exit Management Plan shall come into effect and the Concessionaire shall co-operate fully with the Contracting Authority to ensure an orderly migration of the Services to the Contracting Authority or, at the Contracting Authority's request, a Replacement Concessionaire.
- 33.2 On termination of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Contracting Authority before such completion) the Concessionaire shall procure that all data and other material belonging to the Contracting Authority (and all media of any nature containing information and data belonging to the Contracting Authority or relating to the Services), shall be delivered to the Contracting Authority forthwith and the Concessionaire Authorised Representative shall certify full compliance with this clause.
- 33.3 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry, including *clause* 5.3 (provision of records), clause 19 (Indemnities), clause 20 (Limitation of Liability), clause 21 (Insurance), clause 22 (Freedom of Information), clause 23 (Data Processing), clause 24 (Confidentiality), clause 25 (Audit), and this clause 33 (Consequences of termination), shall remain in full force and effect.
- 33.4 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the Termination Date.

GENERAL PROVISIONS

34. WAIVER

- 34.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

- 34.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy does not waive that or any other right or remedy, nor does it prevent or restrict the further exercise of that or any other right or remedy.

35. RIGHTS AND REMEDIES

The rights and remedies provided under this agreement are cumulative and in addition to, and not exclusive of, any rights or remedies provided by law.

36. SEVERANCE

- 36.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 36.2 If any provision or part-provision of this agreement is deemed deleted under clause 36.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

37. NO PARTNERSHIP OR AGENCY

- 37.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 37.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

38. THIRD PARTY RIGHTS

- 38.1 This agreement does not give any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

39. ASSIGNMENT AND OTHER DEALINGS

- 39.1 The Contracting Authority may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement, provided that it gives prior written notice of such dealing to the Concessionaire.

- 39.2 The Concessionaire shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of the Contracting Authority (such consent not to be unreasonably withheld or delayed).

40. PUBLICITY

The Concessionaire shall not:

- (a) make any press announcements or publicise this agreement or its contents in any way; or
- (b) use the Contracting Authority's name or logo in any promotion or marketing or announcement of orders,

except as required by law, any government or regulatory Contracting Authority, any court or other Contracting Authority of competent jurisdiction, without the prior written consent of the Contracting Authority, which shall not be unreasonably withheld or delayed.

41. NOTICES

- 41.1 Any notice given to a party under or in connection with this contract shall be in writing marked for the attention of the party's Authorised Representative and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the following addresses (or an address substituted in writing by the party to be served):
 - (i) Contracting Authority:
 - (ii) Concessionaire:

- 41.2 Any notice shall be deemed to have been received:

- (a) If delivered by hand, at the time the notice is left at the proper address;
- (b) If sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting; or
- (c) if sent by email, at the time of transmission, or if this time falls outside Working Hours in the place of receipt, when Working Hours resume.

- 41.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

42. ENTIRE AGREEMENT

- 42.1 This Agreement and Lease together constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, leases, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.
- 42.2 Each party acknowledges that in entering into this Agreement and the Lease it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 42.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement or the Lease.

43. VARIATION

Subject to clause 16, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their Authorised Representatives).

44. COUNTERPARTS

- 44.1 This agreement may be executed as a deed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original of this deed of agreement, but all the counterparts shall together constitute the same deed of agreement.
- 44.2 Transmission of an executed counterpart of this deed (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this deed. If this method of delivery is adopted, without prejudice to the validity of the deed thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.
- 44.3 No counterpart shall be effective until each party has executed and delivered to the other[s] at least one executed counterpart.

45. GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

46. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

This Deed is given under the } REDACTED
Common Seal of
NOTTINGHAM CITY
COUNCIL:

Signed as a Deed by the }
Tenant in the presence of: REDACTED

Witness Name (Print)

Witness Signature

Witness Address

Witness Occupation

Schedule 1 - Specification

SPECIFICATION

Name of Service: Childcare Provision on Family Hub Sites

Start of contract: 1 September 2025

1.0 INTRODUCTION

Location of premises:

Lot 2 - The Broxtowe Family Hub, 18 Strelley Road, Nottingham, NG8 3AP

1.1 Background to this service:

There are four Family Hubs in Nottingham of which two currently provide childcare as part of their Core Offer of services run by organisations external to the Authority who had previously tendered for the contract.

This opportunity is to deliver childcare services at the above locations from September 2025, utilising the Authority's property, comprises a covered procurement amounting to the award of a public contract (concession) following a competitive tendering procedure under the Procurement Act 2023.

The contract presents a Concessionaire with the opportunity deliver childcare services for their financial advantage, although exposed to real operating risk as the income generated will come from third party user take up of the childcare services either utilising Early Years Entitlement funding or paying privately. The Concessionaire will not pay any rental costs and will benefit from the close connection to the Family Hub. A concession fee will be payable to the Authority by the Concessionaire for the contractual opportunity to contribute to the running costs of the buildings.

In return, the Concessionaire will be expected to provide a high-quality childcare service which meets the need of the local population, giving priority to Children eligible for Early Years Entitlement funding and/or Children in Need and work collaboratively with the other services within the family hubs.

As it is required that the majority of placements will be under the Early Years Entitlement funding, The Concessionaire will also be required to enter into a Provider Agreement (Appendix 1) with Nottingham City Council to enable receipt of this funding. The agreement is included for reference but will be issued separately to this contract. If the Concessionaire is unable to meet the requirements of the provider agreement, then it will be deemed that they will be unable to deliver the terms of this contract and therefore, this contract will be terminated.

Early Years Entitlement Funding will be provided at the levels indicated in section 6.

The Concessionaire will be expected to work alongside Nottingham City Council's Early Help Teams, which provide co-ordinated support services built around the needs of children, young people and their families at a local level. Early Help Teams provide effective integrated services that improve outcomes for children, young people and families by:

- Providing better co-ordinated support services built around the needs of children, young people and their families, at a local level.
- Improving access to universal and additional support by direct delivery through integrated teams, including wider partnerships; and
- Providing a wide range of extensive support for children, young people and families with more complex needs through Locality Teams.

2.0 CORE VALUES FOR SERVICE

2.1 The service must:

1. Ensure the safeguarding of all children, employees and vulnerable adults.
2. Ensure the health and safety of children and families, staff and others on nursery premises.
3. Work in partnership and/or co-operation with appropriate agencies.
4. Be culturally diverse and inclusive, including (but not limited to) taking into account gender, race, age, culture, religion, belief, language spoken, sexual orientation or disability.
5. Identify, understand and engage, via various communication methods, with hard-to-reach families, groups and cultures and remove barriers to service accessibility.
6. Be delivered in accordance with relevant legislation and best practice applicable to the client group, by suitably qualified and/or experienced staff.
7. Promote and encourage the independence, health and well being of the individual child, taking account of their particular circumstances.
8. Maintain the right to privacy, dignity and confidentiality of the child and their family.
9. Ensure children and families have the right to participate in decisions about the service provided to them and be regularly consulted about whether it meets their needs and feedback the results.
10. Be provided reliably and consistently. In the event of a disruptive event affecting the Concessionaire's ability to deliver the service, the Concessionaire shall take steps to ensure continuity of service delivery is achieved. The Concessionaire shall have a business continuity plan, setting out the detailed procedures and processes to be followed and actions to be taken to ensure continuation of the service during a disruptive event.
11. Ensure that the nursery environment is inclusive and accessible to all children. This involves making reasonable adjustments to the physical environment, curriculum, and teaching methods to accommodate children with SEND.

12. Adopt a whole-family approach, offering support to promote the well-being of families while recognising the primary focus on delivering high-quality nursery provision for children.
13. Ensure Ofsted requirements are demonstrated including:
 - A member of staff with a full and relevant Level 3 qualification in early years education for every 8 children
 - Quality Assurance
 - Staff Training & Development
 - Curriculum & Learning Approach
 - Parental & Community Engagement
 - Child-Centered Environment:
 - Proactive Ofsted Readiness:
 - Strong Leadership & Governance
 - Continuous Improvement Culture
 - Safeguarding Measures including appropriate staff/personnel on this contract will have an Enhanced DBS check, updated every three years.
 - Risk Management & Contingency
 - Planning: Partnerships & Collaboration:

3.0 STRATEGIC RELEVANCE

- National Legislation and Guidance
- Statutory Framework for Early Years 2024
- Childcare Act 2016
- Education Act 2011
- Children and Families Act 2014
- **Special Educational Needs and Disability (SEND) Code of Practice 2015**
- Nottingham Strategy and Guidance
- Council Plan 2025-2029 [Click here](#)
- Children and Young People's Plan 2021-2024 [Click here](#)
- Nottingham City Safeguarding Board Children Board Procedures [Click here](#)
- Nottingham and Nottinghamshire Joint SEND Commissioning Strategy 2024-2027 [Click here](#)
- Nottingham City Early Years Provider Agreement (produced annually)
- Health and Safety [click link](#)
- Equality and Diversity Policy [click link](#)

4.0 SERVICE DESCRIPTION AND AIMS:

4.1 The Concessionaire:

- Will promote the opportunity of the placement of local children, (from within the Meadows/Aspley and Bilborough areas as applicable) and identify and prioritise those who qualify for Early Years Entitlement funding, firstly those local to the Hub followed by referrals from the wider city area.
- Must be fully committed to the aims and objectives of Family Hubs of Improving Access, Communication and Relationships. Be particularly supporting and

achieving the Early Years Foundation Stage, and the other provisions of the Childcare Act 2014 and any subsequent relevant legislation and initiatives.

- Support Nottingham's ambition to be a Child Friendly City, we want all children and young people in Nottingham to have a good start in life, live safely, be healthy and happy and go on to have successful opportunities in adulthood. The concessionaire is expected to be able to demonstrate that they adhere to children's rights statements and take account of what children say when improving and developing services. Further information can be found here: [Welcome to Nottingham Child Friendly City - Nottingham - A Child Friendly City](#)
- Will develop a stimulating child-focused environment which meets the needs of the Early Years Foundation Stage Statutory Framework.
- Have an Ofsted grade of good or above or, if graded as requires improvement or inadequate Nottingham City Council Early Years Team and the Concessionaire will follow the guidance as detailed in the Provider Agreement. (see appendix 1)
- Will, as part of the Family Hub's core offer, provide an affordable service for local people.
- Will ensure a caring, inviting environment and be adaptable within the diverse community in which the setting is located.
- Will ensure a seamless transition for children into school as detailed in the Early Years Foundation Stage Statutory Guidance 2024
- Will actively promote and support breastfeeding, ensuring that parents feel confident and informed about breastfeeding practices and the safe handling of expressed breast milk where supporting families with children under the age of 1 year.
- Will actively promote education on health and nutritional eating, particularly for packed lunches (and where snacks meals are provided ensure these are nutritional and healthy) and physical activity, ensuring that children and their families receive information and resources to support healthy lifestyle choices and prevent childhood obesity.
- Will implement procedures for the early identification of children with special educational needs and disabilities (SEND). This includes regular observations, assessments, and working closely with parents to identify any concerns early on
- Will be committed to the delivery and expansion of the Governments Early Years Entitlements Programme, prioritising places for 2-year-olds with families in receipt of additional support. This will include working with Family Hubs to engage with eligible families.
- Will, if occupancy levels are such, that Waiting Lists are necessary, develop systems in partnership with the Family Hub which will give additional priority to local Children in Need.

- Will contribute to the collaborative efforts of the Family Hub within an ethos of multi-agency working on an on-going basis.
- Will recruit, induct, train, retain and professionally develop good-quality staff.
- Will have a commitment over time to recruit and train a proportion of their workforce from within the local community in which the nursery operates in accordance with the Authority's Local Jobs for Local People commitment.
- Will be required to keep the premises and equipment of which it has use and/or access belonging to the Hub, the Authority and any other agencies in good order, clean, safe and secure.
- Will take responsibility for services and resources relating to their Childcare provision including, but not restricted to, the following:
 - Cleaning materials
 - Nappy waste
 - Refuse collection
 - Food deliveries
 - Cleaning of the building parts solely occupied by the childcare service.
 - Decoration of the building parts solely occupied by the childcare service.
 - Maintenance of the external area utilised as a playground for the children in the nursery, including the maintenance of any play equipment.
 - Own IT and Phone Services
 - Equipment - all equipment which is not part of the fabric of the building, inclusive of kitchen appliances solely used by the childcare service, are the responsibility of the Concessionaire. Any equipment left by the previous Concessionaire will only be done so in agreement with the incoming Concessionaire who will take full responsibility for ensuring is appropriately maintained and safe to use.

4.2 Payable Fees to the Authority (Defined as Concession fee in the contract)

Lot 2: The Broxtowe Family Hub:

The Concessionaire will pay 20% of the whole building utilities, business rates and waste disposal relating to the percentage of the building the nursery provision takes up and general maintenance and repairs in the same % but up to a maximum of £5,000 per annum and 15% of caretaker costs.

5. OTHER SERVICE REQUIREMENTS

5.1 Access to the Premises

The Concessionaire will be required to work in a collaborative nature with other Family Hub staff and services, and that for this to be fully effective it is appropriate for all Childcare staff working within the Hub to have ready access to, and use of, those parts of the premises which are intended for common use.

5.2 Provision of Information

Will provide regular monitoring in line with that detailed in Appendix 2 and in accordance with the Data Protection Agreement in schedule12 of the Concession Agreement.

5.3 Compliance with Policy

The Concessionaire shall have in place and available for scrutiny, sufficient, robust and up to date written policies, procedures, and codes of practices. This includes adequate instruction, guidance, and support for staff in the function and delivery of the service outlined within the specification. These should be accessible and available to all stakeholders including customers; such policies and procedure documents should include as a minimum:

- Equal Opportunities Policy
- Recruitment and Selection Policy – including Anti Slavery and right to work practice.
- Employment / Training Policy (incorporating right to work and anti slavery)
- Staff Induction, supervision, appraisal, training and development
- Staff Code of Conduct, including professional boundaries
- Management & Risk Assessment
- Complaints Policy; for all stakeholders i.e., Young People, families, and staff
- Whistle Blowing
- Confidentiality and Data Protection
- Health and Safety Policy
- Anti-Bullying
- Grievance
- Business continuity Plan
- Children's Safeguarding Policy
- Safeguarding Children which must comply with the Nottingham City Safeguarding Children Partnership (NCSCP), procedures and guidance available here: [click link](#)

5.4 Environmental considerations

The Concessionaire is expected to operate in a manner which minimises their environmental impact as far as is reasonably possible. A self-audit will be required on an annual basis which considers any new measures which may be reasonable to undertake to reduce environmental impact and reflect on any action over the previous year. This may be in terms of the operation of the early years childcare service itself and through education and leading by example to encourage families to consider their own environmental practices.

5.5 Other requirements

- Attend regular meetings with stakeholders.
- Contribute to the Family Hub Self-Assessment as requested
- Use tailored, accessible and multiple up to date communication and engagement methods to share information, gather feedback service user and stakeholders, and promote events and placement opportunities.

6. FUNDING – FOR CHILDREN ACCESSING EARLY YEARS ENTITLEMENT IN NOTTINGHAM CITY.

The below information provided by the Early Years Team details the funding available for children to access childcare provision at a venue of their choice in the City of Nottingham from 1 April 2025.

This is reviewed annually and agreed through the School's Forum.

	Funding Rates From 1st April 2025
9 Months – 2 Year Olds (from September 2024)	£11.19 per hour (increase of 43p on April 2024 rate)
Families receiving additional support 2 Year Old Base Rate	£8.95 per hour (increase of 64p on April 2024 rate)
Working Parent of 2 Year Old Base Rate	£8.10 per hour (increase of 47p on April 2024 rate)
3 & 4 Year Old Base Rate (Universal & Extended Hours)	£5.52 per hour (increase of 36p on April 2024 rate)
Deprivation Supplement	£1.00 per hour for up to 30 hours per child per week (equivalent) for 3 & 4 year olds attracting EYPP
Early Years Pupil Premium (EYPP) Supplement	£1.00 (increase of 32p on April 2024) per hour, up to 15 hours per child for children across all age groups, accessing the Early Years Entitlements
Disability Access Fund (DAF)	Increased to £938 (increase of £28 on April 2024 rate) per eligible child. Any child claiming DLA.

7. MOBILISATION

The Concessionaire will demonstrate ability to meet the contract Commencement Date. The Concessionaire will liaise with the Authority regarding their implementation plan during the period up to the Commencement Date so that the Authority can be assured of the Concessionaire's ability provide the Service from the Commencement Date and how mobilisation risks are being managed and mitigated.

Appendix 1 – Provider Agreement – Terms and Conditions for providing early years entitlement places in Nottingham.

The provider agreement is updated annually and can be found on Nottingham City Council Website.

Schedule 2 - KPI's and Monitoring

Part 1 - KPIs

1. THE KPIs

- 1.1 The KPIs which the Parties have agreed shall be used to measure the performance of the Services by the Concessionaire are contained in the below table.

Service Objective	Key Performance Indicators	Evidence	Target / Measure
1. Local families accessing childcare provision in the Family Hub	Proportion of local families accessing the childcare live within the Family Hub area/Within Nottingham City.	Postcode information from families.	100% Nottingham Children
2. Link and build partnership with Family Hub.	Attendance at Family Hub operational partnership meetings. Attendance at working groups as negotiated. Sharing of information as requested between Family Hub and Concessionaire.	Partnership minutes. Family Hub Self Evaluation Framework's.	4 times a year (minimum) Contribute to the Family Hub SEF sections as requested.
3. Families consent to Family Hub registration.	All forms provided to Family Hub. In the event the target 100% is not achieved the Concessionaire will be expected to detail what they have done to try and encourage take up of family hub registration and discuss with the hub further reasonable actions which may be taken to increase sign up.	Consent forms.	Aim for 100%
4. All families are registered with the Family Hub.	Registers provided monthly. In the event the target 100% is not achieved the Concessionaire will be expected to detail what they have done to try and encourage take up of family hub registration and discuss with the hub further reasonable actions which may be taken to increase sign up.	Registers.	Aim for 100%
5. Affordable childcare	% of children attending the hub who have Early	Registers	Minimum of 75%

	Years Entitlement Funding. (NB these families may also choose to purchase additional hours where available).		
6. Diverse families accessing childcare provision in the Family Hub.	Report to include what measures you have taken to ensure the service meets the needs of the local population	Demographic information. Registration forms. Annual Report	Families accessing the childcare reflect the diversity of the local community.

Further Monitoring Requirements

Service Objective	Information required	How information should be presented
Reducing Obesity	Report to include what measures you have undertaken to help tackle childhood obesity.	Annual Report
Supporting Breast Feeding	Report to include what measures you have undertaken to help support breastfeeding.	Annual Report
Inclusivity of service to children with SEND	% of children with SEND. Report detailing what reasonable adjustments have been made to support these children and ensure that the nursery is an inclusive environment.	Annual report
Feedback from children and Families is incorporated into service development and improvement.	Report to include details of any engagement undertaken and feedback from that engagement, including any changes which have been made as a result of that feedback.	Annual Report
Environmental impact	Report to include what activity has been undertaken and outcome of that activity and any plans for the following year.	Annual report

- 1.2 The Concessionaire shall monitor its performance against each Target KPI and shall send the Authority a report detailing the Achieved KPIs in accordance with schedule 3 of the Concession Agreement.

Part 2 - Consistent failure

1. CONSISTENT FAILURE

In this agreement, **Consistent Failure** shall mean:

- 1.1 Failure to meet KPI 1 or 5 for a period of 12 months or more.

Failure to meet any of the other KPIs for a period of 12 months or more without a written explanation of what steps you had taken already to address this and what you were intending to do in future. If the issues persist for a period of more than a further 6 months and the

Concessionaire has not taken the actions stated in the written report, this will also be considered a consistent failure.

- (i) Failure to submit the annual report within 4 weeks of it becoming due, addressing all of the requirements listed in Schedule 5 of the Concession Agreement.

[AND/OR]

- (b) [the Authority serving 1 or more Remediation Notices in a rolling 6 month period.]

[AND/OR]

- (c) [the Concessionaire repeatedly breaching any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement].

Schedule 3 Concessionaire Tender including the Implementation Plan

REDACTED

Schedule 4 - Concession Fees and payment

Broxtowe Family Hub Indication of Concession Fees Payable.

The Concessionaire will be expected to contribute 20% of all Family Hub costs for gas, electric, water, business rates and waste disposal.

The Concessionaire will also contribute to 20% or up to £5,000 in any one year, whichever is the greater, of any centre repair bills.

The Concessionaire will also contribute to 15% of the caretaker fees who will assist with maintenance and building access but will not undertake the general cleaning or decoration of the areas solely used by the concessionaire (which will be the responsibility of the Concessionaire).

Fees payable by the Concessionaire will be calculated using the previous Calendar year April – March and charged in three equal instalments from September. Fees from September 2025-August 2026 will be calculated from actual costs April 2024-March 2025.

Concessionaire Pricing

REDACTED

Schedule 5 - Contract management

1. Authorised representatives

The Contracting Authority's initial Authorised Representative:

REDACTED

The Concessionaire initial Authorised Representative:

REDACTED

2. Reports

2.1 Register of attendance.

Monthly submission

Children registered with the Family Hub to be named, and those not registered to be anonymised to include whether the child accesses any Early Help Entitlement funding.

To be sent by the 5th of each month for the previous month to the Contracting Authority Authorised contact.

1.3 Annual report

To include:

- Any significant events over the year which have impacted on the ability of the concessionaire to deliver a high-quality service and actions taken to mitigate these events.
- Any areas of good practice the Concessionaire would like to share with the Contracting Authority.
- An summary of any safeguarding issues or complaints and what has been done to address these.
- Any Ofsted report recommendations and what has been done to address them.
- With reference to the tender submission of the provider, an update on what activity has been undertaken to reduce obesity, encourage breast feeding and support the inclusivity of children with SEND and actions planned for the coming year.
- With reference to the tender submission and any further action, details of any activity undertaken to reduce the environmental impact of the childcare provision and actions planned for the coming year.
- Assurance that all health and safety checks, safeguarding referrals and insurance renewals have been completed as required.
- The table below to be completed for any child not registered with the family hub. Where only three or less children are not registered with the hub, in order to ensure anonymity of the information supplied, all of the children whether registered or not registered should be included in the data.

- Where all children are registered with the family Hub, this information will not be required.

To be sent within 15 working days of the anniversary of the contract commencement date each year, to the Contracting Authority Authorised contact.

Total number of children attending the early years provision NOT registered with the Family Hub	
AGE	
Under 9 months	
9 Months - 2 years	
2 Years	
3 & 4 year olds	
Ethnicity	
Asian or Asian British	
Black, Black British, Caribbean or African	
Mixed or multiple ethnic groups	
White	
Other Ethnic Group	
Gender	
Male	
Female	
Other	
Other information	
Nottingham City residents	
Eligible for some free childcare hours.	

Schedule 6 Variation control

1. GENERAL PRINCIPLES

- 1.1 Where the Contracting Authority or the Concessionaire sees a need to vary this agreement, the Contracting Authority may at any time request, and the Concessionaire may at any time recommend, such Variation only in accordance with the Variation Control Procedure set out in paragraph 2 of this Schedule.
- 1.2 Until such time as a Variation is made in accordance with the Variation Control Procedure, the Contracting Authority and the Concessionaire shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Variation.
- 1.3 Any discussions which may take place between the Contracting Authority and the Concessionaire in connection with a request or recommendation before the authorisation of a resultant Variation shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Concessionaire and the Concessionaire Personnel which has not been authorised in advance by a Variation, and which has not been otherwise agreed in accordance with the provisions of this 0, shall be undertaken entirely at the expense and liability of the Concessionaire.

2. PROCEDURE

- 2.1 Discussion between the Contracting Authority and the Concessionaire concerning a Variation shall result in any one of the following:
 - (a) no further action being taken; or
 - (b) a request to vary this agreement by the Contracting Authority; or
 - (c) a recommendation to vary this agreement by the Concessionaire.
- 2.2 Where a written request for a Variation is received from the Contracting Authority, the Concessionaire shall, unless otherwise agreed, submit two copies of a Variation Control Note signed by the Concessionaire to the Contracting Authority within three weeks of the date of the request.
- 2.3 A recommendation to amend this agreement by the Concessionaire shall be submitted directly to the Contracting Authority in the form of two copies of a Variation Control Note signed by the Concessionaire at the time of such recommendation. The Contracting Authority shall give its response to the Variation Control Note within three weeks.
- 2.4 Each Variation Control Note shall contain:

- (a) the title of the Variation;
- (b) the originator and date of the request or recommendation for the Variation;
- (c) the reason for the Variation;
- (d) full details of the Variation, including any specifications;
- (e) the price, if any, of the Variation;
- (f) a timetable for implementation, together with any proposals for acceptance of the Variation;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Variation on other aspects of this agreement including:
 - (i) the timetable for the provision of the Variation;
 - (ii) the personnel to be provided;
 - (iii) the Concession Fees;
 - (iv) the Documentation to be provided;
 - (v) the training to be provided;
 - (vi) working arrangements;
 - (vii) other contractual issues;
- (i) the date of expiry of validity of the Variation Control Note;
- (j) provision for signature by the Contracting Authority and the Concessionaire; and
- (k) if applicable, details of how costs incurred by the parties if the Variation subsequently results in the termination of this agreement under clause 28.4 will be apportioned.

2.5 For each Variation Control Note submitted by the Concessionaire the Contracting Authority shall, within the period of the validity of the Variation Control Note:

- (a) allocate a sequential number to the Variation Control Note; and
- (b) evaluate the Variation Control Note and, as appropriate:
 - (i) request further information;
 - (ii) accept the Variation Control Note by arranging for two copies of the Variation Control Note to be signed by or on behalf of the Contracting Authority and return one of the copies to the Concessionaire; or
 - (iii) notify the Concessionaire of the rejection of the Variation Control Note.

- 2.6 A Variation Control Note signed by the Contracting Authority and by the Concessionaire shall constitute an amendment to this Agreement.

Schedule 7 - Exit Management Plan

As soon as notice is given by either party, or within 6 months of the natural end of the contract, the Concessionaire must allow reasonable access to other providers who may wish to deliver service in the building once the existing contract has ended, At least 5 days' notice will be given of any visit and if during child care opening times, no more than 2 people at any one time will come onto the premises. This should be minimised and wherever possible, access should be outside of usual opening times for the service.

If outside of Childcare opening times, the provider has the right to be in attendance and/or request that the Contracting Authority is present during the visit.

Upon termination of the contract, whether at the end of the contract term or for any other reason, the Concessionaire will clear the nursery space of all equipment provide by the Concessionaire for the delivery of the childcare services, by the contract end date, excepting where:

- The contracting authority has expressly agreed to certain items remaining
- Arrangements have been made with any incoming childcare provider to accept or purchase equipment.

All equipment provided by the authority but used solely by the Concessionaire throughout the term of the contract should be left in full working order with any health and safety checks up to date and certificates provided.

The area used by the Childcare facility should be left clean and in a good state of decoration.

Any repairs which are the responsibility of the Contracting Authority must be reported.

The full term's service charge will be due, regardless of the actual end date of the contract unless the Contracting Authority has instigated a no fault termination, in which case, the relevant proportion of the termly service charge will be required.

Schedule 8 TUPE

TUPE AND EMPLOYMENT MATTERS

INTERPRETATION

1. The definitions and rules of interpretation in this schedule apply in this Contract:

Concessionaire's Final Staff List: the list of all the Concessionaire's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

Concessionaire's Provisional Staff List: the list prepared and updated by the Concessionaire of all the Concessionaire's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

Data Protection Legislation: the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (*SI 2000/2699*), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (*SI 2426/2003*) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under regulation 11(2) of TUPE:

- a. the identity and age of the employee;
- b. the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);
- c. information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years;
- d. information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the

Concessionaire arising out of the employee's employment with the transferor;

- e. information about any collective agreement that will have effect after the Service Take Over Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

Employment Liabilities: All claims, including claims without limitation for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

Former Provider: the provider of the Services immediately prior to the Service Take Over Date.

Pensions Regulations: the Transfer of Employment (Pension Protection) Regulations 2005 as amended or modified from time to time or such legislation as shall replace the Transfer of Employment (Pension Protection) Regulations 2005.

Pensions Act: the Pensions Act 2004 as amended or modified from time to time or such legislation as shall replace the Pensions Act 2004.

Relevant Employees: those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Contracting Authority or a Replacement Operator by virtue of the application of TUPE.

Relevant Transfer: a relevant transfer of the Services for the purposes of TUPE.

Replacement Services: any services that are fundamentally the same as any of the Services and which the Contracting Authority receives in substitution for any of the Services following the termination or expiry of this Contract, whether those services are provided by the Contracting Authority internally or by any Replacement Concessionaire.

Replacement Operator: any third party supplier of Replacement Services appointed by the Contracting Authority from time to time.

Service Take Over Date: ad[] namely the date on which the Concessionaire shall be responsible for delivery of the Services, and a reference to the Service Take Over Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Concessionaire or Sub-Contractor.

Service Transfer Date: the date on which the Services (or any part of the Services), transfer from the Concessionaire or Sub-Contractor to the Contracting Authority or any Replacement Operator.

Staffing Information: in relation to all persons detailed on the Concessionaire's Provisional Staff List, in an anonymised format, such information as the Contracting Authority may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

Sub-Contractor: the contractors or Suppliers engaged by the Concessionaire to provide goods, services or works to, for or on behalf of the Concessionaire for the purposes of providing the Services to the Contracting Authority.

Third Party Employees: employees of Third Party Employers whose contracts of employment transfer with effect from the Service Take Over Date to the Concessionaire or Sub-Contractor by virtue of the application of TUPE.

Third Party Employer: a Supplier engaged by the Contracting Authority to provide some or all of the Services to the Contracting Authority before the Service Take Over Date and whose employees will transfer to the Concessionaire on the Service Take Over Date.

Transferring Employees: employees of any Third Party Employer who are part of an organised group of employees for the purposes of TUPE and whose contracts of employment transfer with effect from the Service Take Over Date to the Concessionaire by virtue of the application of TUPE.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246), as amended.

TRANSFER OF EMPLOYEES TO THE CONCESSIONAIRE ON THE SERVICE TAKE OVER DATE

2. The Contracting Authority and the Concessionaire agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Transferring Employees shall transfer to the Concessionaire or Sub-

Contractor. The Concessionaire shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE. The first Relevant Transfer shall occur on the Service Take Over Date.

3. The Third Party Employer shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions and otherwise, up to the Service Take Over Date.
4. The Concessionaire shall be liable for and indemnify and keep indemnified the Contracting Authority and any Third Party Employer against any Employment Liabilities arising from or as a consequence of:
 - a. any proposed changes to terms and conditions of employment the Concessionaire or Sub-Contractor may consider making on or after the Service Take Over Date;
 - b. any of the employees informing the Contracting Authority and any Third Party Employer they object to being employed by the Concessionaire or Sub Contractor; and
 - c. any of the employees informing the any Third Party Employer they object to being employed by the Concessionaire or Sub-Contractor; and
 - d. any change in identity of the Transferring Employees' employer as a result of the operation of TUPE or as a result of any proposed measures the Concessionaire or Sub-Contractor may consider taking on or after the Service Take Over Date.
5. The Concessionaire shall be liable for and indemnify and keep indemnified the Contracting Authority and any Replacement Operator against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Employees, and any other person who is or will be employed or engaged by the Concessionaire or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions, termination costs and otherwise from and including the Service Take Over Date until the Service Transfer Date.
6. The Concessionaire shall immediately on request by the Contracting Authority and/or the Third Party Employer provide details of any measures that the Concessionaire or any Sub-Contractor envisages it will take in relation to any Transferring Employees, including any proposed changes to terms and conditions of employment. If there are no measures, the Concessionaire will give confirmation of that fact, and shall indemnify the Contracting Authority and any Replacement

Operator against all Employment Liabilities resulting from any failure by it to comply with this obligation.

EMPLOYMENT EXIT PROVISIONS

7. This Contract envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Contract, or part or otherwise) resulting in a transfer of the Services in whole or in part (**Subsequent Transfer**). If a Subsequent Transfer is a Relevant Transfer then the Contracting Authority or Replacement Operator will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
8. The Concessionaire shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this Contract or otherwise, on request from the Contracting Authority and at such times as required by TUPE, provide in respect of any person engaged or employed by the Concessionaire or any Sub-Contractor in the provision of the Services, the Concessionaire's Provisional Staff List and the Staffing Information together with any additional information required by the Contracting Authority, including information as to the application of TUPE to the employees. The Concessionaire shall notify the Contracting Authority of any material changes to this information as and when they occur.
9. At least 28 days prior to the Service Transfer Date, the Concessionaire shall and shall procure that any Sub-Contractor shall prepare and provide to the Contracting Authority and/or, at the direction of the Contracting Authority, to the Replacement Operator, the Concessionaire's Final Staff List, which shall be complete and accurate in all material respects. The Concessionaire's Final Staff List shall identify which of the Concessionaire's and Sub-Contractor's personnel named are Relevant Employees. The Concessionaire shall notify the Contracting Authority of any material changes to this information as and when they occur.
10. The Contracting Authority shall be permitted to use and disclose the Concessionaire's Provisional Staff List, the Concessionaire's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Operator for any services that are substantially the same type of services as the Services (or any part of the Services).
11. The Concessionaire warrants to the Contracting Authority and the Replacement Operator that the Concessionaire's Provisional Staff List, the Concessionaire's Final Staff List and the Staffing Information (**TUPE Information**) and any information provided in accordance with the Concessionaires' contractual duty of notification of material changes under paragraphs 8 and 9 of this Schedule will be true and accurate in all material respects as at the date it is provided and that as at the date

the TUPE Information is provided no persons are employed or engaged in the provision of the Services other than those included on the Concessionaire's Final Staff List.

12. The Concessionaire shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.
13. The Contracting Authority regards compliance with this Schedule as fundamental to the Contract.
14. Any change to the TUPE Information which would increase the total employment costs of the staff in the six months prior to expiry or at any time following receipt by the Concessionaire of a notice of termination by the Contracting Authority or service of notice of termination by the Concessionaire upon the Contracting Authority of this Contract shall not (so far as reasonably practicable) take place without the Contracting Authority's prior written consent (such, unless such changes are required by law. The Concessionaire shall and shall procure that any Sub-contractor shall supply to the Contracting Authority full particulars of such proposed changes and the Contracting Authority shall be afforded reasonable time to consider them.
15. In the six months prior to expiry or at any time following notice of expiry or at any time following receipt by the Concessionaire of a notice of termination by the Contracting Authority or service of notice of termination by the Concessionaire upon the Contracting Authority of of this Contract, the Concessionaire shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of staff listed on the Concessionaire's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the Contracting Authority's prior written consent.
16. The Concessionaire shall indemnify and keep indemnified in full the Contracting Authority and each and every Replacement Operator against all Employment Liabilities relating to:
 - a. any person who is or has been employed or engaged by the Concessionaire or any Sub-Contractor in connection with the provision of any of the Services; or
 - b. any trade union or staff association or employee representative, arising from or connected with any failure by the Concessionaire and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

17. The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
18. The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply from paragraph 8 to paragraph 17, to the extent necessary to ensure that any Replacement Operator shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Operator by the Concessionaire or the Contracting Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
19. Despite paragraph 18, it is expressly agreed that the parties may by agreement rescind or vary any terms of this Contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

PENSIONS

20. Save on expiry of this Contract or sooner determination of this Contract, if the employment of any Transferring Employee transfers to another employer (by way of a transfer under TUPE), the Concessionaire shall and shall procure that any relevant Sub-Contractor shall consult with and inform those Transferring Employees of the pension provisions relating to that transfer; and procure that the employer to which the Transferring Employees are transferred complies with all and any obligations that the employer may have under sections 257 and 258 of the Pensions Act 2004 and the Pensions Regulations.
21. The Concessionaire shall and shall procure that any Sub-Contractor shall maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Concessionaire or any Sub-Contractor on the expiry of this Contract, or sooner determination of the Concessionaire's employment (including without limitation, identification of the Transferring Employees and the Relevant Employees) and promptly provide to the Contracting Authority, such documents and information mentioned above in this paragraph 21 which the Contracting Authority may reasonably request in advance of the expiry of this Contract.

Schedule 9 Commercially sensitive information

REDACTED

Schedule 10 Contracting Authority Assets

Lot 2 - Broxtowe Family Hub

Items installed/provided by NCC. Maintained by Existing Provider.

- Air Extractor Hood
- Four ring domestic hob
- Domestic electric oven
- Domestic dishwasher

Schedule 11 – Lease - Early Years Provision - Family Hub Premises

·REDACTED

Schedule 12 - Data Processing

THIS AGREEMENT is dated _____ **day of** _____

BETWEEN:

- (1) NOTTINGHAM CITY COUNCIL of Loxley House, Station Street, Nottingham NG2 3NG (the "Council"/Authority); and
- (2) LILY & CO LIMITED of 5 Toll Bar Avenue, Nottingham, NG13 0BB being a company registered in England and Wales under Company Number 08123348 ('Provider'/'Concessionaire')

WHEREAS:

- (A) The Data Protection Legislation requires that where a Data Controller uses a Data Processor it must have a written contract (or other legal act) in place to evidence and govern their relationship.
- (B) The Council has engaged the Concessionaire to carry out the processing activities as set out in Annex 1.
- (C) The Parties agree to comply with the provisions of this Agreement in respect of the Personal Data and the processing activities.

NOW IT IS AGREED AS FOLLOWS:

1. In this Agreement unless the context requires the following will have the meanings set out below:

“Controller”	has the meaning given in the Data Protection Legislation
“Data Protection Impact Assessment”	An assessment by the Controller of the impact of the envisaged processing on the protection of the Personal Data
“Data Protection Legislation”	means the Data Protection Act 2018 (DPA 2018), the UK General Data Protection Regulation (UK GDPR), the Regulation of Investigatory Powers Act 2000, The Investigatory Powers Act 2016, the Telecommunications (Lawful Business Practices) (Interception of Communications) Regulations 2000, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy including all applicable guidance, codes of practice issued by the Information Commissioner, in each case as amended or substituted from time to time.

“Data Subject”	Means an individual who is the subject of Personal Data
“DPA 2018”	Means the Data Protection Act 2018 as amended by The Data Protection, Privacy and Electronic Communications (Amendments etc) EU Exit) Regulations 2019 and any subsequent amendments
“UK GDPR”	Means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended by The Data Protection, Privacy and Electronic Communications (Amendments etc) EU Exit) Regulations 2019 and any subsequent amendments
“Law”	means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, bye-laws, regulatory policy, guidance or industry code, judgment of a relevant Court of Law, or directives or requirements of any regulatory body of which the Provider or its Staff are bound to comply.
“Personal Data”	has the meaning given in the Data Protection Legislation
“Personal Data Breach”	Has the meaning as set out in the Data Protection Legislation
“Processor”	has the meaning given in the Data Protection Legislation
“Protective Measures”	Appropriate technical and organisation measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and

	evaluating the effectiveness of measures adopted by it
“Staff”	means all persons employed by the Provider (including volunteers, agency, locum, casual or seconded personnel) in the provision of any services or any activity related to or connected with the provision of any services

2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Contracting Authority is the Controller, and the Concessionaire is both a Controller and, for purposes of the information being passed over to the Council, the Processor.
3. The Concessionaire is only authorised by the Council and shall only process Personal Data in accordance with the Council’s instructions as set out in Annex 1 (which may be amended from time to time), unless the Provider is otherwise required to do so by Law. Where the Processor is relying on Law with regard to the processing of Personal Data it shall notify the Council of this prior to any processing taking place.
4. The Council will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Provider for the duration and purposes of this Agreement.
5. If required the Provider shall, prior to the commencement of any processing, provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment. Such assistance may include:
 - 5.1. a systematic description of the envisaged processing operations and the purpose of the processing;
 - 5.2. an assessment of the necessity and proportionality of the processing operations in relation to the Services being provided by the Provider;
 - 5.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 5.4. The measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
6. The Provider shall notify the Council immediately if it considers any instructions from the Council to be in breach of Data Protection Legislation.
7. The Provider, in respect of any processing of Personal Data under this Agreement shall:
 - 7.1. Have in place, and maintain, Protective Measures, reviewed and approved by the Council from time to time to ensure levels of security. Such measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of or damage to Personal Data (such measures having taken into regard the nature of the data to be protected, the state of technological development and the cost of implementation);
 - 7.2. Not transfer Personal Data outside of the European Economic Area unless with the prior written consent of the Council, and subject to the Council and Processor being satisfied that sufficient safeguards are in place in respect of the transfer of the Personal Data and to protect the rights of the Data Subject;

- 7.3. Delete or return all Personal Data (including copies of it) to the Council when the retention period expires or on termination of this Agreement (whichever takes place first) unless the Provider is required by Law to retain the same.
8. The Provider shall ensure that its Staff:
- 8.1. only process Personal Data in accordance with this Agreement;
 - 8.2. are aware of and comply with the Provider's duties under this Agreement;
 - 8.3. enter into and be subject to, as appropriate, confidentiality agreements with the Provider or any sub-contractor;
 - 8.4. are made fully aware of the confidential nature of the Personal Data and not to publish, disclose or divulge any of the Personal Data to a third party unless directed to do so under this Agreement;
 - 8.5. Have undergone appropriate training in the use, care, protection and handling of Personal Data.
9. The Provider shall notify the Council within two (2) working days and shall provide full assistance and further information if it receives:
- 9.1. a request for Personal Data from a Data Subject;
 - 9.2. a request to rectify, block or erase any Personal Data;
 - 9.3. any other request in relation to the Council or Provider's obligations under Data Protection Legislation;
 - 9.4. any communication from the Information Commissioner, or regulations authority in connection with Personal Data being processed under this Agreement;
 - 9.5. A request from any third party for disclosure of Personal Data which disclosure is required by Law.
10. The Provider shall notify the Council without delay and in any event within 24 hours upon becoming aware of a Personal Data Breach or loss of Personal Data processed under this Agreement in order to enable the Council to report the breach to the Information Commissioners Office within the 72 hour deadline imposed by the UK GDPR and to assist the Council, as directed, in the investigation, mitigation and remediation of any Personal data Breach.
11. In the event of any personal data breach the Provider shall assist the Council in issuing any notifications to data subjects.
12. The Provider shall keep and maintain accurate records and information to demonstrate compliance with its obligations under this Agreement and any additional Data Protection Legislation obligations.
13. The Provider shall allow for and contribute to any necessary audits and inspections by the Council, or an auditor instructed by the Council, as required by UK GDPR.
14. It shall be at the Council's sole discretion as to whether it consents to any processing being conducted by a third party Sub-Processor. If the Provider requires any processing to be undertaken by a sub-contracted third party it must first seek the written agreement of the Council and the Provider shall enter into an appropriate written agreement with the Sub-Processor with processing obligations no less onerous than as set out in this Agreement. For the avoidance of doubt the Provider shall remain fully liable to the Council in respect of all acts or omissions

of the Sub-Processor. For the avoidance of doubt the Provider shall remain fully liable to the Council in respect of all acts or omissions of the Sub-Processor.

AS WITNESS the hands of the parties
SIGNED for and on behalf
of the Council

Authorised signatory

SIGNED for and on behalf
of the Provider

Authorised signatory

ANNEX 1

Data to be processed

Description	Individual information passed from the provider to the authority for purposes of contract monitoring or where a family has agreed to register with the Family Hub. Collated anonymised information passed from Concessionaire to Contracting Authority relating to children where the family have not agreed to register with the family hub.
Subject Matter	Information will be collated regarding individual children attending the nursery, either as anonymised data or, in a non-anonymised format where the family have agreed to register with the family hub and have completed a registration form.
Duration	Information relating to children who have registered with the Family Hub will be kept on the Family Hub data base in accordance with the data retention process for the Family Hub. Collated anonymised data, submitted annually for purposes of contract monitoring will be kept in line with NCCs data retention policies relating to contracts. (up to 6 years).
Nature and Purpose of the Processing	<u>Nature</u> – collection of data from the Concessionaire. <u>Purpose</u> to enable monitoring of the contract delivery against agreed targets and overall usage of the Family Hub.
Type of Personal Data	For children registering with the hub: Name, Address, Date of Birth, Disability, Ethnicity and names and contact details of their parents’. For provision of collated anonymised data where there are individuals not registered with the Family Hub: Age, Ethnicity, Disability and whether the child is a city resident.
Categories of Data Subject	Users of the service. (children and for those who have agreed to be registered with the family hub, their parents)
Plan for return and destruction of the data once processing complete	Where registration forms are emailed or passed as a hard copy to the Family Hub, the information will be inputted into the Family Hub Database and the original copy destroyed. Information on the Family Hub system is covered by its own data protection policy which is notified to the family at the time they agree to be registered with the hub.

	Anonymised data will be provided once a year in an annual report and this will be retained by the authority in line with its data retention policies relating to contracts.
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